



Reparations YES!



Jubilee Activists marching in support of the Lawsuit in US Court

Jubilee South Africa has organised and supported an international apartheid debt and reparations campaign since 1998. The goal of the campaign is to eradicate odious debt and to ensure that victims of apartheid are awarded reparations. The ultimate goal of Jubilee South Africa's campaign is to ensure human rights violations are effectively addressed and that victims have a clear avenue for restitution not only in South Africa but internationally.

When multinational corporations and governments hear the word reparations they often cringe. Rather than see reparations as an avenue for righting past wrongs. Corporations see reparations as impacting profit margins and government see it as a potential loss of investment capital.

The fight for reparations is not particular to South Africa it is a global debate, demanding that multinationals corporations and governments take responsibility for their actions. Victims and survivors of human rights abuses want their right to hold those who perpetrated and supported rape, genocide, murder, torture, and arbitrary confinement accountable for the crimes committed. Victims want the international community to not only recognise these human rights violations but also provide a forum for criminal and civil action to be taken.

The fight to ensure that perpetrators of human rights violations take responsibility for their actions is at a critical point. The international corporations supported human rights violations by providing



Adv. Dumisa Ntsebeza Jubilee Patron, Liz Johnstone Co-ordinator of ADR Task Team and Melania Page an intern from Boston.

community recognises that human rights violations are a criminal act but are not as eager to address potential civil litigations. Multinational corporations supported human rights violations by providing money, oil, and technology, and arms to the apartheid state. These same corporations have not broken any current laws and feel their involvement is the course of just doing business. They do not see themselves as responsible for the action of government and do not feel it is their role to question how their products are being used. Multinationals cannot be tried in a criminal court, but their violations can be brought in civil courts. Lawsuits brought in civil court often attach money damages to be paid to victims, which multinational corporations are hoping to avoid. Thus far multinationals have been very successful in downplaying their role in violation of human rights globally, especially in South Africa.



International Strategic meeting held in Johannesburg at Jubilee South Africa's offices led by Attorney Michael Haupsfeld

Multinational corporations played a significant role in helping to maintain the apartheid system. These corporations provided the apartheid government with financing, technology, transportation, oil, and arms. Without the support of multinational corporations, apartheid would not have had the resources to support itself and continue its system of oppression. Multinational corporations aided apartheid and they should be held accountable for the role they played.

To ensure that multinationals are held accountable Jubilee South Africa supported the Khulumani Support Group to institute a lawsuit against 23 multinational corporations for their role in human rights abuses committed in South Africa during apartheid. The lawsuit was filed in the United States under the Alien Tort Claims Act (ACTA), on behalf of Khulumani and its members who had been murdered, tortured, raped, those who disappeared and were unlawfully detained for long periods of time because of their opposition to apartheid. The lawsuit represents members of Khulumani, this is a group action not a

class action lawsuit and as such does not pertain to represent all victims of apartheid. The victims seek to hold multinationals accountable for their participation, achieving restitution and a measure of justice for their injuries. The principle the lawsuit seeks to advance is to have a rule of law that universally condemns apartheid, genocide, official torture, rape, disappearance, prolonged arbitrary detention, slavery, human trafficking, and crimes against humanity.

The case is in the position to establish a new precedent in human rights law in US courts and internationally. The recent decision by the United States Supreme Court in **Sosa vs. Alvarez** held that a narrow class of litigants could institute lawsuits under the ATCA if the civil damages related to crime or norm of conduct that was definable, universal and obligatory. The case satisfies all of these requirements. If the Khulumani victims succeed it would establish a principle that legally obligates nations and multinational corporations to respect the sanctity of basic human rights and to conform their behaviour accordingly.

However the US Supreme Court has also cautioned that domestic policy interests of the foreign nations in which the conduct occurred must balance the right of civil relief and the foreign policy concern of the United States. Regrettably, former South African Minister of Justice and Constitutional Development, Dr. Maduna, submitted a letter to the district court where the Khulumani and other apartheid cases are pending and expressed the South African government concern that the cases before the court would interfere with the policy embodied in the Truth and Reconciliation Commission and specifically asked the court to abstain from adjudicating the victims claims in deference to its paramount national interests.

The Khulumani case does not violate the policy of the TRC. The 23 corporations named as defendants refused to participate in the TRC process and thus pose no conflict. Archbishop Desmond Tutu filed a declaration stating that, "It was never contemplated by the TRC that victims of apartheid would be precluded from seeking compensation through the ordinary civil process- except of course, to the extent that the perpetrator involved has been granted amnesty with respect to the wrong." Since the 23 defendants did not participate, amnesty was never granted. The TRC final report also states that "business failed in the hearing to take responsibility for its involvement in the state security initiatives specifically designed to sustain apartheid rule." The lawsuit does not seek to interfere with the sovereignty or policies of the South African government, firmly setting it apart from other apartheid lawsuits. Unfortunately, Dr. Maduna's letter has the power to impact and jeopardise not only the Khulumani lawsuit and other apartheid litigation but

also all future human rights lawsuits worldwide.

The lawsuit is only one step to ensuring that multinational corporations take responsibility for the role they played in support of apartheid. It was taken only after all other avenues had been exhausted.

Frequently Asked Questions

What is the Alien Tort Claims Act?

The Alien Tort Claims Act (ATCA) is an old law, established in 1789, which was little used until the 20th century. The ATCA was one of the first laws of the American Republic. It allows foreign victims of serious human rights abuses to bring lawsuits in US courts. Lawsuits can be filed against state officials, private individuals, and corporations that have a presence in the United States. It is under the ATCA that the lawsuit can be brought into US courts.

What is Aiding and Abetting?

Aiding and Abetting means to assist or facilitate the commission of a crime or to encourage, advice, or instigate the commission of a crime. The lawsuit filed in the United States claims that the US companies aided and abetted the apartheid system, by assisting in the commission of human rights violations. US corporations assisted in the commission of human rights violations by providing resources and financial support to the apartheid government. To help the apartheid government maintain its system of oppression, US corporations provided military equipment, oil, money and other resources to continue the suppression of Black South Africans.

The argument of aiding and abetting was used by survivors of the holocaust in their lawsuit for reparations. Holocaust survivors argued that various corporations profited from forced labour used in concentration camps. Survivors demanded that US companies be held accountable for human rights violations, survivors of apartheid are not asking for anything different. Companies and banks must be responsible for the roles they played in supporting violence, oppression, and violation of human rights. Making a profit or just conducting business cannot be an excuse.

Who are the plaintiffs and who are the defendants?

The original plaintiffs are 82 individual members of Khulumani Support Group and Khulumani itself on behalf of its general members launched the lawsuit in November 2002. Khulumani continues to compile survivor profiles which will bring the number of plaintiffs to around 32,000.

The defendants are foreign banks and business corporation that supported the apartheid system. The defendants in this lawsuit are: British Petroleum, Caltex Petroleum, Citigroup, Commerzbank, Credit Suisse, Daimler-Chrysler, Deutsche Bank, Dresdner Bank, Exxon, Mobil, Ford Motor Company, Fluor, Fujitsu Ltd., General Motors, IBM, JP Morgan Chase, Rheinmetall, Royal Dutch Shell, Total-Fina-Elf, and UBS A.G., Rio Tinto, AEG Daimler-Benz, Barclays National Bank.

Why a legal claim?

Jubilee South Africa's approach to reparations has several stages. The lawsuit is not only about money for victims of apartheid but having corporations take responsibility for their role in supporting apartheid. Jubilee's first approach was not the lawsuit. For four years Jubilee tried to meet with multinational corporations and banks, but these requests fell upon deaf ears. To show that Jubilee is not going to go away but to continue to fight for reparations the only option left open was to file a lawsuit.

Why file a lawsuit in the United States?

The apartheid government committed crimes against humanity and numerous multinational corporations and banks supported the government by providing military hardware and ammunitions, technology, transportation, petrol and money. Support from these corporations enabled the apartheid government to continue its system of oppression. To allow victims of apartheid to have human rights violations addressed, the best venue is through US courts. The United States allows foreign citizens to file lawsuits against multinational corporations and banks that have a presence in the USA, using the a legal mechanism called the Alien Tort Claims Act (ATCA).

What has been the response from the South African and International Governments?

When the lawsuit was originally filed the South African government's stance was one of non interference, they did not openly support the lawsuit nor would they interfere. However, pressure from the United States government has caused the government to actively keep the lawsuit from being heard. The South African government filed papers with the US court asking them to dismiss the lawsuit.

The United States has responded by re-examining the Alien Tort Claims Act (ATCA) with legislatures exploring ways to make their law more favourable to corporations.

What has been the response from corporations?

Corporations have taken several steps. In November 2003 they filed a motion to dismiss, asking the court to toss the lawsuit out. They have also begun lobbying legislatures to get rid of the Alien Tort Claims Act claiming it places an unfair burden on corporations.

How to get involved?

Contact Jubilee South Africa, Apartheid Debt and Reparations Task Team

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"Historically there has been a great development, debt repudiation and now a third position, reparations. Demanding reparations and talking about reparations carefully we can design a new world economy/new world order based on the theory of reparations". MP Giyose, Chairperson Jubilee South Africa, Johannesburg, ADR International Strategic Meeting. 04/07/04



**Attorney Michael Hausfeld, M P Giyose
Jubilee Chairperson & Alvin Anthony
Jubilee National Co-Ordinator**

"History is littered with examples of how business has colluded with corrupt and despotic governments in the brutalization of citizens.

The work of the Truth Commission was not just about the accountability of state actors or the liberation movements but also about the role that was played by those who were complicit in apartheid and who aided and abetted the apartheid government."

(Yasmin Sooka, Director Foundation for Human Rights and former TRC Commissioner, Johannesburg, Public Forum on Apartheid Debt and Reparations). 06/07/04



YasminSooka

"The crucial point in the Apartheid court cases is the fact that Apartheid was condemned – just as National Socialism was – by the UN general assembly as a crime against humanity. Today it figures on the newly-created Den Haag International Criminal Court's list of serious crimes against humanity." (Mascha Madorin, Swiss Economist and Reparations Campaigner, , Johannesburg, Public Forum on Apartheid Debt and Reparations). 06/07/04



Mascha Madorin

"With this court case we are expressing our committed struggle for a better future for the victims of Apartheid, for human rights and for the rule of law," Apartheid Debt and Reparations Task Team of Jubilee South Africa on the occasion of the submission of the Khulumani court case in New York. (Apartheid Debt and Reparations Task Team of Jubilee South Africa media release 12/11/2002).

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