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Transforming victims into active citizens

KHULUMANI SUPPORT GROUP CALLS ON THE COMMISSION OF INQUIRY INTO SUSPECTED POLITICAL INTERFERENCE IN TRC PROCESSES TO SECURE THE RECOMMENDATION AND IMPLEMENTATION OF LONG-DELAYED STATE DELIVERY ON REPARATORY JUSTICE

1. Khulumani Support Group (KSG) is a civil society organisation whose membership, as recorded in the Khulumani Apartheid Reparation Database comprises some 120,000+ victims and survivors of gross human rights violations sustained in the struggle against apartheid political oppression. It was established by victims and survivors of apartheid gross violations in 1995 at the time that the Promotion of National Unity and Reconciliation Act 34 of 1995 (the TRC Act) was being debated in Parliament without the invited participation of victims and survivors of apartheid atrocities. It was the debates taking place in that first-post transition Parliament that served as the stimulus for the founding of Khulumani Support Group to serve the nation at this critical time as the collective voice of victims and survivors of apartheid-era serious abuses. This purpose continues.

2. Khulumani Support Group took the mandate from its founders to engage with every process designed to shape the agenda for truth, healing, and redress for survivors of apartheid atrocities to drive the struggle to create a democratic, non-racial and just society in which the worth and value of every citizen would count in building a post-apartheid society in which everyone would feel a sense of belonging. Khulumani became the national membership organisation of organised victims and survivors of apartheid abuses in pursuit of the agenda of truth, integrity, inclusive democratic participation and healing from the grievous harm wrought against the ordinary people whose passion supported the goal of building an inclusive participatory democracy that might work to secure a truly transformed post-apartheid society. Khulumani has supported and organised victims and survivors of apartheid gross human rights violations since 1995.

3. Khulumani became a founding member of the South African Coalition for Transitional Justice (SACTJ), an umbrella body of organizations committed to raising awareness about the rights of victims and survivors of apartheid-era human rights violations and to holding government accountable for its obligations[1]. SACTJ's Founding Constitution focused on the issues that impact the rights of victims with regard to apartheid-era abuses including pardons, prosecutions, disappearances and reparations. The founding members of SACTJ were the Centre for the Study of Violence & Reconciliation (CSVR); Khulumani Support Group, the Institute for Justice and Reconciliation (IJR); the South African History Archive[2] (SAHA); the Trauma Centre for Victims of Violence and Torture (TCVVT) and the Human Rights Media Centre (HRMC).

3. The International Center for Transitional Justice (ICTJ) and the Legal Resources Centre (LRC) in Cape Town played roles in providing research and legal analysis support.[3] Khulumani has served as the host of numerous international transitional justice researchers following their research interests in the possibilities of establishing a 'new model' for achieving post-conflict societal stability through reckoning with the abuses of the past.

4. I have been involved with Khulumani since its institutionalization in 1997 when I was requested to join Khulumani's founding Board of Directors by survivors of the country's *death row,* where numerous political activists were executed on grounds of charges of having committed treason, based on being found guilty of one of the 11 *capital crimes* then on South Africa's statute book. It was the formal request from survivors of apartheid's *death factory* to continue to give support to the post-apartheid struggle for an authentic and deep transformation of our society that saw me become a member of Khulumani's first Board of Governance in 1997.

5. I have played various roles in Khulumani from that time and have represented Khulumani in the SACTJ since its founding in 2012, always accompanied by a survivor member representative. I attest as follows about the struggle of victims and their representative organization to obtain reparation for all victims and survivors of apartheid serious human rights abuses based on the

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[11] In 2019, Khulumani discovered that its membership of the SACTJ had been arbitrarily terminated without the management of Khulumani being informed. This was a result of the setting up of a reconstituted SACTJ with Ms Gunn at the helm, and without the membership of Khulumani Support Group.

[2] SAHA changed its status in the SACTJ to the status of a 'friend'

[3] Howard Varney, formerly the representative of ICTJ in South Africa, now serves as legal representative for the families who are involved in the prosecution of charged apartheid criminals.

recommendations made in the Final Report of the Truth and Reconciliation Commission.

6. The TRC Act established the Truth and Reconciliation Commission (TRC) and charged it with investigating and documenting gross human rights violations committed within or outside South Africa in the period 1960 - 1994. The preamble to the TRC Act sets out its purpose as follows:
To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, 10 May 1994, affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights…

7. Section 3(1) of the TRC Act set out its objective as: "To promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by "inter alia restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them."

8. The TRC Act stated that "victims" include:
(a) persons who, individually or together with one or more people, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights -
(i) because of a gross violation of human rights; or
(ii) because of an act associated with a political objective for which amnesty has been granted.
(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or defendants of victims as may be prescribed.

9. The TRC Act stated that a "gross violation of human rights" means the violation of human rights through "killing, abduction, torture or severe ill-treatment" (KATS Categories).

10. Sections 12, 16 and 23 of the TRC Act established three statutory committees within the TRC. These were, respectively, the Committee on Human Rights Violations (HRVC); the Committee on Amnesty (AC); and the Committee on Reparation and Rehabilitation (RRC).

11. The HRVC carried out a programme of public victims' hearings which began on 15 April 1996 in East London and closed, 18 months later, on 14 December 1997. Trained statement-takers took a total of 21,519 statements using a prepared questionnaire accompanied by guidelines on how to manage the process of capturing victim statements[4].

12. The list of victim statements revealed that around 90% of the victims who had managed to reach the convening spaces for victim and survivor statement-taking with the TRC-employed statement-takers, were included at this point. The most severe setback to the process happened at this stage because of the huge obstacles that faced victims and survivors of apartheid abuses, in their attempts to organize access to the statement-taking venues.

13. The consequences of the very limited ability of opportunities for victims and survivors of the KATS violations to be enabled to make a statement to a TRC statement-taker was the result of a number of practices of the TRC that resulted because there had been no precedents or blueprints for enabling victims to participate in a TRC process[5] that set out to hear the experiences of victims and survivors of apartheid atrocities[6].

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[4] The questionnaire provided to the statement-takers was flawed in several respects, most notably in the absence of any questions about sexual violence at the hands of apartheid agents. The guidelines also unhelpfully included instructions to the statement-takers to immediately terminate any interview in which the 'victim-survivor' became emotionally distressed. No records were kept of these victim-survivors to provide for their statements to be recorded at another opportunity where emotional support might be made available. We were informed that most of the statement-takers were university students who had never received any training in dealing with trauma.

[5] The South African TRC was the first TRC to include victim participation. This meant that the implementers of the TRC had no blueprints to follow for guidance.

[6] Until the present, this attitude towards victims and survivors of serious human rights violations persists in South Africa as if their lives *do not count or matter.* This is the attitude that has characterised the positions of officials of the state especially withing the Department of Justice, into the present – the attitude that the voices of the poor and marginalised as a result of apartheid atrocities, do not count, because *the educated elite, especially those in official state employment, are assumed to know what is best for victims.* This is the attitude that Khulumani has refused to accept. Sadly, this attitude continues to characterise the practices of most lawyers. It resulted in the former Chief Justice Mogoeng Mogoeng requesting trauma practitioners to develop training programmes to be offered to all employees of the Justice Department, given his recognition that lawyers were going into practice without any training in dealing with trauma. Khulumani made a submission, but the Chief Justice had submitted his resignation

13.1 There was almost no communication from the TRC offices to inform victims and survivors of the TRC's plans and venues for victim statement-taking. This was prior to the era of social media and the possibilities for reaching as many of the victims and survivors as this could have made possible.

13.2 Large-scale political interference as political party gatekeepers managed access to information about apartheid crimes to prioritize their own political formations to access TRC processes and their assumed benefits.

13.3 The state made no provision for the travel costs of victims and survivors of apartheid crimes to each site of victim statement-taking, leaving thousands of community-based socio-political activists stranded and excluded from the possibility of lodging their statements, accompanied by whatever evidence they had to hand[7] of their violation, with the TRC. This proved to be the biggest obstacle to effective victim participation in TRC processes.

13.4 Only 2,000 of the victims and survivors who had managed to meet with victim statement-takers on their visits to a limited number of communities[8], were subsequently given the opportunity of appearing in person before the TRC HRV public hearings.

13.5 Victim and survivor presentations at these hearings were constrained by the rules of what they were allowed to disclose and what had to be withheld because of the risk of legal challenges from the alleged perpetrators.[9]

13.6 The maximum time allowed for each oral testimony was 20 minutes. This seriously constrained the potential of these hearings to achieve the first step in victim healing from serious atrocities – the opportunity of being listened to, usually for the very first time.

13.7 These hearings, despite their huge limitations, resulted in breaking the silence and shame associated with having been deeply humiliated by what had

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before these submissions were reviewed or considered. handed in his resignation before any plan to introduce the envisaged programme was agreed.

[7] The evidence Khulumani worker with included was victim affidavits, death certificates and hospital and police records.

[8] Khulumani notes that the planning for a nation-wide national dialogue process includes that these 'dialogues' should reach 12,000 communities across the country. (This is the number of sittings achieved by the Rwandan Gacaca Courts after the 1994 genocide that took place in Rwanda.)

[9] This was necessitated to manage criminal liabilities that might be evoked as stories of what apartheid agents had done to victims and survivors became exposed in a very public arena.

been done to proud and committed social justice activists. The consequence of this large-scale humiliation continues today in the absence of formal recognition of the way in which the self-esteem of thousands of activists was severely damaged[10], and has yet to be restored.

14. According to Volume 6, Section 4, Chapter 3 of the TRC Report, the HRVC collected a total of 21,519 victim statements during its operation. During this period, the HRVC gathered victim statements and held hearings including victim hearings, event hearings, special hearings, institutional hearings and political party hearings[11].

15. The Reparation and Reconciliation Committee of the TRC (RRC) considered matters referred to the TRC and the other committees. Its functions included, inter alia gathering evidence about the identity, fate and whereabouts of victims and the nature and extent of harm suffered by them; and making recommendations to the President for appropriate measures for reparation and rehabilitation, including interim reparations.

16. The reparation policy formulated by the RRC was included in the TRC's Final Report as a major recommendation[12], but was never formally adopted by government as the state's official reparation policy, as had been envisaged by Professor Hlengiwe Mkhize, Chairperson of the RRC[13].

17. This means that the Post-TRC Implementation Unit, known as the TRC Implementation Unit, has never had an official policy framework to inform and guide its work on post-TRC reparation. This has been a major drawback which has allowed state authorities to operate on the basis of occasional (intermittent)

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[10] From this standpoint the work of Khulumani in collaboration with partners to offer programmes for restoring the self-esteem of survivors, including Khulumani's programmes in capacity-building for civic competence and storytelling for healing, has been limited because of funding limitations. Khulumani lead activists benefited from their participation in the exceptional *Training for Transformation programme,* offer by The Grail at Kleinemond in the Western Cape.

[11] After many attempts by Khulumani Support Group to request the minutes and records of these processes, Khulumani lodged a formal complaint with the Public Protector, the Ms Thuli Madonsela. She charged the officials who had routinely denied any answers to Khulumani Support Group's PAIA requests, with an *abuse of power* and the Department was made to provide the 1,400 pages of Reparation Committee minutes to Khulumani Support Group.

[12] The Chair of the RRC, Professor Hlengiwe Mkhize, produced what she believed would be adopted by the state as its reparation policy. This did not happen, leaving the DOJ without guiding policy for its decision-making. This has meant that the DOJ still had no formal policy for reparation and operates on the basis of Ad Hoc Regulations.

[13] Khulumani continues to advocate for the formal adoption of her draft national reparation policy on reparation and reconciliation, as a tribute to her sterling work on the issue.

and irregularly drafted *ad hoc* regulations, without there being a coherent policy to guide this official policy process[14]. This has allowed the state to avoid delivering on a comprehensive, just and inclusive reparation plan.

18. Volume 1, Chapter 4 of the TRC Report[15] indicated that a decision has been taken to establish a finite list of victims (Closed List)[16] to confine the number of victims eligible for reparations to the following three areas:
1) Victims who personally made statements to the Commission.
2) Victims who happened to be named in a statement made by a relative or other interested person (for example a colleague, friend or neighbor); in other words, statements made on behalf of and in the interests of specific people.
3) Victims identified through amnesty processes.

19. The Closed List eventually included the victims of gross human rights violations who emerged through statements made to the HRVC[17] and in applications for amnesty before the AC during the Commission's twenty-months of operations. This became the customary practice and was used to justify its severely limited list of victims developed during the TRC's lifespan from 14 December 1995 to the cut-off date of 14 December 1997. Payment of individual reparation was limited to those on the Closed List, referred to hereafter as "TRC-identified Victims", named in the records that is used as the sole source of authorization of reparation payment despite its recognized severe flaws.

20. The Special Pensions Act 69[18] of 1996 was introduced to provide for special pensions to be paid to South Africa citizens who had rendered military service to

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[14] Khulumani's meeting with the Director-General of the Office of the Chief Justice in Midrand revealed that this office hosted legal drafters and had suitable conference facilities to host such a critical drafting process. This remains another component of the TRC's *Unfinished Business.*
[15] See the summaries of the minutes of the RRC meetings where this has been discussed.
[16] The 'Closed List' remains the source of the unjustifiable exclusion of around 100,000 victims and survivors of apartheid gross human rights violations.
[17] The minutes of the RRC show that the TRC was fully aware that this list was 'brutally incomplete' and were aware of the detrimental consequences of adopting the 'Closed List'. Members of the RRC Committee argued extensively against reliance on this list with its identified flaws and weaknesses and raised concern about the consequences of the decision taken while they acknowledged the huge gaps in the Closed List.
[18] The enactment of the Special Pensions Act 69 of 1996 gave effect to Section 189 of the Interim Constitution (Act, 200 of 1993), which stated that provisions shall be made by an Act of Parliament for the payment of special pensions by the national government to persons (or their dependents) who made sacrifices or who have served the public interest in the establishment of a democratic constitutional effect to order. The process of recognising individuals for Special Pensions was process that became the site of immense contestation, arbitrariness and partisan decision-making. The purpose of the Act is to compensate those who were involved in the liberation struggle and who on that account lost the opportunity to provide for a pension before 2 February 1990 for a period of at least five years. It also

any of the established military organizations, statutory and non-statutory, which had been involved on all sides of South Africa's liberation war from 1960 to 1994 or who had served in the Union Defence Force before 1961 or had become members of the new SANDF after 1994. Dependants of persons who made sacrifices or had served the public interest in the cause of establishing a non-racial democratic constitutional order in South Africa, were included for recognition for Special Pensions.

21. The legislation provided for all persons who had served full time in a banned political organization[19] for a total or combined period of five years; who were restricted or banished[20] to a particular area; who were imprisoned or detained for an offence relating to the pursuance of a political objective; who were at least 30 years of age on the commencement date of the Act; were afforded the right to a survivor's lump sum benefit in terms of the Act if that person is a surviving spouse or a surviving dependant who was a citizen, or entitled to be a citizen, of the Republic; who was not disqualified in terms of section 1(8) (had not committed offences calculated to undermine the political struggle, had not been convicted of an offence after 2 February 1990 and for offences mentioned in Schedule 1 of the Criminal Procedure Act, 51 of 1977; and who had died in circumstances in which, had he or she survived, would have qualified as a result of full-time service or who had died prior to 2 February 1990 while he or she was imprisoned or detained for any crime or in terms of any law mentioned in Schedule 1 of this Act. The cut-off date for application was December 1997, but the Special Pensions board accepted late applications up to November 1998. By April 2001 15,699 of the 29,766 applications had not yet been adjudicated[21].

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seeks to compensate the surviving spouses and dependants of such persons. The object of the Act is to provide financial support to persons involved in the struggle, not in general, but specifically in their old age. The requirement in terms of the Act that a person must have been at least 30 years or older on 1 December 1996 is precisely to ensure that only those who would not have been in a position to make provision for their old age would qualify for special pension. If a person was younger than 30 years on this date, the assumption is that, despite a person's contribution to the liberation struggle, he or she was young enough to still make provision for retirement.

[19] This was intended to include members of the PAC, ANC, AZAPO, SACP, UDF, MK, APLA, POQO, SASO, BCM Movements, ANCYL, other youth formations, trade unions, and civil society organisations.

[20] None of the *banished people* have received reparation. There is a comprehensive list of the banished compiled by Helen Joseph who took on the responsibility for keeping in touch every month with the more that 60 individuals who suffered this severe violation and providing each of them with a token small grant each month.

[21] Khulumani received numerous reports of failures of the state to effectively adjudicate the Special Pension applications to victims and survivors who applied in terms of the legislation. Khulumani received numerous reports of malfeasance and political interference in these administrative processes. Khulumani prepared a training manual for its facilitators to educate communities about the rules of Special Pension. This was when the Special Pensions Office finally started working with Khulumani Support Group and would ask us to engage the communities that they were due to visit to make preparatory preparations.

22. Khulumani Support Group served the agenda of Special Pensions in several ways. Khulumani developed a training package on Special Pensions including who would qualify and how, and became involved with some of the provincial offices from which outreach to possible qualifying individuals was conducted. This became a very productive partnership in which Khulumani coordinators would be contacted by the Provincial Special Pension offices to inform them of the upcoming dates of their planned visits. The officials from these Special Pension offices had found that involving Khulumani facilitators prior to these visits resulted in the officials engaging with beneficiaries who had been fully informed of the processes involved and who had been assisted by Khulumani facilitators to complete the official application forms.

23. The Khulumani-State Partnership was highly valued by officials tasked with delivering on these matters. All the work done was entirely on a voluntary basis without any remuneration. Khulumani's National Contact Centre would provide limited funds for travel and communication but did not have resources to provide those involved in this work with stipends or any other assistance. Khulumani was able to do this work because of the trust in Khulumani that communities had developed.

24. When the TRC Implementation Unit in the National Department of Justice needed assistance in finding identified TRC-reparation beneficiaries that they had not been able to trace, they turned to Khulumani Support Group's national network to assist with this process. Khulumani received no financial assistance for its role in solving these situations.

25. When Dr Mochubela Seekoe who had received military training in the USSR, was appointed the first Chief Director of the TRC Implementation Unit, he expressed the view that all Khulumani members who had been documented as having suffered any of the KATS violations specified in the legislation, should be recognized as having served the public interest and the South African liberation war between 1960 and 1994 and should therefore be provided for in terms of the Special Pensions Act[22].

They found that this expedited the processes immensely. However, there remain an unfinished number of Special Pensions beneficiaries who have been simply 'left in the lurch' without having been engaged.

[22] This proposal has never been formally adopted by the state and Special Pension allocations have been characterized by many anomalies, including the corrupt recognition and provision of the Special Pension to non-qualifying individuals.

26. Dr Seekoe, a trained former military combatant, argued that there should be no distinction between the treatment of 'struggle veterans' as he named Khulumani anti-apartheid political activists and 'military veterans'[23]. He called for the equal treatment of recognised struggle veterans and for trained members of the non-statutory military formations in the country and made this recommendation in meetings in Parliament with members of the Portfolio Committee on Defence and Military Veterans.

23. In 1997 the Department of Justice and Constitutional Development ("DOJ") established the President's Fund in terms of Section 42 of the TRC Act as the vehicle for receiving donated reparation funds and for making reparation payments. Monetary contributions were made by the South African National Treasury, Archbishop Desmond Tutu, Ms Mary Burton, Advocate Geoff Budlender, the government of the Netherlands and the Swiss government, amongst other local and international donations.

24. According to the TRC Report, Volume 5, Chapter 5, there was an initial contribution to the President's Fund from the National Treasury. Khulumani Support Group learned that the value of this contribution had been around R800 million. The economist, Dr Iraj Abedian, advisor to the state on TRC-associated matters, had motivated for an investment of R3 billion from the state into the Reparation Fund – his costing of the provisions that Professor Hlengiwe Mkhize had designed for an adequate programme of reparation. This recommendation was not heeded.

25. At this time, there was extensive advocacy for a wealth tax to be legislated. The President opposed a wealth tax.

26. Khulumani Support Group advocated for each company listed on the Johannesburg Stock Exchange to provide a once-off provision to the Presidents' Fund of 1% of the profit these companies generated in one financial year. This was not approved or supported by the President.

25. The President's Fund resources were invested in the Public Investment Corporation. Over time, the President's Fund resources increased to over R1 billion.[24] The funds in The President's Fund were audited each year.

[23] President Mbeki countered this perspective when he said a person may only claim status as a struggle veteran if they had undergone military training and had carried a weapon.

[24] The President's Fund presently holds R2,066,226.00 (R2 billion, 66 million and 226 rands)

26. Once the initial payments for Urgent Interim Reparation amounting to R50 million had been made, subsequent payments were made to the individuals identified through the limited findings of the TRC - the 'closed list' beneficiaries of some 17,600 individuals, based on intermittent Ad Hoc Regulations[25]. The main approved regulation was for education assistance to TRC victims and their families, for basic education and further education.

27. No additional contributions were paid to the President's Fund towards enabling the agenda of an inclusive 'reparatory justice'[26].[27] At the end of the 2024/5 Financial Year, the Reparation Fund called the President's Fund, held R2,066,226,000,00[28] Presently, the agenda for reparation continues to exclude thousands from all benefits available as part of the reparation agenda that only serves the children and grandchildren of the direct victim[29] who happened to be recognized as a "TRC victim"[30], the dependents of around 17,600 'identified victims[31]'.

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[26] This is an acute contrast to the decision of the Rwandan government that requires every public servant in Rwanda to contribute 10% of their monthly income towards a Dignity Fund for victims and survivors of their horrendous genocide.

[27] This was despite Khulumani's advocacy to the Appropriations Committee in Parliament for an a nnual contribution to be made from the state to the Reparation Fund.

[28] Khulumani has been informed that it is within the power of the President alone to address this failure to ensure *administrative justice on the basis of equality and the equal treatment of all victims and survivors of apartheid serious human rights violations.*

[29] Khulumani has produced a funding application that would provide the funds needed to conduct victim verification in the field, using Khulumani's Apartheid Reparation Database to bring in those who have remained excluded. This contrasts acutely with the achievements in Guatemala where some 3 million victims have received reparation and recognition. At the time of submitting this budget to the relevant government departments, the cost of this process was found to be R10 million. Khulumani has not received a single response from government to its proposals for these funds to be sourced from the President's Fund to provide for verification and subsequent recognition of affected individuals as victims.

[30] The failure of the state to make good for all verified victims of apartheid atrocities deepens the sense of injustice that is perpetuated across generations.

[31] The distinction between 'recognised victims' who were awarded a TRR number that granted these individuals the right to apply for reparation and the around 100,000 victims of the gross human rights violations who have been arbitrarily excluded because the TRC failed to ensure equal justice for all victims of serious violations, remains one of the deepest wounds for those who carried the cost of the mass movement to being down apartheid. Khulumani engaged every possible avenue for securing equal treatment for all victims of apartheid atrocities, without success. At the highest level there had been an unchangeable decision to adhere to the grossly flawed closed list of 'victims.' Every effort made by Khulumani to address this grave injustice has been thwarted by political interference at the level of Parliament where Khulumani's application to present to the Portfolio Committee on Justice resulted in a pre-meeting with the members of the Committee attended by Dr Khotso de Wee, COO of the DOJ and Chief Director of the TRC Implementation Unit, who advised the Committee members to ignore Khulumani's presentation.

28. On 3 April 1998, Regulations on Measures to Provide Urgent Interim Reparation to Victims (1998 Regulations) were promulgated (GNR 545 in Government Gazette 18822). The 1998 Regulations allowed *victims identified in the TRC process*[32] to apply for interim financial grants (not exceeding R2,000.00) for medical and other interventions to address immediate suffering from the gross human rights violations they had suffered. The RRC processed victims' claims for this urgent interim reparation and submitted approved claims to the President's Fund for payment (in accordance with the 1998 Regulations). The President's Fund awarded interim grants to the value of R50 million.

26. At the National Assembly on 2 March 2010, in reply to a question from Ms D Z Rantho (ANC-EC), the DOJ stated that individual reparations of up to R5,705.00 had been paid to 16,654 victims and in total an amount of approximately R50 million had been paid to victims as interim reparations as of 31 January 2009.

27. On 29 October 1998, the TRC published its Final Report that contained its recommendations. In Volume 5, Chapter 5 of the TRC Report, the RRC recommended that each person identified as having suffered a gross human rights violation should receive between R21,700 and R23,023 every year for six years[33].

28. On 12 April 2000, 60 members of the Ex-Political Prisoners and Torture Survivors' Group accompanied by members of Khulumani Support Group in Cape Town, marched to Parliament in Cape Town to deliver a petition with over 2500 signatures which demanded that, inter alia:
1) The final reparations promised by the TRC and the government be paid out.
2) Those who had not had the opportunity to make statements to the TRC be given an opportunity to do so and additional people be included who meet all the criteria for formal recognition as victims of apartheid serious human rights violations.

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[32] This provision continues to be the measure that excludes thousands of victims and survivors on a purely administrative basis. The twenty years since the setting up of the TRC Implementation Unit in 2005 have seen the failure of the Department of Justice to make any inroads in countering these administrative *bungles* – the basis of the accusations that the post-apartheid government had no serious commitment to the reparation agenda.

[33] Khulumani hired a team of experts including a professor of human rights, a professor of actuarial science, building science academics and education specialists to provide a detailed analysis of the cost of using the provisions for reparation in the TRC Final Report. This research confirmed that the costings provided in Khulumani's report were at that time appropriate and that they would meet the need for adequate reparation.

3) Special Pensions be implemented as a priority.

29. In 2001, the Ministry of Justice handed a draft reparations policy to cabinet. Khulumani requested a copy, but this request was ignored. Khulumani lodged a Promotion of Access to Information Act ("PAIA") request. This was also ignored.

30. Khulumani proceeded to file a case against the state for access to the draft policy using the newly adopted PAIA legislation. This was the first case to test the Access to Information legislation. Khulumani was assisted in court by the Open Democracy Advice Centre. The state appeared and argued that the matters involving the Inkatha Freedom Party took priority in needing urgent settlement. Khulumani's matter was once again delayed from adjudication in court. This scenario has continued to dog all efforts to secure equal justice for all victims and survivors of apartheid atrocities.

31. Khulumani was contacted by Professor Medard Rwelamira[34], a graduate in law from the University of Dar-es-Salaam who had served at the International Criminal Court as Director of the Permanent Secretariat of the Assembly of States Parties and as Special Adviser to the South African Minister of Transport between 2002 and 2003. He called Khulumani to inform us he had been appointed by President Mbeki to review the draft reparation proposals forwarded to him by President Mbeki. When he sent President Mbeki his review, he called us to inform us that he had submitted his recommendations to President Mbeki. Khulumani appreciated his action in notifying us. However, there was no direct engagement or consultation with victims and survivors of apartheid serious human rights violations and Khulumani never received a copy of Professor Rwelamira's recommended reparation proposals.

32. On 20 March 2001, around 100 Khulumani members held a protest outside Parliament. Mr Paul Setsetse, a Parliamentary official, promised to organize a meeting with Minister Penuell Maduna, then Minister of Justice and Correctional Services ("Minister of Justice").

33. On 25 and 26 April 2001, Khulumani hosted a Reparations Indaba at the Holocaust Centre in Cape Town. Attendees included representatives of CSVR, TCVVT, IJR, Jubilee SA, the Black Sash, Khumbula, the South African Council of Churches, the Public Protectors Office, representatives from the DOJ, from the Departments of Arts and Culture, Science and Technology and the chairperson of the TRC Reparations Committee, Professor Hlengiwe Mkhize.

[34] Professor Rwelamira passed away on 3 April 2006

34. Thirty-five Khulumani victim members from eight of the country's provinces participated in the Indaba. The Reparations Indaba attempted to address victims' experience of the poor and almost total non-delivery of reparations and to find a political solution to these problems. The following issues, inter alia, were discussed:
34.1 Responses to the report of the government and the TRC on the implementation of the TRC's recommendations.
34.2 The report on the President's Fund and ways to raise additional funds for reparations.
34.3 The progress report on Special Pensions and problems experienced by applicants.

35. Participants raised the issues of confusion about victim status, the insufficiency of reparations, the government's failure to communicate, the disparity between victims and perpetrators and difficulties in accessing interim reparations.

36. Khulumani made it clear that it did not accept the 'Closed List' and drew attention to the thousands of people who had not been included in the TRC through the TRC's administrative decision, made without any consultation with victims and survivors of apartheid atrocities, and were excluded from all possibilities for reparatory justice.

37. Khulumani expressed frustration at the lack of response to the seven memoranda that it had submitted first to President Nelson Mandela and then to President Thabo Mbeki in addition to the lack or acknowledgement and considered responses to numbers of letters sent by Khulumani to the Minister of Justice[35]**.**

38. The next important event was the holding of Business and Labour Institutional TRC Hearings. These hearings led to the strategic decision to bring a lawsuit against 23 multinational companies that had operated (as many still do) in

[35] To Khulumani Support Group, it appeared that there had been a decision of equivalent status to a legal judgment that there would be no delivery by government on an inclusive reparatory justice underpinned by the adoption by Parliament of a reparation policy to guide this important process. This matter was never taken to court. This founding affidavit (which has been supplemented by a record of subsequent advocacy efforts) by Khulumani Support Group, was intended to serve as the founding affidavit for a case to be brought in court on this matter. Khulumani continued trying to secure legal support for a case on the failure of the state to adopt a reparatory justice framework to guide all work on this matter. We found no appetite for this litigation amongst our 'civil society legal partners' in this struggle for justice for victims of apartheid atrocities.

South Africa, which we charged in the *Khulumani et al v Barclays Bank et al* case of aiding and abetting the perpetration of goss human rights violations[36]. An important role was played by Theo Kneifel, a Catholic priest who had been engaged in the background organizing that led to the Durban moment led by organized workers, "when long after the decolonisation wave swept across Africa, Asia, and Latin America, two large countries – Brazil and South Africa – remained in the grip of wretched political systems. The military dictatorship in Brazil (1964–1985) and the apartheid regime in South Africa (1948 –1994) and had faced significant challenges from a range of political and social forces. In these struggles, the role of workers' resistance was little known outside of unions. It was as if workers' struggles were marginal to the story of democratisation[37].

But, in both countries, the struggles of workers became central in bringing down these 'odious regimes.' In South Africa, the 1973 strikes in the industrial port city of Durban began the process of building a militant trade union movement that would, by the second half of the 1980s, have the apartheid regime reeling from its blows. In Brazil, the 1978 –1981 strikes in three industrial cities in greater São Paulo – Santo André, São Bernardo do Campo, and São Caetano do Sul – are often said to have marked the beginning of the end of the military dictatorship. The strikes were led by Luiz Inácio Lula da Silva, then president of the ABC Metalworkers' Union and the current president of Brazil. Workers led the way against entrenched forms of domination that not only exploited them, but also oppressed the people as a whole, and the democracies to come were first incubated on the shop floor. This was an important part of South Africa's history.

Cities were seen as sites of white modernity in which Africans could only be present as strictly subordinated and segregated workers. Pass laws were the key mechanism in the system of oppression that increasingly sought to confine African family life to ethnically delineated rural 'homelands' governed in the name of 'tradition'.

Worker activism led in 1960 to the Pan-Africanist Congress (PAC) breakaway from the ANC and its resolution to directly challenge the state on pass laws, leading to the 21 March 1960 gathering of around 20,000 people outside the police station in Sharpeville and the unleashing of gunfire against the unarmed and peaceful protestors.

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[36] The Khulumani case was excluded from the New York court in 2014 when the US government amended the 1789 ACTA legislation to allow only cases of violations that had taken place on US territory to be adjudicated in US courts in terms of the ATCA (Alien Tort Claims Act)

[37] https://thetricontinental.org/dossier-1973-durban-strikes/

Frantz Fanon wrote that the Sharpeville massacre ‘shook global public opinion’ and on 8 April 1960, the apartheid state banned the ANC and the PAC. Although the state identified 67 deaths of protestors on that day, a recent discovery of a police archive in our National Archives revealed that there were some 350 additional unrecognised deaths and records of serious injuries suffered by participants in the protest against the pass laws in Sharpeville on that day.

The files in our country’s National Archives reveal that the apartheid state had records including J88 forms for each of these victims to which the apartheid Minister of Justice, had applied his mind and had determined the compensation due to each of these individuals. The apartheid government subsequently resolved that there would be no compensation for any victims of the Sharpeville Massacre. This was extended to almost all victims of apartheid state political violence going forward.

This position reflects the extension of this attitude to the new echelons of those now in power for whom the lives of the marginalised are seemingly counted as of no value. There is immense resistance from the state to the essential focus needed on transforming the current political situation in which the most vulnerable are excluded from any semblance of economic justice while the practices of accommodation between capital, white power and national elites continue apace.

The workers who built democratic forms of counter-power from within a deeply oppressive society, eventually bringing down that system, are seldom given full acknowledgement and respect. Their history still awaits an adequate telling.

South African worker protests were rooted in collective practices of deliberative consensus-seeking associated with rural life and long shaped by subsequent worker struggles. These are the practices Khulumani took forward in its community-based programme of ‘Capacity-Building for Civic Competence’ for which funding was initially provided by the Foundation for Human Rights through its dedicated SEJA project funding. (Socio-Economic Rights and Justice Programme.)

The Foundation for Human Rights was established by the European Union to support the Post-TRC Programme of Justice for Victims and Survivors of Apartheid Atrocities. Khulumani used to receive one grant from the SEJA programme each year until very worrying developments took place within the FHR from the time of Ms Sooka’s retirement and her shift of interest to an almost exclusive focus on prosecutions. This has had dire consequences for Khulumani Support Group. This will be further explained in the appropriate place.

South African worker protests were at the forefront of political struggle in South Africa. They were rooted in collective practices of deliberative consensus-seeking associated with rural life and long shaped by subsequent worker struggles. The workers who built democratic forms of counter-power from within a deeply oppressive society, eventually bringing down that system, are seldom given full acknowledgement and respect. Their history still awaits an adequate telling. Khulumani became a site of the extension of this struggle when it undertook its international lawsuit challenging corporations' complicity with serious abuses and violations during apartheid.

The British law firm, Leigh Day in respect of bringing a case on behalf of the carefully documented victims of police shooting from 21 March 1960, has been in communication with Khulumani Support Group regarding the possibility of bringing a case for compensation for these additional deaths and injuries to court in South Africa. This action would strengthen the demand for compensatory reparatory justice for all victims of apartheid violence.

21 March 1960 became recognised globally as the date of the marking every year by the United Nations of International Day for the Eradication of Racial and all Forms of Discrimination. The day was proclaimed to raise awareness of all forms of systemic racism and exclusion. The African Union Call for Reparatory Justice is based on the recognition of the systemic racism and exclusion of all people of African descent.

Khulumani's member collective in Sharpeville was the first of Khulumani's organised member collectives and they have been working closely with the Regional Representative of the UN High Commission for Human Rights in respect of advancing reparatory justice in South Africa.

39. Regarding the TRC Special Hearings on Business and Human Rights[38] in South Africa, these were held over three days in November 1997, (on 11, 12 and 13 November). The official report of these hearings explains as follows.

39.1 At the heart of the business and labour hearings lay the complex power relations of apartheid, the legacy of which continues to afflict post-apartheid society. These included the consequences of job reservation, influx control, low wages, unequal access to resources, migrant labour and the hostel system. Adjacent to these historic developments were industrial unrest, strikes and the struggle for the right to organise trade unions.

39.2 The hearings illuminated the widely divergent perspectives of different sectors of the economy. Sharp differences emerged over the role business

[38] https://www.justice.gov.za/trc/special/index.htm

played or failed to play in the apartheid years. Questions were raised as to whether business had been involved in the violation of human rights, how business related to the state and whether or not business benefited from apartheid. In the process, the very premise of business as a homogeneous entity was questioned.

39.3. Differences also emerged between businesses in different sectors of the economy: between businesses of different sizes, between predominantly white-led business and predominantly black-led business organisations and, most dramatically, between representatives of employers and trade unions.

39.4 While the Commission had called for evidence relating to the period 1960 to 1994, the vast bulk of the evidence led at the hearings dated from the late 1970s onwards. This was to be expected, given that many of the individuals involved were not active in the 1960s.

39.5 Only the white Mineworkers' Union and the South African Agricultural Union refused to participate. A few (most notably the National Council of Trade Unions or NACTU) failed to provide their promised submissions. Others did not respond to the invitation. Most notable amongst these were the multinational oil corporations (which were the largest foreign investors in South Africa) and predominantly white labour organisations, such as the Typographical Union, the Public Servants Association and the United Workers Union of South Africa.

40. The focus turned to identifying culpability, collaboration and direct involvement of business organisations in the perpetration of serious human rights violations in South Africa. The two dominant positions that emerged at the hearing were the presentation of apartheid as part of a system of racial capitalism that was beneficial for white business as an integral part of a system premised on the exploitation of black workers and the destruction of black entrepreneurial activity. While business as a whole benefited from the system, some sections of the business community (Afrikaner capital, mining houses and the armaments industry) benefited more than others did. The other position claimed that apartheid raised the costs of doing business, eroded South Africa's skill base and undermined long-term productivity and growth, thereby harming the economy.

The business organisations that promoted this understanding included the Steel and Engineering Industries Federation of South Africa (SEIFSA), the South African Chamber of Business (SACOB), the Afrikaner Handelsinstituut (AHI), the Council of South African Banks (COSAB), the Textile Federation and the Johannesburg Chamber of Commerce and Industry and certain companies and individuals in business.

41. These contrasting arguments revealed that there were different notions of accountability. The question was raised that if apartheid placed obstacles in the path of profitability, casting business as a victim of the system, why were there few attempts by business to change this situation? Why did business not protest more loudly? Why did it not support the demands of black workers for wage increases and resist migratory labour practices? In contrast, the ANC, COSATU and the SACP seemed to imply that the involvement of business in the racial capitalism system of apartheid was such, and the benefits so great, that it would not have been in its interest to take issue with apartheid.

42. Many South African businesses claimed that as they had not directly been involved in human rights violations, they with others, excluded themselves from the need to make to make any submission to the TRC. This meant that business could evade engaging in making far-reaching changes - another deep flaw in the transition.

43. This is the basis of today's deep-seated social and developmental problems and their link back to the transition processes of the early 1990s and the call for an economic CODESA. The question remains, "Were voices from below given a hearing that might have generated more citizen-driven, reconciliation initiatives at sectoral or local levels?" The learning is that the proposed National Dialogue would need to specifically address this issue from a historical viewpoint traced back to the transition process itself as the basis for the ongoing investigation into issues of accountability and truth recovery.

44. The country's current political leadership will not engage unless they see the merits of doing so, and this means raising the political stakes and getting more people involved. It also means developing political champions for these issues and tying these issues to current realities / challenges.

45. This was the origin of the Khulumani Apartheid Lawsuit, planned as a class action with 87 identified plaintiffs associated with and identified through Khulumani's community-based work. Khulumani Support Group filed its international lawsuit in the Eastern District of New York on November 11, 2002. The lawsuit was filed against 23 foreign corporations, including banks, for their alleged complicity with the apartheid regime, resulting in the personal injuries suffered by victims.

46. The lawsuit was led by the US attorney, Michael Hausfeld from a Washington DC-based law firm who had successfully led cases for compensation for Swiss and Austrian survivors of the Holocaust. He demonstrated a profound respect for the plaintiffs in our lawsuit and took no action without convening a teleconference with Khulumani Support Group.

47. The South African attorney on the case was Charles Abrahams from Cape Town, who was associated with Jubilee South Africa and who failed to create any direct relationship with Khulumani Support Group.

47. There had been an intensification of the Apartheid Debt and Reparation Campaign, led by Jubilee South Africa as a component of a global campaign for economic justice as the world approached what the Catholic Church had earmarked as the Year of Jubilee.

48. What had not been disclosed to Khulumani Support Group at this time was that Jubilee South Africa (JSA) had begun issuing press statements using Khulumani's letterhead and speaking in its name without Khulumani's knowledge or consent. Khulumani raised concerns about this practice. Our information about this practice had come from Khulumani members on the ground who would call Khulumani's office to inform our staff that they had been called to a 'Khulumani' meeting in a particular township, and that when they got there, they did not find any Khulumani staff, only Jubilee SA staff.

49. We raised our concern with the leadership of Jubilee South Africa. Khulumani had not been founded by Jubilee South Africa, and we had never agreed to being used by a civil society 'partner' which assumed it could operate in our name without our knowledge. This became the source of what developed as Khulumani's refusal of the practice of being expected to serve as *cannon fodder* in a campaign in which we had had no voice.

50. When this practice recurred after our stated opposition to this dishonourable use of Khulumani's name and membership without our knowledge, we insisted on a facilitated mediation with Jubilee representatives. Jubilee's senior management agreed provided Khulumani carried the entire cost of the mediation.

51. Khulumani secured the services of a professional mediator, Rob Calmer who prepared for the engagement and facilitated the mediation with rigour. The outcome was a set of agreements that both sides committed to respect.

52. Within days of finalising the agreement, Jubilee South Africa violated clauses of the mediation agreement. Khulumani them prepared a public statement stating the ten reasons Khulumani "could not participate in a partnership with Jubilee South Africa." This was distributed through SAPA with which Khulumani had a signed contract.

53. The response to this public statement was vicious especially from the European donors of the Apartheid Reparation Campaign, of which we had never been appraised. The donors perceived the campaign as being a sole initiative of

Jubilee South Africa. When Khulumani made inquiries about the funding being provided to Jubilee South Africa, we had been refused an answer.

54. Khulumani then learned that Jubilee South Africa had convened a national meeting, to which Khulumani had not been invited. That meeting, we learned had adopted a resolution that going forward Khulumani's entire membership, at that stage some 32,000 victims and survivors of apartheid atrocities[39], would be recorded as belonging to Jubilee South Africa. We learned that the European funders of the campaign had required Jubilee to have a membership. This was Jubilee's response to this requirement.

55. Despite Khulumani's role in running its own advocacy including press statements, we learned that Ms Sooka, as then CEO of the Foundation for Human Rights, had been providing a monthly budget to the Justice and Peace Office of the Catholic Bishops' Conference for advocacy on the 'Khulumani lawsuit'. No resources were being provided by the FHR for Khulumani's ongoing work on the lawsuit advocacy.

56. The Management of Jubilee South Africa, then appointed an Office Manager[40]. In support of Khulumani Support Group and out of respect for its autonomy, all the staff of Jubilee South Africa stood together in making a demand of their management for a demonstration of respect for the autonomy of Khulumani Support Group. The JSA management locked all their staff out of their office and took a case against their staff to the Johannesburg High Court. The JSA Management eventually took their case against their own staff to the Johannesburg High Court three times, thereby exhausting all their resources and sadly having to close down.

57. The situation that emerged in this conflict has continued in different forms and has involved Ms Sooka in all its unfortunate and unhelpful presentations of profound disrespect for community members involved in challenging advocacy issues.[41]

58. Khulumani continued its dedicated advocacy to the cause of securing reparations from complicit multinational companies. When in 2014, the US government amended the Alien Tort Claims Act, the Khulumani case could not

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[39] Khulumani's documented membership on our Apartheid Reparation Database, (KARD) is currently over 120,000 victims and survivors of apartheid violations.

[40] Anthony Alvin took on this role and insisted on and involved the Jubilee staff in making a stand on Jubilee respecting the autonomy of Khulumani Support Group.

[41] The way in which these 'conflicts' arise seem to come about when those who consider themselves as knowing better than those on the ground who are affected by the issued, make their own stands. This attitude towards activists on the ground continues to play out today with many lawyers struggling to relate to community members and activists as equals in serving particular causes.

continue in the US court because the jurisdiction had been amended to allow only human rights violations that had occurred on US territory to use that legislation to take a case to court in the US.

59. At this point, Khulumani's US attorney advised us that he would approach the MD of General Motors to request a voluntary contribution to Khulumani Support Group. This was agreed and the General Motors MD provide around 20,000 shares in General Motors as a voluntary settlement to the cause of reparation for victims and survivors of apartheid human rights violations.

60. The GM shares were deposited into the Hausfeld Trust Fund. In due course, Michael Hausfeld advised Khulumani that he had learned that the value of the shares was dropping and that he had been advised that it would be prudent to sell the shares.

61. At last reckoning, an estimated US$265,000.00 had been realised through the sale of these shares. The funds realised by this sale converted to ZAR4,546,790.50 (using the 8 October 2025 rates of exchange).

62. The attorney Michael Hausfeld had requested me to put in motion the process of establishing a Khulumani Reparation and Reconciliation Trust Fund into which he would transfer the funds generated from the General Motors settlement. I drafted founding documents and shared them with Charles Abrahams. I submitted them with the assistance of the Johannesburg Office of the Legal Resources Centre[42] to the Master of the High Court for approval. The Master of the High Court approved the establishment of the Khulumani Trust Fund.

63. Khulumani set about contacting the individuals who had been identified as potential trustees for this Trust Fund. When, after surviving serious assaults on Khulumani Support Group at the hands of three former Khulumani Board Members, two of whom had never been confirmed by Khulumani's membership as legitimate and approved for board membership, being associated with individuals from defence intelligence themselves or by association with high-ranking military intelligence individuals (including the Head of the National Intelligence Agency). This was revealed in a certified affidavit secured by Khulumani's Finance Administrator, Ms Faradiba Morton in July 2019, after these

[42] While the Legal Resources Centre had served as legal support to the SACTJ (South African Coalition for Transitional Justice which included Khulumani Support Group as a founding member), a hostile attitude towards Khulumani Support Group emerged from the side of LRC when it was learned that the then Minister of Justice, Michael Masutha has requested Khulumani Support Group to 'teach all his senior managers about reparations'.

individuals executed a hostile capture of Khulumani's National Contact Centre in Khotso House in Marshalltown, Johannesburg in late 2018.

64. An investigation later revealed that the settlement provided by General Motors as a settlement to Khulumani Support Group had been divided between the attorney Charles Abrahams and Advocate Dumisa Ntsebeza and had been deposited into their respective law firm trust accounts.

65. These developments had taken us through to 2014 and beyond. But reverting to the subsequent developments in respect of the TRC, the seventh and final volume of the TRC Report was published in 2003, some five years after the HRVC had stopped hearing testimony. This Final TRC Report included the Closed List of victims[43].

66. On 15 April 2003, President Mbeki announced in the National Assembly that reparations would be a once-off payment of R30,000.00 made to each person declared to have been a victim by the TRC. No explanation was offered as to how this sum, less than one sixth of what had been recommended by the TRC, was calculated. On 6 June 2003, an Ad Hoc Parliamentary Committee on Reparations ("Ad Hoc Committee") was formally constituted by the Speaker and the Chairperson of the National Council of Provinces to consider the recommendations made by the President in terms of Section 27 of the TRC Act. The Ad Hoc Committee appointed a Sub-Committee on Reparations ("Sub-Committee") which formulated a draft report[44].

67. On 24 June 2003, a meeting was scheduled by the Ad Hoc Committee to review and amend the Report of the Sub-Committee considering the President's recommendations on:

1) Symbols and monuments.
2) Rehabilitation of communities.
3) Medical benefits and other forms of social assistance.
4) Final reparations.

[43] No amount of advocacy had had any impact on the officials presiding in the Department of Justice. To the present, Khulumani has seen no shift in this unexplained obduracy on the part of officials in the National Department of Justice. Khulumani was left surmising that this obduracy was probably traceable to the Office of the President, who has sole right to make decisions on the use of the Victims' Reparation Fund, we have been told.

[44] Khulumani Support Group had made a submission to the Ad Hoc Committee on Reparations. No Khulumani representative was invited to participate in the discussions in Parliament. None of the recommendations of the Sub-Committee appointed for the process were adopted. The resolution that was adopted stated that there would be no appeal for problematic decisions taken such as the decision to retain a 'Closed List' of victims and survivors.

68. Prior to the meeting of 24 June 2003, the Ad Hoc Committee on Reparations designated a three-day window for public comments on the Report of the Sub-Committee.

69. During the meeting of 24 June 2003, the Ad Hoc Committee endorsed the government's commitment to providing a once-off grant of R30,000 to TRC-identified Victims. It noted but did not accept the contentions put forward that this amount was inadequate. The Ad Hoc Committee did not accept the recommendation of the Sub-Committee that Parliament approve a requirement that an appeal mechanism should be created for victims erroneously or unfairly excluded from the Closed List despite having been identified as victims during the life of the TRC.

70. The Ad Hoc Committee recognized the need for the rehabilitation of communities[45] which were subjected to intense acts of violence and destruction and noted the assurances by the President of that programmes would be put in place including social benefits such as medical benefits, education assistance and the provision of housing where homes had been deliberately destroyed as acts of violence, and requested regular reports thereto[46].

44. Both Houses of Parliament accepted the report of the Ad Hoc Committee, (despite the lack of any consultation with Khulumani Support Group and other civil society organisations.)

45. In August 2003, a National Civil Society Dialogue on Reparations was held. This involved 30 civil society organizations, including Khulumani, as well as government representatives, including Minister Maduna. Khulumani proposed the creation of a Victim Reparation Desk within government[47].

46. Following the August 2003 workshop, Khulumani convened a panel of independent experts to review government's proposals within the framework of victim-centredness. (See Khulumani Victim-Centred Proposals for Reparation.) These confirmed the accuracy of the size of the proposed compensation

[45] There has been no delivery on the proposal for rehabilitation measures for severely affected communities to be put in place. Instead, the COO of the TRC Implementation Unit without consultation with any victim communities, decided on a programme of 'community rehabilitation' without any engagement with Khulumani Support Group or its community collectives.

[46] There have been no recommendations for medical assistance. We have been told that these matters will be taken care of by the National Health Insurance Programme when it is finally approved and introduced.

[47] This proposal was never entertained by the officials in the DOJ.

recommended by the TRC if they were to provide individuals with the means to overcome the consequences of their victimization.

47. On 29 October 2003, Khulumani presented a booklet summarising the Khulumani Victim-Centred Proposals[48] to a legal team in the Office of the President and to the Director General of Justice. In that meeting, Khulumani members presented each chapter of the booklet. The Khulumani Victim-Centred Proposals made the following recommendations:

47.1 A total grant of R120,000 per identified victim, preferably to be paid out as a monthly grant of R2,000 over 5 years, or as an initial lump sum of R30,000 followed by a monthly grant of R1,500 for 5 years ("Reparative Grant I").

47.2 For victims and survivors who have already received the 'once-off" reparations grant of R30,000, a monthly grant of R1,500 per month for 5 years to provide compensation that would total R120,000 per identified victim which KSG strongly recommends should not be referred to as a pension ("Reparative Grant II").

47.3 The creation of means tests so that victims who fall into the category of "privileged" victims (according to agreed criteria) would be invited to voluntarily make their reparative grants payable into a proposed Community Rehabilitation Trust Fund to support the provision of additional specific services needed by victims including psychosocial services, support for small business ventures and stipends for survivors who provide community services.

47.4 The construction of an ongoing participatory research programme to continuously monitor and evaluate the impact of the reparation (reparatory) grant programme and provide evidence of the potential of the grants to assist in the transformation of victims and survivors into active citizens[49].

47.5 The provision of an investment from the President's Fund into Khulumani to recognize the value of the services provided by Khulumani over the previous 15 years to victims of apartheid atrocities and to provide for Khulumani's continuing facilitation of the transformation of victims and survivors into active citizens[50].

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[48] These are available and will be submitted along with this submission to the Commission of Inquiry.
[49] This refers to Khulumani's logo.
[50] This is documented from the experience of initiating these programmes with Khulumani-associated collectives.

47.6 The transfer of funds remaining in the President's Fund after finding and benefiting victims who have not yet received their original reparation package to a Community Rehabilitation Trust Fund which would provide for specific further needs of victims in communities to access micro-finance and other transformatory programmes..

47.7 The establishment of a "living museum" to acknowledge and recognize the contributions of victims and survivors of the anti-apartheid struggle. Khulumani received no response to these comprehensive proposals (See Khulumani Pack) from President Mbeki or Minister Maduna, despite repeated requests[51].

48. When Frank Chikane, as Director-General in the President's Office, organized an event at Soweto's Freedom Square, to invite Khulumani members and all the individuals who had been involved in saving his life when in 1989 he had been poisoned with organophosphate compounds placed inside his clothing in a suitcase he had packed for a trip to Namibia, Khulumani members organized to participate in the event and wrote their concerns about the extent of the 'unfinished business' on sheets of paper which were placed in a child's empty coffin and carried in a procession to hand over Frank Chikane at the start of his ceremonial thanksgiving event. Frank Chikane undertook to respond to these written submissions, but a response was never received from him or from his office. The coffin that Khulumani members had had to procure was never returned.

49. On 12 November 2003, Regulations Regarding Reparations to Victims ("2003 Regulations") were promulgated and gazetted. Section 3(1) 2003 Regulations provided that: "an identified victim is entitled to a once-off reparation grant in the amount of R30,000 as a final reparation." The 2003 Regulations defined an "identified victim" as "a person who has been found by the TRC[52] to be a victim of a gross violation of human rights", referred to in this affidavit as a TRC-identified Victim, one who by *a stroke of luck* came to be included on the state's final list of only 17,600 individuals.

50. The 21,000 victims who had been declared by the TRC Officials to fit the KATS Categories and therefore to be eligible for reparation, were sent paperwork to complete. The problems this created for Khulumani members were huge,

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[51] Khulumani has refined a funding application for work in the field to provide for in-person interviews to provide the content for the proposed Centre for Memory and Transformation (See the proposal for this provided in the attachments.

[52] This is the point at which 100,000 legitimate victims became excluded from any post-TRC support as a result of the TRC 'closing shop' while much had not been addressed.

given that Khulumani members had little or no access to the equipment needed to send their reparation applications. Only around 16,100 of the 21,000 so-called eligible victims submitted applications and received reparations. By contrast, the Khulumani database ("KARD") holds more than 100,000 records of people who fit the KATS categories but who were unable to lodge their claims with the TRC for entirely understandable reasons.

51. Over several months in 2004, Khulumani convened focus groups of victims in every province to assess what had happened in their lives during the first decade of democracy, how they had been brutalized and how they were faring ten years later. The results of these focus groups, which met with 350 people in total, were sent via email to every Member of Parliament as a story of a victim or a survivor every Tuesday and Thursday. No Members of Parliament responded to these stories, beside Douglas Gibson and Sankie Mthembi-Mahanyele[53].

52. Khulumani then produced a victim reflection booklet based on our use of a schema comprising the four components essential for facilitating the recovery of survivors from serious human rights violations[54]. Khulumani distributed it to stakeholders including to the Department of Justice (DOJ). The booklet included illustrations produced by the victims of gross human rights violations. The issues highlighted in the booklet were assembled to construct a Charter of Redress[55] that was formally presented to the TRC and to government[56].

53. In 2005, the government established a Post-Truth and Reconciliation Commission Implementation Unit in the DOJ (the "TRC Unit") to co-ordinate, monitor and report on progress in implementing the TRC recommendations. Dr Mochubela Seekoe, a former Ambassador of the Republic of South Africa to the Russian Federation, was appointed head of the unit. KSG made repeated attempts by telephone and in person to hold a meeting with the TRC Unit to

[53] As a collective, we lobbied Members of Parliament for ten years before they finally adopted the Bill to criminalise torture and to prosecute its perpetrators. We knew that many (probably most) of the earliest MPs in our first democratic Parliaments were survivors of torture, yet they could not bring themselves to criminalise torture. This continued to puzzle us.

[54] The schema requires recognition of what happened to a victim (or what has been done to a victim), remedies to address the needs generated by this harm and its consequences, access to justice for the harms sustained, and support for reintegration into community and the larger society, including access to various forms of capital that would support the victims' own plans for plotting a path to the future.

[55] Khulumani's Charter for Redress was seen by the officials in the Department of Justice as being a Victim Freedom Charter.

[56] This was the very first Khulumani submission to the Department of Justice that was taken seriously but was never used as a framework for addressing the consequences of violations.

discuss its Victim-Centred Proposals, but Dr Seekoe advised Khulumani that it would take up to one year for the TRC Unit to become functional.

54. On 13 December 2010, Khulumani presented its Victim-Centred Proposals comprising the findings of the 'experts' hired by Khulumani to the TRC Unit and to officials in the Presidency including to the Director-General of the DOJ at that time, Advocate Vusi Pikoli.

55. Khulumani offered assistance to the TRC Implementation Unit in tracing victims and survivors, given its countywide network of survivor activists in the country. This offer of assistance was never taken up. The TRC Unit set about hiring tracing agents to try to track down those who had qualified for reparation, but whom the DOJ was unable to trace.

56. The TRC Implementation Unit subsequently published a supplement in several newspapers, including the Daily Sun, containing the list of TRC-identified victims who had not yet been traced. Using this list, Khulumani managed to trace a number of victims whom the TRC had not managed to locate in order to provide them with reparations.

57. Khulumani followed up its submission of its comprehensive reparation policy proposal to the Department of Justice requesting their response to the policy proposals. The Deputy Minister responded that Khulumani would have heard back from the Department if they had found any value in the proposals.

58. On 28 October 2005 and again on 27 October 2006, Khulumani organized marches to Parliament to hand over memoranda to Members of Parliament to highlight the state's failure to adopt effective reparation policy proposals, subsequent to the official handing over of the Final TRC Report of 3,500 pages to President Mandela on 29 October 1998.

59. Khulumani resolved to adopt October 29 for an annual public event to remind South Africa of the failure of government to adopt Professor Hlengiwe Mkhize's excellent reparation policy proposals. It is Khulumani members who carry the score in their bodies of the violence meted out on them by apartheid agents. These marches were organized by Mr Brian Mphahlele[57], a survivor of serious torture who was a staff member of Khulumani's Office in Community House in

[57] Brian Mphahlele lost his employment at Khulumani Support Group during the watch of Ms Shirley Gunn as the board members representing Khulumani Western Cape, when R462,000.00 was stolen from a grant she had failed to report to the National Contact Centre as required by Khulumani's Finance Procedures.

Salt River, Cape Town and who carried responsibility for organizing Khulumani's protest actions in the Western Cape.

59. Khulumani handed its memorandum on the fact that there had been no progress in delivering on the reparation proposals drafted by Professor Mkhize over to Mr Ryland Fisher, advisor to the Minister of Justice (then Minister Brigitte Mabandla) and Mr Iman Solomons, Chairperson of the Justice Portfolio Committee, on these respective dates. Neither official bothered to respond to Khulumani.

60. In November 2006, Khulumani received a letter from the Department of Justice acknowledging its receipt of the 29 October 2006 memorandum, but there was no further response

61. On 26 October 2007, Khulumani again marched to Parliament and presented a memorandum to Enver Daniels, advisor to Minister Mabandla. The memorandum called on Minister Mabandla and the cabinet to inter alia:

61.1 Consult with victims regarding reparation.

61.2 Keep Khulumani informed and updated on all decisions related to The President's Fund which we learned at that time, held R750,000 for reparation.

61.3 Make a reparation policy publicly available, and

61.4 Produce a TRC Report, based on the work done to produce *"Out of the Shadows*[58]*',* for distribution to communities.

62. Mr Enver Daniels, the Chief State Law Adviser in the Department of Justice, gave Khulumani an undertaking that he would meet with Khulumani upon his return from study leave. He later resisted attempts by Khulumani to set up this meeting.

63. In 2007 Khulumani ran a campaign targeted at preventing government from assigning reparation funds to the Disaster Management Fund ("DMF"), as it had publicly announced in the broadcast media it would[59]. We argued that these funds were dedicated for the provision of reparation for survivors and victims of apartheid violations. This threat was then countered when in December 2007 President Mbeki stated at the ANC Polokwane conference that the President's

[58] A manuscript of this title has apparently been lodged with Macmillan Publishers.

[59] This became a threat that was repeated over time by government. Khulumani paid close attention to what was happening to the Victim Reparation Fund.

Fund would be retained for community reparation programmes and not transferred to the DMF.

64. With the continuing experience of the TRC Implementation Unit's failure to share information regularly with Khulumani Support Group, Khulumani's Information Officer, Ms Angela Tembo, submitted a PAIA application to the Department of Justice requesting updates on the work of the TRC Implementation Unit and on the state of the President's Fund.

65. The Department of Justice responded and stated that it was their intention to identify and partner stakeholders. We asked to become a formal partner of the TRC Implementation Unit, but the DOJ never acted on these intentions. The TRC Implementation Unit, however, did share that they had faced challenges due to the non-cooperation of various government departments.

66. On 14 September 2009, a Presidential Hotline ("Hotline") was set up in the presidency of Jacob Zuma. Government publicly stated that the purpose of the hotline was to offer the citizens of South Africa and all members of the public an effective way of sharing information *'from the ground'* and of making referrals to government institutions at all levels and in all spheres.

67. Around 17,000 Khulumani members[60] from across the country called the Hotline to report their dissatisfaction with government's lack of seriousness in adopting policy and provisions for the reparations promised to victims and survivors if they engaged with the TRC and the opportunities it was expected to provide for victims and survivors of apartheid abuses.

68. When Khulumani followed up the matter with the Presidential Hotline, the Director of the Hotline in the Office of the President, Mr Melisizwe Bleki, engaged President Zuma on this matter. Mr Bleki provided Khulumani with an internal reference number (IDMS 323521). From that time, Khulumani's calls to the Presidency received no responses.

69. In 2010 Khulumani planned and implemented a Red Card Campaign[61] for the duration of the country's hosting of the Soccer World Cup to 'Red Card Companies that had been involved in aiding and abetting serious human rights violations in South Africa'. The Campaign used the media interest in South

[60] This figure comes from the records of the Presidential Hotline.
[61] https://redcardcampaign.wordpress.com

Africa's hosting of this event to educate and highlight Khulumani's International Lawsuit in New York, in which Khulumani had charged 23 multinational companies with business operations in South Africa.

70. Khulumani initiated a second blog series called Music 4 Justice[62] which featured Hip Hop compositions in support of the campaign from Hip Hop for Social Justice groups cross the world. The music was presented on the label

71. On 12 June 2010, Khulumani members from the Eastern Cape and Gauteng held a Red Card Campaign March in Thokoza, Gauteng. The march proceeded along Khumalo Street, to the nearby Sam Ntuli stadium where Khulumani handed over a memorandum to a representative of government. The aim of the March was to draw attention to multinational companies who supported apartheid and who were now funding football teams. The memorandum decried the work of the TRC Unit and demanded a boycott of companies that had aided and abetted the apartheid regime and reparations.

72. On 19 and 20 July 2010, Khulumani co-hosted a workshop with the Institute for Justice and Reconciliation in Rossettenville, Johannesburg entitled: "Towards Implementation of Reparations for Apartheid Victims and Survivors", funded by IJR. The workshop objectives were:

72.1 To gain a clear sense of the policy priorities and/or alternatives pertaining to reparation in South Africa.

72.2 To work towards a consensus amongst network partners about policy priorities and/or alternatives where general agreement exists with the view of engaging in collaborative advocacy.

73. In attendance were representatives from CSVR, HRMC, SAHA, LRC, ICTJ and the TRC Implementation Unit, represented by Mr Thapelo Mokushane, responsible for stakeholder relationships. Mr Mokushane tabled the "Report on Government's Progress on the Implementation of the Truth and Reconciliation

[62] https://redcardcampaign.wordpress.com › music-4-justice

Commission Recommendations", dated August 2009. This was the first time that the report was made available to Khulumani members after having been tabled at Parliament. The report lists as one of its successes the once-off payment of individual grants to victims, totalling R476 million as at 31 January 2009. It also stated that R50 million had been paid out as urgent interim reparation and that an amount of R876 million remained in the President's Fund on 31 January 2009. Mr Mokushane said that he did not have a mandate to answer questions about this report.

74. In July 2010, SACTJ wrote to the TRC Unit addressing the concerns that had been raised in the discussions at the Rossettenville Workshop.

75. On 4 November 2010, a meeting was held between member organizations of the SACTJ (including Khulumani) and the DOJ including members of the TRC Unit. Dr Khotso de Wee, Chief Operations Officer of the DOJ, outlined the following areas for discussion:

75.1 The need for the DOJ to call a national consultation with civil society organizations with regards to the need for policies to be designed to deal with the "unfinished business" of the TRC, and the establishment of a timeframe thereto.

75.2 A discussion on the President's Fund and its recent annual report.

75.3 Questions about how it had taken nine months since the completion of the report on the President's Fund for it to be made available to civil society.

76. Dr de Wee acknowledged that the DOJ had been very slow in delivering on the matter of attending to the urgent needs and concerns of victims of apartheid atrocities in South Africa. He acknowledged that the "slow bureaucratic approach" of the DOJ had serious consequences for victims and survivors and that the DOJ was now "*playing catch up*" and dealing with the third generation of family members of victims in respect of applications to the President's Fund.

77. Dr de Wee reported that the DOJ had failed to trace a fairly large number of victims and that the efforts of the tracing agency hired by the TRC had largely been unsuccessful. He agreed that the DOJ needed assistance from civil society to trace beneficiaries.

78. Khulumani pointed out that victims and survivors had continuously attempted to engage the DOJ through meetings and memoranda but had received no substantial responses.

79. Khulumani confirmed that it had tabled requests for information and for urgent assistance with the Presidency, the Minister of Justice, the CEO of the President's Fund, the Public Protector, the Head of the National Treasury and the TRC Unit. It was recorded that government had not convened a single policy consultation with the civil society organizations that had worked with victims from before the commencement of the TRC until the present time.

80. At the conclusion of the meeting on 4 November 2010 the DOJ agreed that it was not appropriate for government to be deliberating on these matters in isolation from civil society, and the following agreements[63] were reached:

80.1 The DOJ committed to including the SACTJ members in all policy-related discussions and planning meetings going forward.

80.2 It was agreed that a consultation would be held between the DOJ and the SACTJ membership organizations to consult on the construction of community rehabilitation proposals.

80.3 The prospective "roll out" date for regulations on community rehabilitation was announced as in March 2011.

80.4 A discussion was promised about these regulations including provisions for victims and survivors who had been omitted from the 'Closed List'.

80.5 The DOJ agreed to provide a formal letter of apology to be distributed to Khulumani member groups in which they undertook to explain the prolonged delays in addressing the "unfinished business of the TRC" and its lack of response to multiple formal letters over several years.

81. On 13 December 2010, a stakeholder meeting entitled "Civil Society Network on TRC Reparations" took place in Pretoria, as a response to the demands of Khulumani members at the meeting of 4 November 2010. In attendance were representatives from the following organizations: Khulumani, CSVR, the Institute for Justice and Reconciliation (IJR), the South African Catholic Bishops' Conference (SACBC), HRMC, SAHA, ICTJ, the Freedom of Expression Institute (FEI) and the Trauma Centre for Victims of Violence and Trauma (TCVVT). Dr de Wee chaired the meeting.

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[63] None of these 'agreements' have been honoured. For Khulumani, the experience has been one of witnessing how the TRC Unit has merely kept following political orders to try never to honour any agreements they forge with civil society. The 'doings' of the TRC Implementation Unit have apparently been fixed in stone for over two decades now.

82. Dr de Wee gave an overview of the mandate[64] of the TRC Unit and what he believed had been achieved since the establishment of the TRC Unit in 2005. Ms Lufuno Mmbadi, Chief Director of the TRC Unit presented a framework for community rehabilitation[65] and the payment of reparations in the form of medical benefits and other forms of social assistance for TRC-identified Victims.

83. Ms Mmbadi confirmed that community projects that could be embarked on and completed within a short time span, would receive some funding from the President's Fund, following the conduct of needs assessments[66].

84. Ms Mmbadi stated that as of 10 December 2010, 15,962 beneficiaries had been paid out (from a total of 16,837 applicants) and that a total of 875 beneficiaries remained to be paid. The cost had been approximately R27 million.

85. As recorded in a letter dated 17 March 2013 from Khulumani to Advocate Dumisa Ntsebeza, Khulumani and other SACTJ members rejected Ms Mmbadi's proposals to use money from the President's Fund to upgrade infrastructure in certain townships[67].

86. In a presentation made to the DOJ, Khulumani welcomed the DOJ's acknowledgement that its stringent adherence to only providing reparations to TRC-identified victims had resulted in many victims of gross human rights violations, resulting from their political activism being excluded[68].

87. Khulumani noted that political offenders and military veterans had both been recipients of special benefits by way of the Special Dispensation on Pardons for Offenders (established by President Mbeki in 2007) and a Special Housing Dispensation for Military Victims as well as the pensions provided through the Special Pensions legislation[69].

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[64] This was a repeat of a kind of 'political mantra', endlessly inanely and mindlessly repeating the same dead-end rhetoric.

[65] Khulumani identified major problems with the framework

[66] Khulumani had long initiated needs assessments for victims and survivors of human rights violations who chose to affiliate to Khulumani Support Group and had presented the collation of these findings to a workshop held in the DOJ.

[67] This plan of the TRC Unit morphed into the proposed selection of 2 sites in each province for the establishment of a Multipurpose Community Centre budgeted at R30 million at each site.

[68] Despite this acknowledgement, no shift from this position was ever achieved with the DOJ.

[69] It should be noted that this provision has not been aligned with guidelines because numbers of beneficiaries were privileged over others – a provision that has always been susceptible to corruption.

88. Khulumani reported that its database, the Khulumani Apartheid Reparations Database (KARD) now held the data of 65,000 individual victims who fell into the categories identified for compensation from the TRC. Projections at this time estimated that the number of victims of apartheid gross human rights violations who in an ethical regime would receive reparation from the state in line with legal provisions, was estimated as 80,000 victims and survivors. (This number is now over 120,000. This is the number that was projected by the Professor of Actuarial Science at the University of the Witwatersrand. Professor Rob Thomson whose calculations predicted that the number of reparation beneficiaries would be around 120,000.)

89. When Khulumani presented the analysis of its database to a meeting of senior officials in the DOJ, Ms Ina Botha, a DOJ legal drafter, advocated for the DOJ to use Khulumani's data and knowledge to guide the work of the TRC Implementation Unit going forward.

90. Open discussions followed the presentations in which attendees raised the issues of governmental bureaucracy, the need for an amendment of the TRC Act to access the President's Fund, points of contact within communities, the lack of resources within the provinces, the importance of victim participation and engagement with those who did not go to the TRC.

91. Dr de Wee in a meeting on 13 December 2010 emphasized the need for civil society participation to hold the government accountable and to provide local contacts. He advised that the DOJ's mandate was to consider those on the Closed List**.** Dr de Wee confirmed that it was necessary to put together a comprehensive submission to the Minister to explain to him how people had been excluded. He also confirmed that the following were goals to be achieved by 2014:

91.1Finalizing regulations pertaining to Health, Education and Housing.

91.2Finalizing the process of tracing the last group of beneficiaries, with the help of the IEC and the Department of Home Affairs.

91.3Adoption of a community rehabilitation plan as a means of awareness and education.

92. According to Appendix A "Comments on the Draft Regulations published by the Department of Justice dealing with Reparations for Apartheid Era Victims, dated 8 June 2011, the main conclusions of the December 2010 stakeholder meeting were the following:

92.1 It would be possible for government to collaborate with civil society to resolve 'the unfinished business of the TRC'.

92.2 Every victim of an apartheid gross human rights violation needs formal recognition.

92.2 Reparations need to address the serious disadvantages that continue to characterize the lives of many victims.

92.3 An inclusive process of victim identification and verification needs to be undertaken from scratch.

92.4 Further, the DOJ suggested that presentations should be made to the Portfolio Committee.

93. On 11 March 2011, Khulumani made submissions to the Portfolio Committee on Defence and Military Veterans on the Military Veterans Bill (B1-2011) published in Government Gazette No. 33762 of 19 November 2010 ("Military Veterans Bill").

93.1 Khulumani noted that while many veterans were members of political movements and thereby lost potential educational and job opportunities, many victims sustained equally devastating losses and inconsistencies in reparations would create risks for the state.

93.2 Khulumani emphasized its refusal to differentiate between veterans and victims, noting that there are individuals who fall into the category of "victim" and "veteran".

93.3 Khulumani set out its opposition to provisions which draw distinctions between veterans and victims of the struggle for liberation and made the following proposals:

93.3.1 Equal consideration of veterans and victims for benefits within a programme of reparation and compensation for sacrifices made in the liberation struggle.

93.3.2 Creation of equivalence between victims and veterans rather than between veterans of the struggle of the past and those currently serving in the military.

93.3.3 Joint consideration of veterans and victims for the range of benefits proposed.

93.3.4 The use of independent criteria to validate the applications of veterans and victims in order to avoid corruption or manipulation.

93.3.5 The use of broader dialogues to draw on the experience of organizations working with victims and veterans.

93.3.6 The use of a simple and straightforward system to distribute benefits to veterans and victims, including identical pensions for all.

94. It its submissions, Khulumani clarified that it supported the principles underlying the proposals contained in the Military Veterans Bill if they applied to all categories of people who made sacrifices in the struggle. Khulumani requested the opportunity to present these proposals in Parliament to the committees deliberating on this issue.

95. On 11 May 2011, the DOJ published in the Government Gazette 2011 Draft Regulations for the Payment of Educational Assistance and Medical Benefits exclusively to victims identified by the TRC. ("2011 Draft Regulations"). Responses were requested

96. There was no further communication with SACTJ since the exchange of letters in early 2011 in which the TRC Unit asked for patience.

97. On 13 May 2011, SACTJ was first made aware of the publication of the 2011 Draft Regulations by a call from the Sunday Times. The SACTJ wrote to the TRC Unit to express its dismay and disappointment that the proposals had been gazetted without the promised follow-up engagement and national consultation.

98. On 27 May 2011, SACTJ wrote to the DOJ requesting information on which of the 'TRC-identified victims' had received additional assistance beyond their final reparations package to date.

99. On 2 June 2011, Mr Thapelo Mokushane of the TRC Unit responded verbally to the request. He stated that the Dr Seekoe had referred several TRC-identified Victims or their beneficiaries on an ad-hoc basis for educational and medical assistance, following personal requests. Khulumani learned that these personal requests had received favourable attention. Apparently, the requests were not linked to the President's Fund.

100. On 8 June 2011, by way of an email to the DOJ, the SACTJ confirmed its objection to 2011 Draft Regulations on procedural, constitutional and international law grounds and submitted the following comments:

100.1 The DOJ has failed to meaningfully involve victims in the conceptualization and drafting process.

100.2 The DOJ has failed to extend the educational and medical benefits to all victims of gross human rights violations, as contemplated in the TRC Act.

100.3 The Closed List policy appears to remain in place despite being inconsistent with the plain and just interpretation of the Act. It is offensive to victims' constitutional rights to equal protection under the law and it violates South Africa's obligations under international law, reflected in The Universal Declaration of Human Rights as well as in the International Covenant on Civil and Political Rights.

100.4 The current definitional and eligibility standards proposed in 2011 Draft Regulations are likely to exclude victims who have suffered harm as a result of human rights abuses and are in dire need of the educational and medical benefits being offered.

100.5 There are several unfair and unnecessarily complicated administrative procedures which will potentially render the proposed assistance inaccessible to many.

101. Further, in a press release, SACTJ outlined its rejection of the 2011 Draft Regulations for the payment of educational assistance and health benefits. SACTJ expressed disappointment that the 2011 Draft Regulations were gazetted after a very superficial consultation process with victims and other stakeholders and stated that victims and survivors reject the regulations because they do not provide for a comprehensive and inclusive reparations programme facilitating the restoration of the dignity of all victims of apartheid gross human rights violations.

101.1 SACTJ further stated that the the 2011 Draft Regulations failed to meet the state's legal obligations to provide reparations and perpetuated the prioritisation of special dispensations for perpetrators over providing redress for victims and survivors.

101.2 SACTJ referred to the set of proposals tabled by Khulumani with the DOJ on 13 December 2010, which provided an inclusive approach maximising the impact of reparations funding to meet victims' urgent needs.

102. On 9 June 2011, Khulumani delivered a submission to the DOJ in which it rejected the 2011 Draft Regulations for the following reasons, inter alia:

102.1 The 2011 Draft Regulations were gazetted without the meaningful and substantial involvement of victims and survivors.

102.2 The 2011 Draft Regulations are not coherent with the purpose and objectives of the TRC Act.

102.3 The 2011 Draft Regulations provide educational assistance and health benefits only for the Closed List of victims developed during the short time-span of the Truth and Reconciliation Commission (an estimated 16% of individuals who would be eligible using the criteria established by the TRC).

102.4 The construction of a closed list of victims was not provided for in the TRC Act.

102.5 There has been no systematic assessment by the DOJ of the urgent needs of victims of apartheid atrocities.

102.6 The 2011 Draft Regulations provide for unnecessarily complicated administrative procedures that would render the proposed assistance inaccessible to many victims and survivors.

103 Further, Khulumani called on the DOJ to:

103.1 Undertake an open and transparent process of consultation and dialogue with civil society to revise the 2011 Draft Regulations to be more responsive to victims' needs.

103.2 Establish ongoing victim registration procedures and take affirmative steps to register all victims of gross human rights violations.

103.3 Ensure that all victims of gross human rights violations according to the criteria in the TRC Act are provided with the TRC recommended reparations package.

103.4 Provide access to educational and medical benefits directly through the DOJ.

103.5 Collaborate with civil society partners on the design and implementation of measures for community reparation and rehabilitation.

104. Further, members of Khulumani sent a total of around 7,000 faxes to the TRC Unit to express their dissatisfaction with the 2011 Draft Regulations. In response, Khulumani received a written response in which the TRC Unti expressed their irritation with Khulumani for continually speaking out about gaps in its work.

105. On 1 November 2011, Khulumani participated in the New Age-hosted Breakfast with President Zuma, held at the International Convention Centre in Cape Town. Shirley Gunn, then representing Khulumani, asked the President what he was intending to do with the President's Fund. Zuma replied that he had never heard of President's Fund.

106. Between 23 and 30 January 2012, SAHA, CSVR and ICTJ received document copies pursuant to their requests submitted in November 2010.

107. On 7 February 2012, Khulumani wrote to President Zuma on the eve of his State of the Nation Address, in response to the public invitation to submit the issues that needed highlighting in the State of the Nation 2012 address, scheduled for 9 February 2012.

108. Khulumani outlined the following as issues which remained to be addressed, inter alia:

108.1 The lack of recognition of the contribution of struggle veterans.

108.2 Discrimination and divisions amongst communities of struggle veterans caused by the Military Veterans Act 2011 (gazetted on 5 December 2011).

108.3 The lack of physical and psychological rehabilitation services for victims of apartheid gross human rights abuses.

108.4 The lack of substantial responses to KSG's submissions on what is needed to "deal with the victims of the past.

108.5 The need to ensure that the President's Fund is dedicated to the delivery of "community reparations" in line with proposals submitted by KSG to the DOJ in the workshop of 13 December 2010.

108.6 The need to implement the TRC recommendations for individual reparations.

109. In this letter of 7 February 2012, Khulumani proposed a meeting on 18, 19 or 20 March 2012. The DOJ confirmed that the meeting would take place at 12pm on 19 March.

110. As agreed, 200 Khulumani members arrived by train at Pretoria Station on that date and travelled to the DOJ offices under police escort. All entrances to the Momentum Building in Pretorius Street, the operational offices of the DOJ, had been blocked with private security agents and the DOJ refused to proceed with the meeting. After obtaining a court order from the Chief Magistrate of Pretoria, the meeting took place on the pavement outside the DOJ.

111. On 20 March 2012, the Khulumani members who had been present at the 19 March meeting. marched to the Union Buildings, after 'overnighting' on the floor of a hall on the premises of St Alban's Cathedral, after receiving permission from Bishop Joe Seoka, Bishop of the Pretoria Diocese of the Anglican Church.

112. As agreed at the meeting on the pavement of the Momentum Building in Pretorius Street, in the Pretoria CBD of 19 March 2012, on 22 March 2012 the TRC Unit convened an ad hoc stakeholder conference, under pressure of Khulumani's advocacy, at the Burgerspark Hotel, Pretoria, to give the organisations representing victims an opportunity to discuss the comments they had submitted regarding the 2011 Draft Regulations (This was called the 22 March 2012 Stakeholder Conference"). Khulumani had had to prepare an advance list of the names and IDs of the 50 victims who would be attending.

113. Ms Sindane, DG (Director General) of the DOJ had given Khulumani permission to have 50 delegates attending. When Khululmani representatives arrived, Mr Mokushane with security guards hired from a private security company, barred the entry of the Khulumani delegation to the conference room.

114. The door to the conference room was only opened when a civil society participant in the room demanded that the Khulumani delegates have a right to enter.

115. At the meeting, Dr de Wee, COO of the DOJ repeatedly told Khulumani's members present that he would never respect them as long as they had elected a white person as their national director. Khulumani members protested to no avail.

116. Upon finally being allowed admission to the meeting, the forty-five Khulumani delegates addressed the 22 March 2012 Stakeholder Conference to put forward their concerns about the extent of non-delivery on undertakings made to victims and survivors by the members of the TRC Unit.

117. It was resolved that a task team would be established to represent the victim organisations to further deal with the draft regulations due to time constraints.

118. Khulumani applied to the TRC Unit for the report of 22 March 2012 Stakeholder Conference but was denied access to the document, because the document had been classified as a "pre-decisional record". As set out in the LRC's letter to the DOJ of 25 March 2013, no official report of the 22 March 2012 Stakeholder Conference had been distributed up until that date despite an undertaking made by the staff of the TRC Implementation Unit to do so. To date, the TRC Unit has still not provided a report.

119. On 12 April 2012, as resolved at the stakeholder conference of 22 March 2012, a Task Team meeting was allegedly held and chaired by Dr de Wee to discuss the 2011 Draft Regulations. Khulumani was not invited to that meeting.

120. Dr de Wee emphasized that the meeting was intended to be a once-off meeting prior to the presentation of the 2011 Draft Regulations to the Minister whereupon and consultation process on the regulations would be closed.

121. The DOJ stated that it considered the Closed List issue to be a complex legal argument which would take too long to resolve in relation to the 2011 Draft Regulations, but which would be researched and discussed further in moving forward with reparations, independent of the 2011 Draft Regulations[70].

122. SAHA raised objections on behalf of SACTJ regarding the anticipated abrupt closure of the consultation process and on the dismissal of the Closed List issue.

[70] The long outstanding matter of the Closed List was subsequently never engaged.

123. On 24 April 2012, SACTJ submitted comments in response to the 2011 Draft Regulations to the DOJ, with the caveat that the submission of these comments should not be misconstrued as support for the passing of the 2011 Draft Regulations. SACTJ attached the comments it had made on 8 June 2011 and stated that its main objections remained the following:

123.1 The failure of the DOJ to meaningfully involve victims in the conceptualization and drafting process.

123.2 The failure of the DOJ to extend the educational and medical benefits to all victims of gross human rights violations, as contemplated in the TRC Act.

124. SACTJ submitted various recommendations to improve the regulations with reference to the above objections including outlining its concern about the failure of the DOJ to extend the definition of "victim" to make reparations available to victims outside the "Closed List". The DOJ did not respond despite the undertaking by Ina Botha, the legal drafter at the DOJ, to keep SAHA informed.

125. On 24 May 2012, the TRC Unit visited GaMatlala Community members in Limpopo. This visit was coordinated by GaMatlala members with the assistance of the Limpopo Parliamentary Democracy Office, at whose offices it took place.

126. On 31 July 2012, at the invitation of the Public Participation and Petitions Standing Committee of Kwazulu-Natal Legislature, the TRC Unit visited Durban to address members of the Bambanani Victims of Political Violence organization. The TRC Unit had previously visited Empangeni to address members of the North Coast Displaced Peoples' Organisation in Kwa Zulu Natal, the Uitenhage Victims of Apartheid Group in the Eastern Cape and members of Khulumani Support Group at Thokoza, Gauteng Province. During these meetings, the following issues were raised:

126.1 Many people did not (or were prevented from) making statements to the TRC and therefore were disqualified from qualifying for assistance in line with the approved recommendations currently being implemented.

126.2 Others made statements to the TRC, but their cases were not resolved because they had failed to submit some required documents.

126.3 The TRC made negative findings in other cases of claimants for a various reasons.

127. At the end of each visit, the TRC Unit informed the claimants that due to legal limitations, their claims could not be processed in line with TRC recommendations if they were not able to make statements before the TRC.

128. From 4 to 6 December 2012, the SACTJ Reparations Conference entitled "National Dialogue on Reparations: A Critical Tool in Dealing with our Past and Building our Future took place at UNISA, Pretoria. The aim of the conference was to develop a policy position on the payment of reparations for victims of apartheid in South Africa through a collaborative effort by SACTJ members who were seen as key players in the transitional justice arena. During the conference, Dr de Wee repeated the statements he had previously, made to Khulumani at the 22 March 2012 Stakeholder Conference, emphasizing that he would never respect people who had voted for a white person as their national director.

129. In his address, Dr de Wee made the following announcements regarding the disbursement of the President's Fund:

129.1 R15m is to be allocated for tracing agency work to locate 259 TRC-identified Victims who have not yet been traced.

129.2 R35m is to be spent on reburials.

129.3 R350m will be provided for educational assistance.

129.4 R100m will be provided for medical benefits[71].

130. Dr de Wee further stated that reparations are not exclusively government's responsibility, but that progress had been made in terms of exhumations and reburials, community reparations, social service provisions and final reparations with 16,827 of the 21,769 TRC-identified Victims having been located.

[71] Khulumani knows of no victim who has received medical assistance through the TRC Unit.

131. Dr de Wee conceded that over 150,000 people had been excluded on the basis of the Closed List but stated that opening the list will be a political process and that the TRC Unit has a limited mandate to address the Closed List only[72].

132. Advocate Howard Varney of ICTJ made the following objections to the Closed List.

132.1 There had been no meaningful consultation by DOJ.

132.2 Excluding people who suffered apartheid serious human rights violations is inconsistent with the TRC Act.

132.3 The 15 December 1997 closing date for the receipt of victim evidence by the TRC was an entirely arbitrary cut-off date.

132.4 Military veterans receive benefits that victims do not.

132.5 Articles 8 and 11 of United Nations Declaration of Human Rights guarantee an effective remedy for victims.

71. Advocate Varney then put forward the following questions to the government representatives who attended the consultation:

71.1 SACTJ is awaiting responses from DOJ about objections it has put forward. When will the answers be provided?

71.2 Given its agreement that the 'Closed List' excludes thousands of beneficiaries, why is DOJ not lobbying for Parliament to challenge these issues?

71.3 Why do discussions not take place about the Closed List? Why should the answer have to be litigated?

72. On 25 March 2013, LRC wrote to Minister of Justice Jeff Radebe copying President Zuma, Minister of Finance Mr. Pravin Gordhan, several other

[72] Legal advocates for victim of apartheid crimes had mourned the apparent absence of any compassion for the community-based anti-apartheid activists amongst political leaders in the country, explaining that they were astounded by the absence of any indication of wholeheartedness for the proposals of the TRC for dealing with these crimes of the past. (Fr Michael Lapsley)

government officials, members of the Audit Committee, former members of the TRC and various ambassadors on behalf of SACTJ. The letter expressed concern that money from the President's Fund may be being dispersed in an unlawful manner in contravention of Sections 40 and 42 of TRC Act which provides that all money be disbursed by way of regulations, issued by the DOJ in consultation with the Minister of Finance: Up until this date, two such sets of regulations had been issued - the 2003 Regulations and the 2010 Regulations. Regulations in respect of the 2011 Draft Regulations, and in respect of housing and the rehabilitation of communities had not been issued at this date. The letter noted that:

72.1 SACTJ had not, at this date, received further reports in respect of any progress in finalizing regulations in respect of the 2011 Draft Regulations despite the appointment of a Task Team to do so and despite Dr de Wee stating that it was urgent to place them before Cabinet by the end of May 2012. The 25 March 2013 letter highlighted that no official report of the 22 March 2012 Stakeholder Conference had been distributed, despite an undertaking for the TRC Unit to do so.

72.2 The LRC Letter of 25 March 2013 drew attention to the fact that many victims are now elderly and that a large number had died without receiving any material benefits. The letter stated that: "Notwithstanding the dire circumstances of many victims, your department has to date displayed little or no sense of urgency. These victims had a right and a legitimate expectation to receive adequate reparations within a reasonable time frame." SACTJ requested an urgent meeting with Minister Radebe to clarify "what is taking place in respect of the President's Fund." SACTJ further suggested that members of the Audit Committee of the President's Fund attend the meeting

72.3The 25 March 2013 letter referred to recently received reports that the TRC Unit had arranged consultations in communities including Mamelodi regarding the allocation and intended expenditure of money from the President's Fund.

73. On 9 March 2013, the TRC Unit had revealed that it had established a committee to plan the expenditure of money from the President's Fund to be used for renovations in Mamelodi. Government officials allegedly informed the meeting that similar meetings were planned for Alexandra and other provinces. There was no reference to this amounting to the initiation of any

Community Rehabilitation plan. There had been no consultation with victim representatives about this plan.

74. On 27 March 2013, Dr Jobson participated as a panelist in a SABC2 discussion with Dr de Wee alongside Vincent Mahladisa, a Khulumani Limpopo Provincial Committee member from Makhado. During the discussion, Dr de Wee announced that the DOJ would not be proceeding with the disbursement of victims' reparations money into the accounts of municipalities[73]. He also announced that the Minister of Justice envisaged the 2011 Draft Regulations to be finalised by May 2013. As transcribed by SACTJ and set out in the LRC's letter to Minister Radebe of July 2013, Dr de Wee further stated that:

74.1 … *the other set of recommendations that were made that have been adopted by government[74] relate to community rehabilitation. There are about 120 communities*
that have been identified in TRC reports (as having suffered extreme harm from political violence) and to date with the amount of money that we have, we are only starting with 18 communities, two per province… The purpose of those consultations [with the two communities per province] *is to indicate to various communities that they have been identified in TRC reports[75]* (as having suffered excessive harm). It was stated that there had been no decision to date on *the amount of funding that would be allocated to these communities. Communities would be allowed to contribute their views on what is it that they wanted to do with the funds as amounts representing part of community rehabilitation…*

75. On 13 June 2013, the Justice Minister stated that if our clients "should still wish to meet, I advise you to liaise with the TRC Unit in my department". The LRC followed up the same day on its letter to the DOJ of 25 March 2013

76. On 21 June 2013, Minister Radebe replied to the 25 March 2013 Letter, noting the stated concerns and expressing his concern about the delays in implementing TRC recommendations. His 21 June 2013 letter included the following progress report:

76.1 Of the 16,837 TRC-identified Victims, only 9 remain to be traced.

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[73] This was the first public exposure that the TRC Unit had been contemplating this action.
[74] There had been no consultation with Khulumani Support Group or its partners in the SACTJ regarding this development.
[75] Khulumani requested the evidence of how these communities had been selected by the TRC Unit.

76.2 A gazette announcement is forthcoming in respect of the 2011 Draft Regulations.

76.3 The regulations in respect of medical benefits[76] and housing assistance are being finalized.

76.4 A community rehabilitation consultation process is currently being undertaken by the TRC Unit. No money has been disbursed as yet as regulations have not been finalised.

76.5 The intention is to inform and account to a broader South African public regarding the implementation of TRC recommendations through Parliament and other TRC channels.

Minister Radebe further stated: "should you still wish to meet, I advise you to liaise with the TRC Unit in my department."

77. On 14 July 2013 LRC wrote on behalf of SACTJ to Minister Radebe in response to his 21 June 2013 Letter. The letter requested that the proposed meeting (referred to in the 25 March 2013 and the 21 June 2013 Letters) indeed take place. This was a direct request to the Minister on account of a perception held by the SACTJ of the unreliability of the TRC Unit. The LRC submitted, inter alia, that

77.1 A meeting would be preferable to exchanges of delayed written communications that are inadequate in trying to resolve serious differences.

77.2 The TRC Unit regularly seems to ignore Khulumani, most recently evidenced by its failure to invite Khulumani to its consultations in Mamelodi.

77.3 The approach of the TRC Unit regarding community reparations appears to be primarily unchanged since 2011 with a core decision to allocate community reparations to two towns per province, despite extensive representations by Khulumani and others.

[76] Government resolved that no medical assistance would be made available because these services would be provided by the proposed National Health Insurance Scheme. (This is still far from implementation)

77.4 SACTJ firmly believes that the current proposal that President's Fund money be paid to two pre-selected towns per province constitutes an allocation of money for expenditure in the absence of regulations.

77.5 The TRC Unit has almost without exception failed to ever respond to representations from SACTJ regarding reparations for the rehabilitation of communities. It appears that the comprehensive and internationally researched proposals have not even been considered. SACTJ is of the opinion that the random selection of two communities per province is absurd and arbitrary.

77.6 The Task Team proposals about regular Task Team meetings have not materialized. The TRC Unit has used any consultation as a once-off event.

77.7 Despite the semblance of consultation, it appears that the proposed community regulations have already been set in stone given that the proposal of two communities per province has remained unchanged despite serious objection to it. Dr de Wee's comments in his TV/ radio interview of 27 March 2013 refers as well as the press release issued by Mthunzi Mhaga.

77.8 Recent engagements between Khulumani and ANC officials suggest that the ANC is attempting to politicise the distribution of reparations and a ministerial intervention is absolutely essential.

77.9 South Africa should follow up on its promise to report to the African Commission on its progress to date in implementing the TRC recommendations.

78. On 31 July 2013, the LRC on behalf of SACTJ wrote again to Minister Radebe to take up the offer of a meeting and requested that such a meeting be considered as critically urgent. The letter set out the following main issues that SACTJ wished to discuss, inter alia:

78.1 The number of concerns raised by SACTJ in 2011 and 2012 on the 2011 Draft Regulations and whether these have been addressed.

78.2 The draft housing regulations referred to in the Letter of 21 June 2013 which SACTJ has not seen or upon which SACTJ has not been consulted.

78.3 The TRC Unit's retention of its proposal to allocate community reparations to two towns per province.

79. The letter also set out SACTJ's concerns that victim and civil society submissions to the TRC Unit since 2010 have not been included or reflected in any of the presentations made by the TRC Unit officials to the Portfolio Committee and requested an urgent response.

80. In August 2013, the Acting Chief Director of the TRC Unit, Lufuno Mmbadi, advised that "we will revert to you shortly regarding the possibility of a meeting in the near future".

81. On 8 August 2013, the LRC wrote to Minister Radebe in response to Ms Mmbadi's letter. The letter stated that SACTJ was very pleased to receive the promise of a possible meeting soon and sought to arrange a date to allow experts on reparations to attend the meeting.

82. On 29 August 2013 a meeting took place between the GaMatlala community accompanied by Khulumani. Dr de Wee conducted the meeting despite Ms Mmbadi having signed off on all of the correspondence between the DOJ and the Ga Matlala communities (19 rural villages). After keeping the delegates waiting for three hours, Dr de Wee outlined the DOJ's limitations and said he welcomed any legal action by Khulumani. Dr de Wee then launched attacks on Khulumani and personal attacks on Dr Marjorie Jobson, National Director of Khulumani. This is detailed in an email from Dr Jobson to Advocate Howard Varney. It was also referenced in an affidavit that detailed Dr de Wee's unprofessional conduct. On 23 October 2013, Khulumani and Professor T Maluleke, then a Khulumani Board member, wrote a joint formal letter of complaint to Minister Radebe regarding this incident.

83. On 16 November 2013, KSG submitted two PAIA requests to the DOJ requesting a copy of the names of the 5,000 TRC-identified Victims whom the TRC Unit claim have not accessed their final reparations and a record of the criteria used to identify the 18 townships named as beneficiary communities for infrastructure renovation using the President's Fund. Khulumani's PAIA file numbers are KSG-2013-DOJ-021 and KSG-2013-DOJ-022. The DOJ did not respond to either request.

84. On 19 November 2013, Khulumani submitted a further four PAIA requests to the DOJ requesting the names of the additional 110 municipalities earmarked for the use of the President's Fund and the grounds on which they have been identified as "beneficiary communities"; a copy of the amendments to the regulations on health and education benefits for TRC-identified victims that

were reported in the latest Annual Report of the President's Fund; a copy of the proposed community rehabilitation final policy; and records detailing the processes that have taken place to date including minutes, registers, agendas and recommendations. The Khulumani PAIA file numbers are KSG-2013-DOJ-023, 024, 025, 026 The DOJ did not respond to any of these requests.

85. The DOJ had advised Khulumani that the Portfolio Committee was the only institution able to instruct the TRC Unit to deal with the "unfinished business of the TRC" and that Khulumani should focus its efforts on arranging a meeting with it. Further, the DOJ itself made several direct verbal recommendations that KSG present its case to the Portfolio Committee. Consequently, on 26 November 2013, a Khulumani delegation presented a memorandum to the Portfolio Committee, represented by Advocate Hisham Mohamed, raising concerns about the stalled reparations process. The memorandum demanded that government address the following issues immediately:

85.1 The full implementation of the final recommendations of the TRC.

85.2 The "opening of doors" for all victims of apartheid gross human rights violations.

85.3 Urgent interventions to stop the proposed diversion of funds in the President's Fund into a programme of township infrastructure development or renovation.

86. Advocate Mohamed, an employee of the DOJ, undertook to hand the memorandum to the Portfolio Committee.

87. On 1 December 2013, Khulumani re-sent the memorandum to the Portfolio Committee secretary, Mr Ramaano, via email, for circulation to the members of the Portfolio Committee.

88. On 29 November 2013, three days after the memorandum was delivered to the Portfolio Committee, the DOJ gazetted Notice 1138 of 2013: Draft regulations relating to 'community development' ("2013 Draft Regulations"). The 2013 Draft Regulations proposed, inter alia, to make funds in the President's Fund available for the Independent Development Trust ("IDT") to

fund community rehabilitation[77]. The DOJ gave stakeholders until 31 January 2014 to respond to these proposals.

89. In a 16 December 2013 press release, Khulumani called for a "revolution of restitution" as the basis for reconciliation and declared that it would conduct a year of intensified advocacy

for reparations and restitution as a means to achieve a just, inclusive and reconciled society in which all people are provided with the means to reach their fullest potential. Khulumani also expressed concerns about the IDT which, by its own admission to the Parliamentary Portfolio Committee on Public Works, is in trouble and has had its funding substantially reduced by the National Treasury. Khulumani with its civil society partners drove a process of formulating a Charter for Redress, under the auspices of the Chief Justice Mogoeng Mogoeng. This is another initiative that has not impacted on government in dealing with a process of restitution for victims and survivors of apartheid atrocities.

90. On 13 January 2014, a meeting took place between the TRC Unit and Luther College, a university from the United States whose students specialise in researching the "Unfinished Business of the TRC", at the DOJ. In his address, Dr de Wee made the following comments:

90.1 Of the 22,000 people who qualified for reparations, documents are still being processed for 42 individuals, 5 individuals are untraceable and 9 live abroad.

90.2 A total of R553 million has been spent on individual reparations to date.

90.3 There have been flaws in the communication of the TRC Unit and its resources have dwindled.

90.4 The TRC Unit plans to spend the bulk of reparations money on community rehabilitation and anticipates that this will take a minimum of five years of consolidation and 10 years to roll out. The TRC Unit explained it had engaged the IDT because it lacked project management capacity. There have been disagreements about community rehabilitation, so the TRC Unit proposes a Stakeholder Conference for February 2014.

90.5 Dr de Wee, COO of the DOJ, stated his belief that if the TRC was reopened now, it would have to include 30 million people. He claimed that those who did not go to the TRC are benefiting from broad programmes of

[77] Khulumani's fear regarding the competence and capacity of the IDT to deliver on a programme of community rehabilitation to harmed communities, have all been confirmed. The IDT failed to offer any evidence of a competence in delivering on such a programme. (Sadly, evidence of grave corruption has since been confirmed in the operations of the IDT)

government[78]. This was the repeated assertion made by Dr Khotso de Wee who refused to accept that reparations are a specific remedy for serious human rights violations, recognized globally and that reparation is not a version of the RDP.[79]

91. Dr Jobson explained that Khulumani had repeatedly offered to assist the TRC Unit to identify victims of apartheid gross human rights violations to be able to prioritise inviting these people to meetings. The TRC Unit has not taken up any of these offers which has meant that victims get ignored as victims do not feel safe to identify themselves in meetings with the TRC Unit. The TRC Unit is incompetent in dealing with victims and this causes the exclusion of those who most need reparations.

92. On 22 January 2014, the LRC wrote to the DOJ on behalf of the SACTJ to outline previous attempts to engage the DOJ in discussions regarding the 2013 Draft Regulations. The letter highlighted that the meeting requested by SACTJ in March 2013 and July 2013 and agreed to by Minister Radebe in July 2013, had still not taken place. Further, the letter requested an extension of two weeks to file submissions on the 2013 Draft Regulations until after the Stakeholder Conference scheduled for February 2014 as "this would enable representations to be made more effectively in regard to the proposed Regulations relating to Community Rehabilitation". The letter further added that the writer is "available to discuss this further telephonically so as to see if agreement could be reached on a mutually agreeable later date."

93. In January 2014, as Parliament resumed, Khulumani contacted the office of Mr Luwellyn Landers MP, Chairperson of the Portfolio Committee, to request a follow-up meeting on both the memorandum to which there had been no response to date and to protest the 2013 Draft Regulations. On 24 January 2014, Mr Landers offered to meet with Khulumani on 29 January 2014. This was the first time Khulumani had been afforded an opportunity to meet with the Portfolio Committee on Justice and Constitutional Development.

94. On 27 January 2014, the Portfolio Committee secretary, via telephone, informed KSG that the meeting would be with the entire Portfolio Committee

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[78] This was a regular assertion by Dr de Wee who would retort that *"can't you people see that my skin is black. I therefore qualify for reparations."*

[79] The conflation of reparation with development is a common mistake in understanding the purpose of reparation. Sout Africa's government has tried to use this excuse to avoid providing dedicated reparation programmes as were promoted in the Final Report of the TRC.

and that Khulumani would be given one hour to present its concerns. On 29 January 2014, Khulumani and SACTJ representatives attended the meeting with Mr Landers and other Portfolio Committee members who did not introduce themselves. The Portfolio Committee stated that:

94.1 It had not received the memorandum handed to Advocate Mohamed on 26 November 2013. It stated that in any case Advocate Mohamed was with the DOJ not Parliament and could not give undertakings on behalf of Parliament.
94.2 Khulumani should have asked for a follow-up meeting from the DOJ, not the Portfolio Committee.
94.3 Khulumani should not have submitted material hours before this meeting[80].
94.4 Khulumani would not be allowed to present its presentation as all the issues it wished to raise had been dealt with at length through consultation, Parliamentary discussion and
negotiation over many years.
94.5 The Portfolio Committee could neither prescribe or interfere in the DOJ processes but could only exercise oversight and apply the law.
94.6The deadline for public comments on the 2013 Draft Regulations remained 31 January 2014.

95. Khulumani responded that it had sent the memorandum to the Portfolio Committee because of concerns that the DOJ had not addressed the issues of reparations and had repeatedly failed to engage stakeholders. Khulumani outlined that the reasons for requesting this meeting were twofold: as a follow-up to the memorandum of 26 November 2013; and to engage them on the 2013 Draft Regulations. Khulumani stated that documentation had been submitted twice prior to the official meeting in Parliament and Khulumani had been assured that it would be handed to the Portfolio Committee[81].

96. Ms Dene Smuts, the Democratic Alliance spokesperson for Justice, stated that the TRC granting amnesty to perpetrators had been intrinsically linked to the payment of reparation to victims. Ms Smuts stated: “when indemnification against prosecution or amnesty was granted to gross human rights violators, the right of victims to sue for damages was extinguished”. Ms Smuts used the phrase “so-called victims” several times. Ms Smuts stated that Khulumani wanted to access money in the President’s Fund to distribute to 85,000 other victims. This was perceived as an insult to the efforts of Khulumani to engage

[80] This was another instance of scapegoating because Khulumani’s formal presentation for the engagement with the PC on Justice had already been emailed twice to the persons whom we were instructed to contact.
[81] A copy of the presentation has been included in the current submission.

the Portfolio Committee on this unattended to 'Unfinished Business of the TRC".

97. Mr Max Sisulu, the Speaker of Parliament launched an investigation into the meeting of 29 January 2014 on grounds of Khulumani's complaint that the Justice Portfolio Committee had been pre-briefed by Dr de Wee who had arranged a pre-meeting with the Portfolio Committee members on the day of Khulumani's presentation to advise them how to respond to a Khulumani presentation. Dr de Wee, representing the legislature, had then remained seated with the Portfolio Committee for the duration of the presentation – an example of direct political interference in the work of a Portfolio Committee.

98. Mr Sisulu asked a researcher employed by Parliament to follow up what had happened in this unfortunate misuse of Parliamentary processes and provisions. Khulumani never received any response from the Speaker's Office and Khulumani learned that Mr Sisulu had resigned from Parliament shortly thereafter.

99. Khulumani sent its response expressing its dissatisfaction with its treatment by the Justice Portfolio Committee on 29 January 2014 to Mr. Landers, who chaired the Portfolio Committee.

100. Khulumani submitted that:

100.1 It had been advised by the DOJ that the Portfolio Committee was the correct body to approach and therefore disputes the Portfolio Committee's claims that Khulumani was attempting to present to the wrong forum in Parliament.

100.2 Khulumani contested that it is possible to amend legislation as necessitated.

100.3 Khulumani stated that it had submitted documentation on 26 November 2014 and subsequently resubmitted it on 1 December 2014 and 23 January 2014.

100.4 Khulumani had prepared a Power Point presentation as requested in communication with the office of the Portfolio Committee on 27 January 2014.

100.5 Khulumani subsequently was asked to resubmit this presentation twice on the morning of 29 January 2013, prior to the meeting.

100.6 Khulumani is of the opinion that Advocate Mohamed had misrepresented himself to Khulumani.

100.7 Khulumani asserts that Ms Smuts' statement regarding the relationship between amnesty and reparations, is fundamentally flawed.

100.8 Khulumani became aware that the DOJ had made undertakings to several communities in respect of money they would receive from the President's Fund for community reparations, when the 2013 Draft Regulations have not yet closed for public comment.

101 On 31 January 2014, the LRC wrote on behalf of SACTJ to the DOJ attaching SACTJ's representations in respect of the 2013 Draft Regulations. The letter again reminded the DOJ that no further advance had been made by the DOJ in response to the proposed meeting repeatedly sought by SACTJ in correspondence from March 2013.

106. The SACTJ submissions included the following preliminary observations, inter alia:

106.1 An extremely short time had been granted to the public for making submissions in response to the gazetted Community Rehabilitation Proposals at a time which coincided with the holiday season.

106.2 The Annual Report of the President's Fund for the year 2011/12 seemed to suggest that the IDT had already been engaged to pursue community reparations prior to the promulgation of the 2013 Draft Regulations

106.3 It appears that the 2011 Draft Regulations have been shelved and that going forward community rehabilitation will be the only form of reparation to be provided and will consume the bulk or all of the remaining funds in the President's Fund.

106.4 The regulations had been compiled with little or no consultation with key stakeholders, mainly Khulumani Support Group

107. The SACTJ submissions included the following main objections, inter alia:

107.1 The community rehabilitation programme envisaged by the 2013 Draft Regulations does not serve the purpose of a reparations policy for communities severely harmed by apartheid.

107.2 The criteria for selecting recipient communities are not clearly defined and most other communities that suffered equivalent harm are excluded.

107.3 Community rehabilitation is being pursued at a time when individual reparations have still not been fully or adequately implemented.

107.4 These factors yield a policy that is incapable of addressing the needs of communities damaged by human rights violation and sends mixed signals about the state's seriousness in addressing individual and collective suffering.

108. SACTJ made the following recommendations: Our country needs::

108.1 Full implementation of the individual reparations recommended by the TRC.

108.2 Establishment of a registry of victims and the execution of an outreach programme to guarantee that all victims of the most serious violations receive reparations as defined by the TRC.

108.3 Provision of health care, education, housing or other social programmes as a form of reparation must be distinguished from other social policies directed to the population as a whole.

108.4 Engagement in a participatory discussion with victims' communities and civil society organisation to devise the best way to address the collective dimensions of violations committed under apartheid.

109. On 27 March 2014, Khulumani representatives met with Director General of the Presidency, Dr Cassius Lubisi, and his assistant Mr Thabo Makhaza to call upon government to implement and expand a transparent and representative process to bring about reparation, rehabilitation and redress. No DOJ representative was present.

Khulumani recorded that inter alia:

109.1 The TRC Unit had been assigned to implement limited, narrow and even altered interpretations of TRC recommendations.

109.2 The TRC Unit had remained adamant that it cannot consider reparation and redress for those not named in the Closed List.

109.3 The TRC Unit had not carried out the limited functions it has been assigned by Parliament with speed and commitment including the timeous payout of once-off reparations to those on the Closed List, a process that had taken the TRC Unit 11 years to complete when victims have been surviving in dire circumstances.

109.4 The TRC Unit had failed to process the 2011 Draft Regulations.

109.5 There is serious concern over the continued non-responsiveness of public servants in the TRC Unit to approaches from civil society in respect of representations from communities, comment on regulations and requests for information.

110. Khulumani recommended that to fulfil the South African state's obligations to provide adequate reparations to those who suffered gross human rights violations under apartheid, there is a need to urgently put in place an ongoing process to establish redress and justice and address the unfinished business of the TRC. Khulumani made practical suggestions as to how this process should function. The meeting concluded with an agreement that Khulumani would make written submissions by 4 April 2014.

111. On 4 April 2014, as agreed, the LRC (attorney Kahanovtiz) emailed the Presidency (Dr Lubisi) attaching a memorandum from Khulumani. The memorandum contained a record of the discussions of 27 March 2014 and expressed grave concern regarding the failure of the state to pay out reparations and the excessive delays experienced by beneficiaries and also the manner in which reparations were being managed. With regard to reparations, Khulumani asked the government to:

111.1 Acknowledge that reparations provided so far had been seriously inadequate and had not reached many victims of gross human rights violations.
111.2 Drop the Closed List.
111.3 Establish a country-wide registration and outreach process to identify victims of gross human rights violations, with the assistance of Khulumani Support Group and its Apartheid Reparations Database (KARD).
111.4 Give immediate priority to repairing outstanding damage to individuals whose suffering continues today.
111.5 Exclude the use of the President's Fund for infrastructure and development projects.
111.6 Accept that in the long-term further funds over and above those currently in the President's Fund may be required for the reparations process.

112. The LRC noted Dr Lubisi's undertaking to revert to KSG by 18 April 2014.

113. On 18 April 2014, the Presidency (Dr Lubisi) wrote to Khulumani enclosing a response from Ms Nonkululeko Sindane, Director General of the DOJ, to KSG's memorandum sent by the LRC to the Presidency) on 4 April 2014. The Presidency (Dr Lubisi) also invited KSG to attend a Stakeholder Conference on 15 May 2014 aimed at finalising the 2013 Draft Regulations. On 25 April 2014, the DOJ (Ms Sindane) wrote to the LRC confirming the invitation.

114. The enclosed response from the DOJ, dated 17 April 2014 and addressed to Dr Lubisi, stated that:

114.1 Of the 16,837 TRC-identified beneficiaries only 12 payments remain outstanding and are currently being processed and 13 are untraceable.

114.2 The draft regulations on basic education and higher education and training were submitted to the Presidency in July 2013. Following a meeting on 25 October 2013, the DOJ amended and resubmitted them to the Presidency. Feedback is awaited.

114.2 The Minster of Finance proposed a new model upon which to base the 2011 Draft Regulations to define victims and their relatives as an additional category of persons who qualify

for free public health care. To make these changes, the DOJ has requested that the Department of Health amend the National Health Act 2003.

114.3 Draft regulations on housing assistance have been developed but the finalisation of the process is dependent on several policy issues.

114.4 18 communities have been prioritised "through criteria approved by the Minister" for completion of the needs analysis phase for community rehabilitation[82]. Comments on the 2013

Draft Regulations are currently being evaluated by the TRC Unit and the Chief Directorate Legislative Development. "No monies have been dispersed thus far, since regulations have not been finalised".

114.5 Two legal opinions, including one of a senior counsel, ("Closed List Legal Opinion") suggested that extending the definition of victim without providing for some kind of verification procedure and extending victim registration procedures or other verification process in the regulations are probably both *ultra vires* the TRC Act; and the TRC Act "envisages a scheme which includes checks and balances on findings of gross human rights violations and *the granting of amnesty* [83]before a person can be found to be a victim for whom reparations may be recommended".

114.6 The DOJ has no mandate to amend the TRC Act.

114.7 A Stakeholders' Conference on the 2013 Draft Regulations has been scheduled for 15 May 2014.

115. On 20 April 2014, Khulumani sent an email to the Presidency (Dr Lubisi) expressing concern that the documents sent by Dr Lubisi on 18 April 2014 do not speak to the record of discussions of 27 March 2014 or to the submission that Khulumani had made as requested on 4 April 2014.

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[82] Khulumani notes that the DOJ continues to ignore the extensive work Khulumani has done on producing needs assessments of each individual on its database. This approach was adopted when the DSD had followed Khulumani's example of basing their work in communities on formal needs assessments of the needs of community members.

[8383] This is an extremely unfortunate proposal given the extremely limited number of applications for amnesty made by perpetrators of apartheid human rights violations.

115.1 *We are puzzled at the disjuncture between our meeting and the replies we have been sent. Our submission was to the Presidency and not to the Department of Justice. The reply solicited by the DG's Office from the Department of Justice does not begin to speak to or address the issues raised in the submission. […] We engaged the Presidency after many years of concerted effort towards finding a constructive way beyond this impasse…*

116. Dr Jobson re-sent the proposals submitted on 4 April 2014 by way of attachment and stated that these were for submission to the Office of the President.

117. In or around April 2014, the IDT issued Terms of Reference for "Service Providers for the DOJ & CD Social Facilitation and Community Engagement for the DoJ & CD TRC Community Rehabilitation Programme" indicating that the service should be provided in April and May 2014 and the consultation on the 2013 Draft Regulations following public submissions would take place on 15 May 2014.

118. On 29 April 2014, Ms Sindane, Ms Emily Dlamini (Regional Head of the DOJ in Gauteng) and the Director for Legal Affairs met with Khulumani members at Constitution Hill. Ms Sindane again reassured Khulumani that the President's Fund had not been used for purposes not provided for in regulations. She further reiterated that the Closed List could not be changed without changing the law and that the DOJ had fulfilled its mandate in the context of existing legislation.

119. Khulumani requested a copy of the Closed List Legal Opinion, which Ms Sindane agreed to provide. The DOJ representatives commented that there was apparently more room for agreement with Khulumani than previously anticipated and asked Khulumani to attend the conference on Community Rehabilitation planned for the following month.

120. On 30 April 2014, Attorney Kahanovitz sent an email to Ms Sindane on behalf of KSG to make a further request for the Closed List Legal Opinion pursuant to a recommendation
from the Presidency, on 29 April 2014, that Khulumani forward its request to the Department of Justice. The LRC clarified that it sought the Closed List Legal Opinion to enable it and its clients to prepare for the forthcoming discussions on 15 May 2014.

121. On 5 May 2014, the LRC wrote to Ms Sindane to confirm its acceptance of the invitation to the meeting to discuss 2013 Draft Regulations on 15 May 2014.

122. On 6 May 2014, Khulumani wrote an open letter to President Zuma calling upon him to:

122.1 Set up an Advisory Committee to develop policy which will address the continuing gaps in dealing with the past.

122.2 Ring-fence the President's Fund established in terms of the TRC Act to ensure it is not used until the necessary policies are constructed and adopted to deal with the "unfinished business" of the TRC.

123. On 8 May and again on 15 May 2014, the DOJ (DG Ms Sindane) wrote to the LRC for clarification on whether there was one or two separate letters. She confirmed the cancellation of the meeting scheduled for 15 May 2014 to discuss the 2013 Draft Regulations.

124. On 27 May 2014 Khulumani issued a press release commenting on the legal opinion mentioned in Ms Sindane's letter of 17 April 2014 which in essence stated that a victim is someone who has been found by the TRC to have suffered gross human rights violations *and* in respect of whom the perpetrators have been granted amnesty.

125. Khulumani pointed out that if this is the correct interpretation, then neither Steve Biko nor Dr Neil Aggett should have been considered "victims" for whom reparations might be recommended because the perpetrators of the crimes against them respectively were denied amnesty and did not apply for amnesty. However, both the Biko and Aggett families were given "TRR" numbers which allowed them to claim reparations, highlighting the lack of a clear and comprehensive policy for reparations. Khulumani called on the new Minister of Justice, Michael Masutha, to consider KSG's proposal to set up an Advisory Committee to "finally put in place a reparations policy of which we can be proud, that will draw on the excellent recommendations of the TRC."

126. On 28 May 2014, the LRC wrote on behalf of SACTJ to Mr Motsamai Karedi, the Chairperson of the Audit Committee in the DOJ, setting out the exchange of correspondence between SACTJ, Khulumani and the DOJ

regarding the issue of reparations and concerns over unlawful disbursements from the President's Fund.

126.1 The letter requested confirmation that meetings of the Audit Committee had taken place in the 2013/2014 year; and requested confirmation of the Fund's balance at 31 March 2014.

126.2 Confirmation that the Audit Committee is satisfied that there has been no unlawful expenditure of President's Fund monies or if the President's Fund money has been improperly expended, confirmation of action being taken to remedy this.

127. On 15 July 2014, Khulumani received a letter by fax from the DOJ (Ms Sindane) dated 10 June 2014. The letter referred to the meeting of 29 April 2014 and invited Khulumani to submit a list of names, contact details and needs of the TRC-identified victims who are in need of medical assistance for referral to the Department of Health. Khulumani responded to the letter and welcomed the opportunity to work with the DOJ. Once again, the unresolved matter of the fact that only TRC-recognised victims would be accommodated[84], was a cause of major concern.

128. On 19 July 2014, the Audit Committee (Mr Karedi) replied to the LRC's letter of 28 May 2014. The letter confirmed that:

128.1 The Audit Committee provides oversight of the President's Fund, and its observations have been communicated through the Audit Committee reports.

128.2 The Audit Committee is not aware of any unlawful payments and that the only payments made have been in respect of management fees to Public Investment Corporation, bank charges and payment to beneficiaries who are eligible in terms of the existing laws and regulations.

128.3 The Auditor General was currently performing an audit and would report on its status at its conclusion.

[84] It must be noted that many victims who successfully engaged the TRC statement-takers were '*struck off the list of those who were awarded the TRR number which allowed them to apply for reparations, on account that in their interviews with TRC statement-takers that broke down emotionally. On the instructions of the TRC, in any interview with the TRC if the victim became emotionally distressed, the interview was to be immediately terminated. All the victims who demonstrated emotional distress consequently were in this manner, denied TRC-identification for reparation purposes, despite being amongst those most in need of reparation.*

128. In August 2014, a meeting was held in Thabong Community Centre in Welkom. Its purpose was to provide a comprehensive report back

129. On 1 September 2014, the TRC Unit (Dr de Wee) wrote to the LRC (Ms Janet Love, National Director) to clarify that the meeting on the 2013 Draft Regulations had been rescheduled to 26 September 2014. On 25 September 2014 KSG (Dr Jobson) emailed the DOJ (Ms Sindane) to propose a draft agenda for the meeting of 26 September 2014 including a proposal that the Closed List Legal Opinion be shared. On 25 September 2014, the DOJ (Ms Sindane) replied to Khulumani stating that the focus at the meeting should remain on the 2013 Draft Regulations but that there would be a discussion or presentation on the President's Fund because it has a direct bearing on the 2013 Draft Regulations.

130. On 26 September the consultative meeting arranged by the DOJ on the 2013 Draft Regulations took place in Pretoria. The meeting was chaired by Ms Sindane and an active role was taken by Dr de Wee. The LRC and members of SACTJ, including Khulumani were present as were representatives of the IDT and representatives of the six areas already designated as intended beneficiaries for community reparations. Khulumani outlined its concerns regarding the legality of the regulations and expressed concern that if they were promulgated in their current form, then more than half of the reparation funding would be spent on 18 designated areas immediately. After lengthy discussions Ms Sindane announced that the legal team of the DOJ would consider the submissions made during the meeting and would prepare and publish a further draft of the 2013 Draft Regulations for comment. At this meeting, members of the DOJ again iterated racist slurs against the KSG delegation as documented in KSG's letter of 12 October 2014 (see paragraph [x]).

131. As stated in the LRC's letter of 16 February 2015 to the DOJ (Ms Sindane), at the consultative meeting of 26 September 2014, members of the DOJ had requested that certain issues not be discussed given that a meeting for that purpose with the President had been scheduled for 2 October 2014. The meeting had been scheduled to discuss issues including the Closed List and the Closed List Legal Opinion. However this meeting was cancelled at very short notice verbally by Charmaine Fredericks, Head of the Private Office of President who informed KSG that President Zuma had said there was no need to meet as all matters were resolved.

132. On 12 October 2014, Khulumani wrote to the Deputy Minister of Justice and Constitutional Development, the Honourable Mr John Harold Jeffery, to document the repeated incidents of the violation of the right to human dignity and hate speech perpetrated by Dr de Wee and some of his assistants between March 2012 and 26 September 2014 and to file a complaint of gross misconduct against certain public servants at the DOJ.

133. On 13 October 2014, Khulumani wrote to Minister Masutha to request a meeting regarding matters of concern affecting KSG and the resolution of the unfinished work of the TRC.

134. On 19 October 2014, KSG wrote again to Deputy Minister Jeffery to follow up on its complaint of 12 October 2014. Khulumani asked for an indication by 22 October 2014 of steps being taken order to inform its decision as to whether to proceed to lay the complaint with the South African Human Rights Commission. Khulumani noted Dr de Wee's recent comments to the Daily Maverick journalist, Mr Simon Allison that "Khulumani cannot decide which one of us deserves the label of Apartheid." Khulumani noted its agreement that "most citizens of this country can legitimately claim to be a victim of apartheid" but disagreed that this approach provides justification to allow the Reparations Fund to be used for purposes that are provided for in national and provincial government budgets.

135. On 20 October 2014, the LRC wrote to the DOJ (Ms Sindane) regarding the 2013 Draft Regulations and her announcement at the consultative meeting on 26 September 2014 that the legal team of the DOJ would consider the submissions made during that meeting. The letter reiterated Khulumani's suggestion originally made at the consultative meeting that in the course of preparing a further draft on community reparations, other draft regulations dealing with reparations could be republished again (duly amended) to avoid any unnecessary conflicts between the regulations. The letter asked whether the proposed new draft regulations were ready for comment or alternatively when they might be ready.

136. On 3 November 2014, Regulations relating to Assistance to Victims in respect of Higher Education and Training and Regulations relating to Assistance to Victims in respect of Basic Education ("2014 Regulations") were promulgated. The 2014 Regulations came into operation on 7 November 2014. The 2014 Regulations afford reparations in the form of financial assistance for education and training, upon application, to victims (and relatives and dependants of

victims) who are are members of households with an annual gross income not exceeding R198,000 or of “vulnerable households.”

137. The 2014 Regulations limit those entitled to apply for reparations to the persons identified as victims by the TRC, and their relatives and dependants. The 2014 Regulations define a victim as:
A person contemplated in the definition of “victim” in section 1 of the [TRC] Act, and who has been found by the Truth and Reconciliation Commission to be a victim[85]*, in accordance with the provisions of the Act.*

138. On 13 February 2015, Khulumani wrote to Minister Masutha to request a new date to meet with President Zuma in light of the cancellation of the proposed earlier meeting scheduled for 2 October 2014.

139. On 16 February 2015, the LRC wrote to the DOJ (Ms Sindane) following up on its letter of 20 October 2014, to which no reply had been received. The letter stated that publication for comment of the further draft the 2013 Draft Regulations was still awaited, and that the undertaking given in September in which Ms Sindane had promised that she would revert to KSG within three weeks had not yet been met. The letter again reminded the DOJ that the scheduled meeting with Zuma had not yet taken place and that the undertaking to provide the Closed List Legal Opinion had not yet been honoured.

[85] This is yet another instance of how ill-considered legislation has excluded seriously harmed victims.