

# **Southern Africa Reconciliation Project: Khulumani Case Study**

by

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## **Khulumani Case Study**

### **Outline**

Our case study will look at the work of the Khulumani Support Group, a non-government organisation (NGO) in South Africa that has been lobbying government to implement a clear reparations policy for the survivors of apartheid-era political violence. It will outline some of the organisation's major campaigns as well as evaluate its effectiveness in its efforts to lobby government and garner support for its cause from other interested organisations, both inside and outside the country. The case study will examine the context within which Khulumani developed its programme, and describe the challenges it faces in its implementation. This examination will also include an analysis of Khulumani's relationship with these "partners". Furthermore, the nature of the relationship that has evolved between the organisation and the national government will be examined. An exploration of some of the structural challenges and internal dynamics, e.g. membership involvement, regional bodies and demands of different programmes within the organisation, shall be undertaken with the aim of understanding how these have impacted on Khulumani's ability to attain its aims and objectives.

A brief historical account of the origins of Khulumani will be followed by a detailed examination of its engagement with the Truth and Reconciliation Commission (TRC), with a special focus on its membership's perception of the government's engagement with the issue of reparations. A detailed overview of its various campaigns will follow this examination. This will include marches, workshops and conferences on reparations that Khulumani has organised and been involved in. An account of other intervention work and empowerment programmes that Khulumani has undertaken for its membership shall also be presented. The paper will present an analysis of the challenges that face Khulumani, with the aim of showing how these challenges have impacted on the organisation's ability to sustain itself as an NGO. It will also examine Khulumani's strategies both in terms of its various campaigns and its partnerships with other organisations and stakeholders. Finally a

brief overview of the organisation's future plans will be presented.

## **Methodology**

The methodology used here includes studying materials collected during work on the Southern African Reconciliation Project (SARP). These comprise media articles and other research material such as documents on government legislation. Also used will be the transcripts of interviews that were conducted with government officials, members of NGOs that have links with Khulumani, and the transcripts of focus group interviews conducted with the members of the Khulumani Support Group in the Western Cape and with some of the members in the Gauteng office. Materials also include minutes collected from various meetings involving Khulumani around the issue of reparations, as well as the field notes collected during the SARP research project. Further, semi-structured interviews will be conducted with members of the executive committees of the organisation's Western Cape and Gauteng branches. The Gauteng branch of Khulumani is the seat of the national office, whereas the Western Cape branch has been leading most parliament-targeted campaigns, in addition to the other work it has been doing in the region.

## **Brief historical background**

Khulumani (Zulu for "Speak Out!") was formed in 1995, largely by survivors and families of the political violence that happened in the 1980s in the then Pretoria, Witwatersrand and Vaal areas in the Transvaal. With over 5 000 signed members, it has branches in seven of the nine provinces of South Africa (the exceptions being the Northern Cape and Mpumalanga provinces). Its main office is based in Johannesburg in Gauteng Province. Initially a subsidiary of the Centre for the Study of Violence and Reconciliation (CSVR), Khulumani has since 1999 functioned as an autonomous organisation.

Khulumani works to assist victims of apartheid-era political violence. Through victim empowerment and direct aid, it supports victims in their struggle for personal and community reconciliation. The aim of this work is to help victims restore their dignity and to integrate them into mainstream society.

In its inaugural newsletter, Khulumani lists the following as its aims:

- To bring survivors and families of victims together to create a collective voice and presence within the community, civil-society, the Truth and Reconciliation Commission and government;
- To assist survivors to engage with the Truth and Reconciliation Commission and its structure;
- To facilitate the access of survivors to appropriate support services, including medical, legal, social and psychological services;
- To assist survivors to rebuild sustainable lives;
- To work for a just reparation policy and to ensure that this policy is fairly and timeously implemented; and
- To develop national and international networks of organisations of survivors.

Khulumani has been a foremost voice lobbying the South African government to implement

a reparations policy. Although effectively marginalised, the Khulumani Support Group is the main mouthpiece of the victims of the apartheid regime who testified before the TRC and who were earmarked for reparations through the TRC process.

As a distinct group of TRC-designated victims who are legally entitled to reparations as well as to support services, Khulumani members act as a barometer to weigh government's commitment to its undertaking to implement reparations as obliged by the constitution.

### **The structure of Khulumani**

Seven years into its existence, Khulumani has recently set up an organisational structure that is relevant to its objectives as an organisation. After enlisting the help of consultants, Qondisa Development Facilitators, the KSG has drawn up an organisational structure that is more practical for its goals (Khumalo, D. interview. 11 Dec. 2002).

The national office, based in Johannesburg in Gauteng province, coordinates the work that is being done at provincial level, and raises funds for all provinces, although each province is expected to do its own fundraising. At the head of this organisational structure is the Director, who is the figurehead of the organisation. The administrative team consists of the Financial Manager, the Secretary and other support staff.

The Programme Manager oversees the Project Supporting Officers, supervising the work the officers do. The latter are responsible for helping set up capacity-building activities for provincial projects. Travelling to various provinces, the Project Supporting Officers help form the provincial offices. They run workshops where they make victims aware of the issues around reparations. Their work is aimed at disseminating information about the developments emanating from government responses to the KSG campaigns. The workshops also involve setting up Victim Empowerment Programmes (VEPs). The VEPs involve providing or referring to counselling services, to help victims deal with post-traumatic stress disorder. It is important to note that the KSG has expanded its constituency to include other victims of crime, such as victims of rape, by referring them to counselling services that are part of the network the organisation has established for itself. In the Vaal area Khulumani works in partnership with other local NGOs such as the People Opposed to Woman Abuse (POWA), the Policing Forum and the Council of Churches. Part of victim empowerment is the running of income-generating programmes, encouraging entrepreneurial skills among the victim community, since many are unemployed (Khumalo, Ibid.).

### **The board**

Meeting monthly, the board of Khulumani performs a role of counsel for the organisation (Jobson, M. 2003. E-mail communication). The board has the following roles:

- To ensure that development activities are taking place;
- To provide guidance and direction for, and not necessarily to run and manage, day-to-day affairs;
- To protect the interests of the community (i.e. representing the community to the funders and the government);
- To ensure that the organisation services and sustains itself (to see that proper

- mechanisms are put in place to support the organisation); and
- To understand and interpret government policies and procedures on development.

The board:

- Facilitates the setting-up of policies and guidelines for the organisation (conditions of employment, transport, marketing etc.);
- Review and approve project plans and especially the Annual Budgets;
- Monitorx the progress of the Activity Plan regularly, through sub- committees;
- Tracks and monitors accounts;
- Provides necessary support for fund-raising and marketing the organisation;
- Leads in strategic thinking and planning processes;
- Hires and fires the director (the rest of staff can be hired and dismissed by the director, sometimes in conjunction with the personnel sub-committee);
- Maintains relative peace and calm in the organisation;
- Delegates day-to-day functions of the organisation to the director and co-ordinators (management team); and
- Signs letters of agreement and contracts with government and funders on behalf of the organisation.

The channels of communication between the board and Khulumani are formal. The board can only formally go through the director, the management committee, and then staff.

### **The issue of reparations in the TRC**

As a victims' lobbying group, Khulumani evolved out of a series of events that came about as civil society engaged with the Promotion of National Unity and Reconciliation Act (hereafter the Act or the TRC Act). It was amidst the interventions made by civil-society organisations (including victims groups) and NGOs during the process leading to the legislation of the Act that victims formed a victim-oriented organisation geared at representing victim-specific issues at the TRC.

During the political negotiations aimed at facilitating transition from the apartheid regime of the National Party, the dominating issue was the political reassurances that perpetrators of gross human rights violations would get amnesty. Also important were other terms on which political control would be ceded by the apartheid government (Colvin, C.J., 2002, p. 1).

In comparison to the above imperatives, the issue of reparations was peripheral to the negotiations. When the Interim and Final Constitutions and finally the TRC legislation was in the drafting stage, however, the need for reparations was mentioned (Ibid.). The TRC established a Committee on Reparations and Rehabilitation (CRR) that identified victims, sought input from civil society on the forms reparations should take and designed recommendations for a government-administered final reparations programme. The CRR also took on the task of administering an urgent reparations programme to over 14 000 victims of human rights violations (Ibid.).

Prior to the final draft of the TRC Act (1995), the issue of reparations was seldom

mentioned. Two conferences were held in February and July of 1994, organised by the Institute for Democracy in South Africa (IDASA) and Justice in Transition, an NGO headed by Alex Boraine. These conferences sought to bring local stakeholders together with experts from other societies around the world that had experienced and participated in similar transitions (Boraine et al., 1994, p. 6). During debates in these forums, the issue of reparations was downplayed, with emphasis placed on the moral reconstruction of society instead. This strain of understanding reparations as fundamentally a societal rather than an individual imperative has been dominant amongst government spokespersons and some prominent commentators to this day.

It was only in other forums, which included victims' organisations, church groups and representatives from peace and conflict resolution NGOs, that a more serious mention of the need for reparations was made (Colvin, C.J. Ibid. p. 5). Many of these forums were coordinated by Justice in Transition ([Merwe, Dewhirst & Hamber, 1999](#)). Another opportunity to raise the issue of reparations occurred when the Parliamentary Portfolio on Justice held a series of public hearings to consider comments on the draft bill of the TRC Act. Although promoted broadly by most actors in the ensuing debate as a just and necessary part of transition, discussion of the details of reparations was always delayed until later in the process (Colvin, Ibid, p. 6). This "non- committal" slant on reparations is also reflected in the TRC legislation and has characterised government stance on reparations to this day. It has also precipitated an increasingly confrontational activism by the Khulumani Support Group, other NGOs and sympathetic civil-society groups.

#### **The TRC's Committee for Rehabilitation and Reparations (CRR)**

In his paper on the reparations process of South Africa, Colvin outlines the various forms that reparations would take should government accept the recommendations made by the CRR.

##### *Individual reparation grants*

A TRC committee for reparations, the Committee for Rehabilitation and Reparations (CRR), was mandated to, among other things, make determinations on application for reparations (compiling the official list of victims) and formulate recommendations on urgent and final reparations (Colvin, Ibid, p. 10). In its findings the committee reported in 1998 that there were major arguments for individual grants in the form of money (TRC Report, 1998, para. 45). An overwhelming majority indicated that money, or services that could be purchased should money be provided, was a preferred form of reparations. Basing its decision on the median annual household income in 1997 for a family of five, the CRR report recommended a benchmark amount of R21 700 per victim for each year over a six-year period (ibid. para. 69).

This grant would be viewed as addressing three components of victims' needs: the acknowledgement of suffering (50% of the grant total); access to services; and daily living costs (each 25%). Those in rural areas or with large numbers of dependants would receive more (Colvin, p. 21). The highest possible grant per year would be R23 023 and the smallest would be R17 029. These grants would be paid out in six-month instalments and would continue for six years.

### *Symbolic reparations, legal and administrative measures*

Symbolic reparations were designed in line with the stated wish of the TRC to help restore the dignity of victims of gross human rights violations. Interventions at different levels were therefore determined and recommended thus:

#### Individual interventions:

- Issuing of death certificates;
- Exhumations, reburials and ceremonies;
- Headstones and tombstones;
- Declarations of death;
- Expunging of criminal records; and
- Expediting outstanding legal matters related to the violations.

#### Community interventions:

- Renaming of streets and facilities;
- Erecting memorials and monuments; and
- Setting up culturally appropriate ceremonies.

#### National interventions:

- Renaming of public facilities;
- Erecting monuments and memorials; and
- Establishing a Day of Remembrance.

### *Community rehabilitation*

The CRR conceded that it would not be enough to target reparations to TRC-designated victims and recommended that communities also be the focus of a special type of reparation. This was in light of the fact that the gross human rights violations that South Africans endured during apartheid also adversely affected communities at large. The measures necessary for this kind of rehabilitation are tabled as follows:

- National demilitarisation;
- Resettlement of displaced persons and communities;
- Construction of appropriate local treatment centres (for physical and psychological needs);
- Rehabilitation of perpetrators and their families;
- Support for community-based victim support groups;
- Skills training;
- Specialised trauma counselling services;
- Family-based therapy;
- Educational reform at the national level;
- Study bursaries;
- Building and improving schools;
- Special educational support services; and
- Provision of housing.

### *Institutional reform*

In addition to these community rehabilitation measures the CRR made recommendations with regard to institutional, legislative and administrative matters that would help to prevent the recurrence of human rights violations by engendering a human rights culture. It was recommended that these should cover a wide range of sectors in society, including the judiciary, media, security forces, business, education and correctional services (TRC Report, para. 115). The overall aim of these measures was the promotion of a human rights culture and the prevention of the kinds of violations that characterised apartheid.

### **The actual disbursement of reparations**

To fulfil its mandate, the CRR identified victims, sought input from civil society on the forms reparations should take and designed recommendations for a government-administered final reparations programme. In line with the demands of the Act, the TRC from June 1998 began paying about 12 000 victims Urgent Interim Reparation (UIR) sums of between R2 000 and R3 500 per victim. In exceptional cases, up to R6000 was paid. By the end of 1999, the President's Fund had paid out R16 754 921 of UIR to 15 078 victims (Leseka, M. p. 7).

Government spokespersons often submit the disbursement of UIR as proof of its commitment to pay reparations to victims. Joel Netshitenzhe, head of the Government Communication and Information System made an announcement in the media in December 2002 that government had made payments of R50 million to 18 000 TRC victims (IOL: December. 2002).

Victims' experience of the disbursement of UIR has been less inspiring. Many have complained that the process of disbursing UIR had been slow. Whereas many victims were pleased to receive the payments, all agreed that the amounts involved made little differences in their lives ([Crawford-Pinnerup: 2000](#)).

It is worth noting the fact that, even in cases where the urgent interim reparations were paid to survivors, the legislation had not envisaged that that was to be the task of the TRC. One account demonstrates the chaos and frustration that resulted from this oversight, both for the people expected to disburse the UIR and the survivors who were eligible for UIR. According to an account by the Western Cape Department of Social Services there is a clear lack of co-ordination and dissemination of information to interested parties from the Justice Department, which is entrusted with overseeing the disbursement of services for the TRC applicants. Victims had been advised to approach the offices of Social Services Department in Cape Town to claim reparations and for referrals to other services deemed necessary to meet their needs (such as post-trauma counselling). However, there had been no communication from the Justice Department to explain to the office what would be expected of it, and there was no setting up of systems to deal with the influx of victims that would approach the office at the behest of the Justice Department. Consequently, the Social Services office has had to improvise as they have tried to deal with the pressure put on it by this influx of demands on its time and resources (Peterson, V; Alwie, L. 2002, March 13, Personal Interview).

However, over and above the urgent interim reparations, little has been forthcoming from

government with regard to final reparations. Instead, there has been an increasing bias emphasising movement away from final individual reparations.

Other forms of reparations recommended in the CRR report have been implemented, albeit in fits and bounds. Government has, through the Presidential Fund, assisted NGOs to set up counselling services for survivors; it has offered education bursaries for some of the children of survivors and for ex-combatants; and through the South African Heritage Resources Agency (SAHRA) has done work to change the cultural landscape of South Africa. The latter is done through the inclusion of the history of the political struggle in the country's heritage sites by funding the establishment of monuments and museums, renaming of streets and public places. SAHRA is currently undertaking a project to locate, and where possible exhume the remains of people that disappeared during the apartheid era political struggle, and to erect memorial sites in their honour ([SAHRA's website](#)).

Often pointing to these and other government projects such as the building of houses and infrastructure, government spokespersons express exasperation at people who demand individual reparations. The perception shared in government circles is mainly that reparations are an effort to restore the dignity of those who suffered from apartheid and to improve their lives. Accordingly, general government functions such as these are seen as intricately tied to reparations.

### **Differing perceptions of reparations**

One of the key differences Khulumani has with government regarding reparations has been the emphasis placed on what is important for the victims. Whereas both victims and government place their understanding of reparations along the framework of a reparations programme suggested through the CRR recommendations, there is an apparent dissonance between the two bodies with regard to what reparations mean and what they should entail.

#### **Government view**

Government has shown a reluctance to take sole responsibility for reparations. Where it has taken up the issue of reparations, the emphasis has been on broader forms of reparations, such as the construction of monuments, the renaming of streets and public spaces, and public holidays. Although there is an absence of a clear final reparations policy, government spokespersons have nevertheless alluded to what might be the government attitude towards this issue.

Pointing to institutions of finance, beneficiaries of apartheid, NGOs, churches, community-based organisations as well as international individuals, organisations and business, government has been intent on broadening the concept of responsibility for apartheid, thus making it difficult to locate the responsibility for reparations solely with government. A constitutional judge, Justice Didcott, argued that reparations should be instituted as a quid pro quo for the loss of the rights to legal action against the perpetrators resulting from the granting of amnesty (quoted in the Khulumani newsletter 2002. p. 6). The judge found that reparations should be the responsibility of the state.

Government's reluctance to take sole responsibility for reparations is accompanied by its insistence on limiting the disbursement of reparations to broader social issues rather than



individual reparations. Four months after the publication of the CRR's recommendations, President Mandela during the opening of the parliamentary debate spoke about reparations as an imperative due "...not so much to individuals, but to communities and the nation as a whole" (Debates: 1999, cited in Colvin: 2002).

TRC Commissioner Wendy Orr (2000: p. 247) reported that these comments sparked an outcry of anger and disappointment from the victims. The government and the ruling party, the ANC, reacted to this outcry in several subsequent communications. The next day Mandela conceded that the TRC recommendations were broadly acceptable and stated the government's "firm view" that individual reparation grants should continue to be made to identified surviving families and victims, to the extent that resources allowed (Debates, 1999, p. 42). The ANC released a statement stating that reparation, restitution, the dignity of victims and generally ensuring that victims receive maximum justice were high on the list of priorities (ANC, 1999).

However, shortly after this show of defending the notion of individual monetary reparations and ensuring that victims receive "maximum justice" the government returned to its earlier stance. Many in government gradually began to construe demands for reparations by victims as a pollution of the aims and principles of the freedom struggle (Colvin, p. 36). Colvin (p. 28) notes the comments made with regard to demands for reparations by the Reverend Frank Chikane, who is in the office of the Presidency under President Mbeki, as indicative of government perspective on reparations. Ascribing the notion of reparations (together with other settlements that are part of the "political" deal-making of any transition) to the "shallow" moral plane, Chikane argued that reparations stand in contrast with more transcendental notions like forgiveness and reconciliation (Colvin, *ibid.*).

Concomitant with this view on reparations, government grew impatient with those who opposed the growing tendency to draw the emphasis away from individual reparations. Rather than singling out certain individuals for reparations, government preferred labelling the broader South African community as victims and thus broadening the constituency of beneficiaries of reparations. ANC MP Willie Hofmeyr, who was also a member of the justice committee in the National Assembly, stated bluntly that:

We just don't have the money. Also, the truth commission will focus only on gross human rights violations. We could face the backlash in communities where activists and their families are compensated and nothing is done for the ordinary people who also suffered under apartheid. (Quoted in Kock. E, Davis, G. 2002. June 29)

In this view the notion of victims refers to the majority of South Africans who suffered discrimination and gross human rights violations during the apartheid regime. According to this view, the restorative measures aimed at alleviating the lives of this category of victims are viewed as sufficient manifestations of reparations. Singling out the people who actually approached the TRC and testified in the commission is undesirable.

#### **The view of victims**

For the victims, especially those who testified at the TRC about their experiences of gross human rights violations, individual reparations are just as important as are the broader

forms of reparations recommended in the 1998 TRC report.

Many of the victims live in poverty, and tend to ascribe their lot to the gross human rights violations they suffered. Some have lost breadwinners, whereas others have suffered physical or psychological injuries that impair their capability to be gainfully employable. Some of those that were displaced during the conflict have still not recovered from the losses they incurred as a result. Because of these and other reasons, victims stress the importance of individual monetary reparations.

Duma Khumalo, the Victim Empowerment Manager of Khulumani, wrote in Khulumani's newsletter: "A symbolic stone will not pay my children's school fees or remove bullets in my body" (Khumalo, D. 2002). Implicit in this statement is that for victims the broad forms of reparations on their own did not address the real suffering brought about by the violence about which victims testified in the TRC victims hearings.

After broad consultations the CRR reported in its findings in 1998 that there were major arguments for individual reparations in the form of money (see above). The report (1998, para. 45) revealed that an overwhelming majority indicated that money, or services that could be purchased should money be provided, was a preferred form of reparations.

Khulumani noted in its July draft newsletter that when victims thought about reparations, it was in terms of their most desperate needs arising from the traumas they had suffered. Victims expected:

- symbolic forms of reparations such as the repatriation of bodies of their loved ones, tombstones which they could not afford in present circumstances;
- medical treatment which was financially inaccessible; and
- assistance with the education of children they had been left to care for.

In addition, many victims felt that what they needed was an injection of capital that would put them in a position where they could start up some sort of small business and become self-sustaining (Draft Newsletter of KSG, July 2000).

Victims find insinuations that they are cashing in on their suffering to be an insult. In many of the interviews conducted with Khulumani members in the Western Cape, the victims are particularly distressed by the dismissive attitude towards their demands for monetary reparations from government.

Many argue that this derision of victims is unfair. Martin Leggasick contends that it is unfair for the people in government to submit the argument that the struggle was fought for a noble cause and not for monetary gain and therefore begrudge victims of monetary reparations; while they are earning huge salaries in their government jobs and the victims are trapped in poverty (Personal Interview, 2002. February 14).

The chairman of the TRC, Archbishop Desmond Tutu, was quoted as saying that many people in the country in fact share the frustration, disappointment and anger at the fact that, apart from the small urgent interim relief, no reparations have been paid to the TRC victims so designated in terms of the relevant legislation. (Sapa. 2002. June 29)

## **Khulumani's engagement with the TRC**

As shown above Khulumani started engaging with the TRC from its early life. Together with the Centre for the Study of Violence and Reconciliation (CSV) Khulumani was instrumental in forming support groups in the East Rand, Soweto, Vaal and Pretoria. They educated survivors and their families about the TRC and its process. After the CSV had run workshops to educate people about the TRC and organised for statement taking in communities, Khulumani became instrumental in debriefing survivors before and after they testified at the Commission (Mofokeng, T. 2002. Personal Interview). Khulumani also started to assist victims by helping them fill reparations forms; do follow-ups after applying, and appeal negative decisions from the Committee on Reparations and Rehabilitation.

Khulumani's early involvement with the truth commission is one of the many distinguishing characteristics of the South African transitional process. In societies such as Chile and El Salvador victims groups only emerged as a response to the weaknesses of their respective truth commissions (Koch, E., & Davis, G. Op cit. June 29). By engaging with the commission, victims groups in South Africa had the opportunity to influence the way it went about its business, especially in as far as victims' issues were concerned (Ibid.). Khulumani has therefore played a very important role both from the point of view of the victims and as far as lending legitimacy to the TRC process.

Khulumani continues to work with its members and other victims to lobby for reparations. Currently the national office is involved in developing a database of the victims of apartheid-era political violence, which they aim should be comprehensive enough to cover all provinces. The database was created by a CSV intern, David Backer, who obtained information about the members of Khulumani from membership forms completed by individuals joining Khulumani and from attendance registers from 25 KSG group meetings. This database will serve the purpose of knowing how many victims there are and where they are located. The information will be used for various purposes, such as profiling victims according to their various needs in order to inform the recommendations for assistance to them whenever offers of assistance arise (Mosikare, N. 2002. June 20. Personal interview).

## **Campaigns**

As a reaction to government's response to the CRR recommendations, Khulumani has embarked on several campaigns to lobby government for a comprehensive reparations policy.

Amidst the confusion brought about by government's ambiguous statements regarding reparations, Khulumani in October 1999 distributed over 30 donated wheelchairs to victims who needed them (Mokabane. A. 2002). Following this ceremony Khulumani marched to the Ministry of Justice demanding to know what the government's plans were around reparations.

In February of 2000 the Centre for the Study of Violence and Reconciliation hosted a conference on reparations, titled: "Politics and Promises". The conference resulted in the

revival of the NGO Working Group on Reparations, allowing civil-society organs a space to add their voice to victims' demands.

In April 2000, during the Freedom Day celebrations in Pretoria, Khulumani staged a highly visible protest. The amount of attention this action drew led to a broad coverage of the issue of reparations in the media and in May the most comprehensive debate on reparations continued in the media. An article in the Sunday Independent of May 7 appeared, based on interviews with victims who had related their stories and said that they had not received reparations. This article was later named in parliament when President Mbeki was asked a question about reparations. Mbeki listed the names of the individuals mentioned in the article and said that they had received reparations. Reiterating what by then had become a clear government stance on reparations, Mbeki continued and argued that the struggle was never about money, saying that people that were asking for reparations were implying that the struggle was about money.

In response, Khulumani wrote an article in the Sunday Independent of the following week, indicating that the individuals named by Mbeki had no indication that they had received any reparations. The article pointed out that in fact what was being referred to in parliament as reparations were the Urgent Interim Reparations and not the long-term reparations they were demanding.

NGOs and other prominent individuals entered the fray and soon government began putting forward a new argument that nothing could be done about long-term reparations because the amnesty process was not yet complete. The TRC's Martin Coetzee challenged this assertion, stating that the only thing that may come out of the amnesty hearings is that additional victims may be identified.

On 16 December 2000, the Day of Reconciliation, Khulumani issued a press release titled "The Truth and Reconciliation Commission's unfinished business". Khulumani urged government to engage with them in addressing many of the unresolved issues related to the work of the TRC. Key among these issues were the many victims whose statements were either rejected or were not taken at all for various reasons that were not a fault of the victims. Khulumani cited the victims living in Kwa-Zulu Natal whose cases were never investigated as an example. Suggesting a way forward Khulumani urged the government to:

- Commit to establishing a TRC desk at the South African Human Rights Commission through which the outstanding matters may be addressed, including the pursuit of prosecutions against identified perpetrators who failed to apply for amnesty; and the investigation of cases of disappearance including those who disappeared in exile; and
- Provide statement-taking opportunities to all those denied such opportunities, especially victims living in KwaZulu-Natal; those who made statements in good faith to statement-takers who failed to transfer the statements to the TRC; and those whose statements were rejected where language difficulties were encountered. (Khulumani Press Statement. 16 December 2000)

Khulumani stated its commitment to a year of organised mass protest action by victims should there be no satisfactory response to the proposals it had tabled.

2001 marked the third anniversary of the TRC's 1998 report. Khulumani provided a list of the victim support work it has been forced to engage in since the TRC's recommendations had not been implemented. This work included:

- Community mobilisation (setting up support groups);
- Reparations applications and appeals;
- Disappearances investigations;
- Victim empowerment programmes (psychological, referrals, theatre for healing);
- Direct assistance to victims and their families (medical, psychological educational); and
- Commemoration services in honour of fallen victims. (Khulumani, 2001, p. 1)

In spite of these activities, the group has largely remained in the periphery of the public gaze, issues such as HIV-AIDS advocacy, crime and poverty taking up much of the public imagination. It could be suggested that this has bought government time and has probably encouraged some of the prominent government officials to speak out more openly against the work of Khulumani.

In spite of this climate, 2001 was an important year in terms of the campaigns and lobbying work that Khulumani engaged in. In February 2001 Trevor Manuel, the Finance Minister, announced in the Budget Speech that approximately R800 million would be allocated through the President's Fund for final reparations, which would be paid in once-off settlements (Makhalemele, O. 2002). Subsequently there were no indications to explain how and when government envisaged this money was to be disbursed. In the Budget Speech of the following year, the issue of reparations was not mentioned. Where reparations were discussed, the tone of government increasingly and openly showed a lack of sensitivity toward those demanding reparations. Employing opprobrious epithets to describe Khulumani members (such as "sinners", "greedy") and likening them to "mercenaries" who demand money for partaking in the anti-apartheid struggle, government spokespersons had begun to elicit rebukes from many quarters, including Archbishop Desmond Tutu, for their callous attitude.

In April 2001 Khulumani sent a letter to the president voicing out the organisation's anxiety sparked off by both the time lapse since the TRC's report (October 1998) and the confusion brought about by the speculations the delay had engendered. The letter pointed out that the imminent closure of the TRC exacerbated the anxiety. The letter ended by making a request to the president to notify Khulumani when regulations pertaining to the CRR recommendations could be expected to be promulgated. (Khulumani Support Group Newsletter.(2002). p. 4)

The Cape Town branch of Khulumani held a "Reparations Indaba," where Medard Rwelamira, advisor to Justice Minister Maduna, informed Khulumani that the draft government's reparations policy would be completed in two weeks. He promised that the policy would be made public by the end of May 2001 (Colvin. Op cit. p. 38). According to Colvin, the two-day Indaba was the most sustained, large-scale and coordinated effort Khulumani had organised. Colvin describes the indaba thus:

It sought to involve as many role players and stakeholders in the reparations issue as possible. Medard Rwelamira from the Justice Department attended as

well as representatives from the Departments of Arts, Culture, Science and Technology (DACST) and Finance. Former TRC commissioners attended (including the chair of the CRR) and the list of NGOs included the CSVR, the Institute for Justice and Reconciliation, the Trauma Centre, Jubilee South Africa, Black Sash, IDASA and the South African Council of Churches. Khumbula, the other victim support group in the Western Cape was also represented. (Colvin, Op cit. p. 42)

The core concern of this meeting was gaining access to the government's final reparations planning process. For Khulumani it was a major coup that government had been brought to the table with victims and other NGOs around the issue of reparations. Many believed that at least the meeting had been the catalyst for getting the final reparations policy finalised (Colvin. Ibid. p. 43). The euphoria and optimism that was brought about by the verbal commitment from Rwelamira to present Khulumani with a government policy document on reparations soon disappeared when government failed to produce the promised document.

The CSVR invited Maduna to a workshop on reparations in October 2001, attended by victims groups, NGOs and other civil society organisations. The aim of this workshop was to create a consultative process where all stakeholders would give input in shaping a clear agenda on the issue of reparations. Maduna was expected to play an important role, given his status as chief of the Ministry charged with disbursing reparations. When he cancelled this engagement at the last minute – without sending a replacement – delegates at the forum saw this as another of the many demonstrations of government's lack of commitment to the issue of reparations and insensitivity to the concerns of victims.

Khulumani has subsequently written numerous letters to the Justice Ministry, appeals and a letter to the Public Protector to complain about this snub from government to no avail.

In March 2002, the Western Cape branch of Khulumani staged a protest action outside parliament demanding an audience with the Minister of Justice, Penuel Maduna, to discuss reparations. In response, the Minister stated through a spokesperson that he would only see them if they made an appointment (Terreblanche, C. 2002, March 22). Maduna said in parliament that the state could only prepare for final reparations once it had received the TRC final report. He claimed that the cabinet had, however, started discussions on the broader issues around reparations (Ibid.). Khulumani had enlisted the assistance of the Legal Resources Centre, an NGO working to give legal support to victims of apartheid era human rights violations, to file the action.

#### **Other outstanding issues**

Khulumani is also campaigning for other unresolved issues from the TRC. The TRC having closed, there are still many cases of disappearances; people that need assistance with exhumations; death certificates for the deceased; and the need to expunge the criminal records of people who testified before the TRC.

#### ***Legal action***

Their patience wearing out, on 14 August Khulumani in the Western Cape filed a petition under the terms of the Access to Information Act for access to the government's policy on

reparations. Under the terms of this Act, citizens can apply to have access to any government document or piece of information that is not restricted in terms of the Act.

Government departments have ninety days to comply with the request or provide reasons why they cannot comply. In Khulumani's case, the ninety days elapsed without any response from government. On the advice of Allison Tilley of the Open Democracy Advice Centre Khulumani filed an appeal, having regarded the silence as legally meaning a refusal by government to produce the policy document. On 15 December Khulumani agreed at a meeting to take Justice Minister Maduna to court (author's notes from the meeting).

There are several legal organisations, or organisations with a good knowledge of the law, who are willing and are working with Khulumani as advisors. The Legal Resources Centre and Jubilee South Africa are two such organisations.

With the assistance of Jubilee South Africa, a network of organisations devoted to debt relief and reparations for developing and post-colonial countries, Khulumani is pursuing possible legal actions against beneficiaries of apartheid.

American lawyer Ed Fagan recently announced a class action lawsuit on behalf of victims of apartheid against several Swiss and American banks and companies. Fagan became famous pursuing similar class action suits on behalf of victims of the Holocaust. Before he announced the lawsuit, he consulted briefly with relevant victim groups and NGOs in South Africa.

Members of the Khulumani executive committee, however, "decided that Mr. Fagan was not acting ethically and that they should not get involved with his lawsuit. They felt he was not consulting victims properly, that he did not have their best interests in mind and that he was mostly out for his own publicity" (Khulumani, 2002). Ntombi Mosikare mentioned that the news about Fagan's visit to South Africa came "in the 11<sup>th</sup> hour," and that there was no proper consultation with victims (personal interview. 2002. June 20).

The following is an excerpt from Colvin's paper reflecting on the relationship Khulumani has with other sympathetic organisations.

### **Support from other sectors in civil society and beyond**

#### **NGO working groups on reparations in Gauteng and the Western Cape**

Just as there have been two centres of victim activism in Johannesburg and Cape Town, there have been two centres of NGO activism based in these cities as well. An "NGO Working Group on Reparations" was begun in 1997 in Johannesburg and was composed of representatives from 20 local NGOs and community-based organisations (Mofokeng, 2002). Their original purpose "was to ensure significant individual financial reparations to those 'declared' victims by the TRC" (Shackleton, 1999). Though they got started in 1997, it was only in 1999, after the government's initial statements on reparations that they became more organised and effective (Minutes of the NGO Working Group on Reparations, 1999; NGO Working Group on Reparations, 1999). Despite the involvement of many organisations, five main role players soon emerged out of what was originally more of a

"loose coalition" of groups (Mofokeng, 2002). The CSVr acted as the main organiser and motivator of meetings and activities. SAGDA, a group of Wits University graduates, an evangelical church group, the Khulumani Support Group and the Legal Resource Centre were the other four groups most involved (ibid.).

The Cape Town group (sometimes called the 'Western Cape NGO Working Group on Reparations') got started in 1999 under the leadership of Father Michael Lapsley of the Institute for the Healing of Memories. One of its members describes it as a "typical civil society lobbying group" (Cleminshaw, 2002). Key role players in the Cape Town group included the Black Sash, the Trauma Centre, the Institute for Justice and Reconciliation, and the Quaker Peace Centre. Khumbula has participated at times but its members have found getting to the monthly meeting in Cape Town often too expensive or difficult to coordinate (Minutes of the NGO Working Group, 1999, 2000). The Cape Town group maintains a "critical but affectionate connection" to Khulumani Western Cape (Cleminshaw, 2002).

The two groups have communicated with each other, but in general, there is little coordination in their various activities. The Cape Town group has focused on letter-writing, setting up meetings with decision makers and raising awareness in the media about reparations. Reflecting the background of the key NGOs and individuals involved in Cape Town, the Western Cape Working Group has always concentrated on making use of its network of high profile media, political and community connections (NGO Working Group, 1999). They write letters to members of Parliament and the TRC. They set up breakfast meetings with prominent government ministers as well as prominent religious leaders and use these associations to raise awareness of and pressurise the government for reparations. They have also tried to communicate the various justifications for reparations through the media. Black Sash, drawing from its own particular activist history, also organised several pickets on reparations and were supported by Khulumani members.

The Johannesburg group, reflecting the influence of the CSVr, has focused more on organising yearly conferences & technical workshops on reparations, letter writing, organising access to policy makers and advocating in the media, especially in the international market. Both groups have supported and sometimes even participated with Khulumani in many of their actions and protests (Colvin. Op cit. pp. 44 – 45).

## **Challenges**

What distinguishes Khulumani from other stakeholders lobbying for reparations is the fact that it is an organisation run for victims by victims themselves. This distinction has its limitations though. Compared to other constituencies that claimed certain outcomes out of the political transition in the new South Africa Khulumani lacks organisation and suffers from a relatively obscure profile. Other constituencies in the post-apartheid landscape have been favoured to some extent by the political settlement that made up the transitional process (such as ex-combatants and perpetrators, as well as leaders of political organisations). Ex-combatants and people deemed eligible for the special pensions according to the Special Pensions Act of 1996 received special grants while perpetrators of gross human rights violations were granted amnesties. Many of those in the leadership structures during the anti-apartheid fight are now occupying influential, and lucrative, posts in the new democratic government, and in business. Although this is a generalisation, and



does not account for the many ex-combatants and many other 'struggle activists' that were overtaken by the transition and have received no direct benefits out of the transitional arrangements, Khulumani survivors stand out as a powerless grouping left virtually to its own devices.

The profile of its membership is characteristically that of disempowered individuals. Many do not have a strong history of political activism. They are largely barely literate, with a very limited exposure to political and civic organisational activism. A quick survey of Khulumani shows that a majority of the members are among the most marginalised section of the South African population – black women. Given these factors it is not surprising that the group has been struggling to make inroads both in terms of garnering support nationally for its cause or causing enough concern amongst government officials to elicit more than the current virtual snub.

These challenges have had a bearing on the ability of Khulumani to win important gains. The relationship between the working groups and the Khulumani branches has sometimes been difficult. Khulumani's activism is more oriented towards mass mobilisation of its members in the form of public demonstrations of anger. Their relationship to the press has generally been based on telling stories about the suffering of victims and their approach to government has been considerably more confrontational. Khulumani's recent decision to engage the government in court has also revealed a difference of opinion about the most fruitful course of action in the fight for reparations (Minutes of the TRC Workshop, 2000; [Colvin, 2000](#)).

There are other organisational challenges such as the inadequate communication between provincial offices, for example between the Gauteng and Western Cape offices (Pigou, 2002. Telephone interview). Pigou notes that Khulumani has missed opportunities to profile the organisation and its objectives effectively in the media (Ibid.). This lack of a media strategy has robbed the KSG of opportunities to win more public sympathy for the case for reparations. This adds to a plethora of problems the group has to contend with in an increasingly acrimonious environment.

Yet, in spite of its difficult circumstances, Khulumani remains the voice of the masses of marginalised survivors who have a legitimate grievance against the TRC on the issue of reparations. The group has also identified other areas of engagement for its members, raising funds with the aim of designing self-empowerment initiatives such as entrepreneurial skills development for its largely illiterate and semi-literate membership.

### **The way forward**

Having grappled with various organisational problems Khulumani seems ready to move on to engage in different programmes. Since August 2001 Khulumani's staff and the board have worked to develop a strategic programme to conduct a needs assessment of survivors of apartheid-era political violence and to utilise the results of this. The goals and objectives of this project were formulated and they are:

- To facilitate a comprehensive and empirical needs assessment of South Africa's victims/survivors of apartheid-era violence, beginning with the Northwest and

Kwazulu Natal (KZN) provinces, in order to discover the present conditions of the victims and their felt needs. By January 2003 Khulumani expects to complete interviews with an initial sampling of 600 – 3 000 survivors in the Northwest province and 300 in KZN. This will be followed by the expansion of this project by moving on to phase 2 of the project in which the needs assessment will spread to other provinces, with the hope of eventually covering all nine provinces.

- To engage survivors in the assessment process so that Khulumani may empower several victims/survivors to take responsibility for the assessing of their collective needs. By November 2002, the project expects to capacitate 50 survivor-interviewers, 25 per pilot province, to conduct needs assessment interviews and accurately record data. By December 2002, Khulumani expects these trained survivor-interviewers to be actively conducting the needs assessment in their assigned regions.
- To utilise the collected information to express the needs of its constituency to government and civil-society agencies, in order to effectively advocate on behalf of victims especially throughout significant processes concerning issues of reconciliation such as reparations lawsuits and policy decisions.
- To utilise the collected information to guide Khulumani's programme development, in national, provincial and community levels, so that they may enhance and create programs that reflect the changing needs of its constituency.

Khulumani argues that although the TRC recorded some of the details of victimisation, there are many other details that were not recorded. An example they bring forward is that some of the victims are now experiencing medical problems resulting from their victimisation that were not initially diagnosed.

Also, given the characteristically aloof governmental engagement with the issues of reparations, Khulumani feels it is crucial to collect thorough needs assessment data in order to influence policy in a way that will be beneficial to victims. Weary of the lack of knowledge about the victims' needs by both the policy makers and lawyers who might occasionally assist victims, Khulumani is keen to contribute a deep grassroots insight into what the final reparations ought to entail.

Khulumani has been getting increasingly involved in recent legal and political issues such as international reparations claims, potential civil claims against perpetrators, and shaping of final reparations. The organisation recognises the value of bolstering its ability to efficiently deal with these issues with sound empirical evidence; hence the need for an accurate needs assessment.

Khulumani has been adapting itself to the post-TRC South Africa. In order to remain committed to its mission of victim assistance and empowerment, Khulumani seeks to understand the changing needs of its constituency. With a sound understanding of its victims' needs Khulumani plans to adapt its established programmes and create new projects that are relevant to these issues.

Acknowledging that it has disproportionately paid attention to the Gauteng and Western Cape provinces, Khulumani hopes to learn a lot more about the other provinces so that it can effectively reach out to outlying provinces through the implementation of relevant programmes.

## **Plans to create strategic partnerships**

Khulumani has recognised the need to incorporate survivors of apartheid violence and their issues within the larger community of human rights and civil-society partners. It plans to strengthen the organisation's relationship with government and civil-society agencies in order to both advocate for their support in working with survivors and provide them with useful resources and information concerning the apartheid-era victim population. With databases of victims and the needs assessment of victims, Khulumani will be in a position to be a resource and partner in South Africa's civil society.

With the assistance of Jubilee South Africa, Khulumani lodged a lawsuit in November 2002, on behalf of its members and 85 individuals (Med venlig hilsen, Morten Nielsen. 2002). The suit named companies that benefited from the apartheid regime. The companies named were the Swiss Bank's Credit Suisse and UBS, Deutsche Bank and Dresdner Bank of Germany, Barclays Bank of the UK, and Citigroup and JP Morgan Chase of the US. Also named were oil companies Exxon Mobil, Shell, Total, Caltex and BP, and car makers DaimlerChrysler, Ford and General Motors, the computer giant IBM, the electronics companies ICL and Fujitsu, and the mining group Rio Tinto (Ibid.).

Khulumani has named the CSVR as one of the organisations that are doing research on the TRC that will benefit from the database it plans to complete. Another use for the database will be a resource for historical researchers and organisations in their attempts to chronicle the collective histories of those involved in the apartheid-era struggle.

## **Conclusion: the standoff continues**

In April 2003 President Mbeki announced a once-off payments of R30 000 to each of the 22 000 victims identified by the TRC. This falls way short of the CRR's recommended sum of just over R130 000 which was to be paid out to each victim over a period of six years. It also falls short of the expectations of those who have been lobbying for reparations.

The government's reaction to the lawsuits discussed in the above paragraph is a strong indicator of its stance regarding final reparations. Reacting to the news of the lawsuits discussed above, Justice Minister Penuell Maduna said on the radio that government would be indifferent to these. The Finance Minister echoed these sentiments after a visit to South Africa by a US trade delegation, saying that the country did not need the suits. Voicing concerns about fear of losing investment opportunities should South Africa agitate these companies, the government has chosen to "stay neutral" on the issue of these lawsuits.

Again this has left victims to their own devices, leaving them vulnerable to processes that may alienate them. There have been precedents where lawsuits filed against companies that abetted human rights violations have resulted in victims receiving substantial reparations. The Holocaust survivors benefited from a class action against Swiss banks which paid \$1, 25 billion to survivors in an out of court settlement (Fagan, E. Khulumani Western Cape meeting on reparations, author's notes). However, this line of action can benefit the lawyers representing the plaintiffs at the expense of the latter, and could be one of the reasons Khulumani was apprehensive about working with Ed Fagan for their claims. Paul Ngobeni and Charles Mojapelo warn of the pitfalls of class action. They show that in the US, class

actions are notorious for providing an opportunity for collusive settlements. They point out that in ordinary litigation courts rely on the adversarial relationship between plaintiff and defendant and the competition between the parties to bring forward the truth. By contrast, class action settlements create incentives for defendants' and plaintiffs' counsel to collude in reaching a settlement (Ngobeni, P. & Mojapelo, C. 2002).

Khulumani, as absentee clients, are in a position where they cannot control the conduct of their lawyers because they have little knowledge of their activities and have insufficient stakes in the outcome to motivate them to monitor their attorney's behaviour.

Ngobeni and Mojapelo submit therefore that government's "indifference" works at the disadvantage of the victims. By protecting victims in this lawsuit, government could be playing a role in helping close a painful chapter in the country's history.

For government, however, this is no option. As Manuel's and Maduna's statements show, government still clings to the position that individual reparations are undesirable. It stresses the importance of moving on. For victims, moving on hinges very much on doing as much as possible to close the chapter of the political transition, of which the TRC is a part. Revealing the role played by all the players is one of the many ways of achieving that closure. Furthermore, forcing those who buttressed apartheid to acknowledge their complicity and compensating the victims of apartheid will go a long way to achieving that goal.

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