

TO: srtruthcalls@ohchr.org

This response to the OHCHR questionnaire was prepared collaboratively by Hope for Africa, Inc. (HFA) and Kha-Nu National Community, Inc. Both organizations are NGOs in Special Consultative Status with the Economic and Social Council of the United Nations and herewith submit this response for consideration

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1. Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and 2 opportunities encountered in investigating, prosecuting and sanctioning such crimes.

ANSWER:

It can be said that attempts have been made to put mechanisms in place in the United States of America to ensure all citizens' rights are protected; the "equal protection clause" of the 14th Amendment to the Constitution, adopted after the Civil War to address the condition of newly-freed slaves, aims to address this issue as a feature of their transition from chattel property to new citizenship status. However, violations of black Americans' civil and human rights by state-sanctioned Black Codes, Jim Crow Laws and white terrorist violence continued throughout the decades following the American Civil War. Whites guilty of these transgressions were usually not charged and held "accountable." This is particularly true in the cases of rampant police violence and murders of black men, women and children.

The challenges in dealing with police violence, as well as black dispossession in the areas of land and property ownership, educational equity, health care, and employment, is that they are canonized in the legacy of systemic racism created by chattel slavery. As treatment of enslaved blacks was encoded in laws that sanctioned such crimes, the failure to examine the origins of institutions like white terrorist acts, destruction of black lives and communities, policing and criminal justice, bank lending and federal housing policies have tended to enable violence and dispossession of descendants of enslaved Africans.

Why this is the case goes back to the US official discourse of nation-building, which shrouds the tale of chattel slavery within a narrative clouded by historical amnesia. White supremacist curricula-- embellished by themes of black inferiority and dysfunction--- have provided a level of uncanny denial and a near complete lack of will to interrogate the true history of slavery and its human rights violations. American historiographers have sparred among themselves for decades while refusing to acknowledge the fact that the US society is one founded on slavery not a society with slaves, as was the case with slave-holding nations of antiquity. Narratives of history that reframe and glorify the European purpose and program in the establishment of nations founded on slavery have dominated historical as well as popular cultural narratives.

However, the injustices suffered by Africans and people of African Descent have been experienced by these populations as a result of laws, policies and practices created and enforced by Euro-American ruling elite first, to maintain and justify the chattelized enslavement of African people for financial gain and secondly to justify maintenance of white supremacy. This carcerality of African people and blackness as a commodity was imposed and enforced by respective European governments before and during the Transatlantic trafficking in captive Africans and the African colonial Eras. The aforementioned policies were both codified in legal cannon and social customs that evolved over several centuries in the Atlantic World and on the African Continent. They represent, indeed, the origin of today's systemic anti-black racism.

An ongoing strategy proffered for addressing this inequity is the call for reparations for slavery. Reparations is a political justice concept that argues that **restitution** should be paid to the descendants of African captives seized from Sub-Saharan Africa, trafficked across the Atlantic and enslaved in the Americas as a consequence of the larger system of Atlantic trafficking in commodities. To this end, African-descended people have been agitating for reparations for more than 150 years, yet one might argue that part of the reason why the issue doesn't get addressed is rooted in the fact that slavery, as part of our national memory, is yet to be resolved.

Slavery was absolutely foundational to the existence of the United States and the rest of the Atlantic world, as underscored by the New York Times' 1619 project, and many contemporary scholarly historical works treating the subject. Yet there is no national monument or memorial marking this reality--- "Not even a bench by the side of the road," as the late Toni Morrison observed. This profound ignorance about slavery and the racism that it produced is the reason for the question today: "Why are black people asking for reparations? Slavery happened 400 years ago. Why don't they just get over it? Haven't we made a lot of progress?" These kinds of questions get asked because slavery has come to be seen as peripheral and almost inconsequential to American history. Few Americans know what Slavery really was and its destructive, socio-economic and psychologically crippling legacy that lingers with us today. Thus, therein lie "the challenges...encountered in investigating, prosecuting and sanctioning continued crimes against African-descended people in the USA.

2. Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was the outcome of the inquiries made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

ANSWER:

Unlike South Africa's Truth and Reconciliation Commission, there have been no measures established at the national level to explore the truth about gross violations of the human rights and spiritual transgressions committed against enslaved Africans in America. There have been no national inquiries that aim at restitution and transitional justice for the dehumanization suffered by enslaved Africans and their descendants, either in the USA or the Caribbean. There have been, however, laws and Presidential acts that have addressed gross breaches of blacks' civil rights in the USA brought on by a convergence of interest (America's embarrassing Civil Rights record during the Cold War Era). Beginning with the first civil rights act of 1875, the Supreme Court decision in the *Brown vs. the Board of Education of Topeka, Kansas* decision and moving forward to the Civil Rights and Voting Rights Acts of 1964 & 65, efforts were made to ensure constitutionally mandated citizenship rights were provided to all Americans.

However, even these inadequate attempts at restorative justice were short lived and followed by reversal efforts like the 1980s Bakke case and decision that created the term "reverse discrimination" in response to an attempt to increase access to higher education for African Americans. The convergence of interest, usually beneficial to white America, that leads to temporary remedies for the 400 years of slavery and institutional racism are routinely followed by roll back strategies to reverse any gains. These efforts are alive and well today as seen in a recent lawsuit against the Biden Administration alleging reverse discrimination for aid specific to Black farmers filed by Stephen Miller, a former Trump official.

The issue of reparations and restorative justice, however, have a long history in the USA and the Caribbean. One highly visible proposal for reparations argues for Congress to create a national commission which would deliberate the particulars of reparations and repair. Since 1989, A pioneer of this strategy was the late Congressman John Conyers who repeatedly filed legislation to create this commission - HR40. The number 40 in the bill's name refers to the promises of the Homestead Act of the late 1800s made to formerly enslaved Africans and the more famous "40 acres and a mule" emanating from General William T. Sherman's Field order # 15 of January 1865 promising farming acreage to the black contrabands in the South Carolina Sea Islands. There was also the Port Royal Experiment where the freedmen were given the right to work land for ownership as a project to demonstrate that the former slaves could provide for themselves a part from white interference and control.

Another existing model of reparations and restitution is Florida House Bill 591 under which the state compensated victims of the Rosewood massacre in 1923. The bill allowed reparations to be paid to families of victims of white violence against black people of the town. In his book, *The Debt: What America Owes to Blacks*, Randall Robinson talks about a wide range of ways that reparations could be used, including the funding of cultural institutions, community initiatives, direct cash grants, and targeted wealth-building programs. Organizations like N'COBRA (The National Coalition of Blacks for Reparations in America). N'COBRA'S agenda asserts that "African peoples in the United States and the prior colonies were denied the right to maintain their language, [their] spiritual practices and normal family relations." They existed under a terroristic regime always under the threat of physical brutality and being torn... from their families at the whim of the slave owner." They go on to point out that chattel slavery lasted

officially from 1619 to 1865 and was followed by 100 years of “slavery by another name” and government-led and supported denial of equal and humane treatment through validation of state-sponsored Black Codes that criminalized every act of Black people coupled with vagrancy laws, convict leasing, sharecropping, and Jim Crow segregation....” All of this was codified as the law of the land by the 1894 Plessey vs. Ferguson Supreme Court decision upholding apartheid with “separate but equal laws” (National Coalition of Blacks for Reparations in America (N’Cobra) <https://www.ncobraonline.org/reparations/>).

While there are high-profile individuals like Randall Robinson engaged in the struggle for reparations for slavery, there are also key organizations whose creation and existence revolves around this issue. NAARC, the National African American Reparations Commission established in 2015, is a group of distinguished professionals from across the country with outstanding accomplishments in the fields of law, medicine, journalism, academia, history, civil rights and social justice advocacy with a 10-point plan for reparations which includes much more than just a payout of cash to descendants of enslaved Africans (African American Reparations Commission’s (NAARC’) “Preliminary 10 Point Reparations Program.” <https://ibw21.org/initiative-posts/naarc-posts/naarc-rolls-out-preliminary-10-point-reparations-plan/>

3. Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

ANSWER:

Neither the idea nor the history of reparations for wrongs committed against a people is new in the United States. Thus, it is logical to take a look at what has been done, the manner of carrying out the restitution to see what aspect of these historical models might be appropriate for reparations to African Americans for the human rights violations of chattel slavery, Jim Crow Segregation and subsequent terrorist attacks on black individuals and their communities. Where they all may fall short, in our estimation, however, is in the tendency to try to redress the wrongs monetarily. Money alone without attention to the comprehensive archive of ills emanating from the thefts of life and opportunity of Black people will not succeed in removing the scar tissue and healing the wound in the soul of America caused by slavery and its legacies, the greatest crimes ever committed against humanity. There are actually a number of examples in the United States of reparations being paid or proposed which might serve as a springboard for serious discussions

about restorative justice and repair for slavery, Jim Crow Segregation, and lingering racist exclusion suffered by African Americans. For example:

1927: The Shoshones were paid over \$6 million for land illegally seized from them (although it was only half the appraised value of the land). (*Race, Racism, and Reparations* by J. Angelo Corlett, 2003, Cornell University Press, p. 170.)

1956: The Pawnees were awarded more than \$1 million in a suit brought before the Indian Claims Commission for land taken from them in Iowa, Kansas, and Missouri. (*Race, Racism, and Reparations* by J. Angelo Corlett, 2003, Cornell University Press, p. 170.)

1962: Georgia restored many Cherokee landmarks, a newspaper plant, and other buildings in New Echota. It also repealed its repressive anti-Native American laws of 1830. (*Race, Racism, and Reparations* by J. Angelo Corlett, 2003, Cornell University Press, p. 170.)

1969: The Black Manifesto was launched in Detroit as one of the first calls for reparations in the modern era. Penned by James Forman, former SNCC (Student Nonviolent Coordinating Committee) organizer, and released at the National Black Economic Development Conference, the manifesto demanded \$500 million in reparations from predominantly White religious institutions for their role in perpetuating slavery. About \$215,000 was raised from the Episcopalian and Methodist churches through rancorous deliberations that ultimately tore the coalition apart. ("Black and Blue Chicago Finds a New Way to Heal" by Yana Kunichoff and Sarah Macaraeg, *YES Magazine*, Spring 2017.)

1971: Around \$1 billion + 44 million acres of land was awarded under the [Alaska Native Claims Settlement Act](#).

1980: \$81 million: Klamaths of Oregon. ("[Spending Spree](#)" by Dylan Darling, *Herald and News* (Klamath Falls, OR), June 21, 2005.)

1980: \$105 million: Sioux of South Dakota for seizure of their land. (*United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).)

1985: \$12.3 million: Seminoles of Florida. (see *Racial Justice in America: A Reference Handbook* by David B. Mustard, 2002, ABC-CLIO, p. 81.)

1985: \$31 million: Chippewas of Wisconsin. (see *Racial Justice in America: A Reference Handbook* by David B. Mustard, 2002, ABC-CLIO, p. 81.)

1986: \$32 million per 1836 Treaty paid to the Ottawas of Michigan. (see *Racial Justice in America: A Reference Handbook* by David B. Mustard, 2002, ABC-CLIO, p. 81.)

1988: [Civil Liberties Act of 1988](#): President Ronald Reagan signed a bill providing \$1.2 billion (\$20,000 a person) and an apology to each of the approximately 60,000 living Japanese-Americans who had been interned during World War II. Additionally, \$12,000 and an apology were given to 450 Unangans (Aleuts) for internment during WWII, and a \$6.4 million trust fund was created for their communities. ("[U.S. pays restitution; apologizes to Unangan \(Aleut\) for WWII Internment](#)," National Library of Medicine.

4. Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

ANSWER:

Memorials as objects function to focus the memory or the commemoration of some thing or person of influence in history. Typically, they are landmarks, objects or works of art such as sculptures, statues or fountains and parks. There has been some progress made in recent years in commemorating Black Historical events and people by states and public institutions. This includes Martin Luther King, Jr. Day and Juneteenth, which marks the end of slavery in 1865. Some are trying to make Juneteenth into a national holiday. Overall, however, recognition of Black history, in general, has been preserved in sanitized narratives presented for the benefit of the “white gaze.” The American “Civil War is commemorated with scores of monuments and historic battlefields...[However, the] African American Civil War Memorial is the only visual gesture honoring the contributions” (“13 Parks and Monuments”) of the over 200,000 black men who fought for their freedom in that war. “The memorial, a granite plaza highlighted by statuary and a wall of honored names, has been called one of the best Washington D.C. museums not on the National Mall,” (*The Wilderness Society*. “13 Parks and Monuments that Celebrate Black History.” February 17, 2021. <https://www.wilderness.org/articles/blog/13-parks-and-monuments-celebrate-black-history>) as a tribute to African Americans who served a country that kept them enslaved for over two hundred years.

There is also an ongoing proposal for a National Slave Memorial to honor the victims of slavery in the United States. It was introduced during a 2003 Congressional session. “Professor Ira Berlin noted that the proposed memorial is an example of the interest Americans in the early 21st century still have in the facts and legacy of slavery.” However, the legislation has not been adopted; instead, Congress supported the creation of the National Museum of African American History and Culture, which opened on the National Mall in 2016” (Hatch, John B. (2010) *Race and Reconciliation: Redressing Wounds of Injustice*. Lanham, MD: Lexington Books: Rowman & Littlefield Publishers, Inc. p. 11). The following memorial sites were created by African Americans themselves: (a)African Burial Ground Museum, New York, NY USA

(b)The Portsmouth African Burial Ground in Portsmouth, New Hampshire USA

(c)America’s Black Holocaust Museum located in Milwaukee, Wisconsin USA. It is a memorial museum founded in 1988 by James Cameron, a survivor of an attempted lynching (“One Hundred Years of Jim Crow.” <https://www.abhmuseum.org/one-hundred-years-of-jim-crow/>).

5. Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities

encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

ANSWER:

Race-based slavery in the United States of America became illegal with the passage of the 13th Amendment to the US Constitution, except if one is found guilty of a crime. The inclusion of "except" laid the foundation for a deeply entrenched system of African American incarceration, and other systemic, long-standing, racially-biased policies. This loophole enabled the establishment of a Post-Civil War "slavery by another name" in the USA. Black bodies were criminalized by vagrancy laws, Pig laws, Black Codes and other Jim Crow laws that made it possible for southern states to re-inscribe blackness as criminality and once again confiscate the labor of black men to rebuild the South, coal mines, railroads, factories and farms of the industrial revolution. The Constitution liberated millions of enslaved Africans, yet it leaves unanswered questions: How do we dismantle the legacies of slavery that the framers of the Constitution allowed to be built around them? Also, since the ills of that institution came about because of compromises, how can we be sure to avoid these kinds of moral infractions that caused such destruction in the past? How do we undo the lingering inhumanity of racism, an intrinsic spawn of slavery? As a result of these ambiguities, a Civil Rights movement had to be launched in order that subsequent laws and acts be passed to guarantee voting and civil rights to dismantle post-slavery Black codes and Jim Crow segregation laws and protocols.

The legacy of slavery remains alive in the USA and other countries today via systemic racism in education, in voting rights, housing, jobs, policing and criminal justice, mass incarceration, employment, predatory lending practices, and other structures of dispossession. "Tracing slavery's fiery path through the Constitution, its amendments, and both law and culture is a reminder that our discussions on current constitutional issues may have similar effects in the future. Where there's ambiguity, there's a test to the Constitution that will shape...[the] path forward.... ("Slavery, the Constitution and a Lasting Legacy." <https://www.montpelier.org/learn/slavery-constitution-lasting-legacy>).

Most importantly, the damages of slavery, subsequent black dispossession and white terrorist violence mark a lingering wrong which remains un-redressed. Therefore, we have the ongoing debate over reparations and transitional justice for descendants of enslaved Africans. It is an issue that needs to be placed within the context of the global struggle for reparations for African enslavement and subsequent colonization which can facilitate the view of an ongoing harm and violations via what has been called the *Maangamzi*. This is a term used to characterize the continuing transgressions and dispossessions of African people's rights to a quality of life free of racist inequities and socio-economic oppressions. This is the idea of repair and restorative justice as a transformation at the systemic level. In this respect, then, important change can take place by challenging public and political misconceptions about reparations and supporting an international push for governments to study with intent to address the long-lasting consequences of enslavement and colonialism.

It was begun by the United Nations at its conference on Racism and subsequent meetings, where the transatlantic slave trade and slavery were declared crimes against humanity. His

Excellency, Mr. Christopher Hackett, Permanent Representative of Barbados, Acting President of the General Assembly declared at the Special Commemorative Meeting of the General Assembly (25 March 2010) that: "This commemoration by the General Assembly signifies the international community's respect and honor for the millions of Africans, violently removed from the African continent and transferred to centuries of bondage in North and South America

and in the islands of the Caribbean," [and added that] "The Durban Conference against Racism firmly established the Trans-Atlantic Slave Trade as the greatest scourge of modern life and a grotesque crime against humanity" (United Nations International Day of Remembrance of the Victims of Slavery and the Trans-Atlantic Slave Trade. Message of the President of the UN General Assembly.

https://www.un.org/en/events/slaveryremembranceday/2010/ga_president_message.shtml).

Required also is an understanding that the process of repair is not simply a question of financial compensation, but rather reparations must address rehabilitation of the mind and soul so brutally bruised by rendering an entire people to a "social death" (Orlando Patterson, 1982).

***We would also welcome any other document, report or article providing further information on this topic in the country concerned.**

Recommendations

For the report to the 76th session of the General Assembly adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts.

This recommendation provides the guiding principles and framework for the United Nations General Assembly's approach to transitional justice processes and mechanisms addressing the legacy of serious violations of human rights and humanitarian law committed in a colonial context. It outlines key components of transitional justice, and ways to further strengthen these activities.

Transitional Justice and Reparations: Remediating the Colonial Past

Reparations are increasingly proposed as both symbols of healing and to remedy the consequences of collective violence in times of transition, especially for Descendants of enslaved Africans in the United States (DEAUS). The murder of George Floyd of George sparked a national and worldwide response to the collective violence perpetrated against Africa Descended people globally. In contrast to demobilization programs or prosecutions, reparations represent a more victim-centered transitional justice measure. At their most basic level reparations are intended to redress harm caused to victims, especially from colonization and systemic racism.

The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

International Humanitarian Law, states that reparations are intended to promote justice by redress.

Transitional Justice Needs Victim-centered Approach

To come to terms with a legacy of past colonial abuses, for example DEAS, transitional justice processes must focus on a victim-centered approach not on the colonial perpetrators or state remedies. It is important to include victim centered approaches and/or civil society from the beginning of the transitional justice processes and at the very center of UN resolutions. Civil Society should be consulted in the design of mechanisms at the UN, to include Working Groups, Special Rapporteurs, Permanent Forums, Committees, etc. Civil society should also be included in the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed by colonial powers.

International actors could contribute to victim centered processes and measures to ensure justice, accountability, and reconciliation. In most cases, the UNGA should launch a program, “Funding Transitional Justice: A Guide for Supporting Civil Society Engagement” designed to offer guidance on how donors may better integrate civil society into their transitional justice funding strategies and support civil society initiatives. The guide, as a transitional justice framework, aim is to get the maximum possible satisfaction for the victim’s rights and achieve this through a commission, and administrative measures for reparation.

To promote truth, justice, reparation and guarantees of non-recurrence for DEAS for example, we need to place the development of transitional justice in its contemporary context.

Contemporary transitional justice processes are unfolding in the USA catalyzed by the modern-day lynching of George Floyd. DEAS, today’s victims, do not only experience violations that come about from the abusive exercise of state power—they are the violations that come about through social chaos. Because violations are different, how they should be redress, should also be different by means of a victim centered approach.

The violations that we are concerned about cannot be fully repaired, and while many things have been or may be done to mitigate their consequences and re-occurrence, nobody can undo 400 years of slavery and systemic racism. While the current focus centers on prevention, it is our position that the international community should focus as much if not more attention on victim centered remedies/redress and approaches.

We therefore advocate for the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts for inclusion in the recommendations for the report to the 76th session of the General Assembly.

According to Resolution A/RES/75/237 adopted by the General Assembly on 31 December 2020 “Welcoming the call upon all the former colonial Powers for reparations, consistent with paragraphs 157 and 158 of the Durban Program of Action, to redress the historical injustices of slavery and the slave trade, including the transatlantic slave trade.

Para 158. The Conference... within the framework of a new partnership based on the spirit of solidarity and mutual respect, in the following areas:

- Facilitation of a welcomed return and resettlement of the descendants of enslaved Africans;

THEREFORE, as victims of colonization we invoke para 158 of the Durban Declaration and international humanitarian law, the inclusion and subsequent adoption of the 158 paragraph language, “Facilitation of a welcomed return and resettlement of the descendants of enslaved Africans” for DE AUS as the transitional justice measure that is a most acceptable and desirable measure to addressing the legacy of the slave trade and 400 years of systemic racism (serious violations of human rights committed by colonial powers). Therefore, the aforesaid recommendation should be in the report to the 76th session of the General Assembly. The adoption of these measures in our view will promote truth, justice, reparation and guarantees of non-recurrence.