



**Evidence for the People's Tribunal on Economic Crime
(03-07 February 2018)**

**1. The Arms Money Machine:
Apartheid's Sanctions-Busting Bank**

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Introduction

1. For all of its constraints, South Africa's Truth and Reconciliation Commission (TRC) provided South Africans with an opportunity and forum in which to interrogate and develop an understanding of the physical violence at the heart of that regime. The TRC report opens with reference to gross human rights abuses, from the Sharpeville Massacre in 1960 to the violence in Kwa-Zulu Natal in the early 1990s. It makes a plea to address this violent history in order to move forward.
2. An outstanding question remains regarding the apparent unwillingness of the state to carry out many of the recommendations of the Commission. This includes the failure by the state to prosecute those individuals denied amnesty, and those who failed to come forward to the commission to account for their role in grave human rights violations. Despite these failures, it is arguable that South Africans have developed a keen understanding of the brutality of its past.
3. An outlier in this understanding of how apartheid operated has been around issues of corruption and economic crime. The failure to properly interrogate these economic crimes at the TRC and other institutions has resulted in a lacuna in South Africa's collective understanding of our past. It has also allowed a myth to develop in our democracy that corruption arrived on our doorstep with a democratically elected government in 1994. We cannot ignore that this myth is often laden with the sub-text that corruption is the phenomenon of a black-led government.
4. This narrative is not only false, but serves as nothing but distraction. It is false because the evidence reveals that the last 20 years of apartheid rule saw the creation of an inherently criminal state to bust the arms and oil sanctions of the time. It is a distraction because it turns our attention away from powerful corrupt networks that survived the democratic transition intact, and have continued to have a deeply corrupt and corrosive influence on our politics. It also reduces our analysis to the state, ignoring crucial parties in the private sector who are integral to economic crime.
5. In an attempt to address this gap in our collective understanding, Open Secrets engaged in a 5-year investigation into the nature and extent of economic crime during apartheid. As part of the research, we consulted 25 archives in 7 countries, including extensive documentation in the South African military archives that survived attempts by the last apartheid government to destroy records of apartheid's crimes. We corroborated the documentary evidence with over 100 interviews, both with those in the apartheid war machine, and those who fought it.
6. What emerged from this research was an insight into how the apartheid state survived as long as it did. The apartheid economy had, over the period of two decades, built a vast and complex infrastructure to bust international weapons sanctions. It was

nothing other than a criminal economy put in place to sustain white power. The machinery created was highly secretive and aided corrupt politicians, launder public and private funds, and break international sanctions. This effectively criminalised key institutions within the public and private sector. The collaborators included bankers, arms dealers, political parties, foreign leaders, arms companies, oil traders, lobbyists, foreign intelligence agencies and the domestic military.

7. These revelations are not only of historical significance. Though South Africa does not face a return to a system of apartheid, legacies and patterns of that system are evident in our democratic politics. Inequality, poverty, excessive securitization, corruption, and the capture of the state by private interests are rightly the predominant concerns of this political moment.
8. Yet we cannot understand or begin to tackle these issues without considering how criminal networks of the past have continued to operate in South Africa today. The transition saw a deliberate choice to leave these networks unchallenged – the interests at stake were simply too extensive to challenge. All South Africans live with the consequences of this today.
9. With this in mind, Open Secrets makes this submission to the First People’s Tribunal on Economic Crime. The submission aims to address the following questions:
 - (i) Which private actors were key facilitators in busting the compulsory UN weapons embargo against the apartheid state?
 - (ii) Do any of these actors face potential criminal liability for their complicity?
 - (iii) Can money laundering for the apartheid regime constitute aiding and abetting the crime of apartheid?
 - (iv) Why has South Africa failed to grapple with the economic crimes of the past in the time of democracy?
 - (v) What continuities have there been in the networks of economic crime from apartheid to democratic South Africa?
10. What follows is not, nor could it be, an exhaustive examination of corruption during apartheid. However, it does constitute an examination of the central point around which the apartheid criminal economy was built; busting the arms embargo.
11. To address the questions above, the submission is broken down as follows. The first section addresses the context of the period in question by exploring how the apartheid state was highly secretive and militarised. This section considers both the extensive need of the regime for weapons, as well as the deep and lasting human cost of the apartheid regime. The second section will examine the compulsory UN arms embargo and how any provision or assistance in providing weapons and related

technology to the apartheid state was a violation of the international embargo, while section 3 will briefly explore how many countries violated the embargo.

12. Sections 3 and 4 constitute the bulk and focus of this submission. Section 3 lays out the extensive evidence that a bank, Kredietbank Luxembourg, intentionally assisted Armscor and the South African state to construct a money laundering network to facilitate the illicit purchase of weapons in contravention of the embargo. Section 4 will consider why and how the bank can and should be held legally liable for this conduct.
13. Section 5 will argue that we have failed to adequately investigate and grapple with these crimes and networks, and that this failure has had severe consequences for continuities in illicit activity. Section 6 will conclude and summarize the important remedies required to address the issues raised in the submission.

The Apartheid Secret State

A culture of secrecy that was legislated

14. The apartheid government was led by the National Party (NP), a party with a deep and long association with the culture of secrecy. Secrecy was deeply ingrained in the NP's way of thinking, and informed the way the state was organised. The invisible hand that directed the NP, and thus state policy, was the Broederbond (Brotherhood), an all-white patriarchal secret society established in 1918. At its height, it grew to a membership of over 12,000 handpicked individuals organised in over 800 cells across the country.¹ It could count among its members every NP prime minister and president between 1948 and 1994, DF Malan to FW de Klerk. In addition, most cabinet members, military generals, business leaders, heads of Afrikaans-speaking universities and the South African Broadcasting Corporation (SABC) were 'broeders'.
15. As Max du Preez notes, the Broederbond was obsessed with total secrecy. Members were required to swear a solemn oath to eternal secrecy, even if they were expelled or resigned.² The Broederbond used its influence, by the late-apartheid era, to drag the NP towards considering a new power-sharing arrangement. However, like with many secretive societies, its influence was not benign; it was responsible for developing some of the earliest thinking around the policy of apartheid. It also normalised the practice of quashing the truth within the echelons of power.
16. The obsession with secrecy manifested itself in a range of apartheid era legislation, as well as in the extra-judicial conduct of the security forces. Police and the military harassed and silenced journalists, backed up by the Official Secrets Act of 1956 and the Protection of Information Act of 1982. The Official Secrets Act was so broad as to prohibit the publication of any matter related to the military, police or security that would prejudice "the safety or interests of the Republic". The consequences of these catch-all pieces of legislation were to secure silence and secrecy, though they often bordered on the absurd. One example was the prevention of South African journalists reporting on apartheid's military excursions in Angola until 1977, despite extensive international media coverage of the same events.³
17. For our purposes, and the discussion on illicit weapons purchases, a crucial additional piece of legislation was the 1968 Armaments Act. The Armaments Act is annexed hereto and marked as "**AC1**". The Act made any public disclosure of Armscor imports,

¹ Ivor Wilkins and Hans Strydom, *The Super-Afrikaners: Inside the Afrikaner Broederbond*, Jonathan Ball Publishers, Johannesburg and Cape Town, 2012.

² Ivor Wilkins and Hans Strydom, *The Super-Afrikaners: Inside the Afrikaner Broederbond*, Jonathan Ball Publishers, Johannesburg and Cape Town, 2012.

³ Graeme Addison, *Censorship of the Press in South Africa During the Angolan War: A Case Study of News Manipulation and Suppression*, Rhodes University, 1980.

exports, acquisition, development and manufacture a crime punishable with a maximum 15-year jail term.⁴ As will be shown below, Armscor was the centre of apartheid's money laundering network, and was responsible for managing hundreds of accounts, front companies and relationships with private collaborators. Unsurprisingly, by deliberately obscuring such a significant portion of strategic and secret state expenditure, the Armaments Act ensured that many economic crimes would go undetected and unchallenged.

A militarised state, dominated by securocrats and the role of Armscor

18. This deep-seated logic of secrecy in the apartheid state was combined with a militaristic and aggressive stance, exemplified by the rise and rule of PW Botha. The fundamental shift in power towards the military began in 1977 when a new Defence White Paper was unveiled. This promised a far more strategic role for the military in future and envisioned the military as playing a far greater role in the affairs of the state. PW Botha famously defined the new logic of the state in 1978 as its preparedness for what he termed 'a psychological onslaught, an economic one, a diplomatic one, a military onslaught – a total onslaught'. The Minister of Defence imagined a situation of total war both at home and abroad that required a concomitant response. This was the 'total strategy' in which all sectors of society would become involved in the defence of the white state.
19. Within a year of unveiling his new 'total strategy', Botha secured the leadership of the National Party and the country, and quickly went about militarizing the state. He did so through appointments of loyalists, and a significant increase in expenditure on the military. Botha appointed General Magnus Malan as Minister of Defence, a political ally and loyal soldier with whom he had worked, while still himself Minister of Defence, as head of the army. As Phillip Frankel points out, Botha nurtured a patron–client relationship with the military; he listened to military leaders, promoted their interests and ensured their preeminence in both the intelligence and policy spheres.⁵
20. Beyond the military itself, the state itself shifted into the power of the securocrats. Christi van der Westhuizen, in her book *White Power*, described this as a system of 'executive lawlessness', in which the excesses of the presidency and the securocrats were no longer beholden to justice.⁶ Through organs like the State Security Council (SSC), Botha's parallel secret cabinet, the security services increasingly directed public policy. They were intended to keep a lid on the growing calls for democratic government, which were crushed with overt force. From 1985 onwards, the few spaces that existed to move and organise were increasingly curtailed by successive

⁴ Section 11A of the Armaments Development and Production Act, 1968.

⁵ Phillip Frankel, *Pretoria's Praetorians*, Cambridge University Press, Cambridge, 1985.

⁶ Christi van der Westhuizen, *White Power and the Rise and Fall of the National Party*, Zebra Press, Cape Town, 2007.

states of emergency, which granted the executive even more power to suppress dissent and enforce NP rule.

21. Returning to the military, Botha was also credited with modernising the South African Defence Force (SADF), turning it from an army that operated with outdated equipment into the most potent military machine on the African continent by the late 1980s. In effect, he was creating a garrison state. All this came at massive human and financial cost. In the event of war the defence force could muster between 500,000 and 1 million men.⁷
22. Of course, to carry out such a plan, a significant amount of money was required. At its peak the real defence budget was almost double the figure stated by Botha's government, accounting for 28% of state expenditure in 1988.⁸ This is worth reflecting on – nearly one in every three rand spent by the apartheid state in this period went to military spending – at a time when the UN arms embargo was in place. To give a sense of contemporary scale: if one in every four rands from the 2017/2018 national budget were to be spent on defence and war efforts today, it would consume around R390 billion, nearly the same as the amount spent on basic education, tertiary education and policing combined – and more than 7 times what democratic South Africa spends on defence.⁹
23. To spend such vast sums, the state needed an entity to manage both production and procurement of weapons and weapons technology around the world. The chosen entity was Armscor. At the time that PW Botha was elected, all defence production and procurement capacity was centralised under the state-owned arms company, Armscor. By the mid-1980s, Armscor was one of the top 20 companies in South Africa in terms of its holdings. It operated its 11 manufacturing units, among other things, for aircraft (Atlas), guided missiles (Kentron), computer technology (Infoplan), heavy-calibre ammunition and bombs (Naschem), and explosives (Somchem). At its height Armscor employed 20,000 people directly and a further 100,000 indirectly, many of whom worked for its 3,000 subcontractors.¹⁰
24. Armscor was tasked with procuring, developing and producing weapons for domestic consumption by the SADF. By the late 1980s much of this newly acquired and developed technology became the basis for the export of weapons across the globe. This, too, was in contravention of the UN arms embargo. By that point Armscor,

⁷ Paul Holden and Hennie van Vuuren, *The Devil in the Detail: How the Arms Deal Changed Everything*, Jonathan Ball Publishers, Cape Town, 2011.

⁸ *War and Society: The Militarisation of South Africa*, ed. Jacklyn Cock and Laurie Nathan, David Philip, Cape Town, 1990.

⁹ See the 2017/2018 National Budget here: <http://www.treasury.gov.za/documents/national%20budget/2017/review/FullBR.pdf>

¹⁰ Paul Holden and Hennie van Vuuren, *The Devil in the Detail*.

through massive public subsidy, had helped equip the most advanced military machine south of the Sahara.

25. Of course, to do this, Armscor required a network of international weapons suppliers that provided the arms manufacturer with sophisticated technology to re-engineer as homegrown products. In other instances, international arms companies filled the holds of ships carrying arms and ammunition to South Africa. As an officially authorised account of Armscor's history states:

*"Successes achieved enabled Armscor to openly negotiate with most of the suppliers. Often the suppliers offered their assistance and advice regarding the creation of channels and the acquisition of end user certificates ... With the help and co-operation of a variety of friends from all over the world, Armscor succeeded in supplying the SADF and befriended countries with the necessary arms. All this was possible under the Armscor motto: 'A will to win'."*¹¹

This extract from Armscor's authorised history, titled 'The Leading Edge', is annexed hereto and marked as "**AC2**".

A deliberate and enforced lack of oversight around weapons procurement – the Special Defence Account:

26. Hence, under Botha's direction and Armscor's application, the South African military developed a vast and sophisticated weapons cache. Although it was possible to get an insight into how much of the budget was being spent on the weapons, how exactly procurement was operating was kept almost completely secret. In a system that is astounding in today's context of check and balances, almost all military spending was channelled through a secret account called the Special Defence Account (SDA) – this account was not even scrutinised by the Auditor General of the country.
27. The SDA was established in 1974 and intended to enable military procurement through Armscor. It did also, to a lesser extent, fund propaganda projects and sinister third-force activities that targeted civilians and political opponents in the late 1980s and early 1990s. According to a report submitted by the Auditor General's office to the Truth and Reconciliation Commission, from its inception in 1974 up to 1994 total expenditure from the account was a fraction shy of R50 billion.¹² The Auditor General's Report is annexed hereto and marked as "**AC3**". In today's value, that amounts to R501 billion (half a trillion Rand, and equivalent to 1/3 of this year's total national budget).

¹¹ LJ van der Westhuizen and JH le Roux, *Armscor: The Leading Edge*, unpublished, University of the Free State, Institute for Contemporary History, 1997.

¹² Review by the Auditor General of the Secret Funds for the Period 1960– 1994, Report to the Truth and Reconciliation Commission, 17 July 1998.

Expenditure on the account saw a general upward trend but it spiked in the mid-1980s, at the height of the civil revolt and the state of emergency.

28. The Auditor General's report provides an important record of this expenditure and was submitted on a voluntary basis to the TRC. Inexplicably, there was no examination of these records in any public hearings at the Commission. By way of comparison, the National Intelligence Service (the civilian spies), the South African Police (SAP) and the Department of Foreign Affairs were allocated a far smaller budget from the Secret Service Account. This amounted to little more than 2% of the funds allocated to the SDA between 1978 and 1994.¹³ The vast majority went to military purchases, often through a secret financial architecture, which is described in this submission.

29. As mentioned above, the media and other members of the public were prevented from proper insight into military spending through legislation such as the 1968 Armaments Act, and other legislation. However, there was an added layer of secrecy in that the state's auditors were not given access to audit use of the account. According to the Auditor General's report to the TRC, all reporting to oversight authorities on secret expenditure only required the relevant minister's signature as proof that all was above board. From 1979, the Auditor General's office was accorded limited access, but only through a system whereby a retired SADF general had the right to review the content of projects and issue an audit certificate *on behalf of* the Auditor General. From the mid-1980s selected members of the Auditor General's staff were allowed to audit ultra-sensitive portions of the SDA, but access to information about what exactly they were auditing remained off limits.¹⁴ Even in this period, the Auditor General reported on these matters at the discretion of the state president. If Botha refused, access would be denied.

30. As the Auditor general's office noted in its report to the TRC, 'Whilst Parliament required the Office to provide audit assurance, the Government begrudgingly provided access to information and the quality of some of the audit evidence produced was limited.'¹⁵ To protect itself from being implicated in a cover-up, the Auditor General's office went as far as seeking a legal opinion regarding its responsibilities.¹⁶ A routine disclaimer on the audit of the SDA noted that 'the level of audit assurance that can be furnished will often be lower than is normally the case in ordinary audits'. What this meant was that the qualified audited records complied

¹³ Review by the Auditor General of the Secret Funds for the Period 1960– 1994, Report to the Truth and Reconciliation Commission, 17 July 1998.

¹⁴ Auditor General of South Africa, Review by the Auditor-General of Secret Funds, as submitted to the Truth and Reconciliation Commission, 7 August 1998.

¹⁵ Auditor General of South Africa, Review by the Auditor-General of Secret Funds, as submitted to the Truth and Reconciliation Commission, 7 August 1998.

¹⁶ Auditor General of South Africa, Review by the Auditor-General of Secret Funds, as submitted to the Truth and Reconciliation Commission, 7 August 1998.

with the legal requirements, but the Auditor General's office couldn't confirm that goods had been delivered in terms of the law.¹⁷

The costs of apartheid

31. The information above provides an insight into the increasingly secretive and militarized nature of the South African state from the mid 1970s up to the early 1990s. It also provides an insight into the sheer scale of military procurement, and the secretive nature of defence spending through the SDA.
32. This build-up of weapons and technology was not just for stockpiling. The apartheid military machine was engaged throughout Southern Africa, and its security forces were deployed in many parts South Africa itself. The primary area of deployment for the military was the occupation of Namibia and the war in Angola. There was, to a lesser extent, some engagement in the proxy war in Mozambique. Between 1975 and 1988, with some intervals, the war in Angola was fought in support of Jonas Savimbi's UNITA movement and against the ruling MPLA in Luanda. It was also intended to weaken support for SWAPO resistance fighters and their call for the independence of Namibia, at that stage still under occupation by South Africa.
33. The Mozambican civil war began in 1977, two years after the end of the war of independence. Similar to the Angolan civil war, the conflict started soon after the countries gained independence from Portugal. The elected governing party, Front for Liberation of Mozambique (FRELIMO) was violently opposed from 1977 by the Mozambique Resistance Movement (RENAMO). RENAMO received funding, military support and military equipment from apartheid South Africa throughout the conflict. Fighting only ended in 1992.
34. The human costs of the war in Angola were significant. The Truth and Reconciliation Commission drew on UNICEF and other resources to record the cost of apartheid's wars. According to Volume 2 of the TRC's report, the war in Angola recorded significant casualties. The TRC Report is annexed hereto and marked as "**AC4**". UNICEF estimated that between 1980 and 1985 over 100,000 Angolans died, largely as a result of war-related famine.¹⁸ Between 1981 and 1988, while the war raged, around 330 000 Angolan children died of unnatural causes. In addition, vast swathes of forest and wildlife were destroyed in the war, partly as a result of smuggling and trading by South African front companies.¹⁹ The economic cost of the war was estimated by the

¹⁷ Auditor General of South Africa, Review by the Auditor-General of Secret Funds, as submitted to the Truth and Reconciliation Commission, 7 August 1998.

¹⁸ Truth and Reconciliation Commission of South Africa Report, Vol. 2, 1998, Chapter 2.

¹⁹ Truth and Reconciliation Commission of South Africa Report, Vol. 2, 1998, Chapter 2.

Angolan government to be \$12 billion in 1987 alone.²⁰ There is little doubt that the war would not have continued for as long as it did without its foreign participants and backers – including South Africa.

35. The costs of apartheid violence were not limited to large foreign wars. Many people were murdered, detained and tortured within South Africa. In addition, cross-border raids on liberation movement bases saw people killed in countries such as Lesotho, Botswana and Swaziland. The TRC findings in this regard were clear and damning. The final report concluded that from 1963 to 1989, apartheid military and police had systematically engaged in a range of cross-border raids, abductions, assassinations and attacks on people in countries bordering South Africa.²¹ It found that this constituted a systematic pattern of abuse that amounted to gross violations of human rights “on a wide scale”. The Commission confirmed that this strategy was approved by the security state built by PW Botha and described above, including the Cabinet, the State Security Council and the leadership of the Police and Military.²²
36. Of course, the widest range of apartheid’s victims are to be found in South Africa itself. There are several groups of apartheid victims who suffered because of apartheid, the prolonging of apartheid and the build-up of South Africa’s military capabilities. As will be described in the following section, these factors cannot be separated from violations of the United Nations arms embargo, specifically designed by the international community, through the UN, to bring about an end to the crime of apartheid.
37. The predominant group of people directly harmed by the apartheid policy of racial segregations were black people living in South Africa. Millions of black South Africans were politically disenfranchised and suffered a significant range of human rights violations. This included many Black people being dispossessed of their land. Together with other racial groups, they were the victims of a wide range of repressive laws, which prevented or limited property ownership, quality education, adequate health care, sanitation, and the ability to pursue job opportunities. People further suffered unequal labour practices and suffered restricted movement.
38. Activists, particularly the leaders of domestic and exiled liberation movements who opposed apartheid and sought to redress these injustices, suffered the brunt of political violence, both in South Africa and in exile. This included political imprisonment, detention without trial, abduction and torture. All Black people suffered from the excessive militaristic policing that apartheid legislation encouraged.

²⁰ Truth and Reconciliation Commission of South Africa Report, Vol. 2, 1998, Chapter 2.

²¹ Truth and Reconciliation Commission of South Africa Report, Vol. 2, 1998, Chapter 2.

²² Truth and Reconciliation Commission of South Africa Report, Vol. 2, 1998, Chapter 2.

The injustices were bulwarked by force and violence by South African security forces and the material they amassed through an ever increasing budget.

39. The systemic dispossession, disenfranchisement and restricted rights of millions of Black South Africans in this period have had severe socio-economic consequences that have far outlived the formal end of apartheid.²³ In 2015, 25% of Black South Africans experienced food poverty, having inadequate resources to meet their food needs. Nearly half (47%) could not attain adequate non-food essentials without forgoing food.²⁴ These rates are grossly disproportionate to poverty levels for other racial groups, indicating the continued cost to those who suffered violations under apartheid.
40. We should therefore understand the costs of weapons sanctions busting in two ways. The one consequence of supplying the apartheid military machine in contravention of sanctions was the direct human rights violations committed by apartheid security forces, in its foreign wars, cross-border raids, and domestic repression. The second type of costs are those physical, economic and social costs that inevitably flowed from sustaining and prolonging apartheid. As will be discussed in the following section, the UN weapons embargoes were designed and intended to bring apartheid to a swift end. As a result, any actions that undermined the embargo strengthened the regime's position by facilitating an ever-increasing military might.
41. The submission turns to the UN sanctions next.

²³ Statistics South Africa, 2017, 'Poverty Trends in South Africa: An examination of Absolute Poverty – 2006-2015', Available Online: <http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>

²⁴ Statistics South Africa, 2017, 'Poverty Trends in South Africa: An examination of Absolute Poverty – 2006-2015', Available Online: <http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>

United Nations Sanctions and Armscor's Response

The Sanctions

42. The preceding section describes apartheid as a highly militarized regime, with both spending on arms and the secrecy around this procurement growing throughout the 1970s and 1980s.
43. To maintain its regime and wage its wars, South Africa needed arms. Contrary to the apartheid narrative, the regime was largely reliant on imports to fulfill this need, particularly to access sophisticated weapons technology.
44. The international community recognized this need, and its condemnation of apartheid²⁵ was supported by a range of sanctions packages, the predominant focus of which was to halt the supply of weapons and related technology. Attempts to embargo the regime began in the early 1960s. On March 29 1960, security forces murdered 69 people and injured hundreds more protesting apartheid's pass laws at a police station in Sharpeville. The Sharpeville massacre, as it came to be known, caused an international outrage and prompted calls for sanctions against South Africa for the grave violations of human rights of victims of apartheid within its borders. For the next three decades, the United Nations would pass a range of declarations and resolutions, intended to assist in bringing about the end of apartheid.
45. Following the massacre, the UN General Assembly adopted Resolution No. 134 of 1960. This Resolution is annexed hereto and marked as "**AC5**". The Resolution urged South Africa to rescind the unlawful apartheid system, and condemned both racial discrimination and what it termed a 'risk to international peace and security' that the regime posed. The apartheid government of course refused, and accelerated in building its military potential. Following this, the General Assembly ratified Resolution 1761 (XVII) on 6 November 1962, which created a Special Committee against Apartheid, tasked with investigating apartheid and reporting to the General Assembly. Resolution 1761 is annexed hereto and marked as "**AC6**". The same resolution made a non-binding request to all member states of the UN to apply diplomatic sanctions against South Africa, stop all ships and planes running South African flags from gaining entry to their ports of entry, and boycotting South African goods.
46. The first embargo that specifically targeted the supply of weapons to South Africa was Resolution 181 of 1963, ratified by the Security Council. Resolution 181 is annexed hereto and marked as "**AC7**". The resolution targeted the internal policy of South Africa, and more specifically the accumulation of arms by the South African

²⁵ As will be evidenced in this submission, there is no doubt that much of the international community's conduct regarding apartheid was duplicitous.

government to use in the execution of its racist politics. This resolution was reinforced on 4 December 1963 with Resolution 182 which called on all states to "cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa". Resolution 182 is annexed hereto and marked as "**AC8**".

47. The UN, and particularly the Security Council, expressed concern about the continued expansion of South Africa's military potential in two ways. The first was the language of criticising apartheid's racist policies and the way weapons were used to enforce them. The second was expressing a concern that the regime presented a threat to international peace and security. It was the latter that was the focus of UN Security Council Resolution 282 of 23 July 1970. Resolution 282 is annexed hereto and marked as "**AC9**". It called upon all states to strengthen the arms embargo by implementing a range of measures. These included withholding supply of any vehicles, equipment or spare parts that could be used by the military; revoking all licences and military patents granted to the South African government or companies for the manufacture of arms, ammunition, and other military equipment; and ending investment, technical assistance, and other forms of cooperation in the military sphere.
48. All of these resolutions optimistically relied on voluntary enforcement by UN member states. It was not until 1977 that the UN Security Council would pass a resolution making the weapons embargo *mandatory* for all member states. This followed years of lobbying by the Anti-Apartheid Movement as well as heightened violence in South Africa, including the violence against school children in protests starting in 1976, and the murder of Steven Biko in detention in 1977.
49. The groundwork for the compulsory embargo was laid at an international conference earlier that year in Lagos, Nigeria, attended by representatives from many countries.²⁶ A draft resolution, including economic and arms sanctions, was first blocked by the 'triple Western veto' by the United Kingdom, United States and France. Yet, after an agreement that economic sanctions would only be voluntary – the Security Council adopted Resolution 418 on 4 November 1977. Resolution 418 is annexed hereto and marked as "**AC10**". It made the arms embargo mandatory for all UN member states. UN members could no longer export weapons to South Africa, provide new licenses to manufacture weapons, or assist in the development and manufacture of nuclear weapons.²⁷

²⁶ UN, *Transnational Corporations in South Africa and Namibia: UN Public Hearings, vol. I: Reports of the Panel of Eminent Persons of the Secretary General, 1986*, United Nations Centre on Transnational Corporations, New York, 1986.

²⁷ UN, *Transnational Corporations in South Africa and Namibia: UN Public Hearings, vol. I: Reports of the Panel of Eminent Persons of the Secretary General, 1986*, United Nations Centre on Transnational Corporations, New York, 1986.

50. For the purposes of this submission, the compulsory embargo contained in Resolution 418 is crucial. The resolution provided:

[The Security Council] acting therefore under Chapter VII of the Charter of the United Nations, decides that all States shall cease forthwith any provision to South Africa of arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for 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.

51. Resolution 418 of 1977 made the embargo mandatory, and it was therefore binding on all member states of the UN. This is a unique power of the Security Council in terms of Chapter VII of the United Nations Charter. Its resolutions made in terms of this Chapter are always binding on member states. A contravention of the arms embargo was therefore unlawful under international law and deemed to constitute complicity with the apartheid system and its gross human rights violations. It is this mandatory embargo, and particularly the system put in place to evade it, that is the focus of this submission.

52. The embargo was strengthened at various points before it was lifted following democratic elections in 1994. Following further repression and states of emergency in 1986, the United Nations Security Council adopted resolution 591 in November 1986.²⁸ Resolution 591 is annexed hereto and marked as “**AC11**”. Resolution 591 clarified the terms and obligations under Resolution 418 by doing the following:

- (i) Extended the embargo to include spare parts of prohibited arms;
- (ii) Required states to take measures to ensure that weapons did not reach South Africa through third countries; and
- (iii) Required states to investigate violations, prevent future circumventions, strengthen their ‘machinery’ for the implementation of the Embargo and introduce penalties for violations of the Embargo.²⁹

The Regime’s Dilemma

53. When read together, the preceding two sections provide a clear indication of the dilemma that faced the apartheid state from 1977 to 1994. It was a period that saw the rise of PW Botha and the military state, and a strategy based on the accumulation of weapons to strengthen the security forces and military. Yet this coincided with a time in which the international community adopted a policy that required all member

²⁸ UN Security Council, *Resolution 591 (1986) Adopted by the Security Council at its 2723rd meeting, on 28 November 1986*, 28 November 1986, S/RES/591 (1986), available at: <http://www.refworld.org/docid/3b00efa017.html>.

²⁹ Article 10 of the Resolution 591 (1986).

states to starve the regime of weapons, technology, spare parts, investment and technical assistance.

54. To overcome this obstacle intended to cripple apartheid, Armscor needed to operate clandestinely. As described in Section 1 – this was ensured domestically through a raft of legislation that prevented journalists, the public and even the state’s auditors any insight into the details of weapons procurement. The state could back up these laws with punitive jail sentences and violence against those who sought to pry too closely.

55. However, given the nature of the international arms trade, Armscor required much more than secrecy at home – they required a secret global network. The worldwide anti-apartheid movement doggedly tried to ensure compliance with the arms embargo, and would report on any violations it uncovered. The World Campaign against Military and Nuclear Collaboration with South Africa operated from 1979 under the directorship of Abdul Minty. The World Campaign was established at the request of the UN in Norway under the patronage of Tanzanian President Julius Nyerere, Swedish Prime Minister Olof Palme and the US human rights activist Coretta Scott King, amongst others. It aimed to police the arms embargo although it had to rely largely on open source material. It also collaborated with journalists and activists who risked their lives to monitor the sale of weapons.³⁰

56. As a result of this constant scrutiny, although many companies and countries were willing to bust the embargo and supply weapons, they did demand secrecy to avoid embarrassment and possible sanction. Armscor thus needed to ensure two things:

- (i) That it could identify and contract with weapons suppliers in complete secret.
- (ii) It could make payments to weapons suppliers without the money trail being traceable back to the apartheid regime. This was a particular challenge.

57. It is worth recalling the scale of this task. The Auditor General’s Report to the TRC (quoted at length above) recorded that 95% of the R500 billion (current value) spent from the secretive Special Defence Account (SDA) was spent during the sanctions period – from the end of 1977 to 1994.³¹ Much of this was spent on international purchases that necessarily violated the UN embargo.

58. The international arms trade is notorious for being one of the most corrupt in the world. This is well recorded in Andrew Feinstein’s seminal work on the industry.³² Yet to spend up to a third of one’s national budget on arms at a time when any

³⁰ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017), pg. 31.

³¹ Auditor General of South Africa, Review by the Auditor-General of Secret Funds, as submitted to the Truth and Reconciliation Commission, 7 August 1998

³² Andrew Feinstein, *The Shadow World: Inside the Global Arms Trade*, Jonathan Ball Publishers, Cape Town, 2012.

international purchases are forbidden by a compulsory embargo, required the most sinister and clandestine conduct by Armscor. Tasked with an investigation into these aspects of South Africa's military trade in 1994, Judge Edwin Cameron made the following remarks about the world in which Armscor was immersed, describing it as consisting of "freewheeling... and subterfuge, of lucrative and often extravagant commissions ... of deliberately disguised conversations, of communications shrouded in complex documents and cryptic notes of deals structured to conceal their true nature, a world without rules and code of conduct, in which intimidation, threats and actual peril are ever present, a world also of unpredictable allegiances and loyalties, the world in short of arms dealers".³³

59. In the following two sections, this submission deals with the two questions above in turn. The first provides an overview of the countries where Armscor was able to find willing suppliers of arms, and gives some examples to illustrate the covert nature and practicalities of illicit arms trading

60. The second is the focus of this submission, Armscor's secret office in the embassy of Paris, and the bank in Belgium and its Luxembourg subsidiary that helped Armscor establish the secretive architecture needed to move money from Pretoria all around the world to pay for the weapons purchases. These were the key to Armscor's money laundering network.

³³ Commission of Inquiry into Alleged Arms Transactions Between Armscor and One Eli Wazan and Other Related Matters (Cameron Commission), First Report to President Nelson Mandela, 15 June 1995.

Sources of Weapons

Busting the self-sufficient myth

61. A powerful domestic weapons industry did indeed develop from the 1960s onwards in South Africa. Many of the largest private corporations became enmeshed in this highly profitable enterprise. In its submission to the TRC, the Centre for Conflict Resolution recorded that 'there was a high degree of integration between the public and private sectors... Three industrial groups, namely Reunert, Altech and Grintek, dominated the private sector defence industry. These groups were in turn owned or controlled by one of the six large financial, mining and industrial conglomerates. Reunert was controlled by Old Mutual, Altech by Anglo American, and Grintek by Anglovaal.'³⁴
62. An exemplary case study of the mutually beneficial relationship between private capital and military expansion can be found in Barlow Rand.³⁵ Today trading as Barloworld, a leading electronics industrial corporate, Barlow Rand presented itself as an opponent of apartheid. However, it was actually 'a major contributor in the production of technology and armaments' and, as such, directly involved in the promotion of the regime and its wars.³⁶ In the 1960s, the Barlow Rand chairman, CS Barlow, was invited by then Minister of Defence, PW Botha, to sit on the Defence Advisory Board, and the company soon became the chief electrical supplier to the SADF.³⁷ By the 1980s the Defence Advisory Board included 13 of the biggest names in South African industry, including Barlow's chief executive, Richard 'Dick' Goss, the Managing Director of South African Breweries, and Frans Cronje, Chairman of Nedbank. Correspondence in PW Botha's archives suggests that Fred du Plessis, Chairman of the insurance giant Sanlam, was also invited to sit on the board.³⁸
63. This close cooperation and growth of a military industrial complex has contributed to one of the myths of the late-apartheid period, namely that South Africa was a self-sufficient arms producer. This notion was supported by the apartheid regime as part of its broader myth-making around the success of the apartheid state. This claim of self-sufficiency was not the case. The apartheid state in fact became expert at smuggling technology and expertise into the country and, in some instances, improving on this, before churning out the same goods under other names in its own

³⁴ Submission to the TRC Business Hearings by the Centre for Conflict Resolution, University of Cape Town, October 1997, SAHA FOIP Collection, AL2878, A2.2.14.4.

³⁵ Graeme Simpson, 'The politics and economics of the armaments industry in South Africa', in *War and Society: The Militarisation of South Africa*, ed. Jacklyn Cock and Laurie Nathan, David Philip, Cape Town, 1990.

³⁶ Graeme Simpson, 'The politics and economics of the armaments industry in South Africa', in *War and Society: The Militarisation of South Africa*, ed. Jacklyn Cock and Laurie Nathan, David Philip, Cape Town, 1990.

³⁷ Graeme Simpson, 'The politics and economics of the armaments industry in South Africa', in *War and Society: The Militarisation of South Africa*, ed. Jacklyn Cock and Laurie Nathan, David Philip, Cape Town, 1990.

³⁸ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

factories. In other instances, container loads of key weapons and ammunition were simply imported clandestinely to the country. This not only fueled the war economy, but became the driver for a range of conflicts, described in Section 1, in which South Africa's military-industrial complex was deeply invested.

64. There are countless examples of how self-claimed 'home-grown' weapons creations were in fact the result of covert import of technology and parts. It is worth recalling one, the development of the G5 and G6 motorised 155 mm howitzer cannon. Following this, Armscor became one of the world leaders in artillery manufacture, and the company described it as one of its 'most outstanding achievements'. Denel (the state-owned arms seller) continues to sell these cannons in various guises today.³⁹
65. In reality, the South Africans obtained the technology and know-how for the G5 cannon through a complex sanctions busting operation in the late 1970s. They received the illicit imports through the G5's designer, Gerald Bull, and his company Space Research Corporation (SRC), operating from Canada. The introduction was made with the assistance of a CIA fixer, Jack Frost. With the help of Bull and his associates, the illicit trade took place through Antigua, and later Spain, with false port documents, in order to obscure the South African connection.⁴⁰ The US Department of Justice (ignoring suspected US complicity) would eventually fine SRC and send Gerald Bull to prison for their role in supplying the weapons technology to South Africa. By this point, PW Botha was boasting of South Africa's domestic achievement.

The wide-range of suppliers

66. The above story is just one example of where and how the apartheid regime, through Armscor, sourced weapons at the time of the embargo. It is not possible, nor necessary, to examine in detail each country that busted the embargo. It is important to note how widespread the complicity was. During the course of the research for the publication *Apartheid Guns & Money: A Tale of Profit*, Open Secrets consulted over 400 boxes of archival material, consisting of more than a million pages. Piecing the material together shows that the SADF organised its procurement, of either small individual items or new weapons systems, as projects. There is, based upon our research, no list of projects or their description to be found in any of the military archives. From what we have been able to ascertain from various former members of the military, the SADF and Armscor destroyed the lists of projects at some point in the early 1990s.⁴¹

³⁹ See <http://www.denellandsystems.co.za/products/artillery>.

⁴⁰ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017), pg. 410 – 412.

⁴¹ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

67. We have, over the past three years, constructed a list of arms procurement and propaganda projects and have identified some 500 projects ranging in alphabetical order from Project Aandblom to Zarki, all of which were run during the sanctions period. This list is annexed hereto and marked as “**AC12**”. As a rule, project names have no obvious association with the goods procured. For example, Project Kerktoring (Church Tower) was the main project for nuclear weapons, and Project Kinky denoted SADF war games. To add to the confusion, each project often has more than one sub-project, and project names were changed or swapped from time to time for security reasons. In addition, Armscor would usually give projects its own name. These were often chosen directly by the project manager.⁴²
68. Despite it being difficult to track all of the projects, and to know their every detail, the archives contain remarkable details of how these clandestine projects were organised and run. They also reveal how many countries busted the embargo. They show that the permanent five members of the United Nations Security Council did not only fail to enforce the arms embargo. Rather, in many instances, every one of those members wilfully violated the embargo or encouraged their agents to do so. Such behaviour trickled down throughout the international system. Pretoria could call on the support of dozens of states across the globe that acted as clandestine supporters providing weapons and intelligence. These included but were not limited to other ‘pariah’ countries notorious for being apartheid allies, Chile, Taiwan, Israel and Argentina. In total, *Apartheid Guns & Money: A Tale of Profit* identified illicit weapons trade to apartheid from over 30 countries. If one includes oil and other sanctions, this number rises over 50.⁴³ The “Apartheid Allies Map” is annexed hereto and marked as “**AC13**”.
69. This trade of course had to be covert. Some examples are helpful to illustrate how these trades worked in practice. In the mid-1980s, an American firm, International Signal and Control (ISC), was investigated to determine whether ‘US ballistic missile technology and military equipment was shipped illegally to South Africa between 1984 and 1986 with the full knowledge of the Central Intelligence Agency’.⁴⁴ A joint *Financial Times* and ABC News Nightline investigation was informed by US federal law enforcement officials that the illegal shipments to South Africa included equipment, which could be used to develop a missile capable of carrying nuclear warheads.⁴⁵ James H Guerin, a former CIA agent, and head of ISC, eventually pleaded guilty to shipping the missile technology to the South African military, via Armscor.

⁴² Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

⁴³ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

⁴⁴ Clipping from the *Financial Times*, 24 May 1991, University of Fort Hare, ANC Archive (London Mission, Press Cuttings, Box 54, Folder 74, Missiles: USA, Israel, SA 1991).

⁴⁵ Clipping from the *Financial Times*, 24 May 1991, University of Fort Hare, ANC Archive (London Mission, Press Cuttings, Box 54, Folder 74, Missiles: USA, Israel, SA 1991).

70. What the American authorities did not know (at least not publicly acknowledged) was what the South African military was doing with the missile technology. Declassified military archive documents, including an Armscor memorandum from 1990 confirms that Armscor had used the technology to develop a state of the art ZT3 laser-guided anti-tank missiles, and in turn was selling the missile technology on to the People's Republic of China (PRC).⁴⁶ Armscor memorandum from 1990 is annexed hereto and marked as "AC14".
71. The document shows that from 1987, communication between Kentron (Armscor subsidiary) and ISC Technology was channeled covertly through Italy and Armscor's Hong Kong regional office. One of the people listed as being compromised by investigations was Herb Liu, the representative of the ISC in Hong Kong.⁴⁷ While no paperwork exists to show how China utilised this technology, one of the two major state-owned Chinese arms companies, Norinco, developed the Hong-Jian 9 or Red Arrow missile system in 1990. It is described as similar to the ZT3. Like its counterpart, it is still in use today.
72. This suggests that South Africa not only covertly imported missile technology from the United States via the ISC, but could also have sold the modified technology via the ISC to China. If this was the case, then ISC was able to extract profits at both ends of the deal, while the SADF received new technology that it could share with a new partner in 'communist China'.

Clandestine Trade

73. A series of other declassified military documents reveal that this was not the only example of weapons trading between the PRC and apartheid. Although adopting a public stance opposed to the regime and in support of the liberation movements, declassified military records show that Communist China joined the western powers in collaborating with apartheid throughout the 1980s. Weapons trades with the PRC are useful to consider as they exemplify the following aspects of the covert nature of such shipments:
- How physical shipments were obscured.
 - The role of intermediary countries in facilitating sanctions busting.
 - The role of front companies and European bank accounts
74. Hansa was the codename used by the SADF for the PRC from at least the early 1980s. As clear from section 1, apartheid's need for weapons in the late 1970s into the 1980s

⁴⁶ Letter from RJ Petersen, Armscor, to Director Counter-Intelligence, 22 March 1990, DOD/SANDF (DI, GP 25, Box 110, APD/W/311/5/1, Hulpverlening en samewerking met statutêre liggame: Krygkor, 6, 8/11/89–10/9/90).

⁴⁷ Letter from RJ Petersen, Armscor, to Director Counter-Intelligence, 22 March 1990, DOD/SANDF (DI, GP 25, Box 110, APD/W/311/5/1, Hulpverlening en samewerking met statutêre liggame: Krygkor, 6, 8/11/89–10/9/90).

was largely to arm and support UNITA in Angola and RENAMO in Mozambique. It was problematic to do this with either South African weapons or those openly procured for the SADF, as they were easily traceable to Pretoria. As a result, to provide for Angola and Mozambique, the SADF and Military Intelligence procured small arms, ammunition, rocket launchers, grenades, mortars, mines, missiles, explosives and bombs from the PRC.⁴⁸

75. The purchases were made from state-owned China North Industries Corporation (Norinco), who insisted on creating a plausible distance between themselves and the regime in Pretoria. Conveniently, and with approval from a mutual ally - the Zairean head of state, Mobutu Sese Seko, the communist Chinese and South Africans agreed to use false end-user certificates from Zaire (now the Democratic Republic of Congo) that would indicate that the weapons would not be re-exported from Zaire. In reality, the port of Matadi in Zaire would serve as a point of transshipment as the goods made their way from Shanghai to Durban.⁴⁹ The Danish-registered *Vinderslevholm* was hired to transport the weapons between the three countries, which would become a regular sanctions-busting route.
76. A summary of what was dubbed Operation Kauka was found in the military archives. This document is annexed hereto and marked as “**AC15**”. The document sets out in detail how the secret shipment took place. After some logistical problems, it was ultimately decided that the weapons would be shipped from Shanghai on the *Vinderslevholm*, and then offloaded in the port of Matadi, taken to a warehouse and placed in new containers in the name of a Pretoria-based front company, Rust Enterprises, destined for Maputo. A Rust Enterprises invoice dated 10 May 1985 listed the camouflaged cargo as 16,500 cook sets, 5,000 ploughs, 2,000 bicycles and 26 trucks, with a total value of \$4.7 million. This invoice is included in annexure “**AC15**”. These guns and bombs ultimately landed in Durban for distribution throughout Southern Africa.
77. Rust enterprises was not the only front company used in this operation. It was also agreed that a front company called *Adam Export* would be used to originally contract with Norinco and purchase the end user certificates. In the SADF archive we found two invoices, for \$2 million and \$567,500, to be paid to Adam Export for the fraudulent end-user certificates.⁵⁰ The two invoices are annexed hereto and marked as “**AC16**”. According to the invoice, dated nearly one year later, payment was to be made to accounts with a bank called Kredietbank Luxembourg (KBL). Although Adam Export

⁴⁸ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

⁴⁹ Summary of Operation Kauka, 27 April 1985, DOD/SANDF (DI, GP 31, Box 5, DBB(SK)/311/1/30 Gallery, Ops Zaire: Gallery, 4, 18/01/1985–30/07/1985).

⁵⁰ Export Invoice for Payment to Be Made to Kredietbank Luxembourg, 25 February 1984, DOD/SANDF (DI, GP 31, Box 4, DBB/SK 311/1/30 Gallery, Ops Zaire: Gallery, 3, 27/02/1984–18/01/1985).

purportedly entered into the contract with Norinco on behalf of Zaire, its agents were two Armscor officials from Armscor's so called 'Technical Council' in Paris.

78. This trade therefore brings us to the centre of Armscor's sanctions busting network, its office in Paris, and its partner bank, Kredietbank Luxembourg.

79. It is worth repeating that the above examples are merely instances of a pattern of clandestine trading revealed in apartheid's military records. They serve to highlight useful threads to the sanctions busting story. Whether it was French helicopters being sent to apartheid via Portugal, or East German artillery via South America, the methods to obscure South Africa as the destination followed similar patterns. Yet in each instance, the foreign collaborators and apartheid officials faced one singular obstacle – how to move the vast sums of money needed to grease this machine, but in complete secret. It is this that we turn to now.

The Role of Kredietbank – the Arms Money Machine

Arm Scor's Technical Council

80. In the final example above, the documents state that the Arm Scor officials facilitating the illicit flow of Chinese weapons, via Zaire, to Durban, were based in Arm Scor's 'Technical Council' office in Paris. This Technical Council (Tegniese Raad in Afrikaans) is frequently referenced in declassified military documents. This is because, aside from Arm Scor's office in Tel Aviv, it was a central node in Arm Scor's sanctions-busting operations. It placed orders for weapons across Europe and much of the world, working in tandem with the Tel Aviv office and project offices and smaller offices across the globe.
81. The South African embassy in Paris is covered with protective layers of aluminium designed to provide a slim window outside while protecting those on the inside from rocks and bombs. Anti-apartheid protests regularly took place outside, while Arm Scor officials ensured the regime's survival from a secret floor inside. Built in 1974, it overlooks the river Seine on the prestigious Quai d'Orsay and is located only three short blocks from the French Ministry of Foreign Affairs, in the heart of the city. The building has ten storeys, three of which are set underground. The first two floors above ground are meant to receive visitors and the remaining five floors house embassy personnel. The most well guarded secret of the Embassy was that one floor of the embassy housed more than two dozen Arm Scor officials from the late 1970s to the early 1990s.
82. This was the base from which Arm Scor brokered illegal arms deals. Its existence was so secretive that, according to the longstanding head of the anti-apartheid movement's campaign for arms sanctions, Abdul Minty, none of the anti-apartheid groups, including the ANC, had much knowledge of it. Minty became aware of an Arm Scor team in Paris in the mid-1980s but had no idea that it was located in the embassy.⁵¹
83. Glenn Babb, a diplomat who worked in the South African embassy in Paris from 1975 to 1978, confirms the presence of approximately 20 Arm Scor officials there during that period. According to Babb, an Arm Scor office was established in Paris in 1969 and was later moved to the diplomatic mission in the 1970s to secure an effective cover. The establishment of the office also coincided with a major missile development project between Arm Scor and the French arms company Thompson-CSF. Babb recalls meeting officials from Thompson-CSF at the embassy.⁵² Top-secret declassified SADF documents confirm that this office was named the Arm Scor Technical Council and was

⁵¹ Interview with Abdul Minty, Pretoria, in Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

⁵² Interview with Glenn Babb, in Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

officially established between 1976 and 1977.⁵³ These documents are annexed hereto and marked as “**AC17**”.

84. The presence of the Armscor contingent is confirmed in an authorized but quietly shelved volume on Armscor’s history, titled *The Leading Edge*. An extract on Armscor’s relationship with France from this volume is annexed hereto and marked as “**AC18**”. The volume records the repercussions of new French laws that formally complied with the 1977 arms embargo. As a result, the number of naval and Armscor personnel in Paris was reduced from over 200 during the early 1970s to 20 within the last few months of 1977 to meet the new requirements for stealth and secrecy.⁵⁴ This volume also records that by 1986 the office recorded contact with more than 50 European suppliers, although the process of acquisition had become more difficult, as complicated channels had to be devised for the clandestine transportation of arms from France to South Africa.
85. The Paris office subsequently became the centre of Armscor’s trading activities, serving as a thoroughfare for all trade with France and other Western European countries. As is evidenced by the trade with the PRC, Armscor officials based there played a role in illicit trades far beyond this sphere of influence. The office grew in importance as the arms embargo kicked in despite the fact that the personnel were reduced to those officials with responsibility for procurement and the management of secret channels. At the same time the nature of the operation changed: it became more clandestine, more secretive and more significant given its role in sanctions busting and money laundering.
86. An obvious question is the extent of French knowledge of this hub of apartheid officials buying weapons, based in Paris. Apartheid era foreign affairs records show that the French government did indeed know of and tolerate Armscor’s secret office. In these records are a series of bureaucratic documents approving the transfer of officials to and from the office, which in turn confirms that there were approximately 30 Armscor officials in the office at any one time during the 1980s. Included in these records is a 1985 letter from the Paris embassy, in response to a transfer request for two officials from Armscor. The letter indicates that the French authorities must have known about the existence of the Armscor Technical Council and its purpose.⁵⁵ This 1985 letter is annexed hereto and marked as “**AC19**”.
87. This suggests that French authorities tolerated the entire operation, including the diplomatic status of some of the staff, despite the illegality involved. The report above

⁵³ Report by CS OPS, 20 July 1977, DOD/SANDF (DI: DBB, GP 22, 41, AMI/520/3/4, Oorseese Besoek, 09/11/87–07/01/88).

⁵⁴ LJ van der Westhuizen and JH le Roux, *Armscor: The Leading Edge*, unpublished, University of the Free State, Institute for Contemporary History, 1997.

⁵⁵ Documents on Appointment of Mr Mark Allen Verwey of Armscor to Paris, 17 September 1985, DIRCO (Paris, 4/2/7, Vol. 9, Brussels, Luxembourg and Paris).

notes that: *'Notwithstanding the tense state of relations and the possibility that South African military attachés in France may have their accreditation withdrawn, we have, at present, no indication that any action is envisaged vis-à-vis the technical section. Although there is always the possibility that the Foreign Ministry, when we apply for registration and identity documents, may refuse to do so, we would advise that, for the moment, transfers of Armscor personnel proceed as usual.'*⁵⁶ Another document in this foreign affairs collection confirms that the head of the Technical Council enjoyed full diplomatic status, granted by the French government from as early as 1981, and which continued throughout the decade.⁵⁷

88. Former Armscor officials who worked in the Paris office have provided greater insight into the exact role of the technical council in busting the arms embargo. Former Armscor employee Martin Steynberg was transferred to the Armscor office in Paris in 1986 to work as a contracts administrator. According to him, employees of the Technical Council were allocated various tasks, ranging from weapons procurement, sales and logistics to the more mundane tasks of financial management. Steynberg confirms that Armscor operated from the embassy with the knowledge of the French government, which provided work permits to carry out their duties.⁵⁸
89. According to Steynberg, the weapons procurement projects were set up as follows. If Armscor headquarters needed a product, they would inform their office in Paris, which would in turn identify and negotiate with an appropriate supplier. Once the Pretoria Armscor office gave a green light, 'the Paris financial section would get involved and establish and implement a suitable channel for payments'.⁵⁹ Steynberg's statement is annexed hereto and marked as "**AC20**".
90. These 'channels', run by the Technical Council, consisted of a series of bank accounts and front companies established with the assistance of Kredietbank Luxembourg (KBL) for Armscor. According to Loubser, 'from 1977 onwards, the [Armscor] top management was looking for new ways to make payments, and he understood that top management of KBL had agreed to help Armscor'.⁶⁰ According to Loubser, Armscor's banking relationship with KBL was set up initially by senior management in Armscor Pretoria, but that once the banking relationships had been established in Luxembourg, the day-to-day operations were controlled out of Armscor's Paris office. Loubser's statement is annexed hereto and marked as "**AC21**".

⁵⁶ Documents on Appointment of Mr Mark Allen Verwey of Armscor to Paris, 17 September 1985, DIRCO (Paris, 4/2/7, Vol. 9, Brussels, Luxembourg and Paris).

⁵⁷ Memorandum to DG DFA, 11 September 1981, DIRCO (Foreign Representation, 4/2/7/3, Vol. 2, 12/9/68–6/1/83, Paris Military Attaché).

⁵⁸ Sworn Statement by Mr Martin Steynberg, 20 April 2001, Open Secrets Collection.

⁵⁹ Follow-up Statements by 'A' (Daniel Loubser) and 'B' (Martin Steynberg) – Steynberg's comments, 1 October 2006, Open Secrets Collection.

⁶⁰ Follow-up Statements by 'A' (Daniel Loubser) and 'B' (Martin Steynberg) – Steynberg's comments, 1 October 2006, Open Secrets Collection.

91. Tonie de Klerk, Armscor's manager of foreign procurement in Paris during the 1980s, confirms that the Paris office "was used by Armscor for the clandestine procurement of weapons, equipment and spare parts originating in the United Kingdom, Western Europe and certain Eastern Bloc countries which were required by the SADF."⁶¹ He relates that it was his job to set up structures in terms of which the weapons could be purchased without identifying South Africa as the ultimate end-user. These structures were the channels described above.
92. Thus, Armscor's secret office in Paris was the hub from which sanctions busting deals were negotiated, but most importantly, where secret 'channels' were constructed to hide the payments and thus the ultimate beneficiary of these trades. A range of ex-Armscor officials confirm that Kredietbank Luxembourg (or KBL) was the primary facilitator of these channels. This begs the question, what was this bank, what was its precise role in these crimes, and why did it align itself with Armscor's cause?

Kredietbank, KBL and their apartheid connections

93. Kredietbank, now known as KBC Bank and based in Antwerp Belgium, is the 18th largest bank in Europe and employs 51,000 people, serving 11 million customers across the globe. Kredietbank's fortunes mirrored the rise in prosperity of Belgium's Flemish speakers in the 20th century, and it has always been the bank of choice for the Flemish elite. When the Kredietbank was set up in 1935, a holding company, Almanij, was established to house the interests of the bank and other investments in the financial sector and large industries. Almanij was led by two large Flemish families: the Collin and Vlerick families.
94. To understand the motive of the bank, one must consider the mindset and other conduct of the management of the bank in the period in question. Both Fernand Collin and André Vlerick were deeply racist and powerful men. Collin chaired the bank for 35 years from 1938 to 1973. He travelled to South Africa on numerous occasions, heading trade delegations, and showed great empathy for the apartheid regime. 'What happens there I cannot explain in a positive light, but I understand their situation, the whites established something that is exceptional,' he commented. 'And everywhere where blacks have become boss, everything disappear'.⁶²
95. The other important figure in Kredietbank who became central to the South African money-laundering scheme was André Vlerick. For over two decades, he filled several senior management positions at the bank, first as deputy chairman from 1974 to 1980

⁶¹ Signed Statement by Mr Tonie de Klerk, 2 February 1996, Open Secrets Collection.

⁶² Clipping from *Humo* magazine titled 'The Belgian elite: Rich but upstanding', 1985, KADOC, Archief Walter de Bock (Banken en Bedrijven, Banken, Bedrijven, Belgie, 2.20, 4).

and then as chairman of the board from 1980 to 1989, exactly at the time of the conduct by the bank in assisting Armscor to bust sanctions.

96. Vlerick had developed a sympathy for white Afrikaner nationalism and the policy of apartheid based on his perceived experience of the Flemish in Belgium. His defence of apartheid as a model for peaceful coexistence was tied to his deeply Flemish nationalistic identity. On one occasion he praised the way 'Afrikaners have fought for the right of their nation and to remain as they are ... If we in Belgium had established parallel development we would not be sitting with the well-known problems we have.'⁶³ The Report on Meeting of the Commissie Rechtvaardigheid en Vrede is annexed hereto and marked as "AC22".
97. To promote his views, in 1977 Vlerick helped found a powerful lobby in Belgium called Protea. According to the Belgian newspaper *De Morgen*, writing in 1981: 'in reality, the Protea club operates as a propaganda organ, behind which significant Flemish South African business interests shelter, which for their own interests defend the racist minority government in Pretoria'.⁶⁴ The group enjoyed significant political influence - the 142 founding members of Protea all had political clout; 46 of them were centre-right members of the Belgian parliament.⁶⁵
98. Alongside lobbying heavily against sanctions on apartheid, Protea published crude propaganda in its rag *Zuid-Afrika*. In 1987 it featured an article on Archbishop Desmond Tutu, titled 'Angel of peace or wolf in sheep's clothing?', accompanied by a drawing showing Tutu holding a cross-shaped wooden box, which, when opened, revealed a dagger.⁶⁶
99. Protea did not exist in isolation. Vlerick had organized it was one of nine national bodies operating as 'sister organisations' under an umbrella group called Eurosa, the Union of Associations of Southern Africa. Headquartered in Brussels, this pro-apartheid federation had over 10,000 members across Western Europe. We have established from numerous documents in Vlerick's archive that Eurosa received funding from the apartheid government, which was channeled through a Kredietbank account.⁶⁷ In one instance Vlerick wrote to the South African ambassador in Brussels: "My colleagues and I of the executive council of Eurosa would be very grateful if you

⁶³ Report on Meeting of the Commissie Rechtvaardigheid en Vrede, 12 November 1979, KADOC, Archief André Vlerick (Diverse engagementen en persoonlijke stukken, Zuid-Afrika, 9.1.2.4, Toespraak Vlerick over Protea voor Algemene Vergadering Commissie Rechtvaardigheid en Vrede, 18 Oktober 1979, Notities, briefwisseling, verslag van de vergadering).

⁶⁴ Clipping from *De Morgen*, 3 December 1981, KADOC, Archief Walter de Bock (Centraal en Zuidelijk Afrika, Zuid-Afrika, 5.06, 1, 1981-1988).

⁶⁵ Clipping from *Knack* magazine titled 'Protea beklim die berg', 26 October 1977, KADOC, Archief Walter de Bock (Centraal en Zuidelijk Afrika, Zuid-Afrika, 5.06, 1, 1981-1988).

⁶⁶ Newsletter distributed by Protea, 1987, KADOC, Archief Walter de Bock (Centraal en Zuidelijk Afrika, Zuid-Afrika, 5.07, 1, 1985-2002).

⁶⁷ Minutes of Eurosa Board Meeting, 14 July 1980, KADOC, Archief André Vlerick (Diverse engagementen en persoonlijke stukken, Zuid-Afrika, 9.1.1.8, Protea/Eurosa, 1979-1982).

could, in the near future, let us know if this budget has been approved by Pretoria. Thereafter, we would like to speak with you about the manner in which the funds can be transferred to Eurosa".⁶⁸

100. It is unsurprising that Vlerick was able to achieve easy access to senior officials in Pretoria. His archive and diaries reveal that his ties to Pretoria were strengthened by regular visits to the country and meetings with senior officials. This included attending the presidential inauguration of Dr. Nico Diederichs in 1975, whom he had first met in the 1960s when Diederichs was minister of finance. Among many other visits, he met PW Botha in 1983 and discussed with him the philosophy of apartheid. For all of his efforts, the South African government awarded him the Order of Good Hope in 1987. The citation read, 'Professor Vlerick is invaluable to the relationship between the Republic and Belgium, as well as in world fora.'⁶⁹

101. While Vlerick had no doubt shown his commitment to the apartheid cause through his extensive European lobbying efforts (on Pretoria's dime), this warmth and recognition from Pretoria was undoubtedly connected to more sinister and integral work – namely the conduct of Kredietbank over which Vlerick exercised such significant control.

102. A crucial part of Kredietbank's make-up was the Kredietbank Luxembourg (KBL), established in 1949. It was one of the first banks created after the Second World War in Luxembourg, and played an important role in implementing the Marshall Plan. Vlerick, who was in senior management at Kredietbank from the 1950s, brought his own men into KBL, such as his assistant at the University of Ghent, Jean Blondeel, who helped establish KBL. By the 1970s, the role of KBL within the Kredietbank structure shifted towards growing the global market and engaging in international investment banking. This included a KBL subsidiary in Switzerland, the Kredietbank Suisse. A breakdown of Kredietbank's corporate structure is annexed hereto and marked as "AC23".

103. Over the years KBL grew into 'the most important link in Kredietbank's international network'.⁷⁰ The less restrictive regulatory environment in Luxembourg induced many corporations and people to start moving their money to Luxembourg, and a number of large international banks were invited to participate in capitalising KBL.

⁶⁸ Letter from André Vlerick to SA Ambassador, Brussels, 13 March 1980, KADOC, Archief André Vlerick (Diverse engagements en persoonlijke stukken, Zuid-Afrika, 9.1.1.8, Protea/Eurosa, 1979–1982).

⁶⁹ 'SA vereer Belg met hoogste orde', *Beeld*, 14 December 1987.

⁷⁰ André Mommen, 'Een Vlaams sprookje', *De Nieuwe Maand*, January 1986, KADOC, Archief Walter de Bock (Banken en Bedrijven, Banken, Bedrijven, België, 2.20, 4).

104. The bank's financial links to apartheid were numerous. Dating to 1960, it had extensive investments in gold and diamond mines in the country. It was also a crucial lender to the apartheid regime throughout the 1970s and 1980s, at the height of apartheid's foreign wars and domestic repression. A 1974 annual report, for example, details major loans to South African state-owned corporations, including Eskom, Iscor and the government itself, totalling \$624 million in the period 1967– 74. This constituted approximately 13% of the bank's loans for the entire period from 1961 to 1975.⁷¹ Even the nuclear power station at Koeberg was co-financed by KBL.
105. This continued throughout the next decades. A study commissioned by the World Council of Churches identified 17 loans to South African state entities between 1982 and 1984. These totalled more than R36 billion in 2017 value, with KBL appearing most frequently as a creditor.
106. Yet none of these loans could compare in importance to apartheid with the money laundering role that the bank took on. Recall that ex-Armscor officials described their role in the Armscor office in Paris as running secret channels designed to hide sanctions busting – and that these 'channels', run by the Technical Council, consisted of a series of bank accounts and front companies established with the assistance of Kredietbank Luxembourg (KBL) for Armscor. It is this conduct by the bank that we turn to next.

The Arms Money Machine

107. The role of KBL in laundering money for Armscor is revealed through a range of sources, from declassified military documents, to the testimony of ex-Armscor officials and bank records unearthed in a lawsuit by an apartheid era sanctions buster against Armscor. Put together, these documents reveal that KBL was the primary institution that provided a solution to the problem posed to Armscor by the 1977 embargo. After 1977, the bank assisted in establishing a money-laundering network that would allow Armscor to pay for weapons without it being apparent that Armscor was the buyer.
108. KBL assisted in two crucial ways. The first was assisting in the establishment of a series of shell companies registered in Panama and Liberia. A shell company (also front company) has no significant assets nor undertakes business activities itself, but can be used by others to undertake a transaction without it being traceable to that party. They are usually, as is the case here, registered in jurisdictions that allow for secrecy in ownership, are low in taxation, and do not require extensive reporting. The

⁷¹ KBL 1974 Annual Report, 1974, KADOC, Archief André Vléricq (Beheerder van maatschappijen, Kredietbank NV, 5.1.7.5, Establishment of an office or branch of Kredietbank Luxembourg in the Far East, 1979).

transactions between Armscor and the arms suppliers were channelled through these shell companies, to obscure the fact that Armscor was a party to the trade. KBL often arranged for the appointment of the named directors of these companies, sometimes providing their own employees to play this role, contributing to the subterfuge.⁷²

109. Open Secrets has been able to identify the identity and in some cases the purpose, of 76 Armscor front companies in Liberia, and 39 in Panama. We asked Paul Holden, who has undertaken extensive research on corruption in the global arms trade, to analyse the records available. Holden's Report is annexed hereto and marked as "AC24". He argues that the evidence 'strongly suggests the companies, as a totality, were specifically established to undertake secret transactions, and were universally closed down, either due to necessity or as a method of evading detection, once the apartheid regime was overthrown'.⁷³
110. Holden believes that the evidence suggests that the majority of the front companies were formed by using well-known company formation agents as their nominee directors. Company formation agents typically act as the 'cover' for individuals looking to establish companies without leaving registration fingerprints, and often offer a package of company management services ranging from formation to submitting annual financial returns. The agents will most often also serve as nominee directors, with the powers associated with directors in that given jurisdiction. This prevents the 'true' owner from having to be associated with directorial decisions.
111. The second role played by KBL was the provision of hundreds of numbered bank accounts, some for Armscor itself and some attached to the shell companies, to facilitate the secretive movement of the money. Most of the front companies' bank accounts were at Luxembourg banks, and the majority of those were KBL accounts. By way of example, 76 front companies identified in Liberia held a total of 198 bank accounts at KBL alone. This meant that while a front company in Liberia may be listed as a party to the transaction, the cash would still flow to an Armscor controlled KBL account in Luxembourg.
112. The scale of this network should not be underestimated. Bank records in Open Secret's possession shows that the network (including some beneficiary accounts linked largely to arms companies) included 844 bank accounts. 487 of these accounts were controlled by Armscor. Of these, Armscor had a core group of 67 'main accounts', the vast majority of which were held in Luxembourg. These accounts were the main accounts used for receiving and holding funds for transactions. KBL housed 25 of these accounts and its controlling bank Kredietbank in Belgium held another 6.

⁷² Supplementary Statement by Martin Steynberg, 8 April 2006.

⁷³ Paul Holden, Expert Opinion, April 2014.

The details of both the Front Companies and the accompanying bank accounts have been summarised in a spreadsheet attached hereto and marked as annexure “AC25”.

113. How did this architecture work in practice? Put simply, it allowed for the following kind of transaction: if Armscor needed to pay a French arms company for a new missile system or set of helicopters, it would not make any direct monetary transfer to the company. This would be too easily traceable. Rather, the money that left South Africa (with authorisation of the South African Reserve Bank) would be routed through a series of different ‘numbered’ bank accounts before arriving in the account of the front company (controlled by Armscor), usually held at KBL itself. The ‘numbered’ accounts allowed the ultimate beneficiary or owner of the account to be withheld, with only a series of digits identifying the account. This made tracking the funds impossible.⁷⁴ With the cash reassembled in Luxembourg, Armscor officials could direct the bank to make payment from these Luxembourg accounts to the weapons suppliers. The series of bank accounts and inclusion of front companies broke the audit trail, ensuring that the transactions could not be linked directly to Armscor. The secrecy provided by KBL’s construction made investigations by the anti-apartheid movement nearly impossible.
114. The daily mechanics of this complex architecture, as well as Armscor’s relationship with KBL, were managed by Armscor officials out of Armscor’s Technical Council in the Paris Embassy. As shown above, this office managed the majority of Armscor’s procurement projects in Europe at the time, identifying weapons providers and then directing the payment via instructions to KBL. Further details of these accounts and the architecture described above are found in the publication, *Apartheid Guns & Money: A Tale of Profit*. The chapter dealing with these matters is annexed hereto and marked as “AC26”.
115. Steynberg provides a clearer picture of how the money would flow from Pretoria to end up with the arms companies. He confirms that accounts remained either in the name of front companies or as numbered accounts as facilitated by KBL. The majority of the funds that were transferred, originated from Armscor’s Volkskas (today ABSA) bank account in Pretoria. The money would then flow through what he describes as ‘dark zones’ and ‘jump accounts’, the purpose of which was primarily to break up the money trail and obscure its origin. Often, Paris officials would not even have knowledge of the route that the money had taken from Volkskas in Pretoria to the accounts they managed and controlled at Kredietbank Luxembourg, such was the desire for secrecy.⁷⁵

⁷⁴ Luxembourg is a country long criticized by fellow European countries for their banking secrecy and the tax evasion and other financial malfeasance that such secrecy facilitates.

⁷⁵ Follow-up Statements by ‘A’ (Daniel Loubser) and ‘B’ (Martin Steynberg) – Loubser’s comments, 1 October 2006, Open Secrets Collection.

116. Philippe Mortge, a Swiss forensic accountant with twenty years' professional experience, has examined the complexity of the payments made and the invention of shell companies in the payment system. After considering over 4,000 transactions involving over \$300 million, he concluded: 'This type of operation is found in the classical cases of money laundering where shell companies are used to "mask" the real purpose relating to the movement of funds. This obscure end trail is illustrative of many "dark zones" where, in effect, the audit trail stops so that you cannot see the ultimate beneficiaries.'⁷⁶ Philippe Mortge's expert witness statement is annexed hereto and marked as "**AC27**".
117. This 'arms money machine', as we have called it, did not just operate for one or two transactions. Steynberg's affidavit confirms KBL was pivotal in the vast majority of the transactions managed from the Armscor Paris office. He argues that the KBL network of accounts handled up to 70% of Armscor's transactions.⁷⁷ If this is correct, the scale of KBL's involvement is vast. Taking the figure in Section 1, up to R500 billion (in today's terms) was spent through the Special Defence Account between 1974 and 1994. The vast majority of this expenditure occurred during the sanctions period after 1977 and would have been foreign expenditure directed by Armscor. Thus, although it is not possible to calculate a precise amount, the evidence suggests that tens of billions of rands were channelled through the KBL architecture.
118. The scale of involvement is confirmed by Armscor's own documentation, as found in declassified military documents in South Africa. In a candid admission, found in the minute of a 1980 Armscor management meeting, Armscor's bosses were concerned that they were utilising the services of KBL *too much*. The document reveals that Armscor's accounts at KBL were being used to such an extent to make payments to suppliers that Armscor was worried it was becoming over-reliant on the bank. It noted: 'As a result of circumstances, the [Armscor] Paris office made significant use of the services of Kredietbank Luxembourg to make payments. The high concentration of payments through this channel is regarded as risky in the event that the implicated individuals at the bank should be identified.'⁷⁸ The 1980 Armscor management meeting minute is annexed hereto and marked as "**AC28**".
119. It must be stated clearly that KBL must have had intimate knowledge of the purpose of the transactions, and thus assisted Armscor with full knowledge of the purpose of the front companies and transactions. This averment is backed up by a range of evidence, starting of course with the nature of the assistance, namely (i)

⁷⁶ Expert Witness Statement by Philippe Mortge, 30 May 2007, Open Secrets Collection.

⁷⁷ Supplementary Statement by Martin Steynberg, 8 April 2006.

⁷⁸ Armscor Trimester Report, 2 October 1980, DOD/SANDF (CSF, GP 3, Box 933, HSF 521/4/1/2, Krygkor, 1, 17/04/1979–28/02/1985).

acquiring offshore companies in Panama and Liberia and (ii) providing 'Front Directors' for those companies, both of which indicate a willingness to take part in the subterfuge.

120. KBL's knowledge is also confirmed by the former-Armscor officials who travelled to Luxembourg weekly (usually on Wednesdays) to issue payment instructions to the bank officials. One such former Armscor official, Daniel Loubser, who also worked from the Armscor office in Paris, confirms these Wednesday meetings. He also indicates that instead of any traceable telephonic communication, all instructions to the bank were delivered through diplomatic pouches taken to these meetings by Armscor officials. The use of diplomatic pouches, reserved for official diplomatic business of the South African state is more evidence that the bank and its officials were inevitably aware that the source of the transactions was ultimately the South African government. According to Loubser, the pouches carried the fully completed instructions to the bank for the week in question. Later, KBL and the Armscor Paris office would develop a coded telex system for urgent communications.⁷⁹

121. Loubser goes on to state that Armscor was a 'special' client of KBL and that the banks and its employees went out of their way to assist the Armscor officials. He writes:

The internal name "le Group Special" was given to Armscor by personnel working in the bank. During the visits to Paris, he [Loubser] went for lunch a couple of times with [Kredietbank official] Germain (Dick) Menager. They would lunch at a banker's club in Luxembourg. Prior to that, Menager's predecessor, Mergand, sometimes also took him to have lunch at that club. A good working relationship prevailed between the bank and our company [Armscor] in the light of its importance to the bank. Indeed, it appeared that KBL's management would go out of their way to do our bidding... Hiding the payment trails for the foreign military procurement projects could not have been done without the full knowledge and blessing of the very top managements of both Armscor and the banks involved. This was due to the volumes of money being channelled and the sensitivity of the activities associated with the transfers.⁸⁰

122. Providing financial services to the weapons arm of the South African government by definition constituted a violation of the UN arms embargo. However, KBL's conduct as described here goes beyond negligent conduct, or simply a bank's

⁷⁹ Follow-up Statements by 'A' (Daniel Loubser) and 'B' (Martin Steynberg) – Loubser's comments, 1 October 2006, Open Secrets Collection.

⁸⁰ Follow-up Statements by 'A' (Daniel Loubser) and 'B' (Martin Steynberg) – Loubser's comments, 1 October 2006, Open Secrets Collection.

failure to do due diligence. Rather, the evidence above shows that KBL deliberately and knowingly acted unlawfully in assisting the South African government in contravening the arms embargo. The intimate relationship between Armscor and KBL dispels any argument that KBL was unaware of the true and exact nature of the bank accounts with Armscor, and the purpose that they served.

Motive – Ideology and Profit

123. The above evidence suggests a deep complicity by KBL in assisting Armscor to violate the UN arms embargo. When one considers the evidence presented about the ideology of the banks' senior management, and particularly the conduct of Chairman André Vlerick in relation to apartheid, it is reasonable to say that ideological affinity can play some explanatory role for the bank's conduct. Vlerick in particular dedicated a significant amount of this time and political capital to lobby in favour of apartheid and against sanctions.
124. It is not the sole variable, however. The other primary driver for the bank and its management was no doubt profit.
125. This is corroborated by the independent expert testimony of Christian Weyer, who has over 35 years of banking experience, including as president of Banque Paribas (Suisse) in Geneva. The expert testimony of Christian Weyer is annexed hereto and marked as "AC29". Weyer agrees that the size and the sensitivity of these Armscor payments mean that they would have certainly been known to the senior management of KBL. However, Weyer argues that the senior executives at the bank no doubt supported the activities of Armscor out of self-interest, having recognised how profitable this business could be for the bank and for themselves.⁸¹
126. Weyer suggests that the behaviour of KBL is typical of small to mid-sized banks engaged in generating profit aggressively. He argues that "In my professional experience, small and mid-sized banks would often attempt to grow by engaging in sensitive or marginal business areas, where the possibility of gain for the bank was greater.... Such small and mid-sized bank could also grow by accepting more sensitive types of business. It was recognized that assisting clients to achieve certain corporate endeavours, including for example tax reduction or avoidance of currency exchange restrictions, could carry risks for the bank and its officers as well as for the clients."⁸² This was done in the knowledge that the conduct was contrary to best practice. Although anti-money laundering laws were playing catch-up with illicit practice during this period, "international banks in Europe were [from] the early 1980s aware of

⁸¹ Expert Witness Statement by Mr Christian Weyer, 7 March 2007, Open Secrets Collection.

⁸² Expert Witness Statement by Mr Christian Weyer, 7 March 2007, Open Secrets Collection.

serious concerns relating to laundering of criminal proceeds, especially those from drug-related crimes, arms trades, and were establishing internal controls to avoid any participation in such matters”.⁸³

127. It is of course difficult to disentangle the causes for any bank’s financial success more than three decades ago. In addition, there is little doubt that political connections helped drive the bank’s growth. Kredietbank grew faster than the Belgian economy between 1945 and 1984, with its balance sheet leaping from 5.8 to 730 billion Belgian francs (R294 billion in 2017 values).⁸⁴

128. This was only accelerated in the period in question. In 1979 alone, international activities in the Kredietbank grew by 25% to BF90.65 billion.⁸⁵ By 1984, Kredietbank was the fastest-growing bank in Western Europe, the third-largest retail bank in Belgium, and it contributed three-quarters of Almanij’s profits. As a result, Almanij became one of the biggest holding companies in Belgium. Of course, a key to its success of Kredietbank was its offshore subsidiaries, the most important of which was KBL in Luxembourg.

129. It is important at this point in the submission to be mindful of the context laid out in section 1. The conduct of KBL should not be reduced to a technical money crime. Rather, it was profiting from assisting a state that was enforcing a crime against humanity through force, with severe consequences for the lives of millions of people in Southern Africa. The following section considers the possible liability of the bank for its conduct. It does so in terms of a range of legal mechanisms.

⁸³ Expert Witness Statement by Mr Christian Weyer, 7 March 2007, Open Secrets Collection.

⁸⁴ Ludwig Verduyn, *Het KBLux dossier*, Uitgeverij Van Halewyck, Leuven, 2011.

⁸⁵ Clipping from the *Financieel Economische Tijd*, 30 May 1979, KADOC - Archief Walter de Bock (Banken en Bedrijven, Banken, bedrijven, Belgie, 2.20, 4).

Potential legal liability based on the conduct of the bank

Violations of the UN compulsory arms embargo

130. It should be apparent from the facts laid out above, that KBL was an essential actor in Armscor's success in violating the 1977 compulsory UN weapons embargo. KBL is registered in Luxembourg, a state which officially communicated its acceptance of Resolution 418 (the compulsory embargo) in 1978.⁸⁶ In 1987, Luxembourg once again officially communicated its acceptance of the Second Resolution (591 if 1986) to the Secretary-General – this was the resolution that strengthened the embargo by extending it to a range of other equipment.⁸⁷
131. Professor Mark Pieth of Basel University is an international expert in economic crime. He has served as chairman of the OECD's Working Group on Bribery in International Business Transactions for almost two decades and was appointed by the UN secretary general to act as a member of the Independent Inquiry Committee into the Oil-for-Food Program of the UN in Iraq. Pieth has inspected the documents in Open Secret's possession. Based on his analysis of these documents, he concludes that if KBL did indeed serve as a deliberate conduit for Armscor's sanctions busting operations, it 'would be one of the most serious forms of sanctions violation registered by far.' Pieth argues that busting an embargo is not just done by those selling the goods or those that facilitate clandestine routes for the goods, but also by those that facilitate the movement of money in the transaction. Professor Mark Pieth's affidavit is annexed hereto as "**AC30**".
132. He contends that 'the financial channel [was] a fundamental part of the conspiracy to subvert the UN Security Council Resolution 418'. Helpfully, Pieth reminds us that not only was the conduct 'clearly illegal according to international law (Chapter VII of the UN Charter)' but that it was also a clear violation of the norms and standards associated with professional banking: "A bank that deliberately channels billions of dollars of then undoubtedly illegal payments through its system does not offer the requirements of an "honourable" and "experienced" professional. This is an obvious offence against the rule of "fit and proper conduct".
133. Professor Pieth unequivocally critiqued the conduct of KBL, which he found to have fallen far short of the professional conduct expected of such an institution, regardless of the specific codified laws of the period. He argued that rules against the

⁸⁶ The reply from Luxembourg to the Security Council is documented as S/12527. See 'Report of the Secretary-General on the Implementation of Resolution 418 (1977) on the Question of South Africa Adopted by the Security Council at its 2046th Meeting On 4 November 1978' at <http://www.aluka.org/stable/pdf/10.5555/al.sff.document.puuns1978002>.

⁸⁷ The reply from Luxembourg to the Security Council is documented as S/18961/Add.2. See 'Report of the Secretary-General on the Implementation of Security Council Resolution 591 (1986) Addendum' at http://repository.un.org/bitstream/handle/11176/60830/S_18961_Add.2-EN.pdf?sequence=3&isAllowed=y.

conduct in question were in place long before they were formerly codified, and were well known by both banks and regulators:

Running hundreds of shell corporations at clandestine accounts to subvert the sanctions was clearly not what one would call professional behaviour of a serious financial institution. Even if Luxembourg codified the considerations of "fit and proper conduct" by bankers in detail, only in 1993, these rules were in place long before. Under these circumstances, if the supervisory authorities would have known of the behaviour of KBL, they would or should have intervened with the strictest of measures available.

134. Two other affidavits by banking experts support Pieth's argument. One is by Phillippe Mortge, an experienced Swiss forensic accountant. Upon analysis of a sample of 4000 transactions made by Armscor with the assistance of KBL, Mortge concluded that KBL must have had detailed insight into all Armscor operations involving movements of money through and by that bank, and thus known that the transactions were designed to violate the arms embargo in place at the time.⁸⁸

135. A third expert to review the transactions and records in question was Christian Weyer, whose views are quoted in the preceding section. Weyer concurred that senior management of the respondent were aware of the transactions and their purpose, namely to circumvent the arms embargo to allow for the continued supply of weapons to the apartheid regime.

136. As Weyer notes, the 'know your client' requirement on the part of banks and their executives is internationally recognised and was certainly recognised in Luxembourg by the 1980s. The 'know your client' (KYC) principle is that banks should have procedures in place to identify the identity of any client to assess whether that client poses any risks in terms of money laundering or other illicit activities. In this case, the state-owned arms company of a rouge nation that is subject to a compulsory UN arms embargo is clearly a particularly high-risk client, as would be determined by any reasonable enquiry by any bank. Weyer concludes that, based on his years of international banking experience, the conduct of KBL did not come even close to meeting the minimum legal and good practice standards of a major international European banks, in terms of the principle of identifying and mitigating the risks associated with their clients.⁸⁹

137. In fact, as has been asserted before, the evidence presented above shows that this was not simply a case of KBL failing to determine the identity and risk factors associated with Armscor as a client. It clearly knew both the identity of the client and

⁸⁸ Expert Witness Statement by Philippe Mortge, 30 May 2007, Open Secrets Collection.

⁸⁹ Expert Witness Statement by Mr Christian Weyer, 7 March 2007, Open Secrets Collection.

the illicit purpose of the accounts. The bank's willingness to assist Armscor in the creation of hundreds of numbered accounts as well as the front companies for the purposes of their transactions, coupled with the regular meetings between senior officials at the bank and Armscor officials, leaves the bank's knowledge of the purpose of these transactions beyond any doubt.

138. Yet the knowledge of the bank raises further questions about its liability, particularly because the ability to continue arming itself in spite of the embargo was essential to the survival of the apartheid state more broadly. Can it then be said that the KBL violated the Apartheid Convention, in addition to its role in violating the embargo? The submission turns to this question next.

Violation of the Apartheid Convention

139. On 30 November 1973, four years before the compulsory embargo was brought into effect by Resolution 418, the United Nations General Assembly adopted the *International Convention on the Suppression and Punishment of the Crime of Apartheid*. The Convention is annexed hereto and marked as "AC31". The convention defined the crime of apartheid as "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them." Apartheid was declared to be a crime against humanity and the convention explicitly imposed international criminal responsibility on a range of actions that will be explored below.
140. Article 1 of the Convention declared apartheid a crime against humanity, which violated the principles of international law, and in particular the purposes and principles of the Charter of the United Nations. Crucially for the purposes of this submission, the Convention also applied to individuals and private institutions and thus applied to KBL.
141. Article 2 of the Convention defined "the crime of apartheid" as including "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons systematically oppressing them". The convention explicitly included the following acts or policies under this definition:
- (a) *denial to a member or members of a racial group or groups of the right to life and liberty of person:*
 - (i) *by murder of members of a racial group or groups;*
 - (ii) *by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by*

subjecting them to torture or cruel, inhumane or degrading treatment or punishment;

(iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.

142. Importantly, the Convention did not limit the crime to policies inflicted by a state. Although the Convention clearly referenced the state policy of apartheid South Africa as the basis for the Convention, article 3 clearly extends liability to individuals and private institutions if they engage in certain conduct.

143. Article 3 of the Convention imposes international criminal responsibility, irrespective of the motive involved, upon any institutions whenever they engage in a range of conduct. For the purposes of this submission and to assess KBL's role in Armscor's money laundering network, it is important to highlight the following sections that impose liability on institutions should they:

(a) commit, participate in, directly incite or conspire in the commission of the acts mentioned in [Article 2];

(b) directly abet, encourage or co-operate in the commission of the crime of apartheid.

(c) any ... other measures calculated to prevent a racial group or groups from participation in the political, social, economic and culture life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including... the right to freedom of peaceful assembly and association.

144. Given that the bank is, like all private institutions, subject to the Apartheid convention it is important to reflect on the conduct described in the preceding section, and consider whether it can be said to be responsible for any of the acts above.

145. In terms of Article 3(a) of the Convention, it can be argued that the Bank participated in or conspired to commit the crime of apartheid, as defined in Article 2. In particular, the Bank's conduct could be framed as the participation of the Bank in the denial of members of a racial group of the right to life and liberty of the person in terms of Article 2(a). This framing is possible given the bank's deep knowledge of the purpose of the sanctions busting operation, the senior management's ideological commitment to apartheid rule, and the significant material contribution of the bank to the ability of the apartheid state to continue to arm itself.

146. If it is true that KBL's channels were responsible for up to 70% of Armscor's operations in the sanctions period, one can only conclude that the bank played a direct role in sustaining the apartheid state and thus directly participated in the crime of apartheid.
147. However, this is not the only requirement for an institution to be held liable according to the Convention. In terms of Article 3(b), it can be persuasively argued that the Bank directly abetted, encouraged or co-operated in the commission of the crime of apartheid, as defined in Article 2. This can be held because KBL's conduct facilitated the violation of rights through arms acquired in contravention of the embargo. Without the creation of the network of front companies and bank accounts, arms acquisitions during the embargo would have been much more difficult and in many cases impossible. As shown in section 2, apartheid had many willing suppliers, but almost all of these demanded a clandestine channel to make the purchase.
148. Article 2(a) prohibits the denial of a racial group of the right to life and liberty. The apartheid state systematically did this through force of arms, both domestically and in its support and involvement in a range of conflicts on its borders. Thus, if KBL's conduct was essential for the continued supply of those arms, it is unavoidable that the bank abetted and cooperated in the commission of the crime.
149. To be clear, either argument, i.e. whether relying on article 3(a) or 3(b) requires that another actor committed the crime of apartheid. In this instance, this would be Armscor, as an arm of the Apartheid State, which in turn facilitated the committal of art (2) violations by other organs of State, particularly security organs in the extensive security apparatus described in section 1.
150. To sum up, the conduct of the Bank can be said to have consisted in initiating, designing, establishing, operationalising, and maintaining a 'system' that:
- i. Participated in the commission of the crime of apartheid; or alternatively,
 - ii. Abetted and co-operated in the commission of, the crime of apartheid, and in particular, the denial of members of a racial group of the right to life and liberty of the person in terms of art 2(a) of the Convention.
151. The 'system' referred to obviously refers to the 'arms money machine' described in the preceding section which was constructed and implemented by KBL. The fact of the "*denial of members of a racial group of the right to life and liberty of the person*" refers to the practical effect of the arms procured through the Bank's scheme.

Violation of Customary International Law and Jus Cogens

152. If the above is true, and KBL's conduct in constructing this money laundering scheme was both (i) a violation of the arms embargo, and (ii) a violation of the Apartheid Convention, there is a strong argument that the bank's conduct in aiding and abetting apartheid was also contrary to customary international law.
153. Customary international law is a collection of rules that have been generally accepted and practiced by the international community. Rules of customary international law are binding on all states. Largely, customary international law has evolved from norms proclaimed in international human rights instruments, which have their basis in the Charter of the UN, the Universal Declaration of Human Rights and other treaties of this nature.⁹⁰
154. When considering the occupied territories of Palestine, John Dugard and John Reynolds have applied their minds to the question of whether apartheid can be said to have passed into customary international law. They argue that it has and that it also assumed the status of *jus cogens*⁹¹ for a range of reasons that will be explained below.⁹²
155. Dugard and Reynolds argue that an overview of the development of international human rights law over the period in question lends support to the argument that apartheid had assumed this status. Firstly and notably they reference the coming into effect of the *International Convention for the Elimination of All Forms of Racial Discrimination* in 1969. This Convention is annexed hereto and marked as "AC32". As apartheid was systemic state enforced racial discrimination, it was clearly prohibited by this convention.
156. Aside from the Apartheid Convention (already described at length above), these authors also point us towards the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*. This Convention is annexed hereto and marked as "AC33". Coming into force in 1970, this Convention expressly precluded any statute of limitations on crimes against humanity. Crucially, it included among crimes against humanity 'inhuman acts resulting from the policy of

⁹⁰ Buergenthal, *International Human Rights in a Nutshell*, St. Paul, West Publishing Co. 1988 at 245.

⁹¹ Rafael Nieto-Navia, in *International Peremptory Norms (Jus Cogens) and International Humanitarian Law*, explains the concept of jus cogens as follows: The notion of jus cogens in international law encompasses the notion of peremptory norms in international law. In this regard, a view has been formed that certain overriding principles of international law exist which form "a body of jus cogens." These principles are those from which it is accepted that no State may derogate by way of treaty. As a result they are generally interpreted as restricting the freedom of States to contract while 'voiding' treaties whose object conflicts with norms which have been identified as peremptory.

⁹² John Dugard and John Reynolds, *Apartheid, International Law and the Occupied Palestinian Territory*, The European Journal of International Law Vol. 24 no. 3 The European Journal of International Law Vol. 24 no. 3, 867–913.

apartheid'. In addition to this, Additional Protocol I of the Geneva Conventions included Apartheid as a crime amounting to a grave breach.⁹³

157. It is unnecessary to revisit the range of UN General Assembly and Security Council Resolutions already discussed at length in the preceding sections, but Dugard and Reynolds suggest that they contribute to the argument that apartheid can be considered a violation of customary international law. They add that the fact that apartheid is unlawful under the general rules of public international law is reinforced by the fact that it is listed alongside genocide and other crimes against humanity as a breach of an international obligation consisting of a 'composite wrongful act' according to article 15 of the Draft Articles of the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts.⁹⁴

158. All of the above lead the two authors to conclude that the movement of apartheid to the status of being contrary to international law "*reinforces the fact that the prohibition itself is established as a rule of customary international law.*"⁹⁵

159. These authors go further however, to argue that the prohibition of apartheid can also be considered a norm of jus cogens giving rise to obligations *erga omnes*.⁹⁶ In other words, the right is enforceable for everybody and against anybody infringing that right. Again, the authors point towards the following developments and precedent under international law to support their assertion.

160. The International Law Commission has found that the prohibition of apartheid was a peremptory norm of general international law. In its finding, it emphasizes that the practice of apartheid amounts to '*a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being*'.⁹⁷ For the purposes of the argument being advanced here, it should be noted that the Commission specifically recognises that '*widespread agreement*' is shared by states as to the peremptory character of the prohibition on apartheid, and that apartheid is 'prohibited in widely ratified international treaties and conventions admitting of no exception'.⁹⁸

161. The International Court of Justice has considered the prohibition of racial discrimination as a norm of jus cogens. In its final judgment in the *Barcelona Traction* case, the Court held that obligations *erga omnes* arose '*from the principles and rules*

⁹³ Art. 85(4)(c), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977), 1125 UNTS 3, entered into force 7 Dec. 1978.

⁹⁴ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) II(2) Yrbk In'l L Comm 31, at 62.

⁹⁵ Dugard and Reynolds, *Apartheid, International Law and the Occupied Palestinian Territory*.

⁹⁶ Erga omnes is a Latin phrase which means "towards all" or "towards everyone".

⁹⁷ International Law Commission, Draft Articles.

⁹⁸ Ibid.

*concerning the basic rights of the human person, including protection from slavery and from racial discrimination’.*⁹⁹

162. Taking these factors into account, Dugard and Reynolds argue that if the prohibition of racial discrimination is indeed established as a rule of *jus cogens*, it follows that the prohibition of a particularly severe form of racial discrimination (in apartheid) must logically also amount to a peremptory norm, in turn entailing obligations *erga omnes*. This argument is supported by Carola Lingaas who stresses that it should not be forgotten that of all discrimination, apartheid developed a unique dynamic: this was because in addition to being listed in several international legal instruments described above, it is also subject of two international treaties, proscribed with individual criminality, accorded *jus cogens* status and universal jurisdiction, not to mention finding its way into the Rome Statute.¹⁰⁰
163. Dugard and Reynolds do not offer a view as to when the prohibition against apartheid became a *jus cogens* norm. However, examining the legal developments discussed above, there is a strong argument that the prohibition against apartheid was *jus cogens* during the 1970s and 1980s, and thus at the time of the conduct of the bank. For the same reasons, there is a strong argument that apartheid as a crime against humanity had passed into customary international law during the same period.
164. This is of course the period in which the Bank facilitated the breaking of the arms embargo. As established in the preceding sections, the overwhelming evidence is that KBL did so with the full knowledge of the purposes of its money laundering architecture. If this was the case, the bank’s conduct in assisting the apartheid state was unlawful in that the Bank committed the crime or at the least aided and abetted Armscor, the South African security forces, and the South African state more broadly to commit the crime of apartheid.
165. It is important to note the position of South African law in terms of the domestic applicability of customary international law. Section 232 of the Constitution provides that customary international law is law in South Africa unless it is inconsistent with the Constitution or an Act of Parliament. Even before the introduction of the Constitution, customary international law formed part of South African common

⁹⁹ *Case Concerning the Barcelona Traction, Light and Power Company (Belgium v. Spain)*, Limited Second Phase, Final Judgment [1970] ICJ Rep 3, at 32, paras 33–34.

¹⁰⁰ Carola Lingaas, *The Crime against Humanity of Apartheid in a Post-Apartheid World*, Oslo Law Review 02 / 2015 (Volume 3).

law.¹⁰¹ As a result, where rights were conferred under customary international law prior to the Constitution, such rights continue in the constitutional order.

166. Furthermore S39(3) of the Constitution states that *“The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.”*¹⁰² This section thus holds that pre-constitution common law rights and freedoms are “preserved” to the extent that they are consistent with the Bill of Rights. It is surely not contestable that the rights and freedoms conferred by the Apartheid Convention and the other international conventions referenced above are wholly harmonious with a number of rights in the Bill of Rights.

167. The Constitutional Court has confirmed that all crimes that are recognised under international customary law, including the crime of apartheid, automatically form part of South African law. In *National Commissioner of the South African Police Service (SAPS) v Southern African Litigation Centre*, the Court confirmed in a unanimous judgment that South African law enforcement agencies are obliged to investigate international crimes (in this case, torture allegations in Zimbabwe). In that judgment, the court stated that *“Along with torture, the international crimes of piracy, slave-trading, war crimes, crimes against humanity, genocide and apartheid require states, even in the absence of binding international treaty law, to suppress such conduct because ‘all states have an interest as they violate values that constitute the foundation of the world public order’. Torture, whether on the scale of crimes against humanity or not, is a crime in South Africa in terms of s 232 of the Constitution because the customary international law prohibition against torture has the status of a peremptory norm.”*¹⁰³

168. This finding was related to criminal prosecutions. However, in reaching this finding the Court applied the principles of liability under international customary criminal law without distinction between criminal and civil cases. Hence, the normative principles communicated in the judgment can be seen to apply to both civil and criminal causes of action.¹⁰⁴

169. Based on the above, Open Secrets submits the following argument. Apartheid constitutes conduct that is prohibited under *jus cogens*, and this was so at the time that the regime was in place. Further, it may well have been a recognised crime under

¹⁰¹ In *South Atlantic Islands Development Corporation Ltd v Buchan* 1971 (1) SA 234 (C). Also See J Dugard *“International Law Is Part of our Law”* 88 SALJ (1971) 88; and J Dugard, *“Kaleidoscope: International Law and the South African Constitution”*, 1 European Journal of International Law (1997) 77-92.

¹⁰² S39(3) of the Constitution of the Republic of South Africa, 1996.

¹⁰³ *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre* 2015 (1) SA 315 (CC) at para 37.

¹⁰⁴ *Ibid.*

international customary law at that time. In addition, as discussed above, the crime of apartheid is recognised crime in South Africa by virtue of section 232 of the Constitution.

170. Without repeating the conduct described in the previous section, we submit that KBL was central to the creation of the money laundering network ('the arms money machine') that facilitated the continued importation of arms to apartheid forces during the time of the compulsory UN embargo. Further it did so with full knowledge that the purpose of the system it created was to circumvent that embargo. There is also significant evidence that the senior management of the bank at the time of this conduct was ideologically and practically committed to supporting the apartheid state. At the same time, there is strong evidence that the bank profited significantly from the assistance it provided the apartheid state. In turn, the apartheid regime relied on the continued supply of weapons to perpetuate its existence.

171. As a result, we contend that the bank's conduct may well amount to an international crime, and at the very least to aiding and abetting thereof. Because these crimes are recognized under South African law, there is scope for considering the liability of the bank in South African courts.

Failed Investigations and Continuities

172. The preceding sections lay out a devastating critique of the conduct of the bank. It is our contention that the severity of the crimes involved, and the suffering that resulted from the bank's conduct provide more than sufficient reason to hold the bank and surviving executives accountable for their conduct. Doing so would be a crucial lesson in accountability, and provide a welcome precedent for holding financial institutions to account for their complicity in human rights violations around the world.
173. We should not under-estimate the potential power of such a precedent. Both the case study of this submission and more recent events such as the 2008 global financial crisis, from which many banks profited, are stark reminders of the human consequences of malfeasance in the financial sector. They should not be allowed to continue to escape accountability for their role in human suffering.
174. However, when we look more narrowly at South Africa, we see another crucial reason that KBL, arms companies and other corporate accomplices to apartheid should be held accountable. This is because of the clear and obvious continuities between the economic crimes of the past and cases of criminality in democratic South Africa. It is our contention that the failure to address these past crimes has undermined our understanding of contemporary corruption and state capture, and allowed criminal networks to continue to profit at the expense of all South Africans.

Failure to Investigate

175. As is alluded to in the introduction of this submission, it is our contention that one of the most conspicuous weaknesses of South Africa's Truth and Reconciliation Commission was its relative failure to investigate and make recommendations on issues of economic crime during apartheid. This resulted in letting many of apartheid's corporate collaborators off the hook for their role in propping up the regime and profiting in return.
176. This is not to say that the Commission did not consider the role of the private sector at all, but that it did so insufficiently, and where it did, the democratic South African state showed little interest in private sector accountability. The TRC did make the following conclusion regarding the role of private business in apartheid:

"Not all businesses profited equally from apartheid. It is however difficult not to conclude that between 1910 and 1994, government and business (despite periodic differences and conflicts between them) co-operated in the building of an economy that benefited whites. On the one hand they promoted and

*maintained the structures of white power and privilege, and, on the other, the structures of black deprivation, discrimination, exploitation and poverty”.*¹⁰⁵

177. This speaks to the structural role of South African corporations in the apartheid economy. It does not explore individual cases of complicity in apartheid crimes, and it does not address the central role of international corporations, such as KBL, in these crimes. This angle of focus has been highlighted by Nicoli Nattrass who points out that the TRC clearly focused on the systemic relationship between the private sector and the Apartheid regime. A consequence of this was that all businesses from corner stores to monopolies were seen to be complicit with the regime in a similar manner. This approach meant that the Commission focused little on specific acts of complicity such as sanctions busting by the most powerful corporations and business leaders.¹⁰⁶ As should be clear from this submission, such an approach was inadequate. The complicity of corporations with apartheid was not all similar. Institutions like KBL offered collaboration to the regime that it relied on to survive and to implement its violent rule.
178. We should acknowledge that one of the thorniest issues facing the Truth and Reconciliation Commission was how it should hold business to account for its collaboration and profit taking during Apartheid. The stakes were high for South Africa’s mega corporations and super-rich at the time, and they placed much pressure on the state to turn their gaze away from misdeeds of the past.
179. The TRC did attempt to introduce what was a relatively novel (for transitional justice processes) focus on the private sector. They did so by making the private sector a theme for one of six special ‘institutional hearings’. While superficially an opportunity to consider corporate complicity, this was not realised. Rather, the hearings that took place over just a three-day period led to a superficial examination of a subject that deserved far greater attention. In total, the Commission received 86 submissions, of which roughly one quarter stemmed from big business and state-owned corporations. Individual submissions were received from large companies such as Anglo-American, Rembrandt, Sanlam, SAB and Gencor. In addition, business associations such as the Chamber of Mines, the Afrikaaner Handels Instituut and the German Chamber of Commerce made submissions.¹⁰⁷
180. The submissions were staggeringly short. Many of the corporations and wealthy individuals admitted that Apartheid was a crime but deliberately withheld any significant details of their direct or indirect complicity with the state. Where detail was

¹⁰⁵ *South African Truth and Reconciliation Commission, 1998, volume 4, page 42.*

¹⁰⁶ Nattrass, Nicoli, ‘The Truth and Reconciliation Commission on Business and Apartheid: A Critical Evaluation’, *African Affairs*, 1999 (98), 373-391.

¹⁰⁷ Hennie van Vuuren, *Apartheid Guns and Money: A tale of profit*, (Jacana: Cape Town, 2017).

included in some submissions, it erred towards demanding absolution. The industry bosses who did appear at the hearings tended to shift focus to their humble efforts in opposing Apartheid and their corporate charity programmes. Journalist Max du Preez, who reported on the TRC hearings for the public broadcaster at the time noted that “... despite the many dark suits and striped shirts, one could at times be forgiven for thinking this was a meeting of Anti-Apartheid movements... especially when powerful companies like Anglo and Barlow Rand claimed to have always opposed Apartheid”.¹⁰⁸

181. The consequences of South Africa’s collective failure to address economic crimes at the time of the transition should not be underestimated. The result was that economic injustices remained a peripheral issue in the narrative of South Africa’s transition. Scholars working on transitional justice have highlighted the serious consequences in cases where this occurs. Zinaida Miller has written extensively on the power of transitional justice processes in shaping memory in post-conflict settings. She argues that truth commissions are inherently discursive projects – in other words, they are crucial in making some issues visible while obscuring others. As such, where they ignore economic crimes, they risk obscuring the role of economic crime in broader injustice.¹⁰⁹

182. South Africa’s transition bears out these concerns. The invisibility of economic crimes and violations that resulted from the TRC’s focus on torture and physical violence is something that continues to compromise those seeking economic and social justice in South Africa. The narrative constructed by the South African TRC presents victims of Apartheid as those who suffered physical violence, and thus presents the quintessential perpetrator of Apartheid’s crimes as people like Eugene de Kock who carried out the violence of the regime in person.

183. In contrast, up to now, we knew comparatively little of the corruption and sanctions busting that funded Apartheid’s military state, and thus propped up the regime. Those responsible for economic crimes have never faced prosecution or sanction in South Africa, encouraging a culture of impunity and allowing networks of corruption to survive and draw in new politicians and businessmen. Particularly for those individual and corporate interests, the apparent ‘South African transition’ was actually just business as usual. This will become clear when we turn to the case studies examining continuities next.

184. Open Secrets has attempted to highlight several important consequences that flow from this inaccurate discursive narrative about economic crime from the past. The first is that the economic and social rights enshrined in South Africa’s Constitution have less meaning when there is no attempt to identify and return the billions of rands

¹⁰⁸ SABC, TRC Special Report, Episode 74, Part 3, 16 November 1997.

¹⁰⁹ Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice.”

stolen both before and since the transition. Secondly, South Africa remains mired in an unhelpful and fundamentally false racialised view of corruption and economic crime that is supported by the perception that they are something new in our society (i.e. a result of a black led government). The current fight against corruption in South Africa is undermined by an absence of recognition of the true nature of that corruption and the criminal networks that facilitate it – namely that they are continuities of a profoundly corrupt system that predates the first democratic election.

185. What is equally clear is that changing these things is not impossible – we do not need to consider South Africa’s transition as ending with the report of the TRC. The work of civil society in documenting economic crimes committed under Apartheid provides a solid basis for instigating criminal investigations and proceedings against individuals and corporations for their role in those crimes. This would help achieve accountability for these crimes, and combined with the dissemination of the documentation would contribute to a shift in the nation’s understanding of South Africa’s past, as well as its understanding of the present. It would also help to disrupt criminal networks that continue to corrupt South African politics today.

Continuities in Corrupt Networks

186. As referenced above, one of the most harmful consequences of our failure to investigate, prosecute and air issues of economic crime from South Africa’s past is the ability of criminal networks to remain undetected. They are given the invisibility required to re-organise, draw in new elites, and to continue to profit at the country’s expense.
187. We stress again that a systemic review of continuities in such networks of profit between apartheid and today is beyond the scope of this submission. However, given the focus of the hearings on the weapons trade, and the likely focus of other submissions, it should assist the Tribunal to draw attention to extensive evidence that the same corporations involved in systemic arms sanctions busting during apartheid were implicated directly in allegations around the 1999 Arms Deal. One of those companies is alleged to have bribed now President Jacob Zuma during the course of that deal – we turn to that company first.

Thomson CSF

188. As is discussed in section 4, the apartheid state found allies in a range of countries and corporations that were willing to supply weapons in contravention of the embargo. We showed how each member of the Security Council, tasked with policing the embargo, in fact violated it – either directly or through their agents. The French state went a step further of course, by permitting Armscor to house a secret sanctions-busting team in South Africa’s embassy that directed the arms money machine through KBL in Luxembourg.

189. Declassified military intelligence records from the apartheid era reveal the consistent nature of French complicity with the apartheid regime. Deals were often struck through French military intelligence. One startling example is provided through a memorandum of a 1987 meeting in Paris between the respective military intelligence agencies. In it, French officials made two open offers to the South Africans – that they were willing to provide mirage fighter jets spare parts at any time. In the meeting, French officials also confirm that they are not opposed to a clandestine plan to supply new aircraft to South Africa via Chile and Argentina. In fact, Jacques Chirac’s (then Prime Minister of France) chief of staff Michel Roussin had confirmed to the South Africans that ‘Mr Roussin personally and the advisors to Chirac would do their best to ensure the successful implementation of such a scheme should South Africa be interested.’¹¹⁰ The Report on the meeting between Director Intelligence Operations and Mr Roussin is annexed hereto and marked as “**AC34**”.
190. These documents reveal the extent to which French securocrats were willing to assist their South African counterparts. Yet beyond state agents, French companies were also perennial embargo busters, and none was closer to the South African military elite than Thomson CSF.
191. Declassified military documents reveal that Thomson-CSF was one of the most consistent suppliers of military equipment to the apartheid regime, both at the time of the voluntary arms embargo in the 1960s and 1970s, and that this continued after the embargo became compulsory in 1977. Beyond being one of the largest suppliers of military aircraft, one of the closest areas of collaboration came in the area of missile development. This began in the 1960s and included a visit by then Minister of Defence PW Botha to France in 1969 to Bordeaux where he shared a hotel with all of Thomson’s senior executives while the missile testing was in progress.¹¹¹
192. Although the co-development and provision of weapons became illegal following the 1977 embargo, this did not prevent Thomson-CSF from working closely with the apartheid government. By 1982, Thomson-CSF had been nationalised by the socialist government in France. This means that that the company was fully state-owned by a state tasked with enforcing the weapons embargo. Despite this, the military collaboration continued. Records reveal that in 1987, Thomson-CSF’s Chief Executive visited South Africa for a meeting with, amongst others, the Minister of Economic Affairs, Danie Steyn. Writing after the visit, the arms company’s CEO thanked Steyn and confirmed that Thomson-CSF was ready to accept a military

¹¹⁰ Report on Meeting between Director Intelligence Operations and Mr Roussin, 24 July 1987, DOD/SANDF (DI Onder-Afdeling Inligting Operasies, Gp 26, Box 13, AMI/IO/311/1/69, Hulpverlening en samewerking met Ivoorkus, 1, 04/08/86–18/05/90).

¹¹¹ Itinerary of PW Botha’s Visit to Thomson-CSF in France, June 1969, University of the Free State, Archive for Contemporary Affairs (PV 203, 1/W1/4, 1969 June, PW Botha).

delegation to France for a 'European high technology scanning mission'.¹¹² This letter from Alain Gomez to DW Steyn is annexed hereto and marked as "AC35".

193. When open collaboration was made increasingly difficult, the company engaged in willing subterfuge, including a 1988 three-way negotiation that provided for the provision of updated missile systems (the cactus) through a channel in Chile (another key apartheid ally under Pinochet).¹¹³
194. The above shows that Thomson-CSF was a long-standing supplier of military material to South Africa, no doubt with the explicit or tacit support of the French state. In return, it would have drawn significant profits from the trade. Yet, upon South Africa's transition, Thomson was never held to account or questioned by French or South African authorities for its willingness to violate the arms embargo and support the racist state. It is therefore no surprise that the corporation, albeit under a different name, continued to do business as usual in democratic South Africa.
195. Thomson-CSF has subsequently changed its name and now operated as Thales, which is a large French fortune 500 company primarily focused on producing electronics for weapons and other equipment for the defence industry. It has offices around the globe, including in South Africa, and has global revenue of nearly R250 billion per year.¹¹⁴
196. As will no doubt be explored in greater depth by other submissions to this Tribunal, the 1999 Arms Deal was not just a defining corruption scandal of South Africa's early democracy, but it also had a dire impact in terms of weakening our institutions tasked with tackling corruption. One of the allegations to have done the most damage is the alleged bribes paid to then Deputy President Jacob Zuma. Armscor fixer turned whistle-blower has infamously alleged that Zuma accepted a bribe from the French company with the code-words "I see the Eiffel tower lights are shining today".¹¹⁵
197. The reference to the famous French tower is because the company alleged to have paid the bribe was none other than Thales, the French company formerly known as Thomson-CSF.
198. Some of the allegations of bribery by the French company have been settled in South African courts. In one of the most famous post-apartheid trials, Schabir Shaik, brother of the chief of acquisitions for the Arms Deal Chippy Shaik, was found guilty

¹¹² Letter from Alain Gomez to DW Steyn, 10 February 1987, DW Steyn Private Papers.

¹¹³ Report from CSADF to CSI, 17 August 1988, DOD/SANDF (DI, GP 24, Box 284, AMI 520/3/4/18, Besoeke, bewegings, persone, vliegtuie. Besoeke aan die buiteland. SAW Krygor personeel: Chile, 10, 10/08/1988–25/10/1988).

¹¹⁴ See https://en.wikipedia.org/wiki/Thales_Group

¹¹⁵ The Sunday Times, *Exposed: How arms dealer bankrolled Zuma*, 28 September 2014.

of having a corrupt relationship with Jacob Zuma and given a 15 year sentence. The judgment, which was upheld by the Supreme Court of Appeal and the Constitutional Court, found Shaik guilty on two counts of corruption. One of these counts involved soliciting a bribe from the French arms firm Thomson-CSF in return for protection from investigation from Zuma. The company supplied the combat systems for the corvettes (warships).¹¹⁶

199. One of the 783 counts of fraud, corruption and racketeering that the National Prosecuting Authority has been ordered to reinstate against Zuma, is directly related to his alleged role in ensuring that Shaik was given a stake in African Defence Systems (ADS) as part of the Arms Deal. ADS was co-owned by Thomson-CSF and received large sub-contracts through the corvette contract.¹¹⁷ Thales ultimately made a significant profit from the deal, with the decision being made to offer the company a R2.7 billion contract to provide equipment to be fitted on the new navy frigates.

200. This story is possibly the clearest manifestation of the consequences of failing to challenge networks that facilitate and commit economic crime. Thomson-CSF was intimately tied to the illicit and illegal supply of weapons to apartheid for three decades, yet this posed no challenge to the company in terms of doing business with democratic South Africa. In the 1999 Arms Deal, the company showed a same willingness to ignore legal requirements in order to secure a deal that would be highly profitable.

German Arms Firms

201. The story of Thomson CSF/Thales is not the only one where we see continuities in arms networks from apartheid to democratic South Africa. Other examples can be found in Germany.

202. Like France, elements of the West German government and the country's largest companies showed themselves to be willing to support the apartheid state through facilitation of arms deals in contravention of the arms embargo. Throughout the sanctions period, the German government approved a secret arrangement that allowed an apartheid official to act as a secret military attaché from the embassy in Bonn.¹¹⁸

203. This was important as several of Germany's largest companies were eager to do business with the apartheid state. Declassified records reveal that companies

¹¹⁶ See full judgment: *S v Shaik and Others* (CCT 86/06) [2007] ZACC 19; 2008 (2) SA 208 (CC); 2007 (12) BCLR 1360 (CC); 2008 (1) SACR 1 (CC) (2 October 2007).

¹¹⁷ See the Mail & Guardian, *Constitutional Court dismisses Shaik's appeal*, 29 May 2008. Available: <https://mg.co.za/article/2008-05-29-constitutional-court-dismisses-shaiks-appeal>

¹¹⁸ Letter from CSADF to DG DFA, 29 February 1984, DIRCO (Foreign Representation, 4/2/2/8, Vol. 3, 24/9/82–20/8/84, Bonn Military Attaché).

including Siemens¹¹⁹, Krauss-Maffei¹²⁰ and Thyssen¹²¹ all collaborated with the apartheid military in the areas of electronic warfare, tanks and submarines respectively. Collaboration around submarines leads us to another clear case of continuities between apartheid's networks and the 1999 Arms Deal.

204. In 1999 the state-owned Howaldtswerke-Deutsche Werft (HDW) and Ingenieurkontor Lübeck (IKL), today trading as a subsidiary of ThyssenKrupp, were two of the three companies (together with Ferrostaal) in a German consortium that won the bid to supply the South African Navy with new submarines. These companies have also faced substantial allegations of corruption in the deal. In fact, a report by US law firm Debevoise & Plimpton, commissioned by Ferrostaal itself, reported a number of apparent irregularities. These included that Ferrostaal made up to \$40 million in payments to agents in South Africa at the time of the deal. The report also provided evidence that Chippy Shaik, the Chief of Acquisitions during the deal, had entered into a joint mining venture with Ferrostaal's South African subsidiary, Ferisa. Finally, the report alleged that Ferrostaal employees had told investigators that the offset program, no doubt the subject of further scrutiny at the Tribunal, was merely a means of paying bribes rather than generating proper economic benefits for South Africa.¹²² Unfortunately, these allegations have not been tested properly in any court. The report is attached as annexure and marked as "AC36".

205. However, what is little known is that there are links to be found in both the companies and the middle-men to an apartheid deal in contravention of the UN embargo. Both HDW and IKL were controversially linked to the sale of blueprints and technology to equip the apartheid military with new submarines during the mid-1980s.

206. An interesting coincidence between the sanctions-busting deal and the arms deal is that both involved a South African Navy captain, Jeremy Mathers. In the post-apartheid deal, Mathers acted as a consultant for the German bidder Ferrostaal. At that point very recently retired from the navy, Mathers was hired by Ferrostaal to provide information on the navy's requirements. In the Debevoise & Plimpton report quoted above – Mathers is quoted as saying that he was aware that Ferrostaal was actively seeking to engage other players with 'political connections'. Controversially, Mathers's agreement included a 'success fee' in the event that the deal was awarded

¹¹⁹ Letter from CSAA to CSI, 2 November 1984, DOD/SANDF (DI, GP 13, Box 64, 520/3/4/4, Besoek aan die Buiteland: Duitsland, 5, 05/07/84–25/05/85).

¹²⁰ Memorandum from CSI to CSADF, 4 November 1986, DOD/SANDF (DI, GP 24, Box 282, AMI/520/3/4/4, Besoek aan Buiteland. SAW– Krygkor lede. Duitsland, 7, 01/07/1986–29/07/1988).

¹²¹ Proposal from CSAN to CSI, 31 July 1986, DOD/SANDF (DI, GP 24, Box 282, AMI/520/3/4/4, Besoek aan Buiteland. SAW–Krygkor lede. Duitsland, 7, 01/07/1986–29/07/1988).

¹²² Ferrostaal Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011.

to Ferrostaal.¹²³ Yet just a decade before that, in 1984, Mathers was the navy's project manager for Project Tamboeryn, which involved the successful acquisition of submarine blueprints from West Germany, in contravention of the UN arms embargo.¹²⁴

207. Records from PW Botha's archives reveal that the 1984 deal was agreed to and facilitated at the highest level of Germany's government, namely by Helmut Kohl, as West German chancellor. The records from PW Botha's archives is annexed hereto and marked as "**AC37**". In a meeting between the two heads of state in Bonn in June 1984, Botha engaged Kohl about approving the deal. Botha said that 'everything had been arranged between IKL/HDW and the South African shipbuilder' in relation to developing new submarines, and appealed to Kohl to make a positive decision as soon as possible. Kohl responded that 'he would look into the matter and write to the Prime Minister personally'.¹²⁵ Ten days after this meeting, a contract for DM116 million sealed the arrangement.

208. This deal would ultimately grow to include not just submarine blueprints, but also expertise and electronic components for the submarines and other strike craft – ultimately resulting in a contract worth DM423 million (R3.5 billion in today's value).¹²⁶ Being experts in naval ship-building, HDW and IKL provided the all-important submarine plans, while the German electronics companies Siemens and Zeiss provided expertise for the equipment required by the vessels. In addition, two Krupps subsidiaries supplied torpedoes and sonar.¹²⁷

209. Despite significant investment of time and money by the apartheid state, the deal was significantly delayed by a public enquiry after the German Green Party leaked information about the embargo-busting deal. Although there was little punishment for the corporations, the delay, coupled with South Africa's move towards a democracy and the end of the Angolan War, meant that the submarines were no longer required and the plans were quietly shelved despite a hefty financial investment.

210. Remarkably, as has been detailed above, within a decade the same German companies were again bidding for the sale of submarines to a new democratic administration, allegedly paying bribes along the way. Similarly to Thomson-CSF, this story is one of unchecked corporate power, a lack of adequate investigation or

¹²³ Ferrostaal Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011.

¹²⁴ Report by CSAN, 28 September 1984, DOD/SANDF (DI, GP 13, Box 64, 520/3/4/4, Besoeke aan die Buiteland: Duitsland, 5, 05/07/84– 25/05/85).

¹²⁵ Report on the Meeting between PW Botha and Chancellor Helmut Kohl in Bonn, 5 June 1984, University of the Free State, Archive for Contemporary Affairs (PV 203, PS 12/27/1, 1984, PW Botha).

¹²⁶ 'West Germany/South Africa: Secret ships deal goes ahead', *Africa Confidential*, 29, 6 (18 March 1988).

¹²⁷ *Ibid.*

accountability, and the ability of networks to move between regimes on either side of a complex transition.

211. These examples provided above provide just a window into the continuity of practice and characters across South Africa's history when it comes to the murky world of arms trading. In both cases, it is clear that the failure to adequately investigate and prosecute those actors for the crimes of the past has allowed them to continue to profit from illicit activity in the future. While the political elites often shift, the corporate players often remain the same.

Remedies

212. What Open Secrets has aimed to communicate in this submission is that challenging the conduct in question is a matter of significant importance, both for the sake of accountability and understanding of our past, but also for challenging networks of corruption and state capture today.
213. No doubt, the arms companies mentioned in the preceding section should be very high on the list of actors who must account for their role in crimes both during apartheid and in democratic South Africa.
214. However, as is evident from this submission, there was a far more systemic and sinister element to apartheid era economic crimes, and that was the bank that facilitated the arms money machine. KBL's network of secret accounts and front companies did not result in single deals. Rather it was a deliberate attempt to ensure that the apartheid state could survive by continuing the flow of weapons in contravention of the arms embargo. It is our contention that the apartheid state may well have been forced to concede to negotiations far earlier if it were not for the conduct of KBL.
215. As such, we believe that the following are important remedies that should be pursued:
- i. **A public recognition and apology by KBL for its conduct:** Kredietbank and its subsidiary KBL have never publicly acknowledged their complicity with apartheid, a regime that caused suffering on such a scale. Their role was not just in doing business with the regime, but extended to collaborating with the regime itself to extend its life through the creation of the 'arms money machine'. While not sufficient, we call on the bank to publicly apologise to victims of apartheid for its role in supporting the regime, and further to condemn the conduct of its senior management of the time that permitted and encouraged the bank to play this role.
 - ii. **Consideration of legal proceedings against Kredietbank in South African court:** this submission has outlined the extensive prima facie evidence that the bank's conduct was criminal in terms of international law, in terms of violating the UN embargos, apartheid convention, and customary international law. Further there is precedent in South Africa's jurisprudence to lay charges against the bank in South Africa's courts. South Africa's investigative and prosecuting authorities have failed so far in their duties to challenge impunity for corporate actors involved in crimes during apartheid. There is an opportunity here to challenge the bank at the centre of apartheid's criminal system of sanctions-busting.

- iii. **Compensation by the bank to victims of apartheid:** Any litigation against KBL should be aimed at obtaining reparations from the bank for the victims of apartheid. It is broadly acknowledged that addressing grave crimes and violations of human rights requires reparation from the guilty party. Reparations place the focus squarely on providing redress for those who suffered under past regimes. Usually, reparations are awarded to individual victims, although ways of providing community reparations are also possible. They have the potential to both improve the well-being of victims of past abuse, and to restore their dignity by recognising their suffering.¹²⁸

Although the apartheid state was the primary violator of millions of people's rights, this submission that KBL at the least should be considered as having aided and abetted the crime of apartheid and the violence that the regime committed at home and abroad. It is appropriate that the bank should pay some form of reparation to apartheid's victims, whether they are individuals identified by victim's rights groups or social justice projects aimed at redressing the legacy of apartheid.

- iv. **Stricter regulation of financial institutions who are complicit in human rights violations:** Finally, the conduct of KBL represents a deeper systemic problem in the global financial system that calls for urgent reform. The system that KBL put in to place for Armscor was a clear precursor to many of today's money laundering techniques used to facilitate economic crime, corruption and the evasion of tax on a mammoth scale. All of these phenomena have severe human impacts, disproportionately on the poor.

The arms money machine was made possible by the lack of regulation and secrecy permitted by Luxembourg's financial system. This allowed a bank across the world to move vast sums of money on behalf of a rogue regime, all in order to violate international law and import weapons. We see numerous modern day examples that point to the continuing problem of secrecy and inadequate regulation of this global financial system and the corporations (banks and legal firms) that take advantage of it to their benefit.

The recent leaks of the Panama Papers and more recently the Paradise Papers reveal a parallel financial world occupied by the world's super rich individuals, corporations and politicians. In this world, the rules that apply to us all do not seem to apply to this elite. In particular, they use the shield of secrecy to avoid their tax obligations and in some instances to hide the proceeds of corruption or other crimes.

¹²⁸ L. J. Laplante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development," *Yale Human Rights and Development Law Journal* 10 (2007): 141–77.

It is now of paramount importance that greater regulation and transparency is demanded by global regulations. This includes the need to end secrecy jurisdictions, require public registries of the beneficial ownership of all corporations, and the acceleration of information sharing to poorer countries who are less able to track their citizens engaging secret structures to engage in illicit activity.

Finally, there must be greater accountability for those large banks and other corporations that are found to have violated domestic and international regulations. A hallmark of banking complicity in a range of crimes is the banks' ability to avoid accountability for their actions. We have seen this around the world, and most strikingly in the global financial crisis of 2008. It is inevitable that this failure to hold banks and their executives accountable for their irresponsible or criminal activities results in repeated offences, and the absence of an adequate deterrent. A culture of responsibility will not rise from the corporations' independent commitment to social responsibility.

v. Conclusion

216. Open Secrets submits that both legal proceedings and greater advocacy around the conduct of KBL during apartheid would make an important contribution to the goals outlined above. This story provides one of the most devastating examinations of how financial institutions can find themselves as co-conspirators in the gravest of crimes, and how they can profit in turn. Similarly, holding them accountable for their conduct, even decades later, would send the crucial message that everyday citizens will not permit this conduct. We will hold them responsible and demand accountability. Their profiting from misery will not go unchallenged.