



# *THE LEGAL BASIS OF THE CLAIM FOR REPARATIONS*

*by*  
**Lord Anthony Gifford, Q.C.**



*FACTS ON  
REPARATIONS*



*THE ABUJA  
DECLARATION*



*Foreword by*  
**Hon. Dudley Thompson, O.J. Q.C.**

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## FOREWORD

*Dudley J. Thompson, O.J., Q.C.*

The Reparations Movement is fortunate to have as one of its early and staunch supporters Lord Anthony Gifford, Q.C.. An acknowledged and outstanding gladiator for Human Rights, he has made his name in Europe as well as in Africa and Jamaica where he now resides with his family. His sincerity and unblemished integrity blend well with his passion for Justice, and in a surprisingly short period have identified him as a leader at the West Indies Bar.

In April 1993 Lord Gifford attended and delivered a memorable paper before the First Pan African conference on Reparations at Abuja. It was on the Legal Basis of the Claim for Reparations. He has been requested by the Group of Eminent Persons (GEP) appointed by the Summit of the Organization of African Unity to chair the Legal Council, a sub-committee of the Group. His paper which is frequently quoted has clarified the legal bases of the Movement and lists many international precedents demonstrating the justice as well as the application of the cause.

I end with some extracts of that paper and strongly recommend the full study of the paper to all who seek to be more fully informed about the Reparations Movement which has only just begun to touch the conscience of the world.

"Once you accept, as I do, the truth of three propositions:

- (a) that the mass kidnap and enslavement of Africans was the most wicked criminal enterprise in recorded human history;
- (b) that no compensation was ever paid by any of the perpetrators to any of the sufferers; and
- (c) that the consequences of the crime continue to be massive, both in terms of the enrichment of the descendants of the perpetrators, and in terms of the impoverishment of Africans and the descendants of Africans; then the justice of the claim for Reparations is proved beyond reasonable doubt."

"Once the claim is well founded in legal principle and well recognized by the international community, remedies and mechanisms will be found.... new structures have often been devised to give effect to recognized principles. The Nuremberg War Crimes Tribunal is an example of new legal thinking which brought a measure of justice following the atrocities of Nazism. The International Court of Justice, where states could settle disputes which each other by law rather than by war, was unknown at the start of this century".

"This paper is an attempt to conceptualize a legal framework for the formulation and prosecution of the claim for Reparations. It is argued by reference to seven fundamental propositions....."

# INTRODUCTION

I am a lawyer who has striven for human rights and justice in many parts of the world. Much of my work has concerned the manifold injustices which are caused by the evil of racism. Especially, I have stood in solidarity with Black people in Britain in their bitter and continuing struggle for equal rights, and with the liberation movements of Mozambique, Angola, Guinea-Bissau, Zimbabwe, Namibia and South Africa in the cause of complete African liberation. I now live and practice law in Jamaica.

I believe that the cause of Reparations to African and Africans in the Diaspora is rooted in fundamental justice - a justice which over-arches every struggle and campaign which African people have waged to assert their human dignity. For the iniquities perpetrated against African people today - whether in South Africa by the apartheid regime, in Mozambique and Angola by terroristic forms of destabilization, in Britain and the USA by racist attacks and by systems of discrimination - are the continuing consequences, the damages as lawyers would say, flowing from the 400-years-long atrocity of the slave system.

For me as a lawyer it is essential to locate the claim for Reparations within **a framework of law and justice**. If this were merely an appeal to the conscience of the white world, it would be misconceived. For while there have been many committed individuals and movements of solidarity in the white world, its political and economic power centres have evidenced a ruthless lack of conscience when it comes to Black and African peoples.

But in my experience progress has been made when the powers that

rule in the white world have been compelled to recognize that the rights of non-white peoples are founded in justice. It is then that forms of legal redress, which may not have existed before, have been devised.

For example, it used to be perfectly legal in Britain, only 25 years ago, for landlords or employers to put up notices which said "**VACANCIES - NO COLOURED**". Today any employer who discriminates on racial grounds can be required by a Tribunal to pay compensation.

At an international level, apartheid in South Africa used to be regarded as an internal affair, however regrettable. But over the years apartheid became recognized as a crime against humanity and a threat to peace, so that international sanctions could be imposed.

This is not to say that the achievement of legal sanctions brings automatic justice. This has not happened either in Britain or South Africa. But these examples show that the demand for justice and legality is an essential element in the struggle for a just cause.

So it is with the claim for Reparations. Indeed, once you accept, as I do, the truth of three propositions:-

- (a) that the mass kidnap and enslavement of Africans was the most wicked criminal enterprise in recorded human history,
- (b) that no compensation was ever paid by any of the perpetrators to any of the sufferers, and
- (c) that the consequences of the crime continue to be massive, both in terms of the enrichment

of the descendants of the perpetrators, and in terms of the impoverishment of Africa and the descendants of Africans,

then the justice of the claim for Reparations is proved beyond reasonable doubt.

To those who may say, that that is all very true in theory, but that in practice there is no mechanism to enforce the claim, or no willingness of the white world to recognize it, I would answer with a latin legal maxim: *ubi jus, ibi remedium*: where there is a right, there must be a remedy. An injustice without a remedy is abhorred by lawyers like a vacuum is abhorred by nature. Once the claim is well-founded in legal principle, and well-recognized by the international community, remedies and mechanisms will be found.

Even so, given the unique, massive and multi-faceted nature of the claim, international jurists will be needed who can show corresponding creativity and imagination. International law has never been static. New structures have often been devised to give effect to recognized principles. The Nuremberg War Crimes Tribunal is an example of new legal thinking which brought a measure of justice following the atrocities of Nazism. The International Court of Justice, where states could settle disputes with each other by law rather than by war, was unknown at the start of this century.

This paper is an attempt to conceptualize a legal framework for the formulation and prosecution of the claim for Reparations. It is urged by reference to seven fundamental propositions.

## 1. THE ENSLAVEMENT OF AFRICANS WAS A CRIME AGAINST HUMANITY

The Charter of the Nuremberg Tribunal defined crimes against humanity in these words:

*Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population ... whether or not in violation of the domestic law of the country where perpetrated.*

The Charter also gave jurisdiction to the Tribunal to try crimes against Peace ('planning, preparation, initiation or waging of a war of aggression...'), and War Crimes ('violation of the laws and customs of war ... including murder, ill-treatment, or deportation to slave labour or for any other purpose of civilian populations of or in occupied territory..')

It is considered by international lawyers that the Nuremberg charter did not create new law, but declared and confirmed concepts of international criminality which have been accepted over centuries. As one writer puts it:

*The tribunal found that acts so reprehensible as to offend the conscience of mankind, directed against civilian populations, are crimes in international Law, (D.P. O'Connell, International Law for Students).*

In 1948 the United Nations promoted the Convention on the Prevention and Punishment of the Crime of Genocide. It has been ratified by most countries in the world. Again, the Convention was giving a new legal form to an old concept in

international law. The preamble to the Convention recognized that "genocide is a crime against international law", and that "at all periods of history genocide has inflicted great losses on humanity". Genocide was defined:

*Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...

Historians and other experts can show without difficulty how the invasion of African territories, the mass capture of Africans, the horrors of the middle passage, the chattelization of Africans in the Americas, the extermination of the language and culture of the transported Africans, constituted violations of all these international laws.

The arguments that such crimes were 'legal' under European law, and accepted as normal by most Europeans, would be unavailing. Europeans did not, then or now, constitute all mankind, and the conscience of all decent mankind must always have been outraged by the atrocities which Europeans inflicted on Africans for over 400 years.

Indeed it can be said that it was the ultimate crime against humanity, to deny human status to a vast section of humankind.

## 2. INTERNATIONAL LAW RECOGNIZES THAT THOSE WHO COMMIT CRIMES AGAINST HUMANITY MUST MAKE REPARATION

The right to reparation is well recognized in international law. It has been defined by the Permanent Court of International Justice (the predecessor of the International Court of Justice) in these terms:

*The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine, the amount of compensation due for an act contrary to international law. (Chorzow Factory Case, Germany v Poland, 1928)*

The leading textbook on international law by Schwarzenberger described the recognition of the right to reparation as a process:

*International judicial institutions have slowly groped their way towards the articulate formulation of the rule that the commission of an international tort (wrong) entails the duty to make reparations.*

Most of the case law on reparations concerns the compensation for specific losses, such as the destruction of property, buildings, ships etc. but the principle is just as valid in the case of illegal actions on a larger scale which affect whole peoples. Indeed there are direct precedents for the payments of reparations in such cases:

- In 1952, the Federal Republic of Germany reached agreement with Israel for the payment of \$822 million, following a claim by Israel which was limited to the costs of resettling 500,000 Jews who had fled from Nazi controlled countries. Much later, in 1990, Austria made payments totalling \$25 million to survivors of the Jewish holocaust.
- A number of agreements have been made under the British Foreign Compensation Act of 1950; lump sum settlements were made by Bulgaria, Poland, Hungary, Egypt and Rumania, and a Tribunal was set up to make awards from the sums made available, so as to do justice as between many thousands of claimants whose property had been expropriated. A US-Iran Claims Tribunal was set up in 1981 for a similar purpose.
- Japan has made reparation payments to South Korea for acts committed during the period of invasion and occupation of Korea by Japan.
- Most recently, the United Nations Security Council has passed a resolution, binding in international law, requiring Iraq to pay reparations for its invasion of Kuwait.

It is therefore clear that the concept of reparations is firmly established

and actively pursued by states, on behalf of their injured nationals, against other wrongdoing states.

In addition, one can identify a second category of reparations which is of great relevance. This is where a state has accepted the responsibility to make restitution, not just to other states, but to groups of people within its own borders whose rights had been violated.

- In 1988 the United States Congress passed the Civil Liberties Act, which was designed to make restitution to Japanese Americans in respect of losses brought about by "any discriminatory act the US Government... based upon the individual's Japanese ancestry" during the wartime period when Japanese Americans were interned in great numbers. A Commission was set up to investigate claims. A total of \$1.2 billion, or about \$20,000 for each claimant, was paid. The Act began by stating the basis for reparations in clear terms which could be applied with the greatest relevance to the claims of African peoples:

"The purposes of the this Act are to:

- (1) acknowledge the fundamental injustice of the evacuation, relocation and internment of US citizens and permanent resident aliens of Japanese ancestry during World War II.
- (2) apologize on behalf of the people of the US ...
- (4) make restitution to those individuals of Japanese ancestry who were interned ...
- (7) make more credible and sincere any declaration of concern by the US over violations of human rights committed by other nations".

- Similar provision was made for restitution to the Aleut residents of various Alaskan islands "in settlement of US obligations in equity and at law, for injustices suffered and unreasonable hardships endured while those Aleut residents were under US control".
- Some steps have been taken to recognize the rights to restitution of indigenous peoples whose land was plundered and occupied, and whose people were decimated, especially in the Unites States, Canada, New Zealand and Australia. Each of these countries have made land rights settlements and/or financial payments to indigenous peoples. These are woefully inadequate gestures, given the atrocities committed in those countries against indigenous peoples. But they recognize that the surviving generations of indigenous peoples have the rights to a measure of reparation for the crimes committed against their ancestors.

**3. THERE IS NO LEGAL BARRIER TO PREVENT THOSE WHO STILL SUFFER THE CONSEQUENCES OF CRIMES AGAINST HUMANITY FROM CLAIMING REPARATIONS, EVEN THOUGH THE CRIMES WERE COMMITTED AGAINST THEIR ANCESTORS**

**W**hether the descendants of the immediate victims of a crime have a right to reparations will depend on the nature of the claim being made. The US payments to Japanese Americans were aimed at making restitution for the suffering of those actually interned. The Austrian payment was

to survivors of the concentration camps, again to make reparation for the physical and mental agony of the concentration camps. If a victim died before the claims were agreed, his claim died with him, since the pain and suffering were personal to him.

But there are many cases where the consequences of the crime committed are visited upon descendants. Where property has been expropriated, the loss is suffered not merely by the then owner, but also by his descendants who have lost an inheritance which would otherwise have been theirs. In such cases, international law gives a remedy, even if the claimant was not born at the time of the expropriation.

For example, the Order made under the British Foreign Compensation Act of 1950 provided that the Foreign Compensation Commission should treat as established any claim relating to certain property in Egypt which had been sequestered by the Nasser government if the applicant was the owner *or is the successor in title of such owner*, making it plain that the children and the grandchildren of the original dispossessed owners were entitled to claim.

More recently, since the unification of Germany, claims have been pressed successfully by the sons and daughters of property owners whose lands were seized after the German Democratic Republic was set up. No one doubts their rights to claim, even though they may have been children, or even unborn, when their family's lands were taken over.

Claims have been made not only by descendants, but by the nation-state which has had to bear the burden of

paying for the consequences of the crime. As noted above, Israel successfully claimed reparations from West Germany for the costs of resettling Jewish refugees - even though the state of Israel did not exist at the time when the Nazi regime committed its crimes against the Jews. It is also significant that West Germany, which felt obliged to meet the claim, was also a different state, territorially as well as politically, from the German Reich which was responsible for the atrocities.

In principle, therefore, the passage of time since slavery ended is no barrier to the claims of African peoples, provided that it can be proved that the consequence of the crime of slavery continue to manifest themselves to the prejudice of Africans now living in Africa and the Diaspora. On the point, the evidence of historical experts is clear and unequivocal.

On the African continent, flourishing civilizations were destroyed; ordered systems of government were broken up; millions of citizens were forcibly removed; and a pattern of poverty and underdevelopment directly resulted, which now affects nearly every resident of Africa. In the Americas, the slavery system gave rise to poverty, landlessness, underdevelopment, as well as to the crushing of culture and languages, the loss of identity, the inculcation of inferiority among Black people, and the indoctrination of whites into a racist mind set - all of which continue to this day to affect the prospects and quality of Black people's lives in the Caribbean, USA, Canada and Europe.

While there is no limitation period in international law, unreasonable delay

could be a reason for refusing a claim. A state which had a just claim, but which failed to advance it over a long period, could be held to have acquiesced in the wrong or to have waived its right to claim reparations.

However, no objection along these lines could properly be made against the claim of Africa and Africans in the Diaspora. In the case of Africa and the Caribbean region, the period of slavery and the slave trade was followed by the period of colonialism. It can be urged that colonialism itself was a crime in international law, for it was a usurpation, imposed by force, of the rights of the colonized peoples to their sovereignty. It was at the very least a crime against peace, and in most if not all colonized territories, crimes against humanity were frequently committed. In the case of the United States, former slaves were subjected to a system of exclusion, separate development, racial persecution, civil rights denials and ghettoization, which has only in part been overcome in the recent years following the civil rights movement.

The important point is that African peoples, until recently, had no independent voice, nor even any status in the world community. How could the people of, say Ghana or Jamaica make a claim for reparations when their country was considered to be an 'overseas possession' of the very country whose people had kidnapped and enslaved their ancestors? Still less were African-Americans, as they struggled for the right to be recognized as citizens, in any position to make any claims - even if there was any international forum in which a claim could be brought, which there was not.

Even after the independence of Africans nations from colonialism, the shackles of neo-colonialism have fettered the power of African governments to speak with any real independence for a claim for reparations to be voiced. Indeed I would argue that now, as never before, is the right time for this claim to be made, as African leaders are speaking with a new confidence and operating new democratic structures.

**4. THE CLAIM WOULD BE BROUGHT ON BEHALF OF ALL AFRICANS, IN AFRICA AND IN THE DIASPORA, WHO SUFFER THE CONSEQUENCES OF THE CRIME, THROUGH THE AGENCY OF AN APPROPRIATE REPRESENTATIVE BODY**

So far I have been dealing with the legal basis for the reparations claim. The next four sections deal with questions which a legal analyst is bound to raise, however difficult it is to answer them:

Who are to be the Plaintiffs, or claimants for reparations?

Who are to be the Defendants against whom the claim is made?

What are the damages to be claimed?

In what Court is the claim to be brought?

Here we sail into uncharted waters, since no claim for reparations of this magnitude has ever been brought. Hundreds of millions of people, in different continents of the world, have an interest in this claim. Their losses may seem almost impossible to quantify. Some minds are so daunted by the practical problems involved that they conclude that the claim is unrealistic.

I do not hold any such defeatist view. Once the first three propositions are accepted as valid, and the right to reparations is seen to be soundly established in international law, then ways of doing justice can and will be found. Difficulties of scale or procedures should not be obstacles to justice. The unwillingness of the white world to consider the claim is not a reason for giving it up, but rather a spur to mobilizing awareness and support around the issues.

However, in addressing these questions I seek to identify the principles involved, rather than to furnish precise answers, which can only be developed over time and experience, and after deep study.

Who are the claimants for reparations? The broad answer is that all Africans, on the Continent of Africa and in the Diaspora, who suffer the consequences of the crime of mass kidnap and enslavement, have an interest in this claim.

All Africans around the world have been affected in some way by the crime of slavery. Even those who have succeeded in a business or a profession have had to face racial prejudice at the least. And while there may be some whose families enriched themselves by collaboration with the slavers, that should not be allowed to undermine the overall truth that the rape of Africa impoverished all Africans, both those who were taken and those who were left behind.

Who should process the claim on behalf of so many? This is a matter which transcends national governments - but governments are the chief implementers of social

programmes, as well as being responsible for the repayments of their country's foreign debt. They should neither be excluded from, nor have sole control over, the prosecution of the claim. In any case, African-Americans, African British, French Africans, and others who are in a minority in the country where they have settled, have no government which could speak for them.

Some form of appropriate, representative and trustworthy body will be required; its size and composition, and the mechanisms for setting it up, will become clearer as the movement for reparations develops.

**5. THE CLAIM WOULD BE BROUGHT AGAINST THE GOVERNMENTS OF THOSE COUNTRIES WHICH PROMOTED AND WERE ENRICHED BY THE AFRICAN SLAVE TRADE AND THE INSTITUTION OF SLAVERY**

Who is responsible for paying reparations? Here it is more appropriate to concentrate on the Governments of the countries which fostered and supported the slave trade, which legitimized the institution of slavery, and which have profited as a result.

It would be possible to identify individual companies which could be proved to have made vast profits from slavery. There are plantation owners in Jamaica, and titled families in England, whose living heirs owe their wealth to slaving. Should such companies and families be targeted as individual Defendants to a reparations claim?

In my view such an approach would

create more problems than it solved. Enormous research would be needed to identify the companies and families, to determine how much money was made by their ancestors, and to calculate how much should be forfeited by the present shareholders or family members. The process would inevitably be somewhat arbitrary, and potentially oppressive, and it would be rejected both by the targets themselves and their governments.

I would however make one exception: When it can be proved that a work of art or an artifact, now in a public or private collection, was originally obtained illegally in the course of an invasion or plundering exercise in Africa. In this one case, the international law concept of restitution in kind could be applied. The reparation process must include the restoration of identifiable treasures to the country which most closely represents the people from whom they were robbed.

In reality in these cases of restitution, the individual owner would lose the work of art, but would most probably receive compensation for its value from his own government. This is because the restitution would have been made with the co-operation of the relevant European or other government; and it is a normal principle that compensation must be paid when private property is taken away by the act of a government.

The reason why the 'Defendants' to the reparations claim should be governments, is that it is governments which have some measure of control over their national wealth, through their reserves and their taxation powers; it

is governments who must in the end be persuaded that reparations are to be paid as a matter of justice; it is governments who can determine whether Africa's debt burden should be unladen from its shoulders; and it is governments which are responsible for making international treaties and implementing them through the passage of laws.

Historians will advise as to which countries have profited most from slavery and the slave trade. The major European maritime trading nations and colonizers can be easily identified. So can the United States, as a country which grew rich on slave labour and the exploitation of African Americans. However, as the next section indicates, the assessment and evaluation of responsibility will be a vast undertaking.

#### 6. THE AMOUNT OF THE CLAIM WOULD BE ASSESSED BY EXPERTS IN EACH ASPECT OF LIFE, AND IN EACH REGION, AFFECTED BY THE INSTITUTION OF SLAVERY

The assessment of what should be claimed is perhaps the most pressing and onerous task to be faced by the reparations movement. Each affected country will have to be studied, and perhaps even each people with each country. Different considerations will apply to the peoples of the African continent; the peoples of the now independent countries where slavery flourished, and the people who are minorities in Europe or North America.

The damage may be classified and researched under different headings.

There is economic damage, cultural damage, social damage, psychological damage. To put monetary figures on any of the elements of the claim raises questions to which there are no easy answers: how do you assess the value of the loss to Africa millions of young people kidnapped and transported over 200 years ago? What figure can be placed on the psychological damage inflicted by a system which is still deeply racist? Can it be proved that the slave system destroyed old and flourishing African civilizations, and if so, how is their value to be measured? What level of restitution is appropriate for the African peoples of the Diaspora?

Another approach, perhaps to be adopted in parallel, is to measure the amount by which various European nations were directly enriched by the institution of slavery. In the Report of the Inquiry into Racism in Liverpool, which I conducted in 1989, I quoted the historian Ramsay Muir, who wrote in 1907. He described the slave trade as "the pride of Liverpool", for it flooded the town with wealth.

*which invigorated every industry, provided the capital for docks, enriched and employed the mills of Lancashire, and afforded the means of opening out new and ever new lines of trade. Beyond a doubt it was the slave trade which raised Liverpool from a struggling port to be one of the richest and most prosperous trading centres in the world.*

Similar evidence could be uncovered about Bristol, London, Bordeaux, and many others ports.

Other questions arise as to the manifold components of a

reparations settlement. A combination of the following could be included:

- an apology made by the Queen and other heads of state to Africans world wide;
- the cancellation of debt, on the basis that Europe owes far more to Africa and the Caribbean than Africa and the Caribbean owes to Europe.
- crash programmes of development in the inner cities where African descendants suffer the consequences of institutionalized racism.
- programmes to build the infrastructure of the African continent, once a land of well-developed trading networks.
- repatriation for diaspora Africans who wish to return to the continent from which their ancestors were taken.

Fortunately there are many seekers after truth who are trying to find answers to all these questions through careful research. Any figures put on the various elements of the reparations claim will at best be estimates made from a basis of sound historical research. However the research process itself will have a value far beyond of the calculation of figures. It will be an educative process through which the horrors of the past will be re-examined. The more the details of the slave system and its consequences are exposed, the more understanding there will be, among African people and white, of the justice of the reparations claim.

#### 7. THE CLAIM IF NOT SETTLED BY AGREEMENT WOULD ULTIMATELY BE DETERMINED BY A SPECIAL INTERNATIONAL TRIBUNAL RECOGNIZED BY ALL PARTIES

There is at present no court which would be competent to hear a claim for Reparations for Africa and Africans in the Diaspora. The International Court of Justice is competent to hear claims by one state against another for breaches of international law. But this claim is on a much vaster scale than a claim between states. It would need a new mechanism, commensurate with the unique and massive issues of which I have spoken.

The absence of a court is no impediment to the Reparations claim. In the examples given earlier, the legitimacy of the claim was recognized and embodied in an agreement, without there having been any pre-existing tribunal to deal with the grievance. As part of the agreement a mechanism for dealing with individual claims was established. The nature of the court which makes the binding decisions will depend on the issues at stake and the negotiations which have preceded the agreement.

For example, the agreement made between Iran and the United States for the payments of reparations set up a nine-member Commission, consisting of three American judges, three Iranian, and three from countries not involved in the dispute. It sat in three chambers of three judges, and made adjudications on nearly four thousand claims.

At this stage, therefore, it is premature to consider the composition of any Commission or

Tribunal which might ultimately adjudicate upon the African Reparations Claim. The adjudicating body will only carry authority if it has been set up with the concurrence of all parties to the dispute. The international recognition of the justice of the claim is a condition precedent to the setting up of any judicial machinery.

This, then is the great task in which lawyers have a specific but significant contribution to make. They are only a small part of the panoply of forces which will be needed - historians, archaeologists, artists, writers, politicians, sociologists, psychologists, and beyond them all, people of good will, of all races, who perceive that the crime of slavery was a monstrous evil, for which atonement and reparation is long overdue.

# **FACTS**

## *on Reparations to Africa and Africans in the Diaspora*

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### **1. What is Reparations about?**

There is an abundance of proof that Africa was the cradle of civilization. Centuries before the birth of Christ, the stories of the Queen of Sheba and her visits to King Solomon, with an organised retinue and also the architectural wonders of the pyramids are clear evidence of the height to which African civilization had reached. Further the ancient kingdoms of Africa like those of Songhai, Benin, Ghana and others were highly organized and even ancient universities like Timbuktu existed. At this time Europe was very underdeveloped and America had not even been discovered. This development of Africa was interrupted sometime around the 14th century by the heinous institution of slavery. This robbed Africa of her best and strongest men, women and children who were put in chains and were exported like goods and chattels - like goats and pigs to the Islands of the Caribbean, United States, Brazil and elsewhere. These slaves worked under very hard conditions, planting sugar cane, and cotton for their masters' enrichment and this prevented for centuries the development of their own countries in Africa. The results of their work as slaves was to enrich the countries of their masters. Those countries became rich and developed, while Africa, the homes of the slaves, remained poor. Reparations which comes from the word 'repair' is a Movement which

seeks to identify and redress those wrongs, so that the countries and people that suffered will enjoy full freedom to continue their own development on more equal terms.

### **2. How do you intend to go about it?**

There is a Sub-Committee which was appointed after the first International Conference on Reparations in Lagos, Nigeria in December, 1990. This Committee has advanced the cause to the national level and President Ibrahim Babangida advanced it further to the platform of the OAU which in June, 1992 empanelled a Group of Eminent Persons (GEP) to work out the different ways in which to proceed, and to secure technical advisers who will help to solve some of the problems raised by this claim. This Group also hopes to make this cause known to the peoples of the world in a quest for justice. This information is being passed to you now through this publication and others to follow.

### **3. Who is asking for Reparations?**

The Group of Eminent Persons on Reparations for slavery, operating under the umbrella of the OAU, is a structured body consisting of people with international reputations and is not restricted to one race, sex or religion. They are acting on behalf of the black peoples of the world, and we expect soon to be able to place

the demand on the agenda of the United Nations, as it has now been supported by the OAU.

### **4. Why are we asking so late?**

This is not late for the following reasons:

(i) There is no law of limitations which limits claims for murder and genocide, such as was involved in slavery;

(ii) Further, when slavery was abolished in the 1830s, it was succeeded by colonialism. This did not abolish exploitation of the colonies, it was merely a transformation from one subjugation to another. Colonialism ended for most of us only 30 years ago and in fact this still exists in some colonies. As colonies, we could not speak for ourselves, as we were not free to do so. Since the abolition of colonialism just 30 years ago, we are free to speak and are asking you to join us. Thirty years is not a long time on the pages of history.

It is the failure of development in Africa over the last 30 years that has underlined the extent to which slave trade, colonialism and neo-colonialism have remained as shackles that need to be removed if we are to be free to pursue development.

### **5. From whom are we asking for Reparations?**

All those countries and peoples who

we can prove unjustly benefitted from carrying on slavery and other forms of unjust exploitation will be asked to make Reparations to those who suffered.

**6. Is the demand for Reparations another way of asking for foreign aid?**

No. The demand for foreign aid is being made by some governments on the grounds of compassion. We are asking for reparations on the grounds of justice and equity.

**7. Have we got any authentic evidence on which we can base that claim?**

There exists evidence in writing, letters, bills of sales, in some cases details such as the names of slave ships, buyers and sellers. There is of course the existence of artifacts taken away from the colonies now in the metropolitan countries and other bits of evidence from which the claims can be made out. But we are also working on further substantiating these claims; And there is still a lot of work to be done.

**8. Is there any precedent?**

There is a list of precedents to this type of claim. Let us mention a few. The State of Israel receives millions every year from Germany as Reparations for the suffering of Jews under the Nazi oppression during the holocaust. The Koreans received Reparations from the Japanese for the cruelties perpetrated upon them. There is in fact still a claim outstanding with regard to Korea's 'Comfort Women'. The Indians received compensation from the United States. And Iraq was ordered to pay Reparation to Kuwait, the richest country on earth, for damages. There are others.

**9. Are we asking for money?**

This claim goes far beyond a request for payment in monetary terms. We cannot evaluate the price of hundreds of thousands of lives and even more for human dehumanization, shame and suffering. We are asking for an acknowledgement by those enriched from slavery and colonialism of their guilt in this respect, a confession of their complicity, an apology, and the natural consequences of all these include monetary compensation.

**10. Is this a race question?**

No. This a question of justice and there are people on both sides of the colour line who support our cause.

**11. How much money are we asking for?**

As stated above, money is not the main objective but certain payments need to be made, to build universities, roads, houses, and to transfer technology, et cetera. A special Committee is already working out details based upon the actual losses and what will get Africa and peoples of African descent moving again. Such payments will also relate similar to payments and other precedences of reparations such as those made to Kuwait, Israel et cetera.

**12. Is there any legal base to support the present demand?**

Our case is based on morality and equity, but it also supported in international law. There is a principle in law known as unjust enrichment: if one party becomes enriched as a result of a wrong done to another party, the law compels the former to make an adjustment to the latter. There are in various Conventions,

such as the Geneva Conventions or the Human Rights Conventions, of the United Nations, clearly laid down prohibitions against the denial of human rights.

This is not a matter which necessarily has to be taken before ordinary courts of law. The conscience of the world is a peoples' tribunal, and it would certainly give support to the experts pursuing this matter.

**13. Should the present generations be held responsible for the wrong doings of their ancestors?**

We are not to penalize the present generations who are descendants of slave-owners and slave-traders. What we put before the world is the fact that certain countries today and certain sections of the present generation are placed in a better position, economically, politically and socially than the claimants, as a result of the unjust enrichment enjoyed by their ancestors at the expense of claimants.

**14. Is the aid already paid to Africa not enough to settle claim?**

Not at all. Even if foreign aid is accepted as part of the returns from the western world, the total investment is still only an infinitesimal part of the value of what they have extracted from Africa, and from the enforced labour of peoples of African descent.

**15. How do we ensure that any repayments do not end up in private pockets?**

The Group of Eminent Persons will ensure full accountability in every respect. Furthermore, much of the Reparations will not be in terms of

cash but in technical transfer from the develop to the underdeveloped world, scholarships, the establishment of universities, infrastructural development, seats on the Board in the Conference rooms where decisions are made affecting matters like plans of trade et cetera. The programme for rehabilitation, reconstruction, and establishment of a new world order will not be the affair of individual person or governments.

**16. Some people have argued that slavery and colonialism have contributed to the development of Africans. Is this true?**

This is palpably not true. Those who say that Africans who have advanced have done so because slavery put them in a 'conducive atmosphere' to advance should visit the slave relics like the Isle of Goree, Elmina Castle, Badagry and other monuments to the infamous trade to understand how wrong they are. Those that advanced as in the Caribbean, United States and elsewhere, did so by the Will of God, and in spite of the slave conditions - certainly not because of them. The struggle of the black slaves is an epic worthy to be remembered. It is the story of a people who fought back under the most difficult conditions trying to climb the ladder of progress. Reparations is an attempt to give their descendants some assistance in climbing that ladder so as to reduce the odds against them. Struggle is a part of our culture and the ascent from slavery to our present position is a source of pride. The struggle continues.

**17. Why do you relate colonialism to slavery?**

It is most important for us to grasp

the linkage. The Atlantic slave trade used European capital to take African slaves to the New World. With abolition, European capital turned its attention to the exploitation of African labour, land and mineral resources in Africa itself. The Atlantic slave trade had identified slavery solely with the black person, perpetually in a degraded and dehumanized position. Colonialism in Africa was based on the racial foundations laid by the Atlantic slave trade. Because the world failed to recognize the inhuman slave trade as a crime against humanity, European powers went in to commit equally heinous crimes against Africans under colonialism. (Remember Leopold's Congo, and the German war against the Hereros). Even after nominal independence had been granted, with African human and material resources already depleted by the slave trade and colonialism, the Western world continues to control African economies and to manipulate its governments for their own ends. They bear a lot of responsibility for the increasing degradation, collapse of states, hunger, disease and gloomy prospects.

**18. Since the Africans at home were not enslaved, why should they ask for Reparations?**

They are asking for reparations for two reasons.

(a) The effects of the slave trade was not felt by the immediate victims only but by all black peoples. The impact on Africa in the loss of people, destruction of agriculture and trade, insecurity of life, social degradation etc. was disastrous and no black people, even those who participated in the trade could escape its destructive consequences.

(b) One of the effects of Atlantic

slave trade has been racial prejudice. Arabs enslaved not only blacks, but also whites and sometimes other Arabs. They sometimes inter-married with black slaves and thus there was no outright prejudice against all black people during the earlier period of the slave trade. In the case of the Atlantic trade, however, all the slave masters were white and the slaves black; and this has given rise to the heinous practice of looking down on black people. All Africans suffered from this, whether they were enslaved or not. This was the foundation of colonialism and neo-colonialism in Africa. Prejudice against black people spread almost every where in the world and we have to redress this problem. The cost of this world-wide prejudice against black peoples is incalculable. It is revealed in such incidents as the Los Angeles riots, and it is beginning to show itself in some parts of Germany, Britain and France. It is even said to exist in Mauritania and other parts of Africa; thus the psychological damage is one of the things we have to redress.

**19. What can I do to help this crusade?**

We should hope, having read this that you will feel it is your duty to stand up for the rights of all black people. To respect your own leaders, to spread the story of the crusade and the facts in this paper, but above all, to support your country as a great black country of which you are proud. You should never measure yourselves against any other standards and not consider our work, our people, and our products as inferior to that of others. Try and organize to teach the young people especially, what is in this paper so that we can make the world a better place.

## **20. Who are the GEP?**

These letters stand for Group of Eminent Persons. At present there are 12 members. They are men and women whose ability, qualifications and dedication to the cause of black people and of justice make them eminently suitable to take on the responsibility of leadership in the Movement. They include *Bashorun M.K.O. Abiola* of Nigeria (Chairman), *Dr. A. M. M'bow* of Senegal, former Director-General of UNESCO, and an accomplished African, as Co-Chairman.

*Hon. Dudley J. Thompson O.J., Q.C., B.C.L.* a Pan-Africanist, International Lawyer and Ex-Foreign Minister of Jamaica, Rhodes Scholar, A member of the legal team that defended the Late President Jomo Kenyatta during the Mau Mau trials.

*Professor J.F. Ade Ajayi* of Nigeria, former Vice-Chancellor of the University of Lagos, former Chairman of the UN University Council, Member of the Unesco International Committee on African History, a distinguished Scholar.

*Miriam Makeba*: an accomplished international singer whose songs have kept the hope alive and sustained the fight against apartheid. A Pan-Africanist respected worldwide.

*Professor Ali Mazrui* of Kenya: Political Scientist, renowned scholar and intellectual, well known and respected especially for his TV series - *The Africans*. He is a visiting Professor to several universities.

*Congressman Ronald Dellums*: Member of the Congressional Black Caucus of the United States of

America, a front-line African-American, Member of the United States House of Representatives.

*Dr. Samir Amin*: Political Economist, Pan-Africanist, prolific Author and Thinker, well respected international scholar and researcher.

*Madam G. Machel*: from Mozambique, the widow of the late (President) Samora Machel, and activist, an outstanding educationist in her own right.

*Professor J. Kizerbo* of Burkina Faso: A historian, author of many works on African history, member of the UN University Council and the Unesco International Committee on African history.

*President A. Pereira*: Ex-President of Cape Verde Island and noted Pan-Africanist of wide international repute.

This Group was empaneled by the OAU to work out the strategies for pursuing the Movement. They have created a net-work of experts to reach into almost every country of the world for the establishment of units which will spread out and inform all people of this cause. They are to find facts on the effects of slavery and colonialism, political, social and otherwise, and in general assist in obtaining justice for all Africans and peoples of African descent.

## **21. What is the role of the United Nations in this programme?**

The Programme has moved from the early expressions including that of the Forum of 1990 in which M.K.O. Abiola and the learned academics and statesmen whom he invited, expressed in precise terms the call

for Reparations to Africans in the Motherland and in the Diaspora. This call was supported by President Ibrahim Babangida of the Federal Republic of Nigeria, thus giving it a national platform. As Chairman of the OAU, President Babangida put it on the OAU Agenda and the Heads of State supported it unanimously. The OAU at its Summit in Dakar empaneled the GEP, thus carrying the Movement from the national to the whole of Africa.

The next stage which will take some work is to take the message to the world and work out strategies by which the Movement will obtain the support of the United Nations. The United Nations will then place this question before the world.

## **22. Who have shown interest in this Movement so far?**

So far diplomats and representatives from various countries have had discussions about this Movement. Academics, journalist, students and other leaders in Africa and abroad have shown great interest in the subject. And more and more ordinary people, spanning every field of human endeavour, are showing interest.

# THE ABUJA DECLARATION

## *A Declaration of the First Pan-African Conference on Reparations*

### April 27 - 29, 1993, Abuja, Nigeria

**T**he First Pan-African Conference on Reparations held in Abuja, Nigeria, April 27 - 29, 1993, sponsored by the Group of Eminent Persons (GEP) and the Commission for Reparations of the Organization of African Unity (OAU) and the Federal Government of the Republic of Nigeria.

Recalling the OAU's establishment of a machinery the the GEP for appraising the issue of reparations in relation to the damage done to Africa and its Diaspora by enslavement, colonization, and neo-colonialism.

Convinced that the issue of reparations is an important question requiring the united action of Africa and its Diaspora and worthy of the active support of the rest of the international community;

Fully persuaded that the damage sustained by the African peoples is not a "thing of the past" but is painfully manifest in the damaged lives of contemporary Africans from Harlem to Harare, in the damaged economies of the Black World from Guinea to Guyana, from Somalia to Surinam;

Respectfully aware of historic precedents in reparations, ranging from German payment of restitution to the Jews for the enormous tragedy of the Nazi Holocaust to the question of compensating Japanese-Americans for the injustice of internment by the Roosevelt Administration in the United States during World War II;

Cognizant of the fact that compensation for injustice need not necessarily be paid only in capital transfer but could include services to the victims or other forms of restitution and readjustment of the relationship agreeable to both parties;

Emphatically convinced that what matters is not the guilt but the **responsibility** of those states and nations whose economic evolution once depended on slave labour and colonialism, and whose forebears participated either in selling and buying Africans, or in owing them or in colonizing them;

Convinced that the pursuit of reparations by the African peoples in the continent and in the Diaspora will itself be a learning experience in self-discovery and in uniting experience politically and psychologically;

Convinced that numerous looting, theft and larceny have been committed on the African people;

Calls upon those in possession of their stolen goods artifacts and other traditional treasures to restore them to their rightful owners the African people;

Calls upon the international community to recognize that there is a unique and unprecedented moral debt owed to the African peoples which has yet to be paid - the debt of compensation to the Africans as the most humiliated and exploited people of the last four centuries of modern

history;

Calls upon Heads of States and Governments in Africa and the Diaspora itself to set up National Committees for the purpose of studying the damaged Black experience, disseminating information and encouraging educational courses on the impact of Enslavement, colonization and neo-colonialism on present-day Africa and its Diaspora.

Urges the Organization of African Unity to grant observer status to select organizations from the African Diaspora in order to facilitate consultations between Africa and its Diaspora on reparations and related issues;

Further urges the OAU to call for full monetary payment of reparations through capital transfer and debt cancellation;

Convinced that the claim for reparations is well grounded in International Law;

Urges on the OAU to establish a Legal Committee on the issue of reparations;

Also calls upon African and Diaspora groups already working on reparations to communicate with the Organization of African Unity and establish continuing liaison;

Encourages such groups to send this declaration to various countries to obtain their official support for the

<p>movement;</p> <p>Serves notice on all states in Europe and the Americas which had participated in the enslavement and colonization of the African peoples, and which may still be engaged in racism and neo-colonialism, to desist from any further damage and start building bridges of conciliation, co-operation, and through reparations.</p> <p>Exhorts all African states to grant entrance as of right to all persons of Africans descent and right to obtain residence in those African states, if there is no disqualifying element on</p>	<p>the African claiming the "right to return" to his ancestral home Africa;</p> <p>Urges those countries which were enriched by slavery and the slave trade to give total relief from Foreign Debt, and allow the debtor countries of the diaspora to become free for self-development and from immediate and direct economic domination.</p> <p>Calls upon the countries largely characterised as profiteers from the slave trade to support proper and reasonable representation of African Peoples in the political and economic areas of the highest decision-making</p>	<p>bodies.</p> <p>Requests the OAU to intensify its efforts in restructuring the international system in pursuit of justice with special reference to a permanent African seat on the Security Council of the U.N.</p>
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