

**ACOA****The American Committee on Africa****198 Broadway • New York, N.Y. 10038 • (212) 962-1210**

M. William Howard, *President*
Elizabeth Landis, *Vice President*
Jennifer Davis, *Executive Director*

SANCTIONS AND THE STRUGGLE AGAINST APARTHEID IN A CHANGING SOUTH AFRICA

American Committee on Africa
International Workshop on Sanctions
Oslo, Norway
March 8-11, 1990

THE CHANGING POLITICAL SITUATION

We are meeting at a time of great changes inside South Africa. These changes can be seen as victories in the struggle to end apartheid and establish a democratic system based on one person one vote on a common voters roll. But the changing situation will also confront the African National Congress, the entire democratic movement, and the international solidarity movement with new organizational challenges.

The struggle to isolate South Africa has been the linchpin of international solidarity efforts. The African National Congress and the democratic movement have remained firm in their call for sanctions. But we would be naive to believe that the new situation will not affect our efforts. The need to negotiate internally while maintaining the call to the international community to isolate South Africa may raise some apparent contradictions, and increases the need for very close communication between the movement in South Africa and the solidarity movement. For example, recently, Nelson Mandela met with the Consultative Business Movement, a South African business grouping. Among the participants in the meeting was a representative of Caltex Petroleum, the largest U.S. investor in South Africa. In order to ensure that the companies do not use such meetings to counter our campaigns, we will need to be able to speak with authority on the position of the democratic movement.

Western political leaders will seek to use the new situation to lift sanctions as soon as feasible. They want to do business with South Africa. They want access to South Africa's minerals and they want the market for their country's exports.

We are again going to have to explain the continuing need for sanctions, even to our allies. This effort will not be easy if press reports leave an image of "change" as opposed to repression.

SOUTH AFRICA'S ECONOMIC LINKS TO THE WORLD

Sanctions have clearly had both economic and political effects. There has been some \$12 billion in capital outflow and up to \$5 billion a year in lost trade since the beginning of 1985. All this lost business multiplies as it ripples through the economy. However, it would also be a mistake to believe that the government is on its knees.

The sanctions campaign and South Africa's growing reputation as a high risk area have dramatically reduced United States economic involvement in South Africa in the past five years. During this period, the number of U.S. companies with subsidiaries in South Africa has declined from over 300 to 120 today. U.S. direct investment and bank loans have decline 50% in dollar terms from the beginning of the 1980s. This capital withdrawal continued during 1989, which saw the disinvestment of Mobil, the largest U.S. investor in South Africa, and Goodyear Tire & Rubber, another large investor.

As recently as the early 1980s, most companies which the U.S. anti-apartheid movement was targeting had subsidiaries in South Africa. Despite the ending of direct investment, many of the companies which then disinvested continued to do business in South Africa through licensing, franchising and distribution agreements. As a result, in February 1987, The American Committee on Africa and four other national anti-apartheid organizations issued "Guidelines for Divestment." These Guidelines were designed to deal with a new situation by clarifying our demand for an end to all business ties. This meant that companies that maintained non-equity business ties to South Africa would still be targets of our campaigns.

SUCCESSFUL PRESSURE - HOW WE GOT HERE

State and Municipal Action

Very effective U.S. actions to cut economic links with apartheid have taken place on the state and municipal level. To date 25 state, 19 counties and 83 cities have taken some form of economic action against companies that do business in South Africa, primarily via legislation. The first round of this legislation focused primarily on banks making loans to South Africa. The second round involved divesting public pension funds of stock of companies doing business in South Africa. The third round imposes selective purchase legislation where states and cities give preference in the bidding process for the purchase of goods and services to those companies that do not do business in South Africa.

As activists are by now probably familiar with divestment activities I have concentrated my observations on selective purchasing policies, which have proved very effective on impacting corporate policy.

Cities like Los Angeles and New York, to name just two places with selective contracting policies, purchase billions of dollars worth of goods and services each year. Los Angeles alone has turned down hundreds of millions of dollars worth of contracts with companies that have ties to South Africa since the city passed a selective purchasing ordinance in 1986.

Even if a city eventually gives a contract to a company that does business in South Africa, the costs and inconvenience to the corporation of the selective purchase process exert significant pressure on it.

Put simply, most companies do far more business with city and state governments than they do in South Africa. Thus:

- * Motorola is ending its licensing and distribution agreements in South Africa when they expire later this year. This is the direct result of the pressure from city and state governments. Just a few years ago, Motorola not only had a subsidiary in South Africa but was a supplier to the police and military.

- * Merrill Lynch, also as a result of pressure from state and municipal governments, recently announced that it would no longer trade in South African securities.

- * Pyramid Technology's South Africa distributor recently went bankrupt. Pyramid has told us it does not plan to establish any new distribution agreement.

To spur on this kind of activity across the country we have had three national conferences and our staff testifies before city councils. But often some particular event will spark a local campaign. For example, the campaign that led to the initial selective purchasing bill in New York City was sparked when union workers in the shelters for the homeless found the city was serving pineapples from South Africa. Another key to getting legislation passed is the support of a member of a local municipal council. Sometimes these politicians have a real interest in South Africa, at other times they simply see it as a way of furthering their own political ambitions.

To get this legislation passed requires a strong grass roots movement. Obviously the business community strongly opposes such legislation. It requires a clear understanding of local political forces. In 1983, Massachusetts became the first state to pass a bill mandating the total divestment of the state employee pension fund. The bill was passed as a result of several years of effort by a broad coalition under the banner of "Mass Divest." It took many more years of anti-apartheid effort before Massachusetts adopted a selective purchase policy last year. In each case there was a concerted campaign for a particular policy.

Local involvement is also often important in the implementation process. In 1988, Metro Dade County passed a strong and effect selective purchasing policy. It is strong not only because of the language of the legislation, but the way it is implemented. There, the local anti-apartheid coalition played an important part not only in drafting the legislation but have continued to play a role in the ongoing implementation process.

Local groups need help from us at various levels. Because we have acquired experience we can provide guidance on drafting legislation capable of actually being implemented. We have been able to alert legislators to the need for particular flexibility in the selective purchase process. We have had to learn about corporate structure and various modes of business. We have had to develop a comprehensive list of U.S. companies doing business in South Africa. We get numerous calls ever week from anti-apartheid activists and the state and municipal governments seeking the latest information on particular companies.

Legal Issues

In some countries the efforts of local authorities to adopt sanctions legislation has been thwarted by national authorities. In the U.S. divestment legislation has been challenged in the courts on the grounds that the fiduciary responsibility of pension fund trustees is to get the best return on investment possible and that restrictions on the available pool of investment options conflicts with this responsibility. Also divestment legislation has been challenged on the grounds that the U.S. Constitution allocates foreign policy to the federal government and limits the ability of cities and states to regulate business beyond their borders. In an important case in the city of Baltimore the Court ruled the divestment could be done in a prudent, and thus fiduciarly responsible manner. The Court also ruled that when a city or state pension fund buys and sells stocks, it is acting as a "market participant" and not as "regulator." This "market participant" doctrine clearly also applies to selective purchase legislation.

U.S. Federal Sanctions

It is worth stressing the very strong link between anti-apartheid activity on the state and municipal level and on the federal level. To a large extent, what happens on the federal level is driven by what happens on the local level. When a member of Congress goes home to his district and there is an active anti-apartheid movement pushing the city to take strong and effective action, it affects the way he acts in Washington. We were able to mobilize those already involved on the local level at several key points in the build-up to the passage of the Anti-Apartheid Act of 1986.

On the federal level the United States now has a series of sanctions in place. The most important of these are as follows:

* The Arms Embargo: Enacted by executive order in 1977.

* The Comprehensive Anti-Apartheid Act of 1986: Bans new investment in South Africa (including loans) and prohibits sales to the police and military, bans the import of agricultural goods, coal, iron, steel, textiles, shellfish, uranium and products of state-owned corporations. The last provision has turned out to be important since all South African gold is exported through a state-owned company.

* The Rangel Amendment to the Budget Reconciliation Act of 1987 (effective as of 1988): Eliminates the ability of U.S. corporations to write off their taxes paid in South Africa against their U.S. taxes. This increased the effective tax rate on the profits of South African subsidiaries of U.S. corporations from 57% to 72%.

LOOKING TOWARDS THE FUTURE

1. How do we keep up the pressure?

Our experience in the U.S., and I think this applies internationally, is that even to maintain existing sanctions, we have to fight for additional sanctions.

Up to this point, activity at the state and municipal level has not been seriously affected in the U.S. by recent events in South Africa. However, this could change. One local group, seeking to get their city to divest, reported they were coming up against the argument "why bother if it will all be over in six months." This emphasizes the need for an intensified information flow, not only from South Africa to the national organizations but to the local groups.

At the national level, there are currently two pieces of legislation before Congress that would impose additional sanction:

* The Anti-Apartheid Amendments Act (HR.21): This act would mandate all U.S. companies disinvest from South Africa and the U.S. residents liquidate their portfolio investment. It would ban most trade, except for those minerals determined by the President to be strategically important to the United States.

* The South African Financial Sanctions for Democracy Act (HR. 3458): This act would prohibit banks from converting their loans from short term loans to long term exit loans and would prohibit the holding of exit loans by the beginning of 1993; it would end correspondent banking links,

limit trade lending and mandate U.S. opposition to the IMF providing South Africa loans or credits. The measures in this bill are phased in over a period of years and only become effective if the South African government does not meet certain conditions, similar to those contained in the Comprehensive Anti-Apartheid Act of 1986 (see below).

Without a new national campaign, the prospect of achieving additional sanctions seem slim. We have recently launched a VOTE FOR THE PEOPLE CAMPAIGN. This campaign links the demand for universal adult suffrage on a common voters roll to the need for additional sanctions. As a first step in this campaign we have been getting cities that have strong anti-apartheid legislation to adopted resolutions welcoming the release of Nelson Mandela but noting the continued lack of democracy. We plan to take this campaign into the churches and unions across the U.S.

2. Sanctions Until When?

In the coming period, the question will be repeatedly asked when should sanctions be lifted. We have strongly supported the position stated by Thabo Mbeki on U.S. television on February 2nd that sanctions should be maintained "Until the people of South Africa agree to a constitution. A constitution for a democratic South Africa."

In the U.S. the debate has already begun, because the Comprehensive Anti-Apartheid Act of 1986, provides that sanctions will be lifted if the South African government meets certain conditions, briefly summarized as follows:

- * frees Nelson Mandela and "all persons persecuted for their political beliefs or detained unduly without trial;"
- * repeals the state of emergency and releases all detainees;
- * legalizes "democratic political parties;"
- * repeals the Group Areas Act and the Population Registration Act; and
- * enters into "good faith negotiations with truly representative members of the black majority without preconditions."

The president is empowered to lift or modify the sanctions, after giving Congress 30 days notice to disapprove. The South African government must take the first step outlined above, along with three of the other stipulations, and make "substantial progress towards dismantling the system of apartheid and establishing a non-racial democracy." Thus in the U.S. our fight will be a political one over interpretation of language and, we will have to work hard to ensure that Congress does not accept a "soft" interpretation.

If the international solidarity movement is to maintain sanctions, the ANC, COSATU and the mass democratic movement leadership will have to speak out loudly, and with one voice, on the issue. Without such support we will inevitably see an erosion of sanctions.

3. How often can you lift economic sanctions?

The importance of having some clarity on when sanctions should be lifted relates to the danger of lifting sanctions too soon. Sanctions are not like a light switch that can be turned on and off.

In the U.S. it took many years of work to build the campaigns that led to states and cities taking economic action against apartheid. Once lifted, it is not likely that we could easily revive the momentum and get such measures reimposed.

Similarly, it will be difficult, although theoretically possible, to reimpose the federal sanctions once lifted. It is unlikely that the conditions that led to the passage of the Anti-Apartheid Act in 1986 would be repeated. The Act was passed at a time when South African government repression was extremely high as was the responsive wave of anti-apartheid activity in the U.S. President Reagan's policy of "constructive engagement" was widely seen to have failed and to be based solely on being nice to whites in South Africa. Thus the majority of the President's own party voted for the Anti-Apartheid Act. Failing some naked acts of mass repression repeating this achievement is doubtful.

4. How Many Exceptions?

This question is going to be of increasing importance. In the past period, we had the problem of censorship and that the people of the world heard almost no voice. In the coming period we are going to have the opposite problem, that of many voices. This is going to make it even more important that the ANC and the democratic movement speak with one, clear unified voice on sanctions.

Sanctions can not be applied with absolute surgical precision. In fact they gain significant impact from being all embracing. Everybody considers that they should be excluded. Even companies like Mobil claimed they should be exempted because of all the "good" things they are doing. We recently had a case of a U.S. company that set up a distribution agreement with a company in South Africa. The U.S. company claimed they should be exempted because the South African company was owned by blacks and served the democratic movement.

For years, we campaigned for the total isolation of South Africa, and that included a cultural boycott and an academic boycott. Some ignoring of it in selected cases, such as a good anti-apartheid play, did not affect the momentum of the forward

thrust. But now the situation is more complex. In the educational field, we have seen a number of cases where institutions claiming to be part of the democratic movement have opened links to U.S. institutions. Who decides if this is a violation of the academic boycott? What consideration is given to whether the U.S. university has divested its holdings in companies doing business in South Africa? On many campuses students continue to boycott Coca-Cola as an important part of their campaigns for total divestment. But now they are confronted by corporate officers who show them a letter from Archbishop Tutu to the company praising the company for its mode of withdrawal. But Coke has not met the anti-apartheid movement's guidelines - so now there is considerable confusion.

It is our experience that sanctions campaigns cannot be run with a series of exceptions. Local sanctions in the United States are effective precisely because they are part of the legal procedures governing state and municipal investment and purchasing policies. Procedures for determining which companies not to invest in or not to purchase from must be based on simple, easy to understand factual criteria. It is for this reason that ACOA worked with other anti-apartheid organizations to develop the Guidelines for Divestment mentioned earlier. It simply is not practical or legally possible to go back now and say we want to make some exceptions. Who would decide which exceptions? When? On what basis?

FUTURE CAMPAIGNS

While it is important to recognize the problems we face, it is equally important that we do not let these problems become demobilizing. We have already overcome numerous difficulties and have been extremely effective in building international pressure.

There are a number of areas where it would be possible to increase international cooperation and increase our work for additional sanctions.

Financial Sanctions

This is a campaign with which we have had considerable success internationally. Despite the agreement on a Third Interim Arrangement, South Africa will face considerable capital outflow - at least \$1 billion per year, till the end of the decade. This is a success that in 1984 we could have hardly dreamed of.

No U.S. bank has been willing to make a loan since the imposition of the debt standstill in September 1985. The main issue currently with U.S. banks is the issue of conversion of outstanding loans inside the standstill to ten year exit loans outside the standstill. Our own analysis is that many U.S. banks will seek to sell off their South African loans on the secondary

market in the next few years. They will look to European and other bank buyers but shouldn't European anti-apartheid groups campaign for the loans not to be bought?

More recently, the South African government has indicated that in the current climate it hopes to be able to raise some new international loans. We are going to have to be very vigilant on this matter. In the proposed U.S. financial sanctions bill discussed above, there is a provision whereby the U.S. government would restrict its business with banks, including foreign banks, that continue to make loans to South Africa. Even the threat of this may make some European banks think twice about new loans.

We believe that there is more room to pressure the international banks to get more money back despite the Third Interim Arrangement. For example, we learned of a case a few months ago where a regional U.S. bank sued a South African bank to get its money back in a British court on the grounds that because the loan was made in the UK, it was covered by UK law, not South Africa law. The South African bank settled out of court and paid back the U.S. bank in full. Clearly the South African bank could not have settled without the agreement of the South African government, but both wanted to settle for fear of setting a legal precedent that would destroy the debt standstill. As part of the settlement, the U.S. bank agreed not to talk about the case.

There are also other banking ties left to be severed, on which we might focus together. The Interfaith Center on Corporate Responsibility recently reported that in the U.S. some banks have been successfully pressured to end all correspondent banking ties to South Africa. For instance, the Bank of New York and BankAmerica have both recently announced that they will no longer maintain correspondent bank ties to South Africa.

Computers

South Africa is totally dependent on the outside world for computers and electronics. For example, South Africa is dependent for the import of 95% of all computer products.

The globalization of the computer industry provides us with both challenges and opportunities. No U.S. computer company still has a subsidiary in South Africa. Yet companies such as Hewlett Packard, IBM and Unysis all have distribution agreements in South Africa. They are also the most active in fighting off efforts on federal, state and municipal level.

In many cases, U.S. computer companies have ties to European computer companies. That situation provides us with useful opportunities for joint action. For example:

* Olivetti [Italy] sells Digital Equipment Corp. [US] computer products in South Africa, yet DEC goes around the

U.S. saying it has no distribution agreement for South Africa.

* Memorex Telex N.V., although based in The Netherlands, is largely owned by U.S. investors. As a result, we have placed Memorex Telex on our list of companies that do business in South Africa. This has quite upset both the U.S. affiliate of Memorex and the parent company. Memorex in the U.S. has lost business from city governments as a result of its parent's companies business ties to South Africa.

* Groupe Bull [France] recently acquired Zenith Data Systems [US]. A Business Day report said that a South African company, DataTec, was the "sole agent" for Zenith lap top computers in South Africa. Yet Zenith told us that neither they nor Groupe Bull does business in South Africa and they had never heard of DataTec.

Some companies, notably Apple, Lotus, Wang and Zenith, do not sell to South Africa. To get these products, South Africa has to buy on the gray market. I believe that much of this gray market is based in Europe. We can move to close some of these loopholes if we work together.

CONCLUSION

In the U.S., much of the muscle of the anti-apartheid movement has come from the state and municipal level. This strength has led to considerable success in isolating South Africa. Numerous U.S. companies have withdrawn from South Africa as a result of this pressure.

It is important that we take the new circumstances in South Africa into account. How this is to be done will not be easy. It is important that we recognize the victories that have been won. But it is equally important that we not be triumphalist. We are a long way from victory. The South African government has made clear that it is not talking about granting universal adult suffrage on a common voters roll. As the government seeks to give apartheid a new face, we need to plan together, as members of the international solidarity movement and work more closely than ever with the ANC, the democratic movement and COSATU.

safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferation risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

12 USC 10203.

Exports.
Defense and
national
security.
President of U.S.

(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS

22 USC 5058.

Sec. 308. (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for such accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

12 USC 461.
Effective date.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

PROHIBITION ON IMPORTATION OF URANIUM AND COAL FROM SOUTH AFRICA

22 USC 5059.

Sec. 309. (a) Notwithstanding any other provision of law, no—
(1) uranium ore,
(2) uranium oxide,
(3) coal, or
(4) textiles,

that is produced or manufactured in South Africa may be imported into the United States.

Effective date.

(b) This section shall take effect 90 days after the date of enactment of this Act.

PROHIBITION ON NEW INVESTMENT IN SOUTH AFRICA

22 USC 5060.

Effective date.

Sec. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

TERMINATION OF CERTAIN PROVISIONS

Sec. 311. (a) This title and sections 501(c) and 504(b) shall terminate if the Government of South Africa—

22 USC 5061.

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;
(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;

Nelson Mandela

(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;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

(b) The President may suspend or modify any of the measures required by this title or section 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has—

President of U.S.

(1) taken the action described in paragraph (1) of subsection (a),

(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and

(3) made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy, unless the Congress enacts within such 90-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.

(c) It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African Congress or other organizations—

African National
Congress.
Pan African
Congress.

(1) refuse to abandon unprovoked violence during such negotiations; and

(2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law, then the United States will support negotiations which do not include these organizations.

POLICY TOWARD VIOLENCE OR TERRORISM

Sec. 312. (a) United States policy toward violence in South Africa shall be designed to bring about an immediate end to such violence and to promote negotiations concluding with a removal of the system of apartheid and the establishment of a non-racial democ-

22 USC 5062.