

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SAKWE BALINTULO as personal representative of SABA BALINTULO, DENNIS VINCENT FREDERICK BRUTUS, MARK FRANSCH as personal representative of ANTON FRANSCH, ELSIE GISHI, LESIBA KEKANA, ARCHINGTON MADONDO as personal representative of MANDLA MADONDO, MPHONG ALFRED MASEMOLA, MICHAEL MBELE, MAMOSADI CATHERINE MLANGENI, REUBEN MPHELA, THULANI NUNU, THANDIWE SHEZI, and THOBILE SIKANI,

Plaintiffs,

v.

DAIMLER AG, FORD MOTOR COMPANY, FUJITSU LTD, GENERAL MOTORS CORPORATION, INTERNATIONAL BUSINESS MACHINES CORPORATION, and RHEINMETALL GROUP AG,

Defendants.

03 Civ. 4524 (SAS)

02 MDL 1499 (SAS)

**SECOND AMENDED COMPLAINT
JURY TRIAL DEMANDED**

CLASS ACTION

Plaintiffs, on behalf of themselves and all other individuals similarly situated, for their Second Amended Complaint, filed pursuant to the Court's Opinion and Order of April 8, 2009, state as follows:

I. NATURE OF THE CASE

1. Plaintiffs bring this class action under the Alien Tort Claims Act, 28 U.S.C. § 1350, against corporations that knowingly aided and abetted the South African security forces, as defined herein, or otherwise participated in a joint criminal enterprise in furtherance of the crimes of apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel,

inhuman, and degrading treatment in violation of international law. Plaintiffs are the personal representatives of victims of extrajudicial killing, or were themselves direct victims of the aforementioned crimes perpetrated by the security forces of the apartheid regime between 1960 and 1994.

2. Defendants—companies that supplied armaments, military vehicles, and computerized racial passbook systems to the security forces—provided not only practical assistance to the South African security forces, but material, logistical, and other means of practical support, which had a substantial effect on the commission of said crimes. The abuses that Plaintiffs suffered were a reasonably foreseeable result of Defendants' collaboration with the security forces of South Africa's apartheid regime. In return, Defendants benefited from apartheid and, consequently, the violence and terror that was used to maintain and enforce it at the expense of Plaintiffs and the members of the proposed classes discussed herein.

3. Defendants knew that the actions of the South African security forces constituted violations of international norms toward Plaintiffs and the classes, but nevertheless provided such assistance with the knowledge and/or purpose of facilitating those crimes. Beginning in 1950, the world community condemned apartheid and the acts of violence and terror committed by the South African security forces to enforce and maintain apartheid as crimes in violation of fundamental, internationally-recognized human rights. The world community specifically identified the manufacturers of armaments and military vehicles, the technology corporations that designed and supported the racial passbook systems, and the banks that funded and collaborated with the security apparatus, as closely connected to the South African security forces and their violent acts. Defendants were on notice that their involvement violated international law and constituted knowing participation in and/or aiding and abetting of the

crimes of apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1350, the Alien Tort Claims Act (“ATCA”), and 28 U.S.C. § 1367 for any additional claims not otherwise covered by the ATCA.

5. This matter was originally brought in the Eastern District of New York, where venue was proper pursuant to 28 U.S.C. § 1391.

6. The matter was consolidated for pretrial proceedings by the Judicial Panel on Multidistrict Litigation and was transferred to the Southern District of New York.

III. DEFINITIONS

7. Apartheid literally means “separateness.”¹ Apartheid is defined by the Rome Statute of the International Criminal Court as “inhumane acts . . . committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”² Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid defines apartheid as a system that includes murder; the infliction of serious bodily or mental harm; torture or cruel, inhuman, and degrading treatment; and the institution of measures calculated to prevent a racial group from participation in the political, social, economic and

¹ Robert Ross, *A Concise History of South Africa* 115 (Cambridge University Press: 1999).

² Rome Statute of the International Criminal Court, art. 7(1)(j), July 17, 1998, 2187 U.N.T.S. 90, 37 I.L.M. 999.

cultural life of a country, in particular by denying the group or groups basic human rights or freedoms.³ Apartheid is a variant of genocide.

8. “Apartheid regime” refers to the country of South Africa during the period 1948 to 1994, when that country was ruled by the National Party.

9. “Bantustan” refers to the barren, rural areas where Blacks were restricted or forcibly resettled. These areas were also called “homelands” or rural reserves. “Bantustan” comes from the word “Bantu,” an isiXhosa and isiZulu word that was co-opted during apartheid and used by some white South Africans as a derogatory term to refer to Black Africans.⁴

10. “Black” refers to all African, Indian, and “Coloured” South Africans unless otherwise indicated.

11. “Plaintiffs” includes all named class representatives.

12. “Coloured” is used as a synonym for “mixed race.”

13. “Genocide” is defined, in part, as “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”⁵

14. “SAP” refers to the South African Police.

15. “SADF” refers to the South African Defense Force.

16. “Security forces” includes the South African military, paramilitary, police, special operations, intelligence, anti-riot, and other security units.

³ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, art. II.

⁴ Kevin Danaher, *In Whose Interest? A Guide to U.S. – South Africa Relations* (Washington, DC: Institute for Policy Studies, 1985) at 107.

⁵ Convention on the Prevention and Punishment of the Crime of Genocide Art. 2(c), Dec. 9, 1948, 78 U.N.T.S. 277.

IV. PARTIES

A. Plaintiffs

17. **Sakwe Balintulo** is the personal representative and brother of **Saba Balintulo**, who was murdered by the SAP on March 15, 1973. On that day, Mr. Balintulo and fifteen friends were walking in the road, when the SAP opened fire on them. Mr. Balintulo was first shot in the leg and then shot three more times in the torso. The gun shots killed Mr. Balintulo as well as his fifteen friends.

18. **Dennis Vincent Frederick Brutus** was detained and shot by the SAP. The recipient of a doctoral degree and numerous honorary doctorates, in 1961 Dr. Brutus was banned from teaching, publishing poetry, and attending gatherings. In 1963, Dr. Brutus was arrested in Johannesburg while on his way to attend a meeting of the South African Non-Racial Olympic Committee, of which he was president. The police transported him to a prison in a security vehicle. When released on bail, Dr. Brutus fled to Swaziland and Mozambique, was arrested by the Portuguese secret police, and was turned over to the SAP. In September 1963, Dr. Brutus attempted to escape but was shot through his back by the South African Secret Police. He was hospitalized in Fort Prison Hospital until December 1963. Dr. Brutus was sentenced to eighteen months hard labor in Leeuwkop Prison in January 1964, was transferred to Robben Island Prison in March 1965, and in July 1965 was placed under house arrest until July 1966. Dr. Brutus, who has served on the faculties of the University of Denver, Northwestern University, and the University of Pittsburgh, has testified three times before United Nations (“UN”) committees on apartheid issues. He still suffers from his injuries.

19. **Mark Fransch** is the personal representative and brother of **Anton Fransch**, who was murdered by the SAP and the SADF in September 1989, when he was 20 years old. Mr. Fransch was a member of the African National Congress (“ANC”). SAP and SADF officers said

that Mr. Fransch was a “dog” and that they would kill him. When Mr. Fransch was staying at a house on Church Street in Crawford, thirty to forty officers, some of whom arrived in a Casspir vehicle, repeatedly shot into the house, killing Mr. Fransch and leaving flesh and hair on the wall.

20. **Elsie Gishi** was shot by the SAP on December 26, 1976. On that day, as Ms. Gishi returned from work, she found a group of youths protesting in her township. There was a heavy police and military presence. The officers kicked in the door of her house and one soldier shot Ms. Gishi from a Casspir vehicle. Multiple bullets entered her back and remain lodged in her chest and arms. One bullet lodged in her throat. Another bullet is lodged inside a bone in her left arm and, as a result, she can no longer lift her left arm and the entire left side of her body is lame. She can no longer bathe herself or do other washing. The three remaining bullets cause her respiratory dysfunction and kidney problems. Ms. Gishi is permanently disabled and continues to suffer as a result of the shooting.

21. **Lesiba Kekana** was tear gassed during numerous student gatherings in 1985 and 1986. Mr. Kekana was unlawfully arrested by soldiers driving a Casspir vehicle. He was fingerprinted and detained without trial from June 1986 to February 1987. During his detention, he was tortured. Mr. Kekana still suffers from the torture and abuse.

22. **Archington Madondo** is the personal representative and father of **Mandla Madondo**, who was murdered by the SADF on July 10, 1986. Mandla Madondo was sent by his father to buy some bread. While he was standing with friends outside the shop, he was shot to death by South African soldiers who were driving down the street in a Casspir vehicle. Mandla Madondo was just 16 years old when he died. His twin brother, Thamsanqa, was arrested shortly after Mandla’s murder and was imprisoned for one year without a trial.

23. **Mpho Alfred Masemola** was arrested and detained without trial for two months in 1982 for not having a passbook. Between 1982 and 1984, Mr. Masemola was monitored and under 24-hour surveillance because of his involvement organizing boycotts and with a banned organization. Mr. Masemola was then imprisoned on Robben Island from August 11, 1985 to 1990. During his time in detention, Mr. Masemola was beaten so badly that his arm was broken and had to be in a plaster cast for one year. He was also hit with iron bars while in detention for passbook violations. Mr. Masemola was tear gassed at school, during riots, and in his prison cell. Mr. Masemola spent one year in solitary confinement without treatment for his broken arm. The police also shot Mr. Masemola. He still has bullet fragments lodged in his head that cause severe headaches. The bullet fragments cannot be removed. Mr. Masemola still suffers from the torture.

24. **Michael Mbele**, born on October 31, 1944, was politically active in a union as a shop steward and was also a United Democratic Front member. Mr. Mbele was arrested twice for passbook violations after moving from the Transkei region of South Africa to KwaZulu Natal in 1973 without appropriate authorization. Then, in 1986, the Special Security Police detained Mr. Mbele, transported him by a security vehicle to prison, and tortured him on account of his political activities. For three straight days police beat and shocked Mr. Mbele with electric pipes, then choked him with a rubber tire. As a result of his torture, Mr. Mbele lost his hearing. Mr. Mbele's suffering continued for eleven more months as police placed him in solitary confinement. Mr. Mbele still suffers from the torture.

25. **Mamosadi Catherine Mlangeni** was arrested, detained, and fined for not having a passbook on as many as eight different occasions. Each time, she would be transported to prison by a security vehicle, detained for a period of days, and forced to pay 200 rand to be

released. There was never a trial for any of these violations. On many of these occasions Ms. Mlangeni was also beaten by the security forces. Ms. Mlangeni believes she was monitored. The police would stop her and say things that indicated they knew who she was. Sometimes, only a day after she was released from jail, the police would re-arrest her. Sometimes it was the same police officers, while at other times it was their colleagues. Ms. Mlangeni was even stopped and told by the police that they were going to get her or her son, Bheki Mlangeni. In 1984 and again in 1986, Ms. Mlangeni was placed under house arrest for two to three months due to her son's status as an enemy of the state. Ms. Mlangeni was constantly harassed by police, who were trying to capture Bheki Mlangeni. The Security Branch came to her home once, asking for her son, then hit and kicked her and destroyed her property when she told them that Bheki Mlangeni was not there. Bheki Mlangeni was murdered in front of his family by a parcel bomb that was planted in the earphones of a walkman on February 15, 1991. Ms. Mlangeni still suffers from these abuses.

26. **Reuben Mphela** was detained and transported by security vehicle to a prison several times between 1976 and 1982 for failing to produce a passbook. On these occasions, the SAP came to arrest him at work. He was beaten, kicked, and made to jump like a frog. Mr. Mphela's family was traumatized by his imprisonment. He still suffers as the result of his injuries.

27. **Thulani Nunu** was shot by the SAP in 1985 when he was just six years old and living in the Nyanga Bush. It was night time and the SAP was raiding houses and shooting at youth with tear gas and live ammunition from Hippo military vehicles and vans. Panicked by the noise and the tear gas that filled his house, Mr. Nunu ran outside. The police fired at him from a Hippo vehicle and struck him in the head and hand. As a result of his injuries, Mr. Nunu lost

60% of the use of his hand. Because of his head wound, Mr. Nunu has permanent visual and hearing impairment. He still suffers from these injuries.

28. **Thandiwe Shezi** was tortured and raped by the Security Police. On September 8, 1988, the police stormed into Ms. Shezi's home and beat and strangled her in front of her daughter. They then took Ms. Shezi in a security vehicle to the Alexander Police Station where they tortured her further. She was handcuffed and a wet sack was tied over her head. She was then taken to a room where she was electrocuted for twenty minutes. Next she was raped repeatedly by four police officers. In addition to physical torture, the police also psychologically tortured Ms. Shezi. The police forced Ms. Shezi to watch as they smashed another prisoner's penis in a drawer. When the prisoner screamed out in pain they wanted Ms. Shezi to laugh. On one occasion, the police took Ms. Shezi outside, stripped her naked and tied her to a tree. They smeared her legs with butter, opened them wide, and threw ants all over her. The ants crawled into her vagina. On at least one occasion, while Ms. Shezi was being electrocuted, acid was poured over her head. Because of the torture, Ms. Shezi could not eat solid food for almost a month. She still suffers from the physical and mental effects of the torture and sexual assault.

29. **Thobile Sikani** was repeatedly detained, tortured, and shot by the SAP. The police shot Mr. Sikani in 1983, while he was attending a funeral for four of his friends. Without warning, the SAP opened fire on the funeral procession. Mr. Sikani was carrying the coffin of one of his friends when he was shot in the back and the left leg by the SAP. In 1986, the SAP transported Mr. Sikani by a security vehicle and fingerprinted and detained him at the Bishop Lavis Police Station because he was chairperson of the ANC Youth League. The SAP officers beat Mr. Sikani for hours and placed his scrotum and testicles in a machine that caused excruciating pain and made Mr. Sikani pass out. The SAP transferred Mr. Sikani in a security

vehicle to other facilities where the torture continued. At Bellville-South Police Station, an SAP officer inserted needles under Mr. Sikani's finger nails to coerce Mr. Sikani into talking about the ANC, but Mr. Sikani refused. Mr. Sikani was then taken to the hospital and treated for his injuries. After his treatment, the SAP took him back to the Wynberg Police Station where he was detained for five months without trial. In 1987, Mr. Sikani was again detained at the Wynberg Police Station for two months and tortured. At one or more times during his detentions, Mr. Sikani was transported in a Casspir military vehicle. In 1988, Mr. Sikani was attending a welcome home rally for the ANC leadership when the police shot tear gas with a pumpgun into Mr. Sikani's face. Mr. Sikani's stomach swelled up and he was rushed to the hospital. Mr. Sikani still suffers from the torture and abuse.

B. Defendants

30. Defendant **Daimler AG** ("Daimler") is a company organized and incorporated under the laws of Germany with headquarters in Stuttgart, Germany. Daimler manufactures and markets a large variety of automobiles and other motor vehicles under the Daimler and Mercedes-Benz names. Daimler does business in New York State and has offices in New York State.

31. Defendant **Ford Motor Company** ("Ford"), an international automobile giant, is organized and incorporated under the laws of Delaware. Headquartered in Dearborn, Michigan, Ford does business in New York State and has offices in New York State.

32. Defendant **Fujitsu Ltd.** ("Fujitsu") is the parent company of Fujitsu Services Ltd., the successor company to International Computers Limited ("ICL"). Fujitsu offers infrastructure management, networking, systems integration, information technology outsourcing, and hosting services to a variety of customers. Organized and incorporated under

the laws of Japan with its principal place of business in Tokyo, Japan, Fujitsu does business in New York State and has offices in New York State.

33. Defendant **General Motors Corporation** (“General Motors”), a leading automobile manufacturer, is organized and incorporated under the laws of Delaware with its principal place of business in Detroit, Michigan. General Motors does business in New York State and has offices in New York State.

34. Defendant **International Business Machines Corporation** (“IBM”) is a global leader in manufacturing computer systems, software, networking systems, storage devices, and microelectronics. IBM is headquartered in New York State and does business in New York State.

35. Defendant **Rheinmetall Group AG** (“Rheinmetall”) is a holding company organized and incorporated under the laws of Germany with headquarters in Düsseldorf, Germany. Rheinmetall operates its armaments business through its division or sector known as Rheinmetall Defence, which directs production, marketing, and sales activities of its various subsidiaries. Rheinmetall and Rheinmetall Defence share the same headquarters, communications and press operations, and, since 2004, Chief Executive Officer (“CEO”). Prior to 2004, the Chair of Rheinmetall Defence’s management board concurrently served on Rheinmetall’s management board. Rheinmetall, on its own and through controlled entities (including Rheinmetall Defence) entered into contracts and solicited business and investors in the United States. Between 1996 and early 2004, Rheinmetall owned and conducted business through Hirschmann Electronics Inc., a civil electronics firm, which did business in New York State through authorized distributors. Rheinmetall is the parent company of Oerlikon Contraves AG (“Oerlikon”), a Swiss company with its principal place of business in Zurich, Switzerland, and a leader in armaments design and manufacture. Oerlikon was formed in 1989, upon the

merger of the Werkzeugmaschinenfabrik Oerlikon-Bührle and Contraves. Oerlikon has been a majority-owned subsidiary or division of Rheinmetall since 1999.

V. CLASS ACTION ALLEGATIONS

36. Plaintiffs bring this action pursuant to Rules 23(a), (b), and (c) of the Federal Rules of Civil Procedure. Plaintiffs seek certification of the following distinct classes:

a. Extrajudicial Killing Class: All persons who are the surviving personal representatives—including parents, spouses, children, siblings, and dependents—of persons who were subject to extrajudicial killing by South African security forces during the period from 1960 to 1994. Class representatives: Sakwe Balintulo, personal representative of Saba Balintulo; Mark Fransch, personal representative of Anton Fransch; and Archington Madondo, personal representative of Mandla Madono;

b. Torture Class: All persons who were themselves subject to torture and rape by South African security forces during the period from 1960 to 1994. Class representatives: Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, and Thobile Sikani;

c. Detention Class: All persons who were themselves subject to prolonged unlawful detention by South African security forces during the period from 1960 to 1994. Class representatives: Dennis Vincent Frederick Brutus, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, and Thobile Sikani;

d. Cruel Treatment Class: All persons who were themselves subject to cruel, inhuman, and degrading treatment by South African security forces during the period from 1960 to 1994. Class representatives: Elsie Gishi, Lesiba Kekana,

Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, and Thobile Sikani.

37. The members of each of these classes are so numerous that joinder of all members is impractical. The exact number and identities of all class members is not currently known, but Plaintiffs believe that each proposed class numbers in the thousands. For example, according to the ANC, the South African security forces were responsible for over 12,000 civilian deaths and 20,000 civilian injuries in the period from 1990 to late 1993 alone.⁶ Between 1960 and 1990, over 80,000 opponents of apartheid were detained for up to three years without trial, including approximately 10,000 women and at least 15,000 children under the age of 15.⁷ A 1988 report noted:

Anti-apartheid and human rights groups, such as the Detainee Parents Support Committee (DPSC), have accused the security forces of widespread brutality, including torture of detainees, assaults, killings and rape, as well as, on occasion, the wanton destruction of property. More than 3,000 blacks reportedly have died in the violence of the last three years, many of them in confrontations with the security forces. More than 20,000 political opponents of the white regime have been imprisoned, including several thousand children.⁸

38. There are questions of law and fact that are common to members of each distinct class or to members of all classes, including, but not limited to:

(a) whether and to what extent Defendants provided assistance to the South African security forces;

⁶ African National Congress First Submission to the Truth and Reconciliation Commission, Aug. 1996, at 25 [hereinafter *First Submission*].

⁷ Kenneth Christie, *The South African Truth Commission 21-22* (St. Martin's Press, Inc., 2000). Max Coleman (ed.), *A Crime Against Humanity: Analysing the Repression of the Apartheid State* xi-xii (Mayibube Books, 1998).

⁸ Investor Responsibility Research Center, Inc., Social Issue Service, Proxy Issue Report, *Sales to Strategic Entities in South Africa* (Feb. 23, 1988), at G-10.

(b) whether and to what extent Defendants substantially assisted the South African security forces in maintaining and enforcing apartheid through campaigns of violence and terror, including committing the crimes of extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment;

(c) whether and to what extent Defendants knew of the violence and terror perpetrated by the South African security forces, benefited from the system of apartheid and the crimes with and by which it was maintained and enforced, and continued to provide assistance for the purpose of facilitating the commission of those crimes;

(d) whether and to what extent Defendants aided and abetted or otherwise participated in or were liable for the crimes committed by the South African security forces;

(e) whether the system of apartheid enforced by the South African security forces is actionable under the Alien Tort Claims Act as a tort in violation of international law;

(f) whether the conduct of the South African security forces constituted extrajudicial killing, torture, prolonged unlawful detention, and/or cruel, inhuman, and degrading treatment and is actionable under the Alien Tort Claims Act as a violation of international law; and

(g) whether each plaintiff class is entitled to compensatory and/or punitive damages and equitable and/or injunctive relief, and the proper measure thereof.

39. Plaintiffs' claims are typical of those of their respective class(es) in that they (and/or the decedents they represent) were civilians who suffered extrajudicial killing, torture, prolonged unlawful detention, and/or cruel, inhuman, and degrading treatment by reason of the conduct of the South African security forces during the time period in which Defendants provided assistance to those forces.

40. Plaintiffs will fairly represent the interests of their respective class(es) because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for the conduct of which they complain. Plaintiffs have no interests that conflict with or are contrary to the interests of other class members.

41. Plaintiffs will adequately represent their respective class(es) in that they are represented by counsel with extensive experience in international human rights and class action litigation.

42. Pursuant to Fed. R. Civ. P. 23(b)(3), questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

43. In the alternative, certification of particular issues pursuant to Fed. R. Civ. P. 23(c)(4) is appropriate with respect to those issues identified in paragraph 38 and/or other significant common issues as resolution of these issues would significantly and materially advance this litigation, reduce the range of issues in dispute, and promote judicial economy.

VI. BACKGROUND FACTS APPLICABLE TO ALL COUNTS

44. In 1948, the National Party won control of the South African government, using apartheid as its primary electoral platform.⁹ After 1948, the electoral vote was taken away from all groups except the white minority.¹⁰ The National Party then passed a series of laws to implement and institutionalize apartheid.

A. Apartheid-Era Laws

⁹ Steven Debroey, *South Africa: Under the Curse of Apartheid* 188, 191 (University Press of America, Inc., 1990).

¹⁰ Christie, *supra* note 7, at 12.

45. Apartheid is a crime against humanity.¹¹ It is a system of “inhumane acts . . . committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”¹² It is a system that depends on systematic violence and acts of terror, including murder; the infliction of serious bodily or mental harm; torture; or cruel, inhuman, and degrading treatment; as well as institutional methods of disenfranchisement and segregation, for its maintenance and enforcement.¹³

46. Apartheid-era laws classified all South Africans according to one of four races—white, “Coloured,” Asiatic (Indian), and Native (African)¹⁴—and then designated specific residential and business areas for the sole use of particular racial groups. The majority of the land was reserved for whites. As a result, non-whites were forcibly removed from their homes.

47. The Bantu Authorities Act of 1951 provided for the establishment of separate rural areas or homelands called “Bantustans” for most Africans to live according to their often bureaucratically-imposed tribal identity.¹⁵ “[T]he dilemma of Bantustan policy in the final analysis was one in which the contradiction of the apartheid attempt to confine black settlement to rural homelands along with the need to secure black, cheap labour power in the cities, created

¹¹ Rome Statute of the International Criminal Court, art. 7(1)(j), July 17, 1998, 2187 U.N.T.S. 90, 37 I.L.M. 999.

¹² *Id.* at art. 7(2)(h).

¹³ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, art. II.

¹⁴ Nigel Worden, *The Making of Modern South Africa, Third Edition* 108 (Blackwell Publishers Ltd., 2000).

¹⁵ Christie, *supra* note 7, at 20.

the repression, the hatred and the patterns which would lead to spiraling violence in later years.”¹⁶

48. The government required all Africans over the age of 16 to carry passbooks, which included their Population Registration identity card, their fingerprints, and pages for any history of government opposition, labor control, and employer signatures.¹⁷ These regulations were referred to as “pass laws.” Without the proper documentation, no African could legally enter or remain in an urban area.¹⁸

49. These laws restricted the freedom of movement of Africans so as to channel workers where employers need cheap labor, facilitated the policing of workers, allowed the “weeding out” of the unemployed and “troublemakers,” and confined and barricaded the “surplus population” in the rural slums of the Bantustans.¹⁹

50. The pass laws were an instrument of coercion and control dating to the prior century “to have a hold on the native whom we have brought to the mines ... a most excellent law ... which should enable us to have complete control of the Kaffirs.”²⁰

51. In addition to controlling movement and access to urban areas, the apartheid laws zoned residential and business districts on a racial basis.²¹ Amenities—including cinemas, restaurants, sports facilities, and public vehicles—were also officially segregated.

¹⁶ *Id.* at 25.

¹⁷ *Id.* at 5 “Natives Act.”

¹⁸ Bentley J. Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obfuscation*, 9 Conn. J. Int’l L. 295, 310.

¹⁹ Robert Davies, Dan O’Meara and Siphon Dlamini, *The Struggle for South Africa* 171 (Zed Books, 1985).

²⁰ African National Congress Submission to Special Truth and Reconciliation Commission on the Role of Business, Nov. 1997, at 2 (quoting the President of the Chamber of Mines at the end of the last century) [hereinafter *Role of Business*]. “Kaffir” is a derogatory term for Africans.

52. Job reservation laws excluded Africans from better paid, more skilled categories of work.²² Master and Servant laws made it a crime—punishable by imprisonment—for Black workers to break an employment contract by, *inter alia*, desertion, insubordination, or refusing to carry out an employer’s command.²³

53. Laws banned relations between races.²⁴ The Immorality Amendment Act, barring intercourse between the races,²⁵ led to the jailing of over 6,000 people between 1950 and 1966.²⁶ The government also prohibited interracial marriages in 1949.

54. The apartheid government also enacted laws to suppress dissent. In 1956, the Riotous Assemblies Act was passed, granting the Minister of Justice wide powers to control public gatherings and to prohibit a gathering if he deemed that it posed a threat to the peace.²⁷ The Act further allowed the police to disperse with force any gathering that took place in violation of its prohibition.²⁸

²¹ Davies, et al., *supra* note 19, at 172.

²² *Id.* at 174; *see, e.g.* Native Building Workers Act (1951), Industrial Conciliation Act (1956).

²³ *Role of Business, supra* note 20, at 2. The laws remained on the books until 1977.

²⁴ *See* Worden, *supra* note 14, at 107. An Amendment to the Prohibition of Mixed Marriages Act was passed in 1968 to make void any illegal marriage by a South African, even if it took place outside of South Africa.

²⁵ The ban on intercourse between whites and Africans already was in place prior to this Act, which extended the ban to all non-whites. The Act was further tightened in 1967. Brian Bunting, *The Rise of the South African Reich*, Chapter Nine: South Africa’s Nuremberg Laws 21 (Penguin Africa Library, 1969).

²⁶ *Id.* at 3 (discussing statistics of Minister of Justice in Parliament).

²⁷ Other related legislation included the Internal Security Act of 1950, the Gatherings and Demonstrations Act of 1973, and the Dangerous Weapons Act of 1968. *See* Janine Rauch and David Storey, *Policing of Public Gatherings and Demonstrations in South Africa 1964-1994*.

²⁸ *Id.* at 9.

55. In 1960, the Governor-General gained power under the Unlawful Organizations Act to ban the ANC and the Pan-Africanist Congress.²⁹ Other African organizations later were banned under the Affected Organizations Act³⁰ and the Internal Security Act, which also banned all political meetings during April 1, 1986 – March 31, 1987 as part of a State of Emergency.³¹

B. The Violence and Terror of Apartheid

56. “What was involved (in apartheid) was far more than simply the implementation of what the world regarded as a criminal policy. What was of even greater significance was the use of criminal means to defend apartheid. The massive powers given to the state to control people’s lives and deny them their basic rights were not enough. They were supplemented by every species of common law crime, including systematic and organized murder, fraud, kidnapping and torture.”³²

57. “Some 16.5 million South Africans were criminalised and harassed under the pass laws Four million people were forcibly removed from their homes and land during the heyday of apartheid social engineering. Three hundred apartheid laws were put on the statute books to control and disadvantage black South Africans from the cradle to the grave.”³³

²⁹ Bunting, *supra* note 25, at 14. The Unlawful Organizations Act also increased the fines and physical punishment under the Riotous Assemblies Act.

³⁰ David Webster and Maggie Friedman, *Repression and the State of Emergency: June 1987 – March 1989*. Glenn Moss and I. Obery (eds.), *State and Politics* 26-27 (Ravan Press Ltd., 1989).

³¹ *Id.* at 163. For a list of banned organizations, *see* Webster and Friedman, *supra* note 30 at 26-27.

³² This quote was taken from the foreword to the Idasa “Truth and Reconciliation in South Africa” 1994 conference proceedings. *See* Christie, *supra* note 7, at 15.

³³ Paul Connerton, *How Societies Remember* 1-4 (Cambridge University Press, 1989); *see, e.g.*, Christie, *supra* note 7, at 13.

58. Between 1960 and 1970, almost 2 million people were forcibly moved into the “Bantustans”³⁴ where they were “reduced to scraping a bare subsistence from eroded, overgrazed land.”³⁵

59. “An urbanized black population were subject to the whims of a government who could deport them, arrest them and transport them to places of work. On top of this system of forced migration and removal, the regime decided to create townships away from areas of employment, forcing labor to travel often long distances just to get to work.”³⁶

60. “The Surplus People Project, which . . . produced the most authoritative documentation of the history and scale of forced removals estimated that between 1960 and 1982 over 3.5 million South Africans were moved as part of this policy. Resistance to forced removals was met with severe repression by the state and resulted in people being killed and jailed.”³⁷

61. Hundreds of thousands of people were arrested each year for pass law violations. Failure to produce a passbook on demand was an arrestable offense regardless of how legally and how long one may have been living in an urban area. In 1976 alone, 250,000 Africans were arrested under the pass laws and related influx control laws, according to the Africa Fund.

62. According to the apartheid government’s own statistics, 2,419,675 people were arrested or prosecuted under the pass laws between 1974 and 1985.³⁸

³⁴ Davies, et al., *supra* note 19, at 208.

³⁵ Danaher, *supra* note 4, at 48-9. Francis Wilson, Chpt. 2: “Farming, 1866-1966” in Monica Wilson and Leonard Thompson’s (eds.), *The Oxford History of South Africa* (Oxford: Oxford University Press, 1971).

³⁶ Christie, *supra* note 7, at 25.

³⁷ *First Submission*, *supra* note 6, at 6.

³⁸ International Defense and Aid Fund for Southern Africa, *Apartheid: The Facts* 48-49 (1991).

63. It has been estimated that 12 million Blacks were unlawfully arrested and convicted in summary trials between 1948 and 1985 for pass violations.³⁹

64. Resistance to apartheid reached a turning point in 1960. On March 21, 1960, a crowd of between 7,000 and 20,000 gathered in Sharpeville to protest against the pass laws. The demonstrators marched to the municipal police station to turn in their pass books. The police opened fire on the crowd, using machine guns and automatic weapons. Sixty-nine people were killed and 186 wounded, many of them women and children and most shot in the back as they ran from the gunfire.⁴⁰

65. That same day, police fired on a crowd of 10,000 demonstrators in Langa, killing two people and wounding 49 others.⁴¹

66. Following Sharpeville, the state called its first State of Emergency. In the three months following the March 1960 State of Emergency declaration, police detained over 10,000 people and arrested a further 10,000, primarily on the charges of pass violations.⁴²

67. The ANC described the resistance that began in the 1970s as follows:

The early 1970s witnessed a slowdown in the economy and increased privations among the black population. Spontaneous as well as organized mass resistance began to surface for the first time in a decade. . . .

Faced with internal mass upsurge, the response of the regime was brute force: detention, closure of institutions, brutal suppression of demonstrations and strikes; and in 1976, cold-blooded shooting of unarmed pupils. The actions of the regime on 16 June 1976, and in the 18

³⁹ Kevin Hopkins, *Assessing The World's Response To Apartheid*, 10 U. Miami Int'l & Comp. L. Rev. 241, 247 (2001-2002).

⁴⁰ Christie, *supra* note 7, at 27-28; Steve Clark (ed.) *Nelson Mandela Speaks: Forging a Democratic, Nonracial South Africa* 275 (Pathfinder, 1993).

⁴¹ *Id.*

⁴² Webster and Friedman, *supra* note 30, at 141.

months following this eruption, brought out in bold relief the determination of the apartheid regime to deny human rights at all costs.

Notes taken during a Cabinet meeting by Jimmy Kruger, at the time Minister of Police, reveal an extraordinary level of self-delusion, or the deliberate denial of reality in order to justify murder:

“10.8.76.

Unrest in Soweto still continues. The children of Soweto are well-trained. (...) The pupils/students have established student councils. The basic danger is a growing black consciousness, and the inability to prevent incidents, what with the military precision with which they act. The Minister proposes that this movement must be broken and thinks that police should perhaps act a bit more drastically and heavy-handedly which will entail more deaths.

Approved.

As the decade came to a close, there was an attempt on the part of the state to employ a new approach grounded in “total strategy”, an explicit commitment to mobilize military, economic, physical and psychological resources in defense of the existing order. It brought senior police, Defense Force and intelligence officers directly into the formulation and implementation of government policy, through the State Security Council and the National Security Management System....⁴³

68. In response to the Sharpeville massacre and the growing trend of government resistance, the SAP instituted Divisional Anti-Riot Units to deal with crowd control.⁴⁴ In 1975, the Divisional Anti-Riot Units gave way to new counter-insurgency units, dedicated to crowd and riot control.⁴⁵

⁴³ African National Congress document, *The National Party and the Anatomy of Repression in South Africa, 1984 – 1994* at 4.6 found at <http://www.anc.org.za/ancdocs/misc/trc04.html> (last visited Sept. 30, 2008)

⁴⁴ Rauch and Storey, *supra* note 27. Furthermore, in 1964, the Defence Amendment Act provided for the SAP to call upon the Citizen Force and Commandos in the event the police needed support in suppression of civil unrest. As of 1967, all white 17-year olds would serve in the Citizen Force or Commandos.

⁴⁵ *Id.*

69. Before 1984, the SAP were primarily responsible for controlling the resistance. But as the unrest spread from the townships around Johannesburg to the rest of the country, SADF troops were deployed. In July 1985, a State of Emergency was declared in riot torn targeted areas.⁴⁶

70. After 1985, the SADF, supplemented by the SAP, was deployed in most Black townships. The SADF was responsible for enforcing emergency regulations which included a ban on protest gatherings. The SADF was also deployed to force Black students who were boycotting classes back to school.⁴⁷

71. On June 12, 1986 Minister of Law and Order Louis La Grange imposed yet another State of Emergency. By June 1987, 26,000 people had been detained, equaling the total detained under all previous emergencies and legislation for the past 26 years.⁴⁸

72. In 1991, the Internal Stability Division, a division of the SAP mobilized to handle racial unrest, was introduced under the government of President Frederick William de Klerk. By the 1990s, a total of 72 riot units existed, 30 of them dedicated to the homelands.⁴⁹

73. These special Internal Stability Division riot units used offensive tactics and heavy weaponry, such as batons, teargas, automatic weapons, shotguns, and handguns.⁵⁰ They relied heavily on armored vehicles for crowd control.⁵¹ According to a report of the TRC, “the training and equipment of riot police, and the deployment ratios of these policemen relative to

⁴⁶ Investor Responsibility Research Center Inc., *supra* note 5, at G-10.

⁴⁷ *Id.*

⁴⁸ Webster and Friedman, *supra* note 30, at 142.

⁴⁹ Rauch and Storey, *supra* note 27.

⁵⁰ Description of Weapons from CSV, *see* Rauch and Storey, *supra* note 27, at 15–17, Exhibit G.

⁵¹ Rauch and Storey, *supra* note 27.

the size of the crowds that they confronted, were all based on the assumption that crowds would be controlled and dispersed through the use of force.”⁵²

74. The riot units viewed the use of lethal force as an acceptable and routine means of crowd control, and were responsible for most of the apartheid-era killings.⁵³ “As the external environment in which they operated took on the character of a low-intensity civil war, their training, equipment, and methodology became increasingly militarized.”⁵⁴ The TRC report noted that the riot policing function “was in direct contrast to reforms being made to public order policing methods elsewhere in the democratic world at this time.”⁵⁵

75. A panel of doctors from the National Medical and Dental Association who treated detainees after their release found that 83 percent of released detainees exhibited signs of physical abuse, and 25 percent of the released detainees alleged sexual abuse. Of those examined (ranging in age from 14 to 45), 95 percent showed symptoms of post-traumatic stress disorder. Detention time ranged from 4 hours to 315 days.⁵⁶

76. Evidence from court records and lawyers indicates that the practice of torture to secure admission of guilt was common.⁵⁷

⁵² *Id.*

⁵³ *Id.* at 1.

⁵⁴ *Id.*

⁵⁵ *Id.* at 4.

⁵⁶ See Webster and Friedman, *supra* note 30, at 167-68. Webster further notes that the DPSC (Detainee Parents Support Commission, which was renamed the Human Rights Committee of South Africa in 1995), the organization that created these reports, distinguishes between police custody and detention. Detention referring to those people held under security or state of emergency legislation, while police custody refers to people held under criminal legislation even if the motive for custody ostensibly is for political arrest. *Id.* at 168.

⁵⁷ *Controls on Exports to South Africa: Hearings Before the Subcommittees on International Economic Policy and Trade and on Africa of the H. Comm. on Foreign Affairs, 97th Cong, 2d*

77. The torture of detainees was the result of training and indoctrination, not the work of aberrant individuals. Many women detainees suffered sexual abuse. The families and friends of detainees were frequently subjected to sustained harassment and surveillance.⁵⁸

78. The violent, criminal acts committed by the apartheid regime were intended to cause death or serious bodily injury to civilians and the purpose of such acts was to intimidate and coerce the civilian population.

79. Systematic violence, including extrajudicial killing, torture, prolonged unlawful detention, and cruel, inhuman, and degrading treatment, was an integral and indispensable element of apartheid employed by the security forces to maintain and enforce the system.

80. Between 1990 and the end of 1993, over 12,000 civilians were killed and at least 20,000 injured by the security forces of apartheid South Africa. Many of the victims were women and children. The numbers of assassinations of anti-apartheid leaders also increased, from 28 in 1990, to 60 in 1991 and 97 in 1993.⁵⁹

81. In 1993, negotiations led to an agreement on the date for non-racial elections, and Nelson Mandela, as leader of the ANC, called for the lifting of economic sanctions.

82. Apartheid officially ended in 1994 with the first universal suffrage general election and the election of Nelson Mandela.

C. Truth and Reconciliation Commission Findings

83. The South African TRC was set up by the Government of National Unity under the Promotion of National Unity and Reconciliation Act to assess and begin to heal the damage

Sess. Feb. 9 and Dec. 2, 1982 at 21 (statement of Goler Teal Butcher on Behalf of the Lawyers' Committee for Civil Rights Under Law).

⁵⁸ *First Submission, supra* note 6, at 2-3.

⁵⁹ *Id.* at 25.

inflicted by apartheid. Led by Archbishop Desmond Tutu, the TRC had a multiracial staff of more than 60, which pursued its mandate through three committees: the Amnesty Committee, the Reparation and Rehabilitation (R&R) Committee, and the Human Rights Violations Committee. The TRC began its hearings on April 15, 1996 and closed in early 2002, although the Amnesty Committee continued to decide cases after that date. The Final Report was released in March 2003.

84. The TRC specifically found that “Certain businesses were involved in helping to design and implement apartheid policies. Other businesses benefited from cooperating with the security structures of the former state.”⁶⁰

85. The TRC also found that “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.”⁶¹

86. The TRC identified as participants in apartheid “businesses that made their money by engaging directly in activities that promoted state repression,”⁶² such as companies that “provided armored vehicles to the police during the mid-1990s,”⁶³ as would companies in the armaments industry: “the moral case against the armaments industry is essentially that business

⁶⁰ Vol. 4, Ch. 2 of TRC “Institutional Hearing: Business and Labor,” Findings Arising out of Business Sector Hearings, ¶ 161.

⁶¹ *Id.* at ¶ 166

⁶² *Id.* at ¶ 26.

⁶³ *Id.*

willingly (and for profit) involved itself in manufacturing products that it knew would be used to facilitate human rights abuses. . . .”⁶⁴

VII. NOTICE AND KNOWLEDGE

87. Beginning in 1950, the world community condemned apartheid as a crime against humanity and instituted a variety of sanctions against South Africa. United Nations resolutions reflected this emerging consensus among civilized societies. Individual nations passed laws in response to the resolutions and in conformity with their objectives. Private and transnational organizations took similar steps to implement the objectives of the resolutions.

88. These actions over a span of 40 years explicitly placed businesses involved in the financial and economic support of the security forces’ abuses of the apartheid government on notice that their involvement violated international law and constituted knowing participation in a crime against humanity.

89. For example, in 1960, the U.N. Security Council issued a Resolution deploring “the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa,” and called upon South Africa to abandon apartheid.⁶⁵

90. On November 6, 1962, the General Assembly called on member states to refrain from exporting arms and ammunition to South Africa, which would be used to increase “ruthlessness involving violence and bloodshed.”⁶⁶

⁶⁴ *Id.* at ¶ 75.

⁶⁵ S.C. Res. 134, U.N. Doc. S/RES/134 (Apr. 1, 1960).

⁶⁶ G.A. Res. 1761, U.N. Doc. A/Res/1761(XVII) (Nov. 6, 1962).

91. Less than one year later, on August 7, 1963, the Security Council adopted Resolution 181 condemning the arms build-up in South Africa and calling on all States and their domestic corporations to “cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa.”⁶⁷

92. In 1968, the General Assembly declared apartheid to be a crime against humanity:

Reiterates its condemnation of the policies of apartheid practiced by the Government of South Africa as a crime against humanity; . . .

Expresses its grave concern over the ruthless persecution of opponents of apartheid under arbitrary laws⁶⁸

93. The General Assembly specifically “condemn[ed]”

the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which, through their political, economic and *military collaboration* with the Government of South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies.⁶⁹

94. In 1972, The Security Council passed a Resolution urging Member States to observe the arms embargo against South Africa.⁷⁰

95. The International Conference of Experts for the Support of Victims of Colonialism and Apartheid in South Africa met in Oslo, Norway, in 1973. The Conference

⁶⁷ The Security Council reaffirmed this Resolution in December 1963 and included all shipments of any materials that might be used to build arms or ammunition. The Resolution again was strengthened in July 1970. Security Council Resolution, *Question Relating to the Policies of Apartheid of the Government of the Republic of South Africa*, See S.C. Res. 181, U.N. Doc. S/RES/181 (Aug. 7, 1963); S.C. Res., 182 U.N. Doc. S/RES/182 (Dec. 4, 1963); S.C. Res. 282, U.N. Doc. S/RES/282 (July 23, 1970).

⁶⁸ G.A. Res. 2396, U.N. Doc. A/RES/2396 (XXIII) (Dec. 2, 1968).

⁶⁹ *Id.* (emphasis added).

⁷⁰ S.C. Res. 311, U.N. Doc. S/RES/311 (Feb. 4, 1972). Also in 1972, the General Assembly declared that “the United Nations has a vital interest in securing the speedy elimination of apartheid.” See G.A. Res. 2923, U.N. Doc. A/RES/2923 E (XXVII) (Nov. 15, 1972).

adopted the following program of action:

(68) The international arms embargo should be fully implemented by all States, and the Security Council should expose those States which violate it, especially France, and secure their compliance. The Security Council should take further action to prevent the importation of arms from South Africa by other States. The Security Council should also examine all other forms of military co-operation with South Africa and take appropriate action.⁷¹

96. Following discussions relating to the Conference's findings, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid.⁷² The Convention declared apartheid a crime against humanity, and all participants in apartheid as criminals, whether they were organizations, institutions, or individuals. Article II of the Convention defined apartheid as:

[s]imilar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- a. Denial to a member or members of a racial group or groups of the right to life and liberty of person:
 1. By murder of members of a racial group or groups;
 2. By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
 3. By arbitrary arrest and illegal imprisonment of the members of a racial group or groups; . . .

⁷¹ The Programme of Action Adopted by the International Conference of Experts for the Support of Victims of Colonialism and Apartheid in South Africa (Oslo, April 9-14, 1973), G.A. Res. 9061, U.N. Doc. A/RES/9061 (May 7, 1973).

⁷² International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243.

- b. Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

97. Article III of the Convention described who would be held responsible for committing the acts outlined in Article II.

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

- a. Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;
- b. *Directly abet, encourage or cooperate* in the commission of the crime of apartheid.⁷³

98. Following the submission of the Preliminary Report of July 14, 1976, by the Special Rapporteur to the Special Committee against Apartheid, the General Assembly adopted a Resolution condemning “the collaboration of ... those foreign economic interests which maintain and/or continue to increase their collaboration with the racist regimes in southern Africa, especially in the economic, *military* and nuclear fields.”⁷⁴

99. In 1976 and again in 1977, the Security Council by Resolution condemned apartheid and specifically the South African Government for “its resort to massive violence against and killings of the African people, including schoolchildren and students and others

⁷³ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, art. III (emphasis added).

⁷⁴ G.A. Res. 31/33, U.N. Doc. A/RES/31/33 (Nov. 30, 1976). (emphasis added)

opposing racial discrimination.”⁷⁵ The Security Council demanded an end to the violence against and repression of Black people and to release all political prisoners.⁷⁶

100. In 1977, the Security Council once again called for an arms embargo against South Africa, but this time made it mandatory by invoking Chapter VII of the U.N. Charter.⁷⁷

101. In November 1979, the United Nations Special Committee Against Apartheid in South Africa co-sponsored an International Seminar on the Role of Transnational Corporations in South Africa. The Seminar expressed the view that “transnational corporations bear a major share of responsibility for the maintenance of the system of apartheid, for *strengthening the repressive and military power* of the racist regime and for the undermining of international action to promote freedom and human dignity in South Africa.”⁷⁸

102. Following acts of police violence against student demonstrators, the Security Council adopted a Resolution supporting the arms embargo and condemning the violence in South Africa:

1. *Strongly condemn*[ed] the racist régime of South Africa for further aggravating the situation and its massive repression against all opponents of *apartheid*, for killings of peaceful demonstrators and political detainees and for its defiance of General Assembly and Security Council resolutions . . .

3. *Reaffirm*[ed] that the policy of *apartheid* is a crime against the conscience and dignity of mankind and is incompatible with the rights and dignity of man, the Charter of the United Nations and the Universal Declaration of Human Rights and seriously disturbs international peace and security; . . .

⁷⁵ S.C. Res. 392, U.N. Doc. S/RES/392 (June 19, 1976).

⁷⁶ S.C. Res. 417, U.N. Doc. S/RES/417 (Oct. 31, 1977).

⁷⁷ S.C. Res. 418, U.N. Doc. S/RES/418 (Nov. 4, 1977).

⁷⁸ Charles Peter Abrahams, *The Doctrine of Odious Debts* (Rijks Universiteit Leiden, Aug. 2000) at 79 (citing Transnational Corporations in South Africa and Namibia, The Review – International Commission of Jurists, No. 36-39 (1986-87), at 34) (emphasis added).

11. *Request*[ed] the Security Council Committee . . . to redouble its efforts to secure full implementation of the arms embargo against South Africa by recommending by 15 September 1980 measures to close all loop-holes in the arms embargo, reinforce and make it more comprehensive.⁷⁹

103. The U.N. General Assembly declared by Resolution that:

continuing political economic and *military* collaboration of certain Western states and their transnational corporations with the racist regime of South Africa encourages its persistent intransigence and defiance of the international community and constitutes a major obstacle to the elimination of the inhuman and criminal system of apartheid in South Africa. . . .⁸⁰

104. The General Assembly adopted a Resolution in December 1983 “reaffirming that apartheid is a crime against humanity” and strongly condemning the apartheid regime for its repression and brutal acts of torture, murder, and terror. The Resolution specifically criticized “transnational corporations and financial institutions that have increased political, economic and *military collaboration* with the racist minority regime of South Africa despite repeated appeals by the General Assembly. . . .”⁸¹

105. In 1984, the General Assembly adopted another Resolution “vigorously” condemning

transnational corporations and other organizations which maintain or continue to increase their *collaboration* with the racist regime of South Africa, especially in the political, economic, *military* and *nuclear* fields, thus encouraging that regime to persist in its inhuman and criminal policy

⁷⁹ S.C. Res. 473, U.N. Doc. S/RES/473 (June 13, 1980).

⁸⁰ General Assembly Resolution, *Policies of Apartheid of the Government of South Africa: Situation in South Africa*, G.A. Res. 36/172 A, U.N. Doc. A/RES/36/172 A (Dec. 17, 1981). Further, the United Nations General Assembly proclaimed the year 1982 as International Year of Mobilization for Sanctions Against South Africa. General Assembly Resolution, *Policies of Apartheid of the Government of South Africa, International Year of Mobilization for Sanctions Against South Africa*, see also G.A. Res. 36/172 B, U.N. Doc. A/RES/36/172 B (Dec. 17, 1981) (emphasis added).

⁸¹ G.A. Res. 38/39, U.N. Doc. A/RES/38/39 A (Dec. 5, 1983) (emphasis added).

of brutal oppression of the peoples of southern Africa and denial of their human rights.⁸²

106. The Security Council further condemned apartheid as “a system characterized as a crime against humanity” including the “continued massacres of the oppressed people, as well as the arbitrary arrest and detention of leaders and activists of mass organizations. . . .”⁸³

107. In 1984, the General Assembly again condemned the increasing violence of the Apartheid regime.⁸⁴

108. In 1985, the Security Council urged states to prohibit “all sales of computer equipment that may be *used by the South African army and police.*”⁸⁵

109. In 1986, the Security Council urged:

States to take steps to ensure that components of embargoed items do not reach the *South African military establishment and police* through third countries; . . .

all States to prohibit the export to South Africa of items which they *have reason to believe are destined for the military and/or police forces of South Africa, have a military capacity and are intended for military purposes*, namely, aircraft, aircraft engines, aircraft parts, electronic and telecommunication equipment, computers and four-wheel drive vehicles.⁸⁶

⁸² G.A. Res. 39/15, U.N. Doc. A/RES/39/15 (Nov. 23, 1984) (emphasis added).

⁸³ S.C. Res. 556, U.N. Doc. S/RES/556 (Oct. 23, 1984).

⁸⁴ General Assembly Resolution, *Policies of Apartheid of the Government of South Africa: Comprehensive Sanctions against the apartheid regime and support to the liberation struggle in South Africa*, G.A. Res. 39/72 A, U.N. Doc. A/RES/39/72 A (Dec. 13 1984). These voluntary sanctions were renewed in 1985. General Assembly Resolution, *Policies of Apartheid of the Government of South Africa: Comprehensive Sanctions against the apartheid regime and support to the liberation struggle in South Africa*, G.A. Res. 40/64 A, U.N. Doc. A/RES/40/64 A (Dec. 10, 1985).

⁸⁵ S.C. Res. 569, U.N. Doc. S/RES/569 (July 26, 1985) (emphasis added).

⁸⁶ S.C. Res. 591, U.N. Doc. S/RES/591 (Nov. 28, 1986) (emphasis added).

110. The General Assembly in 1989 adopted another Resolution regarding the supportive ties of international corporations, including banks, with South Africa, noting that “the maintenance of the *apartheid* economy and *the expansion of military and police expenditures* substantially depend on the supply of further credits and loans by the international financial community”⁸⁷

111. These United Nations resolutions as well as the accompanying domestic legislation of individual states singled out the manufacturers of armaments and military vehicles, the technology corporations that designed and supported the passbook systems to enforce racial segregation and the suppression of dissent, and the banks that funded and collaborated with the security apparatus and provided specific forewarnings that their assistance to the security forces of the South African apartheid regime knowingly and intentionally aided and abetted torts in violation of international law.

112. The United States adopted numerous export regulations to reduce the supply of strategic goods, technologies, and financing to the security forces of the apartheid regime.

113. In 1963, the United States adopted an arms embargo against South Africa, except for existing contracts.

114. In 1971, the Department of Commerce enacted regulations stating: “In conformity with the United Nations Security Council Resolution of 1963, the United States has imposed an embargo on shipments to the Republic of South Africa of arms, munitions, military equipment, and materials for their manufacture and maintenance.”⁸⁸

⁸⁷ G.A. Res. 44/27, U.N. Doc. A/RES/44/27 (Nov. 22, 1989) (emphasis added).

⁸⁸ 15 C.F.R. § 385.4 (1971).

115. This ban remained in effect until 1978, when it was expanded to cover a broader range of goods and technologies destined for use by the apartheid security forces. The revised regulations stated:

An embargo is in effect on the export or re-export to the Republic of South Africa or Namibia *of any commodity*, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in these destinations or used to service equipment owned, controlled or used by or for such military or police entities.⁸⁹

116. Under the U.S. regulations, “A validated export license [was] required for the export to the Republic of South Africa and Namibia of any instrument and equipment particularly useful in crime control and detection”⁹⁰

117. In 1981, the list of commodities subject to the U.S. embargo specifically included vehicles specially designed for military purposes, such as military mobile repair shops; all other specially designed military vehicles; engines, including those modified for military use; pneumatic type casings (tires) constructed to be bullet proof or to run when deflated; specially designed components and parts to the foregoing; [and] pressure refuellers.⁹¹

118. Likewise, the embargo applied to “Specialized machinery, equipment, gear, and specially designed parts and accessories therefore specially designed for the examination, manufacture, testing, and checking of the arms, ammunition, appliances, machines, and implements of war; components and parts for ammunition; nonmilitary shotguns, barrel length 18 inches and over; [and] nonmilitary arms, discharge type.”⁹²

⁸⁹ 15 C.F.R. § 385.4 (1979) (emphasis added).

⁹⁰ 15 C.F.R. § 385.4 (1979).

⁹¹ 15 C.F.R. § 379 (1981).

⁹² *Id.*

119. In the technology sector, the Export Administration Regulations of 1982 provided that

An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of technical data . . . where the exporter or reexporter has reason to know that the technical data is for delivery to or use by or for the military or police entities. In addition, users in the Republic of South Africa of technical data must be informed in writing at the time of export or reexport that the data may not be sold or otherwise made available, directly or indirectly, to the military or police entities in these destinations.⁹³

120. Export licenses were required under U.S. regulations for any computer exported to government consignees. Licenses were awarded “on a case by case basis for the export of computers which would not be used to support the South African policy of apartheid.”⁹⁴

121. The United States strongly condemned apartheid and restricted exports that would substantially assist the South African government in maintaining or enforcing apartheid. As the 1983 Export Administration Regulations succinctly stated: “Authorizations for exports, reexports, sales to or for use by or for military or police entities in the Republic of South Africa will be denied except for medical supplies and similar goods.”⁹⁵

122. To ensure the embargo’s efficacy, the Department of Commerce adopted a broad definition of the term “military or police entities.” Commerce declared that “It is the Department’s position that the following are police or military entities: ARMSCOR, Department of Prisons, Bureau of State Security, South African Railways Police Force, and certain municipal and provincial law enforcement officials such as traffic inspectors and highway patrolmen.”⁹⁶

⁹³ 15 C.F.R. § 385.4 (1982).

⁹⁴ *Id.*

⁹⁵ 15 C.F.R. § 385.4 (1983).

⁹⁶ 15 C.F.R. § 385 (1981).

123. The United States maintained broad export restrictions against South Africa until 1994, the year South Africa held its first universal suffrage general elections.

124. For decades, Defendants were on notice that the security forces of the apartheid regime in South Africa had placed the Black South African population at an unjustifiably high risk of harm.

125. During the relevant period, Defendants knew or should have known of the danger posed by the security forces of the apartheid regime to the Black South African population.

126. Defendants acted in conscious disregard of, or with deliberate indifference to, these dangers by providing substantial assistance or encouragement to the security forces of the apartheid regime of South Africa.

VIII. AIDING AND ABETTING: KNOWLEDGE, INTENT, AND SUBSTANTIAL ASSISTANCE

127. The Nuremberg Tribunals confirmed that those who knowingly aid and abet the commission of crimes in violation of international law are liable for those acts.

128. The Nuremberg Tribunal held that:

[t]hose who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it He had to have the cooperation of statesmen, military leaders, diplomats and *businessmen*. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent . . . if they knew what they were doing.⁹⁷

129. For example, the Military Tribunal convicted Emil Puhl, one of the leading executive officials of the Reichsbank, for participating as a banker in the disposal of looted assets:

⁹⁷ 6 F.R.D. 69 at 112 (emphasis added).

What was done was done pursuant to a governmental policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing the loot must be exonerated and held not guilty as a participant in the murder plan. *Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity.*⁹⁸

130. Similarly, Friedrich Flick, the head of a large group of industrial enterprises, was convicted of slave labor based on his employee's decision to increase company production quotas knowing that forced labor would be required to meet the increase.⁹⁹ Significantly, the Tribunal held Flick fully responsible although the slave labor program had its origin in and was operated by the Nazi regime, and he did not "exert any influence or [take] any part in the formation, administration or furtherance of the slave-labor program."¹⁰⁰ It was not a requirement for liability that Flick specifically sought to use forced laborers. In fact, Flick testified that it was not his intent to use slave labor, and denied full knowledge of slave labor until very late in the war.¹⁰¹

131. In addition to aiding and abetting liability, international and domestic law impose liability for participation in a criminal enterprise where, inter alia, a party acted in furtherance of a particular system in which the crime is committed by reason of the accused's function, and with knowledge of the nature of that system and intent to further that system.¹⁰² Liability is

⁹⁸ Ministries Case, Volume XIV at 611 (emphasis added).

⁹⁹ United States of America v. Friedrich Flick, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 (1952).

¹⁰⁰ *Id.* at 1198.

¹⁰¹ *Id.* at 807.

¹⁰² *Prosecutor v. Krnojelac*, IT-97-25, Judgment (Mar. 15, 2002).

imposed on all persons who had “the intention to take part in a joint criminal enterprise and to further – individually and jointly – the criminal purposes of that enterprise” and where it is foreseeable that crimes—even crimes that do not constitute the common purpose—will be committed by other members of enterprise.¹⁰³

132. Apartheid, in and of itself, is a *jus cogens* violation of international law, on par with genocide and slavery.

133. Article III of the International Convention on the Suppression and Punishment of the Crime of Apartheid specifically imposed liability on those who “irrespective of the motive involved ... directly abet, encourage or cooperate in the commission of the crime of apartheid.”¹⁰⁴

A. Defendants Aided and Abetted and Otherwise Participated in the Commission of International Crimes

134. The security forces of the apartheid regime enlisted the aid of private multinational corporations to provide the means and methods to carry out the violence and terror necessary to maintain and enforce apartheid.

135. Apartheid was “more than the programme of one political party.”¹⁰⁵ Business interests were

active participants and initiators in constructing a political and economic system which, in the end, was classified in international law as a crime against humanity. . . . The period of extreme repression, from 1960 onwards, was intended to save the system that protected privilege based on race, thereby continuing to guarantee business its exclusive place in the South African economy and society.¹⁰⁶

¹⁰³ *Prosecutor v. Tadic*, IT-94-I, Judgment (July 15, 1999).

¹⁰⁴ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, art. III.

¹⁰⁵ *Role of Business*, *supra* note 20, at 1.

¹⁰⁶ *Id.* The ANC noted that several core measures of apartheid were actively promoted by important business groups.

136. The South African security forces depended on foreign sources for advanced technology, materials, goods, and services in three strategic sectors—armaments, technology, and transportation—that substantially assisted the regime to perpetuate apartheid and commit systematic acts of violence and terror against Plaintiffs and members of the classes, including extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment.

137. Certain businesses, including Defendants, played an important role in South Africa’s defense of Apartheid from “civil unrest,” cooperating closely with and providing logistical and other material support to the security forces of the apartheid regime.

138. In 1977, P.W. Botha, then Minister of Defense, discussed the National Security Management System in a Defense White Paper: “The resolution of the conflict in the times in which we now live demands interdependent and coordinated action in all fields: military, psychological, economic, political, sociological, technological, diplomatic, ideological, cultural, etcetera.”¹⁰⁷

139. In May 1980, South African Prime Minister P.W. Botha appointed business leaders, including officers of Barclays, to a Defense Advisory Board. Botha told the House of Assembly that the Defense Force had succeeded in obtaining the goodwill and cooperation of business leaders and said:

[W]e have obtained some of the top business leaders in South Africa to serve on the Defense Advisory Board in order to advise me from the inside, not only about the armaments industry, but also about the best methods to be applied within the Defense Force ... *I want to unite the*

¹⁰⁷ *First Submission, supra* note 6, at 9.

*business leaders of South Africa, representative as they are, behind the South African Defense Force. I think I have succeeded in doing so.*¹⁰⁸

140. The South African security forces performed the wrongful acts of apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment that caused Plaintiffs' injuries. Defendants knowingly and substantially assisted the South African security forces in these violations of international law. Defendants were aware of their role as part of an overall illegal or tortious activity at the time they provided assistance.

141. From the time of the Sharpeville Massacre in 1960 until the fall of apartheid in 1994, it was common knowledge that the security forces of the regime were engaged in violent, criminal acts; that these acts were intended to cause death or serious bodily injury to civilians; and that the purpose of such acts was to intimidate and coerce the civilian population.

142. Defendants' assistance to, and encouragement of, the apartheid security forces' acts of violence and terror spanned several decades. During this time, Defendants provided various forms of support to the security forces in a consistent and repeated manner—they made regular deliveries of equipment, provided long-term design and maintenance services, and participated in standing defense committees. Defendants persisted in this course of conduct for many years after learning of the violent ends to which their assistance was put, ignoring the well-publicized and universally-condemned atrocities committed by the security forces in South Africa.

B. The Armaments Sector

143. The increase in militarism and the corresponding increase in arms production in South Africa were reactions in large measure to the internal social and political climate of the

¹⁰⁸ Abrahams, note 78, at 65 (emphasis added).

1950s and 1960s, when South Africans intensified their struggle to abolish the apartheid system. In response to the popular struggle, the apartheid regime sought to acquire more modern military weaponry and lobbied heavily to import arms technology to the South African security forces.

144. The United Nations imposed a mandatory arms embargo against South Africa in 1977 with the express purpose of putting an end to the “massive violence against and wanton killings of the African people” by the apartheid regime, as well as “its acts of repression” and “its defiant continuance of the system of apartheid.”¹⁰⁹

145. All members of the United Nations—including Switzerland and Germany—were required to abide by the 1977 arms embargo by “ceas[ing] forthwith any provision to South Africa of arms and related material of all types”¹¹⁰

146. The United States began restricting arms exports to the apartheid regime in 1964. After the mandatory United Nations arms embargo was imposed in 1977, the United States strengthened its export restrictions to prohibit all exports that the exporter knew or had reason to know would be sold to or used by military or police entities in South Africa.¹¹¹

147. In South Africa, the Armaments Development and Production (“ARMSCOR”) state enterprise was developed by the apartheid regime in the late 1960s to “promote and coordinate the development, manufacture, standardisation, maintenance, acquisition, or supply of armaments.”¹¹²

148. Due to the secrecy of these activities, not all facts are presently known. However, it is known that ARMSCOR worked closely with private companies, including Defendant

¹⁰⁹ S.C. Res. 418, U.N. Doc. S/RES/418 (Nov. 4 1977).

¹¹⁰ G.A. Res. 1761(XVII), U.N. Doc. A/Res/1761(XVII) (Nov. 6, 1962).

¹¹¹ See 15 C.F.R. 385.4 (1979); see *supra* ¶ 115.

¹¹² Armaments Development and Production Act 57 of 1968.

Rheinmetall Group AG (“Rheinmetall”) and its subsidiaries and divisions, including Oerlikon Contraves AG (“Oerlikon”), to ensure that the security forces of the apartheid regime acquired the armaments and military equipment it needed to suppress dissent and control the population despite the international arms embargoes. The businesses linked to ARMSCOR also included Defendants IBM and Daimler, among others.¹¹³

149. The ANC noted that many of the companies working with ARMSCOR were foreign: “many of the local private sector corporations were not involved in the genuine development of these war materials. They were more often useful conduits for foreign technologies, helping the apartheid state to evade the UN arms embargo.”¹¹⁴

150. The influx of armaments and related equipment, services, and expertise to ARMSCOR and the rest of the apartheid regime substantially assisted the suppression of dissent, the control and manipulation of the African population, and systematic violence against dissidents and non-whites in violation of international law.

151. Defendant Rheinmetall, a top producer of armaments including the MK 20RH 202 (a component of the armored personnel carrier), the MG3 machine gun, and various weapons systems for battle tanks, exported significant quantities of armaments and related equipment and expertise to South Africa, for use by the security forces.

152. In the 1970s, Rheinmetall, under fraudulent export declarations, exported a complete ammunition factory to apartheid South Africa to manufacture the 155mm extended range projectiles needed by the South African security forces.

¹¹³ COSATU Submission to the Truth and Reconciliation Commission Hearings on Business and Apartheid at 17.

¹¹⁴ *Role of Business*, *supra* note 20, at 8.

153. Rheinmetall applied for a license to export a plant to Paraguay using a fictitious company name, “Sudamerika Paraguay Exportacion-Importacion.” When the exported plant reached port in Brazil, ostensibly bound for Paraguay, the freight was re-loaded onto a ship bound for Durban, South Africa.

154. The plant was erected in Pretoria and began operations in 1979. The plant made ammunition at the rate of 80 to 100 rounds per hour.

155. In addition to the munitions plant, Rheinmetall aided the South African security forces in other ways, such as training members of the SADF in the use of certain artillery systems on its Unterlüss test range. Even after a criminal investigation was launched against Rheinmetall in 1980, Rheinmetall continued these trainings.

156. A German tribunal in the mid-1980s found that Rheinmetall had created fictitious firms in foreign countries in order to disguise their business connections to the security forces of South Africa; handed in false end-user declarations to the authorities; and concluded fictitious contracts.

157. Oerlikon, a subsidiary to Rheinmetall, is an international purveyor of defense and space technology. In 1989, the Werkzeugmaschinenfabrik Oerlikon-Bührle and Contraves were merged to form the present entity, Oerlikon Contraves. In 1999, this entity was sold to Rheinmetall DeTec AG. Oerlikon is the successor-by-merger of Oerlikon-Bührle, a company that provided strategic arms and military technology to the apartheid regime.

158. During apartheid, the head of Oerlikon-Bührle, Dieter Bührle, was a member of the Swiss-South African Association, a strong pressure and lobby group with enormous influence on the shape of Swiss policy regarding South Africa. It was noted for inviting

apartheid leaders to Switzerland at a time when they were welcome hardly anywhere in the world.

159. Bührle complained to the Swiss government in the mid-1960s that the embargo taking shape in Switzerland was hurting his company's business. When the Swiss government refused to reverse course on the South African embargo, Oerlikon-Bührle sought to find ways around it.

160. For instance, Oerlikon-Bührle supplied South Africa with arms from its Italian subsidiary. The company also created military production subsidiaries outside Switzerland to serve that purpose.

161. Where the supply from such subsidiaries was inadequate to meet the needs of Oerlikon-Bührle's apartheid-regime clients, the company supplied South Africa with goods using the false end-user certificates. The company secured these false end-user certificates in France and shipped anti-aircraft cannons and ammunition valued at 54 million Swiss francs to South Africa.

162. This creative supply to the apartheid security forces caused Oerlikon-Bührle trouble in the late 1960s and early 1970s with the Swiss government. Oerlikon-Bührle was tried and convicted of violating the embargo and its export license was suspended for three months. Nonetheless, Oerlikon-Bührle continued to supply illegal arms to the South African security forces.

163. Oerlikon-Bührle's support of South Africa's security operations was so extensive that in 1978 Deiter Bührle and others at Oerlikon-Bührle were honored by the apartheid state and given the highest military honor.

164. In the 1980s, Oerlikon-Bührle focused on the sale of armaments patents and licenses to South Africa. Throughout the 1980s, Oerlikon-Bührle applied for numerous patents on arms components with the objective of establishing Swiss-South African co-productions. This was crucial for South Africa because the apartheid regime sought to create a self-sufficient armaments industry with ARMSCOR and its subsidiaries, eliminating the need to import armaments from abroad. In 1987, the United States State Department informed the Swiss embassy in Washington that Oerlikon-Bührle had, between 1978 and 1986, applied for the registration of numerous patents on arms components, such as fuses and artillery components. U.S. intelligence advised the Swiss Foreign Ministry to examine the patents registered by Oerlikon-Bührle in the South African Patent Office. The Swiss declined. There was no reason, the director for international organizations wrote in a confidential document, to “wake up this sleeping dog.”¹¹⁵

165. The weapons and arms technologies Rheinmetall supplied to the South African security forces were made to kill; they had an inherent capacity for harm and were particularly susceptible to harmful and illegal use under international law.

166. Rheinmetall knew that the normal market for armaments was the security forces. Any sales or agreements Rheinmetall entered into with general government entities were done with the understanding that the armaments would ultimately be used by the security forces. In persisting with voluminous and repetitious sales of weapons and arms technologies to the apartheid regime despite this knowledge, Rheinmetall turned a blind eye to its role in facilitating ongoing atrocities in South Africa.

¹¹⁵ Mario Poletti and Martin Stoll, *Kooperation mit den Rassisten*, Facts, (June 27, 2002) at 26.

167. Rheinmetall acquired a stake in the criminal venture of the apartheid regime by making profits which it knew could only come from their encouragement of the security forces' illicit operations through the sale of weapons and arms technologies.

168. Rheinmetall provided the South African security forces with the armaments and services to commit apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment against Plaintiffs and members of the classes with actual or constructive knowledge that those armaments and services would be (or only could be) used in connection with that purpose.

169. Rheinmetall knowingly and substantially assisted the South African security forces to commit acts that violate clearly established norms of international law.

C. The Technology Sector

170. Computers played a central role in the regime's ability to maintain and enforce apartheid since the South African population register was automated in 1955.

171. Rep. Howard Berman, the sponsor of legislation to ban computer sales to South Africa, testified in 1985 that:

Computers are essential to the South African government's pervasive control over every aspect of existence for every black individual. From the age of sixteen, all Africans must carry passbooks indicating where they have permission to live and work and whether they are allowed to live with their families Computers help in the collection, retrieval and use of this information As the South African economy and population grew, political leaders became concerned that a growing white manpower shortage would inhibit the implementation of apartheid. Computers have helped solve that problem. Moreover computers have enabled the South African government to strengthen its grip on the population and intensify apartheid enforcement over recent years. Pass law arrests doubled between 1980 and 1982. Political detentions have increased sharply Armed with more thorough and more readily available information on black residents, the government has accelerated forced removals of whole communities from so-called 'black-spots'—areas where black families

have lived for generations, but which the government has declared 'white'.¹¹⁶

172. The South African security forces used computers supplied by Defendants **International Business Machines Corp.** ("IBM") and **Fujitsu Ltd.**¹¹⁷ ("Fujitsu"), including Fujitsu's subsidiary formerly known as **ICL**, to restrict Black people's movements within the country, to track non-whites and political dissidents, and to target individuals for the purpose of repressing the Black population and perpetuating the apartheid system.

173. South African law required citizens to carry either a passbook or a Book of Life, depending on the person's racial classification. These books were used in conjunction with specially-designed, state-of-the-art electronic databases that stored information on the individual's race, employment status, criminal history, and residence.

174. By the late 1970s, the South Africa National Intelligence Service maintained extensive computer files on government opponents.

175. Through IBM and ICL systems, these computer files could be accessed instantaneously for research or reference purposes related to government dissidents.

176. In 1980, the South African Criminal Bureau launched a computerized suspect tracking system. "Using remote terminal links, police operators at regional centers around the country have immediate access to a secret criminal data bank which stores details about anyone on the government's wanted list. Within minutes after police round up suspects in a raid, stop them for questioning, or pick them up for a violation of the pass laws, computer operators can tell the line officer whether the detainees are wanted."¹¹⁸ This tracking system ran on ICL equipment.

¹¹⁶ *Testimony of U.S. Rep. Howard Berman Before the H. Comm. on Foreign Affairs, 99th Cong.* (reprinted in Cong. Rec. Apr. 18, 1985).

¹¹⁷ In 1990, Fujitsu Ltd. acquired an 80% stake in ICL and by 1998 it had complete ownership of ICL. In 2001, ICL changed its name to Fujitsu Services Ltd.

¹¹⁸ NARMIC/American Friends Service Committee, *Automating Apartheid-U.S. Computer Exports to South Africa and the Arms Embargo* (1982), at 30 (henceforth "*Automating Apartheid*").

177. The electronic databases and equipment supplied by IBM and ICL substantially advanced the government's ability to enforce the pass laws.

178. In the early 1980s, an average of more than 70 people were arrested each day for pass law violations. It was foreseeable that these arrests, directly facilitated by Defendants' computer systems and software, would cause many citizens, including numerous Plaintiffs, to be unlawfully detained, tortured, raped, or subjected to cruel and degrading treatment.

179. The South African government also used computers supplied by the IBM and ICL in defense research and arms manufacture.

180. The South African government used computers supplied by the IBM and ICL to supply ammunition and supplies to military units. For instance, beginning in 1977, the SADF operated an automated military logistics system—using IBM equipment—to supply ammunition and other military supplies to military units.

181. The single largest user of computers in South Africa was the apartheid regime.

182. In 1965, ICL bid for and won the contract to design, implement, and service the computerized South African racial pass system.

183. Pursuant to this contract, ICL developed an automated database of information on South Africa's Black population, including fingerprints, criminal histories, employment information, residency information, and details of political activities against the apartheid government.

184. The automated passbook system that ICL sold or leased to the South African government was not a standard-issue product; it was specially designed for the apartheid government with a specific purpose: to facilitate the government's implementation of the racial pass system, the cornerstone of apartheid.

185. In 1965, the creation of a fast, efficient, and accurate computer system of this magnitude required a significant amount of design and development time. ICL worked closely

with the South African government to design an automated application for the pass information that had previously not been computerized.

186. To run this state-of-the-art system, ICL supplied the South African government with at least 588 computers used by the police, local authorities, and South Africa's defense industry.

187. One such ICL computer was installed at the Bantu Reference Bureau in Pretoria in 1967. The Department of Plural Affairs ("DPA"), formerly known as the Bantu Affairs Department, played a key role in the government's regulation of its African population. The DPA operated through a network of 14 Bantu Administration Boards and served as an arm of the apartheid government in Black townships. The DPA's ICL computer network stored fingerprints and personal details on the 16 million South Africans whom the regime classified as "black" and was used to maintain the passbooks that were crucial to "influx control."

188. Influx control was the method by which Black workers were channeled into the labor force and confined to marginal, desolate reserves called "homelands." In 1978, the DPA had 15 million sets of prints stored in its central computer and issued 900,000 new passbooks and identity documents to Africans. As the DPA noted, the computerized fingerprint record was "absolutely essential because it guarantees positive identification and precludes the possibility of foreign blacks infiltrating into the Republic."¹¹⁹

189. ICL's automated passbook system enabled the South African government to control the movement of Black people within the country and to track and target individuals to suppress political dissent.

¹¹⁹ NARMIC/American Friends Service Committee, *supra* note 118, at 17.

190. ICL's automated passbook system enabled the security forces to centralize and transmit information on Black individuals at a rate and to an extent that would not have been possible without this advanced software and computer equipment.

191. The ICL system played a crucial role in sustaining the apartheid government by expediting the detention, intimidation, or elimination of political dissidents and by facilitating the government's control of movements into and out of the homelands.

192. After winning the passbook contract in 1965, ICL continued to improve the design of the automated system and to service the equipment that supported it. In doing so, ICL engaged in ongoing collaboration with the South African government to facilitate and improve the racial pass system and, ultimately, to assist in sustaining apartheid.

193. In addition to the automated passbook system, ICL also supplied at least four computers to the Bantu Administration Boards that ran the hostel system that housed African workers and administered the permits and controls that governed the movements of Africans.

194. ICL further supplied the SAP with a central processor for their automated "criminal investigation" system. In 1976, ICL delivered a more advanced computer to upgrade the police's system. When the British press disclosed that the computers would be used to enforce the pass laws, British trade unions, members of the British parliament and anti-apartheid activists urged ICL to withdraw from the sale. ICL, however, went ahead with the delivery.

195. Following the November 1977 UN resolution and the 1978 tightening of the U.S. embargo, the sale of computers to South Africa for use by the military or police violated United States export restrictions. Computers and related technologies were considered a strategic asset along with armaments and military equipment. Nonetheless, ICL provided computers for use by the South African police force.

196. In order to facilitate the government's ability to procure strategic equipment for the security forces after the mandatory embargo took effect, the apartheid government resorted to the use of a "dummy" front organization to procure sensitive equipment for the security forces. Infoplan, a Pretoria-based data processing corporation offered hardware, software, computer training and services, acted as such a conduit. ICL had strong links to Infoplan.

197. In 1978, the United States Commerce Department banned the export of all U.S.-origin products—including computers and other technological equipment—to the South African security forces, including the police, military, ARMSCOR, the Department of Prisons, the Bureau of State Security, the railway police, the traffic police, and in some cases the Bantu affairs agency.

198. Despite this embargo, ICL (and IBM) continued to supply the South African security forces with high technology.

199. ICL's finances deteriorated during the late-1970s, leading to the appointment of a new management team and the beginning of a relationship with Fujitsu.¹²⁰

200. ICL's relationship with Fujitsu began in 1981, with a collaboration between the companies on computer technologies intended to extend over a term of at least twelve years. One feature of the collaboration permitted ICL to have access to Fujitsu emerging technologies, typically one year before general availability. ICL began to rely upon Fujitsu's semiconductor technology which was crucial to ICL's continued supply of computers in South Africa and elsewhere. As a result, ICL became increasingly dependent on Fujitsu, and Fujitsu management played an increasing role in directing ICL's business activities.

¹²⁰ This paragraph and the following paragraphs contain supplemental allegations regarding Fujitsu.

201. Initially, the collaboration was presented as arm's length, to avoid diluting ICL's credentials as a European and British company. However, this belied the nature of Fujitsu's ever-increasing control over the activities of ICL. Fujitsu's involvement with ICL at both the financial and technical levels increased steadily over two decades, eventually leading to 100% ownership by Fujitsu and then to the full integration of ICL into the Fujitsu company and the dropping of the ICL brand. Fujitsu also implemented elaborate guidelines about procedures to ensure it was knowledgeable about actions taken at ICL.

202. In 1982, the United States fined ICL for selling computers to the SAP containing United States-origin disk drives, in violation of U.S. Export Administration Regulations.

203. In 1990, Fujitsu acquired a controlling stake (80%) of ICL, paying \$1.29 billion. This equity stake was largely redundant of the control Fujitsu already exercised due, in part, to ICL's dependence. The other 20% was retained by the parent STC plc, which was then owned by the Canadian company Northern Telecom. In 1998, Fujitsu purchased the remaining stake and, in 2001, changed ICL's name to Fujitsu Services Ltd.

204. Like Fujitsu, Defendant **IBM** and its subsidiary and alter ego, International Business Machines South Africa Limited ("IBM-SA"), were intimately involved in sustaining the apartheid regime through the design, importation, installation, and maintenance of high technology systems for the South African government.

205. IBM is a global leader in manufacturing computer systems, software, networking systems, storage devices, and microelectronics. IBM Corp. is headquartered in New York State and does business in New York State. The South African subsidiary, IBM-SA, operated as the agent and/or alter ego of IBM Corp. at all times relevant to this complaint.

206. IBM was the largest computer supplier in South Africa, with total annual sales estimated at 300 million rand. Its relationship with the apartheid regime began in 1952, when IBM-SA received its first order for an “electronic tabulator.” This tabulator was the first step in the automation and expansion of the population control program, which became increasingly sophisticated until the collapse of the apartheid regime.

207. IBM provided the South African Department of the Interior (“DOI”) with a specially-designed, computerized population registry. IBM supplied the software and database design as well as the hardware to run the system. Thomas Conrad of the American Friends Service Committee, an authority on corporate involvement in apartheid, testified that

for several years IBM has knowingly rented a Model 370 computer system to the South African Department of the Interior which is used for the regime’s national identity system. The IBM machine stores files on seven million people the regime has designated as coloreds, Asians, and whites Since IBM owns the equipment and leases it to the government, it could withdraw from the arrangement, but has declined to do so.¹²¹

208. During the 1970s, new computers and peripheral equipment were added to expand and upgrade the system’s capability. IBM supplied multiple Model 370/158 mainframe computers to the DOI. The DOI used the IBM system to process and store a vast quantity of information about the designated population, including identity numbers, racial classification, residence, and place of work. The system also contained a history of government opposition. The same IBM computer served as the basis for the “Book of Life,” an identity document issued

¹²¹ *Controls on Exports to South Africa: Hearings before the Subcomms. on International Economic Policy and Trade and on Africa of the H. Comm. on Foreign Affairs, 97th Cong. 72 (1982) (statement of Thomas Conrad, American Friends Service Comm.); see also Economic Sanctions and their potential Impact on U.S. Corporate Involvement in South Africa: Hearing before the Subcomm. on Africa of the H. Comm. on Foreign Affairs, 99th Cong. 22 (1985) (statement of Dr. Jean Sindab, Executive Director, Washington Office on Africa) (testifying that an IBM computer was used by the regime to maintain the pass system for the “Colored” population).*

to all those covered by the database. The IBM system was used to track racial classifications and movement for security purposes.

209. The IBM computerized population registry was specially designed for the South African government. Its function was to assist the government in implementing and enforcing the racial pass laws and other structural underpinnings of the apartheid system, such as the suppression of political dissent. IBM custom-tailored this product to perform that function at the highest level for the apartheid regime.

210. As of 1976, at least one third of IBM business in South Africa was done directly with the South African government. IBM computers were used by the Department of Defense, the Department of the Interior, and the Bantu Administration Boards, the local administrators of apartheid. The apartheid government was IBM's largest single customer in South Africa.¹²²

211. IBM's 370 computer was used by many South African government agencies, including the Department of the Prime Minister, the Department of Statistics, and the Department of Prisons, which was widely known to hold and torture political prisoners without trial. These agencies, which were a significant component of the apartheid state apparatus, relied on IBM computers for their administration.

212. After the imposition of the mandatory embargoes in 1977 and 1978, IBM shifted much of its business with the South African government to Infoplan (*see supra* ¶ 196). While IBM supplied Infoplan with parts, services, education and technical data which were not covered by the U.S. embargo, Infoplan in turn transferred this equipment and expertise to the SADF.

¹²² *Automating Apartheid*, at 6.

213. Directly and indirectly, IBM was a top supplier for the SADF. The SADF inventory of IBM computers included model 360s (for instance, a model 360 was installed at the Simontown Naval Installation) and model 370s.

214. IBM rented at least seven computers to Leyland-South Africa, a firm that produced Land Rovers for the security forces and the police. IBM also rented several computers to one of Pretoria's top explosives manufacturers, the African Explosives and Chemical Industries, Ltd. ("AECI"). AECI reportedly had specialized in the manufacture of riot control gas, napalm, and nerve gas that were used against Plaintiffs and class members. At least four AECI installations use IBM hardware. For instance, AECI employs an IBM computer at its Modderfontein facility, where the company reportedly made the tear gas used against demonstrators at the Soweto massacre.

215. For much of the equipment leased to the South Africans, IBM provided maintenance and service on the equipment over the term of the lease. IBM's regular servicing of the apartheid government's computer systems, in addition to its custom design of certain products, demonstrates how closely IBM collaborated with the South African government in implementing and improving the enforcement of the racial pass laws and sustaining the apartheid system.

216. IBM conceded that the equipment and services it supplied to South Africa may be used for repressive purposes, noting that "It's not really our policy to tell our customers how to conduct themselves."¹²³

¹²³ Erin MacLellan, *U.S. Business Debates South Africa Ties Limits on Computer Exports are Difficult to Enforce*, Washington Post, Aug. 25, 1985.

217. IBM was fully aware of Infoplan's relationship to the South African security forces when it supplied equipment and services to Infoplan after the imposition of the 1978 embargo.

218. After IBM announced it was leaving South Africa, a letter was sent to customers by the Managing Director of IBM South Africa stating that "there will be no change to the supply of IBM products."¹²⁴

219. Newspapers reported that "[a] letter leaked from IBM's Johannesburg offices reveals that IBM's pull-out from South Africa is not all it seems. Users are being reassured that IBM products and services will be freely available from the company established as a result of IBM selling off its subsidiary. And the letter boasts that the lack of restrictions will leave it free from international pressure This has been interpreted as evidence that IBM's withdrawal was aimed at dodging international disapproval and as a means of taking political heat off IBM in the US."¹²⁵

220. Anti-apartheid activists noted that the IBM's "pull-out" enabled it to expand its market in South Africa:

While computer firms like IBM are prohibited by U.S. sanctions from supplying the South African government, the company's former South African subsidiary (and sole South African distributor), has recently become partners with Reunert Computers, to form a new company, Technology Systems International (TSI). TSI, in turn, is part of Barlow Rand, Ltd., a giant South African conglomerate and a key part of South Africa's military industrial complex, which, through another Barlow Rand subsidiary, Reunert Technologies Ltd. supplies cluster bombs, components

¹²⁴ Letter of J.F. Clarke, Managing Director, IBM South Africa, entitled "Notice to the Customers and Associates of IBM Throughout South Africa."

¹²⁵ *IBM Leak Reveals No Change in SA*, Datalink, Jan 29, 1987; Philip Basset, *Unions claim IBM Operations Still Continuing in South Africa*, Financial Times, Jan 14, 1987 (IBM "has in practice not withdrawn from its South African operations, in spite of its decision last October to disinvest in the country").

for armored vehicles, electronic fuses for artillery and rocket shells, and military electronic and communications gear to the South African military and police . . . the new structure further increases the likelihood that IBM products and technology will be used in armaments applications.¹²⁶

221. In 1978, a year after the UN Resolution imposing a mandatory arms embargo on South Africa, IBM's South African sales jumped 250%.

222. The computer systems and technologies IBM and ICL supplied to the South African security forces were designed to track and monitor civilians with the purpose of enforcing the racist, oppressive laws of apartheid. Moreover, this enforcement was often carried out by violent means. In the hands of their intended user, the apartheid security forces, the equipment and technology supplied by IBM and ICL had an inherent capacity for harm and was particularly susceptible to harmful and illegal use under international law.

223. IBM and ICL knew that the normal market for these technologies was the security forces. Any sales or agreements IBM and ICL entered into with general government entities were done with the understanding that all equipment and technology linked to the passbook and Book of Life systems would ultimately be used by the security forces to enforce the oppressive laws of apartheid, often through violent means. In persisting with voluminous and repetitious sales of computer equipment and technologies linked to the passbook and Book of Life systems to the apartheid regime despite this knowledge, IBM and ICL turned a blind eye to their role in facilitating ongoing atrocities in South Africa.

224. IBM and ICL made profits which they knew could only come from their encouragement of the security forces' illicit operations through the sale of computer equipment

¹²⁶ *Testimony of Jennifer Davis and Richard Leonard, American Comm. on Africa, at the Hearings on the Arms Embargo, Security Council Comm. Established by Resolution 421 (1977) Concerning the Question of South Africa, at 3-4.*

and technologies designed to implement and enforce the oppressive policies of apartheid. By reaping these profits, IBM and ICL acquired a stake in the criminal venture of the apartheid regime.

225. Defendants IBM and Fujitsu provided the South African security forces with the technology and services to commit apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment against Plaintiffs and members of the classes with actual or constructive knowledge that that technology and those services would be (or only could be) used in connection with that purpose.

226. Defendants IBM and Fujitsu knowingly and substantially assisted the South African security forces to commit acts that violate clearly established norms of international law.

SUPPLEMENTAL ALLEGATIONS REGARDING IBM

227. IBM South Africa (Pty) Ltd was incorporated in 1952 in South Africa as a subsidiary of IBM. IBM's largest client in South Africa was the South African government, accounting for about one third of its sales there.

228. At all times relevant to Plaintiffs' allegations, IBM provided computer technology, systems, software, training, and support to facilitate the apartheid governments' control of the majority black population. The maintenance of the complex apartheid system of population control organized by racial classification required sophisticated computer technology and knowledge of the kind provided by IBM.

229. After the U.S. Commerce Department banned the export of all U.S.-origin products to South African security forces, IBM circumvented that embargo by delivering products to South African security forces that were produced outside the United States, and therefore were not subject to the embargo. Given the widespread media coverage of atrocities

committed by apartheid security forces in defense of apartheid, IBM knew that it was substantially assisting the South African government in committing massive human rights violations, as alleged in this complaint, against its people.

230. In 1987, IBM “sold” its South African subsidiary to a company created for the benefit of white IBM South Africa employees. However, IBM stated that it would provide a loan allowing local investors to buy the subsidiary. IBM retained a buy-back option to the new company as a term of the sale. The new entity was run by the person who was the general manager of IBM South Africa prior to the sale. IBM continued to sell its products, parts and services through the new company and continued to be the top supplier of computers to South Africa after the “divestiture”. Around 1992, IBM purchased a 24% stake in the local distributor of IBM products.

D. The Transportation Sector

231. Military-style vehicles were a vital tool used by the security forces to perpetrate violence. The vehicles were used to patrol African townships, homelands, and other areas, and were instrumental in suppressing dissent and targeting Blacks and political dissidents.

232. Defendants **Ford Motor Company** (“Ford”), **Daimler AG** (“Daimler”), and **General Motors Corporation** (“General Motors”) knowingly and intentionally supplied vehicles, parts, and other equipment to the apartheid security forces. This equipment was specifically designed for the purposes of, and was in fact used for, transporting, arming, and protecting military personnel in offensive actions against Plaintiffs and class members. The equipment was used to patrol townships to target political opponents, repress the African population, quell public displays of dissent, and brutalize and kill many citizens as described herein.

233. For instance, Defendant **Daimler** supplied the security forces with essential parts for their personnel carriers and armored vehicles. Daimler sold chassis, engines, transmissions, and other automotive parts to the security forces for use in military SAMIL¹²⁷ trucks and SAMAG trucks; army and police armored vehicles such as the “Unimog,” “Casspir,” “Hippo,” “Buffel,” and “Duiker”; and the armored transporter “Blesbok.”

234. Daimler designed and manufactured the military vehicle “Unimog,” which was used as a component of many other security-force vehicles. Daimler Benz advertised its Unimog as a “military vehicle” in a March 1965 Portuguese magazine *Journal do Exército*. The military version can be distinguished from the civilian version because the former has mountings for arms—such as the “Valkiri,” a 127mm rocket launcher—gloss paint to avoid infrared detection, a 24-volt battery, and bulletproof tires.¹²⁸

235. According to the *Wehrtechnik*, a monthly defense technology journal, in 1976 “the Unimog [was] regarded as the best, small military transporter in Africa.”

236. Daimler shipped approximately 6,000 Unimogs to South Africa despite the U.N. Security Council’s mandatory arms embargo.

237. The police and security vehicle “Casspir” used the chassis of a Unimog. Similarly, the “Buffel” used the Unimog as a component.

238. The Casspir and Buffel were two of the most important vehicles used by the South African security forces. They were used to patrol townships, disburse civilian assemblies,

¹²⁷ The SAMIL 100 truck was designed in 1980 and production began in 1982.

¹²⁸ Anti-Apartheid Bewegung Erwidern. Antwort auf ein Dementi der Bundesregierung zur militärisch-nuklearen Zusammenarbeit Bundesrepublik Deutschland – Südafrika, Bonn, (1979), at 26.

and raid communities in search of political dissidents. The security forces used both the Casspir and Buffel, along with the Hippo, against Plaintiffs and class members.¹²⁹

239. The Casspir was designed for extreme durability. The base model Casspir was designed with a machine gun mount and the capacity to withstand gunfire and explosives.

240. In addition to the Unimog chassis, Daimler supplied the Casspir's engine—a Mercedes Benz 6-cylinder turbo engine, capable of delivering 124 kilowatts of power at a rotation speed of 2,800 tr/min. The Mercedes Benz engine enabled the Casspir to travel at 90 miles per hour.

241. Daimler likewise supplied the Casspir's Mercedes Benz transmission, a five-speed model equipped with two speeds in four-wheel drive.

242. These military vehicles were heavily armored and equipped with numerous firing ports, machine guns, and cannons, all of which were employed in the control of South African townships.

243. Beyond the Unimog, Casspir, and Buffel, Daimler supplied other vehicles to the South African security forces, such as the Mercedes Benz minibus used by the security forces against the populace during the late 1980s State of Emergency.

244. Defendant **Ford** also had a long record of strategic vehicle and parts sales to the South African security forces during apartheid. Ford's vehicles were used by the South African security forces to patrol African townships, homelands, and other areas, as well as to arrest, detain, and assault suspected dissidents, violators of pass laws, and other civilians.

245. Ford reported to the U.S. Congress that it sold vehicles containing U.S.-made parts to the South African security forces up until the day, February 16, 1978, when such sales

¹²⁹ Anti-Apartheid Bewegung, "*Mit Daimler fährt Apartheid gut*", *op. cit.*, at 10.

were prohibited by the U.S. Department of Commerce. Between 1973 and 1977, Ford sold 8,191 vehicles to the South African government central purchasing agency, police, and homelands. Ford sold at least 1,582 F series U.S.-origin trucks to the police.¹³⁰

246. In February 1978, the United States Department of Commerce issued regulations that prohibited Ford from supplying passenger vehicles to the South African security forces, because some of Ford's passenger vehicles contained U.S.-made parts.¹³¹ Despite the prohibitions, Ford continued to supply vehicles to the South African security forces. Ford denied that its continued sales to the South African security forces ran counter to the U.S. prohibitions, on the basis that the vehicles did not contain parts or technical data of U.S. origin.¹³²

247. Ford claims that it lost some sales to certain South African security forces as a result of the February 1978 regulations, but the effects of those losses were minimal.¹³³ Ford's sales to the South African security forces continued.¹³⁴

248. Occasionally these sales were halted by sanctions imposed by foreign governments. For example:

In the mid-1960s, Ford bid on a contract to supply four-wheel drive vehicles to the government. But the Canadian government refused to issue an export permit to Ford's Canadian subsidiary, which was to supply the vehicles, on the grounds that the items might violate the then non-mandatory UN arms embargo against South Africa.¹³⁵

¹³⁰ *Id.*

¹³¹ 15 C.F.R. § 385.4 (1979); *see supra* ¶ 115.

¹³² Letter from Sidney Kelly to Shareholder (May 8, 1980) ("Kelly Letter") at 1.

¹³³ Karen Rothmeyer, *U.S. Motor Industry in South Africa: Ford, General Motors and Chrysler, The Africa Fund 1979*, p. 8.

¹³⁴ Kelly Letter, *supra* note 132, at 1 ("FSA sells a small number of non-US origin civilian vehicles to the Police and Military").

¹³⁵ Rothmeyer, *supra* note 133, at 12.

249. In 1986, as justification for its continued sales to the South African security forces, Ford explained that if it refused to supply military vehicles to the security forces, it could lose all government sales in South Africa, which could in turn render the company economically unviable in South Africa.¹³⁶ Ford was willing to cater to the security forces' demands in order to protect its other profitable operations with other branches of the apartheid regime.

250. Ford sold its products to the South African security forces through a central government purchasing authority. The central authority purchased vehicles for use by the security forces.

251. Defendant **General Motors** also knowingly and purposefully supplied vehicles and equipment to the apartheid regime for "Defence Force purposes."¹³⁷

252. General Motors reported that in 1978 it sold 1,500 units annually to the SAP and military. General Motors also provided police and transport vehicles for the Department of Prisons. And, for at least 15 years, GMSA had a contract to supply Bedford trucks to the SADF.¹³⁸

253. The Comprehensive Anti-Apartheid Act of 1986 prohibited any U.S. entity from engaging in any form of cooperation with the South African security forces except for activities that were reasonably designed to facilitate collection of necessary intelligence.¹³⁹

¹³⁶ Rothmeyer, *supra* note 133, at 13; Richard Knight, "Sanctions, Disinvestment, and U.S. Corporations in South Africa," in *Sanctioning Apartheid* (1990, Robert E. Edgar, ed.).

¹³⁷ GM South African – Contingency Plan, at 4-5, attached to memo from L.H. Wilking of General Motors South Africa, July 20, 1977; *GM Drafts Riot Plan for South Africa*, NY Times, May 19, 1978 at 1, 14.

¹³⁸ Rothmeyer, *supra* note 133, at 8.

¹³⁹ White Wheels of Fortune: *Ford and GM in South Africa*, Interfaith Center on Corporate Responsibility, Vol. 8 No. 6 1989, at 3A.

254. In May 1986, General Motors stated that it would stop selling cars and trucks to police and military agencies in South Africa. Chairman Roger Smith indicated that General Motors would not bid for military or police sales any longer. General Motors also acknowledged that approximately ten percent of the vehicles it sold to the South African government were for police and military use.¹⁴⁰

255. Regulations issued by the United States Department of Commerce in February 1978 kept General Motors from supplying passenger cars to the South African security forces, since its passenger cars contained U.S.-made parts. But General Motors continued to supply commercial vehicles—primarily small trucks—to the security forces.

256. The regulations, moreover, did not prohibit General Motors from selling to South African security forces via a foreign subsidiary. For example, General Motors of West Germany was not affected by the ban. It was also permissible for GM's South African subsidiary to produce General Motors cars in South Africa. General Motors used its foreign subsidiary, GMSA, to build the trucks and other vehicles that it sold to the South African security forces.

257. Yet another means for supplying strategic goods to the apartheid security forces was to do so through a seemingly neutral distributor, such as the centralized purchasing agency. In a letter to the Interfaith Center on Corporate Responsibility, Chairman Murphy claimed, "General Motors does not sell directly to any military, para-military or police force in South Africa." He admitted, however, that General Motors "sells commercial-type vehicles to the centralized purchasing agency of the government."¹⁴¹

¹⁴⁰ *G.M. Cuts Its Sales to Pretoria*, N.Y. Times (Business Day) May 24, 1986.

¹⁴¹ Letter from Thomas Murphy to Sister Regina Murphy (Jan. 20, 1978) at 1.

258. In addition to supplying this strategic security-force equipment, Defendants also assisted with its repair and maintenance.

259. For instance, Daimler took on substantial responsibility for repairing military vehicles and their parts, including vehicles used for “the occupation and control of black urban settlements.” One Mercedes Benz employee of Stuttgart, Germany, Joachim Jungbeck traveled to various Mercedes Benz factories in South Africa and reported to a July 1, 1988 shareholder meeting:

During a company visit, I was proudly shown aggregates of army vehicles, including huge numbers of axles from armoured vehicles Storerooms contained large numbers of engines, axles and transmissions for Unimogs and armoured vehicles of the South African police and army. In between were parts for the armoured vehicle “Buffel”. The Buffel was used in the war against Angola and for the occupation and control of black urban settlements.¹⁴²

260. Mr. Jungbeck also reported that the maintenance work was “strictly confidential”:

Concerning the scale of maintenance services for the army Jungbecks guide, Mr. Hawkey, said that this information was strictly confidential. A large number of army vehicles were being serviced and repaired, but in terms of service promotion the firm would not make use of it.¹⁴³

261. In 1989, the Daimler Benz board confirmed that the South African Army had a service and repair agreement with MBEUS.¹⁴⁴ MBEUS serviced and repaired parts for the South African security forces’ fleet, including exchange engines, transmissions, axles, turbo chargers, and other truck parts.

¹⁴² Application by Jungbeck for “the non-exoneration of the board of management and the supervisory board” and his speech at the shareholder meeting, Stuttgart, 1988.

¹⁴³ *Id.*

¹⁴⁴ Stuttgarter Koordinierungskreis der Aktion, *Entrüstet Daimler, Entrüstet Daimler. Ergänzungen zum Geschäftsbericht 1989 der Daimler Benz AG*, Stuttgart (1990) at 8.

262. Defendants' cooperation with the South African security forces for the servicing of military vehicles demonstrates how closely they collaborated with the apartheid regime to maintain and enforce apartheid.

263. In addition to vehicles, parts, and maintenance, Defendants supplied the South African security forces with the necessary technology and skills to design and improve security force vehicles.

264. For example, General Motors continued to supply its technologies and designs for equipment sold to the apartheid security forces even after it sold its South African motor vehicle subsidiary, GMSA, to local management in 1986.

265. GMSA was renamed Delta Motor Corporation (Pty) Ltd. ("Delta"), but it continued to manufacture General Motors vehicles under license. Under these licenses, General Motors technologies and designs were made available to the apartheid security forces.

266. Through lucrative technology and design licenses, General Motors profited from its so-called "disinvestment" from South Africa. News reports noted that "GM earns licensing fees and Delta is doing better than as a subsidiary because it sells GM cars to the police and military,"¹⁴⁵ something General Motors could no longer afford to do after U.S. export regulations made it illegal.

267. Defendants continued to cater to the apartheid regime despite knowing, or having reason to know, that their equipment and technology was being used to commit atrocious violations of international law.

¹⁴⁵ Jim Jones, *Aftermath of the Exodus of U.S. Firm's Departure from South Africa hasn't helped Africans*, U.S. News & World Report, May 1, 1989.

268. For example, two General Motors inter-office memoranda dated May 6, 1977 and July 20, 1977, respectively, outlined a contingency plan for GMSA during times of civil unrest. All the preparatory work regarding the memoranda was intended to be “carried out quietly and discretely” so as to “avoid giving the impression that [GM] expect these things to happen.”¹⁴⁶

269. Likewise, in a speech before the Daimler shareholder meeting in June 1989 in Berlin, Dr. Beyers Naudé addressed Edzard Reuter, then CEO of Daimler Benz:

The police shoot demonstrators, they even shoot mourners at funerals, as happened, for example, in Llanga. They shoot from cars driven by Daimler-Benz engines. . . . Mr. Reuter; you asserted that there are moral limits to arms delivery. These are, and I quote you: “If supplies end up in states which are ever so slightly suspected to intend using them in attacks against others states.” I can assure you, Mr. Reuter, that these vehicles, for which Daimler-Benz supplies the engines, are being used for aggressive purposes.¹⁴⁷

270. Defendants’ support for the security forces of the apartheid regime extended into other areas, as well.

271. For instance, to circumvent the increasingly strict embargoes on the importation of strategic military equipment to South Africa, Daimler assisted the apartheid regime in establishing the ADE factory. The state-owned Industrial Development Corporation served as major shareholder of the factory (51 percent), and Daimler Benz owned 12.45 percent.

272. Foreign competitors were informed that the South African Army would be one of ADE’s main customers, and invited competitors to compete for this contract. Daimler Benz and Perkins won the licensing agreements in late 1978.

¹⁴⁶ July 20, 1977 Memo – Cover Page.

¹⁴⁷ Dr. C. Beyers Naudé, Shareholder Meeting, Berlin, Germany (June 28, 1989).

273. Daimler Benz designed the ADE factory in Atlantis, which was completed in 1980 in a town established by the state exclusively for the building of ADE. Daimler was aware of the substantial strategic value of the factory: according to DaimlerChrysler Chairman Jürgen Schrempp, Daimler understood that “the authorities established ADE for strategic reasons.”¹⁴⁸

274. Daimler Benz merged with Messerschmitt-Bölkow-Blohn in 1989, which supplied helicopters to the SAP. Documentary footage from the 1980s shows the SAP using Messerschmitt-Bölkow-Blohn helicopters to control mass demonstrations and to identify and target political dissidents.

275. In 1985-86, Daimler Benz bought 56 percent of the capital stock of Allgemeine Elektizitätsgesellschaft (“AEG”). AEG provided strategic technologies to the apartheid security forces, including “short wave transmitters, relay stations, telephone and telex stations and computerised data processing capability.”¹⁴⁹ This equipment was used to assist “the South African government in its internal security by monitoring the identity and movement of [the] black population.”¹⁵⁰

276. The military vehicles, equipment, and services that Daimler, Ford, and General Motors supplied to the South African security forces were designed to enable the security forces to track and attack civilians, patrol communities, and terrorize the Black population with the purpose of perpetuating the oppressive apartheid regime. In the hands of the apartheid security forces, the equipment supplied by Daimler, Ford, and General Motors—including armored tanks

¹⁴⁸ Interview with South African journal *Leadership* (1986); Anti-Apartheid Bewegung, *supra* note 129, at 7.

¹⁴⁹ Ronald W. Walters, “U.S. Policy and Nuclear Proliferation in South Africa.” In: Western Massachusetts Association of Concerned African Scholars, Eds., *U.S. Military Involvement in Southern Africa* (1978) at 182-183.

¹⁵⁰ *Id.*

equipped with machine gun mounts and other types of military vehicles—had an inherent capacity for harm and was particularly susceptible to harmful and illegal use under international law.

277. Daimler, Ford, and General Motors knew that the normal market for these vehicles was the security forces. The vehicles were both pre-equipped with armor and military fixtures and designed for easy modification by the security forces to add additional defensive and offensive features. Daimler, Ford, and General Motors entered into agreements with the apartheid regime with the knowledge that this equipment would ultimately be used by the security forces to enforce the oppressive laws of apartheid, often through violent means. The defendant companies persisted with voluminous and repetitious sales of such equipment and service agreements despite this knowledge, turning a blind eye to their role in facilitating ongoing atrocities in South Africa.

278. By making profits which they knew could only come from their encouragement of the security forces' illicit operations through the sale of vehicles, parts, designs, and services, Daimler, Ford, and General Motors acquired a stake in the criminal venture that was the apartheid regime.

279. Defendants Ford, Daimler, and General Motors provided the South African security forces with the vehicles and services to commit apartheid; extrajudicial killing; torture; prolonged unlawful detention; and cruel, inhuman, and degrading treatment against Plaintiffs and members of the classes with actual or constructive knowledge that those vehicles and services would be (or only could be) used in connection with that purpose.

280. Defendants Ford, Daimler, and General Motors knowingly and substantially assisted the South African security forces to commit acts that violate clearly established norms of international law.

SUPPLEMENTAL ALLEGATIONS REGARDING TRANSPORTATION SECTOR

281. In 1954, Daimler opened an office in South Africa. Beginning in 1958, Daimler, then known as Daimler-Benz AG, contracted with Car Distributors Assembly (CDA), a South African company, to produce Mercedes vehicles in South Africa. In 1966, CDA became a wholly-owned subsidiary of United Car and Diesel Distributors (UCDD), a South African company. In 1967, UCDD acquired a site in the West Bank area of East London, South Africa, and, at all relevant times, built Mercedes vehicles in the plant.

282. In 1984, Daimler acquired majority ownership and control over UCDD, and then renamed the company Daimler South Africa (Pty) Ltd. During all relevant times, Daimler purposefully and/or knowingly controlled and/or oversaw operations at the Mercedes plant located in the West Bank area of East London, South Africa. Indeed, Daimler's management in Germany was involved in and aware of the activities material to the allegations in this complaint.

283. At all relevant times, South African security forces collaborated with Daimler's managers and personnel to suppress peaceful labor and anti-apartheid political activities.

284. While employed at Daimler, black South Africans were subjected to arbitrary arrest, detention, torture, and other cruel, inhuman and degrading treatment by the security forces acting in close collaboration with Daimler management. Daimler management provided information about anti-apartheid union activities to the security forces and facilitated the arrest, detention, and ill-treatment of certain employees in order to suppress those activities. Daimler's

head of security asked employees to spy on fellow employees. Daimler security officials also participated in the interrogation of black South Africans by the Special Branch.

285. Daimler's senior management, including those in human resources and the security department, collaborated with state security forces, including members of the Special Branch, with respect to employees involved in union and anti-apartheid activities.

286. Daimler supported the apartheid regime through the provision of vehicles to the South African security forces. At all relevant times, Daimler manufactured specialized vehicles, in whole or in part, for the South African security forces in its South African plants, including its East London plant. Such vehicles included heavy trucks, designed for military purposes and armored personnel carriers.

287. Daimler created paperwork that identified these vehicles as being intended for the South African security forces. Some vehicles were painted in the plant to meet security forces' specifications. Officials from security forces, sometimes in uniform, visited the plants on a regular basis to inspect the vehicles. At all relevant times, Daimler knew that its products would be used to violently suppress non-violent opponents of apartheid. The use of Daimler's vehicles to violate human rights was widely known.

288. Daimler's vehicles regularly patrolled the townships. Security forces used them to intimidate, suppress, and control both strikers and anti-apartheid activities. The use of Daimler's vehicles by the security forces resulted in injuries and deaths to numerous South Africans. By at least the 1980s, Daimler employees had begun to express opposition to being forced to manufacture the vehicles that were used to suppress anti-apartheid activity in black communities. Daimler management responded by emphasizing that it was a duty of all South Africans to support the security forces.

289. At all relevant times, Daimler knew that the South African security forces violently repressed the rights of blacks in the country, and that the security forces used Daimler vehicles in violating the human rights of black South Africans.

290. In June 1976, a student protest began in Soweto against the use of Afrikaans as the official language of instruction. The protesting school children were met with a violent (and in some cases lethal) response by the security forces, who arrived in Soweto in vehicles produced for them by Ford, GM, and/or Daimler.

291. In May 1985, black South Africans marched to mark the launch of International Youth Year. The march proceeded from East London toward Duncan Village. When they approached the township, security forces were waiting for the marchers. The security forces stood in front of a line of military vehicles ready to fire and asked the marchers to disperse, but they did not. Then, the security forces opened fire without warning. Although marchers had their arms raised in surrender, the security forces still fired at them.

292. In August 1985, the funeral of Mrs. Victoria Mxenge, a human rights attorney whose husband was a slain human rights lawyer, precipitated confrontations in Duncan Village. The security forces' violent response to the anti-apartheid unrest lasted through the month of August and became known as the Duncan Village Massacre. During that time, security forces shot and killed at least nineteen Duncan Village residents, and injured many more. The victims included children.

293. In the early morning during one day of the Duncan Village Massacre, workers arrived at the Daimler plant in East London to find a notice posted saying that the plant was closed for the day. At that time the road into Duncan Village was open. During the massacre,

entrances to the township were sealed off, and, security forces in vehicles manufactured by Daimler, Ford, and/or GM, patrolled the area.

294. At a mass burial service for the victims of the massacre held later in August, security forces once again opened fire on attendees resulting in additional injuries and death. Security forces continued to perpetrate violence against Duncan Village residents at least through 1986. Security forces relied on military vehicles manufactured by Daimler, GM, and/or Ford for transport and protection throughout this time period.

295. In 1985 and 1986, security forces shot and killed young black South Africans from heavily armored military vehicles manufactured, in whole or in part, by Daimler, Ford, and/or GM.

296. GM ran its South African operations through its agent, GM South Africa (Pty) Ltd (GM). GM was incorporated in 1926 in South Africa. Senior management in South Africa included American personnel at all times material to Plaintiffs' allegations.

297. GM's operations at its factory in Port Elizabeth included the assembly and marketing of vehicles for the government, including thousands annually to the security forces in the mid-1980s. GM supported the apartheid regime with the provision of these vehicles. At all relevant times before GM divested, GM manufactured specialized vehicles, in whole or in part, for security forces in its South African plants. Such vehicles included heavy trucks designed for military purposes and armored personnel carriers.

298. GM created paperwork identifying these vehicles as intended for the South African security forces. Some vehicles were painted in the plant to meet security forces' specifications. Officials from security forces, sometimes in uniform, visited GM's plants on a

regular basis to inspect the vehicles. At all relevant times, GM knew that its products would be used to violently suppress non-violent opponents of apartheid.

299. GM's vehicles regularly patrolled the townships. Security forces used them to intimidate, suppress, and control both strikers and anti-apartheid activities. The use of GM's vehicles by the South African security forces resulted in injuries and deaths to numerous South Africans. Employees protested at being forced to manufacture the vehicles that were used to suppress anti-apartheid activity in black communities. When this occurred, GM management stated that anyone who protested the production of such vehicles would be assumed to be members of the African National Congress (ANC), even without any other evidence, and that anyone who was an ANC member would be fired.

300. At all relevant times, GM knew that the South African security forces violently repressed the rights of blacks in the country, and that the security forces used GM vehicles in violating the human rights of thousands of black South Africans. For example, GM was well aware that its vehicles were used in the state violence at Soweto and Duncan Village and many other similar incidents.

301. GM denied black employees their freedom to assemble and promoted the apartheid regime by relying on the South African security forces to harass and assault its black employees to prevent them from unionizing. Even when black employees did unionize, GM management prohibited salaried employees from participating in union activities that supported anti-apartheid political organizations. GM allowed security forces onto its premises to help suppress lawful union activities. These security forces worked closely with GM management in suppressing union activities. They collaborated in the arrest of black GM employees who participated in union activity. GM human resources employees reported black GM employees

involved with unions to the security forces, who in turn arrested certain GM employees at the GM facilities. Employees were arrested, interrogated, and tortured because of their union and anti-apartheid activities.

302. GM shared information about union leaders at its plants with the security forces, knowing that the security forces would detain and torture such leaders as a direct result.

303. As part of an effort to claim divestiture, around January 1, 1987, GM “sold” its operations to a group of investors headed by local management. This effort at “divestiture” was a sham. The local management included no blacks or persons of mixed race. As part of the deal, GM agreed to pay the subsidiary’s creditors and likely agreed to delay payment on the sale for 18 months. The sale terms included a buy-back option. When GM began divesting from South Africa, GM management stated that the company was “changing names only.” During the transfer period, GM management prohibited black employees from speaking with reporters. GM was subsequently renamed Delta Motor Corporation. GM licensed use of its trademark to Delta Motor Corporation and continued to sell its product through Delta Motor Corporation. The boxes and all the parts supplied continued to include the GM logo. GM transferred one of its senior management employees, an American with many years of experience at GM, to run Delta. He had been a GM vice president in the United States shortly before assuming his post as head of Delta. Delta refused to sign the Sullivan Principles,¹⁵¹ although it stated that it would follow nondiscriminatory employments practices and exercise social responsibility. The new ownership also said that it would “not preclude” sales to military and police. GM repurchased Delta in

¹⁵¹ The Sullivan Principles were a voluntary code of corporate conduct developed by African-American preacher Robert Sullivan in 1977 to demand equal treatment for blacks employed by American companies operating in South Africa.

1997. The “divestment” program was a purposeful attempt to evade international sanctions and to allow the maintenance of GM’s system of internal apartheid.

304. Ford’s South African operations were conducted through Ford Motor Co. of South Africa (Pty) Ltd (Ford South Africa). Ford South Africa was formed in 1933. It was a wholly-owned subsidiary of Ford Motor Company of Canada, Ltd. (“Ford Canada”), which was itself 76% owned by Ford U.S. Ford South Africa assembled Ford vehicles from parts obtained locally as well as parts shipped from Ford Canada and Ford England. These shipments were intended in part to avoid U.S. sanctions that did not permit supplying U.S.-made parts to South Africa.

305. Senior top management in Ford in South Africa included American personnel. Senior management in Ford included members of the Broederbond. When workers challenged the employment of these individuals, Ford management ignored these complaints.

306. In 1985, Ford Motor Co. of South Africa (Pty) Ltd merged with Amcar Motor Holding, the vehicles operations of Anglo American Corporation. The resulting entity was called South African Motor Corporation (SAMCOR). As a result of the merger, Ford became a minority owner of the new company, with roughly a 42% interest. At all relevant times, Ford Motor Co. and SAMCOR acted as agents of Ford.

307. In its South African plants, Ford manufactured specialized vehicles for security forces, including large military trucks, armored vehicles and specialized sedans for the Special Branch. Ford created paperwork identifying the vehicles as intended for security forces, some of which specifically identified the police or the military as the recipients. Some vehicles were painted in the plant to meet security forces’ specifications. High-ranking officials from security forces, sometimes in uniform, visited Ford plants on a regular basis, consulted with Ford

management and inspected the vehicles. At all relevant times, Ford knew that its products would be used to violently suppress blacks and opponents of apartheid. For example, Ford was well aware that its vehicles were used in the state violence such as at Soweto and Duncan Village and many other similar incidents.

308. Ford employees raised concerns with Ford management about Ford's production of security forces' vehicles because they saw these vehicles in black communities on a regular basis. On more than one occasion, Ford management retaliated against black employees who questioned its involvement with the South African security forces, *inter alia*, by shortening the work shifts of black employees.

309. The head of Ford security often rode through black communities with Special Branch officers in Ford company vehicles as well as Special Branch cars. Some of these officers, who were regularly inside the Ford plants speaking with Ford management, were involved in the torture and arbitrary detention of union leaders. Ford facilitated the torture and arbitrary detention of its own workers.

310. Special Branch officers worked with Ford management to coordinate efforts to intimidate workers to not get involved in political or union activities. For example, on one occasion a union leader's brother who worked at Ford had been interrogated and detained overnight, and he was brought to a plant the following morning. Accompanied by Special Branch into the plant, he was paraded in handcuffs to deter workers from involvement in political or union activities.

311. Members of the proposed classes were arrested, detained, and tortured by South African security forces as a result of information provided to these forces by Ford. Ford

employees also knew when black employees had been interrogated, even when that information was not public.

312. While Ford agreed to sell its interest in SAMCOR in 1987, it continued to supply SAMCOR with vehicles, components, management and technical assistance and continued to license the Ford trademark to SAMCOR. Ford transferred 57% of its stake to local employees and the remaining 43% of its stake to Anglo American Corporation. Ford also transferred tens of millions from the payment it received from the sale directly to SAMCOR. Thus, Ford effectively continued to exercise control over its agent, SAMCOR.

IX. COUNTS

FIRST COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of apartheid on behalf of Plaintiffs, all members of the proposed Extrajudicial Killing Class, all members of the proposed Torture Class, all members of the proposed Detention Class, and all members of the proposed Cruel Treatment Class against all Defendants

313. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

314. Plaintiffs, all members of the proposed Extrajudicial Killing Class, all members of the proposed Torture Class, all members of the proposed Detention Class, and all members of the proposed Cruel Treatment Class are direct victims of the crime of apartheid.

315. The acts described herein constitute the crime of apartheid and offenses committed in furtherance of or ancillary to that crime in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

316. Defendants provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that those activities constituted violations of international norms toward the Plaintiffs and the classes.

317. Defendants' practical assistance to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

318. The abuses that Plaintiffs and class members suffered were a reasonably foreseeable result of Defendants' collaboration with South Africa's apartheid regime.

319. Defendants benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of Plaintiffs, and the members of the proposed classes discussed herein.

320. Defendants are liable to Plaintiffs in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime, which committed the alleged crimes. Defendants also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

321. Defendants are liable to Plaintiffs for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

SECOND COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of extrajudicial killing on behalf of Sakwe Balintulo, personal representative of Saba Balintulo; Mark Fransch, personal representative of Anton Fransch; Archington Madondo, personal representative of Mandla Madono; and all members of the proposed Extrajudicial Killing Class against Rheinmetall

322. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

323. The deliberate killings, under color of law, of Saba Balintulo, represented by

Sakwe Balintulo; Anton Fransch, represented by **Mark Fransch**; Mandla Madono, represented by **Archington Madondo**; and **all members of the proposed Extrajudicial Killing Class** were not authorized by a lawful judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by all civilized peoples.

324. The acts described herein constitute extrajudicial killing in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

325. **Rheinmetall** provided substantial assistance to South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

326. The practical assistance of Rheinmetall to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

327. The abuses that the Extrajudicial Killing Class and suffered were a reasonably foreseeable result of Rheinmetall's collaboration with South Africa's apartheid regime.

328. Rheinmetall benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Extrajudicial Killing Class.

329. Rheinmetall is liable to the Extrajudicial Killing Class in that it aided and abetted, participated in a joint criminal enterprise with, was reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Rheinmetall also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

330. Rheinmetall is liable to the Extrajudicial Killing Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

THIRD COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of extrajudicial killing on behalf of Sakwe Balintulo, personal representative of Saba Balintulo; Mark Fransch, personal representative of Anton Fransch; Archington Madondo, personal representative of Mandla Madono; and all members of the proposed Extrajudicial Killing Class against Daimler, Ford, and General Motors

331. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

332. The deliberate killings, under color of law, of Saba Balintulo, represented by **Sakwe Balintulo**; Anton Fransch, represented by **Mark Fransch**; Mandla Madono, represented by **Archington Madondo**; and **all members of the proposed Extrajudicial Killing Class** were not authorized by a lawful judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by all civilized peoples.

333. The acts described herein constitute extrajudicial killing in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

334. **Daimler, Ford, and General Motors** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

335. The practical assistance of Daimler, Ford, and General Motors to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

336. The abuses that the Extrajudicial Killing Class suffered were a reasonably foreseeable result of Daimler, Ford, and General Motors's collaboration with South Africa's apartheid regime.

337. Daimler, Ford, and General Motors benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Extrajudicial Killing Class.

338. Daimler, Ford, and General Motors are liable to the Extrajudicial Killing Class in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Daimler, Ford, and General Motors also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

339. Daimler, Ford, and General Motors are liable to the Extrajudicial Killing Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

FOURTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of extrajudicial killing on behalf of Sakwe Balintulo, personal representative of Saba Balintulo; Mark Fransch, personal representative of Anton Fransch; Archington Madondo, personal representative of Mandla Madono; and all members of the proposed Extrajudicial Killing Class against IBM and Fujitsu

340. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

341. The deliberate killings, under color of law, of Saba Balintulo, represented by **Sakwe Balintulo**; Anton Fransch, represented by **Mark Fransch**; Mandla Madono, represented

by **Archington Madondo**; and **all members of the proposed Extrajudicial Killing Class** were not authorized by a lawful judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by all civilized peoples.

342. The acts described herein constitute extrajudicial killing in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

343. **IBM** and **Fujitsu** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

344. The practical assistance of IBM and Fujitsu to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

345. The abuses that the Extrajudicial Killing Class suffered were a reasonably foreseeable result of IBM and Fujitsu's collaboration with South Africa's apartheid regime.

346. IBM and Fujitsu benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Extrajudicial Killing Class.

347. IBM and Fujitsu are liable to the Extrajudicial Killing Class in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. IBM and Fujitsu also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

348. IBM and Fujitsu are liable to the Extrajudicial Killing Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

FIFTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of torture on behalf of Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani and all members of the proposed Torture Class against Rheinmetall

349. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

350. **Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Torture Class** are victims of torture.

351. The acts described herein constitute torture in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

352. **Rheinmetall** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

353. The practical assistance of Rheinmetall to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

354. The abuses that the Torture Class suffered were a reasonably foreseeable result of Rheinmetall's collaboration with South Africa's apartheid regime.

355. Rheinmetall benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Torture Class.

356. Rheinmetall is liable to the Torture Class in that it aided and abetted, participated in a joint criminal enterprise with, was reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Rheinmetall also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

357. Rheinmetall is liable to the Torture Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

SIXTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of torture on behalf of Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani and all members of the proposed Torture Class against IBM and Fujitsu

358. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

359. **Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Torture Class** are victims of torture.

360. The acts described herein constitute torture in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

361. **IBM and Fujitsu** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

362. The practical assistance of IBM and Fujitsu to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

363. The abuses that the Torture Class suffered were a reasonably foreseeable result of IBM and Fujitsu's collaboration with South Africa's apartheid regime.

364. IBM and Fujitsu benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Torture Class.

365. IBM and Fujitsu are liable to the Torture Class in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. IBM and Fujitsu also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

366. IBM and Fujitsu are liable to the Torture Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

SEVENTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of prolonged unlawful detention on behalf of Dennis Vincent Frederick Brutus, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Detention Class against Rheinmetall

367. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

368. **Dennis Vincent Frederick Brutus, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Detention Class** are victims of prolonged unlawful detention.

369. The acts described herein constitute prolonged unlawful detention in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

370. **Rheinmetall** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

371. The practical assistance of Rheinmetall to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

372. The abuses that the Detention Class suffered were a reasonably foreseeable result of Rheinmetall's collaboration with South Africa's apartheid regime.

373. Rheinmetall benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Detention Class.

374. Rheinmetall is liable to the Detention Class in that it aided and abetted, participated in a joint criminal enterprise with, was reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Rheinmetall also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

375. Rheinmetall is liable to the Detention Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

EIGHTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of prolonged unlawful detention on behalf of Dennis Vincent Frederick Brutus, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Detention Class against IBM and Fujitsu

376. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

377. **Dennis Vincent Frederick Brutus, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Detention Class** are victims of prolonged unlawful detention.

378. The acts described herein constitute prolonged unlawful detention in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

379. **IBM and Fujitsu** provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

380. The practical assistance of IBM and Fujitsu to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

381. The abuses that the Detention Class suffered were a reasonably foreseeable result of IBM and Fujitsu's collaboration with South Africa's apartheid regime.

382. IBM and Fujitsu benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Detention Class.

383. IBM and Fujitsu are liable to the Detention Class in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a

joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. IBM and Fujitsu also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

384. IBM and Fujitsu are liable to the Detention Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

NINTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of cruel, inhuman and degrading treatment on behalf of Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class against Rheinmetall

385. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

386. **Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class** are victims of cruel, inhuman and degrading treatment.

387. **Rheinmetall's** acts caused the Cruel Treatment Class to be placed in fear for their lives and forced them to suffer severe physical and psychological abuse and agony.

388. The acts described herein constitute cruel, inhuman and degrading treatment in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

389. Rheinmetall provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the

actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

390. The practical assistance of Rheinmetall to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

391. The abuses that the Cruel Treatment Class suffered were a reasonably foreseeable result of Rheinmetall's collaboration with South Africa's apartheid regime.

392. Rheinmetall benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Cruel Treatment Class.

393. Rheinmetall is liable to the Cruel Treatment Class in that it aided and abetted, participated in a joint criminal enterprise with, was reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Rheinmetall also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

394. Rheinmetall is liable to the Cruel Treatment Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

TENTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of cruel, inhuman and degrading treatment on behalf of Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class against Daimler, Ford, and General Motors

395. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

396. **Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class** are victims of cruel, inhuman and degrading treatment.

397. **Daimler, Ford, and General Motors's** acts caused the Cruel Treatment Class to be placed in fear for their lives and forced them to suffer severe physical and psychological abuse and agony.

398. The acts described herein constitute cruel, inhuman and degrading treatment in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

399. Daimler, Ford, and General Motors provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

400. The practical assistance of Daimler, Ford, and General Motors to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

401. The abuses that the Cruel Treatment Class suffered were a reasonably foreseeable result of Daimler, Ford, and General Motors's collaboration with South Africa's apartheid regime.

402. Daimler, Ford, and General Motors benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Cruel Treatment Class.

403. Daimler, Ford, and General Motors are liable to the Cruel Treatment Class in that

they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. Daimler, Ford, and General Motors also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

404. Daimler, Ford, and General Motors are liable to the Cruel Treatment Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

ELEVENTH COUNT

The Alien Tort Claims Act, 28 U.S.C § 1350, for the crime of cruel, inhuman and degrading treatment on behalf of Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class against IBM and Fujitsu

405. Plaintiffs reallege each and every paragraph set forth above as if fully set forth herein.

406. **Elsie Gishi, Lesiba Kekana, Mpho Alfred Masemola, Michael Mbele, Mamosadi Catherine Mlangeni, Reuben Mphela, Thulani Nunu, Thandiwe Shezi, Thobile Sikani, and all members of the proposed Cruel Treatment Class** are victims of cruel, inhuman and degrading treatment.

407. **IBM and Fujitsu's** acts caused the Cruel Treatment Class to be placed in fear for their lives and forced them to suffer severe physical and psychological abuse and agony.

408. The acts described herein constitute cruel, inhuman and degrading treatment in violation of the Alien Tort Claims Act (28 U.S.C. § 1350), international law, and the common law of the United States.

409. IBM and Fujitsu provided substantial assistance to the South African security forces through material, logistical, financial, and/or other means of practical support, knowing that the actions of the South African security forces constituted violations of international norms toward the Plaintiffs and the class.

410. The practical assistance of IBM and Fujitsu to the South African security forces had a substantial effect on the perpetration of its criminal and tortious activities and was provided with the purpose of facilitating those activities.

411. The abuses that the Cruel Treatment Class suffered were a reasonably foreseeable result of IBM and Fujitsu's collaboration with South Africa's apartheid regime.

412. IBM and Fujitsu benefited from apartheid and, consequently, the violence that was used to maintain and enforce it at the expense of the Cruel Treatment Class.

413. IBM and Fujitsu are liable to the Cruel Treatment Class in that they aided and abetted, participated in a joint criminal enterprise with, were reckless in dealing with, participated in a joint venture with, and/or ratified the actions of the Apartheid regime which committed the alleged crimes. IBM and Fujitsu also acted in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known, in conscious disregard of known dangers, and/or with disregard or deliberate indifference to a substantial risk of harm.

414. IBM and Fujitsu are liable to the Cruel Treatment Class for compensatory and punitive damages, as well as appropriate equitable and injunctive relief.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendants as follows:

- (a) Granting Plaintiffs class action certification;

- (b) Declaring that Defendants knowingly and intentionally aided and abetted the commission of a tort in violation of international law enforceable in this court as federal common law and the law of nations;
- (c) Awarding Plaintiffs compensatory and punitive damages arising out of the unlawful behavior of Defendants;
- (d) Awarding the costs of bringing this action; and
- (e) Granting such other further relief as shall seem just to the Court.

XI. JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: May 1, 2009

Respectfully submitted:



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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2009, a copy of the foregoing Plaintiffs' Second Amended Complaint was delivered via hand delivery to the Clerk's Office of the United States District Court for the Southern District of New York and mailed to each party on the attached service list.



Steig D. Olson

SERVICE LIST
In re: South African Apartheid Antitrust Litigation

<p>Jerome S. Hirsch Susan L. Saltzstein SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP Four Times Square New York, NY 10036-6522</p> <p><i>Defendants Daimler A.G. and Defendant Rheinmetall A.G.</i></p>	<p>Mark D. McPherson, Esq. Michael Gerard, Esq. MORRISON & FOERSTER LLP 1290 Avenue of the Americas New York, New York 10104</p> <p><i>Defendant Fujitsu Limited</i></p>
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