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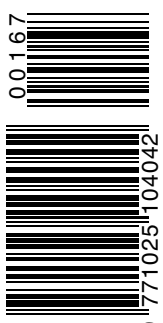
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167 **SEPTEMBER** 2013



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for help lights up
the night sky.



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Letters

Another gullible Global Trader

WE ARE SUCH GULLIBLE FOOLS IN THIS country. The financial markets are driven by fear (bear market) and greed (bull market). It is on those emotions that predators like Global Trader/GT247.com prey and flourish.

I am a 56-year-old professional who stupidly invested all I owned in a property development right before the spectacular crash in 2008. I lost all my savings including most of my pension. I thought I would turbo-charge my investments since I still earn a sizeable salary and want to grow some funds for retirement, which is not far away any more.

I was one of the fools who opened an account with Future Trader on GT247. I deposited R10,000 and within a few days I was down to R7,758.20. I saw that as school fees and decided I would trade more carefully. I started to question the “spreads” of this platform, because, however carefully I traded, I just couldn’t make money here. I opened a demo account with their other platform called GTi Trader and with fake money I made up to US\$3,000 per day! That’s the trap, the demo accounts.

I’m sure plenty of similarly gullible people have been caught with the scam, but are too ashamed to admit to it. Keep on exposing the crooks.

Home-frozen
Krugersdorp

PS: I use a pseudonym as I, too, am ashamed to publicly admit my ignorance.

Some facts for the scientist

THE DEPARTMENT OF WATER AFFAIRS/TCTA (Trans-Caledon Tunnel Authority) Final Feasibility Report on the Long Term Treatment of Acid Mine Drainage includes the following:

“Coetzee et al, 2003, report a uranium concentration in a surface-water body next to the northern watershed of the headwater region of the Wonderfonteinsspruit (Robinson Lake) of

16mg/l after underground mine water decanting into the Tweelopiespruit was pumped into the lake. The combination of pH- and redox-driven reactions resulted in a measured uranium concentration of 16mg/l, and resulted in the NNR declaring the lake a radiation area.”

And the Task Team’s Report (of December 2010) to the Inter-ministerial Committee on AMD stated: “Acid mine drainage in the Witwatersrand typically has a pH value around 3... and is enriched in a number of toxic metals, often including uranium.”

How does Dr Anthony Turton (“Top scientist attacks Wonder Woman”: *nose166*) explain that?

So far there’s no reason to doubt that Mariette Liefferink knows her stuff better than most – and by all accounts better than Dr Turton.

Informed Source
Johannesburg

Complacent consumers

THE SEEMINGLY ENDLESS ARGUMENT AS TO whether our food grown from genetically modified (GM) crops is dangerous or unhealthy is surely irrelevant, for the following reasons.

Yes, farmers have fallen victim to a well-formulated menu of opportunities for various agricultural practices; for example, easier pest and weed control.

Consumers, on the other hand, see the issue through very different eyes:

there is nothing to be gained by them from this GM food: humans have evolved perfectly well for millennia without it; they are not the least bit concerned about the “promised” increase in yields-per-hectare, which has lost its credibility anyway; they’re not influenced by the unnatural introduction of this or that vitamin or protein into a host crop; they are quite accustomed to sourcing these from foods that have historically provided them.

I wonder why there isn’t a burgeoning murmur of discontent among consumers: “Why do they have to mess around with our food so much?”

Malcolm Stuart
Somerset West

Your argument is based on the assumption that everyone has a free choice whether to consume GM foods or not. The factual situation is that most people have no choice; they’re being fed them, like it or not. Which makes it very relevant whether they are harmful or not. That is quite apart from the economic threat posed by the power play, monopoly formation and financial manipulation of politicians and research that have become a feature of the business. – Ed.

Lieberthals leave slimy trail

I USED TO WORK FOR JAYSON AND HUGH Lieberthal (“Family that preys together”, *nose164*) between 2001 and 2003 when they had a shop in Norwood called One Stop Print. I left when they turned the back room into a room where they could take photographs of porn and produce South Africa’s first “black porn magazine”. He also bought one of the designers a vibrator for her birthday: he thought it would be hilarious. She was furious and threatened to sue him for sexual harassment. It was all seriously gross.

He screwed over many employees by not paying them what they were promised. Numerous suppliers struggled to be paid. Being in the printing game we have often talked about them, wondering how they





Creepy... Lieberthals leave slimy trail (opposite page)

get away with it, moving to Durban and carrying on as before. So thank you for your article. It gives us peace of mind, knowing they're not getting away with it after all.

I hope it also helps ensure that more innocent people are not hurt and tricked by them.

Chantel Crocker
Johannesburg

Teed off by scooter's failings

IN 2010, I PURCHASED A SCOOTI GOLF Cruiser from an agent representing the South African importers, Mark Hodson Scooters cc, for R13,995. Within about 12 months the Scooti broke down frequently. In that time I used three different Scooties and all gave various failure problems.

Mark Hodson offered to buy it back for R6,500, taking into account the costs he had incurred for repairs and transportation to his premises in Cape Town. I accepted that offer on 1 March 2012 but, despite many reminders, Hodson has failed to pay me. His attorney subsequently reduced his offer to R4,485 which I accepted in order to bring to conclusion a most unfortunate experience. Again no payment.

It is clear he has no intention of paying me. At one stage he said he was refusing to pay me because I tried to sue him in the Small Claims Court. (The magistrate said I had taken action in the wrong court, so he would not hear the matter.) Taking action in any court is time-consuming,

so I have not tried again in the correct court.

The Scooti is imported from China and – given the various unreliable units I have used – I suspect that many golfers have experienced similar failure problems with this product.

Hodson trades from his home at 25 Crassula Way, Pinelands, Cape Town. His phone number is [*was, it has been disconnected* – Ed.] 021 531 4117. His email address is mark@scooti.co.za

Derek Poole
Lonehill

Lounging around airports

I NORMALLY GO TO FNB'S SLOW LOUNGE at the various airports, which are honestly amazing. This time, however, as the Slow Lounge was full, I decided to use my Diners Club card and go to the Bidvest "Premier" Lounge (entry fee R159.00, which is slightly more than half of the Slow Lounge fee).

The coffee, purporting to be Douwe Egberts, was disgusting, the snacks inadequate, and the choice of drinks laughable. The wifi, when it was not falling over, was extremely slow.

If you were thinking of going into the "Premier Lounge", don't waste your money. Rather go to one of the restaurants; the food will be far superior and a lot cheaper.

Honestly, Diners Club, shouldn't you treat your clients with the same level of respect that FNB does theirs?

Clive Varejes
Johannesburg

Half the value for half the fee sounds about right. The question is: was Diners Club aiming for half the class? – Ed.

Sweet smell of sectarian sport

I CAN RELATE VERY WELL TO TOM EATON'S annoyance about our obsession with sport (*nose165*). I am married to a perfectly rational man, irreligious in every sense of the word, until it comes to rugby. Then another being takes possession, a zealous fanatic who sees, hears, smells nothing other than the brutal assault known as a tackle being perpetrated on the field or screen, or the frenzied knot of beef and bone 'engaging' to get that ball.

But Tom Eaton overlooks one thing: the religion of sport is not limited to South Africa. Try Australia and New Zealand for crazed obsession with rugby, cricket, whatever. Soccer in the UK is pretty insane. And the USA during football or baseball season is not for the faint-hearted: believe in your team, parade your flashy gear, commit to your religion and flaunt it – or else!

Passion for sport almost everywhere is fundamental in ways I can't begin to understand. Like Tom Eaton, I remain unconvinced. But I confess there is a price to pay for this lack of faith: a grain of envy that the sports gene is missing, that I entirely lack the weird, wild conviction of any true believer.

Rosemund Handler
Cape Town

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Editorial

Showdown at Fort Zuma

SHORTLY AFTER NOSEWEEK CONCLUDED its interviews with Public Protector Thuli Madonsela for the profile on page 16, Advocate Madonsela left at short notice for a conducted tour of the endlessly controversial Fort Zuma at Nkandla (our description, not hers). This was, by her own account, the last stage of her office's investigation of the R270 million spent by the state on recent improvements to the "security" facilities at the president's private residential complex in KwaZulu-Natal. It is not only one of her more challenging investigations; it is the one that many fear could bring a sudden end to her career. Her latest walk along the edge of the precipice prompts this last-minute update to our piece.

Thuli Madonsela is strikingly confident, intelligent and as straight a talker as you are likely to find anywhere; this makes her not only remarkably suited to the job she has been given, but also an extremely rewarding subject to interview.

So, straight to the task. First question: Was the Minister of Defence's (publicly unexpected) willingness to give her a conducted tour of Nkandla possibly intended as a test of Madonsela's loyalty to the president and his party?

Answer: "I have no idea how they interpret it. I requested access. Every investigation we do is done in the same way. An on-site inspection is always potentially part of an investigation plan. First you collect the documentary evidence and witness statements. Then, at the end, you test your findings – you assess the reality – with your own eyes."

Second question: Are there reasonable limits to state expenditure on the security of the president's and cabinet ministers' private residences – particularly in view of the fact that the state already provides them with official secure residences, both in Cape Town and Pretoria, while they are in office?

Answer: "Sadly, if I told you, I would be disclosing our view. Our job is to apply the rules; to establish what happened – and what should have happened. Was any deviation from what should have happened reasonable? What is the extent of the discrepancy between the actual situation and what might have been deemed reasonable?"

Tuck Shop

Bunker



Final question: Where do you, yourself, live? Does your own private residence have security features paid for by the state?

Answer: "No, not at all. When things started happening which potentially threatened my security at home, I sold my house and moved to a house in a security complex, at my own expense."

As we go to press, we do not know what her findings on Nkandla will be. What we do know is that Thuli Madonsela embodies all the values her office represents, and all the ideals the new democratic era promised. As an institution, her office seeks to be trusted, effective and accessible; to right administrative wrongs and consistently act with integrity to ensure fair, accountable and responsive decision-making, service and good governance in all state affairs and public administration. Right now that represents a pleasant interlude in a long night of nightmares.

We don't have to agree with every one of the Public Protector's findings. But, with Thuli Madonsela in office, when the question is raised of who will protect the Public Protector, I am more confident than ever of the answer. The public will protect the Public Protector.

The Editor

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Cato Manor evidence challenged

RACKETEERING CHARGES AGAINST various Cato Manor Organised Crime Unit policemen, as well as provincial Hawks commander Major-General Johan Booyesen (noses149, 150, 154 & 165), are based almost entirely on hearsay or on an alleged statement given by a taxi boss – which is being challenged on the basis of his long criminal record and that the statement was taken shortly after he had been left mentally impaired by two strokes. (He died weeks later.)

Booyesen is bringing a court application challenging National Prosecuting Authority (NPA) acting head Nomgcobo Jiba's decision to bring racketeering charges against him, on the grounds it is unjustified and unconstitutional. Booyesen wants a court to review Jiba's decision.

Jiba has denied Booyesen's allegations and says she relied on police dockets as well as evidence given under oath to bring charges.

The investigation of the "hit squad" allegations made against SAPS violent crimes unit was led by Major-General Jan Ntebo Mabula of the Hawks, assisted by the Independent Police Investigative Directorate (Ipid).

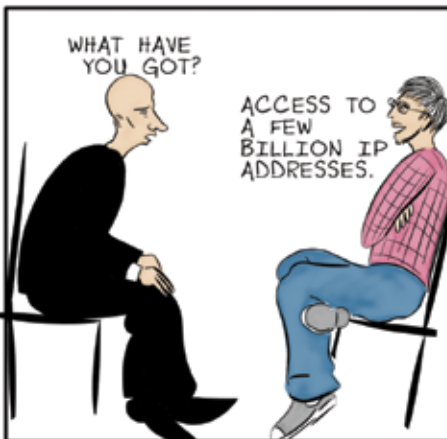
But the Ipid team members have evidently since fallen out with Mabula, as they are now assisting Booyesen and his men with their defence.

Shortly before *Noseweek* went to print, *City Press* recorded that Mabula, who led the investigation, was himself under investigation for the death by suffocation of Solomon Nengwane, 53. The newspaper reported: "Ipid has opened a new investigation into Nengwane's death, allegedly at the hands of a task team of detectives under the command of Mabula, then a colonel, and its subsequent cover-up... At the time, prosecutor Peter Smith told the court it seemed police were "knocking off" witnesses to "cover their tracks".

Booyesen's review application is based on the fact that in the police dockets that relate to the charges against the Cato Manor policemen his name is mentioned only twice. In both instances it is merely noted that he had arrived at the scene of major shoot-outs some time after they occurred; it is therefore highly unlikely that these could have persuaded the prosecutions boss to bring charges of racketeering against Booyesen.

The other prosecution statements available to the defence are one unsigned document attributed to a former police reservist who has since emigrated; two statements from a policeman that Booyesen had sacked for corrupt conduct; and one from Bheki Mthiyane, the taxi boss, whose widow denies in an affidavit that such a statement was or could have been taken from her husband. [See more on this story at www.noseweek.co.za] ■

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Breaching the peace



While South African environmentalists have focused on fracking in the Karoo, the world's energy giants have already begun invading other vast swathes of ecologically sensitive South African territory in the hunt for oil and gas. But because it's offshore, over the horizon and out of sight, hardly anyone seems to have noticed.

By Hilary Venables

A COUPLE OF MONTHS BACK, THE Minister of Mineral Resources Susan Shabangu awarded an oil and gas company the right to prospect in one of South Africa's richest and most sensitive ecosystems – just outside the De Hoop Marine Protected Area (MPA) off the southern Cape coast.

The so-called West Bredasdorp exploration permit is one of 11 so far approved for a combined area of 270,000km² of sea bed. Eight similar applications are currently working their way through the system. Add to those almost 40 preliminary rights doled out in the form of technical co-operation agreements and you discover that just about every square metre of the country's one million square-kilometre Exclusive Economic Zone, from the Orange River mouth to the Mozambique border, and extending 370km out to sea, is spoken for, by, amongst others, Shell, ExxonMobil, BHP Billiton and Andarko.

This is excellent news for those who believe we should extract every last cubic centimetre of fossil fuel from the earth's crust as fast as we possibly can and hang the climate, ocean and future generations.

But long before this undersea carbon hits the atmosphere or a major oil spill wipes out the Eden Coast, there is the noisy and disruptive matter of prospecting to worry about.

The search for offshore hydrocarbons requires the prolonged use of low-flying aircraft and large prospecting vessels, multi-beam bathymetric sonar scans and sea bed sampling. But by far the noisiest and most disruptive is a process called seismic surveying, which produces the loudest man-made sound in the ocean apart from explosives.

Seismic surveying involves chugging up and down and back and forth for months on end while an array of air-guns fires high-decibel blasts capable of penetrating hundreds, if not thousands, of metres of water and as much as 100m of the earth's crust every 10 to 20 seconds, all day and all night.

At between 220dB and 250dB at source, each air blast is enough to stun, maim or even kill a whole variety of sea creatures at close quarters, and to scare and confuse many others for tens of kilometres around. And be-

The sound and the fury

THERE ARE AN ESTIMATED 20 TO 30 seismic surveys taking place at any one time around the globe, and the number is growing by the year. That's in addition to all the other man-made noise throbbing through the ocean, like ship's engines, sonar, off-shore wind turbines and explosions.

It's not easy to measure the full effects of noise on marine biodiversity. For one thing, its propagation through the ocean is not well understood. For another, we have very little idea of how a whole range of sea creatures perceives sound.

And then there is the difficulty of monitoring very mobile populations in the wild.

What we do know from controlled studies, on one hand, and field observations on the other, is that loud noises at close range can kill and that animals at liberty will give seismic rigs a very wide berth.

Most vulnerable to physical trauma and death are the least mobile, like fish embryos and fry and slow-moving invertebrates like lobsters. But even adult fish, if they have swim bladders, can suffer fatal damage if they are close enough to the source.

At a distance, the greatest threat is enforced behavioural change. Gray whales, for instance, have been known to move more than 30km from their normal migratory paths and feeding grounds to avoid airguns.

There are also repercussions for whale communication, since the loudest part of the blast coincides with the pitch at which baleen whales vocalise.

There have been a number of separate stranding incidents involving either whales or giant squid which

have been coincident with seismic activity, but no direct links have ever been established.

There is evidence from fishing grounds, from the North Sea to the California coast that seismic shooting can greatly reduce catches of certain fish within many tens of kilometres of the operational area, and for more than five days after the shooting has stopped.

The prospecting lobby argues that displacement of animals is temporary, but chasing animals away from their preferred spawning grounds or food sources – and possibly towards predators – is likely to have a much longer-term impact.

The industry insists that its mitigation measures reduce the impact to an acceptable degree, but that's not been proven.

A report last year from the UN's Convention on Biodiversity said the effectiveness of 500m-to-1km safety zones was "unclear" as sound did not drop predictably with distance.

The report, a review of the scientific literature, found wide buffer zones and seasonal restrictions to be the most effective measures, but the latter were not always practicable; soft-start procedures looked promising but had not been sufficiently tested; there did not appear to be a standard training programme for Marine Mammal Observers or a requirement that they be independent and civilian trained.

Concerned scientists and organisations, including agencies of the United Nations, the United States and the European Union, are calling for a precautionary approach ahead of more research and the formulation of a consistent set of global guidelines. ■

cause most of the noise is at low frequency, it is particularly disturbing to baleen whales like the threatened Southern Right, which conducts most of its communication in that range.

Since sound travels better through water than air, seismic blasts can affect sensitive animals for many tens of

kilometres and have even been picked up loud and clear 3,000km from their source, so it is not the type of activity one would welcome anywhere in the ocean and certainly not in a pristine environment rich in commercial fish species, squid and lobster, near the breeding grounds and on the migra-

tion routes of threatened and endangered birds and marine mammals, like the Southern Right, and just outside an internationally-recognised marine reserve.

Unless, of course, one is Minister Shabangu and advised in these matters by the Petroleum Agency of South Africa (Pasa) which is completely in accord with her in dreaming of a seascape dotted with drilling rigs.

Still, even these high officers have to go through the motions, as laid down in the Constitution and the statutes.

In terms of the law, anyone who wants to prospect for minerals needs to

them in our Mozambique Channel story: *nose95*.)

ERM duly placed an advertisement in three newspapers, *Die Burger*, *Cape Times* and the area's local paper, *Die Suidernuus*, inviting interested and affected parties (I&APs) to register and submit comments within 21 days. Hardly a high-profile awareness campaign, but all that is required by law.

The response, unsurprisingly, was underwhelming. The single outright rejection came not from an environmental or fishing industry organisation but from the arms manufacturer Denel, which said that prospecting

attempts to extract answers from that ministry were simply ignored.

The only response from the fisheries sector – and that was also clearly prompted – was from a small private company, Gansbaai Marine, which said it was “not concerned about the seismic vessel activities to do tests”. But it said, “We would however be involved [*sic*] when actual exploration is planned or started as we need to fish in that area from time to time and would not like to be excluded from entering that area to fish”.

Boy, are they in for a surprise (see box).

The Western Cape's official conservation agency, CapeNature, asked for a 20km buffer around the Marine Protected Area (MPA) and for exploration to be confined to the period from January to the end of April to take account of the movement of a variety of species, including the Southern Right. Neither suggestion made it to the final EMP report.

A more influential voice – perhaps because less demanding – was that of Dr Ken Findlay of the University of Pretoria's Marine Mammal Research Institute.

Findlay, who is something of a serial I&AP when it comes to offshore mining applications, was invited for further discussions with ERM and is credited with the inclusion of various mitigation measures. These include giving the De Hoop MPA and the coast a 10km berth and avoiding both bathymetric sonar and seismic activity from June to the end of November when the Southern Right population is at its peak.

There will also be a slow ramping-up of noise after any break in shooting and the maintenance of a 500m exclusion zone around the airgun array.

A pair of on-board Marine Mammal Observers is to be employed to monitor the exclusion zone for whales, dolphins, seals and turtles by day, while at night Passive Acoustic Monitoring (Pam) will pick up the presence of cetaceans, as long as they make themselves heard. If any animal is detected within 500m, shooting is supposed to stop.

While these measures are in line with international guidelines, their effectiveness has been challenged by researchers and environmental organisations in other parts of the world

We are not suggesting for a minute that the prospecting company, its partners, or any of its agents would do anything illegal

conduct a public participation exercise and submit an Environmental Management Programme report (EMPr) as part of their application.

Energy companies pay vast amounts of money to Environmental Assessment Practitioners (EAPs) to compile these documents, which are supposed to detail all the potential impacts of the proposed activity on the environment and what will be done to mitigate, offset and/or repair any damage.

In the case of the West Bredasdorp exploration area, the would-be drillers, Impact Africa (see box below), engaged the services of an American EAP, Environmental Resources Management (ERM), which has years of global and local experience helping its clients overcome environmental obstacles to mining permissions. (See more about

would cause its Overberg test range at De Hoop to close down, as it would impinge on the “very large area” they use as a safety zone. Negotiations are reportedly ongoing.

Only two independent environmental organisations sent objections: the local Dyer Island Conservation Trust and the Wildlife and Environment Society of South Africa (Wessa).

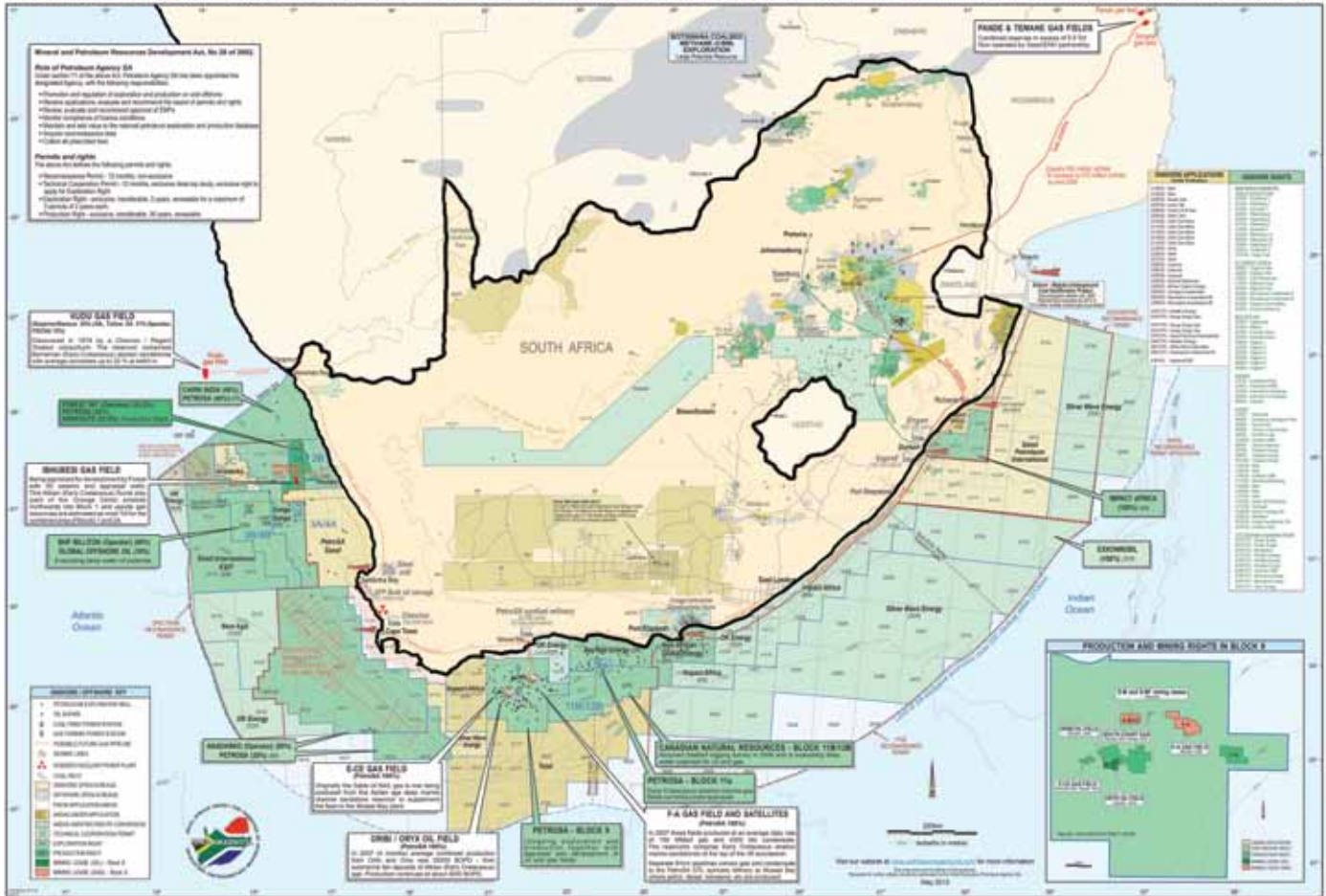
Government agencies, even those directly invited to comment, seemed reluctant to get involved. For years they have used the principle of “co-operative governance” as an excuse not to interfere in these matters.

The Coastal Management Unit of the Western Cape Department of Environmental Affairs and Development said the area was beyond its remit. The unit suggested that ERM contact the national Department of Environmental Affairs (DEA) and Department of Agriculture, Fisheries and Forestry (DAFF).

Environmental Affairs, long relegated to the status of impotent adviser when really big threats to the environment come along, didn't even bother to respond. (It is well-known that the DEA has been progressively sidelined by the Department of Mineral Resources.) Nor was any comment forthcoming from DAFF; *Noseweek's*

Impact Africa is a subsidiary of British Impact Oil and Gas. Apart from the Bredasdorp project, it has exploration rights to 7,700 km² off the coast of Port Elizabeth, 38,136km² off the Transkei coast and a fourth property off Durban. ExxonMobil has taken a 75% stake in the Algoa Bay property and is expected to come to the same arrangement with Impact Africa's

PETROLEUM EXPLORATION AND PRODUCTION ACTIVITIES IN SOUTH AFRICA



ALL STAKED OUT

The full extent and ambition of oil and gas exploration in South Africa is brought to vivid life in the petroleum agency's official map. The fact that the area occupied by the offshore effort is roughly the same as the country's entire land surface provides some idea of the relative importance of undersea hydrocarbons.

The map shows the sites of two earlier seismic surveys carried out back in 2002 off the Namaqualand coast and the southwest Cape. The first 3D survey (using even more powerful blasts than the 2D one pending off De Hoop) is currently under way south of Alexander Bay at the Ibhuesi field, which has already been cleared for drilling.

(see box). Whether they are effective or not, the mitigation measures as they stand will add to costs, cause delays and constitute an annoyance for the prospectors. If they are to have any effect, they will need enforcing. But by whom? There are the two observers of course, all alone on the high seas with a crew of hardened prospectors on a tight schedule (in great white shark territory too).

Of course, we are not suggesting for a minute that the prospecting company, its partners, or any of its agents would do anything illegal, let alone

harm a defenceless Marine Mammal Observer. We're just dramatising the asymmetry of the two sides in the event of a dispute. (In the Mozambique story in *nose95*, Sasol admitted to ignoring the agreed "off" season simply because it didn't suit their schedule, endangering the survival of the near-extinct dugong. Nobody complained or noticed – except *Noseweek*.)

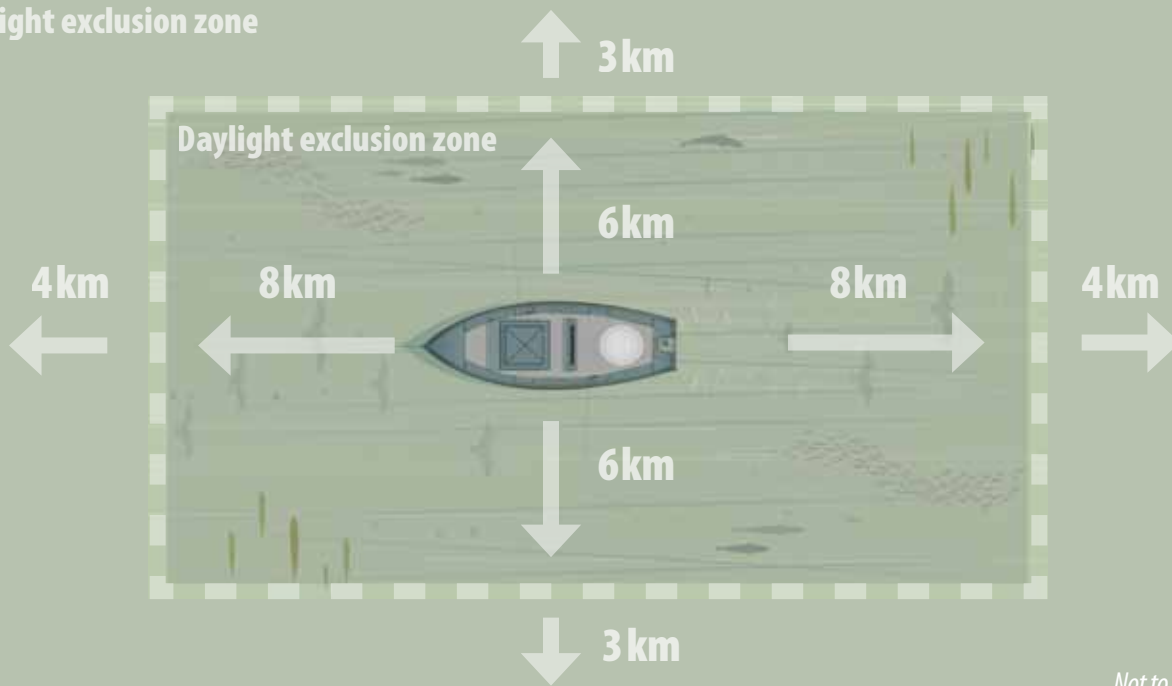
And if the observers are truly independent, the language of the EMPr suggests tension is inevitable. The repeated use of subjunctives and qualifiers and "wherever possible" in con-

nection with any restriction appears to provide endless room for interpretation. The word "avoid" is often used where "stop" would be more appropriate. Even the key mitigation measure of "avoiding" prospecting during the Southern Right season is not watertight: in a revealing response to Cape Nature's request for 24-hour Passive Acoustic Monitoring, ERM says this will be done only "should the June-to-November period not be avoidable".

When *Noseweek* asked EMR about these rather loose undertakings, we were told: "The wording of the envi-

A BIGGER BOAT

Night exclusion zone



There's nothing insignificant about a seismic survey rig. The Environmental Management Programme report (EMPr) for the Bredasdorp operation does not specify the length of the boat, but 90m is not uncommon. The cables, or 'streamers', carrying the underwater microphone (hydrophone) array are described as 12km long.

Since the whole caboodle qualifies as an 'offshore installation', it is automatically protected by a 500m safety zone, but the prospectors have asked for much more (see sketch).

The exclusion zone will occupy a surface area of more than 430km², moving at four-to-six knots an hour. Fishing

boats will have to give way if the surveying rig approaches, because it is defined as 'a vessel restricted in its ability to manoeuvre'. Special 'chase boats' will be used to enforce the exclusion. On top of that, catches could be reduced by the movement of fish away from their usual feeding and spawning grounds and the possibility of fishing gear getting tangled up in the streamers.

However, according to the EMPr: 'After the implementation of mitigation measures, such as liaison and notification of fishing operators, [the] impact should be reduced to being of low significance'.

ronmental management requirements is intentional, being prescriptive when required and in some cases making allowance for professional judgment."

What qualifications are observers required to have? Apparently none. (See box: "The sound and the fury".)

The body to which a final EMPr must be submitted is Pasa, which is mandated to promote the exploitation of gas and liquid fossil fuels, making it as effective a regulator of the petroleum industry as the National Nuclear Regulator is of the nuclear sector (see *nose161*). Pasa makes a recommendation to the minister. And the minister, equally in thrall to the extractive industries, makes the final decision on whether the environment can cope with the abuse.

How much, though, does the minister or anyone in her department actually know about the propagation of sound through the sea or the various mechanisms by which marine animals respond to sound waves?

In terms of the Mineral and Petroleum Resources Development Act, the minister is required to consult on these matters with other departments responsible for enforcing environmental law, like the DEA.

Noseweek asked the DEA about its involvement in the offshore applications process and were told in a written reply that it had "no mandate" as far as mining applications were concerned.

Asked about seismic surveying in particular, the department said it was

aware of increasing local and international concerns and was "closely monitoring these developments with a view to ensuring that the regulatory regime effectively mitigates or manages the negative impacts of this activity on the marine environment".

It would be reassuring to read that as a promise by the custodians of our environment that they will stand up to Pasa and Minister Shabangu and the EAPs and slow down the offshore dash until we can be sure it won't do irreparable damage. But it probably wasn't a promise.

The government will never hold itself accountable. It's all down to us, again.

But maybe we can only deal with one fracking problem at a time. ■

Not so Mutual satisfaction

IT ALL STARTED PROMISINGLY AT THE END of July with an undated letter from Old Mutual telling me that the company had established that the asset management fees charged on an investment I had with them some years ago were “slightly overstated” and I was entitled to a refund of R1,033.82.

My excited toy-toying turned into a tantrum though, when I read that the attached form requesting that I insert my banking details “in block letters using black or blue ink” needed to be accompanied by a cancelled cheque or three months’ bank statements, stamped by the bank.

I’d also have to attach a copy of my ID document, and then fax the whole lot to Old Mutual – there was no email address offered as an alternative. I have neither a cheque account nor a fax machine, having dumped both in my quest to join the digital world, and an emailed bank statement would still have to be certified.

What irked me most was that the account that I wanted the money to go into was the exact same one that Old Mutual has freely dipped into every month for more than three decades.

I got straight on to the phone to Old Mutual, who confirmed that I was “for security reasons” indeed expected to bow to the whims of their auditors.

I escalated my campaign for common sense to include management, first by telephone, then in writing, and was eventually brushed off with a letter, addressing me [*incorrectly*] as “Graham” and telling me that Old Mutual could not “simply assume that everybody would like to be paid in the same account as their debit order but this can be requested through our contact centre”. They need not have assumed it. They need only have asked me to tick the appropriate box.

The next morning my BlackBerry cheerfully informed me that the amount of R1,033.82 had been paid into my account by Old Mutual, but my cynical side still had reservations.

I again rang their contact centre where a faceless robot gave me the same version as before. “No,” she said. “We require proof of the banking details where the money will be paid to, even if it’s the same account.”

By Gavin Foster



at how ungrateful I was: “If you really look at it, Old Mutual could have just kept quiet and pocketed the profit,” he thought to remind me.

[*Now there’s a thought* – Ed.]

Spreeuwenberg also mentioned in passing that I was the only person who’d complained about having to jump through hoops unnecessarily. Although, he had had cases where clients complained about refunds having been paid into their bank accounts without their prior written permission.

Old Mutual is clearly more sensitive to the needs of the dodgy buggers who don’t want their wives to know they’re hiding cash on the side, than to my irritation and inconvenience.

Old Mutual’s spot of finger trouble that left them having to repay R133,260,644 to 136,961 customers, resulted in tens of thousands of adult

If you really look at it, we could have just kept quiet and pocketed the profit

Old Mutual’s dispute-resolution fundi,
Piet Spreeuwenberg

Even though Old Mutual felt it knew me well enough to dip into the same account every month for another policy I have with them?

“That’s right, yes,” she said, adding fuel to the fire. “For security reasons. We might be getting money from your bank account, but to be paid back we need confirmation of your banking details where the money’s going to be paid.”

Old Mutual’s dispute-resolution fundi, Piet Spreeuwenberg, obviously rating me something of an ingrate, told me over the phone that most people were very happy to get an unexpected payment.

“I’m not saying this in defence of a letter that could have been better written,” he said. “I’m giving you the undertaking that I’m passing this information through to the project manager so that we can learn from our mistake. I don’t know what more we can do.”

But he hadn’t overcome his shock

South Africans having to stop work to drive to, park and form queues at, banks all over the country for no better reason than to provide Old Mutual’s auditors with weeks of lucrative work checking all the resulting hundreds of thousands of certified but needless sheets of paper.

But there was a consolation prize (for Old Mutual): for every day the payout was delayed by all this toing and froing, OM could earn simple interest at 5% on the money: a tidy R18,254.86 per day. That would help pay the auditors and a score of clerks required to open and file the mail.

Taking Spreeuwenberg at his word, I phoned the Old Mutual contact centre again 11 days later – still to be given the same old story: even if I had an existing debit order with the company, I’d need to do as I was told, for “security reasons”.

They’re clearly in no rush to learn from their mistakes. ■

In January, when profiling the newly appointed deputy public protector Kevin Malunga, *Noseweek* asked: was he a “cadre” deployment, an apologist for the ANC, a “safe” choice – and, even strategically positioned, in the longer term, to help oust the fearless Thuli Madonsela?

Barely six months later, in a treacherous breaking of ranks, Malunga wrote a letter to Parliament in which he contradicted and distanced himself from the views of his boss. Why is Malunga so defiantly crossing swords with his boss – and in whose interests?

By Sue Segar

HURT. SHOCKED. CONFUSED. AND stabbed in the back. This is how Public Protector Thuli Madonsela felt, in May this year, when she realised that her new deputy, Kevin Malunga, had written to the parliamentary portfolio committee on justice and constitutional development, behind her back, to dissociate himself from the “unpleasant altercation” between Madonsela and committee members over the powers of the Public Protector in relation to the oversight role of Parliament. “It was baffling,” says Madonsela, as we sit talking in her suite at Cape Town’s Mandela Rhodes Hotel.

Immaculately dressed in red, she continues in her inimitable half-whisper: “It was early in May. He was new. He was with my team the night before we went to Parliament. We were sitting in a room like this, as we always stay here at Mandela Rhodes. We talked un-

til late in the night about our strategy for Parliament. There was no discord between any of us. We were laughing...

“We go to Parliament the next day... and two days later, I hear that he wrote a letter to Parliament to apologise for my behaviour.

“When I asked him about it, he said that he’d met with some Members of Parliament and that he was concerned that they were not happy.”

Madonsela had been presenting her strategic plan to Parliament’s portfolio committee on Justice and Constitutional Development when she came head-to-head with several MPs. At issue, was the assertion that she was taking on more than she could handle. Her response was to insist that MPs have no right to question what she investigates: what she investigates is solely at her discretion, and can only be reviewed by a court of law.

Some MPs – notably ANC MP John

Jeffery – argued in a sometimes-heated exchange that, in terms of the Constitution, they should be able to ask questions about her operations.

Barely 48 hours later, Malunga had written to committee chairman Luwellyn Landers thanking the committee for the meeting, but adding: “I, however, want to put on record my regret at the unpleasant altercation that took place between Advocate Madonsela and members of the portfolio committee concerning the powers of the Public Protector vis-à-vis the oversight of Parliament.

“To the best of my knowledge, the views expressed by Madonsela regarding our relationship with Parliament are her personal views and do not reflect my views or those of staff at the Office of the Public Protector or any official policy adopted,” Malunga said.

He added that, although the Office of the Public Protector was an independ-

WOMAN IN SEARCH OF THE TRUTH





Public Protector Thuli Madonsela

ent institution, it was not above parliamentary oversight.

Madonsela, ever the diplomat, declined to comment on Malunga's letter in the mainstream press at the time, except to say that she had discussed the matter with Malunga.

But now, in a long interview with *Noseweek*, she is more forthcoming and concedes that recent events leave many questions unanswered: "Who did he meet, and what was said at that meeting to make him, still new in the job, feel compelled to stab me in the back? Because that was what it was. Back-stabbing," says Madonsela.

"I wish he hadn't come back and said that he had met with MPs. Who were these people that he met with? I don't know. What was said that made him feel he needed to defend them in public? Because he must have known that that letter would land in the media. Did somebody trigger him to write that let-

ter? Those are questions my team has asked. But I have not had any answers. I chose not to pursue that angle with my deputy. He was new, with hardly any management experience...

"I have chosen to have a constructive approach... focusing on making sure he finds his place in our team because I need a functional team...

"But I was hurt and I expressed it to my deputy, that I felt back-stabbed and unnecessarily so."

Does Madonsela think the mysterious Mr Malunga will do it again?

She smiles, the coy smile, and leans forward: "I don't think so – certainly not openly.

"What he would do in his heart or what any human being would do outside the public limelight I do not know but I have made it clear to him that that is improper conduct the way I see it... He undertook that whenever he disagrees with me he will talk to me,

because I have invited him to disagree, as do other members of my team and that is how the team has grown...

"There were two things we agreed. First, we have to work within the system and, second, when I have made a decision, my decision stands because I am the Public Protector. We are not a commission.

"The Public Protector is not a board. It is only one person... so members of the team – like any other organisation – once the team captain has taken a decision, they are obliged not only to accept that decision but to implement it. That, I have made clear... It was an amicable meeting."

Are things hunky-dory now in the Public Protector's office?

"I think so. He [*Malunga*] does what he has to do and is free to comment at meetings when he has a view and his view is respected, as other views are respected, but if at the end of the day I make a different decision, he now understands that I have authority to make that decision. Because I am accountable at the end of the day. If the *Titanic* sinks... they will want to know who was the captain."

When we meet, Madonsela is in the middle of the Cape Town leg of her 2013 national stakeholder consultative dialogue – effectively a trip around the country aimed at strengthening the government's ability to deliver on health and in reducing hunger and poverty.

Despite having to probe the likes of Julius Malema, Bheki Cele and a range of over-spending ministers and officials (her investigations have seen at least two ministers, the late Sicelo Shiceka and Gwen Mahlangu-Nkabinde, and police chief Beki Cele, sacked) she considers her investigations into service delivery failures a key priority for her office. Encouraging constructive dialogue, as opposed to violent protests around service-delivery failures, is, she believes, the only way to go.

The incident with Malunga is the latest in a series of trials Madonsela has faced since taking office in 2009 and it is not the first time she has had a run-in with a deputy. She clashed with her former deputy, Mamiki Shai, who reported her to Parliament, alleging she was a bully and asking Parliament to probe financial mismanagement in Madonsela's office. Shai's allegations

were later dismissed as baseless.

Madonsela's appearances at the Justice Committee have, in recent years, seen her clash regularly with the ANC's John Jeffery, who has since been promoted by President Jacob Zuma to Deputy Justice Minister. Jeffery has lately been at pains to dispel the perception that "we are out to get Madonsela". She has also consistently defended her refusal to answer Jeffery's questions about why she chose to investigate certain cases, on the grounds of her constitutionally enshrined "operational independence".

What has been the low point in her career so far? Madonsela grimaces.

"Between what my previous deputy and this deputy did, I don't know which was the lowest point.

"I also did not expect a minister [Higher Education and Training Minister Blade Nzimande] to issue a statement that blatantly says I support a particular political party – the DA –

They should respect this institution as a real avenue with which they can engage when they want to exact public accountability."

The constant riling by Jeffery has also been a low point. "That was not just shocking, it was crippling..."

"What does it take to meet a fellow human being halfway...? It seems this one will never be met halfway because the goalposts keep shifting."

She continues with an anecdote of how Jeffery once questioned why she had taken up the cause of a certain whistle-blower, "who had been without a job since 2010 and came to me for help in 2012".

"Jeffery suggested I shouldn't have helped her, I should just have let her go to court. To me, that was like Marie Antoinette saying, 'let them eat cake'.

"Perhaps we need to sit around a table and reconcile our values.

"If you go to most ombudsmen around the world, their logo is, 'we will

have a conversation about what is important and what's not and, at the end of the day, what is in it for the people....

"The other thing with politicians... is what I call the arrogance of incumbency. There is a problem with politicians assuming that they are the people. Nobody is the people. I am not the people. The people are the people. Once every five years they elect people to represent them but it doesn't mean that every time the representatives speak they know best what the people want... Hence you need these other levers of democracy, like the Public Protector, where people can speak in their own voices."

Does Thuli Madonsela feel she is struggling to hold on to her job?

Again, the enigmatic smile: "Well, I haven't gone away so far... so, no, I am not struggling to hold on to my job. But I do feel there have been shenanigans." She looks at me, almost incredulously. "I have now been asked to explain to Parliament why I said people are interfering with my staff."

She recalls that when, in 2009, President Zuma appointed her as Public Protector, he assured her that he did "not want a Public Protector who looks at who complained or who was being accused".

"I always go back to that and remind myself that my team and I should do a thorough job in establishing the facts. And once we've found the facts, we should follow the facts and the law and related principles. We shouldn't be looking at who the parties are..."

"And then to be consistent in my decisions, because the moment you are swayed by reasons other than facts or principles, you will struggle."

How many former comrades has she lost along the way in her quest to perform as required by the Constitution?

"I don't know if I have lost comrades. All I know is that suddenly my name has disappeared from literally every government invitation list... My name has just disappeared from their database. Maybe a computer deleted my name. I think it got lost. What can I do?"

Another giggle. And a shrug.

"It saddens me that people do not appreciate that we have a common interest. I believe that if my body is sick and someone gives me bitter medicine, it is because they love me." ■

"The thing with politicians is the arrogance of incumbency. Of assuming that they are the people. Nobody is the people"

and get away with it.

"Let me just say that the politics have not been expected. My predecessors warned me there would be times when people don't greet you... so that was the extent to which I expected things to go but... issuing a statement..."

"Things like that are confusing to people. There might be people who swallow those things without analysis. Reckless statements seriously impact on the trustworthiness of our office. We have to work hard to convince people that I don't jump when the DA says jump.

"You dent an image of an institution one bit at a time."

"These events have been sad. Not just for me, because office bearers come and go, but because I would like people to trust and respect this institution and its role in strengthening democracy so that they never think they need the Egypt way or Tunisian way.

listen to you when nobody else will'; it is supposed to be a refuge... an avenue for the ordinary person to engage with the state whenever other avenues had failed that person."

Her office, she says, allows ordinary people to engage with the government beyond the normal mechanisms... so they don't need to go to court "because court can be cold, complex and time-consuming..."

"Even avenues like the CCMA require legal representation. We are an office where you don't need legal representation and the quality of the decisions has nothing to do with the strength of arguments of parties when it comes to legality.

"All I can say is 'God help me and Mr Jeffery...' At some stage, we need to find an opportunity to discuss our values because what you regard as important depends on where you spring from.

"So, I really don't know, I hope we can

Modest climb to high office

THULI MADONSELA WAS BORN IN SOWETO on 28 September 1962 to Swazi-speaking South African parents. She spent her happy childhood between Soweto and Swaziland, as the child of “an upper class poor family”.

Her parents were informal traders and her father later used his car to start an informal taxi business between Swaziland and South Africa.

“I say ‘upper class poor’ because my father had a car,” she laughs. “I was a child of two worlds: during the school terms, I stayed in Swaziland with my aunt and in the school holidays, I would return to Soweto in my father’s taxi.”

A compulsive reader, from an early age, she devoured anything from comics to good literature.

After completing school at the Evelyn Baring High School in Nhlanguano, Swaziland’s fourth-largest town, Madonsela completed a BA Law at the University of Swaziland, then moved to Wits to complete her LLB.

A member of a very large family, Madonsela describes herself as a middle child who ended up being the last born. “There are step brothers and half brothers... it is a huge family, including the illegitimate ones.

“All three siblings born after me have died – a brother, Maphumzane, and two sisters Khumbuzile, who worked for the CCMA, and Sizakele, who had just taken up a position in the Presidency under Thabo Mbeki. So sad. I was particularly close to those two sisters – but that’s life,” says Madonsela.

In the mid-1990s, Madonsela’s glowing legal career saw her appointed as one of the 11 technical experts who helped the Constitutional Assembly to draft the final Constitution. No sooner had her work started than she heard she had won a Harvard scholarship – an opportunity she forfeited to complete her work on the Constitution.

“It was an agonising decision. Going to Harvard was something I’d dreamt of... I remember saying to myself, ‘Harvard can wait’. But Harvard did not wait! Life moved on. I got involved in my career and became a parent...”

In a frank interview over two hours, we talk about Thuli Madonsela, the

human being. What she reads: (*Jesus CEO: Using Ancient Wisdom for Visionary Leadership* by Laurie Beth Jones, is never far from her bedside). Her music of choice: country, rock and, more recently, classical. And on single parenting: “That’s one job you can never say ‘I did it right’. Every mother is a struggling mother... When they [*her son and daughter*] were younger, I had high expectations, as my parents did. I have come to the point where they pursue whatever they pursue...”

Her role models are Albertina Sisulu and British Labour Party politician Pat McFadden.

What disturbs her the most about South Africa today? “Accountability, or the lack of it. And growing tensions between the people and the state, largely due to maladministration and the slow pace of change. And the fact that many state ‘actors’, particularly those at the highest level of state, seem to be oblivious to that growing tension.”

Madonsela says of her team: “We have had a sudden growth, like a teenager – from 293 in January this year, to 400 – because we added just over 100 trainee investigators. At head office we have about 100 people and the other 300 work in the provinces.

Asked how she views the legal profession, she says, “The law is a good instrument but all good instruments have to be shaped and amended over time. Law is a social science, not an exact science, so it needs constant reshaping... but it is often slow to adapt to realities...”

“I often say we need our own new Aristotles and Socrates to revisit legal principles in the light of a changed world...”

Plans for when her seven-year non-renewable tenure as Public Protector ends: “I am left with about three years now. I would write a bit, but I also want to do some training around ombudsmanship, because I think it is an underrated mechanism that could make a huge difference in strengthening governance in the continent. I would probably go back to academia and end up at the Bar in constitutional litigation.” ■

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WAY OFF TARGET

Failing gun control measures are costing South Africa billions.
By Gavin Foster

EVER SINCE THE FIREARMS CONTROL Act (FCA) of 2000 replaced the Arms and Ammunition Act of 1969, SAPS has lurched and stumbled erratically over implementing the new law.

In July a commission of inquiry into the Central Firearms Registry (CFR) was set up after two police brigadiers were suspended following allegations of bribery, corruption and arranging firearms licences and temporary permits for various gangsters, terrorists and self-confessed murderers.

The suspensions were not a first for the registry; it suspended most of its senior management in 2004 for alleg-

edly similar behaviour. Then, there were no convictions but most of the suspended police officers left the force rather than return to work.

An insider tells *Noseweek* that they were victimised because they objected to many of the irregular methods used by their bosses to implement the FCA.

In 2010 there was another flurry of activity when the registry suspended its abrasive head, Brigadier Jaco Bothma, claiming he'd failed to meet his goals and alleging that his office had shown favouritism in approving licences and permits to some people and institutions. Allegations of bribery and corruption in the CFR were also

raised.

In the most recent drama, Brigadier Mathapelo Merriam Mangwane, section head of the registry and her sidekick, Brigadier Hlamane Elias Mahlabaane, were suspended without pay while criminal investigations are undertaken. Their purported self-enrichment propensities were uncovered during an investigation into two employees of Dave Sheer Guns who were arrested by military police at OR Tambo International Airport for allegedly dealing in stolen military ammunition worth about R1 million.

During the investigation an employee of the gun shop told the Hawks

Firearm law expert Martin Hood of MJ Hood & Associates:

FWe all knew that we didn't have the budget or the manpower to do this properly. The legislation was flawed, its implementation was imperfect and incomplete, and numerous members of the police, including very senior officers, saw opportunities for corruption.

"A senior member of the Hawks told me they believe that delays were purposely created by the people administering the system to create opportu-

nities for corruption – specifically in the field of temporary authorisations because they're easier to approve and there's less control over them in a corrupt system.

"It's pervasive at every police station in every province as well as in the inner workings of the Central Firearms Registry itself. The conclusion I have come to is that the police now have less control over firearms than they had under the old legislation because of this.

"Part of the current investigation involves certain Chinese individuals allegedly being in possession of hun-

dreds of blank signed permits. People use permits – issued by the CFR and valid for a year – to take possession of firearms, supposedly while licence applications are pending.

No licence is issued but when the permits expire, the guns are kept and nobody follows up."

Keith Dyer, ex-handgun editor of Magnum magazine:

FThe police, after initially being very aggressive about enforcement of the FCA, soon found



requirements would be impossible to meet without an enormous budget and thousands of extra police staff. More than two million licensed gun owners would be obliged to apply for new licences for their 3.7 million weapons and there was a minefield of red tape to be negotiated on both sides.

Applicants first had to attend courses at accredited training institutions, then apply to the Central Firearms Registry for the required certificates of competency before applying for the licence itself.

less complex. They'd have to interview each applicant, take fingerprints, and perform background checks by questioning their spouses, neighbours and nominated character witnesses. Police officers would also have to visit an applicant's home to inspect the premises and confirm that there was a suitable gun safe before submitting the paperwork to the CFR office for a decision.

The relicensing process was planned to start in 2005 and be finished by the end of 2008, with deadlines determined by the applicant's month of birth – those born in the first three

When the government started working on the new Firearms Control Act in the late 1990s there was uproar in the pro-gun community

that she had personally delivered large sums of cash to Mangwane at the behest of her employers twice every month, to ensure the swift processing of licences for customers. These included convicted Nigerian terrorist Henry Okah and self-confessed killer Mikey Schultz, who was granted immunity from prosecution when he turned State witness against Glenn Agliotti after pulling the trigger on Brett Kebble.

When the government started working on the new Firearms Control Act in the late 1990s there was uproar in the pro-gun community. Opponents of the proposed act pointed out that the

There were limitations on numbers of weapons licenced, but competitors in organised competition, bona fide collectors, and hunting association members could achieve Dedicated Hunter, Sportsmen or Collector status and would be entitled to additional licences if justified.

For the police officers working with the applications, the task was no

months of the year would have to comply by 31 December 2005, and so on. Those who didn't comply had until the end of June 2009 to legally dispose of their weapons or hand them to the police for destruction. After that deadline,

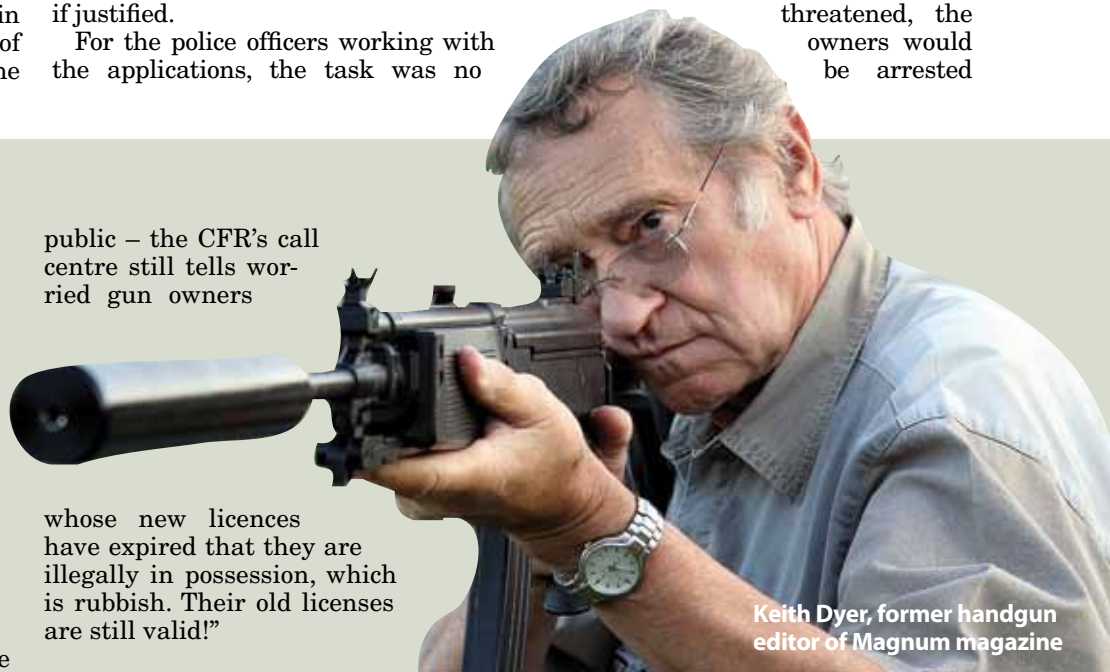
the police repeatedly threatened, the owners would be arrested

that many of the requirements were impractical for them, so they now ignore them. All firearms surrendered for whatever reason – mainly for amnesty or as a result of police intimidation – are supposed to be ballistically tested before destruction to see if they can be linked to unsolved crimes. This could obviously never happen because the ballistic laboratory is snowed under and has a backlog of current evidence to collate. So, what better way to rid yourself of a murder weapon than to hand it over for destruction?

"They also continually lie to the

public – the CFR's call centre still tells worried gun owners

whose new licences have expired that they are illegally in possession, which is rubbish. Their old licences are still valid!"



Keith Dyer, former handgun editor of Magnum magazine



for illegal possession of unlicensed firearms. Despite the clause in the Firearms Control Act allowing for compensation – as dictated by the Constitution – police insisted that none would be paid.

Thousands of timid souls handed in their guns rather than endure the cumbersome process, while many more simply didn't bother either to relicense or dispose of the weapons they'd already owned for years and which they believed they had a constitutional right to retain.

Early in 2005 things started to go wrong. The queues of people waiting to surrender their weapons added to the queues of those waiting to relicense, and the backlog grew and grew. With more than 500,000 people due to apply every year, the CFR could expect more than 2,000 relicensing applications to arrive from police stations every working day. This was on top of the new applications for guns that were being traded daily.

Despite pro-gun lobbyists insisting that the state had neither the manpower nor the budget to carry out such an exercise, police insisted that all was on track. When the CFR ran out of space to store the thousands of applications it hadn't got around to processing, it instructed police stations to stop forwarding them to Pretoria until further notice, so piles of paper gathered dust in police stations for years.

The tap was not yet even fully open. *Business Day* reported on 20 September 2005 that, of the 600,000 expected renewal applications that year, only

20,000 had been received by September and those were being processed very slowly. People wanting new firearms fared no better. Of the 4,224 new applications in the first eight months of the year, just 813 had been processed, SAPS officials told parliament's Safety and Security Committee.

Meanwhile stories started doing the rounds about guns that had been handed in for destruction resurfacing during robberies.

The police still insisted: no compensation for surrendered firearms, so the public decided to hang on to Grandpa's R500,000 Purdey shotgun or Grandma's R200 Baby Browning.

Meanwhile sales plummeted and 800 South African gunshops closed their doors because they could no longer make a living.

At the same time municipal traffic departments, SAPS and SANDF members lost – or sold – weapons at an increasing tempo, with little effort seemingly being made to close the door or recover them.

The pro-gun lobby became even more vociferous in stating the obvious – that South Africa couldn't afford the whole process as it was – but the cops remained insistent that the programme was still on track.

Right at the beginning of the relicensing exercise somebody obviously felt the need to demonstrate just how serious the government was about getting guns out of unauthorised hands. Satirist Tom Sharpe could have done very well out of a book describing just what happened next.

On the morning of 13 January 2005 a heavily armed contingent of SAPS and SANDF heavies, accompanied by TV crews and newspaper journalists they'd invited to attend the show, descended on the South African National Museum of Military History in Saxonwold, Johannesburg. There they arrested Richard Henry, the museum's curator of small arms and fighting vehicles, and Susanne Blendulf, curator of insignia and memorial plaques and editor of the *South African Journal of Military History*. Henry was arrested for being in possession of "stolen" armoured vehicles and numerous small arms without being in possession of valid firearm licences, while Blendulf, according to reports, was simply "talking too much".

The director of the museum, John Keene, who had been in hospital recovering from eye surgery, rushed to the museum to sort out the mess. He too was arrested, handcuffed and with his two colleagues, locked up in a filthy cell overnight. Keene spent the night shackled to his bed while his wife begged to be permitted to administer his medication and pleaded for him to be allowed to return to hospital.

This was eventually acceded to after the prosecutor declined to press charges, but Keene's retina became permanently detached and he subsequently lost his sight in one eye. He and his colleagues sued the state and in 2009 were awarded R450,000 in damages.

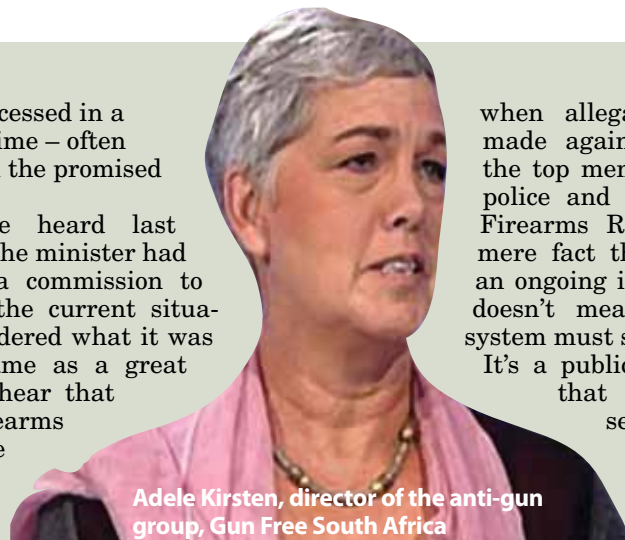
The state also found itself dragged into court in two other significant cases. In the first, the Justice Alliance of South Africa and the False Bay Gun

Advocate John Welch, ex-Deputy Attorney General of Transvaal, now a trustee of the South African Gunowners' Association (SAGA):

We were hoping that after the teething problems with the FCA things had normalised and over the last two years I think most people were satisfied. In most cases they were courteously treated by the police and applications for relicens-

ing were processed in a reasonable time – often quicker than the promised 90 days.

"When we heard last month that the minister had announced a commission to investigate the current situation we wondered what it was about. It came as a great surprise to hear that certain firearms dealers were mentioned and especially



Adele Kirsten, director of the anti-gun group, Gun Free South Africa

when allegations were made against some of the top members of the police and the Central Firearms Registry. The mere fact that there is an ongoing investigation doesn't mean that the system must stop, though.

It's a public institution that renders a service to the taxpayer. I believe it's very important

Club went to court to force the state to pay compensation to the 100,000-plus people who had surrendered firearms without compensation, because they were afraid they'd be jailed once the relicensing deadline was reached. There was much toing-and-froing and the gun owners got their judgment but the state won on appeal in 2013, so those who had already relinquished their firearms will not be paid out.

A much more significant judgment was made in favour of the SA Hunters and Game Conservation Association on 29 June 2009 when the court ordered that the old green licences issued under the Arms and Ammunition Act would remain valid. Judge Prinsloo said in his judgment: "There is no provision in the new act or regulations, so it was pointed out, to cater for the position of an unsuccessful applicant for renewal. Once a renewal application has been refused and the subsequent appeal turned down, the unsuccessful previous licence-holder will be in unlawful possession of the firearm and open to prosecution."

This was patently unfair, and for that reason the judge ruled that the old licences would remain valid. That was four years ago and the state has taken no further action in this regard.

The state was given yet another

black eye in March last year, when the *Sunday Times* published a leaked performance audit report on the quality of training provided to police officers. This revealed that of 157,704 po-

The director of the museum, who was recovering from eye surgery, was arrested, handcuffed and locked up overnight in a filthy cell

lice officers who underwent training to comply with the regulations of the Firearms Control Act, 27,329 failed proficiency tests, yet many still carried service weapons.

The report added that police officers were sent out to fight crime with weapons they could not use properly, leading to high risks for their colleagues and members of the community. It also stated that most of those who failed their proficiency tests were expected to carry weapons daily, and "there are still no proper policies and procedures in place regarding competency issues of Police Act members on operational duty".

Nobody knows what the cost of the Firearms Control Act has been to South Africa, but it will be billions rather than millions of rands. ■



that the committee or commission must carry on and do its job and I just hope it will invite representations so we can help reach a correct finding."

Adele Kirsten, director of the anti-gun group, Gun Free South Africa:

Our call is that there's a mess at the CFR. The system's not working and we need to get to the bottom of that. We think that stopping operations and allowing investigators to get into the firearms registry to look at

everything is the only way.

"We can't put a timeline on this because we don't know how long it will take. In a nine-month period in 2011 when the minister indicated that the CFR had become more efficient, they issued just over a million licences in nine months, whereas before, they hadn't been able to do that in five years. That raised red flags for us: was the system becoming more efficient or was it just about rubber-stamping and not doing background checks while chasing numbers?"

Anonymous gun owner:

The situation is now ridiculous. I have eight firearms but when I applied to relicense them back in 2005, I was told that I could only apply for four. I applied for the most valuable ones and the licences came through in 2008. The first new licence has already expired, and the CFR helpline tells me that I am now in illegal possession of it. The four cheaper weapons I didn't apply for are still legitimate though. People who complied with the law in 2005 are now worse off than those who didn't."

Absa's POISONED apple

It was all very confusing: the bank told the happy pensioner he had been awarded a rebate for his early homeloan repayment – but then he was plunged into unhappy legal demands for the return of the cash.

By Mark Thomas

FORMER MK OPERATIVE, NAVAL Captain Teboho “Tommy” Molotsi, now retired, was one of the few former MK comrades to have been integrated into the SANDF. He rose through the ranks of the SA Navy, to end up as Defence Secretary. In 1998, earning a half-decent salary and wanting to secure his family’s future, he decided not to make use of naval housing but, rather, to raise a bond and buy his own home. Absa was happy to oblige with a R170,000 home loan.

Molotsi religiously paid the agreed monthly instalments without skipping a single payment.

In 2008, Molotsi opted for early retirement from the Navy. When he received his provident fund payout, he asked Absa for the settlement amount on his loan, keen to unburden himself of “credit headaches” in his retirement. He also approached his vehicle financiers, Nedbank’s Motor Finance Corporation (MFC), for a settlement figure on his car.

At Absa’s central branch in Kemp-ton Park, Molotsi dealt with Elize van Jaarsveld, who consulted her computer then gave him a figure which he wrote down on a piece of paper and took to Capitec Bank, into which his provident payout had been deposited. But Capitec refused to transfer any amount to any account without proper documentation stating the purpose of the payment.

Back to Van Jaarsveld for paper-

work stating the amount required to settle Molotsi’s bond account – which she duly provided. The document also gave the particulars of the account to which the settlement was to be remitted.

Molotsi followed exactly the same procedure with his vehicle finance provider, Nedbank’s Motor Finance Corporation (MFC). Soon after settling the car loan, he received a call from a consultant at MFC informing him that, because of his early settlement, he would be receiving a R9,000 rebate – which was promptly paid into his Capitec Flexi Account.

Back to Capitec Bank with the official Absa Bank document stating the reason for the requested transfer of funds to Absa, Capitec obliged, and in November 2008 an amount of R137,063.58 was transferred from his Capitec account to his Absa Home Loan Account. Capitec gave him proof of payment, which Absa ac-

cepted. Molotsi then asked when he could expect to get his title deed and Van Jaarsveld told him it would take three to four months to be processed.

“She said something like ‘the titles are kept with the lawyers who have to work with the Deeds Office to cancel the bond,’” Molotsi recalled.

Three months later, in February 2009, Molotsi went back to Absa to inquire about the status of his title deed but the answer was simply “not yet”. Another month passed, then he received a text message from Absa Bank informing him that, for having settled his bond account in 11 years instead of 20, he was due for a rebate. Since the same had happened with his car loan, Molotsi saw nothing strange in that.

He told *Noseweek* that that particular text message – since deleted – was followed by a phone call from Van Jaarsveld asking him to come in to the bank so that his rebate could

Molotsi received a text message from Absa informing him he was due for a rebate. The same had happened with the car loan, so he saw nothing strange in that

be processed. Since he was not expecting a fortune, he was in no particular rush to get to the bank.

With the frequency of calls from the bank increasing – and having received yet another while out shopping with his wife, Mary, one Friday in April 2009 – and since they were not far from Kempton Park, they decided to go in to the bank to find out exactly what the rebate was that the bank was so impatient to pay out: R90,000, they were told.

Sceptical about what Van Jaarsveld was telling them, Mary specifically asked whether it was a ploy to sign them up for further credit. Van Jaarsveld insisted that it was a rebate.

“I was a pensioner, I had no intention of mortgaging our family home again for money we did not need. After all, the whole purpose of the exercise had been to settle the bond.

“That woman told me to explain to my wife what a rebate is... and all I knew about rebates was what Ned-bank’s MFC had told me when they handed me the R9,000.”

With that cleared up – and without signing any additional bank agreements – the Molotsis were happy to accept the money.

“After a brief consultation with my wife, we decided to immediately spend R60,000 to clear our daughter’s university loan, though there was no urgency to do so. We asked Van Jaarsveld to transfer the rebate to our Capitec Flexi Account from which we would pay Wits the R60,000.”

The Molotsis’ bank statement shows R60,000 was immediately transferred from their bond account (that was supposed to have been settled and closed as requested) to the Capitec Account. At that point, they again inquired about their title deed and the Van Jaarsveld promised to follow up with the Deeds Office.

The following month, additional amounts of R10,000 (on May 11, 2009) and R30,000 (on May 25, 2009) were credited to the Molotsis’ Capitec Account from Absa Bank. Mysteriously the R90,000 “rebate” had grown to R100,000.

Molotsi heard nothing further from

Absa for nearly three months. Even their constant requests for the title deed yielded no straight answers. Then in June of that year, the retired naval officer received a letter from Absa Home Loans informing him that he was in arrears with his bond account. He also received a call from someone in the legal department of Absa’s head office bearing similar news – that his account was in arrears... He explained to the caller his version of what had transpired and thought that would be the end of the matter.

On July 1, 2009, he received another letter, this one headed “Final Warning”, demanding that he settle the arrears or risk facing legal action.

Distraught and confused, the Molotsis rushed in to Absa in Kempton Park and were told that Van Jaarsveld had retired.

They explained their situation to the branch manager, who promised to investigate and get back to them.

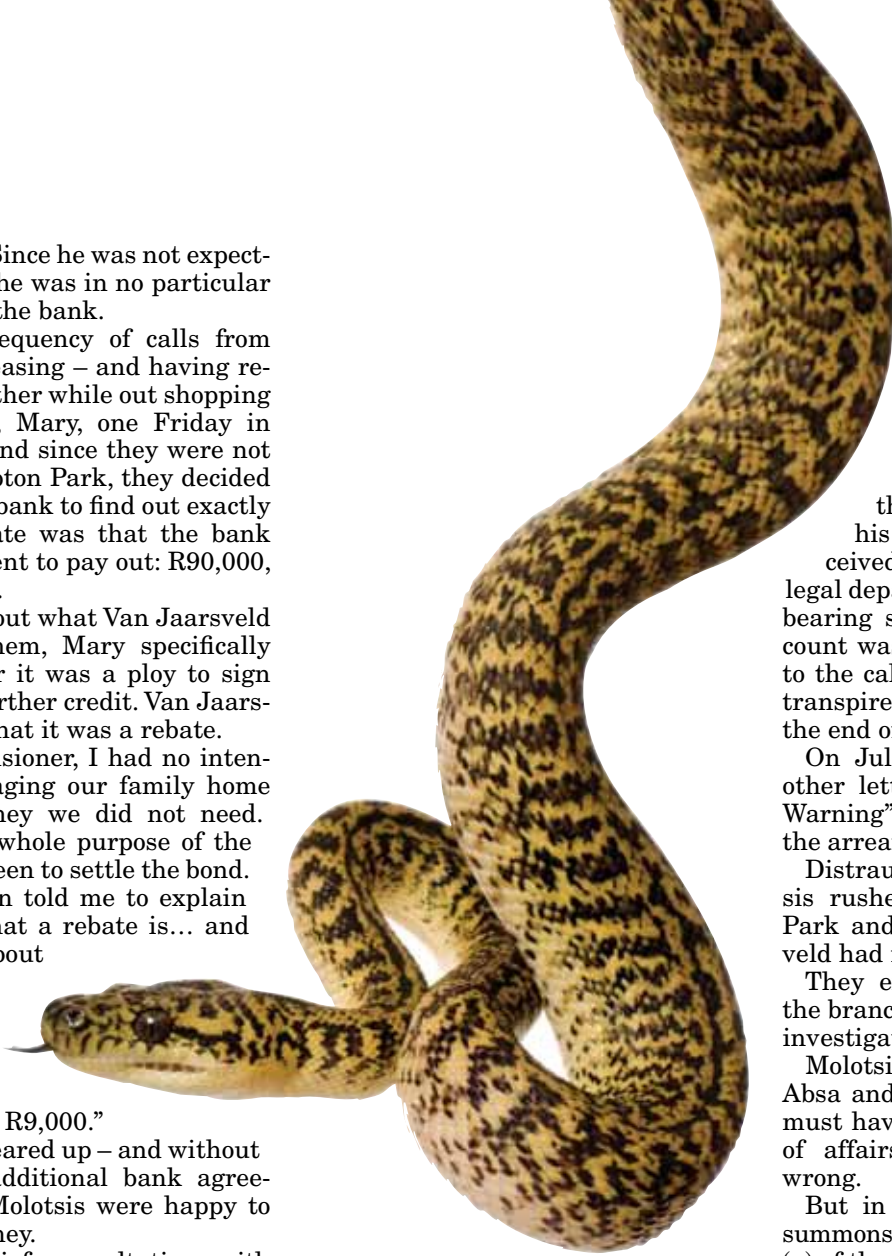
Molotsi heard nothing more from Absa and he assumed that the bank must have established the true state of affairs and rectified what was wrong.

But in March 2010 he received a summons which cited Section 129(1) (a) of the National Credit Act No 34 of 2005. This section stipulates that, by evoking the Act, Absa was acknowledging that they were bound by the NCA, the same legislation that requires that every transaction be individually assessed and adjudicated...

By simply handing the Molotsis the R90,000 or R100,000, without properly vetting the credit-worthiness of the pensioner, the bank must have known that they were contravening the same law that they were invoking in its attempt to attach the Molotsis’ home.

According to Derry Burge of Debt Management & Counselling Services that has since taken up the matter, the National Credit Act demands that each and every one of the three “loan” payments to the Molotsis should have been handled as fresh credit applications.

“Molotsi didn’t sign any documents authorising the bank to reactivate his bond account that he had settled just



three months earlier. Besides, the law doesn't allow automatic renewals of credit agreements," said Burge.

Lawyers at Nel & De Wet Attorneys of Pretoria and Monte Coetzer Inc of Johannesburg argued Molotsi's case before Judge Ramarumo Monama, who ordered the bank to produce the outcome of their own investigations and obtain a statement from their former employee, Van Jaarsveld.

This was after the bank's counsel had

close their file than another summons arrived.

Molotsi rushed to the office of his attorney, Johann Nel, but was shocked to be repelled and told: "Sorry Mr Molotsi, we can't represent you any more as we now represent the bank in other matters..." A conflict of interest.

But being a considerate attorney Nel recommended a correspondent attorney in Johannesburg, Monte Coetzer. He even wrote him a letter explaining

for New Economic Rights Alliance (New-ERA) – an organisation that "supports victims of corporations that put profit ahead of human rights" – said, after seeing Molotsi's documents and those filed by Absa, that the bank's NCRCP (National Credit Regulator Credit Provider) certificate was missing.

She also noticed that the bank had not attached any documentation to prove that Molotsi had given Absa instructions regarding the withdrawals against his cleared bond account.

Burge pointed out to *Noseweek*: "If you read this documentation (the documents filed with the National Credit Regulator on behalf of Molotsi against Absa), it asks for the same information that I would ask for in discovery (the legal process of demanding relevant documents from an opposing party) if I wanted to assess a case of reckless/unlawful lending."

Burge said the bank had to show the court a copy of their assessment from which Molotsi had qualified for the additional R100,000 loan in 2009 as per the National Credit Act.

"As he had retired, it would be important, to see if he had the means to service the 'loan'. Also, there should be some contracts showing the terms of the new credit line."

Burge concluded that the matter should not have been defended in the high court, but with the National Credit Regulator instead.

She has since filed a complaint against Absa on behalf of Captain Molotsi.

In her notice, she informs the National Credit Regulator: "I hereby request that Absa be compelled to comply with my request for this documentation in order for me to assess, as a debt counsellor, as to whether this was reckless/unlawful 'lending' of money, as the consumer did not request a draw down on his bond.

"If he did, then Absa must please supply me with such evidence. In fact I would appreciate any evidence from Absa that substantiates their claim that this was a loan."

Absa wrote to Molotsi on 7 August – copied to Burge – acknowledging receipt of his complaint, "lodged at Customer Contract Management", giving them a reference number and "assuring" them that the matter was receiving urgent attention. ■

The attorneys began to prepare to defend the bank's application, but on the eve of the hearing, they called him with the nasty news that they could not represent him any more

claimed ignorance of the details presented by Molotsi.

Judge Monama postponed the matter *sine die* (without setting a date for the continuation of the trial).

Weeks turned into months and then years without any sign of the bank's ever prosecuting the matter. Then, around August last year, the Molotsi's lawyer, Johann Nel, at Nel & De Wet Attorneys advised him that they wanted to close the file because "leaving it open was becoming costly" to the pensioner.

Molotsi took their advice as, after more than two years without any movements from the bank, it was logical to assume that Absa must have recognised their mistake. But no sooner had he agreed that his lawyers should

his withdrawal from the matter.

Molotsi engaged the Johannesburg lawyer – who demanded a down payment of R7,000.

The new attorneys began to prepare to defend the bank's application, just as Nel had done. But, on the eve of the hearing, they called him with the nasty news that they, too, could not represent him any more. Again, there was some or other conflict of interest.

Left without any legal representation – and R7,000 poorer – and with just one night to prepare, Molotsi decided to represent himself.

When he came to *Noseweek*, he was still fighting his own corner in the court battle.

Derry Burge of Debt Management & Counselling Services, who also consults

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Global Trader: more lies and deception



In attempting to clear the air about their dubious web-based trading platform, an online company resorts to further smoke and mirrors

SHORTLY AFTER NOSE166 APPEARED with a story about Global Trader, an online platform for trading shares and derivatives, financial planner Peter Calitz of Hout Bay wrote to *Noseweek* noting that in that same week of publication, *Finweek's* Simon Brown was telling his readers how much he likes Global Trader and its parent company Purple Capital.

Calitz copied his letter to the chaps at *Finweek*.

Noseweek was seriously critical of the way in which Global Trader (GT) generated its huge profits – a story which investors in either company would have found most disturbing.

Finweek editor Marc Ashton replied: “Disclosure upfront, I do hold some shares in Purple Capital and have previously recommended them as a “buy”. I am also a Global Trader client using the “Future Trader” platform and I also trade equities through them. I bought the shares post a number of interviews with Mark Barnes and Charles Savage. This was published in January 2011.

“Mark Barnes [Purple Capital executive chairman] is regarded as being one of the most ethical people in business.”

“Having reviewed the *Noseweek* article – and without taking sides as I’m still gathering information – I would comment as below:

● The Financial Services Board (FSB) investigation was completed and withdrawn following an independent investigation by KPMG;

● The auditors for Purple Capital are BDO who are well respected by the industry;

● If the FSB had been concerned

about systems in place, I would have been surprised to see them allowed to solicit investments for the Emperor Asset Management business in 2012/13.”

At about the same time, another financial planner, Anton Koch of Durban, wrote expressing much the same confusion and concern. He, too, had received a copy of that KPMG report from GT CEO Charles Savage, who claimed that the report was “clearly defending all accusations made of GT247.com systems”.

Savage had also reported the “executive response to this article” to his own board of directors:

1. *The article has no merit and is based on: (a) the accusations of a disgruntled client who over a period of more than seven years recklessly lost his investments as a result of his own poor trading decisions; (b) a ‘leaked’ report, prepared by an FSB investigator who is no longer in the employ of the FSB and whose findings were found to have no merit when comprehensively reviewed, researched and investigated by his peers.*

2. *A review of our systems by a big 5 auditor found no merit to any of the disgruntled clients’ claims.*

The only possible formal action that we may take is that we will draft a letter to the FSB noting the article and the breach of confidentiality relating to our case. We will ask that they set the record straight by clearing our record publicly.

A few days later, apparently in response to the letter from Savage mooted in the latter’s report to his directors, the FSB’s deputy registrar of financial service providers, Gerry Anderson

wrote to *Noseweek* reader Koch: “Most of the facts contained in the [*Noseweek*] article, which was published without reference to the FSB as the Regulator, are not based on facts. [sic] Global Trader remains a licenced financial services provider trading CFD [*Contracts for Difference*] instruments as a principle. No regulatory action is in process against the company.”

The first sentence of Anderson’s letter repudiating *Noseweek’s* report is plain nonsense. Our report was based on an FSB report and contemporaneous email correspondence with the FSB and Global Trader.

His second sentence is disingenuously misleading: true, Global Trader is a licensed financial service provider and, yes, it does trade CFD instruments, but the two statements bear no relation to one another: The law makes no provision for Global Trader to be licensed by the FSB to trade CFDs.

Anderson’s last sentence, too, is intentionally misleading: there is no regulatory action in process against the company, true, but only because the FSB believes it has no legal jurisdiction to regulate the trade in CFDs – one of the main points made in the *Noseweek* report.

You need not take *Noseweek’s* word for that. Just read the email written – only a month earlier – to William Joshua (the IT specialist who lodged a complaint about GT’s alleged rigging of trades) by Wendy Hattingsh, the FSB’s Head of Department: FAIS Supervision.

“Dear Mr Joshua, We have provided you with the information necessary to

lodge a complaint with the FAIS Ombud. There is however a jurisdiction problem, the FSB can only Act in terms of its mandate provided in terms of the FAIS Act to regulate advisors and intermediaries. Currently, there is no regulation on the issuers of OTC Derivatives. This position will change in future with the implementation of the Financial Markets Act. We have in this matter directed the financial service provider [Global Trader] to change its disclosure to clients, to ensure clients understand that they are not regulated in terms of the FAIS Act when acting as an issuer of CFDs. Your complaint relates specifically to this part of their business.

"We have also conducted research to establish who all the companies are that operate as CFD issuers and have FAIS licences and the same conditions are being placed on them to ensure transparent disclosure when dealing with clients.

"Please note that the FAIS Compliance Department has, based on your complaint and the FAIS Supervisor's subsequent onsite visit, instituted the condition on the licence after considering the legal implications."

Which of the two is likely to be the truthful FSB response?

WILLIAM JOSHUA MET NORMAN Muller, the FSB's head of capital markets and two members of its FAIS supervision division – Ms Koketso Maloba and Lawrence Horner – on 29 August 2011 to explain his complaints about Global Trader and present his evidence.

The following month, the FSB gave First World Trader (Pty) Ltd, then trading as Global Trader and currently trading as GT247.com (GT), the standard four weeks' notice of a planned "routine" onsite inspection by its inspectors. In their report the inspectors say they gave GT so much advance warning "in order not to unnecessarily alert FirstWorld Trader of our intentions to investigate the complaint".

The ruse was, if anything, probably counter-productive because on 5 August, Joshua had already warned GT that he would be reporting his complaint to the Financial Services Board. By *Noseweek's* reckoning, only a fool in GT's position would not have linked the two events.

The FSB's onsite inspection was conducted on 13 October 2011 by Maloba and Horner. They made a follow-up visit on 18 January 2012. Based on their inspection, they identified the following shortcomings in GT's systems:

● The audit trail that logs all transactions effected on behalf of clients was switched off from 5 August to 12 August 2011. It is recommended that audit trail logs are never switched off.

● High volatility in markets resulted in adverse slippage of market orders and stop losses. This slippage is intrinsic to markets. In periods of high market volatility it is recommended that Global Trader should freeze trading on these instruments.

● The prices that the investing public are trading on GT's front-end platform are not indicative of the prices effected on the back-end platform. The clients are worse off. In technical terms the architecture of the price distribution from the back end to the front end is flawed. In times of high market volatility, all price update feeds from Reuters into back end, are not displayed in the front end. The public are trading at out-of-date prices.

● The system has a function to manipulate the bid and ask prices. The difference is referred to as the spread and represents the profit margin of Global Trader. The sample revealed manipulation of the spread settings to widen the profit margin for Global Trader.

Several Global Trader/GT247 clients anxiously wrote to the company seeking answers after reading about William Joshua's experiences in *Noseweek*. To set their minds at rest, Global Trader "confidentially" sent them a copy of a report it commissioned from KPMG Services in September last year. Several of those clients then proceeded – confidentially – to share the report with *Noseweek*. Readers will find it on our website. They need only read the extraordinary disclaimer with which KPMG saw fit to conclude their report, to understand why it is best ignored when judging the credibility of *Noseweek's* reporting. For that reason alone it is worth quoting the disclaimer in full: "Our report represents our view at the time of the review.

"This report and its results are based on our professional judgement in relation to the above described scope and objectives and as such the procedures

carried out to date by KPMG, do not constitute an audit, examination or review in accordance with generally accepted auditing standards and, therefore, KPMG do not express an opinion and/or make any other form of representation regarding the sufficiency of the procedures that KPMG performed.

"This report was not performed by KPMG as registered auditors nor was the engagement performed under any auditing or accounting standards, including International Standards of Assurance Engagements or International Standards of Related Services.

"The report is restricted to management of Purple Capital Limited who have requested the review and such parties that may understand the context of the review since others, unaware of the reasons for the procedures, may misinterpret the results.

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The KPMG report is signed by G E Teare, a director of KPMG Services (Pty) Ltd, and dated 10 October 2012.

Recipients of copies of the KPMG report sent to them by GT247.com and Purple Capital should take particular note of the last two paragraphs.

Now for a look at the report itself, KPMG's brief from their client carefully defined the "objectives and scope" of the "procedures review" they were to perform, "as discussed and agreed with Purple Capital management."

Two items are worth closer examination, since they could have an indirect bearing on the *Noseweek* report about William Joshua's complaint to the Financial Services Board. The first (rephrased here in plain English): KPMG was to verify that Global Trading's computer system was so designed that the prices shown on a GT client's screen was based on a current price feed from Reuters or Bloomberg, plus a "spread" (GT's profit margin) calculated according to a formula approved by its holding company Purple Capital.

The scope of the inquiry was, however, to be limited, inter alia, to prices found on a software program operated by GT called Price Contributor (which raises the question: where else might prices have been found?).

KPMG was also to limit its work “to the software currently installed and in operation at Purple Capital’s offices in Melrose Arch” (they were to note the version number of the software in their report).

Under the heading “Scope Exclusions” the report notes that KPMG was specifically NOT to perform a review of the “general IT controls at Purple Capital’s premises where the systems are maintained” (wherever that was).

And then, for purposes of the above inquiry, KPMG proceeded to select ten bits of sample data for analysis, but dating only from 10 October 2011 onwards – well after the transactions Joshua complained about had taken place and by which time GT had already had a month’s notice of the FSB inspectors’ scheduled visit.

(For some peculiar reason their brief from GT/Purple Capital did not include investigating William Joshua’s very specific complaints or other trades that took place on the dates.)

With all those limitations and exclusions in mind, you need to recall that all the transactions that William Joshua complained about took place prior to 6 August 2011, and that the FSB inspectors reported that “on 27 Aug 2011 Global Trader has major upgrade to IT systems that included additional two servers installed and CPU upgrades from 2 cores to 4 cores, RAM from 5GB to 6GB, Java development kit upgraded to latest version JDK 1.7.0 and

streamlining of the pricing threads to the most active instruments. This resulted in an extra 600% throughput and capacity.”

The second item in the KPMG report worth a closer look was the instruction to “Confirm that Price Contributor receives an update from Red/Grey Admin and that the price spread (shading) is in line with Purple Capital policies.”

In plain language, it was to check whether GT’s profit markup added to (or subtracted from) the prices fed from Bloombergs to generate the prices ultimately reflected on its customers’ computer screens was “in line with Purple Capital’s policies”.

On this point they report: “Based on the sample of 25, the spread (shading)

Oddly their brief did not include investigating Joshua’s very specific complaints

for each of the selected prices on RDS, after the update from Red/Grey Admin agreed to [matched] the spread approved by Purple Capital.”

All sounds very reassuring (if somewhat colourful), except that it is meaningless to anyone who does not know what Purple Capital’s profit “policy” (the so-called “spread rate”) happens to have been at any given time.

(All we do know from their annual report is that Global Trader was making huge profits.) Global Trader’s “spread” policy, as approved by its parent Purple Capital, is not reflected in KPMG’s report summary.

Now you know why KPMG found it necessary to attach that hefty disclaimer at the end of their report.

Noseweek stands by every detail of

its account of William Joshua’s story.

It’s all recorded in emails or on tape. Read the story again., then ask yourself: is GT247 disputing that William Joshua’s deals on 5 August 2011 were wrongly recorded, depriving him of the profits to which he should have been entitled? Is GT247 denying the subsequent telephone and email exchanges they had with him on the subject? Is GT247 denying the strange settlement deal they concluded with him? No.

Are Global Trader, the FSB and KPMG denying the factual findings of the FSB inspectors about the “unfortunate” absence of an audit trail over the critical period? No.

They all carefully ignore the specifics of the inspector’s report: KPMG takes

no account of it, and GT and the FSB dismiss it with the allegation (unsubstantiated) that it has been refuted by “his peers” and KPMG; GT CEO Savage claims that the FSB inspector who wrote the report that *Noseweek* quoted has subsequently been fired. As it happens, the relevant inspector has not been fired – *Noseweek* checked and found that he has in fact been promoted at the FSB to the rank of manager. (Confirmation can be found on the FSB’s website).

We did not refer our story to the FSB and Global Trader before publication. Now you see why. We already had their genuine responses – to a client and a citizen’s legitimate complaint in hand – and in writing. Why invite the falsehoods that have since been generated? ■



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Big boys forever!

The construction industry will continue to display tender regard for the companies which have always dominated at the feeding trough

ONE OF THE MOST JARRING IMAGES of the recent construction industry tender-collusion drama was that of Nazir Alli appearing in smiling solidarity with the guilty industry bosses at the press conference at which they made a show of apologising to the public.

Here it is worth recalling that the 15 construction companies involved were fined a total of R1.46 billion for having colluded, over a ten-year period, on 300 construction projects (that included 24 roads, a number of World Cup stadiums, the Gautrain and the Nelson Mandela Bridge) together valued at R47bn. All of it aimed at defrauding the public purse.

So, we asked ourselves, just what was Alli – boss of the South African National Roads Agency Limited (Sanral), the governing body that has all along been responsible for handing out road-building and maintenance contracts to construction companies – doing there, all pally-pally with the hoods?

Those in the know were not surprised at all. That's because, for many years, Alli has been viewed as the puppet of construction giants like Group 5; Murray & Roberts; Concor (now incorporated into Murray & Roberts); WBHO; Aveng (formerly Grinaker LTA); Stefanutti Stocks; and Basil Read.

The industry big boys decided way back that Alli – once an engineer at Ninham Shand (now Aurecon) – would be the ideal person to ensure that the advent of democracy did nothing to upset their lucrative businesses.

How was Alli used? Well, in the first place, Alli was nominated to spearhead the creation of the Construction Industry Development Board (CIDB), a body created ostensibly to ensure that an unregulated industry – one not without its cowboys – was firmly regulated



Picture: Katherine Muick-Mere/Sunday Times

Murray & Roberts CFO Cobus Bester, Sanral CEO Nazir Alli, and Murray & Roberts CEO Henry Laas at the Competition Tribunal in July

in future. All in the public interest of course.

But in effect its main function was to secure the uncontested dominance of the industry giants. They do this in various ways. For starters, the CIDB ensures that tendering for civil engineering projects is a very complex process, *inter alia* because tendering parties are now required to use the prescribed lengthy and extremely complex standard contracts.

More important, the CIDB has a system of grading – with the smallest construction firms on Grade 1 and the largest on Grade 9. Only a Grade 9 company qualifies to tender for projects valued at R130 million or over. A firm's grading depends on things like turnover over a number of years and

the number of qualified engineers on their books.

The result, of course, is that the established big boys are guaranteed all the significant contracts. And the small-to-medium-size firms never get a look in, except if they're sub-contracted to one of the big boys – usually at labour rates.

(Large state contracts do require construction companies to sub-contract a percentage of the work but even then it's the contractor who determines the rates that the sub-contractor can charge, which means the sub-contractor is always squeezed.)

To further extend the big players' reach into another area made lucrative by massive public funding, the CIDB spawned the National Home Builder

Registration Council (NHBRC).

Alli was the man who persuaded the government that all this regulation was absolutely necessary, and the one who saw the legislation go through Parliament. Not a very difficult job, given that the new order politician knew absolutely sod-all about how the construction industry worked.

Industry insiders say that, to this day, the government is so clueless when it comes to construction that the big construction companies, acting through an industry body called the SA Federation of Civil Engineering Contractors (Safcec), pretty-much tells the government what they need to build, to what specifications, where, when and for how much.

Alli's next task was to ensure that all road contracts – previously handled on a provincial basis – were concentrated in the hands of one (friendly and pliable) entity. Hence the creation of Sanral, which Alli heads, although he mysteriously resigned, then withdrew his resignation, earlier this year.

Apart from ensuring that all road contracts go to the industry giants, Sanral also keeps the focus very much on toll roads. The aim is to raise private funding for road projects (making politicians less sensitive to cost) and then to impose a toll for five or ten years to pay off the debt. Tuncor and Tolcon are early examples that come to mind. That way, the big five not only get to build lavish roads, tunnels and bridges, they also get to run the toll company as well. (Tolcon is, of course, a subsidiary of Murray & Roberts.) The original idea was that, once paid off, the road would revert to the government, but in practice they simply carry on, purportedly because the government has in the meantime lost the capacity to manage and maintain roads – and tolls.

Alli looks after the interests of those in the construction industry very well. His former employer, Ninham Shand (now Aurecon) has been granted the right to facilitate the sale of all land that Sanral has acquired but doesn't need for roads. And a former colleague of Alli's is said to get all the contracts for surveillance cameras on South Africa's roads. As for Group Five, well it's been given the contract to build Sanral's new Western Cape office.

So what about the collusion? It's been well reported of course, and we

now all know that the big companies decided among themselves who would get what, and that the "winner" would typically pay "loser fees" to those kind companies that put in uncompetitive bids.

The following little snippet from a man who runs a small construction firm in the Western Cape sums it up nicely. Before the tenders for the World Cup stadiums had even been called

for, our informant phoned a man he had worked with before, the then-head of Concor, John Willmott, to ask him to bear his company in mind for sub-contracts if Concor were to win the contract for the Cape Town Stadium.

"I'd love to," said Willmott, "but we won't be getting Cape Town; we're getting Rustenburg."

Lo and behold, he was right: the Cape Town Stadium went to Murray &



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Roberts and WBHO. (Concor became a Murray & Roberts subsidiary in 2011.)

Even by South African standards, construction is a dirty business. Projects invariably run massively over budget – as happened with the Cape Town Stadium. Projects are also over-designed or over-spec'd in order to inflate the price – no surprise, since the consulting engineers designing the projects also stand to get the construction contracts, with little or no independent control by the commissioning government authorities.

Noseweek has learnt that the contractors constructing Cape Town's Bus Rapid Transport (BRT) used thick 300mm concrete with massive steel reinforcement – far more than required. And, as for house building, which is regulated by the NHBRC – that other cosy industry institution – the design criteria used by consultants are frequently aimed not at maximising the benefit to low-income home owners, but rather at maximising the contractor's access to as many subsidies as possible.

Experts in the big five are able to milk the system by designing specifically to exploit every add-on subsidy, e.g. subsistence conditions activate a subsistence conditions subsidy; prox-

imity to the sea activates a coastal subsidy, etc. All add-ons to the basic housing subsidy.

And the government pays without blinking an eye because most of the responsible officials don't have a clue how the elaborately designed system works.

You have to love the expressions of shock and outrage at the collusion scandal. In February, before the settlement had been reached, City of Cape Town media manager Kylie Hatton was quoted in the *Cape Times* on the issue of the Cape Town Stadium: "We had no grounds for suspicion then... If they are guilty, we will pursue cost-recovery from the companies, and possibly damages and possibly blacklisting the companies."

More recently, on 5 August, Sanral spokesman Alex van Niekerk was quoted in *Business Report* as saying that the roads agency would do "everything in its power to ensure it was repaid any damages it suffered because of the bid rigging and collusive tendering". But he had to admit that he did not know whether it would be possible to claim damages.

In fact, Van Niekerk was "unsure how Sanral would handle ongoing contracts with contractors who had admit-

ted to collusive tendering... because these were legal contracts it had entered into that could not be terminated at this stage".

Van Niekerk said that Sanral would have to think about how it operated in future. "But I don't know what we are going to do differently."

Which is very much what Western Cape MEC for Transport, Robin Carlisle, said in an interview on Cape Talk radio recently: Yes, this collusion is very bad, but no, I can't confirm that we won't do business with these companies in future.

There you have it folks: if we're relying on government – whether it be the DA or the ANC – to do something about it, we're going to be stuck with these unconscionable cheats for many years to come.

As for Sanral, no doubt it will continue to fulfil the promise it makes in its pay-off line "Creating wealth through infrastructure".

● *Bottom line: if anything is to be done, it will have to be by us, the ordinary voters and consumers. Come to think of it, that Gauteng e-toll boycott looks more and more like a great idea. It's time they got the message: you screw us, we screw you.* – Ed. ■

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Red tide. Savage revenge

FEARFUL OF REVOLUTIONARY CHAOS IN 1994, many South Africans stashed away candles and canned tuna. They might be interested to know of comparable alarms in the Russia of 1914, and the very different outcome in the embrace of the Bolsheviks.

Douglas Smith's dramatic record is subtitled *The Last Days of the Russian Aristocracy*, but it ranges across a much wider historical landscape than the cruel fate of a particular social class. Smith notes, without exaggeration, that Russia entered a period of unprecedented savagery and bloodshed in 1914, suffering four years of world war, two revolutions and three more years of civil war and famine. Ten million died. In 1921 an uneasy semblance of calm descended. The Stalin monster had yet to squeeze even more blood out of Mother Russia.

The officer corps died in their thousands in the WWI struggle against Germany, and millions of ordinary soldiers were killed or wounded. Many aristocratic women set up military hospitals and other supportive organisations. Author Vladimir Nabokov's mother, who funded a clinic for the wounded, remarked prophetically that she could not see these efforts as anything more than "the ineffectiveness of part-time compassion".

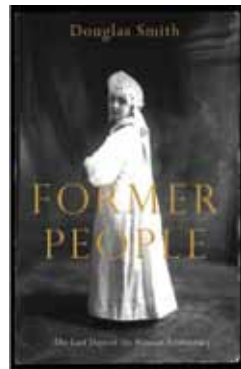
Nothing the aristocracy might do at that stage could stem the seething rage of the serfs against their traditional overlords.

Lenin (who was, surprisingly, of noble lineage) had cynically welcomed the war as a distraction for the minds of the poor while the Bolsheviks wrestled with the terrifying problems of planning a new Russia.

But it seemed that the revolutionary government had little to offer the starving masses except the incitement of hatred against the gentry. Goaded by the Bolsheviks, the peasantry ravaged vast country estates, and stripped the mansions and their contents. Famine walked the land. In the cities, the secret police festered.

At the time of South Africa's regime change, a Chinese diplomat was reported to have commented that he hoped the ANC would have the good sense to retain the skills of the educated classes.

Lenin and his cohorts thought otherwise.



FORMER PEOPLE
by Douglas Smith
(Macmillan)

They believed that those who were privileged in the past should be destroyed, root and branch. The aristos were not even permitted bread rations, like the rest of the population. The astonishingly authoritarian socialists invented an elaborate set of draconian laws that allowed the authorities to exercise powers of life and death for petty "crimes". Possession of a foxtrot dance gramophone recording could result in a ten-year sentence of banishment to Siberia. Citizens were shot, out of hand, for disobedience. Minority groups, including Jews, were preyed on.

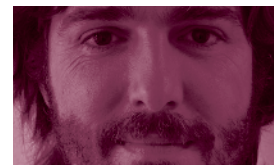
There was obviously an inevitability to the sufferings of the French-speaking nobility. They were out of touch with their Russian-speaking compatriots. Many had brooded on the likelihood of revolutionary revenge, knowing their excesses could not continue. And the dithering of an ineffectual Tsar Nicholas II merely accelerated the process of change.

But the official Bolshevik attitude was barbaric. Children were abandoned to starve on the streets when parents were arrested, and endless viciousness encouraged. The Former People families were deliberately torn apart. Communication with prisoners in Siberia was often forbidden by the corrupt courts. Horror stories of miserable and lonely deaths abound in this thoroughly researched tale.

South Africans of all colours and creeds will forever owe Nelson Mandela an enormous debt for his enlightened and principled governance. We are extremely fortunate to have had his guidance at a crucial revolutionary time. And for the future. We hope. ■



The Romanov family



Unnatural selection. Robbed by tradition

WHEN IT WAS ANNOUNCED IN August that domestic rugby teams would henceforth have to field five black players, the internet broke. If white men could ululate and beat their bosoms, they would have. Instead, they flooded news sites with vitriol and grief. Some clearly felt themselves to be victims of racist persecution; but for many it seemed that their bitterness stemmed from a deep betrayal of their values. It wasn't that rules were being bent or broken: it was that something pure and eternal was being tampered with so arbitrarily.

It highlighted the paradox at the heart of most organised sports; that they demand total obedience to rules that are completely accidental. And yet many fans have been seduced by their apparent permanence. Rugby people, for example, consider it to be immutable, as if its birth – a moment of footballing spontaneity – was an anomaly rather than part of a process.

Likewise, the codified laws of cricket now hound bowlers out of the game for bending an elbow, as if they have broken one of the Ten Commandments; and yet cricket was so fluid for 300 years that over-arm bowling was only legalised in 1835. Why, when all these nuances were open for negotiation for centuries, are they now off the table?

Part of the answer to that question is the appeal to tradition that sports themselves make: perhaps because their stories are so full of randomness, they have overcompensated and tried to anchor themselves in the bedrock of history. Even the youngest, so-called “extreme” sports, refer to their 40-year-old founders as “old school”. In other words, it's not surprising that fans are not encouraged to question the traditions or pedigrees of their chosen passions.

But at what cost, I wonder?

I recently overheard a coloured father despairing of his son's hopes of playing



Who says ferrets can't play with whales?

Sports still feel the heavy hand of unnatural selection; those angry white men feel it particularly keenly

rugby at higher levels. His boy and his young team-mates, he explained, play a brand of rugby that is not “acceptable” to many white South African coaches; a light, fast-flitting game, where exhibitionism is prized as highly as strength and power, and where a sidestep draws as many gasps as a crash-tackle.

We know why this is the case. For the average coach at an average platteland school, presented with two 10-year-olds – one, a milk-fed behemoth with no neck or ankles and an unswerving loyalty to God, Pa and Coach; the other, a small wiry ferret with fast hands, fast feet and a fast mouth – there isn't even a choice. You pick the behemoth. Fair enough, veteran coaches would say: rugby is a hard game. Small, creative boys will always be crushed by big, obedient men.

But what if they are confusing cause and effect?

What if rugby is a game of big, often-uncreative men because the small, creative ones are being rooted out before they can change the sport's culture? Is it possible that traditionalist teachers and coaches are stifling an evolution that might produce something extraordinary; say, a compelling hybrid of rugby union, sevens and Aussie rules?

In those sports dedicated to extreme physical specialisation – the highest-furthest-fastest disciplines like sprinting and swimming – the quest for strength and speed is a given. I am not suggesting for a moment that fans of the 50-metres freestyle might be missing out on some interesting new version where slower swimmers entertain crowds with expressive fluke-slapping. But is it possible that more subtle sports, which are given their lustre by strategy, creativity and individual flare, have been seduced by the single-minded muscular arms race of the track and field stars?

It's going to be difficult to stuff that genie back into its bottle. A sporting-industrial complex has sprung up around our favourite games, demanding endless growth and endless returns to investors.

On the other hand, evolution tends to be unavoidable. If the ferrets can't play with the whales, they may create their own ecological niche in which they flourish; and if enough people enjoy watching them, they may make the whales redundant.

Sports still feel the heavy hand of unnatural selection; those angry white men feel it particularly keenly at the moment. But the great sports we love were born in moments of iconoclasm, not grim resistance. Perhaps, if we are lucky, a child with a healthy disregard for rules is about to meet a coach with wisdom and insight. A ball will be picked up and run with. And we will be reminded that change doesn't always mean decay; that sometimes it means rebirth. ■



Small print. The Gospel is in the detail

HAVE ENOUGH BEAUTIFUL OFFERINGS IN Emjindini Kasi, Barberton Township, where I can step in and be “drenched with the blood of Jesus”. I don’t need any more. What am I on about? Let me tell you.

Jesus Christ Superstar and *The Last Temptation of Christ* are just two movies that could have been chosen by the Intercape bus service to entertain me and my fellow passengers on my recent jaunt to the Fairst Cape to attend *Noseweek’s* 20th anniversary party, and I would not have been offended. I may have thought it an unusual choice of travel entertainment, but fair enough, tastes differ.

I had really been looking forward to the trip. I had decided to go by bus to get some much-needed rest on the long trip and enjoy one of my favourite travelling pursuits – viewing the landscape and taking in the sights.

Holy Moses! Little could I have guessed my journey would be turned into two days of “Jesus-loves-you” hell. I know that sounds like a theological contradiction in terms, but believe you me, it’s possible.

Before I describe Intercape’s force-feeding of the love of Jesus; his power to save, heal and all that, let’s revisit the two movies I mentioned.

If you are going to try to brainwash someone into some belief, for God’s sake, try some subtlety. Governments have done it for as long as there have been governments; they call it propaganda. By playing *Jesus Christ Superstar*, Intercape would have been entertaining me with a musical I have seen and enjoyed many times. And I would have enjoyed it once again and would not, for one second, have thought I was deliberately being bombarded with the blood of Jesus.

They might even have opted for *The Last Temptation of Christ*, which would have exposed Inter-Captured bus passengers to a thought-provoking, controversial film about Jesus and his relationship with Mary Magdalene. And yes, I would have been drawn in by the theme – as I was the first time I saw it, not realising, again, that I was being brutally crucified into the Jesus-freak crowd.

But we were offered nothing so courteous or subtle. What bothered me most was that there was no indication or warning about Inter’s “religious affiliation”. If anything, that is what this heathen’s hullabaloo is all about.

Nothing was said when I booked the tickets by phone ; I saw no sign at their Nelspruit depot, no sign at their Jozi’s Park Station depot and like-



The Gospel according to Umjindi (above) and Intercape (below)



ENTERTAINMENT: We have introduced family friendly material promoting the Gospel on all routes

wise nothing at the Cape Town Station coach terminus.

What the missing signs should have pointed out is something like: “you will have to endure 18-or-so hours of hallelujah-Jesus-themed videos and, as a bonus, the intermissions will be filled with videos of the Sunday pastor farmer with the cowboy hat.”

Actually I found the farmer-cowboy-pastor quite entertaining – even inspirational – really, truly. I caught his broadcasts several times while surfing channels in the early hours of Sunday.

He brings across his “Jesus loves you” message in a subtle manner. He focuses more on the story and less on the constant plugging of Jesus this, Jesus that. But still, I don’t need him on my bus ride – over and over again. Besides, as I pointed out at the opening of this tale, I have enough beautiful offerings in Emjindini Kasi, wherein I can step in and be “drenched with the blood of Jesus”.

Back to the matter of a warning sign. I simply could not believe that would-be passengers are given no warning about the nature and content of the on-road entertainment offered by Intercape.

Surely, I kept telling myself, it would be highly irresponsible of this bus line not to inform potential customers of this matter in advance? After all, we are talking about religion here, a very sensitive issue.

[Really? I wouldn't have guessed it. – Ed.]

After scratching my head to the point of giving myself a bald spot, for some reason – I think it was journalist’s intuition – I took another look inside the folder/envelope in which the ticket came. Opening and reading it with a great deal of difficulty, I exclaimed, Jesus Christ (I really did) – there it is!

At the very end of what looks like a 2,000-word-plus plethora of Intercape information about “exclusion of liabil-

ity” and all the other little tidbits that companies write up to cover their asses, there it was. The Jesus bombardment was described thus, under the heading “Entertainment”: “We have introduced family friendly material promoting the Gospel on all routes”.

Now, is there a problem with this? No, not just one, many. But to spell them out would require a lot more space than the stingy editor allows me, so I will return to the crucial one: the information is printed in such a small font size you can barely decipher it, even with reading glasses; I know, I use them.

Furthermore, it is hidden, along with the other barrage of disclaimer information inside the ticket jacket cover, where it is unlikely to be noticed by anyone.

This, to say the very least, is highly irresponsible of Intercape.

Thank the Lord, there are alternatives: I returned on Greyhound. ■

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Landmeter. Measure for Measure

TOBROEK, NOU, HY WAS MY BOEP-CHINA. Also he was the ou who wrote Article D of the Freedom Charter. That wasn't why they put him in boep, of course, that was for taking up arms against a sea of troubles: the Spear of the Nation, uMkhonto we Sizwe. The reason I mention the Freedom Charter is that it took brains to work out such a beautiful piece of Marxist prose, and such brains ou Tobroek had all right. Me too. We had brains we hadn't even used yet.

I think Article D said The Land Shall Belong to All Who Work It, something noble like that, but Huletts and Anglo American said they were working it just fine according to this and that system of their own here in Natal, so things got a bit complex, know what I mean? I mention all this only to establish the rational status of ou Tobroek's mind. You can't get more rational than being a surveyor. I mean, come on, you're defining the very arrangement of the surface of our planet.

Well irregardless of intellek they stick ou Tobroek and me in the Pretoria prison madhouse for 11 months. In fak it is the Observation Section where, to heal you of your antisocial nature, they shut you up silent and solitary for six weeks with a bible and a shitpot and a felt mat to kip on, two boep blankets and a small table with a basin of water, so you can think about Jesus in a cell with no windows until you're ready for psychoanalysis by a tronkboer name of Van den Beestekraal with a degree in Theology, Criminology, Philosophy and Goeters from the University of Potchefstroom. Also Psychology II.

But after 11 months news leaks out and Helen Suzman raises Hell in public as is her wont and this irritates Lieutenant Beestekraal and he calls ou Tobroek and me to his office and psychoanalyses us and tells us what we need is hard labour. But Tobroek and me, our muscles hang limp on our bones from lack of exercise, and perchance with some luck this hard labour just might take place in the sun. Which, sowaar as God, it does.

We are given big brown felt hats and taken to a vast earthworks by a skinny tronkboer with sinister shades and an R4 assault rifle. The earthworks are an athletics track. Our Pretoria beampstes hierso are so good they hold two national track records, says Shades. This track is for them. We hear a distant clanking and round the corner of the boep appears the hard labour span of 80-or-so bandiete with wheelbarrows called kedilleks and shovels and big brown felt hats.

Me and Tobroek, we can't use the

*Irregardless of intellek
they stick ou Tobroek
and me in the Pretoria
prison madhouse
for 11 months*



shovels because we are convicted of crimes of violence, hey. We line up with our kedilleks opposite the ouens with shovels and each gives us about a soup-plateful of mud and creeping like snails we take these to the top of the embankment and tip them up and stand gazing at the distant Magaliesberg. If you're moving you're working, that's the ideology round here, see? When the whole span is up there gazing at the mountains the beampstes go bloody bananas and break switches from the trees over there, kweperlaaitjies, and roll balls of mud on to the tips and hurl them at us with deadly accuracy. We take shelter behind our kedilleks. A certain boer stomps over to the corrugated-iron bog and kicks it all over with his great big boots until a piteous figure emerges who's been in there 45 minutes. He wasn't moving, no part of him, not even his bowels, so he wasn't working. He's charged with malingering: three meals. We stumble back to the span with the shovels for another soup-plateful. So gaan dit mos, it's lovely in the highveld winter sunshine.

After a week-or-so ou Tobroek suddenly says to me, one day Hey Jock, look at that. Down below stands a great big flabby 6-foot 5-inch tronkboer with a theodolite and a booklet of some sort, looking puzzled. Come, says Tobroek, I'll get us a nice little job here! We march up to 6'5" and Tobroek announces: Meneer, ek is 'n landmeter! Troonkboer says Jy lyk vir my soos 'n vokken bandiet, and ou Tobroek seriously wants to hit him but grinds his teeth and falls sullen.

We creep on with our kedilleks until he nudges me over to where stands a striped wooden peg. Tell me when nobody's looking, says he. Okay, now! say I, and he zaps this peg up and plants it two or three paces to the left. We creep on. At the next peg he says Right, anybody looking? No! say I, and he zaps this one four or five paces along. Teehee, he giggles, that'll fix their national records. Tobroek and me, we have smirks we haven't even smirked yet. ■

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