

# Reparatory Justice and Sustainable Development: A Way Forward?

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Reparatory justice is at the heart of both racial justice for people of African descent and global sustainable development. From a human rights perspective reparatory justice is about rectifying and transforming systemic and structural injustices that were established by past injustices and crimes against humanity. It is about establishing in their place—out of the shambles of inhumanity, tragedy, and trauma—social and global justice in the sense of full and equal enjoyment of human dignity, rights, and non-discrimination.

I propose that reparatory justice should be understood as indispensable to achieving sustainable development and that it holds States responsible for their contributions to structural inequities within and among countries—including the already devastating impacts of climate change and ecological destruction.

A major step towards racial justice and healing, both within and among countries, was taken at the 2001 Third World Conference Against Racism in South Africa with the adoption of the *Durban Declaration and Programme of Action*, also known as the DDPA. As a human rights instrument, the DDPA recognizes colonialism as the main culprit of today's structural racial inequities within as well as among countries. It declares that "colonialism has led to racism, racial discrimination, xenophobia and related intolerance, 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 recognizes the suffering caused by colonialism and regrets that the effects and persistence of its "structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today." It acknowledges and profoundly regrets "the massive human suffering and the tragic plight of millions of men, women and children" caused by enslavement, the transatlantic trade, apartheid, colonialism, and genocide. It notes that in the past "some States have taken the initiative to apologize and paid reparation, where appropriate, for grave and massive violations committed". Hence, with a "view to closing those dark chapters in history and as a means of reconciliation and healing", the DDPA invites "the international community and its members to honour the memory of the victims of these tragedies". Above all, the DDPA affirms that regarding the histories of enslavement, the transatlantic trade, apartheid, colonialism, and genocide, there is a "moral obligation on the part of all concerned States" and calls "upon these States to take appropriate and effective measures to halt and reverse the lasting consequences of those practices".

The call of the DDPA for reparatory justice—to recognising and addressing racial inequities within and among countries that were established by colonialism, including enslavement—is appropriately understood as central to the spirit, goals, and implementation of *Agenda 2030 for Sustainable Development*. The ultimate goal of Agenda 2030 is to "ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment". This is a "world in which every country enjoys sustained inclusive and sustainable economic growth

and decent work for all” *as well as* “a world in which consumption and production patterns and use of natural resources (...) are sustainable”.

As recognized by Agenda 2030, this means decreasing inequities in the enjoyment of human dignity and rights and the use of natural resources within the bounds of ecological sustainability and regeneration. In this context, the DDPA recognises that colonialism, including enslavement and apartheid, remains quintessential to the entrenched nature of racial discrimination within and among countries. At the domestic level, many societies remain racially stratified in ways that are continuous with colonial era racial distinctions, domination, and subordination. At the international level, developed and developing, high-income and low-income countries, and their populations, cluster in ways that suggest the perpetuation of colonial era racial hierarchies. In this sense, today as during the era of colonialism, racial privilege and disprivilege at the national and global levels reflect and reinforce each other.

Reparatory justice, as envisioned by the DDPA, recognises and addresses the domestic and international impacts of colonialism on people of African descent, indigenous people and other people of colour, and calls for a closing of racial gaps in the enjoyment of human dignity, rights, and in the access to resources. This includes decreasing inequities between developed and developing countries, as recognised by Agenda 2030. In turn, sustainable development will require us to increase the enjoyment of human dignity and rights—especially of the global majority in developing countries—while drastically cutting global emissions and curbing unsustainable use of natural resources. This will require us to transform the global economy. The current global economy is premised on an unequal and unsustainable use of human and natural resources in developing countries—to the benefit of developed countries and the detriment of developing countries, including climate change induced loss and damages. It will also require us to transform the unequal relationship between developed and developing countries in international relations and institutions of global governance such as here at the United Nations and International Financial Institutions such as the World Trade Organization, the World Bank, and International Monetary Fund.

We should not forget that all developed countries are either countries that were directly or indirectly involved in, and benefitted from, colonialism and colonial relations or are themselves former colonial settler states. Therefore, at heart—and as recognised by the DDPA—these much-needed transformations towards sustainable development are a matter of addressing legacies of colonialism and the perpetuation of colonial social and global relationships and conditions. At the global level, they are a matter of holding developed countries accountable for their contributions to, benefit from and perpetuation of colonial social, economic, and environmental relationships, and their outstanding responsibility to address and transform these.

The call of the DDPA to reparatory justice is therefore at the heart of sustainable development and should be understood as a critical element in realising the spirit and goals of Agenda 2030. The moral obligation, especially albeit not exclusively, of developed countries to redress and help transform legacies of colonialism and enslavement is part and parcel of their responsibilities to address climate change, drastically cut greenhouse emissions, provide loss and damage funds for developing countries, curb unsustainable use of natural resources, ensure ecological sustainability, dignified working conditions, fair pricing and profits in global

value and supply chains from extraction to consumption, and help reform the UN and other institutions of global governance towards an international order that is democratic and equitable.

In a holistic and human rights-based understanding—as outlined by the DDPA and reflected in the concrete call for reparatory justice by the Member States of the Caribbean Community—reparatory justice is ultimately a matter of decolonizing social and global conditions and relations towards the creation of social and international orders of equality and non-discrimination in which human rights can be fully realised. In this sense, reparatory justice is a matter of rectifying structural injustices in the present that are continuations of past injustices and mutually committing to human rights and international law principles of dignity, equality, and non-discrimination. This human rights-based understanding of reparations is different from understanding it in terms of retribution or punishment or primarily as a matter of compensation. Reparatory justice will no doubt cost. However, the primary objective is to transform inequitable conditions and relations that are rooted in historical injustices and in their place establish full and equal enjoyment of human dignity and rights.

This first Forum session is an opportunity to discuss which sort of recommendations that the Forum should adopt to move towards realising a human rights-based approach to reparatory justice for people of African descent within the context of sustainable development and the implementation of the DDPA.

Here are a few preliminary recommendations:

1. It is essential that reparatory justice is properly and comprehensively included in the UN Declaration on the human rights of people of African descent. More will be said about this tomorrow, so I won't say more about this here.
2. The legal and institutional grounds for pursuing reparatory justice at the UN should be examined to clarify the possibilities of pursuing reparatory justice at the UN and the International Court of Justice and identify possible gaps. This could be done in the following four ways:
  - a. The General Assembly could request an advisory opinion from the International Court of Justice on the legal question of reparatory justice for histories and legacies of colonialism and enslavement.
  - b. To clarify and consolidate the law on reparations the Human Rights Council or the General Assembly could commission an independent and international study, which could be carried out in collaboration with the Committee for the Elimination of Racial Discrimination, relevant special procedures, and an international team of scholars and experts.
  - c. A study could also be done by establishing a Human Rights Council Independent International Commission of Inquiry into Reparatory Justice for Haiti and the Caribbean.
  - d. Under its Statute, UN organs and specialized bodies and agencies may request the assistance of the International Law Commission, also known as the ILC, to carry out a comprehensive study on the question of reparations. The ILC has

already demonstrated interest in the question. As this topic is critical for so many countries and people, we could call on all States to support the initiation of such an ILC study and urge that they speak in favour of this in the Sixth Committee of the General Assembly. We could also use this opportunity to call on the ILC to move the reparations study into its current programme of work and to appoint a special rapporteur with the view to assisting the UN Member States to codify and progressively develop international reparations law.

3. As has already been mentioned today, reparatory justice is a measure among others of addressing systemic and structural forms of racism—within as well as among countries. Hence, a third recommendation is to include reparatory justice in the development of detailed UN guidelines for a comprehensive and human rights-based approach to addressing systemic racism against people of African descent both within and among countries—including, halting, and reversing the lasting consequences of enslavement and colonialism; ecological justice and sustainable development; and establishing a democratic and equitable international order.
4. As I just have outlined in this presentation, reparatory justice should be included in the implementation of Agenda 2030, its Sustainable Development Goals, objective of equity and leaving no one behind. Towards this end, I would suggest that the Permanent Forum of People of African Descent coorganize events at, and advise, the High-Level Political Forum on reparatory justice and sustainable development for people of African descent.
5. As has been proposed by my colleague, Pastor Murillo, the UN could establish a Global Reparations Fund towards implementing the DDPA and addressing the lasting consequences of enslavement, colonialism, apartheid, and genocide.
6. Another proposal towards facilitating concrete action on reparatory justice and sustainable development is the establishment of a United Nations Global Reparations Commission—which includes Caribbean and African States
7. Finally, I would suggest that once some of the above steps have been taken, the Permanent Forum of People of African Descent be given the remit to coordinate, together with the Office of the United Nations High Commissioner for Human Rights, a UN Global Summit on Reparatory Justice (maybe fall 2024 or spring 2025).