



**Stellungnahme der Khulumani Support Group**

## **Khulumani International Lawsuit Appeal Victory Removes an Obstacle to Justice for Victims and to the Advance of Corporate Accountability**

Khulumani Support Group welcomes the long-awaited decision of the New York circuit court of Appeal to reverse the finding of the district court on its Alien Tort Statute claim (Khulumani et al v. Barclays et al). The court held that liability of corporations for aiding and abetting the perpetration of gross human rights abuses does exist and that it can be pled under the statute. The Alien Tort Statute (ATCA) allows for people anywhere in the world to make claims against United States-based corporations that have caused damage to those people. It must be noted that the businesses listed in the lawsuit chose not to appear before the TRC.

The decision is a victory in a long struggle for justice for victims of corporate complicity with the illegitimate apartheid government. All the defendant companies listed in the Khulumani et al v. Barclays et al lawsuit can be shown, not only to have profited from apartheid, but also to have propped up the illegitimate regime long beyond the declaration of apartheid as a crime against humanity by the United Nations. The case is now being sent back to the district court where Judge Sprizzo who originally dismissed it as being, amongst other descriptions, "frivolous", is now required to reconsider his decision. The success of this appeal comes in the light of a campaign that has been supported by an overwhelming majority of Truth and Reconciliation Commissioners as well as by numbers of South African and international civil society organisations and individuals.

The decision of the circuit court contrasts with the position of the South African government that requested the dismissal of the claims on the basis that they interfered with the sovereignty of the South African government to deal with the matter of reparations and that the claims might possibly deter foreign investment. (ex parte declaration submitted by former Minister of Justice Mr Penuell Maduna, dated July 11, 2003, in which former Minister Maduna refers to President Mbeki's announcement of April 15, 2003 that final reparations would be "combined with community reparations and assistance through opportunities and services".) The opposition of the South African government to the Khulumani claim was unexpected given that it had initially declared that "(it) recognises the right of citizens to institute legal action". However, government went even further when Khulumani tabled its appeal in January 2006, and submitted an amicus curiae brief to the Circuit Court in support of 'big business' and against those victims who had sacrificed so much for freedom.



While we note that there is a dissenting opinion in the court decision, it seems to relate more to the two other cases than specifically to the Khulumani case and seems to be particularly influenced by the 'unfortunate' Maduna affidavit, in which claims are made that government is in the process of implementing community reparations. This is untrue. What Minister Maduna was referring to were general measures for social reconstruction and development, rather than targeted reparations measures for affected communities.

At this stage, South Africa's present government has to date not made public the community reparations programme referred to by Mr Maduna in his ex parte declaration, based on President's Mbeki's announcement of April 2003. Khulumani calls on the South African government to make their proposals on community reparations public without any further delay, noting that Khulumani submitted its suggested proposals for community reparations to the Office of the President on October 29, 2003, and that to date, government has still not responded to these. Khulumani notes, moreover, that more than R600 million remains in the President's Fund and is not being used in a transparent manner, given that these funds are derived from the public fiscus and that organised victim groups continue to struggle to get access to resources to implement their plans for sustainable livelihoods. Khulumani also notes that the TRC Unit in the Department of Justice, established at the end of 2005, continues to function in an opaque fashion and has not yet involved Khulumani in discussions to plan how to comprehensively deal with the "unfinished business of the TRC". The Ministry of Justice has, moreover, remained unresponsive to recent requests for urgent meetings to share information on the procedures available to victims for submitting applications to have their urgent needs addressed. The South African government, having failed to wholeheartedly embrace the full scope of reparations, is thereby promoting a model of transitional justice that incorporates "unfinished business".

Khulumani believes that the circuit court decision in New York is an important step forward in a fight for reparations, not only for survivors of gross human rights abuses in South Africa, but for victims affected by unethical corporate behaviour everywhere in the world. Provided there is no challenge to this latest decision, the role of big business in aiding and abetting the apartheid government, and in profiting from apartheid, can at last begin to be interrogated.

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