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FOREIGN DIRECT INVESTMENT IN SOUTH AFRICA

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Foreign direct investment ("FDI")** can be like the quality of Portia's mercy: "twice-bless'd."[1] It can rain high profits on multinational enterprises. And for host nations, especially developing countries, FDI can create jobs and capital for new investments, while providing access to know-how, technology, and lucrative export markets. For these reasons receptivity to FDI has long been a cornerstone of Nelson Mandela's vision for post-apartheid South Africa's approximately 40 million people. As leader of his political group, the African National Congress ("ANC"), Mandela made the importance he attached to FDI clear in an article he wrote for *Foreign Affairs* in 1993, the year before he assumed the South African presidency. Mandela stated:

> It is obvious to me that the primary components of our international economic relations, which must feed our development strategy, are the strengthening of our trade performance and our capacity to attract foreign investment. In addition, we must examine the possibilities of obtaining technical and financial assistance from the developed industrialized countries. We do not expect foreign investment to solve our economic problems, but we understand it can play a valuable role in our economic development...
>
> The ANC believes the most important way to attract foreign investment is to create a stable and democratic political environment. Also important is the development of legitimate, transparent, and consistent economic policies. Foreign companies should be treated as domestic companies, obeying our laws and gaining access to our incentives, and the ANC is

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** As used in this article, the term "foreign direct investment," or "FDI," means the acquisition of an interest in an enterprise which operates in a state other than that of which the investor is a national, the investor's purpose being to acquire an effective voice in how the enterprise is managed.

1. WILLIAM SHAKESPEARE, MERCHANT OF VENICE, act 4, sc. 1.

> committed to the principle of uniform treatment. And while we do not plan to provide exclusive incentives for all foreign investors, we realize it might be necessary to make special arrangements to attract the kind of investment that will make a real difference in South Africa.[2]

No wonder it seemed as though the world was only waiting for Mandela to become the official leader of a post-apartheid South Africa to re-invest in his nation. After all, there are many reasons why South Africa would appeal to foreign investors. Foremost, South Africa has the "most powerful economy" on the African continent.[3] According to the *Africa Competitiveness Report 1998*, published by the World Economic Forum, "South Africa's comparatively open economy (when compared to the rest of Africa) dominates the southern region and the continent, as a whole. Its $134 billion size is more than twice the size of any other African economy . . . ."[4]

Among the many advantages of doing business in South Africa are that "[i]ts transport and telecommunications infrastructure is unrivaled on the continent, it produces more electricity than the rest of Africa put together and it has a third of Africa's telephone lines."[5] South Africa is also rich in mineral resources, including gold, of which it is the world's leading producer and exporter; coal; chrome; copper; diamonds; iron; manganese; nickel; silver; and uranium.[6] Moreover, according to the U.S. Department of State, South Africa's "value-added processing of minerals to produce ferroalloys, stainless steel, and similar products is a major industry and an important growth area."[7] Also, South Africa's "diverse manufacturing industry is a world leader in several specialized sectors, including railway rolling stock, synthetic fuels, and mining equipment and machinery."[8]

In addition, there are indications that currency dealers' speculations may have caused the South African rand's undervaluation.[9] This

2. Nelson Mandela, *South Africa's Future Foreign Policy*, FOREIGN AFF., Nov.-Dec. 1993, at 86, 95.

3. Victor Mallet, *Trade and Investment: An African Renaissance*, FIN. TIMES SURV., Mar. 24, 1998, at IV.

4. WORLD ECONOMIC FORUM, THE AFRICA COMPETITIVENESS REPORT 1998, at 148 (1998).

5. Mallet, *supra* note 3, at IV.

6. *See generally* Office of Southern African Affairs, Bureau of African Affairs, (visited March 20, 1999), *Background Notes: Republic of South Africa, February 1998* <http://www.state.gov/www/background_notes/southafrica_0298_bgn.html>, at 5 [hereinafter *Background Notes*] (for a profile of the South African economy); *The Africa Competitiveness Report 1998*, *supra* note 4, at 146-49; NEW AFRICAN YEARBOOK 1997-1998 (1998), at 418-36.

7. *Background Notes*, *supra* note 6, at 5.

8. *Id.*

9. *Down with the Rand*, THE ECONOMIST, July 4, 1998, at 39. *See also Investment in South Africa*, 13 INT'L TRADE REP. 1581, 1613 (1996).

being the case, investing in South Africa now may be less expensive than in the future, when the rate might correct itself. Already several multinational corporations operating in South Africa have started to retool or add the capacity to increase export production.[10] In 1996, the annual rate of return on South African investments was an appealing 18% to 19%, compared with 14% on investments in Latin America, 12% to 13% on investments in Asia, and 9% on European investments.[11] Recently, the Investor Responsibility Research Center of Washington, D.C., surveyed the 261 U.S. companies currently doing business in South Africa. Respondents gave South Africa high marks for its infrastructure, legal system, supply of raw materials and macroeconomic management.[12]

However, despite apartheid's demise and South Africa's reacceptance into the world community, it has yet to experience the high levels of FDI it needs or expects.[13] According to South African finance minister Trevor Manuel, 1998 saw some 955 international companies engaged in business in South Africa, with interests in about 2,050 operations.[14] These operations controlled roughly $45 billion in assets, and employed approximately 380,000 people.[15] But according to the *Financial Times*, the statistics are somewhat misleading. Most of the foreign interests and assets in South Africa have been there for many years, while the "flow of foreign investment into new factories or businesses remains modest for a market of South Africa's size."[16]

This article will explore some of the reasons why FDI fled South Africa during the apartheid era; the current status of FDI in South Africa; and how South Africa is today addressing the concerns of present and prospective foreign investors. Finally, it will analyze why FDI in South Africa is so necessary and important to that nation, to the African continent as a whole, and to the industrialized world.

Historically, South Africa never rejected the ideological premises of FDI in the way that nations opposed to, or suspicious of, capitalism did. Vietnam, for example, passed laws expropriating and nationalizing private holdings of foreign and domestic individuals and corporations. FDI was viewed by that nation's leaders as an extension of imperialism and

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10. *See Investment in South Africa, supra* note 9, at 1613.

11. *See* Gary G. Yerkey, *BIT: U.S., South Africa Expect to Conclude Investment Treaty this Year, Aide Says,* INT'L TRADE DAILY, May 10, 1996, at 1, *available in* 1996 WL 5/10/96 BTD d2.

12. *See id.*

13. *See Asian Investment in South Africa. . . and the Indian Ocean,* THE ECONOMIST, Aug. 24, 1996, at 52; *Investment in Africa: Primary Problems,* THE ECONOMIST, Nov. 9, 1996, at 95.

14. Victor Mallet, *Buoyant Markets Belie Challenges,* FIN. TIMES SURV., Mar. 24, 1998, at I.

15. *Id.*

16. *Id.*

hence anathema to socialism and communism. Worse, the expropriations occurred during the decades when Vietnam did not necessarily recognize a duty to pay restitution.

Today, however, Vietnam has altered its ideology, in part because of its dire economic circumstances.[17] Laws have been put in place to protect and attract FDI, and 25 years after the end of the Vietnam War, Vietnam has recognized its duty to pay, in full, reparations or restitution for the expropriated or nationalized property of U.S. citizens.[18] Consequently, foreign investors are returning to Vietnam to do business in the new ways and forms acceptable to that government.[19]

In contrast, the problem for South Africa was not that it rejected FDI. Instead, foreign investors rejected South Africa. Although ostensibly committed to the growth-oriented economic policies of free enterprise capitalism, South Africa during the apartheid era instituted policies that were not conducive to FDI. Those policies included extensive state intervention in the economy; apartheid itself, which created economic distortions and political unrest; and a "dual rand" monetary policy. As one analysis has expressed it:

> South African economists in the 1980s described the national economy as a free-enterprise system in which the market, not the government, set most wages and prices. The reality was that the government played a major role in almost every facet of the economy, including production, consumption, and regulation. In fact, Soviet economists in the late 1980s noted that the state-owned portion of South Africa's industrial sector was greater than in any country outside the Soviet bloc. The South African government owned and managed almost 40 percent of all wealth-producing assets, including iron and steel works, weapons manufacturing facilities, and energy-producing resources. Government-owned corporations and parastatals were also vital to the services sector. Marketing boards and tariff regulations intervened to influence consumer prices. Finally, a wide variety of laws governed economic activities at all levels based on race.[20]

In an article for the March-April 1996 edition of *Foreign Affairs*, R. Stephen Brent, an officer in the U.S. Agency for International Devel-

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17. *See generally* Note, *Protection of Foreign Direct Investment in a New World Order: Vietnam--A Case Study*, 107 HARV. L. REV. 1995 (1994) [hereinafter *Protection of Foreign Direct Investment*] (discussing the laws and policies of the Vietnamese government regarding foreign direct investment).

18. *See* George Gedda, *U.S., Vietnam to Set Diplomatic Link*, ASSOC. PRESS, Jan. 27, 1995, at 2, *available in* 1995 WL 4360298.

19. *See Protection of Foreign Direct Investment*, *supra* note 17, at 2009-12.

20. FEDERAL RESEARCH DIV., LIBRARY OF CONGRESS, SOUTH AFRICA: A COUNTRY STUDY 186 (Rita M. Byrnes ed., 3d ed. 1997) [hereinafter LIBRARY OF CONGRESS].

opment mission in Pretoria, South Africa, assessed South Africa's governmental policies and performance under white rule as follows:

> Despite South Africa's reputation for a well-run economy under white rule, the policies of the National Party hampered growth severely. Apartheid brought about international isolation and economic sanctions, but the government's economic management was also poor. For all its criticisms of the ineptitude of African states under black rule to the north, the National Party followed policies after 1948 that resembled much of the rest of Africa. It developed massive bureaucratic and parastatal structures to provide public employment for Afrikaners, many of whom were poor in 1948. It embraced strong protectionism and import substitution. It spent lavishly on public investments, especially defense and supposedly strategic industries. And it set up puppet regimes in the so-called homelands it established that had all the elements of bad governance that the National Party criticized: autocracy, patronage, corruption, and enormous budget deficits.
>
> These policies did not have the same catastrophic effects as in other countries, partly because South Africa was trying to subsidize only 15 percent of the population [i.e., the whites] and had a cushion of vast gold revenues. But the policies did limit growth. After steady gains in per capita income from 1946 to 1974, income stagnated from 1974 to 1981 and fell by 20 percent from 1981 to 1994. Today South Africa's per capita income of $2,700 is practically what it was in the mid-1960s.[21]

The institutionalization of apartheid 1948 culminated decades of racial discrimination and formally created dual economies and societies within South Africa. Laws like the Group Areas Act of 1950 restricted the free movement of blacks and "had the effect of zoning all of South Africa's territory according to race."[22] Individual blacks were only allowed to live and work in the areas governed by the tribe or local government of which the individual was officially designated a member. The residents of these "homeland" areas were often "barely able to support themselves, owing in part to the homelands' arid land, inferior roads and transportation, and overcrowding; some were therefore forced to travel great distances to work in 'white' South Africa."[23] Other laws, such as the Separate Amenities Act of 1953, gave local officials authority to segregate public facilities and accommodations, including beaches, buses, elevators, hotels, libraries, railway stations, restau-

21. R. Stephen Brent, *South Africa: Tough Road to Prosperity*, FOREIGN AFF., Mar.-Apr. 1996, at 113-14.

22. FOREIGN AREA STUDIES, THE AMERICAN UNIV., SOUTH AFRICA: A COUNTRY STUDY 240 (Harold D. Nelson ed., 2d ed. 1981) [hereinafter FOREIGN AREA STUDIES].

23. LIBRARY OF CONGRESS, *supra* note 20, at 185.

rants, telephone booths, theaters, train stations, and the like, thereby forcing social separation of the races.[24]

Apartheid proved expensive and unsettling. For one thing, there was a high cost of maintaining the large security apparatus required to enforce apartheid. Also, investors grew nervous over brewing social unrest. As a result, the government in 1961 found itself faced with a sudden deterioration in its balance of payments. The government's response was to inhibit the flight of investment capital by imposing a "dual rand" currency and exchange rate system.[25] The "financial rand" was defined as "the local proceeds of South African assets owed by persons resident outside of the Republic [of South Africa]."[26] In other words, the financial rand became the currency used by foreigners investing in government approved ventures.[27] The "commercial rand," by contrast, was made the domestic currency.[28] The financial rand and the commercial rand were developed to block the easy repatriation of non-South African owned securities and prevent a run on foreign reserves.[29] By separating the currencies, the commercial rand was never affected by the fluctuation in the discount at which the financial rand traded, which sometimes was as high as 30%.[30]

One legal scholar has asserted that the Sharpeville Massacre precipitated South Africa's 1961 balance of payments crisis. On March 21, 1960 in Sharpeville, a modest township near Johannesburg, South African authorities opened fire on anti-apartheid demonstrators gathered outside a police station to protest apartheid restrictions. According to Nelson Mandela, "more than seven hundred shots" were directed into a crowd of several thousand protesters.[31] When the shooting stopped, "sixty-nine Africans lay dead."[32] More than 400 people were wounded, "including dozens of women and children."[33] In Mandela's view, "it was a massacre, and the next day press photos displayed the savagery on front pages around the world."[34] Mandela recalled, "the shootings at Sharpeville provoked national turmoil and a government crisis."[35]

Nevertheless, the white society and economy benefited at first from

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24. *See* FOREIGN AREA STUDIES, *supra* note 22, at 240.

25. *See* Gary S. Eisenberg, *The Policy and Law of Foreign Direct Investment in the New South Africa* 28 J. OF WORLD TRADE 5, 16 (Feb. 1994).

26. *Id.* at 17.

27. *Id.* at 16.

28. *Id.*

29. *Id.* at 16-17.

30. Eisenberg, *supra* note 25, at 17.

31. NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA 238 (1995).

32. *Id.*

33. *Id.*

34. *Id.*

35. MANDELA, *supra* note 31, at 238.

governmental support and prospered sufficiently under the apartheid regime for South Africa to be considered a "middle-income country" by the World Bank.[36] By contrast, the black society and economy suffered as a consequence of having almost no governmental support. The result for blacks was massive poverty, unemployment, and poor education. A report prepared by the federal research division of the U.S. Library of Congress in 1987, entitled *South Africa: A Country Study*, concluded:

> By the late 1980s, black poverty was so serious that the government began to take steps to alleviate some of the most dire impacts of apartheid. Government statistics then indicated that more than 16 million people were living below internationally determined minimum-subsistence levels. Using nutritional standards as an alternative measure, an estimated 2.3 million people were at severe risk from hunger and malnutrition. In 1988 the [South African] minister of national health and population development characterized the crisis as 'worse than the Great Depression,' and in response, the government initiated food programs and other social welfare initiatives.[37]

By then, the nation's economy had deteriorated badly. "Discriminatory legislation based on race [had] affected the mobility of capital, the development of enterprises, and internal trade. All of these [had] retarded economic growth."[38] Yet for ideological reasons, South African whites for years had refused to acknowledge what one observer called the "basic economic interrelationship of the homelands and the White area."[39] In fact, not until 1980 did the government finally concede that South Africa's economic well-being depended on integration of the black and white economies, if not the societies.[40] By that time, however, FDI, which had been a "major catalyst" in the growth and development of the South African economy since the late 1800s, had declined significantly.[41] To outside observers, it began to appear that apartheid, and the government's inability to quell growing black unrest, was having a negative influence on foreign investors.[42]

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36. *See* FOREIGN AREA STUDIES, *supra* note 22, at 161.
37. LIBRARY OF CONGRESS, *supra* note 20, at 186.
38. FOREIGN AREA STUDIES, *supra* note 22, at 162.
39. *Id.*
40. *Id.*
41. *Id.* at 207.
42. *See* FOREIGN AREA STUDIES, *supra* note 22.

> Between 1973 and 1978 total foreign investment more than doubled. [T]hrough 1976 the rate of overall growth (public and private sectors, direct and nondirect investment) was over 20 percent and reached a high of 29 percent in 1975. The rate dropped sharply in 1977 to 7.6 percent and to 7.3 percent in 1978. Among the factors that appeared to have played a part in the decline were investor concerns after the political disturbances in Soweto in 1976. . . .

Starting in the mid-1970s, throughout the 1980s, and on into the early 1990s, international trade sanctions and investment boycotts became weapons of choice in the world's war against apartheid. The effects on South Africa's economy were devastating. As one report recounts:

> These [trade and investment] measures included a voluntary arms embargo instituted by the United Nations (UN) in 1963, which was declared mandatory in 1977; the 1978 prohibition of loans from the United States Export-Import Bank; an oil embargo first instituted by OPEC in 1973 and strengthened in a similar move by Iran in 1979; a 1983 prohibition on IMF loans; a 1985 cutoff of most foreign loans by private banks; the United States 1986 Comprehensive Antiapartheid Act, which limited trade and discouraged United States investors; and the 1986 European Economic Community (EEC) ban on trade and investment. The Organization of African Unity (OAU) also discouraged trade with South Africa, although observers estimated that [economically dependent] Africa's officially unreported trade with South Africa exceeded R10 billion [rand] per year in the late 1980s.
>
> The most effective sanctions measure was the withdrawal of short-term credits in 1985 by a group of international banks. Immediate loan repayments took a heavy toll on the economy. More than 350 foreign corporations, at least 200 of which were United States owned, sold off their South African investments.[43]

Today, however, South Africa should be very appealing to potential foreign investors because the country wants FDI, needs it, is amenable to it, and a democratic government has replaced apartheid. Among other measures, South Africa has passed new regulations promoting FDI in public and private partnerships.[44] These include regulations that reduce tax rates and import tariffs; allow for easier exchange and repatriation of profits; and which address lagging productivity and the overall socio-economic difficulties of the black population. Taken together the government hopes its policies will reduce crime, which has risen to daunting levels, and increase overall social stability.

To manage the evolution from apartheid to pluralistic democracy, a transitional Government of National Unity drafted a new constitution, which became effective on February 4, 1997.[45] Through the establishment of a Truth and Reconciliation Commission, the government is attempting to address both the black community's demand for an ac-

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Id. at 208.

43. LIBRARY OF CONGRESS, *supra* note 20, at 192-93.

44. *See* Mawusi Afele, *Africa Cries Out for Investment, but Will the World Listen?*, DEUTSCHE PRESSE-AGENTUR, July 18, 1996, *available in* WL 7/18/96 DCHPA.

45. *New South African Constitution Handed Out Free*, DEUTSCHE PRESSE-AGENTUR, Mar. 17, 1997, at 1, *available in* WL 3/17/97 DCHPA.

counting of the human rights violations committed by the apartheid regime, and the white community's fear of retaliation.[46] Even with these progressive policies, however, the current rate of FDI is disappointing.[47] Pinpointing the reason why is much harder than citing any one set of statistics or figures. The problem may be more a matter of perception on the part of prospective foreign investors than of reality. Consequently, as the government is already doing, South Africa can only hope for the best, give assurances, and continue to address the problems it knows affect FDI.[48]

For example, one of the problems is that post-apartheid South Africa inherited one of the most complex tariff systems in the world.[49] By joining the World Trade Organization ("WTO") in December 1994, the government agreed to abide by the general goal of reducing or eliminating tariffs.[50] A five-year plan to reduce or eliminate tariffs on most industrial products began in 1995, giving credibility to South Africa's commitment to overall tariff reform.[51] There had been some skepticism about that commitment because of the potentially detrimental effect tariff reduction and other policies aimed at attracting FDI might have on the alliance between the ANC and the country's labor unions.[52] For example, lower tariffs could conceivably put inefficient domestic industries out of business, thereby increasing the black unemployment rate, which has reached a staggering 41% overall and is even higher among young people.[53] The government, however, achieved a compromise position with labor with its five-year plan announced in June 1996.[54] The government introduced tax breaks for labor intensive industries, and committed to developing 409,000 jobs by the year 2000.[55]

The government also wants to remove all exchange controls "as soon as circumstances are favorable."[56] It has already abolished the

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46. *See generally* Paul Lansing & Julie C. King, *South Africa's Truth and Reconciliation Commission: The Conflict Between Individual Justice and National Healing in the Post-Apartheid Age*, 15 ARIZ. J. INT'L & COMP. L. 753 (1998).

47. *See* Mallet, *supra* note 14, at I.

48. *See* WILLIAM M. HANNAY & LAUREN G. ROBINSON, *Introduction to* A LAWYER'S GUIDE TO DOING BUSINESS IN SOUTH AFRICA 6-7 (Vaughn C. Williams et al. eds., 1996).

49. *See* Tani Freedman, *Southern African Trade Hobbled by Complex Tariffs*, AGENCE FRANCE-PRESSE, Apr. 23, 1998, at 1, *available in* 1998 WL 2267308.

50. *See* Leora Blumberg, *Trade Regulation in South Africa*, *in* A LAWYER'S GUIDE TO DOING BUSINESS IN SOUTH AFRICA, *supra* note 48, at 89.

51. *See id.* at 90.

52. *See* Mark Ashurst, *News: World Trade: Unity of Apartheid's Foes Under Strain*, FIN. TIMES, July 9, 1996, at 4.

53. *See* Brent, *supra* note 21, at 114.

54. *See Hilfe Country Report: South Africa: July 1995*, July 1, 1996, at 18, *available in* 1996 WL 11753513 [hereinafter *Hilfe Country Report*].

55. *See id.* at 19.

56. *Id.* at 25.

double rand system.[57] South Africa is also expected to remove controls on foreign investment by its citizens.[58] Ensuring the free flow of funds by eliminating currency controls would more than likely be an "essential part" of any bilateral investment treaty ("BIT") with the U.S.[59] The policy might also serve to quell the fears of South Africa's white business community. If white South Africans know they have the right to exchange and remove their money from the country, any sense of panic might ease. Hence they might feel less inclined to actually do so.

South Africa is also seeking to sign tax treaties with several countries as a further means of attracting FDI. For example, the new tax treaty with the U.S. provides relief from double taxation and reduces, or in some cases eliminates, withholding tax on dividends, interest, and royalties.[60] Other South African tax initiatives include accelerated depreciation write-offs and the possibility for up to three, two-year tax holidays under certain conditions.[61]

Tax treaties encourage FDI because they allow potential investors to plan for the consequences of their investment choices. For instance, if a company knows it will receive a credit or deduction for taxes paid to the foreign country in which it has a subsidiary, it is more likely to invest in that country than in another nation with which there is no tax treaty, and the treatment of foreign taxes paid is uncertain. Most of the countries which compete with South Africa for FDI have entered into tax treaties with many states. Executing tax treaties, like the one with the U.S., makes South Africa more competitive with these nations.

To make investment even more attractive, the government has taken steps to curb the low worker productivity which seems to have always plagued South Africa.[62] "South Africa's productivity is notoriously poor by international standards."[63] According to Dr. Jan Visser, executive director of the National Productivity Institute ("NPI"), a South African consulting firm which each year advises between 500 and 600 companies on how to improve worker output, South Africa's low productivity "is an organisational issue rather than a national norm."[64] Visser explains:

57. *See Mandela Looks for Foreign Investors*, THE ECONOMIST, May 13, 1995, at 39.

58. *See* Yerkey, *supra* note 11.

59. *See id.* (quoting Dana DuRand, counselor for trade and industry at the South African Embassy in Washington, D.C.).

60. *See* Tom Herman, *Tax Report: A Special Summary and Forecast of Federal and State Tax Developments*, WALL ST. J., Feb. 19, 1997, at A1.

61. *See generally South Africa-Mozambique-Swaziland: Lubombo Corridor to Catalyze Integration*, INT'L MKT. INSIGHT REP., May 14, 1998, *available in* 1998 WL 8068620.

62. *See* Madeleine Wackernagel, at 1, *South African Productivity: A National Priority*, AFR. NEWS SERV., Aug. 26, 1996, *available in* 1996 WL 10503796.

63. *Id.*

64. *Id.*

> One of the biggest problems in terms of raising productivity in this country is the lack of cooperation between management and unions. They tend to fight, not to support each other. Strike negotiations are a case in point—a perfect example of how not to get along. For too long, organizations have set their sights on creating profits for shareholders, as opposed to creating wealth that can be shared around more equitably.[65]

According to Visser, South African labor and management have made progress toward a "common goal and a common vision," and toward the introduction of modern labor relations and management techniques.[66] He admitted to an interviewer that South Africa "fell behind somewhat during the period of isolation . . . ."[67] He insisted, however, that South African managers "are taking greater interest in overseas developments and applying them locally, albeit slowly."[68]

In addition, the government is planning ways to make FDI easier from a logistical standpoint. One plan calls for the creation of "one-stop" investment facilitation centers where prospective foreign investors could do everything necessary, such as obtaining licenses and permits, to start doing business in South Africa immediately and avoid having to deal with numerous government agencies.[69]

Another policy is to privatize some, if not most, large state enterprises, which should create tremendous FDI opportunities. A prime example of the government's resolve to commence privatization has been the acquisition of an equity partner in Telkom, the state telecommunications enterprise. According to one report, Telkom's partial privatization, by which the South African government relinquished a 30% interest in the parastatal, was motivated by the potential for "reduced tariffs, extra calls, and higher tax revenues that have followed such moves in other countries."[70] The government is planning more whole or

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65. *Id.*
66. Wackernagel, *supra* note 62, at 1.
67. *Id.* at 2
68. *Id.*
69. *See South Africa: A Trade Strategy that Dreams of Jobs*, AFR. NEWS SERV., Sept. 18, 1998, at 4, *available in* 1998 WL 17256788.
70. *VeldCom*, THE ECONOMIST, May 16, 1998, at 64. The *Economist* reported that in March 1998, a U.S. company, SBC Communications of San Antonio, Texas, acquired an 18% share of Telkom. *See id.* According to the report, SBC stands to profit handsomely from the acquisition, if current market trends are any indication, in large part because of growing South African consumer demand for mobile phones. The *Economist* report states:

> The bright spot for Telkom is mobiles. Since 1993, when the devices were first licensed, the number of users has rocketed from 12,500 to about 1.6 m, making South Africa one of the world's largest markets for mobile phones outside the OECD [Organization for Economic Co-operation and Development]. In a country where public phones are almost non-existent (people steal them for their value as scrap metal), the cellphone is a must for the well-off and a status symbol for every-

partial privatization.[71]

As stated, South Africa has made itself more attractive for FDI not only because it wants FDI, but also because it needs it. FDI is a cornerstone of the government's approach to economic development. In the past, during decades spent in exile or in jail ANC leaders espoused socialist ideals.[72] But contrary to conventional expectations, the ANC since coming to power in 1994 has committed South Africa to conservative economic policies, such as deficit reduction.[73] Toward that end the government would like to create jobs for the black population, but it cannot expand the civil service payroll as a means of reducing unemployment.[74] Due in part to the current lack of FDI, however, some government intervention has been required.[75] The primary governmental initiative designed to address the inequalities created by apartheid is the Reconstruction and Development Program ("RDP").[76]

So far, the RDP has emphasized the redirection of current government spending rather than new expenditures. The government, since 1996, has been trying to reduce the deficit to 3% of its gross domestic product ("GDP") by the year 2000, down from 5.2% in 1996.[77] This commits the government to a difficult and dangerous balancing act. On the one hand, it must hold spending to levels that will make South Africa attractive to foreign investors. On the other, it must improve black living conditions enough to avoid political unrest until such time as the benefits of increased FDI can be realized. It is only through increased FDI that the South African GDP can grow between 5% and 6% annually, the rate required to significantly reduce the high rate of black unemployment.[78] As one analyst has concluded, "[p]rivate sector growth is

> one else. Nervous drivers like to know they can call for help if they break down somewhere dangerous. A recent letter to the Sowetan raged against immoral township girls who sleep with any man who owns a mobile phone.
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> Telkom is one of two mobile providers. It is a partner of Britain's Vodaphone in a joint venture called Vodacom, which claims millions of subscribers. Its estimated pre-tax profits are 500 million rand ($100m) on sales of perhaps 1.8 billion rand [$360 million]. MTN, the other mobile firm, with fewer customers, but wealthier ones, probably has similar revenues. The good times are likely to continue . . . .

Id.

71. *See, e.g., Mandela Says Foundations Laid for a Better Life, but Admits Problems*, DEUTSCHE PRESSE-AGENTUR, Feb. 7, 1997, at 1, *available in* WL 2/7/97 DCHPA.

72. *See* Mallet, *supra* note 14, at I.

73. *Id.*

74. Brent, *supra* note 21, at 116.

75. *See id.*

76. *Id.* at 114.

77. *See* Ashurst, *supra* note 52, at 4.

78. *See* Brent, *supra* note 21, at 116. The government has already demonstrated its resolve to avoid inflating the civil service or having a fire sale of all of the parastatals.

the only long-term solution for South Africa's economic straits. But to generate the political capital necessary to pursue long-term growth, the government will have to combine economic liberalization with effective interventions to help the black majority."[79]

Additionally the government must decide whether to focus on capital intensive, as opposed to labor intensive, FDI. The two are antithetical. Capital intensive production methods utilize the most advanced equipment and technology to decrease labor costs, whereas labor intensive methods are ordinarily used when there is insufficient capital to invest in the latest technological advances. On the one hand, South Africa needs to update its technological infrastructure. In the long run, capital intensive production methods will make South African products more competitive and thus expand export markets. Conversely, however, labor intensive FDI would reduce black unemployment—at least in the short-run—which appears to be an economic and political imperative. For this reason the government has introduced tax breaks for labor intensive industries.

Fortunately, opinion polls indicate that South Africa's black population does not seek immediate payoffs, but is willing to endure incremental change for small but tangible improvements now, combined with the realistic possibility of a better life for black children.[80] According to one observer, South Africa's black communities have shown "little evidence of populist factions in revolt against the compromises of the new government."[81] However, if neighboring Zimbabwe's experience is any indication, the South African government may have no more than a ten-year window of opportunity to make significant changes.[82]

Yet South Africa's domestic economy cannot provide the capital necessary to develop jobs because there is a drastic shortage of savings, from which domestic capital investment normally comes; productivity of domestic industries is weak; and the skill level of the work force is low. *See id.* at 115. Therefore, it is only through FDI that South Africa can acquire the technical and capital revitalization to improve its export production and grow its economy to reduce the number of unemployed.

79. *Id.* at 114.

80. *See id.* at 117.

81. *Id.* at 113. Apparently most whites feel the same way. Brent states:

> Since the [1994] election, the once-feared threat of right-wing violence has faded. Although extremist Eugene Terre'blanche of the Afrikaner Resistance Movement still appears on his horse from time to time, most conservative Afrikaners accept the new government, which President Mandela has made easier for them by bending over backward to respond to white concerns.

Id.

82. *See id.* at 116-17. In 1980, the people of Zimbabwe were willing to accept slow economic progress, but when by 1994 they had not experienced significant changes in black participation in the economy through business ownership, there was a backlash against the government. *See id.* Even though the government of Zimbabwe succeeded in correcting many social welfare problems, and increased black employment by the government, it failed to provide measures to encourage black business ownership and reduce

As stated, the South African government cannot provide the necessary type of long term improvements for blacks without significant contributions from the private sector through FDI. In addition, white South Africans must realize and accept that their expectations must change. Whites no longer live under a regime which benefits them at the expense of others, as did apartheid, a system which, as one writer put it, "oppressed the majority of South Africans for the enrichment of a few."[83] To avoid turmoil and unrest, the government will have to keep all sectors of the economy focused on the long term growth that will provide jobs and allow for the development of the black community.[84]

Aside from the economic issues that concern foreign investors, the political question of who and what will come after Nelson Mandela lingers. His ANC will clearly remain the majority political group. Going into the 1999 elections, the ANC controls over 60% of the seats in parliament.[85] The question is whether the ANC will be able to govern effectively and responsibly without Mandela.

It is possible. Mandela is not as important to the day-to-day operation of the government as would seem at first blush.[86] His importance derives from his moral integrity and ability to unify various factions.[87] His nation and the world have clung to him as a "saint-like figure," both while he was in prison and since his release.[88] One observer has described him as "among the planet's foremost moral authorities."[89] Mandela has devoted most of his life, including nearly 30 years in prison, to the struggle against apartheid.[90] As an ANC leader, he came to understand the ways in which the colored, Asian, and white communities, as well as blacks, were denigrated by apartheid, and that therefore South Africa itself was the victim.[91] He has championed South Africa as a

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white control of the economy. *See id.* Instead, the Zimbabwean government settled for alleviating black unemployment through government jobs and benefits. *See id.*

83. Pumla Gobodo-Madikizela, *Facing the Truth in South Africa*, WASH. POST, Nov. 1, 1998, at C7.

84. *See* Brent, *supra* note 21, at 117. "The challenge for the [South African] government is to keep the focus on long-term growth but provide enough benefits to the majority population along the way that political consensus can be maintained and moral commitments protected." *Id.*

85. Lansing & King, *supra* note 46, at 759. Next in parliamentary representation are the New National Party and the IFP. Other political parties in the South African parliament are the Freedom Front, the Democratic Party, the Pan Africanist Congress, and the African Christian Democratic Party. *Id.*

86. *After He's Gone*, THE ECONOMIST, Oct. 12, 1996, at 17.

87. *Id.*

88. *Id.*

89. James Bennet, *The Testing of a President: The Visitor; Mandela, at White House, Says World Backs Clinton*, N.Y. TIMES, Sept. 23, 1998, at A26.

90. *See generally*, MANDELA, *supra* note 31 (describing Mandela's life and career, including his years in prison).

91. *See id.*

place of equality for all people, regardless of race, and he has promoted reconciliation.

This ability to understand, without necessarily agreeing with or excusing the behavior of all concerned, has made Mandela a person with whom the leaders of the different racial groups have been able to achieve compromise. Mandela demonstrated this ability by insisting that Chief Mangosuthu Buthelezei, and the Inkatha Freedom Party ("IFP") which he leads, be included in the transitional government of national unity that drafted the new constitution. Buthelezi and the IFP had opposed the ANC throughout the struggle against apartheid.[92] Mandela's conciliatory attributes were also reflected in the strong support for the new constitution demonstrated by the white-dominated New Nationalist Party, the modern incarnation of the Nationalist Party that institutionalized apartheid in 1948.

Yet South Africa's future cannot depend solely on one man. No one understands this better than Mandela himself, who will be 80 years old when his term of office expires in 1999, and has made clear that he will not run for a second term of office.[93] Besides, while his moral courage and efforts to lead South Africa out of apartheid should be lauded, his skills as president should not be held out as perfect or otherworldly. His tenure was successful in the broadest possible sense: he transformed his country from "a racist, pariah state to a major, regional diplomatic power."[94] He can also take pride in the fact that his policies "brought clean water to 3 million people and connected more than 2 million people to the electricity grid."[95] Like other politicians, though, Mandela has made mistakes and has been involved in funding as well as personal scandals.[96] Thus, his departure as president of South Africa should not be viewed as an apocalypse.

Mandela has already delegated most of the daily running of the government to Deputy President Thabo Mbeki, and has virtually

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92. *See* Lansing & King, *supra* note 46.

> Currently, there are nine major tribes in South Africa. The largest is the Zulu tribe, which dominates the Inkatha Freedom Party (IFP). The second largest is the Xhosa tribe, which dominates the ANC (Nelson Mandela is a Xhosa prince). Historically, the Zulu and the Xhosa have not gotten along. The antagonism between the tribes was used by the white government in the 1970s and 1980s to promote division among blacks, particularly between the IFP and the ANC.

Id. at 758. *See also* Kenneth D. Kaunda, *The First Shall Be the Last: The African National Congress and the Inkatha Freedom Party Dispute*, 37 ST. LOUIS U. L.J. 841, 842 (1993). Mr. Kaunda is former president of Zambia.

93. *After He's Gone*, *supra* note 86, at 17.

94. Daniel J. Wakin, *Mandela: "Long Walk" Is Not Over*, ASSOC. PRESS, Feb. 5 ,1999, *available in* 1999 WL 11925039.

95. *Id.*

96. *After He's Gone, supra* note 86, at 17.

anointed Mbeki as his successor.[97] As long as Mandela is in the background and participating in the ANC, even if he no longer holds a governmental office, Mbeki's transition to power should be smooth. Once in office Mbeki must show that he, too, can be a consensus builder. He must also be able to control the more radical elements within the ANC, a tough job if the promised improvements in black living conditions are not forthcoming.

Mbeki has worked with former South African president F. W. de Klerk, Chief Buthelezei, and other leading economic ministers on the economic council that guides the growth of South Africa's economy.[98] An economist by training, Mbeki was educated in the United Kingdom, and spent many years in exile in the former Soviet Union during the apartheid era.[99] To his advantage, he has impeccable credentials within the ANC.[100] In 1997 Fikile Bam, a judge who was imprisoned with Mandela on Robben Island, described Mbeki to an interviewer as a courteous man, "good at economic issues and foreign policy."[101] Bam went on to speculate that Mbeki might even be able to handle the "wealth gap" better than Mandela.[102] Like Mandela, Mbeki focuses on economic liberalization.[103] His designation as Mandela's "heir apparent" should comfort the white population, the ANC, and the international community as a whole because he will probably not seek to make any dramatic changes in the policies followed by Mandela's government.[104]

Besides, South Africa's future as a pluralistic democracy lies not in any one man's ability to govern, but rather first and foremost in the new South African constitution, which is the culmination of all the goals and aspirations Mandela has for a racially tolerant South Africa.[105] When he signed the document into law on December 10, 1996, in Sharpeville, site of the dastardly massacre that became the rallying cry of the anti-apartheid movement, "Mandela's pen brought to life long-dreamed-of guarantees of racial equality and cultural protection, as well as freedom of expression, association and religion, in one of the world's most liberal constitutions."[106] Ultimately, it will take the success of that constitution to alleviate the lingering concerns of current

97. *See id.*

98. *See* Brent, *supra* note 21, at 117-18.

99. *See* Anthony Lewis, *Part Democrat/Part Autocrat; Mandela the Pol*, N.Y. TIMES MAGAZINE, Mar. 23, 1997, at 44; *Hilfe Country Report*, *supra* note 54, at 8.

100. *See Hilfe Country Report*, *supra* note 54, at 8.

101. Lewis, *supra* note 99, at 44.

102. *Id.*

103. *Hilfe Country Report*, *supra* note 54, at 8.

104. *Id.*

105. *How Wrong Is It Going?*, THE ECONOMIST, Oct. 12, 1996, at 23.

106. Lynne Duke, *Hopes and History Mingle as Mandela Signs Charter: Ceremony Held in Town of 1960 Massacre*, WASH. POST, Dec. 11, 1996, at A19.

and prospective foreign investors.

In addition to the matters already discussed, there are other fears which inhibit current and prospective FDI. These fears will have to be addressed by the next South African government. Among them: trepidation over the strength of South Africa's labor unions and the labor movement's alliance with the ANC;[107] the limited availability of qualified black managers and executives;[108] the manner in which established South African conglomerates might act to protect their home markets from foreign "intruders;"[109] and worries over South Africa's high crime rate.[110]

In regard to South African crime, the random and violent nature of it seems to be its most abhorrent aspect.[111] The government can, however, claim some success in the war against it. For instance, recent statistics show that the South African murder rate has declined steadily since 1994.[112] Nevertheless, in his final state of the nation speech to parliament in February 1999, Mandela felt compelled to address the crime problem. He assured his countrymen, "[t]he battle against crime has been joined and we have no doubts at all who the victors will be."[113]

107. *See generally* Eric Taylor, *The History of Foreign Investment and Labor Law in South Africa and the Impact on Investment of the Labour Relations Act 66 of 1995*, 9 TRANSNAT'L LAW. 611 (1996) (for a discussion of South Africa's labor laws and the relationship between the South African labor movement and the ANC).

108. For a discussion of South Africa's efforts to include blacks in the executive and managerial job market, see Lynne Duke, *South African Blacks Lag in Job Market Despite Gain in Political Power*, WASH. POST, July 14, 1996, at A24.

109. *See* Mallet, *supra* note 14, at I. This concern over possible protectionist behavior by existing South African conglomerates is best-addressed by the government's adherence to the National Treatment Obligation (NTO). South Africa committed itself to NTO, which prohibits discriminatory differentiation between foreign and domestic enterprises, when it joined GATT and the WTO. For a discussion of South Africa's ideological commitment to NTO, see Mandela, *supra* note 2, at 95. "Foreign companies should be treated as domestic companies, obeying our laws and gaining access to our incentives, and the ANC is committed to the principle of uniform treatment." *Id.*

110. *See* Mallet, *supra* note 14, at I. According to *The Economist*, a combination of factors account for the rise in South African crime. One is that South Africa's criminal justice system is a weak and relatively ineffective relic of the bygone apartheid era. *See How Wrong Is It Going?*, *supra* note 105, at 21. Another is that organized crime has infiltrated the country, and South Africa has become a money laundering center, as well as a transshipment point for illegal drugs and stolen cars. *See id.* at 22.. Analysts differ as to the crime rate's impact on FDI. Some feel that the high crime rate makes foreign executives and their workers reluctant to relocate to South Africa. *See, e.g.*, Mallet, *supra* note 14, at I. Others say that crime, in and of itself, "probably does not deter foreign investors much: if there is money to be made or a market to conquer, businessmen will go there." *How Wrong Is It Going?*, *supra* note 105, at 22. Even this latter group concedes, however, that at the very least, crime reduces tourism. *See id.*

111. *How Wrong Is It Going?*, *supra* note 105, at 22.

112. *See Mandela: 'Long Walk' Is Not Over*, *supra* note 94.

113. Suzanne Daley, *Mandela, in Last State of the Nation Speech, Pleads for Peace*, N.Y. TIMES, Feb. 6, 1999, at A3.

By far the greatest obstacle facing South Africa, however, is the burden of its past: the political, economical, racial, and other wounds that are apartheid's bitter legacy. South Africa is taking steps to overcome its past. The government established the Truth and Reconciliation Commission in 1994 to chronicle human rights abuses committed during the apartheid era. Chaired by Nobel peace laureate Archbishop Desmond Tutu, the Commission has been "generally regarded as a successful instrument of national reconciliation."[114] The Commission's guiding philosophical principle, "promoted as a model for nations emerging from internal conflict, was that the full public exposure of political crimes was preferable to mass criminal prosecutions as a way of putting the past to rest."[115] In other words, by granting amnesty in exchange for information, the Commission has encouraged human rights violators to come forward and disclose their crimes in order to bring certainty and closure to the families of their victims, and to the nation as a whole. Archbishop Tutu has described the Commission's objective and purpose as follows:

> We are saying people who have committed horrendous acts, demonic acts, monstrous acts, are not monsters, are not demons. They remain human beings. We don't say that because you are a perpetrator, therefore you remain a perpetrator forever. We say that there is a possibility of changing...We—we are hoping that white people will, when they hear the stories, say, 'Isn't that incredible?' 'Aren't we lucky that black people are not wanting to treat us as we treated them?' I'm saying, white people, please, can you hear the generosity that is being offered you? Can you hear our people saying, 'Despite the—the agony that you have caused us, we want to be friends with you'?[116]

But the Commission has not restricted its investigations to human rights abuses committed by whites. Instead, it has endeavored to strike a balance between those on both sides of the anti-apartheid struggle. As President Mandela has stated, "[w]e believe that a government of national unity should be even-handed and grant amnesty, not only to those who committed offenses in their opposition to apartheid, but also to those who committed offenses in defense of apartheid."[117] As an unfortunate result of the Commission's even-handedness, neither the ANC

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114. Christopher C. Joyner, *Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability*, 26 DENV. J. INT'L L. & POL'Y 591, 610 (1998).

115. Lynne Duke, *South African Report Draws Bitterness: Apartheid Probe's Findings Anger ANC and Former Leaders*, WASH. POST, Oct. 30, 1998, at A1.

116. Interview with Archbishop Desmond Tutu, *60 Minutes: Forgive but Not Forget* (CBS television broadcast, Feb. 16, 1997), *available in* 1997 WL 7899905.

117. Steven A. Holmes, *South Africa Panel to Probe Political Violence*, HOUS. CHRON., June 8, 1994, at 15.

nor the country's former white rulers were pleased by its report issued in October, 1998. The 3,500-page document described the nation's former white leaders as "perpetrators of gross human rights violations . . . ."[118] But the document also "attacked the claim to the nation's moral high ground by the ANC, which led the struggle against apartheid."[119]

For all its good intentions, it remains to be seen whether the Commission's work will produce the longed for reconciliation of South Africa's racial groups. As one legal scholar has explained:

> Truth commissions do not produce full justice. They are not intended to. Nor will a truth commission reveal the whole truth. But, then again, it could not have been expected to. Reconciliation will stay incomplete, and so, too, will the hope for justice. Forgiveness, not justice, is the price deemed necessary if a truth commission is to help heal a society of the pain and suffering brought about by internal war and violent ethnic strife. And this poses the crux of the dilemma: Should those who perpetrate the most terrible of crimes escape punishment, at the price only of admitting their guilt by showing remorse? For the experience chosen by South Africa, the price of peace and reconciliation is "the truth" with amnesty. It is neither justice nor compensation. How well forgiveness actually works as a strategy for fostering political stability will only be seen in coming years.[120]

In the meantime, Mandela has expressed the need for what in effect amounts to a reconstruction and development program for the South African soul.[121] In his final state of the nation address, the outgoing president lamented lingering racial animosities, especially those harbored by whites, and issued a call for all South Africans to rise in support of their new democratic government. He complained:

> We slaughter one another in the stereotypes and mistrust that linger in our heads . . . and the words of hate we spew from our lips. We slaughter one another in the responses that some of us give to efforts aimed at bettering the lives of the poor. We slaughter one another and our country by the manner in which we exaggerate our weaknesses to the wider world, heroes of the gab who astound their foreign associates by their self-flagellation.[122]

Mandela went on to challenge South Africans to take responsibility for themselves. He declared:

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118. Duke, *supra* note 115, at A1.
119. *Id.*
120. Joyner, *supra* note 114, at 610.
121. Daley, *supra* note 113, at A3.
122. *Id.*

> Quite clearly there is something wrong with a society where freedom is interpreted to mean that teachers or students get to school drunk; warders chase away management and appoint their own friends to lead institutions; striking workers resort to violence and destruction of property; business people lavish money in court cases simply to delay implementation of legislation they do not like; and tax evasion turns individuals into heroes of dinner-table talk . . . .
>
> Something drastic needs to be done about this . . . South African society—in its schools and universities, in the workplace, in the sports, in professional work and all areas of social interaction—needs to infuse itself with a measure of discipline, a work ethic and responsibility for the actions we undertake.[123]

The Clinton administration has expressed a desire for South Africa to succeed in achieving the democracy and prosperity to which it aspires, and has pledged U.S. support. In fact, in 1998 Clinton announced that the administration would like to make South Africa the centerpiece of its new African trade policy.[124] The U.S. has recognized that a stable and prosperous South Africa is crucial to continent-wide democratization and development. South Africa has already taken the lead in establishing regional free trade arrangements from which all of southern Africa stands to benefit. These include the South African Development Community (SADC); the South African Customs Union (SACU); and a bilateral trade agreement with Zambia.[125] Commentators have summarized U.S. strategic interests in South Africa as follows:

> If South Africa achieves the economic and political potential within its grasp, it will be a wellspring of regional political stability and economic growth. If it prospers, it can demonstrate to other ethnically tortured regions a path to stability through democratization, reconciliation, and steadily increasing living standards. Alternatively, if it fails to handle its many challenges, it will suck its neighbors into a whirlpool of self-defeating conflict.
>
> Although controlling the sea-lanes around the Cape of Good Hope would be important, especially if widespread trouble were to erupt in the Middle East, American strategic interests are not otherwise endangered in southern Africa. Yet because South Africa is the United States' largest trading partner in Africa and possesses vast economic potential, its fate would af-

123. *Id.*

124. For a discussion of U.S. trade policy toward Africa, see Hunter R. Clark, *African "Renaissance" and U.S. Trade Policy*, 27 GA. J. INT'L & COMP. L. 265 (1999).

125. *See* Lynda Loxton, *South Africa Trade Agreements Are on a Roll*, AFR. NEWS SERV., Nov. 8, 1996, *available in* 1996 WL 14178461.

> fect American trading and financial interests that have invested there. It would also destabilize key commodity prices, especially in gold, diamond, and ore markets. More generally, instability in South Africa, as in Brazil and Indonesia, would cast a large shadow over confidence in emerging markets.
>
> American policy toward South Africa should reflect its importance as a pivotal state. While recognizing South Africa's desire to solve its problems without external interference, the United States should promote South Africa's economic and political stability.[126]

No wonder, therefore, that on March 26, 1998, while visiting Africa to promote his African trade policy, President Clinton told the South African parliament, "America has a profound and pragmatic stake in your success—an economic stake because we, like you, need strong partners to build prosperity . . . ."[127] He concluded, "Simply put, America wants a strong South Africa; America needs a strong South Africa. And we are determined to work with you to build a strong South Africa."[128]

For South Africa's sake, and for their own gain, foreign investors will, hopefully, come to share President Clinton's point of view.

In conclusion, South Africa's post-apartheid government is committed to FDI as a cornerstone of its economic development policies. So far, however, South Africa has failed to attract the level of FDI it needs and wants. The government has therefore taken steps to allay concerns of current and prospective foreign investors. These steps include tariff reduction; the privatization of state-run industries; monetary policies designed to attract FDI; increased worker productivity; and lowering the South African crime rate.

In order to avoid social unrest, the South African government has

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126. Robert S. Chase et al., *Pivotal States and U.S. Strategy*, FOREIGN AFF., Jan. 11, 1996, at 45-46.

127. Address by the President of the United States to the Parliament of South Africa (Mar. 27, 1998), *available in* 1998 WL 138738.

128. *Id. See also Albright Says South Africa Is a Model for Ties with U.S.*, N.Y. TIMES, Dec. 14, 1997, at 6. "Secretary of State Madeleine K. Albright today held up the United States' relationship with South Africa as an example of the type of ties it wants with countries across Africa." *Id.* This is not to suggest that the U.S. and South Africa agree on all matters. For example, the two nations have failed to reach accord on a bilateral investment treaty. This is in part because South Africa insists on maintaining an independent trade policy that includes relations with nations like Cuba, Iran, and Libya, with which the U.S. is at odds. *See* R. W. Apple Jr., *From Mandela, a Gentle Admonishment*, N.Y. TIMES, Mar. 28, 1998, at A2. Mandela has told Clinton that "we [South Africans] resist any attempt by any country to impose conditions on our freedom of trade." Charles William Maynes, *The Perils of (and for) an Imperial America*, 111 FOREIGN POL'Y. 36, 44 (1998).

also instituted the Reconstruction and Development Program to improve black living conditions and reduce black unemployment, without substantially increasing government spending. For example, the government is providing tax incentives for labor intensive industries in order to help alleviate unemployment.

In addition, and perhaps most importantly, the government is moving to reduce the lingering racial animosities that are the legacy of apartheid. The nation seems poised for a smooth transfer of power in 1999 from retiring President Nelson Mandela to his deputy, Thabo Mbeki. Indications are that Mbeki will continue the policies Mandela set in motion aimed at economic liberalization, democratization, and racial reconciliation.

Lastly, the U.S. has expressed its support for a strong South Africa that will emerge as a democratic, stabilizing force regionally and continent-wide. As this in fact occurs, investor confidence should grow along with foreign direct investment in South Africa.