

**Introduction to the issue of reparations**  
**WGPAD 22<sup>nd</sup>, March 19-23<sup>th</sup>, 2018, Geneva, Switzerland**  
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Good Morning Excellences, Dear colleagues, ladies and Gentlemen. I am very pleased to be here today and work with you on the preparation of a draft of the declaration towards the full respect of the rights of people of African Descent. I am honored to be able to start our dialogue on reparations that are at the center of the claim for the full respect of human rights of people of African descent.

I would like to start with common **definitions**.

There are several definitions of reparations:

The oxford dictionary defines reparations as follows: *“The action of making amends for a wrong one has done, by providing payment or other assistance to those who have been wronged.”*

*In jurisprudence, reparation is the “replenishment of a previously inflicted loss by the criminal to the victim. Monetary restitution is a common form of reparation.”*

*Carla Ferstman from the Oxford law faculty defines reparations as follows:*

*“Reparation refers to the process and result of remedying the damage or harm caused by an unlawful act. The purpose of reparation is generally understood to reestablish the situation that existed before the harm occurred. It can also serve as a measure to end ongoing breaches and to deter future ones, as a vehicle for reconciliation or to restore relations between the violator and injured parties, as well as a basis to repair or rehabilitate physical and psychological integrity and dignity. In international law, a breach of an international obligation gives rise to a duty to repair the harm caused.” (1)*

What these definitions have in common is the idea that the only way to repair wrong doings, whatever wrong has been done is to provide payment of other forms of assistance to remedy. These definitions imply that remedy includes different forms of action.

As far as the deportation and enslavement of Africans is concerned, The Durban Declaration and Programme of Action recognized that: “Slavery and the slave trade are a crime against humanity”. Some states like France, through the 2001 Taubira Law declared slavery and the slave trade a crime against humanity.

The US, the UK, Canada and other states have supported action towards the recognition of the contribution of people of African Descent to the development of their countries. Some have built memorials and remembrance monuments without the contribution of people of African descent, which makes the process despising towards people of African Descent and therefore unacceptable and inappropriate. NGOs, private companies, universities, and individuals have developed programs educational and awareness programs. Groups of people of African Descent strive to bring the situation

of people of African Descent to their national agenda. International law mechanisms such as human rights conventions have supported recognition, education and legal provisions against racism and discrimination. Conventions like the ICERD are binding. However, very little progress has been achieved globally with regards to the improvement of the rights of people of African descent because there are no real accountability or sanctions.

Despite many initiatives to improve the Human rights situation of people of African descent, their everyday life, wherever they live, remains one that does not reach equal opportunities, equal development or equal access to justice. The acknowledgement of the legacy of the deportation and enslavement centuries has not been put in perspective to ensure that people of African descent could fully enjoy their rights and be free from racism, racial discrimination and stigmatization. On the opposite, a resurgence of racist actions, hate speech, incitement to hatred and criminalization of human rights defenders acting against racism and discrimination is on the increase, sometimes through violent actions and judicial decisions.

The crime against humanity committed against people of African descent has to be repaired. This has to happen through a justice system that cannot be contested or dismissed. To ensure a thorough and drastic shift in the way people of African descent are perceived, to change the global imaginary prejudice about Africa and people of African descent, to heal past dehumanization and the legacy of deportation, enslavement, torture and degrading treatment, reparations for the crimes committed against people of African descent are necessary. Reparations have to take place within a legal reparation framework of reparatory justice. Reparations must be treated as a legal means to repair past crimes and injustice, and grave violations of human rights.

### **There are International human rights law has provisions for reparations.**

The United Nations “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” in its sections V8 and V9 states that:

*“For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*

*A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim”. (2)*

The definition of victims, along with the definition of the harm committed complies with the history of people of African descent, who were hijacked, forced to migrate, human trafficked by the trade of Africans, victims of forced and unpaid labor, dehumanized, deprived of their basic civil and political rights as well as their economic, social and cultural rights, deprived of their dignity, tortured, victims of inhuman and degrading treatments, considered as property (pieces of furniture) of other human beings. The list could go on.

No redress measures have collectively been taken at the international level. No reparations have been officially granted by states to enslaved Africans although former enslavers have, in some cases been compensated. There are rare cases of reparations granted by private entities such as universities (we have the 2017 example of Georgetown university in the USA granting free access to descendants of enslaved Africans to repair the harm done to their ancestors). But no mechanism to ensure legal, binding and international reparations is in place. The fact that these grave human rights violations were committed by several European states and collectively suffered by all deported and enslaved Africans gives legal international ground international legal action.

Soft redress measures have not worked. How many reports have states made of their implementation of the Durban Program of action? What is the status of sanctions of police brutality? How about victims and their families? How many have received compensation for the wrong done to their dear ones? Impunity is the rule.

Furthermore, the legal systems of the time in countries that practiced enslavement of Africans acknowledged and justified crimes committed against people of African descent through the black codes which were state legislation. This is also part of the foundation of racism today.

Writings by religious institutions such as the catholic church also justified the deportation and enslavement of Africans. History shows that the Catholic church did not oppose the institution of slavery until the practice had already been outlawed by some states. Church leaders and popes did not oppose the enslavement of Africans and sometimes promoted it, and this until the end of the 17<sup>th</sup> century as per pope Pius IX writing: I quote:

Pope Pius IX (May 13, 1792- February 7, 1878)

*“Slavery itself considered as such in its essential nature, is not at all contrary to the natural and divine law, and there can be several just titles of slavery, and they are referred to by approved theologians and commentators of the sacred canons....it is not contrary to the national and divine law for a slave to be sold, bought, exchanged or given”.*(3)

Countries like Spain, France, Portugal England and the Netherlands were either catholic or had some catholic influences. The implication of the church is important to mention

as reparations should also be sought from church institutions who actively supported slavery following popes' recommendation and decrees. They also increased the church wealth through the enslavement of Africans. The philosophy that enslaving African was perceived to come from divine orders made the enslavement of Africans legitimate, legal in the eyes of the European public. (4)

This is also part of the foundation of racism and racial discrimination today.

Institutions, literature and the general discourse also promoted the idea that one race was superior to another and led to the collective imaginary concept that Africans were inferior and therefore could be compared to animals and were, depending on the colonization period, portrayed as "savages" or as "good niggers".

Through 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries, respected writers and philosophers developed the myth of the good savage such as Jean Jacques Rousseau in "A Discourse upon the Origin and Foundation of the Inequality among mankind". These ideas nourished the popular beliefs of Africans being stupid and close to a wild environment without culture or civilization. (5)

Furthermore, the "human zoos" that took place in Europe and in the US during the building and "normalization" of colonial empires reinforced popular racism in Europe. They were used to justify actions taken by European governments.

In addition to what was happening in the Americas, forced labor was used in Africa to build roads, railways and factories to serve the European economic needs and development, and increase the wealth of the power of colonial empires. The exploitation of Africans was perceived as the norm, given the way Africans were portrayed on the one hand but also because there had not been any apology or reparations for enslaving Africans.

The Collective imagination could only perceive Africans as slaves. To ensure domination of Africans they had to be portrayed as inferior, with cultural values that were different from and inferior to European values which justified the fact that Africans were to be colonized, christianised and "educated". To ensure that the public would see proofs of these reports and stories from far away, the so-called explorers, colonial historians and philosophers developed human zoos to help corroborate their stories. This is how the Paris universal Exhibit of 1889 brought 400 Africans to a human zoo called the "Negro village". Along with the new Eifel Tower, the human zoo brought 28 million visitors. This kind of zoos continued throughout Europe during the 19<sup>th</sup> and the early 20<sup>th</sup> century.

How could such a thing happen? "These exhibitions did not suddenly appear in the late 19th century—they were in fact following a long tradition, as explained by Gilles Boëtsch, director of the UMI ESS laboratory and scientific coordinator of the catalogue of an exhibition held in 2011 in Paris entitled "Human Zoos: The Invention of the Savage." (6)

These zoos constitute cultural patterns that became rooted in European mentalities and that have to be deconstructed today. They also promoted xenophobia and Afro-phobia towards migrants and African communities living outside of Africa. At the time, the zoos became the basis for colonization. Their heritage is one of the foundations for discrimination, state and structural racism, mass incarceration and other legacies that continue to collectively harm people of African Descent today.

Racism and discrimination has been organized as an oppression system that invent new forms of oppression each time one chain is broken. Nothing but reparations, brought at the international level can deconstruct such bias, racism and prejudice that are the basis for discrimination and stigmatization accompanied by violence and intolerance.

Another phenomenon was the publication of newspapers such as “*Le Petit Parisien*” or “*Le Petit journal*”, “*scientific review*” or the “*traveler’s journal*”, all French publications presenting African populations as cannibals, fetishists, blood eaters, witch crafters belonging to an under-race close to animals. Such publications existed in other European countries. On the other hand, Ethnologists, anthropologists and explorers nourished the international discourse with reports of cultural practices that they related to a lack of civilization and savagism. This has been continued and increased through New technology and social media.

On March 13, 2018, National Geographic apologized for past racist coverage. I quote editor in chief, Susan Goldberg : “*For decades our coverage was racist, Let’s confront today’s shameful use of racism as a political strategy and prove we are better than this.*” The portraying of a young African kid as “the best Monkey in the Jungle” by the H&M firm raised international dismay a few weeks ago. Although an apology was made, damage is done, and deeply rooted prejudice has been perpetuated through these images.

To be able to change beliefs, perceptions, mentalities and deeply rooted racism, discrimination and intolerance and to ensure reparations for crimes against humanity, reparations are the only possible way to follow. This has to be done through international human rights law.

Only when past actions, past and current philosophies’, beliefs and religious theories related to the inferiority of people of African Descent are officially and legally recognized as crimes against Humanity by all and accompanied by remedy, including financial compensation, will the general public pay attention to violent acts of racism, question their own mentalities and accept legislative changes at national levels that can provide change and reverse the discrimination and violent extremism that are committed against people of African Descent.

### **How should reparations be approached?**

The UN principles and guidelines elaborate on how to remedy past grave violations of human rights in its section IX.15

*“Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. **Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.** In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.” (7)*

The above provides clear indication of the legal way to go about reparations.

The UN principles and guidelines also indicate that there can be no prescription to crimes related to grave violations of human rights under the statute of limitations:

*“Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.*

*Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive” (8)*

Furthermore, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by the UN general assembly by resolution 2391 on 26 November 1968 that entered into force on November 11<sup>th</sup>, 1970, states in its article 1.

**“No statutory limitation shall apply to the following crimes, irrespective of the date of their commission”**..... and its section b. This applies to ...*“Crimes against humanity whether committed in time of war or in time of peace”*... as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed 2 by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations....(3)

Although some states, individual and discourses would like to promote the fact that the crime against humanity happened so long ago that it should be prescribed, International law and UN guidelines prove the opposite.

The **CARICOM Reparations Commission (CRC)** looks into the issue of reparatory justice for people of African Descent and indigenous people as follows: “the victims of **Crimes against Humanity (CAH)** in the forms of genocide, slavery, slave trading, and racial apartheid”.

The organization developed a ten-point action plan including: 1. Full formal apology; 2. Repatriation; 3. Indigenous people development program; 4. Cultural institutions; 5. Public Health crisis; 6. Illiteracy eradication; 7. African knowledge program; 8. Psychological rehabilitation; 8. Technology transfer; 9. Debt cancellation. (10)

This ten-point plan has been endorsed by the working group of experts on the rights of people of African descent. The Plan can serve as a basis for reparatory justice of people of African Descent. It needs to be broadened to the international arena and to integrate legal binding mechanisms that can be used to ensure remedy.

But reparatory justice will only be made possible by our continuous action and civil society pressure.

For countries that are still under colonial rules such as the so-called DOM and TOM controlled by French rule, lawyers, NGOs and supporting individuals should continue to put pressure on the state to hold it responsible. The French colonial system makes People of African Descent invisible by forbidding data collection and therefore preventing the information about the human rights violations that affect them to be known. NGO and individuals should continue to seek reparation through the law suits they have started and brought to tribunals over and over again. But they should be supported by an international legal framework as they are criminalized for requesting their rights.

The issue of reparatory justice is not new and has been used to compensate enslavers in many countries at the end of the enslavement of Africans period.

In the UK for example," Dr. Nick Draper from University College London, who has studied the compensation papers, declares that as many as one-fifth of wealthy Victorian Britons derived all or part of their fortunes from the slave economy. As a result, there are now wealthy families all around the UK still indirectly enjoying the proceeds of slavery where it has been passed on to them. There was a feeding frenzy around the compensation." A. John Austin, for instance, owned 415 slaves, and got compensation of £20,511, a sum worth nearly £17m today. And there were many who received far more." (12)

France first abolished slavery in 1794 with no slave owner compensation provision. Slavery was re-established in 1802 and ended in 1848 with a law in which article 5 institutes the compensation of enslavers. A commission was set up to discuss the matter and even abolitionists like Lamartine and Victor Schoelcher promoted enslavers' compensation which was enacted on 30 April 1849. The reasons invoked by the French authorities for the compensation of enslavers are to support the immigration of new workers by former enslavers to break unions of freed deported Africans. In fact, reparations given to former enslavers aimed at holding on to the French colonies for geopolitical reasons and to ensure the continuous feeding of economic wealth from these colonies. The reparation act also aimed at perpetuating the influential strength and political power of France in Europe and worldwide and to ensure that freed deported African would never have the financial power to overthrow France. (13)

Once again, injustice and impunity are the rule. Needless to say, that compensation for slavery for deported and enslaved Africans was never contemplated. Reparations have only been thought about as part of the package for former enslavers at the end of slavery but was never considered an option for deported and enslaved Africans who had suffered the harm. This compensation law left freed enslaved Africans with another dehumanization act against them.

On another note, Haiti gained its independence from France in 1804 after defeating the French Army. The country paid an "independence debt to France from 1825 to 1947. The amount paid would amount to 17 billion Euros today. Despite several requests from Haiti to be reimbursed these funds by France, France has repeatedly refused to provide Haiti with the funds, even after the 2010 earthquake when Haiti was requesting it to help recover from the natural disaster instead of seeking international humanitarian aid. Furthermore, France is perceived as having backed the movement to overthrow the Haitian government who was requesting the debt recovery as of 2003. At the time of independence, the amount requested from Haiti was 150 million gold francs, 10 times the nation's annual revenue. Haiti paid 90 million gold francs. (14)

Haiti's debt must be reimbursed by France and international pressure has to come into play to ensure that it is done.

All the above implies that until a binding system of international reparatory justice is set up, no form of reparation will be done. The way forward is therefore to take international legal action.

**Moreover, the current situation of people of African descent show the urgency to act**

The current situation of people of African Descent in all spheres of life is worrying, both in terms of racism and racial discrimination but also in terms of grave human rights violations and stigmatization. Mass incarceration, racial profiling and the administration of justice in the US, Brazil and Europe call for major urgent actions and reforms as well as recognition of the legacy of the past history in the way people of African Descent are treated and position themselves.

The economic social and cultural rights of people of African Descent are recognized to be more violated, wherever people of African Descent live. Nonetheless, little or nothing at all is done by state level authorities to improve the situation, partly because of the lack of understanding, and partly because there is no political willingness to acknowledge the root causes, consequences of the situation on people of African Descent, and on all of us. More importantly, the fear to provide remedy, particularly financial compensation fuels resistance and defensive attitudes.

Academics and politicians alike along with African countries have acknowledged the matter and recognized the impact of the situation of people of African Descent on African countries. African countries suffered from the uprooting of more than 30 million Africans from their lands during the slave trade centuries. The sensitive issue of the Arabic slave trade which has not ended as we speak is mentioned nowhere in the international arena Furthermore, European Union countries who know the situation of slavery that affects Africans in some countries of north Africa, including Libya provide funding to Libya, Morocco and possibly other countries to ensure that migrants and asylum seekers are contained in North Africa and never cross to Europe.



All this reminds us that international reparations have to occur to ensure that Africa and its diaspora realize their human rights.

I would like to touch on **the international decade for people of African Descent**

Through the International decade for people of African Descent that aims at addressing the issues of recognition, justice and development, soft actions could have taken place in the areas of history, legacy and education as well as in the arena of social, cultural and economic rights, using the sustainable development goals 2030 agenda (SDG).

Unfortunately, few states have taken steps to develop a plan of action for the International Decade for people of African descent while more drastic actions and appropriate measures need to be taken at both state and International levels to ensure that racism and discrimination ends. Only an international reparation process can provide for an open international debate on the legacy of slavery, on its impact on the life of people of African Descent and address the issue of healing, recovery reparations and compensation.

A dialogue has to be initiated by people of African Descent and among them. Over the centuries of deportation and enslavement, followed by decades of economic hardship, stigmatization and discrimination people of African Descent have not been able to reach out to each other or to Africa, partly because of language barriers but also because they were busy resisting and surviving. People of African Descent must learn about each other, exchange on their experience and good practices to develop their memorials and understand their history, develop protection systems against racism and discrimination. Furthermore, systems have to be developed to allow them to work together at the development of their common future and reparations for the crime against humanity committed against them. The building of strong international links and networks among people of African descent can support the process of reparations. The International Decade offers a real opportunity to do so provided if it is implemented by states individually and collectively. NGOs and private Initiatives are already on the way to develop programs around the decade but lack networks and or funding.

**Let us use the declaration to pave the way towards a binding international legal reparation system.**

Furthermore, NGOs are often the victims of state structural and institutional racism and white supremacist extremism. The recent killing of Marielle Franco, councilor for the city of Rio de Janeiro and activist of African descent, the regular law suits against people of African descent who engage with trade unions (Eli Domota and other activists in the French Caribbean islands) the regular dismissal of justice faced by people who seek justice for deportation and enslavement such as the law suit against France in December 2017 are the living proofs that urgent action is needed. (15)

Issues such as the blackface representations have been a common phenomenon in most European countries. They continue to occur, and their meaning and origin are regularly denied by those who practice in. This has been the case in the Netherlands, in France, in Spain and is now going to happen in La Reunion in an island where Africans were deported and enslaved. Although it has already been condemned by the UN, By the working group of people of African Descent, by the human Rights ombudsman of France and other international entities, it still goes on, along with violent discourse on its origin and occurrence. Official complaints to tribunals are dismissed by judges who in

many cases have conflict of interest since they represent the justice of the same colonial states who once deported and enslaved Africans.

Until legal steps have been taken to recognize the contribution of people of African Descent in our modern societies and until reparations are internationally processed there will be no way to address deeply rooted acts of racism that have their origin in the deportation of Africans, in the portraying of Africa as a continent without History civilization. It takes an international court to counter sentences like the one of the French President, Nicolas Sarkozy about Africa during its first visit to the continent in Senegal in 2007: "The tragedy of Africa is that the African has not fully entered into history ... They have never really launched themselves into the future," (16)

Criminalization of human rights defenders has long been an issue but is now increasing. The fact that White supremacist organizations call human rights defenders black supremacists when they demonstrate against racism, racial profiling and discrimination and the killing of teenagers by the police is utterly worrying. More worrying is the FBI report on what has been called "Black identity extremists". It calls for specific attention to be given to the history, legacy and current prejudice against people of African descent before it escalates further.

Finally, in view of their situation in the countries where they were deported, many organizations of people of African descent request the right to return to Africa as a form of reparation with financial compensation to settle on the continent . This is the case of some Rastafari groups but also of other deported Africans who cannot contemplate a future in their current environment. The African Union should make real steps towards welcoming people of African descent to the continent and take part in the debate on the issue of reparations. The institution should clearly state whether African States would be ready to grant nationality to people of African Descent who wish to return and if specific measures would be put in place to welcome them. Some examples already exist but should become widespread and agreed upon through a resolution of the African Union that would start a dialogue with countries responsible for the slave trade.

I also want to mention that the situation of People of African Descent living in the middle East and Central Asia, Asia and the Pacific, particularly India remains far from media attention and unknown to most people of African descent.

Given all the above reparatory justice has to take place. It can However use several forms and approaches.

**We need to work towards international mechanisms for reparations for the deportation, human trafficking, enslavement, forced migration and forced labor, torture, inhuman and degrading treatment and dehumanization of Africans from their uprooting from Africa to today.**

The international decade of people of African Descent is a tool to address the issue of recognition, justice and development. It does not however take the full spectrum of the justice system into account as the UN resolution declaring the decade (17) does not include reparations. The decade can however be used as a mechanism to start a dialogue on reparations with member states, and to ensure that people of African descent from all continents are part of this dialogue.

Governments must be strongly encouraged to develop a program of action for the decade. Reluctance to implement the decade will not help the issue to go away, it will on the opposite make it more pressing and more urgent.

A discussion on reparation has to be started with member states. The comprehensive 10-point plan prepared by the CARICOM has to be used and widen to all cover the situation of all people of African descent.

The requests for reparations intensifies. It is important to address the issue now and reach consensus. Avoid or denying it will not help the process and may lead to unnecessary violence which will eventually lead to discussions as the matter is not going to disappear by itself.

The Working Group of people of African Descent stands ready to support the declaration and to reflect on mechanisms to be put in place for international reparatory justice.

At the IDPAD regional meeting of Europe, Central Asia, Asia and the Pacific that took place in Geneva in November 2017, NGOs clearly stated that reparations had to be part and parcel of the future declaration. There is therefore an opportunity to grab to move forward on the substance of the issue of reparations.

A few steps have been taken in some areas such as the restitution of goods stolen from Africa, particularly Benin and other African States. The discussion process has started, and a solution should be found in the coming years through negotiation with European and African states. Such actions are first steps towards recognition of historical wrongs. Restitution is one step forward. Justice for the victim is the end objective.

Finally, historical facts, the human rights violations against people of African descent that continue to occur today, the deeply rooted prejudice against Africans and people of African descent call for reparations in a form that will raise the issue to the highest levels of international law to ensure that this question will be dealt with in a way that does not allow anyone to dispute the occurrence of hijacking, deportation, forced migration, forced labor, human trafficking, racial discrimination, violation of Economic social and cultural rights and stigmatization of people of African Descent. If these actions are internationally condemned and reparations are provided, the perspective of all towards this issue will shift to a different level. An international court for crime against humanity and for reparations will change the general discourse, attitude and perception and ensure that such crimes will not be tolerated ever again.

To end this presentation, I would like to share a something that Angela Davis said during the US civil rights struggle of the 60's and that we should still use today: "I am no longer accepting the things I cannot change...I'm changing the things I cannot accept. I would like to thank you for your attention.

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