

Institutional Hearing: Business and Labour

• INTRODUCTION

- 1 At the heart of the business and labour hearings lay the complex power relations of apartheid, the legacy of which continues to afflict the post-apartheid society. These include the consequences of job reservation, influx control, wages, unequal access to resources, migrant labour and the hostel system. Adjacent to these historic developments were industrial unrest, strikes and the struggle for the right to organise trade unions.
- 2 The hearings illuminated the widely divergent perspectives of different sectors of the economy. Sharp differences emerged over the role business played or failed to play in the apartheid years. Questions were raised as to whether business had been involved in the violation of human rights, how business related to the state and whether or not business benefited from apartheid. In the process, the very premise of business as a homogeneous entity was questioned.
- 3 Differences also emerged between businesses in different sectors of the economy: between businesses of different sizes, between predominantly white-led business and predominantly black-led business organisations and, most dramatically, between representatives of employers and trade unions.
- 4 While the Commission had called for evidence relating to the period 1960 to 1994, the vast bulk of the evidence led at the hearing dated from the late 1970s onwards. This was to be expected, given that many of the individuals involved were not active in the 1960s.
- 5 Only the white Mineworkers' Union and the South African Agricultural Union refused to participate. A few (most notably the National Council of Trade Unions or NACTU) failed to provide their promised submissions. Others did not respond to the invitation. Most notable amongst these were the multinational oil corporations (which were the largest foreign investors in South Africa) and predominantly white labour organisations, such as the Typographical Union, the Public Servants Association and the United Workers Union of South Africa.

• CULPABILITY, COLLABORATION AND INVOLVEMENT

- 6 From amongst the various different perceptions of the relationship between business and apartheid, two dominant positions emerged at the hearing. One view, which sees apartheid as part of a system of racial-capitalism, held that apartheid was beneficial for (white) business because it was an integral part of a system premised on the exploitation

of black workers and the destruction of black entrepreneurial activity. According to this argument, business as a whole benefited from the system, although some sections of the business community (most notably Afrikaner capital, the mining houses and the armaments industry) benefited more than others did. This position is most clearly articulated in submissions by the African National Congress (ANC), the South African Communist Party (SACP), the Congress of South African Trade Unions (COSATU), Professor Sampie Terreblanche of the University of Stellenbosch and the Black Management Forum (BMF).

- 7 The other position, argued mainly by business, claims that apartheid raised the costs of doing business, eroded South Africa's skill base and undermined long-term productivity and growth. In this view, the impact of apartheid was to harm the economy. This argument was most clearly discernible in submissions from:
 - a business organisations such as the Steel and Engineering Industries Federation of South Africa (SEIFSA), the South African Chamber of Business (SACOB), the Afrikaner Handelsinstituut (AHI), the Council of South African Banks (COSAB), the Textile Federation and the Johannesburg Chamber of Commerce and Industry;
 - b specific companies and corporations such as South African Breweries (SAB), the Anglo American Corporation, Old Mutual and Tongaat-Hulett;
 - c corporate executives such as Mike Rosholt of Barlow Rand and Anton Rupert of Rembrandt International.
- 8 These opposing arguments mirror a long-standing debate over the relationship between apartheid and capitalism.¹ What was of relevance to the task facing the Commission was that these contrasting accounts imply different notions of accountability. If, for example, one assumes that apartheid placed obstacles in the path of profitability, then business as a whole is cast more as a victim of the system than as a partner or collaborator. According to this construct, the essential question to be asked of business is why it did not do more to hasten the demise of apartheid - both through pressure on the state and through progressive actions at company or community levels. In other words, why did business not protest more loudly? Why did it not support the demands of black workers for wage increases and resist migratory labour practices?
- 9 Alternatively, the analysis of the ANC, COSATU and the SACP seems to imply that the involvement of business in the racial capitalism system of apartheid was such, and the benefits so great, that it would not have been in its interest to take issue with apartheid.
- 10 These questions are typically answered in two ways. The predominant approach is to point to instances where business objected to apartheid policies and in other ways promoted political change, and to highlight its contributions through social responsibility investments, its support for the Urban Foundation, the Small Business Development Corporation and various non-governmental organisations. The other approach is to point out that, by creating jobs and generating wealth, business improved living standards and created the conditions for successful political transition.
- 11 In addressing the question of business participation in human rights violations, most business submissions took the view that such abuses required active, deliberate participation by individuals. Thus, Old Mutual stated in its opening paragraph that:

In principle, the mandate of the Commission which focuses on gross violations of human rights would almost certainly exclude Old Mutual from having to make any submission.

12 This view was echoed in other submissions.

13 As far as the business community was concerned, its purpose in participating in the Commission was to promote understanding of the role of business under apartheid and to explore areas where businesses failed to press for change – both at a political and at an organisational level. Failure to act quickly or adequately on the political front was regarded as an error of omission. Failure to adjust employment practices was likewise regarded as regrettable, but not amounting to a gross human rights violation.

14 Tongaat-Hulett expresses it thus:

On occasions, there may have been isolated incidents of 'ill treatment' of employees by individual managers, as was unfortunately true of many institutions and business in South Africa over the past forty years. In certain cases, too, management may have been guilty of 'turning a blind eye', for example, to treatment meted out by supervisors to lower-graded (mainly black) workers. This may have been done under the implicit assumption of most whites during the times that the level of human rights that might be enjoyed by different groups was racially differentiated. Combined with possible implicit class prejudice, this may have resulted in certain forms of ill treatment of workers (for example through separate facilities, job reservation and so forth) - not gross violations of human rights as defined by the Commission - but ill treatment all the same.

15 In contrast, the BMF regards precisely such forms of ill treatment as human rights violations:

The human rights violations by business are seen as those policies, practices and conventions which denied black people the full utilisation of their potential, resulting in deprivation, poverty and poor quality of life, and which attacked and threatened to injure their self-respect, dignity and well-being. Certain of these violations were open abuses, whilst some were indirect; yet others buttressed those carried out at a socio-political level.

16 In brief, the white business perspective sees apartheid as a set of politically inspired, economically irrational policies that were imposed on (and undermined) the economy. Those critical of business during the period under review by the Commission, on the other hand, emphasise the inherent link between apartheid and capitalism – refusing to allow for any sharp analytical distinction between the economic and political spheres. As the ANC puts it:

Apartheid was more than a programme of one political party. It was a system of racial minority rule that was both rooted in and sustained by white minority socio-economic privilege at the expense of the historically oppressed black majority. Apartheid was associated with a highly unequal distribution of income, wealth and opportunity that largely corresponded to the racial structure of society.

It is our contention that the historically privileged business community as a whole must accept and acknowledge that its current position in the economy, its wealth, power and access to high income and status positions are the product, in part at least, of discrimination and oppression directed against the black majority. While some of

the important business organisations and groups opposed some of the laws introduced by successive apartheid governments, a number of core discriminatory laws were both actively sought and tolerated by business.

Historically privileged business as a whole must, therefore, accept a degree of co-responsibility for its role in sustaining the apartheid system of discrimination and oppression over many years.

17 The COSATU submission went further:

We remain of the view that apartheid, with its form of institutionalised racism, masked its real content and substance – the perpetuation of a super-exploitative cheap labour system. We all know that the primary victims of this system were the black working class and the primary beneficiaries the white ruling elite.

18 The SACP draws out the implications of this for the business argument:

The idea that the private sector's chief sin ... was that it failed to 'speak out against a system that was against economic logic' is spurious. Capitalism in South Africa was built and sustained precisely on the basis of the systematic racial oppression of the majority of our people.

In presenting the apartheid political economy as an integrated and coherent system of racial capitalism, the struggle against capitalist oppression is twinned with that for democratisation. Resisting the growth of black trade unionism, and calling in the police during strikes, is thus seen as evidence of collaboration with the apartheid system against democratisation.

19 The link between trade union struggles and the democratic movement is clearly discernible in the following excerpt from the ANC's submission:

At decisive moments in the re-emergence of the democratic movement, business' initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime's security forces. The first reaction to a strike or attempt by unions to organise workers was all too often to call on the police. Many violations of human rights occurred as a consequence.

Given the major role played by the independent black trade union movement in fighting apartheid, the struggle for trade union rights and democracy were often indistinguishable. The overlap was not exact, while finding coherence to the extent that both the refusal to recognise trade unions on the grounds of race and the denial of franchise both constitute human rights violations. The struggle for trade union rights, for better working conditions and for democracy, in turn, led to a host of specific gross human rights violations that are the direct concern of the Commission.

It was certainly the perception of most black workers that big business was in bed with the government. The role that business, either directly or indirectly, played in shaping apartheid policies, collaborating with agents of the state and benefiting from the system, implies a level of moral culpability which simply cannot be ignored.

- 20 Evidence of different levels of collaboration emerged in the Commission's hearings on business and labour. On the one level, business is charged with direct collaboration (most notably with the security establishment). On the other, business is charged with implicitly collaborating with the state by doing business with it, paying taxes and promoting economic growth. Professor Sampie Terreblanche argues that:

Business should acknowledge explicitly, and without reservation, that the power structures underpinning white supremacy and racial capitalism for 100 years were of such a nature that whites have been undeservedly enriched and people other than whites undeservedly impoverished.

These forms of collaboration create and promote a context that leads to the systematic execution of gross human rights violations. It contributes to the emergence of an economic and political structure – a culture and a system which gives rise to and condones certain patterns of behaviour.

- 21 The COSATU submission argues that:

Indeed, the historical record does not support business claims of non- collaboration. A vast body of evidence points to a central role for business interests in the elaboration, adoption, implementation and modification of apartheid policies throughout its dismal history. The South African Police and Defence Force were armed and equipped by big business. Apartheid's jails were constructed by big business, as were the buildings housing the vast apartheid bureaucracy. Apartheid's labour laws, pass laws, forced removals and cheap labour system were all to the advantage of the business community.

- 22 Major Craig Williamson (a former security police spy) expressed a similar understanding of collaboration by pointing to systemic links between the economy, civil society and apartheid:

Our weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. Our finances and banking were done by bankers who even gave us covert credit cards for covert operations. Our chaplains prayed for our victory and our universities educated us in war. Our propaganda was carried by the media and our political masters were voted back into power time after time with ever increasing majorities.²

First order involvement

- 23 To the extent that business played a central role in helping to design and implement apartheid policies, it must be held accountable. This applies particularly to the mining industry which, for this reason, is dealt with in some detail below. Direct involvement with the state in the formulation of oppressive policies or practices that resulted in low labour costs (or otherwise boosted profits) can be described as first-order involvement. This is clearly of a different moral order to simply benefiting from such policies. Businesses that were involved in this way must be held responsible and accountable for the suffering that resulted. Furthermore, to the extent that subsequent capital accumulation was boosted beyond that which would have occurred in the absence of such policies, the moral basis of such wealth must be questioned – a matter that is dealt with in the recommendations.

- 24 Other forms of involvement are more difficult to deal with because the argument shifts from accusing business of active design to accusing it of profiting from the system.
- 25 One could adopt a stance that argues that any business operating in South Africa was tainted by apartheid, and that the intentions of individual businesses are irrelevant to the argument. The Apartheid Debt Co-ordinating Committee makes such a case with regard to loans:

A large number of inter-bank loans, for instance, had no direct connection with apartheid. Yet, the foreign exchange given for a seemingly innocuous purpose – ranging from the development of ESKOM [Electricity Supply Commission] to the financing of a domestic home – was recycled as part of apartheid's sanctions-busting strategy. Similarly, some foreign loans were used for purposes of international trade and, in this respect, were no different from those regularly found throughout the world. Yet, even the seemingly most pristine of these trade loans were tainted by apartheid. The simple fact of trade with South Africa inescapably meant helping to sustain and reproduce the structures, practices and lifestyles normalised by apartheid. No loan could avoid this institutional contamination.

Second order involvement

- 26 However, a distinction needs to be made between those businesses that made their money by engaging directly in activities that promoted state repression and those whose business dealings could not have been reasonably expected to contribute directly or subsequently to repression. Businesses that provided armoured vehicles to the police during the mid-1980s would fall into the former category – so-called second-order involvement – whereas those building houses for state employees would need to be viewed differently.
- 27 As is the case with first-order involvement, those who made their money through second-order involvement clearly have more to answer for than did those who made their money in other business activities. The argument is that, as entrepreneurs, they could have chosen not to engage in such business – allocating their capital and energies elsewhere.
- 28 Second-order involvement hinges to some extent on people *knowing* that their products or services would be used for morally unacceptable purposes. Consider the example provided by Major Williamson – that banks provided the police with covert credit cards. A bank that provides a covert credit card to the police to help them with, say, investigations into white-collar fraud, is in a different position to one which knowingly provides covert credit cards to death squads to help them lure their victims. Some covert activities are more acceptable than are others. Covert credit cards and other banking facilities are, no doubt, still provided by banks to the police to help with their investigations of white-collar crime.
- 29 COSAB acknowledged that being a bank “inevitably” meant doing business with a variety of bodies that were an integral part of the apartheid system. All financial institutions were required to hold government and parastatal securities.

It would have been as impossible then, as it is now, to comply with the banking regulations without effectively doing business with government agencies.

- 30 So, banks were “knowingly or unknowingly” involved in providing banking services and lending to the apartheid government and its agencies. They were similarly involved in the movement of funds from overseas donors to organisations resisting apartheid.
- 31 The fact, however, that a former spy and Civil Co-operation Bureau (CCB) operative referred to the use that was made of covert credit cards cannot be ignored. The particular banker involved may not have had direct knowledge of why specific cards were being used. However, there was no obvious attempt on the part of the banking industry to investigate or stop the use being made of their facilities in an environment that was rife with gross human rights violations.

Third order involvement

- 32 Finally, one can categorise third-order involvement as ordinary business activities that benefited indirectly by virtue of operating within the racially structured context of an apartheid society. Condemning such businesses suggests that all who prospered under apartheid have something to answer for, in that they took advantage of a situation which depressed the earnings of black South Africans, whilst boosting their own. Taken to its logical conclusion, this argument would need to extend also to those businesses that bankrolled opposition parties and funded resistance movements against apartheid. Clearly not all businesses can be tarred with the same brush.
- 33 The issue of third-order involvement does, however, highlight the fact that the current distribution of wealth (which is substantially concentrated in white hands) is a product of business activity that took place under an apartheid system that favoured whites. This acts as a counterbalance to statements by business that apartheid harmed them, a reminder that white business accumulated (sometimes vast amounts of) wealth in spite of this alleged harm. It also raises the question about the need for business as a whole to commit itself to narrowing the gap between the rich and the poor – a matter that is addressed later in this chapter.
- 34 Some of the business submissions grappled with the issue of third-order involvement by asking themselves whether, by merely doing business under apartheid, they were in some sense supporting the system. The Textile Federation, for example, pointed to its only direct link with the state, namely through government clothing contracts. Old Mutual noted that, by paying taxes and investing in government stock, it might possibly have contributed in some very indirect way.
- 35 COSAB, while expressing regret for acts of omission and commission committed by its members that contributed to the damage caused by apartheid, pointed to an intimate involvement by the banking industry in the structures of apartheid:

By the very nature of their business, banks were involved in every aspect of commerce during the apartheid years. Without them, government and the economy would have come to a standstill. But it would have been an ‘all or nothing’ decision. There could have been no halfway position. Either you are in the business of banking, or you are not. It does not lie in the mouth of a bank to say that it will accept the instruction of its client to pay one person but not another.

- 36 Against the above analysis, this chapter (which deals exclusively with the private sector) explores some of the moral issues raised in submissions on the role of business under apartheid.

A note on the role of parastatal organisations

- 37 Information was also provided to the Commission on the role of economic institutions such as the South African Reserve Bank (SARB) and parastatal bodies such as the Land Bank, the Development Bank of Southern Africa (DBSA), and the Electricity Supply Commission (ESKOM). This sheds light on how these institutions shaped the environment within which private business decisions were made (ESKOM, the SARB) and functioned as a financial arm of apartheid (Land Bank and the DBSA).

- 38 ESKOM, which supplies some of the world's cheapest electricity, explained how the electricity supply reflected the peculiarities of apartheid:

This often caused separation of naturally integrated networks or the creation of new networks irrespective of costs ... Black areas were often left with no electricity services ... In certain instances electrified black areas subsidised neighbouring white areas.

- 39 The Land Bank pointed out that government policy:

narrowed the bank's scope for granting loans and excluded the large segment of the South African population. Although not wilfully, the bank was indirectly supportive towards the prevailing inequality around land distribution and farming opportunities.

- 40 'The DBSA made a similar argument, pointing to the way in which its operations (particularly in the homelands) were "immediately framed within an apartheid political context". The DBSA submission noted, however, that it experienced ongoing tension between its development role and the political context within which it operated. It nevertheless accepted that it was "an integral part of the system and part and parcel of the apartheid gross violation of human rights."

- 41 The Commission was gratified to learn of the transformation that had occurred in these organisations (most notably the Land Bank and the DBSA), paving the way for a constructive role in post-apartheid development. As these institutions are not part of the private business sector, they are discussed no further in this report.³

The agricultural sector

- 42 It was particularly regrettable that representatives of commercial agriculture did not participate in the hearing, despite an invitation to do so. Commercial agriculture has always been a fundamental component of business in South Africa and it is necessary to consider, if only briefly, its links with apartheid.

- 43 Like mining, agriculture has both shaped and been shaped by the racist structures of the political economy as it evolved both before and after 1948. Although the Commission's mandate begins only in 1960, it is clear that a proper understanding of this period requires an awareness of its historical roots. This requires recognition, at the very least,

of the Land Act of 1913⁴, as modified by subsequent legislation, including that of 1936. None of this was fundamentally repealed until 1991 which means that, throughout virtually the entire period of the Commission's brief, black South Africans were prohibited from owning land in most areas of the country. Although it is certainly true that white farmers represented a spectrum of political views, it seems safe to conclude that this legislative prohibition retained the strong support of the majority of farmers throughout the apartheid years.

- 44 This means that, at the very least, representatives of commercial agriculture need to acknowledge (not least to themselves) the extent to which white farmers and their families have benefited (irrespective of their political views) from their privileged access to the land, which excluded virtually all other potential farmers.
- 45 Along with control of the land, white farmers also benefited from control over the movement of people by means of pass laws, which placed enormous power in the hands of farmers with respect to living and working conditions, wages and the lives of black workers and their families living on the farms.
- 46 Similarly, it is evident that the state's policy of forcibly resettling into the impoverished homelands hundreds of thousands of black South Africans no longer needed on the increasingly mechanised, commercial farms was done, if not at the explicit request of the agricultural sector, certainly with its implicit support. Indeed, the nature of the precise link between commercial agriculture, the apartheid state and the infamous policies of resettlement as they were experienced by millions of South Africans during the 1960s, 1970s and 1980s is one that requires recognition and acknowledgement.⁵ Likewise, many farmers took advantage of the farm prison system, which provided them with free labour and resulted in many human rights abuses.⁶
- 47 Another critical area requiring deeper reflection by white farmers relates to the extent to which they failed – either by simple omission or through active hostility – to ensure better education for the children (other than their own) living on their farms. Education of farm children has long lagged notoriously behind even that education that was available for African and coloured children, either in the former 'homelands' or in the towns. This failure to educate children in a modern economy is itself a human rights abuse, for which the commercial farming sector must take at least some of the responsibility.

• COSTS AND BENEFITS OF APARTHEID

- 48 To understand the relationship between business and apartheid, it is helpful to explore the ways in which apartheid policies aided or hindered business, and to outline the role that business played in influencing apartheid legislation.
- 49 Business was not a monolithic block and it can be argued that no single relationship existed between business and apartheid. It is, however, also true that overwhelming economic power resided in a few major business groupings with huge bargaining power vis-à-vis the state. This power could have been more aggressively used to promote reform. The state, on the other hand, actively repressed black business, favoured Afrikaner capital (through access to contracts, licences, subsidies and so on), while apartheid labour policies benefited industries dependent on low-cost labour (mining and agriculture).

- 50 It could also be argued that apartheid was in some ways harmful to businesses with greater skill requirements. Most of the submissions pointed out that state-business relationships differed between economic sectors, according to size of firm and along language and ethnic lines. It is necessary, therefore, to adopt a differentiated approach, at least as regards the early apartheid period.

Afrikaner business

- 51 The English business sector drew attention to the special relationship between Afrikaner business and the National Party (NP) government. Anglo-American said that NP hostility prejudiced its ability to conduct business. Its bid for Samancor, for example, was nullified on political grounds.
- 52 SAB also complained of NP bias, which prejudiced its business both in the retail and liquor sector and in the wine and spirits industries:

English-speaking business leaders often felt marginalised under apartheid, having little or no influence over government policy ... In a real sense, such businesses were also victims of the system.

- 53 The life assurer SANLAM accepted that its Afrikaans origins “could have contributed to and facilitated cordial business relationships with government, especially after the NP came to power in 1948 ...” saying that, “successful marketing implies sound relationships with decision-makers.” However, apart from having easier access to government, SANLAM said, “it did not enjoy preferred status with the NP.” SANLAM claimed that it became the first large company to redress economic imbalances when it sold the life assurer Metropolitan Life to black investors in 1993. SANLAM also created a development fund to contribute to empowerment.
- 54 Professor Sampie Terreblanche agreed that the NP favoured Afrikaans business, for example through fishing quotas, mining and liquor concessions, government contracts and “all kinds of inside information”. In later years, however, this policy of Afrikaner favouritism was replaced with a policy of patronage towards those businesses that co-operated in the military industrial complex. In return for support, former State President PW Botha granted reforms proposed by the Wiehahn and Riekert Commissions, which allowed for significant changes to apartheid labour law and influx control. Terreblanche argues, however, that Mr Botha’s intention at all times “was to entrench and perpetuate white control”.
- 55 The ANC submission identified the “spectacular economic growth” of Afrikaner controlled companies like SANLAM and Volkskas, which were “especially favoured by the apartheid regime”. SANLAM’s assets rose from R30 million in 1948 to R3.1 billion in 1981, while companies over which it exercised effective control had assets worth R19.3 billion. The submission noted that Rembrandt (together with SANLAM and Volkskas) “were key players in the Afrikaner Broederbond” and “close confidants and advisers of political leaders of the apartheid state”.
- 56 The AHI was far more self-critical than other representative business organisations. It admitted that it had “committed major mistakes” in its support for separate development, its lack of moral and economic objections to apartheid, its insensitivity to issues involving human rights and its acceptance of the absence of a proper labour relations law. It accepted moral responsibility for this. It noted, however that:

Without in any way detracting from the AHI's willingness to accept responsibility for such pronouncements [in support of separate development], it must be noted that support for separate development was part and parcel of the majority of the white community's thinking at the time. The white Afrikaans churches, newspapers, cultural organisations and the wider community broadly subscribed to the notion that the separate development of South African population groups was seen as the best guarantee for overall justice and peace in the country. The AHI was part of that collective thinking. There were those who supported separate development because of the 'separateness', i.e. apartheid, in its crudest form. Others supported it for the promise of development, i.e. people could develop to their full potential but as different ethnic groups in their own areas. Hence, from the idealistic to the cynical, from the intellectual to the lay person, from the courageous to the threatened, from rich to poor, from agnostic to Christian - many found something in the collective thinking of separate development they thought worthy of support.

- 57 COSATU expressed a similar view to that of Terreblanche, contending that, while the NP government explicitly set out to nurture Afrikaner business, its overall policy climate created the conditions for the rapid accumulation of capital by white capitalists in all sectors of the economy.

Black business

- 58 As outlined in the submission by the National African Federated Chambers of Commerce (NAFCOC), the apartheid state systematically undermined the black business sector. This was done by means of discriminatory legislation, the application of the Group Areas Act, the allocation of licences and in other ways.
- 59 Such actions not only stifled the black business sector, but also provided the space for white business to take advantage of the opportunities denied to black business. The Group Areas Act prevented black businesses from operating in white areas and vice versa. Those black business people who obtained business licenses in designated areas (for petrol stations, liquor outlets and so on) benefited in the limited sense that competitive pressures were artificially reduced by apartheid. While this provided a measure of protection for these (few) entrepreneurs, such protection was not always forthcoming. According to a submission from Indian-owned Avalon Cinemas, although they were prevented from operating in white areas, white-owned Ster Kinekor succeeded in its bid to operate in Indian Areas.
- 60 According to the submission by the Islamic Chamber of Commerce and Industry, there were also members of the black business community who "collaborated" with the apartheid regime, were involved in sanctions-busting and, "together with corrupt politicians in the Tricameral government were engaged in procuring business contracts land, houses etc. for their own benefit to the exclusion of those rightfully deserving of these assets".
- 61 Despite such cases, it is clear that the overall impact of apartheid was to undermine black business systematically and perniciously. Furthermore, by limiting the development of black managerial expertise, the acquisition of business skills by black managers was prejudiced (see BMF submission).

The mining industry

- 62 From the early days of the Boer Republics, mining capital played a major role in shaping and driving cheap labour policies. Strategies included the following:
- a influencing legislation that forced black workers into the wage system (and managed their allocation within it);
 - b state-endorsed monopolistic recruiting practices;
 - c the capping of African wages;
 - d divisive labour practices in managing compounds;
 - e the sometimes brutal repression of black workers and trade unions.
- 63 This history has been well documented⁷ and was reflected in submissions by COSATU, the SACP and the ANC. The first-order involvement of the mining houses and the Chamber of Mines (COM) in shaping the migrant labour system is the clearest example of business working closely with the minority (white) government to create the conditions for capital accumulation based on cheap African labour. The evidence shows that, rather than relying simply on the forces of supply and demand, the mining industry harnessed the services of the state to shape labour supply conditions to their advantage. Thus, the mining industry bears a great deal of moral responsibility for the migrant labour system and its associated hardships.
- 64 It is regrettable that the Chamber of Mines made no mention in its submission of the active role they played in constructing and managing the migrant labour system.⁸ Although the foundations of this system were laid before the 1960s, the Chamber had a significant formative impact on the apartheid political economy during the period under review by the Commission. There is plenty of evidence to show that, directly due to the monopsonistic power of the Chamber of Mines (which was set up with this purpose explicitly in mind), black wages on the mines were lower – at least until the mid-1970s – than they would almost certainly otherwise have been. Similarly, the opposition of the Chamber of Mines to the unionisation of black mine workers effectively prevented the growth of trade unions for black mine workers until the beginning of the 1980s. The recognition of this first-order involvement, together with an appropriate apology, could contribute significantly to the reconciliation process.
- 65 The image of gold mining magnates accumulating vast wealth at the expense of African mine workers, whose wages stagnated in real terms until the 1970s, is a stain on the mining industry and one it needs to recognise. For most of the twentieth century, the greatest point of contact between African workers and business occurred on the mines. The shameful history of subhuman compound conditions, brutal suppression of striking workers, racist practices and meagre wages is central to understanding the origins and nature of apartheid. The failure of the Chamber of Mines to address this squarely and to grapple with its moral implications is regrettable and not constructive.
- 66 The submission by the Anglo-American Corporation was an improvement on that of the Chamber of Mines. Anglo-American accepted that it could have been a better corporate citizen. It had the honesty to note that, despite many representations by Harry Oppenheimer to government about the need for a more stable workforce, the Corporation failed to provide even the limited amount of family accommodation allowed within the bounds of the law.⁹

- 67 However, Anglo's submission was also flawed. Its most glaring failure was to sidestep the African wage issue. The submission blames "race politics" for depressing black wage levels and, like the Chamber of Mines, fails to address the active measures taken by mining magnates to ensure the continued supply of cheap migrant labour. The submission records that black wages doubled within a period of three years in the 1960s, and tripled in the early 1970s. This selective presentation of wage developments is misleading and fails to mention that real African wages on the gold mines were higher in 1915 than they were in 1970.¹⁰
- 68 It is important to recognise that, while the migrant labour system benefited the mining industry, this was not the case with regard to legislation protecting white labour. Government reaction to the 1922 'Rand Revolt' and the mining industry's support of the colour bar shows very clearly that the industry was opposed to any form of industrial action designed to raise labour costs – whether by white or black workers. The apartheid state created an environment in which white worker power was enhanced by legislation (a position accepted by the mining industry). Black worker power, on the other hand, was progressively eroded – a situation that was ignored by the mining industry, which went on to suppress black labour with impunity.
- 69 This leads to the important point that apartheid had both costs and benefits for the mining industry. The relationship between the mining industry and various white minority governments was both complex and contradictory. On the one hand, the migrant labour system worked to the decided advantage of the mining industry. But, on the other, the protection of white labour significantly increased both wage and non-wage labour costs in mining. The many representations by mining magnates to government on the costs of job reservation bear testimony to this major apartheid-related thorn in the side of the industry.
- 70 Finally, it is necessary to touch on the role of health and safety on the mines. A submission by Laurie Flynn¹¹ suggested that the dismal health and safety record of South African mines, and the way in which mining companies and successive government ministers of mines suppressed knowledge about the dangers of asbestos, constituted human rights abuses. He referred to the "obdurate and well documented refusal of the mining companies in South West Africa [Namibia] and in the diamond industry in South Africa itself." Similar themes were evident in the COSATU submission, which drew attention to the health hazards associated with mining and related industries.

Approximately 69 000 miners died in accidents in the first 93 years of this century and more than a million were seriously injured. In 1993, out of every 100 000 gold miners, 113 died in accidents, 2 000 suffered a reportable injury, 1 100 developed active tuberculosis and of these 25 died; in 1990 about 500 were identified as having silicosis.

- 71 The COSATU submission also recalled the notorious Kinross mining disaster, the largest accident in the history of gold mining in South Africa. On 15 September 1986, 177 workers were killed as the result of a polyurethane fire. The submission records the shocking way in which the mine reacted to the disaster:

The mine only publicised the accident at 15h00, although it had occurred at 09h00. Its initial reports stated that thirteen workers had died, although the mine was aware that 177 workers had died. Shortly after the disaster, the names and personal details of white miners were released by the company. The black miners who had died were identified to the world as: "Sotho 45, Shangaan (Mozambican) 21, Pondo 20, Hlubi (Transkei) 6, Venda 1, Xhosa 29, Tswana 14, Malawi 15, Pedi 1".

- 72 Mining is, of course, an inherently dangerous occupation. However, there appears to be some evidence that profitability ranked higher than people's lives – as evidenced by the asbestos scandal and the continued use of polyurethane in mines long after the dangers had become known.¹² It is regrettable that more details were not forthcoming on health and safety issues from the Chamber of Mines or the Anglo American Corporation.

The arms industry

- 73 Various submissions drew particular attention to the armaments industry as a case where businesses made an active decision to involve themselves in what COSATU, the SACP and the Centre for Conflict Resolution¹³ describe as the “military-industrial complex”. The ANC articulated it as follows:

This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of the apartheid war machine, which was responsible for many deaths and violations of human rights both inside and outside the borders of our country. It was, moreover, an extremely profitable decision.

- 74 According to the Centre for Conflict Resolution:

[by providing] the material means for the maintenance and defence of apartheid elements within the business community are guilty of directly and indirectly perpetuating the political conflict and associated human rights abuses which characterised South Africa between March 1960 and May 1994.

- 75 As noted above, the armaments industry falls into the category of second-order involvement with the apartheid regime. The moral case against the armaments industry is essentially that business willingly (and for profit) involved itself in manufacturing products that it knew would be used to facilitate human rights abuses domestically and abroad.
- 76 The only submission by business that attempts to justify participation in the arms industry came from the Armaments Corporation of South Africa (Armcor). Armcor noted that, in carrying out its function to obtain armaments, it was “carrying out a function which is normal in all governments except that the policies of this [apartheid] government were abnormal”. The submission continues:

We do not deny that in executing its mandate, Armcor would have contributed to the military capability of the country. For most members of the South African defence family the enemy was not the people of South Africa. It was the threat posed by an external aggressor - usually a communist linked state such as Cuba or the Soviet Union.

- 77 Thus, the argument presented is that arms procurement is a normal activity of all governments for the (honourable) purposes of defence and that South African companies involved with Armcor thought that they were contributing to such defence (albeit probably mistakenly). The issue therefore boils down to one of motivation.

78 Is it credible to argue that those producing South Africa's arms thought that their products were going to be used to fight an external aggressor? Certainly, given the extent of government propaganda about Communism and the 'total onslaught', it is possible that many people did hold this opinion. However, once the army rolled into the townships in the 1980s, the scales should have fallen from the eyes of all perceptive South Africans. Unfortunately, no evidence was presented before the Commission about the mindset of arms manufacturers.

79 In its submission, Armscor proudly observes that its commitment to executing government policy has ensured its survival today:

[Armscor] has come to be described as a national asset by the Minister of Defence, Minister Joe Modise and by the Chair of the Joint Standing Committee of Defence, Mr Tony Yengeni.

80 This "national asset" now produces arms for export – a matter that is further addressed in the recommendations chapter.

Other (white) business

81 The relationship between apartheid and business in other sectors was complex and at times contradictory. Many businesses benefited from the tariff protection, subsidies, cheap loans and preferential contracts provided by the state. Those industries competing against the import market benefited particularly. Those with a significant proportion of African workers benefited from restrictions on black trade union bargaining power – particularly until the early 1970s.

82 Industry was, however, divided over black trade union rights and wage determination. While many recognised that a higher level of African wages would boost consumer demand, no individual firm had any direct incentive to pay substantially more than the going wage for relatively unskilled (or skilled) labour. To the extent that apartheid policies exercised downward pressure on African wages, all firms benefited, at least in so far as minimising costs was concerned. Some paid meagre wages in order to stay in business, as paying higher wages than the competition could threaten their existence. For others, depressed African wages simply boosted profits to very high levels.

83 Many foreign-owned companies probably fell into the latter category. The fact that they were able to improve wages and working conditions appreciably after being embarrassed by international campaigns to adopt the Sullivan Code (see the submission by the Anti-Apartheid Movement) suggests that they had previously enjoyed substantially high profits at the expense of poorly-paid African labour.

84 Some businesses went beyond accepting the benefits of being able to pay low African wages. Indeed, their use of the repressive machinery of the state to suppress striking workers puts them in another category altogether. Firms that informed on trade union officials to the security police and called in the police to disperse striking workers clearly have a great deal to answer for. Those which took advantage of apartheid norms and practices to humiliate their workers with racism (see the submission by the BMF) and to engage in unfair labour practices also need to recognise that they were part of the problem of apartheid - and not simply subject to its laws. While some submissions from business (such as that of Tongaat-Hulett) acknowledged this role, most did not.

85 Several businesses argued, on the other hand, that apartheid policies also imposed substantial costs on firms. Chief amongst these were:

- a job reservation for white workers (which was a particular problem for the building industry)¹⁴;
- b the Physical Planning Act (which restricted the employment of African workers in certain areas);
- c the Reservation of Separate Amenities Act;
- d the Bantu Education Act;
- e the Group Areas Act.¹⁵

86 Firms that required greater inputs of skilled labour were harmed by the politically enhanced power of white trade unions and by limitations on the skills-development and occupational mobility of African workers.

87 Business organisations argued that they made representations and protested to government about the impact of apartheid on business (see submissions by SEIFSA, SACOB and the Johannesburg Chamber of Commerce and Industry). These protests tended, however, to relate to specific policies (such as the colour bar, Bantu education and the Physical Planning Act) rather than broader political concerns. In other words, they protested against aspects that disadvantaged business. Before the 1980s, most criticisms were voiced at times of skilled labour shortages. Major business organisations also protested during incidents of social and political unrest, most notably after the Sharpsville massacre (1960), the Durban strikes (1973) and the Soweto uprising (1976).

88 But, as the submission from SAB points out, the responses of business were not without their contradictions:

Although business chambers called for reform after Sharpsville, faced with a withdrawal of foreign investment in the aftermath of Sharpsville, many businesses used their financial muscle to stabilise domestic markets by buying up the shares that were being offered for sale on the stock exchange. Similarly, while some businesses called for black workers to be given trade union rights after the 1973 strikes, others resisted efforts by their employees to secure these rights, refusing to recognise black unions and, in certain cases, using the security forces to assist them in their endeavour. Furthermore, following the Soweto uprising, some businesses openly backed the government's endeavour to restore order to the country through the security and military machine.

89 Some sectors of the business community supported social and political apartheid but objected to some of the economic policies. In its frank submission to the Commission, the AHI described its growing realisation of the costs of apartheid:

As the costs for business escalated from the 1970s onwards, the AHI gradually added its voice to the (predominantly English) business organisations which had been protesting against apartheid education and labour policies for some time.¹⁶ By the end of the long post-war boom, most sections of urban business were united in their calls for an urbanised African labour force with better access to skills and jobs.

Opposition by organised business to labour controls, although inspired by the desire for a more stable, settled and productive workforce was profoundly political in that it challenged one of the pillars of apartheid - i.e. the idea that black workers were merely temporary sojourners in white cities. Frustrated by the lack of government action, Harry Oppenheimer and Anton Rupert (representing English and Afrikaner capital respectively) established the Urban Foundation in 1976 to push for reform in the areas of influx control, housing, black land ownership etc. This initiative was supported by a wide range of corporations and business organisations. The achievements of the Urban Foundation are documented in various business submissions.¹⁷

Pressure from business to re-examine its policies towards black labour and urbanisation almost certainly contributed to the subsequent reforms. As a result of the Wiehahn Commission, black trade unions were incorporated into the system of collective bargaining. This unleashed the power of black trade unions (which had been growing since the mid-1970s) and contributed significantly to the subsequent economic and political transformation. Reforms stemming from the Riekert Commission loosened some of the restrictions on labour allocation. This started a process which culminated in the lifting of influx control.

90 The BMF, on the other hand, argued that business “failed to challenge” the white unions and the government in their efforts to prevent black people from entering the trades. Racist corporate culture, it said, is still the main impediment to the success of affirmative action. Business encouraged and benefited from the homelands policy and decentralisation, “which created circumstances of exploitation”. Moreover, the failure of business to allow black people into senior positions “will prove to have been the biggest obstruction to economic growth. Under-utilisation of blacks is a greater cost than the brain drain”.

91 Some submissions from the white business sector highlighted its efforts to improve industrial relations and work towards a new framework that promoted black unions. SEIFSA said it:

led South Africa in respect of forward-looking industrial relations practices. We were the first major industry to eliminate race from our agreements, and the SEIFSA minimum wage has been a target of achievement for many other industries.

92 SEIFSA said that it had addressed the skills shortage in various ways in the past. In the 1960s, the industry looked to immigration and the training of black people. In 1972, the industry and unions agreed that blacks would be allowed to advance into higher operations. In 1978, the industry negotiated “the complete removal of all job discrimination and racially based provisions from the main agreement”. In 1982, SEIFSA negotiated a training agreement that provided a system to train workers who had missed the opportunity to become formally apprenticed. In 1993, SEIFSA and the National Union of Metalworkers’ of South Africa (NUMSA) agreed to investigate shared industry restructuring objectives.

93 The ANC submission recognised that “business’s attitude towards trade unions representing black workers evolved over time”, but it sought to record that during much of the apartheid period, business by and large worked in co-operation with the state to undermine and crush trade unions.

At decisive moments in the re-emergence of the democratic movement, business’s initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime’s security

forces. The first reaction to a strike or attempt by unions to organise workers, was all too often to call on the police. Many violations of human rights occurred as a consequence.

94 The submission added that the trade unions survived because of the commitment and organisation of thousands of workers, despite the suffering they endured as a consequence. It was because of these efforts that the union movement grew to be a force that business could no longer repress or ignore.¹⁸

95 COSATU argued that, from 1973, union growth was characterised by “fierce battles” over these rights.

Business has always opposed the development of well-organised and militant trade union movements... This was co-ordinated with, and for all practical purposes indistinguishable from, state strategy in relation to union organisation throughout the 1970s and well into the 1980s. Although trade union organisations of African workers were never unlawful, business was not prepared to recognise them, but continued to have cordial relations with the established [racially based] white trade union movement of that time, which was committed to paternalistic or outright racist policies. Only mass pressure forced capital to change its tactics in relation to trade unions.

96 Old Mutual's submission on the costs and benefits of apartheid was illustrative. On the negative side, the submission pointed to the lowering of economic growth (which constrained the market for life insurance), the Bantu education system which limited the pool of quality employees and the existence of exchange controls which limited their expansion overseas. Old Mutual offered only two possible ‘positives’: their acquisition of assets from Colonial Mutual of Australia when it disinvested in 1987 and the “marketing opportunities” created by the expansion of the homeland bureaucracies. On this latter score, however, Old Mutual reserved judgement as to whether this would have resulted in a net gain or loss compared to some other (non-apartheid) scenario.

97 Again, not all businesses profited equally from apartheid. It is, however, difficult not to conclude that, between 1910 and 1994, government and business (despite periodic differences and conflicts between them) co-operated in the building of an economy that benefited whites. On the one hand, they promoted and maintained the structures of white power, privilege and wealth and, on the other, the structures of black (mainly African) deprivation, discrimination, exploitation and poverty. To this extent, business was part of the mindset of white South Africa. This point was made in the AHI submission and granted in several other submissions, as well as in the oral evidence of several business leaders in response to questions posed to them by commissioners.

Workers

98 The argument put forward by sections of the business community, that they were not (directly) involved in gross human rights violations, was challenged by the trade unions and others. In this respect, the distinction made by Professor Mahmood Mamdani between “perpetrators and victims” on the one hand and “beneficiaries and victims” on the other, deserves careful attention.¹⁹

99 The BMF accused white business of violating human rights in specific ways. White business supported and did not oppose the location of black residential areas at “absurdly” long distances from work. “Business chose to provide hostels that kept men and women away from their families.” In addition, white business relied “quite heavily” on the

police to structure relationships with black workers, be it around strikes or repatriations. Managers served as police reservists and business co-operated with security agents in providing data on and monitoring workers. "Business continued to pay taxes quietly and rejected calls of civil disobedience."

- 100 Personnel policies, the BMF added, promoted "separate development" in job positions, wages, medical attention and pension pay-outs. Black people were denied the opportunity to practise their customs and were not, for example, allowed leave for funerals or to visit traditional healers. "This conflict between business practice and black custom caused a lot of anxiety and emotional damage." In this respect, the BMF noted that business still uses, for example, culturally-biased psychometric tests to assess job applicants. "Blacks are made to feel unintelligent, and it further deprives them of their right to development."
- 101 COSATU gave what it called "incontestable" examples of the everyday suffering imposed on workers. These included:
- a sexual harassment in the workplace;
 - b the implementation of pass laws "through the active policing and collaboration of management as a means of labour control and cheapening labour";
 - c preventable industrial accidents and diseases, where workers were maimed or killed "because not enough money was spent on safety and health";
 - d starvation wages, which "translate into preventable malnutrition, disease and death, or lack of access to medical care";
 - e denial of essential welfare and social services;
 - f creation of unemployment to protect profits;
 - g victimisation, including the assault and imprisonment of trade unionists and strikers.
- 102 COSATU noted that, despite the legal duty of employers to provide employees with healthy and safe working conditions, many "failed to take the necessary steps to protect employees from occupational accidents and diseases".

More than 60 000 workers lost their lives in occupational accidents between 1964 and 1994... The carnage can be expressed in other ways. In 1974, for example, it was estimated that 100 000 hands, 50 000 feet and 40 000 eyes were badly injured; 31 000 men and women were permanently maimed; several hundred were injured severely enough not to be able to return to work, and 2 284 were killed.

- 103 COSATU identified five main devices used by business: the 'colour bar' (unequal wages, benefits and conditions of employment); segregationist labour legislation; unequal provision of education and training; and labour market regulations, such as the pass laws. Each of these was developed in the COSATU submission.

- 104 COSATU also noted that the business community never opposed the government's clampdown on the union council. Instead, 'total strategy' "elaborated the ideological basis for overt collaboration between senior military officers and business leaders". This co-operation grew out of more than their converging strategic conceptions of necessary 'reform'. It had a direct economic base.
- 105 Business representatives disagreed. Ms Ann Bernstein, who heads the Centre for Development and Enterprise, argued (in her personal capacity) that business "is not the place to protect human rights". Rather, the Constitution, the government and ultimately elections are the mechanisms that ensure human rights. The South African Chamber of Business (SACOB) noted, however, that such issues had been discussed by the white business sector: "there are records of meetings at which a persistent case was made against the violation of human rights and the deleterious impact of apartheid laws."
- 106 As mentioned earlier, Old Mutual did not believe it contributed to gross violations of human rights as a result of its employment practices, "except possibly in some very indirect way by fulfilling its obligations to government by complying with the laws, paying taxes and investing in government stock."
- 107 By contrast, the Development Bank of Southern Africa (DBSA) accepted that, in supporting apartheid through providing development loans to homelands and by advising officials on policy, "the Bank was an integral part of the system and part and parcel of the apartheid gross violation of human rights".
- 108 The Anti-Apartheid Movement (AAM) Archives Committee stated that, in the areas of wages, job discrimination, security and union recognition, international firms "were little different from their South African counterparts ... Investors in the system automatically develop a vested interest ... Subsidiaries were involved in disputes with non-racial unions in which they did not hesitate to invoke the law and call in the police."
- 109 Professor Sampie Terreblanche suggested that racially-based capitalism was deliberately designed to produce white beneficiaries and black victims. He argued that:
- A very high rate of economic growth was maintained in the 1950s and 1960s. During its heyday of state and racial capitalism, the racial disparity ratio between white and African incomes became much larger. While the per capita income of whites was 10,6 times higher than African per capita income in 1946/47, white income was fifteen times higher than in 1975. If ever there was a period of upward redistribution of income (mainly from Africans to Afrikaners), then it was the period of high growth in the 1950s and 1960s. Given the power structures of white supremacy and racial capitalism, it was a period of high growth with a 'trickle-up' effect.²⁰*
- 110 Professor Francis Wilson points out that, although South Africa's average gross national product "places it in the upper middle-income range of countries in the World Bank's annual tables, the depth of inequality is so great that there is widespread and acute poverty which afflicts some 40 per cent of all South Africans".²¹
- 111 Statistics provided by Whiteford and McGrath²² illustrate the effects of apartheid on income. From 1975 to 1991, the average growth rate declined, as did the per capita income of all population groups (except Asians) in the poorer sections of the population. The income of the poorer 60 per cent of both Africans and whites dropped by more than 35 per cent.

	Year	Bottom 40%	Next 20%	Next 20%	Next 20%
African	1975	3 048	6 790	11 894	24 780
	1991	1 784	5 004	10 741	34 243
	Change	-41,5%	-26,3%	-9,7%	38,2%
White	1975	39 167	72 469	90 901	177 194
	1991	23 594	53 721	84 937	177 134
	Change	-39,8%	-25,9%	-6,6%	0,0%
Coloured	1975	5 041	11 377	21 643	49 391
	1991	4 837	14 022	25 761	59 239
	Change	-4,0%	23,2%	19,0%	19,9%
Asian	1975	9 324	19 464	29 809	68 193
	1991	9 544	26 442	40 451	89 132
	Change	2,4%	35,8%	35,7%	30,7%

- 112 These deteriorating circumstances resulted in initiatives by business and government²³ aimed at enhancing capital accumulation and improving the lot of workers. This led to raised expectations in the African community – which could not be met in the declining economic situation.

• BUSINESS IN THE 1980s

- 113 The 1980s was a period of reform and repression. Limited liberalisation occurred on both the political and economic fronts. Such efforts were, however, far from satisfactory and failed to stem the tide of rising protest from trade unions and anti-apartheid organisations.
- 114 Except for the boom years of 1980 and 1981 (primarily a response to the high dollar gold price), South Africa's growth rate was low or falling during the 1980s and early 1990s. Investments performed very badly, unemployment rose and capital flowed steadily out of the country. The mid-1980s were particularly bad years for the economy. Various factors account for this. Perhaps most influential was the impact of high world interest rates, international recession and the instability caused by the 'Third World' debt crisis. Like other developing countries, South Africa had to cope with adverse external shocks.
- 115 Domestic factors, however, also played a role in South Africa's economic woes. Monetary policy, for example, was unduly restrictive between 1982 and 1985. This was in part a consequence of the lifting of certain restrictions on capital outflow, which forced the South African Reserve Bank to raise interest rates to give some protection to the exchange rate. The rand was, nevertheless, allowed to depreciate against the dollar (in nominal and real terms) between 1982 and 1986.
- 116 This policy-induced recession of the early 1980s was exacerbated by political unrest (1984-7) which undermined investor confidence, encouraged capital flight and played a part in the refusal of major international banks (starting

with Chase Manhattan) to roll over South Africa's debt. Consequently, the government declared a moratorium on imposed debt repayment and, in August 1985, re-imposed controls on the outflow of capital. Except for a brief respite in 1988, the economy limped along for the rest of the decade.

- 117 Business's changing attitude to apartheid cannot be ascribed solely to the economic crisis. Apart from the debt crisis and the decline in exports and investment, the fall of the Berlin Wall and the moderation of ANC economic policy after 1990 probably contributed to changing business attitudes.
- 118 Many business organisations were uncertain how to react to the economic crisis and political unrest. As SACOB put it:

The business community was caught between a recognition of the inevitability and desirability of significant political reform, and a range of developments which resulted in a great deal of instability and which were, quite simply, bad for business stakeholders.

[Their response] to this acute dilemma was, on the one hand, to try to speed up the reform process and facilitate contact between the different political interests - both within and outside of South Africa - and on the other, to fight a rear guard action against the sanctions and disinvestment campaign, and the rising levels of violence, which threatened the economy and job creation.

- 119 Efforts to accelerate reform included further protests and representations to government, participation in consultative bodies (like the Economic Advisory Council) and visits by leading business representatives to the ANC in exile. The Consultative Business Movement (CBM), a body consisting of business people and representatives of community organisations, was formed in 1988 to work towards a non-racial democracy. The CBM actively sought alliances with popular leaders and attempted to guide business along the path of political transformation.
- 120 One of the rearguard actions by members of the business community was to become involved in the National Security Management System (NSMS) by participating in the network of Joint Management Committees (JMCs). A main function of the JMCs was to co-ordinate the work of all government departments in dealing with points of unrest. Mechanisms used ranged from police and army control to spending large amounts of money on upgrading townships. The goal was, however, essentially to prolong white domination. Business also participated in Defence Manpower Liaison Committees, whose function was to discuss military call-up needs and local security issues such as stay aways and unrest.
- 121 Charles Simkins, professor of economics at the University of the Witwatersrand, notes in his submission that:

These developments created new and unprecedented relationships between business and the government at a time when the capacity for public scrutiny was lowered. Of all the sub-periods between 1960 and 1994, this one needs the closest attention.

- 122 Unfortunately, the business submissions provided no specific details about this. Nevertheless, a few comments are in order. Where participation by business in the JMCs resulted in, or facilitated, subsequent human rights abuses by the security establishment, there is a clear case to answer. Where such participation resulted in the channelling of

resources to townships, the moral issues are more opaque. While JMC-facilitated development in townships was certainly motivated by counter-revolutionary aims, there is an important difference between counter-revolutionary strategies based on providing infrastructure to people, and strategies based on torture and repression. Again, not all businesses played the same role in the process.

- 123 A different kind of rearguard action concerned business's opposition to sanctions. In one respect, opposition to sanctions was self-serving; to the extent that sanctions reduced growth, most businesses suffered accordingly. However, opposition to sanctions also stemmed from a belief by some businesses that economic growth rather than the intensification of poverty promotes democracy. This view is evident in Mike Rosholt's submission:

Barlow Rand was, unsurprisingly, opposed to sanctions and I state this quite openly. This was because in our view, the critical delivery of a better quality of life and jobs for the disadvantaged depended to a very large extent on economic growth, which obviously would have been detrimentally affected by sanctions, among other things.²⁴

• COULD BUSINESS HAVE DONE MORE?

- 124 Before dealing with this question in a more general way, attention needs to be given to two specific concerns of the critics of business – the support it gave to 'total strategy' and the role specifically of multinational corporations in undermining international sanctions.

Total strategy

- 125 The ANC submission drew attention to the way in which private business was increasingly drawn into the militarisation of South African society under the tutelage of the former state. The Carlton Conference in 1979 introduced a new form of partnership between government and business and was seen as the beginning of a 'new era'. This is illustrated by the fact that business people were members of the ARMSCOR board and by widespread business participation in defence contracts.
- 126 Hundreds and probably thousands of South African private sector companies made the decision to collaborate actively with the government's war machine. This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of this war machine, which was responsible for many deaths and violations of human rights, both inside and outside the borders of our country. In addition, a variety of businesses collaborated with the state in the national security management system. Business representatives, for example, joined the government's JMCs or their advisory structures, participated in defence manpower liaison committees or collaborated with the military in planning issues around conscription and military manpower.
- 127 The ANC submission also pointed to the national 'keypoints' system, whereby private industry was made responsible for protecting essential state installations in place of the state. Finally, it recalled the role of business in assisting in the development of nuclear weapons.

- 128 The AAM Archives submission reported that international firms received several of the 25 000 contracts handed out to the private sector by ARMSCOR. They were later also required to bear the cost of releasing white employees for conscription. "None refused". Although, because of international pressure, British firms withdrew as South Africa's main arms suppliers, French firms replaced them. Despite United Nations sanctions, "corporations played hide and seek in their attempts to circumvent and break the ban". Equipment was used as a major loophole, because firms could argue that it had a civilian application. South Africa depended on western governments and firms for essential nuclear expertise and technology.
- 129 South Africa also depended on five major oil companies to break the oil ban: Shell, British Petroleum (BP), Mobil, Caltex and Total. These companies also helped finance Sasol through a levy they paid to the South African government's Strategic Oil Fund.
- 130 The AAM Archives Committee noted that manufacturers argued that they were involved in constructive engagement with apartheid and raising the living standards of employees. However, "the banks had no such fig leaf. They lent directly to the apartheid government so that it could repress South African citizens, wage war against liberation movements and invade its neighbours." The inability of the government to raise much money from overseas financial markets after 1985 "was undoubtedly one of the factors behind its decision to try to reach a political settlement".

Sanctions

- 131 The failure of multinational corporations to make submissions at the hearing was greatly regretted in view of their prominent role in South Africa's economic development under apartheid. It was left to the AAM Archives Committee to explain the role of foreign firms in South Africa.
- 132 The AAM Archives Committee reported that the pattern of international investment in South Africa changed between 1960 and 1994. In the early 1960s, the involvement of the international business community was mainly through indirect investment, through trading in stocks and shares. By the late 1960s, however, direct investment by multinational corporations began to grow, bringing technological expertise into the country and giving multinational corporations a stake in maintaining the apartheid system. By 1971, over 500 British firms had South African subsidiaries. This gave international businesses a direct interest in maintaining the *status quo*.
- 133 The costs of maintaining apartheid began to mount, however, and from the late 1970s, the government and parastatal organisations began turning to the international banks for help. The AAM Archives Committee said that, after 1984, resistance grew and the costs of apartheid increased, resulting in a fall in the rand and a steep rise in inflation. It was not until then that it became less profitable for international investors to invest in South Africa: "Only then did firms begin to scale down."
- 134 Following international efforts to impose formal sanctions, overseas investors developed a new tactic of forming partnerships with South African parastatal organisations. "They reduced their profile, but relinquished any pretence of autonomy and served the economic priorities of the apartheid state." At the same time, companies were "bribed" by the government to start businesses in 'border' areas where they were offered tax breaks, Industrial Development Corporation loans and special rates for water, power and travel.

135 Nonetheless, in 1986/87, fifty-five of the 297 British firms in South Africa closed, and nineteen reduced their stake in the country. Over this period, 104 American firms sold their South African branches, leaving 157 United States-owned companies in South Africa. The withdrawals were, however, far from complete. Moreover, in general, they were effected in such a way as to minimise the adverse impact on the South African economy and to guarantee their parent firms a continued foothold. Their departure, said the AAM Archives Committee, was motivated by the same commercial criteria that had led them to set up in South Africa in the first place.

136 Foreign investment prevented governments from taking any real action against apartheid. The AAM Archives Committee concluded that:

The speed with which the apartheid edifice crumbled is the final proof of the way in which international business sustained apartheid.

In broader perspective

137 Several business submissions (most notably that of the AHI) suggested that they could have done more to fight apartheid. Mike Rosholt agreed, but pointed out in his submission that “to claim this today is to apply the perfect vision of hindsight, a privilege not available to one at the actual time”.

138 SACOB presents the argument as follows:

With the benefit of hindsight, it may be said that the enormity of the apartheid system required stronger responses from business on certain key issues ... In the ongoing debate about ‘gradualism’ versus the ‘all or nothing approach’ to get rid of apartheid, the stance of these organisations was to push the gradualism arguments to the maximum.

139 According to Professor Charles Simkins, the cautious approach to reform adopted by business leaders was in part a result of having to keep the rest of the business community on board:

As in all changing situations, one can divide the actors into three groups: those who sought to meet the challenges by innovation (the reformers), those who resisted change (the stand patters) and those who waited to see which way the wind was blowing before committing themselves (the expedient adapters) ...

The temptation facing stand patters was always to resist change by collaborating with the state in repression ... By contrast, the work of business reformers has been important in helping define the path to the present. Many attempted reforms soon fell by the wayside; others happened in a rather messy fashion; a few defined a substantially new dispensation in their field. If, from the perspective of the present, the arguments of the reformers look cautious and conservative, this is partly because they often were (though sometimes with more radical longer-term implications) not always understood. But the arguments were also often formulated cautiously in order to persuade stand patters and expedient adapters to move forward.

140 Implicit in any evaluation of the role of business under apartheid is an underlying conception of what the role of business should be in society. Two distinct points of view emerged.

141 The first was expressed in submissions from business which accepted that more could have been done by the business community to bring about change, thus implicitly accepting a moral role for business that extended beyond the conventional bounds of everyday business activity.

142 The other point of view denied that business could or should have acted from a moral standpoint. According to SANLAM:

Any notion that business could have acted as a watchdog of the government as far as human rights violations are concerned is totally unrealistic and should be dispelled. Business was unable to act in that way in the past and will not be able to do so in the future ... government is so powerful and dominant that a business organisation will seriously jeopardise its prospects of success by crossing swords with politicians.

143 While there are clear constraints imposed by political power, to say that business was incapable of crossing swords with politicians is to deny the power (and responsibility) that accompanies financial muscle and personal contacts.

144 Ann Bernstein argued that, by its very nature, business is not a moral being and hence cannot be expected to act as such.

Corporations are not institutions established for moral purposes. They are functional institutions created to perform an economic task (production of goods and services and so on). This is their primary purpose. They are not institutions designed to promote some or other form of morality in the world. Other institutions exist to fulfil these purposes. This does not of course absolve individuals within companies from moral choices, but that is a different matter.

145 She suggested that business contributed in a positive but unintended way through the impact of economic growth on social transformation:

Life is not a morality play. There are very few people who give up everything for their beliefs and ideas. Business in South Africa accommodated itself to the apartheid system. In doing so it provided jobs for millions of people, created infrastructure, unleashed democratising pressures (unintentionally) and sustained a base of economic activity that now provides a platform for economic growth in a democracy.

146 The former argument condemns all business people for having engaged in business under apartheid. The Bernstein argument, on the other hand, applauds them for such engagement (what others have identified as a close symbiosis between white business people and white politicians). Issues of realistic choice, differential power and responsibility (which are important when making ethical judgements) are downplayed in both arguments.

147 Business (not least for reasons of enlightened self-interest) is coming to recognise that morality *is* an important ingredient of viable business. Moreover, the conflict that characterised labour relations in South Africa shows that a failure by government and business to recognise the fundamental rights of workers provided the very incentive that Ms Bernstein questions, with the result that large numbers of people *did* give up “everything for their beliefs and ideas”.

- 148 The mandate of the Commission requires it to make recommendations to ensure that past violations of human rights do not recur in the future. This requires a conscious commitment to realistic moral behaviour grounded in a culture of international human rights law. It would be a sad day for the nation, faced as it is with the opportunity for renewal, if business were to dismiss social concern, business ethics and moral accountability in labour relations as being of no direct concern to itself.

• THE WAY FORWARD

- 149 Many submissions addressed the question of what business should do to contribute to reconciliation and development in ways that are more concrete. Most business submissions pointed to the important contribution of social responsibility investment programmes, support for NGOs, improved employment equity programmes and the like. These important initiatives deserve support.
- 150 Other submissions suggested measures that are more radical. For example, the Apartheid Debt Co-ordinating Committee argued for the cancellation of all apartheid debt. In 1994, the apartheid debt stood at some R250 billion. Interest on the debt amounted to some R30 billion a year. According to a submission by the Apartheid Debt Co-ordinating Committee²⁵:

The total government debt currently stands at R300 billion. R40 billion of government's budget for this year is spent on paying interest on this debt. This makes interest payment on the debt the largest item after education. In comparison, vital social services such as health received just R20 billion, social security and welfare R18 billion, housing R4 billion and water R2 billion.

Who owns the debt? Forty per cent is owned by the Public Investment Commission – a semi-government body – that is the chief lender to the government for financing civil service pensions. Fifty per cent is owned by business, commercial banks, insurers and other wealthy entities and individuals. The remaining amount is owed to the Reserve Bank and about 5 per cent is foreign debt.

- 151 In its argument for the cancellation of the debt, the Apartheid Debt Co-ordinating Committee continues:

There exists the doctrine of "odious debt" in international law. The doctrine concerns the responsibilities of successor governments in relation to the debts incurred by the former regime. As an exception, the doctrine allows successor governments to disown the debt incurred by fallen dictatorships ...

For apartheid's creditors, agreeing to the cancellation of their part of the apartheid debt would give them the opportunity to enter the process of truth and reconciliation. The cancellation of their loans would represent a recognition of their complicity with apartheid and a willingness to contribute to the reparations needed to rebuild this country.

- 152 Leaving aside the debate as to the morality of payment or non-payment, it has been suggested that cancellation of the debt could have certain adverse consequences for economic growth. Advocates for continued payment confirm

the point made by the Apartheid Debt Co-ordinating Committee that a significant part of government debt is owned by domestic financial and commercial institutions. Cancelling it, they say, would erode their asset base, harm shareholders, pensioners (in cases where debt is owned by pension funds) and possibly employees. To the extent that such debt cancellation would undermine the level of confidence in government stock, it would also result in higher borrowing costs on new debt issues – or even an inability to market any debt domestically or abroad. This would severely constrain any subsequent attempts at redistribution on the part of the state. A very careful analysis of the costs and benefits of this proposal is, therefore, required.

- 153 However, given the crippling effects of the South African debt, as well as the general indebtedness of the 'third' to the 'first world', there is a strong argument for discussion, consultation and co-operation with other countries facing similar debts that impact on their ability to deliver services to their citizens.
- 154 Professor Sampie Terreblanche has proposed a wealth tax as a means of redressing an important legacy of apartheid - South Africa's highly unequal distribution of wealth. He gives seven reasons which, to his mind, support this proposal:
- a Africans were deprived of large parts of land on which they had conducted successful traditional farming for centuries.
 - b For decades, millions of African people were paid exploitative wages in all sectors of the economy.
 - c A great variety of discriminatory legislation not only deprived Africans of the opportunity to acquire skills, but also compelled them to do dreary, unskilled and humiliating work at very low wages.
 - d The prevailing power structures deprived Africans of opportunities to 'accumulate' human capital.
 - e Heavy restrictions on the legal right of Africans to own property and conduct business deprived them of the opportunity to accumulate property and develop entrepreneurial and professional capabilities.
 - f While the prevailing power structures impoverished the greater majority of Africans during the first three-quarters of the century, the liberation struggle and the state response to it had a devastating effect on the poorer 60 per cent of the African population.
 - g African societies were impoverished and "destroyed", while the system also prevented South Africans from building a united society.
- 155 Professor Terreblanche argues that a wealth tax would contribute to reconciliation, social stability and economic growth, while providing a basis for restitution for those who have been impoverished through apartheid.
- 156 Mr Bob Tucker, executive director of the Banking Council, argued (without being mandated to do so by members of the Banking Council) that business should contribute to "reconstruction and development" rather than a reparations fund. This, he said, should be motivated not by a "sense of guilt" but out of "enlightened self-interest". He further appealed to individuals "on the basis of their humanity and sense of compassion (not guilt), to contribute as

individuals to a reparation fund to benefit those who were direct and evident victims of the atrocities that were committed at the time.”²⁶

- 157 More recently, Mr Stephen Mulholland, a former editor of the *Financial Mail* and currently a *Business Times* columnist, has argued that each company listed on the Johannesburg stock exchange should give up 1 per cent of its market capitalisation and contribute it to a huge new fund. He suggests that the fund should be run by business and would represent a dramatic and once only contribution by corporate South Africa to redressing the past and the development of a new country. Mr Mulholland commented: “Portfolios routinely move up and down with the market by a great deal more than 1 per cent. The market would hardly notice it.” His proposal would raise R14 billion.
- 158 The virtue or otherwise of the above proposals must be left to experts in the field to assess. The extent to which voluntary responses of the kind suggested by Mr Tucker are likely to prove sufficient to address the problem facing the nation needs at least to be questioned. It may be that the Terreblanche and Tucker options are not mutually exclusive. The Mulholland proposal suggests a bold initiative by corporate South Africa. The virtue of the proposal is that it would remove some of the pressure on the state to introduce legislation or further taxation. It would also be a welcome signal from corporate South Africa that it understands and accepts its own responsibility for the past and its commitment to stability and justice in the future.
- 159 There is no doubt that business could and should play an enormously creative role in the development of new reconstruction and development programmes. Funding for this could come from business itself (as in the Mulholland proposal), from the state (as in the Terreblanche proposal), from loans or from a combination of these.
- 160 An alarming gap exists between rich and poor in South Africa. This is aggravated by the fact that wealth and poverty are very largely defined in racial terms. The perpetuation of the gap – indeed its possible widening in a pressured economic environment – is a very real threat to peace and stability. It is in the interest of the private and the public sector alike to ensure that this situation is redressed. Economic logic suggests that, while more than 60 per cent of the population remains impoverished, there is no possibility of meaningful economic growth or national stability. If a wealth tax is not the way forward, then some other measures should be sought and implemented as a matter of urgency.

● FINDINGS ARISING OUT OF BUSINESS SECTOR HEARINGS

The Commission finds that:

- 161 Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefited from co-operating with the security structures of the former state. Most businesses benefited from operating in a racially structured context.
- 162 Businesses were reluctant to speak about their involvement in the former homelands. A submission by Mr Sol Kerzner and Sun International would have facilitated the work of the Commission.

- 163 The Land Bank and the Development Bank of South Africa, in particular, were directly involved in sustaining the existence of former homelands.
- 164 The denial of trade union rights to black workers constituted a violation of human rights. Actions taken against trade unions by the state, at times with the co-operation of certain businesses, frequently led to gross human rights violations.
- 165 The mining industry not only benefited from migratory labour and the payment of low wages to black employees; it also failed to give sufficient attention to the health and safety concerns of its employees.
- 166 Business failed in the hearings to take responsibility for its involvement in state security initiatives specifically designed to sustain apartheid rule. This included involvement in the National Security Management System. Several businesses, in turn, benefited directly from their involvement in the complex web that constituted the military industry.
- 167 The white agricultural industry benefited from its privileged access to land. In most instances, it failed to provide adequate facilities and services for employees and their dependants.