

South Africa: apartheid victims sue ANC government for compensation

Barbara Slaughter**19 July 2002**

Khulumani, a support group for victims and survivors of apartheid, is suing the South African government in the Cape Town High Court. They are demanding that payments be made to thousands of victims of the apartheid regime—which ruled South Africa from 1948 to 1994—who have waited years for compensation.

President Thabo Mbeki and Archbishop Desmond Tutu, who is chairman of the Truth and Reconciliation Commission (TRC), are named in the lawsuit because the proposals on reparations recommended by the TRC are widely considered to be accepted as government policy. However details of what the government is prepared to pay, if anything, have not been made public. Khulumani is demanding access to the government's reparations policy under the country's access to information laws. Lawyers acting for the organisation said that the lawsuit was their last resort, after years of lobbying the government for reparations.

The African National Congress (ANC) government has treated the victims of apartheid with contempt. Twenty-two thousand of them testified before the TRC, giving graphic details of the horrifying crimes committed by apartheid state forces—of arbitrary arrests and detentions, torture, rape, abductions, bombings and officially sanctioned murder used to terrorise the black population. At most the victims have received a small amount of interim relief and the promise of the “restoration of dignity and self respect” after telling their stories.

The brutal perpetrators of apartheid's crimes also appeared before the TRC. They pleaded for amnesty and in the course of doing so provided cold-blooded details of their crimes. State funds were provided for many of them to pay for legal representation at the hearings.

The TRC recommended in 1998 that reparations

should be paid to thousand of the victims who testified, but little or nothing has been done for the vast majority. Many feel they have been abused and betrayed by the TRC and the government. Alison Tilley, a lawyer for the Khulumani group, told Reuters, “Many of these people are destitute and have serious health problems. They want to know what the government will do for them in terms of reparations.”

Tutu justified the TRC's insistence on “forgiveness”, “national reconciliation” and “healing the wounds of apartheid” with claims that it would establish the truth about what happened under the regime. But the two-year deliberations of the TRC were not designed to reveal the truth about the nature of the apartheid regime, its support by the Western powers, or the reasons for its demise. They were designed to ease the transition to black majority rule, while avoiding the danger of social revolution. They set the seal on the compromise settlement that brought in the new ANC government and effected a power sharing arrangement between the new black elite and the old white rulers, without disturbing class relations in the country.

The outcome of the deliberations has not been reparations for the victims of apartheid, but amnesty for their oppressors.

Neither President Mbeki's State of the Nation address, nor Minister of Finance Trevor Manuel's budget speech earlier this year made any mention of the issue, after the government had promised R800 million for a reparations fund in 2001. Despite numerous requests from the Khulumani group for information about the official reparations policy, the government has remained silent.

Last August the Khulumani group served papers on the Ministry of Justice and Constitutional Development, requesting access to the draft policy

under the Promotion of Access to Information Act. Last December they received a three line letter from the president's office stating that the matter was being looked into.

Justice Minister Penuell Maduna claims the government does not have the necessary funds to pay reparations, while other ANC leaders have been quoted in the press cynically questioning the need for reparations on the grounds that the fight against apartheid was not about money.

The government's response to demands for a general amnesty for apartheid criminals has been entirely different.

President de Klerk and the apartheid security forces tried to insist on a general amnesty when the ANC came to power in 1994. Eventually de Klerk agreed with President Mandela on a formula: "a commission would grant individual amnesties on condition that the perpetrators revealed the truth and could prove that their actions were politically motivated". The TRC provided a platform where this could take place.

South Africa's armed forces, police and judiciary still includes thousands of individuals who were responsible for terrible crimes under the apartheid regime. Others, like ex-President de Klerk, are living comfortably on government pensions, protected from prosecution by the terms of the hand over of government office to Mandela and the ANC. Those who have been granted amnesty by the TRC cannot be sued for civil or criminal damages. Last month the *Mail and Guardian* reported government minister Essop Pahad as saying there were political forces in South Africa arguing for a general amnesty. He argued that the government had to consider their views. The cabinet would have to debate the issue and provide an explanation if it rejected the demand, he said.

One of the political forces referred to is the Inkatha Freedom Party (IFP), which worked closely with the apartheid state and carried out heinous crimes on its behalf. IFP chief whip, Koos van der Merwe, recently met Justice Minister Penuell Maduna to discuss the issue.

Another such group is made up of the apartheid generals, who have been pressing for an amnesty for several years. At the beginning of June, former Defence Force Chief Geldenhuys confirmed that the generals had been negotiating with the ANC and that they and

the ruling party had sent the government "consolidated" proposals on a general amnesty. Another general, Constand Viljoen, said the talks had picked up momentum in recent months and he was "hopeful" of the prospects.

In February 1999, Nelson Mandela and Mbeki assured parliament that there would be no general amnesty. But there is growing evidence that the government will use the discussion of the TRC final report in August as an opportunity to declare a blanket amnesty for all apartheid-era political crimes. Sources close to the TRC believe that President Mbeki recently pardoned 33 convicted criminal, many of whom were denied amnesty by the TRC, to test out public opinion.

The ANC's lending a friendly ear to the criminals of the apartheid era has fed opposition to the government reparations policy. Last October Justice Minister Penuell Maduna pulled out of a strategy workshop on reparations. An article in the *Mail and Guardian* reported that the delegates from Khulumani were enraged when it was asserted that Maduna had cancelled the engagement to take part in the ANC's discussions with the old apartheid politicians now in the New National Party.

The victims of the Biopatong massacre—when 45 sleeping residents were killed in their beds by IFP gunmen—have been waiting for years for reparations under the terms of the TRC mandate. Ten of them said they would boycott the annual commemoration of the massacre organised by the ANC in June. Johannes Mbatha, whose wife Paulina was paralysed after receiving multiple stab wounds, told the *Mail and Guardian*, "The ANC is in power because of the Biopatong massacre and they have forgotten us."



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