ABSTRACT

If Corporate Social Responsibility (CSR) is often reduced to ‘greenwashing’ for naïve middle-class consumers, is there a more durable force to address excessive profit taking and consequent underdevelopment? While the post-apartheid era in South Africa has been celebrated, with little foresight, for an ‘economic boom’ that restored relative corporate profitability to levels last witnessed during apartheid’s heyday, the same period saw world-class social opposition to corporate power. Three areas are illustrative: the Treatment Action Campaign’s street pressure and legal strategy to acquire anti-retroviral drugs for HIV-positive people; Sowetans whose street protests helped drive Suez Lyonnaise des Eaux out of Johannesburg and whose constitutional case over the right to water attacked its commercialization policies; and climate activists who oppose carbon trading. Meanwhile, activists also demanded reparations from apartheid-tainted transnational corporations in the US courts through the Alien Tort Claims Act, while a ‘Corpse Awards’ was launched by activists in part to mitigate against CSR efforts. The critiques of corporations — and CSR — and the motivation for social activism are informed by strategic principles of ‘decommodification’ and ‘deglobalization of capital’; the first cannot work without the second.

INTRODUCTION

Is there a way out of the development dead-end that so many wretched Third World countries find themselves in as a direct result of adverse relationships with the world economy, mediated especially by transnational corporations and multilateral financial institutions? Peter Newell (this volume) observes ‘the taming of activism’ (in the North) against companies yet simultaneously more ‘social contestation, a harder regulatory agenda and more of a focus on the question of corporate power’. A danger pointed out by Bridget O’Laughlin (this volume) is that World Bank promotion of corporate self-regulation undermines or co-opts state sovereignty in crucial areas, particularly in cases of Resource Curse in which transnational capital...
flows into — or rather skips and hops around enclaves within — Africa in a superexploitative manner (see also Ferguson, 2006). Such co-option instead requires, as Gay Seidman (this volume) argues, that ‘transnational networks, attentive to ethical violations and insistent on global equity, could threaten to “name and shame” companies who fail to meet global standards, and independent monitors could provide the information and transparency needed make these threats credible’.

Having largely lost confidence in South African state regulatory will, in part because of the ‘captive regulation’ (or ‘crony capitalism’) problem so evident in the post-apartheid government, civil society forces are showing that in select cases, social movements can indeed set global public policy where either regulation or CSR initiatives are inadequate. The point I aim to illustrate, through several case studies, is that we must not accept the CSR industry’s claim that transnational corporate capital’s profits are consistent with reduction of poverty and inequality, and with environmental stewardship (as Klein, 2000 and Bakan, 2004 eloquently showed on the global scale). South African bottom-up experiences demonstrate instead the need to delink global corporations from any determinations of social welfare, to de commodify basic goods and services, to rebuild public sector capacities, and to ensure that the state is run by a political party with genuine accountability to its poor and working-class constituents, exhibiting environmental, gender and race consciousness.

Peter Utting (this volume) recalls a conference of the NGOs CorpWatch and groundWork: ‘When activists gathered in Johannesburg in 2002 at the UN summit to review progress on sustainable development 10 years after the Earth Summit, the verdict was that CSR was fundamentally flawed’. What, then, have those movement activists been doing to transcend CSR since the World Summit on Sustainable Development?

The context is important — as Cock (2008) proves most forcefully. South Africa has a low-growth, high-poverty, unemployment-ridden, ever more unequal, capital flight prone, volatile, vulnerable, elite-oriented economy, whose gains appear only as temporarily restored profitability for big capital and a conspicuous consumption binge for a credit-saturated new middle class (Bond, 2005; Klein, 2007; Pilger, 2006). Corporate profitability had hit a low point during the country’s longest-ever depression (1989–93), itself a period of heightened class struggle. But by 2001, neoliberal macroeconomic and microeconomic policies had raised the rate of profit for SA corporations to ninth highest of the thirty-four largest countries, far ahead of the US and China (Citron and Walton, 2008: 1).

As a result of the power relations that logically follow, CSR and regulation mean very little (Fig, 2007). The Johannesburg Stock Exchange’s Social Responsibility Index is voluntary and not well monitored, with large firms which are notoriously hostile to the environment — such as partially-privatized Sasol (oil-from-coal/gas) and Eskom, responsible for most SA carbon emissions — scoring themselves highly. Instead, the more durable
approaches adopted by eco-social activists have included stripping the prerogatives of capital — the power to produce and price at will, and to control intellectual property — by insisting on decommodified access to basic services, and questioning how and why corporate profitability relates to broader problems in society such as racism (both apartheid-era and contemporary) and environmental degradation. The social turmoil that results from severe material problems has generated world-class campaigning in various sectors. Meanwhile, state regulation is characterized by a revolving door in which officials move seamlessly into corporate leadership.

Frustrated activists have rejected CSR, in this context, and instead established crucial precedents that open up a great deal more space for social change. Three case studies are illustrative: access to AIDS medicines, commercialized water, and climate change.

MEDICINES

The South African government’s 1997 Medicines Act — which made provision for compulsory licensing of patented drugs — helped to catalyse the formation in 1998 of a Treatment Action Campaign (TAC) that lobbies for AIDS drugs, which in the late 1990s were prohibitively expensive for nearly all South Africa’s HIV-positive people (who number roughly 10 per cent of the 50 million current population). That campaign was immediately confronted by the US State Department’s ‘full court press’ against the Medicines Act (the formal description to the US Congress), in large part to protect intellectual property rights generally, and specifically to prevent the emergence of a parallel inexpensive supply of AIDS medicines that would undermine lucrative Western markets (Bond, 1999; Nattrass, 2004).

The campaign included US Vice President Al Gore’s direct intervention with SA government leaders in 1998–99, to revoke the law. In July 1999, Gore launched his 2000 presidential election bid, a campaign generously funded by big pharmaceutical corporations (which in a prior election cycle provided US$ 2.3 million to the Democratic Party). As an explicit counterweight, TAC’s allies in the AIDS Coalition to Unleash Power (ACTUP) began to protest at Gore’s campaign events. The protests ultimately threatened to cost Gore far more in adverse publicity than he was raising in Big Pharma contributions, so he changed sides and withdrew his opposition to the Medicines Act, as did Bill Clinton a few weeks later at the World Trade Organization’s Seattle Summit.

Big Pharma did not give up, and filed a 1999 lawsuit against the constitutionality of the Medicines Act, counterproductively entitled ‘Pharmaceutical Manufacturers Association v. Nelson Mandela’ (which even Wall Street Journal editorialists found offensive). The case came to court in early 2001. By April, additional TAC solidarity protests against pharmaceutical corporations in several cities by Medicins sans Frontiers, Oxfam and other
TAC solidarity groups compelled the Association to withdraw the suit. In late 2001, the Doha Agenda of the World Trade Organization adopted explicit language permitting violation of Trade Related Intellectual Property Rights for medical emergencies. The South African government remained reluctant to provide medicines, however, for a variety of dubious reasons in part related to a denial that HIV causes AIDS. As a result, the TAC was compelled to file a Constitutional Court case which succeeded in mid-2001 in at least gaining access to Nevirapine for pregnant, HIV-positive women in public hospitals.

At the same time, however, Anglo American Corporation — one of South Africa’s strongest promoters of CSR — released a study showing that only 12 per cent of their employees met a cost–benefit test by which supply of drugs was cheaper to the company than allowing HIV-positive workers to die early (replacing them from the pool of 40 per cent unemployed). Threats not only from TAC but also the main mining trade union forced Anglo American to reverse its decision to deny most workers medicines, in 2002 (Bond, 2005).

Big Pharma’s reluctance to surrender property rights so as to meet needs in the large but far less lucrative African market coincided with the rise of philanthropic and aid initiatives to provide branded medicines. The Bill and Melinda Gates Foundation’s parallel health services in sites like Botswana undermined state health services; it is no coincidence that Gates stands to lose more than anyone on the planet in the event that intellectual property is threatened. Given such prevailing power relationships, the South African government did not invoke any compulsory licensing of medicines even after the Pharmaceutical Manufacturers Association withdrew from its 2001 lawsuit. Local manufacturers Aspen and Adcock Ingram did, however, lower costs substantially through voluntary licensing of the major AIDS drugs. It is in this sense that not only decommodification, but also deglobalization of capital was considered vital to expanding access. Similar local licensing arrangements were soon arranged for firms in Kampala, Harare and other sites.

The SA government’s foot-dragging was costly. It was 2004 before the government issued its first tenders for AIDS medicines, and given the drop in prices due to generics since that time, ‘by the end of 2007 the government was paying almost twice as much as the private sector for first-line drugs like Nevirapine’, according to a report from the UN Office for the Coordination of Humanitarian Affairs (IRIN, 2008: 1). In 2008, the South African Joint Civil Society Monitoring Forum of health, human rights and law organizations complained of ‘serious shortcomings with the [AIDS medicines] tender process and the specifications’, including further delays that would lead to far more paid from public resources than was necessary (ibid.). Hence, even though more than 400,000 South Africans received medicines by that point, this was below the trajectory needed to reach the target of 1.3 million patients with access by 2011.
The combination of a lethargic state and persistent pharmaceutical corporate power meant groups like the AIDS Law Project (based at the Wits Centre for Applied Legal Studies, and associated with TAC) continued their campaign for decommodified medicines, gradually winning patent battles in the courts so as to promote local generic production of individual medicines. According to the Project’s Jonathan Berger, ‘We need a health department that’s prepared to do what the governments of Thailand and Brazil have done. We just can’t keep doing it one by one’ (cited in IRIN, ibid.). Those two governments led the way not only in treatment provision at public clinics, but also in contesting the US government in international trade battles. South Africa’s activists could break through on a few fronts, but without a supportive state, it was impossible to defeat the profit motive and generate a health system based upon meeting human needs.

PUBLIC VERSUS PRIVATE WATER

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

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

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

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

In order to cut consumption by low-income people, Suez began its reign as Johannesburg water manager by installing 6,500 pit latrines, a pilot ‘shallow sanitation’ system and thousands more pre-paid water meters in poor areas, including Soweto. Pit latrines require no water. The new shallow sewage system is also attractive to the company, because maintenance costs are transferred to so-called ‘condominium’ residential users, where a very small water flush and slight gravity mean that the pipes must be manually unclogged every three months (or more frequently) by the residents (typically women). Unlike conventional meters in rich suburbs which provide due warning of future disconnection (and an opportunity to make representation) in the form of notification in red writing at the bottom of the monthly bill, pre-paid meter disconnection occurs automatically and without warning following the exhaustion of the Free Basic Water (FBW) supply. If the disconnection occurs during the night or over a weekend when water credit vendors are closed, the household has to go without water until the shops are open again, and if the household does not have money for additional water, it must borrow either money or water from neighbours in order to survive. This represents not only a threat to dignity and health, but also a direct risk to life in the event of a fire. Two children’s deaths in a Soweto shack fire resulting from pre-paid meters catalysed a lawsuit against Johannesburg Water.

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

However, in the wake of a December 2000 campaign promise by the ruling party, a Free Basic Water (FBW) lifeline was implemented in 2001, amounting to 6,000 litres of water each month for each household. The main debates are over whether the FBW block provides adequate water for larger low-income families (especially those with HIV-positive members), and whether the tariff curve then rises in an excessively convex (versus sufficiently concave) manner. The mandate from national government — the FBW promise made in the wake of rising social protest and alienation, as well as the onset of the cholera epidemic — was worded as follows: ‘The ANC-led local government will provide all residents with a free basic amount of water, electricity and other municipal services so as to help the poor. Those who use more than the basic amounts, will pay for the extra they use’.

Johannesburg officials reinterpreted this otherwise progressive mandate utterly regressively, however, by adopting a relatively steep-rising convex tariff curve, in contrast to a concave curve starting with a larger lifeline block, which would have better served the interests of lower-income residents. The dramatic increase in their per-unit charges in the second block meant that there was no meaningful difference to their average monthly bills even after incorporating the first free 6,000 litres. Moreover, the marginal tariff for industrial/commercial users of water, while higher than residential, actually declines after large-volume consumption is reached. Low-income residents could simply not afford to pay for water at the price Suez demanded.

Resistance soon emerged, consistent with urban social movement traditions dating at least to the mid-1980s, when Johannesburg hosted what was possibly the world’s most impressive urban social movement, the South African township ‘civics’ (Mayekiso, 1996). But the SA National Civic Organization suffered systematic demobilization of their ranks by the ruling party during the mid-1990s, hence an independent network of community groups arose in several Johannesburg townships, beginning with the formation of the Soweto Electricity Crisis Committee in early 2000. The group took what was already a popular township survival tactic — illicitly reconnecting power once it was disconnected by state officials due to non-payment (in 2001, 13 per cent of Gauteng’s connections were illegal) — and added a socialist, self-empowered ideological orientation. Within a few months, the Anti-Privatization Forum (APF) was formed to unite nearly two dozen community groups across Gauteng, sponsoring periodic mass marches of workers and residents. The APF also networked with water activists across the world — to the major water war zone of Cochabamba in Bolivia, to Argentina, to Accra and to Detroit.
So that their critique could be legalized and generalized, Soweto anti-privatization activists from the Phiri neighbourhood launched a constitutional court case in 2004, facilitated by the Freedom of Expression Institute and the University of the Witwatersrand Centre for Applied Legal Studies, and ultimately argued by one of the country’s top lawyers, Wim Trengove. The case — Mazibuko & Others v. City of Johannesburg & Others — was finally heard in the Johannesburg High Court in December 2007. Several issues came under scrutiny: the implications of pre-paid water meters and shallow sanitation for access and administrative justice, especially in cases of water emergency and chronic poverty; and the origins and sufficiency of Free Basic Water, as well as the non-affordability of water beyond the FBW allocation — which was raised by Johannesburg Water in April 2008 to 10 kl/hh/m, but only for ‘indigent’ households as determined by a means test.

That action did not appease High Court judge Moroa Tsoka, who on 30 April 2008 ruled that imposing credit control via prepayment meters ‘in the historically poor black areas and not the historically rich white areas’ was racist, as installation apparently occurred ‘in terms of colour or geographical area’. Moreover, Johannesburg Water’s community consultation process was ‘a publicity stunt’ characterized by a ‘big brother approach’. He ordered removal and prohibition of the prepayment meters and the provision of 50 litres per person per day, effectively doubling the FBW target (Bond and Dugard, 2008).

Because Suez’s reign in Johannesburg was rife with social conflict and also generated strife within the council, the company’s contract was not renewed in 2006, in spite of the desired 25-year extension option available in the original water commercialization Business Plan. That plan anticipated that (after-tax) profits from Johannesburg water supply would soar from R 3.5 million (roughly US$ 300,000) in 2000–01 to R 419 million (US$ 50 million) in 2008–09. Instead of allowing the outflow of huge profits to Paris, local activists partially succeeded in their strategies both to decommodify water (by raising FBW from 25 to 50 litres per person per day) and to deglobalize capital — sending Suez packing in favour of local public services provision.

The provision of FBW was still unsatisfactory, in part because Johannesburg officials, still influenced by Suez’s pricing regime, also intended to cancel universal FBW in favour of means testing. No matter that Johannesburg Council resumed water management, its commercialization continued, and indeed Mayor Amos Masondo vowed to appeal Tsoka’s judgement later in 2008, supported by the national Department of Water Affairs and Forestry. With neoliberal water policies on tap from both municipal and central government, once again South Africa’s leading social change activists were faced with the realization that local resistance, protest, advocacy and legal strategies were insufficient, and that a full-fledged political project would be necessary to undo the damage. In the short term, to counteract the city’s legal appeal, they began a campaign of disconnection of prepayment meters.
and illegal bypasses of the meters, to increase pressure on authorities to heed the High Court judgement.

**CORPORATE POLLUTION AND CLIMATE CHANGE**

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

As just one illustration of resistance tactics backed by strong analysis, the Pietermaritzburg-based NGO groundWork established the humorous ‘Corpse Awards’ (with the US NGO CorpWatch in 2002 and subsequently with the University of KwaZulu-Natal Centre for Civil Society from 2005) in order to ‘recognise worst corporate practice in producing environmental injustice’. Nominations come mainly from voluntary community-based organizations of civil society, especially people living next door to the plants and mines.

In 2005, corporations receiving Corpse nominations included the country’s most aggressive polluters: oil refiners Sasol, Sapref and Engen, steel giant Mittal (formerly Iscor), pulp and paper giants Sappi and Mondi, US agribusiness Mosanto and South Africa’s power utility, Eskom. The 2006 nominees were AngloPlatinum (for destruction of the Mapela community as noted below), Bayer Cropscience (for GM sugar financing), the SA cement industry (for using hazardous waste in its product), two more oil refiners (FFS in Pietermaritzburg and Chevron at Table View, Cape Town) whose air samplings were far higher than legally acceptable levels, Engen (again), Samancor Manganese (for poisoning workers in the Vaal Triangle), Australia’s Paladin Resources (for its uranium mining in Malawi), and AngloGold Ashanti for the death of sixteen workers at Carletonville’s Tautona mine near Johannesburg in 2006, its apparent violation of the UN arms embargo in the eastern DRC, its role in the death of artisanal workers in Obuasi, Ghana, and the role of its subsidiary Kedahda in one of the world’s most

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2. Then-CEO Bobby Godsell reacted to allegations of collaboration with warlords in mid-2005 with the remark, ‘Mistakes will be made’.
repressive sites — ‘the Colombian Army is engaged in uprooting peasants and small-scale miners by attacking their leaders such as Alejandro Uribe, so that the transnational mining corporation Kedahda can enter the region and undertake mining operations on peasants’ and miners’ lands’.

According to 2005 award guest Naomi Klein, ‘We know corporates are not just satisfied with leeching your communities and poisoning your bodies. They want to be loved, which is why government invented corporate social responsibility. For them there is no problem that is so big that it can’t be solved with fantastic public relations’. Bobby Peek, director of groundWork and recipient of a Goldman Prize for environmental activism, explains the antipathy to self-regulation:

All [2005 nominees] boast their commitment to CSR and the environment. Their advertisements and publications proclaim best practice and continuous improvement as well as their commitment to health and safety. Some have even won awards for environmental and social reporting. None of them have convinced their neighbours who live with the burden of ill-health — cancers, asthma and other breathing difficulties, eczemas and allergies, and a variety of conditions affecting the blood, nerve and immune systems. (Peek, 2005: 1)

Critics of pollution will continue a variety of tactics, including Corpse Award ridicule (favourably covered in the South African business press). The next attack on transnational capital appears to be coming from victims of minerals extraction, such as communities in Limpopo, Northwest and Eastern Cape Provinces, who have criticized AngloPlats, LonPlats and Australian Minerals Resources, respectively, for their looting of resources. For example, the Mapela and Maandagshoek communities accused AngloPlats of ‘removing communities from their ancestral land, stealing peoples’ resources and gagging voices of resistance’ (ibid.). AngloPlatinum imposed ‘SLAPP’ orders — Strategic Litigation Against Public Participation — against the mining communities’ legal representative, Richard Spoor, so as to prevent him from ‘defaming’ the firm using the words ‘racist, thug and bully’.

The most serious and ultimately life-threatening forms of pollution are greenhouse gases, especially carbon dioxide (CO$_2$) responsible for climate change. These gases are now open for emissions trading, reflecting the emergence of a vast potential market developed from scratch, with potential activity in the trillion dollar annual range within the next few years. Although aimed at mitigating climate change, the new carbon market may do more harm than good, South African campaigners argue. They joined international activists in 2004 to form the Durban Group for Climate Justice, in opposition to corporations guilty of species-threatening climate emissions which attempt to trade their way out of emissions-reduction obligations. By 2008 these companies included buyers of emissions credits from Northern countries such as Shell, BHP Billiton, EDF, RWE, Endesa, Rhodia Energy, Mitsubishi, Cargill, Nippon Steel, ABN Amro, Chevron, and Chugoku Electric Power. Corporate sellers of emissions reduction credits especially from Brazil, South Africa, India and China included Tata Chemicals, ITC,

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

Until her death in July 2007, environmental activist Sajida Khan attempted to close the Bisasar Road dump, located across the street from her family’s decades-old residence, and in the process derail South Africa’s largest emissions trade pilot project. She died of her second dose of cancer which she attributed to toxins blowing from the dump. Under Khan’s ideal scenario, the closure of Bisasar Road dump, methane from the dump would be captured, piped out, cleaned and safely turned into energy. Instead, Durban officials aimed to burn the methane on site (increasing dangerous incinerated carcinogens), and in the process, keep the dump open at least another seven years, and possibly twenty, so as to increase the flow of carbon reduction credits via the Bank’s Prototype Carbon Fund. However, in July 2006, Durban Solid Waste conceded the power of Khan’s 90-page Environmental Impact Assessment critique, which a year earlier was widely credited as having also intimidated the World Bank away from the Bisasar site. The municipal rubbish company only applied (and won) Bank funding for methane-electricity burning from two much smaller landfills, which were not located in the immediate vicinity of residential areas. In addition to Bisasar, there are several other examples of ways carbon trading is abused in South Africa, justifying its rejection as a strategy to combat climate change (Bond et al., 2007).

What do activists suggest instead of CSR-type carbon offsets and emission trading? The favoured grassroots approach — drawing inspiration from activists in the energy sector from the Niger Delta, Ecuadoran indigenous and environmental communities, California and Alaskan conservation battles, Australian uranium mining towns, Norway and the Alberta tar sands of Canada — is to ‘Leave the oil in the soil, leave the coal in the hole’. South African activists’ critiques of the petroleum sector unite processing/consumption with production, via OilWatch, an international network. The most impressive development in the campaign is Quito-based Accion
Ecologia’s lobbying of Ecuadoran president Rafael Correa, to keep US$ 12 billion worth of oil below ground within the Yasuni National Park, for which he seeks US$ 5 billion in compensation.

Besides mitigating climate change, another reason to leave resources in the ground is the ‘resource curse’ that has adversely affected mostly Third World countries. Non-renewable resource extraction generates net negative savings in many countries, according to even the World Bank’s internal 2006 report ‘Where is the Wealth of Nations’? That report estimates that net national savings in South Africa was a net negative US$ 2 per person in 2000, a year that per capita gross national income was US$ 2,837. (The negative impact of capital devaluation, pollution and especially extraction of non-renewable resources is offset, in Bank calculations, by increased human capital investment via education budgets, but still remains dramatically negative for most African countries.) In other words, the Bank (2006: 51) finds that even Africa’s most industrialized economy cannot generate and retain enough wealth locally to counteract the negative wealth effects of non-renewable resource depletion. Hence leaving resources in the ground is not only good for the environment, but for the local economy, in view of this degree of natural asset expropriation by transnational corporate capital. Most SA mining houses, especially Anglo, DeBeers and BHP Billiton, moved primary listings offshore during the early 2000s, so the profits do not even remain within South Africa, generating, in the process, a vast current account deficit that reached –9 per cent in early 2008.

Whether South African activists and their allies can foil the carbon market in its early stages, and compel the mainstream environmental movement to adopt a more critical perspective on market ‘solutions’ to market problems, remains to be seen. The alternative approach of leaving oil in the soil and coal in the hole — that is, taking the supply side seriously — has far more long-term potential for addressing global warming. That is because — alongside the ecological debt argument — the activist strategy re-incentivizes transnational corporate behaviour in which, at present, local ecological damage is done without recourse to either market or social discipline. As we conclude, the same strategy of re-incentivizing anti-social transnational corporate activity also informed another major internationalist effort associated with the Jubilee debt movement: the campaign for reparations for profits owed to corporations’ black victims during apartheid.

CONCLUSION

The areas of corporate power reviewed above — AIDS medicines patents, water privatization, and pollution (especially climate change emissions) — show that an uncompromising, profound critique of malfeasance can do far more good than observing the standard rules and etiquette of corporate social responsibility. Such etiquette entails naïve acceptance of corporate
bona fides, with rhetoric about responsibility and state regulation as the
terrain on which debate and resistance occurs. In contrast, South African
and other international activists have side-stepped the CSR industry, which
Peek (2005: 1) insists is more distracting than it is useful:

Good corporate citizenship comes with buckets of greenwash. With the exception of Iscor,
all the nominated corporations sponsor various conservation initiatives. Sappi, for example,
has sponsored a book on South African birds particularly ironic since industrial plantations
exclude bird-life. Several corporations, notably Shell, sponsor academic chairs in the envi-
ronmental sciences while many genetic science departments are directly or indirectly in the
employ of corporations. And BP, Shell and Sasol have all signed onto the United Nations
‘Global Compact’ which allows corporations to claim a commitment to human, labour and
environmental rights while avoiding compulsory scrutiny and standards. Sappi and Mondi,
meanwhile, have used the Forest Stewardship Council to provide their products with a stamp
of environmental approval . . . Corporate responsibility is perhaps most invidious at the local
level.

The major South African corporate self-regulating strategy was Mervyn
King’s Commission on corporate governance, an ‘ethical make-over’, as
Peek (2005) remarks. The notion of triple bottom line reporting covers
financial, environmental and social concerns, such that ‘improved education
leading to a wider skills base; improved health care promoting a more
productive workforce; or a more economically diverse, and therefore a more
productive and supportive, local community. . . By being proactive in self-
regulation and governance, the corporate community has the opportunity
to shape public policy in beneficial ways, and pre-empt further potentially
restrictive or burdensome legislation’ (The Grantmaker, 2003: 6).

Finally, instead of persuading oppressed communities of their bona fides
through commitments to corporate responsibility, the major transnational
corporations active in South Africa — even those which escape the campa-
igns noted above — are now facing a much tougher test: to withstand
demands for reparations from apartheid’s victims (details below are found in
Bond 2006, 2008). The idea of reparations for slavery, colonialism, apartheid
and neoliberalism was raised in 1993 in the Organisation of African Unity’s
Abuja Declaration and in 2001 at the World Conference Against Racism
(WCAR) in Durban. Notwithstanding a march of more than 15,000 local
and international activists to the doors of Durban convention centre, repara-
trations demands were absent from the final WCAR document thanks to
SA president Thabo Mbeki’s censorship, and moreover, also soon led to a
rupture between the ANC government and progressive civil society. Frus-
trated by the failure of the WCAR to advance their agenda, two activist
organizations — Jubilee South Africa and the Khulumani Support Group
for apartheid victims — were joined by faith-based activists and others who
sued the corporations for torts under the 1789 Alien Tort Claims Act in the
US courts.

Civil cases for US$ 400 billion in damages were filed by apartheid victims
against three dozen major transnational corporations which had made profits
from South African investments and loans prior to 1994 (by 2003, Anglo American, Gold Fields and Sasol were added to the corporate defendants list). Corporations sued for apartheid profits include the Reinmetall Group, for providing arms and ammunition; British Petroleum (BP), Shell, Chevron Texaco, Exxon Mobil, Fluor Corporation and Total Fina-Elf, for providing fuel to the armed forces; Ford, Daimler-Chrysler and General Motors, for providing transportation to the armed forces; and Fujitsu and IBM for providing the government with much needed military technology. Banks financing apartheid include Barclays, Citibank, Commerzbank, Credit Suisse, Deutsche, Dresdner, J.P. Morgan Chase and UBS.

The Bush administration and corporate lobbies pleaded with US courts, initially unsuccessfully, to nullify an interpretation of the Alien Tort Claims Act that made apartheid reparations suits possible. In June 2004, the US Supreme Court handed down a surprising defeat for Bush in the case of Sosa v. Alvarez, when corporate plaintiffs requested that foreigners not be permitted to file lawsuits for human rights violations committed elsewhere in the world under the Alien Tort Claims Act (cases were then pending against companies for repressive operations in Burma, Nigeria, Indonesia and apartheid South Africa). According to the corporations, US courts might infringe upon the sovereignty of nations and interfere with the business of free trade, a factor in the South African case. The Supreme Court’s ruling was a ‘huge blow’ to the firms, according to Khulumani and Jubilee South Africa lawyers.

However, judge John Sprizzo of the Southern District of New York dismissed the apartheid-related lawsuits in November 2004 on grounds that Pretoria ‘indicated it did not support the lawsuits and that letting them proceed might injure the government’s ability to handle domestic matters and discourage investment in its economy’. Jubilee and Khulumani appealed and in October 2007, a US Appeals Court overturned the Sprizzo judgment, arguing the District Court did indeed have jurisdiction over such matters and allowing the case to resume its trajectory (Fabricius, 2007). With the companies now desperate to put the case behind them, they requested a Supreme Court hearing instead of a return to the lower levels. In February 2008, the US highest court heard arguments from the Bush White House against the ‘unprecedented and sprawling’ lawsuits. Bush was supported by the governments of Britain, Germany, Switzerland, and even South Africa. Amongst others, the plaintiffs have support from Archbishop Desmond Tutu and Nobel economics laureate Joseph Stiglitz. The Supreme Court found in May 2008 that sufficient numbers of their members were in conflict of interest due to personal investments in the apartheid-tainted companies, that they could not rule on the case, and instructed Sprizzo to review his own judgement, a process which began in September 2008.

These courtroom skirmishes remind us of the crucial importance of the reparations movement, both to disincentivize future collaborations such as those with the Nazi or apartheid regimes (or those in contemporary Burma or
Zimbabwe), and to compensate victims and their communities. The benefits of doing business with apartheid, which gave transnational corporations the world’s highest profit rates during the 1960s, should not be locked in. In contrast to vague CSR commitments, the activists claim, only reparations protests and lawsuits have the proven capacity to guard against criminals keeping their ill-begotten loot.

This, then, is the spirit of more realistic regulation of corporate activity in South Africa, ranging from Soweto street protests to battles — potentially successful — in the highest US courts. Instead of being drawn into CSR rhetoric, an alternative strategic approach based upon programmes for decommodification (for example, of medicines and water) and the ‘deglobalization’ of capital (as Walden Bello, 2005 terms it, or ‘delinking’ to quote Samir Amin, 1990) has enormous potential. Because global public policy has been unsatisfactory on matters such as access to medicines, intellectual property rights, public service provision of water and other essentials, pollution, climate change, and reparations for historic oppression, it will be up to activists to tackle corporate power from the bottom up, as part of a quest to eradicate that power entirely.

REFERENCES


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