



Stellungnahmen 2002 von Jubilee South Africa, Khulumani Support Group und KEESA.

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Apartheid Debt & Reparations Campaign

Media Statement

EMBARGO: 11h00 (South Africa) Tuesday, 12 November 2002

Major Apartheid Reparations Suit Filed in US Court

After four years of failed attempts to get multinational banks and businesses that propped up the apartheid state to account for their odious profiteering, the Khulumani Support Group and Jubilee South Africa's Apartheid Debt & Reparations Campaign today announced that a major complaint for apartheid reparations was filed last night in the New York Eastern District Court on behalf of victims of state-sanctioned torture, murder, rape, arbitrary detention, and inhumane treatment.

"The corporations aided and abetted a crime against humanity whose persistent social damage requires urgent repair," Jubilee South Africa said in a statement issued today.

"They made massive profits while the suffering of the victims of apartheid intensified. The banks and businesses have consistently ignored our attempts to engage in discussion about their role in supporting broad social programmes for the reconstruction and development of affected communities and in compensating specific individuals for the damage that the corporations made possible."

Thandi Shezi, one of the claimants from the Khulumani Support Group, said: “Today we lay claim to our right to redress from the banks and businesses that enabled gross violations of our human rights.”

“This is the only route left open to us to ensure that the truth is known about the extent of corporate complicity in apartheid abuses and that justice is delivered to those who suffered. The victims cannot be left to pay for their own suffering. Multinational corporations must be put on notice that complicity in crimes against humanity does not pay,” said the Khulumani Support Group.

The Apartheid Debt & Reparations Campaign, in consultation with its international partner campaigns, instructed its lawyers, Michael Hausfeld (USA) and Charles Abrahams (SA), to file the legal complaint in the United States of America on behalf of the Khulumani Support Group, a coalition partner organisation in Jubilee SA. Khulumani is an organisation of about thirty-two thousand victims of gross apartheid human rights violations.

The complaint names eight banks and twelve oil, transport, communications technology, and armaments companies from Germany, Switzerland, Britain, the United States, Netherlands, and France, calling on them to contribute towards healing the damage caused by their profiteering from apartheid by paying compensation to the victims and reparations that will be used for reconstruction and development programmes.

The Apartheid Debt & Reparations Campaign said: “In this claim, we express our commitment to the future of apartheid’s victims, to the protection of human rights, and to the rule of law”.

“This suit has been filed after extensive international consideration of its legal and factual basis, and after thorough consultation amongst key organisations. Further complaints of similar weight in regard to other aspects of apartheid crimes will be filed in coming months.”

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Note:

- The full text of the filed complaint is available on the website <http://www.cmht.com> from 12h00 (South Africa) on Tuesday, 12 November 2000.
- The text of the complaint will include brief descriptions of the human rights violations and damages suffered by each of the named plaintiffs.

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KAMPAGNE FÜR
ENTSCHULDUNG UND
ENTSCHÄDIGUNG
IM SÜDLICHEN AFRIKA

Medienmitteilung 12.11.02

Am 11. November reichten Apartheid-Opfer durch ihre Anwälte Charles Abrahams (Südafrika) und Michael D. Hausfeld (USA) eine Klage gegen Banken und Unternehmen in New York ein. Heute (12.11.02) findet dazu eine Pressekonferenz in Johannesburg, Südafrika, statt.

An dieser Feier in der Central Methodist Church in Johannesburg werden Hunderte von Personen von Khulumani- und Jubilee-Gruppen aus allen Regionen Südafrikas erwartet. Diese Kirche hat eine besondere Bedeutung: Dort wurde Khulumani, eine Selbsthilfe-Vereinigung zur Unterstützung von Apartheid-Opfern, gegründet. Im Zentrum der Pressekonferenz stehen die Geschichten der Apartheid-Opfer und die Rolle von Banken und Unternehmen, welche mit ihren Geschäften den schweren Menschenrechtsverletzungen des Apartheidregimes Vorschub geleistet und Unterstützung gewährt haben.

(siehe auch die englische Medienmitteilung von Jubilee South Africa)

Die Klage befasst sich spezifisch mit den Menschenrechtsverletzungen durch die Sicherheitskräfte des Apartheidregimes. Andere schwere Menschenrechtsverletzungen werden möglicherweise Gegenstand späterer Klagen sein. Die Klage enthält fünf Teile: zur Apartheid, zu den KlägerInnen, zur Geschichte des internationalen Rechts seit der Sklaverei, zu den einschlägigen Gesetzen in den USA und zur Verantwortung der beklagten Firmen.

In der Klage explizit genannt sind: Barclays National Bank Ltd, British Petroleum P.L.C., ChevronTexaco Corporation, ChevronTexaco Global Energy, Inc., Citigroup Inc., Commerzbank, *Credit Suisse Group*, DaimlerChrysler AG, AEG Daimler-Benz Industrie, Deutsche Bank AG, Dresdner Bank AG, ExxonMobil Corporation, Fluor Corporation, Ford Motor Company, Fujitsu Ltd., General Motors Corporation, international Business Machines Corporation, J.P. Morgan Chase, Rheinmetall Group ag, Rio Tinto Group, Shell Oil Company, Total-Fina-Elf, *UBS AG*. Die KlägerInnen behalten sich vor, zu einem späteren Zeitpunkt bis zu hundert weitere Unternehmen und Banken miteinzuschließen. Die Klage gegen die frühere Schweizer Firma Oerlikon-Contraves ist in derjenigen gegen die deutsche Firma Rheinmetall, welche 1999 den Waffenbereich von Bührle übernommen hat, enthalten. Dadurch, dass die Klage in New York (Eastern District) eingereicht wurde, mussten Unternehmen, die dort keinen Sitz oder keine Tochterfirmen haben, aus der Klage ausgeschlossen werden.

Es gibt fünf Unterschiede zu den Klagen von Ntsebeza/Fagan:

1. Sie ist in Südafrika und international durch ein breites Bündnis von Nichtregierungsorganisationen abgestützt. Aus der Sicht der südafrikanischen Kampagnenkoordination Jubilee ist das der entscheidende Unterschied.
2. Was die Verantwortlichkeit der Unternehmen anbelangt, so bezieht sich die Klage Nicht nur auf den "Alien Tort Claims Act", sondern auf eine völkerrechtliche Rechtsauffassung, die bis zur Bekämpfung der Sklaverei zurückgeht. Die rechtliche Begründung ist in dieser Form unseres Wissens neu.
3. Die Klage, wie sie nun via Abrahams/Hausfeld eingereicht wird, enthält wie diejenige von Ntsebeza/Fagan einen Teil, der damit argumentiert, dass die Beklagten der Apartheid Vorschub und Beistand geleistet haben (aid and abet). Ein kürzlicher Gerichtsentcheid hat in den USA diese Argumentation im Fall Unocal/Burma anerkannt. Die Klage von Abrahams/Hausfeld geht aber darüber hinaus auf konkrete Geschäfte ein, mit welchen die Beklagten die Sicherheitskräfte Südafrikas, d.h. das Militär, Polizei und andere Sicherheitsorgane unterstützten. (Waffenlieferungen, Technik für den Sicherheitssektor, Öl und Finanzierung deren).
4. Die Klage bezieht sich spezifisch auf Menschenrechtsverletzungen durch die Sicherheitskräfte Südafrikas.
5. Die Klage ist nur beschränkt eine Sammelklage: Sie bezieht sich nicht generell auf Menschen in Südafrika, welche bestimmte Arten von Menschenrechtsverletzungen erlitten haben: KlägerInnen sind Khulumani mit rund 33'000 Mitgliedern, sowie rund 90 Einzelpersonen.

Die Klageschrift ist auf www.cmht.com einsehbar.

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Zu den Entschädigungsklagen möchten wir aus der Sicht der Schweizer Kampagne für Entschuldung und Entschädigung (KEESA) Folgendes festhalten:

1. Die Entschädigungsklage wird von einem internationalen Netzwerk getragen und unterstützt. Letzte Woche (3.-5. November) fand in Kopenhagen eine gemeinsame Konferenz von Nichtregierungsorganisationen der EU und des Südlichen Afrika (SADC) statt. In der Schlussresolution werden die EU-Regierungen aufgefordert, anzuerkennen, dass Unternehmen und Banken ihrer Länder dem Verbrechen der Apartheid Vorschub oder Beistand geleistet haben: Die Völker des südlichen Afrika haben deshalb ein Recht auf Schuldenstreichung und Entschädigungszahlungen.
2. Die Schweizer Kampagne für Entschuldung und Entschädigung im Südlichen Afrika (KEESA) unterstützt die Entschädigungsforderungen, welche die südafrikanischen KlägerInnen vor US-Gerichten gegenüber den Profiteuren und Kollaborateuren der Apartheid geltend machen - unabhängig davon, welchen Anwalt sie gewählt haben. Die KEESA arbeitet eng mit Jubilee Südafrika zusammen. Uns verbindet die Auffassung, dass es - weil Apartheid ein Verbrechen gegen die Menschlichkeit war - die Aufgabe der gesamten Völkerfamilie gewesen wäre, die Gräueltaten des Apartheidregimes klar zu verurteilen und politische, technische, militärische und wirtschaftliche Kooperation zu unterbinden. Seit dem Verbot der Sklaverei und erneut seit den Nürnberger Prozessen wurde immer wieder im internationalen Recht festgehalten: Die Geschäfte mit dem Unrecht haben ihre Grenzen, auch für die Privatwirtschaft. Auch sie ist gegenüber den Opfern der Apartheid rechenschaftspflichtig und haftbar für die Konsequenzen ihres Tuns.
3. Die KEESA setzt sich dafür ein, dass das Recht auf Wiedergutmachungsklagen im Fall von schweren Menschenrechtsverletzungen allen Menschen überall auf der Welt zusteht und nicht nur einer kleinen Minderheit, die sich das finanziell leisten kann und die dafür nötige Lobby hat. Der einzige Ort, wo dies gegenwärtig gegenüber ausländischen Konzernen möglich ist, ist in den USA - vorausgesetzt diese Konzerne haben Firmen oder einen Sitz in den USA.
4. Die KEESA lehnt die verlogene und peinlich beherrschende Argumentation der Schweizer Wirtschaft und Politik ab, Entwicklungshilfe und der Blick in die Zukunft seien jetzt für Südafrika wichtiger als Klagen über die Vergangenheit. So wichtig Entwicklungszusammenarbeit für Südafrika ist, auch bei den Klagen geht es um die Zukunft: um die Zukunft der Geschädigten und um die Zukunft der Menschenrechte, in Südafrika und weltweit. Denn Entschädigung für schwere Menschenrechtsverletzungen ist ein Recht, das einklagbar sein soll. Und wer solche

Verletzungen begeht oder mitverschuldet, soll nicht ungeschoren davon kommen und zudem noch mit schönen Gewinnen dafür belohnt werden.

Unsere Forderungen an die Schweizer Regierung:

5. Es ist nicht die Aufgabe der Schweizer Regierung, die partikularen Interessen der Banken und Unternehmen zu verteidigen, welche sich nun mit diesen zivilrechtlichen Entschädigungsklagen konfrontiert sehen. Dies wäre eine beschämende Wiederholung derselben Haltung, die die Schweizer Regierung schon während der Apartheid eingenommen hat.
6. Als EinwohnerInnen und BürgerInnen dieses Landes haben wir das Recht auf die Offenlegung der Fakten über die Apartheid-Beziehungen der Wirtschaft und ihrer Lobbyorganisation Swiss South African Association, der Regierung und anderer schweizerischen Institutionen. Sie gehen alle etwas an. Wir verlangen die Öffnung der Archive der Unternehmen und Banken und aller anderen Institutionen, welche während der Apartheid enge Kontakte zu Vertretern dieses Regimes pflegten.
7. Insbesondere verlangen wir endlich Transparenz über ALLE Beziehungen des Schweizer Militärs und seines Geheimdienstes mit Südafrika, und zwar eine Transparenz, die diesen Namen verdient. Insbesondere fordern wir die Veröffentlichung des Wortlautes des Geheimschutzabkommens, das die Schweiz 1983 mit Südafrika abgeschlossen hat, sowie Klarheit darüber, was es mit dem vermuteten zweiten Abkommen von 1986 auf sich hat, bei dem sich der Schweizer Nachrichtendienst laut Aussagen eines südafrikanischen Nachrichtendienstlers bereit erklärt hat, dem Apartheidregime bei der Entwicklung eines chemisch-biologischen Waffenprogramms zu helfen.

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BRIEFING ON THE APARTHEID DEBT AND REPARATIONS CAMPAIGN.

This briefing serves to provide an overview of the background to the process undertaken and the current status of the campaign and legal action.

Debt and Reparations campaign and background to the Legal Action

The Apartheid Debt & Reparations Campaign was officially launched in Cape Town in November 1998 and has therefore been running for three years and eight months. For nearly three years, we had campaigned in various ways for the cancellation of illegitimate apartheid debt, the return of profits made from apartheid debt servicing, and compensation from businesses that profited from apartheid abuses.

We argued that reparation is due both for broad social reconstruction and development programmes in affected communities, and for individual compensation to victims of apartheid human rights abuses. We further argued that the first step towards reparations must be an acknowledgement of the wrongs of the past and a focus on the persistent social damage that has been done as a result. This damage needs to be repaired to the extent that is reasonably possible. Being considered accomplices in the apartheid crime against humanity, banks that financed the apartheid state and businesses that invested in and profited from it have a responsibility to ensure that such reparatory action is taken. The major corporations named were from Germany, Switzerland, Britain, the US, and France.

We consistently raised this issue through media campaigns, popular education and mobilization, direct meetings with Swiss and German government officials, public events to which especially the banks were invited, ongoing research, and several international conferences. This happened particularly in South Africa, Germany and Switzerland, with supporting events in Zambia, Namibia, Ireland, and the Netherlands and endorsements from Jubilee campaigns throughout the world. We repeatedly called for

the matter to be resolved decisively through the convening of an international conference that would include the relevant corporations, political authorities, campaigning organizations, and victims groups. At one stage, this matter was raised directly with the Swiss president.

However, our public calls were consistently rejected by the corporations as unjustified and ineffective, while the political representatives argued that the matter should be taken up directly with the banks and businesses.

The campaign, in the meantime, began looking into the possibility of international legal action to have the matter resolved. At that stage, after a campaigning visit to Switzerland by Archbishop Njongonkulu Ndungane and Neville Gabriel in May 2000, the campaign was contacted by a US attorney who had been involved in the holocaust-related compensation claims. We entered into discussions with Mr Fagan while at the same time investigating possibilities with other prominent lawyers that were involved in the holocaust claims.

After several public statements that we were prepared to facilitate legal action if our calls continued to be rejected, the campaign took a decision at the end of 2001 to file legal suits as a strategy to ensure that the issues were addressed.

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Lawyers invited

We appointed Charles Abrahams as the legal representative of the Apartheid Debt & Reparations Campaign and invited Dumisa Ntsebeza (a patron of Jubilee South Africa) to be the lead South African advocate for apartheid reparations claims. The Task Team that was managing the campaign included representation from the South African Council of Churches (SACC), the South African National NGO Coalition (SANGOCO), the Congress of South African Trade Unions (COSATU), Khulumani Support Group, the Centre for the Study of Violence and Reconciliation (CSVr), the Institute for Justice & Reconciliation, and several legal specialists, researchers, and patrons and officials of Jubilee South Africa.

Having done several background checks on Edward Fagan, we cautiously entered into ongoing dialogue with him. At the same time, we initiated dialogue with the US attorney Michael Hausfeld who was a leading and respected lawyer in the holocaust claims. Background checks on Mr Hausfeld indicated good credentials.

During briefings and consultations with various individuals, organizations, and government officials, we indicated that legal action was imminent.

However, the legal complaints to be filed in New York that were announced on 17 June 2002 were neither on our instruction nor had we planned to file claims on that date. The claims were nonetheless filed by Mr Fagan with the full knowledge and participation of the South African lead advocate we had mandated.

This raised further serious concerns about the manner in which the cases were being handled and resulted in a breakdown of communication between the Apartheid Debt & Reparations campaign and the South African and US lawyers involved in the filing of the June 17 claims. We did however, commit our support to the victims in whose name the case was filed and supported the legitimacy of the issues over which the claims were filed, and indicated in a letter to the South African lawyers involved in the case that we wanted to ensure the unity of our efforts by convening a meeting of all parties involved in the claims.

Michael Hausfeld Visits South Africa

At the invitation of the Apartheid Debt & Reparations Campaign, US attorney Michael Hausfeld visited South Africa from July 31st to August 3rd. On our initiative, we have had ongoing and detailed discussions with Mr. Hausfeld over the past year in regard to legal strategies. Several meetings with our international research team, partner organizations, Khulumani, the Jubilee SA National Executive Committee (NEC), and other partners took place during his visit.

Attorney Michael Hausfeld and three of his associates provided the Jubilee SA NEC and partner representative Khulumani with a thorough briefing of the proposed legal claim(s). A very lively interchange and discussion transpired.

The Jubilee SA NEC meeting agreed to instruct Jubilee legal representative, Charles Abrahams, to formally engage Michael Hausfeld on a contingency basis to move forward with the proposed legal claims on behalf of the ADR campaign.

Networking with International Solidarity Partners

The campaign is international. We have vibrant and growing partner campaigns in Switzerland and Germany, with solidarity partners in Britain, and the US continuing to strengthen their support. In addition, partner networks in Namibia, Canada, and the Netherlands are active in supporting the campaign. This is happening both on sectoral and national lines of communication, with requests to deepen sectoral communication especially in regard to the churches and trade unions.

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Research

The Apartheid Debt and Reparation Campaign has both a national research team and an international network of researchers in support of the campaign, this network is coordinated by the South African ADR Campaign coordinator and Jubilee South Africa's attorney, Charles Abrahams. The Apartheid Debt & Reparations Campaign called an international researchers meeting to further develop our strategy in accordance with our proposed legal strategy, to identify key research areas, to concretize plans for implementation of our research strategy, and to agree on time frames for the delivery of the required research. The meeting brought together partner campaigns in Switzerland and Germany, local researchers, partner organizations, legal professionals Charles Abrahams and Michael Hausfeld.

The ADR international research network embarked on specific research for the current claim. The research for the claim is of extremely high quality. The research network will continue to produce high quality research for the Apartheid Debt and Reparations Campaign of Jubilee South Africa.

Today

The Apartheid Debt and Reparations campaign together with Partner campaigns in Europe and the United States are meeting with the press to share with the world of the claim filed in the United States on behalf of victims of Apartheid. Today the Khulumani support group for victims of Apartheid, the plaintiff in this legal claim will tell their stories. Together with the ADR Campaign, Khulumani will put on record their aspiration for the acknowledgement of the Truth as they seek Justice and demand reconstruction of communities in South Africa.

Extract from Jubilee South Africa Media Statement, Sunday 11 November 2001

BALL IS IN CREDITORS COURT, SAY CAMPAIGNERS

"We will only take up legal claims for apartheid reparations as a last resort – if we are forced to," Jubilee South Africa said in a statement today, concluding its national consultation on apartheid debt and reparations in Johannesburg.

"It would be unfortunate to have to resolve reparations in court like the holocaust claims were, but we are prepared to do so if there are no other options open to us," said Jubilee South Africa. "After recent revelations about Swiss military backing for apartheid's chemical and biological weapons programme, the onus rests on apartheid's creditors and political underwriters to seriously address the issue – the ball is in the creditors court. We would be open to discussions with them."

Swiss government officials reportedly indicated that they are not worried about apartheid reparations claims being filed in United States courts because Jubilee South Africa does not have money and because the solidarity lobby in the United States is not strong.

Jubilee South Africa said in response: "The question is what the truth is and what justice and integrity demands, not money or lobbying strength. Jubilee South Africa will continue to uncover the truth of apartheid's international economic, military, and political relations, and to secure justice for the victims of apartheid through reparations for the reconstruction and development of our country. The primary step of reparation must be an acknowledgement of the truth."

Jubilee South Africa is part of the international Jubilee movement for debt cancellation and economic justice. It is a broad-based coalition of NGOs, trade unions, religious communities, and popular movements across many social sectors. You may contact the Jubilee SA National Office at Tel - +27 (0)11 403 7624 , Fax. +27 (0)11 403 8703 or e-mail: j2000sec@sn.apc.org - PO Box 31471 Braamfontein 2017

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Organizational History

- Our organization, the Khulumani Support Group works to assist victims of apartheid-era violence. Through victim empowerment and direct aid, we support victims in their struggle for personal and community reconciliation, thereby restoring their dignity and integrating them into mainstream society.
- Khulumani (meaning “**Speak Out**” in Zulu) is a national organization with its national headquarters located in Johannesburg. Initially, Khulumani was created as a subsidiary of South Africa’s Centre for the Study of Violence and Reconciliation. Although we maintain very close ties with CSVR, since 1999 we have officially and practically functioned as an autonomous organization. Our eight-member fulltime staff, work both in the national office and within all nine provinces. Over half of the staff are survivors of apartheid-era violence. Additionally, we have an active eight-member board, whose members represent various human rights groups. There are approximately 32,700 members of Khulumani. In order to meet the needs of our widespread membership, we operate by supporting over 70 community-based chapters in all nine of South Africa’s provinces. These chapters vary in size, ranging from our smaller groups of 10-15 to larger groups of up to 120, as well as in active involvement in our programming
- Khulumani was established in 1995, by the survivors and families of the victims of the political violence that ensued during the apartheid era. KSG was first formed in response to the creation of the Truth and Reconciliation Commission. Our primary purpose was to ensure that the victims had the support they needed in order to speak out about their personal experiences with the human rights atrocities that were committed during the apartheid regime. Throughout the TRC process KSG helped victims obtain and fill out applications and appeals, coordinated meetings with TRC officials, provided individual and group counselling for victims throughout their testimonies in order to utilize the official process of truth telling for survivors to reclaim their victimization and their dignity. Khulumani also advocated the government on behalf of the victims to give them a voice throughout the creation and implementation of the TRC.

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- In addition to working alongside the TRC process, we also strived to create innovative programs to broaden victim’s personal reconciliation processes beyond the scope of the TRC. Once the TRC stopped taking statements in 1998, these programs became the main focus of Khulumani’s work and have continued to drive our organization. Some of our most successful achievements have been the implementation of the following programs, which we also continue to implement even after the life of the TRC:
- **Socio-economic support** We provided direct medical assistance to over 220 victims and their families. Provided educational assistance to more than 100 children. Given more than 50 wheelchairs to disabled people.
- **Counselling:** Khulumani’s counselling sessions give victims the opportunity to gain support and draw strength through shared experiences. We also give referrals to individuals in need of additional psychological care. Our facilitators and staff receive training around psychological healing.
- **Disappearances and exhumations** Khulumani supports many of the families of the disappeared by offering special counselling groups and seminars in conjunction with CSVR’s Disappearances project.
- **Educational and legal workshops / Info dissemination:** we have implemented several

workshops to provide information to victims concerning their rights as well as relevant political and economic developments. Educational workshops around the lawsuits have been conducted in more than five provinces.

- **Reparations:** Khulumani continued to lobby the government for the implementation of promised community and individual reparations as a critical element of the reconciliation process. Although that the TRC has closed down, the TRC continues to issue out applications for reparations to the recently declared victims of apartheid. Our trained staff and facilitators continue to assist victims and their families with appeals and reparations applications.
- **Apartheid Debt and Reparations:** Khulumani has been an active member of Jubilee South Africa since 1999. It has also been an active member of the Apartheid Debt and Reparations Task Team of Jubilee South Africa since its inception in 2000 and is one of an 8 member reference group that guides the work of the current Reparations claims campaign. Khulumani has informed and educated its membership through its provincial structures, of the International Reparations legal claim. Together with Jubilee Khulumani support victims in their actions around the June 16 anniversary of the Soweto uprising with actions and support also coming from Jubilee structures in Switzerland, Germany and the United Kingdom.
- **Reconciliation Workshops:** Some provinces like KZN, Free State and East Rand in Gauteng where people exceedingly experienced internal conflicts have shown interest in personal reconciliation. As in situations of intense trauma, the victims' capacity to cope and take responsibility for moving forward with their lives is largely dependent on their ability to make some sort of peace with the past. This process is severely hindered as a result of the continuing tensions of the past, creating an environment in which it is difficult, if not impossible to reconcile especially if they are living across the street or next door each other. Continued reconciliation workshops are needed in these communities

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JUBILEE South Africa Campaign

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Briefing on the Reparations Lawsuit facilitated by the Apartheid Debt and Reparations Campaign of Jubilee South Africa

Background

In order to understand the legal basis upon which this lawsuit is brought, it is necessary to understand the background against which it is taking place. In 1998, Jubilee South Africa (then known as Jubilee

2000 South Africa), as part of the global Jubilee 2000 coalition of organisations, embarked upon an international campaign calling for the cancellation of Third World debt. The South African chapter of Jubilee 2000 in particular, conducted its own unique campaign around the 'Apartheid Debt.' The 'Apartheid Debt' is the 'debt' inherited by present government from the former Apartheid regime.

It is Jubilee's position that this 'debt' is an immoral debt and should not have to be paid back to foreign banks and corporations to whom it was owed. For this reason, Jubilee South Africa called upon foreign banks and corporations to cancel this 'debt' as an act of reparations in favour of the people of South Africa. However, these banks and creditors failed to heed this call. As a result, Jubilee South Africa considered it appropriate to embark upon legal action, not only against such foreign banks and corporations to whom this 'debt' is owned, but also against a number of other banks and corporations that had co-operated with the Apartheid regime.

International law basis of the lawsuit

Customary International Law (CIL) is the legal basis upon which we bring this lawsuit. Customary International Law is the conscience of the community of nation-states as a whole, as it is the expression of norms acceptable and those unacceptable to humanity in general. Thus, as early as the 18th century after slavery was outlawed as an abominable trade the community of nation-states has come to outlaw acts of aggression, genocide, torture, extra-judicial killing, long arbitrary detention and unlawful medical experimentation. The most recent category added to these unacceptable and abominable norms was apartheid. In 1973, the United Nations General Assembly adopted an international convention declaring Apartheid a crime against humanity and called for the criminalisation and prosecution of all those persons and institutions that practicing the crime. The Convention, drafted along the lines of the Genocide Convention, defined Apartheid as a system that:

- included murder;
- inflicted serious bodily or mental harm, torture or cruel, inhuman or degrading treatment;
- deliberately imposed living conditions upon non-white racial groups to cause its physical destruction in whole or a part thereof;
- to exploit the labour of the non-white racial groups by submitting them to forced labour; and
- dividing the racial groups by creating separate reserves and ghettos

Today, the Rome Statute of the International Criminal Court to which South Africa is a State party, explicitly cites Apartheid as an international crime over which it has jurisdiction. It defines it as a system of inhuman acts which includes murder, enslavement, deportation or forcible transfer of a population, torture and sexual violence committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other group or groups and committed with the intention of maintaining that regime.

In the light hereof, it is now established law that the system of Apartheid as practiced in South Africa explicitly promoted extra-judicial killing, torture, cruel, inhuman and degrading treatment and consisted of elements of genocide and forced labour, all of which were and still are against the norms of Customary International Law (CIL).

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Third Party or Secondary Liability under International Law

This lawsuit is aimed at foreign corporations and banks that aided and abetted the system of Apartheid. This principle of Third Party Liability, also known as secondary liability under Customary International Law, refers to those that aid and abet crimes against humanity. Crimes against humanity are normally committed by primary perpetrators, whilst third party perpetrators normally aid and abet primary perpetrators in the commission of these crimes. Primary perpetrators are thereto primary liable whilst third party perpetrators are secondary liable. This principle dates back as far as 1794 for instance, when the Third US Congress enacted a law barring all and every person, so building, fitting out, equipping of vessels fitted for the 'carrying on of the slave trade,' loading, or otherwise preparing, or sending away, any ship or vessel, knowing or intending that the same shall be employed in such trade or business or

in any way aiding or abetting therein. In the light hereof, the US Congress in 1820 determined that the slave trade was so repugnant that the perpetrators as well as the aiders and abettors thereof should be subject to the death penalty and the slave trade should be formally equated to the international crime of piracy.

One hundred and thirty years later, the Nuremberg Tribunal would uphold this important principle of Third Party or secondary liability when it held that:

“Those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it ... He had to have the cooperation of statesmen, military leaders, diplomats and business men. When they, with the knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent ... if they knew what they were doing”.

In the light hereof, those that have aided and abetted the Apartheid regime are clearly liable of having committed a fundamental wrong under Customary International Law. Hence, this lawsuit, after thorough consideration, brings together a number of foreign corporations and banks for their role in aiding and abetting Apartheid and in so doing furthered the Crime of Apartheid.

Why bringing this suit in the United States?

This lawsuit is brought in the United States because it is the only country in the world that allows for this type of litigation to be brought in its jurisdiction. The remedy under which this suit is brought is the Alien Tort Claims Act (ATCA). It allows for any non-US citizen to bring a claim for damages against any other person that has violated customary international law. The further requirement is that that person who had violated customary international law should have a presence in the United States. South African citizens who are filing this suit are non-US citizens and bring it against foreign corporations and banks for having been aiders and abettors to the Crime of Apartheid. Such corporations and banks all have a presence in the United States.

This suit and the work of the Truth & Reconciliation Commission!

The Promotion of National Unity and Reconciliation Act of 1995 under which the TRC was established, empowered the TRC to investigate and establish as complete a picture as possible of the nature, causes and extent of the gross human rights, within and outside of South Africa, committed during the period 1 March 1960 to the cut-off date contemplated in the Constitution. The Act defined gross violation of human rights to mean:

- a. the killing, abduction, torture or severe ill-treatment of any person; or
- b. any attempt, conspiracy, incitement, instigation, command, or procurement to commit an act referred to in paragraph (a), which emanated from conflict of the past and which was committed during the period 1 March 1960 to the cut-off date; and

provided for an inquiry into all persons, authorities, institutions and organisations involved in such violations. On the strength hereof, Section 18(1) of the Act made provision for any person to apply for amnesty in respect of any act, omission or offence on the grounds that it was an act associated with a political objective.

It is our view that in terms of the provisions of the act, nothing prevented individual business people from approaching the TRC and make full disclosure of the complicity with the Apartheid regime as this clearly constituted an act associated with a political objective. However, not one single foreign business person has approached the TRC to ask for amnesty for his or her role in aiding and abetting Apartheid, other than those submissions made by business. Whilst we are fully aware of the fact that the Promotion of National Unity of Reconciliation Act only made provision for individual amnesty as opposed to institutional amnesty, this should not have precluded foreign corporations and banks to come forward and reveal their complicity with the Apartheid regime. In fact, Jubilee South Africa's international 'Cancel the Apartheid Debt' campaign provided an ideal opportunity for institutional corporations and banks to admit to the wrongfulness of their co-operation with the Apartheid regime, and cancel the Apartheid Debt as an act of reparations in favor of the people of South Africa. Instead, such institutional corporations and banks have failed to heed the call. As a result, we believe that foreign corporations and banks have forfeited their rights to claim any entitlement under the spirit of the

Promotion of National Unity & Reconciliation Act and have opened themselves to litigation.

Who are the claimants?

The claimants to this suit are individual members of the Khulumani Support as well as the Khulumani Support Group itself that bring this suit on behalf of its general members that suffered injuries resulting from recognised categories of violations of customary international law. Thus, this suit is brought on behalf of claimants who suffered torture, extra-judicial killing, cruel, inhuman and degrading treatment, sexual violence, long unlawful detention and disappearance of relatives.

Prepared by Attorney Charles Peter Abrahams on behalf of the Apartheid Debt and Reparations Campaign of Jubilee South Africa

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Apartheid Debt & Reparations Campaign

Media Release

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COMPLAINT SUMMARY

Khulumani et al. v. Barclays et al.

- This lawsuit is based on common law principles of liability and on the Alien Tort Claims Act, 28 U.S.C. §1350, which grants U.S. courts jurisdiction over certain violations of international law, regardless of where they occur. This statute is increasingly being used to bring to justice those who commit human rights abuses. Recent successful cases under this statute include the *Doe v. Unocal* case, which upheld a lawsuit against Unocal Corporation by victims of human rights violations perpetrated by the Myanmar military in connection with an oil pipeline project. In *Unocal* the Ninth Circuit Court of Appeals held that a corporation that aided and abetted human rights violations by a foreign sovereign can be held liable for those abuses.
- Extrajudicial killings, torture, and arbitrary detention are recognized violations of international law and all of these were practiced by the Apartheid regime in South Africa between 1960 and 1993. Apartheid itself was recognized as a crime against humanity and a violation of international law by the world community, as evidenced by decades of U.N. resolutions and the Rome Statute of the International Criminal Court.
- The Truth and Reconciliation Commission in South Africa specifically concluded that “Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefitted from cooperating with the security structures of the former state. Most businesses benefitted from operating in a racially structured context.”

- This complaint seeks to hold those businesses that aided and abetted the apartheid regime responsible for the wrongs they made possible. For example: IBM and ICL provided the computers that enabled South Africa to create the hated pass book system and to control the black South African population. Car manufacturers provided the armored vehicles that were used to patrol the townships. Arms manufacturers violated the embargoes on sales to South Africa as did the oil companies. The Banks provided the funding that enabled South Africa to expand its police and security apparatus.
- Recent historical evidence demonstrates that the involvement of companies in the key industries of mining, transportation, armaments, technology, oil, and financing were not only instrumental to the implementation of the furtherance of the abuses, but were so integrally connected to the abuses themselves that apartheid would probably not have occurred in the same way without their participation.
- The company's conduct satisfies the standard, common law principles of liability, including aiding and abetting liability which was first imposed on corporate participants in crimes against humanity by the Nuremburg Tribunal. At Nuremburg, the bankers that financed the Third Reich were held liable for crimes against humanity.
- Apartheid was an institutionalized system of racial disenfranchisement, forced labor, and criminal domination. It sought to and did exploit and degrade the black South African population for a criminal purpose, through criminal means. The complaint seeks a measure of justice from those entities which aided or abetted the commission of this atrocity.

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