

Corporate Responsibility, Environmental Protection and Threats to Africa's Development

by Patrick Bond

Paper presented to:
**AFRICA'S ENVIRONMENTAL POLITICS:
OPPORTUNITIES, CHALLENGES, THREATS**
Conference co-hosted by
**The Departments of Political Sciences and Geography
University of South Africa, Pretoria, 30 May 2008**

Abstract

By the mid-2000s, South Africa witnessed 10 000 social protests per year, probably the world's highest per capita rate. The structural forces that pressured national government to adopt investor-friendly policies were in part to blame. But while South Africa was celebrated for an 'economic miracle' that raised GDP growth to an average 5% per year from 2003-07 and restored relative corporate profitability to levels last witnessed during apartheid's heyday, the same period saw world-class social opposition to corporate power, reflecting a Polanyian 'double movement'. Five areas were most impressive: the Treatment Action Campaign's street pressure and legal strategy of acquiring anti-retroviral drugs for HIV+ people; Soweto activists whose protests helped drive Suez Lyonnaise des Eaux out of Johannesburg and whose court case began undoing its commercialised water policies; critics of pollution, especially asbestos in worker lungs, toxins in the air, and mining in diverse communities; climate activists who oppose carbon trading; and opponents of the apartheid debt who also demanded reparations from US corporations. The threads running through this activism are 'decommodification' and 'deglobalisation of capital'; the first cannot work without the second. Whether state policies catch up to the activists remains to be seen, but a 2007-08 transfer of ruling party power from the man favoured by corporations and the prosperous classes (Thabo Mbeki) to the candidate of trade unions and the SA Communist Party (Jacob Zuma) seems to reflect the underlying popular dissatisfaction with South African 'crony capitalism', even if power relations did not reverse sufficiently to ensure genuine change. Indeed, a backlash against activists in several of the sectors – a 'triple movement' perhaps - shows the residual power of state and capital, and their desire to deepen neoliberalism notwithstanding the dangers. For that, follow-up to anti-corporate campaigning will need to take a political form, with the ultimate aim of capturing the South African state itself.

Introduction

Is there a way out of the development dead-end that so many wretched Third World countries find themselves in as a direct result of adverse relationships with the world economy, mediated especially by transnational corporations and multilateral financial institutions?¹ This long-standing question is again raised by the notion that 'Regulatory governance, backed by political pressure from civil society, can persuade multinational corporate capital that promoting the reduction of poverty and inequality in developing countries is consistent with the pursuit of profit and corporate legitimacy.' I beg to differ, based upon South African experiences - including global governance reform gambits and weak government positionality - that show instead the need to delink global corporations from any determinations of social welfare, to decommodify basic goods and services, to rebuild public sector capacities, and to ensure that the state is run by a political party with genuine accountability to its poor and working-class constituents, exhibiting environmental, gender and race consciousness.

This is a particularly acute problem in 2008, as the South African political system finds itself recently immersed in internecine ruling-party factional battles, in no small part engineered by disgruntled elements of what I will label the 'centre-left', i.e., the Congress of SA Trade Unions (Cosatu) and SA Communist Party, along with the ANC Youth League and ANC Women's League. The 'independent left', in contrast, is comprised of social and community movements, NGO critics, feminists, internationalists and others alienated by the neoliberalism and patriarchal nationalism that still accompany each other as core ideologies within the ruling party, and even within the Zuma camp. It is in this context that social unrest has risen dramatically, from 5813 protests (as defined under the Regulation of Gatherings Act 205 of 1993) recorded by the SA Police Service in 2004-05 to an average of 10,000 per annum in subsequent years.² This is probably the highest per capita rate of *social* protest in the world.

Nationalists, and especially the black bourgeoisie, are still in the ascendant, warns one of the most perceptive South African analysts, Berkeley-based geographer Gillian Hart. She calls into question

celebratory claims often bolstered by invocations of Polanyi's 'double movement' of an inevitable, cumulative rising tide of progressive working class and popular opposition springing from below to challenge the devastation wrought by the top-down extension of neo-liberal market forces into all forms of life and livelihood. One of the limits of this currently popular 'optimistic' reading of Polanyi is its neglect of the possibility if not likelihood that what he called 'enlightened reactionaries' may well become major forces in protective counter-movements.³

Indeed, on a pessimistic note, I will conclude that South Africa may represent the scene of a triple movement – an excessive dose of neoliberalism, popular resistance (particularly against

¹ . For the case of Africa, see evidence collected in Bond, P. (2006), *Looting Africa: The Economics of Exploitation*, London, Zed Books..

² . Nqakula, C. (2007), 'Reply to Question 1834, National Assembly, 36/1/4/1/200700232', Cape Town, 22 November.

³ . Hart, G. (2008), 'The Provocations of Neoliberalism: Contesting the Nation and Liberation after Apartheid', *Antipode*, 40, 4.

corporate power) and a more sophisticated return to market mechanisms by enlightened reactionaries.

South Africa's pro-corporate democratic transition

The height of the corporate movement to establish a beachhead in environmental and social policy was probably 2002, when Johannesburg hosted the World Summit on Sustainable Development. At that point corporate profits had been restored within South Africa, after several decades of stagnation due to manufacturing overproduction and pressure from organised labour.⁴ Moreover, several other socio-economic processes favoured capital in relation to ordinary citizens and the environment:

- there was an immediate post-apartheid rise in income inequality, which was slightly tempered after 2001 by increased welfare payments, but which meant the Gini coefficient soared from below 0.6 in 1994 to 0.72 by 2006 (0.8 if welfare income is excluded);⁵
- the official unemployment rate doubled (from 16% in 1994 to around 32% by the early 2000s, falling to 26% by the late 2000s - but by counting those who gave up looking for work, the realistic rate is closer to 40%) as a result of imported East Asian goods in relatively labour-intensive sectors (clothing, textiles, footwear, appliances and electronics) and capital-/intensive production techniques elsewhere (especially mining and metals);
- the provision of housing to several million people was marred by the facts that the units produced are far smaller than apartheid 'matchboxes', are located further away from jobs and community amenities, are constructed with less durable building materials, come with lower-quality municipal services, and are saddled with higher-priced debt if and when credit is available;
- while free water and electricity are now provided to many low-income people, the overall price has risen dramatically since 1994, leading to millions of people facing disconnections each year when they cannot afford the second block of water consumption;
- the degeneration of the health system, combined with AIDS, has caused a dramatic decline in life expectancy, from 65 at the time of liberation to 52 a decade later;⁶
- the education system is still crippled by excessive cost recovery and fiscal austerity, leaving 35% of learners dropping out by Grade 5 (worse than neighbouring Namibia, Lesotho and Swaziland) and 48% by Grade 12, and, according to the most recent (2001) survey of schools, leaving 27% without running water, 43% without electricity, and 80% without libraries and computers;⁷
- ecological problems have become far worse, according to the government's own commissioned research in the 2006 'Environmental Outlook' report, which according to the leading state official, 'outlined a general decline in the state of the environment';⁸
- the high crime was accompanied by an arms race that left working-class households more vulnerable to robberies, house-breaks, car theft and other petty crime (with increases of

⁴ . <http://www.transformation.ukzn.ac.za/archive/tran009/tran009005.pdf>

⁵ . Joffe, H. (2008), 'Growth has helped richest and poorest', *Business Day*, 5 March.

⁶ . http://www.statssa.gov.za/news_archive/17sep2004_1.asp, CNN (1999), 'Life expectancy in Africa cut short by AIDS', 18 March, <http://edition.cnn.com/HEALTH/9903/18/aids.africa.02/index.html>

⁷ . Vally, S. and C.A. Spreen (2006), 'Education Rights, Education Policy and Inequality in South Africa', *International Journal of Educational Development*, 26, 4.

⁸ . <http://www.info.gov.za/speeches/2007/07062911151001.htm>

more than 1/3 in these categories from 1994-2001),⁹ as well as epidemic levels of rape and other violent crimes.

Still, by 2001, the rate of profit for large SA capital was restored to 9th highest in the world (far ahead of the US and China), according to one British government study,¹⁰ and an 'economic boom' is regularly proclaimed by observers such as the *Financial Times*,¹¹ thanks to 'macroeconomic stability', GDP growth uninterrupted since 1998, and a substantial rise in exports.

The harsh reality, though, suggests the emergence of a parasitical economy for which such profits and GDP growth rates are untenable at present levels, given the persistence of deeper-rooted contradictions:

- with respect to stability, the value of the Rand in fact crashed by more than a quarter in 1996, 1998, 2001, and 2006, the worst record of any major currency, which in turn reflects how vulnerable SA has become to whimsical international financial markets thanks to steady exchange control liberalisation starting in 1995;
- SA has witnessed GDP growth during the 2000s, but this does not take into account the depletion of non-renewable resources - if this factor plus pollution were considered, SA would have a net *negative* per person rate of national wealth accumulation (of at least \$2/year), according to even the World Bank;¹²
- SA's economy has become much more oriented to profit-taking from financial markets than production of real products, in part because of extremely high real interest rates, for from March 1995 (when the financial rand exchange control was relaxed), the after-inflation interest rate rose to a record high for a decade's experience in SA economic history, often reaching double digits (after a recent 3.5% spike during the mid-2000s, consumer and housing credit markets are badly strained by serious arrears and defaults);
- the two most successful major sectors from 1994-2004 were communications (12.2% growth per year) and finance (7.6%) while labour-intensive sectors such as textiles, footwear and gold mining shrunk by 1-5% per year, and overall, manufacturing as a percentage of GDP also declined;
- Government admits that overall employment growth was -0.2% per year from 1994-2004 - but -0.2% is a vast underestimate of the problem, given that the official definition of employment includes such work as 'begging' and 'hunting wild animals for food' and 'growing own food';
- the problem of excessive capital intensity in production - too many machines per worker - will probably get worse, for the Industrial Development Corporation (a state agency) forecasts that the sector with the most investment in the period 2006-2010 will be iron and steel, with a massive 24% rise in fixed investment per year, but sectoral employment expected to fall 1.3% per year, in spite of - or indeed because of - all the new investment;
- overall, the problem of 'capital strike' - the big business failure to invest - continues, as

9

http://www.iss.co.za/index.php?link_id=3&slink_id=1431&link_type=12&slink_type=12&tmpl_id=3

¹⁰ . http://www.statistics.gov.uk/articles/economic_trends/ET587_Walton.pdf

¹¹ . Russell, A. (2007), 'South Africa's malls trounce township shops', *Financial Times*, 12 March; Russell, A. (2007), 'Post-apartheid phase two: Zuma's leadership of the ANC needs to prove sceptics wrong', 19 December; MacNamara, W., A. Russell and W. Wallis (2007), 'Post-apartheid phase two', *Financial Times*, 20 December.

¹² . World Bank (2006), *Where is the Wealth of Nations?* Washington, DC, p.??

gross fixed capital formation hovered between 15-17% from 1994-2004, hardly enough to cover wear-and-tear on equipment; and

- businesses did invest their SA profits, but not mainly in SA: Dating from the time of political and economic liberalisation, most of the largest Joburg Stock Exchange firms - Anglo American, DeBeers, Old Mutual, SA Breweries, Liberty Life, Gencor (now the core of BHP Billiton), Didata, Mondi and others - shifted their funding flows and even their primary share listings to overseas stock markets;
- the outflow of profits and dividends due these firms is one of two crucial reasons SA's 'current account deficit' has soared to amongst the highest in the world - at 8.1% of GDP this quarter - and is hence a major danger in the event of currency instability, as was Thailand's (around 5%) in mid-1997;
- the other cause of the current account deficit is the negative trade balance, which can be blamed upon a vast inflow of imports after trade liberalisation, which export growth could not keep up with;
- another reason for capital strike is SA's sustained overproduction problem in existing (highly-monopolised) industry, as manufacturing capacity utilisation fell substantially from the mid 80s% range during the 1970s, to the high 70s% range during the early 2000s;
- corporate profits avoided overaccumulated plant, equipment and factories, and instead sought returns from speculative real estate and the Johannesburg Stock Exchange: there was a 50% increase in share prices during the first half of the 2000s, and the property boom which began in 1999 had by 2004 sent house prices up by 200% (in comparison to just 60% in the US market prior to the burst bubble, according to the International Monetary Fund).

As can be observed in accompanying figures, these problems are deep, structural dilemmas. Because of the liberalisation of both trade and finance, the current account deficit is dangerously high (-8%) compared to peer economies (Figure 1). Although overall corporate profits are up against worker wages, manufacturing profits have fallen dramatically since the early 1980s in relation to financial and speculative profits (Figure 2). South Africa's export advantages are in a few areas difficult to maintain, such as auto components, swimming pool filters, wines, coal and base metals (Figure 3). Low fixed investment rates persist, especially by private sector investors (Figure 4), in part because excess idle capacity in existing plant and equipment (Figure 5). That, in turn, helps explain the very low level of Foreign Direct Investment, contrasting with dangerously high inflows of liquid Portfolio Capital attracted by South Africa's high real interest rate (Figure 6).

In sum, instead of an 'economic boom' and 'macroeconomic stability,' South Africa shows evidence of a parasitical, slow-growth, high-poverty, unemployment-ridden, ever more unequal, capital-flight-prone, volatile, vulnerable, elite-oriented economic machine plowing over poor people, whose gains appear only as temporarily restored profitability for big capital and a conspicuous consumption binge for a credit-saturated petit-bourgeoisie.

As a result of the power relations that logically follow, 'corporate social responsibility' and 'regulation' mean very little. The Johannesburg Stock Exchange's Social Responsibility Index is voluntary and not well monitored, with notoriously eco-hostile firms like Sasol oil-from-coal scoring themselves highly. Instead, the more durable approaches adopted by eco-social activists have been to strip the prerogatives of capital - the power to produce and price at will - by insisting on decommodified access to basic services; challenging profits - and corrupt

activities – associated with activities like arms trading; and questioning how and why corporate profitability relates to broader problems in society such as racism (both apartheid-era and contemporary) and environmental degradation.

The social turmoil that has logically resulted from the sort of material problems described above generated world-class campaigns in various sectors. Consider six briefly next: access to AIDS medicines, commercialised water, pollution, climate change, the arms market and Apartheid reparations.

Medicines

The South African government's 1997 Medicines Act – which made provision for compulsory licensing of patented drugs - was the main motivation for a Treatment Action Campaign (TAC) that began the following year to address the need for AIDS medicines, which in the late 1990s were prohibitively expensive for nearly all South Africa's People Living with AIDS (PLAs). That campaign was immediately confronted by the US State Department's 'full court press' (their description to the US Congress) against the Medicines Act, in large part to protect intellectual property rights generally, and specifically to prevent the emergence of a parallel inexpensive supply of AIDS medicines that would undermine lucrative Western markets.¹³

The campaign included US Vice President Al Gore's direct intervention with SA government leaders. But in 1999, as Gore prepared his bid for the 2000 presidential election, funded by big pharmaceutical corporations (which in a prior election cycle provided \$2.3 million to the Democratic Party), TAC's allies in the AIDS Coalition to Unleash Power (ACTUP) began to protest at Gore's campaign events. The protests ultimately threatened to cost Gore far more in adverse publicity than in Big Pharma contributions, so he changed sides and withdrew his opposition to the Medicines Act, as did Bill Clinton a few weeks later at the World Trade Organisation's Seattle Summit. Big Pharma did not give up, of course, and filed a lawsuit against the Medicines Act (counterproductively entitled 'Pharmaceutical Manufacturers Association v. Nelson Mandela') in 1999. The case came to court in early 2001, and by April additional solidarity protests against pharmaceutical corporations by Medicins sans Frontiers, Oxfam and other groups in several cities compelled the Association to withdraw the suit.

By late 2001, the Doha Agenda of the World Trade Organisation adopted explicit language permitting violation of Trade Related Intellectual Property Rights for medical emergencies. The South African government remained reluctant to provide medicines, for a variety of bad reasons in part related to 'denialism' that HIV causes AIDS. As a result, the TAC was compelled to file a Constitutional Court case which succeeded in mid-2001 in at least gaining access to Nevirapine for pregnant, HIV+ women in public hospitals. At the same time, however, Anglo American Corporation released a study showing that only 12% of their employees met a cost-benefit test by which supply of drugs was cheaper to the company than allowing HIV+ workers to die early (replacing them from the pool of 40% unemployed). Although with declining medicines prices, that calculation has changed dramatically, most corporations still require strong public pressure to assure that AIDS medicines are available.

¹³ . Bond, P. (1999), 'Globalization, Pharmaceutical Pricing and South African Health Policy: Managing Confrontation with US Firms and Politicians', *International Journal of Health Services*, 29, 4.

A further pressure point is the power that financial markets have to discipline states engaging in deficit spending. As a reflection of this power, SA presidential spokesperson Parks Mankahlana disclosed to *Science* magazine in 2000 why the SA Department of Health refused to provide a relatively inexpensive (R100 million per year) anti-retroviral treatment to pregnant, HIV-positive women: 'That mother is going to die and that HIV-negative child will be an orphan. That child must be brought up. Who is going to bring the child up? It's the state, the state. That's resources, you see.'¹⁴

Big Pharma's reluctance to surrender property rights so as to meet needs in the large but far less lucrative African market coincided with the rise of philanthropic and aid initiatives to provide branded medicines. The Bill and Melinda Gates Foundation's parallel health services in sites like Botswana undermined state health services; it was no coincidence that Gates stands most to lose of anyone on the planet in the event intellectual property is threatened. Big Pharma's donations to US politicians resulted in the Bush administration's President's Emergency Plan for AIDS Relief (Pepfar), which also promotes branded not generic medicines. Given such prevailing power relationships, the South African government did not invoke any compulsory licensing of medicines even after the Pharmaceutical Manufacturers' Association withdrew from its 2001 lawsuit. Local manufacturers Aspen and Adcock Ingram did, however, lower costs substantially through voluntary licensing of the major AIDS drugs.

The SA government's footdragging was costly. It was 2004 before the government issued its first tenders for AIDS medicines, and given the drop in prices due to generics since that time, 'by the end of 2007 the government was paying almost twice as much as the private sector for first-line drugs like nevirapine', according to a United Nations report. In 2008, the South African Joint Civil Society Monitoring Forum of health, human rights and law organisations complained of 'serious shortcomings with the [AIDS medicines] tender process and the specifications', including further delays that would lead to far more paid from public resources than was necessary.¹⁵ Hence, even though more than 400,000 South Africans received medicines by that point, this was below the trajectory needed to reach the target of 1.3 million patients with access by 2011.

The combination of a lethargic state and persistent pharmaceutical corporate power meant groups like the AIDS Law Project (based at the Wits Centre for Applied Legal Studies, and associated with TAC) continued their battle, gradually winning patent battles in the courts so as to promote local generic production of individual medicines. According to the Project's Jonathan Berger, 'We need a health department that's prepared to do what the governments of Thailand and Brazil have done. We just can't keep doing it one by one.'¹⁶ Those two governments led the way not only in treatment provision at public clinics, but also in contesting the US government in international trade battles. South Africa's activists could break through on a few fronts, but without a supportive state, it was impossible to defeat the profit motive and generate a health system based upon meeting human needs.

Public versus private water

¹⁴ . *The Citizen*, 14 July 2000 and the *Mail and Guardian*, 21 July 2000.

¹⁵ . IRIN (2008), 'Question marks over ARV tender', 29 February.

¹⁶ . IRIN (2008), 'Question marks over ARV tender', 29 February.

Water is another site where partial victories can be declared by civil society campaigners against corporate power, in part through international solidarity activism. But the adverse influence of multinational capital (not to mention the World Bank) on South Africa's most populous metropole, Johannesburg, during the early 2000s, will be felt on water consumers for many years, through water-saving technologies and water pricing systems.

The Paris firm Suez, the world's second largest water company, came to South Africa just before the end of apartheid, picking up three small water concessions in Eastern Cape towns during the early 1990s. By 2001, the firm had won the bid for a five-year trial contract to manage Johannesburg's water,¹⁷ in part by taking the city's councillors on a junket to Argentina the year before, where the 'success story' of Buenos Aires was unveiled. (That contract would go belly-up when in 2002 the Argentine government could no longer afford to allow Suez's substantial hard-currency profit repatriation in the midst of its economic crisis.) At that very point in time, Suez subsidiary Dumez was alleged by Lesotho government prosecutors to have bribed the manager of the Lesotho Highlands Water Authority (which supplies Johannesburg with water), Masupha Sole. Sole allegedly received \$20,000 at a Paris meeting in 1991 to engineer a contract renegotiation providing Dumez with additional profits in excess of \$1 million, at the expense of Johannesburg water consumers.¹ On those grounds, Johannesburg officials were asked by the SA Municipal Workers Union to bar Suez from tendering for the water management contract, but they refused.

Suez inherited a dysfunctional retail water system, especially in Johannesburg's vast shack settlements which are home to nearly a third of the city's 3.2 million residents. There, according to city surveys, 65% use communal standpipes and 20% receive small amounts from water tankers (the other 15% have outdoor yard taps). For sanitation, 52% have dug pit latrines themselves, 45% rely on chemical toilets, 2% have communal flush toilets and 1% use ablution blocks. Needless to say, these conditions are both particularly hostile to women and children, and breed disease at a time when Johannesburg's HIV rate has soared above 25% and during a decade in which cholera and diarrhoea epidemics have killed many tens of thousands of people, especially children.

Instead of expanding supply to these unserved areas, Suez's response to poverty was to take part in massive water disconnections. At peak in early 2002, just before community resistance became an effective countervailing force, Johannesburg officials were disconnecting more than 20,000 households per month from power and water,¹⁸ making a mockery of the boast on the Department of Water Affairs and Forestry's website that Johannesburg offers 100% of its residents Free Basic Water. For municipal bureaucrats and Suez, the point of disconnecting low-income people and maintaining low water/sanitation standards was a strategy, quite simply, to save money.

Eco-blowback from this process was inevitable, as the then water minister, Ronnie Kasrils,

¹⁷ . Suez controlled the Johannesburg Water Management (Jowam) contractor to the city from 2001-06. Jowam managed the Johannesburg Water (Pty) Ltd., a company established in December 2000 to discharge the City of Johannesburg's water service delivery functions. Although functioning at arms-length from the City, Johannesburg Water is a publicly-owned corporation with the City as its only share-holder.

¹⁸ . *Sunday Times Gauteng Metro*, 19 May 2002.

admitted to parliament in 2001: 'Unacceptable sanitation services resulting in severe water pollution, especially bacteriological pollution, is a grave concern in Gauteng [the urban province dominated by Johannesburg]... A lack of funds has been identified as the hindering factor in the upgrading and maintenance of sewerage networks.'² Moreover, lack of a sanitation system was a regular excuse for displacing low-income black people to outlying areas.³ Numerous histories of Johannesburg shed light on the uneven character of the city's growth,⁴ but what is striking is that early 20th century sanitation conditions are now associated with the 21st century return to private management of public services.

In order to cut consumption by low-income people, Suez began its reign as Johannesburg water manager by installing 6500 pit latrines, a pilot 'shallow sanitation' system and thousands more pre-paid water meters in poor areas, including Soweto. Pit latrines require no water. The new shallow sewage system is also attractive to the company, because maintenance costs are transferred to so-called 'condominium' residential users, where a very small water flush and slight gravity mean that the pipes must be manually unclogged every three months (or more frequently) by the residents (typically women) themselves.⁵

And unlike conventional meters in rich suburbs which provide due warning of future disconnection (and an opportunity to make representation) in the form of notification in red writing at the bottom of the monthly bill, pre-paid meter disconnection occurs automatically and without warning following the exhaustion of the FBW supply. If the disconnection occurs during the night or over a weekend when water credit vendors are closed, the household has to go without water until the shops are open again, and if the household does not have money for additional water, it must borrow either money or water from neighbours in order to survive. This represents not only a threat to dignity and health, but also a direct risk to life in the event of a fire (two children's deaths in a Soweto shack fire resulting from pre-paid meters catalysed a lawsuit against Johannesburg Water).

Johannesburg water managers were also reluctant to offer a genuine free lifeline supply and rising block tariff so as to redistribute water from rich to poor, a system which if designed properly would also penalize luxury consumption and promote conservation. They were, after all, in the business of selling more water to people, not less, notwithstanding that the water is piped hundreds of miles across the Lesotho mountains in Africa's largest cross-catchment water transfer. During the late 1990s, Johannesburg water customers became liable for vast Lesotho dam loan repayments, resulting in a spectacular 69% increase from 1996-99 in the nominal cost of water. By the time the city's commercialization strategy was established in 1999, Johannesburg's water prices became more regressive than even during apartheid (i.e., with a flatter slope in the block tariff).⁶

However, in the wake of a December 2000 campaign promise by the ruling party, a Free Basic Water (FBW) lifeline was implemented in 2001, amounting to 6,000 liters of water each month for each household. The main debates are over whether the FBW block provides adequate water for larger low-income families (especially those with HIV+ members), and whether the tariff curve then rises in an excessively convex (versus sufficiently concave) manner. The mandate from national government – i.e., the FBW promise made in the wake of rising social protest and alienation, as well as the onset of the cholera epidemic – was worded

as follows: 'The ANC-led local government will provide all residents with a free basic amount of water, electricity and other municipal services so as to help the poor. Those who use more than the basic amounts, will pay for the extra they use.'

Johannesburg officials reinterpreted this otherwise progressive mandate utterly regressively, however, by adopting a relatively steep-rising convex tariff curve, in contrast to a concave curve starting with a larger lifeline block, which would have better served the interests of lower-income residents. In 2003, the second tier of the block tariff (7-10 kl/household/month) was raised by 32%, while the third tier (11-15 kl/household/month) was lowered by 2% (during a period of roughly 10% inflation, which was the amount by which higher tier tariffs increased). The dramatic increase in their per-unit charges in the second block meant that there was no meaningful difference to their average monthly bills even after the first free 6,000 liters. Moreover, the marginal tariff for industrial/commercial users of water, while higher than residential, actually declines after large-volume consumption is reached.

Low-income residents could simply not afford to pay for water at the price Suez demanded. According to a front page *New York Times* story in May 2003, Suez officials 'acknowledged that in communities like these, billing people for water has been like squeezing water from a stone... Orange Farm women, who live by doing other people's laundry, said they barely had enough money to pay for food and school fees. Many of them already have prepaid electricity meters in their homes, and they say their families end up in the dark for several days each month.'⁷

Resistance soon emerged, consistent with urban social movement traditions dating at least to the mid-1980s, when Johannesburg hosted what was possibly the world's most impressive urban social movement, the South African township 'civics'.⁸ But the SA National Civic Organization suffered systematic demobilization of their ranks by the ruling party during the mid-1990s, hence an independent network of community groups arose in several Johannesburg townships beginning with the formation of the Soweto Electricity Crisis Committee in early 2000.⁹ Led by former ANC councilor and Soweto regional leader Trevor Ngwane, the group took what was already a popular township survival tactic – illicitly reconnecting power once it was disconnected by state officials due to nonpayment (in 2001, 13% of Gauteng's connections were illegal) – and added a socialist, self-empowered ideological orientation.¹⁰

Within a few months, the Anti-Privatization Forum (APF) was formed to unite nearly two dozen community groups across Gauteng, sponsoring periodic mass marches of workers and residents, and also networked with water activists across the world (e.g. to the major water warzone of Cochabamba in Bolivia, to Argentina and to Accra). One of the key activists from Orange Farm township, Bricks Mokolo, quotes the popular APF graffiti slogan: 'destroy the meters and enjoy the water. The government promised us that water is a basic right. But now they are telling us our rights are for sale'.¹¹ By 'destroy the meters', Mokolo refers to the activists' widespread 'bypass' strategy of putting connector pipes or hoses in place of meters, thus ensuring an adequate free water supply. Dozens of militant protests were carried out by Soweto and Orange Farm activists against Suez and city officials during the 2000s, including a demonstration at the mayor's house in a mainly white suburb in early 2002, during which his bodyguard shot and wounded activists, 87 of whom were arrested and ultimately acquitted.

Because Suez's reign in Johannesburg was rife with social conflict and also generated strife within the council, the company's contract was not renewed in 2006, in spite of the desired 25-year extension option available in the original water commercialization Business Plan. That plan anticipated that (after-tax) profits from Johannesburg water supply would soar from R3.5 million (roughly \$300 000) in 2000-2001 to R419 million (\$50 million) in 2008-2009. Instead of allowing the outflow of huge profits to Paris, local activists partially succeeded in their strategies both to decommodify water (raising FBW from 6000 to 10 000 l/hh/month in the process) and to deglobalise capital – sending Suez packing - in favour of local public services provision. But the provision of FBW was still unsatisfactory, in part because Johannesburg officials, still influenced by Suez's 2000s pricing regime, also intended to cancel universal FBW in favour of means testing. No matter that Johannesburg Council resumed water management, its commercialization continued.

So that their critique could be legalised and generalised, Soweto anti-privatisation activists from the Phiri neighbourhood launched a constitutional court case in 2004, facilitated by the Freedom of Expression Institute and the University of the Witwatersrand Centre for Applied Legal Studies, and ultimately argued by one of the country's top lawyers, Wim Trengove. The case - *Mazibuko & Others v City of Johannesburg & Others* – was finally heard in the Johannesburg High Court in December 2007. Several issues came under scrutiny: the implications of pre-paid water meters and shallow sanitation for access and administrative justice, especially in cases of water emergency and chronic poverty; and the origins and sufficiency of Free Basic Water, as well as the non-affordability of water beyond the FBW allocation (which was due to be raised in April 2008 to 10 kl/hh/m, but only for 'indigent' households as determined by a means test).

This was the first South African case in which the applicants explicitly seek enforcement of their constitutional right of access to sufficient water.¹⁹ The Phiri applicants specifically ask for a FBW supply of 50 litres per person per day (not 6000 litres per household per month), and the option of conventional metered water supply, which exists throughout Johannesburg's richer suburbs, to the residents of Phiri. As Trengove remarked to the court: 'Rich people are given the luxury of using water first and paying later... Discrimination between the rich mostly white residents on the one hand, and the poor mostly black residents on the other, is sheer discrimination on grounds of poverty and race.'²⁰

Remarkably, on 30 April 2008, the legal strategy paid off, at least temporarily. Judge Moroa Tsoka agreed with the Soweto plaintiffs that JW's prepaid water meters and inadequate free water supply violated their constitutional rights. Tsoka ordered the prepaid meters replaced with conventional meters, and that 50l be provided free to each resident. The arrogant official reaction was soon posted on the municipal website: 'The city's efforts to upgrade water infrastructure could suffer a setback following the high court ruling.' Tsoka accused city officials of racism by imposing credit control via prepayment 'in the historically poor black areas and not the historically rich white areas'. Meter installation apparently occurred 'in terms of colour or geographical area', and the community consultation process was 'a publicity stunt' characterised by a 'big brother approach'. The high court ruling will potentially force a more ecological, rational and fair approach to

¹⁹ . Constitution of the Republic of South Africa Act 108 of 1996, section 27(1)(b).

²⁰ . Sapa (2007), 'Residents 'were bullied into accepting prepaid meters'', 3 December.

water provision. The national Coalition Against Water Privatisation, the Wits Centre for Applied Legal Studies and advocate Wim Trengove deserve credit for supporting the Soweto residents and raising JW's race/class discrimination to national prominence. Tragically, three weeks after the historic judgment, Lindiwe Mazibuko passed away of cancer. And JW and the national Department of Water Affairs and Forestry launched an appeal against the judgment.

Corporate pollution

With regard to pollution, there are countless incidents in which multinational firms operating in South Africa (some with local headquarters) violate laws by illegally dumping waste or emitting effluents into the water and air. What is important is that in the wake of systemic regulatory failure and post-apartheid environmental conditions that are far worse than during apartheid (in part because of the downgrading of Environmental Impact Assessments), local activists have found ways to put formidable pressure on the state and capital. Some of these involve long-term campaigns, such as against Thor Chemicals' mercury poisoning, for which partial damages were eventually paid. Others entail precedent-setting lawsuits, such as the Cape PLC asbestos case which drove the firm to bankruptcy. Others require much more direct action and creative protest.

As just one illustration of resistance tactics backed by strong analysis, the Pietermaritzburg-based NGO groundWork established the humorous 'Corpse Awards' (with the US NGO Corpwatch in 2002 and subsequently with the University of KwaZulu-Natal Centre for Civil Society) to 'recognise worst corporate practice in producing environmental injustice.'²¹ Nominations come mainly from voluntary community-based organisations of civil society, especially people living next door to the plants and mines. In 2005, they included the country's most aggressive polluters: oil refiners Sasol, Sapref and Engen, steel giant Mittal (formerly Iscor), pulp and paper giants Sappi and Mondi, US agribusiness Monsanto and South Africa's power utility, Eskom.

The 2006 nominees were AngloPlatinum (for destruction of the Mapela community as noted below), Bayer Cropscience (for GM sugar financing), the SA cement industry (for using hazardous waste in its product), two more oil refiners (FFS in Pietermaritzburg and Chevron at Table View, Cape Town) whose air samplings were far higher than legally acceptable levels, Engen (again), Samancor Manganese (for poisoning workers in the Vaal Triangle), Australia's Paladin Resources (for its uranium mining in Malawi), and AngloGold Ashanti for its 16 worker corpses at Carletonville's Tautona mine near Johannesburg in 2006, its likely violation of the UN arms embargo in the eastern DRC (then CEO Bobby Godsell reacted to allegations of collaboration with warlords in mid-2005 with the remark, 'Mistakes will be made'), its role in the death of artisanal workers in Obuasi, Ghana, and its subsidiary Kedadha's role in one of the world's most repressive sites: 'the Colombian Army is engaged in uprooting peasants and small-scale miners by attacking their leaders such as Alejandro Uribe, so that the multinational mining corporation Kedadha can enter the region and undertake mining operations on peasants' and miners' lands.'

²¹ . All quotes in the section below are from Corpse Award documentation, at <http://www.groundwork.org.za>

According to 2005 award guest Naomi Klein, 'We know corporates are not just satisfied with leeching your communities and poisoning your bodies. They want to be loved, which is why government invented corporate social responsibility. For them there is no problem that is so big that it can't be solved with fantastic public relations.'

Bobby Peek, director of groundWork and recipient of a Goldman Prize for environmental activism, explains the antipathy to self-regulation:

All [2005 nominees] boast their commitment to Corporate Social Responsibility and the environment. Their advertisements and publications proclaim best practice and continuous improvement as well as their commitment to health and safety. Some have even won awards for environmental and social reporting. None of them have convinced their neighbours who live with the burden of ill-health - cancers, asthma and other breathing difficulties, eczemas and allergies, and a variety of conditions affecting the blood, nerve and immune systems.

To illustrate the scale of the problem, consider the groundWork critiques of some of the Corpse targets. Sasol's annual pollution in the early 2000s included 300 000 tonnes of sulphur dioxide, 120 000 tonnes of hydrogen sulphide, 446 000 tonnes of volatile organic compounds, 420 000 tonnes of solid and liquid toxic waste and 57 million tonnes of carbon dioxide. Health and safety accidents killed an average of 9 workers per year during the early 2000s, and an unknown number of community residents through respiratory diseases. Similarly, Sapref is the refinery for Shell and BP, and annually emits 13 000 tonnes of sulphur dioxide and 1.2 million tonnes of CO₂. Regular leaks and fires occur at Sapref and its South Durban neighbour, the Engen refinery, owned by Petronas of Malaysia. Their impact on communities is phenomenal, with the Settlers School – overlooking both Sapref and Engen – having the highest incidence of asthma recorded in world. Also guilty of world-class pollution is Mittal's Vanderbijlpark steel smelter, which began leeching toxics into groundwater in 1952. The plume of cadmium and lead, responsible for widespread cancer and contamination, today stretches more than 10 square kilometres. After the firm – formerly state-owned Iscor - privatised in 1989, 30 000 jobs were cut, at which point Indian tycoon Lakshmi Mittal bought the steelmaker.

In the paper sector, the South African Pulp and Paper Industry changed its name to Sappi and in 2000 won permission to relist on the New York Stock Exchange. Along with Mondi, its apartheid legacy included the occupation of three million hectares of land which entailed the forced removal of black residents. Critics note that Sappe turned 'grasslands rich in biodiversity (some 4,000 species) into monoculture plantations dependent on chemicals. This transformation has dried out water catchments and destroyed the structure and fertility of soils.' It exports the majority of pulp, and outsourced thousands of workers.

In the agricultural sector, Monsanto controls 40% of the seed market, and is accused by critics of 'pushing agrochemicals and mono-crop farming since the 1940s. Its pursuit of power to decide the future of agriculture and lock farmers into dependence on its technologies led it to pioneer genetic engineering in the 1980s.'

Eskom's Cape Town nuclear power plant, Koeberg, generates 32 tonnes of high level

spent fuel waste annually, stored on site, with no waste disposal plan. Its Pebble Bed Modular Reactor programme will add many more facilities in coming years, at vast expense. In addition to Eskom, Peek remarks,

Several of the nominated corporations started life as heavily subsidised parastatals and most of them were protected from scrutiny by security legislation - notably the Key Points Act. Corporations more or less determined policy relevant to their operations and some, like Eskom, effectively ran the relevant government department. To be sure, water officials expressed concern about Iscor's pollution of Steel Valley as early as 1961, but they took no effective action when the corporation ignored them - then or since. For the most part, the relationship was cozy. Regulators took industry information at face value and adopted the corporate viewpoint. Local government was also keen to support industry prerogatives... The pattern of locating poor black people next to dirty industry and waste dumps was replicated all over the country and with particular enthusiasm in company towns such as Vanderbijlpark, Sasolburg and Secunda... On the whole, government remains the handmaiden of corporate abuse. In the first decade of democracy, regulation was mostly about negotiating non-compliance. In some sectors, however, compliance wasn't an issue. In the grand old order tradition, the gene industry simply wrote its own rules. At the same time, government has actively promoted corporate driven development, foreign corporate investment and the export oriented drive for global markets and positioning. It is also closing down some of the democratic openings - restricting access to information, bringing the Key Points Act out of the closet, 'streamlining' environmental impact assessments, confining protest and silencing dissent.

Brave community activists are thus periodically in conflict with both government and corporate power. As Peek notes,

In 2002, Iscor sought a gagging order against the community claimants. Engen and Sapref have both introduced confidentiality clauses into labour contracts to gag workers. Mondi has consistently attempted to prevent public criticism. In 2001, it ordered workers not to talk to the media or other stakeholders about its expansion plans and, in particular, about its proposed incinerator. In 2003, the managing director of the Mondi paper mill in Durban suggested that he could use personal influence with 'key figures in the media' to prevent local activists publicising 'information on worker injury and death at the plant'. The corporation also went to court to get a gagging order against the South Durban Community Environmental Alliance.

Against these strategies, critics of pollution will continue a variety of tactics, including Corpse Award ridicule (widely covered in the South African business press). The next critique of corporate activity in the late 2000s appears to be coming from victims of minerals extraction, such as communities in Limpopo, Northwest and Eastern Cape Provinces, who have criticised AngloPlats, LonPlats and Australian Minerals Resources, respectively, for their looting of resources. For example, the Mapela and Maandagshoek communities accused AngloPlats of

removing communities from their ancestral land, stealing peoples' resources and gagging voices of resistance. AngloPlatinum imposed 'SLAPP' orders - Strategic Litigation Against Public Participation - against the mining communities' legal representative, Richard Spoor, so as to prevent him from 'defaming' the firm using the words 'racist, thug and bully'.

The most serious and ultimately life-threatening forms of pollution are greenhouse gases – especially carbon dioxide (CO₂) responsible for climate change.

Carbon trade

One of the largest markets ever to be developed from scratch, with potential activity in the trillion dollar annual range within the next few years, is the market in greenhouse gas emissions reductions, especially carbon trading. Although aimed at mitigating climate change, the new market may do more harm than good, South African campaigners argue. They joined international activists in 2004 to declare war not only on companies guilty of species-threatening climate emissions, but also of trying to trade their way out of reductions obligations. By 2008 these companies included buyers of emissions credits from Northern countries: Shell, BHP Billiton, EDF, RWE, Endesa, Rhodia Energy, Mitsubishi, Cargill, Nippon Steel, ABN Amro, Chevron, and Chugoku Electric Power. Corporate sellers of emissions reduction credits especially from Brazil, South Africa, India and China included Tata Chemicals, ITC, Plantar, Votorantim, Petrobras, Shri Bajrang, Birla, Oil & Gas Nat. Corp., Sasol, Mondi, Hu-Chems Fine Chemical, Chugoku Electric Power and Chhatisgarh Electricity.

The idea behind the trade gained global credibility when then US vice president Al Gore negotiated for its inclusion in the 1997 Kyoto Protocol design. The carbon market was created and Kyoto gave countries a minimal reduction target (5 per cent from 1990 emissions levels, to be achieved by 2012), in exchange for the US delegation's promise – subsequently broken – of Kyoto endorsement. Corporations in Northern countries can either meet the target through their own reductions or by purchasing emissions credits from countries/firms that reduce their own greenhouse gasses beyond their target level, through the carbon trade.

South Africa is one of the most important sites to question both the internal logic and the practical implications of carbon trading, because – as a result of apartheid's historic reliance upon cheap electricity from coal-fired generators – CO₂ emissions, measured as a percentage of per capita GDP, are 20 times higher than even those of the United States. Carbon trading arrived in South Africa as a concept in 2002, with the World Summit on Sustainable Development, as a means of relatively painlessly addressing mitigating greenhouse gases. Africa's largest rubbish dump, located by the apartheid regime in 1980 within a black residential community - the Bisasar Road vicinity of Durban - offered the South African government, the World Bank and numerous corporations an opportunity to earn profits from emissions reductions, by turning methane emissions into electricity using a \$15 million Bank subsidy which it intended selling off to international corporate investors.

Until her death in July 2007, environmental activist Sajida Khan attempted to close the Bisasar Road dump, located across the street from her family's decades-old residence, and

in the process derail South Africa's largest emissions trade pilot project. She died of her second dose of cancer which she attributed to toxins blowing from the dump. Under Khan's ideal scenario, Bisasar Road's closure, the methane from the dump would be captured, piped out, cleaned and safely turned into energy. Instead, Durban officials aimed to burn the methane on site (increasing dangerous incinerated carcinogens), and in the process, keep the dump open at least another seven years, and possibly twenty, so as to increase the flow of carbon reduction credits via the Bank's Prototype Carbon Fund.

However, in July 2006, Durban Solid Waste conceded the power of Khan's 90-page Environmental Impact Assessment critique, which a year earlier was widely credited as having also intimidated the World Bank away from the Bisasar site. The municipal rubbish company only applied (and won) Bank funding for methane-electricity burning from two much smaller landfills, which were not located in the immediate vicinity of residential areas. But in addition to Bisasar, there are several other examples of ways carbon trading is abused in South Africa, justifying its rejection as a strategy to combat climate change.²²

In 2004, Khan's work helped to catalyse the Durban Group for Climate Justice, which in 2006 issued the book *Carbon Trading*, a veritable bible on the subject, edited by Larry Lohmann of the Cornerhouse NGO in England, with assistance from the Dag Hammarskjold Foundation.²³ The Group, whose largest signatory is Friends of the Earth International, aims to discredit the trade based upon experiences such as Khan's, as well as foundational critiques of the very notion of the 'privatisation of the air'. Instead of carbon trading, the more durable solution - drawing inspiration from activists in the energy sector from the Niger Delta, Ecuador, Australia, Norway and Canada - is to '*Leave the oil in the soil, leave the coal in the hole*'. South African activists' critiques of the petroleum sector unite processing/consumption with production, via OilWatch, an international network. The most impressive development in the campaign is Quito-based Accion Ecologia's persuasion of Ecuadoran president Rafael Correa, to keep \$12 billion worth of oil in the Yasuni National Park, for which he seeks \$5 billion in compensation.

Another reason to leave resources in the ground is the 'resource curse' that has adversely affected mostly Third World countries. Nonrenewable resource extraction generates net negative savings in many countries, according to even the World Bank's internal 2006 report *Where is the Wealth of Nations?* That report includes an estimate of -\$2 per year net national per capita savings in South Africa in 2000, a year that per capita gross national income was \$2837. (The negative impact of capital devaluation, pollution and especially extraction of nonrenewable resources is offset, in Bank calculations, by increased human capital investment via education budgets - but still remains dramatically negative for most African countries.)²⁴

²² . Graham Erion, 'Low Hanging Fruit Always Rots First', in Patrick Bond, Rehana Dada and Graham Erion (eds.), *Climate Change, Carbon Trading and Civil Society: Negative Returns on South African Investments* (Pietermaritzburg: UKZN Press, 2007), p.88.

²³ . Larry Lohmann (Ed), *Carbon Trading: A Critical Conversation on Climate Change, Privatisation and Power*, special issue of *Development Dialogue*, 48, September 2006.

²⁴ . Bond, P. (2006), *Looting Africa: The Economics of Exploitation*, London, Zed Books.

Whether they can foil the carbon market in its early stages, and compel the mainstream environmental movement to adopt a more critical perspective on market 'solutions' to market problems, remains to be seen. But the alternative approach, taking the supply side seriously, has far more long-term potential for addressing global warming, because – alongside the ecological debt argument - it begins to reincentivise behaviour of global importance, through which a great deal of local ecological damage is done without recourse to either market or social discipline. In the same spirit of reincentivising anti-social multinational corporate activity – in this case, collaboration with the apartheid regime - the another major internationalist effort associated with the Jubilee debt movement has moved into the highest court of the United States: the campaign for reparations from profits made during apartheid, owed to corporations' black victims.

Reparations for profits from apartheid

The idea of reparations for slavery, colonialism, apartheid and neoliberalism has been argued in small circles of leftwing, nationalist and ethnic movements. But there is a more general sensibility in which crony capitalism with SA and transnational corporations characterises the ruling party's strategies (Figures 7 and 8). To illustrate, in 2001, the World Conference Against Racism (WCAR) was held in Durban, and became a site for a much wider set of arguments. The formal event splintered over a demand from NGOs and some African governments that payment be made to compensate for centuries of colonial plunder, whose effects continue contributing to vastly imbalanced economies, societies and international power relations. The EU's chief negotiator, Belgian foreign minister Louis Michel, justified his own country's appalling history at a press conference: 'Colonialism could not be considered a crime against humanity, for at the time it was a sign of economical good health.'¹² UN human rights commissioner, Mary Robinson, broke off discussions with NGO anti-racism activists because their petition calling for reparations and Palestinian rights was, for her, too radical.

Ironically, even though Nigerian president Olusegun Obasanjo endorsed reparations along with other African official delegates, host president Thabo Mbeki and his foreign minister, Nkosazana Dlamini-Zuma, refused support, saying merely that more donor aid was needed. 'Nigeria has chosen to ditch SA and align itself with other African hardliners over the slavery issue,' lamented a *Business Day* editorial under the headline 'Trapped in the Middle.' It continued, 'The difficulties that SA has encountered in Durban trying to move the rest of the continent to a more moderate position in negotiations between Africa and Europe over an apology and reparations for slavery, highlight the gulf, and sometimes deceit, that underlies relations between this country and the rest of the continent... When will our real friends in Africa stand up and be counted?'¹³

Notwithstanding a march of more than 15 000 local and international activists to the doors of Durban convention centre, reparations demands were absent from the final WCAR document, and moreover, also soon led to a rupture between the ANC government and progressive civil society. Frustrated by the failure of the WCAR to advance their agenda, leaders of Jubilee South Africa, the Khulumani apartheid-victims group and other faith-based activists then turned to the US courts. Civil cases for \$400 billion in damages were filed on behalf of diverse groups of apartheid victims against three dozen major multinational corporations which made profits from South African investments and loans prior to 1994 (by 2003, Anglo American, Gold Fields and Sasol were added to the corporate

defendants list).¹⁴ The Bush regime and corporate lobbies pleaded with US courts, initially unsuccessfully, to nullify an interpretation of the Alien Tort Claims Act that made apartheid-reparations suits possible.¹⁵

Mbeki first reacted to the court applications with 'neither support nor condemnation.' However, in April 2003, in the wake of Archbishop Desmond Tutu's final Truth and Reconciliation Commission (TRC) report which recommended a reparations payment by businesses which benefited from apartheid, Mbeki changed tack. Now, he said, it was 'completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country, and the observance of the perspective contained in our constitution of the promotion of national reconciliation.' He expressed 'the desire to involve all South Africans, including corporate citizens, in a cooperative and voluntary partnership.' But Mbeki failed to reflect upon numerous such attempts by the Reparations Task Force and Cape Town's Anglican Archbishop Njongonkulu Ndungane for some years prior to the lawsuits.¹⁶

Trade minister Alec Erwin joined Mbeki during an April 2003 parliamentary discussion. Pretoria was 'opposed to, and contemptuous of the litigation,' Erwin said. Any findings against companies 'would not be honoured' within South Africa, he added, and a wealth tax - as recommended by the TRC - would be 'counterproductive.'¹⁷ A few weeks later, the director-general in Mbeki's office, former liberation theologian Frank Chikane, attacked the morals of those filing the reparations lawsuits: 'I have seen [apartheid] victims being organised by interest groups who make them perpetual victims. They will never cease to be victims because they [interest groups] need victims to advance their cause. I think it is a dehumanising act.' Chikane argued that lawsuits against banks and corporations would lead 'businesses here to lose money and therefore to lose jobs.' As for the TRC wealth tax, 'My view has always been that healing will happen only if the victimiser stands up and says, 'let us make it right'. It will not happen if the government says so.'¹⁸

In July 2003, Mbeki and justice minister Penuell Maduna went to even greater lengths to defend apartheid-era profits, arguing in a nine-page brief to a US court hearing a reparations case, that by 'permitting the litigation', the New York judge would discourage 'much-needed foreign investment and delay the achievement of the government's goals. Indeed, the litigation could have a destabilising effect on the South African economy as investment is not only a driver of growth, but also of unemployment.'¹⁹ As a friend of the court on behalf of the claimants (alongside Tutu), Nobel laureate Joseph Stiglitz replied that the comments by Mbeki and Maduna had 'no basis,' because, 'those who helped support that system, and who contributed to human rights abuses, should be held accountable... If anything, it would contribute to South Africa's growth and development.'²⁰

Maduna's letter to the US court requested that the lawsuits be dismissed, 'in deference to the sovereign rights of foreign countries to legislate, adjudicate and otherwise resolve domestic issues without outside interference.' But in August 2003, at the opening plenary of a major Reparations Conference, Jubilee SA's Berend Schuitema reported that Maduna made an extraordinary confession: 'The reason why he had made the objection was that he was asked for an opinion on the lawsuit by Colin Powell. He gave Powell his written response, whereupon Powell said that he should lodge this submission to the Judge of the New York Court. Howls from the floor. Jubilee SA chairperson M.P. Giyose pointed out the bankruptcy of the sovereignty argument.'²¹

In June 2004, the US Supreme Court handed down a surprising defeat for the Bush regime in the case of *Sosa v Alvarez*, when corporate plaintiffs requested that foreigners not be permitted to file lawsuits for human rights violations committed elsewhere in the world under the Alien Tort Claims Act (cases were then pending against companies for repressive operations in Burma, Nigeria, Indonesia and apartheid South Africa).²² According to the corporations, US courts might infringe upon the sovereignty of nations and interfere with the business of free trade. The judgement was mixed, however. On the one hand, although the conservative Supreme Court's ruling was a 'huge blow' to the firms, according to Khulumani and Jubilee South Africa lawyers, on the other hand,

The US Supreme Court cautioned that the right to civil relief must be balanced by the domestic policy interests of the foreign nations in which the conduct occurred and the foreign policy concerns of the United States. Regrettably though, in a footnote in the judgment, the US Supreme Court referred to the declaration submitted by the former South African Minister of Justice and Constitutional Development, Dr Penuell Mpapa Maduna, submitted to a district court where the Khulumani and other Apartheid cases are pending as an instance where the caution should be applied.²³

In contrast, the Final Report of the TRC, chaired by Tutu, contained a different sentiment: 'Business failed in the hearings to take responsibility for its involvement in state security initiatives specifically designed to sustain Apartheid rule.'²⁴ Taking the most conservative approach possible, judge John Sprizzo of the Southern District of New York dismissed the apartheid-related lawsuits in November 2004 on grounds that Pretoria 'indicated it did not support the lawsuits and that letting them proceed might injure the government's ability to handle domestic matters and discourage investment in its economy.'²⁵

Jubilee and Khulumani appealed and in October 2007, a US Appeals Court overturned the Sprizzo judgment, arguing the District Court did indeed have jurisdiction over such matters and allowing case to resume its trajectory.²⁵ With the companies now desperate to put the case behind them, they requested a Supreme Court hearing instead of a return to the lower levels. In February 2008, the US' highest court heard arguments from the Bush White House against the 'unprecedented and sprawling' lawsuits. Bush was supported by the governments of Britain, Germany, Switzerland, and even South Africa.²⁶

The case relies upon the Alien Tort Statute, which permits lawsuits by foreign citizens against US and international corporations which break US laws or treaties, including the Comprehensive Anti-Apartheid Act on 1986. Bush's representative argued to the Supreme Court, 'Litigation such as this would also interfere with the ability of the U.S. government to employ the full range of foreign policy options when interacting with regimes the United States would like to influence. ... Such policies would be greatly undermined if the corporations that invest or operate in a foreign country are subjected to lawsuits under the ATS.' An opinion is expected in September 2008.

While the case wound its way through US courts, Jubilee took the opportunity to tackle

²⁵ . Fabricius, P. (2007), 'Apartheid victims' US legal battle rages on', *Sunday Independent*, 18 November.

²⁶ . Meers, B. (2008), 'Dismiss apartheid suits, White House urges Supreme Court', *CNN*, 2 February.

Barclays Bank in a citizens' campaign stretching to London and Washington, in the course of the UK financier's 2005 takeover of South Africa's second-largest bank, Absa (formerly the Amalgamated Banks of South Africa, a collection of mediocre and failing institutions, several with Afrikaner roots, stitched together by the SA Reserve Bank in a controversial 1991 rescue operation). Jubilee insisted that Barclays come clean over its 1970s financing of the SA Defense Force, and make amends. Once again, when an Alien Tort Claims suit was filed against Barclays, Pretoria's justice minister Brigitte Mabandla (Maduna's 2004 replacement) responded with an October 2005 friends of the court brief on behalf of the bank, prompting a demonstration by Jubilee and solidarity protests from UK and US allies.

These skirmishes remind us of the crucial importance of the reparations movement, both to disincentivise future collaborations such as those with the Nazi or apartheid regimes, and to compensate victims and their communities. The benefits of doing business with apartheid, which gave multinational corporations the world's highest profit rates during the 1960s, should not be locked in, so that future generations of South Africans remain behind, and often falling further, in international competition. Activists argue that, in contrast to vague corporate social responsibility commitments, only reparations protests and lawsuits have the proven capacity to guard against criminals keeping their ill-begotten loot.

Conclusion

The areas of citizen versus corporate power struggles reviewed above – AIDS medicines patents, water privatisation, pollution, climate change gimmicks and reparations - suggest a profound critique of malfeasance will do far more good than observing the standard rules and etiquette of corporate social responsibility. Such etiquette entails naïve acceptance of corporate bona fides, with rhetoric about responsibility and state regulation as the terrain on which debate and resistance occurs.

In contrast, South African and other international activists have side-stepped the CSR industry, which Peek (2005) insists is more distracting than it is useful:

Good corporate citizenship comes with buckets of greenwash. With the exception of Iscor, all the nominated corporations sponsor various conservation initiatives. Sappi, for example, has sponsored a book on South African birds particularly ironic since industrial plantations exclude bird-life. Several corporations, notably Shell, sponsor academic chairs in the environmental sciences while many genetic science departments are directly or indirectly in the employ of corporations. And BP, Shell and Sasol have all signed onto the United Nations 'Global Compact' which allows corporations to claim a commitment to human, labour and environmental rights while avoiding compulsory scrutiny and standards. Sappi and Mondi, meanwhile, have used the Forest Stewardship Council to provide their products with a stamp of environmental approval... Corporate responsibility is perhaps most invidious at the local level. Sasol sponsors numerous community and educational projects in Sasolburg and Secunda. Since it is also the major employer, this is a modern regime of patronage which has the effect of silencing criticism. The Sasol nomination notes the corporation's billboard advertisements proclaiming that 'we put as much into the community as we put into our fuel' and remarks that this includes benzene, lead, sulphur dioxide and a cocktail of other toxic compounds. Similar points are made in several of the other nominations. In south Durban, for example, corporate

sponsorship of local organisations is seen as having a deliberate intention to divide local communities.

The major South African corporate self-regulating strategy was Mervyn King's Commission on corporate governance, an 'ethical make-over', as Peek remarks. The notion of triple bottom line reporting covers financial, environmental and social concerns, such that 'improved education leading to a wider skills base; improved health care promoting a more productive workforce; or a more economically diverse, and therefore a more productive and supportive, local community... By being proactive in self-regulation and governance, the corporate community has the opportunity to shape public policy in beneficial ways, and pre-empt further potentially restrictive or burdensome legislation.'²⁷

This, then, is the spirit of more realistic activism in South Africa, ranging from street protests to court battles – potentially successful as seen in the AIDS medicines and Johannesburg water cases, and even the US courts as of this writing. Hence instead of being drawn into CSR rhetoric and logic, an alternative strategic approach based upon programmes for decommodification (e.g., of medicines and water) and the 'deglobalisation' of capital (as Walden Bello terms it, or 'delinking' to quote Samir Amin) has enormous potential. Because global public policy has been unsatisfactory on matters such as access to medicines, intellectual property rights, public service provision of water and other essentials, pollution, climate change, and reparations for historic oppression, it will be up to activists to tackle corporate power from the bottom up, as part of a quest to eradicate that power entirely.

²⁷ *The Grantmaker*, Newsletter of the Southern African Grantmakers' Association, March 2003, No.18. p. 6.

Figure 1: South Africa's current account deficit in relation to other emerging market economies

(Source: International Monetary Fund Article 4 Consultation, August 2007)

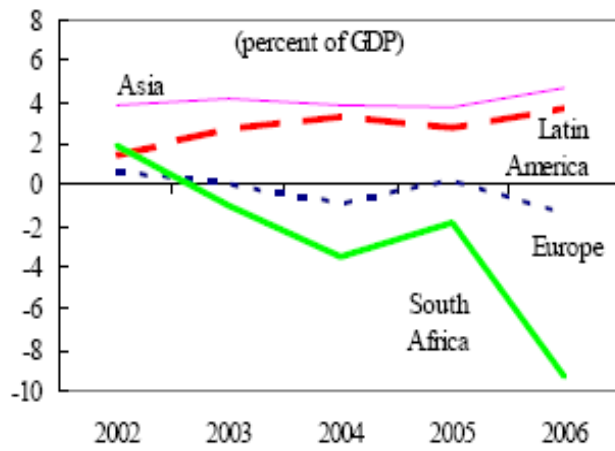


Figure 2: Manufacturing profits decline in relation to financial sector profits
(Source: Dani Rodrik)

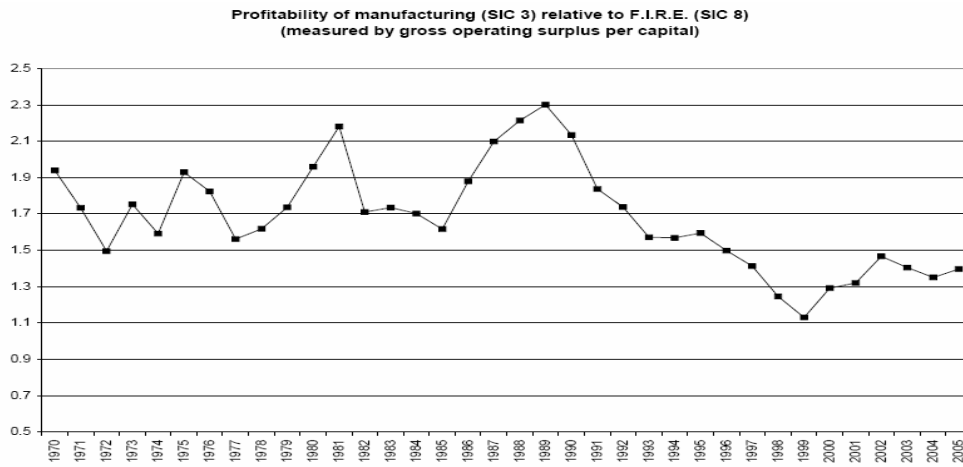


Figure 3: SA's export advantages
 (Source: International Monetary Fund Article 4 Consultation, August 2005)

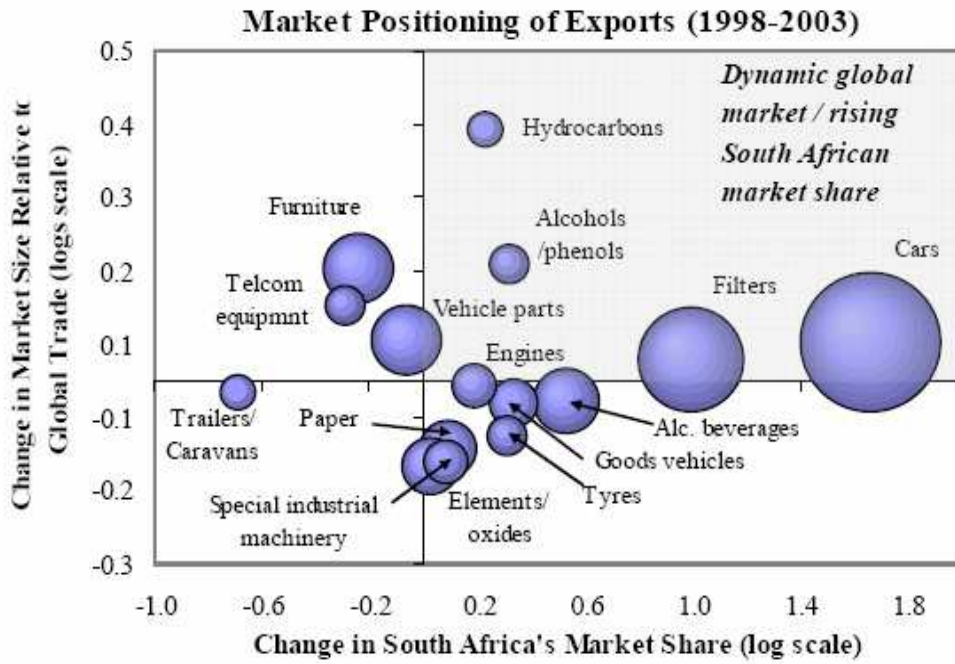


Figure 4: Capital strike: Fixed investment and GDP
 (Source: Dani Rodrik)

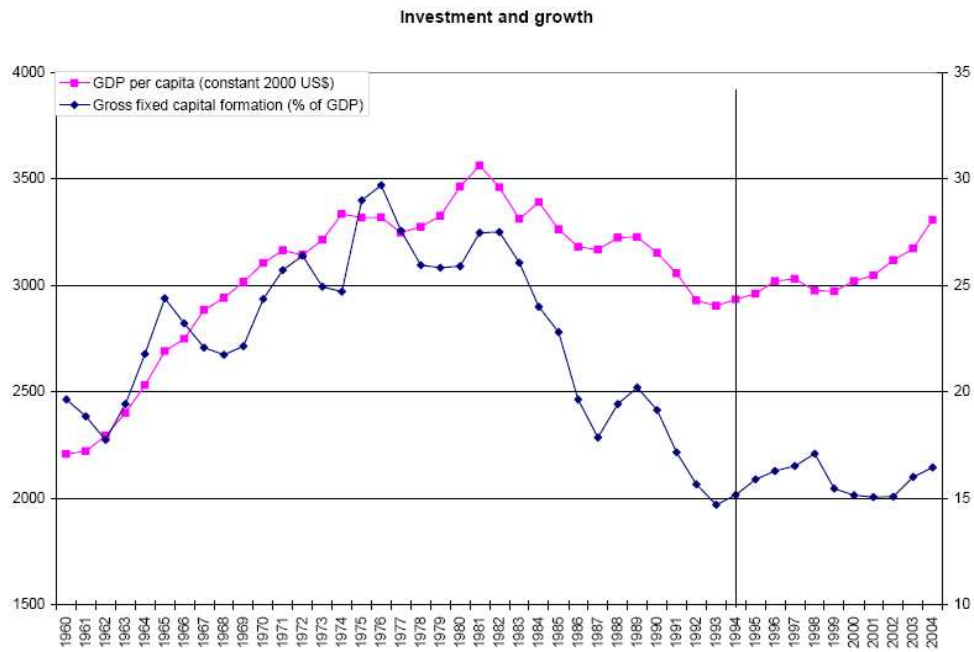
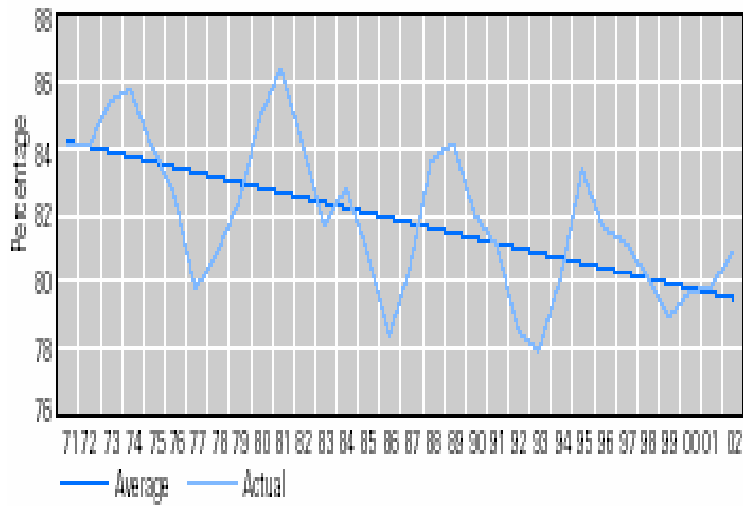


Figure 5: Sustained overaccumulation of manufacturing capital: Capacity utilisation
(Source: United Nations Development Programme *Human Development Report*, 2004)



Source: Reserve Bank Database

Figure 6: Declining Foreign Direct Investment, rising hot money
(Source: International Monetary Fund)

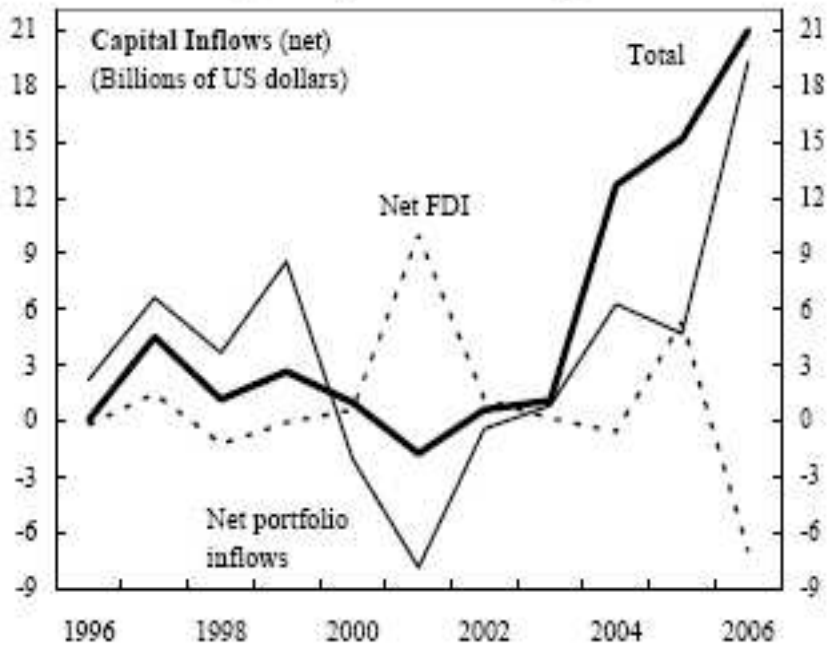


Figure 7: Zapiro on the whitewash of apartheid profits



Figure 8: Zapiro on the reparations controversy



1 . *Business Day*, 5 August 1999; *Washington Post*, 13 September 1999.

2 . *The Star*, 14 May 2001.

3 . Grant, G. and T.Flinn (1992), *Watershed town: The history of the city engineer's department*, City of Johannesburg, pp.58,61.

4 . See, e.g., van Onselen, C. (1982), *Studies in the social and economic history of the Witwatersrand, 1886-1914*, London, Longman; Palestrant, E. (1986), *Johannesburg one hundred: A pictorial history*, Johannesburg, Ad Donker.

5 . In this case, Suez instructed its shallow sewage pilot customers to: 'Wear gloves; remove all solids and waste from the inspection chambers; do a mirror test for each chamber-to-chamber section; if waste material is found in a section, bring in the tube from the upstream inspection chamber until it comes into contact with the obstruction; block off the outlet from the downstream inspection chamber with a screen that allows water to pass through but not solids; push the tube until the material is moved to the downstream inspection chamber; wear gloves and remove waste material by hand; pour a large quantity of water through the section between the two inspection chambers and check for cleaning; repeat the mirror test; close the inspection chambers.' For more, see Harvey, E. (2003), 'A critical analysis of the decision to corporatize the water and wastewater services in the City of Johannesburg', Masters Dissertation, University of the Witwatersrand Graduate School of Public and Development Management, Johannesburg.

6 . Krystall, N. (2003), 'Johannesburg's Water Tariff Structure,' Masters Research Report, University of the Witwatersrand Graduate School of Public and Development Management, Johannesburg.

7 . Thomson, G. (2003), 'Water tap often shut to South Africa poor,' *New York Times*, 29 May.

8 . Mayekiso, M. (1996), *Township Politics: Civic Struggles for a New South Africa*, New York, Monthly Review; Murray, M. (1995), *The Revolution Deferred*, London, Verso; Marais, H. (2000), *South Africa: Political Economy of Change*, London, Zed Press and Cape Town, University of Cape Town Press; and Adler, G. and J.Steinberg (Eds) (2000), *The South African Civics Movement and the Transition to Democracy*, London, Macmillan.

9 . Jeter, J. (2001), 'For South Africa's poor, a new power struggle,' *Washington Post*, 6 November.

10 . Ngwane, T. (2003), 'Sparks in Soweto', Interview, *New Left Review*, July-August.

11 . Thomson, G. (2003), 'Water tap often shut to South Africa poor,' *New York Times*, 29 May.

12 . Cashdan, B. (2002), *Globalisation and Africa: Whose Side are We On?*, video, Johannesburg, Seipone Productions.

13 . *Business Day*, 7 September 2001. Three days earlier the same editorial column carried these words: 'There is a new and powerful breed of African leader in Africa, democrats such as Mbeki and Obasanjo, who are determined to end war

and want and who also know their economics.'

14 . SA Institute of Race Relations director John Kane-Berman, a hard-core neoliberal ideologue, called the lawsuits 'superficial' because they included charges of apartheid as 'genocide' and a 'crime against humanity'. After all, the black population grew during apartheid, Kane-Berman observed. *Business Day*, 3 June 2003 and Charles Abrahams' letter-to-the-editor rebuttal of 26 June 2003.

15 . *Business Day*, 17 June 2003.

16 . For coverage, see, e.g., *Financial Times*, 19 May 2003. According to Jubilee SA secretary George Dor, writing to *Business Day* in the wake of the late August 2003 Reparations Conference, 'Attempts to engage the foreign corporations were initiated as long ago as 1999 and this had been met with an obstinate refusal to talk. Business reiterated its non-cooperative stance by failing to take the opportunity to address this conference.'

17 . *Financial Times*, 19 May 2003.

18 . *Sunday Independent*, 15 June 2003.

19 . *Sunday Independent*, 25 July 2003. Replying to this logic a month later, prize-winning Indian author Arundhati Roy told BBC radio, 'In what ought to have been an international scandal, this same government officially asked the judge in a US court case to rule against forcing companies to pay reparations for the role they played during apartheid. Its reasoning was that reparations - in other words justice - will discourage foreign investment. So South Africa's poorest must pay apartheid's debts so that those who amassed profit by exploiting black people can profit more?' (BBC, 24 August 2003.)

20 . *Sunday Independent*, 9 August 2003.

21 . e-debate listserve, 30 August 2003. The organisations represented included JubileeSA, Khulumani, Cosatu, the Anti-Privatisation Forum, Sanco, the Landless Peoples Movement, the South African Council of Churches and the Environmental Justice Networking Forum. Notwithstanding important divisions over loyalty to the ANC/Alliance, there was no dispute that Mbeki had erred in his attempt to sabotage the reparations campaign.

22 . Engelbrecht, L. (2004), 'Apartheid Victims turn to US Court,' *Business Report*, 5 July.

23 . Apartheid Debt and Reparations Campaign (2004), 'Support for the Khulumani Lawsuit,' Johannesburg, 13 July.

24 . Apartheid Debt and Reparations Campaign, 'Support for the Khulumani Lawsuit'.

25 . Neumeister, L. (2004), 'Lawsuits Seeking Billions from U.S. Companies in South Africa Dismissed', Associated Press, 29 November. A few months later, the adverse implications of Maduna's intervention for international justice became even more ominous, in a case involving women who were victims of Japanese atrocities during World War II. Fifteen 'comfort women' from Korea, China, the Philippines and Taiwan sued the Japanese government in the US, using the Alien Tort Claims Act. They had been held as sex slaves, raped and tortured by the Japanese military. In June 2005, the US Court of Appeals in the District of Columbia rejected their suit in part by citing Maduna's affidavit.