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SOME PERSONAL THOUGHTS ON REPARATIONS  
AND PEOPLE OF AFRICAN DESCENT

Working Paper prepared by

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Note: The opinions expressed in this paper are those of the author.

## **I. Preliminary note**

1. The following personal thoughts are meant to arouse an enlightened debate on an issue that, though emotional and controversial, is firmly on the world's agenda. I have termed the following lines as "personal thoughts" because they have not benefited to any great extent from the extensive body of research on this subject that has been attracting growing attention.
2. The thoughts presented here are preliminary, short and only briefly cover a subject that is not easy to cover in all its intricacies in a few weeks. Hence, any additional or critical thoughts on the following are most welcome.

## **II. On the principle of reparations**

3. The word "reparations" does not appear in the final documents of the Durban Conference, yet it is known that this question was of utmost importance during that meeting. It was the main issue discussed during the Durban Conference. What emerged from Durban, even though the word "reparations" does not appear in the final documents, is a form of silent consensus that reparations for slavery is in harmony with the simple sense of justice and with the basic tenets of international law. This silent consensus is based on pronouncements (in Durban) that proclaimed slavery as a crime against humanity. And it is a legal principle that each crime entails reparations. Hence it could be said with certainty, that the issue of reparations for slavery is an outstanding item on the world's agenda, and it enjoys a high priority on that agenda.

## **III. On what is meant by reparations**

4. "Reparations" is a multi-dimensional word. It may refer to moral reparations as well as material (monetary) reparations; to some it means repatriation, i.e. reparations in kind. While several aspects of moral reparations are acceptable to all, such as erecting museums to remind us of the difficulties suffered by the victims of the slave trade, there are aspects of reparations that are highly contested, such as monetary reparation or repatriation. It is important, however, to make one point clear. "Reparation" is a legal term, that should not be confused with aid, technical assistance or programmes to alleviate poverty. It also should not be confused with national or international politico-economic plans to empower or enrich the underprivileged. However, for the sake of convenience or diplomacy, confusing different concepts may serve as a better guide for practical solutions.

## **IV. On the three-sided material reparations relationship**

5. It is easy, for those who advocate material (i.e. monetary) reparation to define three sides in the relationship. Those who are slave descendants, those who are descendants of slave traders and owners and the public authority, i.e. the state, where one or two of the sides referred to above can be found. The slave descendants are referred to as People of African Descent (PAD). They will be identified in a special paper by Ambassador Peter Lesa Kasanda, Chairperson of the Working Group on People of African Descent. The descendants of slave traders and owners are not a

clear category. They can be approached as a person, a family, a class, a nation or a civilisation. In general, they manifest themselves as families or companies established on either a family or non-family basis. A continually prosperous family or company may appear to some as fit to have reparations imposed on it. But in strict legal terms, this imposition of reparations is not equitable, though some justifications for such a measure may be advanced. The state, on the other hand, as a sum of all its citizens, is the third side that can be an arbitrator, acting from a position of sovereignty. The state is better able to assess the financial capability of those who, in simple justice, ought to pay. Yet the question does not have an easy answer. Thorough investigations have to be made regarding the details of the purported abuses. One could venture to say that the USA, by virtue of its large PAD percentage and their political power; Belgium, by virtue of the advanced steps it has taken to deal with the historical injustices it inflicted on PADs; and France, by virtue of its law of May 2001, are particularly well-qualified to study this matter thoroughly.

## **V. On possible elements in the calculation of reparations**

6. The question of the various elements in calculating reparations is a very delicate one. However, there are a few historical precedents that may be of guidance. For example, the French government, which abolished slavery in 1848, did not think of offering reparations to the slaves but, on the contrary, offered them to the slave owners. Furthermore, after the liberation war fought by the slaves against France, in 1824 Haiti was forced to pay France 100 Million Francs for war reparations in return for recognition of its independence. On the other hand, in the days of emancipation the US government took a more righteous path when it promised to offer to each emancipated slave a 40-acre piece of land and a mule. Although I do not want to comment on the implementation of that clause, an element of calculation was definitely present in this decision. Later historical precedents also offer elements of calculation: reparations for all the Holocaust victims, for the Americans of Japanese descent, for the Libyans taken captive by Italy in 1911, by the Belgian government in relation to the Congo. All the above-mentioned cases present certain similarities (incarceration, suppression, loss of personal freedom, forced labour, poverty) to the PAD situation. The various elements which emerge from historical precedents can help in working out the calculation, but should be built upon and developed rather than be seen as the final, end position. According to my knowledge, there are now many attempts at calculating reparations taking place and a consensus, or semi-consensus, may emerge. After all, if an American court in Los Angeles could issue a verdict giving 28 billion US dollars to a lady (Mrs Betty Pullock) in reparation for injury from smoking, then any amount of money claimed by the PAD is not exaggerated.

## **VI. On how to proceed**

7. There are many ways in which to proceed. To me, there is a need for more refinement of the various aspects of reparations. While reparations are an important item on the world's agenda, its ramifications have to be carefully explored. At a later stage a clearer concept of reparations may be disseminated to form a basis for an international political decision. Practically, one may proceed as follows:

- a) The Secretariat of the Working Group of Experts on PAD will be advised to compile whatever material available (papers, debates, etc) on reparations.

- b) The Working Group of Experts will evaluate the compiled material and will decide whether there is a need to pursue research on the subject, in order to fill any gaps that may appear.
  - c) Filling any of the gaps may be done through either commissioning some studies, convoking panels, conducting hearings, or through any other relevant means.
  - d) At a later stage, the whole issue of reparations should be dealt with at a political level.
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