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DEFEND OUR DEMOCRATIC STATE AGAINST CORPORATE CAPTURE!

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- Pallo Jordan assesses monarchies – in history and today
- The real agenda behind the International Criminal Court

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EDITORIAL NOTES

The Guptas aren't the only threat to our NDR – just the most obvious

A week in politics, as they say, can be a very long time indeed. At the end of February, in its Political Report to the Central Committee (published in this edition of *The African Communist),* the national secretariat of the Party focused on the dangers of corporate capture of the state. The report identified the Gupta family as a particularly dangerous, although not the only, threat in this regard. The political report went on to say: "It is time now that the SACP and the rest of the working class speak out more forcefully against these parasites."

That was just a few weeks ago. At that point in time, the SACP was more or less alone from within the ANC-led Alliance in publicly condemning the activities of the Gupta family. This was a few weeks before Cde Mcebisi Jonas, Deputy Finance Minister, confirmed that he had been approached by members of the Gupta family in their incessant meddling endeavours in the appointment (and demotion) of Cabinet ministers. And it was a few more weeks before the ANC's National Executive Committee finally decided to investigate the role of the Guptas.

Of course, this was not the first time that the SACP had raised the alarm around the role and influence of the Gupta family. At May Day 2013 rallies throughout South Africa, SACP speakers

(and at least one ANC speaker, secretary general, Cde Gwede Mantashe) roundly condemned the shameful landing of Gupta wedding guests at the Waterkloof airbase the day before. We called for an investigation into the circumstances. SACP speakers warned of South Africa being turned into a banana republic. More recently, on behalf of the SACP leadership collective, our Deputy General Secretary, Cde Solly Mapaila has led the way in speaking out about the Guptas.

The SACP's role in all of this has, of course, not pleased everyone. Irvin Jim, in a *Daily Maverick* "Opinionista" column, spends more time attacking Cde Mapaila than the ostensible targets of his intervention - state corruption and "white monopoly capital". Jim, with all of his vanguardist ambitions, is clearly miffed that he is a peripheral voice in this critical struggle. He has only himself to blame. Jim has marginalised himself because, unlike the SACP, he has failed to understand that, with all of its risks, the trajectory and contested future of our struggle will still have to be determined to a considerable extent, one way or another, from within the state and from within the ANC and the Alliance it leads. Jim has walked away from that responsibility.

The basic line of polemic pursued by Jim is to argue that the Guptas are a distraction from the "real" corporate capture of the state by "white monopoly capital" (would "black" monopoly capital, whatever that might mean, be okay?). In this, ironically, Jim is not very far from the counter-offensive strategy waged by the Gupta-controlled media (*The New Age* and *ANN7*). Hired gun Andile Mngxitama, writing in *The New Age*, for instance, portrays the attack on the Guptas as a "story hatched by the global white capital propaganda machine". Regular *New Age* contributor, Pinky Khoabane, argues, in effect, in several columns that if you think the Guptas are bad what about Jo-

hann Rupert and his mega-rich clan? It was Khoabane who wrongly claimed (she has since back-tracked somewhat) that Rupert flew out from London to meet with Deputy President, Cde Cyril Ramaphosa in December to "instruct" the state to hire Cde Pravin Gordhan as Finance Minister.

In responding to Jim, Mngxitama, Khoabane and others, it is useful to note that the SACP, in defence of our democratic national sovereignty and in the face of the dangers of corporate capture, has not focused exclusively on the Guptas. Take the February Central Committee political report for instance. Readers will note that, while several paragraphs are certainly directed against the Gupta family, the Rupert family, the Oppenheimer family, and Koos Bekker's Naspers-empire (a conglomerate that includes media giants Media 24, Multichoice and extensive printing and publishing operations) are all critically flagged.

At the same time, we need to analyse more accurately and strategically the different and complex ways in which capital and its agents (shareholders, CEOs, fund managers, ratings agencies, the IMF and World Bank, neo-liberal ideological high priests, and their diverse lackeys and hangers-on) might undermine the democratic mandate of the post-apartheid South African state. Simply treating corporate capture as a monolithic "plot hatched by global (white) capital", or, conversely, as the doings of the Gupta clan, leaves us strategically and tactically disarmed. We are not about to abolish capitalism globally, and simply dealing with the Guptas won't make our challenges miraculously disappear.

An effective anti-capitalist, and therefore an effective anti-corporate capture strategy, needs to understand the terrain much more accurately. Obviously there is not the space in this brief Editorial Note to undertake a comprehensive analysis. But here are some point-

ers. In the first place, it is important to recognise that, while they will all be hostile to the SACP, the working class, a radical national democratic revolution and socialism, the Guptas, Bekkers, Ruperts and Oppenheimers have different and in some respects conflicting agendas.

Johann Rupert's extensive business empire was inherited largely from his father Anton, a Broederbonder and at one time the National Party Cape Province's favoured replacement for Verwoerd as apartheid prime minister. The Rupert empire is centred on two major corporations that emerged from the South African tobacco giant, Rembrandt–Remgro and Richemont. Remgro is an investment company headquartered in Stellenbosch with interests in finance, mining and industry.

Richemont is a Swiss-based luxury goods company. The Rupert business empire embraces hundreds of companies in 35 countries and on six continents. It is an empire that does not depend on South African government tenders. Johann Rupert can leave the schmoozing of ministers to others. He can leave the bullying of the South African government, the heavy lifting to "market sentiment", to the ratings agencies, while he enjoys a weekly family meal at the Ruperts-only reserved table in his favourite Stellenbosch restaurant when he is not on holiday in one of the family's properties in the Seychelles or in Onrus.

Koos Bekker's personal trajectory has both similar and distinct features. Like the Rupert empire, Bekker's current empire was based on Afrikaner capital accumulation – in the case of Naspers dating back to 1914. Several directors and editors in Naspers were prominent apartheid-era politicians, including DF Malan, Hendrik Verwoerd and PW Botha. As the NP's favoured newspaper and school textbook publisher, the company benefited extensively after

the NP's accession to power in 1948. Bekker's own involvement in Naspers came in 1985 when, as a young post-graduate, he helped launch MNet, one of the first two pay TV services anywhere in the world. Most of the funding came from Naspers. Like the Rupert empire, Naspers is a multi-national. It operates in 130 countries, and it is listed on the JSE and in London. A major investment and money-spinner has been the Chinese-based media and entertainment company, Tencent in which Naspers has a 34% holding.

However, unlike Johann Rupert who operates in a somewhat aloof if not downright disdainful manner towards the post-apartheid ANC-led government, Bekker's Naspers South African media have other requirements. They are active within highly regulated sectors and there have been constant interventions from these corporate quarters to influence and suborn ANC MPs and government officials. As numerous SACP statements have indicated, Naspers has, with the connivance of some ANC politicians and the current leadership of the SABC, subverted and undermined the public mandate and responsibilities of what is meant to be our public broadcaster. The much-delayed digital conversion also has everything to do with Naspers interference and partial corporate state capture.

By contrast with both the Ruperts and Bekkers, the Gupta family, arriving in South Africa in the mid-1990s, has been entirely parasitic for their wealth accumulation on corrupting parts of the post-apartheid state. In particular, they have targeted key parastatals, among them Eskom, Transnet, Denel and SAA, as well as provincial governments. The Ruperts and Bekkers, part of the so-called Stellenbosch mafia, appear to have some degree of commitment to South Africa, presumably both for wealth preservation and sentimental cultural reasons. (Rupert is reported to have cancelled all Richemont advertising in an overseas publication that once crassly described Afrikaans as "the

ugliest language in the world".) The Ruperts and Bekkers repatriate some of their considerable global earnings back into South Africa. By contrast, the Gupta family is reputed to be shipping its ill-acquired wealth post-haste out of the country to Dubai in anticipation of a loss of political influence in the near-term.

A greater attachment to South Africa does not mean that Rupert and Bekker are "good capitalists" while the Guptas are "bad capitalists". Nor does the difference between a Remgro and a Naspers make Johann Rupert a nicer capitalist than Koos Bekker. Capitalism itself, however innovative, dynamic and durable it can sometimes be, is a thoroughly exploitative system, and, in civilizational and ecological terms, it is unsustainable. The SACP is not alone in recognising this reality: the current head of the Roman Catholic Church, Pope Francis, for instance, is outspoken in his recognition of this fact.

For the SACP it is not the Ruperts, or the Bekkers, or the Guptas, but capitalism as a global system that constitutes our principal and formidable strategic challenge. But how to deal with it? How do we safeguard our hard-won democracy? How do we defend our electoral mandate? How do we roll back the profit-maximising agenda of capital? What tactical and strategic programmes do we undertake?

Again, within the confines of an Editorial Note, we can only indicate some issues in broad brush-strokes. So let's take one topical area. If we are to advance a second radical phase of the National Democratic Revolution, as we surely must, we require among other things a strategically disciplined, professional National Treasury and South African Revenue Service (SARS).

The Guptas' smash-and-grab, parasitic agenda has no such interest. A National Treasury that blows the whistle on the squandering

of public resources on corrupt tenders, or that asks rational questions about a mega nuclear build programme, or a SARS that probes high income earners, are all anathema to the Guptas.

By contrast, the Ruperts and Bekkers for both sentimental and wealth preservation reasons, would like to see an effective Treasury and SARS capable of staving off a South African economic meltdown. But for them and much of the rest of South African monopoly capital, a strategically disciplined and professional Treasury and SARS would be institutions that essentially imposed a neo-liberal, investor friendly macro-economic policy programme that continued to lock South Africa into its semi-peripheral global positioning within the wider imperialist value chain.

Against the parasitic agenda of the Guptas and others, the SACP supports the defence of a strong and professionally effective Treasury and SARS, but the strategic discipline we have in mind is radically different from that of the Ruperts and Bekkers. We recognise the imperative for macro-economic, monetary and fiscal strategic discipline and professionalism in support of a radical second phase of the NDR.

This includes macro-economic policy aligned to re-industrialisation, a major state-led infrastructure spend programme, job creation and sustainable social redistribution. In short, we require an effective Treasury and SARS, along with development finance institutions, which form important pillars of a democratic, developmental state. This is the only way that we can begin to roll back the neo-liberal agenda of the Ruperts and Bekkers. But the very state and parastatal instruments required for this developmental agenda are the ones that are actively and wilfully eroded by the Gupta agenda.

In short, exposing and putting an end to the parasitism of the

Guptas and others like them is not a diversion from confronting monopoly capital as personified by the Ruperts and the Bekkers. Defeating parasitism is essential to confronting monopoly capital and advancing, deepening and defending our national democratic revolution. ★

CENTRAL COMMITTEE POLITICAL REPORT

Mobilising working class-centred people's power

Reverse state capture, build people's education, transform the financial sector and sharpen ideological struggle to drive a second, more radical phase of our transition

When we went to our Special National Congress in July last year, we chose our Congress theme after careful consideration based on the assessment of the then prevailing political situation. Our call became Communist cadres to the front to unite the working class, our communities and our movement. Later, however, the SACP felt that much as this is an important organisational clarion call, the question was asked about what we are calling this unity for. We then argued that it was actually a clarion call to unite ourselves in order to drive a second, more radical, phase of our transition.

Our Special Congress call for unity in all the various sites and terrains of struggle, which now is also our 2016 programmatic theme, was informed by a number of developments and observations in the contemporary conjuncture. Firstly, the call for the unity of the working class was primarily informed by the imperative of uniting the Congress of South African Trade Unions (Cosatu) at a time when our ally was facing a huge onslaught on a number of fronts and with a very real threat of serious divisions and the weakening of the federa-

tion. It was an offensive that was initially launched with the attack on the National Union of Mineworkers (NUM) in the platinum belt a few years earlier. This was to be followed by the Cosatu General Secretary embedding himself in a faction that wanted to turn Cosatu into an extension of political forces that had placed themselves outside, and in opposition, to the Congress movement. This led to, amongst other things, the expulsion of National Union of Mineworkers of South Africa (Numsa) and the Cosatu General Secretary, with a few of the affiliate unions aligning themselves with the expelled union and General Secretary, but simultaneously, choosing to remain inside the federation.

Given the above context, the call to unite the working class, was also specifically meant to rally communists and SACP structures to support and work with Cosatu during one of its most difficult times. Indeed, much as the Cosatu leadership and affiliates played the most important role in defending the unity of the federation, the SACP also rose to the challenge of supporting the efforts of unifying and defending the integrity of our ally, Cosatu.

Unifying our communities was informed by two inter-linked considerations. Firstly, the need to position the ANC and the SACP organisationally to provide leadership in our communities. Secondly, to see that this is necessitated by the enormous challenges facing especially poor and working class communities in our townships, particularly in the light of high unemployment and other forms of social distress in these communities.

Often, the worsening conditions in our townships and rural villages are due to the failure of some government services to reach these communities. Instead, these services are consumed by tenders by middlemen standing between government and services for communities. Our townships and villages still remain the primary residential areas of the vast majority of the workers and poor in our country.

The clarion call for the unity of our movement was also informed by our concerns at the increase of factionalist activity especially inside the ANC. Factionalism is reaching unprecedented levels, accompanied by the corrupting and hollowing out of democratic practices in its structures. The problems include gate-keeping, corruption of democratic procedures in branch general meetings, outright stealing of regional and even provincial conferences through corrupt practices, including the use of money to buy delegates' votes. These problems have reached serious levels in our movement.

In the above context, there is also a resurgence of anti-communist and anti-working class sentiment from within sections of our own movement. And all of this is taking place in the wake of the stubborn persistence of the structural features of our economic trajectory, characterised by inequality, poverty and unemployment. One would have thought that in in the light of such challenges all class forces within our movement would seek to deepen broad and maximum unity to drive a more radical phase of our transition. And yet factionalism is deepening. There are also more regressive tendencies and splinters emerging from inside our movement, such as the neo-fascist EFF tendency and an ultra-leftist but simultaneously business-unionist tendency, such as that in Numsa.

Corporate capture and other threats facing our movement and government

The principal (internal) organisational and political threat facing our revolution was sharply identified at the Alliance Summit last year - that of corporate capture. Various elements of both domestic and international capital, often in alliance with a domestic parasitic bourgeoisie, are seeking to capture our movement to pursue narrow class accumulation interests

Among the worst forms of corporate capture to emerge of late are those represented by the parasitic Gupta family, which is unashamedly capturing state tenders and business licences, and in the process arrogantly trashing our national sovereignty and national pride. The landing of the Gupta's family's wedding guests at a national key-point air force base represented, as the SACP asserted at the time, a humiliating affront to our national pride and sovereignty. This family is working hand in glove as part of a parasitic bourgeoisie in the state with people from within our own ranks, and are increasingly influencing government policies and key government decisions and appointments. It is time now that the SACP and the rest of the working class speak out more forcefully against these parasites.

South African capitalism, going back to Cecil John Rhodes and Alfred Beit has, of course, always had its own super-rich oligarchs. In more recent decades the oligarchies have included the Oppenheimer and Rupert families. The Guptas are emerging as one of the latest capitalist oligarchies seeking to capture tenders in the state, especially in the state owned enterprises. Capitalism in other parts of the world has had its own oligarchies, as in Russia today. In Russia, the state tends to discipline these oligarchies, but in South Africa there is a very real danger that they tend to discipline the state!

Since the mid-1990s, sections of our movement leadership have come under the heavy influence of US and London-based imperial finance capital, which seeks to displace and ultimately destroy our (working class based) Alliance, and replace it with a new alliance anchored in the bourgeoisie (old and new, including the worst components of the parasitic elements).

Established sections of Afrikaner capital, notably the Naspers group, have also managed to endear themselves, often through underhand means, to some of the sections of the leadership of our movement,

including some MPs. These represent the most backward sections of capital in our country that hugely benefitted from the apartheid regime. Unfortunately, precisely because of its experience in working with the apartheid regime, this section of imperialist capital has placed itself in a pole position to co-opt and corrupt some of the leaders of our own movement.

The latest sections of international capital that are creeping onto our economic shores are those of Russian oligarchies, which are strongly positioning themselves principally on the possible acquisition of nuclear energy. This development has the potential of undermining aspects of the progressive content and possibilities of Brics. It also calls for renewed energy by the SACP for consolidating our own international relations, both inside and outside Brics countries, as an integral component of the – internationalist – organisational renewal of the SACP

The corporate capture – real and potential – outlined above has been made possible by the creation of a small, but highly compradorial Black Economic Empowerment (BEE) bourgeoisie. This compradorial stratum is characterised by its high dependence on state policies and procurement for accumulation. It is a bourgeoisie that has very minimal independent control over any capital, and often made up of paper rather than substantial millionaires. The latter reinforce the very dependency of this BEE bourgeoisie on established (white and imperialist) monopoly capital

Perhaps one of the dangerous features of the current conjuncture is that of the parasitic capture of state-owned enterprises, accompanied by the corruption of some of our state institutions that are fundamental to the strengthening of our democracy, such as the South African Revenue Services (SARS) and the National Prosecutions Authority (NPA).

All these developments undermine a working class-led process of driving a second phase of our transition. The struggle inside the ANC and the Alliance at the moment is between the working class and a parasitic bourgeoisie. The struggle for 2017 is not about the ANC conference as such, but about who captures the ANC. In fact, what often seem to be tensions between the ANC and the SACP are often proxy battles representing factionalist struggles inside the ANC itself.

Lately, this parasitic bourgeoisie seems to be emboldened, and we need to identify the reasons for this. The anti-communist and anti-working class stances of this parasitic bourgeoisie have become more aggressive and strident. Could it be that it has consolidated some powerful bourgeois backers from inside and outside our country? It is seemingly ready to sacrifice our Alliance. Or could it be a sign of desperation and paranoia about the possible negative reaction to this blatant capture of our movement from sections within it?

All these factionalist tendencies tend to be exacerbated during periods of leadership transition in the ANC, especially in conjunction with the end of term of the President of the Republic. The story and narrative become the same, with attacks on communists gaining more traction, as happened in the lead up to the Polokwane conference.

It is also against this background that our own 14th Congress assumes even more significance. The run-up to our Congress, which coincides with the centenary of the Great October Socialist Revolution in Russia, must not be seen narrowly as preparing for an event, but rather its preparations must be integrally linked to the challenges facing our revolution and movement, as well as the terrain upon which SACP's organisational renewal must be consolidated.

The national question and social cohesion

The resurgence of racist views and attitudes in society has exposed

the fragility of our 1994 consensus on the national question, principally revealing that the latter cannot be addressed without fundamentally addressing economic emancipation. The idea of a "rainbow nation" that does not address class, national and gender questions in their interrelationship was always a false one.

The impact of unemployment, inequality and poverty has deepened many social fault-lines in our communities and society. This is manifested through increased violence against women and children, worsened by poor progressive leadership in our communities.

The above underlines the necessity for the SACP, and indeed the ANC, to remain focused on the national question, especially in its relationship to class and gender

Heavily indebted working class and lower middle class households

The #Feesmustfall campaign (notwithstanding its internal contradictions and contradictory character) is not unconnected from the broader class struggles in South African society and its capitalist nature. The almost-simultaneous struggles of the working class over their pension funds and the current student struggles over access to higher education, capture a deeper reality that is facing South Africa's working class and lower middle classes.

South Africa's working class and the lower middle classes are deeply indebted largely as a result of the absence or inadequacy of a social wage, especially for the working class. The Taylor Commission focused on this issue, and proposed a comprehensive social security net.

The core of the working class (including nurses, teachers, police, factory workers, etc) does not benefit from the government RDP housing subsidy. At the same time, large sections of the working class and lower middle classes do not qualify for housing bonds from private banks. Even those who have access to such bonds are currently

experiencing extensive bank repossessions and evictions. The latter have reached the same levels as during the height of Group Areas Act evictions under apartheid!

Similarly, the same class strata do not benefit and often fall through the cracks of the National Student Financial Aid Scheme (NSFAS), which is meant to assist poor students. The majority of children from the working class come from families that are not poor enough in terms of NSFAS criteria, and they yet cannot afford to finance their university education.

The working class and lower middle classes also suffer from the absence of safe, reliable and affordable public transport. Many workers spend up to 40% of their monthly income on unsafe and unreliable public transport.

The absence of an affordable and quality health care system, for instance a National Health Insurance (NHI) scheme, places additional burden on these families, thus further eroding their income. A huge percentage of working class and middle class families rely exclusively on the expensive private health care system through their (inadequate and yet very costly) medical aid schemes.

On top of the above expenses many workers and middle class professionals have to look after unemployed or aged family members (the so called black tax), which puts a further strain on earnings.

All the above are manifestations of colonialism of a special type, a variant of bourgeois rule that had been based, and continues to be, on the super exploitation of the black working class and middle classes, which endure a heavy burden from this legacy.

It is therefore important to understand the student struggles from the standpoint of the failure of capitalism to finance higher education, in particular, for the working class and the poor. For example, the next possible bubble in the United States after the 2008 housing

bubble, is that of student debt, currently estimated at about US$1,2-trillion. Due to the misery of the 2008 capitalist crash, many families and young people took loans for education with the hope that as the US picked up from the 2008 crash they would be able to get better jobs. The creation of better jobs is taking a long time, thus exacerbating student indebtedness.

Without by any means abandoning the struggle for free higher education for the poor, it is important to understand that the state is being asked to bail out capitalism for its failure to fund higher education for the poor.

It is therefore important that we intensify our financial sector campaign together with the struggle for a comprehensive social security net. More importantly, Cosatu must earnestly take up the campaign on where and how workers' pension and provident funds are invested.

People's education for people's power

The ANC's 8 January 2016 statement appropriately names this year as the year of advancing people's power. This call is most appropriate, especially in light of the student struggles in higher education, worsening social distress in working class communities, as well as the local government elections. Indeed the many challenges we face call for the mobilisation of people's power, with the working class at the centre. It is therefore important for the SACP and the working class as a whole to ensure that this does not become just a slogan, but a reality.

In fact the very corporate capture that we spoke about earlier can only truly be reversed and defeated through the mobilisation of people's power.

In our analyses of the student struggles at our last Central Committee in 2015 we noted a number of positive aspects of the #Feesmus-

tfall campaign, among which was their potential to politicise many students for the first time in their lives, as well as putting pressure on our movement to implement its own resolutions.

However there are many negative aspects and other lessons to be learnt out of these struggles. While internet based mobilisation is a very powerful organisational weapon, the internet cannot provide leadership to such mass struggles as shown by the collapse and defeat of a number of promising Arab Spring struggles in North Africa and the Middle East.

A hugely negative outcome of these 2015 university struggles is that of the resurgence of Black Consciousness and PAC- type thinking. Indeed, like in all racially dominated societies (both politically under apartheid, and economically in the past 21 years) black consciousness thinking tends to attract a lot of young people both from poor and from lower middle class families. The concept of "decolonisation" emanates from these realities and needs to be subjected to critique.

The post-1976 student struggles quickly overcame Black Consciousness discourses mainly because of systematic interventions by the Congress movement, as well as through the formation of Congress-aligned movements in the 1980s. An important ideological role and intervention in this regard was that of the working class, through the fledgling progressive trade union movement in the 1980s and the all-important worker-student alliances forged on campuses, as well as the ideological role of the SACP underground.

The 2015 student struggles have taken place against the background of a weakened ANC-SACP presence on our campuses, as well as the absence of the concrete articulation of the perspectives of our movement on education, especially the concept of "people's education for people' s power" in the current conditions.

The participation and support given to the student struggles by some of our own ANC comrades have more been about advancing their narrow factionalist interests to attack the SACP and the working class rather than principled support for genuine student struggles and the transformation of higher education.

Therefore there has been very little theoretical and strategic guidance given to our student formations along the lines of our strategic perspectives of people's education for people's power in the contemporary struggles.

It is absolutely essential for the SACP to play a leading role in the concrete elaboration of our perspectives in order to guide these struggles ideologically along the lines of driving a second more radical phase of our transition, with the broader perspectives of the national democratic revolution.

It is also absolutely imperative that we strengthen YCL structures on our university and college campuses as well as building strong SACP structures in these campuses.

It is important also for the SACP to invite Sasco's leadership and cadres to its joint political schools, especially those with the National Health and Allied Workers Union (Nehawu) and the South African Democratic Teachers' Union (Sadtu).

Key ideological, organisational and mobilisation tasks in the current period

We need to undertake a frank and self-critical analysis of our own SACP role in the post-Polokwane period, and also whether we did not elevate palace politics above mass mobilisation and building independent working class power on the ground.

We need to reflect on our experiences in governance over the last while, including the role of communists in governance since 1994.

With clear signs that there is a push by the parasitic bourgeoisie to drive communists and the working class out of the Alliance, what is our strategy to defend the revolutionary character of our movement and the strengthening of an independent SACP?

Our strategy must also include the organisational renewal of the SACP and its machinery and readiness to build capacity in all key sites of power, including policy, administrative, labour unions, international and the ideological capacities.

Perhaps in the process of seeking to forge a broader left-leaning consensus within the Alliance, thus prioritising palace manoeuvres, we abandoned the idea of pushing forward with the idea of a reconfigured Alliance, a matter we need to return to with some vigour. It must seek to answer the question that whilst the Alliance remains relevant, is its modus operandi perhaps outdated and now needs to be revisited?

Perhaps a key issue to be confronted is the reality that in some areas the ANC has lost so much credibility that in order to save our Alliance the SACP may have to consider contesting elections, on a case-by-case basis. KwaZulu Natal is one province where we are faced with this stark reality. We need to consider and debate this thoroughly.

The transformation of the financial sector as the key platform for a comprehensive social security net

At the last SACP-Cosatu bilateral, Cosatu agreed to take back to its CEC the proposal to campaign around the transformation of the financial sector and to link this both to its more specific provident fund issue, and to the broader struggle for a comprehensive social security system. This provides an important opportunity for the Party to work actively on the ground with Cosatu. The SACP has, of course, already committed to take up the financial sector campaign as our

flagship campaign for the year. Nedlac has agreed to convene a second Financial Sector Summit in the second quarter of the year, and that presents one useful milestone that should be preceded by popular mobilisation, a review of the Financial Sector Charter agreements, and other policy work.

The prospects for effective broad-based mobilisation are significant, particularly focusing on the unsustainable and deepening debt crisis confronting many South African households. More than 10 million credit active South Africans now have impaired records (three months and more in arrears). Unsecured credit in South Africa grew from R40-billion in 2008 to R172-billion in 2014. Much of this credit is for immediate consumption. An estimated 40% of loans from micro-lenders are to buy food. Some 65% of consumers of non-mortgage loans earn less than R8 000 per month. With mass retrenchments in the mining sector, with rising food prices, partly impacted by the drought, the household debt crisis will deepen. It is a crisis that is affecting the unemployed, the under-employed and casualised, unionised workers, families supporting students, and, indeed, large swathes of the so-called "new black middle class" whose middle-class status is typically only possible through unsustainable indebtedness.

The original Nedlac Financial Sector Summit in 2002 was a direct outcome of the SACP's Red October Campaign, launched two years before. A Financial Sector Charter (FSC) was signed in 2004.

The Summit and Charter resulted in a number of gains:

- A credit bureau blacklisting amnesty and greater transparency in the working of credit bureaux; and
- The National Credit Act and a National Credit Regulator – with the latter showing increasing effectiveness.

But as we assess the impact of the first FSS and FS Charter we need to also note weaknesses and assess other issues:

- Compliance with the Charter was purely voluntary;
- The Charter was predominantly a BEE arrangement – with the 15% equity target (itself a special dispensation for the financial sector), among the few hard targets; and
- Commitments to targeted financing of housing for instance (Community Reinvestment requirements) were vague and never implemented:

Other issues that require critical assessment include:

- Why has so little progress been made with co-operative banking?
- The Mzansi Account was an important achievement of the first Summit – but what are the lessons to be learnt?

Among the issues going forward that the SACP (and the broader network of allies in the FS Campaign) should take up are:

- Some form of debt amnesty – this will require more detailed engagement, including with Treasury and the Department of Trade and Industry, to ensure that unintended negative consequences are avoided;
- Intensification of the campaign against Garnishee Order abuses;
- Intensification of the campaign against Mashonisa – illegal interest rates, illegal additions, the holding of IDs, etc; and
- Evictions – an estimated 100,000 households a year (now on a scale comparable to the height of Group Areas removals).

Other demands should include:

- Capped interest rates on industrial credit, and for the gap housing market;
- Enhanced developmental role of Development Financial Institutions (DFIs) – including consolidation and rationalisation of multiple (often provincial) DFIs. ECDC has reserves

of R1-billion, FSDC reserves of R400-million, Limdev, Ithala, etc. In his budget speech, Cde Gordhan alluded to the lack of transparency that often applies to DFIs, notably in provinces;

- Progress towards stabilising South African Post Office with a view to providin the Postbank with a banking licence.

To take forward the Financial Sector Campaign we need, as the SACP, also to ask self-critical questions. In particular, we need to note that in the recent past, with some exceptions, our campaigns have often been little more than a launch rally, a few provincial launches, and a closing rally. How do we ensure that we actually organise more effectively and in a sustained manner on the ground, and once more build the network of formations behind the campaign?

The struggle for a transformed, developmentally oriented financial sector and the review of the appropriate approach to provident fund reform are both inextricably linked to the need for a comprehensive social security system that responds to the reality of our situation. It is a situation in which mass unemployment is not a temporary phenomenon for many, and in which worker retirement funds and different social grants are typically not used only by the individual recipients but are needed to support extended households. This reality is very far from the assumed reality behind the classical welfare state social security net – i.e. that there is relatively full employment, that workers are typically employed for a working lifetime by a single employer, and that households are male-headed and nuclear. With these assumptions, social security is seen as "temporary" relief – unemployment insurance for a few months of unemployment, or for maternity leave, of for retirement, or temporary injury. This has never been the South African reality and, increasingly, globally it is not the reality in both developed and developing societies, with growing cas-

ualisation, a-typical work, mass (particularly youth) unemployment, etc. This requires a fundamental re-think of social security and social wage interventions.

Currently the Department of Social Development and the National Treasury are working on a social security policy, and have promised that it will be published in the course of the year. It is critical that through campaigning and policy engagement we influence this policy. This must include advancing the NHI, public employment programmes, as well as the trade union movement taking up where its provident and pension funds are invested, as key pillars of a social security approach. ★

DISCUSSION PAPER

On the institution of monarchy in South Africa

Z Pallo Jordan offers a panoramic class perspective on the origins and perpetuation of "the rule of one"

Since January 2008 there have been sporadic outbreaks of violence against foreign-born Africans in a number of informal settlements close to Pretoria, Johannesburg and Cape Town. This violence also escalated sharply in the informal settlements near Alexandra, Diepsloot, Reiger Park and in Jeppestown. Within days of the pogrom's outbreak they took an ethnic turn, with attacks even on other South Africans, especially those speaking Tsonga and Venda. When the final tally of those killed was completed, it was clear that the majority of people killed were South Africans, 22 in all!

There are indications that much of the violence was orchestrated. But the brutality of the attacks and the willingness of even relatively small numbers of South Africans to constitute these violent mobs suggests that feelings of antipathy towards those cast in the role of "others" are relatively easily mobilised among the poorest section of the African people, such that they can be incited to mount violent attacks on neighbours and strangers.

Are the events we have witnessed evidence of a resurgence of ethnic identity? The urban African tends to identify less with the ethnic

group than his or her rural cousin, yet it was in the urban areas that the xenophobic violence took place.

Can we in earnest assert that 104 years after 1912, the traditions of anti-tribalism, of a progressive African nationalism and internationalism are firmly rooted in our society? Can we be absolutely certain that they are secure even within the ANC?

In his call convening the inaugural conference of the ANC, Cde Pixley kaIsaka Seme wrote: "We are one people, these divisions, these jealousies, are the cause of all our woes today."

Writing in Govan Mbeki's *"Inkundla yaBantu"* in May 1946, Cde Anton Lembede expressed it as follows: "Africans are one: Out of the heterogeneous tribes, there must emerge a homogenous nation."

In 1948, the ANC Youth League's *Basic Policy of the Congress Youth League* declared: "The African people in South Africa are oppressed as a group with a particular colour. They suffer national oppression in common with thousands and millions of oppressed colonial peoples in other parts of the world.

"African Nationalism is the dynamic national liberatory creed of the oppressed African people. Its fundamental aim is:

- The creation of a united nation out of the heterogeneous tribes;
- the freeing of Africa from foreign domination and foreign leadership; and
- The creation of conditions which can enable Africa to make her own contribution to human progress and happiness.

"The African has a primary, inherent and inalienable right to Africa which is his continent and Motherland, and the Africans as a whole have a divine destiny which is to make Africa free among the peoples and nations of the earth."

That an ethnic consciousness is still quite pervasive amongst sec-

tions of the African people casts doubt on our attainment of the objectives that the visionaries of our movement inspired us to strive for. Though it is highly differentiated and can often be correlated with urbanisation, class and region, ethnicity is a political reality our movement is pledged to oppose.

A question we have to pose to ourselves is: has there been a resurgence of ethnic consciousness among the African people, and indeed amongst other South Africans?

The ANC was founded to nurture a national, as opposed to an ethnic, consciousness among the African people. As the pioneer national movement in Southeastern Africa, the ANC also embraced a pan-African vision that linked us in South Africa, not only to the rest of the continent, but also to people of African descent around the world. The ANC inspired the emergence of national movements in the neighbouring countries, helped to organise them and our fighters shared the trenches with all the other liberation movements (with the possible exception of Swapo) in the region. Our own experience in South Africa instructed our movement in non-racialism, while association with international progressive movements taught us internationalism.

In his address from the dock during the Rivonia Trial in 1964, Cde Nelson Mandela summed up the ANC's experience and the evolution of its political identity as a modern national liberation movement in the following terms:

"The Magna Carta, the Petition of Rights, and the Bill of Rights are documents which are held in veneration by democrats throughout the world.

"I have great respect for British political institutions, and for the country's system of justice. I regard the British Parliament as the most democratic institution in the world, and the independence and

impartiality of its judiciary never fail to arouse my admiration.

"The American Congress, that country's doctrine of separation of powers, as well as the independence of its judiciary, arouses in me similar sentiments.

"I have been influenced in my thinking by both West and East. All this has led me to feel that in my search for a political formula, I should be absolutely impartial and objective. I should tie myself to no particular system of society other than of socialism. I must leave myself free to borrow the best from the West and from the East."

With these words Cde Mandela was aligning the ANC with specific political traditions and doctrines, which in broad terms are referred to as democratic. These are traditions rooted in the revolutionary movements that unfolded in the Atlantic region of the world between the 17th and 19th centuries, beginning with the English Revolution of 1640.

In both the great revolutions of that era, in order to establish a democratic order or representative government, the institution of monarchy was overthrown and kings were executed. The American Revolution (1776), by politically seceding from British rule, repudiated the institution of monarchy in favour of a republic. Though the monarchy was permanently restored in Britain, and temporarily in France (between 1815 and 1871), by the end that era, the emperors, kings and other monarchs exercised extremely diminished powers usually defined in a negotiated constitution.

The 1969 *Strategy and Tactics* adopted at Morogoro spells out the ANC's understanding of the liberation struggle:

"The struggle of the oppressed people of South Africa is taking place within an international context of transition to the Socialist system, of the breakdown of the colonial system as a result of national liberation and socialist revolutions, and the fight for social and eco-

nomic progress by the people of the whole world.

"We in South Africa are part of the zone in which national liberation is the chief content of the struggle. On our continent sweeping advances have been registered which have resulted in the emergence to independent statehood of 41 states. Thus the first formal step of independence has been largely won in Africa and this fact exercises a big influence on the developments in our country."

The Morogoro document goes further to describe the character of our liberation struggle itself:

"The national character of the struggle must therefore dominate our approach. But it is a national struggle which is taking place in a different era and in a different context from those which characterised the early struggles against colonialism. It is happening in a new kind of world - a world which is no longer monopolised by the imperialist world system; a world in which the existence of the powerful socialist system and a significant sector of newly liberated areas has altered the balance of forces; a world in which the horizons liberated from foreign oppression extend beyond mere formal political control and encompass the element which makes such control meaningful - economic emancipation. It is also happening in a new kind of South Africa; a South Africa in which there is a large and well-developed working class whose class consciousness and in which the independent expressions of the working people - their political organs and trade unions - are very much part of the liberation front. Thus, our nationalism must not be confused with chauvinism or narrow nationalism of a previous epoch. It must not be confused with the classical drive by an elitist group among the oppressed people to gain ascendancy so that they can replace the oppressor in the exploitation of the mass."

The institution of monarchy

In both our movement and in South African society in general we employ the term "traditional leaders" rather than the more accurate "monarchs". Throughout this paper I will use the term monarch/s, firstly because it is historically more accurate and, secondly, because "traditional leader" somehow suggests that tradition can endow a person with the right to lead. "Traditional leader" is a euphemism that conceals the historical reality that many who are so described in fact could not justify that title in terms of tradition (as we shall demonstrate further on). The term itself is ideologically rooted in the monarchist assumptions this paper seeks to debunk.

Monarchy is a form of government in which one person – a chief, prince, king, emperor – is the head of state. The word, derived from Greek, literally means one person (mono-) rule (archy).

With the exception of hunter-gatherer societies, some of which still survive marginally, the institution of monarchy, in one form or another, has characterised all societies as they develop in size and complexity. Monarchy as an institution is based on the premise of inequality among people. It assumes that some people, by virtue of their birth, are entitled to rule, while others, for the same reason, are born to be ruled by others. Intrinsically, the institution is undemocratic, if not anti-democratic.

The historic origins of the institution are lost in the mists of time, but the careers of a number of historical figures offer a few hints about how monarchies came into being. They also reveal how it has been exploited, utilized and manipulated for both political and economic objectives unrelated to the institution itself.

For example, Napoleon Bonaparte was neither related to the royal family (the Bourbons) of France nor did he claim to be. But, by dint of a distinguished military career he was able to make himself emperor

of France in 1803. In South Africa, Shaka, descended from a relatively obscure clan among the Nguni of Natal, performed a similar feat and died as a king. The status of his formerly obscure clan rose with him to become dominant within the kingdom he built, which also took on its name.

History abounds with other examples. The Claudio-Julian clan (gens) in ancient Rome, thanks to Julius Caesar's military career, gave birth to the first five emperors after the fall of the republic. Caesar's name also became synonymous with emperor and all Roman emperors were called "Caesar", though all those who came after Nero (ruled 55–68 A.D) were not related to the original Caesar. The title Caesar was later Germanized as "Kaiser" meaning emperor, and as "Czar" in Russian, also meaning emperor.

In China, two of the famous dynasties that ruled pre-modern China were not even ethnic Chinese. The Yuans (1271 to 1368) of Genghis Khan were Mongols, the Chings or Manchus (1644 to 1911), the last dynasty to rule China, were Manchurians. After defeating the enfeebled indigenously ruled empire's armies in battle, both the Mongols and Manchurians had imposed themselves as rulers.

Monarchy has been manipulated for a range of political and social reasons. Thus, for example, the incumbent royal family of Great Britain are descended from the German House of Hanover, who reigned from1714 until the death of Victoria in 1901. The Hanovers had been made kings of Britain for a fee. George I, the first Hanoverian king, could not even speak a word of English when he ascended the British throne! The family changed their name from Saxe-Coburg to Windsor under political pressure during the First World War. Battenberg, their original German surname, also became Mountbatten.

The Bernadottes, the royal family of Sweden, are the descendants of a French general, Jean Baptiste Bernadotte, who had risen through

the ranks of the Napoleon's army from the rank of a common soldier (a private) to Marshall. Napoleon rewarded him by making him crown prince of Sweden. By 1815 he had become the king of Sweden.

Historically, monarchs have claimed to rule by divine right. Even today monarchs claim they rule by divine grace, hence the titles of Queen Elizabeth II of Britain, are "Queen Elizabeth II, by the Grace of God, Defender of the Faith, Queen of Britain". Her father, George VI, was titled "George VI, by the Grace of God, Defender of the Faith, Emperor of India, King of Great Britain and Colonies". The full official titles of the former Emperor of Ethiopia were: "His Imperial Majesty Haile Selassie I, King of Kings, Lord of Lords, Conquering Lion of the Tribe of Judah, and Elect of God"

The Roman Caesar's claimed to be descended from the gods. The Egyptian Pharaohs claimed they were themselves Gods! The Emperor of China was called "the Son of Heaven" and the Emperor of Japan also claims to be descended from divinity. Even the former republican consul of France, Napoleon Bonaparte, funded research he hoped might link him to divinity through the fabled "Black Madonna".

Kings, chiefs and princes in Africa also claim/ed to be the representatives of the clan, tribe or nation's founding ancestral spirits on earth. The emperors and kings of Ethiopia claimed descent from the biblical union between King Solomon and Sheba. While the kings of Morocco claim descent from Fatima, a daughter of the prophet Muhammad.

In virtually all monarchies this "divine spark" was said to be passed down through the eldest or senior male child of the royal family. Consequently male primogeniture (descent through the senior male) is a feature of almost all monarchies. Women could only succeed in the instance that no male heir was available. Consequently, while emperors, kings, chiefs are plentiful, empresses, queens and chieftainesses

are few and far between. There are a few instances, like the Lobedu of the Limpopo province, where divinity is said to be passed down through the female descendants of the rain-queen. But that is exceptional.

Whatever its claims were in the past or might be in the present, history demonstrates that monarchy is a political institution created by and manipulated by ruling groups/classes as they deem expedient. And, though rooted in inequality, monarchy has repeatedly taken account of merit. But, in order to maintain some ideological consistency, such recognition was later rationalised by fabricated "divine right" (as in the case of Julius Caesar.)

There are many who seem to think that monarchy is a uniquely African institution. Proceeding from that premise they argue that as a system of government indigenous to the continent, monarchy deserves to be upheld and preserved as an aspect of pre-colonial African culture. Parliamentary government, it is argued, is an import from Europe which has its virtues, but these virtues should be assimilated to African political traditions, amongst which is the institution of monarchy.

Firstly, these extravagant claims are completely untrue. Today, after three centuries of political upheavals in Europe, there are monarchies in Sweden, Norway, Denmark, Netherlands, Belgium, United Kingdom, and Spain. Japan, the economic powerhouse of Asia, is a monarchy as are a number of the states in western Asia, Saudi Arabia, Jordan, and the Gulf states.

Monarchy is neither peculiarly African nor is republicanism peculiarly European. A number of African states, ancient, mediaeval and modern, including South Africa itself, are republics .The majority of member states of the African Union are republics. Some accommodate monarchy, others do not. Most 20th century African Nationalists

regarded the institution of monarchy as divisive, undermining the effort to build a common allegiance to the nation, by diverting loyalties to ethnic fractions. They saw it as archaic and something to be phased out or completely abolished.

Southern African monarchies in historical perspective

The territories that were finally brought under white control and domination at the end of the Anglo-Boer War had formerly been divided amongst at least nine different African political communities. The political units that existed during the 19th century were the result of centuries of political evolution and a few decades of rapid political change, the Mfecane/Difaqane, characterised by wars and the coalescence of new political units and kingdoms.

By the mid 19th century there were in the southeast the kingdoms of the Xhosa, sub-divided into a number of principalities (or paramountcies as the colonialists preferred to call them); in the northeast, the Zulu kingdom, the Swazi kingdom, the Tsonga kingdom, and the Venda kingdom. On the highveld were the baPedi kingdom, the Tswana and southern Sotho kingdoms. In addition to these there were the independent coloured principalities of the Gri(qua),the Koranas, the Philanders and Nama(qua), under the leadership of their Kapteins (Chiefs).

The Mfecane and its outcome suggest that prior to the late 18th century, most of the African kingdoms in South Africa were decentralised, extended units. A number of relatively autonomous consanguinal clans (persons who are blood relations) clustered around the most powerful amongst them, to which they all ceded senior status. Territorial and political expansion was achieved by the assimilation and incorporation of weaker and dependent neighbours and through alliances sealed through marriages. An example of such expansion

was the incorporation and assimilation of Khoikhoi tribes by the Xhosa. Two large Xhosa clans, amaSukwini and amaGqunukwebe, trace their origins to such incorporation. Within the relatively decentralised kingdom led by the amaGcaleka clan, these assimilated groups retained a large measure of autonomy provided they recognised that they were vassals of amaGcaleka.

Clan heads were usually recognised as chiefs or princes. The power of the state was vested in the chief and his council, usually the oldest male members of the clan, who exercised both law making and judicial powers. They exercised their powers through the lekgotla/inkundla or community forum, which all adult males were free to attend and participate in. All able-bodied adult men were expected to have mastered certain military skills and in times of war served as the community under arms. A clan chief would send a substantial number of his fighters to serve under the king's command in time of war but such warriors owed their primary allegiance to their clan chief.

Historians speculate that the penetration of maize as a grain among the coastal kingdoms led to a population explosion among the northern Nguni, east of the Drakensberg. As a hardier grain than sorghum, maize soon replaced the former as the staple food though sorghum retained its centrality in ritual. In addition to a higher yield, maize was also less labour intensive and thus indirectly producing more leisure time.

The second external economic factor usually mentioned is the lucrative ivory trade with the Portuguese in Maputo. The clans and kingdoms of the northern Nguni wrestled each other to control this trade leading to wars amongst them. The competition among kingdoms and clans that had recently experienced unprecedented population growth eventuated in a situation of regular military clashes.

It was in this environment that innovative military leaders like Dingiswayo and Shaka rose, from relative obscurity, to forge powerful armies that became highly effective political instruments to create centralised kingdoms.

The kingdoms pioneered by Dingiswayo and Shaka differed from previous political arrangements in that power was centralised in the monarch and the autonomy of the clans was radically reduced. Senior clan heads recognised the need for a new political structure. A centralised state enhanced unity, making possible the maximisation of resources and the end of internecine conflict among the clans.

The centralised state also had a standing army, organised into regiments under the direct control of the monarch, replacing the people under arms in times of war. The enhanced military capacity of these new kingdoms produced a domino effect. To fend off the power of the Zulu kingdom, others emulated it, in the belief that this new model had demonstrated its efficacy. The remnants of other clans and kingdoms, fleeing the heat generated by this competition for the ivory trade, attacked others in their path. Three decades of profound instability that spilled over the Drakensberg into the highveld, into the Eastern Cape, into Mozambique, into Zimbabwe and beyond as far north as Tanzania, ensued. By the time of Shaka's assassination (circa 1828), Dingiswayo's and his military exploits had transformed the political landscape of southern Africa.

Shaka established an empire whose boundaries were present day Swaziland in the northeast, the Drakensberg in the west, and the Mzimkhulu River in the south. Diverse and otherwise unrelated clans had been incorporated through conquest. The regiments of the standing army and those for young women served as the primary institution for integrating these previously separate elements into a single kingdom, in the process, also undermining the individuality of the

distinct clans. The name of what had been a small, rather insignificant clan, became the name of the kingdom.

Other northern Nguni communities tried to resist Shaka's expansionism. Those whose armies could not hold out against Shaka's well drilled regiments were defeated and their young people were incorporated. Matiwane led his amaNgwane south of the Mzimkhulu, cutting a bloody swathe through the tribes in his path, only to be stopped by British troops of the line on the banks of the Mthatha. The Xhosa king, Hintsa, fearful of the disruptions already caused by the advance of Matiwane, invited the British into his kingdom to halt it. The remnants of the amaNgwane subsequently submitted to Shaka's successor, Dingane.

Mzilkazi kaMashobane, after collaborating with Shaka, fled his authority. Leading his clan, among whom was a body of warriors who had passed through Shaka's regiments, he applied Shaka's battle tactics to great effect against the peoples of the highveld. He established himself as king of a relatively small kingdom in the district of Madikwe, dominating his Tswana neighbours from whom he exacted tribute. Ten years after Shaka's assassination, the horse-riding Boer trekkers broke his power and forced him and his people to retreat across the Limpopo into Zimbabwe where by dint of their military prowess they succeeded to carve out a new kingdom.

In response to the upheavals precipitated by events east of the Drakensberg, another young chief, Lepoqo of the baKwena clan assembled the remnants of other tribes under his leadership. By retreating onto an easily defended mountain plateau, Lepoqo was able to offer those who swore allegiance to him security. In this manner he built around the baKwena an expanding kingdom that assimilated a large number of previously unrelated clans. He soon earned the title Moshoeshoe, for his capacity to "shave the beard" - defeat in battle -

of many of his rivals. The heads of other clans recognised him as king and paid a regular tribute in goods and a number of services.

As in other parts of the world, once these African societies began to grow as a result of internal evolution, conquest or trade, the style of life of the ruling group became noticeably different from the rest. They consumed the most and the best that the society offered. Yet, they were least directly involved in the production of wealth by farming, cattle herding, etc. The kings in particular had the right to call upon the labour of the common man for certain projects and for a given number of days per year. While these were at first regarded as socially significant projects, this was a power that was easily abused and evolved into an aspect of the tribute "commoners" paid to their monarchs. The construction of the Queen mother's house by the maidens participating in the reed dance is a remnant of this practice. That it could swiftly become a form of forced labour, like the corvée of pre-revolutionary France, should be self-evident.

It was into the midst of these relatively new political arrangements that the Boers trekked between 1836 and 1838, becoming a factor for even greater instability and finally the destruction of African independence.

The South African context

As has been noted, many of the "royal" families of our country, within historical memory, had been persons of no particular status. A brilliant military career had opened the path to kingship in the case of Shaka. In the case of Moshoeshoe his strategic vision and his political skills, had achieved the same. With Mswati I, defensive and offensive alliances amongst clans had also resulted in one chief being elevated above the others, as king.

During the latter part of 18th century and early 19th century, a

number of pre-existing kingdoms, chieftaincies and clans disappeared in wars of conquest or self-defence. Some were dismembered and absorbed into Shaka's empire; others had disintegrated and their members were dispersed as refugees; others coalesced with neighbours and fugitive remnants to form new kingdoms; yet others were forged as clans fled before more powerful adversaries - like Shaka or the Trekker Boers; the history of the Khumalo clan, who constituted the core of the migrant Ndebele kingdom led by Mzilikazi, being a case in point.

The nine political units were the outcome of this process that had witnessed formerly powerful rulers reduced to fugitives, while minor chiefs and even "commoners" had risen to declare themselves or be embraced as kings. What these events demonstrate is the absolute hollowness of the claims made for monarchy! If there is/was "divine right", it could be earned by brilliant soldiering; by diplomacy and statecraft; and sometimes by default – circumstances foisting it upon a reluctant candidate. Social stratification came into being with the rise of the state, as outlined previously. Thus there emerged royal lineages (or houses) and commoner clans. Though they had not congealed into classes, there were real and recognised distinctions between the families of chiefs, princes and kings, and the rest of the society.

The pre-colonial African monarchs in Southern Africa were the political leaders of agrarian societies based on mixed farming in which land was collectively owned. The monarchs were regarded as custodians of the land on behalf of their kingdom. They had the power to distribute it to families on a usufructuary basis – a family could use the land, but it did not become their private property. Cattle and other livestock were privately owned by and within families, with the most senior male recognised as the decisive voice in their utilization. In most communities there was a gender-defined division of labour,

with males responsible for the livestock, while women tended the household and the fields. Tilling in certain cases was also a responsibility men undertook, but livestock was the preserve of men reinforced by a number of taboos that excluded women from the cattle byre and rituals associated with it.

As the ANC's Strategy and Tactics Document of 1969 states:

"From the time alien rule was imposed there has been — historically speaking — unbroken resistance to this domination. It has taken different forms at different times but it has never been abandoned. For the first 250 years there were regular armed clashes, battles and wars. The superior material resources of the enemy, the divided and often fragmented nature of the resistance, the unchallenged ascendancy of imperialism as a world system up to the beginning of the 20th century, the historically understandable absence of political cohesion and leadership in the people's camp; these and other factors combined to end the first phase of resistance against alien domination. But the protracted character of this resistance unequalled anywhere else in Africa is underlined by the fact that the armed subjugation of the indigenous people was only really accomplished by the beginning of this century."

Monarchs in the wars of resistance

The first war of resistance to colonial expansion occurred within the first decade of the Dutch occupation of the Cape, in 1658. From that date until 1898 there were regular clashes and wars between one or other European colonial authority or its advanced guard in the shape of settler farmers, like the Voortrekkers. African interactions with white governments on and off the battlefield, in their turn, also impacted on the political institutions of African societies, not least the monarchy.

As the embodiment of the state in the African communities, kings,

chiefs and headmen were the leaders in all interactions with the colonial powers - Boer and Brit. As in all interactions between separate political communities, such interactions were informed by the past and the present. Both sides to such interactions hoped to maximize their respective positions – employing persuasion where they could, but resorting to force when it was necessary.

As was often the case when dealing with other peoples, the European colonial authorities assumed that political power in the indigenous societies was exercised in the same manner as in Europe. Rather than recognise that the powers of monarchs were often limited and proscribed by convention, colonial officials insisted that they act on their own. Monarchs whose territories were annexed or ceded to a colonial power by treaty saw themselves granted far greater powers over their subjects than they conventionally enjoyed under African customary law, though they were subservient to the colonial power.

Though we tend to emphasise the record of heroic resistance, the performance of African monarchs during the wars of resistance is rather checkered – with some consistently resisting the encroachments of the Europeans, while others resisted inconsistently, others oscillating between resistance and collaboration, and yet others collaborating.

The options chosen by these monarchs were informed by a number of considerations. In certain instances, calculation of the possibility of victory against an enemy equipped with firearms, horses, wagons and even small cannon, persuaded a monarch that it was wiser to pursue accommodation with the Europeans rather than risk annihilation.

After nearly 100 years of resistance, the Khoikhoi chieftaincies were severely weakened. To survive, some chiefs allied with the colonial forces. At the battle in Grahamstown in 1818, for example, it was the arrival of Khoikhoi hunters, under the leadership of Chief Boesak

that gave the British garrison the respite it needed to turn its cannon on the advancing Xhosa armies. Grapeshot – ammunition consisting of small iron balls fired together from a cannon – broke the attack Makhanda was leading and was the key factor in his defeat. It was from the remnants of the Khoikhoi tribes of the Eastern Cape that the British created, first the Cape Mounted Rifles, and later the Cape Corps. These Khoikhoi troops became the effective imperial army in the Cape, used against rebellious Boers and other Africans.

After the war of 1835, led by their respective chiefs, the refugee Mfengu communities swore allegiance to the British crown at Peddie (eNgqushwa) and became the principal auxiliaries of the British in all the wars waged in the Cape after that date. A contingent drawn from amongst them, the so-called "Cape Fingo Boys Column", accompanied Rhodes' invasion of Zimbabwe.

In other instances, as on the highveld, the white newcomers were considered a useful counterweight to more powerful enemies. Thus for example, Moroka, chief of the baRolong of Thaba Nchu, felt it wiser to seek an alliance with the Trekkers against Mzilikazi's Ndebele. At Vegkop, where the trekkers broke the power of the Ndebele, it was the arrival of Moroka's troops that turned the battle.

Lerothodi, Moshoeshoe's son and successor, first helped the British suppress Moorosi's rebellion in 1880 only to find himself at war with this erstwhile ally a year later, during Ntwa yaDithunya of 1881-2. By contrast, Mhlontlo, king of the Mpondomise, preferred to defy the British when they invited him to join them in an invasion of Lesotho in 1881. He sought an alliance with Lerothodi and was subsequently arrested and sent to Robben Island for his pains.

After defeating the armies of King Cetshwayo in 1879, the British authorities broke up his kingdom by establishing eleven other kinglets, who became their allies. Two of these, Hamu and Zibhebhu,

distinguished themselves as pro-British collaborators who harassed and attacked Cetshwayo after he was returned to Natal when he was released from imprisonment.

Resistance consequently was not highly coordinated until the second half of the 19th century when some monarchs succeeded in creating alliances that proved invaluable in times of war. The coloured settlement at Kat River, originally set up as a buffer and as frontier guards for the British-governed Cape Colony, rose in rebellion and allied with the Xhosa under Sandile in 1851. Moshoeshoe too was able to build alliances with the coloured chieftaincies of the Bergenaars and Griqua when he fought the Free State Boers in 1858.

In most instances, however, the African kingdoms and chieftaincies were picked off one by one and had to fight virtually alone. In addition to the disparity in arms, these isolated efforts at resistance were doomed, over time, to fail.

The independence and freedom of the African people was lost on the battlefield, leading to the disintegration of the indigenous social formations. But what is often under-rated are the internal dynamics of these societies themselves, especially as they sought to adjust to the European presence in their midst.

The peoples of Southern Africa had traded among themselves and with other parts of the world for centuries. But in general terms each of the kingdoms were self-sufficient economic units that met most of their needs by what the community itself produced. There was a degree of regional specialisation attributable to the availability of raw materials, climatic and other factors. Trade was incidental to these societies until the mid 17th century, when the presence of the Dutch settlement at the Cape and the Portuguese in Maputo stimulated trade as never before.

African communities traded their surplus goods with Europeans

but in return often received necessities for their agrarian life. The economic impact was sometimes disastrous. The Khoikhoi tribes in the Western Cape lost much of their cattle in trade with the Dutch settlers. Soon, all that many Khoikhoi had to trade was their ability to work. As they became poorer, so the numbers of Khoikhoi servants on white farms and in white homes increased.

The wares Africans bought from the Europeans included iron and steel tools, pots, blankets and cloth. All these became more plentiful after the 18th century, when manufactured goods arrived with the industrial revolution. What was produced by indigenous crafts and smiths could not compete with European goods either in quantity or in quality. Africans became more dependent on trade to meet old and new needs, and thus did increasing numbers of them become detached from African economies to be integrated into the colonial economy, linked to Europe. Like the tribes of the Western Cape, others that became embroiled with the colonial economy sold first their livestock, but eventually their labour power.

The indigenous African societies coexisted side by side with the colonial outposts for close to two centuries. Increasing interaction between more or less self sufficient economic systems evolved into mutual dependence, but it did not however compromise the integrity of either system. Wars of aggression had weakened African societies as they lost more and more land to the expansionist white colonialists. By the mid 19th century this relationship had become unequal. The white trader and his wares had been completely integrated into the lives of African communities. The colourful baSotho blanket and the Ndebele "kumbesi" were invariably purchased from a trader who could trace these commodities back to a factory in Britain, Holland, Germany or France. The three-legged cast iron pot, glass beads and a host of fabrics, all came from the trader's wagon or his store.

The societies of Southern Africa were prosperous enough to sustain close to two centuries of wars of primary resistance to colonialism. For example, at the height of its power the Zulu kingdom was able to maintain a standing army of 30,000 fighting men and regiments of young women of about the same number. It equipped each warrior with a variety of iron weapons and a full-length war-shield, and put into the field hundreds of young boys who acted as auxiliaries. In the Cape alone between 1779 and 1878 at intervals of approximately ten years, nine successive wars were waged on the frontier. By the second half of the 19th century – the disparity in weaponry being well understood - African kingdoms adopted a common tactic to acquire firearms.

After the opening of the Kimberley mines (1870), a three month contract on the diamond fields could earn a migrant worker a firearm. Moshoeshoe's Sotho kingdom, situated close to the diamond fields, employed this method to build up a formidable arsenal of guns. Firearms became more easily available in all colonial countries when the armies of Europe and North America re-equipped after the Crimean War (1851-4).The only problem was that they were obsolete, having been overtaken by the more efficient Martini-Henry, the Winchester, the Schneider, the Mauser and Springfield. Virtually all the kingdoms of Southern Africa were a ready market for firearms, which could only be acquired through legal or illicit trade with Europeans.

Ironically it was the demand for a mass, cheap labour force after the opening of the mines that created the opportunity for African kingdoms to arm themselves for the wars of secondary resistance that ensued all over the Southern Africa after 1870.

"British and colonial troops made war on the Hlubi in 1873, the Gcaleka and the Pedi in 1877, the Ngqika, Thembu, Mpondo, Griqua and baRolong in 1878, the Zulu in 1879, the Sotho in 1880, the Ndebele in 1893 and the Afrikaner republics in 1899 ," Jack and Ray Simons tell us.

Doubly ironic is that the drive to acquire firearms enmeshed Africans even more decisively in the white dominated colonial economy. It was the ever increasing demands for labour in mining that finally detached the majority of Africans from the pre-industrial, pre-colonial economy of their forebears and drew them into a common society with whites, coloureds and Asians.

Two centuries of wars of colonial conquest culminated in an attack on the baVenda kingdom in 1898. After a brutal campaign, the Boers of the South African Republic defeated the armies of Machado and Ramabulana and seized their lands. The combined impact of the wars of aggression and the opening of the mines led to the collapse of the African economies and the complete absorption of all blacks into the modern capitalist economy, then dominated by mining.

As Jack and Ray Simons put it: "South Africa's industrial era was baptized in blood and the subjugation of small nations."

By 1900 pre-colonial African society had effectively ceased to exist as independent formations, though the outer trimmings continued to survive in highly attenuated form. Even Africans living in the rural areas, ostensibly governed by their monarchs, were integrated into the modern capitalist economy and were either directly or indirectly dependent on it for their livelihoods.

The 1905 Commission on Native Affairs, where the colonial status of all black South Africans was confirmed, was the acknowledgement that Africans and the whites, who had seized their land and dismembered their communities, now lived in a common society and worked within the same capitalist political economy. The formerly discrete, but mutually dependent, economic systems had been subsumed within a dominant, modern capitalist system.

The Africans were required to either adapt to this new reality or go under. The struggle against white domination would have to as-

sume new forms, because the contest would no longer be across frontiers separating two societies. It would assume the shape of a political struggle to wrest political control from a white minority and to acquire an equitable share in the economy within a common society.

The ironies of colonialism

As they were forced to turn away from the familiar symbolic universe of the family, the clan and the ethnic group, the most advanced elements among the Black intelligentsia adopted the more inclusive concepts of the nation, the African continent, and that continent as part of an international community. They also embraced as worthy compatriots others drawn from the most recent immigrant communities from Europe and Asia, who identified with Africa's struggles and the aspirations of her people.

But their's would be an Odyssey characterised by an agonising existential dilemma: either to confidently confront the uncertainties of progress and the future, or cling to the dubious comfort of a disintegrating past. African writers, poets and leaders of thought experienced the modern era as highly ambiguous, combining extremely destructive aspects with constructive elements.

Their dilemma was brilliantly captured in the epic (misnamed "Praise poem") Samuel Mqhayi composed to honour the Prince of Wales (later the Duke of Windsor) when he visited South Africa.

Mqhayi personifies modernity as Britain herself, of whom he then says:

"Ah, Britain! Ah Great Britain!
Great Britain on which the sun never sets!
She hath conquered the oceans and laid them low;
She hath drained the little rivers and lapped them dry;
She hath swept away little nations and wiped them away;

And today she lusts even for the open skies.
She sent us the preacher; she sent us the bottle;
She sent us the Bible, and barrels of brandy;
She sent us the breechloader, she sent us cannon;
O, Roaring Britain! Which shall we embrace?
You sent us truth, yet denied us the truth;
You sent us ubuntu, yet took away our ubuntu;
You sent us light, yet we sit in darkness,
Shivering and benighted in the bright noonday sun!
Nay, this mighty Britain is confusing the peoples;
Harsh, hard and cold is she, even unto her womb,
What then shall we say of her offspring?!
And, worse yet, what can be said of her father!"

These excruciating ambiguities of modern times grew as urbanisation accelerated.

In their distress, many intellectuals were tempted to lend an ear to the siren songs of a backward-looking nativism, which its adherents frequently presented as "authenticity." The colonial intelligentsia in Africa (as well as in Asia) often portrayed the dilemma posed by modernity as tragic. The national liberation movement's response was that rather than wallowing in their alienation or seeking refuge in the past, the intellectuals should reintegrate themselves with the common people by active engagement in the political and social struggles for freedom, independence and progress.

The most progressive among the Black intelligentsia consequently evolved an inclusive vision of South Africa, embodied in Rev Z R Mahabane's invocation of: "The common fatherhood of God, and the brotherhood of man." From its inception, African nationalism in South Africa has preferred inclusivity to ethnicity, and has eschewed racism and tribal particularism. The non-racial national ethos, expressed in

the preamble of the Freedom Charter as: *"South Africa belongs to all who live in it. ..."* is the legacy they left us.

In 1924, the left wing of the then pre-dominantly white labour movement, organised as the Communist Party of South Africa (CPSA), were the first among whites to accept the notion of a non-racial society. Liberals among the dominant capitalist classes began to see it as the inevitable result of the changes wrought by World War II. White liberalism made its last ambivalent attempt to force this recognition on the rest of white South Africa through the 1946 (Fagan) Commission on Native Laws. The fate of Fagan's recommendations testify to the option the majority of white South Africans chose: excluding Blacks from common citizenship.

Colonialism of a Special Type (CST) thus carried within it two contradictory tendencies — the one, segregationist; the other a countervailing, integrationist thrust. But the empirical fact of institutionalised racism rested like an ominous shadow on the consciousness of all South Africans, in instances shaping it to a greater extent than objective socio-economic forces.

CST as a path of capitalist development

South African capitalist development, unfolding in a colonial setting, acquired a number of features peculiar to itself. The 1905 Commission on Native Affairs symbolised the victory of British imperialism over the Boer republics as well as the incorporation of the former enemy elite into the dominant ruling bloc. Both the victorious Brits and the defeated Boers regarded all Africans, irrespective of their ethnic affiliation or origin, as a conquered and subject people. coloureds and Asians though treated marginally better than Africans, shared the same colonial status.

The tenor of and the evidence led at the 1905 Commission made it

clear that its purpose was to devise policy for the purposes of laying out an efficient and effective path of capital accumulation for the now dominant Randlords.

The commission recommended that the numerous existing instruments of coercion derived from the previous century, including racism, be harnessed for this purpose. Africans, coloureds and Indians would not be allowed a say in the manner the country was governed, except for a handful that would be permitted to buy their way out of their helot status by ownership of property of a certain value. These were the "exempted Natives", who had the vote in the former Cape Colony and Natal. The Commission thus cobbled together a system of colonialism, but with distinctive characteristics — the colonial power (the white minority) and the colonised people (the Black majority) lived in the same territory. Our movement has referred to this as a Colonialism of a Special Type (CST)'.

CST was the institutional expression of the economic evolution of South Africa after the opening of the mines. As we have seen, during the 1870s many African kingdoms thought they might more effectively resist conquest and domination by acquiring firearms. That option had however entangled them in the white controlled colonial economy. The indigenous pre-capitalist economic systems thus began articulating with the emergent capitalist economy to their own detriment. African economic independence was more radically compromised when kingdoms were incorporated into either the Boer Republics or the two British colonies of the Cape and Natal. Taxation was the means both systems then employed to compel Africans to make themselves more readily available as a source of cheap labour power. Thousands of African tillers were literally impressed into the modern economy in this fashion, undermining the agrarian economy, leaving it as a subordinate periphery reproducing cheap labour power for mining capital.

CST carried within it two contradictory tendencies — the one, segregationist; the other, its countervailing trend, an integrating impulse. Mining capital and CST more generally were central to driving both tendencies simultaneously. A modern capitalist economy acted as an integrating factor drawing in large numbers of labourers into the economic heartland. At the same time, pass laws, hostels, the migrant labour system and interventions by different white minority regimes to prop up subsistence activities in the reserves, not out of philanthropy, but to impose the burden of labour reproduction (child rearing, care for the sick, the injured and elderly) on to these marginalized location under the patriarchal domination of colonially sanctioned monarchs.

The principal countervailing tendencies to integration were the economic interests of the dominant white capitalist classes — in mining and agriculture — and the sectional interests of the Afrikaner petty bourgeoisie.

Like any other dominant class, the white oligarchy in mining and commercial agriculture sought to limit access to their economic and social status. Law, inherited custom and the mores of British colonialism in Africa were used to deny Africans access to various forms of productive property. This was first applied in the mines, but was incrementally extended to commercial agriculture, then to various trades and professions, then to a number of commercial activities, culminating in "Stallardism," that excluded Africans from the urban areas except when "ministering to the needs of the whites." By the 1920s all whites, including the recently landed immigrant and even the beggar, were defined as members of an exclusive community, collectively endowed with certain rights and prerogatives solely on account of their race.

Racial domination — in its various guises of "white supremacy

with justice" as with Smuts' United Party, or the "apartheid" of the National Party — was also the means of domination employed in the pursuance of particular class interests. By legislative fiat and administrative measures, the white autocracy steadily destroyed the property-owning classes among Blacks. Beginning with the Natives Land Act of 1913, these measures were followed up by the Natives Land and Trust Act of 1935, the Asiatic Land Tenure Act of 1946, The Group Areas Act of 1951, the Bantu Authorities Act of the same year and a host of others that bankrupted the Black property-owning classes by restricting their rights to own property and engage in commerce. Policies such as the white labour policy instituted by the Nat-Labour Pact government after 1924, then further elaborated in the Job Reservation Act of 1954, also made certain forms of skilled work the exclusive preserve of whites. State policy thus created a racial hierarchy graded by skin colour, with whites at the top and Africans at the bottom.

An intricate dialectic of race and class thus evolved, resulting in a class stratification coinciding in large measure with a racial hierarchy, so that in general terms the overwhelming majority of Blacks were propertyless working people, while the propertied classes were virtually lily white. The ANC's policy thrust of tilting in favour of the working class and its mass organisations is grounded in this reality. It is this same historical experience that is the basis of the alliance with the Communist Party and Cosatu (Congress of South African Trade Unions).

These racial exclusions were institutionalised in the 1909 Act of Union, then by extension differentially applied to the other Blacks. Indians, as a numerically weak minority of recent immigrants, were the easiest victims. Coloureds, the majority of whom were the descendants of propertyless servants and former bonded persons, were to witness steady encroachments on their rights well into the 1970s.

The second powerful reinforcement of racism came from the sec-

tional interests of the Afrikaner petty bourgeoisie and intelligentsia. British victory in the Anglo-Boer War destroyed Afrikaner independence and plunged the Afrikaner people into a cosmopolitan, industrialising society dominated by British monopoly capital. The impoverished Afrikaner ex-farmer of the early 1900s, like his African and coloured counterparts, entered the job market as the least skilled and least acculturated to urban life. All three of these groups of former peasants now had to re-invent and restructure their identities as new persons living in a common society. From the perspective of the Afrikaner petty bourgeois intelligentsia — whose domain was the Dutch reformed churches and its educational institutions — this process held out the prospect of the urbanising Afrikaner community drifting away from the church, the "volk" and other institutions dominated by themselves.

Consequently, the bearers of Afrikaner nationalist ideology were the small property owners and related strata amongst the Afrikaners, whose livelihood depended on the preservation and elevation of that community's distinct language, the preservation of its churches and exclusive schools, as well as other institutions. They manipulated the totems and symbols of the Afrikaner's recent past — defeat in war, the destruction of their republics, suffering at the hands of the British occupation forces etc — to cocoon their community against the influences of the cosmopolitan environment. An ethnic nationalism, which alleviated the pain of the Afrikaner working people's alienation, but could not redress their political and economic subordination, was the result. Afrikaner ethnic nationalism defined an ethnic "home" for a people who had been rudely torn from their pre-industrial life by war and bankruptcy and placed them under the ideological domination of the Afrikaner propertied classes who thenceforth employed ethnic mobilisation as the means to carve out a niche for themselves

in South Africa's developing capitalist economy.

The Afrikaner nationalists found ready helpers among the right wing of the white labour movement, led by the South African Labour Party. An electoral pact between the two in 1924, defeated Smuts' South African Party and began an inexorable reinforcement of racism through law. The white labourites hoped to promote the claims of white workers to certain rights by an appeal to their status as whites in a colonial society. White labourism's alliance with the racists was sealed at the expense of the Black people in general, but the Black working class in particular. As the majority of white workers embraced racism, so too did they drift away from the Labour Party, which virtually disappeared from white South African politics by the outbreak of World War II. This led to the coalescence of a racial bloc — whites as a dominant racial group — led by the capitalist classes, who projected the particular interests of the white propertied classes as the general interest of all whites.

The third, but no less important countervailing trend was white racist state policy. Once institutionalised, racial domination and its twin, racism, infected every pore of society. The compound labour system, originally designed to give mining employers greater control over their work force, was extended to virtually every section of African workers. After the Report of the Stallard Commission in 1923, Africans were arbitrarily defined as aliens in all the urban areas of the country. They were residentially segregated to improve control over their movements and residential segregation quickly became the norm in urban areas outside a few areas of the Cape, Natal and some freehold locations in Johannesburg.

The national liberation movement and African monarchies

When the ANC was founded, its founders conceived the movement as something akin to the British parliament. There was a "House of

Commons", which was the dominant part of the movement, but also a "House of Chiefs", into which all chiefs, kings, headmen and others considered royalty were invited. The Sotho monarch, Letsie, was made head of this house in his absence. The Swazi Queen also was given a special place in this house and she made a substantial monetary contribution to the ANC to enable it to set up a newspaper, *Abantu/Batho*.

The special status accorded to royals was repeated when the National Liberation League was established in Cape Town in 1935.

The attitude of the movement to African royalty was determined by two considerations. One was the role that a number of African kings and chiefs had played in the struggle to resist conquest. King Dinizulu, for example, was unable to attend the inaugural conference of the ANC because he was still in detention on St. Helena for his alleged role during the Anti-Poll Tax (Bambatha) Rebellion of 1906. The second was the understanding that many, if not the majority, of ordinary Africans respected royalty and treated them as such. A movement that did not enjoy at least their tacit support was unlikely to be successful.

For the first decade that they participated in the House of Chiefs, there were no serious differences between that house and the rest of the ANC. Strains and stresses began to emerge during the 1920s. After the passage of the Native Laws and Administration Act of 1927, which made all African monarchs and chiefs the vassals of the "Supreme Chief of all Natives" in the person of the Governor-General (very much as the King of Britain was by law Emperor of India), reduced all African women to the status of legal minors, and assigned every African, irrespective of choice or preference to a chief, headman or king as a subject. That law reduced the institution of monarch in South Africa to that of employee of the white racist state. Virtually

all the hereditary kings, chiefs and headmen withdrew from the ANC and the House of Chiefs fell into disuse. Some elected chiefs, like Chief Albert Luthuli, retained their membership and participated in the movement. When President Dr A B Xuma revised the constitution of the ANC to create a more efficient and effective movement in 1943, he abolished the House of Chiefs.

The ANC's approach to the institution of monarchy has been governed more by tactical considerations than by principles. Though the principles that undergird the political tradition the ANC belongs to and has always identified with are intrinsically opposed to monarchy, the movement has preferred not to oppose the institution per se for the tactical consideration that it was essential to isolate the apartheid regime and its most consistent supporters amongst African monarchs. As part of that broad strategy, when the mass democratic movement inspired by the ANC reached its height in the mid-1980s, the ANC mobilized the anti-regime monarchs and chiefs into the Congress of Traditional Leaders of South Africa (Contralesa). It is unclear the extent to which by creating such a body the ANC has committed itself to not merely acceptance of the reality of monarchy, but also its perpetuation. What was clear from the outset, though, is that Contralesa was not intended to become a monarchist lobby in the ANC.

Drawing together the threads of argument in this paper, we can summarise them as follows:

. Monarchy, or what we euphemistically refer to as" traditional leadership", is not a uniquely African institution but rather a universal one which all human societies at a certain point in their evolution adopted.
. Monarchy does not derive from any pre-ordained, let alone divinely inspired, source. It has historically been an extremely utilitarian institution either imposed by successful

generals/military leaders or embraced by ruling classes in pursuance of their own political agendas.

. Monarchy is based on the fundamentally anti-democratic notion that some humans are born to rule, while others are born to be ruled.

. The ANC is a democratic national liberation movement inspired by democratic traditions associated with the revolutionary movements that have shaped the modern world since 1789. That tradition established the principles of "government of the people, by the people, for the people" and equality among all humans.

. For a number of tactical considerations, during the course of the struggle for freedom, the ANC has not addressed the institution of monarchy per se.

What needs to be discussed in the movement is how we proceed beyond the tactical considerations to the issues of principle, recognizing that tactical allies often can transmute into opponents because they are located in political spaces whose fundamental interests run counter to the objectives of the liberation movement.

We need also revisit our own self-definition as set out in a number of historic documents, like the Morogoro *Strategy and Tactics* and subsequent ones, as a struggle that, as was mentioned earlier and is worth repeating:

> "…is taking place in a different era and in a different context from those which characterised the early struggles against colonialism. It is happening in a new kind of world – a world which is no longer monopolised by the imperialist world system; a world in which the existence of the powerful socialist system and a significant sector of newly liberated areas has altered the balance of forces; a world in which the horizons liberated from

> foreign oppression extend beyond mere formal political control and encompass the element which makes such control meaningful - economic emancipation. It is also happening in a new kind of South Africa; a South Africa in which there is a large and well-developed working class whose class consciousness and in which the independent expressions of the working people - their political organs and trade unions - are very much part of the liberation front. Thus, our nationalism must not be confused with chauvinism or narrow nationalism of a previous epoch. It must not be confused with the classical drive by an elitist group among the oppressed people to gain ascendancy so that they can replace the oppressor in the exploitation of the mass."

In the instance that the terrain on which we have been forced to manoeuvre has compelled us to embrace tactical allies who have their own sectional agendas, how much flexibility can we extract from such allies and how flexible are we prepared to be in accommodating them? Would, for example, constitutional monarchy be an acceptable option for us as the ANC? Should we opt for a constitutional monarchy, given that the monarchs are numerous and are found in every province? How many will be recognized? What would such recognition entail? Would this apply only to African monarchs to the exclusion of the coloured/Khoikhoi monarchs?

If, on the other hand, the ANC is of the view that its strategic objective of attaining maximum unity amongst the African people, in the first instance, is likely to be undermined by the perpetuation of monarchy, how would we as a movement persuade the country and the people to abandon monarchy in preference for an unfettered republic? ★

Cde Jordan, a Marxist, is a struggle veteran who served in the ANC's National Executive Committee and in the Cabinet

CUBA & AFRICA

Paying the debt to Africa: the 40th anniversary of *Operación Carlota*

November 2015 marked the 40th anniversary of the start of Cuba's intervention to save the newly independent Angola from conquest by the apartheid military. **Isaac Saney** assesses the impact of that intervention

"*The Cuban people hold a special place in the hearts of the peoples of Africa. The Cuban internationalists have made a contribution to African independence, freedom and justice, unparalleled for its principled and selfless character...Cubans came to our region as doctors, teachers, soldiers, agricultural experts, but never as colonisers. They have shared the same trenches with us in the struggle against colonialism, underdevelopment, and apartheid.*" – Nelson Mandela

The 5 November 2015 marked the 40th Anniversary of *Operación Carlota*, Cuba's 15-year mission to defend Angola's independence, which played a decisive role in Southern African national and anti-colonial liberation struggles. Cuba's extensive and decisive role in the struggle against the apartheid regime in South Africa is marginalised in the dominant Western discourse and narratives. Cuba's critical contribution is not only frequently ignored; it is treated almost as if it had never occurred. However, the overarching significance of Cuba's role cannot be erased.

Havana initiated *Operación Carlota* on 5 November 1975 in response to a direct and urgent request from the government of Angola. Having just achieved independence after a long and brutal anti-colonial struggle, Angola confronted an invasion by racist South Africa. Apartheid South Africa was determined to destroy the black government of the newly independent Angola. *Operación Carlota* was decisive in not only stopping the South African drive to Luanda but also in pushing the South Africans out of Angola. The defeat of the South African forces was a major development in the Southern African anti-colonial and national liberation struggle. At the time, *The World*, a black South African newspaper, underscored the significance: "Black Africa is riding the crest of a wave generated by the Cuban success in Angola. Black Africa is tasting the heady wine of the possibility of realising the dream of "total liberation."

Named after the leader of a revolt against slavery that took place in Cuba on 5 November 1843, *Operación Carlota* lasted more than 15 years. More than 330 000 Cubans served in Angola. More than 2 000 died defending Angolan independence and the freedom and right of self-determination of the peoples of Southern Africa.

Africa's children return!

Cuba's solidarity with Angola was not simply one country coming to the aid of another, but a part of the African diaspora – the black world – rising to the defence of Africa. Since the triumph of the Cuban Revolution on 1 January 1959, Cuba has engaged in ongoing solidarity with the peoples and the continent of Africa. In a tribute to Cuba's assistance to African liberation struggles, Amilcar Cabral (celebrated leader of the anti-colonial and national liberation struggle in Guinea Bissau and Cape Verde) stated: "I don't believe in life after death, but if there is, we can be sure that the souls of our forefathers who were

taken away to America to be slaves are rejoicing today to see their children reunited and working together to help us be independent and free."

The Cuban Revolution's involvement with Angola began in the 1960s when relations were established with the Movement for the Popular Liberation of Angola (MPLA). The MPLA was the principal organisation in the struggle to liberate Angola from Portuguese colonialism. In 1975, the Portuguese withdrew from Angola. However, in order to stop the MPLA from coming to power, the United States of America (US) government had already been funding various groups, in particular the Union for the Total Independence of Angola (Unita) led by the notorious Jonas Savimbi. In October 1975, South Africa, with the support of Washington, invaded Angola. On 5 November 1975, the Cuban revolutionary leadership met to discuss the situation in Angola and the Angolan government's request for military assistance to repel the South African invasion force. The decision to deploy combat troops thwarted apartheid South Africa's goal of turning Angola into its protectorate.

The Cuban leadership justified the military intervention as both defending an independent country from foreign invasion and repaying a historical debt owed by Cuba to Africa. Cde Fidel Castro frequently invoked Cuba's historical links to Africa. On the 15th anniversary of the Cuban victory at Playa Girón (Bay of Pigs), he declared that Cubans "are a Latin-African people". Cde Jorge Risquet, Havana's principal diplomat in Africa from the 1970s to 1990s, was also unambiguous in explaining Cuba's military intervention in terms of Cuba's obligations to Africa, and this linkage resonated especially with black Cubans, who were able to make a symbolic connection with their African roots.

As Cuba specialist Terrence Cannon noted, for many black Cubans,

fighting in Angola was akin to defending Cuba except that the fight was "this time in Africa. And they were aware that Africa was, in some sense, their homeland". Reverend Abbuno Gonzalez underscored this connection: "My grandfather came from Angola. So it is my duty to go and help Angola. I owe it to my ancestors". General Rafael Moracen echoed this sentiment and the words of Amilcar Cabral: "When we arrived in Angola, I heard an Angolan say that our grandparents, whose children were taken away from Africa to be slaves, would be happy to see their grandchildren return to Africa to help free it. I will always remember those words."

Cuban involvement in Southern Africa has been repeatedly dismissed as surrogate activity for the Soviet Union. This insidious myth has been unequivocally refuted. John Stockwell, the director of USA's Central Intelligence Agency (CIA) operations in Angola during and in the immediate aftermath the 1975 South African invasion, stated in his memoir, *In Search of Enemies: A CIA Story*: "we learned that Cuba had not been ordered into action by the Soviet Union. To the contrary, the Cuban leaders felt compelled to intervene for their own ideological reasons."

In his acclaimed book, *Conflicting Missions: Havana, Washington and Africa, 1959-76*, Piero Gliejeses demonstrated that the Cuban government – as it had repeatedly asserted – decided to dispatch combat troops to Angola only after the Angolan government had requested Cuba's military assistance to repel the South Africans, refuting Washington's assertion that South African forces intervened in Angola only after the arrival of the Cuban forces; and the Soviet Union had no role in Cuba's decision and were not even informed prior to deployment.

Cuba was not the puppet of the Soviet Union. Even *The Economist* magazine – no friend of Cuba – in a 2002 article, acknowledged that the Cuban government acted on its "own initiative".

That Cuba could act on its own initiative, independent of the will of the great powers, was not only anathema to Washington but also inconceivable. In 1969 Henry Kissinger, a National Security Advisor who later became US Secretary of State, unambiguously and categorically declared: "Nothing important can come from the south. History has never been produced in the south. The axis of history starts in Moscow, goes to Bonn, crosses over to Washington, and then goes to Tokyo. What happens in the south is of no importance." That Cuba – a poor "Third World" country, a Latin-African nation – could act on its own, and through that independent action shape history, enraged Kissinger.

At his behest, the Pentagon drew up a number of extensive military plans in 1975 and 1976 to specifically punish the island for daring to defy the imperial order, with its racist global hierarchy. These detailed plans encompassed a naval blockade to aerial bombardment to outright invasion. While they were never carried out, these options were seriously discussed and debated within the highest levels of the US government, poignantly illustrating the dangers that Cuba faced and accepted during its internationalist defence of Angola.

Apartheid South Africa's war of terror

The survival of the racist South African state depended on establishing its domination of all of Southern Africa. To this end, Pretoria had militarised the South African state, fashioning it into the sword to defend the racist system and wage a regional war of terror.

From 1975 to 1988, the South African armed forces embarked on a campaign of massive destabilisation of the region. The war of destabilisation wrought a terrible toll. The financial and human cost cannot only be measured in direct damage and deaths but also in the premature deaths and projected economic loss caused by destruction of in-

frastructure, agriculture and power networks. While it is very difficult to estimate the economic cost and damage, it was undoubtedly enormous. One study calculates that up to 1988, the total economic cost for the Frontline States was in excess of US$45-billion – in Angola alone the economic cost was US$22-billion; in Mozambique US$12-billion; in Zambia US$7-billion; and in Zimbabwe US$3-billion.

The human toll was also immense. The *South Africa's Truth and Reconciliation Commission Report* underscored that: "the number of people killed inside the borders of the country in the course of the liberation struggle was considerably lower than those who died outside… the majority of the victims of the South African government's attempts to maintain itself in power were outside South Africa. Tens of thousands of people died as a direct or indirect result of the South African government's aggressive intent towards its neighbours. The lives and livelihoods of hundreds of thousands others were disrupted by the systematic targeting of infrastructure in some of the poorest nations in Africa."

Between 1981 and 1988, an estimated 1,5-million people were (directly or indirectly) killed, including 825 000 children. This was the result of Pretoria sponsored insurgencies (Unita in Angola and Renamo in Mozambique) and direct military actions by the South African armed forces. South Africa launched numerous bombing raids, armed incursions and assassinations against surrounding countries. One notorious example was the 4 May 1978 massacre in a camp for Namibian refugees, located in the town of Kassinga in southwestern Angola, where a South African air and paratrooper attack killed hundreds of people and took hundreds of prisoners.

The late Julius Nyerere perhaps summed up the situation best when in 1986, as President of Tanzania, he observed: "When is war not war? Apparently when it is waged by the stronger against the weaker

as a pre-emptive strike. When is terrorism not terrorism? Apparently when it is committed by a more powerful government against those at home and abroad who are weaker than itself and whom it regards as a potential threat or even as insufficiently supportive of its own objectives. Those are the only conclusions one can draw in the light of the current widespread condemnation of aggression and terrorism, side by side with the ability of certain nations to attack others with impunity, and to organise murder, kidnapping and massive destruction with the support of some permanent members of the United Nations Security Council. (Apartheid) South Africa is such a country."

The Battle of Cuito Cuanavale

In 1987-1988, a decisive series of battles occurred around the south-eastern Angolan town of Cuito Cuanavale – the largest military engagements in Africa since the North African battles of World War II. Arrayed on one side were the armed forces of Cuba, Angola and the South West African People's Organisation (Swapo). On the other, the South African Defence Forces, military units of Unita (the South African proxy organisation) and the South African Territorial Forces of Namibia (then still illegally occupied by Pretoria).

Cuito Cuanavale was a critical turning point in the struggle against apartheid. From November 1987 to March 1988, the South African armed forces repeatedly tried and failed to capture Cuito Cuanavale. In Southern Africa, the battle has attained legendary status. It is considered the debacle of apartheid: a defeat of the South African armed forces that altered the balance of power in the region and heralded the demise of racist rule in South Africa!

Cuito Cuanavale decisively thwarted Pretoria's objective of establishing regional hegemony (a strategy which was vital to defending and preserving apartheid), directly led to the independence of

Namibia and accelerated the dismantling of apartheid. The battle is often referred to as the African Stalingrad for apartheid. Cuba's contribution was crucial as it provided the essential reinforcements, material and planning.

In July 1987, Fapla, the Angolan armed forces, launched an offensive against Unita, the apartheid state's surrogate. The Cubans objected to this military operation because it would create the opportunity for a South African invasion, which is what transpired. The South Africans invaded, stopped and threw back the Angolan forces. After terrible human and material losses, the Angolans were forced into a headlong retreat to the town and strategic military base of Cuito Cuanavale.

As the fighting became centred on Cuito Cuanavale, the Angolan armed forces were placed in an extremely precarious situation, with its most elite formations facing annihilation. Indeed, Angola faced an existential threat. If Cuito Cuanavale fell to South Africa then the rest of the country would be at the mercy of the invaders. Angolan General Antonio dos Santos underscored the overarching significance of the town's defence stating that if they (the apartheid South African forces) won at Cuito Cuanavale, the road would be open to the north of Angola.

Determined to transform its initial military success into a fatal blow against an independent Angola, Pretoria committed its best troops and most sophisticated military hardware to the capture of Cuito Cuanavale. As the situation of the besieged Angolan troops became critical, Havana was asked by the Angolan government to intervene. On 15 November 1987 Cuba decided to reinforce its forces by sending fresh detachments, arms and equipment, including tanks, artillery, anti-aircraft weapons and aircraft. Eventually Cuban troop strength would rise to more than 50 000. It must be emphasised that for a

small country such as Cuba the deployment of 50 000 troops would be the equivalent of the US deploying more than a million soldiers, or Canada more than 100 000.

The Cuban commitment was immense. Cde Fidel Castro stated that the Cuban Revolution had "put its own existence at stake, it risked a huge battle against one of the strongest powers located in the area of the Third World, against one of the richest powers, with significant industrial and technological development, armed to the teeth, at such a great distance from our small country and with our own resources, our own arms. We even ran the risk of weakening our defences, and we did so. We used our ships and ours alone, and we used our equipment to change the relationship of forces, which made success possible in that battle. We put everything at stake in that action…"

The Cuban government viewed preventing the fall of Cuito Cuanavale as imperative. A South African victory would have meant not only the capture of the town and the destruction of the best Angolan military formations, but, quite possibly, the end of Angola's existence as an independent country. The Cuban revolutionary leadership also decided to go further than the defence of Cuito Cuanavale. They decided to deploy the necessary forces and employ a plan that would both put an end once and for all to apartheid South Africa's aggression against Angola and deliver a decisive blow against the racist state. The successful defence of Cuito Cuanavale would be the prelude to a grand and far-reaching strategy that would transform the balance of power in the region.

South Africa's efforts to seize Cuito Cuanavale were stymied by the Cubans and Angolans. With the South Africans preoccupied at Cuito Cuanavale, the Cubans achieved a strategic coup by carrying out an outflanking manoeuvre. To the west of Cuito Cuanavale and along the Angolan-Namibian border, Havana deployed 40 000 Cuban troops,

supported by 30 000 Angolan and 3 000 Swapo troops. Pretoria had become so focused on seizing Cuito Cuanavale that they had left its forces exposed to a major military counterstroke.

The Cubans, together with Angolan and Swapo forces, advanced toward Namibia. This advance exposed the insecurity and vulnerability of the South African troops in northern Namibia. Such was this vulnerability that a senior South African officer said: "Had the Cubans attacked [Namibia] they would have over-run the place. We could not have stopped them." This was further compounded by South African debacles at the end of June 1988 at Calueque and Tchipia, where the South Africans suffered serious defeats, which were described by a South African newspaper as "a crushing humiliation". Cuba also achieved air supremacy. Facing the new powerful force assembled in southern Angola and having lost control of the skies, the South Africans withdrew from Angola.

This defeat on the ground forced South Africa to the negotiating table, resulting in Namibian independence and dramatically hastening the end of apartheid. The regional balance of power had been fundamentally transformed. The respected scholar Victoria Brittan observed that Cuito Cuanavale became "a symbol across the continent that apartheid and its army were no longer invincible".

In a July 1991 speech delivered in Havana, Nelson Mandela underscored Cuito Cuanavale's and Cuba's vital role: "The Cuban people hold a special place in the hearts of the people of Africa. The Cuban internationalists have made a contribution to African independence, freedom and justice unparalleled for its principled and selfless character. We in Africa are used to being victims of countries wanting to carve up our territory or subvert our sovereignty. It is unparalleled in African history to have another people rise to the defence of one of us. The defeat of the apartheid army was an inspiration to the strug-

gling people in South Africa. Without the defeat of Cuito Cuanavale our organisations would not have been unbanned. The defeat of the racist army at Cuito Cuanavale has made it possible for me to be here today. Cuito Cuanavale was a milestone in the history of the struggle for southern African liberation."

In 1994, Mandela further declared: "If today all South Africans enjoy the rights of democracy; if they are able at last to address the grinding poverty of a system that denied them even the most basic amenities of life, it is also because of Cuba's selfless support for the struggle to free all of South Africa's people and the countries of our region from the inhumane and destructive system of apartheid. For that, we thank the Cuban people from the bottom of our hearts."

The 1987-88 military reversal in Angola constituted a mortal blow to the apartheid regime. The battle of Cuito Cuanavale ended its dream (a nightmare for the region's peoples) of establishing hegemony over all of Southern Africa as a means by which to extend the life of the racist regime.

Paying humanity's debt

As a direct witness and participant in Africa's anti-colonial and national liberation struggles, the late Cde Jorge Risquet always elaborated on the profound ties that bound Cuba and Africa together. This unbreakable historic connection formed the poignant base for the Cuban Revolution's solidarity with Africa.

In a 2012 speech honouring the great Pan-Africanist, Cde Kwame Nkrumah, Cde Risquet pointed out: "This was the understanding with which Cuban fighters came to ancestral Africa to fight side by side with the people against colonialism and the oppressive apartheid regime. For 26 years, 381 000 Cuban soldiers and officers fought alongside African populations — between 24 April 1965, when Er-

nesto Che Guevara and his men crossed Lake Tanganyika, and 25 May 1991, when the remaining 500 Cuban fighters returned home triumphant… 2 400 Cuban internationalist fighters lost their lives on African soil. Today we no longer send soldiers. Now, we send doctors, teachers, builders, specialists in various fields."

Cuba's solidarity continues

Cuba made a critical contribution to the fight against the Ebola epidemic in the West African nations of Guinea, Liberia and Sierra Leone. The Cuban medical mission was by far the largest sent by any country. Standing side-by-side with the people of West Africa, Cuban doctors and nurses went to West Africa and joined the struggle against Ebola. As Cde Jorge Lefebre Nicolas, Cuba's ambassador to Liberia, declared: "We cannot see our brothers from Africa in difficult times and remain there with our arms folded." At the 16 September 2014 meeting of the United Nations Security Council, Cuban representative Cde Abelardo Moreno declared: "Humanity has a debt to African people. We cannot let them down." Even the Wall Street Journal declared: "Few have heeded the call, but one country has responded in strength: Cuba."

Cuba is often described as the only foreign country to have gone to Africa and gone away with nothing but the coffins of its sons and daughters who died in the struggles to liberate Africa. Cuba's role in Angola illustrates the division between those who fight for the cause of freedom, liberation and justice, to repel invaders and colonialists, and those who fight against just causes, those who wage war to occupy, colonise and oppress. The island's internationalist missions in Africa are a profound challenge to those who argue that relations among the world's nations and peoples are – and can only be – determined by self-interest, and the pursuit of power and wealth. Cuba provides the

example that it is possible to build relations based on genuine solidarity and social love: demonstrating the alternatives which permit people to realise their deepest aspirations, and that another better world is possible. ★

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THE INTERNATIONAL CRIMINAL COURT

An instrument of global power

Alexander Mezyaev argues that the view of the ICC as a guardian of international law is not proven in practice, and points to its real agenda

The International Criminal Court (ICC) was created in 1998 in terms of the Rome Statute, with the purpose of prosecuting the most dangerous international crimes – crimes against humanity and war crimes.[1] After more than 15 years of activity, this Court has not only failed to fulfil its purpose, but is promoting a totally different agenda. The latest scandalous events provoked by the ICC and some NGOs in South Africa compels us to analyse what the real agenda of the ICC is and the location of African countries therein.

We will face serious problems understanding the real agenda of the ICC, if we make this analysis within the existing academic lexicon. For example, the very name of ICC as an international court is misleading in understanding its true essence and role. Before we start this analysis we need to resolve certain methodological matters and to suggest a more correct definition for the court itself as well for the system that it operates in.

The rise of supranational entities

The 21st century is far more complex than the 19th and 20th centuries. One of the main elements that inform the complexity is the appear-

ance of the new subject of management on the international stage.

Before the end of the 1980s there were two main entities on the international stage – states and international organisations. International organisations were collective representatives of the will of certain states and groups of states. Even when an international organisation acted in its own name, it represented the collective will of its member states.

After the 1980s human civilization witnessed the emergence of totally new entities. None of them claim to be new, and they even try to camouflage themselves under old names, but the radically different nature of these entities requires that they be defined differently. For example, the creation of the European Union marked the appearance of an institution that may hold a separate (and sometimes totally different) position on the matters of economic or political questions, to member states of the EU. Because of this, the European law (EU law) is more correctly called, supranational law not international (or regional) law. This term rightly denotes that this law was created not by member states but by a supranational institution (like the European Commission or European Court of Justice).

There is also at least one other entity or actor of world politics that does not fit into either the inter*nation*al nor supranational levels. These two last levels are both concerned with the "nation", though showing different positions towards it. This other level of world politics has no functional connection with nations (states) and thus may be called "extra-national". In fact it is better to use the term "global". This term reflects the essence of this level very well, showing the global character of the entities and its agenda. The actors at global level do not represent the interests of any state or its population as a whole, but have their own interests. Moreover, these interests may contradict the interests of particular states and

their populations.

Challenging the conceptualisation of the ICC

The early 1990s was characterised by the formal institutionalisation of global power. The analysis of the establishment of these institutions is informed by an analysis of the activities of the ICC and other international courts and tribunals.

We start this analysis from what may be called "strange facts". What makes them strange is that such stories are not what we would expect from an institution of the highest integrity and highest quality, which the ICC is claimed to be and as it is indeed widely regarded. Nevertheless these episodes are indeed from the ICC practice.

- At the very first trial of the ICC (Lubanga trial, DRC situation), the first witness confessed right in the courtroom that he gave false evidence and that he was taught to do so by the prosecution. The court did nothing to investigate the case.
- In the trial of Germain Katanga (DRC), the prosecution did not prove any of the counts that were brought against the accused. Instead of acquitting the accused, the court changed the counts themselves and found Katanga guilty on these – the court's imposed counts.
- The President of Cote-d'Ivoire, Laurent Gbagbo, was imprisoned by the ICC for more than four years without trial. He spent almost 2,5 years in prison even without confirmation of charges. In any local legal system no person could be detained without confirmed charges. After the first hearings for confirmation of charges the majority of judges agreed that there was no case. But instead of dismissing the case, the judges decided to give the prosecution "more time to collect more evidence". After the second attempt,

another judge finally confirmed the charges, but the decision to prosecute was adopted by the majority of two to one. The dissenting judge still claimed that there was no case. When the defence tried to appeal this decision at the appeals chamber, the same judges prevented the defence from doing that.

- In the case against the President of Kenya, Uhuru Kenyatta, and others (Kenya), the prosecution withdrew the case against Kenyatta and his co-accused after the charges were confirmed by the court. The problem with this situation is that the prosecution confessed that there were no witnesses in the case. The disturbing question is how did the judges confirm the charges when there were no witnesses?
- In the case against Muammar Gaddafi (Libya), following the assassination of the accused, the court simply "terminated the proceedings". We have seen a lot of so-called contempt cases when certain individuals were put on trial because of the interruption of the integrity of the proceedings, for example, the cases of bribing witnesses or refusal to give evidence, etc. But what could cause more damage to the integrity of the proceedings than the assassination of the accused? Notwithstanding the fact that the killing was filmed and criminals may be well identified, no investigation or contempt cases were initiated.
- During the trial in the case of the former Vice-President of the Democratic Republic of the Congo, Jean-Pierre Bemba (DRC) his entire defence team, with the single exception of one non-African member, was violently arrested.

When facing any "strange" fact, we are in reality confronted with the methodological question of whether it is a bad fact or a bad con-

cept. Why should the "bad" facts enumerated above draw our attention at the conceptual level? They should draw our attention because they cannot be explained by mistakes and negligence. They also cannot be explained if we consider the ICC as an international institution of the highest degree of legal standards and integrity. This means that these incidents cannot be explained in the established conceptualisation of the ICC as an international court and as a guardian of law and justice. And thus we have to revisit this official concept.

These bad facts are not an exception; they are the rule. We also have the same bad facts not only in ICC practice, but also at the conceptual level of the ICC as an institution. Here are some examples.

According to common sense, judges of an international court must be the best judges that the world ever produced. Unfortunately, common sense is not the best way of understanding the modern world, because according to article 36 (b) of the ICC Statute, the candidate for election to the Court shall have established only their competence in criminal law and procedure, and the necessary relevant[2] experience. This sounds reasonable though not strict enough. For example, to be an ICC judge, the candidate has to possess high moral character, and be an expert on law of recognised competence in international law. As we see, in the ICC, high morality is not a necessary and recognised competence that can substitute established competence in relevant areas of international law. The bad fact about ICC judges is that many of them do not have any judicial or even court experience.

A second, and even more disturbing bad fact, is that there are some judges in the ICC who do not have legal education at all. This sounds really unbelievable, but can easily be verified from the official CVs of the judges. Some of the examples are Judge H Kaul (Germany) and Judge K Ozaki (Japan)[3].

There is another special aspect of this problem that we are not going to analyse in detail but just mention. This is a problem of states that voted for candidates who do not possess legal education and the attitudes of candidates for the position of ICC judges. Some of them wish to be ICC judges for dubious reasons: "I wish to be elected a Judge of the ICC as I am convinced that I can make a valuable contribution to the development of international criminal law and justice."[4] There is a problem in such an attitude, the ICC Statute requires that the judge applies law, not develop it. But this revelation from some judges shows that the "developing" (read: changing) of international law is a real agenda of ICC.

There are cases where almost all the human rights of the accused are violated in the ICC. For example, some accused are almost completely denied the right to public hearings. This right is assured in all universal and regional human rights treaties. Article 14 of the *Covenant on Civil and Political Rights* (adopted by the United Nations on 19 December 1966), for instance, states that in the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a court of law. But in the case of Jean-Pierre Bemba, 30 of the 40 witnesses were so-called secret witnesses, meaning that their identities were hidden from the defence until it was impossible to collect any information about such witnesses. This is an intentional policy of the ICC, denying the accused the ability to exercise the right to prepare for any meaningful defence.

During a public hearing in the ICC, Judge Cot said to the accused M Chui: "Accused, the fact that we acquit you does not mean that you are innocent". This is a totally new concept of the rights of the accused. According to the International *Covenant on Civil and Political Rights*, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

According the ICC, even when acquitted you are not regarded as innocent.

The human rights issue is one of the most serious issues in ICC practices. The violation of the human rights of the accused helps one to understand the reality of the ICC. ICC cases are unsound. They are all based on political considerations and thus cannot be proved with the use of law. The only way to "prove" such cases is to deny the accused and defence any rights.

How can we explain all these bad facts?

The official aim of the International Criminal Court is enshrined in article 1 of the Rome Statute. It says that the ICC is established "to exercise jurisdiction over persons for the most serious crimes of international concern". Thus the prosecution of the most serious international crimes is proclaimed as the main aim. But the practice of the ICC shows that this aim is not achieved.

The situation in Cote-d'Ivoire was brought to the ICC in 2003, but the Court did nothing until 2011. The ICC acted only eight years later in the context of a new situation, the forcible removal of President L Gbagbo. And in this context the ICC acted really quickly and issued an order of arrest against Gbagbo within several weeks.

The UN Security Council brought the situation in Libya to the ICC when Nato forces were preparing to invade the country. At that time Libyan citizens had the highest social guarantees. Today Libya is totally destroyed, its statehood is under serious doubt and more than four years after the coup, thousands of refugees are still leaving the country. The ICC issued no indictments for those who ruined the state. It issued the indictments against those who built that state.

The situation in the Central African Republic (CAR) was brought to the ICC in 2005, but the only case within this situation is a case

against former Vice-President of the Democratic Republic of the Congo, Jean-Pierre Bemba.

Bemba was indicted because he sent his troops to support the then legitimate CAR President Ange-Félix Patasse, in response to his official request to help him to suppress an armed rebellion. Now the legitimate CAR President is overthrown, the country is ruined and the ICC produced no indictments against those who did that.

In the Ugandan situation, the ICC did nothing except publish vague orders of arrest for three persons. ICC investigations in Mali and Nigeria did not stop the suffering of people from al-Qaeda's or Boko Haram's terror. The ICC openly sided with these organisations, warning Malian and Nigerian leaders that they may end up in The Hague if not assuring the human rights of these terrorists while fighting them.

So where has the ICC brought peace? Where has it brought justice?

International crimes are committed in front of the ICC but it has very little or no interest in them. At the same time the ICC is actively involved in certain conflicts and it would be difficult not to notice that in many cases this is connected with one side of the conflict.

The true purpose of the ICC

The official conceptualisation of the ICC as a guardian of international law and justice is simply not proved in practice. But what is the real ICC agenda? The real intention behind the creation of an international criminal court of justice is to create the system of institutions of global power that have at least two main authorities:

- The authority to remove the heads of states; and
- The authority to transform the international rules.

This idea is best implemented by international courts: the removal

of heads of states needs to be sanctified in the name of international law, thus the norms of international law need to be changed. The new system of international justice was assigned with these tasks.

The first international criminal tribunal as part of the global power institutions was the International Tribunal for the Former Yugoslavia (ICTY) in 1993 and International Tribunal for Rwanda (ICTR) in 1994. These tribunals successfully probed the idea of removal of heads of states (President of Yugoslavia Slobodan Milosevic, Prime Minister of Rwanda Jean Kambanda and others). At the same time these tribunals started to change international law: some international treaties started to be "corrected", some were disregarded and some norms were created by these very tribunals. After a successful inquiry, the international criminal tribunals were mushroomed *en mass*: Special Court for Sierra Leone, Special Tribunal for Lebanon, Special courts for Cambodia, Timor-Leste and Kosovo. The creation of the ICC must be understood in the context of that intent and the realisation of the system of international criminal justice.

Removal of heads of states

To implement the idea of removal of heads of states it was important to personalise the heads of states as private persons. This task was very well done with the use of mass media. One example was the insertion of the name "Saddam" instead of Hussein or President Hussein etc. This cliché still works. Let us remember how we called the case against President of Sudan in South Africa in June 2015? Mass media imposed on us the title "al-Bashir case" and all society, including lawyers, happily accepted it. But the wrong name, which was intentionally imposed on us, changed the essence of the case: it was brought down from a case about sovereignty of Sudan to a personal case against an individual.

This trick of personalisation of the heads of states was implemented via international criminal justice, because criminal justice has personal jurisdiction. All these courts and tribunals were directed at one operative aim, the indictment and removal of the heads of states. ICTY removed and indicted the President of Yugoslavia, Slobodan Milosevic, and former President Milan Milutinovic. It also indicted four more heads of states (though unrecognised) – Radovan Karadzic and Biljana Plavsic (Presidents of the Republic of Srpska), Milan Martic and Milan Babic (Presidents of the Republic of Serbian Kraina). In addition, they indicted and removed all political and military administrations of Yugoslavia and then Serbia. The Special Court for Sierra Leone removed President of Liberia Charles Taylor. The Tribunal for Rwanda indicted former Prime Minister of Rwanda Jean Kambanda. Finally the ICC indicted the President of Cote-d'Ivoire, Libyan leader Muammar Gaddafi, Kenyan President Uhuru Kenyatta and President of Sudan Omar al-Bashir. The ICC prosecutor made it clear that the highest officials of Mali, Nigeria and Burundi may be next to be indicted and removed as leaders. This policy of unnamed suspects is another way of controlling the leaders of some states.

Moreover, international criminal tribunals, including the ICC and ICTY were used as direct weapons of international crimes. Three examples of that:

- The situation in Libya was brought to the ICC by the UN Security Council in February 2011, and processed too fast to have conducted any meaningful investigation. Over a few weeks, the ICC prosecutor prepared an order of arrest against the Libyan head of state, President M Gaddafi. This order of arrest was issued during the aggression of Nato against Libya. Thus the ICC acted as a legal instrument of war. (It is worth mentioning that one of the judges in the case against

Gaddafi was an Italian citizen, and Italy was one of the states taking part in Nato aggression against Libya. Thus the ICC is violating the elementary principles of independence of the judiciary).

- In April 2014 the ICC's jurisdiction was recognised by the Ukraine. The problem with this decision is that the request was sent by an improper subject. People who claimed to be "the government of Ukraine" had no legal justification for that claim. Notwithstanding, the ICC agreed with that acceptance. It is difficult to understand how an international court could work with a government that assumed power illegally through a bloody coup. The main task of the ICC is to check the legality of the subject appearing before it. To understand why this agreement constitutes taking part in a crime, we have to look at the details of the acceptance of jurisdiction. The illegal government of Ukraine accepted the jurisdiction only for the purpose of prosecuting the members of the overthrown government! Accepting such a jurisdiction from an illegal junta, the ICC appeared as a weapon of the *coup d'etat* committed in Ukraine.
- In 1999 during the aggression of Nato states against Yugoslavia, the ICTY issued an order of arrest against the president of the country. Notwithstanding the fact that there was no investigation, the ICTY prosecutor issued an indictment against Milosevic. Thus, the ICTY was a direct weapon of the war.

Violating existing rules of international law

The ICC practice shows that some of its cases have gravely violated fundamental principles of modern international law: the principle of

equality of states; the principle of consent of states; and the voluntary nature of international law. In this regard, special attention should be drawn to the situations in Libya and Sudan (and subsequently to all Sudanese and Libyan cases). The analysis shows that these situations were referred to the ICC through violation of international law. The gravity of these violations and their obvious nature allows us to conclude that it was made in order to destroy the very base of modern international law.

The situation in Sudan was referred to the ICC by the UN Security Council in March 2005, and the situation in Libya in February 2011. The problem with these referrals is that they were not taken in accordance with international law. The main question that arises in this regard is on what legal basis did the Security Council act?

In Resolution 1593 (2005) the Security Council was hesitant to name any exact article of any exact legal document that informed its decision. It only said that it was "acting under Chapter VII of the UN Charter". Reference to a "chapter" is quite disturbing from a legal point of view, because it shows that the Security Council indeed could not name any exact law relied on in taking its decision. Legal decisions must be based on specific articles and even clauses of articles of a treaty, not on whole chapters. The vague reference to the chapter as a whole is itself proof of the absence of any legal basis for this decision.

It is interesting to note that the ICC Pre-Trial Chamber attempted to mitigate the legal impotence of the Security Council and claimed that the Security Council acted pursuant to Article 13b of the Rome Statute. This attempt brought even worse legal consequences than the Security Council's impotence, because the powers of the Security Council are regulated by the United Nations Charter, not by any other treaty. The attempt to claim that it based its powers that are suppos-

edly prescribed in another treaty and not UN Charter is scandalous and illegal. The Security Council does not have the right to use powers granted it by the UN Charter – particularly with respect to a state that is not a party to the Rome Statute! The UN Security Council was established by the UN Charter and must act on that basis. The UN Charter does not give the Security Council the right to refer situations to the ICC. This is the only possible conclusion if we take into consideration the principles of international law.

Such a power is too serious to be considered as "implied" and not to be included in the Charter as the legal basis for the Security Council's actions. Thus, in the absence of any amendments to the UN Charter itself, the Security Council does not have the right to refer situations in states. This is especially so in relation to the states which are not party to the Rome Statute. Members of the United Nations have given their consent only to those powers of the UN Security Council, which are enunciated in the UN Charter, not to powers expressed in other treaties. The UN Charter is one international treaty and the ICC Rome Statute is completely another treaty. They have different obligations and different state-parties.

There are many other legal defects in these "referral" cases. For example, paragraph 1 of UNSC Resolution 1593 (2005) says that it is referring the situation in Darfur "since 1 July 2002" to the ICC Prosecutor. But the very resolution was adopted on 31 March 2005! On what legal basis does the Security Council claim the right to apply criminal law retrospectively? Where is it stated that the Security Council has such a power? It is totally contrary to common principles of law.

Let us imagine that after the Security Council referral of Sudan the country would sign and ratify the ICC Statute. What would be the legal effect of article 11 of the ICC Statute, which regulates the temporal jurisdiction of the ICC? Paragraph 1 of this article states that, "The

Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute." Paragraph 2 of the same article says: "If a state becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that state, unless that state has made a declaration under article 12, paragraph 3." And what about Article 24 which specifies that "no person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute."?

Obviously the decision of the UN Security Council is discriminatory against Sudanese citizens indicted by the ICC because different rules apply to them than to citizens of states which have signed the ICC statute. Many international human rights treaties specifically prohibit discrimination in criminal proceedings. If we accept that it is possible to initiate proceedings against a state which is not a party to the ICC (whether through the UN Security Council or by any other means) then we must accept the legality of discrimination. But it is absurd to say that an international treaty may legalise such discrimination. It is difficult to believe that states decided to discriminate between accused persons from a state party and accused persons from a non-state party. Such discrimination would be contrary to the most basic human rights. If a thesis leads to an absurd conclusion, then the thesis should be abandoned. Thus is must be concluded that without the amendment of the UN Charter, any referral to the ICC of a situation in a non-signatory state is not possible.

There are many other legal problems with these "referral" Security Council resolutions. For example, what is the legal value of a decision forcing a state to be obliged by a treaty of which the Security Council members are not even signatories themselves? In March 2005, only nine of the 15 member states of the Security Council (and three of

the five among permanent members) were state-parties to the ICC Statute. What is the legality of a decision taken by states that are not parties to a treaty to force another state to be a party to it, or to be bound by obligations under it? Even if all the members of the Security Council had been state parties to the Rome Statute then this would not have changed the illegality of their decision. This is absolutely illegal, because it violates the very foundations of the international legal order.

The activity of the ICTY clearly shows that when it was necessary to convict a person for political reasons, it deviates from existing international law and creates its own law. One such example is the case of former President of Yugoslavia, Slobodan Milosevic. To convict President Milosevic by any means, the ICTY inserted into practice the concept of the so-called "joint criminal enterprise" (JCE). The third category of this JCE allows the court to convict anybody, including the persons who not only have not taken part in the crimes, but have not even known about the commitment of these crimes!

The International Criminal Tribunal for Rwanda (ICTR) violated the convention on the prevention of the genocide, which carried the requirement to establish the specific intent, and decided that there is no need to establish the specific intent, and that it would be possible to convict a person for genocide if intent was not established. This tribunal also "corrected" the genocide convention, added to it new features with the sole purpose of convicting before the tribunal. The same "correction" of existing international law was made by other international tribunals, like the Special Tribunal for Lebanon or Special Court for Sierra Leone. Thus we could detect another common direction of the activity of the international tribunals – the destruction of the already existing international law on the one side and the creation of new international law on the other side. Needless to say,

international courts do not have the power to destroy existing law, nor to create new law. It could only apply law as it already exists. As we see, it is not the case with ICC and other international courts.

Another example is the practice of "proofing" cases with the use of plea-bargaining. Officially it looks as if the accused pleaded guilty and gave a testimony about his crimes. The reality of these guilty pleas is very different. First of all the accused is not giving his own testimony but is obliged to sign a text of "facts" prepared by the prosecution. The accused receives assurances that sentencing will not be harsh. The accused is then obliged to give testimony against his co-accused. Thus the plea bargaining procedure is not aimed at establishing the truth, but at convicting specific accused using the testimony of another accused who was incentivised to plead guilty. The practice of several international criminal tribunals (especially the ICTY and ICTR) shows that plea-bargaining is used with pressure. The whole practice of the ICTR was based on a false plea-bargaining with the Rwandan Prime Minister, Jean Kambanda. The whole Srebrenica case in the ICTY was based on plea-bargaining with Dražen Erdemovic and Momir Nikolic. In this context the ICC's indictment against Simon Gbagbo (wife of President Laurent Gbagbo) is a clear attempt to resolve the case of President Gbagbo without trial.

Another serious derogation of international law is a derogation of human rights law by the international tribunals. For example, the accused of international criminal tribunals are denied the right to choose their counsel. This denial has a very "good" explanation. Only the "approved" (by ICC and other courts) counsel may defend these accused, thus guaranteeing that the counsel will not go too far in establishing the truth. The only case when the ICC accused was able to get the defence counsel of his own choice was Jean-Pierre Bemba (Central African Republic/DRC). That was secured by the ability of

Bemba to finance his counsel himself (which is a unique case in the history of the international criminal justice). But in November 2013 Bemba's whole defence team was arrested and put on trial. Officially the reason for this arrest was the attempt of defence to prepare a false witness. At the same time the sudden arrest of the defence counsels of Bemba was conducted just some hours before the defence was about to present evidence of how the ICC prosecution bribes witnesses.

The bribing of witnesses and presenting of false witnesses is not an extraordinary situation in international criminal justice. False witnesses are a rule at this system. In the Vojislav Seselj trial at the ICTY more than 20 witnesses gave sworn testimonies that they were threatened by the prosecution to give false evidence against the accused. The Court took no action against the prosecution. Moreover the accused was prevented from presenting his defence case – a unique case in history of international criminal justice. In the Milosevic trial, one prosecution witness confessed that he was pressed (and even tortured) to give a false testimony against Milosevic. The court did not take any action, not even to investigate the claim.

The synthesis of ICC activity with activity of other bodies in the system of international criminal justice is also important because of the following: there are the same staff working in these institutions (running from one court to another and sometimes working in different courts at the same time!); there are the same judges in these courts (running from one court to another and sometimes working in different courts at the same time!); the courts use their practice as a way of creating law, thus the ICC is citing the decision of ICTY as a proof of its own legality.

Al-Bashir & South Africa

In June 2015 the ICC tried to force the South African government to

arrest Sudanese President, Omar al-Bashir who attended the African Union meeting in Johannesburg. South Africa's North Gauteng High Court issued the decision obliging the South African government to arrest President al-Bashir, which was not implemented. Unfortunately the discussion on this matter was limited by the very narrow approach that was taken by the North Gauteng High Court, but only to some extent, because nothing prevented the court from considering other relevant issues. Firstly, the questions of why the elementary matter of jurisdiction was not resolved must be raised. Another question arises when we are facing very strange position of the court that the obligation to cooperate necessarily means the obligation to arrest, and to do this automatically. It is not our aim to analyse the arguments of the North Gauteng High Court. What we would like to highlight nevertheless are those circumstances that escaped any attention of the mass media and even judicial institutions on the global level – that is, the behaviour of ICC.

It must be noted: the artificial exclusion by the ICC of the majority of judges from the adoption of the decision to force South Africa to arrest President al-Bashir. The decision was adopted by a single judge. But the "al-Bashir case" is assigned not to a single judge but to a full chamber constituted by three ICC judges. Why did the other two judges not part take in its adoption? The formal answer to that question is that the decision was taken urgently. But this answer does not hold water, because the urgency of the decision was clearly made up by the intentionally late application by prosecution.

Information about the Sudanese President's visit to South Africa was available to the ICC months in advance but the ICC prosecution decided to apply for a request to arrest just some hours before this visit. The reason for this is clear: to manufacture "urgency" and

thus legitimise the exclusion of two judges from the decision-making process. The other question arises with the attempt of the ICC (in reality – of one judge) to force South Africa to arrest the head of state who was enjoying immunity according to international law. Such an attempt was not legally supported. Any reference to article 27 of ICC Statute is not convincing. This article says that "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person". This article gave some commentators the wrong impression to claim that heads of states do not have immunity anymore.

In fact a careful reading of this article shows that it is only directed to the ICC Prosecutor and other ICC officials, and not to states. The article relates only to the relations between accused and the Court. As concerns states, the immunities of heads of states and governments are regulated by the norms of customary international law and treaties. These treaties clearly obliged the states to assure the immunities of the highest state officials. The so-called al-Bashir case is not about Omar al-Bashir in his personal capacity, but about the President of Sudan, that is, about state sovereignty. The attempt by the ICC to force South Africa to arrest al-Bashir was a case against South Africa, forcing the state to a position where it would destroy the very base of current international law – state sovereignty and equality.

The clarity of this situation raises the legitimate question of why the ICC engaged in that provocation against South Africa. Now, knowing the consequences (North Gauteng High Court decision, it is supposed non-respect by South African government, the impeachment move against South African President etc.) we may suggest that all this was made up with the sole purpose of destabilising the Republic of South Africa.

Conclusion

The current system of international criminal justice was created by the global powers with aims that are too far from the officially proclaimed goals. The real agenda of the ICC is the sanctification of crimes committed by the global powers and the creation of new international rules – possibly better described as global rules, because there are no ways for nations to be entities of these rules. In the plan of global power, nations must only be objects of these rules.

For now, there are two separate systems of international law. The first is the current international law that may be called relatively progressive international law. It is the result of the developments of the international system from 1945. The regime of this law is characterised by the aim (common interest for all members of the international community) and the way of creation (made by all equal members of international community). The other system is regressive international law that was created mainly through international courts and tribunals. The regime of this law is characterised by the same features but in negative terms: it is created by only certain "chosen states" and in their interests.

Step by step this second system of regressive international law is becoming bigger and stronger. The modern world is more complex than in 1945. To understand the modern world we need at least proper definitions that correctly reflect the essence of objects and phenomena. In our opinion we have difficulties in understanding the true picture of the modern world, among other things because of the incorrect definitions and even lack thereof. It is interesting to note that the very lack of definitions sometimes acts as the basis for the non-existence of certain entities or phenomena in our minds. One of the best examples in this regard is the word "international". We refer to international treaties, organisations, operations, politics and

so on. Sometimes the use of this word is an obvious abuse, like the expression "international judge". The idea of a judge acting as a representative of an international community is clear, but does it have anything to do with reality? The judges are elected by other states but nominated by the state of their citizenship. In some cases the election process is pure hypocrisy, when there is no competition between candidates and their number is the same (or nearly the same) as the number of places. In this situation we are facing not "international" institutions, but rather a group of foreign representatives.

While we have some treaties and organisations (like the United Nations) that could be called truly "international", we still have institutions that clearly do not fall within that definition. These institutions are the International Monetary Fund, World Bank, NATO, European Union and the ICC. We have to notice the attempt made by some researchers to correct the situation and to introduce the new definition that better reflects the situation, namely the introduction of the word "supranational". This attempt is indeed very useful in defining the true character of the entities like EU institutions, but it is not enough. The international institutions were created to represent the interests of the community of all states and for achieving common values and goals. Supranational institutions constitute a new phenomenon where the interests of such institutions may not necessarily coincide with the interests of member states. In such institutions the states sometimes are not the decision-makers.

Nowadays the dichotomy "national-international" does not properly reflect the real situation. Even the introduction of the "supranational" or "transnational" levels does not change things. National, supranational and international are all "nation-centric" phenomena. But institutions like the ICC are "contra-nation" phenomenon. This level of politics reflects the interests of a subject not connected with any state

or group of states, though based in certain states. The interests of these entities do not coincide with interests of states or of the international community as a whole, moreover, sometimes they may even conflict with them. The strength of the entity is several times greater than the power of most of the states. And as a *de facto* matter we are witnesses to the existence of certain institutions that assume this new level of politics. We suggest that this level may be called as "contranational", stressing its *centrifugal* character, where the *centre* is a nation.

Thus, we argue that the ICC is an institution at the *contranational* level of politics. Its real aims and policy may only be understood in this context. The ICC was established with the main purposes to create a universal judicial institution for controlling the highest national and international levels of politics. The main means of such control to be exercised is through the power to remove disobedient heads of state and the destruction of existing national and international laws and replacing them with new (regressive/repressive) international laws. Thus "contranational" law. Stopping this process of destroying the international system and the grabbing of power by "contranational" entities is an essential task of the United Nations. ★

Endnotes

1. Article 1 of the ICC Statute says that the Court is a "permanent institution and shall have the power established to exercise its jurisdiction over persons for the most serious crimes of international concern".
2. As article 36 says, "relevant experience" means whether as judge, prosecutor, advocate or in other similar capacity (!), in criminal proceedings.
3. One correction – that could be verified not that easily. The official website of the ICC uses a misleading way of reflecting the education of judges, for example covering the lack of legal education of some judges under waterfalls of words about their experience.

4. From the response of Geoffrey Andrew Henderson to the Coalition for the International Criminal Court' Questionnaire. In 2013 G.A. Henderson was elected as ICC judge.

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