

NYM/027/0104/3

3.6.91

TRANSAFRICA'S REPORT CARD ON U.S. SANCTIONS AGAINST SOUTH AFRICA

INTRODUCTION: Progress in South Africa

There have been important developments in South Africa over the last year which provide the basis for cautious optimism about the prospects for future reform. However, changes instituted by the de Klerk government do not yet meet the requirements for lifting sanctions under the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99-440), nor do they provide assurances of genuine irreversible progress toward a democratic government. Until all requirements of U.S. law are met, irreversible progress toward democracy is achieved, and legitimate representatives of South Africa's Black majority call for a lifting of sanctions, sanctions should remain in place.

The South African record so far is inconsistent. Nelson Mandela was released from prison just over one year ago. At that time, President F.W. de Klerk also unbanned political parties, lifted the national state of emergency and repealed the Separate Amenities Act, a law that required the segregation of public facilities. On February 1, 1991, in a speech before the South African Parliament, de Klerk announced plans for the repeal of the three major "pillars of apartheid" -- the Group Areas Act, the Land Acts and the Population Registration Act. There has been no governmental concession, however, on the critical issue of Black voting rights. Moreover, many of the reforms already announced appear considerably less impressive under further scrutiny.

This report examines the legal requirements for the lifting of U.S. sanctions against the backdrop of the progress that has been achieved to date in South Africa. Each condition outlined in Section 311 of the Comprehensive Anti-Apartheid Act is analyzed separately. Appendix I lists a large number of laws that are still on South African statute books and which continue to form the legal basis of the apartheid system. Section 311 is reprinted in Appendix II.

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SUMMARY: Conditions for Termination of Sanctions

The Comprehensive Anti-Apartheid Act of 1986 (CAAA) provides the United States with a powerful means to influence South African authorities. Under Section 311 of the law, five conditions must be satisfied before sanctions shall terminate. The five conditions are:

1. The South African government releases all persons persecuted for their political beliefs or detained unduly without trial and releases Nelson Mandela from prison.
2. The South African government repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency.
3. The South African government unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process.
4. The South African government repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes.
5. The South African government agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

Alternatively, the Comprehensive Anti-Apartheid Act permits the President to modify or suspend sanctions upon a determination that the South African government has:

1. Satisfied Condition #1 and any three of the last four conditions above and;
2. Made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy.

The U.S. Congress may prevent the President from modifying or suspending sanctions if it enacts a joint resolution disapproving the President's action within thirty days after such action. (See Appendix II for a reprint of Section 311 of the CAAA.)

ANALYSIS: Requirements for Termination of Sanctions

Condition 1.

The South African government releases all persons persecuted for their political beliefs or detained unduly without trial and releases Nelson Mandela from prison.

Unsatisfied.

The South African government has met only part of the mandatory first condition laid out in the CAAA. Nelson Mandela was released from prison on February 11, 1990; a number of other political prisoners were freed both before and after Mr. Mandela's release. But detention without trial remains a fixture of South African law and these releases represent only a small percentage of the total number still in jail for political reasons. According to the South Africa-based Human Rights Commission, approximately 2750 people remain imprisoned for political reasons. *In fact, fifty-five political prisoners are on death row awaiting execution.* (See Appendix I, numbers 26, 40, and 41.)

Condition 2.

The South African government repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency.

Technically Satisfied.

(Natal's been lifted too)

The State of Emergency of 1986 was repealed in October 1990. The Emergency granted broad powers of arrest and detention to police in order to "maintain public law and order" in unrest areas. It further permitted authorities to ban political gatherings (including funerals), censor the media and take other repressive actions. The South African government has released all people detained under the state of emergency, according to the Human Rights Commission. The U.S. Department of State has concluded that condition two has been completely satisfied by these actions. However, TransAfrica has determined that the South African government has only technically met this condition since the State of Emergency has arguably been extended by enactment of the Public Safety Amendment Act of 1986 (PSAA). Furthermore, another State of Emergency can be imposed at any time under the Public Safety Act of 1953.

In the meantime, the PSAA authorizes powers that are virtually identical to those defined in the 1986 Emergency. Amnesty International reports that Natal and Bophuthatswana continue to be designated as "unrest areas" under this law and that over 1600 persons are currently detained under the PSAA.

It is also significant to note that other laws on the South African statute books allow detention without trial, prevent contact with family or lawyers for those detained and permit unlimited police power on a scale that rivals the State of Emergency. For example, the Internal Security Act of 1982 (ISA) currently remains in effect. Under the ISA, the police may detain suspects without trial and ban persons, political organizations, and public

gatherings. The Human Rights Commission reports that 140 persons are currently detained without trial under the ISA.

What is Randall calling for - repeal of Public Safety Acts + Internal Security?

Condition 3.

The South African government unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process.

Unsatisfied.

Contrary to statements by the Bush Administration, Black South Africans have not been permitted the free exercise of their rights to participate in the South African political process. President de Klerk unbanned the African National Congress, Pan Africanist Congress, the South African Communist Party and thirty-three other political parties including the United Democratic Front in February 1990. While the U.S. State Department considers this requirement to be fully satisfied by these actions, it is clear that the South African government has not fulfilled other requirements spelled out in this section of the Act.

Through the third condition in the CAAA, Congress requires the free participation of all South Africans in the mainstream of political activity in South Africa. Free participation can be reasonably interpreted as the right to vote and run for elected office in national elections. Otherwise, such participation would be meaningless, devoid of basic political rights and contrary to the purpose of the sanctions law. The CAAA explicitly states that its purpose is to set forth a "comprehensive and complete framework" that will not only help to end apartheid but will "respect the principle of equal justice under the law for citizens of all races."

The South African government has much to do before this condition is fully satisfied. All South Africans must be allowed to freely exercise their right to vote. The pillars of these restrictions on political participation are the Electoral Act No. 45 of 1979, the Separate Representation of Voters Act No. 46 of 1951, and the Republic of South Africa Constitution Act No. 110 of 1983. The Electoral Act prohibits Blacks from voting and running for national office. This Act also reinforces the Separate Representation of Voters Act which prevents Blacks from registering to vote -- a prerequisite of voting and candidacy. The Republic of South Africa Constitution Act suppresses the participation of Blacks further by establishing a racially divided tricameral Parliament, exclusively for whites, Indians, and coloreds. (See Appendix I, numbers 14, 52, and 56.)

Finally, for many Blacks the exercise of the right to vote must be preceded by the restoration of citizenship which has been unjustly stripped from them. The National States Citizen Act No. 26 of 1970 provides territorial citizenship for Blacks living in the "independent" homelands, thereby denying these Blacks the rights and benefits of South African citizenship. Blacks are further disenfranchised by the National States Constitution Act No. 21 of 1971 which establishes separate, self-governing political systems in the homelands and denies inhabitants the right to participate in national politics. Blacks are further excluded from the political process by unfair procedures established by the South African government which have delayed the return of over 30,000 political exiles. (See

Appendix I, discussion on Independent Homeland Laws on page 10, Removal Laws on page 12, and laws numbered 29, 30, 53, and 58.)

With these restrictions on Black citizenship, suffrage and political representation, the South African government continues to prevent "the free exercise by South Africans of all races of the right to...express political opinions, and otherwise participate in the political process." Condition three remains unsatisfied. (For further evidence of legally enforceable restrictions of free expression of political opinions and political association see Appendix I, numbers 26, 27, 36, 38, 39, 40, 41, 54, and 63.)

Condition 4.

The South African government repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes.

Unsatisfied.

Although President de Klerk recently announced that the Group Areas Act and the Population Registration Act will soon be repealed, Parliament has not yet taken action. The condition thus remains unsatisfied. The Group Areas Act makes residential segregation mandatory and the Population Registration Act classifies South Africans according to race. The actual and effective repeal of these Acts will be important steps toward the eradication of apartheid. Nonetheless, the effect of these particular repeals will not be substantial since most Blacks can ill afford to move to white neighborhoods. Furthermore, repeal of the Population Registration Act will only end racial classification for those born after the repeal; racial classification will continue for the current population. It should also be noted that a host of other laws must also be repealed before genuine reform can occur.

The CAAA also requires that no other measures be instituted "with the same purposes" as these two Acts. *President de Klerk has announced that, once repealed, the Population Registration Act would be replaced by "temporary transitional measures."* It is possible that the continued racial classification of the South African population would be permitted under a different guise. Likewise, local authorities may move to negate the effect of repealing the Group Areas Act. If so, this fourth condition of the CAAA will remain unfulfilled even after the Group Areas Act and the Population Registration Act are repealed.

Condition 5.

The South African government agrees to enter into good faith negotiations with true representative members of the black majority without preconditions.

Technically Satisfied

Although the U.S. State Department considers the fifth condition to be satisfied, the South African government has only technically met this requirement concerning

negotiations not yet begun. In fact, both sides characterize the process which must necessarily precede negotiations. Black leaders with whom the government has begun the "talks" insist that real negotiations can only be conducted by elected representatives of the South African majority. They maintain that a measure of democratic authorization by South African Blacks is critical before the government can be deemed to have begun negotiations with "truly representative Black leaders" as the condition specifies.

It is reasonable to conclude that Congress could not have intended this condition to be met by a simple unilateral agreement by the government to enter into negotiations. Congress also demonstrated a concern about the "good faith" nature of the negotiation process. Events that followed the South African government's preliminary agreement have been troubling and may even serve to jeopardize the negotiation process itself. For instance, the ANC maintains that it can not enter into negotiations until exiles are allowed to return to South Africa with full and permanent indemnity and until all political prisoners are released. Neither of these conditions have been met. The ANC also argues that the South African government's role in the upsurge in violence in South Africa must be investigated before good faith negotiations can begin and produce positive results.

Condition 6.

The South African government has made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy.

Unsatisfied.

The last condition that must be met if the President plans to suspend or modify sanctions, calls for "substantial progress" toward dismantling apartheid and establishing a nonracial democracy. These provisions can be variously interpreted. By any reasonable measure, however, progress to date has not been substantial. Apartheid continues to cut across all sectors of daily life. Nothing resembling a nonracial democracy has yet been established. The reforms to date - the repeal of the Separate Amenities Act, the lifting of the State of Emergency, the release of prisoners, and the unbanning of political parties - have all left the system of apartheid intact. These reforms are by no means "irreversible," a criterion recognized by the United Nations, Presidents Bush and de Klerk and the African National Congress as critical in the evaluation of political progress in South Africa. Under existing legislation, as detailed in Appendix I, the South African government has the authority to undo these reforms with impunity, that is, the government can ban political parties, designate unrest areas as well as arrest and detain suspects without charge at any time.

The last condition also requires that substantial progress be made in the establishment of a nonracial democracy. This suggests that the South African government should be actively involved in South Africa's transformation into an authentic democratic society. So far, the South African government has supported the idea of a multi-party conference, but has been hesitant to make concrete suggestions beyond vague references to new "transitional measures" and veiled notions of group rights for whites. Until

CONCLUSION

The most effective pressure that the United States can exert on the South African regime is through existing U.S. sanctions. *TransAfrica* urges the Administration and Congress to follow the letter and spirit of the Comprehensive Anti-Apartheid Act of 1986 as they consider whether sanctions should be lifted. According to our analysis, only two conditions have been met -- and those only in the strictest technical sense -- signalling that it would be premature (and illegal) to lift sanctions at this time. *TransAfrica* will push for the maintenance of sanctions until irreversible progress toward dismantling apartheid and the establishment of a nonracial democracy has been achieved.

The most important tangible measure of irreversibility would be the opening of the South African political process to all races through full and equal voting rights.