South Africa Fails to Meet
Anti-Apartheid Sanctions Conditions
March 1991

The Comprehensive Anti-Apartheid Act of October 2, 1986 specifies six conditions for the termination, suspension or modification of the sanctions included in the Act. If conditions one through five under Section 311.(a) are met, then sanctions imposed by the Act automatically terminate. The President is authorized to suspend or modify the sanctions in the Act if he determines that South Africa has satisfied condition number one, three among conditions number two through five, and a sixth condition specified under Section 311.(b). In that case the sanctions are suspended or modified at the President's discretion unless Congress enacts a joint resolution, within 30 days, disapproving the President's determination.

Spokesmen for the administration have said that the provisions of the Act will be satisfied when South Africa completes the release of political prisoners (the first condition). The anti-apartheid movement disagrees. While most provisions have been partially satisfied, the deKlerk government still falls far short of full implementation.

First condition - Sec. 311.(a)(1): "releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison"

DeKlerk has clearly not yet met this condition, required for any modification of sanctions. Nelson Mandela and a number of other political prisoners were released in February 1990, and several times deKlerk's government has reached agreements with the African National Congress (ANC) over release of others. But each time the regime has found ways to stall by imposing new fine-print requirements. As of early March 1991, according to the ANC and independent human rights groups, over 3000 political prisoners remained behind bars. Under repressive security legislation, detentions without trial and trials for political offenses continued throughout 1990 and into 1991. And the regime still recognizes only a few hundred individuals as political prisoners.

Second condition - Sec. 311.(a)(2): "repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency"

This is the condition that is closest to being fully satisfied. But the Congress of South African Trade Unions (COSATU) notes that a state of emergency remains in effect in Bophuthatswana, one of South Africa's homelands, which are not recognized as independent by the United States, the United Nations, or any government except the South African regime.

Third condition - Sec. 311.(a)(3): "unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process"

DeKlerk unbanned the ANC and other groups last year, implementing the first phrase in this conditions. But the condition goes on to refer to free exercise of political rights, on which there are still numerous fundamental restrictions in effect.

As Nelson Mandela repeatedly reminds the international community, he and other Black South Africans still do not have the right to vote. It is absurd to argue that they can freely participate in the political
process without this most basic of political rights. Before this condition can be satisfied, there must be equality of rights to representative participation in the political process, even if that be in preliminary stages such as an interim government or constituent assembly before enactment of a new constitution. Secondly, the free exercise of political rights is impossible as long as security legislation and lack of due process gives the security forces the capacity to block meetings and arrest dissidents. It is also impossible when there is no effective check on security force involvement in instigating or tolerating violence against ANC members, trade unionists and others. DeKlerk's failure to allow independent investigation of such allegations, and his refusal to dismiss officers and cabinet ministers suspected of involvement in death squads and other similar activities, is a substantive impediment to the free exercise of political rights.

Fourth condition - Sec. 311(a)(4): "repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes"

In February 1991 deKlerk announced his intention to propose the repeal of these two acts, together with the Land Acts. But Parliament has not yet acted. Moreover, deKlerk at the same time announced his intention to enact transitional measures to serve the same purpose as the Population Registration Act, a clear violation of this fourth condition. The reason a functional equivalent for the Population Registration Act is needed is to distinguish citizens of South Africa by race, in order to determine their political role, or, in other words, to continue the racial categories defined by the apartheid system. For anti-apartheid forces, in contrast, how people should be represented, even in a transitional period, should be determined by democratic procedures rather than assigning people to groups by race.

Fifth condition - Sec. 311(a)(5): "agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions"

The deKlerk government is clearly interested in negotiations and has at least in principle agreed to enter them. Its conduct during preliminary talks to date, however, leaves significant doubt about its good faith. It has repeatedly reached agreement on release of political prisoners, for example, only to unilaterally impose new conditions after announcement of the agreement. Many anti-apartheid South Africans feel that the regime's stalling is designed to weaken the ANC, while winning time for the regime to convince the world to lift sanctions.

Sixth condition - Sec. 311(b)(3): "made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy"

This condition depends on the interpretation of the inherently ambiguous word "substantial." The anti-apartheid movement's position has instead insisted on the word "irreversible," used in the Harare Declaration and other documents. The changes over the last year are certainly significant, but they have not yet even touched the core of apartheid: the restriction of political rights according to race. Establishing a nonracial democratic constitutional order has not even begun. One hopes that the changes will continue to their logical conclusion of a non-racial democracy. But the only guarantees of irreversibility are real changes in political rights and control over the security forces. As long as a regime elected only by a racial minority retains power and the effective monopoly of force, the anti-apartheid movement does not agree that progress is substantial enough.