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Chp 2, HB 3 65032
(TM 3:43)

INTERNATIONAL DEVELOPMENT PROJECT IDENTIFICATION DOCUMENT FACESHEET (PID)	1. TRANSACTION CODE <input type="checkbox"/> A = Add <input type="checkbox"/> C = Change <input type="checkbox"/> D = Delete	DOCUMENT CODE Revision No. _____ 1
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2. COUNTRY/ENTITY SOUTH AFRICA	5. PROJECT NUMBER 674-0311
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3. BUREAU/OFFICE AFRICA BUREAU	A. Symbol AFR	B. Code 06	5. PROJECT TITLE (maximum 40 characters) Promotion of Democracy
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4. ESTIMATED FY OF AUTHORIZATION/OBLIGATION/COMPLETION A. Initial FY: 9 1 B. Final FY: 0 0 C. PACD: 0 0	7. ESTIMATED COSTS (\$000 OR EQUIVALENT, \$1 =) <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">FUNDING SOURCE</th> <th>LIFE OF PROJECT</th> </tr> <tr> <td>A. AID</td> <td></td> <td>11,500</td> </tr> <tr> <td>B. Other U.S.</td> <td>1.</td> <td>N.A.</td> </tr> <tr> <td></td> <td>2.</td> <td></td> </tr> <tr> <td>C. Host Country</td> <td></td> <td>N.A.</td> </tr> <tr> <td>D. Other Donor(s)</td> <td></td> <td>N.A.</td> </tr> <tr> <td colspan="2" style="text-align: center;">TOTAL</td> <td>11,500</td> </tr> </table>	FUNDING SOURCE		LIFE OF PROJECT	A. AID		11,500	B. Other U.S.	1.	N.A.		2.		C. Host Country		N.A.	D. Other Donor(s)		N.A.	TOTAL		11,500
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TOTAL		11,500																				

8. PROPOSED BUDGET AID FUNDS (\$000)							
A. APPROPRIATION	B. PRIMARY PURPOSE CODE	C. PRIMARY TECH. CODE		D. 1ST FY		E. LIFE OF PROJECT	
		1. Grant	2. Loan	1. Grant	2. Loan	1. Grant	2. Loan
(1) DFA	690	690		500		11,500	
(2)							
(3)							
(4)							
TOTALS				500		11,500	

9. SECONDARY TECHNICAL CODES (maximum 6 codes of 3 positions each)	10. SECONDARY PURPOSE CODE
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11. SPECIAL CONCERNS CODES (maximum 7 codes of 4 positions each) A. Code _____ B. Amount _____	
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12. PROJECT PURPOSE (maximum 480 characters)

To support programs and activities which encourage a peaceful transition to a non racial, democratic South Africa, an effective national and local government and a healthy free market economy.

13. RESOURCES REQUIRED FOR PROJECT DEVELOPMENT
 Staff: PDO - Existing Staff

Funds OE - As required.

14. ORIGINATING OFFICE CLEARANCE	Signature: <i>Gerard B. Barrett</i> Title: Mission Director, South Africa	Date Signed: 6/20/91 MM DD YY 06 20 91	15. DATE DOCUMENT RECEIVED IN AID/W, OR FOR AID/W DOCUMENTS, DATE OF DISTRIBUTION MM DD YY
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16. PROJECT DOCUMENT ACTION TAKEN <input type="checkbox"/> S = Suspended <input type="checkbox"/> A = Approved <input type="checkbox"/> D = Disapproved CA = Conditionally Approved DD = Decision Deferred	17. COMMENTS
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18. ACTION APPROVED BY	Signature _____ Title _____	19. ACTION REFERENCE	20. ACTION DATE MM DD YY
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PROJECT RATIONALE

AGENCY POLICY ON DEMOCRATIZATION

In announcing the new Democracy Initiative in December, 1990, Administrator Roskens said, "We are witnessing a resurgence of democracy in all regions of the world, but its success is not guaranteed. A similar wave of democracy also swept over the developing world in the 1950s when colonial powers relinquished power in favor of new democratic regimes in Asia and Africa. Most did not endure, and by the late 1960s democracy was in retreat throughout much of the developing world. Now we have a second chance. We have an uncommon opportunity to directly strengthen fragile regimes which face challenges to the survival of their democracies, as well as to support positive political and social changes in nations which have not yet established democratic systems." After years of repression, violence and bitter struggle, South Africa offers the United States just the sort of uncommon opportunity Dr. Roskens spoke of.

THE SOUTH AFRICAN POLITICAL CONTEXT

Since President F.W. De Klerk's historic February 2, 1990, speech in Cape Town, South Africa has witnessed unprecedented political changes. In the last 16 months virtually all political prisoners, including Nelson Mandela, have been released. The African National Congress, the South African Communist Party, the Pan Africanist Congress and other black-led political opposition organizations have been unbanned. The African National Congress has suspended its "armed struggle" in the context of negotiations and has held formal talks with the South African Government in Pretoria and Cape Town. Hundreds of exiles have been granted indemnity from prosecution and have returned to South Africa after absences of up to three decades. The main legislative "pillars of apartheid" have been repealed. Sanctions are gradually being lifted and relations with other nations, many of which were in the forefront of the anti-apartheid movement, are being normalized.

The process of dismantling apartheid has been characterized as "irreversible" by President George Bush. However, it does not necessarily follow that a post-apartheid South Africa will be an economically viable, nonracial, multi-party democracy. Indeed, if the experiences of most other African countries are taken into account, it appears that South Africa is about to enter a new phase which is as fraught with danger as any other period in its history. Among the immediate challenges it faces are:

--Ending the civil unrest and political violence that has claimed more than 750 lives since January, 1991.

--Transforming liberation organizations into responsible, effective political parties.

--Negotiating a new constitution and bill of rights.

--Creating a culture of political tolerance and national reconciliation.

--Educating the over 35 million people, who have no first hand experience with democracy, about their rights and responsibilities in a free society.

Assuming the pace of political change does not slacken, a new constitution is adopted and a representative government is elected, there will still be many daunting tasks to be dealt with. If a stable, democratic society is to be established, it will be necessary to strengthen the competence of government and political institutions so they will merit the confidence of political leaders, citizens and investors. This task will be complicated by the fact that many existing institutions are integrally connected to the system of apartheid, both in terms of their staffing and their functions. In the case of local government bodies, for example, entirely new, nonracial structures will have to be designed and made operational without creating chaos in the urban areas they serve. Similarly, few members of a nonracial legislature are likely to have had any experience as legislators, having been legally excluded from the legislative process for generations. The need for assistance in strengthening a post-apartheid legislature, alone, will be enormous.

Just as important as strengthening the competence of government and political institutions is the creation of a strong, pluralistic civil society that can balance and limit the power of the state while providing channels for the articulation and practice of democratic interests. The anti-apartheid organizations within South Africa provide a good foundation for a strong civil society, but these organizations tend to be administratively and financially weak, often dependent on infusions of financing from the U.S., European and Scandinavian anti-apartheid organizations. As foreign interest in South Africa begins to wane, many of these non-governmental organizations will undoubtedly go out of existence. Those that survive will still require sustained assistance over a period of several years in order to make a programmatic shift and achieve financial self-sustainability.

USAID/South Africa has played an important role in supporting political change, but it has an even more important role to play in supporting the evolution of a stable democratic society

over the next five to ten years. One of the most unique features of the USAID program in South Africa has been its ability to respond flexibly and quickly to important opportunities as they arise. Unfortunately, when the Mission's existing project portfolio was designed, no one anticipated the speed with which the political change has occurred. Thus, while we are well equipped to "fight apartheid" we are less well prepared to play a more constructive role in building a new South Africa. This, to an increasing extent, limits the Mission's ability to respond to important new developments.

CURRENT TOOLS FOR PROMOTING DEMOCRACY

To date, most activities that fall under the rubric of a transition to a post-apartheid democracy have been funded through the Human Rights program. The Human Rights Program was authorized in 1983, under Section 116(e)(2) of the Foreign Assistance Act. Under this provision, grants of up to \$10,000 may be made "to non-governmental organizations....promoting political, economic, social, juridical and humanitarian efforts to foster a just society and help victims of apartheid." In 1986, Section 116(f)(1) was added to include the legal assistance provisions. These provisions authorize not less than \$500,000 per year for direct legal and other assistance to political prisoners, detainees and families, including the investigation of killing of protesters and prisoners. The provision also authorizes support for "black-led community organizations" peacefully resisting the enforcement of apartheid policies, such as forced removals, denationalizations or restrictions on where blacks may reside, work or which bar families from being housed with the employed spouse. In 1987, Section 116(g) was added to provide, from existing funds, \$175,000 for direct assistance to families of victims of violence. An additional \$175,000 per year was made available to black groups "actively working toward a multi-racial solution to the sharing of political power....through non-violent, constructive means."

LIMITATIONS OF CURRENT PROGRAMS

An unfortunate feature of this legislation is that only the small grants provision offers wide ranging and flexible criteria for grants "promoting political, economic, social, juridical and humanitarian efforts to promote a just society and to help victims of apartheid." This provision is limited by the \$10,000 ceiling, thus, precluding significant support for a variety of activities falling within the conceptual framework of the legislation. Similarly, Section 116(f), while permitting larger grants, is very limited in scope. Due to the imminent abolition of the legal pillars of apartheid and the release of political detainees, the provision is much less relevant than it was even a short time ago.

Section 116(g) has been used very effectively to support a limited number of organizations, such as the broad based Institute For Multi-Party Democracy and applied research institutions like the Foundation For Contemporary Research in Cape Town. These opportunities are quite rare, though. Because eligibility for funding is limited to "black groups.....actively working toward a multi-racial solution to the sharing of power...." this provision, too, severely restricts the Mission's ability to respond to important opportunities. Few "Charterist" or multi-racial groups addressing power sharing could accurately be described as "black." "Black Consciousness" groups--although "black"--view "multi-racial" power sharing as a low priority. Hence, the availability of funds to support the development of a post-apartheid democracy are currently very restricted.

A.I.D.'s recently announced Democracy Initiative recognizes that, "Given the diversity of political, economic, cultural and social conditions in countries where A.I.D. has programs, our efforts will be tailored to the unique conditions of a particular country and flexible enough to respond to specific opportunities." This need for flexibility is particularly important in South Africa, as the events of the past 16 months have demonstrated. Nevertheless, an illustrative list of activities to be financed under the Promotion of Democracy Project is attached.

ILLUSTRATIVE ACTIVITIES

1. Conferences/workshops on alternative local government models to replace existing racially based structures. \$ 600,000.
2. Short-term experts on constitutional law to provide advice to South African political leaders on drafting a new constitution. (10 person months @ \$400/day.) \$ 88,000.
3. Civic education programs, including use of radio, television and other media. \$ 500,000.
4. Conferences, seminars and workshops with representatives of all political parties and international experts to discuss economic policy options in a post-apartheid environment. \$ 400,000.
5. Support for independent public policy research organizations. (4 @ \$200,000 per year X 4 years) \$3,200,000.
6. Provision of legal assistance and establishment of adjudicating bodies to resolve land ownership disputes arising from the apartheid policy of forced removals of non-white occupants. \$2,500,000.
7. Training and internships for journalists. \$ 850,000.
8. Legislative training, observation visits and capacity building. \$1,000,000.
9. Political leadership training. National, non-partisan training programs and observation visits aimed at young, aspiring political leaders for service at all levels of Government in post-apartheid South Africa. \$ 200,000.
10. Operational support and capacity building for constituent and/or public advocacy organizations (i.e. Contralesa, Institute for Multi-Party Democracy, Institute For A Democratic Alternative For South Africa, National Civics Association, etc.) \$5,500,000.

ELIGIBILITY CRITERIA FOR ASSISTANCE

1. Priority will be given to black-led groups serving the disadvantaged community in South Africa; other groups will be considered only when their programs clearly service and have the support of the disadvantaged community.
2. Recipient organizations must not engage in or advocate violence.
3. Organizations must not oppose negotiations leading to a nonracial, democratic South Africa.
4. Recipient organizations and activities should strive to be self-sustaining over the medium to long term.
5. Activities should fall into one or more of the following categories:
 - A. Local government reform/restructuring.
 - B. Legislative capacity development.
 - C. Judicial reform and capacity development.
 - D. Development of policy research, formulation and analysis capability.
 - E. Land reform.
 - F. Measures to increase the free flow of public information.
 - G. Assistance in political party development which is open to all political parties in South Africa.
 - H. Civic education.
 - I. Improve the effectiveness and strengthen the institutional capacity to administer free, fair and open elections for all South Africans.
 - J. Constitutional development and reform.
 - K. Strengthening constituent and/or public advocacy non-governmental organizations (business, professional, tribal, etc.).

INITIAL ENVIRONMENTAL EXAMINATION

In accordance with 22 CFR Part 216 Environmental Procedures, Section 216.2(c) certain classes of actions do not require an Initial Environmental Examination, an Environmental Assessment or an Environmental Impact Statement. Included among these are actions which do not have an effect on the physical or natural environment. The actions contemplated in this instance are designed to promote the establishment and maintenance of an economically viable, non-racial, multi-party democracy. They will have no impact on the physical or natural environment. Therefore, Mission recommends a negative Threshold Decision based on categorical exclusion.

LOGICAL FRAMEWORK

GOAL:

MEASURES OF GOAL ACHIEVEMENT:

MEANS OF VERIFICATION:

MAJOR ASSUMPTIONS:

To promote the establishment and maintenance of an economically viable, non-racial, multi-party democracy in South Africa.

Free and fair national elections open to voters of all racial groups are held. Widespread tolerance for difference political points of view. Investor confidence (domestic and foreign) improved. Discriminatory legislation abolished.

Full acceptance of South Africa in world bodies which previously banned it due to concerns about its political system and human rights violations. These may include, but are not limited to the Organization of African Unity, The World Bank and its affiliates and the International Olympics.

Pace of political reform in South Africa does not slacken significantly.

PURPOSE:

Support programs and activities which strengthen the competence of NGOs, political institutions and, subject to legislative restrictions, governmental bodies so that they will merit the confidence of political leaders, citizens and investors.

EOPS:

Several political parties active in South Africa. Press and electronic media free to express ideas and opinions. Local government structures responding to demands of people from all racial groups. Popularization of free market principles. Judiciary and legislature operating smoothly and fairly. Barriers to membership in political organizations reduced. New constitution ratified.

1. Public opinion polls.
2. Annual reports from private institutions (e.g. Amnesty International, Black Sash, Lawyers For Human Rights).

External macro economic events do not severely limit the growth potential to the South African economy. Political organizations and NGOs are capable of attracting the funding and retaining the qualified staff they require to remain viable and effective.

OUTPUTS:

1. A vigorous, pluralistic, autonomous civil society that can balance and limit state power while providing channels for the articulation and practice of democratic interests.
2. Increased Public Awareness: Members of the public will have an improved understanding of critical issues facing the country in its transition to a non-racial society and will be better able to participate in the national debate over the future of South Africa.
3. Strengthened governmental and para-statal bodies supportive of democratic values and practices. These may include electoral bodies, the legislature, the judiciary, civic and professional associations and a free, responsible press.

1. Greater influence by NGOs in the formulation of public policy and delivery of services.
2. Increased responsiveness to the needs and wishes of currently disenfranchised groups on the part of government bodies.
3. Reduced levels of politically motivated violence.
4. Widespread discussion and participation in debates over fundamental issues related to the transition to a new constitution and government, especially on such topics as the constitution, a bill of rights and economic policy.
5. An effective non-racial, non-partisan electoral system based on universal suffrage.

1. Project evaluations.
2. Government reports.
3. Annual reports of NGOs.
4. Interviews with policy makers and leaders of historically disadvantaged communities.
5. Academic studies/ investigations.
6. Analysis of elections (voter participation rates, voter registration rates, etc.).
7. Independent election observer reports.

The new constitution for South Africa permits non-governmental organizations to operate freely and a representative system of government is adopted. Access to the electronic media is increased to allow a variety of opinions and points of view to be expressed. The print media is allowed to operate without state interference. Freedom of expression, assembly and affiliation are incorporated in the new constitution.

INPUTS

- Training
- Technical Assistance
- Project Management
- Observation Tours
- Conferences
- Commodities (computers, office equipment, etc.)
- Budgetary Support For Selected Grantees

1. Training provided to approximately 3,500 persons.
2. Not less than 14 conferences held to discuss key issues related to the political transition in South Africa.
3. Approximately 140 persons sent on observation tours.
4. Grants made to approximately 15 NGOs. These grants may include funds for operating and program expenses as well as selected commodities.

1. Receipts
2. Trip reports
3. Conference papers
4. Site visit reports

USAID continues to operate in a post-apartheid South Africa. Adequate funds are available to conduct needed activities in a timely fashion. Qualified personnel are available to provide assistance as needed. Restrictions on working with SAG lifted.

ACTION MEMORANDUM FOR THE DIRECTOR

DATE: January 3, 1989

FROM: Harry Wilkinson, Human Rights Office

SUBJECT: Utilizing the Building Democratic Institutions Project (674-0306) to Support New and Important Human Rights Activities.

I. Action Requested

It has become increasingly apparent, that as currently structured, the Human Rights program cannot respond adequately to an emerging and important set of human rights activities. As a result, our Human Rights program, which has been characterized by its high relevance and responsiveness to pressing human rights issues, may find itself becoming increasingly marginal to many critically important human rights activities. In Pretoria-89 17663, we outlined this problem and advised A/W of our intention to utilize the Building Democratic Institutions (BDI) Project (674-0306) as the most effective and timely solution. In State-89 388807 A/W saw "no major problem with proposal" and would consult further within the Bureau upon receipt of a more detailed document. Accordingly, and for the reasons discussed below, it is recommended that you approve using the BDI Project (674-0306) as the most effective, logical means available for supporting these critical human rights activities while, at the same time, preserving overall program integrity. If you approve, this document, which sets out the conceptual framework for our position, will be submitted to A/W as requested.

II. Authority

Pursuant to Redelegation of Authority No. 452, you have the authority to execute grants with indigenous non-governmental organizations in an amount not to exceed \$5 million. The BDI project (674-0306) has been utilized since 1986 as the legal basis for funding grants with the National Endowment for Democracy (NED). These grants have been executed on the basis of an Action Memorandum signed by the Mission Director. Accordingly, similar grants to other NGOs can be authorized in the same fashion under the project.

III. Summary:

The purpose of this memorandum is (a) to explain why the current USAID Human Rights program is not able to respond as effectively as it might to a newly emerging set of important human rights activities, and (b) to explore several options for addressing this problem; namely, seeking an amendment to the current Human Rights provisions of the Comprehensive Anti-apartheid Act (CAAA), developing a new Project Paper for human rights, amending the Community Organization and Leadership Development (COLD) project (674-0301) or, as herein recommended, utilizing the existing Building Democratic Institutions project (674-0306) as the logical basis for supporting these emerging human rights efforts.

IV. Background

As presently structured the USAID Human Rights (HR) program is not able to respond adequately to an emerging and important set of human rights activities for which U.S. funding could make a real contribution. These activities fall under the rubric of a "transition to a post-apartheid democracy" and would include support for organizations with programs designed to develop or strengthen several key elements of a post-apartheid democratic system of government in South Africa. These activities, which are discussed in more detail below, would include: expanded human rights and anti-apartheid legal activity; constitutional development (e.g., bill of rights); legal reform (e.g., programs to increase opportunities for black lawyers to become judges); support for organizations developing policy options for a post-apartheid democracy; and support for press groups (e.g. the Media Defense Fund).

V. The HR Legal Framework

The HR program was authorized as early as 1983, with enactment of Section 116(e)(2) of the Foreign Assistance Act, which initiated the Small Grants provision. This provision authorized grants up to \$10,000 "to nongovernmental organizations ... promoting political, economic, social, juridical, and humanitarian efforts to foster a just society and to help victims of apartheid."

Section 116(f)(1) was added in 1986 to include the Legal Assistance provisions, which authorizes not less than \$500,000 a year for "direct legal and other assistance to political detainees and prisoners and families, including the investigation of the killing of protesters and prisoners," and support for "black led community organizations" peacefully resisting the enforcement of apartheid policies such as forced removals; denationalizations; or restrictions on where blacks may reside, work or which bar families from being housed with the employed spouse. In 1987 Section 116(g) added the Victims of Violence and Democratic Alternatives provisions.^{1/}

This legislation has, on the whole, successfully guided implementation of the HR program since early 1987. It provided direction, purpose and spine to a program which might otherwise have become an unfocused, and perhaps irrelevant, self-help program.

1. "Of the funds available...\$175,000 shall be used for direct assistance to families of victims of violence...An additional \$175,000 shall be made available to black groups...actively working toward a multi-racial solution to the sharing of political power...through nonviolent, constructive means."

However, a serious, and quite possibly unintended, consequence of this legislation is that only the Small Grants provision offers wide-ranging and flexible criteria for grants "promoting political, economic, social, juridical and humanitarian efforts to promote a just society and to help victims of apartheid." This provision, unfortunately, is limited by the \$10,000 ceiling which precludes significant support for a variety of human rights activities falling squarely within its conceptual framework.

The very legislative provisions which were instrumental in ensuring that the HR program would be relevant and effective at the time of their enactment now limit to some extent its ability to be either. While certain changes are taking place (e.g., the reduction in the number of detainees and executions) it cannot, of course, yet be argued that the specific problems identified in the legislation are no longer significant. Confrontation, detentions, arrests and human rights violations will continue for some time as will the need for legal assistance and support for anti-apartheid activities. These efforts do not, however, constitute the full range of the human rights and direct anti-apartheid activity now being conducted in South Africa and seeking support from USAID.

Accordingly, the Mission finds itself increasingly unable to address important HR efforts -- some of which are critically important for peaceful change -- which were not relevant or perhaps even envisaged at the time the legislation was passed. Moreover, even to the extent that the Small Grants provisions do provide adequate flexibility to assist in wider range of human rights activities, the \$10,000 grant ceiling precludes support for any activity of a significant nature.

A. Specific Legislative Constraints

-- Small Grant Ceilings. The \$10,000 ceiling on Small Grants is well-suited to funding small, nascent, grassroots initiatives and for assuring program outreach. It does not permit more substantial support for larger institutions or projects. The limited provision for matching grants of up to \$30,000 has a cumulative ceiling of \$100,000 which is inadequate to overcome this problem.

-- Legal Assistance grantees. Section 116(f) permits assistance either (a) in the form of legal or other "direct" assistance to political prisoners or detainees, (b) to investigate political killings or (c) to support resistance to apartheid policies by "black-led community organizations." While these categories -- notably (c) -- are not wholly inflexible, they leave out some of the major categories of human rights and anti-apartheid activities that are now emerging.

-- Democratic Alternatives criteria. The second and relevant of the two earmarks contained in section 116(g) provides \$175,000 per year for "black groups ... actively working toward a multi-racial solution to the sharing of political power ... through non-violent, constructive means." South African political realities sharply restrict the potential of this earmark. Few if any "Charterist" (or multi-racial) groups addressing power-sharing could accurately be described as "black." "Black Consciousness" groups -- though "black" -- view "multi-racial" power-sharing as a rather low priority. Thus, again, funds to support the political debate over and the development of a post-apartheid democracy may be provided only under the Small Grants authority.

B. Examples of Activities the USAID cannot Support

As a result of these constraints, several categories of activity have not received the assistance they ought:

-- Anti-apartheid legal activity. Much legal activity on important anti-apartheid matters does not fit in the categories contained in section 116(f). Individual cases not involving detainees or prisoners or "black-led community organizations" (e.g., Group Areas cases involving an individual or group challenge of apartheid laws or practices) may not be funded.

-- Anti-apartheid lobbying and other human rights efforts Some of the most effective lobbying and educational efforts being carried out by national and regional human rights and anti-apartheid groups (e.g., Lawyers for Human Rights, whose investigations uncovered the first solid evidence of South African "hit squads") are largely run by whites and therefore ineligible for general assistance under either section 116(f) ("support for black-led community organizations") or the section 116(g) ("black groups ... working toward a multi-racial solution to the sharing of political power"). These important human rights groups can only be assisted under the Small Grants authority, or in the context of the Legal Assistance language.

-- Constitutional Development. With the very limited exception of the section 116(g) earmark, no more than \$10,000 may be provided for efforts to develop the specific content of proposals for constitutional and legal change in South Africa. With the increasing possibility that serious negotiations will be entered into in the foreseeable future, this need is becoming a strong one. Although this is an area in which the USG appears to take a stronger interest than most other donors, the constraints referred to above have sharply limited the Mission's ability to fund such efforts.

-- Legal Sector. The South African legal system is experiencing a crisis of legitimacy, the reasons for which are too obvious and too many to elaborate here. Hopes for a lasting democratic outcome of the present political crisis rest in part on the existence of a responsible, independent and popularly-supported system of justice. While the problems involved in addressing the legal system are systemic, and the solutions longer-term, the health and reform of the Legal sector is one of the most crucial human rights issues facing South Africa, one in which the USG has a strong interest, but unfortunately, one which cannot now be addressed adequately.

-- Think Tanks. Again, Legal Assistance funds can not be used due to statutory language, and Small Grants are too small to support substantial research efforts or even get a think tank under way. Section 116(g) permits use of funds for this purpose only if the recipient is (a) "black" (which has been interpreted to include its leadership as well as professional staff) and (b) chooses to work on matters which can be characterized as "multi-racial power-sharing".

-- The Press, either collectively or individually. Legal Assistance funds to support the press are not authorized under the 116(f) language, and Small Grant funding is inadequate to meet the needs of press groups. (e.g., support for a media defense fund).

VI. Alternatives Approaches

As discussed above, it is in the interest of the Mission and the United States that a logical, expeditious means be found to permit the funding of activities of the kind discussed above. There exist several possible approaches --

Legislative Changes: Congressional enactment of the desired authority is the ideal solution, and not to be ruled out in the long run. Mission experience in obtaining legislative relief to this and similar constraints has, however, been less than successful and it is unwise to assume that Congressional action would take place in the near future. The Mission in 1988 and 1989 recommended modifications to extant legislation.

Development of a new project: Unlike other sectors, the existing HR program has no Project Paper. The Mission and its RLA have concluded that the specificity of section 116 meets all the substantive requirements for which a PP might be needed, and that a PP is not required. Accordingly, the option of modifying the PP does not exist.

Development of a new project would provide a bureaucratic and legal foundation that would be as effective as that offered by a statutory solution. Several difficulties, however, make this alternative impractical in the short term. Principal among these is the time involved in developing, presenting and obtaining approval of a full Project Paper. In addition to the delay, the process would seem excessive in view of the limited amount of funds involved -- between \$350,000 to \$500,000 per year. There is no reason to believe, moreover, that AID/W, let alone the USAID, wishes to be subjected to a full PP exercise. What is sought here is simply a way to fill out the structure of the existing HR sector, rather than set up a new project.

Amending an Existing Project -- Community Development and Leadership Training (COLD): The problems referred to above have, to a very limited degree, been addressed on an ad hoc basis under COLD (e.g., grants to the media for training or to human rights groups to support training of young lawyers in public interest law).

However, for COLD to assist on a systematic rather than purely ad hoc basis would entail amending the COLD Project Paper. This solution, however, has very real limits. The most important of these is that the focus of COLD activity is on longer-term training and institutional development at the community level, rather than on short-term or highly political projects.

Clearly, there comes a point where the use of COLD funds for HR purposes abuses and distorts the COLD program. It also presents management difficulties of trying to coordinate and manage a politically volatile HR program located in two separate offices.

Apart from the obvious management problems, such a move would also give the appearance of divying up important human rights activities among several USAID offices -- something the Congress might find objectionable.

The Preferred Option -- ad hoc grants made against the Building Democratic Institutions Project (674-0306). A logical and cautious approach to the emerging changes in the human rights scene in South Africa would be to utilize the existing BDI project (674-0306) under which the Mission Director could authorize a limited number of grants which, for the reasons explained above, cannot be developed under existing legislative authority. Given the current political volatility in SA, the precise demand for these emerging HR activities remains somewhat uncertain. Accordingly, we do not plan to use the BDI project beyond FY 90 in the hope that Congress will have solved our problem by modifying the current legislation.

Conceptually, the BDI project conforms with the type of human rights activities the USAID would like to support but cannot given extant legislation. The BDI project is an accepted part of the USAID portifolio and was developed in A/W. Funds under it can be authorized through an Action Memorandum signed by the Mission Director. The authorization has been amended three times to increase funds intended for the NED grant. Given these facts, it would seem clear that the BDI project could be utilized to support critical HR activities the Mission wants and ought to support.

Funding. To some extent, the amount of funding made available for this subsector depends on the approach selected. Absent a statutory change, the subsector could not draw funds from the \$1,500,000 earmark under section 116(e)(2)(A) and could thus be funded only over and above that earmark. The funds themselves would be drawn from other Mission funds, as was done in FY89 when two tranches totalling \$500,000 were shifted from COLD and ESAT to the HR program. Since the current FY90 CP already carries HR at the \$2.0 million level, Congress would only have to be notified regarding the intention to authorize up to - \$500,00 under the BDI project. Certainly in the near term the Mission does not anticipate that more than \$500,000 would be used in the new area.

VII. RECOMMENDATION

That for the reasons cited above, you approve utilizing the Building Democratic Institutions Project (674-0306) to support some of the newly emerging Human Rights activities that at present are not eligible for support under other components of the USAID program.

Approved *William P. Brown*
Date *Jan 3, 1990*
Disapproved _____

Cleared: CMango *MPDO*
DKeene, RLA
MJohnson, *ATA*
Drafter: HWilkinson, HR

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DRAFTED BY: AID/AFR/PD/SA:NBILLIG/HAKLEINJAN:FAF:0212L
APPROVED BY: AID/AAA/AFR:WBOLLINGER
AID/AFR/PD/SA:CROZELL AID/AFR/SA:KBROWN (DRAFT)
PPC/PDPR/SP:THOREL (DRAFT) AID/AFR/PD/PAB:TBETHUNE (DRAFT)
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TAGS:

SUBJECT: EXPANDED HUMAN RIGHTS/DEMOCRATIC INITIATIVES

REF: (A) PRETORIA 01696 (B) PRETORIA 17663 (C) WILKINSON
1/3 MEMO ON USING BUILDING DEMOCRATIC INSTITUTIONS
PROJECT.

1. SUMMARY: THE PROJECT COMMITTEE, CONSISTING OF REPRESENTATIVES FROM AFR/SA, AFR/DP, AFR/PD AND GC/AFR, REVIEWED THE MISSION REQUEST TO FINANCE EXPANDED HUMAN RIGHTS ACTIVITIES FROM BDI/MED PROJECT 674-0206. WHILE THE COMMITTEE STRONGLY SUPPORTS THE SUBSTANCE OF THIS MISSION INITIATIVE, THE PROCEDURES FOR DESIGNING AND OBLIGATING FUNDS OUTLINED IN REF. C WERE NOT ACCEPTED. END SUMMARY.

2. PROJECT AMENDMENT VS. NEW PROJECT: PROJECT 0306 IS A HB 13 GRANT BASED UPON AN UNSOLICITED PROPOSAL FROM NED; IT IS INAPPROPRIATE TO AMEND IT TO INCLUDE NON-NED ACTIVITIES. WE UNDERSTAND FROM SUBSEQUENT TELEPHONE CONVERSATIONS WITH HARRY WILKINSON, THAT THE MISSION MAY FUND A PORTION OF THE ACTIVITIES PROPOSED FROM THE COLD PROJECT. IF SUCH ACTIVITIES FALL WITHIN THE SCOPE OF

COLD'S PURPOSE, THE PROJECT COMMITTEE HAS NO OBJECTION. HOWEVER, GIVEN THE POTENTIAL IMPORTANCE OF THIS EXPANDED CONCEPT OF HUMAN RIGHTS ACTIVITIES, IN ADDITION TO THE ACTIVITIES PLANNED UNDER COLD, WE WOULD ENCOURAGE THE MISSION TO ENTER UPON A SEPARATE ACTIVITY. THE PROJECT COMMITTEE RECOMMENDS THAT THE MISSION DEFINE THESE NEW ACTIVITIES VIA NORMAL A.I.D. DOCUMENTATION AND ESTABLISH A SEPARATE PROJECT. ALSO, IT MAY BE USEFUL TO SEPARATE THE NEWLY PROPOSED ACTIVITIES FROM THE STATUTORILY-MANDATED HUMAN RIGHTS ACTIVITIES. TO AVOID CONFUSION AS TO WHICH ACTIVITIES CONTRIBUTE TOWARD MEETING THE EARMARK.

3. LEGAL INTERPRETATION: GC/AFR HAS CONCLUDED THAT FAA SECTION 116 (E) (1), THE AGENCY'S GENERAL HUMAN RIGHTS AUTHORITY, PROVIDES SUFFICIENT AUTHORITY FOR THE ACTIVITIES PROPOSED AND IS NOT SUBJECT TO THE RESTRICTIONS OF SECTIONS 116 (E) (2), (F), AND (G). WHILE THERE IS A REQUIREMENT, BASED ON LEGISLATIVE HISTORY, THAT THE DEPARTMENT OF STATE CONCLUDE THAT THE HOST GOVERNMENT WILL PERMIT A 116 (E) (1) ACTIVITY, WE

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NOTE THE EXISTENCE OF PAST SIMILAR ACTIVITIES. GC/AFR HAS ALSO CONCLUDED, AS A LEGAL MATTER, THAT THE STATUTORY EARMARKS DO NOT PREEMPT OTHER ACTIVITIES IN THE HUMAN RIGHTS FIELD FOR SOUTH AFRICA. FURTHERMORE, AID/LEG DOES NOT SEE A POLICY PROBLEM WITH THE PROPOSED EXPANSION OF HUMAN RIGHTS ACTIVITIES. THIS CABLE HAS BEEN CLEARED BY THE AGENCY HUMAN RIGHTS COORDINATOR, AND SECTION 624 (F) (2) (C) CONSULTATION WILL BE CARRIED OUT WHEN FULL PID DOCUMENTATION, INCLUDING CRITERIA, ARE RECEIVED.

4. DESIGN GUIDANCE: A NEW PROJECT WILL, HOWEVER, REQUIRE THE MISSION TO PREPARE A PID AND PROJECT PAPER. THE COMMITTEE IS WILLING TO ACCEPT THE MISSION'S EXISTING STRATEGY STATEMENT, INCLUDING REF (C). AS THE SUBSTANCE OF A PROJECT IDENTIFICATION DOCUMENT WITH THE ADDITION OF THE FOLLOWING ITEMS: (A) BRIEF LOG FRAME WITH A CLEAR PROJECT PURPOSE, (B) CRITERIA FOR SELECTING THE TYPE OF SUB-GRANTS THE PROJECT WOULD FINANCE, (C) FACESHEET, AND (D) REQUEST FOR CATEGORICAL EXCLUSION OF THE IEE. THE CRITERIA NEED TO BE STATED MORE SPECIFICALLY THAN AS THE SAME CRITERIA UNDER THE SECTION 116 (E) (2) STATUTORY PROGRAM, SINCE BY DEFINITION THIS ACTIVITY CAN NOT BE DONE UNDER THE STATUTORY PROGRAM. THE CRITERIA IS THE AREA THAT AID/W IS MOST INTERESTED

IN. IT IS IMPORTANT THAT THEY BE CAREFULLY DRAWN. AND THE MISSION SHOULD BEAR IN MIND THAT A.I.D. HAS PERIODICALLY RECEIVED INQUIRIES AS TO WHAT CRITERIA ARE UNDER THE STATUTORY PROGRAM. FOR INSTANCE, ARE THERE ANY LIMITATIONS AS TO THE TYPES OF LEGAL ASSISTANCE ACTIVITIES?

5. ONCE AID/W RECEIVES A PID, OR ADDITIONAL ITEMS IDENTIFIED ABOVE FOR A MODIFIED PID, WE WILL MOVE QUICKLY TO FORMALLY REVIEW THE PID. BECAUSE OF THE POLICY CONCERNS RAISED BY THIS TYPE OF ACTIVITY, AUTHORITY TO APPROVE THE PID CANNOT BE DELEGATED. THE PROJECT COMMITTEE ANTICIPATES THAT MISSION DIRECTOR AUTHORITY TO APPROVE THE PROJECT PAPER AND AUTHORIZE THE PROJECT IN THE FIELD (DOA 551) WILL BE CONFIRMED AT THE PID REVIEW.

6. FYI THE JANUARY 3 MEMO SUGGESTS THAT DOA 452 AUTHORIZES THE MISSION TO AUTHORIZE GRANTS. DOA 452 IS A SIGNING, RATHER THAN AN AUTHORIZING. DELEGATION. ACTIVITIES WOULD HAVE TO BE AUTHORIZED UNDER DOA 551. AS STATED ABOVE. END FYI. BAKER

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