

## OVERSTANDING REPARATIONS

### Brief Survey of the Literature by Esther Stanford-Xosei

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Reparations as a concept is one of the most misunderstood terms with popular understandings of reparations associating it with financial compensation. It is important to look to how reparationists have defined the term. In a paper presented at the Birmingham Preparatory Reparation Conference, on 11<sup>th</sup> December 1993 organised by the African Reparations Movement (ARM) UK, Dr Kimani Nehusi<sup>1</sup> asserts that understanding the term reparations “demands that this notion be applied to the specific historical experience and the related contemporary condition of Africans” asserting that “the meaning of this term transcends repayment for past and continuing wrong, to embrace self-rehabilitation through education, organisation and mobilisation.” Nehusi goes on to highlight the etymology of the term ‘reparation’ which originates from Latin pointing out that there are a number of meanings associated with the term.

One of these lines of development being the modern English term repair meaning: to restore to good condition, to set right, or make amends concluding that the Modern English term ‘reparation’ speaks to: “the act, or instance of making amends; compensation.” Similarly, Waterhouse (2006)<sup>2</sup> quoting from the Oxford English Dictionary points out that the concept of making amends is only one of two of the original meanings of repair and reparations, and that the other set of meanings are “to restore or renew.” Waterhouse therefore concludes that reparations are best understood as efforts to repair past damages however, he also asserts that the broader meaning of repair, “relates to the transformation of the thing damaged,” best to be understood as meaning “its restoration or renewal.”

This notion of reparations as repairs has also been advanced by continental based African public intellectuals such as Nigerian Professor Chinweizu, who in his famous paper presented at the Abuja Conference<sup>3</sup> ‘*Reparations and New Global Order: A Comparative Overview*’ defined reparations in this way:

*Let me begin by noting that reparation is not just about money: it is not even mostly about money; in fact, money is not even one percent of what reparation is about. Reparation is mostly about making repairs. self-made repairs, on ourselves: mental repairs, psychological repairs, cultural repairs, organisational repairs, social repairs, institutional repairs, technological repairs, economic repairs, political*

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<sup>1</sup> K. Nehusi (1993) ‘The Meaning of Reparation’ unpublished paper presented at the First UK Preparatory Conference on Reparations, (1993)

<sup>2</sup> C. Waterhouse, ‘The Full Price of Freedom: African Americans Shared Responsibility to Repair the Harms of Slavery and Segregation’, Graduate School of Emory University PHD thesis, (2006), p3.

<sup>3</sup> Presented at the ‘First Conference on Reparations for Slavery, Colonialism and Neo-colonialism’ which took place in Nigeria in 1993.

*repairs, educational repairs, repairs of every type that we need in order to recreate and sustainable black societies....More important than any monies to be received; more fundamental than any lands to be recovered, is the opportunity the reparations campaign offers us for the rehabilitation of Black people, by Black people, for Black people; opportunities for the rehabilitation of our minds, our material condition, our collective reputation, our cultures, our memories, our self-respect, our religious, our political traditions and our family institutions; but first and foremost for the rehabilitation of our minds.*

It can thus be concluded then popular conceptions of reparations within the Social Movement for African Reparations should be viewed as an obligation to make the repairs necessary to correct current harms caused as a result of past wrongs. Under this view, reparations can be viewed as a process that restores hope and dignity and rebuilds communities rather than being reduced to a pay check. This notion of 'reparations as repairs' has also been advocated by reparations legal and political theorists in the USA. For example, Yamamoto *et. al* (2007)<sup>4</sup> advocate the 'reparations as repair' model to help elevate the role of reparations potential to "create social healing and generate practical theory" as well as ways of "doing justice" that link scholars and frontline reparations advocates with legal policymakers and the [American] public.

The right to reparation has also been recognised as a fundamental right and well established principle in international law which according to the human rights organisation REDRESS that helps torture survivors obtain justice and reparations "has existed for centuries" and refers to the obligation of a wrongdoing party to redress the damage caused to the injured party.<sup>5</sup> Typically in the 19<sup>th</sup> and 20<sup>th</sup> centuries, reparations came to be associated with punitive sanctions against aggressor states following their defeat in war. However, among the significant transformations of reparations politics in more recent times has been a shift from reparations involving states, to cases involving both states and civil society actors, who are usually racial or ethnic groups united by their common experience of a historical injustice.

Under international law, "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."<sup>6</sup>In 2005, the UN General Assembly adopted the '*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*.'<sup>7</sup> These principles go some way towards codifying the norms relating to the right to reparation and also dispel one of the most common misconceptions, i.e. that reparation is synonymous with compensation. Other forms of reparation contained in these norms include: restitution, rehabilitation, satisfaction and guarantees of non-repetition.

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<sup>4</sup> E.K Yamamoto, E.K., S. Hye Yun Kim, S. and A.M Holden, A.M 'American Reparations Theory and Practice at the Crossroads,' *California Western Law Review*, Vol.44, No.1. (2007).

<sup>5</sup> REDRESS, 'What is Reparation' <http://www.redress.org/what-is-reparation/what-is-reparation>

<sup>6</sup> See Permanent Court of Arbitration, Chorzow Factory Case (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 47 (September 13); International Court of Justice: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.).

<sup>7</sup> '*Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Law*', United Nations General Assembly Resolution 60/147, 21 March 2006.

## Classical and Indigenous African Approaches to Reparations

Dr Maulana Karenga, Professor of Africana Studies in his paper: *The Ethics of Reparations: Engaging the Holocaust of Enslavement*<sup>8</sup> asserts that reparations, like all our struggles, begins with the need for a clear conception of what we want, how we define the issue and explain it to the world and what is to be done to achieve it. He puts forward the argument that the ethical dimension is the first and most fundamental dimension of the reparations issue. He teaches that in the *Husia*, the sacred text of ancient Egypt, there is an African concept of restoration, i.e., healing and repairing the world that is appropriate in discussing our struggle to advance the cause of reparations. This concept is *serudj* which is part of a phrase *serudj-ta*, which Karenga states means to repair and heal the world making it more beautiful and beneficial than it was before.

Accordingly, he asserts that this is an ongoing moral obligation in the Kawaida (Maatian) ethical tradition and is expressed in the following terms:

- (1) to raise up that which is in ruins;
- (2) to repair that which is damaged;
- (3) to rejoin that which is severed;
- (4) to replenish that which is depleted;
- (5) to strengthen that which is weakened;
- (6) to set right that which is wrong; and
- (7) to make flourish that which is insecure and undeveloped.

Equally as relevant is the work of Mogobe B. Ramose, Professor of Philosophy who teaches on African conceptions of justice and race. In his paper *An African Perspective on Justice and Race*,<sup>9</sup> he argues that since it is no longer tenable to argue that the idea and practice of law was alien to the indigenous African peoples prior to colonisation, an essential aspect of repairing the damage of enslavement and colonisation is to reclaim African conceptions and frameworks of justice. Quoting Kéba M'Baye, Ramose reminds us of the importance of working according to African conceptions of justice and seeking to gain recognition for Africans rights to do so when he states:

*A debt or a feud is never extinguished till the equilibrium has been restored, even if several generations elapse ... to the African there is nothing so incomprehensible or unjust in our system of law as the Statute of Limitations, and they always resent a refusal on our part to arbitrate in a suit on the grounds that it is too old.*

Thus in the *ubuntu* understanding of law, an injustice that endures in the historic memory of the harmed is never erased merely because of the passage of time. The work of N' COBRA

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<sup>8</sup> Presented at The National Coalition of Blacks for Reparations in America (N'COBRA) Convention, Baton Rouge, LA, 2001 June 22-23

<sup>9</sup> <http://them.polylog.org/3/frm-en.htm>

Legal Consultant and Adjunct Professor of Law, Adjoa Aiyetoro is relevant here. In her article *Formulating Reparations Litigation through the Eyes of the Movement*<sup>10</sup> she advocates that:

In order for people who have been shut out of the system to obtain meaningful remedies for violations of their human rights, redefinition of some ordinary and some uncommon terms must be accepted by the legal system.

### **Reparations for What?**

Reparations is not just a legal case or a political claim but also a social movement. In *An Approach to reparations* Human Rights Watch maintain that “when addressing relatively old wrongs, claims of reparations should not be based on the past abuses of enslavement and colonisation solely, but on its contemporary effects.”<sup>11</sup> They point out that people today, i.e. the descendants of the enslaved who can reasonably claim that today they personally suffer the effects of past human rights violations through continuing economic or social deprivation are deserving of reparations.

There is great potential in utilising the Genocide Convention as an advocacy tool. In his book *Never Meant to Survive: Genocide and Utopias in Black Diaspora Communities*, Joao H. Vargas, Associate Professor of African American Studies and Anthropology establishes that the relentless and intergenerational oppression and marginalisation of large numbers of Black people in modern societies constitutes genocide, in that groups among us are subjected to conditions of life that are sufficiently destructive to amount to instances of genocide. In this regard it is important to also understand indirect genocide (which involves creating life conditions which destroy a group and facilitate intra-community violence).

According to Raphael Lemkin, the Polish-Jewish lawyer who coined the term genocide, *genocide* has two phases: one, the destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.<sup>12</sup> In the 1948 *Genocide Convention*, genocide is therefore defined as follows:

*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;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.*

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[http://law.nyu.edu/ecm\\_dlv2/groups/public/@nyu\\_law\\_website\\_journals\\_annual\\_survey\\_of\\_american\\_law/documents/documents/ecm\\_pro\\_065061.pdf](http://law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website_journals_annual_survey_of_american_law/documents/documents/ecm_pro_065061.pdf)

<sup>11</sup> <http://www.hrw.org/legacy/campaigns/race/reparations.htm>

<sup>12</sup> Raphael Lemkin, ‘Axis Rule in Occupied Europe’ (1944)

Vargas poses a challenge to us when he states:

*We either begin to address, redress, and do away with what make possible the multiple facets of anti Black genocide, or we succumb to the dehumanising values that produce and become reproduced by the systematic and persistent disregard for the lives of Afro-descended individuals and their communities.*<sup>13</sup>

It is important to therefore recognise however, that there are two dimensions to reparations, the external and the internal. The external is what we say others owe us but the internal self repairs are what we must engage in by way of restoring our agency, and asserting our right to self-determination and dignity as Africans. Many Africans in Africa and other parts of the African Diaspora are asserting the highest form of reparations as being a restoration of our sovereignty and the need to forge Pan-African Sovereignty which never ceded and has never been restored since Africa was colonised. Independence and sovereignty are not the same things! There are two main ideological tendencies, that which has been associated with various forms of African/ Black nationalisms and linked to the restitution of land, language, culture, community, nation and Pan-African citizenship. The other dominant tendency has been the integrationist approach which sees reparations as being about Africans gaining more fulfilling experiences of citizenship within the West and more successful integration of Africans within Euro-American nations. The question is can reparations truly occur if we are simply seeking to emulate our former colonisers, Do we not owe it to ourselves *to not* (as Fanon admonished us many years ago)

*Let us not pay tribute to Europe by creating states, institutions and societies which draw their inspiration from her. Humanity is waiting for something other from us than such an imitation, which would be almost an obscene caricature. If we want to turn Africa into a new Europe, and America into a new Europe, then let us leave the destiny of our countries to Europeans. They will know how to do it better than the most gifted among us. But if we want humanity to advance a step farther, if we want to bring it up to a different level than that which Europe has shown it, then we must invent and we must make discoveries. If we wish to live up to our peoples' expectations, we must seek the response elsewhere than in Europe.*<sup>14</sup>

I close with the words of Professor Chnweizu:

*Now, we who are campaigning for reparations cannot hope to change the world without changing ourselves. We cannot hope to change the world without changing our ways of seeing the world, our ways of thinking about the world, our ways of organising our world, our ways of working and dreaming in our world. All these, and more, must change for the better. The type of Black Man and Black woman that was made by the holocaust - that was made to feel inferior by slavery and then was steeped in colonial attitudes and values - that type of Black will not be able to bring the post-reparation global order into being without changing profoundly in the process that has begun; that type of Black will not be even appropriate for the post-*

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<sup>13</sup> J.H. Vargas *Never Meant to Survive: Genocide and Utopias in Black Diaspora Communities* (New York, Toronto, Plymouth, UK: Rowman & Littlefield Publishers, 2008), p.x

<sup>14</sup> Frantz Fanon, 'The Wretched of the Earth', Chapter 6. Conclusion (1961)

*reparation global order unless thoroughly and suitably reconstructed. So, reparation, like charity, must begin with ourselves...*<sup>15</sup>

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<sup>15</sup> <http://www.ncobra.org/resources/pdf/Chinweizu-ReparationsandANewGlobalOrder1.pdf>