

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KHULUMANI, SAKWE BALINTULO as)
personal representative of SABA)
BALINTULO, FANEKAYA DABULA as)
personal representative of LUNGILE)
DABULA, NOKITSIKAYE VIOLET)
DAKUSE as personal representative of TOZI)
SKWEYIYA, BERLINA DUDA as personal)
representative of DONALD DUDA, MARK)
FRANSCH as personal representative of)
ANTON FRANSCH, SHERIF MZWANDILE)
GEKISO as personal representative of)
NTOMBIZODWA ANNESTINA)
NYONGWANA, ELSI GUGA as personal)
representative of JAMES GUGA, JOYCE)
HLOPHE as personal representative of)
JEFFREY HLOPHE, NOMVULA EUNICE)
KAMA as personal representative of)
MNCEDISI DLOKOVA, JOYCE LEDWABA)
as personal representative of SAMUEL)
LEDWABA, JOHANA LERUTLA as personal)
representative of MATTHEWS LERUTLA,)
FRIEDA Z. LUKHULEI as personal)
representative of TOKKIE LUKHULEI,)
ELIZABETH MAAKE as personal)
representative of JACKSON MAAKE,)
ARCHINGTON MADONDO as personal)
representative of MANDLA MADONDO,)
SOPHIE MAIFADI as personal representative)
of BENJAMIN MAIFADI, TSHEMI)
MAKEDAMA as personal representative of)
LUGILE MAKEDAMA, MABEL MAKUPE)
as personal representative of ANDREW)
MAKUPE, MABEL MALOBOLA as personal)
representative of MALOBOLA MBUSO,)
EVELYN MATISO as personal representative)
of PITSI MATISO, BETTY MGIDI as)
personal representative of JEFFREY MGIDI,)
ELIZABETH MKHONWANA as personal)
representative of OBED MKHONWANA,)
CATHERINE MLANGENI as personal)
representative of BHEKI MLANGENI, CECIL)
MLANJENI as personal representative of)
KELE MLANJENI, SAMUEL MORUDU as)

CV 02 5952

Civil Action No.: _____
COMPLAINT
JURY TRIAL DEMANDED

GARAUFIS, J.

MANN, M.J.

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personal representative of SANNAH P.)
 LESLIE, TSHIDISO MOTASI as personal)
 representative of JOHN AND PENELOPE)
 MOLOKE, WILLIE NELANI as personal)
 representative of MONGEZI NELANI,)
 CATHERINE NGQULUNGA as personal)
 representative of BRIAN NGQULUNGA,)
 CATHERINE PHIRI as personal)
 representative of THOMAS PHIRI,)
 ELIZABETH SEFOLO as personal)
 representative of HAROLD SEFOLO, MARIA)
 SIBAYA as personal representative of)
 JEFFREY SIBAYA, PATRICIAL M. SONGO)
 as personal representative of DIPULO)
 SONGO, MPOLONTSI TYOTE as personal)
 representative of BOYBOY TYOTE,)
 NOMKHANGO PHUMZA SKOLWENI)
 DYANTYI, CLIFFORD ZIXELILE)
 FUDUKILE, WINDOVOEL GAAJE,)
 CHARLES HLATSHWAYO, MOSES)
 HLONGWANE, LESIBA KEKANA,)
 SANAKI MAHLATSI, ROBERT MAKANA,)
 ZAKHARIA FIKILE MAMBA, ELLIOT)
 SITHEMBISO MARENENE, ALFRED)
 MASEMOLA, MAUREEN THANDI)
 MAZIBUKO, MICHEAL MBELE,)
 LAETITIA NOMBAMBO MFECANE as)
 personal representative of RUBIN MFECANE,)
 DENNIS MLANDELI, TEFO MOFOKENG,)
 MOTLALETSATSI MOLATEDI, AZARIEL)
 MOLEBELELI, SIMON MOLOTSI, LINA)
 MOREANE as personal representative of)
 ALBERT XABA, THABISO SAMUEL)
 MOTSIE, SONTU NDLOVU,)
 MANGINDIVA ROBERT RHENENE,)
 THOBILE SIKANI, BUBELE STEFANE,)
 NOLUTHANDO BILETILE, LESLIE)
 MNCEDISI BOTYA, LEON DUKASHE,)
 ELSIE GISHI, DORTHIA GOMO-PEFILE,)
 ZAMIKHAYA BISHOP KHALI, JAMES)
 MAGABANA, NOSIPHO MANQUBA,)
 NOTATHU EUGENIA MATOMELA,)
 NOMISA THERESIA MAY, MBONGENI)
 NELSON MBESHU, MZUHLANGENA)
 NAMA, ELIAS NGAMANI as personal)
 representative of ELIZABETH NGAMANI,)

GESHIA NGOXZA, LUCAS)
NDUKWAYIBUZWA NGWENYANA,)
WELLINGTON MTYUKATO)
NKOSIPHENDULE, VUYANI)
NONGCAMA, SINDISWA MIRRIAM)
NUNU, THULANI NUNU, BONIWE)
PHALAZA, PATHISWA PRINGANE as)
personal representative of MTHOZAMA)
THEOPHILUS PRINGANE, MTHUTUZELI)
SIKANI, NOLUTHANDO SILETILE,)
THEMBEKA VICTORIA SIPHAHO,)
JOHANNES TITUS, MPOLONTSI TYOTE,)
MTHUZIMELE MELFORD YAMILE,)
NTUNANI WILLIAM ZENANI,)
THANDIWE SHEZI, ELIAS B. BONENG,)
DENNIS VINCENT FREDERICK BRUTUS,)
MORALOKI A. KGOBE, REUBEN)
MPHELA, and LULAMILE RALRALA,)

Plaintiffs,)

v.)

BARCLAYS NATIONAL BANK LTD,)
BRITISH PETROLEUM P.L.C.,)
CHEVRONTEXACO CORPORATION,)
CHEVRONTEXACO GLOBAL ENERGY,)
INC., CITIGROUP INC., COMMERZBANK,)
CREDIT SUISSE GROUP,)
DAIMLERCHRYSLER AG, AEG)
DAIMLER-BENZ INDUSTRIE, DEUTSCHE)
BANK AG, DRESDNER BANK AG,)
EXXONMOBIL CORPORATION, FLUOR)
CORPORATION, FORD MOTOR)
COMPANY, FUJITSU LTD., GENERAL)
MOTORS CORPORATION,)
INTERNATIONAL BUSINESS MACHINES)
CORPORATION, J.P. MORGAN CHASE,)
RHEINMETALL GROUP AG, RIO TINTO)
GROUP, SHELL OIL COMPANY, TOTAL-)
FINA-ELF, UBS AG, and DOE)
CORPORATIONS 1 – 100,)

Defendants.)

Plaintiff organization on behalf of itself and its members, as well as Plaintiff individuals (“Plaintiffs”), for their Complaint state as follows:

NATURE OF CASE

1. Crimes against humanity, genocide, extrajudicial killings, torture, unlawful detention, and cruel, inhuman, and degrading treatment are violations of international law. All of these crimes were practiced by the apartheid regime of South Africa between 1960 and 1993. Apartheid itself is recognized as a crime against humanity and a violation of international law.

2. Plaintiffs, victims of apartheid-era violence, bring this action under the Alien Tort Claims Act, 28 U.S.C. §1350, against the corporations which aided and abetted or otherwise participated in these crimes. Plaintiffs are the personal representatives of victims of extrajudicial killing, or were themselves tortured, sexually assaulted, indiscriminately shot, or arbitrarily detained by the apartheid regime. Plaintiffs also lived under the apartheid system and were subject to the racial pass laws, forced relocations, job restrictions, housing restrictions, repression, lack of educational opportunity, poor housing and living conditions, and overwhelming injustices that characterized apartheid.

3. Recent historical evidence demonstrates that the participation of the defendants, companies in the key industries of oil, armaments, banking, transportation, technology, and mining, was instrumental in encouraging and furthering the abuses. Defendants’ conduct was so integrally connected to the abuses that apartheid would not have occurred in the same way without their participation.

4. Beginning in 1950, the world community identified and condemned apartheid as a crime against humanity and instituted a variety of sanctions against South Africa, including embargoes on armaments, oil, and technology. These actions put the defendants on notice that

their involvement violated international law and constituted participation in a crime against humanity. Nevertheless, Defendants provided substantial assistance to the apartheid regime, acting in the face of an unjustifiably high risk of harm to the African population. Defendants acted with deliberate indifference to the well-being of the African population and knew or should have known that their conduct endangered the lives of black South Africans. The defendants' conduct also satisfies the principles of third party liability which were imposed on corporate participants in crimes against humanity by the Nuremburg Tribunal.

5. Apartheid intentionally dispossessed, disenfranchised, dominated, and abused the black South African population from 1960 to 1993. Its consequences continue to date. This action seeks a measure of justice for its victims.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction based on the following: (a) 28 U.S.C. § 1350, the Alien Tort Claims Act; (b) 28 U.S.C. § 1331, in that Plaintiffs make claims against Defendants under federal common law as it incorporates customary international law and international treaties; (c) 28 U.S.C. § 1332(a)(3) in that the matter in controversy exceeds the sum or value of \$75,000 per plaintiff and is between citizens of different states and in which citizens or subjects of a foreign state are additional parties; and (d) 28 U.S.C. § 1367 for any claims not otherwise covered by the aforementioned jurisdictional bases.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(3) in that defendant corporations may be found in this district and there is no district in which the action may otherwise be brought.

DEFINITIONS

8. Apartheid literally means “separateness”.¹ Apartheid is defined by the Rome Statute of the International Criminal Court as “inhumane acts . . . committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” Plaintiffs also adopt the definition of apartheid in Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid. The treaty defines apartheid as a system that includes murder; the infliction of serious bodily or mental harm; torture or cruel, inhuman, or degrading treatment; the “deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;” denying to members of a racial group basic human rights and freedoms such as the right to work, the right to education, and the freedom of peaceful assembly; exploitation of the labor of the members of a racial group or groups, in particular by submitting them to forced labor; the division of a population by racial lines by the creation of separate reserves and ghettos, the prohibition of mixed marriages and the expropriation of property belonging to a racial group or groups; and the institution of measures calculated to prevent a racial group from participation in the political, social, economic and cultural life of a country, in particular by denying the group or groups basic human rights or freedoms.

9. “Apartheid regime” refers to the country of South Africa during the period 1948 to 1994, when that country was ruled by the National Party.

10. “Bantustan” refers to the barren, rural areas where Africans were restricted or forcibly resettled. These areas were also called “homelands” or rural reserves. Bantustan comes

¹ Robert Ross, *A Concise History of South Africa* (Cambridge University Press: 1999) at 115.

from the word “Bantu” which is a derogatory term used by some white South Africans to refer to Africans.²

11. “Black” refers to all African, Indian, and “Colored” South Africans unless otherwise indicated.

PARTIES

Plaintiffs

12. **Khulumani Support Group** (“Khulumani”) is a South African organization with its national headquarters located in Johannesburg. Khulumani means “**Speak Out**” in Zulu. The organization works to assist victims of apartheid-era violence and has 32,700 members who are survivors of such violence. Through victim empowerment and direct aid, Khulumani supports victims in their struggle for personal and community reconciliation, thereby restoring their dignity and integrating them into mainstream society. Initially, Khulumani was created as a subsidiary of South Africa’s Centre for the Study of Violence and Reconciliation (“CSV”), but is now an autonomous organization with an eight-member full-time staff. The staff works both in the national office and within all nine provinces. Over half of the staff are survivors of apartheid-era violence. Additionally, Khulumani has an active eight-member board, whose members represent various human rights groups including CSV. Khulumani operates over 70 community-based chapters in all nine of South Africa’s provinces. Khulumani was established in 1995 by the survivors and families of the victims of the political violence that occurred during the apartheid era. Khulumani was first formed in response to the creation of the Truth and Reconciliation Commission (“TRC”). Its primary purpose was to ensure that the victims had the support they needed in order to speak out about their personal experiences with the human rights

² Kevin Danaher, *In Whose Interest? A Guide to U.S. – South Africa Relations* (Washington, DC: Institute for

atrocities that were committed during the apartheid regime. Throughout the TRC process, Khulumani helped victims obtain and fill out applications and appeals, coordinated meetings with TRC officials, provided individual and group counseling for victims throughout their testimonies in order to utilize the official process of truth telling for survivors to reclaim their victimization and their dignity. Khulumani also represented the victims before the government in order to give them a voice throughout the creation and implementation of the TRC. In addition to working alongside the TRC process, Khulumani began to create innovative programs to broaden the victim's personal reconciliation processes beyond the scope of the TRC. Once the TRC stopped taking statements in 1998, these programs became the main focus of Khulumani's work and have continued to drive the organization. For example, Khulumani provides direct medical assistance to victims and their families, educational assistance to children, and equipment, such as wheelchairs, to injured victims. Khulumani's counseling sessions give victims the opportunity to gain support and draw strength through shared experiences. Khulumani also gives referrals to individuals in need of additional psychological care. Khulumani's facilitators and staff receive psychological training. Khulumani also supports many of the families of the disappeared by offering special counseling groups and seminars in conjunction with CSV's Disappearances Project.

A. Victims of Extrajudicial Killings

13. The following plaintiffs are personal representatives of victims of extrajudicial killings.³

Policy Studies, 1985) at 107.

³ Some victims of extrajudicial killings were also victims of torture and arbitrary detention.

14. **Sakwe Balintulo's** brother **Saba Balintulo**, was murdered by the South African Police on March 15, 1973. On that day, Mr. Balintulo and fifteen friends were walking in the road, when the SAP opened fire on them. Mr. Balintulo was first shot in the leg and then shot three more times in the torso. The gun shots killed Mr. Balintulo as well as his fifteen friends.

15. **Fanekaya Dabula** is the father of **Lungile Dabula**, who was slain by the South African Police in March 1986. At that time, the Witdoeke, a vigilante group supported by the SAP, was burning down houses in the Crossroads Squatter Camp outside of Cape Town. Mr. Dabula was in a crowd of people that was running away from the burning buildings. While Mr. Dabula was running, he was fatally shot in the back.

16. **Nokitsikaye Violet Dakuse** is the sister of **Tozi Skweyiya**, who was murdered by the South African Police on March 2, 1985. He was playing with his friends at the corner of the street on which he lived. Six soldiers and police officers arrived and Mr. Skweyiya and his friends ran. Mr. Skweyiya entered the house of Zaphukibe Jacobs. The police followed and shot Mr. Skweyiya three times in front of Mr. Jacobs and his wife. The police and soldiers then brought Mr. Skweyiya's body out of the house, where they shot him further. A van arrived and took Mr. Skweyiya's body away. Ms. Dakuse and her mother were present when this happened and cried out to the police, who threatened to shoot them too. The following day, Ms. Dakuse and her mother went to the police station to recover the body. The body had been stripped of all clothing. No investigation was made and no charges were ever brought against the perpetrators.

17. **Berlina Duda** is the wife of **Donald Duda** who was murdered by the South African Police on May 17, 1986. The police shot and killed Mr. Duda during a period of civil unrest. After her husband was shot, the South African Police (SAP) teargassed Ms. Duda. She was also detained and beaten by the police. Ms. Duda continues to suffer from her husband's

death. Mr. Duda was the primary source of income for his wife and four children. Ms. Duda continues to suffer from the physical and mental trauma of Mr. Duda's death and the torture inflicted upon her.

18. **Mark Fransch** is the brother of **Anton Fransch**, who was murdered by the South African Police and the South African Defense Force in September 1989, when he was 20 years old. Mr. Fransch was a member of the ANC who was staying at a house on Church Street in Crawford. SAP and South African Defense Force (SADF) officers said that Mr. Fransch was a "dog" and that they would kill him. Thirty to forty officers, some of whom arrived in a Caspir vehicle, repeatedly shot into the house, ripping apart Mr. Fransch's arm and leaving pieces of his flesh and hair on the wall. An inquest into Mr. Fransch's death did not result in any findings.

19. **Sherif Mzwandile Gekiso** is the son of **Ntombizodwa Annestina Nyongwana**, who was murdered by the South African Police on March 5, 1986. Ms. Nyongwana and the six other individuals murdered with her have become known as the Guguletu 7. The police gave no explanation for the massacre and no one was ever prosecuted for the deaths. Witnesses to the massacre refused to speak for fear of being arrested and/or detained.

20. **Elsi Guga** is the mother of **James Guga**, who was slain by the Security Police in 1985. The shooting occurred while activists were singing freedom songs and marching in the streets. The Security Police shot Mr. Guga, 19, while he was running from the gunfire.

21. **Joyce Hlophe** is the mother of **Jeffrey Hlophe**, who is known as one of the KwaNdebele 9, nine young men who were executed in July 1986. Mr. Mamasela drove the young men to a house in Vlaklaagte in the KwaNdebele homeland and lined them up against a wall. The security police then entered the room and executed them. The police then doused the young men's bodies with gasoline and burned them in order to destroy the evidence.

22. **Nomvula Eunice Kama** is the sister of **Mncedisi Dlokova**, who was murdered by the South African Security Police. On March 21, 1985, Mr. Dlokova was shot while participating in a march held in Uitenhage. Ms. Kama and her family could not attend her brother's funeral for fear that they would lose their homes.

23. **Joyce Ledwaba** is the mother of **Samuel Ledwaba**, who is known as one of the KwaNdebele 9. Former Vlakplaas policeman Joe Mamasela lured the young men to their deaths under the pretense they were going to get military training. Mr. Mamasela drove the young men to a house in Vlaklaagte in the KwaNdebele homeland and lined them up against a wall. The security police then entered the room and executed them. The police then doused the young men's bodies with gasoline and burned them in order to destroy the evidence.

24. **Johana Lerutla** is the mother of **Matthews Lerutla**, who was murdered by the South African Police outside Mamelodi in July 1986. Mr. Lerutla, 15 at the time of his murder, was a student and member of the Congress of South African Students. Joe Mamasela, a Police spy, lured Mr. Lerutla to his death under the pretense that Mr. Mamasela would take Mr. Lerutla and his friends to Botswana to join the ANC for military training. Instead Mr. Mamasela led them to their execution at Nietverdiend, a location five kilometers north of Piennar's River near the Botswana border. Mr. Lerutla and his friends were interrogated, kicked, beaten, and strangled with wire by members of the SAP. To conceal the evidence, Mr. Lerutla's body was blown up using a landmine.

25. **Frieda Z. Likhulei** is the mother of **Tokkie Likhulei**. Mr. Likhulei was detained during the June 16, 1976 riots. He was last seen at the Silverton Police Station, where he was being beaten and tortured. Family and friends have spent the last twenty-six years

searching for Mr. Lukhulei, visiting police stations but have yet to find out what happened to him. His mother has not seen or heard from him since June 21, 1976.

26. **Elizabeth Maake** is the mother of **Jackson Maake**, who was murdered by the South African Police. The SAP first abducted Mr. Maake, who was working for them as a spy in the ANC, and took him to a deserted property owned by the Pretoria Portland Cement Mine. He was accused of being a double agent, which he denied. He gave Andrew Makupe's name as his MK contact (The MK – Mkhonto Wesizwe – was the military wing of the ANC). Mr. Makupe was then abducted, followed by Harold Sefolo. During the torture of Mr. Sefolo, Mr. Maake was shocked to death in front of Mr. Sefolo and Mr. Makupe. Ms. Maake did not learn of her son's fate until it was published in the *City Press Sunday*.

27. **Archington Madondo** is the father of **Mandla Madondo**, who was murdered by the South African Defence Force on July 10, 1986. Mr. Madondo was sent by his father to buy some bread. While he was standing with friends outside the shop, he was shot to death by South African soldiers who were driving down the street in a Caspir vehicle. Mr. Madondo was just 16 years old when he died. His twin brother, Thamsanqa, was arrested shortly after Mr. Madondo's murder and imprisoned for one year without a trial.

28. **Sophie Maifadi** is the mother of **Benjamin Maifadi**, who is known as one of the KwaNdebele 9, nine young men who were executed in July 1986. Former Vlakplaas policeman Joe Mamasela lured the young men to their deaths under the pretense they were going to get military training. Mr. Mamasela drove the young men to a house in Vlaklaagte in the KwaNdebele homeland and lined them up against a wall. The security police then entered the room and executed them. The police then doused the young men's bodies with gasoline and burned them in order to destroy the evidence.

29. **Tshemi Makedama** is the sister of **Lugile Makedama**, who was murdered at the De Aar Police Station in October 1985.

30. **Mabel Makupe** is the wife of **Andrew Makupe**, who was murdered, along with Jackson Maake and Harold Sefolo, by the South African Security Police in June 1986. Mr. Makupe was a courier for the ANC. The SAP abducted Mr. Makupe, took him to the Pretoria Portland Cement Mine and interrogated him. During the interrogation, Mr. Makupe told the SAP about Mr. Sefolo. Mr. Makupe was then forced to call Mr. Sefolo in Witbank, telling him that he would be picked up by some ANC comrades that night. That night two SAP spies abducted Mr. Sefolo. In order to force Mr. Sefolo to provide more information, they shocked Mr. Maake to death right in front of him. Shortly thereafter, both Mr. Makupe and Mr. Sefolo were shocked to death.

31. **Mabel Malobola** is the mother of **Malobola Mbuso**, who is known as one of the KwaNdebele 9, nine young men who were executed in July 1986. Former Vlakplaas policeman Joe Mamasela lured the young men to their deaths under the pretense they were going to get military training. Mr. Mamasela drove the young men to a house in Vlaklaagte in the KwaNdebele homeland and lined them up against a wall. The security police then entered the room and executed them. The police then doused the young men's bodies with gasoline and burned them in order to destroy the evidence.

32. **Evelyn Matiso** is the mother of **Pitsi Matiso**, who was murdered by the police in July 1986. While Mr. Matiso and a group of his friends were playing soccer, a policeman singled out Mr. Matiso and began to chase him. The policeman chased Mr. Matiso out of the area where he was playing and shot him.

33. **Betty Mgidi** is the mother of **Jeffrey Mgidi**, who was shot to death by the South African Police in 1984. After Mr. Mgidi's death, his family was under constant surveillance by the SAP. The police banned all speeches at Mr. Magidi's funeral and prevented his family from giving him a proper burial.

34. **Elizabeth Mkhonwana** is the sister of **Obed Mkhonwana**, who is known as one of the KwaNdebele 9, nine young men who were executed in July 1986. Former Vlakplaas policeman Joe Mamasela lured the young men to their deaths under the pretense they were going to get military training. Mr. Mamasela drove the young men to a house in Vlaklaagte in the KwaNdebele homeland and lined them up against a wall. The security police then entered the room and executed them. The police then doused the young men's bodies with gasoline and burned them in order to destroy the evidence.

35. **Catherine Mlangeni** is the mother of **Bheki Mlangeni**, who was murdered by a parcel bomb on February 15, 1991. The bomb was planted by Colonel Eugene de Kock of the Security Branch of the South African Police. Mr. Mlangeni received a package at his office, opened it, and discovered that it was a walkman. Leaving the box at his office, he took the walkman home that night to try it out. Mr. Mlangeni did not know that a bomb had been planted in the earphones. When he turned the walkman on, the bomb exploded, and Mr. Mlangeni's head was blown off in front of his family, killing him instantly. The Truth and Reconciliation Commission granted his killers amnesty.

36. **Cecil Mlanjeni's** brother, **Kele Mlanjeni**, was slain by the South African Police on November 29, 1985. On that day, the police burst into Mr. Mlanjeni's home and attacked all those present. People started fleeing the home to avoid the SAP. As Mr. Mlanjeni was trying to flee, the police shot him in the back of the head. He died instantly.

37. **Samuel Morudu** is the grandfather of **Sannah P. Leslie**, who was murdered in a firebomb attack in February 1987. Ms. Morudu was born on December 19, 1974 at Hetzogville in the Orange Free State. In 1980, Ms. Morudu moved to Mamelodi to live with her uncle and attend school. Ms. Morudu's uncle, Moss Morudu was a member of the Mamelodi Civic Association and was targeted by the South African Police. During the early morning hours of February 20, 1987, four bombs were thrown into the bedroom where Ms. Morudu slept with her four cousins. All the children suffered at least third degree burns. Ms. Morudu was rushed to Kalafong Hospital, but she could not be saved. Ms. Morudu died on February 25, 1987, from the burns she sustained.

38. **Tshidiso Motasi** is the son of **John and Penelope Moloke**, who were murdered in their beds by the South African Police. Mr. Motasi was only 5 years old at the time. Three members of the SAP stormed into his home at 10pm and shot his father. His mother, who witnessed the slaying and saw the face of one of the killers, was shot in order to protect the identity of the killers. The police did not detect Mr. Motasi. Not knowing what to do, Mr. Motasi spent the night alone, crying, with the bodies of his murdered parents. Neighbors, who heard his cry the following morning and came to investigate, found Mr. Motasi with his parents' bodies. John Miles chronicles Mr. Motasi's story in the book *Deafening Silence*.

39. **Willie Nelani** is the father of **Mongezi Nelani**, who was murdered by South African security police on April 1, 1987. The police shot Mr. Nelani and three of his friends because they were political activists.

40. **Catherine Ngqulunga** is the wife of **Brian Ngqulunga**, who was murdered by the South African Police on July 19, 1990. Mr. Ngqulunga had worked for the SAP, but had

recently left his position and was in contact with the ANC. His former colleagues kidnapped him, then beat, stabbed and chopped his body to pieces.

41. **Catherine Phiri** is the sister of **Thomas Phiri**, who was one of ten young men murdered by the security police in June 1986. The ten young men disappeared from their homes on June 26, 1986. Joe Mamasela, a police spy, lured the young men to their deaths. Mr. Mamasela told young men they were going to Botswana to join the ANC for military training. Instead, Mr. Mamasela led the young men to Nietverdiend where the security police and military were waiting. The security police and military packed the ten helpless young men into a minivan filled with explosives and blew them up.

42. **Elizabeth Sefolo** is the wife of **Harold Sefolo**, who was murdered by the South African Police. Mr. Sefolo was abducted in June of 1986 along with Jackson Maake and Andrew Makupe. Mr. Sefolo was interrogated and tortured. A knife was forced in his nose to coerce him to provide information regarding the ANC. Mr. Sefolo begged for his life. The police then shocked Mr. Maake and Mr. Makupe to death before Mr. Sefolo. Shortly thereafter, Mr. Sefolo was shocked to death. The police then took the bodies to a minibus, which was then placed over a landmine, which was detonated. This was done to create the impression that they had blown themselves up. Ms. Sefolo learned of her husband's fate in a newspaper article in the *City Press Sunday*.

43. **Maria Sibaya** is the mother of **Jeffrey Sibaya**, who was murdered by South African Police outside Mamelodi in July 1986. Mr. Sibaya, 17 at the time of his death, was a member of the ANC and the Congress of South African Students. The SAP approached him about becoming an informant. After Mr. Sibaya refused, Joe Mamasela, a SAP spy, lured Mr. Sibaya to his death. Mr. Mamasela told Mr. Sibaya and his friends that he was going to take them to

Botswana to join the ANC for military training. Instead Mamasela led them to their execution at Nietverdiend, a location five kilometers north of Piennar's River near the Botswana border. Mr. Sibaya and his friends were interrogated, kicked, beaten, and strangled with wire by members of the SAP. To conceal the evidence, Mr. Sibaya's body was blown up using a landmine.

44. **Patricial M. Songo** is the mother of **Dipulo Songo**, who was murdered during the Mamelodi Massacre on November 21, 1985. Ms. Songo was a 16 year old student. She was attending a gathering that was to present the then mayor with a memorandum concerning the high cost of rentals in Mamelodi. The South African Police and South African Defense Force opened fire on the crowd, shooting even those who ran away. No one has ever been prosecuted or called to account for the massacre.

45. **Mpolontsi Tyote** is the father of **Boyboy Tyote**, who was murdered by the South African Police on November 11, 1991. While Mr. Tyote and his friends were holding a meeting, the SAP appeared and started firing at them. Mr. Tyote was shot dead.

B. Victims of Torture

46. The following plaintiffs are victims of torture.⁴

47. **Nomkhango Phumza Skolweni Dyantyi** was tortured by the South African Police in 1983. The police detained Ms. Dyantyi and took her to the Maitland Police Station, where they tortured her for three weeks. The SAP shot Ms. Dyantyi in the legs, where bullet fragments still remain. The SAP repeatedly beat Ms. Dyantyi on her head. She lost most of her eyesight as a result of the torture inflicted by the SAP and was left with a large scar on her head and face.

⁴ Some victims of torture were also victims of sexual assault and arbitrary detention.

48. **Clifford Zixelile Fudukile** was shot and repeatedly tortured by the South African Police beginning in 1982. As a result of the shooting, Mr. Fudukile was paralyzed. He can no longer work and still suffers from his injuries.

49. **Windovoel Gaaje** was detained on June 9, 1986. During his imprisonment, he was tortured and beaten by the South African Police in Hoffmeyer prison. On June 9, 1987, Mr. Gaaje was released; however, he was detained again in 1990 and sent to Henneman Prison for months, before being transferred to Bloemfotein Prison. Mr. Gaaje continues to suffer from the torture.

50. **Charles Hlatshwayo**, a member of the ANC, was beaten and tortured by the Bophuthatswana police in 1990. A police informer, pretending to work for the ANC, lured Mr. Hlatshwayo and his colleagues into a police trap. The police then tortured Mr. Hlatshwayo. They handcuffed him, beat him unconscious, and poured cold water over him to revive him. Then the police inserted electric wires into Mr. Hlatshwayo's penis and shocked him until he passed out. The police also choked Mr. Hlatshwayo with a rubber tube. The police tortured Mr. Hlatshwayo for three weeks, until he was placed in detention. Mr. Hlatshwayo urinated blood for six months following his torture. The electrical shock caused severe damage to Mr. Hlatshwayo's spine and vocal cords. He is now confined to a wheelchair and cannot talk.

51. **Moses Hlongwane** was detained under the State of Emergency on June 17, 1986. He was released in May 13, 1987. In August 1990, Mr. Hlongwane was detained by the Bophuthatswana Defense Force when he was trying to flee to Botswana. He spent two weeks at Matikeng Police Station under hard conditions. He was then sent to Virginia Police Station where he was tortured for one week and released. Even after his release, the police continued to harass Mr. Hlongwane. Mr. Hlongwane continues to suffer from the torture.

52. **Lesiba Kekana** was unlawfully arrested and detained without trial from June 1986 to February 1987. During his detention, he was tortured. Mr. Kekana continues to suffer from the torture.

53. **Sanaki Mahlatsi** was detained on June 12, 1986 under the State of Emergency. During his detention the South African Police tortured, harassed and beat him. After three months at the Bothaville Police Station Mr. Mahlatsi was transferred to the Kroonstad Prison where his torture continued. He was placed in solitary confinement for five months prior to his release in June 1987.

54. **Robert Makana** was detained in September 1986 under the State of Emergency. During his detention he was beaten and tortured. After spending three months at St. Albans Prison, Mr. Markana was transferred to Steyn Prison. He was released in May 1987. Mr. Markana was also detained in July 1985 for one month. Because of his imprisonment, Mr. Markana lost his job. Mr. Markana continues to suffer from the torture.

55. **Zakharia Fikile Mamba** was tortured repeatedly by South African Security Police. After Mr. Mamba became politically active in 1984, the SAP began tracking him. He went into hiding, only emerging in March 1986 to participate in school protests. After the protests, Mr. Mamba went back into hiding. He was found by the SAP and taken to the Bothaville police station. There, Mr. Mamba was interrogated. Mr. Mamba was transferred to Wesselsbronx police station where his torture began. While Mr. Mamba was being interrogated two police officers handcuffed and repeatedly punched and kicked him. The police tortured Mr. Mama again three weeks later, handcuffing him and beating him. However, this time they placed a metal hat-like device on his head and electrocuted him. The security police also poured water on his head while he was being electrocuted. Mr. Mamba passed out but the beating

continued. In addition to the torture, Mr. Mamba was not allowed to bathe. On July 10, 1987, Mr. Mamba was released. But the torture did not stop. Twice a month, every month, through 1990, the security police picked up Mr. Mamba, took him to the Bothaville police station, and interrogated and tortured him. On January 5, 1990, at approximately two o'clock in the morning, the SAP entered Mr. Mamba's home and took him to Kgotsong police station where they beat him, electrocuted him and tortured him for four hours. In September 1990, because of constant police harassment, Mr. Mamba went back into hiding. On New Year's Day 1991, the local police found Mr. Mamba and subsequently kicked and punched him. Mr. Mamba was hospitalized. On February 11, 1991, tired of the constant police harassment, Mr. Mamba decided to leave the country. However, the security police detained Mr. Mamba. They beat and tortured Mr. Mamba and again he was hospitalized. Mr. Mamba continues to suffer from the torture.

56. **Elliot Sithembiso Marenene** was tortured by the South African Police at the Gugulethu Police Station in June 1985. The SAP placed an electrical instrument on his fingers and shocked him. The SAP then beat Mr. Marenene all over his body, breaking his arm in the process. The SAP also deprived Mr. Marenene of food and water during his detention. Mr. Marenene still suffers from the torture.

57. **Alfred Masemola** was imprisoned on Robben Island from August 11, 1985 to 1990. During his imprisonment, the police beat Mr. Masemola, breaking his arm on one occasion. Mr. Masemola spent one year in solitary confinement without treatment for his broken arm. The police also shot Mr. Masemola. He still has bullet fragments lodged in his head that cause severe headaches. The bullet fragments cannot be removed. Mr. Masemola continues to suffer from the torture.

58. **Maureen Thandi Mazibuko** was beaten and tortured by the South African Police in 1977. The SAP detained Ms. Mazibuko on March 23. She was taken to the Gugulethu police station. The SAP started to interrogate her but they were unable to glean any pertinent information. She was then taken to a stone building in Cape Town. As Ms. Mazibuko entered the building she could hear people crying. A member of the SAP forced Ms. Mazibuko into a dentist chair. He then threw acid on her head. The initial shock from having the acid thrown on her paralyzed Ms. Mazibuko. As she tried to wipe the acid off, large clumps of her hair began to fall. The officer punched her repeatedly, stripped her naked, and subjected Ms. Mazibuko to psychological abuse. The torture lasted for 10 hours. Shortly thereafter, Ms. Mazibuko passed out. She was then taken to Wynberg Prison where she was put into a cell with children. There were no toilets and no fresh water. The SAP sent a social worker to Ms. Mazibuko's cell to tell her she was going to prison for 13 or 14 years. Ms. Mazibuko still suffers physically and mentally as a result of the torture. She was disfigured by the acid and developed Post Traumatic Stress Syndrome (PTSD). As a result of her PTSD, Ms. Mazibuko is plagued by nightmares, insomnia, paranoia, memory loss, paralyzing fear, dissociation, and feelings of hopelessness.

59. **Micheal Mbele**, born on October 31, 1944, was politically active in a union as a shop steward and was also a United Democratic Front member. Because of Mr. Mbele's political activities the Special Security Police detained and tortured Mr. Mbele in 1986. For three straight days police beat and shocked Mr. Mbele with electric pipes, then choked him with a rubber tire. As a result of his torture Mr. Mbele lost his hearing. Mr. Mbele's suffering continued for eleven more months as police placed him in solitary confinement. Mr. Mbele's continues to suffer from the torture.

60. **Laetitia Nombambo Mfecane** is the daughter of **Rubin Mfecane** who was repeatedly detained and tortured by the South African Police. In 1960, the SAP came to Mr. Mfecane's home and beat him. He was then taken to Sidnum Port Elizabeth Prison. For three months, he was tortured. He was severely beaten and electrocuted. As a result of his torture, he suffered from psychotic episodes. In 1964, the SAP detained Mr. Mfecane again and sentenced him to four and a half years at Robben Island. In addition to the psychotic episodes, Mr. Mfecane suffered severe pain as a result of the torture. Due to his detention, Mr. Mfecane lost his job and his house. For twenty years Mr. Mfecane and his family had no stable home. Mr. Mfecane was eventually admitted to Butterworth Hospital in 1983 because of his psychotic episodes. He died there in May of 1983.

61. **Dennis Mlandeli** was detained during a political uprising in 1977. During his detention, Mr. Mlandeli was severely beaten, punched, and kicked. Subsequently, Mr. Mlandeli was transferred to another facility and no one was allowed to visit him. Mr. Mlandeli continues to suffer from the torture.

62. **Tefo Mofokeng** was detained by South African Security Police while attempting to attend training with the ANC in Botswana. During his detention at Mmabotho prison, Mr. Mofokeng was tortured. He was transferred to Virginia prison in June 1990 where his torture continued until his release. Mr. Mofokeng continues to suffer from the torture.

63. **Motlaletsatsi Molatedi** was detained in June 1986 under the State of Emergency. During her imprisonment, the South African Police tortured and interrogated Ms. Molatedi. Ms. Molatedi spent a total of nine months at the Allanridge Police Station and Kroonstad Prison. She continues to suffer from the physical and mental effects of the torture, including hearing loss and depression.

64. **Azariel Molebeleli** was first detained in 1985 after the riots at the Mophate Secondary School. The Security Police went to Mr. Molebeleli's home at two o'clock in the morning and sent him to Klenksdorp prison. He was detained there for seven days. After his release, Mr. Molebeleli returned to school. Soon after he returned, Mr. Molebeleli was expelled from school. He was detained again in June 1986 under the State of Emergency. He was sent to Wesselsbrook Police station for a month, then transferred to Kroonstad Prison where he spent a year. In 1991, Mr. Molebeleli decided to leave the country and go to Botswana. Unfortunately, he was caught by the security police and imprisoned at Mega City Police Station, where he was tortured. Two weeks later he was transferred to Virginia Police Station. He remained at Virginia Police Station for only seven days, until he was released. Mr. Molebeleli continues to suffer from the torture.

65. **Simon Molotsi** was detained on June 12, 1986 under the State of Emergency. During his detention, Mr. Molotsi was assaulted and subjected to electric shocks. On August 29, 1986, Mr. Molotsi was transferred to Kroonstad Prison, where the torture continued. Mr. Molotsi was released in 1987. After his release, the police continued to harass Mr. Molotsi by performing random searches of his home. Mr. Molotsi continues to suffer as the result of the torture.

66. **Lina Moreane** is the mother of **Albert Xaba**. Mr. Xaba was arrested for a petty crime. While in prison, he was beaten on the head and sprayed with tear gas. The beatings caused Mr. Xaba to go blind, become mute, and lose the use of his legs. Mr. Xaba was confined to bed for the rest of his life. In addition, the beatings caused a blood clot in Mr. Xaba's brain. Mr. Xaba eventually died from the brain damage caused by the beatings.

67. **Thabiso Samuel Motsie** was detained on December 23, 1986 under the State of Emergency. During his imprisonment, the police tortured him. He was beaten, kicked, assaulted and harassed. After three weeks at the Bothaville Police Station, he was transferred to Kroonstad Prison, where the torture continued. Mr. Motsie was released on April 27, 1987, but, the police continued to harass him. Mr. Motsie received no medical treatment for his wounds while in prison.

68. **Sonto Ndlovu** was detained on October 31, 1987 for alleged sabotage. On that day, Ms. Ndlovu's cousin, Peter Dlamini, visited her at work. Her cousin had a limpet mine with him that detonated and caused injuries. Her cousin went into exile, but Ms. Ndlovu was charged with sabotage and arrested. During her detention, Ms. Ndlovu was tortured. The police severely beat Ms. Ndlovu, causing a loss of hearing in her left ear. As a result of the torture, Ms. Ndlovu can no longer bear children. Ms. Ndlovu continues to suffer from the torture.

69. **Mangindiva Robert Rhenene** was tortured by the SAP in 1984. The SAP detained Mr. Rhenene at the Goodwood Police station before transferring him to Pollsmore. At Pollsmore, the SAP placed a black bag over Mr. Rhenene's head and electrocuted him through his hands and feet. Mr. Rhenene continues to suffer from the torture.

70. **Thobile Sikani** was detained, tortured, and shot by the South African Police. The police shot Mr. Sikani, in 1983, while he was attending a the funeral for four of his friends. Without warning, the SAP opened fire on the funeral procession. Mr. Sikani was carrying the coffin of one of his friends, when he was shot in the left leg by the SAP. In 1986, the SAP detained Mr. Sikani at the Bishop Lewis Police Station. There, seven officers forced Mr. Sikani to lay flat on his back on the ground. The SAP officers then stood on Mr. Sikani's chest and began beating him with their fists and batons. He attempted to cover his body, but his efforts

were futile. The beating continued for ten hours. After the beating stopped, blood poured from Mr. Sikani's nose and he sustained serious injuries that left scars and marks all over his body and face. He was then taken to a separate room where his torture continued. One of the officers brought in a machine and placed Mr. Sikani's scrotum and testicles inside. The machine caused excruciating pain to Mr. Sikani's genital area and Mr. Sikani passed out. When he regained consciousness, he found himself handcuffed and covered in blood with a black bag over his face. Later, the SAP transferred Mr. Sikani to Bellville-South Police Station, where his torture continued. At Bellville, an SAP officer inserted needles under Mr. Sikani's finger nails to coerce Mr. Sikani into talking about the ANC, but Mr. Sikani refused. He was then taken to the head to the intelligence unit and further tortured. Finally, three policemen washed the blood from Mr. Sikani's body and took a photo of him. Mr. Sikani was then taken to the hospital and treated for his injuries. After his treatment, the SAP took him back to the Wynberg Police Station where he was further detained. Mr. Sikani still suffers from the torture.

71. **Bubele Stefane** was shot by the South African Police on February 2, 1992. He was shot in the right arm and right thigh. After shooting Mr. Stefane, the SAP beat and kicked him repeatedly. He was then taken to the Guguletu Police Station. There, the SAP placed an electrical instrument on Mr. Stefane's penis and electrocuted him. Mr. Stefane still suffers from the torture.

C. Victims of Indiscriminate Shootings

72. The following plaintiffs are victims of indiscriminate shootings.

73. **Noluthando Biletile** was shot in the leg by South African Police in September 1992 while she lay in her bed asleep. She was hit in the lower right leg. As a result, she has lost

feeling in her right leg and cannot work on her feet for extended periods. She still suffers from the shooting.

74. **Leslie Mncedisi Botya** was shot by the South African Police. The SAP shot Mr. Botya in the arm, where the bullet remains lodged. Doctors inserted a plate into his arm to strengthen it but Mr. Botya was left with only limited use of his right arm. Mr. Botya has not been able to work and is unable to support his family. He continues to suffer from the shooting.

75. **Leon Dukashe** was shot in the back by the SAP in 1989 in an informal settlement near Cape Town. Mr. Dukashe's friends attempted to remove the bullet from his back with a knife, because people with gunshot wounds related to civil unrest were often arrested by the SAP at clinics and hospitals. Mr. Dukashe is disabled, is not able to work and suffers acute pain as a result of the shooting. Mr. Dukashe relies on a crutch to walk and must wear a brace. He still suffers from the shooting.

76. **Elsie Gishi** was shot by the South African Police on December 26, 1976. On that day, as Ms. Gishi returned from work, she found the youth in the township holding a demonstration. Soon, the SAP arrived in their vans and started shooting. The officers kicked in the door of her house and rushed in. Ms. Gishi was shot in the back six times. The bullets entered her back and remain lodged in her chest and arms. One bullet lodged in her throat. Another bullet is lodged inside a bone in her left arm and as a result, she can no longer lift her left arm and the entire left side of her body is lame. She can no longer bathe herself or do other washing. The three remaining bullets cause her respiratory dysfunction and kidney problems. Ms. Gishi is permanently disabled and continues to suffer as a result of the shooting.

77. **Dorthia Gomo-Pefile** was shot by security police with pellets as they rushed into her mother's house. She continues to suffer as a result of the shooting.

78. **Zamikhaya Bishop Khali** was shot by the South African Police on April 11, 1990. The SAP shot Mr. Kali in the back as he stood outside of James Trading Store. Doctors at St. Lucy's Hospital removed a bullet from Mr. Khali's lower back. Mr. Khali continues to suffer from the shooting. He must use crutches to walk, still goes to the hospital for therapy, and continues to have back pain. He needs constant medical attention and has problems with his bladder.

79. **James Magabana** was shot by the South African Police in 1985. Afterwards he was sentenced to five years in prison. He continues to suffer as a result of the shooting.

80. **Nosipho Manquba** was shot by the South African Police when he was just eight years old. While searching for his mother near the KTC Church, at the squatter camp near Cape Town, the police shot at him. He was hit in the leg with rubber bullets. Mr. Manquba still suffers from the shooting.

81. **Notathu Eugenia Matomela** was shot by the South African Police in 1984. In March/April of that year, while Ms. Matomela was staying in Nyanga Bush, the SAP arrived to remove the houses and forcibly relocate Ms. Matomela, her family and others staying in the settlement. People then started to emerge from their homes, but the SAP asked everyone to remain inside. Ms. Matomela remained inside. As the people outside were trying to persuade the police not to demolish their homes, the police started shooting. Suddenly, Ms. Matomela felt a burning sensation in her stomach. She looked down and realized she was shot. As she sat down in her home, she was overcome by tear gas. Ms. Matomela then realized that the SAP was shooting rubber bullets and tear gas to disperse the crowd. Ms. Matomela was then taken to the hospital for treatment. She continues to suffer as a result of the shooting.

82. **Nomisa Theresia May** was shot by the South African Police on May 20, 1986. At that time, the Witdoeke, a vigilante group supported by the SAP, were burning people's houses. Ms. May was part of a crowd of people gathered in a street in Nyanga. Without warning, the SAP began shooting into the crowd. It was then, as people were fleeing, that Ms. May was shot. The bullet fractured her skull, leaving her paralyzed. Ms. May's speech has been seriously impaired and she cannot care for herself. She continues to suffer from the shooting.

83. **Mbongeni Nelson Mbeshu** was shot by the SAP when he was just twelve years old. One day in 1985, as Mr. Mbeshu was returning from school, he walked into a riot. As he turned to flee the police, he was shot in the back by the police. The pellets remained lodged in his back until a local man removed them. In addition, a pellet remains lodged in Mr. Mbeshu's head. Mr. Mbeshu still suffers from the shooting.

84. **Mzuhlangena Nama** was shot in the leg by the South African Police while attending a commemoration march in 1982. The SAP indiscriminately fired into the crowd with live ammunition. Mr. Nama was shot in the leg while fleeing from the SAP. He was taken to Bishop Lavis Day Hospital where doctors removed a bullet from his leg. Mr. Nama remained in the hospital for four months. He continues to suffer from the shooting.

85. **Elias Ngamani** is the husband of **Elizabeth Ngamani**. Mr. and Mrs. Ngamani were tear gassed by the SAP. One Monday morning, as the couple was inside their house, the SAP shot Mrs. Ngamani in the chest with a teargas canister. There was no way to take her to the hospital at the time of the incident; Mr. Ngamani had to wait three days before he was allowed to take his wife to the hospital. Mrs. Ngamani endured numerous chest problems and was repeatedly hospitalized for lung problems. She was unable to hold her char job and the family

suffered without this income. She eventually died, in 1994, from complications related to her chest injury.

86. **Geshia Ngozza** was shot by the South African Police in 1976 while he was on his way to the store. His hand and lower legs were wounded but the SAP offered him no medical assistance. As a result, he had to personally remove six bullet fragments from his hand. Mr. Ngozza was also shot in the back of the legs, breaking his kneecaps. He did not go to the hospital because he thought he would be arrested since the hospital was required to report all gun shot wounds to the SAP. Mr. Ngozza continues to suffer from the shooting. He walks with a cane and takes painkillers daily to alleviate his physical suffering. In addition, Mr. Ngozza was unable to perform his job effectively because of the injuries to his knees. He was considered unfit to continue working and has since been unable to keep a job for an extended period. Thus, Mr. Ngozza can no longer support his family.

87. **Lucas Ndukwayibuzwa Ngwenyana** was shot in the back by South African Police in 1976. Mr. Ngwenyana encountered a crowd of people while on his way home from school. He was unaware of what was happening, but soon realized that the crowd was running from the police. The crowd overtook Mr. Ngwenyana and the police forced him to the ground. Realizing he was in serious danger, Mr. Ngwenyana got up and started to run in the direction of the fleeing crowd. As he was running away, the SAP shot him in the back. He was then taken to Tygerberg Hospital where he remained for two weeks. Mr. Ngwenyana still suffers physical and mental trauma from the shooting.

88. **Wellington Mtyukato Nkosiphendule** was shot by the South African Police in November 1993. The SAP ordered the funeral gathering that Mr. Nkosiphendule was attending to disperse. Without warning, the SAP opened fire on the crowd because the parties attending

the funeral did not disperse as promptly as the SAP would have liked. Mr. Nkosiphendule was shot in his head and in the left arm. Mr. Nkosiphendule was taken to Tembisa Hospital where he remained for several months. Mr. Nkosiphendule still suffers from the shooting.

89. **Vuyani Nongcama** was shot by the South African Police on November 15, 1976. He was hit in the right calf muscle with buck shot. Twenty-nine pellets remain lodged in his leg. Mr. Nongcama cannot walk for extended periods of time and is unable to work. Thus, he cannot provide for his wife and five children. Mr. Nongcama continues to suffer as a result of the shooting.

90. **Sindiswa Mirriam Nunu** was shot by the South African Police in 1976. Ms. Nunu was attending a meeting which was abruptly cancelled when the SAP arrived to suppress the gathering. On her way home with a group of friends, Ms. Nunu was chased by the SAP. When she reached her home, she was spotted by a SAP van. In a desperate attempt to reach the safety of her home, Ms. Nunu tried to dive over the fence in front of her home. As she was diving over the fence, she was shot in the leg. Fortunately, she fell in such a way that she was able to hide under a hedge near the fence. The police went into her house to search for her and ransacked her home during the search. Ms. Nunu managed to hide until the SAP left and was eventually taken to Conradie Hospital for treatment. She was treated outside of the hospital with the other wounded people. In 1988, Ms. Nunu was beaten by the police when she was eight months pregnant. The SAP detained Ms. Nunu after she attended a meeting in Grand Parade. She was taken to the police station with eight others. At the station, the SAP repeatedly punched, kicked, and struck Ms. Nunu with their batons despite her pregnancy. She then miscarried at the police station and lost her baby. She continues to suffer as a result of the shooting and the torture.

91. **Thulani Nunu** was shot by the South African Police in 1985 when he was just six years old and living in the Nyanga Bush. The SAP was shooting at youth with tear gas and live ammunition. Panicked by all the shooting, Mr. Nunu ran out of his house. The crowd of people fleeing and the teargas fired by the SAP overwhelmed him. In the confusion, he was shot in the head and hand. As a result of his injuries, Mr. Nunu lost 60% of the use of his hand. Because of his head wound, Mr. Nunu has permanent visual and hearing impairment. He continues to suffer as the result of his injuries.

92. **Boniwe Phalaza** was shot by the South African Police in 1994. Bullets hit her once below the breast and once under her arm. The police then burned her house. Ms. Phalaza still has scars from where the bullets entered her body. Ms. Phalaza also witnessed the SAP murder her son. She continues to suffer from the shooting and is tormented by the fact that she witnessed her son's murder.

93. **Pathiswa Pringane** is the child of **Mthozama Theophilus Pringane**, who was shot by South African Police while attempting to prevent a state sponsored vigilante group, the Witdoeke, from entering his township. Mr. Pringane was part of a crowd that confronted the Witdoeke as they tried to enter the township. Suddenly, the SAP appeared and shot indiscriminately into the crowd. Mr. Pringane was struck by a bullet on his right side. The bullet remained lodged in his body. As a result of being shot, Mr. Pringane was paralyzed on his right side. Because of his paralysis, Mr. Pringane lost his job and felt "useless." Mr. Pringane died, on January 23, 1998, due to complications related to his gun shot wounds.

94. **Mthutuzeli Sikani** was shot by the South African Police in 1988. Mr. Sikani was attending a youth meeting inside a hall. The SAP entered the hall and ordered all the youth out of the building. The crowd did not respond immediately, so the SAP started shooting. Mr.

Sikani was shot in his right leg with a live round. He was then taken to the KTC clinic, where doctors removed the bullets. He had to endure physical therapy for three months and rely on crutches to walk. Today, Mr. Sikani walks with a limp and continues to suffer as the result of the shooting.

95. **Noluthando Siletile** was shot in the leg by South African Police in September 1992 while she lay in her bed asleep. She was hit in the lower right leg. As a result, she has lost feeling in her right leg and cannot work on her feet for extended periods. She still suffers from the shooting.

96. **Thembeke Victoria Siphaho** was shot by the South African Police in 1984. During March and April of that year, the South African Police were forcibly evicting people in her area. Ms. Siphaho pled with the SAP not to carry out the evictions. As Ms. Siphaho pled with the police, she was unaware of what was going on around her. Moments later, she felt herself collapsing to the ground. It was then that she realized the SAP had shot her under the knee on her right leg. As she lay on the ground, some people attempted to rescue her. But as the people were assisting her, the SAP fired tear gas and Ms. Siphaho's would be rescuers scattered. After the tear gas cloud subsided, people returned to assist her. Ms. Siphaho was hospitalized for over one month. She still suffers from the shooting. In addition, she was unable to work for a significant period of time to support herself and her children.

97. **Johannes Titus** was shot by the South African army in September 1976. While walking in Hanover Park, army officers shot Mr. Titus. The bullet ripped open his stomach and part of his intestines fell into the street. Presumed dead, Mr. Titus was taken to the morgue in Salt River. There, they discovered his heart was still beating. He was then taken to Victoria Hospital and was placed under police guard. Mr. Titus endured eight operations to repair his

stomach. While Mr. Titus was hospitalized, the SAP periodically seized him and detained him at Pollsmore Prison. After his last operation in 1986, the SAP took Mr. Titus and detained him at Victor Verster police station. Mr. Titus can no longer work because of his injuries. He suffers from chronic pain and the doctors can no longer help him. In fact, the surgeons indicated that if he has another surgery, he will die. Mr. Titus has plastic tubes in his stomach and can only eat soft foods for the rest of his life. He is married and has five small children who he is unable to support. He continues to suffer as the result of the shooting.

98. **Mpolontsi Tyote** was tortured by the South African Police in 1984. In December of that year, Mr. Tyote saw the SAP and a huge crowd gathering at the Nyanga Police Station. Unaware of what was going on, Mr. Tyote approached the crowd. Suddenly, he saw people running, so he started running too. Without warning, the police began shooting into the dispersing crowd. Mr. Tyote was shot and fell to the ground. He was shot in the groin and was taken to the hospital for treatment. Mr. Tyote still suffers severe pain from his wound.

99. **Mthuzimele Melford Yamile** was shot by the South African Police on January 26, 1982. The bullet entered his left shoulder and exited through his right shoulder. Mr. Yamile spent three weeks in the Conradie Hospital and immediately upon his discharge the SAP detained him. He was sent to Pollsmore Prison for one week, after which he posted bail and was released. The charges against Mr. Yamile were eventually dropped. Mr. Yamile continues to suffer as a result of the shooting.

100. **Ntunani William Zenani** was shot by the South African Police in 1984. Mr. Zenani was living in the Nyanga Bush. The SAP arrived and began shooting indiscriminately. Mr. Zenani was shot in the stomach. He was hospitalized for 6 months and underwent long operations on both his chest and his stomach. Mr. Zenani still suffers from the shooting. He

must wear colostomy bags, suffers severe pain, and suffers vomiting spells because of the permanent damage done to his stomach.

D. Victims of Sexual Assault

101. The following plaintiff is a victim of sexual assault.

102. **Thandiwe Shezi** was tortured and raped by the Security Police. On September 8, 1988, the police stormed into Ms. Shezi's home, and beat and strangled her in front of her daughter. They then took Ms. Shezi to the Alexander Police Station where the torture began. She was handcuffed and a wet sack was tied over her head. She was then taken to a room where she was electrocuted for twenty minutes. Next she was raped repeatedly by four police officers. In addition to physical torture, the police also worked on Ms. Shezi psychologically. The police forced Ms. Shezi to watch as they smashed another prisoner's penis in a drawer. When the prisoner screamed out in pain they wanted Ms. Shezi to laugh. On one occasion, the police took Ms. Shezi outside, stripped her naked and tied her to a tree. They smeared her legs with butter, opened them wide, and threw ants all over her. The ants crawled into her vagina. On at least one occasion, while Ms. Shezi was being electrocuted, acid was poured over her head. Because of the torture, Ms. Shezi could not eat solid food for almost a month. She still suffers from the physical and mental effects of the torture and sexual assault.

E. Victims of Arbitrary Detention

103. The following plaintiffs are victims of arbitrary detention.

104. **Elias B. Boneng** was detained during the State of Emergency in June 1986. Mr. Boneng was released in April 1987. At the time of Mr. Boneng's arrest he was attending school, and thus his education was disrupted. The police continued to harass Mr. Boneng after his release.

105. **Dennis Vincent Frederick Brutus** was detained and shot by the SAP. The recipient of a doctoral degree and numerous honorary doctorates, in 1961 Dr. Brutus was banned from teaching, publishing poetry, and attending gatherings. In 1963, Dr. Brutus was arrested in Johannesburg while on his way to attend a meeting of the South African Non-Racial Olympic Committee, of which he was president. When released on bail, Dr. Brutus fled to Swaziland and Mozambique, was arrested by the Portuguese secret police, and was turned over to the South African Police. In September 1963, Dr. Brutus attempted to escape but was shot through his back by the South African Secret Police. He was hospitalized in Fort Prison Hospital until December 1963. Dr. Brutus was sentenced to eighteen months hard labor in Leeurokop Prison in January 1964, was transferred to Robben Island Prison in March 1965, and in July 1965 was placed under house arrest until July 1966. Dr. Brutus, who has served on the faculties of the University of Denver, Northwestern University, and the University of Pittsburgh, has testified three times before UN committees on apartheid issues.

106. **Moraloki A. Kgobe** was detained during the State of Emergency on June 1986. Ms. Kgobe was released in April 1987. Ms. Kgobe's detention disrupted her employment. After Ms. Kgobe's release, she was subjected to continuous police harassment.

107. **Reuben Mphela** was imprisoned several times between 1976 and 1982 for failing to produce a passbook. On these occasions, the SAP came to arrest him at work. He was beaten, kicked, and made to jump like a frog. Mr. Mphela's family was traumatized by his imprisonment.

108. **Lulamile Ralrala** was detained in September 1977 after returning from Steven Biko's funeral. He was sentenced to three years in prison for trying to overthrow the government and furthering the aims of the ANC.

Defendants

109. **Defendant Barclays National Bank Ltd.** is a London-based financial services group engaged primarily in banking, investment banking, and investment management. Barclays National Bank Ltd. does business in New York State and has offices in New York State.

110. **Defendant British Petroleum P.L.C.** is the holding company of one of the world's largest petroleum and petrochemicals group with headquarters in London, United Kingdom. British Petroleum P.L.C. does business in New York State and has offices in New York State.

111. **Defendant ChevronTexaco Corporation** is the product of the October 2001 merger of Chevron Corp. and Texaco Inc. ChevronTexaco wholly owns **Defendant ChevronTexaco Global Energy Inc.**, formerly known as Caltex Petroleum Corporation, which was launched in 1936 as a joint venture between Chevron and Texaco. ChevronTexaco is organized and incorporated under the laws of Delaware and has its headquarters in San Francisco, California. ChevronTexaco and ChevronTexaco Global Energy Inc. do business in New York State and have offices in New York State.

112. **Defendant Citigroup Inc.**, a leading financial services company, was organized and incorporated under the laws of Delaware. Citigroup Inc. does business in New York State and has offices in New York State.

113. **Defendant Commerzbank** is a bank organized and incorporated under the laws of Germany with its headquarters in Frankfurt, Germany. It does business in New York State and has offices in New York State.

114. **Defendant Credit Suisse Group**, a leading financial services company, provides banking and insurance solutions for private clients, companies, and institutions. Organized and

incorporated under the laws of Switzerland with its principal place of business in Zurich, Switzerland, Credit Suisse Group does business in New York State and has offices in New York State.

115. **Defendant DaimlerChrysler AG** is a company organized and incorporated under the laws of Germany with dual headquarters in Stuttgart, Germany, and Auburn Hills, Michigan. DaimlerChrysler is the result of the 1998 merger of the U.S. automaker Chrysler Corporation and the German company Daimler-Benz. The combined DaimlerChrysler manufacturers and markets a large variety of automobiles and other motor vehicles under the Chrysler, Daimler, and Mercedes-Benz names in plants and subsidiaries in both the United States and Germany, in addition to other countries. DaimlerChrysler owns **Defendant AEG Daimler-Benz Industrie**, an international technology corporation. DaimlerChrysler and AEG Daimler-Benz Industrie do business in New York State and have offices in New York State.

116. **Defendant Deutsche Bank AG** is a bank organized and incorporated under the laws of Germany with its principal place of business in Frankfurt, Germany. Deutsche Bank AG does business in New York State and has offices in New York State.

117. **Defendant Dresdner Bank AG** is a bank organized and incorporated under the laws of Germany with its principal place of business in Frankfurt, Germany. Dresdner Bank AG does business in New York State and has offices in New York State.

118. **Defendant ExxonMobil Corporation**, the world's largest integrated oil company, is a corporation organized and incorporated under the laws of New Jersey with its principal place of business in Irving, Texas. ExxonMobil Corporation does business in New York State and has offices in New York State.

119. **Defendant Fluor Corporation** is one of the world's largest publicly owned engineering, procurement, construction, and maintenance services organizations. Fluor Corporation is organized and incorporated under the laws of California with its principal place of business in Aliso Viejo, California. Fluor Corporation does business in New York State and has offices in New York State.

120. **Defendant Ford Motor Company**, the second largest corporation in the United States and international automobile giant, is organized and incorporated under the laws of Delaware. Headquartered in Dearborn, Michigan, Ford Motor Company does business in New York State and has offices in New York State.

121. **Defendant Fujitsu Ltd.**, the successor company to International Computers Limited, offers infrastructure management, networking, systems integration, IT outsourcing, and hosting services to a variety of customers. Organized and incorporated under the laws of Japan with its principal place of business in Tokyo, Japan, Fujitsu Ltd. does business in New York State and has offices in New York State.

122. **Defendant General Motors Corporation**, the world's largest automobile manufacturer, is organized and incorporated under the laws of Delaware with its principal place of business in Detroit, Michigan. General Motors Corporation does business in New York State and has offices in New York State.

123. **Defendant International Business Machines Corporation (IBM)** is a global leader in manufacturing computer systems, software, networking systems, storage devices, and microelectronics. International Business Machines is headquartered in New York State and does business in New York State.

124. **Defendant J.P. Morgan Chase** is the result of a December 2000 merger between J.P. Morgan & Co. Incorporated and Chase Manhattan Corp. ("Chase"). Chase itself resulted from the merger of Chase Manhattan Corp. and Chemical Bank in 1996. Chemical Bank acquired Texas Commerce Bancshares Inc. in 1987 and Manufacturers Hanover Corp. in 1991. JP Morgan Chase is organized and incorporated under the laws of Delaware, has offices in New York State, and does business in New York State.

125. **Defendant Rheinmetall Group AG** ("Rheinmetall") is a holding company organized and incorporated under the laws of Germany with headquarters in Düsseldorf, Germany. Rheinmetall Group AG owns and does business through Hirschmann Electronics Inc., a civil electronics firm, which does business in New York State through authorized distributors.

126. **Defendant Rio Tinto Group** is one of the world's largest exploration, research and technology corporations. Rio Tinto PLC and Rio Tinto Limited comprise Rio Tinto Group and operate as a single business entity with headquarters in London, England and Melbourne, Australia. The exclusive holder of the American Depositary Receipts (ADRs) for the Rio Tinto Group is the Bank of New York in New York State. The Rio Tinto Group is a major contributor to the New York-based International Copper Association. Rio Tinto products are sold at prices determined by reference to prevailing market prices on terminal markets such as the New York Mercantile Exchange.

127. **Defendant Shell Oil Company**, a leading petroleum company, is organized and incorporated under the laws of Delaware with its principal place of business in Houston, Texas. Shell Oil Company does business in New York State and has offices in New York State.

128. **Defendant Total Fina Elf**, one of the world's largest integrated oil companies, is organized and incorporated under the laws of France with its principal place of business in

Courbevoie, France. Total Fina Elf does business in New York State and has offices in New York State.

129. **Defendant UBS AG**, a leading financial firm, is organized and incorporated under the laws of Switzerland with dual headquarters in Zurich, Switzerland and Basel, Switzerland. UBS AG does business in New York State and has offices in New York State.

130. **Defendant Doe Corporations 1 – 100**, the identities of which are unknown at this time, participated in the wrongful acts alleged herein.

CO-PARTICIPANTS

131. Other corporations participated in the criminal enterprise of apartheid. The companies are not named here not because they did not aid, abet, and encourage the crimes but because jurisdiction does not exist.

RELEVANT TIME PERIOD

132. The relevant time period is 1960 to 1993.

STATUTES OF LIMITATION TOLLED

133. Plaintiffs' claims are not time-barred, as the applicable statutes of limitations have not yet run.

134. Moreover, there are no statutory limitations on claims for crimes against humanity, or genocide.

135. In addition, any applicable statute of limitations is tolled because Defendants concealed facts underlying this claim, denied Plaintiffs access to information that would have enabled Plaintiffs to state a claim while apartheid was in force. The laws of the Apartheid regime

forbid the disclosure of defendants' operations within South Africa. Much of the information relevant to these claims is still unavailable to Plaintiffs due to a South African law imposing a 20-year waiting period for access to information in government archives. The operations of Armscor, for example, remain confidential. Indeed, information related to apartheid and its aiders and abettors did not begin to become public until after the convening of the Truth and Reconciliation Commission in 1995. Moreover, the Truth and Reconciliation Commission has not yet issued its final report.

136. Furthermore, Defendants fraudulently concealed the details of their cooperation with the Apartheid regime by establishing convoluted relationships, off-shore trusts, sham sales and licensing agreement to conceal transactions with and within South Africa.

137. Any applicable statute of limitations are thus tolled by equitable principles of fairness and justice.

THE FACTS

History of South Africa and Apartheid

138. “[F]rom the earliest days of European colonialization of South Africa, economic and other measures introduced by successive colonial and apartheid regimes sought, among other things, to benefit white property owners, including farmers, mine owners, industrialists and financiers, at the expense of the black majority. The pursuit of this objective continued through the period of apartheid rule, including the years of extreme repression...”⁵

⁵ African National Congress Submission to the Special Truth and Reconciliation Commission Hearing on the Role of Business, November 1977 at 1.

139. The first European settlers arrived in present-day South Africa in 1652 when the Dutch East India Company established a settlement at Table Bay.⁶ European expansion throughout South Africa continued throughout the 18th and 19th centuries.

140. In 1867 and 1886, the discovery of diamonds at Kimberley and gold in the Witwatersrand created a new demand for labor.⁷ A migrant labor system, which included a pass system, was established.⁸ This system would later be institutionalized by the apartheid regime.

141. In 1910, the Commonwealth of South Africa was established by the British Parliament.⁹

142. The Commonwealth of South Africa's all-white government began implementing laws that formed the foundation of apartheid. The Natives Land Act of 1913 segregated land ownership and restricted African land ownership to the "native reserves," covering only seven percent of the land.¹⁰ These areas became the basis of the 'homelands' during the apartheid regime.¹¹ The Act of 1913 allowed whites to take the country's best land and to control the mining industry.¹² The Land Act severely weakened the rural economy because the small amount of land allotted to Africans could not sustain the African population. Young African men who previously had been able to avoid the migrant labor system were forced to leave home for

⁶ Timothy Keegan, *Colonial South Africa and the Origins of the Racial Order* (University of Virginia Press, 1996) at 15.

⁷ Bernard Makhoshezwe Magubane, *The Political Economy of Race and Class in South Africa*, (Monthly Review Press, 1979) at 45.

⁸ Nigel Worden, *The Making of Modern South Africa, Third Edition* (Blackwell Publishers Ltd., 2000) at 77.

⁹ *Id.* at 35.

¹⁰ Steven Debroy, *South Africa: Under the Curse of Apartheid*, (University Press of America, Inc., 1990) at 30. The percentage of land set aside was increased to 13 percent in 1936.

¹¹ Worden, at 55-56.

¹² Kenneth Christie, *The South African Truth Commission* (St. Martin's Press, Inc., 2000) at 11.

extended periods of time to work in urban centers. As a result, the homelands became “rural slums,” and segregation became the norm. The reserves became “dormitories” of cheap labor.¹³

143. The Natives (Urban Areas) Act of 1923 imposed restrictions on African ownership of land in urban areas. The School Board Act of 1905 segregated schools;¹⁴ the Mines and Works Act of 1911 imposed a color bar in the workplace; and the Industrial Conciliation Act of 1923 excluded migrant (meaning African) workers from trade union representation.

144. In 1948, the National Party won control of the South African government, using apartheid as its primary electoral platform.¹⁵ “Apartheid was the central prop of the NP’s [Nationalist Party’s] electoral platform. Many observers believed that the ‘political slogan’ of apartheid won that election for the NP.”¹⁶

145. For example, an election pamphlet stated that “All the Natives must be put in separate locations and crowding in urban centres must be countered. The Natives must be considered ‘visitors’ in our urban areas, who will never get the chance to claim any political rights or equal social rights with the Whites in his territory. . . . All superfluous Natives in the cities must be sent back into the country or to the native reserves where they have come from.”¹⁷

¹³ Bentley Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obfuscation*, 9 *Conn. J. Int’l L.* 295, 301 (1994).

¹⁴ *Id.* at 79.

¹⁵ Debroey, at 188, 191.

¹⁶ Dan O’Meara, *Forty Lost Years: the Apartheid State and the Politics of the National Party 1948-1994* (Athens: Ohio University Press, 1996) at 64. See Kenneth Christie, *The South African Truth Commission* (St. Martin’s Press, Inc., 2000) at 11.

¹⁷ *Nasionale Party se Kleurbeleid (Race Policy of the National Party)* at 3. See Steven Debroey, *South Africa under the Curse of Apartheid* (University Press of America, 1990) at 188.

146. After 1948, the electoral vote was taken away from all groups except the white minority.¹⁸

147. The National Party then passed a series of laws to implement and institutionalize apartheid.

Apartheid-Era laws

148. Apartheid-era laws paralleled the Nuremburg laws passed by Nazi Germany.

149. The 1950 Population Registration Act¹⁹ classified all South Africans according to one of four races -- white, Coloured, Asiatic (Indian), and Native (African).²⁰

150. The mobility of Africans was restricted and separate ghettos or homelands were established.

151. The Group Areas Act of 1950 gave the government the power to designate specific residential and business areas for the sole use of particular racial groups. The majority of the land was reserved for whites. As a result, Africans were forcibly removed from their homes, often to "Bantustans." Coloureds and Asians were removed from their homes in areas the government designated for whites to inferior housing in townships designated by the government for their own "race".

152. The Bantu Authorities Act of 1951 provided for the establishment of separate rural areas or homelands called "Bantustans" where most Africans were to live according to their

¹⁸ Kenneth Christie, *The South African Truth Commission* (St. Martin's Press, Inc., 2000) at 12.

¹⁹ An amendment to this Act in 1967 made descent the determinative factor for racial categorization to prevent the "gradual, but dangerous, integration of whites and non-whites." Brian Bunting, *The Rise of the South African Reich*, Chapter Nine: South Africa's Nuremberg Laws (Penguin Africa Library, 1969) at 20-21 (quoting minister who introduced the amendment). In addition, the Births, Marriages and Deaths Registration Amendment Act of 1968 required confirmation of the racial categorization of a newborn and its parents such that the birth certificate's classification matched the Population Register. See Bunting at 21.

²⁰ Worden, at 108.

often bureaucratically imposed tribal identity.²¹ Scholars have noted that “The dilemma of Bantustan policy in the final analysis was one in which the contradiction of the apartheid attempt to confine black settlement to rural homelands along with the need to secure black, cheap labour power in the cities, created the repression, the hatred and the patterns which would lead to spiraling violence in later years.”²²

153. In 1954, the Natives Resettlement Act authorized the forcible removal of Africans into segregated townships or ghettos. Inhabitants of Sophiatown, for example, were removed and forced to live in the new township of Soweto in 1955.²³

154. In 1963 and 1964, the Bantu Laws Amendment Acts were passed to further restrict Africans’ entry, residence, and employment rights in urban areas,²⁴ while another Bantu Laws Amendment Act served to segregate in the reverse, i.e., by keeping races other than Africans out of the homelands. The 1966 Bantu Laws Amendment Act prohibited persons who were not citizens of the particular Bantu territory from entering the land without permission.²⁵

155. Under the Departure from the Union Regulation Act of 1955, no African over the age of 16 could leave the country unless in possession of a valid passport or permit, both of which were extremely difficult to obtain, especially for those who criticized the government.²⁶

156. To regulate the African flow of labor and exert “influx control,” the government required all Africans over the age of 16 to carry passes. In 1952, the government passed the Natives (Abolition of Passes and Coordination of Documents) Act, which required Africans of

²¹ Christie, at 20.

²² *Id.*, at 25.

²³ Worden, at 108.

²⁴ Bunting, at 17.

²⁵ *Id.*, at 19.

²⁶ Bunting, at 10 “Departure from the Union Regulation Act.”

both sexes to carry their passes in a single book together with their Population Registration identity card pasted in the front. The book also contained their fingerprints and pages for any history of government opposition, tax receipts, and labor control, including a page for employer signatures.²⁷ Without the proper documentation, no African could legally enter or remain in an urban area.²⁸

157. These laws had as their objective “the maintenance of a cheap labour system through: 1) restricting the freedom of movement of black persons so as to channel workers where employers need cheap labor; 2) enforcing employment contracts by making sure workers stay where they are wanted as long as they are wanted; 3) policing the workers and allowing the ‘weeding out’ of the unemployed and ‘troublemakers’ and 4) confining and barricading the ‘surplus population’ (i.e. the unemployed) in the rural slums of the Bantustans.”²⁹

158. According to the African National Congress, “Many of the basic laws of segregation and apartheid were introduced to create a cheap black labor force to benefit businesses drawn from the white minority.”³⁰ The pass laws were an instrument of coercion and control dating to the last century “to have a hold on the native whom we have brought to the mines ... a most excellent law ... which should enable us to have complete control of the Kaffirs.”³¹

159. Labor Bureaus were established to control the movement of job seekers. They had the power to remove those Africans deemed “surplus to requirements.” The Bureaus also

²⁷ *Id.*, at 5 “Natives Act”.

²⁸ Bentley J. Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obfuscation*, 9 Conn. J. Int'l L. 295, 310.

²⁹ Robert Davies, Dan O'Meara and Siphso Dlamini, *The Struggle for South Africa* (Zed Books, 1985) at 171.

³⁰ African National Congress Submission to the Special Truth and Reconciliation Commission Hearing on the Role of Business, November 1977 at 2.

³¹ *Id.*, at 2 (quoting the President of the Chamber of Mines at the end of the last century).

imposed “efflux control” regulations “to ensure the ‘labor conditions’ in a certain area were satisfactory from the standpoint of local capitalist farmers before permitting any African in that area to take up employment elsewhere.”³²

160. As then Minister of Bantu Education and Development M.C. Botha explained “The Bantu in the White areas are here for the work we have to offer them and which they also need...They are not here for themselves...”³³

161. In the 1980s businesses began to pressure the government to relax the controls on the movement of labor. The government responded by relaxing the pass laws.³⁴

162. In addition to controlling movement and access to urban areas, laws zoned residential and business districts on a racial basis.³⁵

163. Job reservation laws excluded Africans from better paid, more skilled categories of work.³⁶

164. For example, after a trip to South Africa, Henry Ford reported that the Environmental Planning Act of 1968 limited black workers to the number employed at that time – 165 at Ford’s plant – and that Ford had to gain approval to increase the number of black employees. Also, Work Reservation Determination No. 16 reserved all welding, supervisory, and control work for whites and required that not less than 45% of all employees be white.³⁷

³² Davies, et al., at 173; at 14-15 (Labor bureaus were “established to allocate jobs and regulate the flow of African workers from the bantustans to the white economy”).

³³ Bunting, at 6 “Natives Laws Amendment Act”.

³⁴ Anderson, at 313-14.

³⁵ Davies, et al., at 172.

³⁶ Davies, et al., at 174; *See, e.g.* Native Building Workers Act (1951), Industrial Conciliation Act (1956).

³⁷ Statement of Henry Ford II, Chairman of the Board, Ford Motor Company, after returning from a trip to South Africa in January, 1978 at 2.

165. Master and Servant laws made it a crime – punishable by imprisonment – for black workers to break an employment contract by, *inter alia*, desertion, insubordination, or refusing to carry out an employer's command.³⁸

166. Amenities and schools also were officially segregated. In 1953, the Reservation of Separate Amenities Act segregated premises -- including cinemas, restaurants, and sports facilities -- and public vehicles to restrict passengers on the basis of race.³⁹

167. In that same year (1953), schools began enforcing apartheid policies pursuant to the Bantu Education Act.⁴⁰

168. Then Minister of Bantu Education and future Prime Minister Hendrick F. Verwoerd stated “[I]f the native in South Africa today in any kind of school in existence is being taught to expect that he will live his adult life under a policy of equal rights, he is making a big mistake ... there is no place for him in the European community above the level of certain forms of labor.”⁴¹

169. Laws banned relations between races.⁴² The Immorality Amendment Act, barring intercourse between the races,⁴³ led to the jailing of over 6,000 people between 1950 and 1966.⁴⁴ The government also prohibited mixed marriages in 1949.

³⁸ African National Congress Submission to Special Truth and Reconciliation Commission on the Role of Business, Nov. 1997, at 2. The laws remained on the books until 1977.

³⁹ Bunting, at 9 “Reservation of Separate Amenities Act.” Later, apartheid policies were extended to transport services (Motor Carrier Transportation Amendment Act of 1954), taxis (Motor Carrier Transportation Amendment Act of 1959), beaches (Reservation of Separate Amenities Amendment Act of 1960), factories (Factories, Machinery, and Building Work Amendment Act of 1960); Bunting, at 14.

⁴⁰ Worden, at 108 (educational apartheid brought to technical colleges in 1955 and to universities in 1959); Bunting, at 14 “Extension of University Education Act.”

⁴¹ Kevin Hopkins, *Assessing The World's Response To Apartheid*, 10 U. Miami Int'l & Comp. L. Rev. 241, 249.

⁴² Worden, at 107. An Amendment to the Prohibition of Mixed Marriages Act was passed in 1968 to make void any illegal marriage by a South African, even if it took place outside of South Africa.

⁴³ The ban on intercourse between whites and Africans already was in place prior to this Act, which extended the ban to all non-whites. The Act was further tightened in 1967. Nuremberg Laws, at 21.

170. The apartheid government also enacted laws to suppress dissent. In 1956, the Riotous Assemblies Act was passed, granting the Minister of Justice wide powers to control public gatherings and to prohibit a gathering if he deemed it to pose a threat to the peace.⁴⁵ The Act further allowed the police to disperse with force any gathering that took place in violation of its prohibition.⁴⁶

171. Four General Law Amendment Acts further enhanced “security” measures. Between 1961 and 1964, a series of laws gave the government the ability to detain a person for up to 12 – later extended to 180 – days without bail; enhanced penalties for a broadly defined crime of sabotage; granted police the authority to detain people without charge, merely for the purpose of interrogation; and permitted the imprisonment of any person who refused to give evidence during a criminal trial.⁴⁷

172. In 1960, the Governor-General gained power under the Unlawful Organizations Act to ban the African National Congress and the Pan-Africanist Congress.⁴⁸ Other African organizations later were banned under the Affected Organizations Act⁴⁹ and the Internal Security Act (banning all political meetings during April 1, 1986 – March 31, 1987 as part of a State of Emergency).⁵⁰

⁴⁴ Bunting, at 3 “Immorality Amendment Act of 1950” (discussing statistics of Minister of Justice in Parliament).

⁴⁵ Other related legislation included the Internal Security Act of 1950, the Gatherings and Demonstrations Act of 1973, and the Dangerous Weapons Act of 1968. See Janine Rauch and David Storey, *Policing of Public Gatherings and Demonstrations in South Africa 1964-1994*, <http://www.csvr.org.za/papers/papjr&ds.htm> (visited Oct. 31, 2002) at 6.

⁴⁶ *Id.*, at 9.

⁴⁷ Bunting, at 15-17.

⁴⁸ Bunting, at 14 “Unlawful Organizations Act.” This Act also increased the fines and physical punishment under the Riotous Assemblies Act.

⁴⁹ David Webster, *Repression and the State of Emergency*, Glenn Moss and I. Obery (eds.), *State and Politics* (Ravan Press Ltd., 1989) at 26-27.

⁵⁰ Webster, at 163. For a list of banned organizations, *Id.*, at 26-27.

173. “The Land Act had created a landless peasantry and forced it to become a captive labor force; a complex set of pass laws had prohibited blacks from moving about the country to sell their labor on a free market and classified those who were unemployed as vagrants; the Master and Servants Act had made the breach of labor contract a criminal offence; and the Mines and Works Act prevented blacks from doing skilled work in the mines. Together this body of laws had set up the framework for a system of exploitative racial capitalism.”⁵¹

Consequences of Apartheid

174. “What was involved (in apartheid) was far more than simply the implementation of what the world regarded as a criminal policy. What was of even greater significance was the use of criminal means to defend apartheid. The massive powers given to the state to control people’s lives and deny them their basic rights were not enough. They were supplemented by every species of common law crime, including systematic and organized murder, fraud, kidnapping and torture.”⁵²

175. Of the twenty-six million people living in South Africa in 1976, only the four million classified as “white” had full citizenship rights, while nineteen million Africans who were born in South Africa, worked in South Africa, and died in South Africa were considered foreigners in their own land.

176. “Some 16.5 million South Africans were criminalised and harassed under the pass laws . . . Four million people were forcibly removed from their homes and land during the

⁵¹ Alister Sparks, *The Mind of South Africa: the Story of the Rise and Fall of Apartheid* (Maandarin, 1991) at 191; Kenneth Christie, *The South African Truth Commission* (St. Martin’s Press, 2000) at 26.

⁵² This quote was taken from the foreword to the Idasa “Truth and Reconciliation in South Africa” 1994 conference proceedings. The quote was reprinted in the *Sunday Tribune*, June 12, 1994. Christie, at 15.

heyday of apartheid social engineering. Three hundred apartheid laws were put on the statute books to control and disadvantage black South Africans from the cradle to the grave.”⁵³

177. Between 1960 and 1970, almost 2 million people were forcibly moved into the “Bantustans”⁵⁴ where they were “reduced to scraping a bare subsistence from eroded, overgrazed land.”⁵⁵

178. “An urbanized black population were subject to the whims of a government who could deport them, arrest them and transport them to places of work. On top of this system of forced migration and removal, the regime decided to create townships away from areas of employment, forcing labor to travel often long distances just to get to work.”⁵⁶

179. “The Surplus People Project, which has produced the most authoritative documentation of the history and scale of forced removals estimated that between 1960 and 1982 over 3.5 million South Africans were moved as part of this policy. Tens of thousands of other people lived for many years under constant threat of losing their homes ... families were separated and lost their homes and productive resources such as livestock, trees and farming implements. In many cases people were not compensated at all. Resistance to forced removals was met with severe repression by the state and resulted in people being killed and jailed.”⁵⁷

180. “In most cases communities were put in places far from their original homes and places of work. Jobs were lost, or people forced to become migrant workers in order to support

⁵³ Paul Connerton, *How Societies Remember* (Cambridge University Press, 1989) at 1-4; Christie, at 13.

⁵⁴ Davies, et al., at 208.

⁵⁵ Danaher, at 48-9. Francis Wilson, Chapter 2: “Farming, 1866-1966” in Monica Wilson and Leonard Thompson’s (eds.), *The Oxford History of South Africa* (Oxford: Oxford University Press, 1971).

⁵⁶ Christie, at 25.

⁵⁷ African National Congress, Statement to the Truth and Reconciliation Commission, Aug. 1996, at 6.

their families. Conditions in resettlement camps were appalling. Often, people were dumped with little more than tents, tin toilets, and trucked-in water.”⁵⁸

181. Entire communities were uprooted and relocated. Forced sales of the homes enabled white South Africans to purchase valuable properties at a fraction of their true value. In Natal, 38 Black owned farms were taken in 1973 and given to whites. By 1982, sixteen of those farms had been converted into profitable coal mines.⁵⁹

182. By 1982, at least 1.4 million people were forced off white-owned farms and 1.3 million “endorsed out” of city areas and into “Bantustans.” Over 400,000 were forced out of long established homes in “black spots.”⁶⁰

183. In 1990, whites owned or controlled 85% of the land. Fewer than 60,000 white farmers owned 84.6 million hectares compared to 1.2 million African farmers who occupied 14.5 million hectares.⁶¹

184. People had to live in areas segregated by the government’s racial classifications. In the urban areas, there were segregated townships for Africans, Asians and Coloureds. Some of these townships were informal in nature, and few African townships had electricity or running water. Millions lived in squatter camps. Many Africans were forced to live in the “Bantustans.” As of 1978, about 45% of those classified as Africans lived in the Bantustans. “The bantustans, 13.6 percent of South Africa, are the only place Africans can own land and ostensibly exercise

⁵⁸ *Id.*

⁵⁹ Hopkins, at 245.

⁶⁰ Controls on Exports to South Africa, Hearings Before the Subcommittees on International Economic Policy and Trade and on Africa of the House Committee on Foreign Affairs, 97th Cong, 2d Sess. Feb 9 and Dec 2, 1982 at 21 (Statement of Goler Teal Butcher on Behalf of the Lawyers’ Committee for Civil Rights Under Law).

⁶¹ The Africa Fund, “South Africa Fact Sheet, “ 1995.

their rights of citizenship. Africans are only permitted in the white cities and suburbs as laborers.”⁶²

185. Conditions in the “bantustans” and townships were harsh: the living conditions were calculated to cause the physical destruction in whole or in part of the inhabitants.

186. In May 1976, Africans earned less than the Poverty Datum Line (representing minimum subsistence) in almost every sector of the South African economy.⁶³

187. In the Transkei “bantustan”, 70% of the rural African population lived below the household subsistence level.⁶⁴ 62% of the African households in the Johannesburg area lived below the subsistence level.⁶⁵

188. A survey of 186 homes in Soweto, carried out in 1975 by the Department of Pediatrics of the University of Witswatersrand, found that 45% of the children aged 10 – 12 were malnourished and 87% of the homes used candles for light with only 5% of the homes having electricity or gas.

189. A survey by the South African Institute of Race Relations found widespread racial disparities in economic and social indicators: the average monthly household income in 1991 for Africans was 779 rand, for whites it was over four times as high, 4,679 rand; the 1990 infant death rate per 1,000 live births for African infants was 52.8, for white infants it was 7.3; there were 216.7 new cases of tuberculosis per 100,000 Africans in 1987, but only 14.8 among whites;

⁶² Kevin Danaher, *In Whose Interest? A Guide to U.S. – South Africa Relations* (Institute for Policy Studies, 1985) at 15.

⁶³ Jennifer Davis, Research Director, American Committee on Africa testimony before the United States Senate Committee on Foreign Relations Subcommittee on African Affairs, Sept. 29, 1976 at 3.

⁶⁴ Economic Sanctions and their potential Impact on U.S. Corporate Involvement in South Africa, Hearing before the Subcommittee on Africa of the House Foreign Affairs Committee, 99th Cong. 1st Sess. Jan 31, 1985 at 24 (Statement of Dr. Jean Sindab, Executive Director, Washington Office on Africa, citing 1984 Carnegie Corporation Report on poverty in South Africa).

⁶⁵ *Id.* (citing 1980 South African Institute for Race Relations statistic).

and the per capita school expenditure for African pupils was 1,248 rand, for white pupils it was 4,448 rand.⁶⁶

190. It was estimated that one of every four babies born in the homelands died during the first year of life.⁶⁷

191. The democratic government is still trying to overcome the legacy of apartheid in areas such as housing, health care and education.

192. All public education was racially segregated with racially different curricula. Education was free and compulsory for white children but not for African children. In March 1987, as estimated, 1,051,189 African children of school-going age (7-16) were not attending school. In 1993, Africans suffered from an illiteracy rate of 46%, "coloureds" 34%, Indians 16%, and whites 1%.

193. Housing was segregated and unequal. Very little housing was built for Africans under apartheid.

194. Between 7.5 and 10 million people (mostly Africans) lived in informal housing, such as shanties, in squatter camps, and back yards of Black township houses. Only 10% of Africans in urban areas had access to electricity.

195. The homelands and townships eventually became ghettos or open-air prisons due to the physical confinement to restricted land masses and limited economic opportunities and health care afforded to their inhabitants.

⁶⁶ South African Institute of Race Relations, *Race Relations Survey, 1993*; Anthony Leomn (ed.), *The Geography of Change in South Africa* (New York: Wiley & Sons Ltd, 1995).

⁶⁷ South Africa Restrictions, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, 98th Cong, 1st Sess, Jun. 8, 1983 at 66 (Statement of Hon. William H. Gray).

196. Medical care was substandard and materially contributed to the spread of disease and death. In 1990, the Medical Officer of Health of the City stated in an Annual Report “that in the locations the mortality among children between the ages of one and five years is fifteen times that of White children of the same age in the town. The location water supply is grossly deficient and the sanitary arrangements are strongly criticized.”⁶⁸

197. The most obvious expression of inequality is the distribution of income by race. In 1987 whites, who comprised only 14% of the population, earned 62% of South Africa’s income. The Africans, who comprised 75% of the population accounted for only 27% of the income.⁶⁹

198. South Africa had “the unenviable distinction of having the most unequal distribution of income for an economy for which data is available. . . . The statistics of racially inscribed inequalities under apartheid are too well known to require detailed recapitulation: whether the measure is infant mortality, nutritional intake, life expectancy, literacy, domestic per capita earnings, employment levels or property ownership, the findings are the same.”⁷⁰

199. “The homelands could not sustain the large numbers of Africans required to live within their borders. Consequently, thousands of Africans left the reserves for the cities to find work. Because many of these job seekers did not have permission to travel in white South Africa, they were classified as illegal immigrants, or ‘illegals’. These conditions led to the arrest each year of large numbers of ‘illegals’ from the homelands for violations of the pass laws.”⁷¹

⁶⁸ Debroey, at 65.

⁶⁹ David M. Smith, “Redistribution and Social Justice after Apartheid,” in Anthony Lemon, ed., *The Geography of Change in South Africa* (John Wiley & Sons, 1995) at 49.

⁷⁰ African National Congress Statement to the Truth and Reconciliation Commission, August 1996 at 4.

⁷¹ J. Bentley Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obsuscation*, 9 Conn. J. Int’l L. 295, 312.

200. Hundreds of thousands of people were arrested each year for pass law violations. Failure to produce a passbook on demand was an arrestable offense regardless of how legally and long one may have been living in an urban area. In 1976 alone, 250,000 Africans were arrested under the pass laws and related influx control laws, according to the Africa Fund.

201. According to the apartheid government's own statistics, 2,419,675 people were arrested or prosecuted under the pass laws between 1974 and 1985.⁷²

202. It has been estimated that 12 million Black Africans were arrested and convicted in summary trials between 1948 and 1985 for pass violations.⁷³

203. Resistance to apartheid continued to grow. A turning point came in 1960. On March 21, 1960, a crowd of between 7,000 and 20,000 gathered in Sharpeville to protest against the pass laws. The demonstrators marched to the municipal police station to turn in their pass books. The police opened fire on the crowd, using machine guns and automatic weapons. Sixty nine people were killed and 186 wounded, many of them women and children and most shot in the back as they ran from the gunfire.⁷⁴

204. That same day, police fired on a crowd of 10,000 demonstrators in Langa, killing two and wounding 49.⁷⁵

205. Following Sharpeville, the state called its first State of Emergency. In the three months following the March 1960 state of emergency declaration, police detained over 10,000 people and arrested a further 10,000, primarily on the charges of pass violations.⁷⁶

⁷² Apartheid: The Facts, International Defense and Aid Fund for Southern Africa, 1991, p. 48, 49.

⁷³ Hopkins, at 247.

⁷⁴ Christie, at 27 -8; Steve Clark (ed.) Nelson Mandela Speaks: Forging a Democratic, Nonracial South Africa (Pathfinder, 1993) at 275.

⁷⁵ Id.

⁷⁶ Webster, at 141.

206. The African National Congress described the resistance that began in the 1970s as follows:

The early 1970s witnessed a slowdown in the economy and increased privations among the black population. Spontaneous as well as organized mass resistance began to surface for the first time in a decade.

Faced with internal mass upsurge, the response of the regime was brute force: detention, closure of institutions, brutal suppression of demonstrations and strikes; and in 1976, cold-blooded shooting of unarmed pupils. The actions of the regime on 16 June 1976, and in the 18 months following this eruption, brought out in bold relief the determination of the apartheid regime to deny human rights at all costs.

Notes taken during a Cabinet meeting by Jimmy Kruger, at the time Minister of Police, reveal an extraordinary level of self-delusion, or the deliberate denial of reality in order to justify murder:

“10.8.76.

Unrest in Soweto still continues. The children of Soweto are well-trained. (...) The pupils/students have established student councils. The basic danger is a growing black consciousness, and the inability to prevent incidents, what with the military precision with which they act. The Minister proposes that this movement must be broken and thinks that police should perhaps act a bit more drastically and heavy-handedly which will entail more deaths. Approved.”

As the decade came to a close, there was an attempt on the part of the state to employ a new approach grounded in “total strategy”, an explicit commitment to mobilize military, economic, physical and psychological resources in defense of the existing order. It brought senior police, Defense Force and intelligence officers directly into the formulation and implementation of government policy, through the State Security Council and the National Security Management System....⁷⁷

207. Between 1960 and 1990, over 80,000 opponents of apartheid were detained for up to three years without trial, including approximately 10,000 women and at least 15,000 children under the age of 15. Restrictions on movement, known as the system of banning, were put into

⁷⁷ African National Congress document, *The National Party and the Anatomy of Repression in South Africa, 1984 – 1994* at 4.6 found at www.anc.org.za/ancdocs/misc/trc04.html

practice against nearly 3,000 people in the same period and nearly 15,000 people were charged in court under various forms of security legislation and probably ten times that number in “unrest trials.”⁷⁸

208. Despite these measures, protests continued. In June 1976, thousands of young Africans in Soweto rallied in protest of the Bantu Education Act.⁷⁹ Further resistance protests and demonstrations were held across South Africa.⁸⁰

209. The apartheid regime responded to the growing unrest with increased force. In response to Sharpeville and the growing trend of government resistance, the SAP instituted Divisional Anti-Riot Units to deal with crowd control.⁸¹ In 1975, the Divisional Anti-Riot Units gave way to new counter-insurgency units, dedicated to crowd and riot control.⁸²

210. Before 1984, the South African police were primarily responsible for controlling the resistance. But as the unrest spread from the townships around Johannesburg to the rest of the country, South African Defense Force (“SADF”) troops were deployed. In July 1985, a State of Emergency was declared in riot torn areas.⁸³

211. After 1985, the SADF, supplemented by the police, was deployed in most black townships. The SADF was responsible for enforcing emergency regulations which included a

⁷⁸ Christie, at 21-22. Max Coleman (ed.), *A Crime Against Humanity: Analysing the Repression of the Apartheid State* (Mayibube Books, 1998) at xi-xii.

⁷⁹ Rauch and Storey, at <http://www.csvr.org.za/papers/papjr&ds.htm>.

⁸⁰ *Id.*

⁸¹ Rauch and Storey at <http://www.csvr.org.za/papers/papjr&ds.htm>. Furthermore, in 1964, the Defence Amendment Act provided for the SAP to call upon the Citizen Force and Commandos in the event the police needed support in suppression of civil unrest. As of 1967, all white 17-year olds would serve in the Citizen Force or Commandos.

⁸² Rauch and Storey at <http://www.csvr.org.za/papers/papjr&ds.htm>. (accessed on 11/6/02).

⁸³ Investor Responsibility Research Center Inc., Social Issues Service, Proxy Issues Report, Sales to Strategic Entities in South Africa, Feb. 23, 1988, at G-10.

ban on protest gatherings. The SADF was also deployed to force black students who were boycotting classes back to school.⁸⁴

212. On June 12, 1986 Minister of Law and Order Louis La Grange imposed yet another State of Emergency. By June 1987, 26,000 people had been detained, equaling the total detained under all previous emergencies and legislation for the past 26 years.⁸⁵

213. In 1991, the Internal Stability Division (ISD), a division of the SAP to handle racial unrest, was introduced under the De Klerk government. By the 1990s, a total of 72 riot units existed, 30 of them dedicated to the homelands.⁸⁶

214. The special riot units used offensive tactics and heavy weaponry, such as batons, teargas, automatic weapons, shotguns, and handguns,⁸⁷ and relied heavily on armored vehicles as crowd control.⁸⁸ According to a TRC report, “the training and equipment of riot police, and the deployment ratios of these policemen relative to the size of the crowds that they confronted, were all based on the assumption that crowds would be controlled and dispersed through the use of force.”⁸⁹

215. The riot units viewed lethal use of force as an accepted and common means of crowd control, and was responsible for most of the apartheid-era killings.⁹⁰ “As the external environment in which they operated took on the character of a low-intensity civil war, their training, equipment, and methodology became increasingly militarized.”⁹¹ A TRC report noted

⁸⁴ *Id.*

⁸⁵ Webster, at 142.

⁸⁶ Rauch and Storey at <http://www.csvr.org.za/papers/papjr&ds.htm>. (accessed on 11/6/02).

⁸⁷ Description of Weapons from CSVr Rauch and Storey at 15 – 17, Exhibit G.

⁸⁸ Rauch and Storey at <http://www.csvr.org.za/papers/papjr&ds.htm>. (accessed on 11/6/02).

⁸⁹ *Id.*

⁹⁰ *Id.*, at 1.

⁹¹ *Id.*

that the riot policing function “was in direct contrast to reforms being made to public order policing methods elsewhere in the democratic world at this time.”⁹²

216. A report noted:

Anti-apartheid and human rights groups, such as the Detainee Parents Support Committee (DPSC), have accused the security forces of widespread brutality, including torture of detainees, assaults, killings and rape, as well as, on occasion, the wanton destruction of property. More than 3,000 blacks reportedly have died in the violence of the last three years, many of them in confrontations with the security forces. More than 20,000 political opponents of the white regime have been imprisoned, including several thousand children.⁹³

217. A panel of doctors from the National Medical and Dental Association who treated detainees after their release found that 83 percent of released detainees exhibited signs of physical abuse, and 25 percent of the released detainees alleged sexual abuse. Of those examined (ranging in age from 14 to 45), 95 percent showed symptoms of post-traumatic stress disorder. The average detention time ranged from 4 hours to 315 days.⁹⁴

218. Evidence from court records and lawyers indicates that the practice of torture to secure admission of guilt was common.⁹⁵

219. The torture of detainees was the result of training and indoctrination, not the work of aberrant individuals. Many women detainees suffered sexual abuse. The families and friends of detainees were frequently subjected to sustained harassment and surveillance.⁹⁶

⁹² *Id.* at 4.

⁹³ Investor Responsibility Research Center, Inc., Social Issue Service, Proxy Issue Report, *Sales to Strategic Entities in South Africa* (Feb. 23, 1988) at G-10.

⁹⁴ Webster, at 167, 168. Webster further notes that the DPSC (Detainee Parents Support Commission, which was renamed the Human Rights Committee of South Africa in 1995), the organization that created these reports, distinguishes between police custody and detention. Detention referring to those people held under security or state of emergency legislation, while police custody refers to people held under criminal legislation even if the motive for custody ostensibly is for political arrest. *Id.* at 168.

⁹⁵ Controls on Exports to South Africa, Hearings Before the Subcommittees on International Economic Policy and Trade and on Africa of the House Committee on Foreign Affairs, 97th Cong, 2d Sess. Feb 9 and Dec 2, 1982 at 21 (Statement of Goler Teal Butcher on Behalf of the Lawyers' Committee for Civil Rights Under Law).

220. Between 1990 and the end of 1993, over 12,000 civilians were killed and at least 20,000 injured in thousands of incidents, including many massacres. Many of the victims were women and children. The numbers of assassinations of anti-apartheid leaders also increased, from 28 in 1990, to 60 in 1991 and 97 in 1993.⁹⁷

221. "The South African conflict was an extremely long and violent one with the apartheid period justifiably falling into the category of crimes committed against humanity."⁹⁸

222. In 1993, negotiations led to an agreement on the date for non-racial elections, and Nelson Mandela, as leader of the ANC, called for the lifting of economic sanctions.

223. Apartheid ended in 1994 with the election of Nelson Mandela. Its consequences live on.

THE UNITED NATIONS AND OTHER ORGANIZATIONS PUT CORPORATIONS AND THE WORLD ON NOTICE

224. Beginning in 1950, the world community began to condemn apartheid as a crime against humanity and to institute a variety of sanctions against South Africa. United Nations resolutions reflected this emerging consensus among civilized societies. Individual nations passed laws in response to the resolutions and in conformity with their objectives. Private and transnational organizations took similar steps to implement the objectives of the resolutions. Taken together, these actions over a span of 40 years explicitly placed businesses involved in the financial and economic support of the apartheid government on notice that their involvement violated international law and constituted participation in a crime against humanity.

⁹⁶ African National Congress, Statement to the Truth and Reconciliation Commission, Aug. 1996, at 2-3.

⁹⁷ African National Congress Submission to the Truth and Reconciliation Commission, Aug. 1996, at 25.

⁹⁸ Christie, at 12.

225. On December 2, 1950, the U.N. General Assembly issued its first Apartheid-related Resolution declaring apartheid a “policy of ‘racial segregation’ [that] is necessarily based on doctrines of racial discrimination.”⁹⁹

226. Between 1950 and 1959, the General Assembly issued several more Resolutions condemning apartheid.¹⁰⁰

227. In 1952, the U.N. established a commission to study the racial situation in South Africa.

228. After the Sharpeville massacre, the U.N. Security Council issued a Resolution deploring “the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa,” and called upon South Africa to abandon apartheid.¹⁰¹ Boycotts of South African goods were implemented in many countries, and the Second Conference of Independent African States called for sanctions against South Africa.

229. In 1961, the International Labor Organization voted in favor of a resolution called for South Africa to withdraw from the ILO.

230. Two years later, the General Assembly began to implement measures intended to weaken the apartheid economy.

231. On November 6, 1962, the General Assembly called for a boycott on all South African goods; called on member states to break off diplomatic ties to South Africa, and to

⁹⁹ G.A. Resolution 395 (V), Dec. 2, 1950.

¹⁰⁰ Resolutions included: Resolution 820 (IX) (1954); Resolution 1016 (XI) on apartheid (January 1957); Resolution 1178 (XII) (November 1957); Resolution 1248 (XIII) (1958); Resolution 1375 (XIV) (1959).

¹⁰¹ Security Council Resolution, S/RES/134, 1 April 1960.

refrain from exporting goods, especially arms and ammunition, which would be used to increase “ruthlessness involving violence and bloodshed.”¹⁰²

232. Less than one year later, on August 7, 1963, the Security Council adopted Resolution 181 condemning the arms build-up in South Africa and calling on all States and their domestic corporations to “cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa.”¹⁰³

233. In 1964, a U.N. expert committee suggested implementing an embargo specifically against the export of petroleum and related products to South Africa.

234. In March 1967, the U.N. Commission on Human Rights denounced the actions of the South African Government as “contrary to international law and international morality.”¹⁰⁴

235. In 1968, the General Assembly declared Apartheid to be a crime against humanity:

Reiterates its condemnation of the policies of apartheid practiced by the Government of South Africa as a crime against humanity; . . .

Expresses its grave concern over the ruthless persecution of opponents of apartheid under arbitrary laws¹⁰⁵

236. In December of 1968, the General Assembly condemned “the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which, through their political, economic and military collaboration with the Government of

¹⁰² General Assembly Resolution, *The Policies of Apartheid of the Government of the Republic of South Africa*, A/Res/1761(XVII).

¹⁰³ The Security Council reaffirmed this Resolution in December 1963 and included all shipments of any materials that might be used to build arms or ammunition. The Resolution again was strengthened in July 1970. Security Council Resolution, *Question Relating to the Policies of Apartheid of the Government of the Republic of South Africa*, S/RES/181, 7 August 1963; Security Council Resolution, S/RES/182, 4 December 1963; Security Council Resolution, S/RES/282, 23 July 1970.

¹⁰⁴ Resolution adopted by the United Nations Commission on Human Rights. E/CN.4/RES/2 (XXIII), 6 March 1967.

¹⁰⁵ General Assembly Resolution, *The policies of apartheid of the Government of South Africa*. A/RES/2396 (XXIII), 2 December 1968.

South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies.”

237. In the same Resolution, the General Assembly expressed “grave concern over the ruthless persecution of opponents of apartheid under arbitrary laws” and urged the international community to apply economic sanctions against South Africa.¹⁰⁶

238. The General Assembly declared in December 1970 the “policies of apartheid of the Government of South Africa are a negation of the Charter of the United Nations and constitute a crime against humanity.”¹⁰⁷

239. In 1972, The Security Council urged Member States to observe the arms embargo against South Africa.¹⁰⁸

240. The International Conference of Experts for the Support of Victims of Colonialism and Apartheid in South Africa met in Oslo, Norway in 1973. The Conference adopted the following program of action:

(61) The collaborative role of international investment in, and trade and other relations with, South Africa should be exposed and the false claim that such supportive links can act as agents for change should be condemned and rejected. Investigations and studies of these links should take place in full consultation with the liberation movement.

(63) Investments should be withdrawn; all new investment programmes should be stopped; no loans or any other assistance should be provided either to the white racist regime or to corporations operating in South Africa.

¹⁰⁶ *Id.*

¹⁰⁷ General Assembly Resolution, *The Policies of apartheid of the Government of South Africa*, A/RES/2627 (XXV), 24 October 1970; General Assembly Resolution, A/RES/2636, 13 November 1970. Later, on December 14, 1973, the General Assembly declared that “the South African regime has no right to represent the people of South Africa and that the liberation movements recognized by the Organization of African Unity are the authentic representatives of the overwhelming majority of the South African people.” General Assembly Resolution, *Policies of apartheid of the Government of South Africa: Situation in South Africa resulting from the policies of apartheid*, A/RES/3151 G (XXVIII), 14 December 1973.

¹⁰⁸ Security Council Resolution, S/RES/311, 4 February 1972. Also in 1972, the General Assembly declared that “the United Nations has a vital interest in securing the speedy elimination of apartheid.” General Assembly Resolution, A/RES/2923 E (XXVII), 15 November 1972.

(64) All economic and scientific support of, collaboration with, and assistance to South Africa should be stopped

(68) The international arms embargo should be fully implemented by all States, and the Security Council should expose those States which violate it, especially France, and secure their compliance. The Security Council should take further action to prevent the importation of arms from South Africa by other States. The Security Council should also examine all other forms of military co-operation with South Africa and take appropriate action.

(73) The international boycott of South African goods and campaigns against corporations which have links with South Africa should be intensified.¹⁰⁹

241. Following discussions relating to the Conference's findings, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid. The Convention declared apartheid a crime against humanity, and all participants in apartheid as criminals, whether they were organizations, institutions, or individuals. Article II of the Convention defined apartheid as:

[s]imilar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- a. Denial to a member or members of a racial group or groups of the right to life and liberty of person:
 1. By murder of members of a racial group or groups;
 2. By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
 3. By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

¹⁰⁹ The Programme of Action Adopted by the International Conference of Experts for the Support of Victims of Colonialism and Apartheid in South Africa (Oslo, 9-14 April 1973), A/9061, 7 May 1973.

- b. Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- c. Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- d. Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- e. Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- f. Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

242. Article III of the Convention described who would be held responsible for committing the acts outlined in Article II.

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

- a. Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;
- b. Directly abet, encourage or cooperate in the commission of the crime of apartheid.

243. In 1976, the U.N. established the Centre against Apartheid with the U.N. Secretarial.

244. All Arab OPEC members placed an oil embargo on South Africa in 1973. After the fall of the Shah in February 1979, Iran, too, joined the embargo.¹¹⁰

245. In 1975, the U.N. General Assembly called on the Security Council to “impose an effective embargo on supply of oil and oil products to South Africa and on all assistance to the oil industry in South Africa, particularly to the oil from coal industry” and requested all members to facilitate the “prohibition of the supply of oil and oil products to South Africa as well as technology to its oil industry.”¹¹¹

246. The General Assembly condemned the cooperation of transnational corporations’ with the apartheid regime in a November 9, 1976 Resolution:

1. *Proclaims* that any collaboration with the racist regime of South Africa constitutes a hostile act against the oppressed people of South Africa and a contemptuous defiance of the United Nations and the international community;

2. *Strongly condemns* the action of those States and foreign economic and other interests which continue to collaborate with the racist régime of South Africa; ...

5. *Condemns* the intensified activities of transnational corporations, which continue to exploit the racially oppressed people of South Africa and plunder its natural resources and thereby are accomplices to the crimes of the apartheid regime ...¹¹²

247. Following the submission of the Preliminary Report of July 14, 1976, by the Special Rapporteur to the Special Committee against Apartheid, the General Assembly adopted a Resolution condemning “the collaboration of ... those foreign economic interests which

¹¹⁰ R. Hengeveld and J. Rodenburg, (eds.), *Embargo*, Shipping Research Bureau, Amsterdam University Press, 1995 at 21.

¹¹¹ U.N.G.A. Res 3411 (Dec. 10, 1975).

maintain and/or continue to increase their collaboration with the racist regimes in southern Africa, especially in the economic, military and nuclear fields.¹¹³

248. In 1976 and again in 1977, the Security Council condemned apartheid and specifically the South African Government for "its resort to massive violence against and killings of the African people, including schoolchildren and students and others opposing racial discrimination."¹¹⁴ The Security Council demanded an end to the violence against and repression of the black people and to release all political prisoners.¹¹⁵

249. In addition in 1977, the Security Council once again called for an arms embargo against South Africa, but this time made it mandatory by invoking Chapter VII of the U.N. Charter.¹¹⁶

250. In November 1979, the United Nations Special Committee Against Apartheid in South Africa co-sponsored an International Seminar on the Role of Transnational Corporations in South Africa. The Seminar expressed the view that "transnational corporations bear a major share of responsibility for the maintenance of the system of apartheid, for strengthening the repressive and military power of the racist regime and for the undermining of international action to promote freedom and human dignity in South Africa."¹¹⁷

¹¹² General Assembly Resolution, Policies of apartheid of the Government of South Africa: Economic Collaboration with South Africa, A/RES/31/6 H, 9 November 1976.

¹¹³ General Assembly Resolution, Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist regimes in southern Africa, A/RES/31/33, 30 November 1976.

¹¹⁴ Security Council Resolution, S/RES/392, 19 June 1976.

¹¹⁵ Security Council Resolution S/RES/417, 31 October 1977.

¹¹⁶ Security Council Resolution, *The Question of South Africa*, S/RES/418, 4 November 1977.

¹¹⁷ Charles Peter Abrahams, *The Doctrine of Odious Debts*, Rijks Universiteit Leiden, Aug 2000 at 79 (citing *Transnational Corporations in South Africa and Namibia*, *The Review – International Commission of Jurists*, No. 36-39 (1986-87) at 34).

251. In response to the Declaration on Foreign Investment in South Africa, adopted by the Council of Ministers of the Organization of African Unity in June 1980, the U.N. General Assembly reaffirmed that:

any economic or other activity which . . . obstructs efforts aimed at the elimination of colonialism, *apartheid* and racial discrimination in southern Africa and other colonial Territories is in direct violation of the rights of the inhabitants and of the principles of the Charter and all relevant resolutions of the United Nations, . . .

the exploitation and depletion of those resources by foreign economic interests, in particular in southern Africa, in association with the illegal racist minority regime of South Africa, constitute a direct violation of the rights of the peoples and of the principles stated in the Charter and all relevant resolutions of the United Nations.

252. Following acts of police violence against student demonstrators, the Security Council adopted a Resolution supporting the arms embargo and condemning the violence in South Africa:

1. *Strongly condemn*[ed] the racist régime of South Africa for further aggravating the situation and its massive repression against all opponents of *apartheid*, for killings of peaceful demonstrators and political detainees and for its defiance of General Assembly and Security Council resolutions . . .

3. *Reaffirm*[ed] that the policy of *apartheid* is a crime against the conscience and dignity of mankind and is incompatible with the rights and dignity of man, the Charter of the United Nations and the Universal Declaration of Human Rights and seriously disturbs international peace and security; . . .

11. *Request*[ed] the Security Council Committee . . . to redouble its efforts to secure full implementation of the arms embargo against South Africa by recommending by 15 September 1980 measures to close all loop-holes in the arms embargo, reinforce and make it more comprehensive.¹¹⁸

253. In 1979, the U.N. General Assembly asked the U.N. Security Council to consider imposition of a mandatory oil embargo against South Africa.

¹¹⁸ Security Council Resolution, S/RES/473, 13 June 1980.

254. The General Assembly adopted a voluntary oil embargo against South Africa in December 1980 in order to increase the effectiveness of the mandatory U.N. arms embargo already enacted. The Resolution noted:

An embargo on the supply of petroleum, petroleum products and other strategic materials is an essential complement to the arms embargo against South Africa

[The General Assembly] *Urges* . . . action against companies or individuals who supply or transport crude oil or oil products to South Africa . . .

Urges . . . a ban on the participation of corporations and individuals within their jurisdiction in the oil industry in South Africa, including exploration, storage, refining, transport and distribution.¹¹⁹

255. In January 1981, the U.N. Special Committee Against Apartheid organized a Conference of West European Parliamentarians on an Oil Embargo Against South Africa in Brussels. In attendance were 35 Members of Parliament from eight western European countries and the European Parliament as well as representatives of U.N. bodies, the OAU, and South African and Namibian liberation movements. The Conference adopted a Declaration:

In view of South Africa's complete lack of indigenous crude oil resources, an oil embargo represents one of the most effective forms of external action available to complement the existing arms embargo against South Africa. . . .

Alarming evidence has emerged in recent months suggesting that Western oil and shipping companies have played a key role in assisting South Africa to evade the existing oil embargo. In particular, these companies appear to be purchasing oil from various countries, including those that embargo South Africa, and then secretly taking it directly or indirectly to South Africa. . . .¹²⁰

256. In 1981, the International Conference on Sanctions against South Africa called for a freeze on all new investments and financial loans to South Africa. "It is a well established fact that foreign capital, loans and other financial facilities sustain the *apartheid* economy, provide it with resources to expand its repressive apparatus, as well as to acquire and increase its military

¹¹⁹ U.N.G.A. Res. 35/206 (Dec. 1980).

¹²⁰ *Id.* The oil embargo never became a mandatory resolution because the United States, France, the United Kingdom, and Germany vetoed the resolution in Security Council.

and nuclear capability, to the detriment of peace and security in the entire southern African region.”¹²¹

257. The U.N. General Assembly noted that:

continuing political economic and military collaboration of certain Western states and their transnational corporations with the racist regime of South Africa encourages its persistent intransigence and defiance of the international community and constitutes a major obstacle to the elimination of the inhuman and criminal system of apartheid in South Africa. . . .¹²²

258. The General Assembly adopted a Resolution in December 1983 “reaffirming that apartheid is a crime against humanity” and strongly condemning the apartheid regime for its repression and brutal acts of torture, murder, and terrorism. The Resolution specifically criticized “transnational corporations and financial institutions that have increased political, economic and military collaboration with the racist minority regime of South Africa despite repeated appeals by the General Assembly. . . .”¹²³

259. Also in 1983, the General Assembly adopted a resolution that:

Reaffirm[ed] that any economic or other activity which . . . obstructs efforts aimed at the elimination of colonialism, apartheid and racial discrimination in southern Africa and other colonial Territories is in direct violation of the rights of the inhabitants and of the principles of the Charter and all relevant resolutions of the United Nations, . . .

Condemn[ed] the intensified activities of those foreign economic, financial and other interests which continue to exploit the natural and human resources of the colonial Territories and to accumulate and repatriate huge profits to the detriment of the interests of the inhabitants . . .

¹²¹ Declaration of the International Conference on Sanctions against South Africa, A/CONF.107/8, par.253, May 27, 1981.

¹²² General Assembly Resolution, *Policies of apartheid of the Government of South Africa: Situation in South Africa*, A/RES/36/172 A, 17 December 1981. Further, the United Nations General Assembly proclaimed the year 1982 as International Year of Mobilization for Sanctions Against South Africa. General Assembly Resolution, *Policies of apartheid of the Government of South Africa, International Year of Mobilization for Sanctions Against South Africa*, A/RES/36/172 B, 17 December 1981.

¹²³ General Assembly Resolution, *Policies of Apartheid of the Government of South Africa: Situation in South Africa*, A/RES/38/39 A, 5 December 1983.

Strongly condemn[ed] the support which the racist minority regime of South Africa continues to receive from those foreign economic, financial and other interests which are collaborating with it . . .

Condemn[ed] the activities of foreign economic and other interests in the colonial Territories impeding . . . the efforts to eliminate colonialism, *apartheid* and racial discrimination, . . .

Call[ed] upon those oil-producing and oil-exporting countries that have not yet done so to take effective measures against the oil companies concerned so as to terminate the supply of crude oil and petroleum products to the racist regime of South Africa.¹²⁴

260. In 1984 the General Assembly adopted another Resolution “vigorously” condemning “transnational corporations and other organizations which maintain or continue to increase their collaboration with the racist régime of South Africa, especially in the political economic, military and nuclear fields, thus encouraging that regime to persist in its inhuman and criminal policy of brutal oppression of the peoples of southern Africa and denial of their human rights.”¹²⁵

261. The Security Council further condemned apartheid as “a system characterized as a crime against humanity” including the “continued massacres of the oppressed people, as well as the arbitrary arrest and detention of leaders and activists of mass organizations....”¹²⁶

262. In 1984, the General Assembly called upon the Security Council to enforce mandatory sanctions against South Africa and adopted a resolution outlining a voluntary set of sanctions based on the International Convention on the Suppression and Punishment of the

¹²⁴ General Assembly Resolution, Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa, A/RES/38/50, 8 December 1983.

¹²⁵ General Assembly Resolution, Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist regimes in southern Africa, A/RES/39/15, 23 November 1984.

¹²⁶ Security Council Resolution, S/RES/556, 23 October 1984.

Crime of Apartheid adopted in 1976. This resolution also condemned the increasing violence of the Apartheid regime.¹²⁷

263. In response to the General Assembly's call for sanctions against South Africa, the Security Council adopted a resolution that the international community should take action to prevent apartheid through sanctions:

Deeply concerned at the worsening of the situation in South Africa and at that continuance of the human suffering that the apartheid system, which the Council strongly condemns, is causing the country,

Outraged at the repression, and condemning the arbitrary arrests of hundreds of persons, . . .

Considering as totally unacceptable the practice by the South African Government of detention without trial and forcible removal,

[The Security Council] *Urges* States Members of the United Nations to adopt measures against South Africa, such as the following:

- (a) Suspension of all new investment in South Africa;
- (b) Prohibition of the sale of krugerrands and all other coins minted in South Africa . . .
- (f) Prohibition of all sales of computer equipment that may be used by the South African army and police.¹²⁸

264. In 1986, the Security Council again urged:

States to take steps to ensure that components of embargoed items do not reach the South African military establishment and police through third countries; . . .

all States to prohibit the export to South Africa of items which they have reason to believe are destined for the military and/or police forces of South Africa, have a military capacity and are intended for military purposes, namely, aircraft, aircraft engines, aircraft parts, electronic and telecommunication equipment, computers and four-wheel drive vehicles.¹²⁹

¹²⁷ General Assembly Resolution, Policies of Apartheid of the Government of South Africa: Comprehensive Sanctions against the apartheid regime and support to the liberation struggle in South Africa, A/RES/39/72 A, 13 December 1984. These voluntary sanctions were renewed in 1985. General Assembly Resolution, Policies of Apartheid of the Government of South Africa: Comprehensive Sanctions against the apartheid regime and support to the liberation struggle in South Africa, A/RES/40/64 A, 10 December 1985.

¹²⁸ Security Council Resolution, S/RES/569, 26 July 1985.

¹²⁹ Security Council Resolution, S/RES/591, 28 November 1986.

265. The General Assembly in 1989 adopted another Resolution regarding the practices of international corporations toward South Africa. The Assembly:

Noting with concern that a number of transnational corporations, including banks, continue to provide support to the apartheid economy by maintaining financial and technological and other ties with South Africa,

1. *Urges* all states that have not yet done so, pending the imposition of comprehensive and mandatory sanctions, to adopt legislative and/or comparable measures to impose effective sanctions against South Africa and, in particular. . .

(d) To induce transnational corporations, banks and financial institutions to withdraw effectively from South Africa by ceasing equity investment and cutting off non-equity links, particularly those involving transfer of high technology and know-how;¹³⁰

266. Furthermore, the General Assembly:

Noting that the maintenance of the *apartheid* economy and the expansion of military and police expenditures substantially depend on the supply of further credits and loans by the international financial community, . . .

3. *Calls upon* those States which continue to maintain trade and financial links with South Africa to restrict the provision of trade credits and cease loan insurance, in particular:

(a) By calling upon all the relevant banks and financial institutions to impose stricter conditions on day-to-day trade financing, specifically through reducing the maximum credit terms to 90 days;¹³¹

267. These United Nations resolutions as well as the accompanying domestic legislation of individual states singled out the oil, arms, transportation, banking and technology industries as pillars of apartheid. These industries in particular were warned that their trade with the apartheid regime aided and abetted crimes against humanity.

¹³⁰ General Assembly Resolution, Policies of Apartheid of the Government of South Africa: Comprehensive and Mandatory Sanctions Against the Racist Regime of South Africa and Imposition, Co-ordination and Strict Monitoring of Measures Against Racist South Africa A/RES/44/27 C & D, 22 November 1989.

¹³¹ General Assembly Resolution, Policies of Apartheid of the Government of South Africa, International Financial Pressure on the Apartheid Economy of South Africa, A/RES/39/72 E, 22 November 1989.

Defendants Supported the Apartheid System

Background

268. Apartheid would not have occurred in the same way without the participation of the defendants.

269. As stated by Owen Horwood, South African Minister of Finance, in 1983:

The story of the economic development of this country is intimately bound up with foreign capital, technology, and expertise. Significant investments usually bring all three. It allows us to do what we want rather more quickly. It allows us to do some things better than we would otherwise do.¹³²

270. Apartheid was “more than the programme of one political party.”¹³³ Business interests were “active participants and initiators in constructing a political and economic system which, in the end, was classified in international law as a crime against humanity The period of extreme repression, from 1960 onwards, was intended to save the system that protected privilege based on race, thereby continuing to guarantee business its exclusive place in the South African economy and society.”¹³⁴

271. “A research report prepared by the University of Witswatersrand Centre for Business Studies, released in 1984, concluded that private corporate support is largely responsible for the success of the government’s apartheid policies.”¹³⁵

¹³² South Africa Restrictions, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, 98th Cong, 1st Sess, Jun. 8, 1983 at 102.

¹³³ African National Congress Submission to Special Truth and Reconciliation Hearing on the Role of Business, Nov. 1977 at 1.

¹³⁴ *Id.* The ANC noted that several core measures of apartheid were actively promoted by important business groups.

¹³⁵ Economic Sanctions and their potential Impact on U.S. Corporate Involvement in South Africa, Hearing before the Subcommittee on Africa of the House Foreign Affairs Committee, 99th Cong. 1st Sess. Jan 31, 1985 at 24 (Statement of Dr. Jean Sindab, Executive Director, Washington Office on Africa, quoting P.W. Botha).

272. "The police state was being built at the same time as the new automated refineries and the great factories, in the years that U.S. corporate investment was growing rapidly, sometimes by 20% a year."¹³⁶

273. Apartheid was not only a system of political and social racism, but a complex system of labor control: "The plan of 'influx control,' passbooks, forced removals, and "Bantustans" is designed to ensure just enough black labor to produce the wealth enjoyed by the white minority and to keep a reserve pool of unemployed in the "Bantustans". Exploitation of cheap black labor means high profits for these corporations. As then Prime Minister P. W. Botha explained in April 1981: 'Through the years we have brought about a situation in which the Republic is one of the best countries to reside and invest in.' Apartheid South Africa attracts foreign capital because it has two economies in one: the developed 'white' economy which provides a good market, and the underdeveloped 'black' economy that supplies cheap labor."¹³⁷

274. Business "generally acted as though 'cheap black labour' was a natural endowment like the weather or mineral wealth."¹³⁸

275. As a top ranking Ford official said, "Why are we in South Africa? ... we would not be there were there not an opportunity to make a profit."¹³⁹

276. A British banker noted, "South Africa's a good investment for people who can stand the political heat."¹⁴⁰

¹³⁶ Jennifer Davis, Testimony, at 2.

¹³⁷ Economic Sanctions and their potential Impact on U.S. Corporate Involvement in South Africa, Hearing before the Subcommittee on Africa of the House Foreign Affairs Committee, 99th Cong. 1st Sess. Jan 31, 1985 at 24 (Statement of Dr. Jean Sindab, Executive Director, Washington Office on Africa).

¹³⁸ African National Congress Submission to Special Truth and Reconciliation Hearing on the Role of Business, Nov. 1977 at 4.

¹³⁹ *Id.*, at 37 (Statement of William D. Broderick, Director of International Governmental Affairs for Ford Motor Company).

¹⁴⁰ Robert A. Bennett, *Chase Ends Loans to South Africans*, N.Y. Times, Aug. 1, 1985.

277. The South African military was dependent on foreign sources for advanced technology, oil and trucks. An estimated 60% by value of all automobiles were imported.¹⁴¹

278. The National Supplies Procurement Act and the National Key Points Act required businesses to produce military supplies upon request and make provisions for para-military units within plants for protection against potential African resistance.¹⁴²

279. "The [South African] government has co-opted many foreign firms into security collaboration. The National Key Points Act of 1980, the Atomic Energy Act as amended, the National Supplies procurement Act as amended, and the Petroleum Products Amendment Act, among other pieces of legislation, implicate private firms in a secrecy about their production levels, sources of supply, trading partners and so forth that contribute to the siege mentality. One could also surmise that in this atmosphere there is a good deal of planning and implementation of secret stockpiles, strategic reserves and contingency plans entangling the private sector and the strategic planners."¹⁴³

280. Companies played a strategic role in the South African's defense of apartheid from "civil unrest". Under the Civil Defense Act of No. 39 of 1966, the South African government could declare any facility a National Key Point. Companies that owned facilities declared National Key Points were required to provide a certain level of security and, if they failed to do so, the government could provide the security and bill the company for costs. Companies liaised with government authorities. The system was extended by the National Key

¹⁴¹ Richard Knight, Literature Director, American Committee on Africa, Statement Before the Special Committee Against Apartheid of the United Nations General Assembly of Apr. 3, 1984 at 2.

¹⁴² Beate Klein, Bricks in the Wall: An Update on Foreign Bank Involvement in South Africa, World Council of Churches Report, Mar, 1981, at 7.

¹⁴³ Kenneth W. Grundy, *The Rise of the South African Security Establishment* (South African Institute of International Affairs, 1983) at 21; "Fortressing Industry, Fortressing Apartheid," *Register*, no. 28, October/November 1983. Danaher at 54.

Points of 1980 that moved much of the responsibility to the Ministry of Defense. It was against the law for companies to announce that their facilities had been declared National Key Points.

According to Dr. Jakkie Cilliers:

“The National Key Points Act, No. 102 of 1980, provides for the Minister of Defense to declare any premises, building, installation or industrial complex or any soil or water surface, whether with a building, installation or structure on it or not, as a National Key Point or National Key Point complex. The Minister’s decision in this regard is guided by his view of whether the loss, damage, disruption or immobilization of the facility may prejudice the Republic or whenever he considers it necessary or expedient for the safety of the Republic or in the public interest. This Act vests the Minister with wide powers from that enabling him to take over the duties of an owner of a National Key Point to regulating various aspects in general – anything, in fact, which in his opinion is necessary to prescribe to achieve the objective of the statute, including ordering the owner of the complex to improve security at the owner’s cost. It should be noted that a ‘declaration’ by the Minister takes the form of a letter to the owner. The owner is prohibited, by law, from disclosing this fact.”¹⁴⁴

281. Under the National Key Points Act, the Minister of Defense declared a location a National Key Point based on whether “the loss, damage, disruption, or immobilization of the facility may prejudice the Republic or whenever he considers it necessary or expedient for the safety of the Republic or in the public interest.”

282. In 1977, P.W. Botha, then Minister of Defense, discussed the National Security Management System in a Defense White Paper:

The resolution of the conflict in the times in which we now live demands interdependent and coordinated action in all fields: military, psychological, economic, political, sociological, technological, diplomatic, ideological, cultural, etcetera. We are today involved in a war whether we like it or not.¹⁴⁵

283. In May 1980, South African Prime Minister P.W. Botha appointed business leaders, including officers of Barclays, Standard Bank, Anglo American mining company, and

¹⁴⁴ Dr. Jakkie Cilliers, Executive Director, Institute for Defense Policy, “An Outline to Effect Defense Related Reform,” *African Defense Review*, Issue No. 16, 1994. The Institute for Defense Policy is now called the Institute for Strategic Studies.

¹⁴⁵ African National Congress, Statement to the Truth and Reconciliation Commission, Aug. 1996 at 9.

the President of the Johannesburg Stock Exchange, to a Defense Advisory Board ("DAB").

Botha told the House of Assembly that the Defense Force had succeeded in obtaining the goodwill and cooperation of business leaders and said:

"[W]e have obtained some of the top business leaders in South Africa to serve on the Defense Advisory Board in order to advise me from the inside, not only about the armaments industry, but also about the best methods to be applied within the Defense Force . . . I want to unite the business leaders of South Africa, representative as they are, behind the South African Defense Force. I think I have succeeded in doing so."¹⁴⁶

284. Companies sought to camouflage their trade through various artifices.

285. For example, many companies that withdrew from South Africa retained lucrative licensing and franchise arrangements: "Many U.S. firms said goodbye but never completely left. In some cases, all that changed was the legal ownership of small South African assembly or distribution operations: They still generate revenue from franchises, licensing or distribution agreements. Under these arrangements, companies keep their product before the public yet avoid the negative publicity from direct investment."¹⁴⁷

286. The practice of setting up offshore trusts by companies such as Exxon, General Motors, and IBM attracted attention:

The idea of setting up a trust that could avoid the moral stigma of being involved in apartheid, skirt the foreign exchange regulations in South Africa, and sidestep the Comprehensive Anti-Apartheid Act, all at the same time, must have seemed attractive to many companies. . . It is instructive to see how setting up an offshore trust will allow a U.S. company to skirt the Comprehensive Anti-apartheid Act's restriction on new investment in South Africa: since the trust is not located in South Africa, the disinvesting

¹⁴⁶ Charles Peter Abrahams, at 65.

¹⁴⁷ Jim Jones, *Aftermath of the Exodus of U.S. Firm's Departure from South Africa hasn't helped Africans*, U.S. News & World Report, May 1, 1989; Elizabeth Weiner and Steve Mufson, *All Roads Lead out of South Africa*, Business Week, Nov. 3, 1986 ("most recent departures of U.S. companies have involved the sale of units to local management, along with arrangements to supply parts and technical know how."); Dennis Kneale, *GM, IBM and others Departing South Africa are Faulted for Plans to Continue Sales There*, Wall St. J., Oct 24, 1986 (describing criticism of "increasingly common exit arrangements that typically let departing U.S. companies continue to sell goods and services to newly independent units they leave behind" and noting "such licensing and distribution deals can let U.S. companies reduce the heat surrounding a direct investment in South Africa - while allowing their revenues, corporate images and advertising to continue").

company may legally extend credit to the trust, enabling it to purchase the assets of the South African subsidiary. The local company then sends its dividends to the trust, which uses the money to pay off the loan to the parent company. This arrangement not only allows the parent company to reap the benefits of self-financing, albeit with the accompanying risk of not being repaid, but it also provides a way for the disinvesting company to maximize its dollar return, as the dividends can leave South Africa at the commercial rand rate.¹⁴⁸

287. Many people assumed that when companies withdrew from South Africa, they would cut all links with the country, but as the Commonwealth Committee of Foreign Ministers noted, "In practice, this has rarely happened. Most have maintained commercial links, licenses, technology-transfer agreements and so on. They continue to provide the products, inputs and services that they supplied before. In the most extreme cases, such as Ford and IBM, withdrawal has had no noticeable effect; the old managers run the old subsidiary and continue to sell the same products supplied by the same former parents."¹⁴⁹

OIL

Introduction

288. Oil was the one major raw material not produced (except synthetically from coal) in South Africa. The Apartheid regime established a high degree of control over the industry in its attempt to ensure a constant supply of oil.

289. Without oil, the police and military could not have functioned and the economy of South Africa would have come to a standstill. The South African regime took a number of steps to ensure an adequate supply of oil.

¹⁴⁸ Haider Ali Khan, *The Political Economy of Sanctions Against Apartheid* (Lynne Rienner Publishers, 1989) at 67-68.

¹⁴⁹ *South Africa: The Sanctions Report*, prepared for the Commonwealth Committee of Foreign ministers on Southern Africa (Penguin Books, 1989).

290. In November 1978, in response to the fall of the Shah and the decision by Iran to join the oil embargo, then-Minister of Economic Affairs Chris Heunis, called a meeting with the managing directors of the oil companies. He met with them in alphabetical order: BP, Caltex, Mobil, Sasol, Shell, then Total and told them each "Our petrol pumps must stay wet."¹⁵⁰

291. South Africa established an "Equalisation Fund" in January 1979 "to compensate the subsidiaries of Western oil companies refining oil in South Africa for their abnormal costs of crude oil purchases."¹⁵¹

292. It has been estimated that South Africa paid at least 50% above market price for its oil imports.¹⁵² Some estimated that the premiums were as high as 70%.¹⁵³

293. A 1988 report described a "confidential document" dated June 27, 1984 and authored by South Africa's Advocate General. The report states that "According to the Advocate-General, from 1978 to 1980 the government compensated international oil companies for the additional expenses they incurred in obtaining oil for South Africa. As a further incentive to these companies to continue to supply their South African subsidiaries with crude oil, Pretoria paid an additional \$8 subsidy per barrel in 1980."¹⁵⁴

¹⁵⁰ R. Hengeveld and J. Rodenburg, (eds.), *Embargo*, (Shipping Research Bureau, Amsterdam University Press, 1995) at 21.

¹⁵¹ *Id.*

¹⁵² South Africa and International Banks, New York Committee to Oppose Bank Loans to South Africa, Jul. 4, 1980 at 5.

¹⁵³ Hengeveld and Rodenburg, Eds., at 21.

¹⁵⁴ Investor Responsibility Research Center Inc., Social Issues Service Proxy Issues Report, Sales to Strategic Entities in South Africa, Feb. 23, 1988 at G-7.

294. Additionally, the Strategic Fuel Fund Association purchased crude oil on behalf of those companies that could not longer be supplied by their parent companies due to the embargo. However, Shell SA and Total SA were able to obtain their own crude oil.¹⁵⁵

295. The oil industry was given special incentives by the apartheid regime “to secure their continued collaboration” according to the ANC.¹⁵⁶

296. In 1976, BP, Shell and Total were granted substantial mining concessions. Three years later the South African Minister of Economic Affairs told the Parliament that the oil companies’ participation in the highly profitable coal export market had been permitted, “subject to the condition that they continue to fulfill their obligations in supplying liquid petroleum fuels.”¹⁵⁷

297. BP, Shell and Total controlled 40% of South Africa’s coal exports in 1985.¹⁵⁸

298. Minister Heunis later noted that the “acquisition of oil was more difficult than arms” and that the oil embargo “could have destroyed this country.”¹⁵⁹

299. U.S. oil corporations made substantial investments in South Africa during the 1970s and 1980s. In 1982, petroleum companies’ investments represented 16.14 percent of total U.S. assets in South Africa.¹⁶⁰

¹⁵⁵ Hengeveld and Rodenburg, at 21.

¹⁵⁶ ANC Statement, Oil Fuels Apartheid, Mar. 1985, at 4.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*, at 22.

¹⁶⁰ Richard Knight, Testimony, Hearings on the Oil Embargo Against South Africa, United Nations Headquarters (April 12-13, 1989), available at <http://richardknight.homestead.com/files/oilembargo.htm>. (accessed on 11/6/02).

Defendants

ExxonMobil Corp.

300. Mobil received from its South African attorneys the following legal advice: “[a]s oil is absolutely vital to enable the army to move, the navy to sail and the air force to fly, it is likely that a South African court would hold that it falls within the definition of munitions of war.”¹⁶¹

301. During the Apartheid regime, Mobil was “the largest U.S. investor in South Africa, with assets of approximately \$426 million.”¹⁶²

302. Mobil officials and directors did not deny that its oil was being supplied to the South African military, although they described the sales as “but a small part of Mobil’s total sales and typical in relative size to its sales to such groups in other countries.”¹⁶³

303. Mobil officials justified sales to the police and military and urged shareholders to vote against a shareholder resolution at its annual meeting to prohibit such sales, by stating:

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.¹⁶⁴

304. In a 1980 explanation to shareholders, Mobil stated “Mobil takes all steps required by U.S. law to prevent exports from the United States being supplied to the police and military in South Africa. These regulations do not, however, cover any goods originating from other sources and exports from the United States represent a small fraction of the total imports of Mobil’s South African affiliates.”¹⁶⁵

¹⁶¹ *International Seminar on Loans to South Africa* at 12; See Item 8—Prohibition of Sales to South African Police and Military at 1.

¹⁶² Item 8—Prohibition of Sales to South African Police and Military at 1.

¹⁶³ *Id.*, at 1.

¹⁶⁴ *Id.*, at 2.

¹⁶⁵ Richard Knight, Testimony.

305. Moreover, Mobil was required by South African law to sell to the police and the military. "As a seller to the Government, Mobil has no policy specifically prohibiting sales to the South African police and military and under South Africa's Official Secrets Act is even unable to confirm or disclose the amount sold to the police and military."¹⁶⁶

306. At the beginning of the 1960s, Mobil ran the only petroleum refinery operating in South Africa. By October 1963, Shell-BP had established a second petroleum refinery.¹⁶⁷ Both refineries were located near Durban.

307. Mobil facilities, such as its oil refinery, were likely part of the National Key Point System. Rawleigh Warner, Jr., Chairman of the Board of Mobil Corporation, noted in a letter in February 1984: "It is a very serious crime under South African law (the punishment for which includes both heavy fines and imprisonment) to communicate information relating to a national key point. Our South African affiliate is, therefore, unable to identify any particular facilities or installations which may be designated key points."

308. Mobil's interests in South Africa included Mobil Oil Southern Africa (100%), Mobil Refining Company Southern Africa (100%), Condor Oil (100%), South African Oil Refinery (32.9%), Vialit (100%), and Roadmix Holdings (26%).¹⁶⁸

309. In 1988, Mobil had assets of between \$400-426 million, about 1% of its world wide assets and 2,739 employees, about 2.3% of the world-wide total, in South Africa.¹⁶⁹

310. Mobil did not pay its African employees equal pay for equal work. At the 1973 Annual Shareholders Meeting, Dr. Howard Schomer of the United Church of Christ said:

¹⁶⁶ Item 8 at 1.

¹⁶⁷ R. Hengeveld and J. Rodenburg, at 13.

¹⁶⁸ M. Bailey and B. Rivers, *Oil Sanctions Against South Africa*, U.N. Center against Apartheid, Notes and Documents (June 1978) at 34.

¹⁶⁹ Richard Knight., Testimony.

The management of Mobil's South African affiliated assured me that within a few weeks the last 40 non-white workers out of a total non-white workforce of more than a thousand will have their wages raised to the official minimum effective level as calculated by the cost-of-living offices in their respective areas.... Do you know that the legal minimum wage in that country [South Africa], is quite a different thing from the sociologist's minimum effective level, is still in the neighborhood of \$21 a month?¹⁷⁰

311. On April 28, 1989, it was announced that Mobil Corporation had agreed to sell its business operations in southern Africa to General Mining Union Corporation Ltd. (Gencor). The price agreed for Mobil's assets was \$155 million plus 1989 earnings estimated at \$10 million.¹⁷¹ The assets included the Wentworth refinery near Durban, pipelines, a distribution network, and twelve subsidiaries. The company employed nearly 3,000 workers in South Africa and operated over 1,100 petrol stations. Mobil was the biggest US investor; it had been in the country for 92 years.¹⁷²

312. Exxon's concerns in South Africa consisted of Esso South Africa Ltd. and Exxon Chemical Ltd., with a combined total of approximately 200 employees.¹⁷³

313. These affiliates had combined revenue in 1985 of approximately \$200 million.¹⁷⁴

314. Exxon may have been designated a National Key Point. When asked if Exxon had been designated, a key point, Roger E. Chandler, Assistant Secretary of Exxon Corporation wrote, "We have been advised by counsel that the information requested in your letter may not be supplied nor may it even be obtained for purposes of supply, as such an action would violate

¹⁷⁰ Transcript, 1973 Annual Meeting of Shareholders, at 13, 16.

¹⁷¹ Nancy H. Kreisler, Mobil is Quitting South Africa, Blaming 'Foolish' Laws in U.S., The New York Times, April 29, 1989.

¹⁷² Shipping Research Bureau, *Fuel for Apartheid*, 1990 at 33f.

¹⁷³ Exxon Sells to Subsidiaries In South Africa, S.F. Chron., Dec. 31, 1986.

¹⁷⁴ Mark Potts, *Exxon to Shed South Africa Holdings*, The Wash. Post, Dec. 31, 1986 at A1.

Sections 3 and 4 of the Protection of Information Act No. 84 of 1982 of the Republic of South Africa.”¹⁷⁵

315. In December 1986, Exxon announced that it “sold its affiliates in South Africa to an independent trust created to continue operations in that country.”¹⁷⁶ Exxon established the independent trust on the Channel Islands’ Isle of Jersey and then lent money to the trust to buy the South African affiliates.”¹⁷⁷

316. After its withdrawal, Exxon continued to honor existing licensing and technical agreements: “Until the entire flow of products and service ends, Exxon will continue to oil the wheels of apartheid.”¹⁷⁸

Shell Oil Company

317. Shell Oil Company was the largest supplier of oil and petroleum to South Africa during apartheid, importing almost 7.5 million tons of oil or 20 percent of South Africa’s estimated import needs.¹⁷⁹

318. Despite international pressure to distance itself and disinvest from South Africa, Shell continued to expand its interest in South Africa. Total investment by Shell South Africa increased from 430 million rand in 1981 to over 1 billion rand in 1985.¹⁸⁰

¹⁷⁵ Letter from Roger E. Chandler, Assistant Secretary, Exxon Corporation to Rev. Carol L. Somplatsky-Jarman, Interfaith Center on Corporate Responsibility, February 22, 1984.

¹⁷⁶ Janice C. Simpson, Exxon Leaves South Africa by Selling Its Interest There to Independent Trust, *The Wall Street Journal*, Dec. 31, 1986.

¹⁷⁷ *Id.*

¹⁷⁸ Quoting Donna Katzin, Director of South Africa Programs for the Interfaith Center on Corporate Responsibility)

¹⁷⁹ S. Faltas, *Shell in South Africa* (Utrecht, Kairos, 1976) at 4.

¹⁸⁰ Shipping Research Bureau, Newsletter.

319. A report commissioned by Shell Oil U.S., known as the "Pagan Report," noted in Appendix XII, first page, that Shell supplied 5,000 barrels per day to the security forces. This constituted about 10% of Shell's contribution to total South African petroleum consumption.¹⁸¹

320. In May 1980, De Bruyne, a top Shell official, admitted that Shell did not differentiate among its clients and supplied schools, the armed forces and the police alike with oil products.¹⁸²

321. During a radio interview on July 2, 1986, a Shell spokesman admitted that Shell was supplying fuels to the South African police and armed forces: "The alternative would be that we withdraw from South Africa, but then the police and army vehicles would use another brand."¹⁸³

322. The 1986 Shell Shadow Report estimated that Shell supplied 18% of the oil consumed by the SADF.¹⁸⁴

323. Even during the embargo, Shell SA was one of the few companies that was able to obtain its own crude oil for use in South Africa.¹⁸⁵

324. When a Norwegian spokesman for Shell was questioned about Shell's sales to the South African military and police, he replied:

That is just the consequence of being present in a country. . . . Neither politically speaking, nor in a practical way, our petroleum products are to be blamed for the policies of the South African government. To say it in a demagogical way: from the fact that Hitler ate pumpernickel, it does not necessarily follow that there is anything wrong with pumpernickel.¹⁸⁶

¹⁸¹ *Shell Shadow Report*, (revised ed., April 1987) at 10.

¹⁸² *Id.*

¹⁸³ VARA Radio, Netherlands, "De Rode Draad," July 2, 1986; quoted in SRB Newsletter No.5 at 9.

¹⁸⁴ Diane Bratcher, *The Neptune Strategy: Shell Battles Its Antiapartheid Critics*, Interfaith Center on Corporate Responsibility, 1987, at 3B.

¹⁸⁵ R. Hengeveld and J. Rodenburg, at 21.

¹⁸⁶ Carl John Sverdrup, *Dg og Tid*, Norway, Feb. 4, 1988.

ChevronTexaco Corporation and ChevronTexaco Global Energy, Inc.

325. ChevronTexaco Global Energy, Inc., formerly known as Caltex Petroleum Corporation,¹⁸⁷ was a joint venture between Chevron Corp. and Texaco Inc., which merged in October 2001 to form ChevronTexaco Corporation. ChevronTexaco Global Energy, Inc. is now part of ChevronTexaco Corporation.

326. In 1966, two years after the U.N. expert committee recommended an oil embargo, Caltex opened a petroleum refinery near Cape Town.

327. According to the South African Magazine, *Management*: "When Caltex began operations in South Africa in 1911, it was an importer and marketer of the finished product. When it built a refinery in 1965 it imported crude oil and refined it. It is still doing so."¹⁸⁸

328. Caltex's expansion in South Africa did not mean an expansion of job opportunities for Africans. Between 1962 and 1972, the proportion of Africans in the workforce fell from 32% to 22%. Moreover, Standard Oil described Caltex's employment practices as "governed by South African laws, and in the event of any conflict between these laws and EEO practices the company must be guided by the former."¹⁸⁹

329. Dennis Fletcher, Chairman and Managing Director of Caltex's South African subsidiary, commented: "In 1973, we were unable to buy Saudi Arabian crude so we switched our supply to Iranian sources. When the Shah fell in 1978 Iranian supplies dried up and we had to look elsewhere. It is to our credit, not only in the oil industry but the South African

¹⁸⁷ Eventually, Caltex together with Mobil would become the two largest suppliers of imported oil to South Africa, accounting for between 40 and 55 percent of South African service stations. Other major companies investing in South Africa included British Petroleum (BP), Royal Dutch/Shell (Shell), and the French company Total-Compagnie Miniere et Nucleaire. See David Bates, *Business as Usual with Pretoria*.

¹⁸⁸ Richard Knight, Testimony (April 12-13, 1989), citing *Management* (1984).

¹⁸⁹ Jennifer Davis, Testimony, at 6 (citing letter of D. Maytum, Standard Oil of California, to Father R. Powell, National Council of Churches, of Dec. 19, 1975).

Government, that there was never one shipment of oil, so to speak, missed Although we are effectively prevented from buying oil openly, we still get exactly what we want.”¹⁹⁰

330. According to Southern Africa magazine “Caltex has assisted the South African government by breaking the 1973 oil embargo against South Africa called by the Organization of African Unity by executing a complicated series of swaps to allocate more Iranian crude oil to South Africa.”¹⁹¹

331. In a 1978 letter, Caltex Oil S.A. (Pty.) Ltd was described by its parent Texaco as an entity “incorporated under the laws of South Africa and subject to the laws and regulations of that nation. Caltex South Africa was required by Government directive to sell petroleum and petroleum products to any credit-worthy citizen or organization, and dissemination of information outside South Africa respecting the sales of petroleum products to the military and other customers was restricted by South African law.”¹⁹² Caltex supplied the South African government with oil for civilian and military purposes.¹⁹³

332. By 1980, Caltex operated at 100,000 barrels per day capacity, totaling approximately 6.3 percent of Caltex’s worldwide refining capacity. In addition, Caltex owned a 1,000-barrel per day lubricating oil and grease-blending plant as well as 34 percent of South African Oil Refinery (Pty.) Ltd. (SAFOR), a 3,000-barrel per day lube oil refinery.¹⁹⁴

¹⁹⁰ *Id.*

¹⁹¹ “Caltex’s Expansion in South Africa”, Southern Africa, Vol. IX, No. 5, May 1976, p. 15.

¹⁹² Richard Knight, Testimony, (April 12-13, 1989).

¹⁹³ Jennifer Davis, Testimony, at 5.

¹⁹⁴ In addition to Caltex’s 34 percent ownership, Mobil owned 47% and Total 19%. *Id.*

333. From January 1979 to March 1980, Texaco ranked third on the Shipping Research Bureau's list of oil companies who shipped oil to South Africa. Out of 150 tankers listed, Texaco boasted five.¹⁹⁵

334. In 1989, Caltex Managing Director Jock McKenzie announced that Caltex had "no intention of leaving South Africa unless legislation forces us to."¹⁹⁶

335. Texaco's response to a shareholder resolution filed by the New York City Police Retirement Fund seeking to stop Caltex's sales to the South Africa military and police was that if Caltex were forced to terminate sales to the military and police, it would have to sever all economic ties to South Africa.¹⁹⁷

336. Caltex remained in South Africa in the 1990s, even after other oil companies had disinvested.¹⁹⁸ A Shipping Research Bureau (SRB) report revealed that Texaco directly supplied one crude oil shipment in the period following Nelson Mandela's release from prison and the unbanning of the ANC.¹⁹⁹ This identification by the SRB marked the first time in almost 10 years that the SRB had identified a direct, visible shipment of oil by a major oil company. In the past, the SRB had recorded oil companies' sales to intermediate traders and/or recipients.

337. In 1990, Caltex, then leader of the U.S. Industry Support Unit, lobbied against U.S. sanctions and for justification of U.S. corporate involvement in South Africa.²⁰⁰

¹⁹⁵ Shipping Research Bureau, Main Report of March 1981.

¹⁹⁶ *Financial Mail*, Feb. 24, 1989; *Business Day*, Sept. 29, 1989; *Argus* Apr. 5, 1990.

¹⁹⁷ Investor Responsibility Research Center, Inc. Social Issues Service Proxy Issues Report Supplement: Texaco, Apr. 18, 1989 at 2.

¹⁹⁸ Shipping Research Bureau, *Fuel for Apartheid* (1990) at 35.

¹⁹⁹ Shipping Research Bureau, *The Oil Embargo 1989-1991: Secrecy Still Rules* (first quarter, 1992).

²⁰⁰ Letter, The Interdisciplinary Centre for Comparative Research to Shipping Research Bureau, Jan. 12, 1990.

British Petroleum P.L.C.

338. British Petroleum (BP) had considerable interest in South Africa during apartheid, including BP Development Company of South Africa, Duckhams Oil Africa, AST Exploration Ventures, BP Coal Southern Africa and British Petroleum Minerals International.²⁰¹

339. BP sold oil and gas to the South African military.²⁰²

340. BP operated Durban Aes South African Petroleum Refineries, the largest refinery in South Africa.²⁰³

341. BP was one of the last multinational oil companies to continue to refine crude oil in South Africa after the oil embargo.²⁰⁴

342. By the 1970s, BP was linked to Sentrachem, the chemicals group in which the South African state had a financial interest. BP retained a 19 percent stake, which was increased later.²⁰⁵

343. British Petroleum directly invested in SASOL²⁰⁶ through a series of stock purchases. BP Southern Africa purchased 80,000 shares, BP Thibault Nominee purchased

²⁰¹ M. Bailey and B. Rivers, *Oil Sanctions Against South Africa*, U.N. Center against Apartheid, Notes and Documents (June 1978) at 34.

²⁰² *Multinational Monitor*, 1942 p. 42.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ R. First, J. Steele and C. Gurney, *The South African Connection: Western Investment in Apartheid* (Temple Smith, 1972, Penguin African Library, 1973) at 33.

²⁰⁶ The South African Coal, Oil and Gas Corporation Ltd. ("SASOL"), was first established by the South African government in 1950. This first SASOL endeavor produced a wide range of petroleum-based products, all of which were derived from coal. These products included petrol, diesel, synthetic rubber, and fertilizers. The ever-increasing demand for oil coupled with the U.N. imposed oil-embargo resulted in the establishment of SASOL II in 1980 and SASOL III in 1982, which specialized in oil from coal production using Fischer-Tropsch technology. SASOL continued to grow throughout the 1980s and 1990s, and today includes operations and joint ventures worldwide.

50,000 shares, and BP's pension fund purchased approximately 100,000 shares of SASOL stock.²⁰⁷

344. In 1974, BP's Chairman admitted that the oil companies had "intentionally set out to thwart Arab attempts at enforcing oil embargoes on countries like South Africa."²⁰⁸

345. After the Iranian revolution of 1978-79, "British Petroleum, a major provider of oil for the Pretoria government and the company most reliant on Iranian production, was hit especially hard and was unable to fulfill its South African contracts."²⁰⁹

346. BP exported approximately 210,000 kilograms of refined petroleum products from the United Kingdom to South Africa in 1987.²¹⁰

347. British Petroleum's interest in South Africa did not only include oil, but mining as well. British Petroleum wholly-owned BP Coal Southern Africa, which had stakes in the Eikeboom Colliery, Ermelo Mine (together with Total), Middleburg Mine Services, Richards Bay Coal Terminal Co., and Unisel Gold Mines. In 1989, BP sold its mining interests in South Africa to Rio Tinto.

348. On June 16, 1985, a director of German BP, met oil trader Gert Lutter in the latter's Marimpex offices in Hamburg. One of the topics discussed was oil to South Africa.²¹¹ Marimpex was one of the trading companies that filled the gap left by the major oil companies when they ceased direct shipments to South Africa in 1981. Under a large long-term contract with Iran, quantities of crude oil procured by Marimpex went to South Africa (via purchasers,

²⁰⁷ M. Bailey in CCSA, *op. cit.* (1979) at 15.

²⁰⁸ *Anti-Apartheid News*, UK, September 1974.

²⁰⁹ Arthur Jay Klinghoffer, *Oiling the Wheels of Apartheid* (1989), p. 37.

²¹⁰ F. Hendriks (ed.), *Tankgids* (Series Consumenten tegen Apartheid No. 1), Amsterdam/Utrecht/ Den Haag: Komitee Zuidelijk Afrika c.a., p. 28.

²¹¹ SRB, *Oil to South Africa: Apartheid's Friends and Partners* (1988), pp. 16-17.

including German BP), through an intricate scheme of transshipment in Northwest Europe, where the crude oil was sent to South Africa *after* part of the cargo had first been unloaded in Germany.²¹²

Fluor Corporation

349. In order to reduce its vulnerability to oil sanctions,²¹³ South Africa began a coal to oil conversion program. The Apartheid regime expected to be able to meet up to 50% of its oil needs from this program. SASOL – the South African Coal, Oil and Gas Corporation, was a state controlled company formed to oversee the oil from coal program. Three plants were to be built. SASOL II and III constituted the largest and most expensive project undertaken by the South African government.

350. Defendant Fluor Corporation (Fluor) obtained a \$4.2 billion contract to oversee the expansion of South Africa's coal conversion program, lending direct support to apartheid.²¹⁴ In 1975, Fluor was awarded a contract for engineering and construction work on SASOL II. Later, the contract was revised to include management and coordination of the total project.

351. Fluor did not provide equal pay for equal work. It employed 4,500 African workers who were paid only \$2.20 per hour, while white workers were paid \$4.00 for the same work.²¹⁵ Of the 4,500 African workers hired, 3,200 were miners, one of the lowest paid and most exploited positions.

352. At the 1979 Fluor annual meeting, William McKay, President of Fluor Constructors International, said: "The Africans are not getting equal pay for equal work. You

²¹² *Id.*, at 17-18 and story on *Berge King* on page 7.

²¹³ The Arab OPEC members placed an oil embargo on South Africa in 1973. After the fall of the Shah, Iran, too, joined the embargo.

²¹⁴ The Africa Fund, *Fluor: Building Energy Self-Sufficiency in South Africa* (1979).

²¹⁵ *Id.*, at 4.

cannot produce a journeyman overnight.” He added, “We do not have too much control over the actual wages paid, because they are controlled by forces beyond our control.”²¹⁶

Total-Fina-Elf

353. Total has been operating in South Africa since 1956.²¹⁷

354. Total has a long history as an important player in the petroleum industry in South Africa. In December 1957, Total South Africa completed the Durban terminal (today known as Island View Terminal). In 1960, Total South Africa completed a new Cape Town ocean terminal. In 1967, Total South Africa took part in the construction of the first national crude oil refinery at Sosolburg. In 1971, the NATREF refinery, in which Total South Africa had a 30% interest, came on stream. In 1972, Total South Africa, in conjunction with Caltex and Mobil, opened a lubricating oil refinery in Durban to manufacture base oils. The company operating the refinery was South African Oil Refining Co. (Pty.) Ltd., a joint venture of Total South Africa, Caltex and Mobil.

355. Total S.A. is 57.6 per cent owned by CFP, of which the French government is the principal shareholder. The remaining shares are held by South African investors. Total S.A. also operates Natref, a refinery it co-owns with SASOL.

356. Total agreed by contract to supply Natref with 30 per cent of the crude oil the refinery needed.²¹⁸

357. The Natref refinery had been regarded a National Key Point of the South African economy even before the adoption of the Act. A South African army journal explained the role

²¹⁶ *Id.*

²¹⁷ SRB, *Oil to South Africa* (1988), p. 26.

²¹⁸ Letter of Embassy of the Islamic Republic of Iran in Oslo to the Norwegian daily newspaper *Klassekampen*, dated 13 August 86.

of the 'SASOL Commando,' a unit comprised of SASOL employees: "When the men of the SASOL Commando change their white coats for the uniform of the South African Defense Force they become members of a specialized unit, which in times of war will defend two key points of the South African nation. The SASOL factory ... and the Natref Refinery are two of the most important installations in the country. The importance of the task which the SASOL Commandos have in defending these two key points cannot be overemphasized."²¹⁹

358. In 1976, South Africa granted "independence" to the Transkei "Bantustan." No other government agreed to recognize Transkei as an independent country. Total, however, formed a subsidiary, Total Transkei, to operate in the "bantustan."

359. In 1986, when Total came under fire from the anti-apartheid movement, trade unions, and others in France, A.R. Hough, Managing Director of Total wrote to the Financial Mail: "At no time in the past was the possibility of Total withdrawing from SA considered; it is not being considered at present, and will not be considered in future".²²⁰

360. Earlier in 1986, Bernhard Lafitte, the CEO of Total S.A., defended the South African system of government control over fuel prices:

Those who are campaigning against the existing system seem to have short memories. They forget, amongst others, that South Africa is still subject to an international oil boycott, . . . Strategic considerations and ensuring a continued supply of fuel to the country, should take precedence over short term personal gains and aspirations. The effect of any break in the supply of oil to the country would be disastrous to the economy and continued well-being of South Africa.²²¹

²¹⁹ August 1979, *Paratus*, the journal of the South African armed forces.

²²⁰ *Financial Mail*, August 8, 1986.

²²¹ SRB Newsletter No. 4, May 1986, p. 5, quoting South African press reports from February/March 1986 (references given).

361. Even during the embargo, Total SA was one of the few companies that was able to obtain its own crude oil for use in South Africa.²²²

362. Total operated a Total/Shell/BP off-shore drilling consortium engaged in prospecting a large off-shore area off the Cape.

363. In early 1989, reacting to news regarding Mobil's planned dis-investment, Mr. Lafitte said he was "extremely disconcerted" by the prospect: "If one pulls out, there will be increasing pressure on the rest of us to do the same."²²³

364. Recent reports indicate that Total cooperated with Swiss-based American oil trader Marc Rich, who was the No. 1 oil embargo buster identified by the Shipping Research Bureau during the period 1979–1993.²²⁴

365. Total S.A., through its subsidiary, Total Exploration South Africa (TESA), held 50 per cent of the Arthur Taylor coal mine and 30 percent of the Ermelo coal mine.²²⁵

366. The SRB Coal Monitor listed several reports on Total's defiance of France's coal embargo.²²⁶

367. In the 1980s–early 1990s, Total increased its South African coal interests. For example, Total started a second joint-venture with Tavistock, a coal mining branch of Johannesburg Consolidated Investment, for a new export mine providing an additional 1.5 to 3.9 million tons of exports annually, to be marketed by Total.²²⁷

²²² R. Hengeveld and J. Rodenburg, at 21.

²²³ *The Citizen*, April 26, 1989.

²²⁴ "Marc Rich: Fuel for Apartheid," in: *Embargo*, pp. 138-159, *et seq.*

²²⁵ A. Cooper and M. Tusenius, *International Investment in South Africa, Australia, Belgium* (Investor Responsibility Research Centre, Inc., 1987) at 123.

²²⁶ SRB Coal Monitor No. 9, 1991, p. 1: 'French coal sanctions remain in place, but TOTAL starts South African coal supplies in 1992'.

²²⁷ SRB Coal Monitor No. 4, 1990, pp. ii and iv (start joint-venture April 1990), and 10, 1992, p. i (mine opened 1992).

ARMAMENTS

Introduction

368. The increase in militarism and the corresponding increase in arms production in South Africa were reactions in large measure to the internal social and political climate of the 1950s and 1960s.²²⁸ As South Africa began to have interest in the acquisition of more modern military weaponry in response to increasing popular struggle from black South Africans, it lobbied heavily to bring arms technology to its country. The Armaments Development and Production (“ARMSCOR”) state enterprise was developed in the late 1960s to “promote and coordinate the development, manufacture, standardisation, maintenance, acquisition, or supply of armaments.”²²⁹

369. ARMSCOR contracted its work out to private companies. Due to the secrecy of these activities, not all the facts are known. It is believed that ARMSCOR distributed work to 1,200 private companies, and that at least 400 companies were dependent on ARMSOR contracts. In 1988, one researcher estimated that the number of private subcontractors to ARMSCOR had grown to 3,000.²³⁰

370. The COSATU²³¹ submission to the Truth and Reconciliation Commission noted that “ARMSCOR stood at the core of a new, indigenous military-industrial complex. The

²²⁸ Simpson, Graeme, *The Politics and Economics of the Armaments Industry in South Africa*, Center for the Study of Violence and Reconciliation.

²²⁹ Armaments Development and Production Act, No. 57 of 1968.

²³⁰ African National Congress Submission to the Special Truth and Reconciliation Commission Hearing on the Role of Business, November 1997 at 8.

²³¹ COSATU is a South African trade union federation representing 18 affiliated unions with a combined paid up membership of 1.8 million workers.

Corporation had become South Africa's third biggest industrial group, with total assets exceeding R1,200 million rand."²³²

371. In 1976 alone, ARMSCOR handed out 25,000 contracts to roughly 1,200 private contractors. The businesses linked to ARMSCOR included "virtually all of South Africa's major non-state conglomerates, as well as a number of high profile multinationals, such as IBM, Shell, Daimler-Benz and many others."²³³

372. The ANC noted that many of the companies working with ARMSCOR were foreign: "many of the local private sector corporations were not involved in the genuine development of these war materials. They were more often useful conduits for foreign technologies, helping the apartheid state to evade the UN arms embargo."²³⁴

373. The embargo was not bulletproof. For example, it was discovered that the United States had licensed some \$300,000 worth of guns and other equipment for export to South Africa in 1976 despite the arms embargo. Among materials classified as non-military, and thus allowable for export, were shotguns, billie clubs, and tear gas guns. Members of Congress criticized the mistake: "I am convinced that no one at the Commerce Department really has a sound grasp on exactly what is going on regarding the licensing of these so-called non-military weapons to South Africa."²³⁵

²³² COSATU Submission to the Truth and Reconciliation Commission Hearings on Business and Apartheid at 17.

²³³ *Id.*, at 17.

²³⁴ African National Congress Submission to the Special Truth and Reconciliation Commission Hearing on the Role of Business, November 1997 at 8.

²³⁵ Danaher, at 123.

374. ARMSCOR also raised capital by taking out loans. It was reported that ARMSCOR borrowed 40 million rand in 1978 and 40 million rand in 1980, with additional loans likely. It is not known which banks were involved in these loans.²³⁶

375. ARMSCOR historically was involved in many suspect dealings regarding the illegal export and import of international arms, corruption and reported murders.²³⁷ The secrecy surrounding ARMSCOR and its relationship with private sector companies was routed in the strategic imperatives of ARMSCOR and the apartheid regime.²³⁸ As noted in a scholarly article by the Center for the Study of Violence and Reconciliation:

[I]n the fifteen years of its existence Armscor has proved an almost unattenuated success - in developing the South African arms industry to a high degree of self-sufficiency in the face of international sanctions and, of no lesser importance for domestic politics, in locking together the military, government and economic elite into a tight tripartite network in support of Apartheid policy.²³⁹

376. South Africa had been subject to numerous embargoes over time in a global response to its apartheid policy. A number of individual private sector corporations ignored both the United Nations and their own countries' directives to cease arms importation to and from South Africa. For financial reasons, these companies continued to supply South Africa with armaments throughout the apartheid regime. As a result, South Africa, even as most of the world outwardly decried apartheid, was able to build a very modern and advanced military relative to the majority of the African states. It also ultimately raised the stature of South Africa from an exclusive arms importer into a real player in the global arms industry.

²³⁶ Terry Shott, *The Banks and the Military in South Africa*, International Seminar on Loans to South Africa, Apr. 5-7, 1981 at 9.

²³⁷ *Id.*, at 13. "Even as recently as May 1993, the African Fund, a US human rights group reported to the press that US shot-guns, ammunition and other small arms were illegally exported to South Africa via Zimbabwe, where they have been used in attacks on anti-apartheid activists. A company with alleged links with Armscor received the weapons." *Id.*, at fn. 7 (citation omitted).

²³⁸ Simpson at 6-7.

²³⁹ *Id.*, at 8 (citations omitted).

Defendants

Rheinmetall Group

377. Defendant Rheinmetall is a German company with its principal place of business in Düsseldorf, Germany. It is a top producer in the German armaments industry with factories in Düsseldorf and Unterlüss. In 1999, Rheinmetall purchased another armament producer Oerlikon-Contraves Defense (“Contraves”). Contraves was a large supplier of armaments to South Africa in the 1970s.

378. Rheinmetall’s top military products are the MK 20RH 202 (a component of the armored personnel carrier), the MG3 machine gun, and various weapons systems for battle tanks. Rheinmetall also produces various types of ammunitions, which are exported worldwide.²⁴⁰

379. Rheinmetall, under fraudulent export declarations, exported a complete ammunition factory to South Africa to manufacture the 155mm extended range projectiles needed by South Africa.²⁴¹

380. Rheinmetall applied for a license to export a plant to Paraguay, using a fictitious company, “Sudamerika Paraguay Exportacion-Importacion.” Once the exported plant had reached port in Brazil, the freight was re-loaded onto a ship bound for Durban, South Africa.²⁴²

381. The plant, which was located in Pretoria, began operations in 1979. The plant continued to make ammunition at the rate of 80 to 100 rounds per hour. By 1985, the plant was fully automated with central controls run through a video monitor system.²⁴³

382. Even after a criminal investigation was launched against Rheinmetall in 1980, Rheinmetall openly trained members of the SADF in the use of certain artillery systems on its Unterlüss test range.

²⁴⁰ Brzoska, Michael, *Die BRD Rüstungsindustrie im Fadenkreuz* (1982).

²⁴¹ Landgren, Signe, *Embargo Disimplemented*, at 88-95 (1989).

²⁴² Helmet Lohrscheid, “Waffenhandel vor Gericht: Im Prozeß gegen Rheinmetall scheint die Justiz überfordert,” *TAZ* (Berlin), May 28, 1986.

²⁴³ Landgren, at p. 95, 125.

383. A German tribunal in the mid-1980s found that Rheinmetall had created fictitious firms in foreign countries in order to disguise their business; handed in false end-user declarations to the authorities; and concluded fictitious contracts.²⁴⁴

384. Contraves is a Swiss company with its principal place of business in Zurich, Switzerland. In 1989, the Werkzeugmaschinenfabrik Oerlikon-Bührle and Contraves were merged to form the Oerlikon-Contraves Group, which concentrated on defense and space technology. Later it was renamed Oerlikon Contraves Defense, and in 1999 sold to Rheinmetall.

385. The head of Oerlikon-Bührle, Dieter Bührle, was like most top managers of Swiss companies doing business in South Africa – a member of the Swiss-South African Association (“SSAA”), which was much more than a commerce organization. The SSAA was a very strong pressure and lobby group, with enormous influence on the shape of Swiss policy regarding South Africa. It also developed its own parallel diplomacy, inviting apartheid leaders to Switzerland at a time when they were welcome hardly anywhere in the world. There were also close contacts between the Swiss and South African armies.

386. When Bührle complained to the Swiss government in the mid-1960s that the embargo taking shape in Switzerland was hurting his company’s business, his efforts were fruitless. Rather than accepting his government’s position, Bührle began to secure false end-user certificates in France and shipped anti-aircraft cannons and ammunition valued at 54 million Swiss francs to South Africa.²⁴⁵

387. Oerlikon-Bührle circumvented the Swiss arms embargo by using its subsidiaries in countries that did not have embargoes to produce arms. The company also created military production subsidiaries outside Switzerland, and additionally it granted production licenses to various countries.

²⁴⁴ “Rheinmetall-Manager gegen unerlaubter Waffengeschäfte zu Haftstrafen verurteilt,” *Frankfurter Allgemeine Zeitung*, May 28, 1986.

²⁴⁵ *Die Bührle Saga: Festeschrift zum 65. Geburtstag des letzten aktiven Familiensprosses in einer weltberühmten Waffenschmiede* (Zürich: Limmat Verlag, 1986) at 139, 142.

388. Bührle encouraged his employees to circumvent the Swiss embargo by supplying South Africa with arms from its Italian subsidiary. Since the plant in Italy was small, however, Oerlikon-Bührle continued to supply South Africa with goods using the false end-user certificates.²⁴⁶

389. This creative supply to South Africa caused Oerlikon-Bührle trouble in the late 1960s and early 1970s with the Swiss government. After a trial and a suspension of Oerlikon-Bührle's export license for three months, Oerlikon-Bührle continued to supply illegal arms to South Africa. Oerlikon-Bührle's support of South Africa was so involved that in 1978 Deiter Bührle and others at Oerlikon-Bührle were honored by the apartheid state and given the highest military honor. Oerlikon-Bührle was praised by the apartheid regime for investment in South Africa where it owned several subsidiaries. The Oerlikon-Bührle business had been expanded and diversified and contributed to companies in South Africa.²⁴⁷

390. In the 1980s, Oerlikon-Bührle focused on the sale of patents and licenses to South Africa. Throughout the 1980s, Oerlikon-Bührle applied for numerous patents on arms components with the objective of establishing Swiss-South African co-productions. This was crucial for South Africa because the regime wanted and needed to create a self-sufficient armaments industry with ARMSCOR and its subsidiaries producing all the necessary armaments themselves. In 1987, the United States State Department informed the Swiss embassy in Washington that Oerlikon-Bührle had, between 1978 and 1986, applied for the registration of numerous patents on arms components, such as fuses and artillery components. U.S. intelligence advised the Swiss Foreign Ministry to examine the patents registered by Oerlikon-Bührle in the South African Patent Office. The Swiss declined. There was no reason, the director for international organizations wrote in a confidential document, to "wake up this sleeping dog."²⁴⁸

²⁴⁶ *Id.* at 142.

²⁴⁷ *Tagesanzeiger* (Swiss Newspaper), December 11, 2001.

²⁴⁸ Mario Poletti and Martin Stoll, "Kooperation mit den Rassisten," *Facts*, June 27, 2002 at 26.

BANKING

Introduction

391. The vital importance of banking to South Africa was summarized by South African Prime Minister John Voster, who stated, "each bank loan, each new investment is another brick in the wall of our continued existence."²⁴⁹

392. From the early 1960s to the early 1970s, foreign investment accounted for approximately eight percent of South Africa's gross domestic investment, providing the margin for economic growth.²⁵⁰

393. International banks were integrally involved in the financing of apartheid. Foreign capital in the form of trade loans, large international bonds and credits, direct loans from banks to South African borrowers, and project financing supported the apartheid regime. German and Swiss banks, along with the South African Reserve Bank, were also involved in the gold trade.²⁵¹ The confidential nature of the financing makes identification of the transactions difficult.

394. A few major banks in each country, including defendant banks, played a lead role as managers and investors in making decisions on credit arrangements with South Africa. This structure "creates a significant degree of interdependence, or at least common interest, between the banks and the government led-political economy of South Africa."²⁵²

²⁴⁹ Beate Klein, *Bricks in the Wall: An Update on Foreign Bank Involvement in South Africa*, (World Council of Churches Report, Mar. 1981).

²⁵⁰ Clark Report, at 49.

²⁵¹ Mascha Madorin and Gottfried Wellmer, *Apartheid-Caused Debt: The Role of German and Swiss Finance*, 2000 at 33.

²⁵² Clark Report, at 25, *International Credit and South Africa*, William Riaford, Analyst, (Congressional Research Service, The Library of Congress, Aug 12, 1977).

395. Before anti-apartheid protests intensified, banks lent funds directly to the Apartheid regime. These loans came under increasingly harsh scrutiny from the world community. For example, early protest after the Sharpeville massacre in 1960 focused on the consortium of 10 banks lead by Chase Manhattan that provided South Africa with \$40 million in rescue loans, "thus making available funds to compensate for capital leaving the country because of political brutality."²⁵³

396. In 1974, the National Council of Churches, representing Protestant, Catholic and Orthodox religious leaders, released an open letter to banks that had participated in over \$200 million in loans to the South African government. The letter noted that "the loans are of unprecedented magnitude, constituting some 20% of South Africa's foreign loans since 1970 [the loans] represent a direct financial subsidy to the South African government and its oppressive racial policies." The letter noted that the United Nations "singled out the policy of apartheid for condemnation as a crime against humanity" and concluded that the loans "further retard the day of justice and democracy in a free South Africa. They implicate our nations, Canada, Japan and those in Europe in a sordid scheme in support of unconscionable policies."²⁵⁴

397. In 1979, the Chairman of the United Nations Special Committee Against Apartheid released a report on bank loans to South Africa stating "[a]t a time when the international community through the General Assembly has repeatedly condemned collaboration with South Africa ... we learn today that more than \$5.4 billion has been loaned in a six year

²⁵³ Jennifer Davis, "Squeezing Apartheid," *The Bulletin of the Atomic Scientist*, 1993.

²⁵⁴ Letter of Dr. W. Sterling Cary, President of National Council of Churches to Jean Cattier, Chairman of European-American Banking Corporation (Mar. 1, 1974).

period to bolster a regime which is responsible for some of the most heinous crimes ever committed against humanity.”²⁵⁵

398. The Soweto massacre and a recession led to a decrease in South African borrowing. Banks began to view the country as a more politically risky borrower. In 1980 due to rising price of gold, South Africa was able to return to foreign borrowing.²⁵⁶

399. In response to political pressure, some banks curtailed lending to the Republic of South Africa, and instead increased loans to the private sector, loans which were then used to support the state.

400. Eighty-five percent of all U.S. loans to South Africa were to the private sector by 1985. These loans were primarily to the big South African banks; these loans were arranged by private sector banks for South Africa parastatals such as ESCOM and ARMSCOR. The importance of such loans was noted by South Africa’s former Minister of Finance, Owen Horwood, in 1984: “The U.S. banks, or some of them, are little wary to be seen in public. But there is a good deal of business with them which doesn’t hit the headlines, and they remain important to us, particularly in the private sector.”²⁵⁷

401. A news report noted that “U.S. banks during this period were making lofty claims to have halted lending to the government of South Africa and its agencies when in fact much inter-bank loan money ended up in the hands of the Pretoria Regime.”²⁵⁸ The report noted that

²⁵⁵ *Bank Loans to South Africa, 1972 – 1978*, Corporate Data Exchange for United Nations Centre Against Apartheid at 1 (Statement by Mr. Leslie Harriman, Chairman of the Special Committee Against Apartheid).

²⁵⁶ Timothy Smith, *The Role of Foreign Banks in South Africa: Economic Support for Apartheid*, May 1981 at 1.

²⁵⁷ John Summa, *Apartheid’s Monied Friends*, *Multinational Monitor*, Sept. 1988, vol. 9.

²⁵⁸ *Id.*, at 2.

many of the same U.S. banks had increased lending by over 400% to the private sector and alleged that the banks knew the money was used for re-lending to parastatals.²⁵⁹

402. After direct access to western capital was blocked, South Africa used local banks as conduits:

Nedbank for example, one of South Africa's major banks recently raised \$200 million for the South African Treasury, much of which came from U.S. commercial banks. And an examination of Federal Reserve statistics on US bank loans to South African banks reveals a phenomenal rise between 1980 and 1982. At \$575 million in 1980, these loans represented 41% of total US bank loans to South Africa; by 1982 their volume had climbed to \$2.2 billion or 60% of total US bank loans.²⁶⁰

403. The banks also negotiated favorable terms for South Africa in times of crisis.

404. For example, after the 1987 rescheduling the Johannesburg Star ran the headline "South Africa Makes a Deal ... Which the Rest of the World Can Only Envy."²⁶¹

405. In 1976, South Africa raised \$110 million from a consortium of international banks including defendants Citibank, Morgan Guaranty and Deutsche Bank, to ameliorate its balance of payments deficit.²⁶²

406. In 1989, the apartheid regime reached another agreement with foreign banks to defer repayment of a large part of that country's debt. Eight billion dollars in Western bank loans would be refinanced. Banks that were on committee that negotiated the deal included defendants Barclays, Dresdner Bank, Deutsche Bank, Credit Suisse, and UBS.²⁶³

²⁵⁹ *Id.*

²⁶⁰ South Africa Restrictions, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, 98th Cong, 1st Sess, Jun. 8, 1983 at 96 (Statement of Randall Robinson, Executive Director of TransAfrica).

²⁶¹ Summa, at 2.

²⁶² Charles Peter Abrahams, *The Doctrine of Odious Debts*, *Rijks Universiteit Leiden*, Aug 2000 at 60.

²⁶³ Christopher Wren, *Pretoria and Banks in \$8 billion Debt Pact*, *N Y Times*, Oct 20, 1989, at D1

407. At least one of the agreements allowed funds to flow to military and defense purposes. In September 1985, the South African government imposed a debt repayment standstill, at which time South Africa's foreign debt was approximately \$23.5 billion, of which \$14 billion was included in the debt repayment standstill. After the imposition of the debt repayment standstill, the South African government negotiated three interim agreements to reschedule the debt covered by the standstill. The agreements were negotiated by a "Technical Committee" of international banks representing approximately 260 banks, including Defendants Barclays, Citibank, J.P. Morgan Chase, Credit Suisse, Dresdner Bank, Deutsche Bank and Union Bank of Switzerland. The second of these interim agreements provided that funds owed to foreign banks by South African borrowers were to be deposited with a body called the Public Investment Commissioners ("PIC"), a statutory body headed by the Minister of Finance, in a "Special Restricted Account," as they came due for repayment. The funds held by the PIC were then lent to the South African government by means of purchases of South African currency, government securities or deposits with the South African Reserve Bank. Thus, the funds held by the PIC were lent to the South African government to finance expenditures, including military and security expenditures.²⁶⁴

408. According to *How Foreign Banks Have Invested in South Africa's Military Expansion*, "[t]here is no doubt that the Pretoria regime has used these funds [the rolled over debts] for such purposes. The 1987-88 budget, announced in June 1987 just three months after the debt agreement, included a 30% or £180 million increase in official defense expenditure, and

²⁶⁴ *How Foreign Banks Have Invested in South Africa's Military Expansion*; "Apartheid's Monied Friends," by John Summa, *Multinational Monitor*, September 1988; *The New Interim Agreement Between the Banks and South Africa*, 1 July 1990 through 31 December 1993 and its Implications," by John E. Lind, CANICCOR Research.

a 50% of £165 million increase in expenditure on the police, compared with an increase in overall government expenditure of only 15%.”²⁶⁵

409. South Africa also used the funds to rebuild its oil reserve.²⁶⁶

410. As a general matter, the borrowed funds supported increased spending on internal security.

411. The apartheid regime’s extensive borrowing was due to, in large part, “increases in defense expenditures due to the growing costs of policing the apartheid state, as well as developing an indigenous arms industry.”²⁶⁷

412. As the Corporate Information Center of that National Council of Churches noted in 1973, “[c]ontributions to South Africa’s economic strength are indirect contributions to its military and police systems, designed to perpetuate the domestic racial helotry.”²⁶⁸

413. A 1976 article noted that “South Africa is borrowing heavily to finance massive development projects and boost its defense spending. . . . It is hard to imagine where it would be right now without borrowed funds.”²⁶⁹

414. South Africa’s defense budget increased 46% in 1974 and an average of 25% in the next three years.²⁷⁰ These defense expenditures drained capital from other sectors of the economy, which then sought financing from foreign banks.

415. As experts noted, “because foreign exchange is transferable between sectors within the budget and because defense spending – with its large import component – is the sector

²⁶⁵ *How Foreign Banks Have Invested in South Africa's Military Expansion*

²⁶⁶ Joseph Hanlon and Roger Omond, *The Sanctions Handbook* (1987) at 210f.

²⁶⁷ Klein, at 11.

²⁶⁸ Corporate Information Center, National Council of Churches, *The Frankfurt Documents: Secret Bank Loans to the South African Government*, Corporate Examiner, July 1973, at 3A.

²⁶⁹ Reed Kramer, *In Hock to the U.S. Banks*, *The Nation*, Dec. 11, 1976.

with the largest growth in the last two years, it is logical to assume that loans to South Africa are more likely to go toward meeting defense costs than to go for expanded social services...²⁷¹

416. Moreover, as Citibank itself noted in a letter to a church group that described the investment criteria used by the bank in South Africa, "Needless to say, money is fungible no matter what criteria are applied."²⁷²

417. Additionally, in South Africa, the cost of policing the apartheid state was hidden in other budgets. For example, the expense of troops occupying black schools was paid from the education budget.²⁷³

418. Banks demanded extra compensation for loans to South Africa.²⁷⁴ A 1977 report noted that terms of loans to South Africa were growing shorter and the interests rates were high – 1.84 above LIBOR.²⁷⁵ Also, there was a "[g]rowing desire by lenders for anonymity such as is offered by inter-bank loans."²⁷⁶

419. Foreign banks in South Africa were subject to the provisions of the 1980 National Key Points Act which allowed the Minister of Defense to declare any building or installation a "national key point," thereby requiring the owner to take special security precautions. Such

²⁷⁰ *Id.*, at 13.

²⁷¹ Investor Responsibility Research Center, Inc., *Corporate Activity in South Africa: Manufacturers Hanover Corp.*, Mar. 29, 1977 at E-96.

²⁷² Letter from Wilfred D. Koplowitz, Vice President, Citibank to Audrey C. Smock, Social Responsibility in Investments, United Church Boards, Apr. 5, 1985 at 2.

²⁷³ Testimony of Jennifer Davis before House Ways and Means Committee, Jul. 8, 1987 at 7.

²⁷⁴ *Financing the Republic*, *Financial Mail*, July 2, 1976, at 13.

²⁷⁵ Investor Responsibility Research Center, *Corporate Activity in South Africa: Manufacturers Hanover Corp. Analysis I*, Supp. No. 7, Mar 29, 1977 at E91.

²⁷⁶ Commonwealth Committee of Foreign Ministers of Southern Africa, *Banking on Apartheid: The Financial Sanctions Report*, at 45 (1989).

security precautions included the organization of all-white military reserve units and the storing of weapons and communications equipment.²⁷⁷

420. In May 1980, South African Prime Minister P.W. Botha appointed a 13-member Defense Advisory Board (“DAB”) to advise the armed forces on the “best business methods and other matters” including the manufacturing of arms. Botha said “I want to unite the business leaders of South Africa ... behind the South African Defense Force. I think I have succeeded in doing so.”²⁷⁸

421. One of Barclays Directors, Basil Hersov, was appointed to the DAB.²⁷⁹

422. In addition to providing valuable technological, financial and business services, foreign banks made direct contributions to the government of South Africa through the payment of taxes and the investment of assets in government prescribed investments, including defense bonds. Moreover, any transfer of capital to South Africa had military implications: loans to the railways and harbors systems assisted in the mobilization of the armed forces; trade financing provided the computers and telecommunications equipment necessary to the efficient functioning of a modern army; financing for housing projects perpetuated the segregated housing of apartheid.

423. A 1981 report noted that “the ready availability of foreign capital has enabled South Africa to finance massive investments needed to achieve industrial growth, economic self-

²⁷⁷ Terry Shott, *The Banks and the Military in South Africa*, ELTSA, 1981.

²⁷⁸ Charles Peter Abrahams, *The Doctrine of Odious Debts*, *Rijks Universiteit Leiden*, Aug. 2000 at 65.

²⁷⁹ Terry Shott, *The Banks and the Military in South Africa*, ELTSA, 1981; *see also* Klein at 9 (“foreign controlled banks within South Africa are directly tied to the South African military through the purchase of defense bonds and representation on a government military advisory board.”)

sufficiency, to offset balance of payments deficits, support growing defense and oil import costs, and survive economic crises such as that following the 1960 Sharpeville massacre.²⁸⁰

424. The President of the South African Reserve Bank, Dr. Chris Stalls, commented “if the international association of bankers should effectively shut South Africa off from the international trade and payments system, that would be a far more powerful sanctions measure than the trade restrictions which foreign governments imposed.”²⁸¹

425. The Secretary General of the Commonwealth concluded after a 1987 study on South Africa’s relationship with the international financial system that “South Africa’s apartheid economy is now trapped in a situation where it cannot sustain a satisfactory rate of growth without sufficient new sources of foreign exchange...”²⁸² The Secretary General noted that financial sanctions “would hobble South African economic growth and maintain pressure on the South African government to abandon apartheid.”²⁸³

Defendants

Barclays National Bank Ltd.

426. Defendant Barclays is an English bank with its principal place of business in London, England. Barclays’ involvement in South Africa dates from its acquisition of the National Bank of South Africa (founded 1891) in 1919. Barclays utilized a variety of subsidiaries to operate in South Africa, including Barclays Insurance Brokers South Africa, Ltd.,

²⁸⁰ *Id.* at 2.

²⁸¹ Mascha Madorin and Gottfried Wellmer, *Apartheid-Caused Debt, The Role of German and Swiss Finance* (2000) at 32.

²⁸² *Banking on Apartheid*, The Financial Links Report, prepared for the Commonwealth Committee of Foreign Ministers on Southern Africa, The Commonwealth Secretariat, Marlborough House, Pall Mall, London, 1989 at 3.

²⁸³ *Id.*, at 4.

Barclays National Bank, Ltd., Barclays Western Bank, Ltd., and Barclays National Merchant Bank.²⁸⁴

427. Barclays was one of the most important lenders of foreign capital to South Africa. A United Nations study entitled "Bank Loans to South Africa 1972-78," identified nine major loans to the South African government and its corporations totaling \$478 million, in which Barclays played a leading role.²⁸⁵

428. A 1978 United States Senate report identified Barclays as a financial institution having "a sizable exposure" in South Africa.²⁸⁶

429. Barclays Insurance Brokers South Africa, Ltd. was the third largest insurance broker in South Africa.²⁸⁷ Insurance and pension programs were a guaranteed source of capital for the South African government pursuant to a government decree that approximately one third of all insurance and pension funds had to be held in the form of government stocks.²⁸⁸

430. In March, 1974, Barclays participated in a Eurobond issue of \$15 million by ESCOM.²⁸⁹

431. In 1976, Barclays acquired R10 million of South Africa Defense Bonds, constituting the largest single purchase and representing about one-eighth of all the bonds sold; such bonds directly financed the South African Armed Forces.²⁹⁰ The check for the bonds was

²⁸⁴ *Barclays Shadow Report 1981*, London: ELTSA, 1981, pp. 4-5.

²⁸⁵ *Id.*, at 14.

²⁸⁶ Clark Report at 27.

²⁸⁷ Ann W. Seidman and Neva Makgetla, "Activities of Transnational Corporations in South Africa," in *UN Centre Against Apartheid Notes and Documents, 1978*, May 1978, at 81.

²⁸⁸ *Id.*

²⁸⁹ The Electricity Supply Commission ("ESCOM") is the primary provider of energy to South Africa. Established in the 1920's by the South African government, it is responsible for providing over 90% of the electricity and power within South Africa. Until the 1980s, very few urban African households had electricity. Electricity to the African rural areas began only after the election of the ANC government in 1994.

²⁹⁰ Seidman and Makgetla, at 75.

personally presented to the acting head of the Defense Force, Lieutenant-General R. Rogers at a ceremony where Barclays National's managing director, Bob Aldworth stated that "the bank regards the subscription as part of its social responsibility not only to the country at a particular stage in its history, but also to our staff members who have been called up..."²⁹¹ Barclays was criticized for the purchase by, among others, the Minister of State of the United Kingdom.²⁹²

432. Furthermore, as noted above, Barclays Director Basil Hersov was a member of the South African Defence Advisory Board.

433. In 1979, SASOL issued 263 million rand in shares. This offering was handled and underwritten by five merchant banks, including Barclays National Merchant Bank. Barclays also purchased ten million SASOL shares for 20 million rand.²⁹³

Citigroup Inc.

434. Defendant Citigroup, formerly Citicorp, is a United States corporation with its principal place of business in New York. Citibank, Citicorp's banking subsidiary, was the only U.S. bank to have a wholly owned subsidiary in South Africa that operated a wholesale banking business, beginning operations in 1958. Citibank was the largest U.S. lender to South Africa; in 1990, Citibank had \$660 million in outstanding loans to South Africa.

435. Citicorp was the world's largest lender to South Africa as of 1981.²⁹⁴

²⁹¹ Terry Shott, *The Banks and the Military in South Africa, International Seminar on Loans to South Africa*, Apr. 5 -7, 1981 at 2.

²⁹² *Id.*

²⁹³ Barclays Shadow Report 1981, at 7.

²⁹⁴ Beate Klein, *Bricks in the Wall: An Update on Foreign Bank Involvement in South Africa* (World Council of Churches Report, Mar, 1981), at 25.

436. Between 1972 and 1978, Citibank and its subsidiaries participated in \$1.6 billion in credits and bonds to South Africa (Citibank's actual share is unknown); most of these loans went to the government and government-owned companies.²⁹⁵

437. A 1978 United States Senate report identified Citibank as a financial institution having "a sizable exposure" in South Africa.²⁹⁶

438. In 1976, Citibank, along with three other U.S. banks and Barclays, provided a \$200 million credit for ESCOM.²⁹⁷ Within a few weeks of the Soweto Revolt in October 1976, Citibank was involved in a Eurodollar loan of \$300 million to the South Africa government.²⁹⁸

439. The Chairman of the U.N. Special Committee against Apartheid claimed in 1979 that "Citicorp has loaned nearly 1/5 of the \$5 billion plus which has gone to bolster apartheid."²⁹⁹

440. A 1977 Senate report indicated that Citibank had participated in \$767 million of syndicated loans mostly to South African government-owned corporations. In March 1978, Citibank announced that it had stopped making loans to the South African government or to government-owned corporations. However, South Africa required that banks operating in South Africa place 15% of their assets in government bonds; thus, in order to operate in South Africa, Citibank purchased government bonds thereby financing the activities of the Apartheid government.

441. In 1980, Citibank joined with Standard Chartered Merchant Bank as lead manager of a \$50 million loan to Standard Bank of Africa. In August 1980, Citibank joined Dresdner

²⁹⁵ Corporate Data Exchange, Bank Loans to South Africa 1972 - 1978, U.N. Centre Against Apartheid (April 1979); Corporate Data Exchange, CDE Handbook: U.S. Bank Loans to South Africa (Aug. 1978).

²⁹⁶ Clark Report at 27.

²⁹⁷ *Financial Mail*, July 2, 1976, at 13-14.

²⁹⁸ *Citibank Heads Group in South Africa Loan*, N.Y. Times, October 14, 1976.

²⁹⁹ Bank Loans to South Africa, 1972 - 1978, Corporate Data Exchange for United Nations Centre Against Apartheid at 2 (Statement by Mr. Leslie Harriman, Chairman of the Special Committee Against Apartheid).

Bank and other European lenders to negotiate a \$250 million loan to the South African government which was used to finance segregated housing.³⁰⁰

442. "A significant portion of the \$250 million loans was used to finance housing for thousands of "coloreds" who were removed from their previous homes in integrated residential areas in Cape Town so that the South African government could move white citizens into that area."³⁰¹

443. Citibank was a member of a fourteen bank Technical Committee that negotiated the terms of repayment of \$23 billion of debt during the crisis of 1985.³⁰²

444. In February 1989, Citicorp converted \$660 million in short-terms loans covered by the 1985 debt repayment standstill renegotiations into a ten-year loan, requiring no repayment of principal until 1992.

445. "A recent disclosure by Citibank that it has rescheduled on lenient terms an estimated \$600 to \$700 million in loans to South Africa is putting the big bank under fire from antiapartheid activists who contend it is giving aid and comfort to the white-minority government..."³⁰³

446. News reports quoted activists as saying "Citibank has gone the extra mile for apartheid" and "[t]he bank's actions amounts to bailing out the apartheid regime and giving

³⁰⁰ *In from the cold?*, *Financial Mail*, September 8, 1980; Peter Montagnon, *\$259 m Eurocredit plan marks 'rehabilitation of South Africa*, *Financial Times*, August 29, 1980; *Foreign Loans - And more to come?*, *Financial Mail*, October 3, 1980.

³⁰¹ South Africa Restrictions, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, 98th Cong, 1st Sess, Jun. 8, 1983 at 209 (Statement of Hon. Stephen J. Solarz).

³⁰² John Riley, *Citibank Under Fire; Loan Terms Seen as Aid to Pretoria*, *Newsday*, Feb. 8, 1989, at 41.

³⁰³ *Id.*

them confidence to continue imprisoning, torturing, and even murdering the people of South Africa.”³⁰⁴

447. Citibank assets in South Africa increased in rand terms by 72.8% in 1985 and 152.4% in 1984 as Citibank continued to make loans from rand deposits and “blackened dollars” held by its subsidiary in South Africa.³⁰⁵

448. In June 1987, Citibank sold its South African subsidiary to First National Bank (South Africa).³⁰⁶ However, Citibank maintained correspondent bank ties with South Africa and, in 1990, had approximately \$666 million in outstanding loans to South Africa.

449. Citibank itself “termed its South African lending “embarrassing”.

Commerzbank

450. Commerzbank was founded in 1870 in Hamburg, Germany. According to the minutes of the Executive Council of the South Africa Central government, Commerzbank began making loans to the South African public sector in 1964.

451. Commerzbank was a leading manager of loans to South Africa between 1972 and 1978, according to a UN report tabulating such loans. Commerzbank was involved in 30 such loans with a total value of \$870 million.³⁰⁷

452. Commerzbank was the managing bank for 16 such loans. Commerzbank was also a participating bank in loans, including \$31.2 million, to the Republic of South Africa in 1972, \$31.4 million to the City of Johannesburg in 1972, \$29 million to the Strategic Oil Fund of the

³⁰⁴ *Id.* (quoting Tim Smith of the Interfaith Center for Corporate Responsibility and the Reverend Frank Chikane of the South African Council of Churches).

³⁰⁵ Richard Knight, U.S. Banks and South Africa, at [Richardknight.homestead.com/files/usbanks.htm](http://richardknight.homestead.com/files/usbanks.htm)

³⁰⁶ <http://www.anc.org.za/anc/newsbrief/1995/news0129>. (accessed on 11/6/02).

³⁰⁷ Bank Loans to South Africa 1972 – 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979), at 8.

Republic of South Africa in 1976, and \$25 million more to the Republic of South Africa in 1976, among others.³⁰⁸

453. Commerzbank participated in 55 loans to South African public sector institutions between 1964 and 1980. Commerzbank or its subsidiaries were the lead manager or co-manager of bank consortiums making the loan in all but six of the loans. The nominal value of the loans was DM 4.,7328 billion or \$1.789.6 billion.³⁰⁹

Credit Suisse Group

454. The Credit Suisse Group includes Credit Suisse CS, Bank Leu (acquired in 1990) and Swiss Volksbank (acquired in 1993). In 1968, Credit Suisse CS was one of the founding members of the Zurich Gold Pool, the importance of which is further detailed below in the section on UBS.

455. Pio Eggstein, representative of Credit Suisse in South Africa, was very active in the South African Foundation and headed its Swiss branch in 1970 and thereafter.³¹⁰

456. Between 1982 and 1984, Union Bank of Switzerland (UBS/SBG), Swiss Bank Corporation (SBC) and Credit Suisse (CS) were among the most active lead managers of syndicated loans to the South African government.

457. Credit Suisse was on the "Technical Committee" that rescheduled South Africa's debt after the 1985 standstill and again in 1989.

458. Credit Suisse was the managing bank for, among others, the following loans: SwF 60 million to the Republic of South Africa in February 1979, SwF50 million to the Republic of

³⁰⁸ Bank Loans to South Africa 1972 – 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979).

³⁰⁹ National Archive Pretoria, SABE Fundus, URU Series (Executive Council Minutes)

³¹⁰ *Financing Apartheid: Union Bank of Switzerland, Swiss Bank Corporation, Credit Suisse.*

South Africa in August 1979, SwF 20 million to South African Railways in August 1979, SwF 50 million to ESCOM in July 1980 and SwF 50 million to ESCOM in November 1980.³¹¹

459. Swiss Credit Bank was a leading manager of loans to South Africa Between 1972 and 1978, according to a U.N. report tabulating such loans. Swiss Credit Bank was involved in 22 such loans with a total value of \$717.7 million.³¹²

460. Credit Suisse was among the banks that extended credit to the South African State Oil Fund. In February 1979, Credit Suisse was one of three banks to arrange a SwF60 million loan to the Fund. In August 1979 Credit Suisse arranged another loan of SwF50 million.³¹³

Deutsche Bank AG

461. Deutsche Bank AG was founded on May 2, 1957 as a legal successor of the Deutsche Bank founded in Berlin in 1870.

462. The importance of Deutsche Bank to the South African Government is evidenced by the awarding of the Order of Good Hope³¹⁴ to Dr. Hermann Josef Abs, former Chairman of Deutsche Bank on June 13, 1979.³¹⁵

463. Between 1958 and 1980, Deutsche Bank and its domestic and foreign subsidiaries, including Compagnie Financiere de la Deutsche Bank, Luxembourg, (hereinafter "the Deutsche Bank AG Group") participated to varying degrees in at least sixty-nine loans to

³¹¹ Terry Shott, *The Banks and the Military in South Africa, International Seminar on Loans to South Africa*, Apr. 5 -7, 1981 at Appendix 3.

³¹² Bank Loans to South Africa 1972 - 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979) at 8.

³¹³ Shott, *The Banks and the Military in South Africa, International Seminar on Loans to South Africa*, Apr. 5 -7, 1981, at 17.

³¹⁴ *The Order of Good Hope*, instituted in 1973, is South Africa's highest civilian award given to foreigners for promoting international relations and the interests of South Africa. <http://www.medals.org.us/south-africa/south-africa045.htm>.

³¹⁵ *National Archive Pretoria, U.R.U. (1979), Volume 7595, Minute No. 755.*

the South African Government, state-owned companies or private mining companies involved in uranium or gold mining. These loans had a total nominal value of \$2.344 billion.

464. Between 1972 and 1978 Deutsche Bank participated in 25 loans to the South African government totaling \$1.2 billion.³¹⁶

465. A 1978 United States Senate report identified Deutsche Bank as a financial institution having “a sizable exposure” in South Africa.³¹⁷

466. The financing in which the Deutsche Bank AG Group participated amounted to a massive 16 percent of all identified individual foreign loans to the public sector of South Africa between 1950 and 1980. The Deutsche Bank AG Group was involved in eighty-four percent of all loans to the South African Government in which German banks participated between 1962 and 1980.

467. For example, Deutsche Bank was among the underwriters for a 1978 Bond Issue by the Republic of South Africa.³¹⁸ Deutsche Bank was the managing bank for a \$31.4 million public bond for the city of Johannesburg in 1972.³¹⁹ Deutsche Bank was also the managing bank for at least six public bonds for the Republic of South Africa worth \$141.6 million between 1972 and 1978 and a participant in many others.³²⁰

468. Deutsche Bank was one of six joint owners of the European-American Banking Corporation, which was the chief organizer of substantial credits to the South African

³¹⁶ Corporate Data Exchange, Bank Loans to South Africa 1972 – 1978, U.N. Centre Against Apartheid (April 1979). Corporate Data Exchange, CDE Handbook: U.S. Bank Loans to South Africa (Aug. 1978).

³¹⁷ Clark Report at 27.

³¹⁸ Republic of South Africa Prospectus, Jan. 1976, cited in U.S. Corporate Interests in Africa, Report to the Committee on Foreign Relations of the United States Senate by Senator Dick Clark, Chairman, Subcommittee on African Affairs, 95th Cong. 1st Session, Jan 1978 at 40.

³¹⁹ Corporate Data Exchange, Bank Loans to South Africa 1972 – 1978, U.N. Centre Against Apartheid (April 1979). Corporate Data Exchange, CDE Handbook: U.S. Bank Loans to South Africa (Aug. 1978)

³²⁰ *Id.*

government between 1970 and 1973. These direct loans totaled over \$210 million, far more than any previous sum, and were made in secret.³²¹ The National Council of Churches noted that the “substantial credit arrangements represents a concerted effort to assist the government of South Africa to overcome serious economic and financial problems. The secrecy surrounding these transactions confirms what the banks involved would no doubt wish to deny, that these loans have the important political effect of providing concrete assistance to the white-supremacist government.”³²²

469. Detusche Bank was one of the main banks involved in financing SASOL by assisting the State Oil Fund. In 1976, Deutsche Bank was part of a consortium of banks that arranged a DM71 million loan to the Fund.³²³

Dresdner Bank AG

470. Dresdner Bank operated in South Africa utilizing a variety of subsidiaries and associated companies, including Compagnie Luxembourgeoise de Banque S.A., Luxembourg Dresdner Bank, subsidiaries and associated companies are collectively referred to as the “Dresdner Bank Group”). Dresdner also had representation in South Africa as a member of Associated Banks of Europe Corporation, ABECOR.

471. Dresdner Bank participated in sixty loans to the South African public sector between 1950 and 1980, acting as lead or co-lead manager with respect to fifty-four of these loans. The total nominal value of the loans was \$1.767 billion.

³²¹ *The Frankfurt Documents: Secret Bank Loans to the South African Government*, Corporate Information Center, National Council of Churches, July 1973 at 3A.

³²² *Id.*, at 3C.

³²³ Terry Shott, *The Banks and the Military in South Africa*, at 17.

472. Dresdner Bank was a leading manager of loans to South Africa between 1972 and 1978, according to a U.N. report tabulating such loans. Dresdner Bank was involved in 24 such loans, with a total value of \$1.1402 billion.³²⁴

473. A 1978 United States Senate report identified Dresdner Bank as a financial institution having “a sizable exposure” in South Africa.³²⁵

474. The loans in which Dresdner Bank participated included \$31.4 million to the City of Johannesburg in 1972, \$25 million to the Republic of South Africa in 1972, \$110 million to the Republic of South Africa in 1974, \$25 million to the Republic of South Africa in 1976, and \$250 million to the Republic of South Africa in 1978, among others.³²⁶

475. Dresdner Bank was a managing bank for 11 such loans.³²⁷

476. For example, in 1980, South Africa issued a public bond of DM120 million on the Eurobond market that was managed by Dresdner Bank, Commerzbank, and Kreditbank International of Germany, among others. It was oversubscribed by 25%, indicating foreign banks’ willingness to renew business relations with South Africa.³²⁸

477. In August 1980, Dresdner Bank, along with other European lenders, negotiated a \$250 million loan to the South African government, which was used to finance segregated housing for “coloreds” who were removed from their previous homes.³²⁹

³²⁴ Bank Loans to South Africa 1972 – 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979) at 8.

³²⁵ Clark Report at 27.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ Charles Peter Abrahams, *The Doctrine of Odious Debts*, Rijks Universiteit Leiden, Aug. 2000 at 62.

³²⁹ *In from the cold?*, *Financial Mail*, September 8, 1980; Peter Montagnon, *\$259 m Eurocredit plan marks ‘Rehabilitation’ of South Africa*, *Financial Times*, August 29, 1980; *Foreign Loans – And more to come?*, *Financial Mail*, October 3, 1980.

478. Dresdner Bank was one of the main banks involved in financing SASOL by assisting the State Oil Fund. Dresdner Bank arranged for the placement of private bonds worth at least DM40 million for the State Oil Fund. In 1976, Dresdner Bank was part of a consortium of banks that arranged a DM71 million loan to the Fund.³³⁰

J.P. Morgan Chase

479. J.P. Morgan Chase is the result of a December 2000 merger between J.P. Morgan & Co. Incorporated and Chase Manhattan Corp. ("Chase") which included both Chase Manhattan Bank NA and Chase Manhattan Ltd. (UK). Chase itself resulted from the merger of Chase Manhattan Corp. and Chemical Bank ("Chemical") in 1996. Chemical Bank acquired Texas Commerce Bancshares Inc. 1987, and Manufacturers Hanover Corp. in 1991.

480. After the Sharpeville massacre in 1960, Chase Manhattan led a consortium of 10 banks in providing \$40 million in loans to South Africa, "thus making available funds to compensate for capital leaving the country because of police brutality."³³¹

481. In 1976, Chase was one of five banks which together provided a \$200 million credit to ESCOM. Between 1972 and 1978, Chase participated in loans which provided a total of \$418 million to Urban Foundation, African Explosives & Chemicals, Industrial Development Corp., ESCOM and ISCOR.

482. Morgan & Co. was a leading manager of loans to South Africa between 1972 and 1978, according to a U.N. report tabulating such loans. Morgan & Co. was involved in 12 such loans, with a total value of \$691.3 million.³³²

³³⁰ Terry Shott, *The Banks and the Military in South Africa*, at 17.

³³¹ Jennifer Davis, *Squeezing Apartheid*, *The Bulletin of the Atomic Scientist*, 1993.

³³² Bank Loans to South Africa 1972 – 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979) at 8.

483. The loans Morgan & Co. participated in included loans of over \$50 million to the Republic of South Africa in 1972 and \$110 million to the Republic of South Africa in 1976, among others.³³³

484. The Congressional Research Service of the Library of Congress shows Manufacturers Hanover participating in eight loans to South Africa between 1974 and 1978 worth \$500 million, and bond placements for South Africa of more than \$450 million in 1975 and 1976.³³⁴ Figures from the Export-Import Bank show that Manufactures Hanover made loans to ISCOR in 1969, 1970, and 1974.³³⁵

485. A 1978 United States Senate report identified Manufacturers Hanover as a financial institution having a "sizable exposure" in South Africa.³³⁶

486. As of April 1990, Chase had \$284 million in outstanding loans to South Africa.

487. In April 1990, Chemical had outstanding loans to South Africa of at least \$130 million. Chemical was also a depository for American Receipts ("ADRs") which were utilized to purchase shares in South African companies.

Union Bank of Switzerland AG

488. Defendant Union Bank of Switzerland ("UBS") is a Swiss bank with its principal place of business in Zurich, Switzerland.

489. In 1946, UBS designated South Africa as one of the most important overseas countries in which to invest.³³⁷

³³³ *Id.*

³³⁴ Investor Responsibility Research Center, Inc., *Corporate Activity in South Africa: Manufacturers Hanover Corp.*, Mar. 29, 1977 E-93.

³³⁵ *Id.*

³³⁶ Clark Report 27.

³³⁷ Strehle, et al., 1987, p. 149.

490. During a long period under Apartheid, foreign exchange and the export of capital was strictly controlled by the South African Reserve Bank. All foreign capital invested in South Africa was blocked and could only be repatriated with permission from the South African Reserve Bank; UBS specialized in the export of capital from South Africa.³³⁸

491. South African gold was by far the most important single export item of South Africa. Until 1968, the Bank of England bought South Africa's gold, although the Swiss banks already dominated three quarters of the retail market. In 1968, the price of gold rose so quickly that the gold market was closed at the international stock markets. The same day, the Zurich Gold Pool was established with the following members: SBC Swiss Bank Corporation (now part of UBS), CS Credit Suisse and UBS/SBG Union Bank of Switzerland (now part of UBS). In the 1970s, the Zurich Gold Pool was responsible for marketing and trans-shipping more than 80% of South African gold.

492. In 1978, South African judge Anton Mostert published documents and testimony detailing the establishment of secret funds to finance projects to improve the image of South Africa through the purchase or creation of newspapers. One result of these efforts was the establishment of "The Citizen" by Thor Communications. In 1976, Thor Communications was the recipient of \$5 million transferred by UBS.

493. Between 1979 and mid-1982, UBS participated in more loans to South Africa than any other bank.

³³⁸ CETIM, p. 151.

494. UBS was a leading manager of loans to South Africa between 1972 and 1978, according to a U.N. report tabulating such loans. UBS was involved in 29 such loans, with a total value of \$1.0401 billion.³³⁹

495. UBS was involved in loans directly to the Republic of South Africa of well over \$100 million in 1972, \$25 million in 1976, and \$250 million in 1978, among others.³⁴⁰

496. Between 1982 and 1984, UBS was still among the most active lead managers of syndicated loans to the South African government. In 1984, South Africa signed a SFr70 million loan with UBS, followed by a \$115 million bond issue floated on the Eurobond market in January and March 1984.

497. Anti-apartheid activists alleged that \$2 billion destined for ARMSCOR was held by UBS which was acting on behalf of the South African Reserve Bank.³⁴¹

TRANSPORTATION

Introduction

498. Defendant vehicle manufacturers knowingly supplied vehicles, parts, and other equipment to the South African Police (SAP), South African Defense Force (SADF) and South African Army. Furthermore, the industry enabled the South African government to acquire necessary technology and skills to construct armaments-related automobiles. These vehicles were used to patrol African townships, homelands, and other areas and were used to suppress dissent.

³³⁹ Bank Loans to South Africa 1972 -- 1978, Corporate Data Exchange, U.N. Centre Against Apartheid (May 1979) at 8.

³⁴⁰ *Id.*

³⁴¹ Timothy Smith, *The Role of Foreign Banks in South Africa: Economic Support for Apartheid*, May 1981, at 1.

Defendants

Ford Motor Company

499. In 1905, Ford Motor Company ("Ford") began distributing vehicles in South Africa. In 1923, the company built South Africa's first automobile assembly plant.³⁴² Ford conducted its South Africa operations via a subsidiary, Ford Motor Company of South Africa (FSA). Until 1985, FSA was a 100% subsidiary of Ford of Canada. Ford owned 88.5% of Ford of Canada.³⁴³

500. Ford has a long record of sales to the South African government including to the police and military. Occasionally these sales were halted by sanctions imposed by foreign governments. For example:

In the mid-1960s, Ford bid on a contract to supply four-wheel drive vehicles to the government. But the Canadian government refused to issue an export permit to Ford's Canadian subsidiary, which was to supply the vehicles, on the grounds that the items might violate the then non-mandatory UN arms embargo against South Africa. In retaliation the South African government refused to allow Ford to bid on contracts for the next two years.³⁴⁴

501. Shortly thereafter, Ford resumed its sales to the South African government. In 1973, Ford reported that sales to the South African government, including the police and military, amounted to about 1% of total sales over the preceding decade.³⁴⁵

502. In 1977, Ford's investment in South Africa was 110,000,000 rand.

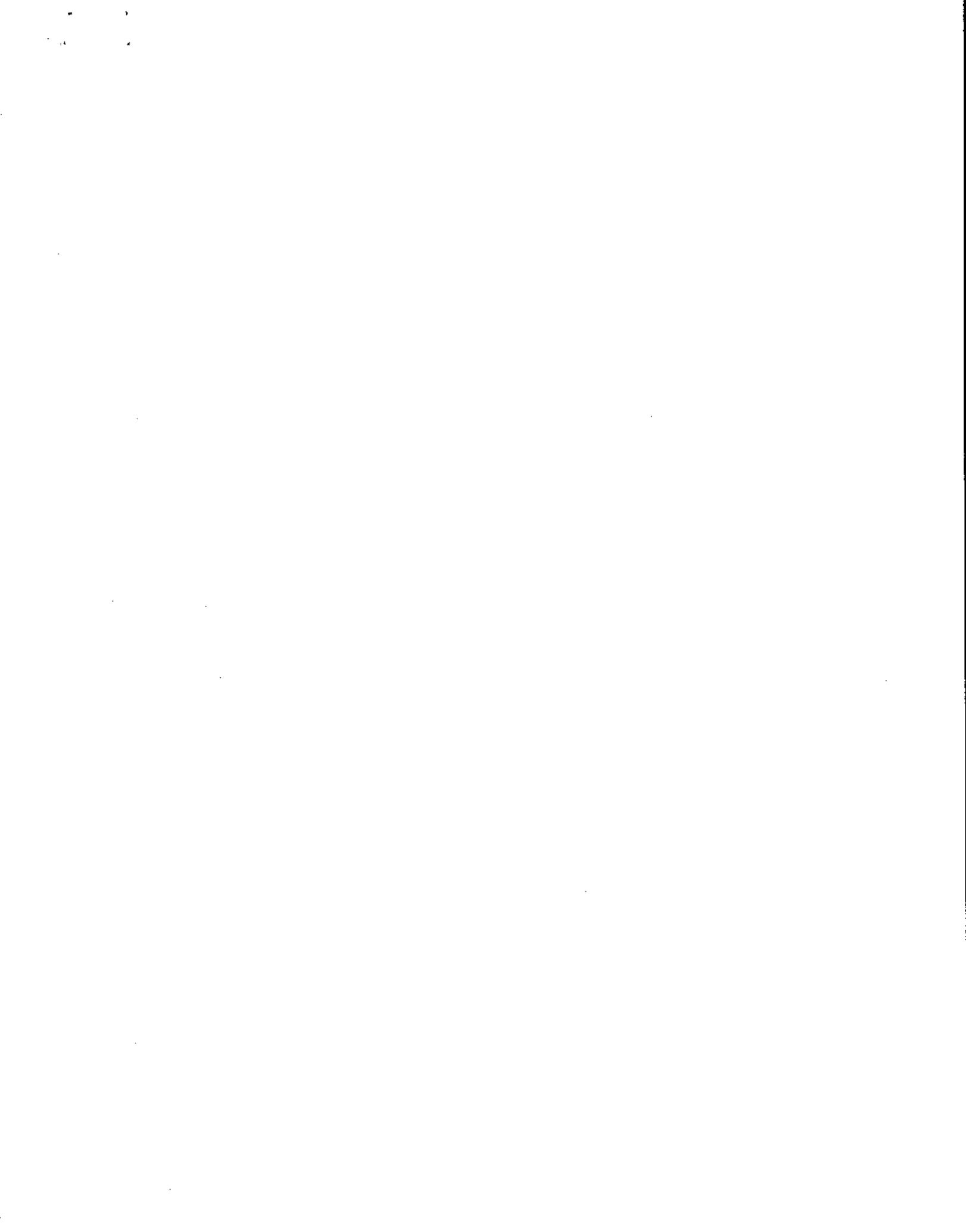
503. Ford reported to the U.S Congress that it sold vehicles to the South African police and to the homelands, as well as to the military up until the day, Feb. 16, 1978, when such sales

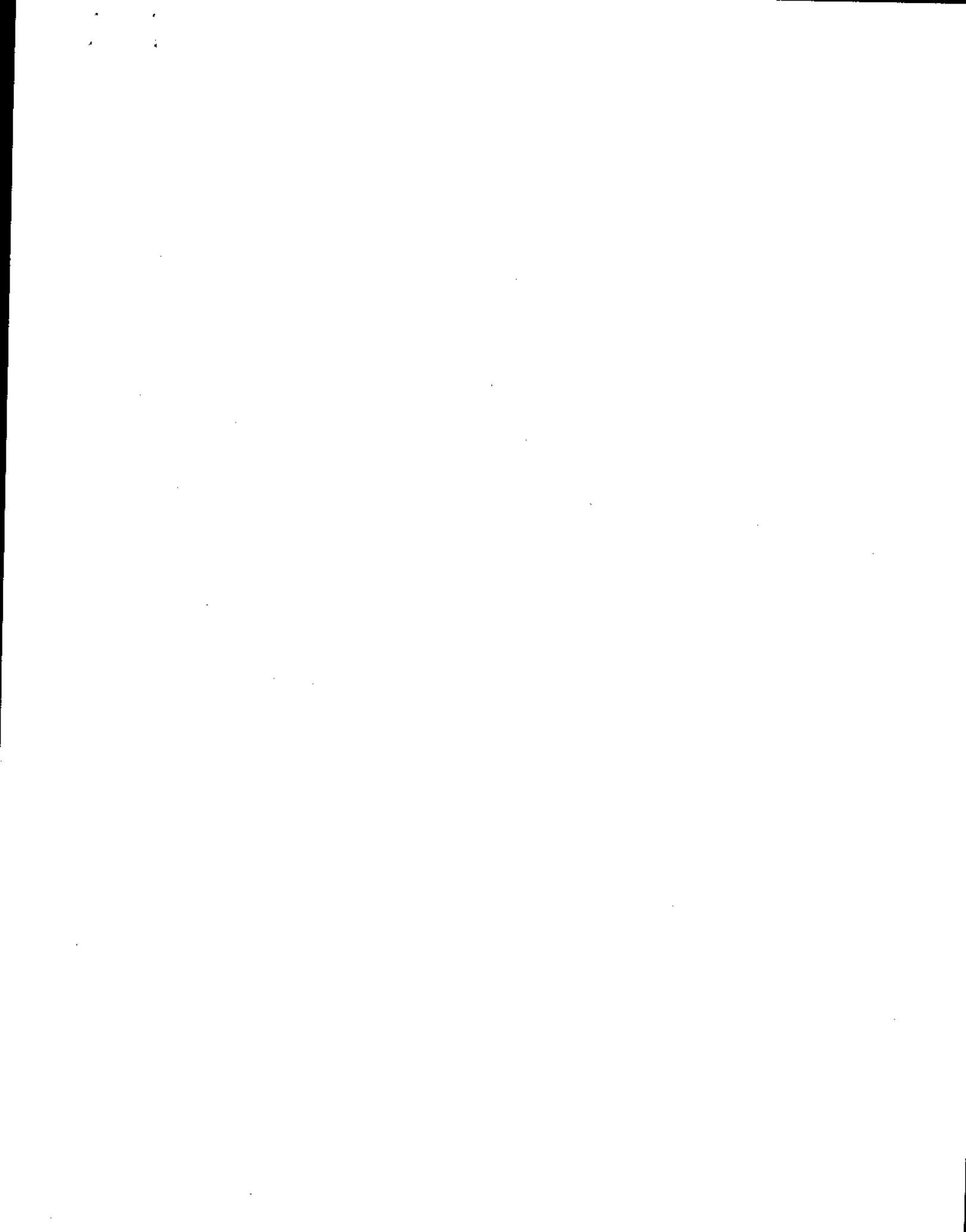
³⁴² Karen Rothmyer, *U.S. Motor Industry in South Africa: Ford, General Motors and Chrysler*, The Africa Fund, (Jan. 1979) at 12.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*, at 13.







were prohibited by the U.S. Department of Commerce.³⁴⁶ Between 1973 and 1977 Ford sold 8,191 vehicles to the South African government central purchasing agency, police, and homelands. An additional 1,582 F series U.S. origin trucks were sold to the police.³⁴⁷

504. In February 1978, the United States Department of Commerce issued regulations that prohibited Ford from supplying passenger vehicles to the South African military and police, since some of Ford's passenger vehicles contained U.S.-made parts. Despite the prohibitions Ford continued to supply vehicles to the South African security forces. Ford denied that its continued sales to the South African military and police sales ran counter to the U.S. prohibitions, on the basis that the vehicles do not contain parts or technical data of U.S. origin.³⁴⁸

505. In 1978, Ford indicated that the new regulations forbidding direct sales of vehicles made in the US or containing US-made parts to the military or police had only a marginal effect on sales.³⁴⁹

506. As justification for its continued sales to the South African military and police, Ford asserted that "[i]t is clear that if FSA were to cease its relatively limited sales to those agencies, the military and police would have no difficulty finding alternative sources of supply." Ford also explained that refusal to supply military vehicles "might influence the South African government to restrict or halt procurement of Ford vehicles for its other civilian agencies, which represents a significant volume of business."³⁵⁰

³⁴⁶ United States Private Investment in South Africa, Hearings before the Subcommittees on Africa and on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong, 2d Sess., at 492.

³⁴⁷ *Id.*

³⁴⁸ Letter from Sidney Kelly to Shareholder of May 8, 1980, p. 1.

³⁴⁹ *Id.*

³⁵⁰ Rothmeyer at 13.

507. Ford made sales to the South African government through a central purchasing authority. The central authority purchased vehicles for use by the police and military.

508. In 1985 Ford and Amcar, a subsidiary of the Anglo-American Corporation, announced the merger of their two operations into a new company, the South African Motor Corporation (SAMCOR), with Anglo-American owning 58% and Ford 42% of SAMCOR. Amcar, and SAMCOR after the merger, was the local licensed producer of Mazda and Mitsubishi cars.³⁵¹ In 1986, SAMCOR had assets of \$218 million and sold 55,000 vehicles. Vehicles made by SAMCOR still depended on Ford design and technology.

509. Ford claims that it lost some sales to certain South African government agencies as a result of the February 1978 regulations, but the effects of those losses were minimal.³⁵² Ford's sales to the South African Police continued.³⁵³

510. In 1987 Ford sold a majority of its interest in SAMCOR to the Anglo-American Corporation of South Africa and placed a percentage interest in an employee trust. Ford continued to supply its former affiliate with vehicles, components, management and technical assistance and licensed SAMCOR to use the Ford trademark.

511. In November 1994, Ford reinvested in SAMCOR, acquiring a 45% interest in the company with 45% owned by Anglo-American and 10% owned by an employee trust. In January 2000 Ford announced it was acquiring Anglo-American's interest in SAMCOR and had made an offer to acquire the shares owned by the employee trust.³⁵⁴

³⁵¹ Richard Knight, *The U.S. Motor Industry in South Africa during Apartheid*.

³⁵² Rothmeyer.

³⁵³ Letter from Sidney Kelly to Shareholder of May 8, 1980, at 1 ("FSA sells a small number of non-US origin civilian vehicles to the Police and Military").

³⁵⁴ *Id.*

512. Ford complied with job reservation laws, which reserved certain jobs for whites only. No black employees served in supervisory positions at Ford where they would supervise whites.³⁵⁵

DaimlerChrysler AG

513. In 1954, Daimler Benz opened its first office in South Africa. Four years later, the South Africa Auto Union acquired a franchise to sell Mercedes-Benz vehicles. The Pretoria-based company United Car and Diesel Distributions Ltd. (UCDD) was founded in 1962 to serve as sole distributor of these products. Soon, UCDD itself became involved in the production of vehicles and bought shares of Car Distributors Assembly (CDA), an assembly company based in East London, South Africa, which imported *inter alia* Daimler Benz parts.

514. By 1984, Mercedes Benz had acquired 50.1 percent of UCDD and renamed it Mercedes Benz South Africa (MBSA).

515. MBSA concentrated in producing passenger cars, minibuses, and commercial vehicles. MBSA delivered minibuses to the SAP. The SAP used the mini buses during the late 1980s State of Emergency.

516. MBSA required a garage to service its parts, especially its engines. In 1985, Mercedes Benz Exchange Unit Services (MBEUS) in Johannesburg was purchased by UCDD to fill this role. MBEUS serviced and repaired numerous parts, including exchange engines, transmissions, axles, turbo chargers, and other truck parts.

517. Mercedes Benz employees reported that their company increasingly gained responsibility for repairing military vehicles and their parts, including vehicles used for "the

³⁵⁵ Transcript of Henry Ford Jan. 19, 1978 Press Conference, attached to Letter of Sidney Kelly, Secretary, Ford Motor Company to Timothy Smith, Director, Interfaith Center on Corporate Responsibility (Mar. 3, 1978).

occupation and control of black urban settlements.” One Mercedes Benz employee of Stuttgart, Germany, Joachim Jungbeck traveled to various Mercedes Benz factories in South Africa and reported to a July 1, 1988 shareholder meeting:

During a company visit, I was proudly shown aggregates of army vehicles, including huge numbers of axles from armoured vehicles ... Storerooms contained large numbers of engines, axles and transmissions for Unimogs and armoured vehicles of the South African police and army. In between were parts for the armoured vehicle “Buffel”. The Buffel was used in the war against Angola and for the occupation and control of black urban settlements.³⁵⁶

518. Mr. Jungbeck also reported that the maintenance work was “strictly confidential”:

Concerning the scale of maintenance services for the army Jungbecks guide, Mr. Hawkey, said that this information was strictly confidential. A large number of army vehicles were being serviced and repaired, but in terms of service promotion the firm would not make use of it.³⁵⁷

519. In 1989, the Mercedes Benz board confirmed that the South African Army had a service and repair agreement with MBEUS.³⁵⁸

520. In 1978, a year after the U.N. Security Council enacted a mandatory arms embargo, South Africa’s Minister for Economic Affairs announced the establishment of the Atlantis Diesel Engines (ADE) factory. The state-owned Industrial Development Corporation served as major shareholder (51 percent), and Daimler-Benz owned 12.45 percent.

521. Until the early 1990s, ADE was lucrative for Daimler Chrysler. In 1984, South Africa required that ADE engines be built into every truck or tractor produced in South Africa.³⁵⁹ According to a 1978 Mercedes Benz business report, “[e]ngines, produced in South Africa, will be used by all vehicle manufacturers in South Africa.”

³⁵⁶ Application by Jungbeck for “the non-exoneration of the board of management and the supervisory board” and his speech at the shareholder meeting, Stuttgart, 1988.

³⁵⁷ *Id.*

³⁵⁸ Stuttgarter Koordinierungskreis der Aktion, *Entrüstet Daimler, Entrüstet Daimler. Ergänzungen zum Geschäftsbericht 1989 der Daimler Benz AG*, Stuttgart (1990) at 8.

³⁵⁹ *Financial Mail, Supplement Trucks and Transports*, Aug. 9, 1985 at 5-8.

522. In the early 1990s, every commercial vehicle made by South African truck and tractor manufacturers installed ADE engines. The following military and police vehicles used ADE engines: military SAMIL³⁶⁰ trucks and SAMAG trucks; army and police armored vehicles such as the "Casspir," "Hippo," and "Buffel," and "Duiker;" and the armored transporter "Blesbok."

523. The limited market caused ADE engines to become very expensive. The government began imposing high tariff protection, charging foreign competitors an import duty of 30 to 50 percent of the truck's value.³⁶¹

524. Foreign competitors were informed that the South African Army would be one of ADE's main customers, and invited competitors to compete for this contract. Daimler Benz and Perkins won the licensing agreements in late 1978.

525. Mercedes Benz designed the ADE factory in Atlantis, which was completed in 1980a town established by the state exclusively for the building of ADE. The government paid for the construction of all industrial areas in Atlantis, provided a 40 percent discount for rail transport to and from Atlantis, paid for ADE employees' technical training for seven years, and subsidized interest by 40 percent on an ADE loan for 10 years.³⁶² According to Daimler Chrysler Chairman Jürgen Schrempp, "As far as I understand, the authorities established ADE for strategic reasons."³⁶³

526. Because of strategic importance to the government, ADE was named a National Key Point. The Key Point Act required an industry's owner to implement certain security measures, including the employment of security guards. According to Klaus Heidel, ADE not only employed a civilian protection unit but also an armed unit, 50-60 guards strong. These

³⁶⁰ The SAMIL 100 truck was designed in 1980 and production began in 1982.

³⁶¹ Business Day (South Africa) June 10, 1985.

³⁶² *Financial Mail*, Nov. 29, 1985.

³⁶³ 1986 Interview with South African journal *Leadership*. Anti-Apartheid Bewegung, Mit Daimler fährt Apartheid gut (1989) at 7.

guards had received military training by the SAP or South African army, and carried 9mm guns and pistols.

527. In the 1970s, the South African state-owned corporation ARMSCOR began to import diverse weapons components for "add up engineering." For example, the police vehicle "Casspir"³⁶⁴ used the chassis of a Unimog. Similarly, the "Buffel" (designed in 1977) used the Unimog as a component. The "Valkiri," a 127mm rocket launcher was mounted on a Unimog truck.³⁶⁵

528. The SAP and army used both the Casspir and Buffel against the African population in townships.³⁶⁶

529. Daimler Benz advertised its Unimog as a "military vehicle" in a March 1965 Portuguese magazine *Journal do Exercito*. The military version could be distinguished from the civilian version because the former has mountings for arms, gloss paint to avoid infrared detection, a 24-volt battery, and bulletproof tires.³⁶⁷ Moreover, *Wehrtechnik*, a monthly defense technology journal wrote in April 1976, "the Unimog is regarded as the best, small military transporter in Africa."

530. Beginning in 1978, Mercedes Benz began to ship approximately 6,000 Unimogs to South Africa despite the U.N. Security Council's mandatory arms embargo. These Mercedes Benz Unimogs were among those used as component parts for the ARMSCOR vehicles.³⁶⁸

531. In his speech before the shareholder meeting in June 1989 in Berlin, Dr. Beyers Naudé complained:

But Daimler-Benz does just not help us to prevent this violence. The police shoot demonstrators, they even shoot mourners at funerals, as happened, for example, in

³⁶⁴ This vehicle was designed in 1974 and produced beginning in 1975.

³⁶⁵ Militärpolitik Dokumentation, Heft 50-52 (1986): Durchrustung in Südafrika. Bürgerkrieg und militärische Interventionspotentiale, pp. 76ff.

³⁶⁶ Anti-Apartheid Bewegung, "Mit Daimler fährt Apartheid gut", op. cit., p. 10.

³⁶⁷ Anti-Apartheid Bewegung Erwiderung. Antwort auf ein Dementi der Bundesregierung zur militärisch-nuklearen Zusammenarbeit Bundesrepublik Deutschland - Südafrika, Bonn, (1979), at 26.

³⁶⁸ Anti-Apartheid Bewegung, "Mit Daimler fährt Apartheid gut", op. cit., p. 10.

Llanga. They shoot from cars driven by Daimler-Benz engines. How am I supposed to understand your statement that you are ready to help prevent the situation to turn into violence? You will only succeed in doing so, if you cease supporting the military. I will take up another quote from you, Mr. Reuter; you asserted that there are moral limits to arms delivery. These are, and I quote you: "If supplies end up in states which are ever so slightly suspected to intend using them in attacks against others states". I can assure you, Mr. Reuter, that these vehicles, for which Daimler-Benz supplies the engines, are being used for aggressive purposes."³⁶⁹

532. Daimler Benz merged with Messerschmitt-Bölkow-Blohn (MBB) in 1989. On August 6, 1985, a television documentary revealed the delivery of five MBB helicopters to the SAP. The documentary showed footage of the SAP using the MBB helicopters to control mass demonstrations and to help identify leading activists.³⁷⁰

533. Deutsche Bank owned 57 percent of Daimler Benz shares as of January 14, 1975.³⁷¹

534. Daimler Chrysler partly owned several companies that helped maintain the apartheid system. In 1985-86, Daimler Benz bought 56 percent of the capital stock of Allgemeine Elektrizitätsgesellschaft (AEG).

535. According to one report:

The \$25 million facilities were installed by Siemens AG and AEG Telefunken... The project equipment consists of short wave transmitters, relay stations, telephone and telex stations and computerised data processing capability. Its major locations are the Cape Town central headquarters with regional headquarters at Port Elizabeth, Durban and Walvis Bay in Namibia. Its uses are versatile. First, it aids the South African government in its internal security by monitoring the identity and movement of black population...³⁷²

³⁶⁹ Speech by Dr. C. Beyers Naudé, shareholder meeting, Berlin, June 28, 1989.

³⁷⁰ Monitor, German Support for South Africa's Police – How the Arms Embargo against the Apartheid Regime is being circumvented (WDR-TV broadcast, Aug. 6, 1985).

³⁷¹ Baumann, W-R., Eschenhagen, W., Judt, M., Paesler, R., Die Fischer Chronik. Deutschland 1949-1999. Ereignisse, Personen, Daten. Frankfurt aM., Mai 1999, column 567.

³⁷² Ronald W. Walters, U.S. Policy and Nuclear Proliferation in South Africa. In: *Western Massachusetts Association of Concerned African Scholars*, Eds., U.S. Military Involvement in Southern Africa (1978) at 182-183.

General Motors Corporation

536. In 1923, General Motors Corporation (GM) began its South Africa operations by building its first vehicle assembly plant. GM conducted its South Africa operations via a subsidiary, General Motors of South African (Pty) Limited (GMSA).³⁷³ GMSA is a consolidated subsidiary of GM located in Port Elizabeth, South Africa. The subsidiary was established in 1926 and grew from a small assembly operation to a large manufacturing-assembly complex encompassing nearly two million square feet of floor space.³⁷⁴

537. From the beginning, GM cooperated closely with the South African government. When GMSA was established,

the South African government requested GM to establish its operation in Port Elizabeth because the government wished to alleviate a serious unemployment problem among white South Africans in the area. As a result the initial work force was virtually all white. In 1967 the government faced a similar unemployment problem, this time among colored workers. As a result Port Elizabeth was designated by the government as a "colored preference area" and the proportion of colored employees at GMSA increased sharply.³⁷⁵

538. GMSA has three plants: assembly and manufacturing plants located in Port Elizabeth and an engine manufacturing plant located at Aloes, outside of Port Elizabeth.³⁷⁶ GM produced several models at its plants including the Nomad, a utility vehicle; Bedford and Chevy commercial vehicles; Ranger, Opel and Chevrolet passenger cars; and locomotives.³⁷⁷ GM also produced Isuzu trucks.³⁷⁸

³⁷³ GM Public Interest Report, (1980) at 72.

³⁷⁴ Letter from Roger E. Smith to Jeffrey M. Field of July 19, 1971 at 1.

³⁷⁵ United States Private Investment in South Africa, Hearings before the Subcommittees on Africa and on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong, 2d Sess., (Statement of GM REP).

³⁷⁶ Letter from Roger E. Smith to Jeffrey M. Field of 7/19/71, at 1.

³⁷⁷ Letter from Roger E. Smith to Jeffrey M. Field of 7/19/71, Encl. p. 1; SA Digest May 23, 1980, at 7.

³⁷⁸ Rothmeyer, at 7.

539. To support the assembly of the vehicles, GMSA also manufactured engines, radiators, batteries, spark plugs, spring and other sheet metal parts. General Motors Acceptance Corporation conducts financing operations in South Africa through its subsidiary, GMAC, Ltd.³⁷⁹

540. In 1978, GM Chairman Thomas Murphy admitted that “[i]t would be impossible to maintain a viable concern” in South Africa “without the small portion of government business which we do have.”³⁸⁰

541. In 1977, GM had sales of \$185 million in South Africa: \$156 million in vehicles and the remaining \$29 million in locomotives, earth-moving equipment and diesel engines. By the end of 1977, GM’s total investment in South Africa was \$119 million.³⁸¹

542. In an inter-office memorandum dated July 20, 1977, GMSA noted that:

GM South African has, for example, been requested to supply vehicles such as the K25, K31, 4x4 LUV for Defence Force purposes and refusal to offer such might be interpreted as reflecting doubt on the motives of the Company. Such interpretation or a variation thereof could lead to direct loss of other government business and seriously affect GM South African’s share of the vehicle market and very likely threaten its viability.³⁸²

543. Six months later, in a letter to the Interfaith Center on Corporate Responsibility (ICCR), Chairman Murphy claimed, “General Motors does not sell directly to any military, paramilitary or police for in South Africa.” He continued “[h]owever, General Motors, as do most other vehicle manufacturers in South Africa, sells commercial-type vehicles to the centralized purchasing agency of the government.”³⁸³

³⁷⁹ Letter from Roger E. Smith to Jeffrey M. Field of 7/19/71, at 1.

³⁸⁰ Rothmeyer, at 7.

³⁸¹ *Id.*

³⁸² GM South African – Contingency Plan, at 4-5, attached to memo from L.H. Wilking of General Motors South Africa, July 20, 1977.

³⁸³ Letter from Thomas Murphy to Sister Regina Murphy of Jan. 20, 1978, at 1.

544. In May 1978, a GM spokesman acknowledged that GM had in fact sold the trucks discussed in the July 20, 1977 memorandum to the South African government's central purchasing facility. He went on to state that "[w]e don't make military vehicles as such, but they adapt them for whatever purposes they want."³⁸⁴

545. GM indicated that in 1978 it sold 1,500 units annually to the South African police and military. GM also provided police and transport vehicles for the Department of Prisons. And, for at least 15 years, GMSA had a contract to supply Bedford trucks to the South African Defense Force.³⁸⁵

546. Regulations issued by the United States Department of Commerce in February 1978, kept GM from supplying passenger cars to the South African military and police, since its passenger cars contained U.S.-made parts. But GM continued to supply commercial vehicles—primarily small trucks—to the security forces.

547. The regulations, however, did not prohibit GM from selling to South African security forces via a foreign subsidiary. For example, GM of West Germany was not affected by the ban. It was also permissible for GM's South African subsidiary to produce GM cars in South Africa. GM used its foreign subsidiary, GMSA, to build the small trucks and other vehicles that it sold to the South African security forces.

548. Two GM inter-office memoranda dated May 6, 1977 and July 20, 1977, respectively, outlined a contingency plan for GMSA during times of civil unrest. All the

³⁸⁴ *GM Drafts Riot Plan for South Africa*, N.Y. Times, May 19, 1978 pp. 1 & 14.

³⁸⁵ Karen Rothmeyer, *U.S. Motor Industry in South Africa: Ford, General Motors and Chrysler*, The Africa Fund 1979, p. 8.

preparatory work regarding the memoranda was intended to be “carried out quietly and discretely” so as to “avoid giving the impression that [GM] expect these things to happen.”³⁸⁶

549. The May 6 memo discloses that the South African government designated GMSA facilities at Kempston Road and Aloes as National Key Points.³⁸⁷

550. The South African government conducted security surveys at GM’s Kempston Road and Aloes facilities. GMSA agreed to bring security up to the standard required by the South African government. GMSA stated that because the government’s mandated security level “is not unreasonable and is in the best interest of the company, these will be carried out as a matter of self interest.”³⁸⁸

551. As National Key Points, during times of national emergency, GMSA’s facilities would be accorded protection through the Citizen Force Commando system. Noting that all white South African males up to age 65 may be called for military service, the May 6 memo suggests that white personnel be encouraged to join local units. The memo indicates “plant personnel who have had military training and who still have training commitments to meet are encouraged by the authorities to volunteer to join a local Commando unit.”³⁸⁹

552. The “GM Commando” would assume guarding responsibility for the GM plants and would fall under the control of the local military. GM envisioned that “plant personnel could be engaged in a composite function, i.e. part normal work and part guard duty in such situations.”³⁹⁰

³⁸⁶ July 20, 1977 Memo – Cover Page.

³⁸⁷ Contingency Planning - attached to memorandum from W.C. Mott of General Motors South African (May 6, 1977), at 3.

³⁸⁸ May 6, 1977 Memo, at 3.

³⁸⁹ May 6 Memo, at 2.

³⁹⁰ *Id.*, at 3.

553. "GM Commando" unit members would be involved in both normal work and guard duty because "key skills, technical and managerial expertise are concentrated in the same population group from which defense requirements must be drawn."³⁹¹

554. In the July 20 memo, GM states as a given assumption that under conditions of national emergency the South African government would assume a major role in its operations. Specifically, major elements of the GMSA's motor vehicle manufacturing industry would be taken over by an arm of the [South African] Ministry of Defense that would completely regulate output and co-ordinate operations.

555. In May 1976, the 241 Chevrolet dealers in South Africa decided to run a campaign to raise money for South African soldiers. At that time, South African soldiers were occupying Namibia and parts of Angola. An ad run in conjunction with the campaign said, "They are our South African soldiers. Nationwide, Chevrolet Dealers believe we can never do enough for them."

556. In response to criticism of the ad, a GM spokesperson maintained that GM played no role in the dealers' actions. But the company went on to state that GM believes the dealer organization felt that it was acting "in a socially responsible way by trying to contribute to the betterment of needy families of army personnel."³⁹²

557. The Comprehensive Anti-Apartheid Act of 1986 (CAAA) prohibited any U.S. entity from engaging in any form of cooperation with the South African armed forces except for activities that were reasonably designed to facilitate collection of necessary intelligence.³⁹³

³⁹¹ *Id.*, at 2.

³⁹² Rothmeyer, at 9.

³⁹³ White Wheels of Fortune: *Ford and GM in South Africa*, ICCR, Vol. 8 No. 6 1989, at 3A.

558. In May 1986, GM stated that it would stop selling cars and trucks to police and military agencies in South Africa. Chairman Roger Smith indicated that GM would not bid for military or police sales any longer. GM also acknowledged that approximately ten percent of the vehicles it sold to the South African government were for police and military use.³⁹⁴

559. Later that same year, GM sold its South African motor vehicle subsidiary GMSA to local management. GMSA was renamed Delta Motor Corporation (Pty) Ltd. (Delta), which continued to manufacture GM cars under license. GM continued to provide designs and parts.

560. GM appears to have profited from "disinvestment." News reports noted that "GM earns licensing fees and Delta is doing better than as a subsidiary because it sells GM cars to the police and military, something GM would not do."³⁹⁵ Delta nearly doubled sales of GM vehicles in two years. The same news report noted that Delta's CEO "makes no apologies."

561. The Managing Director of Delta Motors stated that by lifting the ban on sales to the military and police, GM had secured a "vote of confidence" as well as "significant" orders from the government. He predicted Delta would do more government business in 1987 than GM did in the previous five years.³⁹⁶

562. GM reinvested in South Africa in December 1997, acquiring 49% in Delta.³⁹⁷

³⁹⁴ *G.M. Cuts Its Sales to Pretoria*, N.Y. Times (Business Day) May 24, 1986.

³⁹⁵ Jim Jones, *Aftermath of the Exodus of U.S. Firm's Departure from South Africa hasn't helped Africans*, U.S. News & World Report, May 1, 1989.

³⁹⁶ Testimony of Jennifer Davis and Richard Leonard, American Committee on Africa, at the Hearings on the Arms Embargo, Security Council Committee Established by Resolution 421 (1977) Concerning the Question of South Africa at 5.

³⁹⁷ Richard Knight, *The U.S. Motor Industry in South Africa during Apartheid*, at 4.

TECHNOLOGY

Introduction

563. Since the days of the first population register, computers have played a key role in Pretoria's ability to maintain apartheid.³⁹⁸

564. Rep. Howard Berman, the sponsor of legislation to ban computer sales to South Africa testified that:

Computers are essential to the South African governments' pervasive control over every aspect of existence for every black individual. From the age of sixteen, all Africans must carry passbooks indicating where they have permission to live and work and whether they are allowed to live with their families... Computers help in the collection, retrieval and use of this information ... As the South African economy and population grew, political leaders became concerned that a growing white manpower shortage would inhibit the implementation of apartheid. Computers have helped solve that problem. Moreover computers have enabled the South African government to strengthen its grip on the population and intensify apartheid enforcement over recent years. Pass law arrests doubled between 1980 and 1982. Political detentions have increased sharply ... Armed with more thorough and more readily available information on black residents, the government has accelerated forced removals of whole communities from so-called 'black-spots' – areas where black families have lived for generations, but which the government has declared 'white'.³⁹⁹

565. Congressman Berman concluded "we cannot fool ourselves any longer that we can find the 'good' parts of the South African government and quarantine the 'bad' sections."⁴⁰⁰

566. "South Africa is totally dependent on the outside world for electronics and technology, and imported 95% of its computer products."⁴⁰¹

567. No mainframe computers were made in South Africa, and the key parts of the personal computers that are assembled in South Africa were imported.⁴⁰²

³⁹⁸ Automating Apartheid, NARMIC, American Friends Service Committee, 1982 at 14.

³⁹⁹ Testimony of U.S. Rep. Howard Berman before the House Foreign Affairs Committee (reprinted in Cong. Rec. Apr. 18, 1985).

⁴⁰⁰ *Id.*

⁴⁰¹ Sanctions and the Struggle Against Apartheid in a Changing South Africa, American Committee on Africa, factsheet, Mar. 1990.

⁴⁰² Richard Knight, *US Computers in South Africa*, The Africa Fund, 1986 at 2.

568. The United States supplied 70% of the computers sold in South Africa. IBM was the largest supplier.⁴⁰³

569. The single largest user of computers in South Africa was the white minority government.⁴⁰⁴ "American-made computers exported to South Africa went to government agencies engaged in defense research and arms manufacture, and administrative boards that keep track of black population movements among others."⁴⁰⁵

570. In 1977, only the U.S. and Britain spent more on computer technology than South Africa as a percentage of gross national product.⁴⁰⁶

571. American computer companies were among the most active in fighting the divestment movement at the federal, state and municipal level.⁴⁰⁷

572. Although the U.S. had placed an embargo on the sale of computers and sophisticated technology to South Africa, a cable from the American embassy in Pretoria acknowledged that "it is our understanding that most firms have been able to continue sales by shifting to non-U.S. sources for components."⁴⁰⁸ In 1979, \$60 million worth of U.S. computers and other technology managed to reach South Africa despite the embargo.⁴⁰⁹

⁴⁰³ Berman Testimony.

⁴⁰⁴ Richard Knight, *US Computers in South Africa*, The Africa Fund, 1986, at 2.

⁴⁰⁵ Erin MacLellan, *U.S. Business Debates South Africa Ties Limits on Computer Exports are Difficult to Enforce*, Wash. Post, Aug. 25, 1985.

⁴⁰⁶ The Use of Computers to Support Oppression, <http://www-cs-students.stanford.edu/~cale/cs201/apartheid.comp.html>. (accessed October 7, 2002).

⁴⁰⁷ Sanctions and the Struggle Against Apartheid in a Changing South Africa, American Committee on Africa, fact sheet, Mar. 1990.

⁴⁰⁸ Jack Anderson, *Embargo on South Africa called a Farce*, Wash. Post, May 30, 1981, at E51.

⁴⁰⁹ *Id.*

Defendants

Fujitsu Ltd.

573. International Computers Ltd. (ICL), a British company, owned 92.86% of its South African subsidiary, International Computers (ICL-SA).⁴¹⁰ In 1990, Fujitsu acquired an 80% stake in ICL and by 1998, it had completed its ownership of ICL. ICL moved to the Fujitsu brand in 2001 and by 2002, it operated as Fujitsu Service.⁴¹¹

574. ICL played a crucial role in sustaining the apartheid government.

575. ICL-SA dealt primarily with marketing and servicing hardware manufactured in the UK. In 1978, it employed approximately 1,200 individuals: 950 white, 142 African, 96 Asian, 36 Coloured.⁴¹²

576. ICL supplied the South African government with 588 computers used by the police, local authorities, and South Africa's defense industry.⁴¹³

577. The South African government began automating its population register in the early 1950's.⁴¹⁴ ICL first entered this arena by installing a computer at the Bantu Reference Bureau in Pretoria in 1967.⁴¹⁵ The Department of Plural Affairs ("DPA"), formerly known as the Bantu Affairs Department, played a key role in the government's regulation of its African

⁴¹⁰ *Computerising Apartheid: ICL in South Africa*, London: Anti-Apartheid Movement, at 4 (October 1978).

⁴¹¹ <http://services.fujitsu.com/about/history> (accessed October 7, 2002).

⁴¹² *Computerising Apartheid*, at 4.

⁴¹³ *Id.* The 588 tally excluded an unknown number of 'classified' computers kept secret by ICL. *Id.*

⁴¹⁴ *Automating Apartheid-U.S. Computer Exports to South Africa and the Arms Embargo*, NRMIC/American Friends Service Committee, at 6 (1982).

⁴¹⁵ *Computerising Apartheid*, at 11.

population.⁴¹⁶ The DPA operated through a network of 14 Bantu Administration Boards and served as an arm of the apartheid government in black townships.⁴¹⁷

578. The DPA computer network stored fingerprints and personal details on the 16 million South Africans whom the regime classified as “black”⁴¹⁸ and was used to maintain the passbooks that were key to “influx control.”

579. The passbook system was the key to the success of “influx control.” Influx control was the method by which black workers were channeled into the labor force and confined to marginal, desolate reserves called “homelands.”⁴¹⁹ In 1978, the DPA had 15 million sets of prints stored in its central computer and issued 900,000 new passbooks and identity documents to Africans.⁴²⁰ As the DPA noted, the computerized fingerprint record was “absolutely essential because it guarantees positive identification and precludes the possibility of foreign blacks infiltrating into the Republic.”⁴²¹ Enforcement of this system led to the arrests of millions of Africans.

580. Four ICL computers were used by the Bantu Administration Boards.⁴²² These Boards ran the hostel system that housed African workers who were not allowed to bring their families with them to their job locations. The Boards also administered the permits and controls that governed the movements of Africans.

⁴¹⁶ Automating Apartheid, at 14.

⁴¹⁷ *Id.*, at 17.

⁴¹⁸ *Id.*, at 14.

⁴¹⁹ *Id.*, at 17.

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.*, at 18.

581. On March 24, 1978, during an interview with the South African journal *Financial Mail*, John Starkey, Managing Director of ICL South Africa discussed ICL's role in the maintenance of Apartheid:

Our computers are quite extensively used by [the] Bantu boards in administrative jobs-in rates and rent for example. . . . We also have a computer which stores information about the skills of Africans. As soon as a skilled worker is required he can easily be traced.⁴²³

582. The South African police used an ICL unit for a central processor in their automated "criminal investigation" system.⁴²⁴ In 1976, ICL delivered a more advanced computer to upgrade the police's system.⁴²⁵ When the British press disclosed that the computers would be used to enforce the pass laws, British trade unions, members of the British parliament and anti-apartheid activists urged ICL to withdraw from the sale. ICL, however, went ahead with the delivery.

583. In 1978, three ICL computers were in use by the South African police force: a 190S and two 2960s.⁴²⁶

584. By 1982, ICL had sold nine (9) high-speed computers to the South African police.⁴²⁷ Following the November 1977 UN resolution, the sale of computers to South Africa violated United States' restrictions on the export of computers.

585. On March 3, 1982, the United States fined ICL \$15,000.⁴²⁸

⁴²³ *Computerizing Apartheid*, at 5.

⁴²⁴ *Id.*, at 28-29.

⁴²⁵ *Id.*

⁴²⁶ *Computerizing Apartheid*, at 11.

⁴²⁷ *Automating Apartheid*, at 29.

⁴²⁸ *How Britain Arms Apartheid: A Memorandum for Presentation to Her Majesty's Government*, London: Anti-Apartheid Movement, at 18; *Automating Apartheid*, at 29.

586. After the United Nations imposed a mandatory arms embargo on South Africa in 1977, the apartheid government resorted to the use of a “dummy” front organization to procure sensitive equipment for the police and military. Infoplan, a Pretoria-based data processing corporation offered hardware, software, computer training and services, acted as such a conduit.⁴²⁹ ICL was reported to have strong links to Infoplan.⁴³⁰

International Business Machines Corporation (IBM)

587. Like ICL, IBM had an extensive involvement in the apartheid regime in that it was the largest computer supplier in South Africa, with total annual sales estimated at R300 million.⁴³¹ The relationship began in 1952, when IBM’s South African subsidiary (“IBM-SA”) received its first order for an ‘electronic tabulator’⁴³² This tabulator was the first step in the consolidation and expansion of the population control program. IBM bid on the passbook system in 1965, but lost to its competitor, ICL.

588. As of 1976, at least one third of IBM business in South Africa was done directly with the South African government.⁴³³ IBM computers were used by the Department of Defense, the Department of the Interior, and the Bantu Administration Boards, the local administrators of apartheid.

⁴²⁹ Automating Apartheid, at 45.

⁴³⁰ *Id.*

⁴³¹ Automating Apartheid, at 7.

⁴³² *Id.*, at 6.

⁴³³ Jennifer Davis, Research Director, American Committee on Africa testimony before the United States Senate Committee on Foreign Relations Subcommittee on African Affairs, Sept. 29, 1976 at 8.

589. In 1978, a year after the mandatory UN Resolution, IBM's South African sales jumped 250%.⁴³⁴ South Africa's apartheid government was IBM's largest single customer, accounting for approximately one-third of the company's South African sales.⁴³⁵

590. Since at least 1970, the South African Department of the Interior ("DOI") relied on IBM hardware for its portion of the computerized population registry.⁴³⁶ Thomas Conrad of the American Friends Service Committee, an authority on corporate involvement in apartheid, testified that "for several years IBM has knowingly rented a Model 370 computer system to the South African Department of the Interior which is used for the regime's national identity system. The IBM machine stores files on seven million people the regime has designated as coloreds, Asians, and whites ... Since IBM owns the equipment and leases it to the government, it could withdraw from the arrangement, but has declined to do so."⁴³⁷

591. During the 1970s new computers and peripheral equipment were added to expand and upgrade the system's capability. The DOI used two IBM Model 370/158 mainframe computers.⁴³⁸ The IBM system processed and stored a vast quantity of details about the designated population, including identity numbers, racial classification, residence, and place of work. The system also contained a history of government opposition.⁴³⁹ The same IBM computer

⁴³⁴ Automating Apartheid at 6.

⁴³⁵ *Id.*

⁴³⁶ Automating Apartheid, at 14.

⁴³⁷ Controls on Exports to South Africa, Hearings before the Subcommittees on International Economic Policy and Trade and on Africa of the Committee on Foreign Affairs, 97th Cong. 2d Sess., Feb 9 and Dec 2, 1982, at 72 (Statement of Thomas Conrad, American Friends Service Committee); *See also* Economic Sanctions and their potential Impact on U.S. Corporate Involvement in South Africa, Hearing before the Subcommittee on Africa of the House Foreign Affairs Committee, 99th Cong. 1st Sess. Jan 31, 1985 at 22 (Statement of Dr. Jean Sindab, Executive Director, Washington Office on Africa) (Testifying that an IBM computer was used by the regime to maintain the pass system for the "Colored" population).

⁴³⁸ Automating Apartheid, at 15.

⁴³⁹ *Id.*, at 15; *U.S. Computers in South Africa* at 7; *Computers and the Apartheid Regime in South Africa*, <http://www-cs-students.stanford.edu/~cale/cs201/> (accessed October 7, 2002); *The Use of Computers to Support Oppression* <http://www-cs-students.stanford.edu/~cale/cs201/apartheid.comp.html> (accessed October 7, 2002).

served as the basis for the "Book of Life," an identity document issued to all those covered by the database.⁴⁴⁰ The IBM system was used to track racial classifications as well as movement for security purposes.

592. IBM conceded the equipment may be used for repressive purposes, but also noted that "Its not really our policy to tell our customers how to conduct themselves."⁴⁴¹

593. IBM's 370 computer was used by many South African government agencies, including the Department of the Prime Minister and the Department of Statistics.⁴⁴² The Department of Prisons, which held and tortured political prisoners without trial, used IBM computers.⁴⁴³

594. Although Infoplan did computer work for the SADF, in which IBM agreed it could not participate, IBM supplied Infoplan with parts, services, education and technical data which were not covered by the U.S. embargo.⁴⁴⁴

595. IBM, when confronted about its computer systems' role in the regime's population control program stated: "We feel that the fact that it is being done with computers hasn't any appreciable overall effects on the apartheid situation. This pass system could be done in many other ways besides computers."⁴⁴⁵

⁴⁴⁰ Automating Apartheid, at 15.

⁴⁴¹ Erin MacLellan, U.S. Business Debates South Africa Ties Limits on Computer Exports are Difficult to Enforce. Wash. Post, Aug. 25, 1985.

⁴⁴² *Id.*, at 11, 21.

⁴⁴³ *The Use of Computers to Support Oppression*, <http://www-cs-students.stanford.edu/~cale/cs201/apartheid.comp.html>.

⁴⁴⁴ Automating Apartheid, at 65.

⁴⁴⁵ *Id.*

596. IBM was also a top supplier for the South African Defense Force (“SADF”). The SADF inventory of IBM computers included two model 360s (one installed at the Simontown Naval Installation) and two model 370s.⁴⁴⁶

597. IBM rented at least seven computers to Leyland-South Africa, a firm that produced Land Rovers for the security forces and the police.⁴⁴⁷ IBM also rented several computers to one of Pretoria’s top explosives manufacturers, the African Explosives and Chemical Industries, Ltd. (“AECI”).⁴⁴⁸ AECI reportedly had specialized in the manufacture of riot control gas, napalm, and nerve gas.⁴⁴⁹ The company reportedly made the tear gas used against demonstrators at Soweto at its Modderfontein facility which has an IBM computer.⁴⁵⁰ A total of four AECI installations use IBM hardware.⁴⁵¹

598. IBM also serviced Mobil and Caltex, as well as many mining companies that were pillars of apartheid.

599. As recently as 1980, IBM had no African salespeople.⁴⁵²

600. After IBM announced it was leaving South Africa, a letter was sent to customers by the Managing Director of IBM South Africa stating that “there will be no change to the supply of IBM products.”⁴⁵³

⁴⁴⁶ Automating Apartheid, at 41.

⁴⁴⁷ *Id.*, at 55.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² Richard Knight, *US Computers in South Africa, The Africa Fund*, 1986, at 8.

⁴⁵³ Letter of J.F. Clarke, Managing Director, IBM South Africa entitled “Notice to the Customers and Associates of IBM Throughout South Africa”.

601. Newspapers reported that “[a] letter leaked from IBM’s Johannesburg offices reveals that IBM’s pull-out from South Africa is not all it seems. Users are being reassured that IBM products and services will be freely available from the company established as a result of IBM selling off its subsidiary. And the letter boasts that the lack of restrictions will leave it free from international pressure ... This has been interpreted as evidence that IBM’s withdrawal was aimed at dodging international disapproval and as a means of taking political heat off IBM in the US.”⁴⁵⁴

602. Anti-apartheid activists noted that the IBM’s “pull-out” enabled it to expand its market in South Africa:

While computer firms like IBM are prohibited by U.S. sanctions from supplying the South African government, the company’s former South African subsidiary (and sole South African distributor), has recently become partners with Reunert Computers, to form a new company, Technology Systems International (TSI). TSI, in turn, is part of Barlow Rand, Ltd., a giant South African conglomerate and a key part of South Africa’s military industrial complex, which, through another Barlow Rand subsidiary, Reunert Technologies Ltd. supplies cluster bombs, components for armored vehicles, electronic fuses for artillery and rocket shells, and military electronic and communications gear to the South African military and police ... the new structure further increases the likelihood that IBM products and technology will be used in armaments applications.⁴⁵⁵

MINING

Introduction

603. “The mining industry remains the goose that lays the golden egg for South Africa.”⁴⁵⁶ It also shaped the system of apartheid and its abuses.

⁴⁵⁴ *IBM Leak Reveals No Change in SA*, Datalink, Jan 29, 1987; Philip Basset, *Unions claim IBM Operations Still Continuing in South Africa*, Financial Times, Jan 14, 1987 (IBM “has in practice not withdrawn from its South African operations, in spite of its decision last October to disinvest in the country”).

⁴⁵⁵ Testimony of Jennifer Davis and Richard Leonard, American Committee on Africa, at the Hearings on the Arms Embargo, Security Council Committee Established by Resolution 421 (1977) Concerning the Question of South Africa, at 3-4.

⁴⁵⁶ Kris William Kobach, *Political Capital: The Motives, Tactics, and Goals of Politicized Businesses in South Africa* (New York: University Press of America, 1990) at 107.

604. The Truth and Reconciliation Commission specifically found that the mining industry “played a central role in helping to design and implement apartheid policies” and “must be held accountable.”⁴⁵⁷ The TRC noted that the mining industry “had a significant formative impact on the apartheid political economy” and that its involvement

in shaping the migrant labour system is the clearest example of business working closely with the minority (white) government to create the conditions for capital accumulation based on cheap African labour. The evidence shows that, rather than relying simply on the forces of supply and demand, the mining industry harnessed the services of the state to shape labour supply conditions to their advantage. Thus, the mining industry bears a great deal of moral responsibility for the migrant labor system and its associated hardships.⁴⁵⁸

605. The TRC concluded its discussion of the mining industry with the finding that “The shameful history of subhuman compound conditions, brutal suppression of striking workers, racist practices and meager wages is central to understanding the origins and nature of apartheid.”⁴⁵⁹

606. The ANC submission to the TRC on the role of business stated “in many respects the apartheid government can be seen as having done no more than further extending and tightening up the application of a measure introduced at the behest of the mining houses for their benefit. It is our contention that the continued existence in force after 1960 of pass laws must be acknowledged as a measure that continued to benefit the mineowners and other employers.”⁴⁶⁰

607. The ANC also noted that “the migrant labour system and the compounds were not legislated into existence by governments hostile to business but brought into being by the mining

⁴⁵⁷ Vol.4, Ch. 2 of TRC “Institutional Hearing: Business and Labor,” Findings Arising out of Business Sector Hearings, ¶ 23

⁴⁵⁸ Vol.4, Ch. 2 of TRC “Institutional Hearing: Business and Labor,” Findings Arising out of Business Sector Hearings, ¶ 63, 64.

⁴⁵⁹ Vol.4, Ch. 2 of TRC “Institutional Hearing: Business and Labor,” Findings Arising out of Business Sector Hearings, ¶ 65.

⁴⁶⁰ ANC Submission to the Truth and Reconciliation Commission Hearing on the Role of Business, Nov. 1995 at 2.

houses themselves. Research has shown that the migrant labour system was the key to the cheap labour policies of the mining industry” and that the mining industry lobbied successfully for a tightening up of pass laws.⁴⁶¹

608. “The Bureau of Economic Policy Analysis at the University of Pretoria calculated that in 1978 mining accounted for 26 percent of South Africa’s GDP. . . . In 1980, according [to] the Chamber of Mines, the figure was 33 percent.”⁴⁶²

609. Nelson Mandela told the Seventh Congress of the National Union of Mineworkers (NUM), an affiliate of the Congress of South African Trade Unions (COSATU) that it was “your sweat and blood that has created the vast wealth that white South Africa enjoys.”⁴⁶³

610. “South African’s gold, metal, and coal mining industry lies at the center of the country’s wealth. After agriculture, mining is the most important source of employment. There are 550,000 black mine workers.”⁴⁶⁴

611. “When the development of diamond and gold mining in the late 1800s created the need for more African workers, the whites devised burdensome taxes and restrictive land tenure rights to force Africans from often prosperous farms into urban wage labor. . . . Had Africans been allowed to retain their productive farms, it would have been difficult to lure them to work in the dirty and dangerous mines. Mineowners would have been forced to pay much higher wages

⁴⁶¹ *Id.* at 3.

⁴⁶² Kris William Kobach, *Political Capital: The Motives, Tactics, and Goals of Politicized Businesses in South Africa* (New York: University Press of America, 1990) at 107. See David Yudelman, *The Emergence of Modern South Africa: State, Capital, and the Incorporation of Organized Labour on the South African Gold Fields, 1902-1939* (Cape Town, South Africa: David Phillip, 1983).

⁴⁶³ “It is your Sweat and Blood that has created the Wealth of South Africa,” Nelson Mandela address to National Union of Mineworkers, April 27, 1991 as reprinted in Steve Clark’s (ed.) *Nelson Mandela Speaks: Forging a Democratic, Nonracial South Africa* (New York: Pathfinder, 1993) at 93-94.

⁴⁶⁴ Denis MacShane, Martin Plaut, David Ward, *Power!: Black Workers, their Unions and the Struggle for Freedom in South Africa* (Boston, MA: South Run Press, 1984) at 101.

to secure the labor of successful African farmers. But through a combination of onerous taxes and deprivation of land, the whites forced the Africans to seek meager wages of the mines.”⁴⁶⁵

612. Most workers were migrant workers, who came from the homelands that were located near the mines. Many mines were actually located within the homelands. Other workers were imported by the mining companies from Lesotho. Once the workers from Lesotho were no longer capable of working, they were taken back to Lesotho and new workers were brought in to replace them.

613. “No single group of workers has seen so many of its leaders victimised. 95 per cent of the 600,000 black miners are migrant workers. Dismissal from the mine means a return to a bantustan.”⁴⁶⁶

614. The average wage paid to black workers in the mining industry was lower in 1969 than it had been in 1889.⁴⁶⁷ Between 1911 and 1969, salaries of white miners rose by over 70% in real terms, while those of black miners remained the same.⁴⁶⁸

615. “The African miners who were the backbone of South Africa’s development received no real increase in wages during most of the twentieth century.”⁴⁶⁹

616. The living and working conditions for miners were tantamount to slavery.

617. The conditions at the miners’ compounds were described as follows:
accommodation was between 10 and 15 per room, in same-sex “hostels.” Men and women were not allowed to live together, even if they were married and working at the same mine. There was

⁴⁶⁵ Danaher, at 8, 49.

⁴⁶⁶ Denis MacShane, Martin Plaut, David Ward, *Power!: Black Workers, their Unions and the Struggle for Freedom in South Africa* (Boston, MA: South Run Press, 1984) at 17.

⁴⁶⁷ ANC Submission to the Truth and Reconciliation Commission Hearing on the Role of Business, Nov. 1995 at 4.

⁴⁶⁸ BBC World Service, The Story of Africa: Southern Africa: Mining at (accessed 7/23/02)

⁴⁶⁹ Danaher, at 48.

no hot, clean water, no private showers, and only a tiny electric stove on which to prepare meals. The miners slept in bunk beds, often without mattresses. In some mines, the beds were concrete slabs, which the chief medical officer of the Chamber of Mines said was beneficial to the physics of the natives.⁴⁷⁰ The barracks were surrounded by barbed wire and guards, as visits by wives and families were forbidden. Outside of the compounds, shanty-towns were everywhere. Homes made of scraps of metal and wood were where some of the families of these miners live. Dust, full of silica, asbestos, and vanadium was rich in the air and covered everything. There was no electricity, medical care, schools, pavement, or running water in these make-shift villages.

618. The compounds were isolated from the townships and other industrial workers.⁴⁷¹

619. The COSATU submission to the TRC Hearing on the Role of Business noted that health and safety standards were, at best, neglected.⁴⁷² African miners did not obtain needed health care and were not provided adequate safety equipment or training.

620. An expert in respiratory disease found that “the focus of medical attention on black miners by the mining industry was on the detection and repatriation of those miners who were unfit to work, primarily those with pulmonary tuberculosis (PTB) ... thousands of black miners were sent home every year after having been diagnosed with PTB on the mines or by labour recruiters. In a well-documented process, repatriation of sick miners over the years contributed to the transformation of rural labour reserves from areas where PTB was unknown to

⁴⁷⁰ Truth and Reconciliation Commission. Business Sector Hearing. Johannesburg. 13 November 1997.

⁴⁷¹ Denis MacShane, Martin Plaut, David Ward, *Power!: Black Workers, their Unions and the Struggle for Freedom in South Africa* (Boston, MA: South Run Press, 1984) at 101.

⁴⁷² COSATU Submission to the TRC Hearings on Business and Apartheid at 30.

endemic hot spots where the incidence of PTB is among the highest in the world.”⁴⁷³ Before they died, miners sent home with PTB infected their families and others.

621. Although PTB could be treated, less than 10% of the miners received treatment after being “repatriated.” From 1980 to 1985, more than 15,000 men were repatriated for PTB alone.⁴⁷⁴

622. Other reports also noted that black South African mineworkers were not given medical treatment. If one became sick with any kind of disease, they were immediately fired and left to die.⁴⁷⁵ Once these men were diagnosed with what they referred to as “wet lung” (silicosis or asbestosis), they were black-listed and unable to work again. Doctors were on the payroll of the companies and were present to prevent the outbreak of any epidemics, not to treat the African workers.

623. Data on coal mining indicates that from 1978 to 1983, South African coal workers were about 10 times more likely to die on the job as their counterparts in the United Kingdom.

624. In an accident that has been called “symptomatic of the disregard for human life of mining employers and the apartheid government,” 177 mineworkers were killed in a 1986 fire at the Kinross gold mine, the largest accident in the history of South African gold mining. The black miners who died were identified not by name, but by ethnic group: “Sotho 45, Shangaan (Mozambican) 21, Pondo 20, Hlubi (Transkei) 6, Venda 1, Xhosa 29, Tswana 14, Malawi 15, Pedi 1” The names and personal details of white workers who died were released by the company.⁴⁷⁶

⁴⁷³ Id. at 37.

⁴⁷⁴ Id. at 37.

⁴⁷⁵ Paula Howell, *Dying Miners Left to Rot*, Mail & Guardian, Feb. 8, 2002

⁴⁷⁶ COSATU submission to the TRC Hearing on Business and Apartheid at 31.

Defendants

625. “Rio Tinto (known as RTZ-CRA until February 1997), the world’s second largest mining company, is the most widely spread, with more than 200 subsidiaries in over 40 countries. . . . Rio Tinto mines and processes a wide range of minerals and metals. It is the world’s largest private producer of aluminum and one of the global top ten miners of bauxite, iron ore and copper. Coal [and gems are] among its interests. . . . Most of its operations are open-pit; relatively few mines are underground.”⁴⁷⁷

626. One of the largest mining projects of the decade was at Phalaborwa in the northeastern Transvaal. Palabora Mining, a subsidiary of Rio Tinto Zinc invested more than 80 million rand in opencast mining of copper and other ores: “This venture was so profitable that by 1970 it was supplying some 42 percent of RTZ’s worldwide profits on only 8 percent of invested capital.”⁴⁷⁸

627. As noted above, Defendants Shell and Total also owned mining operations in South Africa.

Defendants

Rio Tinto – need more, to come from LB

628. “Rio Tinto (known as RTZ-CRA until February 1997), the world’s second largest mining company, is the most widely spread, with more than 200 subsidiaries in over 40 countries. . . . Rio Tinto mines and processes a wide range of minerals and metals. It is the

⁴⁷⁷ John Madeley, *Big Business Poor Peoples: The Impact of Transnational Corporations on the World’s Poor* (London: Zed Books, 1999) at 90.

⁴⁷⁸ William Minter, *King Solomon’s Mines Revisited: Western Interests and the Burdened History of Southern Africa* (New York: Basic Books, Inc., 1986 at 216-217.

world's largest private producer of aluminum and one of the global top ten miners of bauxite, iron ore and copper. Coal [and gems are] among its interests. . . . Most of its operations are open-pit; relatively few mines are underground."⁴⁷⁹

629. As noted above, Defendants Shell and Total also owned mining operations in South Africa.

TRUTH AND RECONCILIATION COMMISSION FINDINGS

630. The South African Truth and Reconciliation Commission (TRC) was set up by the Government of National Unity under the Promotion of National Unity and Reconciliation Act to assess and begin to heal the damage inflicted by apartheid. Led by Archbishop Desmond Tutu, the TRC has a multiracial staff of more than 60, which effects its mandate through 3 committees: the Amnesty Committee, Reparation and Rehabilitation (R&R) Committee and Human Rights Violations (HRV) Committee. The TRC began its hearings on April 15, 1996 and closed in early 2002, although the Amnesty Committee continues to decide cases. The Final Report is expected in early 2003.

631. The TRC specifically found that "Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefited from cooperating with the security structures of the former state. Most businesses benefited from operating in a racially structured context."⁴⁸⁰

⁴⁷⁹ John Madeley, *Big Business Poor Peoples: The Impact of Transnational Corporations on the World's Poor* (London: Zed Books, 1999), at 90.

⁴⁸⁰ Vol. 4, Ch. 2 of TRC "Institutional Hearing: Business and Labor," Findings Arising out of Business Sector Hearings, ¶ 161.

632. The TRC also found that “Business failed in the hearings to take responsibility for its involvement in state security initiatives specifically designed to sustain apartheid rule. This included involvement in the National Security Management System. Several businesses, in turn, benefited directly from their involvement in the complex web that constituted the military industry.”⁴⁸¹

633. The TRC found that some businesses “played a central role in helping to design and implement apartheid policies.”⁴⁸² The TRC identified the mining industry as such a business and noted that “from the early days of the Boer Republics mining capital played a major role in shaping and driving cheap labor policies. Strategies included the following: influencing legislation that forced black workers into the wage system (and managed their allocation within it) . . . [T]he migrant labor system is the clearest example of business working closely with the minority (white) government to create the conditions for capital accumulation based on cheap African labor . . . profitability ranked higher than people’s lives.”⁴⁸³

634. The TRC also identified as participants in apartheid “businesses that made their money by engaging directly in activities that promoted state repression,”⁴⁸⁴ such as companies that “provided armored vehicles to the police during the mid-1990s,”⁴⁸⁵ as would companies in the armaments industry: “the moral case against the armaments industry is essentially that business willingly (and for profit) involved itself in manufacturing products that it knew would be used to facilitate human rights abuses . . .”⁴⁸⁶

⁴⁸¹ *Id.*, at ¶ 166

⁴⁸² *Id.*, at ¶ 23

⁴⁸³ *Id.*, at ¶¶ 62, 63, 72.

⁴⁸⁴ *Id.*, at ¶ 26.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*, at ¶ 75.

635. The TRC also found that “ordinary business activity [that] benefited by virtue of operating within the racially structured context of an apartheid society.”⁴⁸⁷

636. The TRC concluded “not all business profited equally from apartheid. It is, however, difficult not to conclude that, between 1910 and 1994, government and business (despite periodic differences and conflicts between them) co-operated in the building of an economy that benefited whites. On the one hand, they promoted and maintained the structures of white power, privilege and wealth and, on the other, the structures of black (mainly African) deprivation, discrimination, exploitation, and poverty.”⁴⁸⁸

THE NATURE OF THE CRIMES

637. The Alien Tort Claims Act (“ATCA”) imposes liability for “a tort only, committed in violation of the law of nations.” 28 U.S.C. § 1350.

638. Apartheid, in and of itself, is a *jus cogens* violation of international law, on par with genocide and slavery. See Restatement (Third) of Foreign Relations Law §102 Reporter’s notes 6, § 702 note n.

639. Article I of the International Convention on the Suppression and Punishment of the Crime of Apartheid describes apartheid as a crime against humanity, a violation of international law, and subject to universal jurisdiction. The convention also declared criminal those organizations, institutions, and individuals committing the crime of apartheid.

⁴⁸⁷ *Id.*, at ¶ 32.

⁴⁸⁸ *Id.*, at ¶97. For example, the ANC submission noted that “Many businesses were also often only too willing to take advantage of potential opportunities created by apartheid repression to advance themselves at the expense of black workers or competitors.... There were no apartheid laws that specifically prevented businesses paying their black workers more than the prevailing minimum or which made it illegal for employers to pay black employees at the same rates as whites. It was decisions taken by businesses themselves that played a major role ...business generally acted as though “cheap black labour” was a natural endowment like the weather or mineral wealth.” African National Congress Submission to the Special Truth and Reconciliation Commission Hearing on the Role of Business, November 1977 at 9.

640. The Convention defines apartheid as system that includes murder; the infliction of serious bodily or mental harm; torture or cruel, inhuman, or degrading treatment; the “deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part”; exploitation of the labor of the members of a racial group or groups, in particular by submitting them to forced labor; the division of a population by racial lines by the creation of separate reserves and ghettos, the prohibition of mixed marriages and the expropriation of property belonging to a racial group or groups; and the institution of measures calculated to prevent a racial group from participation in the political social, economic and cultural life of a country, in particular by denying the group or groups basic human rights or freedoms. *See* International Convention on the Suppression and Punishment of the Crime of Apartheid Art II.

641. The Rome Statute of the International Criminal Court also describes “the crime of apartheid” as a crime against humanity. Rome Statute at Art. 7(1)(j). Apartheid is specifically defined as inhumane acts – including murder, enslavement, deportation or forcible transfer of a population, torture, and sexual violence – “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”

642. Forced Labor is a component of apartheid, and in and of itself a *jus cogens* violation of international law.

643. Forced labor is a modern variant of slavery.

644. The Nuremburg Tribunal found that “The treatment of . . . [forced laborers] was based on the principle that they were to be fed, sheltered and treated in such a way as to exploit them to the greatest possible extent at the lowest possible cost.” Judgement at Nuremburg at 799

- 800.

645. Apartheid institutionalized a system of forced labor that was designed to create and maintain the black South African population as a labor pool to be dominated and exploited.

646. Genocide is a component of apartheid and in and of itself a *jus cogens* violation of international law.

647. Apartheid is a variant of genocide.

648. Genocide is defined, in part, as “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” Convention on the Prevention and Punishment of the Crime of Genocide Art. 2(c).

649. A component of apartheid is the “deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.” International Convention on the Suppression and Punishment of the Crime of Apartheid Art. II (2).

650. The genocide element of apartheid was another means to control and dominate the black South African population. The creation and maintenance of the homelands were acts of genocide -- the homelands imposed living conditions calculated to cause the physical destruction of the black South African population.

651. Apartheid, genocide, and forced labor are crimes against humanity that do not require state action for liability to attach under the ATCA.

652. Violations of international law such as extrajudicial killing, torture, sexual assault, arbitrary detention, and cruel, inhuman and degrading treatment do not require state action when committed in furtherance of or ancillary to apartheid, genocide, or forced labor.

653. Torts committed in furtherance of or ancillary to a violation of international law are, by themselves, violation of customary international law.

Third Party Liability

Aiding and Abetting Liability

654. Both customary international law and domestic law specifically recognize the liability of principals who commit a tortious act. Both customary international law and domestic law also recognize the liability of those who aid and abet or otherwise participate in that wrongful act.

655. Defendants aided and abetted the apartheid regime in South Africa in furtherance of the commission of the crimes of apartheid, forced labor, genocide, extrajudicial killing, torture, sexual assault, unlawful detention, and cruel, inhuman and degrading treatment.

656. The principles of secondary liability of aiders and abettors to crimes against humanity date back to the 1700s.

657. In 1794, the Third U.S. Congress enacted a law barring the building or equipping of vessels fitted for the “carrying on of the slave trade.”⁴⁸⁹ As part of that law, Congress required forfeiture and payment of \$2,000 by “all and every person, so building, fitting out, equipping, loading, or otherwise preparing, or sending away, any ship or vessel, knowing or intending that the same shall be employed in such trade or business...or any ways *aiding or abetting* therein...”⁴⁹⁰

⁴⁸⁹ Statute of March 22, 1794 “An Act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country,” Ch. 11, §1, 1 Stat. 347.

⁴⁹⁰ Statute of March 22, 1794 “An Act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country,” Ch. 11, § 2 (emphasis added), 1 Stat. 347.

658. In 1800, the U.S. Congress made it unlawful for any U.S. citizen or resident “*directly or indirectly*” to have any interest in a slave-trade vessel, and granted jurisdiction to the federal courts to handle violations of the law.⁴⁹¹

659. In 1807, the United States enacted a law prohibiting the importation of slaves and required forfeiture and payment of \$20,000 by persons who aided or abetted in the “building, fitting out, equipping, loading, or otherwise preparing or sending away”⁴⁹² of vessels intended for the importation of slaves.

660. In 1820, Congress determined that the slave trade was so repugnant that perpetrators as well as their aiders and abettors should be subject to the death penalty and the slave trade formally should be equated to the international crime of piracy. [16th Congress, Session 1, Ch. 113, May 15, 1820]

661. The Nuremburg Tribunals confirmed that those who aid and abet crimes in violation of customary international law are liable for those acts.

662. The Nuremberg Tribunal held that:

[t]hose who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it He had to have the cooperation of statesmen, military leaders, diplomats and *businessmen*. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent . . . if they knew what they were doing.

6 F.R.D. 69 at 112.

663. For example, the Military Tribunal convicted Emil Puhl, one of the leading executive officials of the Reichsbank, for participating as a banker in the disposal of looted assets:

⁴⁹¹ Act of May 10, 1800, “An Act in addition to the act intitaled [sic] ‘An Act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country,’ Chapter 51, §§ 1, 5, 2 Stat. 70.

⁴⁹² Act of March 2, 1807, “An Act to prohibit the importation of Slaves into any port or place within the jurisdiction of the United States,” Ch. 22, §3, 2 Stat. 426.

What was done was done pursuant to a governmental policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing the loot must be exonerated and held not guilty as a participant in the murder plan. **Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity.**

Ministries Case, Volume XIV at 611 (emphasis added).

664. Similarly, Friedrich Flick, the head of a large group of industrial enterprises, was convicted of slave labor based on his employee's decision to increase company production quotas knowing that forced labor would be required to meet the increase. *United States of America v. Friedrich Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 (1952). Significantly, the Tribunal held Flick fully responsible although the slave labor program had its origin in and was operated by the Nazi regime, and he did not "exert any influence or [take] any part in the formation, administration or furtherance of the slave-labor program." *Id.* at 1198. It was not a requirement for liability that Flick specifically sought to use forced laborers. In fact, Flick testified that it was not his intent to use slave labor, and denied full knowledge of slave labor until very late in the war. *Id.* at 807.

665. The application of aiding and abetting liability has recently been reaffirmed by international tribunals.

666. The International Tribunal for the Former Yugoslavia held that "the *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime." *Prosecutor v. Furundzija*, IT-95-17/1-T (Dec. 10, 1998). The Tribunal noted that the practical assistance "need not constitute an indispensable element" of the crime but that it is enough that the assistance makes "a significant difference to the commission of the criminal act by the

principal.” *Id.* at 209, 223. The Tribunal also held that liability is appropriate where “the criminal act most probably would not have occurred in the same way” without the acts of the aider and abettor. *Prosecutor v. Tadic*, ICTY-94-1, (May 7, 1997).

667. An aider and abettor need not share the *mens rea* of the perpetrator or even know the precise crime that the perpetrator intends to commit: it is enough that the aider and abettor is “aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed...” Under such circumstances, the aider and abettor is deemed to have “intended to facilitate the commission of that crime, and is guilty as an aider and abettor.” *Id.* Actual or constructive knowledge that the aider and abettor’s actions will assist the perpetrator is enough.

668. Likewise, the International Tribunal for Rwanda has held that an aider and abettor need not have the intent to commit an offense, but only know or have reason to know that the principal had the intent to commit the offense. *Prosecutor v. Musema*, ICTR-96-13-T (Jan 27, 2000). The Rwandan Tribunal, like the Yugoslav Tribunal, held that aiding and abetting consists of acts that “substantially contribute to the commission of the crime.” *Id.*

669. Article III of the International Convention on the Suppression and Punishment of the Crime of Apartheid specifically imposed liability on those who “irrespective of the motive involved ... directly abet, encourage or cooperate in the commission of the crime of apartheid.”

670. Aiders and abettors are liable for their own acts, and also for all acts comprising the entire system of apartheid – a criminal enterprise.

Criminal Enterprise Liability

671. Customary international law and domestic law impose liability for participation in a criminal enterprise where, *inter alia*, a party acted in furtherance of a particular system in which the crime is committed by reason of the accused’s function, and with knowledge of the nature of that system and intent to further that system. *Prosecutor v. Krnojelac*, IT-97-25 (Mar. 15, 2002). Liability is imposed on all persons who had “the intention to take part in a joint criminal enterprise and to further - individually and jointly - the criminal purposes of that

enterprise” and where it is foreseeable that crimes -- even crimes that do not constitute the common purpose -- will be committed by other members of enterprise. *Prosecutor v. Tadic*, IT-94-I (July 15, 1999).

Other Standards of Liability

672. In addition to and independent of aiding and abetting liability, domestic law imposes liability on third parties for the wrongful acts of another where there is, *inter alia*, a joint venture, an agency relationship, negligence, or reckless disregard.

673. Reckless disregard encompasses “objective recklessness” and “subjective recklessness” and imposes liability when one party acts with reckless disregard for the welfare of another.

674. “Objective Recklessness” imposes liability on a person who acts in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known.

675. “Subjective Recklessness” imposes liability on a person who knew a substantial risk that was subsequently disregarded.

676. Recklessness does not require proof of intent, but only that a party acted in conscious disregard of known dangers.

677. Third party liability is also imposed when a third party acts with deliberate indifference to a substantial risk of harm to another.

678. For decades, the global economic community was on notice that the apartheid regime in South Africa had placed the black South African population at an unjustifiably high risk of harm.

679. During the relevant period, global industrialists and financiers knew or should have known of the danger to the black South African population.

680. These global industrialists and financiers acted in conscious disregard of or with deliberate indifference to these dangers by providing substantial assistance or encouragement to the apartheid regime of South Africa.

CAUSE OF ACTION

681. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein

682. Defendants violated the Alien Tort Claims Act, 28 U.S.C. §1350, and customary international law enforceable in this Court as federal common law and the law of nations:

- a. Defendants aided and abetted the apartheid regime in South Africa in the commission of the crimes of apartheid, forced labor, genocide, extrajudicial killing, torture, sexual assault, unlawful detention, and cruel, unusual and degrading treatment, and offenses committed in furtherance of or ancillary to those crimes.
- b. Defendants provided substantial assistance and/or encouragement to the apartheid regime of South Africa.
- c. Defendants participated in the criminal enterprise of apartheid.
- d. Defendants are liable as joint venturers for the conduct alleged herein.
- e. Defendants acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known.
- f. Defendants acted with disregard of a substantial risk of harm to the African population.
- g. Defendants acted in conscious disregard of known dangers to the African population.
- h. Defendants acted with deliberate indifference to a substantial risk of harm to the African population.

683. Defendants are liable to plaintiffs for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

INJURY

684. Plaintiffs reallege every paragraph set forth above as if fully set forth herein.

685. Khulumani is injured in that it has expended resources to provide aid and assistance to victims of apartheid-era violence. Specifically, Khulumani provided direct medical assistance to victims and their families; psychological counseling; equipment, such as wheelchairs, to injured victims; and educational assistance to children. Khulumani continues to provide these services. Additionally, Khulumani's 32,700 members are the direct victims of apartheid-era violence; as their representative, Khulumani is entitled to equitable and injunctive relief.

A. Victims of Extrajudicial Killings

686. Sakwe Balintulo, personal representative of Saba Balintulo; Fanekaya Dabula, personal representative of Lungile Dabula; Nokitsikaye Violet Dakuse, personal representative of Tozi Skweyiya; Belinda Duda, personal representative of Donald Duda; Mark Fransch, personal representative of Anton Fransch; Sherif Mzwandile Gekiso, personal representative of Ntombizodwa Annestina Nyongwana; Elsi Guga, personal representative of James Guga; Joyce Hlophe, personal representative of Jeffrey Hlophe, Nomvula Eunice Kama, personal representative of Mncedisi Dlokova; Joyce Ledwaba, personal representative of Samuel Ledwaba; Johana Lerutla, personal representative of Matthews Lerutla; Frieda Lukhulei, personal representative of Tokkie Lukhulei; Elizabeth Maake, personal representative of Jackson Maake; Archington Madondo, personal representative of Mandla Madondo; Sophie Maifadi, personal representative of Benjamin Maifadi; Tshemi Makedama, personal representative of Lugile Makedama; Mabel Makupe, personal representative of Andrew Makupe; Mabel Malobola, personal representative of Malobola Mbuso; Evelyn Matiso, personal representative of Pisi Matiso; Betty Mgidi, personal representative of Jeffrey Mgidi; Elizabeth Mkhonwana, personal representative of Obed Mkhonwana; Catherine Mlangeni, personal representative of Bheki Mlangeni; Cecil Mlanjeni, personal representative of Kele Mlanjeni; Samuel Morudu, personal representative of Sannah P. Leslie; Tshido Motasi, personal representative of John and Penelope Moloke; Willie Nelani, personal representative of Mongezi Nelani; Catherine Ngqulunga, personal representative of Brian Ngqulunga; Catherine Phiri, personal representative

of Thomas Phiri; Elizabeth Sefolo, personal representative of Harold Sefolo; Maria Sibaya, personal representative of Jeffrey Sibaya; Patricial M. Songo, personal representative of Dipulo Songo; and Mpolontsi Tyote, personal representative of Boyboy Tyote, are injured in that the individuals they represent were victims of extrajudicial killings.⁴⁹³

B. Victims of Torture

687. Nomkhango Phumza Skolweni Dyantyi, Clifford Zixelile Fudukile, Windovoel Gaaje, Charles Hlatshwayo, Moses Hlongwane, Lesiba Kekena, Sanaki Mahlatsi, Robert Makana, Zakharia Fikile Mamba, Elliot Sithembiso Marenene, Alfred Masemola, Maureen Thandi Mazibuko, Micheal Mbele, Dennis Mlandeli, Tefo Mofokeng, Motlaletsatsi Molatedi, Azariel Molebeleli, Simon Molotsi, Thabiso Samuel Motsie, Sono Ndlovu, Mangindiva Robert Rhenene, Peggy Salumane, Thobile Sikani, and Bubele Stefane are injured in that they were victims of torture and continue to suffer from the effects of torture.⁴⁹⁴

688. Laetitia Nombambo Mfecane, personal representative of Rubin Mfecane; and Lina Moreane, personal representative of Albert Xaba, are injured in that the individuals they represent were victims of torture and arbitrary detention.

C. Victims of Indiscriminate Shootings

689. Noluthando Siletile, Lesie Mncedisi Botya, Leon Dukashe, Elsie Gishi, Dorthia Gomo-Pefile, Zamikhaya Bishop Khali, James Magabana, Nosipho Manquba, Notathu Eugenia Matomela, Nomisa Theresia May, Mbongeni Nelson Mbeshu, Mzuhlangena Nama, Geshia Ngoxza, Lucas Ndukwayibuzwa, Wellington Mtyukato Nkosiphendule, Vuyani Nongcama, Sindiswa Mirriam Nunu, Thulani Nunu, Boniwe Phalaza, Mthutuzeli Sikani, Thembeke Victoria Siphaho, Johannes Titus, Mpolontsi Tyote, Mthuzimele Melford Yamile, and Ntunani William Zenani are injured in that they are victims of indiscriminate shootings and continue to suffer from the effects of the shooting.

⁴⁹³ Some victims of extrajudicial killings were also victims of torture and arbitrary detention.

⁴⁹⁴ Some of these plaintiffs were also victims of arbitrary detention.

690. Elias Ngamani, personal representative of Elizabeth Ngamani; and Pathiswa Pringane, personal representative of Mthozama Theophilus Pringane, are injured in that the individuals they represent were victims of indiscriminate shootings.

D. Victims of Sexual Assault

691. Thandiwe Shezi is injured in that she is a victim of sexual assault and torture, and continues to suffer from the effects of the torture and sexual assault.

E. Victims of Arbitrary Detention

692. Elias B. Boneng, Moraloki A. Kgobe, and Lulamile Ralrala are injured in that they are victims of arbitrary detention and continue to suffer from the effects of the arbitrary detention.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendant as follows:

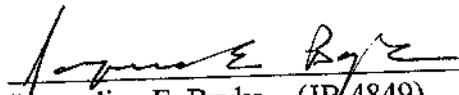
- (a) Declaring that Defendants committed a tort in violation of customary international law enforceable in this court as federal common law and the law of nations;
- (b) Declaring that Defendants violated the Alien Tort Claims Act;
- (c) Directing Defendants to make available forthwith all documents or other records related to their operations in and/or cooperation with the Apartheid regime;
- (d) Awarding Plaintiffs compensatory and punitive damages arising out of the unlawful behavior of Defendants;
- (e) Awarding the costs of bringing this action, including an award of attorneys' fees, expert fees and other costs; and
- (f) Granting such other and further relief as shall seem just to the Court.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: November ¹¹~~12~~, 2002

Respectfully submitted:


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