Economic Disengagement and South Africa: The Effectiveness and Feasibility of Implementing Sanctions and Divestment

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Opponents of apartheid have sought for many years to sever economic ties between South Africa and the rest of the world, and have advocated economic sanctions as a way for the international community to work for change inside the republic. The call for international support in the form of economic sanctions came first from South African blacks.¹ For decades they protested against

¹. The racial categorization "black" or "African" is one of "four distinctive demographic units" recognized by the South African government, the others being "White," "Coloured," and "Asian." See, e.g., DEP'T OF FOREIGN AFF. AND INFORMATION, SOUTH AFRICA 1980/1: OFICIAL YEARBOOK OF THE REPUBLIC OF SOUTH AFRICA 30-31 (1981). In a political context and in this article, the term "black" refers to "Africans," "Asians," and "Coloureds." The racial categorization for "Asians" is in fact a further subdivision of the categorization "Coloured"; some authorities use the categorization "Indian" instead of "Asian." See, e.g., The Report of the Study Comm. on U.S. Pol'y Toward Southern Africa, South Africa: Time Running Out 48-66 (1981) (this report, funded by the Foreign Policy Study Foundation, Inc., is commonly, though inaccurately, referred to as "The Ford Foundation Report" because the chair of the Study Commission was Franklin A. Thomas, the President of the Ford Foundation) [hereinafter cited as SOUTH AFRICA: TIME RUNNING OUT]. For the purposes of "petty apartheid" — that is the "whole apparatus of segregation in the routine of daily life" or legally acceptable separate and unequal treatment, there are only two major racial categorizations "Whites" and "non-Whites." Id. at 61.
white minority rule,² but their peaceful campaigns were met with escalating violence and repression.³ Today, the foremost South African black leaders continue to advocate the application of economic pressure against South Africa.⁴ The U.N. General Assembly has also long accepted the premise that the imposition of sanctions would effectively undermine the power of the apartheid state, first adopting a resolution in favor of economic sanctions over twenty years ago.⁵

². As long ago as 1959, Nobel Peace Laureate Albert Luthuli, then president of a major black political organization, the African National Congress (ANC), urged the international community to impose economic sanctions on South Africa; he argued that:

The economic boycott of South Africa will entail undoubted hardship for Africans. We do not doubt that. But if it is a method which shortens the day of bloodshed, the suffering to us will be a price we are willing to pay.

U.N. CENTRE AGAINST APARTHEID, INTERNATIONAL POLICY OPTIONS 9 (9 Notes and Documents, Mar. 1983).

³. For example, the South African government’s response to appeals by South African blacks to support sanctions was to make the advocation of such sanctions an offense under the Terrorism Act with a maximum penalty of death and a minimum penalty of a five year sentence. See id.; see Tutu, infra note 4, at 57; for a discussion of the Terrorism Act, see infra notes 36–39 and accompanying text.

⁴. For example, Bishop Desmond Tutu, General Secretary of the South African Council of Churches, has continued to call for sanctions and divestment despite the fact that he has had his passport removed on several occasions for advocating this position. Tutu, An Open Letter, July 1981, KUSASA, INDEP. J. FOR A BETTER TOMORROW IN S. AFRICA, Spring 1983, at 57–58. In 1980, the President of the African National Congress (ANC), Oliver Tambo, succinctly stated his organization’s position: “We demand total isolation of the racist regime – no investment and withdrawal of existing investment.” S. Rodrigues, Workers Challenge Apartheid, The Guardian (U.S.), Mar. 22, 1983, at 15, col. 3 (copy on file at the offices of Law & Policy in International Business).

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Despite the call for sanctions from the United Nations and South African black leaders, major western governments have refused to impose stringent economic measures against South Africa. Nonetheless, a growing number of non-government organizations have continued to pressure western corporations to withdraw from South Africa as part of a general campaign to end white minority rule there. Campaigns to end bank lending and corporate investment have been waged by coalitions of churches, trade unions, university and high school teachers and students, and community and other groups supporting liberation.\(^6\) Their efforts have had a clear impact.\(^7\) In the 1980s, state and local governments have also joined the campaign to withdraw funds from corporations operating in South Africa.\(^8\)

\(^6\) See generally B. SJOLLEMA, ISOLATING APARTHEID (1982).
\(^7\) For a brief survey, see THE AFRICA FUND, CHURCH AND UNIVERSITY ACTION AGAINST APARTHEID: A SUMMARY OF WITHDRAWALS AND DIVESTMENTS (Mar. 1983) (copy on file at the offices of Law & Policy in International Business). As documented in the Summary, supra, By 1982, more than thirty colleges and universities had divested more than one hundred million dollars from banks and corporations operating in South Africa, and actions calling for divestment had taken place on hundreds of campuses. Major Protestant denominations [had] voted to withdraw from banks and do no business with corporations which operate in South Africa. Dozens of national, regional, and local church bodies [had taken] special action against Citibank, the largest U.S. lender to Pretoria.

\(^8\) For two brief surveys, see AMERICAN COMM. ON AFRICA, DIVESTING FROM APARTHEID: A SUMMARY OF STATE AND MUNICIPAL LEGISLATIVE ACTION ON S. AFRICA (Mar. 1983) [hereinafter cited as 1983 Summary] (copy on file at the offices of Law & Policy in International Business); AMERICAN COMM. ON AFRICA, SUMMARY OF STATE AND MUNICIPAL LEGISLATIVE ACTION ON S. AFRICA (Jan. 1981) [hereinafter cited as 1981 Summary] (copy on file at the offices of Law & Policy in International Business). Since the late 1970s, proposals to divest municipal, pension and similar funds from corporations and banks with investments in South Africa have proliferated and have experienced more frequent success. 1983 Summary, supra; 1981 Summary, supra. By 1982, the legislatures of Massachusetts, Michigan, Connecticut, Philadelphia, Pa., Wilmington, Del., and Grand Rapids, Mich., all approv-
Proponents of economic disengagement argue that an analysis of workings of apartheid over the last twenty years reveals that foreign trade with, and investment in, South Africa is not neutral, but rather, provides support for apartheid. Thus, they contend, foreign investment has not been, and will not be, a force for truly constructive change. This article first will describe the system of apartheid in South Africa and the scope of U.S. economic involvement there. It then will discuss the objective of a strategy of economic disengagement, analyzing the effectiveness of such a strategy and the feasibility of implementing it. Finally, the article will conclude that economic sanctions and divestment are effective means of bringing about the end of apartheid.

The System Of Apartheid

Apartheid, which literally translated means "separateness," is a system that enables a small white minority to maintain political, social, and economic control of the black majority in South Africa.
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and consequently maintain its own wealth, power, and prestige. Under the apartheid plan, all members of the African majority are to become foreigners in South Africa. This plan calls for the republic to be divided into separate areas. Ten of these areas, comprising 13 percent of the land, have been deemed by the government to be the true states ("homelands" or bantustans) for all of South Africa's 22.5 million Africans. Much of this land is barren, rural

10. According to the South African government's figures, the population of South Africa in 1979 was as follows: out of a total population of 27,886,270, Africans or Blacks represented 20,084,319 or 72 percent of the total, Whites represented 4,453,273 or 16 percent of the total, Coloureds represented 2,554,039 or 9 percent of the total, and Indians represented 794,639 or 3 percent of the total. THE AFRICA FUND, S. AFRICA PERSPECTIVES 1 (No. 2181, S. Africa Fact Sheet 1981) (copy on file at the offices of Law & Policy in International Business). The distribution of income in 1977, according to the South African Institute of Race Relations, indicates that white South Africans, despite their minority status, are the main benefactors in the South African economy; the breakdown is as follows: Africans derive 26 percent of the per capita income, Whites 64 percent, Coloureds 7 percent, and Indians 3 percent. Id. at 2.


Already four of the "homelands," Transkei, Bothuthatswana, Venda, and Ciskei, have been granted independence by the South African government, with important results for the minority regime. First, it has reduced the African population of South Africa by 8 million. Eight Million Blacks Have Lost Citizenship, Cape Argus, Feb. 11, 1983 (copy on file at the offices of Law & Policy in International Business). Eight million black South Africans have been deprived of their South Africa citizenship and in return, have been given citizenship in a series of tiny, fragmented states which have not been officially recognized by any other nation other than South Africa because this so-called "independence" lacks meaning in any real political, social or economic sense. A second major benefit derived by the South African government from the granting of "independence" to the bantustans is the international public relations coup that these bantustans represent. See, e.g., B. RODGERS, supra, at 120-21. In Bophuthatswana, where foreign entertainers and athletes flock to perform for exaggerated fees, South Africa is promoting the impression that the "homeland" has achieved real independence, and meaningful change has occurred. The leaders of these bantustans, however, are dependent on the government of South Africa for their power, both politically and economically.

Independence has not meant an escape from the harsh laws of apartheid South Africa. As Simon Farisani, Lutheran Dean in Venda, explained on a recent visit to the United States, oppression in Venda has worsened since independence. More whites are now involved in government affairs, and can do more harm when hiding behind a "black government." Ven-
and undeveloped; the remaining 87 percent of the land is reserved for 4.5 million whites and the blacks the republic needs to keep the economy going.\textsuperscript{12}

Under the South African law that implements this separate development scheme,\textsuperscript{13} millions of black South Africans have been

da police beat Farisani for allegedly supporting the family of a man who opposed the white South African regime. Interview with Dean Farisani, Lutheran Dean of Venda, at the Lutheran Church of America, New York City (Feb. 1, 1983).

\textsuperscript{12} See \textit{SOUTH AFRICA: TIME RUNNING OUT}, supra note 1, at 150. The Study Commission reported that:

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The homelands are poor. In 1975 per capita gross domestic product (GDP) ranged from a low of R49 [approx. $66.00] in KaNgwane to a high of R108 [approx. $146.00] in Bophuthatswana, which has a sizable mining industry. The average was R73 [approx. $98.58]. In the common areas of South Africa the per capita GDP in 1975 was R1,546 [approx. $2,087.00]. If the homelands statistics accurately reflected the living standards of the populations, starvation and misery would be worse than is actually the case. The incomes of many homeland residents are supplemented, however, by the earnings of migrant workers, and this income makes the difference between starvation and survival for many. The R73 [approx. $98.00] average per capita income from sources in the homelands in 1975 increased to about R300 [approx. $405.00] when the earnings of migrants were included. Thus, only a quarter of the income earned by the homeland population was generated in the homelands. The rest came from the other parts of South Africa.
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\textsuperscript{13} The main laws implementing separate development are: (1) the Bantu Authorities Act of 1951 which provided for the establishment of Bantu tribal, regional and territorial
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uprooted from their homes and forced to settle in the homelands; they are prohibited from purchasing any land in the white areas. The lives of those Africans affected by the plan have been totally disrupted.

authorities in the African Reserves; (2) the Promotion of Bantu Self-Government Act of 1959 which identified the various African groups with their “national units”; (3) the Bantu Homelands Constitution Act of 1971, later renamed the Black States Constitution Act, which established the mechanism whereby the government created “self-governing territories”; and (4) the Bantu Homelands Citizenship Act of 1970, as amended in 1978, which stripped all Africans in “independent” territories of their South African citizenship. RACE RELATIONS, supra note 11, at 16-19.

14. The primary laws implementing this prohibition are the Natives Land Act of 1913, Act 27 of 1913, and the Bantu Trust and Land Act of 1936, Act 18 of 1936. The Land Act of 1913 set aside the existing African reserves as “scheduled areas” reserved for black ownership and occupation, and prohibited any purchase of land by Africans outside of these areas. Certain areas were excluded from the operation of the Act. For example, the Cape was excluded because to interfere with African land rights meant interfering with their still existing qualifications for the franchise. The Land Act of 1936 extended the law to the Cape and closed many other loopholes; it also ended the right of individual purchase of land by Africans even inside the reserves, substituting the principle of trust tenure. DAVENPORT, S. AFRICA: A MODERN HISTORY 1977; see also RACE RELATIONS, supra note 11, at 76-77.

15. According to an authoritative report on removals, people have been:

- moved from places where there was employment to places where there was none,
- from places where they had land and cattle and where they could do some subsistence farming to places where this was impossible. Huts were burned down to force people out. Land was expropriated and compensation was inadequate.


Between the 1960s and the 1980s the homeland population has grown from 40 percent to 54 percent of the total black population. Cape Argus, Feb. 11, 1983, supra note 11. This increase in population is the result of a deliberate government policy and represents the removal of approximately 3.5 million people between 1960 and 1980. B. Streek, 3.5 Million Blacks Forcibly Removed, XXI Africa News, July 11, 1983, at 5.

Removals have been facilitated by the Bantu Laws Act of 1964 which outlawed “labor tenancy”—a means by which African farmers paid for their use of a section of a white-owned farm by contributing their labor to the white farmer. The Act has resulted in the eviction of
The bantustan policy has a dual purpose. The policy is not only designed to perpetuate the disenfranchisement of the African majority, but also to serve as a mechanism for control of the black labor force, and thus undergirds an economic system that ensures continued white wealth and privilege. The South African economy, dominated by whites, is totally dependent on black labor and this system.

Under this system, black workers have no choice as to where, for an estimated 1,250,000 people from white rural areas to the "homelands." This has not improved the lot of people whose existence on the white farms was always precarious. They settle in the quasi-urban areas of the homelands, the so-called "closer-settlements." J. Collinge, The Black Shadow of Forced Removal For Many, The Johannesburg Star Airmail Weekly, Apr. 16, 1983, at 5, col. 1. Closer-settlements are villages with plots of one-eighth to one-half acre, with only rudimentary facilities such as tin toilets and communal sources of water. No livestock may be kept in these settlements. S. AFRICA: A LAND DIVIDED, supra note 12, at i.

These are not the only farmers deprived of their livelihood by removals. Many small farmers in the homelands themselves have been stripped of their land and moved into densely settled so-called "betterment" areas where subsistence agriculture is not possible. Others are evicted from their homes because land is claimed for infrastructural development, because of the consolidation of fragmented homelands, or the relocation of black townships. Finally, Africans are moved to the "homelands" because they lack the qualifications to be in the so-called "white areas." J. Collinge, supra.

16. Eight million black South Africans have lost their citizenship already, and the goal of the minority governments is to create a South Africa with no African citizens. See SOUTH AFRICA: TIME RUNNING OUT, supra note 1, at 51.

Under the homelands policy, Africans technically may exercise their political liberty to vote, for example, only in the homeland to which they are designated; this determination is made primarily on the basis of their tribal origin. Thus, "the homelands policy rests on a fiction — namely, that Africans residing in 'white' areas are temporary workers rather than a permanent, integral part of South African society." Id. Concerning Africans' theoretical political rights, John Dugard, author of HUMAN RIGHTS AND THE SOUTH AFRICAN LEGAL ORDER 1978, aptly described the position of Africans, stating:

Many of the Africans living in the common area have no real link with any homeland and, even where such a link exists, they are as likely to be satisfied with the franchise in a homeland political system as would the English-speaking white South African with a vote in Britain.

Id.

17. South Africa's work force is 72 percent African. SOUTH AFRICA: TIME RUNNING OUT, supra note 1, at 132; see also OFFICIAL YEARBOOK OF THE REPUBLIC OF S. AFRICA 1980-81, supra note 1, at 69 (the government's estimates are slightly lower than those reported elsewhere).
whom, or under what conditions, they will work.\textsuperscript{18} The bantustans are barren and economically undeveloped lands incapable of providing a living for their ever-increasing population.\textsuperscript{19} Consequently, blacks are forced to seek work in the white areas, but their presence there is a “privilege” controlled by the government.\textsuperscript{20} Blacks have

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  the native should only be allowed to enter the urban areas, which are essentially the white man's creation, when he is willing to enter and to minister to the needs of the white man and should depart therefrom when he ceases so to minister.
\end{quote}


Key legislation establishing a rigid system of labor control include the following. The Bantu (Urban Areas) Act of 1923, which provided that in “proclaimed areas” African males “must carry and be required to produce on demand either a permit to seek work or a duly registered service contract, in order to establish his right to be within the area.” The Bantu (Urban Areas) Consolidation Act No. 25 of 1945 provided for registration by the employer of “every contract of service entered into by a male African” and granted “the right to prohibit any male African who is not in possession of a contract of service from remaining in the area for a period beyond fourteen days.” The Abolition of Passes and Co-ordination of Documents Act of 1952 substituted a single reference book for a myriad of documents which Africans are required to have, such as the poll tax receipt and the pass book. Under this Act, it was an offense punishable by a jail sentence or fine for any African male of 16 years and over not to be in possession of a pass book. For a discussion of African women and pass books, see \textit{infra} note 26.

The Bantu Laws Amendment Act No. 42 of 1964 further extended controls on access to urban areas and on the right to seek work. For a further discussion on the right to be in an urban area, see \textit{infra} note 20. Under this act, work had to be sought through a government-run labor bureau that assigned the work locality, type of employment and even specific employer. The act’s provisions were extended to casual laborers, independent contractors and Africans previously exempted as permanent residents of urban areas. Regulations promulgated under the act limited labor contracts to one year and required that employers repatriate African workers to their “homeland” when their contracts expired. S. Greenberg, \textit{Race and State in Capitalist Development: Comparative Perspectives} 152-55 (1980); see also \textit{The Black Sash, Memorandum on the Application of The Pass Laws and Influx Control} (1966); \textit{Race Relations}, \textit{supra} note 11, at 69-75 (Concerning the Pass Laws, and presence of Africans in White Areas).


20. The right to be in an urban area is defined by the Bantu (Urban Areas) Consolidation Act of 1925 as amended by the Bantu Laws Amendment Act of 1964. One is allowed to remain in an urban area under Section Ten of this Act if (a) one was born in the urban area and has lived there continuously since birth; (b) one has worked continuously for ten years for the same employer or has lived lawfully and continuously for fifteen years in an urban area.
been designated by the government as “units of labor” and are allowed to remain in white South Africa only so long as they are economically active. These “migrant” workers are confined to inferior jobs, and compensated at strikingly unequal rates compared to those received by whites. Those blacks the government deems to

area; (c) one is married to a man who qualifies under (a) or (b), one entered the urban area legally and “ordinarily resides” with one’s husband; (d) one is granted permission to reside in an urban area from a labor bureau in a “homeland,” but one is allowed, as a migrant worker to remain in the urban area only as long as the contract lasts. R. Lapchich & S. Urdang, Oppression and Resistance, The Struggle of Women in Southern Africa 34–35 (1982).

21. South Africa: Time Running Out, supra note 1, at 81–84. The Study Commission stated:

Race very largely determines the job a person holds in industry, commerce and government. Partly as a result, in 1977 fewer than 1 of every 100 unskilled workers in these sectors was white and fewer than 1 of every 200 company managers was African. Eighty-two percent of African workers held semiskilled or unskilled jobs in 1977; 0 percent held clerical positions, but only 5 percent skilled, 1 percent supervisory, and 3 percent professional positions. Even now in gold mining, all rock-breakers and laborers at the mine face are black and all those with blasting certificates, a prerequisite for the best-paid jobs, are white.

State action is directly responsible for some of the color barriers in employment. One field where such state-imposed bars have long been the rule is mining. The Mines and Works Act of 1911, passed almost immediately after formation of the Union of South Africa, reserved blasting certificates and thirty-two mining occupations for whites.

Id.

22. Migrant workers, generally speaking, are workers who are not qualified to remain in white areas on a permanent basis, whose contracts lapse on an annual basis and who are required to return to their “homelands” to re-register from time to time. For a further discussion of labor control laws, see supra notes 18 and 20.

23. Although African monthly wages have increased significantly more in percentage terms than white monthly wages between 1970 and 1982, the cash difference between African and white wages has grown during the same period. For example, from 1970 to 1980, the percentage increase in African wages was 400 percent; from 1979 to 1982, it was 214 percent. For whites, the percentage increase in wages from 1970 to 1980 was 250 percent; from 1979 to 1982, it was 175 percent. By contrast, the “cash gap” in monthly wages between the average white wage earner and the average African wage earner in 1970 was $321.00; in 1980, $698.00; and in 1982, $773.00. The figures quoted above were arrived at through a comparison of percentage figures reported in the Sixth Report on the Signatory Companies to the Sullivan Principles published in November 1982 with the cash figures reported in the 1982 Survey of Race Relations in South Africa published by the South African Institute of Race Relations in Johannesburg in January of 1983. Wage Gap Grows,
be unproductive, including women, children, and old people, have been labeled "superfluous appendages" and are "endorsed out" to the homelands.\textsuperscript{24}

Under the so-called Pass Laws,\textsuperscript{25} every African over the age of sixteen is required to be fingerprinted and furnished with a reference book or pass that contains information regarding his or her legal residence and employment.\textsuperscript{26} The passbook must be carried at all times, and non-compliance is punished by arrest and imprisonment.\textsuperscript{27} Legally, only Africans can be charged with these "crimes." Between 1967 and 1980, an estimated 6.1 million people were tried for pass law offenses.\textsuperscript{28}

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\item S. \textit{AFRICA}, Dec. 1982, at 13. The article underscored the deceptiveness of focusing solely on percentage increases in African wages without looking to the cash increase. For example, the article noted that an African mineworker receiving a 12 percent increase in a monthly wage of $216.00 will receive $26.00 more per month, whereas a white mineworker making $1,080.00 a month receiving the same 12 percent raise would receive $130.00 more per month. Finally, another factor to be kept in mind is that the recent increases in African wages have been minimized because prices have risen by some 400 percent in the late 1970s.
\item Id.
\item B. \textit{RODGERS, supra} note 11, at 14.
\item J. \textit{DUGARD, supra} note 16, at 75. It may be noted that African women resisted the carrying of passes for many years, but finally in 1963 were forced to comply. R. \textit{LAPCHICH \& S. URDANG, supra} note 20, at 147.
\item J. \textit{DUGARD, supra} note 16, at 75. According to Dugard, an expert on South Africa's legal system:

This [pass] system more than any other aspect of institutionalized apartheid, has undermined respect for the law and those charged with its enforcement, and has done irreparable harm to race relations in South Africa. From an economic point of view, too, it is a disaster and a recent study estimates that over 112 million Rand is spent each year on the implementation of the system, which contrasts sadly with the amount of 150 million Rand budgeted for African education in the 1975-1976 financial year.

\item Id. at 76-77.
\item Quoted figures were calculated from annual statistics of prosecutions under the pass laws as reported in the South African Institute of Race Relations annual \textit{SURVEY OF RACE RELATIONS IN SOUTH AFRICA}, published in Johannesburg for the years 1968 through 1981. In 1982, 206,000 arrests were made under the pass laws. J. Collinge, \textit{supra} note 15. Collingenoted that "[i]t is impossible to ascertain how many of those tried are endorsed out of the..."
The laws regulating where blacks may reside prevent millions of blacks from living together as a family unit.\(^{29}\) For those affected, the price of gainful employment is separation from children and spouses for weeks or months at a time.\(^{30}\)

In order to control the growth of opposition and suppress resistance to apartheid, South Africa has adopted a battery of security laws over the last thirty years.\(^{31}\) In 1953, for example, the government passed legislation designed to suppress a passive resistance urban areas to the homelands." Id.; see also P. Sullivan, *Over 200,000 'Dombas' Arrests*, Johannesburg Star & Airmail Weekly, Feb. 26, 1983, at 3, col. 5.

29. The residence and employment qualification laws affect women more severely than men. Few women are able to qualify under Section 10 (a) or (b) of the Urban Areas Act. Many have spent disqualifying periods away from the area, and employment opportunities are very much more limited for women than men. Marriage to a qualified African does not legalize her status, regardless of how many years she has been married, if her first entry was unlawful. Indeed, marriage can have the reverse effect for women who qualify on the basis of their fathers' status. If her husband lives in a different urban area, and she goes to live with him there, she will lose any qualifications she may have under Section 10 (a) or (b) without necessarily gaining a new one under Section 10 (c). R. Lapchich & S. Urdang, *supra* note 20, at 35–36. As observed by the authors, "in over a decade, women have not been lawfully able to enter an urban area for more than 72 hours. A woman might therefore have remained in the area for any number of years without problem and suddenly be forced out if discovered." Id.; see also H. Bernstein, *For Their Triumphs and For Their Tears: Conditions and Resistance of Women in Apartheid South Africa* (1978).

30. H. Bernstein, *supra* note 29. It should be kept in mind that it is not just Africans who are subject to extreme social control. Under the Group Areas Act of 1955, the Community Development Consolidation Act of 1966 which replaced the 1955 measure, and various amendments, the lives of Coloureds and Indians, or Asians as they are sometimes referred to, are regimented. These acts determine where whites, Coloureds and Indians can live in the 87 percent of the land that is designated white. When these acts are enforced, whites usually allowed to remain in the developed areas of cities and Coloured and Indian people are moved to new townships away from the center of the cities. *Race Relations*, *supra* note 11, at 39. As with the Africans, the implementation of these laws has often meant the destruction of communities that have existed for generations, and living costs for Indians and Coloureds are dramatically increased because of greater transportation costs. By the end of 1981, over 80,000 Coloured families and nearly 38,500 Indian families had been forced to move according to the terms of the Group Areas Act. Over the same period, only 2260 white families had to move. Currently, 7600 Coloured, 4600 Indian and 130 white households await removal. J. Collinge, *supra* note 15.

31. Chief among the security laws enacted early on are the following: (1) the Suppression of Communism Act (Act 4 of 1950) (later renamed the Internal Security Act of 1976) under which a broad definition of communism led to the outlawing of the Communist Party as well as the penalization of the non-communist radical opposition to the status quo; (2) the Public Safety Act (Act 3 of 1953) which was designed to suppress the passive resistance "Defiance of
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campaign organized by the African National Congress (ANC), the country's oldest black nationalist protest organization.32 Ten years later, the ANC concluded that change in South Africa could not be achieved through non-violent means and turned to armed struggle.33 Under South African law today, it is a crime for any organization or individual to further the aims of the ANC.34

Tens of thousands have been arrested under South African security laws.35 Another set of laws provides for detention without trial. The General Law Amendment Act of 1963 and the Terrorism Act of 1967 first introduced detention without trial.36 The Internal Security Act of 1976, as amended in 1982, replaced much of this

Unjust Laws' campaign; and (3) the Unlawful Organization Act (Act 34 of 1960) which was specifically enacted to outlaw the African National Congress and the Pan Africanist Congress. See J. DUGARD, supra note 16, at 102, 110, 163-64; for a general discussion of the evolution of the security laws, see id., ch.5 (Freedom of Person) at 107-45, ch.6 (Freedom of Speech, Association and Assembly) at 146-202; see also infra, notes 32-38 and accompanying text.

32. The Defiance Campaign of 1952 was a major passive resistance campaign organized to protest apartheid laws in which some 8500 Africans and their allies went to jail for defying South Africa's segregationalist laws. FROM PROTEST TO CHALLENGE: A DOCUMENTARY HISTORY OF AFRICAN POLITICS IN SOUTH AFRICA 1822-1964, at 4 (T. Karis & G. Carter ed. 1977).

33. After 69 unarmed demonstrators were gunned down by South African police at Sharpeville, South Africa, ANC leaders increasingly questioned the effectiveness of non-violence against a government that had only responded violently to all forms of non-violent protest. For a discussion of the "Sharpeville incident," see infra note 74. By 1961 some members of the ANC had concluded that all avenues of peaceful protest had been exhausted and that armed struggle would be necessary in order to achieve justice in South Africa and this position soon became ANC policy. Karis & Carter, supra note 32 at 647.

34. The Unlawful Organization Act (Act 34 of 1960); see J. DUGARD, supra note 16, at 163-64.

35. "Over 4400 people have been convicted under the Suppression of Communism Act, the Unlawful Organization Act, the Public Safety Act, the Terrorism Act, the General Law Amendment Act and the Internal Security Act. " Review: 20 Years of Increasing Repression, FOCUS ON POLITICAL REPRESSION IN SOUTH AFRICA, July-Aug. 1981, at 7. In the period from June 1976 to July 1979, 44,300 people, 8200 of whom were under 18 years of age, were convicted in the courts as a result of their participation in mass protests and demonstrations against apartheid. They were convicted of charges of "Riotous Assembly, Public Violence, Sabotage, Inciting or Promoting Unrest, Arson, or Malicious Damage to Property." Id. It might be noted that as a consequence of these laws, South Africa's prison population is among the highest in the world, with a prison population of 440 per 100,000 people. The figure for the United States, which also has a relatively high per capita prison population, is 189 per 100,000 people. FOCUS ON POLITICAL REPRESSION IN SOUTH AFRICA, supra, at 7.

36. Section 17 of the General Law Amendment Act (Act 37 of 1963) permitted 90-day
earlier legislation.\(^3\) Under this act, a person can be detained in South Africa without charge or trial. Moreover, neither lawyer nor family has access to the detainee or information about him.\(^3\) Of those detained without trial, fifty-nine have died while in police detention, while unknown numbers of others have been tortured.\(^3\) Most people who are detained, many for months on end, are even-

... detentions and denied detainees the right to see visitors or a legal advisor; it was finally repealed in 1965. \(^3\) See J. Dugard, supra note 16, at 112–14. The Terrorism Act of 1967 permits indefinite detention without trial of political suspects as well as interrogation and solitary confinement; it has been replaced by the Internal Security Act of 1982, which also amends the Internal Security Act of 1976. \(^3\) See id. at 114–21.

37. J. Dugard, supra note 16, at 121–22. Dugard states that:

In 1976 preventive detention or internment, not linked with a state of emergency, was introduced by the Internal Security Amendment Act which made sweeping changes to the Suppression of Communism Act of 1950, and renamed this law the Internal Security Act. Section 10(1)(a) of the Internal Security Act now empowers the Minister of Justice to order the detention in prison of any person “if he is satisfied” that such person “engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order...”

This provision gives the government powers of internment which were previously possible only in a declared state of emergency. ... The Minister is given a completely subjective discretion to detain a person, as the only requirement for the exercise of his discretion is that he should be “satisfied” that the person has engaged in “activities which endanger or are calculated to endanger the security of the State or maintenance of public order.” There is no requirement of reasonable belief, of the kind found in section 6 of the Terrorism Act, nor are the terms “security of the State” or “maintenance of public order” anywhere defined in the Act. This unfettered discretion is in no way restricted by the review committee, as the Minister is not obliged to submit all the information at his disposal to the review committee and is, in any event, not required to accept a recommendation of the review committee or give reasons for his refusal to accept such a recommendation.

Id. (footnote omitted).

38. The Internal Security Act of 1976 further empowers the government to prohibit the printing, publication or dissemination of any periodical or any other publication. Any organization can be unlawful and its assets disposed of by the government. Random searches can be conducted. Moreover, it is illegal under this act to render assistance to any campaign at home or abroad that protests or seeks to modify or repeal any law. See The Africa Fund, Human Rights Violations in Apartheid South Africa (G. Hovey, South Africa Perspectives No. 183, Sept. 1983).

39. Death and Torture in Detention, Focus on Political Repression in South Africa, Nov.–Dec. 1982, at 7. For official purposes, the government attributes deaths in detention to accidents such as falling down stairs or from a ten-story window, or suicide by “self strangulation.” Id. Deaths caused by torture or physical abuse by prison guards have been
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tually released without charge or trial.\textsuperscript{40}

Banning is yet another method the government employs to silence political opponents\textsuperscript{41} and prohibit individuals or groups from airing their views. Since 1961, more than 1,400 individuals and numerous organizations have been banned.\textsuperscript{42}

\textsuperscript{40} The Detainees' Parents Support Committee (DPSC), \textit{Why No Recourse to the Courts}, The Johannesburg Star Airmail Weekly, Nov. 20, 1982 (copy on file at the offices of \textit{Law & Policy in International Business}).

\textsuperscript{41} Banning orders vary from individual to individual, but generally confine a person to a particular area, sometimes to the home. The person usually cannot visit specific places like schools, meet with more than one person at a time, speak in public, write or be quoted. Bans are usually for five years and are often renewed. \textit{See} J. Dugard, supra note 16, at 138.

\textsuperscript{42} \textit{Review: 20 Years of Increasing Repression}, supra note 35, at 7. The last major banning of organizations was in 1977 when the following 19 groups were affected: Association for the Education and Cultural Advancement of the African People of South Africa; Black Parents' Association; Black People's Convention; Black Women's Federation; Border Youth Organization, also known as Border Youth Union; Eastern Province Youth Organization, also known as Eastern Cape Youth Organization; Medupe Writers Association; Natal Youth Organization; National Youth Organization; South African Students Movement; South African Students Organization; Soweto Students Representative Council; Soweto Teachers Action Committee; Black Community Programs, Ltd.; Christian Institute of Southern Africa; Transvaal Youth Organization; Union of Black Journalists; Western Cape Youth Organization; and Zimele Trust Fund. For a discussion of this incident, the order, and its implications, see \textit{Text of South African Statement on Restrictions}, N.Y. Times, Oct. 20, 1977, at A10, col. 4; J. Burns, \textit{South Africans Ban Major Black Groups, Close Leading Paper; Editor Under Arrest}, N.Y. Times, Oct. 20, 1977, at A1, col. 6; J. Treaster, \textit{Banning Imposes Rigorous Curbs}, N.Y. Times, Oct. 20, 1977, at A11, col. 1; \textit{Courting Disaster in South Africa}, N.Y. Times, Oct. 20, 1977, at A22, col. 1.
In recent years, the government has implemented certain new laws and policies\(^4\) that it contends are "changing [the] face of South Africa."\(^4\) These laws, however, merely represent changes in the

43. Some of the government's rigid controls on the organization and movement of black workers have been refined for certain categories of laborers as a result of the expanding and increasingly sophisticated South African economy and its need for a more skilled and stable workforce. These "refinements" are often hailed as indicators of major changes in apartheid. In 1977, the South African government appointed two commissions to deal with labor control. The Wiehahn Commission investigated South Africa's labor legislation. The Riekert Commission explored manpower utilization, including regulations concerning rights of employment, residence and mobility of black people. Rather than "changing the face" of South Africa, these commissions resulted in new legislation that further refined the apartheid system to meet the changing needs of the South African economy.

The Wiehahn Commission, for instance, recommended granting some, limited, union rights for black South Africans as a method of control of black workers. The economy's demand for increasingly skilled workers has created a dependence in certain sectors of the economy on a skilled labor force that could not be easily replaced or retrained. Recognizing this dependence, the Wiehahn Commission recommended granting recognition to certain black unions that were willing to fit into the government's heavily proscribed labor relations framework, while at the same time substantially tightening restrictions of the majority of African workers. Black unions will be permitted to exist, so long as they are not political, report regularly to the government on their activities and comply with a series of strict regulations concerning industrial disputes. Strikes by black workers are still virtually illegal and black workers who organize unions are subject of almost constant harassment. See generally K. Luckhardt & B. Wall, Working for Freedom: Black trade union development in South Africa throughout the 1970s (1981) (available through the World Council of Churches, Programme to Combat Racism, Geneva). Perhaps the best description of the new labor legislation was provided by the South African government minister in charge of unions, "we are registering black trade unions in order to control their activities." Boyer, Black Unions in South Africa, 1981 SOUTHERN AFRICAN PERSPECTIVES, No. 1, at 2 (Feb. 1982) (copy on file at the offices of Law & Policy in International Business).

In addition to these labor law "refinements," the government has also recently claimed that a new constitutional arrangement is being discussed with all groups in South Africa. A closer look at these constitutional proposals reveals that power will remain exclusively in the hands of the white minority. Under new constitutional proposals for a tri-cameral parliament, those designated as Coloreds and Indians will be given separate institutions with the whites retaining the monopoly of power. The white chamber will have the largest number of members and will dominate the process of electing a president who will have wide-ranging executive power. The African majority remains totally excluded from this new structure. See generally The Africa Fund, Human Rights Violations in Apartheid South Africa (South Africa Perspectives No. 1, Sept. 1983).

44. The phrase "the changing face South Africa" refers to the bold letter caption found accompanying pictures of South Africans and a short description placed as an advertisement by the South African Embassy's Minister of Information in several prominent newspapers. See, e.g., Wall St. J., Oct. 15, 1982, and Washington Post, Sept. 29, 1982, (copies on file at

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particular methods employed to continue the subjugation of the black population. For example, while new labor legislation allows black unions to exist, the government concedes that this legislation was enacted simply to control more effectively the black workers. The minority government's fundamental commitment to the maintenance of white supremacy has not changed.

U.S. CORPORATIONS IN SOUTH AFRICA

South Africa's economic strength has been built up from its natural riches, especially gold and diamonds, and has been strengthened by significant flows of foreign investment. United States investors have found South Africa to be a rewarding country. Its access to cheap labor, among other factors, has made possible exaggerated rates of return in comparison with other areas of U.S. foreign investment. At the end of 1981, U.S. direct investment in

the offices of Law & Policy in International Business) The short description proclaims that “South Africa is changing. Creating opportunities for all her peoples. In her social, political and economic life, reform is a reality.

“A new constitutional framework is in the making. And positive results are emerging from the on-going consultations between Government and the leaders of all groups.” Id.

45. For example, the privileged urban worker who has section 10 rights is today being cultivated by the government as well as by the white employers, both South African and foreign. These workers are, for example, being granted 99-year leases for their homes. The aim of the government and white employers is to create an elite black work force. It will be allowed into more skilled positions, it will have a sense of permanence in the urban areas, and it will be middle class. Rather than identifying with their migrant and rural counterparts, the hope is that the specialized work force will see that its interest lie in working with the present economic and political system. International Labour Office, Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa, at 29 (1983).

46. See Boyer, supra note 43, at 2.

47. The sophistication of the old divide-and-rule strategy persists; as Sheena Duncan, President of the Black Sash has said, "Rather than living in a period of apartheid reform, we are in the midst of an accelerated process of bringing apartheid to its desired conclusion." Cape Argus, Feb. 11, 1983, supra note 11.


49. The rates of return of U.S. foreign direct investment in South Africa was 29 percent
South Africa totaled $2.63 billion, a figure nearly triple the book value of U.S. direct investment a decade earlier. In fact, buoyed by an expanding South African economy, U.S. direct investment increased substantially in both 1980 and 1981. At the end of 1982, U.S. direct investment was estimated at $2.8 billion. The full extent of U.S. financial involvement in South Africa reaches beyond direct investment. Approximately 6,000 U.S. companies do business in South Africa. In addition to $2.6 billion in direct investment, the U.S. Federal Reserve reported that, as of December 1982, U.S. financial institutions had outstanding loans to South African borrowers totaling over $3.6 billion, and U.S.-based investors were estimated in 1982 to hold $8 billion worth of shares in South African mines. Thus, total U.S. financial involvement in South Africa amounts to over $14 billion.

Because of the tight rein the South African government keeps on all elements of the society and the intertwining of political and economic power, any capital infusions that bolster the South African economy necessarily serve to strengthen the forces that maintain apartheid. Thus, through investment and business ties with South Africa, U.S. corporations, wittingly or unwittingly, support apartheid. Many corporations play a direct role in supporting the apartheid system by providing goods, know-how, or high-level technology in strategic sectors of the economy. In addition, the laws require some corporations to make special security arrangements in


51. Id.

52. South Africa: Time Running Out, supra note 1, at 135.


cooperation with the police to safeguard their business location.\textsuperscript{56}

Much of the U.S. corporate involvement in South Africa is concentrated in sectors of the economy that require sophisticated technology or access to materials not readily available in South Africa, such as oil, chemicals, and electronics. The supply of petroleum to South Africa by U.S. corporations is perhaps the most striking example of this involvement.

The South African government has declared petroleum to be a strategic commodity because of the critical importance of liquid hydrocarbon resources to the functioning of a modern economy.\textsuperscript{57} Although South Africa is generously endowed with mineral resources, it lacks commercially exploitable quantities of liquid hydrocarbons.\textsuperscript{58} Despite strong conservation and alternative usage, the Republic is still dependent on oil for about one-quarter of its energy production.\textsuperscript{59} Within South Africa, five major transnational

\textsuperscript{56} See, e.g., Act No. 102 of 1980: National Key Points Act of 1980 (Cape Town, July 25, 1980) (cited in The Republic of South Africa, 181 Government Gazette, No. 7134). The National Key Points Act of 1980 empowers the Minister of Defense to declare “any place or area that is so important that its loss, damage, disruption or immobilization may prejudice the Republic,” to be a National Key Point. \textit{Id.}, § 2(1). If the Minister notifies the owners of a National Key Point, whether it is a corporate establishment, production plant, or a strategic area, that the site is now designated as a National Key Point, the owners must take steps “to the satisfaction of the Minister of the security of the said Key Point.” \textit{Id.}, § 3(1). Failure to take steps toward securing a Key Point is punishable by law. \textit{Id.}, § 3(2),(3).

The Minister may make regulations to grant guards that the owners of the Key Points have appointed the power of arrest, seizure, and the power to use firearms. The Minister also may make regulations that give the guards “anything which in his opinion it is necessary to prescribe so as to achieve the objects of this act.” \textit{Id.}, § 5. The Minister or any person in the service of the State shall not be held liable for “any loss or damage as a result of bodily injury, loss of life or damage to property” arising from the execution of this act. \textit{Id.}, § 7. Under this Act, the Minister is empowered to enter any place or area “to gather information or to check any steps being or to be taken in terms of this act.” \textit{Id.}, § 12. Because of the secrecy surrounding this law, it is impossible to determine which industrial locations the Minister of Defense has declared “National Key Points.” See Bus. Wk., \textit{infra} note 67, at 56.

\textsuperscript{57} One example of the weight that the South African government places on petroleum is legislation passed in 1979 that made publishing information about petroleum supplies a serious criminal offense. See Bailey, \textit{Oil Sanctions: South Africa's Weak Link}, 15 U.N. Centre Against Apartheid, Notes & Comments 15 (Apr. 1980).

\textsuperscript{58} Quinlan, \textit{Embargoes Fail to Check Oil Supply}, Petroleum Economist, 95, 95 (Mar. 1982).

\textsuperscript{59} \textit{Id.} South Africa’s oil requirements are variously estimated at between 320,000 and 400,000 barrels per day, the vast majority of which South Africa must import. \textit{Id.} See generally D. Myers, \textit{U.S. Business in South Africa} 153–88 (1980).
corporations control 85 percent of the distribution and marketing of petroleum products, and two U.S. corporations, Mobil and Caltex, control almost 40 percent of petroleum sales. The dominant role that the major multinationals play in supplying the existing power structure with petroleum places them in de facto support of apartheid.

United States corporations are involved in other strategic sectors besides the petroleum industry. Several U.S. corporations have contributed directly to South Africa's attempt to achieve energy self-sufficiency by assisting in the construction of oil-from-coal operations. The automobile industry is also considered a strategic sector of the South African economy. As in other sectors, U.S. corporations in the automobile industry have no choice but to participate in supporting the existing power structures.

In 1977 it was revealed that General Motors Corporation was developing in coordination with the South African police plans for defending their corporate facilities in South Africa in case of civil unrest. One memo suggested, for instance, that white employees

60. Quinlan, supra note 58, at 104. The five companies are Shell, BP, Caltex, Mobil, and Total. Id.

61. These corporations have implicitly recognized this role, as a statement made to the shareholders of Mobil Oil illustrates:

Total denial of supplies to the police and military forces of a host country is hardly consistent with an image of responsible citizenship in that country. The great bulk of the work of both police and the military forces in every country, including South Africa, is for the benefit of all its inhabitants.


South Africa faces an internationally-recognized boycott from both OPEC and non-OPEC petroleum producers and the Republic has been forced to turn to various covert means to obtain the petroleum supplies it needs. Quinlan, supra note 58. The government's success in obtaining much-needed petroleum supplies has been documented elsewhere, but it is clear that the major petroleum multinationals have played a role in the procurement. Id.

62. For a discussion of U.S. corporations' contribution to South Africa's self-sufficiency program, see The Africa Fund, Fluor: Building Energy Self-Sufficiency in South Africa (1981) (copy on file at the offices of Law & Policy in International Business). The U.S.-based Fluor Corporation, a large engineering and management firm, has been the major contractor behind construction of South Africa's Sasoe oil-from-coal program. Id.


64. The Africa Fund, General Motors in South Africa: Secret Contingency Plans "In the Event of Civil Unrest" 1 (1978).
join local militias. Indeed, the government has drawn up legislation that specifically requires certain key corporations to develop plans for defense of their plants. Although General Motors has since claimed that they do not fall under this legislation, it appears that many other multinationals were being forced to develop such plans. The coordination of corporate militias with police and military forces demonstrates yet another close link between multinational corporations and the coercive apparatus of the apartheid state.

Although the South African economy is relatively sophisticated, the country is still heavily dependent on U.S. corporations for computers and other high-technology inputs that require large expenditures on research and development to produce. The consumer market in South Africa is simply not large enough to warrant research and development on the scale necessary to produce complex mainframe computers. The extensive involvement in South Africa by U.S. computer companies has not only spurred the republic's economic growth, but has directly facilitated the government's legal enforcement capabilities. The Department of Interior, for example, uses an International Business Machines computer to monitor part of its computerized population registry which is part of the categorization scheme used to differentiate between races and maintain the apartheid system of racial discrimination. A 1982 study on computer companies in South Africa concluded that the presence of U.S. corporations directly supported the government.

65. Id. at 1-2.
66. Id. at 2.
68. Id. IBM is the largest computer corporation in the South African market, and the South African government is the largest single customer, accounting for almost one-third of IBM's sales. See NARMIC/AMERICAN FRIENDS SERVICE COMMITTEE, AUTOMATING APARTHEID: COMPUTER EXPORTS TO SOUTH AFRICA AND THE ARMS EMBARGO 7 (1982) [hereinafter cited as NARMIC]. Other U.S. corporations in the South African computer market include Burroughs, NCR, Sperry Univac, and Control Data. Id. A 1980 survey in South Africa found that U.S. firms sold 75 percent of all computers and handled 77 percent of all local rentals in South Africa. Id. See also THE AFRICA FUND, COMPUTERS IN SOUTH AFRICA: A SURVEY OF U.S. COMPANIES (1978).
70. See NARMIC, supra note 68, at 14.
71. Id. In 1981, the Sperry Corporation granted a license to sell a computer to Atlas
THE INADEQUACY OF THE SULLIVAN PRINCIPLES

The U.S. corporations involved in South Africa counter criticisms that they support the apartheid system by arguing that they are able to play a role in reforming apartheid by implementing non-discriminatory operating practices, as well as by contributing to economic growth which can stimulate the process of reform. Twenty years of expanding U.S. economic involvement in South Africa have demonstrated the fallacy of this argument. United States economic involvement more than tripled in the period between 1970 and 1981, yet apartheid was in no way weakened. On the contrary, the repressive power of the white minority increased dramatically during those years.

The argument that U.S. corporate presence has a reforming effect nevertheless persists, as illustrated by the development of the Sullivan Principles. The Sullivan Principles are a voluntary code of conduct for U.S. firms drafted by the Reverend Leon Sullivan, who is a member of the Board of Directors of General Motors Corpor-
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ation, a company which has a substantial presence in South Africa.\(^7\) Consisting of six principles, the code calls for desegregation of the workplace, fair employment practices, equal pay for equal work, job training and advancement, and improvement in the quality of workers’ lives.\(^7\)

The code is flawed, however, because it fails to address directly the question of apartheid. It calls for workplace reforms that, at best, can affect only 1 percent of the black work force.\(^7\) Instead of focusing on conditions in South Africa and the role of the U.S. corporations in perpetuating the status quo, the debate about corporate involvement is shifted to a discussion of labor conditions for a tiny percentage of the work force. This has happened in divestment campaigns at colleges and universities, and at the level of state and

Oppress the black majority to obtain this investment, is illustrated by the measures taken immediately after the Sharpeville massacre of 1960. See J. Dugard, supra note 16, at 110; see also supra note and accompanying text. On March 21, 1960 the Pan Africanist Congress led a protest against the pass laws. The only violence that the demonstrators committed was the throwing of pass books onto a fire and burning them. J. Dugard, supra note 16, at 110. During the demonstrations, the South African police attacked a crowd at a small town near Johannesburg called Sharpeville, killing 69 people and wounding many more. Id. This brought pronounced economic repercussions, as foreign investors lost faith in South Africa’s political stability, and capital fled the country. Id. at 112.

The government thus had to devise new methods of combatting political unrest without endangering the economic stability of the country. Various forms of detention without trial were introduced to silence the opposition, and foreign investors returned. Id.

75. For a discussion of the U.S. automobile industry’s presence in South Africa, see supra notes 63 and 64.


77. E. Schmidt, One Step—In The Wrong Direction, The Sullivan Principles As A Strategy For Opposing Apartheid 1, 5 (March 1983) (published by Episcopal Churchman for South Africa); see also American Committee on Africa, The Sullivan Principles: No Cure For Apartheid 1 (1980). According to the State Department, all U.S. firms and affiliates operating in South Africa employed a total of 127,000 individuals in June 1983, providing employment for only 1.5 percent of the total white and black workforce. Ninety thousand of those employees work for Sullivan signatory companies while only 69,000 work for Sullivan signatories that actually submitted reports on their activities in the last reporting period. See Statement by Rep. Frank G. Wisner before the Subcomm. on Financial Institutions of the House Comm. on Banking, Finance and Urban Affairs, 97th Cong., 1st Sess. (June 8, 1983). Because 36 percent of the Sullivan signatory workforce is white, the actual number of black workers affected by the Principles totals less than 58,000, a minuscule number in comparison to the black population of approximately 20 million. E. Schmidt, supra, at 1, 5.
municipal governments.\textsuperscript{78}

Furthermore, compliance with the code by many corporations is questionable. The sole enforcement mechanism consists of a voluntary questionnaire sent to signatories whose responses are then compiled into an annual report. In 1982 alone, only three-quarters of the corporations that were required to report on their efforts to comply with the code did so. Of those that did respond, more than one-third received the lowest possible rating.\textsuperscript{79}

Inside South Africa, the Sullivan Principles have been rejected by the workers they purportedly were implemented to help. The Motor Assembler's and Component Workers Union of South Africa (MACWUSA), which represents some of Ford Motor Company's workers, called the Sullivan Principles a "toothless package" and a "piece-meal reform that allows this cruel system of apartheid to survive."\textsuperscript{80}

The Reverend Sullivan has himself shifted his attitudes since 1976. Originally, he was highly optimistic about the effectiveness of the

\begin{itemize}
\item[78.] See, e.g., Connecticut Campaign, \textit{supra} note 8.
\item[79.] Arthur D. Little, Inc., \textit{Sixth Report on the Signatory Companies to the Sullivan Principles} 1 (Nov. 1, 1982).
\item[80.] Union Reviews Sullivan Code, The Cape Times, Jan. 19, 1982 (copy on file at the offices of \textit{Law & Policy in International Business}).
\end{itemize}
When the Principles were criticized by trade union and other black leaders during a 1980 visit to South Africa by Reverend Sullivan, he admitted that change was coming far too slowly. He called for an end to all bank loans to, and all new investment in, South Africa, but did not embrace disinvestment. The contradiction inherent in the position that new investment supports apartheid while existing investment is justified has not been satisfactorily resolved.

The real inadequacy of the Sullivan Principles is that even if every U.S. firm in South Africa fully enforced each of the Principles, apartheid would not be threatened. The Sullivan Principles coexist with disenfranchisement, population control, and removals, as well as detention and bannings. They cannot bring an end to apartheid, and they are dangerous because they give the impression that they will.

**The Strategy of Economic Disengagement**

*The Objective — Eradication of Apartheid*

The strategy of economic disengagement is built on the recognition that U.S. corporate presence in South Africa necessarily operates to strengthen apartheid. The proponents of economic disengagement firmly believe that the interests of the majority in South Africa will not be served by the mere reform of apartheid and that only the complete dismantling of the apartheid system will achieve the inevitable transformation of South African society. Accordingly, their primary objective is to support the struggle against apartheid that is being waged by black South Africans.

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82. *Id.*
83. *See Rand Daily Mail, March 21, 1981. Rev. Sullivan stated, “The Principles have been a catalyst for change. There have been gains, but all of it has been far too slow.... until apartheid is ended, no U.S. bank shall make any loans to the South African government or its parastatal agencies. I am not in favor of more expanded investments.” Id.*
84. *See generally J. Dugard, supra note 16 at 110, 112; The Africa Fund, supra note 81.*
85. Observers, both within South Africa and outside, agree that the brutal measures needed to enforce this system and repress all opposition cannot be abolished without
For over two decades, black leaders have called for the imposition of sanctions and the application of other forms of economic pressure against South Africa. The advocacy of economic disengagement has been a direct response to the failure of decades of nonviolent protest and passive resistance to end apartheid. The halting of the flow of oil, computers, capital, technology, and weapons is accepted by black leaders as the most effective way for the international community to play a positive, nonviolent role in bringing about fundamental change. They claim that economic disengagement will weaken the South African economic system which supports the entire enforcement apparatus of apartheid and maintains the

abolishing the entire system. The Detainees' Parents Support Committee, supra note 39, after its study of torture and detention concluded that "the detention laws flow directly from the necessity to protect the beneficiaries of apartheid." See supra note 39. Amnesty International, winner of the Nobel Prize for Peace, made a study of political imprisonment in South Africa and came to the conclusion "that no reforms in the present structure will be sufficiently far-reaching to remove the causes of political imprisonment unless the whole system of apartheid is dismantled. CATHOLIC INST. FOR INT'L RELATIONS, supra note 39, at 7-10. As one South African woman aptly put it "We don't want our chains made comfortable, we want them removed. Tutu, supra note 4 (quoting Mrs. Motlana).


87. In 1964 the leader of the African National Congress, Nelson Mandela, was tried along with eight others for sabotage and a conspiracy to overthrow the South African government. Speaking at his trial, Mandela gave a brief history of black resistance to white minority rule:

The African National Congress was formed in 1912 to defend the rights of the African people which had been seriously curtailed by the South Africa Act, and which were then being threatened by the Native Land Act. For thirty-seven years—that is until 1949—it adhered strictly to a constitutional struggle. It put forward demands and resolutions; it sent delegations to the Government in the belief that African grievances could be settled through peaceful discussion and that Africans could advance gradually to full political rights. But White Governments remained unmoved, and the rights of Africans became less instead of becoming greater. In the words of my leader, Chief Lutuli, who became President of the ANC in 1952, and who was later awarded the Nobel Peace Prize: 'who will deny that thirty years of my life have been spent knocking in vain, patiently, moderately, and modestly at a closed and barred door? What have been the fruits of moderation? The past thirty years have seen the greatest number of laws restricting our rights and progress, until today we have reached a state where we have almost no rights at all.'

N. MANDELA, NO EASY WALK TO FREEDOM 165 (1965). See also L. KUPER, PASSIVE RESISTANCE IN SOUTH AFRICA, (1957); E. ROUX, TIME LONGER THAN ROPE (1964).
minority's total control of political power. The advocates of sanctions and divestment recognize, however, that economic disengagement alone cannot bring an end to apartheid; this can only be achieved by black South Africans themselves. Rather, economic disengagement is a strategy designed to provide direct support for the liberation struggle. By cutting South Africa's supply lines from the outside world, sanctions can isolate and weaken the regime, thereby limiting its capacity for survival.

Effectiveness

In analyzing the effectiveness of a strategy of economic disengagement, both the potential economic and psychological impact of sanctions and divestment must be examined. The probable economic impact of disengagement can be assessed by examining South Africa's heavy reliance on U.S. trade and investment, as well as its own lack of self-sufficiency in many key industries. This article has already sketched the extensive business ties that link South Africa and the United States. The United States is South Africa's largest trading partner, its second largest investor, and a supplier of one-third of its international credit demands. Closer examination of this vital link reveals that South Africa would indeed be economically wounded, if not crippled, by any significant cutoff of U.S. trade or investment flows.

Because South Africa remains dependent on foreign sources to complete many industrial processes, a cutoff in U.S. trade and direct investment would level a heavy blow to South Africa's manufacturing operations and other basic industries. Its industries' continuing dependency on imported machine tools, plants and machinery, electronic equipment, computers, and chemicals to maintain both regular production lines and industrial expansion is well-documented. In the event this flow was curtailed, some key industries would face seriously disrupted production, and all would

88. See supra notes 49-71 and accompanying text.
89. Id.
90. S. BALDWIN, J. TOWER, L. LITVAK, J. KARPEN, Pension Funds & Ethical Investment 17 (1980) (quoting D. SMART, Investment Targeting, a Wisconsin Case Study 129 (1979)).
91. S. BALDWIN, J. TOWER, L. LITVAK, J. KARPEN, supra note 90, at 18.
face rapidly escalating costs and considerable dislocation.\textsuperscript{92} Even if substitute sources could be found for goods no longer easily accessible after withdrawal had occurred, the costs of such readjustment would likely be high, and the costs of local manufacture higher still.\textsuperscript{93} The loss of tax revenues derived from foreign corporations would undermine further the efficiency of the economic system.\textsuperscript{94}

Sanctions would especially damage the strategic sectors of the South African economy, where reliance on outside technology and know-how is so great.\textsuperscript{95} A U.S. State Department assessment of the South African economy's dependence on multinational corporations for high technology concluded that lack of access to foreign technology could cripple South Africa.\textsuperscript{96} It specifically noted that, in the face of sanctions, the South African economy could not adequately meet the demand for spare parts of high technology equipment, despite the government's stockpiling of such parts.\textsuperscript{97} In addition, the general rate of growth of the economy would be severely affected by the termination of lines of external capital on which it has increasingly relied in recent years.\textsuperscript{98}

In the face of such a cutoff, the South Africans would intensify their current efforts to achieve self-sufficiency in the most crucial sectors of their economy.\textsuperscript{99} Such attempts would be likely to meet with failure, however, because the market is too small to make such a policy cost-effective.\textsuperscript{100} The restriction imposed on economic

\begin{itemize}
\item \textsuperscript{92} See NARMIC, supra note 68, at 9.
\item \textsuperscript{93} Id.
\item \textsuperscript{94} See Act No. 58 of 1962, the Income Tax Act; see also Official Yearbook of the Republic of South Africa: Guide to Foreign Investors ch. 32 (1980/81).
\item \textsuperscript{95} See supra notes 57–67 and accompanying text.
\item \textsuperscript{96} See NARMIC, supra note 68, at 9.
\item \textsuperscript{97} Id. A grave problem would be the supply of spare parts for existing high technology equipment. The South African government has built up a reserve of stocks of more than one year which will act as a cushion, but there is no possibility that local industry can produce all replacement parts for the imported goods which keep their economy going. \textit{Id}.
\item \textsuperscript{98} See supra note 53 and accompanying text.
\item \textsuperscript{99} See e.g. South Africa: Time Running Out, supra note 1, at 134, 141-143; see also, e.g., supra note 62 and accompanying text.
\item \textsuperscript{100} For example, Jan Timmer, managing director of Philips S.A. concluded that, "it is a fallacy that any country other than the U.S. and Japan can ever reach self-sufficiency in electronics. This is because of the sizzling pace of change, the huge sums required for research and the lack of market size." \textit{Electronics Survey}, Supplement to Financial Mail (Johannesburg), Sept. 4, 1981.
\end{itemize}
growth by the apartheid system, which effectively keeps millions of black people out of the marketplace, limits the potential for the establishment of industries which require large markets to achieve economic production.  

The imposition of sanctions could also be expected to weaken the white population's support of apartheid. The system would be far less capable of providing the high level of consumption luxury for the white minority which is so integral to the apartheid system. The system in South Africa reflects more than abstract racism; it has perfected the art of manipulating power to produce very real and striking economic benefits for the white minority.  

White loyalty to the system will remain high so long as it produces such benefits, despite personal costs to whites, such as mandatory military service. If the system cannot deliver those benefits, however, not only is the state's administrative and repressive capability shaken, but cracks may develop in the loyalty of the system's white beneficiaries. Such cracks are likely to deepen in an extended period of economic disruption. Moreover, divisions between different sections of the white community, which will disproportionately suffer the impact of economic disruption, may also emerge and further fragment the unity of that population.

Analysis of the effectiveness of sanctions must take account of political and psychological effects as well. White South Africans have a strong need to feel themselves a part of the industrialized world community. Sanctions would represent a concrete rejection of apartheid and give real meaning to the United States' rhetorical condemnation of the system.

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101. Dr. Simon Brand, economic advisor to Prime Minister Botha conceded that, "Any drive towards self-sufficiency tends to raise costs, and to harm the competitiveness of our export industries." See Financial Times, infra note 120.

102. See supra note 10 and accompanying text.


104. See infra note 106.

105. Lawrence S. Eagleburger, Undersecretary of State for Political Affairs, in his address, "Southern Africa: America's Responsibility for Peace and Change," given before the National Conference of Editorial Writers in San Francisco on June 23, 1983, stated, "We stand against injustice, and therefore we must reject the legal and political premises and consequences of apartheid... We reject unequivocally attempts to denationalize the black
A more tangible measure of the potential political impact of sanctions and divestment is the level of white fear of such action and the countermeasures that South Africa has undertaken to prevent disengagement. The South African government has responded to the success of state divestment campaigns by hiring lobbyists in the United States. It has also expanded its regional consulates, which are flooding legislators with lengthy letters and memoranda responding in detail to each argument raised by divestment proponents and engaging in extensive lobbying of legislators. The government is organizing trips to South Africa for opinion-makers, legislators, and the editors of local papers. Carefully targeted investment conferences have been organized, and advertisements about progress and change have been placed in national journals and newspapers. All of these activities represent South African reactions to real fear about the possible impact of a growing divestment movement in the United States.

South African majority . . ."

Chester A. Crocker, the Assistant Secretary for African Affairs, in his address, "The Search for Regional Security in Southern Africa," given before the Subcomm. on Africa of the House Comm. on Foreign Affairs, on Feb.15, 1983 (reprinted in U.S. Department of State, Bureau of Public Affairs, The Search for Regional Security in Southern Africa, Current Policy No. 453 (Feb. 15, 1983)), stated, "Believing that 'apartheid,' as a stricture of legally entrenched racial segregation, is morally unacceptable to a democracy such as ours, we have sought to encourage those elements within South Africa seeking constructive change . . ." (statements on file at the office of Law & Policy in International Business).

106. The white fear of western economic disengagement has been well articulated by the director of the South African Institute of International Affairs: "Any country in the modern world needs working relations with other countries. It needs contacts for trade, capital, technological know-how, scientific and cultural exchange: all the things which keep a country alive in the modern world. If society is cut off, the danger is that it will simply wither." Id.

107. These include the law firms of Shipley, Smoak and Henry; and Baskin and Sears. The South African government paid John P. Sears of Baskin and Sears $750,000 in 1981 for lobbying on their behalf. Smathers, Symington and Hurlong received $300,000 for the same work in 1982. See Washington Office on Africa, Washington Notes on Africa 5 (Autumn 1982); see also Transafrica Forum, South Africa's Hired Guns: The Registered Foreign Agents (Oct. 1982).

108. G. Hovey, Research Director, American Committee on Africa, interviews with individual legislators in 1981 and 1982.

109. Thomas Moore, a member of the President's Foreign Intelligence Advisory Board, and William Simon, Chairman of the President's Advisory Committee on Productivity, both have made several trips to South Africa paid for by the South African government. See Transafrica Forum, supra note 107.
The effects of economic disengagement on South Africa have been discussed above, but the more practical question of how a strategy of economic disengagement can best be implemented remains. The imposition of international mandatory sanctions by western governments would be the optimal means of implementing such a strategy, but the reluctance of those governments to take such action has spawned divestment campaigns by nongovernment groups.

For more than twenty years, the U.N. General Assembly has attempted to impose sanctions on South Africa and thus give effect to the resolution it adopted in favor of such measures in 1962. In November 1977, the U.N. Security Council passed Resolution 418, which mandates a universal arms embargo against South Africa. This was the first time that a sanction against South Africa was made mandatory. All subsequent economic sanction attempts have been vetoed by the United States and other western allies of South Africa.

The failure of western governments to support sanctions represents a lack of political will rather than any shortcoming of the sanction mechanism itself. Indeed, in recent years, western governments have increasingly used economic sanctions as instruments of foreign policy. The United States in particular has been quite willing to impose sanctions in a variety of contexts.

Because of the present unwillingness of the United States and other nations to take strong action against South Africa, proponents of economic disengagement view action by nongovernment

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Three Illinois state senators and their wives made a three week visit to South Africa in March 1983, arranged for by the South African Department of Foreign Affairs and Information. See South Africa Digest, Mar. 25, 1983.

110. See supra note 5 and accompanying text.

111. S.C. Res. 418, supra note 5.

112. See supra note 5; see also XVI Southern Africa, Apartheid: Getting By With a Little Help From Its Friends 10 (Mar. 1983).

113. Id. at 11.

114. As Bishop Desmond Tutu said in 1983, "It is very interesting how the U.S. is prepared to use economic sanctions even at the risk of her friendship with her Western allies, against Russia, Cuba, and Vietnam, but will not even discuss these measures with regard to South Africa. See Tutu Hits a Reagan Over Namibia, APS News and Feature Bulletin, June 27, 1983.
organizations as the only realistic way of severing the links with apartheid. This strategy is international in scope and entails the coordination of numerous efforts to cut off a wide range of ties between South Africa and other countries.  

115 A sports and cultural boycott of South Africa has already gained international support, and a boycott of the sale of the Kruggerand in the United States has been going on for a number of years.

The most important of these economic efforts has been the divestment campaign. Divestment represents the demand that institutions such as universities, churches, municipalities, and states sell their holdings in all corporations which either have direct investments in South Africa or make bank loans to South Africa. One goal of divestment is to translate moral and political opposition to apartheid into economic terms by encouraging shareholders to sell their stocks in those corporations that do business with South Africa, and thus pressure U.S. firms to withdraw or disinvest from South Africa. Another objective of divestment is to heighten public awareness of the repressive apartheid system. The campaign has already created a national debate on the question of investing in South Africa. This debate, which is carried on by elected officials, trade unionists, church people, black leaders, and community organizers, educates

115. For example, in the United Kingdom this spring, representatives from 66 local authorities representing 35 million people came to an anti-apartheid conference called by the city government of Sheffield. Sheffield, a large industrial city, pledged itself in 1981 to "end all links between the City . . . and the apartheid regime of South Africa." The Sheffield conference provided a forum at which local authorities discussed expanded co-ordination and implementation of action across a broad front of issues including the withdrawal of all investments in companies with South Africa interests, and the cessation of the purchase of any goods originating in South Africa. Local Authorities Anti-Apartheid Conference, Sheffield, March 25, 1983, Papers 1-4; City of Sheffield, Metropolitan District.

Similar campaigning in Sweden has already led to the passage in 1979 of a law restricting Swedish investment in South Africa. The law still allows companies already operating to continue doing so, without expansion, under an annual license, and Swedish organizations continue to work vigorously to expand the legislation to enforce the complete withdrawal of Swedish corporations from South Africa. The Africa Groups of Sweden, THE LAW CONCERNING SWEDISH INVESTMENTS IN SOUTH AFRICA AND NAMIBIA (March 1983).

116. See generally U.N. CENTRE AGAINST APARTHEID, REGISTER OF SPORTS CONTACTS WITH SOUTH AFRICA, Notes and Documents 20/82, at 1-6. (Dec. 1982).


118. For a discussion of the current divestment campaign, see THE AFRICA FUND, SOUTH AFRICA: QUESTIONS AND ANSWERS ON DIVESTMENT 1 (1981).
the public about the apartheid system and the U.S. ties to South Africa which support that system. This dialogue creates an informed constituency that can demand a change in U.S. policy towards South Africa. In a matter of years, divestment and organized opposition to investment in general have been effective in achieving corporate disinvestment from South Africa. Late last year General Electric (G.E.), a U.S. corporation, pulled out of a major mining project in South Africa, in large part because of such pressures. Company officials in Johannesburg conceded that General Electric’s decision to sell its stake in a joint venture with a major South African mining house, estimated to cost $138.6 million, was influenced by anti-apartheid pressure in Connecticut, where G.E. has its headquarters. In the first half of 1983, a number of companies withdrew from South Africa, in part because of international opposition to investment there. Although the level of withdrawal from South Africa has only begun to shift in the last two years, pressure in institutions to withdraw U.S. funds from companies which continue to operate in South Africa has grown dramatically. Several major divestments, involving many millions of dollars, have occurred. Moreover, the increasing number of


120. B. Simon, GE Quits South African Project, Fin. Times (U.K.), Oct. 12, 1982, at 44, col. 2 (statement by company officials that pressure in Connecticut influenced their decision). Similarly, a senior official of the South African Reserve Bank concluded that:

Increasing political pressure on foreign companies to limit their investments in South Africa had contributed to a change in investment patterns.

Under these pressures, many institutions have begun to give preference to short-term and medium-term investments instead of those of a more permanent nature.


122. For examples of some major divestment moves, see American Committee on Africa, Divesting From Apartheid: A Summary of State and Municipal Legislative Action on South Africa (Mar. 1983); see also The Africa Fund, Church and University...
divestitures by state employee pension funds, universities, and other large institutions has created precedents for further withdrawal. Finally, state governments are beginning to pass legislation requiring divestment, with three states enacting such legislation in 1982. Disinvestment may also be spurred by the increasing risks that U.S. companies in South Africa face as a result of the unstable political climate there. It is clear that many corporations will not withdraw without economic incentive to do so. United States corporations nonetheless have previously withdrawn from other countries whose climate they felt to be insufficiently friendly. It is likely that, because of the increasing risk factor, corporations that have previously defended the need to remain in South Africa because of their allegedly progressive social role there may soon confront withdrawal proposals from their own business managers. Indeed, statements by corporate executives of companies involved in South Africa provide dire predictions about the future security of their investments due to anticipated violence and unrest. Finally, divestment will be further stimulated because large institutional investors have increasingly realized that divestment can be wholly compatible with prudent trust management. These investors are finding that


123. See supra note 8 and accompanying text.
124. For example, U.S. corporations withdrew from Chile in the early 1970s as a result of the election of socialist President Allende. See 58 International Documentation on the Contemporary Church, Chile: The Allende Years; The Coup; Under the Junta (Dec. 1973).
126. Id. The Managing Director of the Goodyear Tire and Rubber Company’s South Africa subsidiary told a reporter in 1980 that, “Foreign companies are going to be the target. That is where dissident blacks will focus. We are right here in the tinder box.” Id. That same year, Ian Leach, then General Manager of Caterpillar Africa warned fellow investors, “We are secure here for five years. Up to ten years it is a matter of caution. After that it is anybody’s guess.” Id.
127. Joan Bavaria of Franklin Research and Development Corporation told a conference on Public Investment and South Africa that an examination of the earnings records of investment held by the City of Washington demonstrates that the companies not in South Africa had a better earnings record than those that are in South Africa and that a comparison of stock price performance showed that over time corporations without South African investments did notably better than those involved in South Africa. Address by Joan Bavaria, Franklin Research and Development Corporation, to Conference on Public Investment and South Africa, Boston, Mass. (April 16, 1983) (copy on file at the offices Law
divestment of stock of companies involved in South Africa may be followed by more profitable investments in companies which are not involved there. At least one investor had attributed this development to the relative decline in profitability of the large industrial firms located in South Africa as compared to other types of firms.

**Conclusion**

Inside South Africa today, black South Africans are struggling against the oppressive apartheid system, and continually face police attacks, mass arrests, banning, and harassment. The extensive involvement in the South African economy by U.S. corporations has no reforming effect on apartheid and, indeed, only serves to support the status quo. This article has advocated the withdrawal of U.S. economic support from South Africa as an effective means of promoting the end of apartheid. Such economic withdrawal or disengagement, however, will not come voluntarily, but rather, must be stimulated by divestment campaigns and international sanctions.

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128. Robert J. Schwartz, vice president of Shearson/American Express, and an expert on socially-responsible investment (SRI), testified in 1980, “By careful selection, the exclusion of companies in South Africa may be replaced by more profitable investments . . . the SRI funds which I manage have outperformed the major indices (sic) of stocks and bonds in the years 1976–1979.” See The Africa Fund, supra note 118.

129. According to Nancy Elliot, director of investments and trusts at Michigan State University, divestment worked to the university's advantage “because the firms that are involved in South Africa are the big industrial firms that have not been doing as well as other types of firms.” By comparing the current market value of companies sold versus the market value of companies bought, Elliot determined that as of June, 1980, the portfolio had earned an additional $1 million. Telephone interview with Nancy Elliot, April 15, 1983.