

Reparations within the UN

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Thank you...

With respect to the question of reparations within the UN system for injustices of colonialism, systemic racial discrimination (apartheid), enslavement and native genocide—there are three things one may want to emphasize:

1. Reparations is a matter of rectifying structural injustices—rather than, say, unjust or wrongful acts in the past or other individual and isolated events of injustice or violation;
2. Reparations is a matter of furthering domestic and international commitments to—including civic cultures, relationships between groups, practices, institutions and policy making that are based on—fundamental principles of human rights and international law of the inherent dignity of the human person, equality and non-discrimination;
3. Reparations is a matter of promoting an international order of justice, equity and democracy—in the words of Article 28 of the Universal Declaration, “a social and international order” in which human rights can be fully realized.

One. The foundation for a broad structural account of reparations is already laid out in the *Durban Declaration and Programme of Action*. In it there is an explicit recognition that the historical injustices of enslavement and colonialism

have undeniably contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity that affect many people in different parts of the world, in particular in developing countries.
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It recognizes that “colonialism has led to racism [and] racial discrimination (...) and that Africans and people of African descent, and people of Asian descent and indigenous peoples were victims of colonialism and continue to be victims of its consequences.” It acknowledges “the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its reoccurrence prevented.” And regrets that “the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today.” “

What the DDPA points to is that over and above all, colonialism, for instance, in the Caribbean and European states and their relations to the rest of the world—established a systemic undermining of

equality of human dignity and rights and pervasive racial discrimination domestically across all areas of society and in international relations. Moreover, that there are continuations between the systemic or structural racial discrimination and inequities of the past and today's conditions of structural racial discrimination and inequity—internationally as well as domestically, for instance, in the Caribbean and European states and their relations to the rest of the world.

From this perspective of understanding the injustices of colonialism primarily as a matter of establishing structures of racial discrimination and inequity (including, the racial exploitation and terror of enslavement and the racial violence of native genocide)—structures of discrimination and inequity which in many ways remain; then, the primary objective of reparations is to recognize and rectify structural racial discrimination and inequity in the present that are continuations of past structural racial discrimination and inequity.

The CARICOM Reparatory Justice Program can favorably be understood as an example of such a structural view on reparations where the main objective isn't financial compensation per se—but to put in place a development program that would help transform present conditions that are rooted in histories of European colonialism, systemic racial discrimination (apartheid), enslavement and genocide.

This view of the point and purpose of reparations as primarily a matter of structural transformation is not merely in line with the spirit of the DDPA, but also recent developments in, for instance, transitional justice where reparations increasingly is understood as including a transformation of structural injustices and the UN Basic Principles and Guidelines on the Right to Remedy and Reparation (2005) with its principle of “guarantee of non-repetition”. It's also in line with the understanding of racial discrimination in the ICERD—which understands it primarily as a matter of societal conditions for which the state is responsible, rather than as racial discrimination of individual actors or acts; and which calls for special measures for groups that suffer (structural) racial discrimination to protect and promote their equal enjoyment of dignity and rights.

A structural view of reparations may also help address and bypass key legalistic arguments against reparations that reduces it to such issues as individual acts or actors, rectifying past injustices, difficulties in pinpointing precise causal connections between the past and present or that historical injustices such as enslavement and the racial discrimination of colonialism were lawful at the time.

Two. This brings me to the second of the three points I'd like to make. If we understand reparations, as we should, primarily as a matter of rectifying structural injustices in the present that are continuations of past injustices—then, this sort of reparations is inherently restorative, relational and a matter of mutually committing to fundamental human rights and international law principles of dignity, equality and non-discrimination.

It is a different understanding of reparations than as a matter of retribution, punishment, primarily a matter of compensation or redistribution of resources (even if this might be essential to some aspects of it).

It is an understanding of reparations that is inherently restorative in that it is a matter of accomplishing structural justice, equity, dignity and non-discrimination. This includes recognition of structural injustices, their historical precedents and the need for rectification. It is inherently relational in that it is a matter of transforming relationships of discrimination, stratification, inequity and domination between groups of people. It is inherently a matter of mutually committing to fundamental human rights and international law principles of dignity, equality and non-discrimination—as these are the basis for the claims and processes of reparations and its objective is domestic and international orders that are more firmly based on such principles.

This point is relevant to addressing misgivings that reparations is a matter of narrow self-interests, divisive group-thinking, loss for one group and wins for another or something that does not concern

us all. Keeping in mind and emphasizing this might be essential to making the call for reparations universally appealing.

Three. This brings me to the final point that reparations for injustices of colonialism, systemic racial discrimination, enslavement and native genocide is a matter of promoting an international order of justice, equity and democracy. Addressing and rectifying *international* injustices and inequities that are continuations of colonial injustices and inequities will need to be central to such reparations.

Recognition of the need to address such injustices and inequities have been a recurring theme since the establishment of the UN. Still, they are yet to be comprehensively addressed, rectified or repaired.

For example, although already the *Universal Declaration of Human Rights* (1948) states that, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”—we have yet to see a UN convention that addresses international relations and inequities or a UN mechanism that monitors inequities in, say, international relations, organizations and agreements.

Although the UN *Declaration on the Establishment of a New International Order* (1974) called for, for instance, “The right of all States, territories and peoples under foreign occupation, alien and colonial domination or apartheid to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples”—nothing became of this.

Although the article 5 of the UN *Declaration on the Right to Development* calls on states to,

take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation..

no reparations or other resolute steps have been made or taken. For instance, we may have some development aid, but we are yet to see any concerted efforts to address international inequities in enjoyment of labor rights or the use of and control over natural resources (including land).

Although the Sustainable Development Goals call for putting the first last, leaving no one behind and equality within and between states—they do not in any comprehensive way address international inequities and injustices.

During the last General Assembly session here in New York last December there were several resolutions that we presented and passed that called for a new international economic order and addressing global economic inequalities. Since 2011 we also have a UN Independent Expert on the promotion of a democratic and equitable international order.

Albeit, so far these initiatives have been without consequence.

On this note, let me end by proposing that you in your report Tendayi include as a recommendation the establishment of a UN Forum on the promotion of a democratic, just and equitable international order with the mandate to develop recommendations for how the UN can take steps towards promoting such ends—for instance, by establishing a UN tribunal for international reparations (as David Commissioning has suggested) or draft a convention towards promoting equity, justice and democracy in international relations, including, inside the UN itself.