Book Review Symposium VII of Economic Sanctions from Havana to Baghdad: Unilateral Sanctions - The US-South Africa Bilateral Relations Review Bill of 2025

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Alena Douhan notes that unilateral sanctions challenge many aspects of international human rights law. The occurrence of overcompliance by institutions such as banks may pose risks to initiatives aimed at protecting human rights. This danger is well illustrated by Charles Chilufya, S.J. and Fernando Saldivar, S.J., who identify the ‘chilling effect’ that economic sanctions can have on poverty reduction and sustainable development. These discussions concerning the potential devastating impact of unilateral sanctions are made relevant to the South African context when considering the proposed U.S.-South Africa Bilateral Relations Review Bill of 2025 (the Bilateral Relations

Bill).

The Bilateral Relations Bill was introduced in the House of Representatives on 3 April 2025 by Congressman Ronny Jackson from Texas. It seeks to initiate a full review of the bilateral relationship between the United States and South Africa. In the process of this review, it would identify leaders of the African National Congress as well as other political groups such as the Economic Freedom Fighters (EFF), who have engaged with actors the US considers as malign. Such actors include Hamas, Iran, China and Russia. The Bill envisages that sufficient evidence may be found in the review to link these leaders with instances of corruption and human rights abuses. This would allow the US Executive branch to impose targeted sanctions on these leaders, which would include the freezing of assets held in the US, blocking of entry into the US as well as the inability to use the financial systems the US supports for any financial transactions.

It is far from certain whether the Bilateral Relations Bill will gain traction and be enacted. However, even the remote possibility of enactment is enough to give us pause. What would the consequences be of such a review of bilateral relations between South Africa and the United States? On the one hand, one could argue that the review is aimed at rooting out corruption and human rights abuses perpetrated by members of the South African government. In 2025 the South African government itself instituted a commission of inquiry into corruption in the criminal justice system, the Madlanga Commission. Surely the South African government would be aided by US sanctions against corrupt persons who are members of government?

However, considering the dangers set out by Douhan, Chilufya and Saldivar, the review may prove devastating to human rights protections in South Africa. The South African Constitution guarantees protection of various socio-economic rights such as access to education, a clean living environment, access to housing as well as adequate food, water and healthcare. Targeted sanctions against members of the ANC who are involved in government could mean that the State’s practical capacity to realise socio-economic rights in South Africa could be detrimentally affected. It would reduce the overall resources to South Africa that would have been available through development finance, multilateral and bilateral partnerships, Non-Government Organisation networks

and philanthropic funding. Overcompliance could mean that even members of the ANC who are not designated in the review process could face financial obstacles, not only from partners in the United States but also from all third parties who may be concerned that their involvement with the ANC could mean being sanctioned by the US. These third parties could be other states in Africa, who would be potential partners in combatting poverty and nurturing sustainable development on the continent. But perhaps the biggest risk is that all these negative consequences could arise from a review process motivated primarily not by concern for corruption and human rights abuses, but by concerns driven by United States foreign policy.

To analyse this concern in context, it would be instructive to look at the legal framework which the Bilateral Relations Bill utilises. It relies on the framework provided by the Global Magnitsky Human Rights Accountability Act (the 'Magnitsky Act'). The Magnitsky Act is a federal law enacted under the Obama Administration, named after Sergei Magnitsky, who was a Russian tax lawyer who died under suspicious circumstances in 2009 after uncovering tax fraud perpetrated by Russian officials. The Act supports targeted or 'smart' sanctions against individuals, as opposed to sanctions which impact entire countries. This framework has been used successfully by the United States in the past to combat corruption in numerous different jurisdictions. For instance, it was used in 2017 to sanction the corrupt businessman Dan Gertler and his associates for human rights abuses and corruption in the mining industry in the DRC. But closer to a South African context, it was used by the United States in 2019 to sanction the Gupta family, who engaged in corrupt activities to obtain political leverage under watch of President Jacob Zuma. In October 2016, the Public Protector confirmed in a report that there was *prima facie* evidence to support allegations that the Gupta family had nurtured improper relations with President Jacob Zuma and his administration, which relations resulted in such outcomes as the removal and appointment of government ministers and directors of State Owned Entities, as well as the biased rewarding of government contracts to the benefit of the Gupta family.

Considering the public anger that resulted from the Public Protector's report into the Gupta family, the majority of South Africans would probably be supportive of the sanctions against the Gupta family. But the same could not be said of the Bilateral Relations Bill. Section 2 of the Bill builds the case of

sanctions against members of the ANC using, *inter alia*, the following points: South Africa's criticism of Israel's response to the attack by Hamas in 2023 and advocating for restraint in the escalating violence; the accusation of genocide by Israel by President Ramaphosa in 2023; the request to the ICJ by the South African government in 2023 that there be an investigation into war crimes being committed in Palestinian territories and that there be a declaration of genocide committed by Israel by the ICJ; that the Ambassador to the United States had made statements indicating that the President of the United States was 'extreme'; and South Africa's diplomatic relations with Russia and China.

These points are contentious as a basis for a case against members of the ANC for corruption and human rights abuses. According to the United Nations Convention against Corruption (2003), corruption deals with such activities as bribery, embezzlement, trading in influence, abuse of functions and illicit enrichment. Statements regarding South Africa's own foreign policy stances on the war in Gaza do not count as corruption on this definition. Furthermore, South Africa's concern about genocide in Gaza is listed as a foundation for allegations of corruption and human rights abuses in the Bilateral Relations Bill. This is ironic, given that South Africa's main concern in a declaration of genocide in Gaza was to defend against what it saw as human rights abuses in another jurisdiction. The ICJ has since indicated that there is a *prima facie* case of genocide in Gaza, which is at odds with the characterisation of South Africa's activities according to the Bill.

These points raise the serious possibility that the Bilateral Relations Bill is seeking sanctions against individuals in the South African government on a foundation driven ostensibly by foreign policy concerns. While the Bilateral Relations Bill does mention certain instances where corruption may have been present in the South African government, like mismanagement of funds in Eskom and Transnet, the presence of allegations that have nothing to do with corruption or human rights abuses should raise red flags about this process.

It is these red flags that Douhan warns us about. Sanctions are imposed on individuals by executive bodies and not by judicial authorities. This means that there is no judicial oversight of such imposition. The evidentiary threshold for executive processes is lower than that which is expected in judicial platforms. The Bilateral Relations Bill needs bipartisan support, and so will need to pass

through the House of Representatives and the Senate. But if it is adopted, the imposition of sanctions on South African government officials would fall far short of the burden of proof for criminal cases relating to instances of corruption and human rights abuses in a court of law, which is proof beyond reasonable doubt. Apart from the lack of due process for sanctions, there is the lack of appeal structures. An individual may be able to challenge a sanctions listing in court, but this is a costly and lengthy process. Furthermore, it is likely that the courts will be deferential to the executive, which lowers the prospects of success in any case.

What this means is that should the Bilateral Review Act be enacted, the individual ANC members would struggle to recover from the impact. The resources available to South Africa from the US for poverty reduction and realisation of socio-economic rights would be disrupted. The 'chilling effect' which Chilufya and Saldivar mention as the impact of sanctions could restrict financing for South African sustainable development. If this negative impact was driven primarily by foreign policy concerns and not corruption or human rights abuses, it would constitute a gross injustice to South Africa. It would also constitute a gross injustice to the individuals sanctioned, whose civil rights to a fair trial and due process would have been violated.

Historically, sanctions played an important role in ending Apartheid in South Africa. They provided the necessary financial and political pressure which led to the advent of democracy. The cases of Dan Gertler and the Gupta family are instances where corruption was combatted using the tools provided to the United States by such laws as the Magnitsky Act. However, the spectre of the enactment of the Bilateral Review Act points to the potential abuse of these tools. In the light of this danger, Douhan's recommendation that appropriate legal and institutional networks be developed for unilateral sanctions to ensure the protection of human rights and rule of law must surely be right.

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