

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

IN RE SOUTH AFRICAN APARTHEID
LITIGATION

THIS DOCUMENT RELATES TO:

TOZAMILE BOTHA; SOLLY BOKABA;
MPUMELELO CILIBE; NOTHINI BETTY
DYONASHE (as personal representative of
VUYANI ADONIS); THOMAS
MOGOSHANE; MANTOA DOROTHY
MOLEFI (as personal representative of
HECTOR ZOLILE PIETERSON); MPELE
MARIA MOSIANE; MIRRIAM MZAMO (as
personal representative for BUBELE
MZAMO); NONKUKULEKO SYLVIA
NGCAKA (as personal representative of
THEMBEKILE NBCAKA); MARGARET
PETERS (as personal representative of
WILLIAM DANIEL PETERS); HANS
LANGFORD PHIRI; PEDRONICA
KEIKANTSEMANG SEPHERI; LEKOSE
SHOLE; MNCEKELELI HENYN
SIMANGENTLOKO,

Plaintiffs,

v.

FORD MOTOR COMPANY and
INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendants.

MDL No. 02-md-1499 (JES)

CLASS ACTIONS

Civ. No. 03-cv-1024 (JES)

Civ. No. 02-cv-6218 (JES)

Civ. No. 02-cv-4712 (JES)

**NTSEBEZA AND DIGWAMAJE
SECOND CONSOLIDATED AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiffs, by and through their attorneys, bring this action on behalf of themselves and all others similarly situated. Plaintiffs hereby allege, on information and belief, as follows:

INTRODUCTION

1. Plaintiffs bring this class action to vindicate violations of the law of nations under the Alien Tort Statute (ATS), 28 U.S.C. § 1350, on behalf of themselves and black South Africans¹ (and their heirs and beneficiaries) who, during the period from 1973 to 1994, suffered injuries as a result of Defendants' violations of the law of nations by their complicity in specific abuses alleged herein committed by South African state officials, employees, or agents.

2. Apartheid was an institutionalized regime of racial segregation and systematic oppression implemented in South Africa for the purpose of depriving the black population of basic rights and securing the white minority's hold on power over the country's government and wealth. The international community universally condemned the apartheid system in South Africa and the systematic discrimination, brutality, and violence against blacks that characterized the apartheid state and constituted violations of international law at all times material to the allegations in this complaint.

3. Apartheid, itself a crime against humanity, was enforced by means of international crimes and other violations of the law of nations, including prolonged arbitrary detention, forced exile, forced relocation, revocation of citizenship, forced and exploited black labor, extrajudicial killings, torture, and other cruel treatment of opponents. Black workers were denied access to certain classes of jobs, deprived of the right to organize and protest their conditions, and paid lower wages. Physical separation of the races was also an essential aspect of the apartheid system. The black population was geographically isolated into homelands (or

¹ The term black is used throughout, as it was during apartheid, to refer to black Africans as well non-white individuals.

Bantustans) and other enclaves separate from whites, where they lacked access to fertile land, employment opportunities, and basic services such as education and healthcare.

4. This elaborate system would not have been possible without the active and ongoing collaboration of private actors, including Defendants, in every sector of society. The apartheid system, supported by many corporations, including Defendants, systematically and intentionally discriminated and facilitated violent acts against black South Africans, including anti-apartheid leaders and Plaintiffs, in violation of international law. While apartheid's survival was dependent on the participation, resources, products, and expertise of foreign corporations, Plaintiffs' claims are based solely on substantial assistance, such as the creation of a specifically customized ID system, provided by Defendants that was purposefully aimed at enabling unlawful activity, such as denationalization.

5. Defendants Ford Motor Company (Ford) and International Business Machines Corporation (IBM) (collectively Defendants) are U.S. corporations that, through their conduct in the United States, provided direct support to the South African government during apartheid and/or were purposefully complicit in the human rights violations committed by the apartheid government and security forces. Defendants, from the United States, also directed and controlled their subsidiaries, acting on their behalf, to provide such support. Defendants did not merely do business in apartheid South Africa or simply place their products into the stream of commerce. Rather, Defendants in the United States directly and purposefully provided substantial and/or practical assistance to and/or acted in concert with the South African government and security forces, including police, military, intelligence, and Special Branch personnel, all of whom were integral parts of the apartheid security state. Defendants produced the very products that enabled the apartheid government to run and maintain the apartheid system and to oppress, control,

suppress, intimidate, denationalize, and otherwise violate the rights of black South Africans. Through such unlawful assistance, which emanated from Defendants' decisions in the United States, Defendants violated the human rights of Plaintiffs and other similarly situated South Africans, and intentionally provided the South African government with the tools necessary to maintain the separation of the race and the exploitation of blacks.

6. The claims contained herein touch and concern the United States because, as detailed below, the two Defendant U.S. corporations were integral to the implementation, maintenance, and enforcement of the apartheid regime and its attendant international law violations. Defendants, through policies and decisions made in the United States, directed and controlled the sale of specialized vehicles to the South African security forces to suppress the black population, as well as the creation and maintenance of an identity card system to denationalize the black population. Defendants took actions in the United States to circumvent U.S. and United Nations (UN) sanctions as well as clear U.S. congressional opposition to apartheid. Defendants also attempted to conceal these actions, misleading the U.S. government as well as shareholders about the true nature of their activities in South Africa to minimize domestic criticism. These were not the acts of renegade foreign subsidiaries: to the extent that some acts occurred in South Africa, Defendants' agents were acting within the scope of their agencies. These were high profile, sensitive matters requiring approval, direction, and supervision at the highest levels, by the U.S. parent corporations' upper management and boards.

A. Defendant Ford

7. Ford actively facilitated the implementation of apartheid by purposefully and knowingly manufacturing vehicles, including specialized vehicles, in whole or in part, specifically for sale to the apartheid state, including the security forces and the Special Branch.

South African security forces used Ford vehicles to suppress opposition to the apartheid system and to inflict widespread violence associated with the intimidation and control of anti-apartheid protests protected under international law. The government's violent suppression inflicted grievous injuries against Plaintiffs and the classes they represent, including the extrajudicial killings of numerous civilians. Ford intentionally and knowingly facilitated and enabled the commission of these crimes by providing the vehicles that substantially assisted to the repression. *See, e.g.*, paras. 78-95.

8. UN Security Council and U.S. sanctions targeted the supply of vehicles to the South African security forces, recognizing the importance of such equipment in the government's effort to suppress and control the black population. In contravention of the principles of international law and the sanctions that recognized the importance of such vehicles to carrying out violence against the black population, Ford continued to manufacture vehicles, including specialized ones, specifically for sale to the apartheid state and its security forces. *See, e.g.*, paras. 72-73, 77-78, 80-83. In flouting international law and sanctions, Ford chose to embrace the goals and purposes of the security forces by making sales in this context, which Ford also believed would advance its economic and other short-term and long-term interests in South Africa. In so doing, the sale of Ford vehicles intentionally enabled, aided, and abetted the security forces to more effectively oppress the black population and implement apartheid. *See, e.g.*, paras. 72-73, 77-78, 80-121.

9. From the United States, Ford made the key decision to continue to sell vehicles to the South African security forces. Ford also made the major decisions regarding product line, design, and manufacture of vehicles for the South African security forces, including arranging for the shipment of unassembled vehicle kits to South Africa, determining the types of products

sold, and approving all design elements, including those which were specialized for use by the security forces. As part of its oversight from the United States, Ford also directly appointed the head of operations in South Africa throughout the relevant time period. His pay scale and bonus for international service and other benefits were determined by policy set in the United States. *See, e.g.*, paras. 67-78.

10. Ford also actively retaliated against employees, including Plaintiffs and the classes they represent, who participated in community organizations and unions that opposed apartheid or expressed anti-apartheid views. Ford, in collaboration with the South African security forces, subjected Plaintiffs and the classes they represent to dismissal, arrest, intimidation, detention, and torture. These violations were viewed as being necessary to advance Ford's short and long-term interests in South Africa. *See, e.g.*, paras. 82, 95-120.

11. Ford's U.S. headquarters was closely and directly involved in employment relations in South Africa, including conducting detailed investigations and oversight of strikes, shut downs, and any major personnel problems. Ford's U.S. control was also reflected in its asserted ability to impose the Sullivan Principles of nondiscrimination on Ford operations in South Africa. The Sullivan Principles were adopted because of international and U.S. condemnation of the discrimination and oppression facing black South African workers. While affirming the Sullivan Principles on paper, however, Ford embraced an employment relations system in which its South African managers provided South African security officials with information on workers involved in anti-apartheid activities, which led to violations of their rights. Ford in the United States also maintained files on specific individual union leaders in South Africa and was involved in specific employment decisions related to these individuals. *See, e.g.*, paras. 75-76, 96-121.

12. Ford's corporate headquarters and board members were closely involved in oversight and monitoring of activities and operations in South Africa. Ford in the United States was so active in South Africa that the Ford's U.S. department tasked with dealing with worldwide political issues focused as much as 85 percent of its time on South African operations, even though those operations constituted only a small percentage of Ford's overall business. Ford oversight from the United States was particularly important given controversy concerning U.S. investment during apartheid. *See, e.g.*, paras. 69-78.

13. Ford knowingly and intentionally facilitated the extrajudicial killings by the apartheid state of the sons of Plaintiffs Molefi, Ngcaka, Dyonashe, and Mzamo and others in the Plaintiff class who suffered the same fate.

14. Ford knowingly and intentionally facilitated the torture by South African security forces of Plaintiffs Botha and Peters and others in the Plaintiff class who suffered the same fate by identifying Plaintiffs and sharing information about their anti-apartheid activity, and directly caused the abuse suffered by Plaintiff Cibile and others in the Plaintiff class who suffered the same fate within the Ford plants in South Africa.

B. Defendant IBM

15. IBM actively facilitated the implementation of apartheid by purposefully and knowingly producing race-based identity documents and sorting and storing information in databases used to strip Plaintiffs of their South African nationality and citizenship and force upon them citizenship in "independent" Bantustans. Bantustans were impoverished and isolated tribal areas created for the very purpose of isolating and suppressing the black population, as well as to restrict Plaintiffs' rights, including travel in, out, and within South Africa. The Bantustan system facilitated discrimination and the geographic separation of the races in South Africa on a massive

scale, depriving blacks of their South African citizenship and associated rights, including participation in the South African economy. No foreign government ever accorded diplomatic recognition to any Bantustan. By supporting and implementing this fictitious administrative separation with the creation of the ID system, IBM purposefully provided an essential tool to institutionalize apartheid. IBM thus facilitated denationalization, including the loss of South African citizenship, the forced relocation of blacks to inhospitable areas, separation of families, and severe restrictions on food and medicine and educational and employment opportunities, by improving the effectiveness and efficiency of race separation. *See, e.g.*, paras. 56-59, 135-61.

16. IBM's technology was also essential to maintaining and storing records related to the Book of Life, which was a critical piece of efficiently tracking the different races to better implement apartheid. Whether Plaintiffs lived in the Bantustans or South Africa, IBM's technology supported efforts to separate them by race. *See, e.g.*, paras. 140.B, 143-46.

17. UN Security Council and U.S. sanctions targeted computers and other technology sales and services to the South African government, recognizing how such technology contributed to the government's efforts control and separate the races. In contravention of the principles of international law and the recognized importance of such technology, IBM specifically developed, sold, leased, customized, and maintained critical computer systems for the South African and Bantustan governments to enable them to efficiently track and better separate the races and violate the fundamental rights of black South Africans, including members of the Plaintiff class. *See, e.g.*, paras. 133-61. IBM thus chose to embrace the goals of apartheid's racial separation efforts, including denationalization of blacks, when it provided substantial and targeted assistance in this context. In so doing, IBM intentionally enabled the

South African and Bantustan governments to more effectively separate, denationalize, and oppress the black population and implement apartheid. *See, e.g.*, paras. 143-53.

18. IBM was a dominant industry player in South Africa at all relevant times. IBM and its U.S.-based activities, including systems support and product design and delivery, were essential to the successful creation and operation of the technology used to deprive the black South African population of its citizenship and enforce apartheid through the ID system. The South African government understood the substantial contribution that computer technology provided to apartheid and its implementation, and pushed for increased self-sufficiency in the late 1970s and 1980s as threats of sanctions mounted, so that the government would be able to continue to use the equipment that was essential for separating the population along racial lines. At all relevant times, however, IBM and its conscious support for the South African and Bantustan governments provided essential machinery and technology, originating in the United States, for the purpose of separating the races. *See, e.g.*, paras. 135-53. In flouting international law and sanctions, IBM chose to embrace the goals and purposes of racial separation, including denationalization as implemented through the Bantustan system, which IBM also believed would advance its economic and other short-term and long-term interests in South Africa.

19. IBM directed and controlled its South African activities from the United States. IBM tightly controlled and centralized its product research, design, and technology from the 1960s to 1980s, including its mainframe systems, which were at the heart of most major computer operations during that period. At that time, computers required significant customization and major systems engineering support, and South Africa lacked the knowledge required to implement complex computer systems. *See, e.g.*, paras. 140-53.

20. Given the political sensitivities surrounding U.S. investment in South Africa, corporate officials at the highest levels of IBM in the United States were involved in oversight of activities in South Africa and the decisions to develop hardware and software, bid on contracts, lease, sell, and provide services.

21. The U.S.-based IBM support and decisions to purposefully supply specific technology and technical support to the South African and Bantustan governments was critical to those entities' ability to more effectively implement apartheid.

22. IBM knowingly and intentionally facilitated racial separation and the denationalization of Plaintiffs Mogoshane, Monsiane, Phiri, Sepheri, and Kgosi Shole, and the classes they represent, who were stripped of their South African nationality and citizenship, were restricted in their ability to travel in to, out of, and around South Africa, and were discriminated against by being forcibly geographically separated and segregated into Bantustans on the basis of race. The children of those who lost their citizenship also suffered by losing the right to seek work in urban areas of South Africa.

JURISDICTION AND VENUE

23. The Court has jurisdiction over this case under 28 U.S.C. § 1331 (Federal Question Jurisdiction) and 28 U.S.C. § 1350 (Alien Tort Statute). All of Plaintiffs' claims for relief arise under the law of nations.

24. Venue is proper under 28 U.S.C. § 1391(a) in this Court because the Defendant corporations, their subsidiaries, affiliates, alter egos, or agents are doing business in this district.

PARTIES

A. Plaintiffs

25. Plaintiff TOZAMILE BOTHA is a South African citizen and a resident of Centurion, South Africa. He worked for Ford's operation in Port Elizabeth from approximately 1978-1980 as a work-study technician. After he became Chairman of the Port Elizabeth Black Civic Organization (PEBCO), an anti-apartheid community organization, Ford intimidated and retaliated against him solely because of his anti-apartheid activities and views, thus actively participating in and assisting the state's repression of anti-apartheid movements. Botha was arrested, detained, questioned, and tortured by the South African security forces. Eventually, Botha was forced into exile. Ford closely monitored Botha and his situation from the United States and kept a file on him at U.S. headquarters that included communications about him sent from Ford in South Africa. At Ford, Botha was subjected to apartheid practices within the Ford plant including segregation and exploitation of his labor as well as other discriminatory and humiliating treatment.

26. Plaintiff MPUMELELO CILIBE is a South African citizen and a resident of New Brighton near Port Elizabeth, South Africa. Despite his qualifications for a higher position, because of his race, he was forced to accept a position as a laborer to gain employment at Ford's operation in South Africa, where he worked from 1974-1984. During this period he was subjected to apartheid practices within the Ford plant including segregation and other blatantly discriminatory and humiliating treatment, including training less-qualified whites to be his superior and experiencing grossly inferior advancement opportunities and pay. As treasurer of a union with a strong anti-apartheid position, Cilibe was harassed and intimidated by Ford management and government forces.

27. Plaintiff MARGARET PETERS brings this claim as a personal representative and/or successor in interest for the estate of WILLIAM DANIEL PETERS. Peters was a South African citizen and a resident of Bethelsdorp near Port Elizabeth, South Africa. He worked as a material handler and later as a checker for Ford's operation from 1980-1985. As chairman of the National Automobile and Allied Workers Union (NAAWU), a union with anti-apartheid positions, Peters was arrested, interrogated, and tortured by the security forces, including the Special Branch, which pursued him based upon information they had received from Ford regarding his anti-apartheid community and union activities. He was also subjected to segregation, humiliation and racial discrimination, and grossly unequal pay. He died in January 2010.

28. Plaintiff MANTOA DOROTHY MOLEFI brings a claim on behalf of herself and the estate of her deceased son, Hector Zolile Pieterse. Molefi is a South African citizen and a resident of Soweto, South Africa. On June 16, 1976, South African security forces shot and killed her son, a twelve-year-old schoolboy, during a protest led by schoolchildren against Afrikaans language instruction in schools. The provision of vehicles manufactured by Ford for the security forces provided substantial assistance to coordinate, monitor, gather intelligence, and conduct a violent campaign to suppress peaceful opposition to apartheid that facilitated the extrajudicial killing of Pieterse and many others.

29. Plaintiff NOTHINI BETTY DYONASHE brings a claim on behalf of herself and the estate of her deceased son, Vuyani Adonis. Dyonashe is a South African citizen and a resident of Duncan Village near East London, South Africa. In August 1985, South African security forces shot and killed her son, Vuyani Adonis. The thirteen-year-old schoolboy was making an unannounced visit to see his mother in Duncan Village from Chalumn, where he

stayed with his grandmother and attended school. When he arrived from Chalumn, the home was locked, forcing him to remain outside in the street. During a patrol in Duncan Village, security forces shot him without justification. The provision of vehicles manufactured by Ford for the security forces provided substantial assistance to coordinate, monitor, gather intelligence, and conduct a violent campaign against the community that facilitated the extrajudicial killing of Adonis and many others.

30. Plaintiff NONKULULEKO SYLVIA NGCAKA brings a claim on behalf of herself and the estate of her deceased son, Thembekile Ngcaka. She is a South African citizen and a resident of Duncan Village, South Africa. In August 1985, South African security forces shot her son, a nine-year-old schoolboy who was playing outside with friends. During a patrol in Duncan Village, security forces shot Ngcaka for no reason. After suffering from his wounds for approximately a year, he died from these injuries. The provision of vehicles manufactured by Ford for the security forces provided substantial assistance to coordinate, monitor, gather intelligence, and conduct a violent campaign against the community that facilitated the extrajudicial killing of Ngcaka and many others.

31. Plaintiff MIRRIAM MZAMO brings a claim on behalf of herself and the estate of her deceased son, Bubele Mzamo. She is a South African citizen and a resident of Duncan Village near East London, South Africa. In March 1986, South African security forces on patrol shot and killed her son, a fifteen-year-old schoolboy, while he was playing in the street. The provision of vehicles manufactured by Ford for the security forces provided substantial assistance to coordinate, monitor, gather intelligence, and conduct a violent campaign against the community that facilitated the extrajudicial killing of Mzamo and many others.

32. Plaintiff MNCEKELELI HENYN SIMANGENTLOKO is a South African citizen and a resident of Jongilanga, Kuelerlig, South Africa. While participating in a peaceful march in East London to commemorate International Youth Year in May 1985, Simangentloko was shot in the arm by security forces, suffering a severe injury that prevented him from working for 23 years. The provision of vehicles manufactured by Ford for the security forces provided substantial assistance to coordinate, monitor, gather intelligence, and conduct a violent campaign against the community and suppress the peaceful protesters.

33. Plaintiff KGOSI (Chief) LEKOSE SHOLE is a South African citizen and a resident of Ramatlabama, South Africa. As part of the apartheid government's campaign to create Bantustans within South Africa, the fertile South African village in which he was chief—known as Botshoale, and composed of the three smaller villages of Ikopeleng, 600 Village, and Miga—was forcibly removed to Ramatlabama, an arid and undeveloped area in Bophutatswana near the border with Botswana. Bophuthatswana was one of the Bantustans that became an “independent country” inside South Africa in 1977. Kgosi Shole was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. He was forced to acquire the Bophuthatswana ID document also known as the Bophuthatswana Book of Life. The Bophuthatswana ID was necessary to access basic services in Bophuthatswana, including pensions, schooling, health clinics, bank accounts and loans, government jobs, and permits to build homes or open businesses. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. IBM, designed, sold, maintained, and/or leased the technology and helped maintain the system with training and service support. As a result of his loss of South

African citizenship, Shole suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship, including the right to reside in his home.

34. Plaintiff SOLLY BOKABA is a South African citizen and a resident of Mafikeng, South Africa. As part of the apartheid government's campaign to create Bantustans within South Africa, his home village was incorporated into Bophuthatswana and Bokaba was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Bophuthatswana was one of the Bantustans that became an "independent country" inside South Africa in 1977. He was forced to acquire the Bophuthatswana ID in order to legitimize his existence in Bophuthatswana and access basic services, including education. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. IBM designed, sold, maintained, and/or leased the technology and helped maintain the system with training and service support. As a result of his loss of citizenship, Bokaba suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

35. Plaintiff PEDRONICA KEIKANTSEMANG SEPHERI is a South African citizen and a resident of Delareyville, South Africa. As part of the apartheid government's campaign to create Bantustans within South Africa, her home village of Stella was forcibly removed to Atameleng, which was incorporated into Bophuthatswana after "independence" in 1977. Sepheri was stripped of her South African citizenship, which was replaced by Bophuthatswana citizenship. As a result of her village's removal, she was separated from her family, and made to live in an area remote from schools, employment, and other services. Sepheri was forced to acquire the Bophuthatswana ID, which was required to obtain basic services in Bophuthatswana,

including buying a home, receiving a pension, registering a child in school, and accessing medical care. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. IBM designed, sold, maintained, and/or leased the technology and helped maintain the system with training and training and service support. As a result of her of citizenship, Sepheri suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

36. Plaintiff HANS LANGFORD PHIRI is a South African citizen and a resident of Mafikeng, South Africa. As part of the apartheid government's campaign to create "independent countries" within South Africa, Phiri was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Bophuthatswana was one of the Bantustans that became an "independent country" inside South Africa in 1977. His South African ID was declared invalid, and he was assigned a Bophuthatswana ID. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. IBM designed, sold, maintained, and/or leased the technology and helped maintain the system with training and service support. As a result of his loss of citizenship, Phiri suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

37. Plaintiff MPELE MARIA MOSIANE is a South African citizen and a resident of the village of Miga in Ramatalabama, South Africa. As part of the apartheid government's campaign to create Bantustans within South Africa, Moisane was stripped of her South African

citizenship, which was replaced by Bophuthatswana citizenship. Bophuthatswana was one of the Bantustans that became an “independent country” inside South Africa in 1977. Her South African ID was declared invalid, and she was assigned a Bophuthatswana ID. However, because Mosiane was Sotho rather than Tswana, she suffered additional deprivations, including not immediately being able to obtain a Bophuthatswana ID and services, which were intended for black South Africans of Tswana decent. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government’s illegal revocation of the citizenship of large numbers of black South African citizens. IBM designed, sold, maintained, and/or leased the technology and helped maintain the system with training and service support. As a result of her loss of citizenship, Moisiane suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

38. Plaintiff THOMAS MOGOSHANE is a South African citizen and a resident of Ikopeleng village in Ramatlabama, South Africa. As part of the apartheid government’s campaign to create Bantustans within South Africa, Mogoshane was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Bophuthatswana was one of the Bantustans that became an “independent country” inside South Africa in 1977. Mogoshane was born and lived in Botshabelo (the Tswana name for Putfontein) until the village was forcibly removed to Ikopeleng in Bophuthatswana in 1977. For several years while living in Bophuthatswana, he continued to use his South African ID to work in the mines. Sometime in the 1980s, he could no longer use his South African ID to work in the mines, and was required to get a Bophuthatswana ID to continue such work. His South African ID was declared invalid, and he was assigned a Bophuthatswana ID document, which he used to continue to work in the mines

until the early 1990s. The Bophuthatswana ID and corresponding database of individuals was produced and maintained using IBM machines and software specifically designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. IBM designed, sold, maintained, and/or leased the technology and helped maintain the system with training and service support. As a result of his loss of citizenship, Mogoshane suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

B. Defendants

39. Defendant FORD MOTOR COMPANY (Ford) is an automobile company incorporated under the laws of Delaware with its headquarters at 1 American Road, Dearborn, Michigan. Ford does business in the United States and within this jurisdiction through subsidiaries, affiliates, and agents. At all relevant times to the facts alleged in this complaint, Ford operated in South Africa directly and controlled and directed its subsidiaries, affiliates, alter egos, and agents in South Africa, including Ford South Africa and South African Motor Corporation (SAMCOR).

40. Defendant INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM) is an information technology company and manufacturer of computer systems, hardware, software, networking systems, hosting systems, and storage devices. It is incorporated under the laws of New York with its headquarters at 1 New Orchard Road, Armonk, New York. IBM does business in the United States and within this jurisdiction through subsidiaries, affiliates, alter egos, and agents. At all times relevant to the facts alleged in this complaint, IBM did business in South Africa, and controlled and directed its subsidiaries, affiliates, alter egos, and agents in South Africa, including IBM South Africa (Pty) Ltd and IBM South Africa Group Ltd.

GENERAL ALLEGATIONS

41. At all relevant times and as the more specific allegations below demonstrate, the Defendants' actions were part of a pattern and practice of systematic and widespread attacks and human rights violations against the black population of South Africa during apartheid.

42. At all relevant times and as the more specific allegations below demonstrate, Defendants acted with the purpose to perpetrate human rights violations and with intent and knowledge that their actions, as alleged herein, provided practical assistance to the government of South Africa and its agents that had a substantial effect on the abuses alleged in this complaint.

43. The Defendants' actions described herein were inflicted under the color of law or official authority or in a conspiracy or a joint criminal enterprise with South African and Bantustan government officials. Defendants are responsible for Plaintiffs' injuries and the injuries of the Plaintiff classes because: (1) they were directly responsible for the alleged human rights violations by their own actions; (2) their agents committed these violations within the scope of their authority; (3) their co-conspirators or co-participants in joint criminal enterprises committed such violations; (4) they or their agents actively participated in such violations; and/or (5) they or their agents aided and abetted such violations. Defendants worked jointly with South African and Bantustan state officials, employees, and agents in perpetuating apartheid and in committing the violations alleged herein.

44. In particular, Defendants, by their actions over an extended period of time, became a significant part of the apartheid system and the crimes perpetrated by this system. Defendants provided substantial practical assistance over many years, including assistance that violated or knowingly circumvented international law and sanctions regimes

specifically applicable to the assistance they provided. Defendants knew that this assistance was perpetuating the apartheid crimes that the Plaintiffs suffered but purposefully continued this assistance because, by embracing the particular aspects of the apartheid system that their specialized products supported, they sought to advance their own economic and other interests, short-term and long-term, in South Africa. Thus, Defendants intentionally became critical cogs in the apartheid system, leading directly and substantially to the human rights violations suffered by the Plaintiffs.

45. As detailed below, the key decisions to enter into and continue their complicity with the apartheid government in facilitating the specific alleged abuses were taken by U.S. corporations in the United States. Ford in the United States approved the design of specialized vehicles for the South African security forces, directed the production of these vehicles and shipments to South Africa, and closely supervised the handling of major events involving South African employees. IBM in the United States developed the hardware and software used to produce identity documents and store information necessary to implement apartheid's separation of the races. Both Defendants were active in the United States to prevent the imposition of U.S. sanctions on exports to South Africa and, when they failed to do so, Defendants then acted to undermine U.S. foreign policy and support apartheid by continuing their business activities.

46. The allegations brought herein address claims exclusively between private persons and corporations and do not involve claims against or on behalf of the government of South Africa. The government of South Africa expressly reserved such claims to the courts during the Truth and Reconciliation Commission (TRC) process. Indeed, the TRC Chairperson, Archbishop Desmond Tutu, and other members of the TRC have stated that:

Litigation seeking individual compensation against multinational corporations for aiding and abetting the commission of gross

human rights abuses during apartheid does not conflict, in any manner, with the policies of the South African government, or the goals of the South African people, as embodied in the TRC. To the contrary, such litigation is entirely consistent with these policies and with the findings of the TRC.

South Africa did not enact a general amnesty statute. No relief from civil or criminal liability was offered or granted to those who did not apply for or obtain amnesty from the TRC. Neither of the Defendants in this action sought or obtained an amnesty from the TRC.

47. At all relevant times and as the more specific allegations below demonstrate, Defendants maintained control over their subsidiaries and agents in South Africa, had knowledge of the human rights violations alleged herein, directed the subsidiaries and agents' involvement or complicity in these violations, and intended to facilitate the violations that occurred. In particular, Defendants maintained such control over the actions of subsidiaries in South Africa that they were agents of Defendants and/or joint enterprises. This control continued even after divestment, when the entities in South Africa providing products and services for the Defendants were still their agents and/or alter egos, and therefore it would be unfair to recognize their separate corporate existence vis-à-vis the claims made by Plaintiffs in this complaint.

48. As a direct and proximate result of Defendants' actions, Plaintiffs and those they represent suffered harm, including death, pain and suffering, loss of citizenship, personal injuries, lost wages and opportunities, and extreme emotional distress and mental anguish and other injuries.

49. Equitable tolling applies to Plaintiffs' claims not within the applicable statute of limitations because there was no practical, safe, or effective way for Plaintiffs to bring these claims without risk of retaliation by the apartheid state prior to 1994. In addition, Defendants' refusal to cooperate with the TRC and provide a full explanation of their connection to the

violations alleged in this complaint tolls the running of the statute of limitations with respect to Plaintiffs' claims.

50. There were and are no effective domestic remedies for Plaintiffs to exhaust in South Africa against these Defendants for these claims.

HISTORICAL CONTEXT

A. International Condemnation of the Apartheid System and Corporate Involvement

51. In 1950, shortly after the inception of the apartheid regime, the international community began to condemn the South African government and its policies as antithetical to the human rights and fundamental freedoms guaranteed by the UN Charter and international law. The UN and many of its members, including the United States, took joint and separate action against the apartheid system. This included restrictive arms embargoes as early as 1963 and various forms of economic sanctions.

52. Further condemnation came from the International Labour Organization (ILO) as early as 1953. That year, ILO's Ad Hoc Committee on Forced Labour described apartheid and its legislative system that created barriers for the black population as "a system of forced labor of significance to the national economy."

53. International condemnation grew in the wake of the Sharpeville Massacre of March 21, 1960, when police killed 69 unarmed individuals, including women and children and those attempting to flee the scene. Several hundred were also injured.

54. International condemnation mounted through the 1970s and 1980s and increasingly restrictive sanctions were passed, including by the United States. For example, in 1970, UN Security Council Resolution 282 condemned apartheid and support for the South

African security forces. The condemnation was affirmed repeatedly, including in 1977 with UN Security Resolution 418.

55. The United States supported these UN resolutions and passed its own specific sanctions in the 1970s and 1980s. For example, in 1977, the Carter administration announced new regulations on investment supporting the South African security forces. Similarly, in July 1985, the Export Administration Act enacted further sanctions, as did a Reagan administration executive order from September 1985. In 1986, Congress passed the Comprehensive Anti-Apartheid Act, which tightened the sanctions regime even further.

B. Grand Apartheid: Geographic Separation of the Races

56. “Grand Apartheid” was a broad scheme designed to prevent black South Africans from accessing political rights and land by uprooting and forcibly relocating millions to make South Africa a white-majority nation. The South African state passed numerous laws to enact Grand Apartheid and to legislate the widespread and permanent physical and geographic separation of the races.

57. The scheme culminated in four of the original ten tribal areas (or Bantustans)—Bophuthatswana, Ciskei, Transkei, and Venda—becoming “independent countries” within South Africa between 1976 and 1981. No country, other than South Africa, recognized these territories as independent states, viewing them as transparent attempts to deny black South Africans the benefits of citizenship.

58. Grand Apartheid and the apartheid government envisioned providing the most valuable lands—for agriculture, water, natural resources, employment opportunities, and developed urban centers—to the white population. Blacks assigned to a Bantustan lost their ability to continue to work and own property in South Africa. Blacks were assigned and sent to

Bantustans that were largely isolated and infertile, and lacked the resources necessary to maintain self-sufficiency and economic vitality. Black population centers in the Bantustans also lacked sufficient infrastructure such as housing, roads, schools, and basic services.

59. A necessary feature of Grand Apartheid was a system of racial identity documents that enabled the apartheid regime to restrict and control the movement of black South Africans. Various pass documents were used to control the movement of black South Africans between the Bantustans and white South Africa. Blacks with invalid pass documents were subject to arrest, imprisonment, and/or banishment to the Bantustan designated for their ethnic group.

C. Militarization of Apartheid in the 1970s and 1980s

60. The student-led Soweto Uprising on June 16, 1976, to protest mandatory Afrikaans language instruction in schools, was met with violent suppression by the security forces. Women and children were shot and killed. The violence precipitated a wave of demonstrations across South Africa opposing apartheid. During a six-month period, an estimated one thousand black South Africans were killed by security forces, and between ten and twenty thousand were arrested as demonstrations and boycotts touched urban areas throughout the country.

61. In response, beginning in the late 1970s, the South African government implemented the “Total Strategy” to coordinate repressive measures in all fields—military, psychological, economic, political, sociological, technological, diplomatic, ideological, and cultural. This strategy relied on extensive cooperation with the private sector, including Defendants, and led to widespread killings, detentions, and the suppression of any perceived dissent to the apartheid system.

62. The South African security forces were critical to the implementation of apartheid, whether carrying out violence or helping to enforce the separation of the races and Grand Apartheid and the Total Strategy. The security forces included the South African Defence Forces, the South African Police, and the Special Branch, among others. The Special Branch was a notorious, well-financed, and violent unit that played an important role in the South African security forces, exercising broad discretion and power to gather information and intelligence on anti-apartheid activities and leaders, and reporting to senior government officials. The Special Branch was regularly active in townships collecting and coordinating information and monitoring the activities of the black population, including during protests, funerals, crackdowns, and other gatherings.

63. The TRC recognized that “business played a central role in helping to design and implement apartheid policies.” Apartheid depended on the active support and assistance of the corporate sector, which in turn benefitted greatly because the system provided a perpetual supply of cheap black labor. By destroying economic opportunities for blacks and by separating them from their families, Grand Apartheid made blacks dependent on white employers. Moreover, corporations seeking to exploit black workers could rely on the state and its security apparatus to silence protests by workers and their representatives and punish and ban protestors.

64. The South African government recognized the strategic importance of some industries—including the technology and motor vehicle industries—as well as the substantial contributions these industries were making to achieve the government’s vision of apartheid, including Grand Apartheid, and to carry out oppression of the black population, including the Total Strategy. The UN and U.S. sanctions regimes also identified the critical role of computers and vehicles in apartheid and rights violations. *See, e.g.*, paras. 54-55, 80, 136. Recognizing its

dependency on foreign corporations to maintain the apartheid system, and fearing the tightening of sanctions in the late 1970s and 1980s, the South African government initiated self-sufficiency efforts to develop local industry for computers and automobiles. Nonetheless, throughout this time, foreign industry and technology remained essential to the apartheid state.

65. Despite international condemnation of the significant contribution made by multinational corporations to apartheid and its associated human rights abuses, both Defendants provided essential assistance to the South African state, knowing and intending that such assistance would facilitate the violation of the human rights of black South Africans.

DEFENDANT FORD'S PARTICIPATION IN APARTHEID

A. Ford Directed and Controlled Activities in South Africa from the United States

66. Ford is an American multinational automaker incorporated in the United States and based in Dearborn, Michigan, near Detroit, whose Michigan headquarters at all relevant times has directed the operations of its subsidiaries globally. A single vice-president from Ford's headquarters headed the entire global automotive that covered all automotive operations outside the United States.

67. At all relevant times, Ford vehicles, product lines, and components were developed and produced wherever it was in the interests of Ford to do so, as directed from U.S. headquarters. At all relevant times, Ford, from its U.S. headquarters, directed which product lines would be sold in each of its foreign locations.

68. Beginning in the mid-1970s, Ford expanded its centralized control and monitoring with an Office of Corporate Strategy and Analysis. Ford centralized administration and data processing and had a centralized Order Processing Network.

69. At all relevant times, Ford in the United States made key decisions about operations in South Africa, including investments, policy, management (including the hiring of the managing director), product lines, product design, and parts procurement and supplies.

70. Like other U.S.-based multinationals, Ford exercised rigid control over South African subsidiaries and operations.

71. Ford's senior management personnel, including those in South Africa, who were transferred from England, the United States, or Canada, carried with them the same pensions and seniority although they received additional compensation when they worked abroad. For example:

- A. Ford directly selected the head of operations in South Africa throughout the relevant time period.
- B. As the head of operations was involved in "international service" for the company, the salary and benefits were set and dictated by employment policies made by Ford in the United States.
- C. Management personnel were transferred from one part of Ford to another. Such transfers involved significant reviews and sign offs by Ford in the United States, which controlled the process. For example, the general manager of Ford South Africa was chosen and sent from other Ford operations and went on to other jobs in Ford outside South Africa. Similarly, Lewis Booth, the general manager of SAMCOR, started in 1978 with Ford in Europe, went to Dearborn, Michigan from 1993 to 1996, then to SAMCOR, subsequently became president of Asia Pacific and Africa Operations for Ford as of January 1, 2000, and was

subsequently chosen by Ford for other high-level executive positions in Ford both in Europe and the United States.

- D. The assignment by Ford headquarters of general managers of foreign subsidiaries, including those in South Africa, was part of the development of rising Ford executives, which was controlled by Ford in the United States. Ford identified “high potential” executives for such international development assignments, and then closely monitored, evaluated, and reviewed their performance in managing the foreign subsidiary.

72. Similarly, Ford oversaw all major investment and restructuring decisions in South Africa. For example:

- A. In 1985, Ford negotiated the sale of its South African interests to Amcar Motor Holding, the automobile 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. However, at all relevant times, SAMCOR acted as an agent and/or alter ego of Ford.
- B. Despite the tightening of U.S. trade sanctions in February 1978, Ford in the United States still announced a “large infusion[] of capital into its South African subsidiary. Ford injected \$8 million for upkeep and retooling.”

73. Both Ford South Africa and later, SAMCOR, carried out the business activities of Ford and were directed by Ford headquarters. For example:

- A. In filings with the U.S. government, such as Ford Motor Co. (1989) Form 10-K 1989, Ford acknowledged that it operated in South Africa through SAMCOR.

- B. Ford adopted the Sullivan Principles regarding operations in South Africa and claimed that it would implement the principles of non-segregation and equality of wages in its South African operations.
- C. In a July 1979 meeting with a religious task force on apartheid, William Broderick, the Vice President for international and government affairs for Ford in the United States, implicitly acknowledged direction from headquarters for its activities in South Africa in explaining why Ford continued to operate in South Africa.
- D. Ford regularly sent U.S. delegations to South African facilities and provided experts to work on new installations there.
- E. Ford also sent employees to deal with human resource issues and to establish human resource programs such as “Zero Defects.”

74. From the United States, Ford orchestrated and tightly controlled product lines for Ford operations in South Africa. Product lines, design, and key product decisions ranged from which parts to put into cars, to where Ford sourced the parts. For example:

- A. During the relevant period, Ford’s operations in South Africa focused on assembling vehicles rather than manufacturing parts. South Africa was a Complete Knock Down (CKD) and Semi-Knock Down (SKD) region, meaning that Ford’s U.S. headquarters would direct that parts be manufactured in other regions and sent to South Africa unassembled or semi-assembled.
- B. Indeed, the plants in South Africa did not contain the more costly manufacturing facilities necessary to produce parts. As a CKD and SKD region, Ford operations

in South Africa were thus dependent on parts shipments from elsewhere and the decisions made in the United States.

- C. Like civilian vehicles, the vehicles supplied to the security forces were products assembled from Ford kits produced outside of South Africa.
- D. Special modifications to vehicles sold to the security forces had to be approved by Ford in the United States. Such modifications altered the approved product plan and required approval by Ford headquarters.

75. Ford acknowledged that it was able to and did impose policies on its operations globally, including in South Africa. In addition to claims about its implementation of the Sullivan Principles, Ford's U.S. headquarters controlled its major global policies, which applied to South Africa, including employment policies, ethical business policies, and codes of conduct. For example:

- A. Ford headquarters regularly communicated with its operations in South Africa. Management in South Africa had to report to Ford headquarters in the United States daily, weekly, and monthly in writing on forms regarding production and other operations, through processes developed by Ford in the United States. There were also regular conference calls as part of South Africa's reporting to the United States.
- B. Ford headquarters kept files on South African employees. For example, Plaintiff Botha, a former Ford employee, who was banned in South Africa for anti-apartheid and union activities, was taken by an American Ford lawyer to Ford headquarters in Michigan and interviewed over two days. She showed him a letter from Ford South Africa to Ford headquarters referring to Botha, which read,

“[v]ery intelligent, hard working, if he could be on our side.” Although she only showed Botha one letter, Ford had a file on him in the United States that included other documents.

- C. Ford was also directly involved in labor relations and negotiations, with U.S. headquarters providing counsel and oversight and, if necessary, taking charge. For example, during the so-called Black December or Black Christmas strike, black workers approached Ford in the United States through Andrew Young. As a result of decisions and actions taken in the United States, the South Africa subsidiary paid some money or a stipend to those involved in the strike.

76. Ford closely monitored and oversaw activities related to its South African operations through regular reports, investigations, and the involvement of U.S.-based management for major incidents. For example:

- A. Ford’s U.S. headquarters had a department that dealt with political issues emanating from its worldwide activities. Although only one percent of Ford’s global foreign investment was in South Africa, that department spent 85 percent of its time on South African issues, reflecting the high degree of involvement of U.S. management in Ford operation in South Africa.
- B. Ford would send executives from the United States at least twice a year to conduct cross-functional audits on all aspects of its South African operations.
- C. Ford also had a process to further audit and investigate employment practices, particularly if there were problems, such as complaints, a death, an injury, a lawsuit, or a press report. The problems associated with employment relations in South Africa would have triggered an investigation. Under such circumstances,

Ford engaged in an investigatory process called a “root cause analysis,” also known as “8Ds,” which was a review asking multiple questions and producing a written report for Ford in the United States.

- D. In the case of a major employment problem, such as a strike, Ford, from the United States, would closely monitor, guide and/or oversee the situation, including, at times, by involving U.S.-based management.

77. Even after announcing its “divestment” from South Africa, Ford, through SAMCOR, continued to control the manufacture of vehicles for South Africa and their shipment and assembly there, and also continued to supply CKD kits. In particular, 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 the actions and decisions of its agent and/or alter ego in South Africa, SAMCOR.

78. Although SAMCOR was formally independent, it remained an alter ego and/or agent of Ford. For example:

- A. The general manager of Ford South Africa, Lewis Booth, became the head of SAMCOR. He joined Ford Motor Company in 1978 and served in a series of senior level management positions including President of Asia Pacific and Africa Operations from January 2000 to April 2002. He remained a Ford employee.

- B. Ford agreed that SAMCOR, a formally separate company, would use its trade name and that Ford would provide SAMCOR with CKD kits, parts, vehicles, managerial assistance, and capital derived from Ford's sale of its interests.
- C. The one notable change in Ford's South Africa operation was the names and stamps that appeared on boxes.
- D. When apartheid ended, Ford stepped back into the place it claimed to have left.
- E. In 2001, SAMCOR again became a wholly owned subsidiary of Ford. Ford announced that it would operate the subsidiary in substantially the same manner as prior to the transaction and that it would not decrease the staffing level, the type of business performed, or the way in which SAMCOR's business operated in South Africa.

Ford Intentionally Decided to Continue Supplying Vehicles to South Africa's Security Forces and thus Purposefully Facilitated Violence against Black South Africans, in Contravention of International Law, U.S. Policy, and Regulations

79. Ford was not merely a passive investor in South Africa but rather intentionally provided vehicles to support specific unlawful violence against black South Africans, including Plaintiffs and those similarly situated. Ford purposefully provided such support knowing that vehicles sales to the security forces were critically linked to the enforcement of apartheid and violence against black South Africans.

80. At least as early as the 1960s, international and U.S. sanctions regimes had made clear that vehicles provided to South African security forces played a central role in advancing apartheid, including by making a substantial contribution to the violent oppression of the black South African population. For example:

- A. In 1963, UN Security Council Resolution 181 called on states to stop the sale and shipment of arms, ammunition, and military vehicles to South Africa.
- B. In 1970, UN Security Council Resolution 282 condemned South Africa's continuing disregard for international law and reaffirmed a policy of withholding the supply of all vehicles and equipment to South African armed forces and paramilitary organizations.
- C. In 1971, the U.S. 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."
- D. In 1977, UN Security Council Resolution 418 mandated that all States should "cease forthwith any provision to South Africa of arms and related matériel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts of the aforementioned, and shall cease as well the provision of all types of equipment and supplies and grants of licensing arrangements for the manufacture or maintenance of the aforementioned." The resolution further called upon States to "review all existing contractual arrangements with and licenses granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them."

- E. Following the passage of that mandatory UN arms embargo, the Carter administration announced new curbs on U.S. sales to South Africa in furtherance of the administration's policies "supporting human rights."
- F. The 1978 U.S. sanctions regime was created to eliminate "gray areas" and ensure that American supplies were not flowing to vehicles used by, or increasing the "operational capacity of," the South African security forces.
- G. In 1986, Congress passed the Comprehensive Anti-Apartheid Act, which also prohibited the export of vehicles for the use of South Africa government entities associated with apartheid.

81. Despite sanctions and the international consensus and condemnation of supplying vehicles to South African security forces, Ford made policy, management, investment, sales, and operational decisions that purposefully supported sales to the security forces and police.

82. Ford, in the United States, decided to and did oppose efforts in the United States and South Africa that would end sales to the South African security forces, because doing otherwise might have harmed Ford's business interests, in particular its future relationship with the South African government. For example:

- A. Ford continued to provide the South Africa security forces with vehicles despite the 1978 Commerce Department regulations prohibiting the sale of any U.S. commodity to the South African police or military.
- B. Ford's decision to continue to sell to the South African security forces was aimed at the long-term potential for profit on its substantial existing investment, with a desire to wait for the development of, and be included in, the black South African

market, as well as the equally undeveloped and substantial potential for export to other African nations.

- C. Even if Ford's sales to the security forces did not represent a large proportion of the company's overall sales, Ford and the South African government recognized the importance of this business. Ford sought to preserve long-term and friendly relations with the government, and Ford believed the government's perception of whether the company was willing to cooperate in vehicle sales was important enough to continue in the face of criticism even though the actual volume of sales did not provide that much income for the company.
- D. Ford management opposed the adoption of more restrictive sanctions in the United States, as well as shareholder efforts to restrict investment and sales to South Africa.

83. Ford intentionally supported the apartheid security forces and their goals when it directed its global operations to circumvent U.S. sanctions in order to continue sales to South Africa, enabling violent suppression of blacks in South Africa. In so doing, Ford demonstrated that it fully embraced the purpose of the security forces to oppress the black population. For example:

- A. Ford's actions contravened the intent of U.S. policy and regulations, and undermined U.S. foreign policy. As one Ford board member noted, in dissenting from Ford's literal interpretation of the 1979 sanctions: "[A]ny Ford Motor Co. vehicles sold to the South African military or police necessarily include some element of U.S. technology if not material. Thus such sales even by a subsidiary

constitute a violation of both the spirit and intent of the policy of the U.S. Department of Commerce.”

- B. As the acting director of Southern African Affairs at the State Department noted in 1978, when offering his opinion about automobile company sales in South Africa: “Such sales have the effect of lessening the impact of what U.S. policy seeks to accomplish—keeping essential goods and services from the South African military and police.”
 - C. Ford South Africa assembled Ford kits that included parts shipped from Ford Canada and Ford England. Ford in the United States controlled and directed such shipments that undermined the U.S. sanctions regime banning the supply of U.S.-made parts to South Africa.
 - D. Ford deliberated over sales decisions and offered rationalizations for the decision to continue sales to South Africa. For example, Ford officials stated publically that the loss of security forces contracts would lead to layoffs of South African employees.
 - E. Ford’s misleading divestment efforts surrounding the creation of SAMCOR and a nominal change in ownership further revealed Ford’s intention to continue to facilitate South Africa’s violent imposition of apartheid and to undermine U.S. sanctions and foreign policy. *See, e.g., paras. 76-77.*
84. Ford’s sales played a vital role in manufacturing and supplying vehicles for the South African security forces, including specialized vehicles. For example:
- A. By the late 1970s, of the ten auto companies in South Africa, only one was South African-owned. In 1978, Ford’s sales in South Africa were estimated at \$288

million and its investments were valued at \$119 million. At that time, with the automobile industry in a downturn and the South Africa government seeking ensure that automobile companies would be stable and profitable, Ford was of the best-capitalized car manufacturers, possessing the resources to wait out the downturn.

- B. Ford's support to the South African government was significant: "[B]etween 1973 and 1977 [Ford] sold 128 cars and 683 trucks directly to the South African Ministry of Defense and 646 cars and 1,473 trucks to the South African police."
- C. In its South African plants, Ford assembled specialized vehicles for security forces, including large military trucks and specialized sedans for the Special Branch. Ford's operations in South Africa also had paperwork identifying the vehicles as intended for security forces, some of which specifically identified the police or the security forces as the recipients. Some vehicles were painted in the plant to meet security forces' specifications.
- D. Notably, into the 1980s, Ford sold vehicles that did not need to be "converted" by the apartheid government for security forces or police use but were already specialized before leaving the plant in South Africa.
- E. Tags on vehicles being produced on the line in South Africa would indicate which vehicles were intended for the South African security forces.
- F. The engines in some of these models were more powerful than in other cars, and they were only made for the security forces.
- G. In particular, Ford built a limited number of XR6 model Cortinas known as "interceptors" that were sold almost exclusively to security forces. The XR6

was special because it had three Weber model double carburetors, as opposed to all other Cortinas that had only one double carburetor.

H. Ford would have had to approve such specialized design modifications and would have audited the specially-designed product as part of its normal bi-yearly audit process.

85. Ford's vehicles sold to the security forces were of critical importance to the South African government. Ford as well as the government understood that such vehicles, including specialized ones, substantially contributed to apartheid and its violence and that U.S. corporations should in no way act to increase the operational capacity of the South African security forces. For example:

- A. In the words of a U.S. official discussing the purposes of the 1978 embargo, vehicles for the security forces were "the instruments most directly concerned with the enforcement of apartheid."
- B. UN and U.S. sanctions both targeted vehicles directly. *See, e.g.*, para. 80.
- C. Because of their strategic importance, some industries were designated as National Key Points, and as such, there was a particularly close relationship between these corporations and South African security forces. Ford, as an automobile manufacturer, would have been designated a National Key Point.
- D. High-ranking officials from the security forces, sometimes in uniform, visited Ford plants on a regular basis, consulted with Ford management, and inspected the vehicles.

E. Boxes of parts including nuts, bolts, and carburetors to be used in the specialized vehicles would arrive from overseas and receive expedited treatment to get them to the plant.

86. At all relevant times, Ford understood that its products would be used to violently suppress blacks and opponents of apartheid, including Plaintiffs and the classes they represent. For example, Ford employees, including Plaintiff Peters, 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 managers in South Africa retaliated against black employees who questioned Ford's involvement with the South African security forces by, *inter alia*, shortening the work shifts of these employees.

87. Ford vehicles provided substantial assistance to the apartheid security forces in Soweto. The student-led Soweto Uprising on June 16, 1976, to protest mandatory Afrikaans language instruction in schools, led to violent suppression by the security forces. Women and children were shot and killed, including Hector Zolile Pieterse, the twelve-year-old son of Plaintiff Mantoa Dorothy Molefi. Ford vehicles were used as part of the security force patrols in Soweto in the 1970s.

88. Ford vehicles were active in other security force operations across South Africa. 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 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. Ford vehicles were critical to the coordination, monitoring of gatherings, collecting intelligence and information to advance the

crackdown and violence in Duncan Village. Many victims were children, including the sons of Plaintiffs Ngcaka, Dyonashe, and Mzamo.

89. At times during the massacre, entrances to the Duncan Village township were sealed off and security forces in vehicles manufactured by Ford patrolled the area.

90. At a mass burial service for victims of the massacre held later in August, security forces once again opened fire on attendees resulting in additional injuries and deaths. Security forces continued to perpetrate violence against Duncan Village residents at least through 1986. Security forces relied on vehicles manufactured by Ford for coordination, monitoring the black population's activities, gathering information, and transportation throughout this time period.

91. In August 1985, Plaintiff Ngcaka's nine-year-old son, Thembekile Ngcaka, and his friends were playing with small toys outside his home in Duncan Village. Security forces shot Ngcaka and his friends as they drove past them in heavily armored military vehicles. Ngcaka suffered numerous wounds to his stomach. Though he survived the initial shooting, Ngcaka never fully recovered, and died approximately one year later from his wounds.

92. During the same month, Plaintiff Dyonashe's thirteen-year-old son, Vuyani Adonis, arrived unexpectedly in Duncan Village at his mothers' home to obtain school supplies. At that time, armored military vehicles, manned by South African soldiers, were patrolling the village. Security forces shot Adonis multiple times, and he staggered into a neighbor's house and collapsed. He died shortly thereafter from his wounds.

93. In March 1986, Plaintiff Mzamo's fifteen-year-old son, Bubele Mzamo, was playing in the street in Duncan Village when he was shot and killed by South African security forces. He was shot by security forces in military vehicles on patrol.

94. Others in Duncan Village were shot while attempting to assist and transport the injured to obtain medical care.

95. The Langa Massacre occurred in Uitenhage, near Port Elizabeth, on March 21, 1985. A group of people from the area peacefully assembled that morning to march to a funeral. The police blocked the road in the center of Uitenhage with armored vehicles and ordered the crowd to disperse. When the crowd did not immediately respond, the police opened fire, fatally shooting 36 and injuring many others. The TRC later conducted an investigation of the event and concluded that the South African Police “resorted to grossly excessive means to achieve this, using unjustified deadly force, and that they are accountable for the gross human rights violations.” Security forces active at this time relied on vehicles manufactured by Defendant Ford for coordination, monitoring activities, intelligence gathering, transport, and protection.

C. Ford Collaborated with the South African Government to Purposefully Suppress Anti-Apartheid Activities

96. Ford worked in deliberate cooperation with the South African security forces to repress anti-apartheid and union activists. Ford denied black employees full freedom to assemble and worked with security forces to enable harassment and assault of Ford’s black employees, as well as to limit and prevent union organizing and anti-apartheid activities. Employees in Ford’s South African plants were disciplined by Ford for anti-apartheid activities that took place outside of work, and employees active in workplace organizing were tracked and picked up by the South African security forces, questioned about their activities based on information supplied by Ford, and tortured and imprisoned.

97. Ford understood well the discriminatory purposes of apartheid, which was the focus of international condemnation. *See, e.g.*, paras. 11, 54, 80. For example:

A. UN and U.S. sanctions highlighted the discriminatory aims of apartheid.

- B. Ford adopted the Sullivan Principles because it was fully aware of the discrimination and oppression of anti-apartheid activists.
- C. Shareholder resolutions and activism in the United States also focused on apartheid and its discriminatory effects.

98. While Ford made public statements espousing commitment to the Sullivan Principles, in practice Ford management's actions and decisions demonstrated intent to support the repression of anti-apartheid activists and to cooperate with security forces to purposefully achieve these goals. For example:

- A. Ford wanted to maintain good relations with the South African government because it viewed such relations as important to its long-term business and profit. *See, e.g.,* para. 82.
- B. Ford benefited from government targeting of blacks who supported unions and anti-apartheid activities, because such repression suppressed workplace dissent. Ford also benefited from depressed wages for blacks within the apartheid system, as these low wages increased the profit margin for its subsidiary's operation.
- C. Ford knowingly and purposely created a management system that permitted and indeed encouraged cooperation with South African security forces by hiring and employing managers who were important figures in the apartheid state, and who it knew shared information with security forces to target black Ford employees. Some of these senior managers, including individuals who were at relevant times the head of human resources and the head of industrial relations, were members of the Broederbond. The Broederbond ("association of brothers"), an elite and powerful Afrikaner organization in South Africa, was dedicated to preserving

permanent white supremacy, and in particular Afrikaner dominance, in South Africa. The Broederbond espoused an ideology of radical racism that demanded the exclusion of blacks from white South Africa.

99. Ford management closely collaborated with South African security forces to suppress anti-apartheid activities. For example:
- A. Ford management provided information on anti-apartheid activities at Ford to South African security forces, which led to Ford employees being tracked, harassed, monitored, arrested, detained, and tortured. When interrogating black Ford employees, security forces regularly quoted statements made by these employees to Ford management, sometimes verbatim.
 - B. Ford knew when its black employees had been interrogated, even when that information was not public.
 - C. South African security forces regularly visited and entered Ford plants.
 - D. Security forces, including the Special Branch, coordinated their suppression of anti-apartheid labor and political activities with key senior management personnel within Ford. Coordination was particularly close between the human resource managers and/or senior security personnel at the plants and the apartheid state's security forces.
 - E. Human resource managers and senior security personnel at Ford included former or active security forces officers and/or members of the Broederbond.
100. Ford in the United States was specifically informed about this close collaboration with the South African security forces and the resulting harms. For example:

- A. Black Ford workers in South Africa complained to Ford in the United States that management included members of the Broederbond. Ford workers knew of specific managers who were members of the Broederbond. Ford in the United States was informed through Andrew Young and Jesse Jackson, both of whom visited South Africa. Black Ford workers also provided some information in writing to Ford in the United States about the Ford collaboration with security forces and the Broederbond.
- B. Ford's practice, developed in the United States, was to investigate and, when necessary, control its employment policies and practices in South Africa in the event of controversies such as strikes, work shut downs, or safety complaints. *See, e.g., paras. 75-76.*

101. As described below, Ford's close collaboration with the security forces led to violations of the rights of anti-apartheid leaders, including Plaintiffs and the classes they represent. These individuals experienced torture, cruel, inhuman, and degrading treatment, and deprivation of other rights associated with apartheid.

102. In October 1979, Plaintiff Botha became Chairman of the Port Elizabeth Black Civic Organization (PEBCO), an organization he helped launch. PEBCO was an anti-apartheid community organization seeking to improve the living conditions of township residents in and around Port Elizabeth. PEBCO received widespread media attention throughout South Africa at the time of its creation, as a result of which Plaintiff Botha was frequently referred to and quoted in newspapers throughout the country.

103. Shortly after PEBCO was launched, a white supervisor in a Ford plant called Plaintiff Botha into his office. The supervisor was holding a newspaper and stated that he, as

well as the white management and other white employees at the plant, were unhappy at the publicity about Botha's work with PEBCO. The supervisor told Plaintiff Botha that, despite having a good work record, he was too political and could either continue working at Ford or go and serve his community by working with PEBCO. When Botha refused to cease working with PEBCO, he was dismissed from his job at Ford.

104. Only after hundreds of workers at Ford went on strike to demand Botha's reinstatement was he allowed to return to work. During the strike over Botha's dismissal, several employees established a new committee to deal with labor issues, believing that registered unions had collaborated with Ford management. In this strike, as in similar incidents, Ford personnel from the United States provided oversight and were involved in the resolution of the issues.

105. Plaintiff Botha and others formed this committee, which later became known as the Metal and Allied Component Workers Union of South Africa (MACWUSA). Plaintiff Botha was Chair of MACWUSA's Executive Board. Plaintiff Cilibe became treasurer of MACWUSA shortly after its formation.

106. Ford management took action to suppress the multiracial union and its activities. Upon its founding, a senior manager in human resources who was also a member of the Broederbond declared that Ford would not recognize MACWUSA as a multiracial union that was in line with the principles of the ANC.

107. Ford management continued to deny black employees full freedom to assemble and promoted the apartheid regime. Managers called in the South African security forces to harass and assault black employees and to limit and prevent union organizing, especially of unions seen as anti-apartheid.

108. Ford's ongoing discriminatory policies prompted another strike in 1979. Workers demanded that Ford comply with the Sullivan Principles. Ford had committed itself to the Sullivan Principles, which included guarantees of racial equality, equal pay for equal work, and the removal of job reservations, but Ford had flagrantly breached those principles.

109. On the same evening that Ford settled the strike, Plaintiff Botha was arrested and detained by the South African security forces. The security forces interrogated Botha about the strike at Ford and about who was behind the strike. During his detention, he was subjected to torture, including sleep deprivation, and other physical and mental abuse.

110. Upon his release following several months of detention and abuse, the South African government placed Botha under a banning order, preventing him from working, attending university, meeting with more than one person at any time, or leaving the house between 6pm and 6am or on weekends or public holidays. As a result of these restrictions imposed upon him by the banning order, Botha was driven into exile in Lesotho.

111. There were other strikes at Ford's South Africa plants in the early to mid-1980s to protest discrimination by Ford. Security forces were called to Ford plants on some occasions. During at least one strike, security forces set vicious dogs on the workers. Other employees who participated in the 1979 strikes, as well as later strikes, were harassed at home, arrested, detained, and questioned about PEBCO or anti-apartheid activities.

112. Union meetings were monitored by members of the Special Branch and/or other security forces, as well as by informants who were in some instances Ford employees in South Africa. After meetings, security forces would arrive at the homes of union members, including Plaintiff Cilibe, to question them about union and strike activities. For example, the officers who

interrogated Cilibe in his home made clear that they knew Cilibe worked at Ford in an effort to intimidate him.

113. Plaintiff Peters became the Chairman of NAAWU at Ford in the early 1980s. On occasion, Plaintiff Peters would travel because of his duties as a union representative. Ford managers in South Africa received notice of his travel in advance and collaborated with the Special Branch, including by informing the Special Branch of Peters' travel plans. As a result, the Special Branch detained Plaintiff Peters to question him about these union activities.

114. During interrogations, the security forces attempted to intimidate and pressure Plaintiff Peters, as Chairman of NAAWU, to intervene with workers in order to prevent and end strikes. When he refused to do so, he was threatened and tortured. When security forces interrogated Plaintiff Peters about his union activities, they regularly quoted statements he had made to Ford management in meetings he attended as part of his union responsibilities, sometimes verbatim. This reflected the ongoing close cooperation between Ford management and the South African government and security forces in suppressing black political activity of any kind.

115. On at least two occasions, Plaintiff Peters was subjected to a form of torture known as "the helicopter": his hands were handcuffed to his ankles, a broomstick was inserted between the wrists and ankles, and he was spun around violently. Some of his torturers were the same Special Branch officials he saw regularly inside the Ford plant speaking with Ford management. During interrogations at the Special Branch office, Plaintiff Peters observed, on occasion, the head of Ford security inside the building.

116. Ford managers who were members of the Broederbond flaunted their comprehensive insider knowledge of upcoming security forces' activities and collaboration with

security officers. At least one Ford manager who was a member of the Broederbond was informed, as part of his Ford responsibilities, about Plaintiff Peters' union travels.

117. The head of Ford security in South Africa 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, including Plaintiffs Peters. Ford thus facilitated the torture and arbitrary detention of its own workers.

118. On at least two occasions, Plaintiff Peters was interrogated on Ford premises with Ford management's cooperation. In addition to members of the Special Branch, sometimes Ford managers interrogated Peters during these sessions. Several human resources and industrial relations members of management participating in these joint Ford-Special Branch interrogations were also members of the Broederbond.

119. Special Branch officers worked with Ford management to coordinate efforts to intimidate workers not to 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.

120. Members of the class, including Plaintiff Peters, were arrested, detained, and tortured by South African security forces as a result of information provided to the security forces by Ford and its management. Ford employees also knew when black employees had been interrogated, even when that information was not public.

121. Along with Plaintiff Botha, other politically active workers with good employment records were dismissed in the early 1980s by Ford. Some lost their work permits and had to return to a Bantustan as a result. Even those who were not tortured or driven into exile during the 1979 strikes were severely discriminated against in their employment because of their union and anti-apartheid activities.

DEFENDANT IBM'S PARTICIPATION IN APARTHEID

A. IBM Directed and Controlled Activities in South Africa from the United States

122. At all relevant times, IBM was a centralized corporation incorporated in the United States and headquartered in Armonk, New York. The major activities of IBM and its subsidiaries were directed from U.S. headquarters. IBM's Board of Directors, which meets in the United States, was responsible for supervising the company's overall affairs.

123. IBM oversaw all its overseas business from New York.

124. IBM in the United States set, at all relevant times, the code of business conduct, standards, and values for IBM directors, executive officers, and employees globally, which provided personnel policies for employees throughout the company, including in South Africa.

125. IBM South Africa (Pty) Ltd. was incorporated in 1952 in South Africa as a subsidiary of IBM. IBM had particularly close control and involvement in activities in South Africa because of the sensitivity to U.S. investment during apartheid.

126. IBM's complicity in institutionalizing, implementing, and perpetuating apartheid, including separation of the races and denationalization in South Africa and the Bantustans including Bophuthatswana, was directed from the United States.

127. At all relevant times, IBM in the United States made key decisions about operations in South Africa, including investments, policy, management, bids and contracts, hardware and software products and customization, as well as services and maintenance.

128. IBM, from the United States, controlled the top management personnel of its operations in South Africa. For example:

- A. IBM in the United States selected and trained individuals to be employed in its South African subsidiary.
- B. The head of IBM in South Africa frequently reported and answered to IBM in New York.

129. IBM, from the United States, controlled major investments and restructuring as well as bids on government contracts. For example:

- A. Decisions about bids for major projects were handled in the United States and decisions were made on a case-by-case basis depending on the specific application in question.
- B. IBM bid on the 1965 South African contract to produce the South African passbook but the contract was awarded to another company.
- C. In 1985, Chairman Akers explained IBM's continued support for apartheid: "If we elect to leave it will be a business decision."
- D. In 1986, IBM announced its intention to sell its South African holdings, although it would continue to license and distribute its products in the country. *See, e.g.,* paras. 133-34.

130. IBM's own public statements indicate that decisions about its South African operations, including business with institutions involved in implementing apartheid and denationalization, were made in the United States. For example:

- A. IBM acknowledged that its U.S. headquarters controlled and directed its South African policy by adopting the Sullivan Principles.
- B. IBM's Vice Chair stated to the U.S. Congress in 1976 that IBM knew about all end uses of its products.

131. IBM tightly controlled the use of its technology in South Africa, including which hardware and software it provided to the government. IBM was also closely involved in customizing systems and providing ongoing systems support for its products. For example:

- A. Thomas Watson, Jr., then IBM's Chairman, stated in a 1967 interview, "[T]echnology forces us to operate in a centralized manner. We have a centralized technology."
- B. Customization and software development for the systems in South Africa relied on IBM's U.S. support and expertise. IBM did not have research and development or manufacturing facilities in South Africa. Rather, IBM, in the United States, conducted the research and development for the hardware and software that supported the apartheid system.
- C. The major breakthroughs for the System/360 mainframe (and subsequent mainframe generations such as the System/370), which was at the core of computer systems in South Africa, were made and developed in the United States and/or orchestrated by IBM's headquarters.

- D. IBM's research and development was so U.S.-focused that in its 1987 annual report to its stockholders, IBM stated that a third of its worldwide profits were earned by its U.S. operations. However, on its federal tax return for that year, IBM treated so much of its research and development expenses as U.S.-related that it reported almost no U.S. earnings—despite \$25 billion in U.S. sales that year. As a result, IBM's federal income taxes for 1987 were virtually non-existent. Thus, the 1989 federal tax return indicates that development and research for IBM's products used in South Africa occurred in the United States.
- E. From the 1960s to the 1980s, systems engineering was particularly time-consuming, and this was a major part of the service that IBM provided. Expertise and ongoing support lay in the United States, and systems technicians relied on the expertise in the United States throughout this time period. Communication was facilitated by a worldwide network that IBM created for internal communication so that thousands of computers could communicate, and IBM could provide systems service and maintenance to its customers, including those in South Africa.

132. IBM closely monitored its operations, activities, and the use of its technology in South African. For example:

- A. Senior management officials from the United States, including the head of IBM, made regular visits to South Africa to ensure that their policies and practices were followed.
- B. IBM informed its shareholders that, in 1972, its corporate Executive Committee visited South Africa in order to understand the situation there.

C. IBM executives understood that the passbook system was discriminatory.

According to Gilbert Jones, IBM's Vice Chair and Chair of the IBM World Trade Corporation: "Sir, I don't want to stand up and defend the passbook system because, like you, I feel the passbook system is definitely a sign of the way they treat whites much better than they do colored, Asians, and blacks."

D. Chairman Frank Cary noted at IBM's 1977 annual meeting: "I have said time and again that we have investigated each instance brought to our attention where there was any reason to believe IBM computers might be used for repressive purposes, and we have found no such use." In all public statements during the apartheid period, IBM management repeated the claim that they did not aid the imposition of apartheid but never claimed that IBM did not supply hardware, software, or technology to the South African and Bantustan governments. Indeed, at the same 1977 meeting, IBM confirmed that its machines stored the data of colored, Asian, and white South Africans.

E. IBM employees in South Africa could make complaints straight to New York, and IBM would get involved directly in the issues, including employment matters, going so far as to send management from the United States to investigate. U.S. interventions in such matters could lead to changes in South Africa.

133. In 1987, IBM "divested" from South Africa when it "sold" its South African subsidiary to Information Services Management Ltd. (ISM), a company created for the benefit of white South African IBM employees. Company spokespersons said this was done so that the newly independent company could fulfill IBM's existing contractual responsibilities in South

Africa. Moreover, IBM stated that it would provide a loan allowing local investors to buy the subsidiary.

134. Although ISM was formally independent, it remained the alter ego and/or agent of IBM. IBM created the new company with its own funds for the purpose of continuing its business with the South African and Bantustan governments while claiming that it was no longer doing business there. For example:

- A. Jack Clarke, the same IBM employee who had been the general manager of IBM South Africa prior to the sale, ran the new entity.
- B. The manuals, the staff, the office location, and the email addresses remained the same. Staff kept their IBM email addresses. Although employees had two email accounts—one ISM email and one IBM email—they would reach one destination whether someone sent to IBM or ISM. The individuals who ran the training programs in South Africa continued to come from IBM, including the people who would explain the mainframes.
- C. Although IBM formally withdrew from South Africa, it intentionally continued its support for apartheid and denationalization. In particular, while IBM itself would no longer have assets, capital, or employees in South Africa, the new company signed multi-year contracts to import and sell IBM products, services, and technology.
- D. In 1987, IBM's management defeated a shareholder resolution to prohibit sales to ISM. IBM Chairman Akers admitted that the volume of products IBM was shipping to South Africa remained about the same as before the ISM sale.

E. In 1987, Chairman Akers said that IBM had sold its assets in South Africa and claimed that IBM's newly created representative no longer sold directly to the police or military.

F. Implicit in Akers' assertion is that, even after IBM's sale of assets to a newly created company, that company still followed U.S.-directed policies. This interpretation is consistent with the statement of the former head of IBM South Africa, who became head of the newly formed company:

The former manager of IBM South Africa, Jack F. Clarke will be managing director of the new independent company. In full page advertisements in major South African papers, Clarke has gone out of his way to reassure IBM's South African customers that they will still be able to buy IBM computers and other products. "The new company will hold the sole franchise for IBM in South Africa, and has a supply and service contract with IBM. . . . There will be no change in the supply of IBM products," he wrote in a personally signed letter. Annual sales are estimated at over \$200 million, the largest by far of any computer company in South Africa. IBM computers will continue to dominate the South African market.

G. IBM continued to sell all of its products, parts, and services through the new company and continued to be the top supplier of computers to South Africa after the "divestiture." As one IBM dealer explained at the time, "Nothing has really changed except that IBM no longer has to account for its presence in South Africa."

H. After divestment, IBM ensured that its West German subsidiary and the Japanese company Hitachi could supply parts to service embargoed IBM equipment.

I. These sales and service arrangements violated the purpose of U.S government restrictions, since parts would be made under IBM patents registered in the United States and services were critical to the product. IBM intended—as it had for

years—to continue to service South African agencies, contrary to the purpose of U.S. regulations.

- J. IBM retained a buy-back option to the new company as a term of the sale.
- K. In 1994, IBM “bought back” its majority interest in ISM.
- L. At the time of the “buy-back,” the ISM Managing Director had already been with IBM South Africa for 22 years in its various forms.
- M. Thereafter, the company that had been known as ISM became IBM South Africa Group Ltd. and continued to be the exclusive representative of IBM in South Africa and to rely on IBM in the United States for technological support.

B. IBM Created and Produced Bophuthatswana Identity Documents to Purposefully Institutionalize and Facilitate Apartheid’s Goals of Racial Separation and Denationalization

135. At all times relevant to Plaintiffs’ allegations, IBM intentionally developed and provided computer technology, systems, software, training, and support to purposefully facilitate and enable the apartheid government’s control of the majority black population, including the physical separation of the races into Bantustans. IBM sought specific contracts that would achieve these ends, executed those contracts in order to maintain its business in South Africa as well as to accomplish the goals of apartheid, and sought to prevent and circumvent sanctions regimes that would interfere with these ends. IBM actively created the system that institutionalized the complex apartheid system of Bantustans and population control organized by racial classification, which required sophisticated computer technology and knowledge of the kind provided by IBM both before and after it formally divested.

136. At least by the 1970s, the international and U.S. sanctions regimes had made clear that technology and computers provided to South African security forces played a critical role in

advancing apartheid, including making a substantial contribution to the violent oppression of the black South African population and separating the races. For example:

- A. In November 1977, the Carter administration announced new curbs affecting computer and technology sales to South Africa that prohibited the sale, direct or indirect, of any U.S. commodities or technical data to military or police entities in South Africa.
- B. The 1978 U.S. sanctions regime was created to eliminate “gray areas,” which was understood specifically to include specialized computer systems. The Carter administration put into place export controls in 1978 that prohibited the “export or re-exports of any commodity or technical data for delivery directly or indirectly to or use by or for military or police entities” in South Africa.
- C. President Reagan also issued an executive order in September 1985 banning: “All exports of computers, computer software, or goods or technology intended to service computers to or for use by any of the following entities of the Government of South Africa: . . . (6) The administering authorities for the black passbook and similar controls; (7) Any apartheid enforcing agency; (8) Any local or regional government or ‘homeland’ entity which performs any function of any entity described in paragraphs (1) through (7).”
- D. In 1986, Congress passed the Comprehensive Anti-Apartheid Act, prohibiting the export of computers, software, and other technology for the use of South Africa government entities associated with apartheid and the extension of new loans or credit to such entities.

137. Despite sanctions and international condemnation of supplying technology to the South African security forces and government, as well as to the Bantustans, IBM made policy, management, investment, development, sales, and operational decisions that supported and facilitated sales, leases, and services to purposefully advance the goals of apartheid, in particular separation of the races.

138. IBM, in the United States, actively opposed efforts in the United States and South Africa to prevent it from supplying equipment and services out of concern for harm to IBM's business in the country, and in particular its relationship with the South African government. For example:

- A. U.S. IBM executives asserted that sales to the South African government were necessary to maintain business there. Gilbert Jones, IBM's Vice Chair, stated in 1976 before the U.S. Congress: "But if you are going to go in South Africa, it is our feeling that you have to sell to the South African Government. If you don't sell to the South African Government, there is no way that your 1,400 employees are going to stay with you, No. 1. It is beyond me to believe that the South African Government is going to buy your computers and allow you to stay in South Africa if you don't deal with the government."
- B. IBM's largest client in South Africa was the South African government, accounting for about one third of its sales there.
- C. IBM specifically opposed the 1978 U.S. sanctions: "Senior U.S. officials from the home offices of IBM . . . and other multinationals registered their opposition to the ban and asked that it be lifted." After the adoption of these sanctions, IBM pushed for U.S. regulations that lacked enforcement and strove to interpret

loopholes in the sanctions regime that did exist.

- D. In the United States, IBM opposed shareholder resolutions starting in the 1970s related to divestment and advocated for a sanctions regime that would allow it to support the South African government's implementation and enforcement of apartheid, thereby interfering with U.S. foreign policy.

139. IBM pursued business in South Africa in a manner directly contrary to the intent of the U.S. embargo and sanctions regime, as well as international law. IBM directed IBM offices elsewhere in the world to continue to provide the same services, including those that facilitated denationalization and separation of the races. IBM engaged in subterfuges to disguise its violations of international law and sanctions so that it could continue to assist the apartheid regime and continue to profit from that collaboration. In so doing, it embraced the goals and purposes of the South African and Bantustan governments to advanced apartheid, including the separation of the races. For example:

- A. IBM assured the South African government that its work in South Africa would continue, including through provision of hardware, software, and technical support to implement denationalization through the Bantustan system. IBM continued sales to the apartheid government despite that fact that its operations supported unlawful behavior that the U.S. government sought to prevent.
- B. After the U.S. Commerce Department banned the export of all U.S.-origin products to the South African security forces, IBM camouflaged its operations through deceptions arranged with affiliates in other countries and effectively circumvented the embargo by delivering parts and products to South African

security forces that were produced outside the United States, and therefore not subject to the embargo.

- C. IBM sought to help the apartheid structures “adjust to the threat posed by trade sanctions” and elude the goals of the embargo, including by making plans to switch to non-U.S. supply stocks and pledging to help the South African government overcome shortages of strategic goods by deceptive means.
- D. The U.S. embassy in Pretoria cabled to the State Department, in October 1978, that, “Multinationals, including U.S. subsidiaries, are determined to undercut any sanctions action and have already made plans to camouflage their operation through subterfuges arranged with in other countries.” By August 1979, the U.S. embassy acknowledged that U.S. multinationals had begun using loopholes to undermine the goals of the embargo. As one U.S. official in South Africa cabled to the State Department, “It is our understanding that most U.S. firms have been able to continue sales by shifting to non-U.S. sources for components.”
- E. Enough of South Africa’s supply chains remained intact to provide the apartheid state with continued access to computers, technology, machinery, and software.
- F. IBM repeatedly misled the U.S. government and its own shareholders about its purposeful support for apartheid in order to circumvent domestic criticism.
- G. On another occasion, IBM stated that it would continue to service computers in the South African Department of Defense. Jack Clarke, head of IBM South Africa, said that it would do so by using parts already in South Africa. IBM was therefore able to continue to support apartheid while giving the appearance of compliance with the embargo.

H. In another example of IBM's purposeful conduct supporting apartheid, IBM cooperated with Infoplan, a major South African government systems department designed to bypass sanctions, which worked directly with the security forces. IBM specifically provided Infoplan with codes and training that were necessary to change software, even when IBM knew sanctions were in place prohibiting work with the South African security forces.

140. IBM's many arguments defending its facilitation and maintenance of apartheid systems and structures were misleading and evinced the purposeful nature of its support. For example:

A. IBM asserted that South African government agencies used IBM computers only for "administration" and not for repressive use, thereby attempting to conceal the nature of the government it supported and the tasks it performed, such as denationalization of an entire ethnic group. However, when questioned about IBM's role in the expansion of the pass system, an IBM official replied, "We feel that the fact that it is being done with computers hasn't any appreciable overall effects on the apartheid situation. This pass system could be done in many other ways besides computers."

Such statements ignored the essential nature of the computer systems and the dependency of South Africa and the Bantustan governments on IBM technology.

B. In a 1982 letter to the State Department, IBM admitted its machines were used for the national identity system maintained by South Africa's Interior Department. However, IBM officials in the United States maintained that the Interior Department installation for the Book of Life was not objectionable and did not contribute to apartheid because it did not cover the black population. This assertion was intended to obscure the fact

that IBM's hardware and software played a key role in facilitating the very system of racial classification that made apartheid possible. Moreover, the implication is clear that the origin of the technology, machinery, and programs was the United States.

141. IBM was a dominant industry leader and played a vital role in providing systems—both its hardware and software—to the South African and Bantustan governments.

For example:

- A. For a significant time period, IBM controlled nearly half the South African computer industry. IBM's export from the United States to South Africa of its technology, equipment, expertise, and training on how to use and maintain its technology was essential to apartheid.
- B. Between 1960 and 1980, South Africa did not have an indigenous domestic computer industry and was dependent on outside sources for its critical computerized operations, including those related to racial separation and denationalization.
- C. Computers and software required major ongoing systems support during the relevant time period. For example, serial numbers, coding, and customization were required for individual purchasers to make use of hardware. IBM played this role, providing ongoing services, maintenance contracts, and systems engineers, who knew IBM's hardware and software systems and filled the gaps that existed in South African industry.
- D. Software and ongoing support was, along with hardware, a critical a part of IBM's business. IBM considered that continued support to be essential to its business model. As explained by Gilbert Jones, IBM's Vice Chair: "When you

buy a computer—one of the major reasons you buy a computer is because of the service and IBM support that is behind that computer. So that our systems engineers and our sales representatives are dealing with our customers on a day-to-day basis.”

- E. IBM also helped troubleshoot system problems. If government officials could not handle a problem internally, they would contact IBM. IBM employees known as “operators” would be called in to help the government, for example with problems associated with the IBM operating system.
- F. IBM provided training to government officials in South Africa and the Bantustans on IBM programming languages and proper use of IBM machines, which was essential to use the systems. IBM also provided trainings and courses in South Africa to data capturers and operators.

142. IBM systems, which helped institutionalize the separation of the races, were of critical importance to the South African and Bantustan governments. IBM and the governments understood that such machinery, technology, and technical support coming from the United States substantially contributed to the goal of separating the races and denationalizing black South Africans. For example:

- A. IBM’s representative told investigators from the House Subcommittee on Africa in 1984, “South Africa really needs U.S. companies in certain industries, particularly high tech industries and computers.”
- B. 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’.

- C. A U.S. government cable noted that a lack of access to foreign technology could cripple South Africa. The incapacitation of a single computer would necessitate “having to find hundreds of bookkeepers who are not available on [the] labor market.”
- D. As of 1986, South Africa relied on imported mainframe computers. As a computer industry official in South Africa explained: “We’re entirely dependent on the United States. The economy would grind to a halt without access to the computer technology of the West.”
- E. The reality of labor shortages to administer the apartheid system made dependency on foreign technology companies and IBM’s U.S.-based decisions about its South African policy all the more important.
- F. The South African government recognized the importance of the computer support as well. As one South African academic noted in 1978, “We are almost totally dependent on imports for our computer requirements. . . . Our utter

vulnerability in this vital field is not generally appreciated by the public, but is causing grave concern in official circles and serious attention is being given to the matter.” The government recognized the need to circumvent sanctions regimes and to develop more self-sufficiency over time.

G. IBM misrepresented that its equipment, software, and services were not essential or significant and that legitimate purposes overshadowed any risk of harm, even while IBM acknowledged that its equipment facilitated racial separation and denationalization. IBM’s efforts to portray all its equipment as dual-use was deliberately misleading, as the company supplied hardware and software with the intent to violate international law and for the purpose of denationalizing black South Africans.

143. Although IBM was outbid for the contract to provide technology to produce the African passbook in 1965, IBM hardware served as the electronic memory bank for a large part of South Africa’s national identity system. IBM supplied the South African government and provided essential technology for the Book of Life that, along with the passbook, facilitated the racial classifications and population tracking that made apartheid possible.

144. Pretoria’s Interior Department ran its population registry, the so-called Book of Life, on two IBM mainframes that stored details on seven million citizens the government classifies as “coloureds,” Asians, and whites. The Book of Life contained assorted information, including racial classification, name, sex, date of birth, residence, photograph, marital status, driver license number, dates of travel/exit from and/or return to the country, place of work or study, and finger prints. Give this amount of data, the power of IBM mainframes provided critical support.

145. The Book of Life, which had to be carried at all times, enabled authorities to identify individuals by race in order determine their rights with respect to movement, employment, and other status. The Group Areas Act, which controlled the movements of “coloureds” and Asians and allowed the government to suppress them, could not have been as effectively institutionalized without the Book of Life.

146. Beyond its support for the South African Book of Life, IBM played an essential role in the creation and maintenance of the Bantustan system, which worked in tandem with the South African pass system to separate the races.

147. The Bantustans represented the ultimate goal of apartheid: the creation of a white majority South Africa through denationalization of the black majority, who were forced to become citizens of “independent” homelands (Bantustans) comprising 13% of the undesirable rural land that had been a part of South Africa. The administrations of at least one Bantustan—Bophuthatswana—relied on IBM computers. IBM computers were also used by other Bantustans, including but not limited to Transkei, Venda, KwaZulu, Gazankulu, and Lebowa.

148. Bophuthatswana was a designated Bantustan, an “independent” state created for the very purpose of excluding blacks from white South Africa under apartheid. It was accorded nominal independence, as a putatively sovereign state, in 1977.

149. Bophuthatswana established some of the indicia of statehood. Among these were the capacity to have “citizens,” a designation forced upon black South Africans of the Tswana tribe as part of the exercise of denationalization that was the basis of Grand Apartheid. The Bophuthatswana government imposed identity documents and passports among the victims of denationalization in an effort to achieve the ultimate goal of Grand Apartheid.

150. For this purpose, the Bophuthatswana government used and was dependent upon IBM computers and systems—both hardware and software—including specifically for the production of the Bophuthatswana ID that was essential to institutionalizing the denationalization of black South Africans. For example:

- A. Bophuthatswana government employees working with IBM computers and systems were trained in an IBM-specific programming language.
- B. IBM ran training courses for government employees in Johannesburg and Bophuthatswana. These courses also covered the IBM-specific programming language and the proper use of IBM machines. Programmers who attended these courses were government employees.
- C. The critical role that IBM played in developing and maintaining the system was further indicated by that fact that IBM-trained individuals had more power within the government than university-trained individuals. Some IBM-trained individuals had fewer formal qualifications, but government officials in Bophuthatswana gave IBM-trained individuals larger and more important, complex, and challenging assignments.
- D. Programs that government had at the time were not working well, which frustrated employees. IBM helped solve the limitations that government was facing. Some computer programs run by the Bophuthatswana government on IBM machines were developed and written in-house with the assistance of IBM employees.
- E. When government employees encountered difficulty with their machines or with the programs, IBM employees would assist them in troubleshooting and repairing

any problems. Government officials would call in IBM operators to help with the operating system for example.

151. In the late 1970s and 1980s, the Bophuthatswana government used IBM computers, which were upgraded regularly. For example, over the span of a few years, the government used the System/3 Model 10 computer, which was upgraded to the Model 12 computer and then the Model 15. All these models that the government was using were IBM machines. The system was later upgraded to a System 38.

152. At least by 1978, IBM actively created and then oversaw the ongoing functioning of the hardware and software necessary to create the new ID book for Bophuthatswana. IBM wholly developed the sub-system to produce the ID book. Once IBM had developed the system, it was transferred to the Bophuthatswana government for implementation.

- A. IBM wholly developed the sub-system used to create the Bophuthatswana ID book. The IBM system created to make the Bophuthatswana ID, which was developed around 1978, was viewed as an innovation. The ID book was seen as a crucial step towards Bophuthatswana's status as an independent country with its own ID book and citizens.
- B. In the United States, IBM developed both the hardware and software—both a machine and a program—to create the Bophuthatswana ID. Once IBM had developed the system, it was transferred to the Bophuthatswana government for implementation.
- C. The IBM project leader, who was a full-time IBM employee, was in constant contact with the Bophuthatswana official who was a government manager in the computer center and the government's project leader. The IBM project leader

would visit the government office. When IBM installed the system at the government's computer center, the IBM project leader was directly involved in showing the government project leader how the system worked.

- D. IBM employees trained Bophuthatswana employees to use the IBM machine and program to produce ID documents. The IBM project leader directly trained government officials involved in data capture on the system. IBM was contacted when problems arose with the ID book system and IBM employees would attend to fix such problems.
- E. After the initial development of the ID system, it was handed over to the Bophuthatswana Department of Internal Affairs, which was in charge of ID books. This transfer happened in the late 1970s or early 1980s.
- F. Initially, Internal Affairs brought the government computer center information provided on application forms for IDs, data capturing would capture that information on the IBM machines, and ID books would be printed, produced, and bound.
- G. Subsequently, Internal Affairs officials were trained to do their own data capturing and the system was then transferred to them. The IBM project leader was directly involved when the system was moved to Internal Affairs. The IBM project leader also trained new government officials from Internal Affairs to use the system.
- H. At Internal Affairs, it was a stand-alone IBM machine that could produce the IDs, which was brought in by IBM and tested for implementation. The ID book project was both hardware and software—a program and a machine. Although

the machine was capable of performing other tasks, it was specifically and exclusively used for ID books. Once the system was in place, the program would allow an individual to enter details from application forms and would then print the ID document. The books would then be bound and produced.

- I. If there was a problem with the system, Internal Affairs would initially contact another government employee with computer training but most often, because the software source was with IBM, IBM would be called and they would fix the issue. IBM worked directly with the computer center at Internal Affairs on such issues. The government project leader had very little access to the source code and did very little maintenance.
- J. The IDs produced for the Bophuthatswana government contained the name, sex, racial classification, ethnic origin, and residential address/postal address of the individual. Bophuthatswana residents were required to carry the IDs produced by the Bophuthatswana government with the active participation of IBM, and their South African IDs were no longer valid.
- K. The system handled a large volume of information and data. Applications came from all regions of Bophuthatswana in huge boxes.

153. The legislation creating “independent” homelands was announced in 1970 but did not have significant effect until after 1976, when the new “states” were able to produce indicia of statehood like the IBM-produced Bophuthatswana ID.

154. Each of the Plaintiffs suffered as a result of the South African government’s campaign to separate the races and create nominally “independent countries” within South Africa. Plaintiff Shole and his villagers were relocated from the fertile area in which he was

chief and forcibly removed to Ramatlabama, an arid and undeveloped area in Bophuthatswana near the border with Botswana. Plaintiff Shole was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. He was forced to acquire the Bophuthatswana ID, which was necessary to access basic services in Bophuthatswana, including pensions, schooling, health clinics, bank accounts and loans, government jobs, and permits to build homes or open businesses. As a result of his loss of South African citizenship, Shole suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship, including the right to reside in his home.

155. Plaintiff Bokaba's home village was also incorporated into Bophuthatswana and Bokaba was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Plaintiff Bokaba was forced to acquire the Bophuthatswana ID in order to legitimize his existence in Bophuthatswana and access basic services, including education. As a result of his loss of citizenship, Bokaba suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

156. Plaintiff Sepheri's home village of Stella was forcibly removed to Atameleng, which was incorporated into Bophuthatswana after "independence" in 1977. Plaintiff Sepheri was stripped of her South African citizenship, which was replaced by Bophuthatswana citizenship. As a result of her village's removal, she was separated from her family, and made to live in an area remote from schools, employment, and other services. Sepheri was forced to acquire the Bophuthatswana ID, which was required to obtain basic services in Bophuthatswana, including buying a home, receiving a pension, registering a child in school, and accessing medical care. As a result of her loss of citizenship, Sepheri suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

157. Plaintiff Mosiane was stripped of her South African citizenship, which was replaced by Bophuthatswana citizenship. Her South African ID was declared invalid, and she was assigned a Bophuthatswana ID. However, because Mosiane was Sotho rather than Tswana, she suffered additional deprivations, including not immediately being able to obtain a Bophuthatswana ID and associated services, which were intended for black South Africans of Tswana decent. As a result of her loss of citizenship, Moisiiane suffered a great indignity as well as the loss of the rights and benefits associated with South African citizenship.

158. Plaintiff Phiri was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Officials declared his South African ID invalid, and he was assigned a Bophuthatswana ID document. Black individuals, including Plaintiff Phiri, were told that they had to apply, or they would lose privileges, such as employment opportunities in Bophuthatswana. Many were forced to return their South African IDs when they applied for the new Bophuthatswana ID. Individuals feared punishment and retaliation, imprisonment, or the loss of existing employment if they did not acquire the new ID. Plaintiff Phiri lost the benefits of South African citizenship, including the right to live and work in his own country.

159. Plaintiff Mogoshane was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Plaintiff Mogoshane was born and lived in Botshabelo, a village that forcibly removed to Ikopeleng in Bophuthatswana in 1977. For several years while living in Bophuthatswana, he continued to use his South African ID to work in the mines. Sometime in the 1980s, he could no longer use his South African ID to work in the mines, and was required to get a Bophuthatswana ID to retain his employment. His South African ID was declared invalid, and he was assigned a Bophuthatswana ID, which he used to continue to work in the mines until the early 1990s. As a result of his loss of citizenship, Mogoshane suffered a

great indignity as well as the loss of the rights and benefits associated with South African citizenship.

160. IBM also actively participated in developing the bookkeeping and salary system used by the Bophuthatswana government for all employees, including the police and security.

161. Other Bantustan governments, including but not limited to Transkei, Venda, KwaZulu, Gazankulu, and Lebowa, also used IBM hardware and software.

DEFENDANTS' LIABILITY

A. Ford's Liability for Acts of Its Agents and Alter Egos

162. Ford South Africa and later SAMCOR were agents of Ford headquartered in the United States. For example:

- A. The activities of the two companies were devoted to Ford. *See, e.g.*, paras. 66-78.
- B. Ford and both South African companies publicly represented that the latter represented the former and was the only entity doing the business of the former in South Africa. *See, e.g.*, paras. 66-78.
- C. The financing for the South African entities came from Ford. *See, e.g.*, paras. 72, 77-78.
- D. Further, Ford controlled all major decisions and specifically controlled the decision to provide specially adapted vehicles to the South African security forces as well as decisions related to suppression of anti-apartheid employees. *See, e.g.*, paras. 66-83.
- E. The injuries suffered by Plaintiffs were within the scope of the agency, and included providing vehicles specially adapted for the security forces using

violence to maintain apartheid, and cooperating with the security forces to repress anti-apartheid activities. *See, e.g.*, paras. 66-121.

- F. SAMCOR was also the alter ego of Ford because it was created in bad faith for the purpose of obscuring Ford's continued facilitation of the South African apartheid and other government abuses. *See, e.g.*, paras. 77-78.

B. IBM's Liability for Acts of Its Agents and Alter Egos

163. IBM South Africa and later ISM were agents of IBM headquartered in the United States. For example:

- A. The activities of the two companies were devoted to IBM. *See, e.g.*, paras. 122-34, 138-39.
- B. IBM and both South African companies publicly represented that the later was the only entity doing the business of the former in South Africa. *See, e.g.*, paras. 122-34.
- C. The financing for the South African entities came from IBM. *See, e.g.*, paras. 129, 134.
- D. IBM controlled all major decisions, including the decision to enter into an agreement with the South African and Bantustan governments to provide and maintain identity documents necessary to the implementation of Grand Apartheid. *See, e.g.*, paras. 122-34.
- E. Further, the conduct that injured Plaintiffs was within the scope of the agency, and included denationalization in areas of poverty and isolation by knowingly and intentionally creating and maintaining the equipment that produced race-based

identity documents and sorting and storing information in databases and training those who used the equipment to enforce race separation. *See, e.g.*, paras. 122-61.

C. Defendants' Liability for Aiding and Abetting

164. Ford is liable for aiding and abetting the South African government in extrajudicial killings and crimes against humanity in that, directly and/or through its agents and alter ego:

- A. Ford provided substantial assistance with the purpose of facilitating the alleged offenses. *See, e.g.*, paras. 74, 78-121.
- B. Ford did so knowing and intending that its assistance purposefully facilitated those offenses. *See, e.g.*, paras. 78-121.

165. IBM is liable for aiding and abetting the South African and Bantustan governments in the denationalization of Black South Africans in that, directly and/or through its agents and alter ego:

- A. IBM provided substantial assistance with the purpose of facilitating the alleged offenses. *See, e.g.*, paras. 135-61.
- B. IBM did so knowing and intending that its assistance purposefully facilitated those offenses. *See, e.g.*, paras. 135-61.

D. Defendants' Liability for Acts in Furtherance of the Conspiracy

166. Ford is liable for the extrajudicial killings, torture, and crimes against humanity as part of a conspiracy in that:

- A. Ford agreed with the South African government to provide specially adapted vehicles to the security forces to be used in the violent imposition of apartheid. *See, e.g.*, paras. 74, 78.

- B. Ford, through its agents and alter ego, provided specially adapted vehicles to the security forces to be used in the violent imposition of apartheid. *See, e.g.*, paras. 74, 78, 84-85.
 - C. Ford acted knowing and intending that its provision of these vehicles purposefully facilitated those offenses. *See, e.g.*, paras. 79-86.
 - D. Ford, directly and/or through its agents and alter ego, agreed with the South African government to suppress anti-apartheid and union activity. *See, e.g.*, paras. 96-121.
 - E. Ford, directly and/or through its agents and alter ego, did provide the South African government with information on anti-apartheid and union activities of its employees knowing that those employees would be subjected to torture and crimes against humanity. *See, e.g.*, paras. 96-121.
 - F. Ford acted knowing and intending that its provision of this information purposefully facilitated the commission of those offenses. *See, e.g.*, paras. 96-121.
167. IBM is liable for in the denationalization of black South Africans and crimes against humanity as part of a conspiracy with the South African and Bantustan governments in that:
- A. IBM agreed with the South African and Bantustan governments to develop and provide equipment that produced race-based identity documents and sorted and stored information in databases and trained those who used the equipment to enforce denationalization and race separation. *See, e.g.*, paras. 122-53.

- B. IBM, directly and through its agents and alter ego, did develop and provide equipment that produced race-based identity documents and sorted and stored information in databases and trained those who used the equipment to enforce denationalization and race separation. *See, e.g.*, paras. 122-53.
- C. IBM acted knowing and intending that its provision of this equipment and services purposefully facilitated those offenses. *See, e.g.*, paras. 122-53.

E. Defendants' Liability as Part of a Joint Criminal Enterprise

168. Ford is liable for the commission of the abuses alleged above in that Ford contributed as part of a group of entities, including the South African government, acting with a common purpose, to the commission of crimes against humanity, torture, and extrajudicial judicial killings.

- A. Ford acted to further that purpose. *See, e.g.*, paras. 69-86, 96-101.
- B. Ford did so with knowledge of the group's intention to commit these abuses. *See, e.g.*, paras. 69-86, 96-101.

169. IBM is liable for the commission of the abuses alleged above in that IBM contributed as part of a group of entities, including the South African and Bantustan governments, with the common purpose to denationalize black South Africans and commit crimes against humanity.

- A. IBM acted to further that purpose. *See, e.g.*, paras. 122-53.
- B. IBM did so with knowledge of the group's intention to commit those abuses. *See, e.g.*, paras. 122-53.

CLASS ACTION ALLEGATIONS

170. This action is brought and may properly be maintained as a class action pursuant to the provisions of Fed. R. Civ. P. 23. Plaintiffs bring this class action as authorized by the Alien Tort Statute (ATS) on behalf of themselves and black South African citizens (and their heirs and beneficiaries) who during the period from 1973 to 1994 suffered injuries as a result of Defendants' violations of the law of nations by their complicity in such violations caused by South African state officials, employees, or agents. Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, and any of Defendants' subsidiaries, affiliates, officers, directors, or the families of any such officers or directors.

171. Plaintiffs and class members were subjected to apartheid as a crime against humanity, tortured, extrajudicially killed, stripped of their South African nationality and/or citizenship, suppressed and retaliated against for expressing anti-apartheid sentiments or beliefs or for participating in anti-apartheid organizations or movements, and suppressed and retaliated against for their union activities.

172. The classes for whose benefit this action is brought is so numerous that joinder of all class members is impracticable. Plaintiffs believe that there are many thousands of members of the classes, although the number and identities of individual class members are presently unknown and can be ascertained only through discovery.

173. There are questions of law and fact common to each class that predominate over any questions affecting only individual class members.

174. Among the questions of law and fact common to the classes are the following:

- A. Whether Ford actively participated in extrajudicial killing of black South Africans, including those who opposed and/or protested against the South African apartheid state, or subjected them to other forms of physical violence;
- B. Whether Ford actively participated in the torture of those who opposed or protested against the South African apartheid state or against working conditions as members of union organizations;
- C. Whether Ford suppressed and retaliated against those who participated in anti-apartheid political movements or union activities or expressed similar views;
- D. Whether IBM helped implement apartheid by facilitating or participating in the geographic separation of the races;
- E. Whether IBM helped institutionalize and implement apartheid through denationalization; and
- F. Whether these actions against the class members were committed by the apartheid state with the complicity of Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise, or whether the actions were committed directly by the Defendants themselves, or whether each Defendant and the state acted as the agent of the other.

175. Plaintiffs' claims are typical of the claims of the other members of the class, since all such claims arise out of Defendants' actions in actively providing support for the specific violations alleged herein. Plaintiffs have no interest antagonistic to the interests of the other members of the class.

176. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel with extensive experience in the prosecution of human rights actions

and class actions. Accordingly, Plaintiffs are adequate representatives of the class and will fairly and adequately protect the interests of the class.

177. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants in this action.

178. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

179. Although most class members are located in South Africa, this will not hamper the ability to pursue this case as a class action since communication with class members can be made with the assistance of various attorneys and non-governmental organizations operating in South Africa.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(APARTHEID AS A CRIME AGAINST HUMANITY)

(AGAINST BOTH DEFENANTS)

180. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

181. All Plaintiffs, on behalf of themselves and the classes they represent, seek relief from crimes against humanity committed by the apartheid state with the complicity of Defendants, either directly and/or through their agents and alter egos, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise with the South African and Bantustan governments, including Bophuthatswana.

182. The crimes against humanity for which Defendants are liable are intentional acts that were knowingly committed as part of widespread or systematic attacks directed against a civilian population.

183. The acts which form the basis of Defendants' liability for crimes against humanity include apartheid itself as well as murder, deportation or forcible transfer of population, revocation of nationality, imprisonment or other severe deprivation of physical liberty in violation of international law, torture, the persecution against any identifiable group or collectivity on political, racial, national, or ethnic grounds, and/or other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

184. Each single act constitutes a crime against humanity because it was committed within the context of widespread or systematic attacks against a civilian population. In addition, apartheid itself has been long recognized as a crime against humanity.

185. Plaintiffs and the members of the class or classes they represent suffered injuries as a result of Defendants' actions.

186. The Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each Defendant.

SECOND CLAIM FOR RELIEF
(DENIAL OF THE RIGHT TO A NATIONALITY)
(AGAINST DEFENDANT IBM)

187. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

188. Plaintiffs Mogoshane, Monsiane, Phiri, Sepheri, and Shole, on behalf of themselves and the class they represent, seek relief from the denial of the right to a nationality committed against them by the apartheid state with the complicity of IBM acting either directly and/or through their agents and alter egos, and either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. IBM conspired with state actors, including the South Africa and Bantustan governments, including Bophuthatswana.

189. Plaintiffs Mogoshane, Monsiane, Phiri, Sepheri, and Shole, and the class they represent were stripped of their South African nationality and citizenship, were restricted in their ability to travel in to, out of, and around South Africa, and were discriminated against by being forcibly geographically separated and segregated into homelands on the basis of race.

190. Plaintiffs Mogoshane, Monsiane, Phiri, Sepheri, and Shole, and the class they represent, suffered injuries as a result of IBM's actions.

191. IBM's actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against IBM.

THIRD CLAIM FOR RELIEF
(EXTRAJUDICIAL KILLING)
(AGAINST DEFENDANT FORD)

192. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

193. Plaintiffs Molefi, Ngcaka, Dyonashe, and Mzamo on behalf of themselves and their murdered sons, Hector Pieteron, Thembekile Ngcaka, Vuyani Adonis, and Bubele Mzamo, and the class they represent, seek relief from extrajudicial killings committed against them by the apartheid state with the intentional complicity of Ford acting either directly and/or through its

agents and alter egos, and, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. Ford conspired with state actors, including South African security forces.

194. These Plaintiffs and the class they represent suffered injuries as a result of Ford's actions.

195. Ford's actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against Ford.

FOURTH CLAIM FOR RELIEF

(TORTURE)

(AGAINST DEFENDANT FORD)

196. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

197. Plaintiffs Botha and Peters, on behalf of themselves and the class they represent, seek relief from torture committed against them by the apartheid state with the intentional complicity of Ford, acting either directly and/or through their agents and alter egos, and either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. Ford conspired with state actors, including South African security forces.

198. The tortures described herein were inflicted deliberately and intentionally for purposes that included, among others, punishing the victim or intimidating the victim or third persons.

199. Plaintiffs and the class they represent suffered severe mental and physical injuries as a result of Ford's actions.

200. Ford's actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against Ford.

FIFTH CLAIM FOR RELIEF
(CRUEL, INHUMAN OR DEGRADING TREATMENT)
(AGAINST BOTH DEFENDANTS)

201. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

202. All Plaintiffs and the class they represent suffered injuries as a result of Defendants' actions that constitute cruel, inhuman or degrading treatment (CIDT).

203. The acts described herein had the intent and the effect of grossly humiliating and debasing the Plaintiffs, forcing them to act against their will and conscience, inciting fear and anguish, and/or breaking their physical or moral resistance.

204. The acts described herein constitute CIDT committed against the Plaintiffs by the apartheid state with the complicity of the Defendants, acting either directly and/or through their agents and alter egos, and, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise, or committed directly by the Defendants themselves. Each Defendant conspired with state actors, including the South African and Bantustan governments and security forces.

205. All Plaintiffs and the class they represent suffered injuries as a result of Defendants' actions.

206. The Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each Defendant.

PRAYER FOR RELIEF

207. WHEREFORE, each and every Plaintiff prays for judgment against each Defendant as follows:

- A. for compensatory damages, including general and special damages;
- B. for punitive damages;
- C. for disgorgement of profits;
- D. for costs of suit, including attorneys fees; and
- E. for such other and further relief as the Court deems appropriate.

JURY DEMAND

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

Dated: August 8, 2014

Respectfully submitted by,

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