

The basis of the claim is that large corporations aided and abetted the National Party government in keeping the apartheid machinery running smoothly



The photograph was taken at the launch of the book – “All That Was Lost. Apartheid Violence: Third TRC participants speak” – Edited by Catherine C. Byrne, 2010.

Apartheid victim group scores **SYMBOLIC VICTORY** against multinationals

The Truth and Reconciliation Commission (TRC) has left in its wake what *Villa-Vicencio & Du Toit* call ‘un-finished business’. This ‘un-finished business’ has now come back to haunt multinational corporations that are seen to have been complicit in supporting the apartheid government; and it comes in the form of litigation processes instituted by the Khulumani Support Group. *Narnia Bohler-Muller* looks at their success in seeking reparations.

Khulumani, an organisation that represents victims of apartheid human rights abuses who feel that they have not benefited from the TRC and other nation-building processes, takes the position that both reconciliation and reparations are necessary conditions for restorative, redistributive and social justice. The group therefore continues to petition the South African government and the Department of Justice and Constitutional Development (DOJCD) to honour the payment of reparations to victims of apartheid crimes against humanity.

Over the past 11 years of its operations Khulumani has helped victims and survivors of apartheid-era violations to become self-reliant victors. Seventy-four per cent of their membership base of 54 000 are unemployed. Members report that their greatest need is for assistance and support to deal with interpersonal violence, in particular with domestic violence and its related challenges, including HIV/AIDS infection. Twenty per cent of their members openly state that they are affected by the pandemic.

The group was initially set up in response to the TRC hearings. Their humble beginning in 1995 was as a trauma centre where people could share their experiences in small groups in order to ensure that victim re-empowerment is in the hands of victims/survivors themselves.

Legal actions against corporations

In 1973, the United Nations General Assembly opened the International Convention on the Suppression and Punishment of the Crime of Apartheid for signature and ratification. It defined the crime of apartheid as 'inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them', strengthening the group's case against multinationals.

The first Khulumani case (2002) was filed against a number of multinationals for 'aiding and abetting' apartheid crimes against humanity by allegedly supplying ammunition, technology, oil and loans to the National Party government.

The 23 corporate defendants included IBM, General Motors, Daimler-Chrysler, Rheinmetall Group, Shell, BP and Barclays Bank. The claim instituted against multinationals in the US is based on the 1789 Alien Tort Claims Act that provides for the rights of foreigners to institute lawsuits in the US for serious human rights violations.

Khulumani has alleged that the multinationals violated customary international law and a series of UN resolutions by aiding and abetting the crimes of apartheid, and that the defendants are liable to the plaintiffs for compensatory and punitive damages, as well as any other appropriate and equitable relief.

Litigation and incomplete reconciliation

The South African government initially opposed the lawsuit (2003) because it was deemed to be political and not legal matters already dealt with by the TRC, and that using foreign courts to address matters central to the future of South Africa infringes on state sovereignty and would deter much needed foreign direct investment.

In the US, Justice Sprizzo dismissed the first case on the basis that the claims for

reparations would have serious consequences for US foreign relations and in particular commercial trade. The case then went on appeal. In October 2007, the US Court of Appeals reversed the lower court's ruling and held that companies may be held liable for 'aiding and abetting' a government's violations of international law. The case was referred back to the US District Court and is ongoing.

This litigation illustrates the 'unfinished business' of reconciliation in South Africa. For many victims and survivors the post-apartheid experience has become one of bitterness, broken promises and a sense of betrayal.

On 27 February 2012 a US court finalised a \$1.5 million settlement between General Motors Liquidation Company, formerly known as General Motors Corporation (GM), and the apartheid lawsuit claimants represented by Khulumani and those represented by Lungisile Ntsebeza. The settlement was made in 'good faith' and did not constitute an admission of guilt by GM. GM was accused of allegedly providing customised vehicles for the security forces to use in townships to stifle resistance.

Khulumani welcomed the decision and called on the remaining companies in the litigation – Ford Motor Company, IBM, Daimler and Rheinmetall – to also come to the table to negotiate a settlement.

Litigation successes against human rights abuses

Recent development have strengthened the case of the apartheid litigants in the US. On 8 July 2011, in the case of *Doe v Exxon Mobil*, the DC Circuit Court in the US decided that 'aiding and abetting' liability is well established under international law. In this lawsuit, 15 Indonesian villagers from the oil-rich province of Aceh, Indonesia, claimed that during a period of civil unrest Exxon Mobil retained soldiers from Indonesia's military as guards for a natural gas facility in Aceh, despite knowing of past human rights abuses by the Indonesian army, leading to human rights violations against Aceh villagers. In its decision the court stated that the 1789 Act allowed corporations in foreign countries to be 'held liable for the torts committed by their agents'.

Kiobel v. Royal Dutch Petroleum Co. is another case in which the US Supreme Court must decide whether corporations

can be sued for violations of international human rights law. The case was brought by 12 plaintiffs from the Ogoni region of Nigeria against Royal Dutch (Shell) for its alleged complicity in serious human rights abuses. The plaintiffs allege that Shell aided and abetted the military dictatorship in Nigeria in the early 1990s, leading to arbitrary arrests, detention and torture. During this period, the Ogoni people protested against Shell's despoliation of the Niger Delta and demanded that Shell and the Nigerian government halt the destruction and share the benefits of Nigeria's oil wealth with the poverty-stricken Ogoni people. The claimants allege that Shell provided financial and other assistance to the military by brutally oppressing the Ogoni people.

These cases are very significant for the Khulumani South Africa Apartheid Litigation case as the basis of the claim is that large corporations aided and abetted the National Party government in keeping the apartheid machinery running smoothly, and should be held accountable for complicity in assisting with the perpetration of human rights abuses and crimes against humanity.

Finishing the 'unfinished business'

While the legal procedures and negotiations with multinationals continue, Khulumani has called on the South African government to become a partner in the 'unfinished business' of restoring the lives and the losses of victims of apartheid-era crimes. In memoranda delivered to the DOJCD and the Presidency, the group requested government to 'join victims and survivors of apartheid gross human rights abuses to close the gaps in post-apartheid injustices'.

GM's largely symbolic reparations had very real benefits and set a good example of what can be done towards the attainment of socioeconomic justice by compensating victims of crimes against humanity and acknowledging their suffering, past and present, as they strive to better their own lives.

Author: Dr Narnia Bobler-Muller, acting executive director, Democracy, Governance and Service Delivery, HSRC

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