

YONKE NDAWO, O MZABALAZO WA SEVUMELELA!!:
VICTIMS OF APARTHEID VS COPORATES & STATES

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Overview

1. Introducing Khulumani Support Group
2. Khulumani and Reparations
3. Events leading up to launch of Lawsuit
4. The International Lawsuit
5. Lessons learnt and International Significance of the Lawsuit

(A) ABOUT KHULUMANI

- Khulumani (“Speak Out”) is the national membership-based organisation of **victims and survivors of apartheid** political violence
- Founded by victims & survivors in 1995. To date **55 000 members**.
- Mostly above 40; 65% women; victims/survivors of family members **killed; forcibly disappeared; tortured; indiscriminate shooting** and **property burnt down**. 70% unemployment.
- Aim: “Contribute to the **empowerment** of survivors and relatives of victims and survivors”

ABOUT KHULUMANI cont.

Programs:

- (a) Advocacy for Reparations and Social Justice;
- (b) Community Reconciliation;
- (c) Forgotten History and Social History projects;
- (d) Community Sustainable livelihoods projects;
- (e) Community Memorialisation;
- (f) Advocacy and counseling around issues of Enforced Disappearances;
- (g) Community Healing of Memories Project

LEGACIES OF APARTHEID

- 1992 HDI rankings: SA = 86th among 173 countries (adjacent. Sri Lanka, Botswana, and Peru)
- White SA ranked 18th place (similar to NZ)
- Black SA falls to 118th place, close countries such as Vietnam, Bolivia and Lesotho
- 35%-40% unemployment and
- 45% below poverty line

SOCIO-ECONOMIC CONSEQUENCES

- Lower socio-economic status
- Greater illiteracy
- Higher unemployment
- Higher health care costs
- Have reduced food security
- More frequent recourse to social grants

SOCIO-ECONOMIC CONSEQUENCES

cont.

- Lower earnings in previous week & in past year
- Lower household expenditure
- Greater indebtedness
- Lower quality of housing
- Poor state of repair of homes
- Limited access to information

SOCIO-ECONOMIC CONSEQUENCES CONT.

- Use natural resources less
- Have less access to information
- Travel further for fuel wood collection
- Greater vulnerability to ongoing stresses
- Feelings and beliefs of powerlessness

(B) KHULUMANI ON REPARATIONS

- (1) Individual Reparations
- (2) Community Rehabilitation
- (3) Institutional Reform

INTERNATIONAL GUIDELINES ON REPARATIONS

- Redress
- Restitution
- Rehabilitation
- Restoration of dignity
- Re-assurance of non-repetition

TRC & VICTIMS

TJ trade off: **Amnesties** for perpetrators; **Reparations** for Victims

GAPS in the TRC process

(A) **Mistakes and omissions**

(B) Lack of **Appropriate Support and Financial Advice**

(C) **Arbitrariness of amount of compensation**

(C) EVENTS LEADING ABOUT LAUNCH OF INTERNATIONAL LAWSUIT

- **1998, October: TRC Report submitted**
- **1999, October: Khulumani marches to demand information**
- **2000-2002: Khulumani marches, protests, litigates, stimulates public discussions... Met with dismissals, obfuscations and lies**
- **2002, November: Khulumani & Jubilee SA launches the Lawsuit in USA**
- 2003, April: President announces final individual reparations (one third of that recommended by TRC)

(D) *'yonke ndawo/o mzabalazo wa sevumela'*: INTERNATIONAL LAWSUIT

- People have right to **seek justice anywhere** in the world
- Pursues **'unfinished business'** of TRC
- Those who profitted must be held **accountable**

Main claims:

- (1) Violated ATCA and Customary International Law
- (2) Companies provided substantial **assistance and/or encouragement** to the apartheid regime; acted with **criminal enterprise** of apartheid...

Yonke Ndawo: PLAINTIFFS

- 88 Plaintiffs

Categories:

- (1) Extra-Judicial Killings
- (2) Indiscriminate Shootings
- (3) Torture
- (4) Sexual Assault
- (5) Arbitrary detention
- (6) Forced labour

Yonke Ndawo: DEFENDANTS

- Lawsuit targets 23 MNCs:

*Barclays Bank/ Shell/ BP/ IBM/ DaimleyChrysler/
Rheinmettal/ Dresdner Bank AG/ Exxonmobil/ Ford/
Fujitsu/ General Motors/ J.P. Morgan Chase/ UBS
AG/ AEG Daimler-Benz Industrie/ Fluor Corporation/
Rio Tinto Group/ Total-Fina-Elf/ PLC/ Chevrontexaco
Corp/ Chevrontexaco Global Energy/ Citigroup/
Commerzbank and Credit Suisse Group*

Yonke Ndawo: DEFENDANTS CONT.

- (1) OIL
- (2) ARMAMENTS
- (3) BANKING
- (4) TRANSPORT
- (5) TECHNOLOGY SECTOR
- (6) MINING SECTOR

yonke ndawo: WHERE ARE WE NOW?

- Launched in **2002** (*victory*)
- **2003** SA state submits an amicus curiae brief. US gov submits Statement of Interests
- **2004**: Judge dismisses the case (*set back*)
- **2004-2007**: Khulumani and partners lobby
- **2007**: US Circuit Court of Appeal affirms that liability may exist (*victory*)
- **2007**: companies appeal ruling. SA & USA gov's re-affirm support for case
- **2008, May (victory): US Supreme Court confirms 2007 ruling**
- District court to hear arguments on merits

Yonke Ndawo: **LESSONS LEARNT**

- (2) NB to have strong **international partners**
- (3) **Persistence and perseverance** NB
- (4) Strategy in terms of advocacy and lobbying
- (5) Litigation not substitute to **political agitation**

CONCLUSION

- Critical case for developing global standards for **ethical corporate behaviour**
- Possibility of **binding legal principles** on big business conduct in conflict areas
- Potential to **alter relationship** between states, corporates and citizens
- **International Human Rights** on verge of huge leap forward

Thank You