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 ///// A POST-APARTHEID ECONOMY
 SOME SOCIO-LEGAL IMPLICATIONS

by VELAPHI VUYO WALTER DUBA B Juris LLB (Unizul)
 SENIOR LECTURER - UNIVERSITY OF FORT HARE

'Building a post-apartheid economy which will serve the interests of all South Africans is a central challenge for all those striving for a non-racial, democratic South Africa. This crucial question was discussed at a consultative workshop organised by the African National Congress (ANC) and the Congress of South African Trade Unions (COSATU) in Harare from April 28 to 1 May, 1990. The product of this workshop, which was attended by economists and representatives from the ANC and Cosatu, was a document outlining policy proposals for a post-apartheid economy. This document has been presented to the National Executive Committee of the ANC and Cosatu for consideration. The workshop was an important step in working towards policy options for a future democratic economy. However, the process would be incomplete and the result therefore inadequate without the participation of the people of South Africa as a whole in moulding these policies. Suggestions from the people on these proposals will be studied and incorporated into further workshops which are being planned as a follow-up to the Harare workshop. This process will ensure that the proposals that finally emerge on the economic policy of a non-racial, democratic South Africa are a product of the people as a whole ' 1

1 Reproduced in verbatim in the newspaper
 NEW NATION: JUNE 15 - JUNE 21 1990, 11

Not much can be faulted with the policy proposals for a post-apartheid economy (hereinafter referred to as proposals). They reflect a spirit of statesmanship and patriotism on the part of the drafters. The above quoted passage also confirms the spirit of democracy that exists in the minds of the ANC and Cosatu leaders. Like Von Savigny of old, they believe that the laws should be a reflection of the spirit of the nation. They are to come from the community upwards and not be the dictates of the government of the day.

The purpose of this article, therefore, is to suggest the most effective ways of implementing the proposals. Some of the ideas expressed in this article may seem to be too academic and may border on impossibility. However, it is submitted, the future of South Africa depends much on sometimes radical changes and the sooner the people as a whole accept that fact, the better for all.

For the proposals to be effectively implemented some changes on the composition of local governments, on urbanisation and housing will have to be effected. There will also be a need to adjust the laws concerning companies. It is important to note that company law will still play an important role in the non-racial democratic state. Contrary to the beliefs of many, at this point in time, there will be no forced nationalisation, only the privatised state assets will be renationalised. On this point the proposals say:

'The transformation of the economy will require a viable state sector. Nationalisation would be an essential part of the reconstruction

programme of such a state. The non-racial democratic state would retain existing nationalised industries and would be prepared, as a matter of fundamental policy, to renationalise privatised state assets 'NatiOnalisation would be effected through due legal and constitutione al processes. In addition to these measures, the democratic state would also facilitate forms of collective ownership, including co-operatives'. 2

From the above it is clear that in the future non-racial democratic South Africa individuals will enjoy their democratic right to be selfish but they will not be allowed to selfishly use the country's resources to the detriment of the welfare of the state and its citizens. One may, therefore safely predict that capitalists and commuhists, alike, will actively contribute to the building of a mixed economy of the future non-racial democratic state. Perhaps the words of Rev. Leon Sullivan are apposite here, "The enemy of capitalism is not communism, but the narrow-minded selfishness of capitalism". 3 Further, it is clear from the above that the drafters of the proposals were fully aware of the repercussions of nationalisation. They knew that the right to nationalise cannot be disputed, but it must be accompanied by proper compensation determined by the state's international obligations.

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1 3 Rev. Leon Sullivan "Agents for Change: The Mobilization of Multi-national Companies in South Africa" (1983) Law and Policy in International Business 427 at 443

In this discussion the role of local governments, urbanisation, housing and company law will be analysed and suggestions forwarded. Local governments, urbanisation and housing will be discussed under one section or heading and thereafter, the company law will be discussed on a different section or heading.

1. LOCAL GOVERNMENT, URBANISATION AND HOUSING

Sir Lawrence Gomme⁴ defined local government as 'that part of the whole government of a nation or state which is administered by authorities subordinate to the State authority, but elected, independently of control by the State authority, by qualified persons resident, or having property, in certain localities, which have been formed by communities having common interests and common history'.

The local government may be in the form of a city or town council or tribal authority (in this article only the effect of the proposals on the councils will be discussed). Local governments pass by-laws on, inter alia, the payment of rates and rents, the regulation of traffic, the admittance or expulsion of people to or from their respective communities, etc. The administrative services are departmentalised, e.g. the city Engineer's Department which is responsible for road, water circulation, sewage, refuse removal, housing; Electricity Department; Fire and Ambulance; Parks and Recreation; Public Transport; Public Health;

⁴ Sir Lawrence Gomme - Lectures on the Principles of Local Government (1897) 1-2

Markets; Libraries and Museums, etc. 5 As one observes, these services are not only concerned with the protection of the members of the community from the adverse weather, but they also promote easy communication between the members of the community. prepare good grounds for amusement, mental development and, further facilitate easy and time-saving methods of carrying out their daily duties. But of vital importance is the health of the community members. This involves services such as sewage, refuse collection. ambulance, clinics, etc. All the abovementioned services need finance for their proper maintenance. Although local governments do receive some subsidies from the central government, it is still their duty to generate funds to improve the living conditions of their own respective communities. The standard of the living conditions of the people reflect or are a measure of the economic standard of the state: It is in this area, therefore, that the proposals are to prove their effectiveness. It is, with respect, very doubtful that they can have any meaningful effect with the present structure of the habitation of the peoples of South Africa i.e. with the bulk of its population living in scattered villages. A need for urbanisation, therefore, arises - a reversal of Dr H F Verwoerd's tribalism. Urbanisation is one of the symptoms of a highly industrialised state. Indeed, urbanisation is an inevitable consequence of economic development. The United States of America is said to be a nation of cities. 6 So it is with West Germany, France, Soviet Union and many leading industrial states. Even in South Africa 80% of the white population lives in towns and cities.

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5 John Meyer Local Government Volume 1 General Principles (1978) 72

6 Johan Meyer op tit 16

The future non-racial democratic state will have, therefore, to encourage a gradual urbanisation and gradual emptying out of the villages: 63 Apart from the foregoing reasons the following reasons also cause one to see the need for urbanisation.

a) Famine

One is always haunted by the pictures of malnourished and starving people of Africa. Ethiopia and Mozambique are but examples that quickly come to mind. There are many factors that have contributed to the famine in these states. One of them is the very traditional way of life in the villages. The people there depend on subsistence farming that in turn depends absolutely on good weather. Adverse weather conditions that cause crop failure result into untold starvation and misery for many villages. Furthermore, in villages all the municipality services mentioned are either lacking or not properly executed because of the lack of effective means of communication. Starvation which is usually accompanied by diseases result into death of many people.

b) Natural disasters

Although it can prove difficult to differentiate between (a) above and (b) here, what is meant here are disasters caused by floods and other types of adverse weather. In Lesotho, for example, every winter is a threat to the lives of many village dwellers of that mountain Kingdom. People become trapped by snow and have to be rescued by the army.

6a This of course should not be confused with the evil so-called rehabilitation scheme which was first outlined by Dr D L Smit in 1945 when he was the Secretary for Native Affairs and which promoted labour reserves. See Nelson Mandela 1994 Easy Walk To Freedom (1989) 43-45

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Security

Mozambique is a living example of a country which fails to protect its village dwellers from the rebel Renamo forces that terrorise, rape and murder them. These forces simply close all the routes that are used to bring fresh supplies to the villages. The villagers, if not murdered or escape to the neighbouring states, starve to death. It is not suggested that this would not have happened if all the people of Mozambique were city dwellers. However, cities and towns have detachments of the Defence Force and police to protect the city dwellers against invaders. It is difficult to protect village dwellers because of the vast terrain they occupy.

Sharing of the expenses of Services

In the cities the population is concentrated in a relatively smaller area. It becomes easier to provide all the area with all the municipal services. Further a large number of persons share the expenses of putting up these services. It is common knowledge that electricity is cheaper in the big cities-than in small towns.

Agricultural Development

South Africa depends not only on mining and industry, but also on agriculture. This necessarily means that every square centimetre of the South African ground is important. Driving along the so-called national states, one is deeply disturbed by the ugly scenes of soil erosion and of mud huts erected on the grounds which would be suitably

and profitably used for agricultural purposes. It is a well known fact that only a small percentage of agriculturally qualified people are needed to feed the whole nation with the agricultural produce. Further the veld is for the livestock and not for the people. It cannot be overemphasised that the above suggestion will invoke a spirit of rebellion among the village dwellers. Reasons against the phasing out of villages are astronomical. However, if the non-racial democratic state is to make a meaningful impact on the South African economy, and thereby escape the economic perpetual tutelage that has been suffered by most African countries, a serious thought on this issue will have to be given. People will have to be taught the value of urbanisation. To date, there are positive indications that most village dwellers see no future in the village life. The ever-growing so-called squatter camps around the urban areas testify to that fact. Urbanisation will therefore be inevitable in the future non-racial democratic South Africa. According to Leslie Green 7 urbanisation passes through at least four distinguishable phases. Firstly the pre-industrial phase associated with subsistence economy and primitive culture; secondly the primary industrial phase which is economically identified with early industrialisation; thirdly the secondary industrial phase when the secondary industry becomes the spearhead of economic advance and urbanisation reaches such a stage that metropolitan 8 circumstances arise and, lastly the post-Johan Meyer op cit p19

The term 'metropolitan' has come to mean the problem of places which have got into the same geographical and administrative mess as London

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industrial phase during which leading metropolitan regions tend to decentralise to form megalopolitan regions.

No doubt many of our cities have become megalopolitan. However, the majority of the people of South Africa are still forced to live under congested conditions in the so-called locations; of late, "developed" areas meant for the middle class. There is a need for the majority of the people to be properly housed under proper living conditions in the urban areas. It is heartening to realise that the proposals touch on this point and state that the provision of sufficient and affordable housing for millions of South Africans is dependent on the following areas:

'The release of affordable urban and rural land could be achieved through the removal of land from the market by implementing a policy of "land banking" as a matter of urgency, and by reducing of land prices through the imposition of a generalised land tax on unused land to force sale'.

'The non-racial democratic state commits itself to providing the minimum infra-structural services that are needed to ensure decent living standards.

'The non-racial democratic state would counter by providing new houses and flats for rental with security of tenure and by providing state assistance to community controlled non-profit housing development project. Furthermore, the provision of housing is currently taking place on a privati-

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sed basis. In the future, the democratic state would take primary responsibility for the provision of housing needs. However it is noted that the provision of an affordable housing for all can be costly. As such, the role of the state would be based on establishing the conditions for providing low-cost housing (i.e. subsidisation of land and services) rather than direct state construction of houses'. Decent living standards for the millions of South Africans can only be ensured in urban areas. Local government administrative services mentioned above can only be afforded by city or town councils which are democratically elected. 9

However, the highlighted (italicised) words above are disturbing. It is true that the provision of affordable housing for all can be costly. But it is also possible to construct flats and cheap affordable houses that meet the minimum standards of living. The low income group desperately needs the state's assistance in erecting houses. Erection of shacks in the cities is not a luxury. It proves beyond reasonable doubt how difficult it is for many citizens to afford a single affordable room. The state will have to pump more money into the housing project and not only provide low-cost housing which is defined as subsidisation of land and services. The provision of low-cost housing seem to be in conflict with one of the cardinal aims embodied in the Freedom Charter - 'There shall be houses, security and comfort'. 9a

Much exploitation has been perpetrated against the African people

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See Nelson Mandela op cit 39

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by the so-called property developers. The method of exploitation is very simple. The local governments in the form of town councils sell a piece of land in their respective jurisdictions cheaply to the property developers. The latter develop the said land and sell it to the buyers at a price twenty times the price they paid for it. The result is corruption. The property dwellers, eager to make much profit, subdivide the land into smallest possible sites in which the affordable houses can fit. Of late the prices of houses are astronomical.

The above conduct is a serious result of the state's delegation of its duties to exploiters. The non-racial democratic state will have to right this wrong. There are methods that are presently being used by the government to assist the white citizens acquire affordable houses. Two relevant acts will be briefly discussed here i.e. the Community Development Act 10 and the Housing Act. 11

(1) Community Development Act

Under this act a community development board has been created, is funded by the central government and is vested with powers to raise funds for the purpose of carrying out its duties. Some of the powers and duties are summarised as follows:

'Generally the board is vested with powers to acquire property and to dispose of, hypothecate and develop land owned by

Act 3 of 1966

Act 4 of 1966

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it; and to make payments including compensation. It has the necessary general powers to lay out and develop townships and to undertake slum clearance and urban renewal schemes; powers to construct buildings and assist prospective home owners; the capacity to enter into contracts with the government and statutory bodies, to compensate business for goodwill likely to be lost in consequence of steps taken under the act or under the Group Areas Act and to compensate lessees who have to vacate properties; and, generally to perform all such acts which in the board's opinion are necessary for or incidental to the attainment of its objects'. 12

Unfortunately the above powers and duties were exercised or performed discriminately for the benefit of the White minority. What is needed therefore, is to use the above powers and duties for the benefit of all the citizens of South Africa.

Housing Act

Under this act a national housing commission was established. It is also funded by the central government and has powers to raise funds for the exercise of its powers and for carrying out its duties. Its objects and powers may also be summarised as follows: 13

w A JOUBERT - The Law of South Africa Vol 10 (1980) 420

w A JOUBERT - The Law of South Africa Vol 11 (1980) para 70

- a) to advance monies to the local governments to assist them in housing projects;
- b) to grant housing loans on first mortgage over land on which an approved dwelling is to be constructed. to any natural person to enable him to construct that dwelling for the accommodation of himself and his dependents;
- c) to assist any building society to enable it to grant a building loan to any person to 'enable him to construct an approved dwelling; and
- d) with the written approval of the minister to purchase, expropriate or otherwise acquire any land which it requires for the purpose of constructing a dwelling or carrying out a housing scheme.

Likewise this act needs to be inherited by the new state and made applicable indiscriminately to all citizens of South Africa. All other racially inclined acts which deal with housing are to be repealed. It is proper to note that the abovementioned acts also provide for co-operation between the community development board, the housing commission and the local governments. Indeed the local governments will play the most prominent role in effectivising the proposals. This is no" cause of alarm. Local governments are the proper instruments which regulate the day-to-day'affairs of the community members in their living conditions.

No doubt these local governments will also have to be non-racial and democratic in nature. It is good to note that many people have accepted the fact that racially created town councils and municipalities will have to be abolished. Only one local government elected on non-racial democratic principles is needed for each city or town:

Apart from the use of the abovementioned acts, the employers are to be encouraged to assist their employees to acquire houses. The trade unions have a responsible role to play in this regard. Further, the building societies are to be duty-bound not only to provide loans to the citizens for the purposes of purchasing houses but also to ensure that the houses built through such loans are not only commensurate with the loan but also that they are also properly built.

2. COMPANY LAW

Having discussed the importance of urbanisation and its resultant housing problem, it is now fitting to look at the problem of employment and the financing of the services of the local government. Companies will play an important role in this regard.

It is public opinion that very few Africans control companies. Many African business-minded persons always opt for the sole proprietorship-type of business. This type of business is grounded on selfishness and it contributes very little, if ever, to the general welfare of the community.

For the effective implementation of the recommendations, creation of public companies will have to be encouraged. 14 People have to be taught the advantages of conducting company business. They will have to be informed of its enormous ability to generate funds, its being a vehicle for ' mobilisation of funds and its ability to create job opportunities. These companies will be both domestic and multinational enterprises.

a) Domestic Companies

Domestic companies may be defined as companies that are controlled only by the citizens of the country in which they operate. There will be a need for the South African citizens to establish as many of these companies as possible. They will contribute much in the financing of the services performed by the local governments through the payment of rents, rates and taxes. Of much importance are domestic companies whose main object and main business would be to engage in agriculture and farming operation respectively. What is envisaged here is the selling of land and livestock by villagers to the companies in consideration of shares. The villagers in turn leave the villages and settle in their nearest respective towns or in the towns of their own choice. The day-to-day business of such companies is run by the personnel who are well-trained in agriculture. Shareholders receive their dividends when declared.

The above method will not only cause the land to be utilised productively and economically, it will also solve the problem of 14 There is a strong campaign for the abolition of private companies in South Africa now that Close Corporations are a success

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livestock overcrowding and soil erosion. It is a well known fact that with any more developed country only a small percentage of the population is needed to support the bulk of the population in the cities with agricultural produce. But that percentage must be highly agriculturally Skilled. It therefore becomes the duty of the universities not only to train students on modern agricultural technology, but also to inculcate in them the spirit of nation building and destroy the spirit of selfishness that is prevailing in many graduates of these universities.

Multinational Companies

Not much has been written on the law applicable to Multinational Enterprises' in South Africa. The writer hereof has found the article by Robert Grosse 15 of much value on the progress that is being made by other countries on this sphere of company law. The writer is therefore deeply indebted to the distinguished author thereof.

The proposals state the following:

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'The democratic state would encourage foreign investment on terms which are consistent with its development goals. Foreign investors would be encouraged to invest in activities which lead to increased employment and development of local technological capabilities. They Robert Gfosse "Code of Conduct for Multinational Enterprises"

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will also be required to follow labour practices acceptable to the trade union movement. Such policies are required to ensure that the activities of foreign investors do not have a detrimental effect on the environment or the general development strategies of the state. Finally, the state and the trade union movement should be legislatively empowered to ensure that foreign investors reinvest productively to promote continued growth'. 15 (a)

It is good that the drafters have expressly assured the South Africans that reinvestment will be encouraged. Indeed, there is a need for multinationals 16 to invest in the new state so as to boost the economy. However, it must be cautioned that multinationals can unduly interfere with the internal affairs of their respective host countries. 'Such enterprises, as a rule, are conspicuously endowed with money and knowledge; they are entrenched in industries difficult to enter; and they are foreign in the eyes of most government with which they deal'. For these reasons alone the firms present a large target to government policymakers'. 17 As a result different codes of conduct of the multinationals have been drafted. Some of these codes are agreements between labour unions and the multinationals; some are agreements between multinationals and host governments; some are agreements between home governments and host governments and some are a mixture of all-the above.

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This is a shortened form of Multinational Enterprise which refers to companies that do businesses in different countries

Robert Grosse op cit 414

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In this article, because of their likely effect on the new non-racial democratic state, only some of the international codes signed by the governments will be set out and their contents briefly summarised. 18

CODES

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Andean Common Market gAndean Code)

It was formed in 1969 and was signed at the time by Bolivia, Colombia, Ecuador, Peru and Chile. In 1973, Venezuela joined the pact and has been a leader since that time. In 1976 Chile withdrew from the pact. This code places numerous, mandatory limitations on the operations of foreign-owned firms in the signatory countries. The rules limit foreign ownership to a maximum of 49 percent, limit profit remittance, other financial policies, technology contracts and many other company activities.

European Economic Community gEECI 19

This proposal was presented to the EEC parliament as a basis from which to negotiate a binding set of rules on Multinationals in the North Atlantic region. It deals with maintenance of competition, protection of workers, prevention of destabilizing international financial flows and provision of information about company activities.

For more analysis see Robert Grosse op cit 419

Draft code of principles for Multinational Enterprises and Governments, Annex to the Resolution of the European Parliament, European Economic Community, Brussels, 19 April 1977

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International Labour Organisation gILOQ 20

This code represents a consensus among representatives from national governments, multinationals and labour unions concerning multinational activities in the labour area. It provides that multinationals should give priority to local personnel in employment and training, use technologies which generate employment, provide workers with information about the firm to allow meaningful negotiations and also that governments should promote good labour and employment practices.

Organisation for European Co-operation and Development gOECDz 21

As the second intergovernmental code after the Andean Pact

(Supra) to be enacted, and the first to involve developed countries, as well as voluntary rules, its guidelines carry great significance. It aims at harmonising the member countries' treatment of the multinationals in addition to disallowing some of the undesirable activities of the firms, e.g. "unfair" transfer pricing and improper payments e.g. bribes.

Tripalrite Declaration of Principles Concerning Multinational Enterprises and Social Policy - International Labour Office, Geneva, 16 November 1977

Declaration of OECD member Governments on International Investment and Multinational Enterprises OECD, Paris 21 June 1976

(5) United Nations Conference on Trade and Development (UNCTADQ 22

This particular code proposal spells out a wide range of protective measures to ensure that less-developed countries gain "fair" access to industrial technology. Additionally, it calls for appropriate protection of industrial property for the multinationals. These codes, especially the intergovernmental codes reflect the difference between the fears harboured by the more-developed countries from those harboured by the less-developed countries. For example, the more-developed countries have focused on the establishment of rules to guarantee fair competition among firms and to harmonise or unify national policies towards multinationals. The less-developed countries on the other hand push for mandatory constraints on multinationals' operations, including the requirements of local ownership, contact and control.

The following subject-matters dealt with by the codes can illustrate this point:

(1) Adherence to host Government policies

This is a major concern of the less-developed countries which fear the potential extra-territorial assertion of the multinationals' home-country rules on affiliates. This concern is not unfounded, the 22 An international code of conduct on the transfer of Technology - The latest draft is set out in UNCTAD Document TD/CODE TOT/33 of 12 May 1981

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more-developed countries can use any tactic to destabilise less-developed countries and make them their puppet.

Avoidance of corrupt practices

This is an issue that has arisen in both more and less developed countries' proposals. The more-developed countries, especially the United States of America, have pressed for rules on bribery and extortion in international business transactions. Less-developed countries aim to keep multinationals from interfering in domestic or foreign politics of host countries.

Limits of foreign ownership

This proposal is favoured by less-developed countries and disfavoured by the more-developed countries. However, both groups of countries support the position that anti-competitive acquisitions should be controlled or disallowed. Further, both groups of countries have agreed to the principles that any national government retains permanent sovereignty over natural resources within its boundaries.

Financial Controls

The less-developed countries have pressed more for this proposal especially for balance of payment protection. They have demanded in several formulations that the multinationals should provide a net surplus to each host country's balance of payments.

(5) Technology Transfer

For obvious reasons the less-developed countries have pressed for the transfef of knowledge of technology. The more-developed countries on the other hand have pressed for effective protection of their industrial property rights.

A major reason for this divergence is the fact that the more-developed countries act as both homes and hosts for the vast majority of the multi-nationals. and thus these nations can be concerned about competition and fair treatment of foreign firms. The less-developed countries on the other hand operate very disproportionately as host countries. where domestic firms often need protection against multinationals in competition.

It cannot be denied that although South Africa has features of the first world, its arrears in the development of the living conditions of the Blacks who, in turn, form the majority of its population causes it to be in the category of the less-developed countries. The non-racial democratic state will have to seriously consider the impacts made by these codes on the different jurisdictions.

Except for the Andean Code, all the intergovernmental codes are voluntary. The countries are not obliged to make them part of their national laws. However. the popularity of these codes has caused them to have a profound effect on the governments. For example, the Organisation for European Co-operation and Development (OECD) code (supra) is such a code. An USK4based Multinational Badger Corporation was sued for failure

to provide financial backing to its Belgian subsidiary, which declared bankruptcy and then failed to offer sufficient funds to its 237 employees to cover Belgium's required termination payments. A group of Belgian labour unions brought the case to the Belgian government, and argued specifically that the MNE (Badger) had failed to live up to the OECD guidelines, which had been accepted both by the Belgian and the United States governments. The Belgian government argued that Badger should bear financial responsibility for the termination of its affiliate's labour contracts under the "Employment and Industrial Relations" section of the "Introduction" section of the OECD guidelines. Ultimately Badger settled directly with the Belgian government and agreed to pay the termination costs of its Belgian subsidiary's labour contracts and the contribution of available assets of the bankrupt subsidiary.

This case proves how persuasive the OECD guidelines are and how the government and the multinationals may be forced to comply with them. Indeed, the same may be said of other voluntary codes of conduct.

At the other extreme is the Andean Code (supra).. It is mandatory and has been enacted into national law in each member nation (Bolivia, Colombia, Ecuador, Peru and Venezuela). The multinationals initially reacted by not investing in these countries. They preferred to invest in other countries which have no limitations or strict rules on ownership, profit remittance and capital reinvestment. However, ultimately the code did not reduce foreign investment into the Andean countries, and company behaviour has been altered permanently in the region, in the directions desired by host governments.

The point that is being made here is that it is possible to force the multinationals to comply with both the voluntary and mandatory codes of conduct. But there is a risk of reduced investment with the latter codes and this risk must always be weighed against the overall benefits of obtaining the desired performance from those multinationals which invest in spite of the mandatory rules. Chile, for example, withdrew from the Andean Pact explicitly because the Chilean government decided to encourage new investment, and it could not accept the code's restrictiveness.

Further, the new state will have to reconsider the Sullivan principles.²³ These principles were signed by more than three-quarters of multinationals operating in South Africa and they have played a leading role in reshaping the labour laws of our country. They also deal with the subject-matters mentioned above and more.

For example, the principles require signatories to put an end to racial discrimination in the workplace, equal pay for equal work, training advancement of Blacks, promotion of Blacks to all levels of company operation; to provide extensive support for the education, health care and housing of their employees.²⁴

Immediately one asks the question, "What about the revolt by the less-developed countries against interference by the multinationals in their i23 The Sullivan Principles for US Corporations Operating in South Africa: (1985) f4 International Legal Materials 1496

24 Reverend Leon Sullivan op cit 430-431

internal affairs?" Sullivan answers the question aptly in the following words:

'Many contend that multinational corporations must adhere to the social, economic, and political norms of the host nations, and that it is not the role of companies to become involved in the promotion of social and political change. I share the view of others, however, that such a posture for companies is unconscionable when their profits are made from exploitation of mass, cheap and dehumanised labour. Attitudes of laissez faire, and "do as you please" for the benefits that can be accrued might have been appropriate for multinational corporations in the past, but not for those in the present. Today, no company can be devoid of moral and humanistic responses. Companies employing a humanistic veneer, behind which they hide while unjustly extracting profits from a 'nation at the expense of oppressed populations, are doomed to challenge and failure'.

For every rule there is an exception, the reverend gentleman seems to say.

CONCLUSION

The idea of phasing out villages is, of course. a wildest dream ever dreamt by an African. especially in the Southern part of the continent. One can actually see a battalion of objections on this point based on all possible moral, social, political, economic and even religious grounds. The idea seems impossible to implement.

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However, let it be remembered that there is nothing impossible. God created the heavens and the world out of nothing; Moses crossed the Red Sea on dry land; Neil Armstrong walked on the moon and some followed thereafter; Apartheid is, for the time-being, in a comma. If, therefore, the non-racial democratic state is to apply the noble principles it has laid down in the proposals and escape the economic disaster that is so much endemic in Africa, this dream will have to be taken seriously. Urbanisation will have to be carried to its logical conclusion.

The scope of company law will have to be increased to include the role of multinationals in the social sphere of the state. Up to date Company Law in South Africa has always been confined within the parameters of the Companies Act 26 and common law that only deals with the creation, the running and the liquidation of companies. The interests of the employees and the social duties of the companies have always been allocated to the so-called Labour or Industrial law which mainly concerns itself with the prohibition of strikes. The proposals offer the South African lawyers a chance to develop the Company Law. It must be remembered that the best way to serve the state is to cater not only for the present generation, but also for the generations unborn. The little national cake there may be, will have to be shared by all if peace and prosperity is the goal of the drafters.

25 Revereha Leon Sullivan op cit 443

26 Act no 61 of 1973

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