

Contested Apartheid Litigation: **Chronology 16 June 2002 to July 2004**

English translation of the original German version.

Please note that many of the texts in this chronology are „translations of translations“. That is to say that there are quotes from interviews (published in newspaper articles) which were conducted in English and then translated into German for the Swiss readership. We have re-translated them back into English, without access to any original transcripts. This means that these quotes cannot be used in official documents as original quotes.

2002

16-6-2002

In the Swiss Sunday newspaper „SonntagsZeitung“ Ed Fagan announces that he is filing, in the name of victims of apartheid human rights violations, a class action suit in New York against, amongst others, the Swiss banks UBS and CS Group and that the plaintiffs will be demanding reparations payments amounting to at least 80 billion Swiss Francs.

Karin Rhomberg, spokesperson of the CS Group:

„To hold our company co-responsible for the injustices of the apartheid system would be absurd, and the facts do not at all support such an accusation.“ CS Group had, „always acted in accordance with all the relevant laws and regulations of the Swiss government regarding business activities with South Africa“.

(SonntagsZeitung, 16.6.2002)

Strategy paper of economiesuisse (Swiss Business Federation)

The newspaper „SonntagsZeitung“ quotes from a confidential policy paper of economiesuisse regarding apartheid litigation (the submission of which had been expected for a while already). In the case of such litigation being filed against Swiss companies, the policy paper calls for a broad national reaction: „It is important, above all, that business and government clearly reject the demands. It has to become clear, that, contrary to the holocaust discussion, Switzerland is not prepared to enter into any compromise. „Political authorities and business should, in close co-operation, decide on what and how to communicate. Professional public relations offices both in South Africa and in Switzerland should immediately motivate the public to „politically condemn“ the class action suit.

The public relations strategy of economiesuisse has three aims:

1. Ed Fagan should be focussed on as the enemy. His „unjustified“ action should be presented as a „purely profit-making exercise by a populist lawyer“ lacking any objective, factual basis.
2. It should be emphasized that the South African government distances itself from the litigation and is, on the contrary, interested in continuing investment, aid and experts' knowledge rather than in money and discussions which open „old wounds“.
3. A pro-active media campaign is to be started, with the aim of presenting Switzerland as one of the most important investors and as a development co-operator interested and engaged in the construction of the new South Africa. This also involves intensified contact with the South African authorities and the strengthening of the Swiss business presence: „Swiss Business Hub, Chamber of Commerce, South Africa Fair, investment seminar“.

With this forward-looking strategy („change of focus: away from the discussion about the South African past to a positive stance for the future development of the country“), *economiesuisse* wants to curb the „opposition“ early on. In addition, *economiesuisse* will closely follow „the activities of these exponents“ as well as providing „selected parliamentarians“ with specific information. (SonntagsZeitung, 16.6.2002)

17-6-2002

Thomas Pletscher, *economiesuisse*: „The demands are totally unjustified. According to all we know, regarding working conditions as well as financial relations, Swiss companies did not behave worse but rather better than the companies of other countries.“ (Tages-Anzeiger, 17.6.02)

17-6-2002

Ed Fagan announces on Zürich Paradeplatz, together with Dorothy Molefe, mother of Hector Petersen, and with the South African lawyer John Ngcebetscha, the filing of the Ntsebeza class action suit against UBS, CS Group and Citicorp. At a later stage, French, British and German companies and banks would also be included. A simultaneous media conference is held in Soweto, with Dumisa Ntsebeza. On Paradeplatz, Fagan is confronted by an angry mob, organised, according to the „SonntagsZeitung“, by Willy Egger, member of the right wing Schweizerische Volkspartei and an activist in the far right wing Auns, the movement for an independent and neutral Switzerland. (SonntagsZeitung, 23.6.02)

17-6-2002

Media statement Jubilee South Africa:

„This is a high point in a long battle we started more than three-and-a-half years ago. (...) Jubilee South Africa repeatedly warned over the past two years that such action will be taken as a last resort by victim groups associated with us if the matter was not dealt with by international corporate and political representatives through a decisive process of dialogue and negotiation. However, they rejected our calls with contempt. This international court action should therefore not come as a surprise“, said MP Giyose, chairperson of Jubilee South Africa. „(...) Yet we still have hope that they will now enter into open dialogue with us to bring justice, healing and reparation to apartheid's victims“, he said. Jubilee South Africa therefore calls on Swiss, American, German and British political and business leaders to convene an international conference with representatives of the banks, businesses, and civil society campaigning groups to decisively address this matter.(...)“ (Media statement Jubilee South Africa, 17.6.02)

18-6-2002

Statement by Archbishop Njongonkulu Ndungane:

„(...) In the interests of justice and the common good, the banks and businesses should now sit down together with apartheid victim groups and other parties to discuss and resolve the matter of reparations, including debt cancellation and social programmes for post-apartheid reconstruction and development. In a spirit of transparency, they should open their books to public scrutiny so as to ascertain with certainty the extent of profiteering from apartheid. (...) To this end, I give my full support to convening an international conference (...)“

(Statement by Njongonkulu Ndungane, 18.6.02)

19-6-2002

The Ntsebeza class action suit against UBS, CS Group and Citicorp is filed in the Southern District Court of New York. The judge responsible is Richard Conway Casey.

Up to 100 further companies will be included at a later stage.

(Neue Zürcher Zeitung, 21.6.02)

19-6-2002

The Washington-based lawyer Michael Hausfeld confirms that he is preparing a large class action suit in the name of victims of the apartheid regime. He assumes that the litigation will be ready to be filed by late summer. He sharply criticises Ed Fagan, especially that he went ahead without thorough preparation.

(Neue Zürcher Zeitung, 20.6.02)

21-6-2002

UBS spokesperson Monika Dunant: „We will fight with all legal means against this class action suit. (...). We are well-prepared. There is no legitimacy to accuse the bank, neither according to international customary law nor for any other reason.“ UBS had always acted within the boundaries set by official Swiss policy.

CS Group spokesperson Karin Rhomberg says that the class action suit lacks all legal and factual foundation.

(Tages-Anzeiger, 21.6.02)

23-6-2002

According to the „SonntagsZeitung“, the Swiss government and economiesuisse employed one of the most renowned business law offices to conduct initial legal clarification regarding potential class action suits at approximately the same time as Ndungane and other Jubilee representatives started calling for reparations. At a later stage they are said to have commissioned an experts' opinion on this issue.

(SonntagsZeitung, 23.6.02)

23-6-2002

Business circles provide the Swiss media with a letter from Nelson Mandela to Fritz Leutwiler, dated 22.7.1994 - in order to prove that the class action suit filed by apartheid victims is unjustified.

In the letter, Mandela congratulates Leutwiler on his 70th birthday and thanks him for his role during the negotiations to reschedule the apartheid government's debts as well as for his efforts for the release of Mandela and his comrades - and finishes by saying: „I am certain that you will maintain your interest in South Africa and so contribute to the reconstruction and development thereof.“

(SonntagsZeitung, 23.6.02)

23-6-2002

The Swiss business lobby has difficulties in involving the Swiss government in its efforts to counter the class action suits:

Although the Swiss government shares, according to a government spokesperson, „the common aim“, with business and banks, „of fighting the class action suits“, there is also some disagreement.

On June 18th, a government working group led by ambassador Jacques de Watteville formulated a media statement taking the same stance as the position taken by the companies. But Foreign Affairs Minister Joseph Deiss and his secretary general prevented its publication. Officially, the reasons were that one did not want to signal nervousness and stoke up the case. Foreign Affairs also distances itself from business' demand that government pro-actively present its development projects in the media.

Until now, the Federal Council has not issued a statement regarding the class action suits.

(SonntagsZeitung, 23.6.02)

23-6-2002

Former Foreign Affairs secretary general Edouard Brunner in an interview:

„(...). Let us remain realistic: The country and the people profited more from our trade relations than the apartheid regime. South Africa today is developed way beyond any other former colony because Europe and the US strongly invested into that country.

These successes can now also be enjoyed by the Mandela government.

(...) all we did economically, shortened the life of apartheid. It is impossible to simultaneously have a free economy and totalitarian rule. (...). One cannot construe any blame or any serious mistake by Swiss authorities or business. On the contrary: The influence of Switzerland enabled the regime to understand that it could not continue in this way. It is not possible, in a free economy, to control the majority of the population by means of race criteria.“

(SonntagsBlick, 23.6.02)

26-6-2002

Press statement of the Swiss Federal Council regarding the class action suits:

„(...). A first reading has shown that the accusations have been very summarily formulated and are not proven by concrete facts. The two Swiss defendants intend to oppose the class action suit by legal means.

It is not for the Federal Council to advance an opinion as to the justification of such litigation. But it is of the opinion, nevertheless, that this kind of class action suit filed with a US court is not suitable for solving political problems of other countries. Such legal action also cannot answer the question of economic co-operation with countries which violate international law and human rights.

The Federal Council has tasked the Foreign Affairs Department to continue to observe the development of the situation, together with the other departments as well as with representatives of the economy.

Switzerland and South Africa have close relations. The Federal Council will do all it can to deepen these relations. During the regular official contacts between Switzerland and South Africa there have been no indications that the South African authorities would support such class action suits.“

(South African class action suits: oral information from the Federal Council's spokesperson (vice-chancellor Achille Casanova), 26.6.02)

28-6-2002

Hansjürg Saager, proprietor of the economic news agency AWP and member of the board of the Swiss-South African Association (SSAA), in an interview:

„The amount of Fagan's demand (80 bn \$) is absurd. The ((gold trade)) was only lucrative for the Swiss banks until the end of the 1950s. (...).

The tough negotiations ((the debt-rescheduling negotiated by Leutwiler)) contributed substantially to the dissolution of apartheid. Under pressure, the PW Botha government repealed the so-called petty apartheid measures. Non-white citizens were allowed to travel outside of their districts, separate amenities like toilets and escalators were abolished, black trade unions were legalised. Swiss companies like the former Ciba-Geigy even went as far as promoting black workers to management functions where they were above whites in the hierarchy. This was not allowed, officially, but it was tolerated. (...).

Swiss companies verifiably did nothing unlawful.“
(Cash, 28.6.02)

30-6-2002

Anton Schrafl, president of the Swiss-South African Association (SSAA) and long-time member of the senior management of Holcim (formerly Holderbank), in an interview:

„(...). Governments come and go. It does not make sense to support a particular regime and not another one. (...). Factories, including cement factories, are long-term investments. You cannot just close the door and leave if at some point a government does not suit you. (...). On the whole, profitability in South Africa was neither better nor worse than in other developing countries. A company prospers or stagnates, depending on whether there is economic growth. Holderbank mostly did not transfer its profits to Switzerland, but invested them locally to finance expansion. (...). At the beginning, the black workers' salary level was lower than that of whites. But then the lack of qualified staff led to the salaries for the same tasks becoming more equal. (...). The law stated that blacks were only allowed to be auxiliaries and not artisans. But when we couldn't find any white artisans, we did not adhere to the law. Many other companies did the same. Together with Ciba-Geigy, BBC, BMW and IBM, we even created a training institute for artisans - Ga-Rankuwa.“

Question: So one there is no question of shameless exploitation by apartheid?

Schrafl: „Such an attitude would not have worked well in the long term. You cannot oppress people permanently. That would be a dead end for the economy too. (...). The companies were part of the economy. If all foreign companies had left, the country would have been ruined. Blacks, too, were better off thanks to our presence.“
(SonntagsBlick, 30.6.02)

30-6-2002

Pio Eggstein, CS Group representative in South Africa for many years, on the class action suits:

„These attempts at blackmail must be ignored. The Swiss companies did not do anything wrong. If I could go back in time, I would, regarding South Africa, do everything exactly the same way again.“

(SonntagsZeitung, 30.6.02)

30-7-2002

Mascha Madörin, economist and representative of Aktion Finanzplatz Schweiz, in an article in the Swiss newspaper „St. Galler Tagblatt“:

„(...). The Swiss government and business argue until today, that sanctions were not at all useful. Using statistics of the Swiss banks or the Swiss Reserve Bank they try, in addition, to prove that Switzerland had normal economic relations with South Africa and did not circumvent financial sanctions. But if we look at the total foreign long-term investments (direct investments, credits, loans, shares etc.) in the statistics of the

South African Reserve Bank, there emerges a different picture: In 1980, Switzerland's share was at roughly 10 percent. In 1989, when sanctions were the most severe, it was at 25 percent - and today it is at 4 percent. According to the South African newspaper 'The Star', a Swiss banker is supposed to have said: 'We will lend them the money they need - it just isn't allowed to appear on our balance sheets.' It is therefore not surprising that the Swiss banks are not prepared to open their archives."

(St. Galler Tagblatt, 30.7.02)

31-7-2002

Archbishop and TRC chairman Desmond Tutu in an interview with the Swiss news magazine „Facts“ (in German):

Tutu: „One cannot just ignore it (the Ntsebeza class action suit filed by Ed Fagan). He is an able lawyer and has after all managed to gain several billion dollars for the Holocaust victims from Swiss banks and German companies. If victims really benefit from this class action suit, then I have nothing against his initiative.

At the time, we had appealed to the banks not to give the apartheid regime any more loans, but none of them listened to us. (...).

That the Swiss banks were the first to be attacked has to do with the fact that Switzerland considers itself to be the banking centre of the world. Repeatedly, Switzerland has led debt-rescheduling negotiations with the apartheid regime. There are therefore good reasons to first aim at them. But this does not mean that the others should feel more secure. All companies that did business with the apartheid regime, should know that they are in the firing line.“

Question: Were you ever in direct contact with Swiss banks, in order to convince them to boycott Pretoria?

Tutu: „They were not interested, at the time, in meeting us. Most of these people ignored us, they considered us unimportant.“

(...).

Question: The TRC was considered to be the relevant authority for dealing with South Africa's past and for looking into the question of reparations. Is Ed Fagan not undermining the Commission's jurisdiction?

Tutu: „No. The TRC was supposed to deal with reconciliation within the South African population. If Fagan had accused South African companies, then that would indeed have been trespassing on our terrain. But as he is aiming at the international links of the apartheid regime he will not get in our way at all. And if he sees to it that victims of the apartheid regime get better reparations, then this is welcome.“

(...).

Question: What would you advise the Swiss banks to do?

Tutu: „They should pay. They can afford it. And they should do it with dignity.“

(Facts 31/02, 31.7.02)

5-8-2002

Jubilee engages Michael Hausfeld:

Jubilee still supported the Ntsebeza complaint and the victims but was uneasy about Fagan's manner of operation, Neville Gabriel said to the Swiss news agency SDA.

„The way Fagan presented the case gives victims the impression that they could become rich through it.“ This had never been Jubilee's aim. „We formally engaged Hausfeld to support Jubilee in the development of an honest, sensitive and credible campaign“, said Gabriel. On the one hand Jubilee was demanding a broad based

social programme for community development and on the other hand also private compensation.

(Neue Zürcher Zeitung, 6.8.02)

8-8-2002

Yasmin Sooka, Director of the EU Foundation for Human Rights in Pretoria and Patron of Jubilee, in an interview with the Swiss news magazine „Facts“ (in German): „We disliked the way in which Ed Fagan presented his initiative to the public. We are not interested in sensationalism. When we heard that Fagan had gone to the victims of the apartheid regime and promised to get them a lot of money, we said: Stop! We don't want anything to do with that. (...).

Hausfeld will closely cooperate with us and prepare a legally and factually sound process. Our aim is to make transnational corporations accountable and to ensure that they cannot, in the future, again act as in Nazi Germany and during the apartheid regime or in colonial Africa. We have the historical chance of getting multinational companies and their financiers to realise that they have to face the consequences if they act against the world order or against the moral order.“

(Facts, 32/02, 8.8.02)

8-8-2002

First hearing of the Ntsbeza case against Swiss banks and Citicorp in the Southern District Court of New York. Fagan suggests that all apartheid cases be consolidated in the same court. The lawyers for the defendants, Roger Witten and Francis Barron, plan to file a motion to dismiss the case on September 13th.

(SDA, 9.8.02, NZZ, TA, Bund, 10.8.02)

18-8-2002

Michael Hausfeld wants to file the first apartheid cases against „companies from all parts of the globe“ before the end of the year. He emphasizes that he wants to establish companies' accountability through individual cases.

Hausfeld hopes that the South African government changes its opinion regarding the cases as soon as their chances of success become clearer. Hausfeld sees his cases as a means of getting companies to enter into negotiations with his coalition.

(NZZ am Sonntag, 18.8.02)

23-8-2002

Second hearing of the Ntsebeza complaint

Until September 13th, Ed Fagan has to produce a revised and consolidated complaint and has to file all outstanding cases against further companies. In Switzerland, Fagan aims at Ems-Patvag as well as Oerlikon-Bührle's successor.

Against Novartis, Roche and Nestlé he plans to file cases regarding exploitation of and discrimination against black workers (Labour Cases).

(SonntagsZeitung, 25.8.02)

19 or 20-9-2002

Fagan files the consolidated and extended class action suit which replaces the one he filed in June. Defendants are banks from the US (Citigroup, J.P.Morgan Chase), Britain (Barclays, Natwest, Standard Chartered), Germany (Deutsche, Dresdner und Commerzbank) and France (Crédit Lyonnais, Banque Indo Suez) as well as UBS and CS Group. Added to that are IBM, Novartis, Sulzer, Anglo American and De Beers (the last four because of unfair, discriminating labour practices). In addition there are

up to 100 further, as yet unnamed, companies. In New Jersey he filed a class action suit against Nestlé and Roche. The principle of secondary responsibility („aid and abet“) is now part of the accusations.

(Tages-Anzeiger, 4.10.02)

11-10-2002

Thomas Pletscher, economiesuisse, in an interview with swissinfo:

„If private companies have to open up their archives more and more, then transnational corporations, be they Swiss or foreign ones, have to consider very carefully whether they should have their head offices in Switzerland.“

(Swissinfo, 11.10.02)

28-10-02

The legal affairs commission of the Swiss parliament rejects the parliamentary initiative Hollenstein (calling for a comprehensive historical study on the relations between Switzerland and the apartheid regime) by 11 against 9 votes.

Beforehand, economiesuisse had written letters to all the liberal and conservative members. Not only did all the members of the centre-right FDP and far-right SVP reject the initiative, but all CVP-representatives too, although three of them had signed the same initiative when it had been submitted, in November 2001. Their reason for changing their minds: If one opened the archives now, one would basically assist Ed Fagan, opening the archives would heighten the risk arising from the cases for the Swiss companies. They had also been informed of this by representatives of the Foreign Affairs Department, says Doris Leuthard.

(Tages-Anzeiger, 29.10.02)

11-11-2002

The Khulumani-complaint is filed by the US law office Cohen, Milstein, Hausfeld&Toll together with the South African law office Abrahams Kiewitz at the Eastern District Court in New York.

There are 91 plaintiffs, all members of the Khulumani Support Group (32'000 members).

There are 22 defendants: oil companies: ExxonMobil Corp., Shell Oil Co., Caltex (Chevron Texaco Corporation, Chevron Texaco Global Energy Inc.), British Petroleum P.L.C., Fluor Corporation, Total-Fina-Elf; arms companies: Rheinmetall AG; banks: Barclays National Bank Ltd., Citigroup Inc., Commerbank, Credit Suisse Group, Deutsche Bank AG, Dresdner Bank AG, J.P. Morgan Chase (Chase Manhattan), UBS AG; motor industries: Ford Motor Co., DaimlerChrysler AG, General Motors Corp.; technology companies: Fujitsu Ltd. (International Computers Ltd.), International Business Machines Corp. (IBM), AEG Daimler-Benz Industrie; mining companies: Rio Tinto.

12-11-2002

Desmond Tutu in an interview with the Swiss newspaper „St.Galler Tagblatt“: Should judges in the US pass judgment on South Africa's way of dealing with the past?

Tutu: „Basically I don't see why victims of the apartheid regime should not take the chance to get substantial reparation payments, seeing that the victims of Nazi Germany did that very successfully. The apartheid system was nearly as odious as the Third Reich.“

On that premise, however, South African companies and banks would also have to be taken to court in the US?

Tutu: „No, this is something different. The Truth and Reconciliation Commission has indeed always encouraged South African companies to pay a once-only voluntary reparations tax. Because of the complex situation in our society, however, which was highly destabilised by the conflict, it would not be wise if we disturbed our hard-earned peace by massively expensive trials. For this reason South African companies should not be taken to court.“

(St.Galler Tagblatt, 12.11.02)

12-11-2002

Central Methodist Church, Johannesburg: Media conference of Khulumani und Jubilee South Africa; 600 survivors and family members of victims are present.

12-11-2002

Media statement Khulumani and Jubilee South Africa:

„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 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. (...). 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.' (...).

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 the coming months.“

(Media statement Khulumani and Jubilee South Africa/Apartheid Debt&Reparations Campaign, 12.11.02)

12-11-2002

Reactions to the Khulumani complaint:

UBS-CEO Peter Wuffli vehemently rejects the complaint: The business operations of UBS during the apartheid regime did not violate human rights, he said. The demands were unfounded and would be vigorously fought by UBS.

Although Wuffli expressed his regret for the suffering of the population, he said that UBS was sticking to its position that there is no link to the business operations of UBS in South Africa.

CS Group spokesperson Andreas Hildenbrand: „To give the CS Group part of the responsibility for the injustices of apartheid is without basis and is not supported in any way by the facts.“ In addition, the bank criticises the proceedings of the lawyers and plaintiffs: A case filed by US lawyers at US courts was in any way not the right forum to discuss the activities of Swiss companies in South Africa.

Thomas Pletscher, economiesuisse: „We deem the complaint as unsuitable for a historical clarification process.“
(Tages-Anzeiger, 12.11.02)

13-11-2002

Ed Fagan files class action suits against three further Swiss companies: Holcim in Michigan, Ems-Patvag in South Carolina and Unaxis in Florida.
(Tages-Anzeiger, 12.11.02)

13-11-2002

Background article in the Swiss newspaper „HandelsZeitung“ under the title „Banks constructing protective barrier“:

The Swiss banks had learnt their lesson from the Holocaust cases. They were taking „these cases seriously“ (says UBS CEO Wuffli), „very seriously“ (says CS Group). In 1999, UBS had set up an internal task force to deal with this issue. UBS was also co-operating with US law offices. The CS Group had also created a task force a while ago already, with lawyers, historians, communication experts and bankers. „We are well prepared for the cases“, says Andreas Hildenbrand, spokesperson for the CS Group. „Our attitude is clear: There is no basis for these cases, neither factual nor legal.“ The CS Group had begun to look into the history of the bank in South Africa a while ago.

In addition, the banks, together with other defendants, had created a working group within economiesuisse (led by Thomas Pletscher), which was in contact with the Swiss government as well as with business associations abroad.

A central role was being played by the Swiss government in the background. In May 2000 it created a working group led by Jacques de Watteville which co-ordinates government activities and feeds information and arguments to parliamentarians (for example against the Hollenstein initiative). In addition, there was another working group in which representatives of the banks, economiesuisse and government meet four to six times a year to talk about possible strategies. Foreign Affairs Department representative Martin Tschirren had, furthermore, been invited to meetings of the economiesuisse working group several times.

The Foreign Affairs Department had also become active on an international level, especially in South Africa there was very intensive diplomatic activity. The aim of the Swiss government is to prevent Switzerland from becoming the cases' perceived prime defendant under any circumstances, says Foreign Affairs spokesperson Daniela Stoffel.

And the advice from Thomas Borer (who led the Swiss task force at the time of Holocaust cases): The aim was to be „to bring the US and South Africa ((the governments)) to distance themselves from the cases“. Stick together and co-operate with other countries, recommends Borer.

(HandelsZeitung, 13.11.02)

14-11-2002

Interview in Swiss Radio DRS with the joint CEO of the CS Group, Oswald Grübel: „I do not consider the case regarding South Africa as a problem of the CS Group, as, on the whole, around 80 companies world wide have been named as defendants. According to me this is a political problem, and in my view the respective governments have to talk to one another and with the defendants, and they have to try and find a solution. But from what has been presented until now, I cannot see how we in any way could be involved in a question of guilt.“

(Radio DRS, Echo der Zeit, 14.11.02)

14-11-2002

More than 50 important US companies (including Pfizer, Exxon, IBM and Ford) deliberate in Washington on the way forward regarding the apartheid cases as well as other „human rights cases“ against multinational companies in the US. The companies' target is the Alien Tort Claims Act.

The main speaker is Stuart E. Eizenstat, who, as the special representative of the Clinton Administration in the Holocaust class action suit in the 1990s, led the negotiations between the Jewish plaintiffs and the Swiss banks.

Today he is a partner in the Washington law firm Covington & Burling - where UBS is amongst the clients. The meeting was considered a „wake-up call“, Eizenstat said, as the human rights cases could lead to very expensive judgments threatening the US economy and even shake the foundations of world trade.

(NZZ am Sonntag, 8.12.02)

17-11-2002

Archbishops call for Marshall Plan in place of apartheid lawsuit

South Africa's two Anglican archbishops (Desmond Tutu and Njongonkulu Ndungane) have urged foreign companies that profited from apartheid to set up a voluntary Marshall-style aid plan for the reconstruction of the country.

The clerics were reacting to comments by former president FW de Klerk, who said the lawsuits would harm foreign investment and Nepad.

Both leaders strongly defended the right of apartheid victims to enter litigation, as this was a last resort after their calls for voluntary compensation „fell on deaf ears“.

De Klerk told a gathering of the American Chamber of Commerce that for Nepad to be a success, the court case should not be pursued.

He warned that a finding against banks and other firms would set a precedent for international litigation that would soon cripple the ability of companies to do business anywhere. „Cases will then be made against banks that have granted loans to many countries throughout the world that, at one time or another, have been accused of serious human rights violations“, he said.

(The Sunday Independent, 17.11.02)

21-11-2002

Interview with Frederik Willem de Klerk in the Swiss weekly magazine „Weltwoche“ - under the title „The banks did not commit any injustice“:

De Klerk: „I regard them ((the apartheid cases)) as absolutely unjustified. The Swiss banks should fight them vigorously, because they did not commit any injustice. The banks concerned did not support apartheid. They just did their job, lent money and charged interest for it. In that way, they generated economic activities, created jobs and helped to build an infrastructure from which all South Africans profited, regardless of their race or skin colour. (...). It was not the sanctions and the withdrawal of foreign companies from the South African economy which led to the collapse of apartheid, but mainly the rapid economic growth and social development, especially in the 1960s and 70s. And that was reached - partly - also thanks to international trade and foreign investment. (...). Due to this development, more and more black South Africans were integrated into the economy, more and more blacks moved from the countryside into the supposedly white cities, and more and more blacks worked in increasingly higher-qualified jobs. At the same time, more and more white South Africans adapted to the values of the first world. Like in many societies

around the world, changing economic conditions led to new social conditions. Finally, the outdated constitution came under unavoidable pressure. Foreign companies operating in South Africa prior to 1994 played a positive role in this regard and assisted in promoting this societal change as well as social development. (...). The debt-rescheduling agreement was not a charitable gesture by the Swiss banks for the South African government. It was a very severe agreement which ensured that the foreign banks got back all the money we owed them. (...). Although they ((the cases)) have very little substance and are not very likely to be successful, they nevertheless have the potential to create great damage. To put it clearly: The cases could create chaos. Should the courts decide against the banks, they would open the way for international trials which would curtail the possibility of companies to do business all over the world. International banks and companies could then show even more restraint to do business with countries in which the human rights situation is not perfect - and that, unfortunately, is the case in nearly all African countries, except for South Africa. The cases furthermore could raise unrealistic expectations among thousands, maybe even hundreds of thousands of black South Africans. This could promote animosity which we have been fighting successfully since 1990. (...).“
(Weltwoche, 21.11.02)

21-11-2002

Apartheid Debt & Reparations Campaign responds to FW de Klerk (Media Statement):

„Mr de Klerk’s acknowledgment that Swiss banks actively contributed to the growth of the apartheid economy reinforces our claim against the banks to repair the social damage they made possible. It is unfortunate, but comes as no surprise, that Mr de Klerk actively supports the banks that provided a lifeline to the apartheid regime, but does not seem to have much concern for healing the victims of apartheid.

Jubilee SA calls on Mr de Klerk to back up his comments by supporting the call for the banks’ archives to be opened so that the truth can be known.“

(Media statement Apartheid Debt & Reparations Campaign, 21.11.02)

21-11-2002

Jubilee South Africa and Khulumani Support Group: Press Statement:
Watch out, de Klerk!

„Jubilee and Khulumani want to issue a warning to FW de Klerk that, if he continues to apologise for apartheid and support those who have benefited and still benefit from apartheid, our organisations will be left with no option but to put his role in perpetrating apartheid crimes back in the spotlight.

Last week, De Klerk suggested that support for the claim (...) will impede foreign investment in South Africa and hamper the progress to the New Partnership for Africa’s Development (Nepad). Today, it has come to light that de Klerk has given open support to the Swiss banks and asked them to oppose and resist the case before the US courts. He has asserted that, far from prolonging the life of apartheid, the loans made to the apartheid regime strengthened the economy and helped the regime to create the conditions for change. But, in so doing, he is confirming that these banks and companies played a major role in supporting the apartheid regime. The money from the Swiss banks was used to bolster the bantustan governments and the military, in other words the system despised and condemned by the South African majority and the international community, and the violent means to impose that system on the people of our country. The loans further contributed to the immensely destructive impact of apartheid on the Southern African region.

Indeed, de Klerk is also telling us that the loans and support from the Swiss and other banks and companies afforded his regime undue power in the negotiations process. Subsequently, resources that should have been used to uplift the people of our country have been and are being put aside to pay the apartheid debt. These banks are thus not only continuing to benefit from their support of apartheid, but, in so doing, are perpetuating their crime by continuing to support the impoverishment of the majority of South Africans.

It is our contention that the banks and companies must first make an acknowledgment of their liability and then go further to make compensation to the people of South Africa and the southern African region. The court case has been filed because they have, to date, steadfastly refused to do so.

Up till now, Jubilee and Khulumani are demanding reparations from the foreign banks and companies that are known to have supported the apartheid with money and war materials. We have not included De Klerk and others in South Africa because of our respect for the TRC process and the rationale behind it.

But we want to remind De Klerk that he, along with PW Botha and their predecessors, are the primary perpetrators of the crimes of apartheid. Moreover, we have certainly not forgotten the complicity of South African banks and corporations in this regard.

If De Klerk continues to enter the public domain as an apologist of apartheid criminality, he will force us to pay attention to him and add him to the list of those from whom we are demanding redress.“

(Jubilee South Africa and Khulumani Support Group: Press Statement, 21.11.02)

22-11-2002

Mangosuthu Gatsha Buthelezi has come out in support of FW de Klerk, who has been slammed by other political leaders and activists for advising the Swiss banks to fight the apartheid class action lawsuits that have been filed against them.

Buthelezi: „During the days of apartheid my stance was well known against the use of sanctions. I personally went to talk to the banks about investing in South Africa to create jobs. Now I cannot turn around and tell the same people I asked to invest in South Africa, not to fight the court action.“

(Sapa, 22.11.02)

22-11-2002

John Ngcebetsha, lawyer for the Apartheid Claims Taskforce which brought the Ntsebeza class action suit in June:

„What we became aware of is that the Swiss banks, immediately after we had filed against them, hired a PR agency to deal with the adverse publicity that they would suffer. De Klerk is the obvious candidate to deal with the PR... as he had been the chief facilitator of apartheid.“

(Sapa, 22.11.02)

27-11-2002

Media Statement Apartheid Debt & Reparations Campaign - Jubilee South Africa:
Jubilee SA responds to reported comments by Cabinet Ministers:

„In response to widely reported comments attributed to the Minister of Finance and the Minister of Justice that the South African government ‚would not back apartheid reparations claims because they would harm attempts to woo foreign investment‘, Jubilee SA said in a statement issued today:

,In all our discussions with South African government ministries it is clear that the position of the South African government is neither to oppose nor to actively support the reparations lawsuits, since citizens have an undeniable right to legal recourse. The rule of international human rights law must be upheld.

It is apparent that the comments attributed to the Ministers are therefore inaccurate. The reports should neither be seen as a change of the South African governments' position nor interpreted as an indication that the government opposes calls on banks and businesses that propped up the apartheid regime to repair the social damage that their apartheid profiteering made possible.

The reports asserted that individual compensation for apartheid victims will be insufficient to undo the damage done by apartheid. Jubilee SA and its campaign partners agree. We have consistently called for reparations that include:

- > an acknowledgment that profiting from the apartheid crime against humanity was wrong;
- > financial backing for broad social programmes for the reconstruction and development of the most damaged communities;
- > individual compensation for victims who suffer persistently debilitating damage;
- > unconditional cancellation of any outstanding apartheid debt repayments;
- > other indirect forms of reparation such as increased investment in affected communities, interest-free loans, and preferential terms of international trade that benefit the poor.”

(Media Statement Apartheid Debt & Reparations Campaign - Jubilee South Africa, 27.11.02)

12-2002

The Multi-District Litigation Panel (MDL) decided that three of the apartheid class action suits filed by Ed Fagan in New York and New Jersey are to be consolidated. They will be treated by Judge Richard Casey at the Southern District Court in New York. The Khulumani case is being treated separately, for the moment.
(SDA, 15.1.2003)

2-12-2002

Question during parliamentary question time by MP Nils De Dardel of the Social Democrats:

„The Federal Council is hereby asked whether it has assisted, be it politically, diplomatically or logistically, Swiss companies against whom cases have been filed in the US concerning their economic co-operation with apartheid South Africa. How many working meetings have taken place between the working groups of the Foreign Affairs and Economic Affairs Departments and representatives of the Swiss economy in that respect? And did any similar meetings take place with Swiss representatives who are in favour of reparations for the victims of apartheid - and if so, with which organisations exactly?“

Reply:

„The Foreign Affairs department presides over an inter-departmental working group and a 'contact group' with representatives of the private sector, which follow developments regarding the campaign by 'Jubilee South Africa' and treat questions regarding our relations with South Africa in this context. Doing that, the Federal Council takes this question seriously and closely follows this issue. It intends mainly to guard against possible negative repercussions for the otherwise excellent relations between South Africa and Switzerland, and to protect the legitimate interests of the Swiss economy.

The first meeting of the contact group took place in July 2000 at the request of the business community. Until today, it met nine times (five times in 2002).

In addition, the Federal Council and the representatives of the administration dealing with this issue maintain contacts with all the interested parties: parliamentarians, representatives of the political parties, media, NGOs, representatives of the churches etc. It has happened, in this context, that offers for contact have remained unanswered.“

(Question 02.5213. De Dardel: Procédures judiciaires aux Etats-Unis contre les entreprises. 2. 12. 02)

2-12-2002

Question during parliamentary question time by MP Pia Hollenstein of the Green Party:

„In their statements regarding the cases filed by apartheid victims in the US, representatives of the CS Group (Oswald Grübel, Co-CEO, in an interview with Swiss radio DRS on 14.11.02; CS Group spokesperson Andreas Hildenbrand, in an interview with SDA/St.Galler Tagblatt on 13.11.02) requested that governments and companies talk to each other regarding these cases. A dialogue concerning unclear matters should be conducted on a political level by the responsible bodies, namely the Swiss Foreign Affairs Department. What is the attitude of the Federal Council regarding this proposal? Why is the Swiss government not taking the same position as the South African government? The latter emphasizes that it is the right of all its citizens to participate in such litigation, and that it would not interfere in this issue.“

Reply:

„A contact group between the business community and the federal administration which follows the development of the campaign by ‘Jubilee South Africa’ and treats the respective questions regarding our relations with South Africa in this context has existed for two years.

The representatives of the banks particularly stated that the cases brought by the apartheid victims referred to a fundamental question which goes beyond the relations of Switzerland with South Africa during apartheid: What kind of economic relations can one have with countries which do not respect international law and human rights?

The Federal Council already tackled this question in its position ((on the Ntsebeza class action)) of June 26, 2002. It stated there that such cases could not give an answer to this specific question.

According to the South African press of last week, the South African government has decided neither to support nor to reject the legal action launched in the US. Penuell Maduna, the Minister of Justice, has indicated that the government did not support the call for individual reparations and that it was in the interest of the country that foreign companies continued to invest in South Africa, which would be to the benefit to the whole population. Besides, certain representatives of the South African government had previously distanced themselves from these cases and others had declared that every South African citizen had the right to participate in these cases.“

5-12-2002

Statement on a South African Cabinet Meeting (excerpt):

„Cabinet reiterated its recognition of the right of all citizens to undertake legal action on any matter. Government however is not party to this litigation; and it neither supports nor opposes it.“

15-12-2002

The MDL-Panel decides that all apartheid complaints will be handled by Judge Casey at the Southern District of New York. Michael Hausfeld appeals this decision.

2003

1-2003

International Apartheid Debt and Reparations Campaign: Declaration

1-2003

Invitation to Hausfeld withdrawn:

In February, Michael Hausfeld should have held a lecture in Zürich on the subject of „being sued in the USA“, at the invitation of the Swiss-American Chamber of Commerce. The lecture is cancelled, however. Walter H. Diggelmann, director of the Chamber of Commerce: „We had been talking to Michael Hausfeld, but then we didn't follow up on the issue, as Michael Hausfeld is a highly controversial person. Such an occasion would probably not have been well understood by the Swiss business community.“

(NZZ am Sonntag, 19.1.03)

15-1-2003

Judge Richard Casey withdraws from Ntsebeza class action suits. The reason given by Casey: He had a conflict of interest, as he owned large amounts of shares of one or several of the defendant companies.

To exempt oneself is prescribed by the judges' code of ethics in the case of a personal financial interest arising. Casey's withdrawal leads to a further delay.

(Neue Zürcher Zeitung, 16.1.03)

22-1-2003

The Multi-District Litigation Panel (MDL) decides to transfer the Ntsebeza class action suits to the New York judge John E. Sprizzo. Sprizzo is considered conservative.

(SonntagsZeitung, 26.1.03)

On the same day, the MDL panel also decides to transfer the Khulumani case to the Southern District Court/Judge Sprizzo.

21-2-2003

Michael Hausfeld applies for the separate treatment of the Khulumani and the Ntsebeza cases.

(NZZ am Sonntag, 23.2.03)

3-2003

Apartheid litigation and the Swiss Churches

Like the Swiss business community and government, the Swiss church representatives now emphasize that the cases had massively reduced the room for manoeuvre. The litigation blocked the reconciliatory efforts to engage in a historical clarification process, says Antonio Hautle, director of „Fastenopfer“. The Federation of Swiss Protestant Churches and the Bishops' Conference are not going to lobby amongst parliamentarians for a yes-vote on the Hollenstein initiative. Since the cases

have been filed, both the Federation and the Bishops' Conference have struggled to re-define their positions regarding reparations. It seems, as if they both would relapse to something less than the positions they had held in 2001 on the question of a thorough review of the relations between Switzerland and South Africa during apartheid.

Christoph Stückelberger, general secretary of „Bread for All“ envisages a kind of „third way“ between doing nothing and supporting the cases. He still is of the view that something could be done by way of a „dialogue“. A dialogue on two levels: Firstly, „Bread for All“ should „challenge“ Swiss business and the Swiss government, to further investment in South Africa. The reason being that since the repeal of apartheid „a dramatic disinvestment has taken place, and an increasing disinterest.“ First one would have to start nationally, then he could imagine that an international investment conference take place. Secondly, Stückelberger also considers it necessary to „give a clear signal to the victims of apartheid“. Those 21'000 victims identified by the TRC who have been waiting for money for years should be given priority in receiving reparations payments. The amount of 500'000 Swiss Francs paid by the Swiss government into the President's Fund is considered insufficient by Stückelberger. „More money should be paid into that Fund. That would be a visible sign.“ Apart from government, banks and companies should participate in these costs - as well as other foreign as well as South African companies and the South African government.

Already in October 2002, Stückelberger and Antonio Hautle had met, „deliberately without a mandate“, with representatives of UBS and CS Group. The aim had been to gauge the „room for negotiation“. The banks, however, had been „very reticent“ on account of the cases pending. Stückelberger will now coordinate the next steps with the South African partner churches, the Federation of Swiss Protestant Churches and the Swiss Protestant Churches' Development Agency, Heks.

(Tages-Anzeiger, 3.3.03)

13-3-2003

The Hollenstein initiative is threatened:

The centre-right parliamentarians who had supported the initiative when it was initially submitted, have changed their positions. Doris Leuthard, CVP: The apartheid cases had changed the situation: „It would be dangerous to open the archives and thereby make lines of argument accessible to lawyers for the plaintiffs.“ In addition, one of the two large Swiss banks had stated its intention of becoming engaged in development projects in South African and of thereby contributing to a better future for the country. „I do not want to threaten this development“, says Leuthard. She wouldn't say whether the statement had been made by UBS or by CS Group.

(WochenZeitung, 13.3.03)

14-3-03

South African Cardinal Wilfrid Napier visits Switzerland and openly supports the apartheid litigation.

(Tages-Anzeiger, 15.3.2003)

31-3 to 1-4-2003

Strategy seminar of the international Apartheid Debt and Reparations Campaign in Frankfurt with campaign representatives from South Africa, Great Britain, Belgium, the Netherlands, Germany and Switzerland as well as with the lawyers.

4-4-2003

Media statement by Anglo-American in reaction to reports that Fagan had filed a case against the company in the US: it „strongly rejected“ these attempts.

„Anglo-American believes that the question of whether reparations to individuals is an appropriate or effective way to assist in the rebuilding of South Africa is a matter to be resolved through South Africa’s democratic processes - including, if necessary, its courts - as part of South Africa’s ongoing broad efforts to bring about reconciliation and reconstruction after apartheid. The company has already made extensive contributions to the process of reconciliation and reconstruction that is underway in South Africa, including active partnership with South Africa’s many governmental and non-governmental initiatives to redress the effects of apartheid.“

(Sapa, 4.4.03)

9-4-2003

Apartheid reparation lawsuits against South African corporations are untimely: Media Statement of the Apartheid Debt & Reparations Campaign - Jubilee South Africa

„(...). After thorough consultation over the past two years, the Apartheid Debt & Reparations Campaign believes that a different approach is required to encourage South African corporations, as compared to foreign corporations, to repair the persistent social and individual damage done by apartheid. (...) corporations should at this stage be engaged through processes of national dialogue in the framework of the Truth and Reconciliation Commission (TRC) recommendations for reparation, rather than in courts. (...).

While there are legal grounds for reparations claims, court proceedings should be a last resort only if business fails to respond adequately to a process of dialogue about their liability for apartheid reparation, as was the case with the foreign corporations. Recognising that South African corporations have to date not made significant contributions to reparations funds, we urge the corporations to engage with the victims of apartheid in whose name lawsuits have been filed, through their representative organisations, including the Khulumani Support Group and Jubilee South Africa, on how they can contribute to apartheid reparation. (...).“

(Apartheid Debt & Reparations Campaign - Jubilee South Africa. Media Statement, 9.4.03)

10-4-2003

Statement issued by Anglican Archbishop Njongonkulu Ndungane, concerning apartheid reparations from South African and foreign corporations:

„It is time for the matter of apartheid reparations by South African and foreign corporations to be resolved through a process of dialogue rather than in court. (...). (...), we must all recognise that legal complaints are simply formal mechanisms to lodge a grievance. These grievances can be taken up and resolved without costly and extended court proceedings.

I believe that it is possible, through a process of dialogue in South Africa, to settle the matter of reparations by South African corporations without it having to be decided by American courts. I therefore urge South African corporations to enter into dialogue with victims of human rights violations through their organisations and representatives to have this matter settled. (...). Similarly, I am convinced that multinational banks and businesses that originate in other countries should equally approach the apartheid reparations claimant groups so as to discuss an appropriate resolution to this matter. In the interests of truth, justice and reconciliation, I express

my willingness and commitment to work towards the resolution of the matter of apartheid reparations in the best possible manner (...).“
(Statement Njongonkulu Ndungane, 10.4.03)

15-4-2003

In his speech at the opening of the parliamentary debate on the final report of the Truth and Reconciliation Commission, Thabo Mbeki expresses the South African government's attitude to the apartheid litigation:

„In the recent past, the issue of litigation and civil suits against corporations that benefited from the apartheid system has sharply arisen. In this regard, we wish to reiterate that the South African government is not and will not be party to such litigation. In addition, we consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution of the promotion of national reconciliation. While Government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC. (...).“

(Statement to the National Houses of Parliament and the Nation at the tabling of the Report of the Truth and Reconciliation Commission, 15. 4.03)

The Minister of Trade and Industry, Alec Erwin, during the same debate, said that it was abuse to use the „unsound“ law of another country to undermine South Africa's sovereign right to settle its past and build a future as it saw fit.

„The government rejects the actions of legal practitioners in the USA to exploit our history and will not allow any judgment made in the USA or elsewhere to be carried out in South Africa.“

(Sapa, 15.4.03)

16-4-2003

Press release by Jubilee South Africa and Khulumani in reaction to the South African parliament's response to the Final Report of the TRC:

„(...).

We note with concern the gigantic retreat taken by our President today in his conclusion of the work of the TRC. (...).

Our current civil suits target foreign corporations. To the local corporations within the borders of our country we say: we would not prefer to deal with you in a court of law whether it be a foreign or a local court. Our preference is to call on you to use this moment so the purpose of opening up a meaningful dialogue with our organisations in achieving the following outcomes:

- > acknowledgment of guilt
- > devising public processes of redress
- > searching for human rights driven process of investment
- > reconstructing economic alternatives in South Africa whose aim is to invert the process of redistribution to make it flow from the rich to the poor
- > constructing models of bringing immediate relief to the pressure of poverty on our people as the basis of ensuring a process of eradicating poverty.

To this end, Khulumani Support Group and Jubilee South Africa are convoking a national conference at a date and venue to be announced soon in order to allow the

ordinary citizens of our land concretely to prepare an alternative position on reparations based on the stand we have taken in relation to foreign corporations. That specifically applies to South African corporations. This conference will (...) designate a process of social mobilisation and political intervention that will not exclude the taking of South African companies to court if they are unwilling to address our platform. (...).“

(Press release issued by the National Executive Committees of Jubilee South Africa and Khulumani Support Group, 16.4.03)

16-4-2003

The Swiss Federal Council decides to „temporarily prevent“ access to records in the federal archives. Extracts from a press statement of the Finance Department: „(...) At its meeting yesterday, the Federal Council saw itself forced to take this step: In view of the class action suits filed in the US against local and foreign companies which operated in South Africa during the apartheid era, free access to the records, as practised until now, would hold the danger of worsening the position of the Swiss defendants as compared to the foreign defendants. (...). The Federal Council weighed the results of research being as broadly based as possible on the one hand against equal opportunity for all in international court cases on the other hand and decided to protect the principle of Swiss and foreign legal parties' equality before the law. (...).

The Federal Council explicitly wants to limit access only for a finite period and will periodically review whether the context once again allows for the broad-based opening of the archives.(...).“

(Swiss Finance Department, 17.4.03)

3-5-2003

Closed Federal archive: strongly-worded letter of protest by the association of Swiss historians (SSG) to the Federal Council:

The Swiss Society for History (SSG) criticises the decision to ban access to the federal archives as „massive interference in the constitutional right to freedom of research“.

(Tages-Anzeiger, 3.5.03)

10-5-2003

Statement by Archbishop Njongonkulu Ndungane, following a meeting with the litigants in the case involving South African corporations and victims of human rights violations under apartheid at Bishopscourt, Cape Town:

„This morning I had the first informal meeting with representatives of Jubilee 2000, the Khulumani Group, the Apartheid Debt and Reparations Campaign, the Apartheid Claims Task Force, Mokoena attorneys and the SACC. The principle of dialogue rather than litigation was discussed and all groups are agreed that dialogue is the preferred course of action. The courts should be a last resort. (...).

My intention is to pursue that course through dialogue and a way forward acceptable to all parties. What I do not want is the adverse publicity for our country that will result if we hang our dirty linen out in international forums. It is an absolute necessity for all the parties to come to the table. From what I heard from the claimants today it is imperative for me to seek a meeting with the business community and government to share what the claimants are saying. I believe they too will agree on the importance of dialogue.(...).„

(Statement Njongonkulu Ndungane, 10.5.03)

19-5-2003

Court hearing in the Fagan/Ntsebeza class action suits by Judge John E. Sprizzo. The lawyers for the Swiss company Sulzer present their arguments for a dismissal of the suits against the company.

Several defendants, among them UBS and Nestlé press for an expedited process. Sprizzo decides that the parties should hand in their arguments in writing by summer. On November 6, during a further court hearing, there will, for the first time, be a material discussion as to whether the Fagan/Ntsebeza class action suits are to be admissible or dismissed.

(Tages-Anzeiger, 20. and 21. 5.03)

6-2003

In an interview with the South African newspaper „The Sunday Independent“, South Africa's Justice Minister Penuell Maduna disclosed that the big corporations against which complaints have been filed in US courts had pledged to make community reparations in return for state support to squash the claims.

„Business has been talking to us with their lawyers“, Maduna said in that interview in June 2003. „They said they are willing to work with us in order to convince American courts that as South Africans we can find workable and less destructive solutions.“

Maduna said foreign and local companies had warned the government that the lawsuits could result in massive job losses.

(Sunday Independent, 27.7.03)

4-6-2003

Speech by John Kane-Berman, South African Institute for Race Relations, at a lunch organised by the Swiss-South African Association in Zürich for its members and some Swiss journalists:

„(...). The charge in these court cases is extremely slim, the probability, that they will be successful in court is very small.“

Kane-Berman warns the defendants not to agree to an out-of-court settlement: „Each reparations payment would be interpreted as an acknowledgment of guilt and would seriously harm the reputation of the corporations concerned.“

He said that the class action suits depended far too much on the one-sided/biased reports of the TRC. Whether entrepreneurs had been for or against racial segregation, they all had, through the promotion of economic growth, contributed to the unavoidable collapse of racial segregation. Neither Swiss banks nor other corporations had come to the rescue of the apartheid system: „As early as the 1980s, there was no way apartheid could be saved any more, my institute had already made that clear publicly then.“

Instead, those companies that remained active in South Africa in spite of the massive international pressure should today be proud of having contributed to the creation of the strongest economy and infrastructure in the whole of Africa.

(Tages-Anzeiger, 5.6.2004)

11-6-2003

Report in „Neue Zürcher Zeitung“ (NZZ) on Mbeki's visit to Switzerland. Title: South Africa rejects class action suits.

„During his state visit to Bern this Tuesday, the South African president, Thabo Mbeki, made it very clear that his country rejects the class action suits filed in the US against corporations that were active in South Africa during the apartheid era.“

At a press conference with the President of the Federal Council, Pascal Couchepin and in an interview with NZZ, Mbeki explained that matters concerning South Africa could not be decided by a court in another country. South Africa would deal with its past itself and had created the necessary mechanism to do so with the Truth and Reconciliation Commission. In addition, it was important that South Africa concentrated on creating its future and not concentrate one-sidedly on a historical clarification process. His country would not go the way of punishment, but the way of reconstruction, Mbeki emphasised in the interview with NZZ. Foreign companies should assist in this venture. On the question of whether foreign corporations had to bear any responsibility for the injustices of the apartheid era, the South African president declared that the companies concerned were aware of the situation which had existed at the time. No larger company had up to now disputed that. At the same time, the corporations had been prepared to make a contribution to overcoming the past. In 2001, a trust fund had been created in Switzerland, which was used for channelling aid. When asked if Swiss or other foreign companies should, over and above the contributions made so far, make further payments for the rehabilitation of the country and the people concerned, Mbeki answered that additional means were always welcome. But that would not mean an obligation for further reparations payments. (...).“
(Neue Zürcher Zeitung, 11.6.2003)

12-6-2003

KEESA press statement:

„The weekly news magazine Facts today published an illuminating article on official documents of the 1980s, which show how willingly the Swiss authorities had accepted, if not actively supported, the ineffectiveness of the ceiling on capital exports - even though they had presented a completely different image of themselves to the national and international public - and have done so until this day. The article makes it look as if coordination between the authorities and business regarding economic co-operation with the apartheid regime went a lot further than was ever admitted by the government. (...). We ask what the real reasons were for banning access to the state archives and whether it really was mainly because of the US litigation. (...).

When considering this article, we also ask whether the Federal Council, by taking that recent decision regarding the closing of the archives, did not quite readily accede to the pressure of the defendants - in order to hide the authorities' two-faced approach, which presented the ceiling on capital exports as an alibi for the public which was critical towards apartheid and secret agreements with the business community about how to circumvent the same. (...).“
(Media statement KEESA, 12.6.03)

13-6-2003

The MDL panel decides that the Khulumani case be transferred to the Southern District of New York (judge Sprizzo). The appeal by Hausfeld/Abrahams against its first decision on January 22 was unsuccessful.

The transfer order states that the Khulumani case be transferred to the said District for inclusion in the coordinated or consolidated pre-trial proceedings occurring there. It is now up to the Judge, John E. Sprizzo, to decide whether to coordinate or consolidate all the cases.

(Transfer Order of the MDL Panel decision 13.6.03)

15-6-2003

Article in the South African „The Sunday Independent“:

Foreign lawsuits dehumanise apartheid victims, says Chikane

„Frank Chikane, the director general of President Thabo Mbeki's office, has slated 'interest groups' filing civil lawsuits against multinationals in the United States for 'dehumanising' victims of apartheid-era gross human rights violations.

'I have seen victims being organised by interest groups who make them perpetual victims. They will never cease to be victims because they ((interest groups)) need victims to advance their cause. And I think it is a dehumanising act.' (...). His remarks coincide with yet another statement by Mbeki in Switzerland this week against foreign lawsuits (...). Chikane, who himself appealed for sanctions in the 1980s, played a key role in synthesising the government's response to the TRC. This week he spoke openly about the effect his own painful experiences during apartheid had had on his views on reparations and reconciliation. He emphasises that he too was a victim, speaking 'as part of the victims'. (...). 'I make a vast difference between victims and interest groups. And we shouldn't try to equate specialist NGOs with victims because they are arguing on behalf of victims, when in fact they don't support them.' (...).

'You know there is this new concept of democracy that civil society understands more than democratically elected people', Chikane said, revealing his doubts about the role civil society plays in the post-apartheid era. 'Civil society is not elected by anybody... ((it is)) just interest groups which organise around particular issues.'

He said there was no clarity on who would get the money if the law suits succeeded.

'So I really sympathise with the victims who are carried by what I call the special interest groups. They ((interest groups)) hire lawyers...who want to make money and they organise a few victims. They make them believe they will get money.'

His rejection of the suits rested on the principle that 'we did not fight the liberation struggle with a view of paying revenge'. Chikane emphasised: 'I did not fight the struggle with the expectation that those who oppressed me will have to pay me for what they did. But somehow there are people who think South Africa must be an experiment. To deal with things that the world has not been able to deal with. Those of us who say we don't think that going to New York to set up a case there ((in order)) to challenge businesses here to lose money, and therefore to lose jobs... believe it is not the best way to compensate for the past, because you risk destroying the future.' (...).“

(The Sunday Independent, 15.6.03)

16-6-2003

Speaking to the Swiss parliament, Finance Minister Kaspar Villiger, for the first time concedes that the Federal Council fears „compensation claims aimed at the state from companies, banks and bank clients“. Villiger denied, however, that there had been „threats“ to this effect from companies involved.

(Tages-Anzeiger, 19.6.03)

20-6-2003

The Swiss parliament rejects the Hollenstein initiative with 103 votes against 67 (no abstentions).

Furthermore, the majority of parliamentarians explicitly support the decision of the Federal Council to „temporarily“ ban access to the state archives.

(Neue Zürcher Zeitung online, 20.6.03)

11-7-2003

South Africa's Minister of Justice and Constitutional Development, Penuell Maduna, files a 9-page affidavit with the court in New York, addressed to Judge Sprizzo, calling upon him to dismiss both the Fagan and Khulumani lawsuits.

„1. (...).

2. (...). It is the government's submission that as these proceedings interfere with a foreign sovereign's efforts to address matters in which it has the predominant interest, such proceedings should be dismissed.

3. (...). 3.2.4. It is my respectful submission that the government's views on matters which fall within its sovereign domain should be respected in all forums.

(...)

7. The decision taken by Cabinet not to support the litigation was not taken lightly.

(...). The principal reason for the Cabinet's decision was that as the Mandela government in 1994 and the Mbeki government in 1999 were both elected by an overwhelming majority of the population, on a programme of thorough socio-economic transformation aimed at redressing the legacy of apartheid, it would make little sense for the government to support litigation which not only sought to impose liability and damages on corporate South Africa but which, in effect, sought to set up the claimants as a surrogate government. Accordingly, on 16 April, the Cabinet, after extensive discussions of the matter at Cabinet committee level, resolved that:

'It remains the right of the government to define and finalise issues of reparations, both nationally and internationally. In this regard, it is imperative for the government to clearly express its views on attempts to undermine South African sovereignty through actions such as the reparations lawsuit filed in the United States of America by a US lawyer, Mr Ed Fagan, against two South African mining firms and the participation of South African lawyers in such procedures.'

8.1. The government's policy is to promote reconciliation with and business investment by all firms, South African and foreign, and we regard these lawsuits as inconsistent with that goal. Government's policies of reconstruction and development have largely depended on forging constructive business partnerships. Its 1996 Growth, Employment and Redistribution (Gear) strategy further acknowledged the importance of the private sector that faster economic growth offers the only way out of poverty, inequality, and unemployment, that such growth is driven by both foreign and local private sector investment, and that government's principal role is to create an enabling environment for such investment. (...).

9. The government accepts that corporate South Africa is already making a meaningful contribution to the broad national goal of rehabilitating the lives of those affected by apartheid. Over and above its existing corporate social investment programmes, business has been in partnership with the government in the R1-billion (approximately US\$ 133 million) Business Trust. (...). Further initiatives in partnership between business and government, as well as other social actors, are being prepared (...).

10. The remedies demanded in the current litigation in the United States - both the specific requests (such as for the creation of a historical commission and the institution of affirmative action programmes) and the demand for billions of dollars in damages to be distributed by the US courts - are inconsistent with South Africa's approach to achieving its long term goals. (...). As indicated above, the government has its own views on appropriate reparations policies and the appropriate allocation of resources to develop our economy. I would also make the point that matters of domestic policy which are pre-eminently South African should not be pre-empted by litigation in a foreign court.

11. It is also the view of the government that the issues raised in these proceedings are essentially political in nature. These should be and are being resolved through South Africa's own democratic processes. Another country's courts should not determine how ongoing political processes in South Africa should be resolved, not least when these issues must be dealt with in South Africa. In addition, the continuation of these proceedings, which inevitably will include massive demands for documents and testimony from South Africans involved in various sides of the negotiated peace that ended apartheid, will intrude upon and disrupt our own efforts to achieve reconciliation and reconstruction.

12. Permitting this litigation to go forward will, in the government's view, discourage much-needed direct foreign investment in South Africa and thus delay the achievement of our central goals. Indeed, the litigation could have a destabilising effect on the South African economy as investment is not only a driver of growth but also of employment. (...). If this litigation proceeds, far from promoting economic growth and employment and thus advantaging the previously disadvantaged, the litigation, by deterring foreign direct investment and undermining economic stability will do exactly the opposite of what it ostensibly sets out to do.

13. I understand that under United States law, courts may abstain from adjudicating cases in deference to the sovereign rights of foreign countries to legislate, adjudicate and otherwise resolve domestic issues without outside interference, particularly where the relevant government has expressed opposition to the actions proceeding in the United States, and where the adjudicator in the United States would interfere with the foreign sovereign's efforts to address matters in which it has the predominant interest. The government submits that its interest in addressing its apartheid past presents just such a situation."

(Minister Penuell Maduna to Mr Justice John E. Sprizzo, 11.7.03)

6-8-2003

Response of Khulumani plaintiffs to the letter of the South African Government (to Judge Sprizzo):

„At the hearing on July 31, 2003, the Court commented that the letter it had received from the South African government was something it 'can't ignore'. To the contrary, the Court can and must ignore that letter in the Khulumani litigation. (...). The opinions and policies expressed in the South Africa letter are irrelevant and inapplicable to the 'four corners' of the Khulumani complaint. (...).“

(Response of Khulumani Plaintiffs to the Letter of the SA Government, submitted to the US District Court, Southern District of New York, 6.8.03)

6-8-2003

Letter by Joseph E. Stiglitz to Judge John E. Sprizzo (US District Court for the Southern District of New York) in support of the Khulumani-complaint:

„Dear Judge Sprizzo,

I submit this letter in connection with the Khulumani litigation only.

South Africa has expressed a concern that recent suits in America intended to address issues of abuses of basic individual rights during the Apartheid regime in South Africa risk having an adverse effect on growth and development in South Africa. I see no basis for these concerns.

To be sure, foreign firms, in making a decision about whether to invest in South Africa today are concerned with what is sometimes called the overall business climate. Among the factors which determine the business climate are governmental attitudes towards business and broader social and political stability. The South

African government has long demonstrated a positive attitude towards business. Like any government, it wants to be sure that business operates in a responsible way, and the rules and regulations that are imposed to ensure that that happens should not be, and by and large are not, viewed as anti-business. Indeed, the successful application of such rules and regulations contributes to social and political stability, and this in turn makes a positive contribution to creating a favorable business climate.

The suits in American courts say nothing, of course, about the attitude of South Africa's government towards business. If, in fact, American businesses did aid and abet the system of Apartheid, which resulted in such abuses of individual rights, then it is important that this form of corporate misconduct be addressed; and knowing that such abuses can be effectively addressed contributes to overall confidence within society towards business; it helps create a more positive business climate.

Businesses themselves are forward looking. They ask, what are the opportunities for profits today and in the future? If a firm has polluted in the past, making it pay for that past pollution may deter it from polluting in the future, but will not deter it from entering into profitable investments. No one would argue that one should not impose fines or penalties for past pollution because doing so would discourage future investment. Such arguments would imply that no firm would ever be held accountable for past misbehavior. So too in the cases at hand. Apartheid is a matter of the past, though its consequences live on. Those who helped support that system, and who contributed to human rights abuses, should be held accountable. Holding them accountable will contribute to confidence in the market system, creating a more favourable business climate. If anything, it will thereby contribute to South Africa's growth and development."

(Joseph E. Stiglitz to US District Court Judge John E. Sprizzo, 6.8.2003)

25-8-2003

Mandela criticises the apartheid litigation:

„South Africans are competent to deal with issues of reconciliation, reparation and transformation amongst themselves without outside interference, instigation or instruction. We have dealt with our political transition in that manner and we are capable of dealing with other aspects of our transformation in similar ways.“

(Sapa, 26.8.03)

27/28-8-2003

Civil Society Reparations Conference in Randburg, South Africa

Roughly 50 organisations participate; Minister of Justice Penuell Maduna talked about the South African government's position regarding litigation: „We recognise everyone has the right to approach the courts and have matters settled... We are not taking away this right, but spelling out our position. (...). Once we decide international courts should decide for us, we impair our sovereignty and proclaim we are subservient to those courts.“

On the question of why he had written a letter to Judge Sprizzo, Maduna said South Africa had been asked by the US government to educate them about the government's position regarding litigation in the US courts.

Maduna said government would rather use dialogue than litigation to solve the problem of business reparations. „We are prepared to engage in dialogue. This is much more helpful than going down the route of litigation. We have no desire whatsoever to prejudice the right of those that go that route, but let's have the opportunity to dialogue on these matters. (This would) get a better result on a long-term basis.“

Njongonkulu Ndungane urged corporations to participate in dialogue and appealed to government to support and facilitate this process. Court action was the last resort, he said.

Ndungane also suggested South Africans, both big business and individuals, should mark the tenth anniversary of democracy in 2004 by contributing to a national reparation fund, of which 20 percent would be used to pay out victims of apartheid and 80 percent would be spent on restructuring.
(Sapa, 28.8.03)

Press release on the National Civil Society Reparations Conference:

„This conference on ‚Opening Civil Society Dialogue on Reparations‘ has unequivocally called for the opening of constructive dialogue with government with regard to reparations.

We call for the implementation of the TRC recommendations on reparations. We regard these as minimal recommendations. We reject the proposed R30 000 once off payment to victims as grossly inadequate. (...).

We call on government to withdraw their affidavit lodged in the US court system opposing our lawsuits. We reassert our right to legal action in pursuit of justice. We are very concerned at the failure of business to accept our invitation to participate in mediation providing that there is full disclosure by all parties and mediation is not a whitewashing exercise. This would require a fundamental change of heart and approach. The Archbishop Ndungane has agreed to lead the dialogue process. (...).“
(Press release: National Civil Society Reparations Conference, Randburg, 28.8.03)

31-8-2003

Article in the South African „Sunday Independent,, title: President in bid to avert reparations litigation:

„An urgent meeting between big business and the apartheid victims who are suing the corporations in a New York court, is being convened by President Thabo Mbeki in an attempt to reach a negotiated settlement. Bheki Khumalo, Mbeki’s spokesperson, said the president would hold the meeting next month. The announcement followed a promise this week by Penuell Maduna, the justice minister, to mediate between the victims’ lawyers and big business, whom the victims accuse of aiding and abetting apartheid while making unjust profits. (...). Maduna’s promise was seen as an about-turn from his earlier stance of condemnation of the litigation, to the extent that he wrote to the American judge asking for the cases to be dismissed. The surprise u-turn happened at a national reparations conference this week, convened by Anglican Archbishop Njongonkulu Ndungane in a last-ditch effort to find an out-of-court settlement. ‚We believe this will make a meaningful contribution towards the broader reparations issue‘, Maduna told the conference. ‚We have no desire whatsoever to deny the rights of the most vulnerable. If these rights can only be secured in courts, we won’t stand in the way.‘ (...). Maduna earlier told Independent Newspapers that business had warned the government that massive job losses could follow if they were forced to pay up, and had asked for state support in quashing the cases. The litigants’ memorandum for discussion with business calls on the corporations to agree that ‚companies may have unjustly profited from apartheid‘, that ‚there is no programme for reparations through which affected victims could make claims‘, that ‚mediation would be in everyone’s best interest‘, and that this should be aimed at the ‚creation of reparations funds through which victims may receive benefits‘. The victims are also demanding that Maduna withdraw his declaration to the New York court. MP Giyose, national chairperson of Jubilee, which is supporting two of the lawsuits, said

Jubilee had already written to Maduna to demand the withdrawal. „We are prepared to consider that he can become an honest broker between the reparations movement and business, as an elected custodian of people's interest, but he cannot carry out his function when he has an affidavit in court supporting one side', Giyose said. (...).

(The Sunday Independent, 31.8.03)

2-9-2003

Brief of Amici Curiae in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss ((the Khulumani complaint)), by KEESA

(Brief of Amici Curiae in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss, United States District Court, Southern District of New York, 2.9.03)

9-10-2003

Advocate Dumisa Ntsebeza at the Black Management Forum's annual conference in Cape Town:

„There is more than just a moral obligation on the part of business to contribute to the reparations process. There is also a legal duty. What the apartheid lawsuits seek to do is exactly that.“

Ntsebeza said business had never approached the Truth and Reconciliation Commission to make full disclosure and apply for amnesty while they had the chance, because they were in denial. „They still are. They are stronger in denial because, for whatever reason, they are now defended and supported by the democratic government in the lawsuits. (...).They fit the classical bill of those who proverbially hunt with the hounds and flee with the hares. During the apartheid era, they hunted with the apartheid state in its internationally recognised violations such as extra-judicial killings, torture, genocide, arbitrary detention... During democracy, they have suddenly become hares who run and seek refuge under the welcoming petticoats of our democratic government in the face of lawsuits.“

(Sapa, 10.10.03)

5-11-2003

Ed Fagan's mandate is terminated:

„We have terminated his mandate on the apartheid case“, said the South African lawyer John Ngcebetsha in the „Financial Times“. „We took the decision in the best interest of our clients.“

(Financial Times, 6.11.03)

5-11-2003

„The pressure from both the US and SA governments has been such that I would not be surprised if the judge ruled the case has no merit“ - an executive with one of the companies involved told the Financial Times

(Financial Times, 6.11.03)

6-11-2003

Hearing by Judge John E. Sprizzo at the Southern District Court of New York.

During the three hours of the hearing, Sprizzo apparently made it quite clear, that he considered the arguments of the plaintiffs too far-fetched and that he would dismiss the case.

6-11-2003

Statement by MP Giyose, chairperson of the Apartheid Debt and Reparations Task Team, on the removal of Ed Fagan from the Ngcebetsha lawsuit:

„(...) We applaud the action taken by Mr. J. Ngcebetsha and our Patron Advocate Dumisa Ntsebeza. We want to request them humbly to make sure that the reparations litigation in the USA will not in future survive in any manner as Faganism without Fagan. And that therefore these dear comrades will hold a discussion with us, as they often do, in which we will all seek to bring those litigation into proper alignment under the aegis of the Apartheid Debt and Reparations Task Team and the general authority of the National Reparations Movement. (...)“

(Statement by MP Giyose, Chairperson of the Apartheid Debt and Reparations Task Team, on the removal of Ed Fagan from the Ngcebetsha lawsuit, 6.11.03)

6-11-2003

The „November 6 Action Committee,, (Jubilee South Africa, Khulumani Support Group, Anti-Privatisation Forum, Khanya College, Samancor Retrenched Workers Crisis Committee, Soldiers Forum, South African History Archive, Youth for Work) marches to Barclays Bank in Johannesburg (symbolically representing all the defendants), on the day when, in New York, the next hearing of the apartheid case takes place, thereby supporting lawyers Abrahams and Hausfeld, and hands the Barclays' representative a memorandum regarding reparation litigation, which ends in the following way:

„This memorandum thus serves to reflect the growing mobilisation of South Africans and international allies in support of our claim. We offer you the promise that we shall continue to mobilise and organise support for the claim and for reparations. We will not rest until the just demands of the people have been met.“

(Reparations Yes! Memorandum presented by the November 6 Action Committee to Barclays Bank, 6.11.03)

12-03

Affidavit by Desmond Tutu to Judge Sprizzo: Supplemental Declaration in Opposition to Defendants' Joint Motion to Dismiss (regarding the Ntsebeza- and Digwamaje-complaints):

„1. I was Chairperson of the Truth and Reconciliation Commission (...). I make this Declaration in Opposition to Defendants' Joint Motion to Dismiss in the South African Apartheid Litigation (MDL No.1499 (the „Lawsuits“), that is currently pending before this Honourable Court.

2. During the latter years of apartheid, while I was Archbishop of Cape Town, I was one of the leaders of the campaign for non-violent opposition to apartheid. I considered that the most effective non-violent tool was a campaign of international economic sanctions, designed to pressurize the government by making the continuation of the system of apartheid economically unviable. I accordingly vigorously supported the international sanctions approved by the United Nations and other international bodies, and the various sanctions regimes enacted in many countries around the world, including some which were South Africa's major trading partners.

3. I have read the letters addressed to this Court of Dr. Penuell Maduna, dated July 11 and by the Legal Adviser, the Department of State, dated October 27, 2003. I have taken special note of the suggestion in the letter of the aforementioned Legal Advisor that adjudication of the Lawsuits by this Honourable Court would impede efforts at reconciliation and redress in South Africa, a suggestion which appears to be based upon a similar averral by Dr. Maduna in his letter of July 11, and the

associated allegation that the TRC process has provided the remedies sought by plaintiffs in these lawsuits. I have also taken special note of the suggestion, advanced by both the Legal Advisor and by Dr. Maduna, that the adjudication of these Lawsuits by this Honourable Court would deter future foreign investment in South Africa.

4. For the reasons that follow, it is my firm view that the aforementioned allegations by the Legal Advisor and Dr. Maduna are without merit.

5. Turning first to the issue of reconciliation and redress in South Africa, one of the functions of the TRC was to consider the question of reparations for victims of apartheid. It is important to understand that the Commission itself only had the power to place before the President and Parliament its proposals for the provision of reparations. It could not implement reparations, nor could it take the final decision as to the type of reparation measures to be implemented.

6. It is also important to understand that the TRC always took the view that its mandate was to consider *reparations* rather than *compensation* for victims of apartheid. As I have stated:

‘We agreed that there was no way in which anyone could claim to compensate, for instance, a family for the brutal murder of their beloved husband, father and breadwinner. There is no way of compensating the devastation of such a loss. ... Thus our recommendations to the President and Parliament provided that a sum of money reasonably significant in amount would be paid to those designated as victims, but that it would be acknowledged that it was really meant to be symbolic rather than substantial.’

7. Thus it was that the TRC considered that, in principle, a private corporation might be liable to victims of apartheid as a matter of civil law, quite independently of the TRC process. The Final Report of the TRC, dated March 21, 2003, stated that a claim against the Anglo American Corporation, one of the Defendants in this suit: ‘Would be based on the extent to which decades of profits were based on systemic violations of human rights. In legal terms, this could be based on the principle of ‘unjust enrichment’. ‘Unjust enrichment’ is a source of legal obligation. Actions based on ‘unjust enrichment’ are common to most modern legal systems. These kinds of claims give rise to an obligation in terms of which the enriched party incurs a duty to restore the extent of his/her enrichment to the impoverished party. Put differently, the impoverished party acquires a legal right to claim that the extent of the other’s enrichment be restored to him/her if it was acquired at his/her expense.’

8. In its Final Report, the Commission recommended that the government pay the then-equivalent of US\$375-million in reparations, to some 22'000 persons that testified before the TRC and claimed that they were individual victims of gross human rights violations committed by individual perpetrators.

9. On April 15, 2003, President Mbeki announced that he had authorized a one-time payment of approximately US\$74 million - \$300 million less than the sum recommended by the commission - to more than 19'000 victims whose need was characterized as ‘urgent’ by the commission.

10. Thus, the very different character and objectives of the TRC process on the one hand, and potential civil litigation on the other, make it clear that the assertion that adjudication of these Lawsuits would be at odds with the TRC, or otherwise undermine reconciliation in South Africa, is a *non-sequitur*. To the contrary, the obtaining of *compensation* for victims of apartheid, to supplement the very modest amount per victim to be rewarded as *reparations* under the TRC process, could promote reconciliation, by addressing the needs of those apartheid victims dissatisfied with the small monetary value of TRC reparations.

11. 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 had been granted amnesty with respect to the wrong. (Because no business corporations applied for amnesty under the TRC process, the hypothetical possibility that they may have been eligible to receive amnesty is of no consequence for present purposes). While I would have preferred to see disputes regarding compensation for victims of apartheid resolved in South Africa, to the extent that courts outside of South Africa do not enjoy jurisdiction over defendants in such suits, I would support the right of victims to seek redress in any country in the world where courts do have such jurisdiction.

12. Turning secondly to the suggestion that the adjudication of these Lawsuits by this Honourable Court may deter future foreign investment in South Africa, it is my belief, speaking as an individual who played a leading role in the disinvestment campaign against apartheid, that this proposal is entirely without foundation. It makes no sense to suppose that suits filed in a foreign jurisdiction that seek to hold foreign companies accountable for their collaboration with a prior regime would discourage foreign investors from sending capital into that country in the future. If anything, the contrary may be true. Placing corporations on notice that they will in future be held responsible for the effects of their investments in repressive regimes may well create an incentive for them to channel such investments into countries with a better human rights record.

13. The human rights records of governments are becoming an important item on the pre-investment due-diligence lists of multi-national corporations, and the adjudication of these Lawsuits, and others like them, by courts around the world will only encourage such a trend. Post-apartheid South Africa, which has an exemplary human rights record relative to many of the other developing nations competing for direct foreign investment, stands to be a great beneficiary of such a shift in the distribution of global direct investment.“

(Archbishop Desmond Tutu, Cape Town, South Africa, December 2003)

2004

24-1-2004

The director of international law of the Swiss foreign affairs department signs, together with the governments of Great Britain and Australia, an Amicus Curiae letter to the US Supreme Court. It refers to a court case in which the US government negates the right of Humberto Alvarez-Machain, a Mexican citizen, to take a person hired by the US Drug Enforcement Agency to abduct and bring him (Alvarez) to the US for trial, to court. This case – the first of its kind before the US Supreme Court – will be path breaking for the future of the right of foreign victims of gross human rights violations to go to court in the USA, based on the Alien Tort Claims Act (ATCA). The letter signed by the Swiss foreign affairs department relies on the South African government's Amicus Curiae letter on the Apartheid litigation, which is appended to the letter in its entirety. Besides Switzerland, Great Britain and Australia it is above all US business federations and the Bush administration that have called for restrictions on litigation based on ATCA.

Numerous US-American and international human rights organisations and human rights experts have, in contrast, voiced their opposition to any attempts to limit this right, as have organisations that deal with corporations' social responsibility. These are, amongst others, Amnesty International, organisations against torture, Mary

Robinson, the former UN High Commissioner for Human Rights, Richard J. Goldstone, the former South African constitutional court judge and former chief prosecutor at the UN court of justice on Yugoslavia and Rwanda, many retired high-ranking US diplomats, roughly a hundred law professors and civil society organisations such as the World Jewish Congress, The International Centre for Corporate Accountability, OECD Watch, Oxfam International, TransAfrica Forum, Jubilee South Africa, Christian Aid and Human Rights Watch. In Switzerland, the Zurich professor for criminal law and former president of the European Commission for Human Rights, Stefan Trechsel, the Berne Declaration and TRIAL (the Swiss Association against Impunity) as well as international human rights organisations located in Geneva have signed.

In response to public protest, the Swiss Foreign Affairs Department announced that the Swiss signature under the Amicus Curiae letter had nothing to do with the Apartheid litigation, but rather was directed against the increasing misfeasance of public international law by the USA (Tages-Anzeiger, 19.3.04) – a strange claim, as the case under contention concerns a kidnapping in Mexico upon the instructions of the US drug authorities, that is to say that is simultaneously concerns gross sovereignty violations as well as human rights violations. The South African government's letter against the Apartheid litigation is unashamedly instrumentalised therein.

(Excerpt of the English translation of the article "Using claims of sovereignty against human rights. On Switzerland's handling of the Apartheid court cases" by Mascha Madörin, published in "Widerspruch" 46, 2004)

1-2-2004

Reparations have "profound implications" for SA

The SA government is dismissive of Desmond Tutu's support for the apartheid litigations in the US. Government spokesperson Joel Netshitenzhe told the "Sunday Independent" that Tutu should first have discussed his concerns with the state. "If the Archbishop had sat down with the Minister of Justice to discuss the issue, he would have had a clearer understanding of the government's position on the litigation in the US", Netshitenzhe said. "This is that not settling the matter (of apartheid victims) inside South Africa has profound implications for the future of the country, for instance for the assessment of the country risk profile, and for investment and job creation."

(Sapa, 1.2.04)

2-2-2004

Media Statement Jubilee South Africa: Jubilee South Africa salutes Archbishop Desmond Tutu

"Jubilee South Africa salutes Archbishop Desmond Tutu as he continues to support the poor of his country through his public support of the Apartheid Reparations claims filed in the USA.

Archbishop Desmond Tutu provided the courts of the USA in January with a signed affidavit supporting the victims of Apartheid who suffered gross human rights violations as they continue to struggle for their right to reparations from those foreign companies that aided and abetted the Apartheid State. (...).

Through the conflict with Apartheid, eminent leaders struggled and stood side by side with the poor and the oppressed in this country. One such leader was Archbishop Desmond Tutu. Jubilee asks other South African leaders to again stand with the poor of this country and support the Apartheid Reparations claims filed in the US. Jubilee

now calls upon Nelson Mandela to support the claims together with Archbishop Desmond Tutu and demonstrate that he is a leader of the people and not a leader of the big corporations.”

(Media Statement Jubilee South Africa, 2.2.04)

10-2-2004

Swiss Government against apartheid reparations case

An American court should not decide a class action law suit seeking reparations for apartheid from international companies, the Swiss government said on Tuesday. “We are particularly concerned about the extraterritorial application of US laws”, said Swiss ambassador Eric Martin of the multi-billion rand law suit, which targeted a number of international companies, including some Swiss banks.

Martin, who was addressing a group of South African journalists in Berne, said the Swiss government was following the developments in the Washington district court “very closely” and were in regular contact with stakeholders across the world.

He said the Swiss government had a great interest in the position taken by the South African government and was “impressed” with President Thabo Mbeki’s stance on the matter, as well as utterances by Justice Minister Penuell Maduna explaining South Africa’s “clear position” on the issue.

“The Swiss government is not directly involved in the case... we are mainly observers... (but) we consider it inappropriate to resolve it in a US court”, said Martin, highlighting the clear separation between the Swiss government and private companies. He said legal actions such as the class suit could not answer economic and human rights violations. “(We) don’t think litigation will solve the problems of the past”, he said, adding that they were expecting a decision from the presiding judge in the matter towards the end of the month. “(We) hope the judge will dismiss the plaintiffs”, he said.

South Africa’s ambassador to Switzerland, Nozipho January-Bardill, said while the South African government did not support the litigation for the same reason as the Swiss, “we also said we can’t stop our citizens from pursuing any action they want to take. It is their constitutional right to do that and we won’t stand in their way.”

(Sapa, Bern, 10.2.04)

13-2-2004

Tutu: Apartheid victims have waited too long

In an interview with “The Associated Press” in London, Tutu said that apartheid’s victims have waited too long for too little compensation from the South African government. “I myself would say that we have been less than generous with people who have been remarkable”, Tutu said.

While perpetrators who gave a full account of their crimes were granted amnesty immediately, their victims had to wait years for reparations, until the TRC submitted its final report on March 2, 2003, and Mbeki’s government considered its recommendations.

On November 17, the government began issuing 33’000 Rand payments to 22’000 victims who testified before the TRC - less than a quarter of what the commission had recommended. Those who did not testify, received nothing.

Tutu says victims have a right to seek redress in other countries.

Without specifying names, Tutu said many companies who did business in South Africa were “very snooty” with the TRC. “When they ought to have come and said: ‘Yes, we benefited from apartheid. We are sorry...’, quite a few made out that ‘Oh no, we opposed (apartheid)’”, Tutu said. “Twaddle!” Others simply ignored the TRC’s

appeals to come testify. "They thought, yo see, they could thumb their noses at efforts because nothing would happen", Tutu said. "I think it is a good thing that people can go to another country. I'm not certain that they are going to win, but it is important for these groups to know they could be in for the high jump, which they could have avoided."

(Sapa, 13.2.04)

18-3-2004

Parliamentary interpellation by Swiss MP Pia Hollenstein on the Swiss Foreign Affairs Department's Amicus Curiae Brief to the US Supreme Court regarding the Alvarez-Sosa case.

(04.3145 – Pia Hollenstein. Interpellation. Menschenrechtsklagen. Keine Einschränkungen, 18.3.04)

22-4-2002

Protestant churches confess apartheid failings: Switzerland's federation of Protestant churches has expressed regret that it failed to do more to defend the victims of apartheid in South Africa.

Speaking on Thursday, federation president Thomas Wipf said three separate research projects had shown that the church body had taken the wrong approach towards apartheid South Africa. The federation had already admitted in 2001 it hadn't done enough for the victims of racial segregation or sufficiently supported those opposed to the South African regime. „From a theological viewpoint, condemning apartheid was obvious", said Paul Schneider, the federation vice-president. „But at the time, we had trouble formulating an official position."

The federation has faced criticism it did not do enough to bring about the end of apartheid. „The World Alliance of Reformed Churches called apartheid a sin in 1982", said Mascha Madörin, who is coordinating the Apartheid Debt and Reparations Campaign in Switzerland. She told swissinfo the church body had supported dialogue with the apartheid regime, even though local South African churches were calling for international sanctions. And while she welcomes the federation's expressions of regret, she doubts it will really change anything. „The federation still needs to pay more attention to the South African churches' discussions about apartheid-era claims against Swiss companies", she said.

Schneider told swissinfo that the federation now regrets its earlier decisions and accepts the criticism. "We regret we did not pay enough attention to those calling for an end to apartheid", he said.

(swissinfo, 22.4.04)

22-4-2004

Excerpt from the executive summary on the study "Switzerland-South Africa: socio-ethical perspectives", Studies and reports 59, Institute for Social Ethics of the Federation of Swiss Protestant Churches, authors: Hans-Balz Peter, Dorothea Loosli - which was presented to the public at a media conference on April 22 in Berne:

"(...).

Facts and opinions in relation to the demands:

Chapter 5 analyses the facts and options relating to the demands and draws out possible conclusions. It discusses a number of topics, concentrating on debt forgiveness, odious debts and payment of reparations:

> On the question of debt forgiveness, it points out that South Africa's foreign debt is not dramatic in terms of its overall economy. For that reason it is not eligible for debt

relief granted by the IMF and World Bank to the poorest and most indebted countries. The South African government has furthermore always said that it is not interested in debt relief, even for odious debts.

> The study looks closely at this doctrine of odious debts. These are loans received by undemocratic regimes for projects targeted against the interests of the population and for which successor governments are held to account. Two conditions must be met for debts to be defined as odious and therefore not lawful. The study points out that a purely moral judgment reached with hindsight is not sufficient; an internationally recognised mechanism involving an independent authority is needed, using clear criteria to determine whether loans to an undemocratic regime are odious and therefore non-enforceable. Any investments in such regimes would then be made on the lender's own responsibility.

> On the issue of reparations, the study emphasises that demands for compensation are not to be understood only in economic terms. What is needed is a holistic restoration covering spiritual, material, physical, political, cultural and religious aspects. It goes on to demonstrate how the South African government is attempting to put into practice the recommendations of the TRC with regard to intra-South African demands for reparation. The foremost challenge is to support reconstruction and development through contributions to the President's Fund. In this context the study comes out against a general amnesty for apartheid offenders and against class actions. However, it supports the idea of putting more resources into the President's Fund. The Swiss-South African Cooperation Initiative (SSACI) launched by the Swiss Development Corporation and Swiss companies has the same objective. It is also important to stem the decline in inward investment as South Africa needs this to eventually bring together its modern business sector and its subsistence economy. The study sees the opportunity here for the Federation of Swiss Protestant Churches (FSPC) and churches to make their influence felt by bringing the various parties around the table.

Options for the future:

Chapter 6 looks at options for the future. Admitting regret and remorse, as the FSPC delegation did after its visit to South Africa, opens the door to reconciliation and to helping the victims. The study pinpoints four specific areas in which the FSPC could act:

> The FSPC could work with the World Council of Churches (WCC) to jointly push for the doctrine of odious debts becoming accepted and put into practice.

> It could make a public statement supporting the principle of 'restorative justice' developed during South Africa's reconciliation process.

> It could, detached from the question of guilt, make its own financial contribution to the President's Fund to compensate individual victims of apartheid or to support parishes.

> It could try to persuade banks and companies to contribute to the President's Fund or the SSACI as well.

The FSPC should see class actions as a legitimate means by which victims of apartheid can press their demands. However, they should not be encouraged as they would tend to be humiliating for South Africa and would dissuade banks and companies from working with South Africa.

Loans granted by Swiss banks to the apartheid regime after the UN's decision on sanctions cannot be regarded as odious debts because such transactions were not explicitly prohibited or declared odious.

Any payments should not be calculated retrospectively, or if they are it should be along the lines of the Bible story about the chief tax collector Zacchaeus (Luke 19: 1-

10). Support for development policy and encouraging investment are more important. The study also points out that this should be done in partnership with South Africa. An investment conference attended by representatives of the churches concerned, development organisations, governments and business would make a major contribution to this. (...).”

(Excerpt from the executive summary on the study “Switzerland-South Africa: socio-ethical perspectives”, Studies and reports 59, Institute for Social Ethics of the Federation of Swiss Protestant Churches, authors: Hans-Balz Peter, Dorothea Loosli)

29-6-2004

US Supreme Court Judgment in the *Sosa v Alvarez Case*:

The Court holds that foreigners can use the Alien Tort Claims Act (ATCA) to institute lawsuits in the US for human rights abuses wherever they may be committed in the world. The Court holds that “today the door is open to a narrow class of international norms” for litigants to institute lawsuits under ATCA. It observes that “it would take some explaining to say now that federal courts must avert their gaze entirely from any international norm intended to protect individuals.” It holds that “Section 1350 was enacted on the congressional understanding that courts would exercise jurisdiction by entertaining some common law claims derived from the law of nations” and “there is every reason to suppose that the First Congress did not pass the ATS as a jurisdictional convenience to be placed on the shelf for use by a future Congress or state legislature that might, some day, authorize the creation of causes of action or itself decide to make some element of the law of nations actionable... the reasonable inference from the historical materials is that the statute was intended to have a practical effect the moment it became law.” The court further holds that “courts should require any claim based on the the present-day law of nations to rest on a norm of international character” defined with specificity and that claims “must be gauged against the current state of international law, looking to those sources we have long, albeit cautiously, recognized.”

(quoted in a letter by the Apartheid Debt and Reparations Campaign to its partners, solidarity organisations and supportive individuals, regarding support for the Khulumani lawsuit by signing a new Amicus Curiae brief, 13.7.04)

30-6-2004

US Supreme Court Judgment in the *Sosa v. Alvarez-Machain Case*:

Rights Ruling a Compromise. Court urges narrow interpretation on letting foreigners sue in US – article in the “Washington Post”:

The US Supreme Court issued a compromise ruling in its first interpretation of a key human rights law yesterday, upholding the right of foreigners seek compensations in US courts for abuses that take place abroad but urging federal judges to interpret that right narrowly to avoid judicial interference in foreign affairs.

By a vote of 6 to 3, the court confirmed that the 1789 Alien Tort Statute (ATS) authorises civil suits in this country for human rights violations of international legal principles that are as universally recognised today as were rules against piracy or assaulting diplomats at the time the ATS was passed.

“The judicial power should be exercised on the understanding that the door is still ajar subject to vigilant doorkeeping, and thus open to a narrow class of international norms today”, Justice David H. Souter wrote for the majority. He alluded to the prohibition against torture as an example of such a norm.

The precise impact of the court's opinion on the many ATS-based suits now pending remains to be hashed out in lower courts, but the ruling clearly rebuffed an effort by the Bush administration and the business community to eliminate them.

Souter echoed the arguments of the administration and the corporations in warning courts to be "particularly wary of impinging on the the discretion of the Legislative and Executive branches in managing foreign affairs."

In a footnote, Souter suggested that courts "should give serious weight" to arguments by the US and South African governments that a pending class-action suit against US firms for alleged collaboration with South Africa's apartheid-era governments would upset that country's reconciliation process.

Yet he offered only one clear example of an invalid human rights claim, and it was the one that prompted yesterday's case: the allegation by a Mexican, Humberto Alvarez-Machain, that a former Mexican police officer hired by the Drug Enforcement Administration to abduct him and bring him to the US for trial in the slaying of a DEA agent was guilty of violating international law against "arbitrary arrest" (Alvarez-Machain was acquitted of murder).

(Washington Post (USA), 30.6.04)

1-7-2004

Arm Scor documents released:

Intervention by Defence Minister Mosiuoa Lekota has finally led to the release of documents by state arms procurement agency Arm Scor that reveal the military relationship that existed between South Africa and Switzerland during apartheid. Researchers from the Swiss National Science Foundation project on Swiss-South African military cooperation and the South African History Archive (Saha) said they had been battling with Arm Scor for the past 18 months to get access to the documents using the Promotion of Access to Information Act. According to SAHA, the documents detailed information on the technology of arms, arms production and intelligence exchange between the two countries.

Evelyn Groenink, a specialist in sanctions busting and the arms trade working on the project, wrote a letter to Lekota four months ago complaining about the treatment by Arm Scor, and foreshadowing a complaint to the public protector. Groenink: „I don't think we would've won if we didn't get the ear of the minister two months ago. He told Arm Scor that we shouldn't hide anything about what happened under the previous government.,,

The names of Swiss companies involved in arms deals with South Africa remain masked, but Groenink said the documents revealed the „wholeheartedness,, with which Switzerland then supported apartheid.

(This Day (SA), 1.7.04)

2-7-2004

Press Communique Jubilee South Africa: ADR Campaign and Michael Hausfeld meet with Archbishop Desmond Tutu

„(...). Michael Hausfeld reviewed the progress of the lawsuit, noting the signal role played by the Archbishop in it. He further updated the Archbishop on the outcome of the Alvarez case before the US Supreme Court. (...). He also noted the kind of difficulties that might be indicated by the presence of the SA Government affidavit before a law court in the USA. The Archbishop, together with giving specific support to civil society interventions in this area, gave the delegation a wide range of advice on these questions, especially warning the delegation of the deleterious effects of the role played by Ed Fagan in these matters. (...),,

(Press Communiqué Jubilee South Africa, 2.7.04)

4/5-7-2004

International Apartheid Debt and Reparations Campaign: International Strategic Planning Meeting, Johannesburg, July 4th and 5th

4-7-2004

US court ruling revitalises SA compensation claims

Apartheid victims have vowed to step up their arguments for compensation claims from multinationals in the wake of a landmark ruling by the US Supreme Court this week. They insist the ruling, which gave the go-ahead for foreigners to use the 200-year old Alien Tort Claims Statute (ATCA), was in their favour, despite contradictory interpretations of a simultaneous „rule of restraint,,.

The Jubilee and Khulumani victims' groups met Archbishop Desmond Tutu on Friday, and he again gave his backing to their US litigation against multinational companies and banks.

The US Supreme Court ruled six to three this week that the ATCA is still available to foreigners for civil suits in relation to gross human rights violations, which the court said was universally recognisable, naming examples such as torture, genocide, rape, beatings and detention.

Both the defendants and the litigants now have 30 days in which to bring new arguments to the judge.

The „rule of restraint,, means that lower courts should be careful of and respect the prerogative of the executive of both the US and foreign legislatures and executives to manage their own foreign affairs and that litigations should not affect foreign relations.

Professor Gerhard Erasmus, an international and human rights law expert, said the ruling meant that South African victims „would definitely be able to bring such cases, if gross violations occurred, and that the US court will have jurisdiction over it,, but that the „lower court must interpret the sensitivities of the South African and American executives. It is a rule of restraint, not a prescription, and it is not beyond review,, said Erasmus.

Enver Daniels, South Africa's chief state law adviser, said he did not have instructions yet as to whether the government will make further representations to Judge Sprizzo.

(Sunday Independent (SA), 4.7.04)

5-7-2004

Press Release Jubilee South Africa: Fresh optimism - the civil law suits in the US „Jubilee South Africa and the Khulumani Support Group are currently holding an international consultation in a climate of fresh optimism in light of the US Supreme Court ruling last week on the Sosa vs Alvarez case. The ruling has opened the door for victims of human rights violations around the world seeking redress under the Alien Tort Claims Act. It has provided a climate of hope for the survivors of gross human rights violations during the apartheid era.

It has strengthened the chances of success of the Khulumani litigation in the New York Southern District Court (...).

The consultation is being held in Johannesburg from 4 to 5 July and includes campaign partners from Zimbabwe, Zambia, Malawi, Namibia, Swaziland, Switzerland, Germany, United States and Norway. The legal team, led by Michael Hausfeld in the USA and Charles Abrahams in South Africa, are also present.

The main thrust of deliberations consists in a review of the international Apartheid Debt and Reparations Campaign, including the state of the Khulumani litigation. We are paying special attention to developing strategies as to how best to relate to the new legal environment.

There has been overwhelming support from the international human rights community individuals of stature for our demand for reparations. Archbishop Desmond Tutu and economist Joseph Stiglitz as well as international campaigns have filed Amicus briefs in support. It is, however, unfortunate that the South African government put an affidavit before the court in New York last year, calling for the dismissal of the cases relating to Apartheid, in particular because this is being used by banks and corporations in the North and their governments to argue for restriction of the legislation and dismissal of the Apartheid cases.

We have decided on the following in response to the ruling:

- > To seek an urgent meeting with the Minister of Justice, Bridget Mabandla, to discuss our concerns on the government affidavit
- > To enter into discussions with churches, unions and other civil society organisations so as to broaden support for the Khulumani case
- > To develop a further Amicus brief for presentation to the court from international supporters, including human rights organisations, other civil society formations and key and influential individuals.

The consultation reiterated our position that we will pursue claims against international companies where there is the best chance for a successful outcome, but that we will address domestic companies within South Africa. We distance ourselves from the irresponsible role played in these matters by the US attorney Ed Fagan.”
(Press Release Jubilee South Africa, 5.7.04)

5-7-2004

Apartheid victims to pursue US court case

US lawyer Michael Hausfeld told reporters in Johannesburg that his clients' case had been considerably strengthened by the US Supreme Court judgment: “The ruling has opened the door for victims of human rights violations around the world seeking redress under the Alien Tort Claims Act. It has provided a climate of hope for the survivors of gross human rights violations during the apartheid era.”
(Sapa, 5.7.04)

6-7-2004

Public seminar on reparations: international, social, legal, economic dimensions. Organised by Jubilee South Africa in conjunction with WISER - Wits Institute for Social and Economic Research, at the University of the Witwatersrand, Johannesburg

Speakers: Yasmin Sooka (Director Foundation for Human Rights, TRC Commissioner, Patron Jubilee South Africa), Michael Hausfeld (US Human Rights Attorney), Dumisa Ntsebeza (SA Advocate, TRC Commissioner, Patron of Jubilee), Mascha Madörin (Swiss economist, feminist and researcher)

14-7-2004

Resolution by the South African Council of Churches' Triennial Conference on Reparations:

“The National Conference acknowledges the experience and expertise developed by the Khulumani Support Group in the areas of reparations as a means of redress for gross human rights violations, both at a local and an international level.

The National Conference recognises the right of people to seek legal redress for corporate practices that helped to sustain the apartheid government.

The National Conference calls on the NEC to facilitate ongoing dialogue between the SACC, Khulumani Support Group and any other victim groups to:

- > deepen the understanding of the TRC's unfinished business and reparation issues;
- > to explore co-operation and support for programmes that advance the healing of victims in a way which enables responsible rebuilding and development of community

The National Conference notes the existing Amicus brief in support of the Khulumani litigation in addressing issues of global inequity and the practices of corporations, both internationally and locally and refers this to the NEC for urgent action.

The National Conference also mandates the NEC to meet with government to consider the wisdom of continuing to oppose the Khulumani litigation, as distinct from the class action."

(Resolution by the South African Council of Churches' Triennial Conference on Reparations, Cedar Park Conference Centre, Johannesburg, 14.7.04)

8-04

Brief of Amici Curiae International Human Rights Organisations, TRC Commissioners, and Others in Support of Plaintiffs of the Khulumani Case ready to be filed.