AN ANALYSIS OF U.S.-SOUTH AFRICAN RELATIONS IN THE 1980s: HAS ENGAGEMENT BEEN CONSTRUCTIVE?

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1. Introduction

Each trade agreement, each bank loan, each new investment is another brick in the wall of our continued existence [1].

J.B. Vorster, former Prime Minister of South Africa

We cannot and will not permit our hand to be forced to align ourselves with one side or an other .... Our task ... is to maintain communication with all parties ... and to pursue our growing interest throughout the region.

Only if we engage constructively in southern Africa as a whole can we play our proper role in the search for negotiated solutions, peaceful change and expanding economic progress.

The Reagan Administration has no intention of destabilizing South Africa in order to curry favor elsewhere. Neither will we align ourselves with apartheid policies that are abhorrent to our own multiracial democracy [2].

Chester A. Crocker, Assistant Secretary of State for African Affairs

This Comment will evaluate the Reagan Administration’s foreign policy in South Africa in light of American business interests and the South African government’s recent efforts to improve both its foreign and domestic relations. Considerable attention will center on both the new South African Constitution, passed in November 1983, and on the Sullivan Principles [3], a code of conduct for American businesses operating in South Africa. The success or failure of the Constitution and the Principles will indicate the likelihood that the Reagan Administration’s policy will help achieve reform of South African apartheid policies [4].

The phase “constructive engagement” [5] is used to describe the Reagan Administration’s policy in South Africa. Officially, the Reagan Administration has adopted a neutral policy of neither promoting nor discouraging American business activities [6]. In practice, however, the Reagan Administration has encouraged economic ties with South Africa, paying scant attention to invest-

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ment neutrality. For example, in March 1982 the Administration relaxed certain export controls imposed in 1978 by the Carter Administration [7]. These had been enacted pursuant to the U.N. Security Council's adoption of a mandatory arms-embargo resolution in 1977 [8]. The State Department stated that the earlier military and police embargo "was too widely cast to achieve its objective" [9]. According to the American Chamber of Commerce in South Africa, it is expected that these relaxations will have a "substantial effect" on U.S. business [10].

2. U.S. business involvement in South Africa

The legitimacy of the U.S. government's interest in American business activity abroad is an underlying assumption of this examination [11]. American companies, however, generally avoid identification with political goals [12]. American business leaders steadfastly resist being used by the executive branch as foreign policy tools [13]. George J. Vojta, Executive Vice President of Citicorp, stated that, "the conduct of American foreign policy is and ought to be the sole prerogative of the U.S. Government ... [W]e believe it is wrong to try to use American business as the cutting edge of American foreign policy" [14]. Nevertheless, according to Ted J. Smale, Executive Director of AECI Ltd., South Africa's largest chemical company, and President of the Johannesburg Chamber of Commerce, "[Y]ou can't divorce economics from politics, particularly in a place like this" [15].

While in absolute terms the United States' economic interest in the Republic is relatively small [16], it assumes a disproportionate significance because of U.S. prestige, economic power, and support of democracy and racial equality. The pressures exerted by special interest groups [17] and by other African states further highlight American involvement.

Approximately 350 of the most prominent companies in the United States, including more than half of the Fortune 500's top one hundred firms, operate subsidiaries in South Africa [18]. Another 6000 do business there through sales agents and distributors [19]. The United States holds fifty-seven percent of all foreign holdings on the Johannesburg stock exchange, including gold mines, mining houses, platinum mines, and diamonds [20]. The State Department estimated that U.S. direct investment amounted to $2.3 billion in 1983, down from the $2.8 billion calculated by the South African Institute of Race Relations for 1982 [21]. Other estimates put overall American investment, including loans and gold stocks, at $14 billion [22].

For the typical American company operating in the Republic, investments constitute less than one percent of total assets. U.S. majority-owned corporations account for three percent of the annual capital spent in South Africa for new equipment and replacement of old equipment [23]. In 1978, these busi-
nesses spent $300 million of an $11.4 billion gross domestic investment in South Africa [24]. About eighty-five percent of these expenditures were financed through depreciation and retained earnings. Thus, U.S. parent companies invested relatively little external capital. A cutoff of this investment would reduce the Republic's gross domestic investment by less than one-half of one percent [25].

U.S. exports to South Africa, however, grew from approximately R1.2 billion in 1979 to R2.7 billion in 1981 [26]. As a result, the United States emerged as the Republic's largest trading partner [27]. Apart from its quantitative impact, U.S. business investment has a qualitative impact disproportionate to its financial value. Since large multinational corporations comprise the bulk of the U.S. business commitment, American business assessments of investment opportunities influence other countries' foreign investments and loan capital decisions [28]. U.S. investment, furthermore, is directed toward critical sectors of the South African economy, thereby promoting increased high technology transfers and industrial expansion [29]. Key investment areas include the automobile industry, where U.S. firms hold a fifty percent market share; petroleum, forty-one percent [30]; and computers, approximately sixty-five percent [31].

Foreign capital and trade have been vital ingredients in the economic development of South Africa. Investments and business transactions have provided valuable foreign exchange necessary for industrialization and growth of an increasingly capital-intensive economy [32]. The Republic's imports of goods and services have equalled about one-third of overall gross national product [33]. Although expanding exports, primarily agricultural products and minerals, have offset a portion of increasing import costs, South Africa has incurred a balance-of-payments deficit on current account in eight of the last ten years [34]. This situation has worsened in the past two years because of the decline in the price of gold, South Africa's greatest source of export income, and the severe drought which forced the country to import maize, another important source of export income [35]. South Africa has relied upon loans and foreign investment to cover these deficits and to supplement domestic savings. Consequently, loans and foreign investment have become increasingly important to the economy [36].

2.1. Critics of American policy in South Africa

A number of commentators, who support the continued presence of American business interests in South Africa, contend that the U.S. government and American businesses should adopt a more active role in supporting reform [37]. According to these critics, U.S. investment is (1) vitally important to the Republic and (2) this dependence can be exploited to foster reform [38]. Simon Brand, the Prime Minister's Economic Adviser, legitimized this argument by
characterizing foreign investment as the “engine of growth in South Africa, responsible in the past for one-third of the country’s annual growth rate” [39]. Similarly, a former director of Barclay’s National Bank of South Africa acknowledged that foreign investment figures underestimate South African dependence on American investments by failing to reflect the “know-how” skills generally associated with foreign investment [40].

Other critics of American business in South Africa, however, argue that the combination of (1) the U.S. business presence and (2) the high level of political dialogue between the two countries bolsters apartheid [41]. The Reverend Jessie L. Jackson characterized the Reagan Administration’s policy in South Africa as “an act of barbarism that permits American firms to reap profits from the cheap labor created by that nation’s apartheid system” [42]. One South African official stated, “[i]f not exactly the Good Housekeeping seal of approval, the presence of companies like Ford and GM is at least a sign of international support” [43]. Senator Dick Clark, chairman of the Subcommittee on African Affairs, stated in a January 1978 report to the Senate Foreign Relations Committee:

Collectively, U.S. companies operating in South Africa have made no significant impact on either relaxing apartheid or in establishing company policies which would offer a limited but nevertheless important model of multinational responsibility. Rather, the net effect of American investment has been to strengthen the economic and military self-sufficiency of South Africa’s apartheid regime [44].

The relationship between economic development and internal stability was clearly recognized in the Republic’s economic development program for 1978–87. According to the program, “a strong and vital economy is one of South Africa’s best weapons against the coordinated onslaught being launched against her from outside her borders on the political, economic, military, and psychological fronts” [45].

2.2. Capacity of U.S. companies to initiate reform

Commentators on South Africa disagree on the effectiveness of any pressure American businesses can exert to reform apartheid. South Africa’s Finance Minister, Owen Horwood, contends that “South Africa will certainly not be forced to its knees by divestment of American capital, whatever that vague notion may mean and however it is supposed to be brought about” [46]. In a recent interview, Foreign Minister Roelof Frederik “Pik” Botha maintained that South Africa must be considered “a regional power with which the rest of the world must deal, like us or not” [47]. Moreover, he added, “whether the world or the United States likes us or not is of little concern to me” [48].

Foreign investment accounts for only eighteen to nineteen percent of total
investment in South Africa [49]. Because new U.S. investment is only one-half of one percent of total U.S. investment, and the general trend toward new investment is down, disinvestment would be of little consequence. In addition, the gap would soon be filled by foreign competitors [50]. In 1978, U.S. imports from the Republic constituted four percent of that country’s gross domestic product (GDP) [51]. A cutoff of American imports, assuming alternative markets could not be found, would reduce South Africa’s GDP by approximately twelve percent [52]. This, however, is an unlikely scenario. Gold and diamonds are easily marketed elsewhere. In addition, the United States would incur considerable costs by halting such raw material imports [53].

Nevertheless, some businessmen argue that American–South African trade and investment assumes a constructive role in South Africa by providing capital which in turn stimulates growth, jobs, and improved labor practices [54]. William C. Norris, Chairman of the Board and Chief Executive Officer of Control Data Corporation, emphasized that “[t]o limit or restrict the job-creating potential of the U.S. companies in South Africa is to put a lid on the possibility for meaningful employment for many Black South Africans. Economic growth is the means to providing new jobs for Black South Africans” [55]. John Purcell of Goodyear concurred, asserting that economic pressures will not encourage nonviolent social change in South Africa; rather, this will be brought about by “economic growth, expanded contact with the outside, and time” [56].

Some businessmen acknowledge, however, that a high growth rate is not the panacea that some free marketers believe [57]. Morton Dagut, Deputy General Manager of Nedbank, one of the leading banks in South Africa, remarked that, “[A]ll our old problems of inflation, shortage of key skills, inadequate social infrastructure, the juxtaposition of the haves and have-nots, of urban crowding and rural poverty have not and will not just go away because the growth rate is high” [58]. Two basic limitations of the “trickle down” theory of economic progress in South Africa are the increasingly capital-intensive nature of investment and the apartheid policy itself. An examination of Caltex, a corporation jointly-owned by Texaco and Standard Oil of California, typifies these problems.

Between 1962 and 1977, South Africa underwent a period of tremendous economic growth, yet Black workers failed to receive appreciable benefits. In 1962, Caltex employed 2400 workers in South Africa, 776 of whom were Black, constituting 32.3% of the labor force. By June 1977, employment had been reduced through modernization to 1,953 people, 452 of whom were Black, representing 23% of the work force. During these fifteen years of high economic growth, Caltex reduced its total labor force by 18.6%, while cutting back its Black labor force by 41.8% [59].

The recent employment history of Caltex is convincing exception to the two-prong argument that additional capital investment will increase benefits to
Black workers and, conversely, that divestment will disproportionately harm Black workers. Moreover, the South African educational system fails to provide Blacks with adequate instruction and facilities. In an increasingly capital-intensive workplace where advanced skills are a prerequisite to meaningful employment, this policy ensures that Black laborers will be the last hired and the first fired [60]. As a result, foreign investment cannot fundamentally improve the lives of Black South Africans until apartheid is rejected [61].

The limited number of Black workers employed by U.S. companies in South Africa is another factor restricting the effectiveness of an economic solution to apartheid. The total number of South Africans of all races working in American firms is less than one percent of the labor force, approximately 80,000. Although estimates vary, thirty to forty thousand of these employees are Black [62]. Assuming, arbitrarily, that among Black families one worker supports five, U.S. companies indirectly affect the lives of 150,000 to 200,000 Blacks. While this number is significant in human terms, it is a small percentage of the total Black population in South Africa [63].

Once the limitations involved in any economic reform of South African apartheid policies are recognized, American businesses must address three questions. First, to what extent can American businesses play a constructive role in reform? Second, does this role justify continued involvement in the Republic? Third, what costs would American businesses and South Africans incur in the event of divestment?

The activities of U.S. businesses are constrained by the increasingly competitive nature of the South African economy [64]. American firms vie with foreign firms and local competitors in virtually every field [65]. IBM, for example, competes for market shares of the computer industry with ICL, the British computer company, and Siemens, a German firm [66]. Similarly, Ford and GM recognize that their withdrawal from the motor vehicle market would have little impact on the economy [67]. Furthermore, South Africa has sought to guarantee itself a more stable technologies transfer flow. Although a cutoff in Western technology would adversely affect the Republic, the impact would be mitigated by provisions such as the 1978 Patent Act. This law allows South African businesses to violate patent rights of overseas holders refusing to make their technology available [68].

Corporate leaders justify business investment in South Africa on the grounds that (1) it is not the prerogative of private firms to sit in judgment of the domestic affairs of foreign countries [69]; (2) business organizations have an obligation to their shareholders to make profits, not moral pronouncements [70]; (3) Black South Africans and the neighboring Black states would bear the brunt of the economic dislocation resulting from divestment [71]; (4) the United States is dependent upon South African products, including chrome, manganese, platinum, uranium, gold, diamonds, and other minerals [72]; and (5) there are many other foreign countries who would replace the United States
and who would be less committed to reform [73]. The Sullivan Principles, which will be analyzed in section 2.3, infra, provide a backdrop against which the success of "constructive engagement" can be assessed.

Approximately 50,000 jobs in the United States depend upon South African exports [74]. In real terms, the jobs lost in the United States would be compounded by the income-maintenance provisions of the U.S. economic system. Estimates of total loss from such welfare programs as unemployment compensation, food stamps, medical care expenditures, and decreased tax revenue are in the one billion dollar range [75]. Any corporate decision to withdraw from South Africa must also account for the costs of repatriating investment funds. The Republic's foreign exchange regulations make the transfer of money received from the sale of assets costly. Unless the assets are purchased by another foreign investor, who is unlikely to pay top price, proceeds of sale must be invested for a period of up to five years in low-interest South African securities or government bonds [76]. An equally unattractive alternative is the possibility of exchanging rands for dollars at a discounted rate, ranging from a twenty to forty percent discount [77].

2.3. The Sullivan Principles

The Sullivan Principles are one notable example of American business reform within the South African workplace and improvement in the lives of employees. This U.S. corporate code of conduct was publicly introduced in 1977, developed under the leadership of Reverend Leon H. Sullivan, a prominent Black civil rights leader and board member of General Motors. The Sullivan Principles pledged the original twelve signatories to work toward the desegregation of the workplace, fair employment procedures, equal pay for equal work, job training and promotion, and improvement in the quality of life [78].

Initially, the Principles were warmly received. By the end of 1978, 105 companies had signed, and by October 1981 the number had risen to 144. Signatory firms employed eighty-five percent of the South African workforce working in U.S. subsidiary companies in 1979. The State Department heralded the Principles "as a potentially major force for change in South Africa," pledging the "strong support" of the U.S. government [79].

By April 1979, however, increasing numbers of American Black leaders began questioning the efficacy of the Sullivan Principles. This disillusionment was expressed by religious leaders who met in New York to consider U.S. policy in South Africa. The overwhelming majority of the 200 representatives rejected the Principles, describing them as "well-intentioned [but] no longer sufficient" [80]. They found "that the very presence of the United States corporations in South Africa serves to legitimize the apartheid system of white
supremacy” [81]. The clergyment committed themselves to working toward total disengagement [82].

Current views on the Sullivan Principles are sharply divided. Much of the “easy work,” such as initial desegregation of the work force, is now completed [83]. Promotion of Blacks into managerial positions, however, has not yet been implemented. American firms have been hesitant to proceed in this area, fearing the consequences of antagonizing White workers who strongly resist such management directives [84]. The Study Commission on United States Policy toward Southern Africa, sponsored by the Ford Foundation, concluded in 1981:

> Although the Sullivan Principles and the other codes have changed employment practices, company reform has not been of “massive proportions.” Nor has compliance with the codes threatened the basic structure of apartheid. The state role in the labor market, particularly state control over African labor, is virtually unaffected [85].

On November 9, 1983, more than 100 U.S. firms with South African investments met in closed session to formulate policy. “We’ve come to a kind of crossroads,” stated James Rawlings, chairman of Union-Carbide South Africa, Inc. “[T]he easy issues, like desegregation in the workplace and equal pay for equal work, are pretty much behind us now. It’s time to refocus our efforts, and figure out how we can be most effective on the harder issues, like education, community development and black entrepreneurship” [86].

How have U.S. firms measured up against other foreign and domestic firms in South Africa? Many have treated their nonwhite workers better than South African companies, yet, on the whole their record has not been remarkable [87]. A recent study of British, American, and South African businesses revealed that all three were still paying salaries below the minimum standard poverty level in South Africa [88]. William Degenring of American Cyanamid noted that “a lot of South African companies are a hell of a lot better [about non-White employee compensation] than U.S. companies” [89].

The superficiality of the changes instituted by the Sullivan Principles is one of its major criticisms. For example, some companies replaced segregation of dining or locker facilities by race with segregation by workers’ status, *i.e.*, hourly or salaried workers. Cafeterias, bathrooms, and locker rooms formerly assigned to non-Whites were redesignated for hourly workers. Similarly, White facilities were allotted to salaried workers or artisans. Because companies had few, if any, salaried Blacks or hourly Whites, segregation was preserved [90]. In one case, General Motors replaced “offending” signs on bathroom doors, explicitly designating race, with new color-coded doors: blue for Whites and orange for Blacks and Coloureds [91].

The Principles have also been criticized for leaving intact the basic framework of apartheid [92]. This has been cited as a reason why the South African
government acquiesced to the Principles. Donald McHenry of the Carnegie Endowment for International Peace emphasized the Principles' failure to substantially improve conditions. No matter how commendable General Motors' employment programs are, he noted, and no matter how many housing and educational opportunities are provided, Blacks still must live in prescribed areas and are still unable to move about freely. Furthermore, less than one percent of the Black population rises to a level where they can take advantage of the high school scholarship programs [93]. Reverend Sullivan himself expressed his disappointment:

I am not satisfied with the overall pace of implementation by the companies. Some of the companies are doing far better than others; 20 percent are pulling hard, 50 percent are pulling, and the rest are just being pulled along. And a whole lot of them are not even on the wagon yet [94].

3. South African legal responses to foreign pressures

3.1. Shielding statutes

An analysis of constructive engagement would be incomplete without considering the nature and degree of South African governmental reactions. Typically, the South African government responds to sanctions and threats of further controls by enacting legislation mitigating foreseeable effects. For example, in response to foreign sanction campaigns, the Parliament passed the National Supplies Procurement Act [95], empowering the Minister of Economic Affairs to order any firm to produce upon demand any product the government deems necessary to national security. If a company refuses, the government “may, without legal process, seize the goods in question” or take over the company's production processes. General Motors Chairman Charles Murphy highlighted the ramifications of this law:

It is apparent to us that manufacturing plants involved in such basic industries as petroleum production and refining, mining primary metals, transportation, and machinery — industries which generate the lifeblood of any economy — also assume equally strategic importance in time of emergency. Any of our plants can be converted to war production as clearly demonstrated in the United States in 1941 [96].

3.2. Constitutional developments

No nation, no people, can thrive on hate. No nation can build the future on hate. [97] — South African Prime Minister P.W. Botha.

The most recent example of the South African government's response to a combination of foreign and domestic pressures is to be found in its new
Constitution, accepted by 65.95% of the White population on November 2, 1983 [98]. Ironically, the 2.8 million Coloureds and 800,000 Indians, identified as the principal beneficiaries of this enactment, were not allowed to vote in the referendum.

The passage of the new Constitution raises two fundamental questions. First, what does this plan mean for all South Africans – White, Black, Indian, and Coloured [99]? Second, to what extent does the Constitution cast doubt on the continued liability of constructive engagement as a means of encouraging racial reform? The basic issue is whether the Constitution will initiate constructive change and the eventual dismantlement of apartheid or whether it will further entrench White-dominated governance through the façade of reform [100].

The ratification of the South African Constitution split the Nationalist Party [101], the leading political party since 1948, into two factions, the mainstream element led by Prime Minister Pieter W. Botha and the breakaway Conservative Party led by Dr. Andries P. Teurnicht [102]. It pitted those who believe reform is necessary for survival against those who assert that any dismantling of apartheid will ultimately lead to “racial suicide” by the White population [103]. Dr. P.J. Barnard, a Conservative Party referendum agent, warned, “[t]his Constitution removes color as a criterion, and so it will lead to black, Marxist government. We have seen what happened in the rest of Africa” [104].

Prime Minister P.W. Botha stated that the ratification of the Constitution indicates a “decisive majority in favor of the attempt to secure security, peace, stability and prosperity for South Africa .... The Government now feels strengthened to go ahead with proper and evolutionary reform for South Africa” [105]. Brand Fourie, South African Ambassador to the United States, announced, “[r]eform and stability: these are the key words of the South African mandate. Reform encompasses all minority groups in South Africa” [106].

When the particular provisions are examined closely, however, it becomes apparent that the fundamental precept of the new Constitution, like its predecessor, is the division of the population into distinct racial groups and the land into areas in which one or more groups receive preferential treatment [107]. Robert J. Rotberg, Professor of Political Science and History at M.I.T., observed:

South Africa after the referendum is much as South Africa was before last week's vote. Its vast majority is poor, alienated, and angry. Its Coloreds and Asians are wary and fearful, and its whites are no more secure than they were before. The new constitution and the new parliament ... address none of the fundamental problems of a still bitterly divided country [108].

John Kane Berman, Director of the liberal South African Institute of Race
Relations, asserted that the “problem with this Constitution is that it won’t advance that process [of eventually including Blacks in government] so much as retard it by introducing new stumbling blocks in the path of a common society” [109].

Examination of the Constitution [110] reveals that, contrary to official pronouncements, power has become more centralized and less subject to checks and balances than under the previous Constitution [111]. Part III of the Constitution, for example, outlines the State President’s powers. The State President assumes not only his former powers, but also those of the Prime Minister, among others. This makes the State President the most powerful person in the Republic. Importantly, the State President is not subject to the will of the legislature, unlike the parliamentary system of government followed in Great Britain, nor is he directly elected by the electorate, as in the French and American systems. If Parliament passes a no-confidence vote in his Cabinet, or if such a vote is passed by one or more of the Houses, he can dissolve Parliament or the House concerned and call a new election [112]. This is a marked departure from the old system under which the Prime Minister was a Member of and responsible to the House of Assembly. At any time during the life of a Parliament he could have been rejected by the provincial congresses of the majority party, thereby losing his position as Prime Minister.

The most important and controversial power granted the State President is his duty under section 16 [113] to classify matters affecting a particular population group as “own affairs” [114], or matters affecting all racial groups as “general affairs” [115]. Section 14 states:

Matters which specifically or differentially affect a population group in relation to the maintenance of its identity and the upholding and furtherance of its way of life, culture, traditions and customs are subject to the provisions of section 16, own affairs in relation to such population group [116].

The State President’s decisions, here, are not subject to review by any court of law [117].

In effect, these sections entrench apartheid policy. “Own affairs” are defined purely on racial grounds as those affairs considered to be the separate concern of each of the three groups involved – Whites, Coloureds, and Indians. It includes such matters as social welfare, education, art, culture and recreation, housing, agriculture, and even water supply [118]. General affairs include foreign policy, defense, law and order, and state security [119]. This division prevents the Coloured and Indian Minister’s Councils from acting on many vital concerns affecting their own population groups, including removal of certain racial groups from living areas designated for other racial groups as well as other apartheid laws and practices [120]. The State President, for example, can prohibit the Coloured Minister in charge of Coloured Education from opening schools to White or Black students [121].
The day-to-day operation of government will also reflect the continued vitality of apartheid. In practice, the three Houses representing the three population groups will function separately [122]. Their only contact with each other will be limited to joint standing committees dealing with general affairs.

Many constitutional critics contend that the system will prove to be a source of continuous friction. The Progressive Federal Party (PFP), opposed to the Constitution, argues that White liberalism in South Africa will lose all credibility by reinforcing the view among Blacks that it is “pointless” to look to Whites for nonviolent change [123]. As Frederick van Zyl Slabbert, leader of the PFP, explained: “The real issue in South Africa is Black-White co-existence. And the willingness to negotiate stands a better chance of surviving with a ‘no’ vote” [124]. One PFP member concluded, “They [the Coloureds and Indians] are being made collaborators in applying apartheid to themselves” [125]. The government’s view, on the contrary, is optimistic. Supporters claim the constitution will allow the different population groups an opportunity to determine their own affairs and to share co-responsibility for common concerns [126].

Considerable criticism is also leveled at the constitutional provision involving the President’s Council [127]. This body consists of twenty members from the House of Assembly (White), ten members chosen from the House of Representatives (Coloured), five members designated by the House of Delegates (Indian), and twenty-five members appointed by the State President [128]. The new Council, although not accountable to the electorate, assumes a legislative role when the three Houses of Parliament cannot agree on a bill. The Council’s deadlock-breaking function under section 78 allows it to ratify a bill, despite the fact that only one of the Parliament Houses may have approved it [129]. In effect, the Council has greater legislative powers than any of the Houses or even Parliament itself. The Council’s power is limited only by its inability to introduce legislative amendments [130].

The most egregious provision of the new Constitution is the purposeful exclusion of Blacks, the vast majority of the South African population, from any degree of power-sharing and decision-making [131]. Section 93 vests control and representation of Black interests in the State President, “who shall exercise all those special powers in regard to Black Administration which immediately before the commencement of this Act were vested in him ...” [132].

Chief Gatsha Buthelezi, a prominent Zulu leader, addressed PFP members on the eve of the election and strongly urged rejection of the Constitution. “It is in your power to salvage the country from the kind of politics which those who have been sentenced to political death will begin to indulge in” [133], he said, referring to the future polarization of nonfranchised Blacks from the rest of the country under the “new dispensation” [134]. “It is up to you to salvage the country from the politics of anger” [135]. When the Constitution was
passed, Chief Buthelezi called the Coloured Labor Party’s decision to participate in the new parliament “‘a slap in the face’ for blacks” [136]. Frederick van Zyl Slabbert of the PFP agreed. “Even if against all odds the new constitution operates successfully for Coloreds and Asians,” he argued, “the very success would be a source of alienation and frustration for the majority of Blacks” [137].

Although limited provision has been made for Coloured and Indian participation under the new Constitution, prominent Coloured and Indian leaders have expressed concern over the cost of these benefits. When the proposals were first introduced in 1977, D.M.G. Curry of the recently disbanded Coloured Persons’ Representative Council articulated several objections:

The proposals are there to entrench apartheid in the constitution by preserving the ethnic divisions of Coloureds and Indians and Whites. We see the plan as a subterfuge for using Coloureds and Indians as tools to entrench exclusive National Party rule. By effectively excluding opposition political parties, which are necessary in a truly democratic society, the plans aim at entrusting dictatorial powers to the State President by giving the person elected to this post wide powers to affect the lives of South Africans [138].

The Constitution has preserved the statutory underpinnings of apartheid, such as the Group Areas Act [139], Influx control [140], the Immorality Act [141], and security legislation [142] which severely restrict opportunities for peaceful reform [143]. Prime Minister Botha’s Foreign Minister, Roelof F. Botha, claimed that the retention of security laws was necessary to protect the rule of law from “those who have no interest in democracy” [144].

4. The United States’ response

The continued viability of the Reagan Administration’s policy of constructive engagement has been linked by commentators and Congress to the success of the South African Constitution and South Africa’s relations with neighboring states. Immediately prior to the constitutional referendum, The Christian Science Monitor reported that “[w]hile the debate impacts on both whites and blacks in South Africa, the results ... have direct consequences for the Reagan Administration’s policy of ‘constructive engagement’ ...” [145]. The pronouncements of Prime Minister P.W. Botha underscore the relationship between the constitutional developments and the Reagan Administration’s policy of constructive engagement. Botha predicted ratification would have a “big influence internationally” [146], and following the referendum, he stated that the results would foster “a better understanding” with the Reagan Administration [147].

The U.S. State Department responded to the election results by “welcom[ing] the outcome of South Africa’s referendum of a new constitution,” and asserting that it “opened the way toward a system based on the consent of all South
African citizens” [148]. The referendum was described as “a potentially significant date in the modern history of South Africa” [149].

South Africa’s recent attempts to normalize relations with neighboring Black states such as Mozambique and Angola have also been characterized as significant [150]. Progress on Angola began on December 6, 1983, when Chester A. Crocker met with South African Foreign Minister, R.F. Botha. Thereafter, Crocker’s deputy, Frank Wisner, and Angolan Vice Foreign Minister, Antonio da Moura, met and agreed that Angola would prevent its forces, along with those of the Cuban and Namibian rebels, from taking advantage of a South African military withdrawal. Following the Angolan commitment, Prime Minister Pieter W. Botha announced a thirty-day disengagement on January 31, 1984 [151]. The United States assumed a critical role in the tripartite talks in Lusaka that established a joint commission to monitor the disengagement [152].

The Reagan Administration’s recent successes in southern Africa have led some commentators to reconsider the policy of constructive engagement [153]. Others, however, have steadfastly pointed out the limitations of both the constitutional and regional developments in southern Africa. As Representative Howard Wolpe (D. Mich.) noted, “Unfortunately, these optimistic appraisals may, in the end, make American diplomacy in southern Africa increasingly irrelevant to achieving regional stability, as people and governments throughout Africa perceive that America has entered into a long-term accommodation with apartheid” [154].

Glenn Frankel of The Washington Post noted that on the same day U.S. diplomats were orchestrating peace talks between South Africa and Angola, the South African police were uprooting residents of Mogope, a small African village near Johannesburg, and sending them to a government-designated area for Blacks [155]. The move was completed despite a strong protest by the United States [156]. More recently, on October 23, 1984, seven thousand South African army troops and police officers raided Sebokeng and three other Black townships [157]. Eighteen thousand homes were searched and 357 Blacks were arrested [158]. This operation was the most sweeping of its kind since the South African government announced, on October 7, 1984, that the army would be employed to aid the police in combating unrest in Black townships [159]. The Azania People’s Organization and the United Democratic Front, two leading antiapartheid groups, termed the “crackdown” a declaration of war [160]. John Hughes, the State Department spokesman, responded to these events with a statement criticizing the underpinnings of constructive engagement [161]. “These repressive measures are bound to obscure and put in question the South African government’s professed intentions of dealing with the problems of the country by reform and consensus” [162].

The events described above highlight the limitations of constructive engagement. While the United Statees may score points by influencing South Africa’s
relations with her neighbors, the United States has "extremely limited leverage" over the internal developments of South Africa [163]. One American diplomat conceded, off-the-record, that constructive engagement had little to offer Blacks within South Africa. "There's admittedly not a whole hell of a lot this Administration has to say to black South Africa. Essentially we've opted for a policy that may yield benefits in 20 or 25 years. That's pretty thin gruel" [164].

The official pronouncements of Prime Minister Botha also reveal the limitations of the Constitution, thereby calling into question the rationales supporting constructive engagement. Botha has repeatedly stressed that the Constitution would not depart from Nationalist policies [165]. It does not include a "hidden agenda," he promised Afrikaners, to later include Blacks once the referendum is over [166]. "That is a story created by people who do not want to read my programs as announced" [167]. Botha's assurance of continued White supremacy was reinforced by the promise of Professor Jan de Lange, Chairman of the Broederbond, an unofficial but influential organization behind the Nationalist Party. "The policy of apartheid, or separate development of the races as it is called today," he maintained, "is not under question" [168].

5. Conclusions

Although unexplored options remain, it appears constructive engagement has failed. One of its basic premises is the belief that increased communication and trade between the United States and South Africa would eventually foster internal reform [169]. To the extent there has been communication and "constructive criticism" between the two countries, however, apartheid reform has been absent.

On June 24, 1983, the United States released its most comprehensive evaluation of the South African situation in nearly two years. It was an effort to counter criticism that the Administration had been "too soft" and had been "offering too many carrots" to the Republic [170]. In a strongly worded speech, Laurence S. Eagleburger, Under Secretary of State for Political Affairs, characterized the South African political system as "morally wrong" [171]. He went on to say that the United States "stand[s] against injustice, and therefore ... must reject the legal and political premises and consequences of apartheid" [172]. He attacked the South African government's "attempts to denationalize the black South African majority" and the "repression of organizations and individuals by means of Administrative measures like banning and detention without due process of law" [173].

Prime Minister Botha responded to Eagleburger's criticisms by accusing the United States of attempting to "dictate to South Africa how blacks ... should be governed there" [174]. Botha also pointed out the "central misconception"
of U.S. policy in South Africa [175]. According to Botha, the Reagan Adminis-
tration acts upon the presumption that the Republic is a unitary state con-
sisting of a South African nation with a “Black majority” and a “White
minority” [176].

This recent dialogue reveals the limitations of any policy relying upon
communication and constructive criticism of South Africa’s policies. A “meet-
ting of the minds” is impossible when there is no agreement on basic working
assumptions. David Welsh, a political scientist at the University of Cape
Town, summarized the problem:

South Africa in many important respects has abused “constructive engagement” by using it
as an umbrella to do what they damn well like in the region and get off with, at worst, a
wrist-slapping from Washington. If the bottom line of “constructive engagement” is, as it
must be, real change inside South Africa, then you can forget it [177].

Not only has the policy of constructive engagement failed to achieve its
objectives, but it may have adverse consequences for long-term relations
between the United States and South Africa. Franklin H. Williams, President
of the Phelps-Stokes Fund, an educational institution, stated, “The ultimate
folly of such a policy [constructive engagement] for the United States is that
favor is being won with the wrong people. The so-called reforms applauded by
the Reagan Administration are merely cosmetic changes in a system deeply
entrenched and jealously guarded by ‘white’ South Africa” [178]. One U.S.
foundation analyst working in South Africa reported, “anti-Americanism is
slopping over everything .... I have found it much more difficult to work in
South Africa since the Reagan Administration took office. The United States
has never been on the right side of the black community, but this [policy shift]
has made things worse” [179]. American approval of the constitutional provi-
sions has served to exacerbate an already shaky relationship [180].

Congress, too, has become disenchanted with the Reagan Administration’s
policy [181]. The passage of the Constitution and the remarks of Prime
Minister Botha have heightened concern. Representative Stephen J. Solarz (D.
N.Y.), Chairman of the Subcommittee on African Affairs, asserted that Botha’s
denial of a fundamental realignment of Nationalist Party thinking “shows the
South African government has no intention of fundamentally changing the
apartheid system and that the Administration is naive to think otherwise”
[182]. “Constructive engagement,” Solarz concluded, has “turned out to be the
flop and failure we always thought it would be...” [183]. Representative
Howard Wolpe concurred, stating, “Constructive engagement has unintention-
ally reinforced South Africa’s segregationist policies and caused an increase in
domestic repression” [184].

While there has been harsh criticism of constructive engagement, there is
little consensus regarding alternative U.S. policy [185]. The United States has
significant interests in the region including (1) assuring long-term access to strategic minerals [186]; (2) foreclosing Soviet influence [187]; (3) preserving the Cape Sea route [188]; (4) maintaining commercial relations with South Africa and the rest of Africa [189]; and (5) supporting human rights and human dignity. The U.S. government has assumed until now that these objectives would best be served by supporting the White minority government and attempting to encourage reforms that would not upset the stability of the region. The outspoken criticism of Black leaders, the increasing incidence of domestic violence, and the mounting dissatisfaction with the Sullivan Principles and other economic reform measures, however, casts doubt upon the professed rationale for continued U.S. involvement.

The U.S. government may pursue two policy options in South Africa. The government can acknowledge the structural limitations of constructive engagement, and, if it is committed to abolishing apartheid, apply increasing levels of pressure against the South African government. Such measures would include export and loan restrictions, conditioning U.S. business operations in South Africa upon compliance with the Sullivan Principles, and, if necessary, divestiture. On the other hand, if the U.S. government is committed to a less activist foreign policy stance, it must ensure that voters and shareholders receive complete and accurate information. While the Reagan Administration has generally followed a "hands off" attitude toward investment and trade, distortions and omissions of critical information have disabled the American public from objectively evaluating U.S. involvement in South Africa.
Notes


1. Nonsegregation of the races in all eating, comfort, locker room and work facilities.
2. Equal and fair employment practices for all employees.
3. Equal pay for all employees doing equal or comparable work for the same period of time.
4. Initiation and development of training programs that will prepare blacks, colored (mixed races) and Asians in substantial numbers for supervisory, administrative, clerical and technical jobs.
5. Increasing the number of blacks, coloreds and Asians in management and supervisory positions.
6. Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation and health facilities.

This version of the Sullivan Principles is reprinted in Time Running Out, infra note 36, at 462–64.

[4] Apartheid literally means "separateness" in Afrikaans. Webster's Third New International Dictionary 98 (1976). As used in this Comment, apartheid will refer to a racially based policy of segregation and political and economic discrimination against nonwhites. The philosophy of apartheid was first officially announced by the nationalist Party of Prime Minister Daniel Malan in 1948. Barry Dean, Professor of Law at the University of Cape Town, has defined apartheid as "the negation of equality before the law." The Star, Nov. 29, 1978, at 10.


[10] Id. at 12.


[17] See, e.g., id. (In 1980, forty-five shareholder resolutions were proposed to thirty-seven corporations with respect to employment practices, sales, loans, and investments in South Africa.)

[18] Id. at 68.

[19] Id.


[21] Slambrouck, Southern Africa: Can U.S. Policies Influence Change?, Christian Sci. Monitor, Feb. 21, 1984, at 25; Cowell, Does Withdrawing Investment Hurt Apartheid?, N.Y. Times, Oct. 28, 1984, at 18. Direct investment is defined as “all investment in which U.S. investors have an effective voice in the management of the overseas operation.” Hero, supra note 16, at 50. The U.S. Department of Commerce characterizes an investment as direct if the U.S. investor holds 10 percent or more of the outstanding shares of the overseas affiliate and has the right to nominate one or more directors. Id.

[22] Cowell, supra note 21, at 18.


[24] Id. at 53.

[25] Id.

[26] A Fresh Look at South Africa, supra note 9, at 10–11. The rand (R) is the South African unit of currency. At the end of 1980, U.S. $1 equalled approximately R 0.74 and R 1 equalled approximately U.S. $1.34. At the time of this Comment, U.S. $1 equalled approximately R1.7778 and 1 R equalled approximately $0.5625. Wall St. J., Oct. 24, 1984, at 57.

[27] A Fresh Look at South Africa, supra note 9, at 42.

South Africa’s foreign trade (R million)

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</thead>
<tbody>
<tr>
<td>US</td>
<td>1,239.1</td>
<td>1,952.1</td>
<td>2,655.3</td>
<td>1,410.2</td>
<td>1,648.0</td>
<td>1,519.9</td>
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<tr>
<td>Germany</td>
<td>1,308.4</td>
<td>1,860.2</td>
<td>2,365.8</td>
<td>930.7</td>
<td>977.8</td>
<td>775.1</td>
</tr>
<tr>
<td>UK</td>
<td>1,252.8</td>
<td>1,738.7</td>
<td>2,161.2</td>
<td>990.7</td>
<td>1,384.5</td>
<td>1,193.0</td>
</tr>
<tr>
<td>Japan</td>
<td>800.3</td>
<td>1,290.7</td>
<td>1,961.8</td>
<td>958.4</td>
<td>1,205.8</td>
<td>1,409.7</td>
</tr>
<tr>
<td>France</td>
<td>470.6</td>
<td>541.8</td>
<td>877.4</td>
<td>351.8</td>
<td>407.1</td>
<td>458.2</td>
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<tr>
<td>Italy</td>
<td>250.7</td>
<td>439.4</td>
<td>633.1</td>
<td>346.5</td>
<td>382.3</td>
<td>381.7</td>
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<tr>
<td>Switz.</td>
<td>181.6</td>
<td>238.9</td>
<td>314.5</td>
<td>1,506.9</td>
<td>1,239.9</td>
<td>1,155.3</td>
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<tr>
<td>N’lands</td>
<td>157.7</td>
<td>196.8</td>
<td>254.4</td>
<td>220.1</td>
<td>241.9</td>
<td>235.0</td>
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<tr>
<td>Belgium</td>
<td>131.4</td>
<td>171.2</td>
<td>247.1</td>
<td>307.1</td>
<td>318.7</td>
<td>309.7</td>
</tr>
<tr>
<td>Taiwan</td>
<td>60.1</td>
<td>109.5</td>
<td>228.3</td>
<td>115.5</td>
<td>167.1</td>
<td>192.7</td>
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<tr>
<td>Canada</td>
<td>95.4</td>
<td>138.8</td>
<td>216.4</td>
<td>171.9</td>
<td>205.2</td>
<td>204.8</td>
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<tr>
<td>Sweden</td>
<td>101.7</td>
<td>144.2</td>
<td>179.0</td>
<td>22.5</td>
<td>18.8</td>
<td>26.5</td>
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<tr>
<td>H/Kong</td>
<td>59.0</td>
<td>101.3</td>
<td>177.1</td>
<td>185.3</td>
<td>223.8</td>
<td>167.9</td>
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<tr>
<td>Austr.</td>
<td>65.2</td>
<td>98.9</td>
<td>148.8</td>
<td>73.5</td>
<td>86.0</td>
<td>91.9</td>
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<td>Brazil</td>
<td>48.3</td>
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<td>115.0</td>
<td>111.8</td>
<td>133.0</td>
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<td>Israel</td>
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<td>47.9</td>
<td>71.2</td>
<td>98.4</td>
<td>73.9</td>
<td>64.5</td>
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</table>
[29] 1980 Hearings, supra note 6, at 54.
[34] Id.
[48] Id.
[52] Id. (this calculation is made using a standard multiplier of three).
[53] Id.
[54] See, e.g., 1980 Hearings, supra note 6, at 408–14 (statement by Donald Taylor, President and Chief Operating Officer of Rexnord); cf. Cowell, supra note 21, at 18 (“The influence of U.S. companies in changing the character of South African society has been significant.”) (quoting the American Chamber of Commerce in South Africa).


[64] *See, e.g., 1978 Hearings*, supra note 13, at 71 (statement by B. Lyle Shafer, Vice-President, Corporate Personnel Resources, NCR Corp.).

[66] *Id.*

[67] *Id.; see also 1980 Hearings*, supra note 6, at 386 (statement by William Broderick, Director, International Governmental Affairs, Ford Motor Company).

[69] *See, e.g., 1980 Hearings*, supra note 6, at 386 (William Broderick, Director, International Governmental Affairs, Ford Motor Company) (“The course of South African policy in the future, as in the past, will be determined far more by ... internal factors than by outside forces.”).

[70] *See, e.g., 1978 Hearings*, supra note 13, at 71 (statement by B. Lyle Shafer, Vice President for Corporate Personnel Resources, NCR Corporation); *see also Weigand, Invest in South Africa*, N.Y. Times, June 24, 1983, at A25 [hereinafter cited as Weigand].

[71] *See, e.g., 1978 Hearings*, supra note 13, at 68–69 (statement of William C. Norris); *id.* at 98 (statement by John Holmes, Jr., Director of Personnel, Overseas Operations Division, General Motors Corporation); R. Bissell, South Africa and the United States: The Erosion of an Influence Relationship 82 (1982); Myers, *supra* note 32, at 141; Elbinger, Are Sullivan Principles Folly in South Africa?, 1979 Bus. & Soc'y Rev. 35, 40. Cf. *1980 Hearings*, supra note 4, at 619–20 (Freddie Sols, an organizer for Coloured and Black workers in the Port Elizabeth auto industry) (“It's all very well for people to urge disinvestment who sit in comfort in a nice office 8,000 miles away. But if the American auto plants were closed down, I would have thousands of men looking for work and wondering where the next meal would come from.”).

[73] *See id.*

[75] *Id.*

Distribution in provinces and Black national states of South Africa. 1980 (in thousands)

<table>
<thead>
<tr>
<th>POPULATION GROUP</th>
<th>Total</th>
<th>Asians</th>
<th>Blacks</th>
<th>Coloureds</th>
<th>Whites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Province</td>
<td>5,091</td>
<td>28</td>
<td>1,569</td>
<td>2,226</td>
<td>1,264</td>
</tr>
<tr>
<td>Natal</td>
<td>2,676</td>
<td>663</td>
<td>1,358</td>
<td>91</td>
<td>562</td>
</tr>
<tr>
<td>Transvaal</td>
<td>8,351</td>
<td>108</td>
<td>5,645</td>
<td>228</td>
<td>2,362</td>
</tr>
<tr>
<td>OFS</td>
<td>1,932</td>
<td></td>
<td>1,550</td>
<td>56</td>
<td>326</td>
</tr>
<tr>
<td>Subtotal: White Areas</td>
<td>18,050 *</td>
<td>798 *</td>
<td>1,012 *</td>
<td>2,601</td>
<td>4,514 *</td>
</tr>
<tr>
<td>Subtotal: ** Black National States</td>
<td>6,836</td>
<td>8</td>
<td>6,802</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>TOTAL: South Africa</td>
<td>24,886 *</td>
<td>806 *</td>
<td>16,924 *</td>
<td>2,613 *</td>
<td>4,528 *</td>
</tr>
</tbody>
</table>

* These and similar differences due to rounding off.
** Including the Republic of Ciskei.
[76] Nickel, supra note 46, at 60, 61.
[77] See id.
[78] See supra note 3.
[81] Religious Leaders' Resolutions, supra note 80.
[82] See id.
[84] See Myers, supra note 32, 85-87 (Wally Grobblar, head of the Artisan Staff Association of the Railway Workers, stated in October 1978 that training (indenturing) Africans would be "over the dead body" of his rank and file).
[87] See 1978 Hearings, supra note 13, at 27 (statement of Richard L. Sklar, professor of political science, University of California at Los Angeles). Contra N.Y. Times, Nov. 6, 1983, at F8 (Meg Voorhees of the Investor Responsibility Research Center) ("Some American companies have influenced or set precedents for the rest of the South African business community.").
[88] Rogers, supra note 40, at 66-67. For additional information addressing the difficulty of evaluating company wage levels in South Africa, see Myers, supra note 32, at 112-24.
[89] Myers, supra note 32, at 123.
[90] See, e.g., Schmidt, supra note 1, at 22; Nickel, supra note 46, at 72.
[91] See Nickel, supra note 46, at 72.
[92] See, e.g., 1980 Hearings, supra note 6, at 622-25 (statement of Reverend M. William Howard, President, National Council of Churches of Christ in the U.S.A.) (rejecting Sullivan Principles); 1978 Hearings, supra note 13, at 428 (statement of Randall Robinson, Executive Director, Transafrica) ("We do not believe the Canadian Code, the EEC Code, or the Sullivan principles will in effect do anything more than cosmetically disguise the face of apartheid."); Cowell, supra note 21, at 18 (Dumisani Kumalo, the projects director of the American Committee on Africa, a principal divestment group in New York, stated that the Principles did not address the fundamental issues of apartheid. He noted:

While it is good that at a Ford plant, black workers are being trained to do some jobs which they did not do before, being paid more, working conditions are improved. That's commendable. But when they leave the plant, they are back in South Africa where being black is a crime.

Morlan, Sullivan Code -- Cleaning Up the Corporate Image, Southern Africa, Dec. 7, 1979, at 14 ("The Sullivan Principles provided precisely what the companies were looking for: a guaranteed public relations success which promised maximum credit for minimum change. The Principles were impressive. They mandate nothing, and there is no way they can be effectively enforced.").
[94] 1980 Hearings, supra note 6, at 447.

[96] Propp & Myers, supra note 95, at 16.
[99] The term "Coloured," as used in this Comment, denotes South Africans of mixed race, mainly of African-European descent. A Coloured person is sometimes referred to as one who is not a White or an African, a definition that can include Indians and Asians. For a more precise legal definition of the racial classification system, see Population Registration Act 30 of 1950 (S. Afr.).
[110]
A diagrammatic representation of South Africa's new constitution. The tricameral Parliament will consist of 308 members. Each of the three Houses will deal exclusively with measures affecting their population groups.

Esterhuyse, supra note 98, at 5. See infra notes 97–144 and accompanying text.

[113] S. Afr. Const. § 16(1)(a) states:

any question arising in the application of this Act as to whether any particular matters are own affairs of a population group shall be decided by the State President, who shall do so in such manner that the governmental institutions serving the interests of such population group are not by the decision enabled to affect the interests of any other population group, irrespective of whether or not it is defined as a population group in this Act.

[117] S. Afr. Const. § 18(2). Neither a Minister's Council nor a particular house of Parliament may contest the State President's decision. Under S. Afr. Const. § 18(1), the Supreme Court's review is limited to ascertaining whether the proper procedural provisions regarding the decision were followed.
[124] Id.
[126] Id. See generally Esterhuyse, supra note 98, at 6–7.
[128] See S. Afr. Const. §§ 70(1)(a), (b), (c), and (d). See supra note 110.
[129] See S. Afr. Const. § 32 in conjunction with § 78.
[132] Id.
[134] Id.
[135] Id.
[139] Group Areas Act 36 of 1966 (S. Afr.) (legislation governing ownership and occupation in specific geographic areas according to race). The Group Areas Act of 1950 applied to members of all racial groups and provided for the imposition of control over the ownership and occupation of land and buildings throughout South Africa except in African homelands, African townships, and Coloured reserves, which were dealt with under separate legislation. For further information regarding the enforcement of the Group Areas Act, see Special Report of the Director-General of the Application of the Declaration Concerning the Policy of Apartheid in South Africa, Interna-
tional Labour Conference 32 (60th Sess., 1983) (hereinafter cited as 1983 Labour Report). By the end of 1983, the Group Areas Act had removed 125,082 families from their property while 7,473 families remained to be moved. This figure reflected an increase of 8,632 families moved over the figure for September 1982. The Cape Times, Mar. 9, 1984, at 3. See also Reservation of Separate Amenities Act 49 of 1953 (S. Afr.) (act provided for separate buildings, services, and conveniences for people of different racial groups and stipulated that such provisions, whether past or future, could not be ruled invalid on the grounds that provision had not been made for all races, or that separate facilities provided for the various groups were not substantially equal).

[140] Native Laws Amendment Act of 1952 (S. Afr.) (any Black born in South Africa is restricted to a seventy-two hour visitation period in any urban area unless a special permit has been obtained). Admission of Persons to the Republic Regulation Act 59 of 1972 (S. Afr.) (deportation without trial for persons not entitled to be in the Republic). The Chairman of the Western Cape Administration Board stated that his officials, in addition to the police, were arresting up to 70 persons per day for reference book and influx control offenses; see also 43 Institute of Race Relations: Race Relations News 2 (No. 5, June 1981) (Johannesburg). Similar restrictions were enforced against Blacks in the Johannesburg area where, in the first six months of 1981, 19,704 persons were tried and 10,250 convicted of influx control offenses. Courts dealt with an average of 87 cases daily. House of Assembly debates: Questions and Replies, 7th Parliament, 1st Sess. No. 3, col. 115 (Aug. 17–21, 1981), reprinted in Hansard.

[141] Immorality Act 23 of 1957 (S. Afr.) (an offense for Coloured persons, defined broadly as "any person other than a White person," and White persons, to have sexual relations with persons of the opposite sex and of a different race). Prohibition of Mixed Marriages Act (S. Afr.) (an offense for nonwhites and Whites to marry).

[142] See Suppression of Communism Act (S. Afr.) (Internal Security Act 74 of 1982); Riotous Assembly Act; Control of Meeting of Africans (S. Afr.). Under Proclamation R. 268 of 1968, it is an "offense throughout the country, except with official permission, to hold, preside at, or address any gathering in a Bantu area at which more than ten Africans were present"; Listing and Banning of Persons (Persons banned from social gatherings are, in practice, not allowed to be in the company of more than one other person at a time, for social purposes. The Magistrate might also prohibit a person, during a specific period, from being within or absenting himself from any place or area mentioned in the order. It is an offense to record, publish, or disseminate any speech, utterance, or writing made at any time by persons who have been prohibited from attending gatherings unless with the Magistrates' consent or for the purpose of proceedings in any court of law.). Section 29(1) of the Bantu Administration Act, 1927, amended 1974 (S. Afr.), provides that "any person who utters words or performs any other act with intent to cause, encourage or foment feelings of hostility between different population groups of the Republic shall be guilty of an offense."


[156] Id.


[160] Id.


[164] Id. at A11; see also Wash. Post, Apr. 8, 1984, at CS; Christian Sci. Monitor, June 8, 1984, at 20–21.

[165] See N.Y. Times, Oct. 9, 1983, at A12 (Prime Minister Botha stated, “I’ve never looked upon it [the Constitution] as a new departure. I wouldn’t have stayed in the National Party, which I have served for more than an ordinary lifetime, if I thought that the party was departing from its basic principles.”).


[172] Id.

[173] Id. at A7.


[175] Id.

[176] Id.


[180] See id.


[184] Id.


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