

## Global Reparatory Justice

Our theme this year, “Realizing the Dream,” makes a not-so-subtle reference to Dr. Martin Luther King Jr’s “I have a dream speech,” delivered 60 years ago this summer. I call it America’s most well-known and least well-understood public address. It was distorted, sanitized, and drained of its true radical vision. Despite that fact, I believe we can now safely call Dr King ‘s assertion that the U.S. Constitution was a “promissory note” which came back marked “insufficient funds” for its Negro citizens both accurate and ominous.

As an American civil rights lawyer, I’ve watched Supreme Court justices and politicians weaponize Dr. King’s memory to make a mockery of the idea of a multiracial democracy. Within the month the Supreme Court will likely completely end Affirmative Action in the United States. They have justified their position by quoting Dr. King’s edict to judge people by the content of their character and not the color of their skin. They claim Dr. King was arguing for a colorblind approach to racial justice, or simpleminded antidiscrimination, knowing that instead of **helping** to bridge the gaps created by centuries of bondage and oppression this will do more to **hurt** us.

The truth is, Dr. King believed in reparations. He called for it explicitly up until the last speech of his life. The promissory note, the check, that he demanded be cashed 60 years ago this summer, was not only figurative one, but literal. Dr. King was a drum major for justice. He knew that a fake peace obtained by avoiding issues is no peace at all. And in that tradition, 60 years later, we must acknowledge him as a visionary in this area as well. Because it’s clear now that reparations is what justice looks like in the 21<sup>st</sup> century.

### 1. Who decides the norm?

On December 16, 2005, the U.N. General Assembly reaffirmed the importance of providing reparations for gross violations of international human rights law, adopting the 5 point framework for reparations that have become the norm- 1) monetary compensation proportionate to the gravity of the harm, 2) restitution which would include re-establishing the situation which existed before the wrongful act committed (repatriation, culture and identity), 3) satisfaction or reparations for moral injury, injury to reputation, mental suffering (apology, cultural genocide ended), 4) guarantees of non-repetition (laws), 5) Rehabilitation (medical care to address the inequities described, mental health support).

But the question to ask is why is the United Nations General Assembly as expert on what constates justice for our atrocities?

### 2. Nothing about us without us

What we’ve uncovered at Howard University is that over 90 reparations commissions have been created since the killing of George Floyd in 2020, 40% by cities, 40% by Universities, Churches, or Non-Profits, and less than 20% by states.

The groundbreaking local reparations effort, in Evanston Illinois, was based on a claim of housing segregation. It provided 25,000 housing vouchers to its first 16 Black citizens in early 2022. Howard’s Thurgood Marshall Center provided the legal analysis to help ensure that the plan would meet all constitutional standards. These standards were primarily met by the creation of a through record detailing the government complicity in a scheme to concentrate Black residents into Ghettos

from 1919-1969, dooming the residence to a lack of equity that helped create the wealth gap that endures today.

On June 1, 2022, the state of California followed suit, issuing a 500-page report surveying the ongoing and compounding harms experienced by African Americans because of slavery and its lingering impact today. The final report will be issued before July 1 of this year. Draft recommendations include setting up a “Freedman’s Bureau,” called the Freedom Affairs Agency, which would oversee the administration of any educational or health programs for the community.

In April of 2022, Harvard University set up a \$100 million endowment fund, along with a 100-page report on its own finding of how the campus and university benefitted from enslavement. For example, HLS was established in 1817 with a bequest from Isaac Royall Jr., whose family made much of its fortune in the slave trade and on a sugar plantation in Antigua. The recommendations included scholarships for Black Harvard students, or for professors from Black Universities to be given resources to guest lecture at Harvard, both exceptionally self-serving proposals that serve as a cautionary tale of reparations.

A similar reparations mistake was made by the church of England, which decided to create a fund of \$100 million after it was documented to have made \$1.3 Billion from slavery, then decided to select its own panel of experts to administer the fund how it sees fit.

Question 2: Why is it that nations feel that they can make these decisions about us without us?

### 3. Reparations outside of Justice and Law Results in Reparations as a Gift

The framing of reparations as a “gift” determined by the perpetrators becomes possible when we separate questions of repair from law and justice. It wouldn’t make sense for a bank robber to determine how much of the heist he will return, or to select a panel of experts to dole out the stolen money according to his own vision of what’s fair. In what world would that be the appropriate activity to provide justice for genocide or a crime against humanity?

This is perhaps the most appropriate legal question to ponder. Crimes Against Humanity are governed by the Rome Statute of the International Criminal Court, adopted in 1998, implemented in 2002, defining crimes against humanity as any atrocity done as part of a widespread or systemic attack on a people. It includes enslavement and forced migration, and includes the jurisdiction of the international criminal court. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly in 1948, shortly after the holocaust, and the additional element is the **intent** being to destroy a racial group through an atrocity.

So far it’s been left to scholars or the court of public opinion to determine who’s guilty, Whether it’s for mass incarceration in the U.S., Police Violence in Brazil, or cultural genocide throughout the diaspora in trying to take pan Africanism away from us, trying to take away from us the sense that we are a people. What we know is that, if these are crimes, they must be addressed through justice, not charity.

In conclusion, on December 14, 2022, President Biden stated at the US Africa Leaders Summit “we remember the stolen men and women and children who were brought to our shores in chains, subjected to unimaginable cruelty. My nation’s original sin was that period.” Then on December 19, 2022, Dutch Prime Minister Mark Rutte apologized for the past actions of the Dutch government for their role in enslavement, to enslaved people, in the past, and their sons and daughters. He condemned the evils of slavery as quote “a crime against humanity.”

And I quote at length:

For a long time I thought that the Netherlands' role in slavery was a thing of the past, something we had put behind us.

But I was wrong.

Centuries of oppression and exploitation still have an effect to this very day.

In racist stereotypes.

In discriminatory patterns of exclusion.

In social inequality.

And to break those patterns, we also have to face up to the past, openly and honestly.

A past that we share with other countries and that has forged a special connection between our societies for all time.

It is true that no one alive *now* is personally to blame for slavery.

But it is also true that the Dutch State, in all its manifestations through history, bears responsibility for the terrible suffering inflicted on enslaved people and their descendants.

So we cannot ignore the effects of the past on the present."

Today, Dutch dominance over the people of curacao, aruba, st. mareetn, still endures, as does the dominance of the descendants of enslavers over the people of African Descent. So we are left unsatisfied. But it is also a challenge to every government here who has not yet even taken the step of an apology.

For those governments, I leave you with a call to action- We would like to see *15 governments follow the path of the other presidents and apologize not just to Africa but to your own citizens. And to do so before the End of the First U.N. Decade, December 31, 2024. If you want to talk through any legal concerns, the permanent forum is here to be a support. That's our Mandate.*

*And for those who cannot make that call, please commit to meeting with us to talk about your concerns as why a first step. It will be a great failure if we came here from around the world and there is no commitment from your government to at least meet and discuss. And remember this final quote nations of the world by Marcus Garvey*

The ends you serve that are selfish will take you no further than yourself but the ends you serve that are for all, in common, will take you into eternity.