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'From victims to active citizens'

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From: Khulumani Support Group

Date: 24 April 2012

RE: Comments: The Promotion of National Unity and Reconciliation Act, 1995:
Education Assistance and Medical Benefits Regulations (proposed DOJ
amendments – March 2012)

Khulumani Support Group is the only national membership organization of some 70,000 individual victims and survivors of apartheid gross human rights violations. The organisation was founded in 1995 while the National Unity and Reconciliation Act was being debated in Parliament to provide a way for victims and survivors to bring their voices together to enable them to be heard.

The importance of this objective has continued since the closure of the TRC and its Committees and Khulumani has continued to provide a way for the organised voices of seriously harmed individuals and communities to submit in their own words their major concerns in receiving the justice promised to victims of the conflicts of the past by the post-1994 political dispensation.

The critical issues for which Khulumani has consistently stood and organized are:

- To provide space for victims and survivors to speak out about the past to ensure that violations should never occur again (right to non-recurrence);
- To expose the truth about disappearances, assassinations, torture and other human rights abuses condoned under apartheid (right to the truth);
- To assist in identifying perpetrators towards ending impunity in South Africa (right to justice); and
- To facilitate the reclaiming of the dignity of harmed individuals and the restoration of the lives of survivors & their families (right to reparation).

These remain critical objectives in securing long-term peace and stability in South Africa and Khulumani is proud to have been the major contributor towards these efforts.

Khulumani's main objectives include the following:

1. To empower survivors & relatives of victims of apartheid-era human rights abuses;
2. To create a collective voice & presence in society;
3. To offer safe spaces for sharing experiences & offering mutual support;
4. To assist survivors to rebuild sustainable lives;
5. To facilitate access to needed services – legal, medical, psychosocial & other services;
6. To support victims to present their cases to the TRC and to engage state agencies post the TRC;
7. To educate communities about the TRC and about delivery on the TRC recommendations;

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8. To work for a just reparation policy; and
9. To develop networks of victims' organisations.

Khulumani has a proud record of undertaking this critical work. In the context of a TRC Unit that sees its only role as coordinating the provision of some support from line departments to only around 10% of individuals who were able to engage the TRC during its very short lifespan, Khulumani's work has taken on increasing significance.

In particular, its work has highlighted how the post-apartheid state has a long distance still to travel in providing for the urgent needs of harmed communities and individuals in the context of a state that has moved apart from knowing and understanding the needs of the most vulnerable citizens in the country.

In this context, Khulumani is commenting on the present regulations which the TRC Unit is rushing to see implemented in the words of the TRC Unit, to spend the money that is available.

Khulumani mourns this extremely limited perspective when so much is possible with the existing money in The President's Fund and when all the submissions made for better solutions, have not been interrogated to date.

Khulumani will undertake every effort to halt the current limited regulations that do not holistically deal with the situations in which victims presently find themselves.

The basis of Khulumani's objections have been named before:

The current regulations were gazetted without the meaningful and substantial involvement of victims and survivors in their conceptualization. Their construction has been a closed process that has failed to respond to the many efforts of civil society to assist the Department to deal effectively with reparations since 1999 and more intensively since October 2003. The process of trying to work with the Department of Justice has been characterized by a lack of responsiveness and accountability to victims as critical partners in the resolution of these matters in the best interests of long-term peace and nation-building. The gazettement of these regulations without meaningful victim participation undermines the constitutional rights of victims to participate with government in designing policies that will meet their identified needs.

The regulations ignore the evidence of the identified urgent needs of victims that have been presented to the Department of Justice on several occasions. They have been formulated in the absence of any systematic assessment by the Department of the urgent needs of victims of apartheid atrocities.

The regulations provide educational assistance and health benefits only for the 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.

The regulations provide for unnecessarily complicated administrative procedures that would render the proposed assistance inaccessible to many victims and survivors and would once again privilege those with better access as has happened with the Special Pension reparation grant.

The President's Fund has to date still failed to find all the identified beneficiaries of the initial reparations once-off payment.

State provision for educational needs and health care benefits continues to improve. This makes the provision of the specialized services and programmes that can best assist victims with their reintegration, more important.

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Line departments have found ways to date to provide assistance to many individuals.

The regulations do not address the loss of housing in the political violence of the past.

Khulumani asserts that the adherence to an arbitrary list of victims from which thousands have been excluded through the limitations of the TRC itself, is inconsistent with the purposes of The Promotion of National Unity and Reconciliation Act of 1955 to restore the dignity of all victims of gross human rights violations and to provide measures for their reparation and rehabilitation.

Khulumani asserts that the TRC Act did not provide for the construction of a closed list of victims who would be eligible for reparations. It only stipulated the type of harm that a person must have suffered in order to be considered a victim. The TRC reminds the Department of Justice that it emphasized that all victims and survivors of gross human rights violations should be recognized and acknowledged for reparation in order to heal the divisions of the past and to establish a society based on social justice (Preamble to the Constitution).

As its point of reference, the Department of Justice in the present regulations refers back to the Act that established the TRC and its objectives, yet the present regulations are not coherent with the purpose and objectives of that Act.

Khulumani notes that the Department of Justice has at intervals appointed consultants to evaluate the extent to which the recommendations of the TRC have been successfully implemented. These evaluations have ignored the fact that the core recommendation of the TRC for a financial package of R21,000.00 per victim per year for 6 years, has not been implemented.

Khulumani confirms that this TRC recommendation has been validated by independent actuarial research and highlights this provision as the foundation of an effective and comprehensive programme of reparations for victims.

Khulumani confirms that the limited regulations presently on the table do not meet the needs of victim and survivors of the gross human rights violations of the past.

It is of great concern that the regulations fail to address the critical issue of community reparations and rehabilitation despite this being the primary declared purpose of the President's Fund. The regulations in fact contain no proposals for community reparations – a critical component for victim communities who have not secured the remedies they need and whose major contributions to their communities have not yet been supported by any government budgets to date, despite many efforts to develop an effective partnership with the state.

Khulumani calls on the Department of Justice to:

- i. undertake an open and transparent process of consultation and dialogue with civil society to revise the Notice 282 regulations so as to be more responsive to victims' needs;
- ii. establish ongoing victim registration procedures and take affirmative steps to register all victims of gross human rights violations;
- iii. allow all those who are victims of gross human rights violations under the criteria specified in the Promotion of National Unity and Reconciliation Act to be provided with the TRC recommended reparations package;
- iv. provide access to educational and medical benefits directly through the relevant

Departments; and

- v. collaborate with civil society partners on the design and implementation of measures for community reparation and rehabilitation.

The grave situation of many thousands of non-recognised victims of gross human rights violations from the past, remains a serious negation of the contributions of these individuals to the liberation struggle.

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