

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

KHULUMANI, et al.	)	S.D.N.Y.
	)	Case No.: 1:03-cv-4524 (JES)
Plaintiffs,	)	
	)	
v.	)	
	)	
BARCLAYS NATIONAL BANK, et al.	)	
	)	
Defendants.	)	
	)	

Brief of KASA as *Amicus Curiae* in Support of Plaintiffs’  
Opposition to Defendants’ Motion to Dismiss

STATEMENT OF KASA INTEREST AND BACKGROUND

This letter is submitted in connection with the *Khulumani* litigation in support of the Plaintiffs Opposition to Defendants’ Motion to Dismiss.

I, Theo Kneifel, am a theologian holding degrees of licentiate in both philosophy and theology from the Pontifical University Gregoriana in Rome, Italy, and a PhD degree from Natal University in South Africa. I worked as a lecturer at St. Joseph’s Theological Institute at Cedara, Pietermaritzburg, RSA, from 1974-1986. In 1986 on account of my participation in the democratic opposition to apartheid I was deported from the country, and have since then been involved in advocacy work on Southern Africa.

I am presently the coordinator of KASA/Werkstatt Ökonomie in Heidelberg, Germany, supported by twenty church organisations and groupings including the four main Aid Agencies of the German catholic and protestant churches involved in South Africa.. KASA is focusing its work, besides EU-trade policies on Southern Africa, on the main issue of apartheid debt and reparations in South Africa and the neighbouring countries. KASA’s principal partners are the economic justice departments of the South African Council of Churches including the Catholic Bishops’ Conference, and connected church based agencies. KASA is one of the four organisations coordinating the German section of the International Campaign on Apartheid Debt and Reparations.

KASA is a department of the non-governmental organisation Werkstatt Ökonomie (WÖK) that since its foundation in 1983 has been one of the key research centres involved in the church-based Anti-Apartheid Movement in Germany that in its campaigns concentrated on the five German defendant companies. In the following we want to contribute the results of our previous as well as of our present research and advocacy work to provide additional evidence and support of the Plaintiffs’ Opposition to Defendants’ Motion to Dismiss.

In 1986 the WÖK published a major study on the involvement of German companies and banks in doing business with Apartheid-South Africa and on the necessity of economic sanctions: "Die Deutsche Wirtschaft und Südafrika: Zur Notwendigkeit von Wirtschaftssanktionen", Heidelberg 1986.

In 1987 WÖK published a study on the Apartheid-connections of Mercedes-Benz (today DaimlerChrysler), exposing unfair labour practise and cooperation of Daimler-Benz SA with the security sector of the apartheid regime: Klaus Heidel. "Kein guter Stern für die Schwarzen: Die Geschäfte von Daimler-Benz in Südafrika". A shortened version was included in the major study on the role of Daimler-Benz induring the Nazi-regime: "K.H. Roth, M. Schmidt: "Das Daimler-Benz Buch 1916-1948. Ein Rüstungskonzern im Tausendjährigen Reich", Hamburger Stiftung für Sozialgeschichte des 20. Jahrhunderts, Nördlingen, 1987.

In 1999 the German and Swiss sections of the International Campaign on Apartheid Debt and Reparations (ADR) published the study „Apartheidschulden. Der Anteil Deutschlands und der Schweiz“, Stuttgart 1999, the English version of which was published by Jubilee South Africa in March 1999: „Apartheid-Caused Debt. The Role of German and Swiss Finance“. This study provided the scientific basis of the German Campaign that targeted the three German defendant banks Deutsche Bank, Dresdner Bank and Commerzbank. Copies of the study were sent to the three banks with the invitation to engage in public debate on these findings. These invitations which we reiterated at numerous occasions, especially at the annual shareholders meetings, were largely ignored; some initial responses to serious dialogue were not maintained or were unduly protracted.

We therefore welcomed the decision of Khulumani and associated individual plaintiffs, facilitated by Jubilee South Africa, in the absence of appropriate national legislation in South Africa or Germany to have recourse to the Alien Tort Claims Act to hold the defendant banks and companies accountable for [aiding and abetting the abuses of the system of apartheid](#).

#### INTRODUCTION TO THE MAIN ARGUMENTS.

On the basis of the above mentioned research and political advocacy work at the address of the five German defendant companies, against the background of responses of the five companies to our demands and in the light of the arguments contained in the Affidavit of the South African Minister of Justice Penuell Maduna of July 11 2003 we in the following will advance these [four](#) main arguments:

1. The international community has declared apartheid a "crime against humanity". Holding accountable the beneficiaries does not violate South Africa's sovereignty but is a primary responsibility of civil society in the respective countries and an integral dimension of the findings and recommendations as contained in the final reports of the South African Truth and Reconciliation Commission(TRC) of 1998 and of March 2003.
2. Taking responsibility for the support of Apartheid in the past is in the long-term interest of the companies and consistent with their commitments to the principles of the UN Global Compact. It is therefore not convincing to argue that holding the defendant companies accountable to deal with their apartheid past would be detrimental to their present or future investments in South Africa. The contrary should be the case.
3. Legality is different from legitimacy. The fact that the defendant German companies did not violate existing German National Law does not absolve them from having ignored

international law by aiding and abetting the illegitimate apartheid regime.

4. Daimler Chrysler has to respond to four counts of collaborating with the security system of the apartheid regime. It can be argued that this represents, in the terms employed by the TRC, a “second order involvement” with the apartheid regime.

## ARGUMENTS

**Ad 1.** Apartheid, a “crime against humanity”, as defined by the General Assembly of the UN since 1973, – a definition assumed by the International Court of Justice-, has been put on a par with slavery and genocide and therefore for over thirty years has constituted a concern of the international community. Redressing this crime and upholding the right to compensation of the victims of apartheid for damages related to the activities of international banks and companies with apartheid therefore is also a concern of the international community rather than being the exclusive concern of the sovereign Republic of South Africa as argued in the Affidavit of the South African Minister of Justice of July 11, 2003.

But it is of special concern to governments and civil society in the countries of apartheid’s main beneficiaries. Addressing the five German defendant companies is a primary responsibility of German society, but especially of those sectors of German civil society that have shown a persistent commitment of opposition to the racist regime of apartheid and the redressing of its legacy. This explains our support for the plaintiffs in the *Khulumani* litigation.

Furthermore reparations to the victims by the beneficiaries of apartheid are an essential element of the just balance of the process for reconciliation informed by the principle of restorative justice as adopted by the parliamentary TRC that has set international standards in dealing with injustices of past criminal regimes.

**Ad 2.** In our approach to the three German defendant banks and Daimler Chrysler we have consistently argued that taking responsibility for their involvement with apartheid would enhance their public image as global players that are committed to the principles of transparency and social responsibility; it would give credence to their commitment to the nine principles of the UN Global Compact to which they have subscribed. We have challenged them to public debates on our findings regarding their support of apartheid and asked for the opening up of their archives to scientific research and for the establishment of independent historical commissions (in analogy to the research they have commissioned with regard to their role during the Nazi regime). This in view of the fact that none of the five German companies heeded the invitation of the TRC to participate in the special hearings on the role of business in late 1997.

We have argued with the German defendant companies that by publicly facing up to the truth of their involvement with apartheid and by engaging in negotiations with the victims on adequate reparations they would enter into the logic of the TRC, make a much needed contribution to reconciliation and help establish a new culture and a rules-based system of corporate social responsibility.

**Ad 3.** The respective German governments failed to translate the declaration of apartheid as a “crime against humanity” into effective national legislation regarding economic sanctions and dis-investment policies. Strictly bound only by the mandatory arms embargo, declared in 1977 by the UN Security Council, the German government was instrumental in avoiding binding

legislation on economic sanctions against Apartheid-South Africa by adopting in 1977 the weak EC Code of Conduct of the nine members of the European Community which had the form of recommendations only and regarded mainly wage structures and labour conditions.

#### **Ad 4. The Case of Daimler Chrysler**

Daimler Benz was not the only German company that did substantial business with the military, police and security apparatus of apartheid South Africa. It is, however, singled out from the range of other German companies like Siemens, Höchst, Mannesmann, BMW or Volkswagen because it represents four critical areas of German collaboration as documented by numerous publications by the German Anti-Apartheid Movement including research done by WÖK..

1. The supply of armament and military equipment in alleged violation of international law, notably the mandatory UN arms embargo of 1977. Exports of Daimler-Benz from Germany of up to 6000 Unimog trucks (by 1985), so-called “dual use vehicles” which have been used by the South African army and police;
2. The servicing and repair work of military equipment in its daughter company in South Africa, the Mercedes Benz Exchange Unit Services in Johannesburg;
3. The production of vehicles by Mercedes-Benz South Africa and supplying of them to the South African police and army;
4. Holding shares in Atlantis Diesel Engines which helped building up the military self-reliant sector and produced components for military vehicles.

In volume 4,6,23-36 of the final report the TRC distinguishes between three different orders of involvement of business with apartheid. While first order involvement relates to “helping to design and implement apartheid policies”, second order involvement is defined as “engaging directly in activities that promoted state repression”. In the same paragraph 26 one example is singled out which is of specific relevance to Daimler-Benz’s involvement with the apartheid security establishment: “Business that provided armoured vehicles to the police would fall into the former category – so-called second-order involvement”.

Above mentioned research of WÖK and of other Human Rights Organisations have consistently pointed out the above four areas of business activities of Mercedes-Benz in South Africa that would relate to the above category of second order involvement. In his speech at the shareholders meeting of Daimler-Benz in June 1989 in Berlin the General Secretary of the South African Council of Churches Beyers Naude addressed Daimler’s support of apartheid’s security sector in the following terms: “Daimler- Benz does not help us to prevent this violence. The police shoot demonstrators, they even shoot mourners at funerals, as happened , for example, at Langa. They shoot from cars driven by Daimler-Benz engines. How am I to understand your statement that you are ready to help prevent the situation to turn into violence? You will only succeed in doing so if you cease supporting the military”.

#### **CONCLUSION**

From the perspective of church-based organisations in Germany that since the early eighties have been engaged in monitoring the involvement of the five defendant German banks and companies in aiding and abetting the abuses of apartheid and in supporting the historically disadvantaged community in South Africa we consider it to be imperative that the rights of the victims to truth and reparations are recognised by this Court. Therefore in the light of the reasons set forth above, this Court should not grant Defendants’ Motion to Dismiss and allow the case to go forward.

