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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by Africans in America for Restitution and Repatriation Inc, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 January 2021]

* Issued as received, in the language(s) of submission only.



Accountability for gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes

Introduction

As a non-governmental organization in consultative status with the United Nations (UN) Economic and Social Council, we can initiate good practices and resolutions, but it is the UN working groups and other mechanisms that is a challenge. For example, in 2017 with an international lawyer and former UN Special Rapporteur, we submitted our program of activities, under the auspices of the Durban Declaration and the International Decade for People of African Descent, to the Working Group of Experts for People of African Descent (WGEPAD) and the Office of the UN High Commissioner for Human Rights (OHCHR) - no response. The WGEPAD mandate states “Designing special projects, in collaboration with people of African descent, to support their initiatives at the community level.” Years of social research have shown that for real, institutional change to happen the usual processes of oversight and decision-making must be interrupted and new forms of accountability to the victims must be established by the OHCHR and other mechanism.

To address this, our organization has long called for greater inclusion in the design and implementation of international law and humanitarian law as a more robust accountability to victims or in this case descendants of enslaved Africans in the United States of America (DEAUS). As victims, we are experiencing exhaustion from and physiological effects of systemic racism.

In the United States of America (United States) and elsewhere, oligarchies have traditionally used all of the tools at their disposal to hold on to and extend their economic and cultural power. Since the conception of the United States, these tools have included the fiction of “race,” which evolved from a political and cultural concept of “race” in the early part of the 17th century into what we know as scientific racism. And yet, for this moment to be different — the United States government and the United Nations must enact sustainable, positive changes to effect international humanitarian law — officials must listen the call of the victims, DEAUS.

Transitional Justice

The core value of transitional justice is the very notion of justice. Transitional justice is rooted in accountability and redress for victims. It recognizes their dignity as citizens and as human beings. Ignoring our program of activities to address massive abuses is an easy way out, and it destroys the values on which any decent society can be built. This is simply re-victimization of the victims. Transitional justice asks the most difficult questions imaginable about law and politics.

By putting the victim's remedy and dignity first, it signals the way forward for a renewed commitment to make sure ordinary citizens are safe in their own countries – safe from the abuses of their own authorities and effectively protected from violations by others. International human rights and humanitarian law is there to protect vulnerable groups such as DEAUS.

International Humanitarian Law

International humanitarian law has never been confined to the level of relations between States. On the contrary, the initiators of the nineteenth century conventions already believed that human persons had inviolable rights. However, recognition of rights is one thing, the right to claim those rights is another. So far, States have been reluctant to entitle, explicitly and in general, victims of violations of international humanitarian law to claim reparation. As humanitarian law treaties do not expressly envisage causes of action for DEAUS as victims in national or international law, we are hardly able to exercise our rights, such as the

right of return, development, self-determination etc. On this point international humanitarian law sharply contrasts with tendencies in international law. It is generally known that human rights treaties provide a remedy, both substantive and procedural, for individuals suffering injury from unlawful conduct by State authorities.

Human rights treaties also provide for specific provisions on compensation. Most recently, the Rome Statute of the International Criminal Court authorizes the Court to determine any damage, loss or injury to victims and order reparations to them. But the nature of institutional racism means that it cannot be dismantled by the people who have — even if unwittingly — benefited from systemic racism all their lives. To achieve anti-racist outcomes, we must reimagine international public service accountability in ways that center the views of the victims. Most current forms of accountability do not achieve this. They center on the views of elite, working groups, special rapporteurs who think they know how to improve marginalized communities, but whose relationship to those communities is often abstract.

The purpose of international humanitarian law is to go “beyond the interstate levels and [to reach] for the level of the real (or ultimate) beneficiaries of humanitarian protection, i.e., individuals and groups of individuals - DE AUS. The design and implementation of the accountability mechanism grounded on effective consultation with victims in this case is the “return and resettlement of DE AUS.” The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

Full and Effective Implementation of the Durban Declaration and Programme of Action

During the 18th Session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, Her Excellency Michelle Bachelet, UN High Commissioner for Human Rights stated “It is impossible to design effective corrective measures and to dismantle discriminatory structures and institutions without an honest assessment of the past, and without acknowledging the consequences of the Transatlantic Slave Trade and of enslavement and colonialism in present times.

The Conference acknowledged that Africans and people of African descent are victims of racism and racial discrimination. [...] The Durban Declaration and Programme of Action constitutes a holistic agenda. It encompasses measures to deliver remedies to victims of racism, to strengthen education and awareness raising, to fight poverty and marginalization, and to secure inclusive development. [...]

In this context, the 20th anniversary of the Durban Declaration and Programme of Action, together with the International Decade for People of African descent and the 2030 Agenda, provide us with the opportunity to place racial equality and equity at the centre of global and national agendas.

It is the occasion for all of us to set priorities and future actions, a chance to renew and strengthen commitments to implementing the Durban Declaration and Programme of Action, and design adequate responses to fight racism, racial discrimination, xenophobia and related intolerance."

The Durban Declaration and Programme of Action, in its Section IV. Provision of effective remedies, recourse, redress, and other measures at the national, regional and international levels, paragraph 158 states that “the Conference recognizes the need to develop programs for the social and economic development of these societies and the Diaspora, within the framework of a new partnership based on the spirit of solidarity and mutual respect, in the following areas”:

- Building or strengthening democratic institutions;

- Infrastructure development;
- Human resource development, including capacity-building;
- Education, training and cultural development;
- Facilitation of a welcomed return and resettlement of the descendants of enslaved Africans.

The international community must recognize the right to restitution, compensation and rehabilitation for victims (DEAUS) of grave violations of human rights and fundamental freedoms. The Commission on Human Rights resolution 1998/43 guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on human rights, other relevant human rights instruments and the Vienna Declaration and Program of Action, reaffirms that, pursuant to internationally proclaimed human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation (2003/34).

Recommendation

Africans in America for Restitution and Repatriation Inc calls on the Human Rights Council to:

- Implement the full and effective Programme of Action of the Durban Declaration, and total elimination of racial discrimination, by establishing a Resettlement Coordinating Committee to "facilitate a welcomed return and resettlement of the descendants of enslaved Africans" in the United States. Clearly, the Durban Declaration and Programme of Action constitutes a holistic agenda and encompasses measures to deliver remedies to victims of racism.
- Urge all human rights bodies within the United Nations system, as well as the special rapporteurs and representatives, independent experts and working groups, to take duly into account the contents of this statement in carrying out their mandates.
- Reiterate to States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under its Article 14 to enable victims to resort to the envisaged remedy.

Africans in America for Restitution and Repatriation Inc calls on the Human Rights Council to urge states to:

- Fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law.
