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FOREWORD

Lennox L. Hinds

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FOREWORD

Lennox S. Hinds*

Bigotry, hatred, prejudice— these are the ugly symptoms of a sickness humanity has always and everywhere suffered. Racism can, will and must be defeated.¹

The problem of the twentieth century is the problem of the color line.²

Each year in which I have been a social activist in the courts and in the streets, the linkage of domestic grievances to remedies under international human rights law has become more clear. I continue to urge oppressed constituencies to consider seeking legal recourse under international law to augment their struggles against racist institutional practices and repressive policies, particularly since the de facto forms and traditions of institutional racism have been insufficiently responsive to domestic remedies. The descendants of enslaved Africans throughout the Americas have been among those who sought redress before the United Nations as their unique conditions historically remained unremarked outside their communities and specialized interest groups of scholars and activists. Since its creation, the United Nations has struggled to find measures to combat racial discrimination and ethnic violence. This commitment to human dignity and equality is reflected in its adoption of a number of resolutions, conventions, and declarations.³ From the

* Professor, Rutgers University Administration of Justice Program; Rutgers Law School, J.D. 1972; Vice President and Permanent Representative for the International Association of Democratic Lawyers to the United Nations; Counsel to the Republic of South Africa; lifelong legal activist admitted to practice in many U.S. jurisdictions, before the Supreme Court of the United States, and the United Nations International Criminal Tribunal for Rwanda; author and lecturer on racism and international law.

1. Kofi Annan, Address at United Nations Headquarters announcing the convening of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa, 31 August - 9 September 2001 (Jan. 2, 2001).

2. W.E.B. Dubois, "To the Nations of the World", Address to Pan-African Conference, London, (1900). Dubois echoed Frederick Douglass's sentiment that "The relationship between the white and colored people of this country is the great, paramount, imperative, and all commanding question for this age and nation to solve." Frederick Douglass, Civil War Address at the Church of the Puritans, New York City (May 1873).

3. See, e.g., Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9 1948, 78 U.N.T.S. 277; United Nations Declaration on the Elimination of All Forms of Racial Discrimination, G.A. Res. 1904 (XVIII) (Nov. 20, 1963); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195; International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, 1015 U.N.T.S. 243; First Decade to Combat Racism and Racial Discrimination (1973-1982), G.A. Res. 3223, U.N. GAOR, 29th Sess., Supp. No. 31-A/9631, U.N. Doc. A/RES/3223 (1974); Second Decade for Action to Combat Racism and Racial Discrimination (1983-1992), G.A. Res. 47/77, 47 U.N. GAOR Supp. No. 49, at 158, U.N. Doc. A/47/49 (1992); Third

founding of the United Nations ("U.N."), its express intentions to combat racism and the institutionalized legacies of slavery, colonialism, and imperialism throughout the world immediately attracted the attention of African American leaders.

In the fall of 1947, W.E.B. Dubois, then Director of Special Research for the National Association for the Advancement of Colored People ("NAACP"), presented on behalf of the NAACP the lengthy *Appeal to the Commission on Human Rights of the United Nations* to the Human Rights Commission. The appeal sought not only to expose the extent of racist oppression confronting African Americans in the United States, but also to generate "corrective action" by the international body.⁴

In 1952, William L. Patterson, on behalf of the Civil Rights Congress, presented an even lengthier and more detailed accusation to the U.N. in Geneva called *We Charge Genocide*.⁵ One consequence of Mr. Patterson's uncompromising political positions was that his passport was confiscated upon his return to the United States from Geneva.⁶

In 1964, Malcolm X advocated a U.N. sponsored investigation of American racism⁷ and in the late 1960s the Black Panther Party proposed a U.N. referendum among people of African descent living as a "colonized minority" within the United States.⁸

In 1978, this author filed a petition before the Human Rights Commission of the U.N. under Economic and Social Council resolution 1503 (XLVIII)⁹ on behalf of the Commission for Racial Justice, United Churches of Christ, the National Alliance, and the National Conference of Black Lawyers asserting

Decade for Action to Combat Racism and Racial Discrimination (1994-2003), G.A. Res. 49/146, 49 U.N. GAOR Supp. No. 49, at 162, U.N. Doc. A/49/49 (1994). Other examples include: 21 March designated International Day for the Elimination of Racial Discrimination (1966); First World Conference to Combat Racism and Racial Discrimination, Geneva, 1978; Second World Conference to Combat Racism and Racial Discrimination, also in Geneva, 1983.

4. See W.E.B. DuBois, *THE AUTOBIOGRAPHY OF W.E.B. DUBOIS: A SOLILQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY* 332-333 (1968) (discussing preparation of pamphlet for U.N. Commission on Human Rights).

5. CIVIL RIGHTS CONGRESS, *WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE* (William L. Patterson ed., International Publishers Co. 1970) (1951).

6. The passports of W.E.B. Dubois and Paul Robeson were also confiscated at this time. See Paul Ruffins, *Still Exiled After All These Years*, BLACK ISSUES IN HIGHER EDUCATION, Apr. 29, 1999, LEXIS-NEXIS.

7. BY ANY MEANS NECESSARY: SPEECHES, INTERVIEWS AND A LETTER BY MALCOLM X 57-67; 152-56 (George Breitman ed., Pathfinder Press, Inc. 1970).

8. BOBBY SEALE, *SEIZE THE TIME: THE STORY OF THE BLACK PANTHER PARTY* 63-39 (1979).

9. 48 U.N. ESCOR, Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970). Resolution 1503 (XLVIII) is designed to examine instances of systematic and massive violations of human rights.

gross violations in the United States of international covenants on human rights and against racism.¹⁰

None of these well documented and un rebutted initiatives filed with the U.N. were able to pierce the veil of sovereignty of the United States. Nor were they able to rebut the traditional legal defenses mounted by racist and repressive societies throughout the world, including the United States, that various forms of institutional repression including racism, gender discrimination, and ethnic and religious persecution are domestic problems confined to these societies and outside the scope of international legal remedies or inquiry.

These legal assumptions which shielded various racist societies from international scrutiny prevailed until the sharpening struggle against apartheid, waged within South Africa by its liberation movements, alerted an international network of supporters from Non-Governmental Organizations (“NGOs”), certain nation states, religious institutions, and individuals to seek world intervention under the rubric of international law as articulated by the United Nations. In 1973, South African apartheid was expressly excluded from the “domestic problem defense” and was declared by the U.N. to be a genocidal crime against humanity under international law.¹¹

The U.N.’s articulation of these crimes provided the legal and political springboard for international support of the internal mass liberation struggle that ultimately prevailed and dismantled the legal apparatus of the racist minority government. Although it took almost thirty years after South Africa had been declared an international pariah and was made the object of international economic, cultural and social boycotts¹²— the first non-racial, non-sexist elections finally were held and Nelson Mandela and the African National Congress were elected to serve in the first government.

The democratically elected South African Unity Government is now engaged in the “final eradication of apartheid and the building of a democratic, non-racial and non-sexist future.”¹³ Like the individual survivors of slavery in the Americas, people of color in South Africa seek to repair the harms

10. LENNOX S. HINDS, *ILLUSIONS OF JUSTICE: HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES* (Univ. of Iowa 1978).

11. See *The International Convention on the Suppression and Punishment of the Crime of Apartheid*, Nov. 30, 1973, 1015 U.N.T.S. 243.

12. In 1975, the General Assembly resolved that “The racist regime of South Africa is illegitimate and has no right to represent the people of South Africa.” G.A. Res. 3411, U.N. GAOR, 30th Sess., Supp. No. 34, at 37, U.N. Doc. A/10034 (1975). The General Assembly reaffirmed the “legitimacy” of the struggle of the oppressed people of South Africa and their liberation movements for the seizure of power by the people by all possible means as they exercised their rights to self-determination.

13. *The Reconstruction and Development Programme: A Policy Framework* (1994) (adopted by the Unity Government), available at <http://www.polity.org.za/govdocs/rdp/rdp.html> (last visited Apr. 9, 2001).

inflicted upon them by racism and race based privilege as a nation rather than as individuals.¹⁴ Despite possible domestic remedies enshrined in their new constitution, it remains unclear whether survivors of apartheid will be able to obtain redress for the physical, economic, political, and social harm done them now that the “crime of apartheid” has been formally abolished.¹⁵ They too, like Africans in the diaspora, may need to seek remedies under international human rights law.

Increasingly in the contemporary world, law and legal processes have become the mechanisms by which those in political power and authority impose their priorities and seek to make legitimate their public policies rather than by wars of conquest or imperial and colonial expansion. This is as true in the United States as it was in South Africa (never forget apartheid, like chattel slavery in the United States, was a legal system). What is unique to the United States is the pervasive myth of the protection of the people’s civil and political rights as enshrined in the Declaration of Independence and the U.S. Constitution whose lyric lines have influenced the proclamations and slogans of every contemporary and popular movement for liberation.¹⁶ The processes for securing these rights have been called the “illusions of justice . . . [the] intricate labyrinth of legal process . . . hold[ing] tantalizing promises of relief [while validating] the results of proceedings tainted with racism and political expediency.”¹⁷

In the United States, it is the law and not military might or religious or social class prerogatives that has made political purposes and economic ends legitimate. European colonists arriving in the new continent established laws which supported their expansionist intentions to exploit the resources of the new world. The stripping of property from the indigenous populations of the North, Central and Southern Americas was sanctioned by the law.¹⁸ The

14. See generally S. AFR. CONST. (1996) (adopted by the Unity Government).

15. See Final Report, Truth and Reconciliation Commission (1998), available at <http://www.polity.org.za/govdocs/commissions/1998/trc/index.htm> (last visited Apr. 9, 2001). This seventeen member Commission was established by the South African Parliament to solicit testimony from victims of apartheid injustice and from perpetrators, who, if they revealed the nature of their crimes, received amnesty. Archbishop Desmond Tutu, Chair of the Commission, conscious of the impact of *de facto* and *de jure* racism on the victims and the perpetrators of racism, has expressed that the Commission will be part of the process for healing of the nation because every South African has, to some extent or other, been traumatized. See *id.* at Vol. 1, Chap. 1.

16. See, e.g., the language of demands in the 1989 demonstrations of Chinese students in Tiananmen Square; the preamble of the South African Freedom Charter of the African National Congress South Africa (June 26, 1955): “...we the people of South Africa, black and white together...”, available at <http://www.anc.org.za/ancdocs/history/charter.html> (last visited Apr. 15, 2001); the slogans of popular challenges to incumbent governments throughout Eastern European; *inter alia*.

17. See HINDS, *supra* note 10, at iii.

18. See generally, THE NATIVE POPULATION OF THE AMERICAS IN 1942 (M. Denevan ed., Univ. of Wis. Press. 1976).

imposition on African Americans of their status as chattel goods was sanctified by both civil and ecclesiastic law.¹⁹

Despite the fact that explicitly racist laws have been overturned and African Americans, Native Americans and Asian Americans are no longer legally barred from testifying against whites, pervasive institutionalized racism survives in criminal and civil law. Legal practices favoring the rich over the poor and favoring white over black, brown, red, or yellow also persist.²⁰

Throughout the history of the United States, people of good will have tried to expose the contradictions posed by the words of the founders of the nation when they announced to the British Parliament and the world that: "We hold these truths to be self evident: that all Men are created equal; that they are endowed by their creator with certain unalienable rights; that among these rights are Life, Liberty, and the Pursuit of Happiness."²¹ The authors of these inspiring words had no difficulty reconciling themselves to the fact that most of them were slaveholding property owners, and that they were founding a nation in which no women, black people, or white men without property had any civil or political rights as they took control of a land stolen by deceit and armed violence from the Native Americans.

Although the Emancipation Proclamation of 1863 granted African Americans citizenship and the Fifteenth Amendment guaranteed their right to vote, no provisions had been developed which provided for effective enforcement of newly granted rights.²² For a hundred years *de jure* and *de*

19. See DERRICK A. BELL, JR., *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980); see also JOHN H. FRANKLIN, *FROM SLAVERY TO FREEDOM*, (4th ed. 1974); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (3rd ed. 1974). The first Africans taken forcibly from their homeland to colonial America arrived in Jamestown in August 1619. Within forty years, the Africans brought to America had become a group apart, separated from the rest of the population by law and custom. Legally classified as slaves for their lives, a status inherited by their children—forbidden to contract, learn, or inter-marry with whites, deprived of their African traditions and dispersed among Southern plantations—blacks in America lost tribal, regional and family ties. Chattel slavery, as it developed in the United States, laid the foundation for the institutionalized and legally sanctioned discrimination which prevails today.

20. See generally THE KERNER REPORT: THE 1968 REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (Pantheon Books 1988) (1968).

21. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

22. See, e.g., U.S. CONST. art. I, § 2, cl. 2 (counting enslaved Africans as only three-fifths of a person and Native Americans not at all for the purpose of determining the number of elected representatives for which each state was eligible for the first national Congress). See also *Dred Scott v. Sandford*, 60 U.S. (19 How) 393 (1857), in which the court held in a notorious, but honest, opinion by Chief Justice Taney that:

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as part of the people, nor intended to be included in the general words used in that memorable instrument . . . Blacks had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and for inferior, that they had no rights which the white men was bound to respect; and that the negro might justly and lawfully

facto segregation flourished in the United States. Legislative initiatives undertaken in the late fifties and sixties of the twentieth century to enforce these rights and to ensure African Americans equal economic, political, educational and social opportunities have been totally inadequate because enforcement has been held by the courts to require that the burden of proof of discrimination rests upon aggrieved persons of color.

Meanwhile in the global market, it is the absence of international legal standards which permits the exploitation of people of color from the southern hemispheres to serve as cheap labor sources and the despoliation of their environments. Past injustices survive in emerging contemporary guises that maintain the same economic and political relationships as in the past.

Many both here and abroad have asked me why in the twenty-first century should African Americans should have to continue to struggle for change in their status after all the discernible changes in U.S. life. What about Colin Powell and Clarence Thomas and all the black elected and appointed officials? Alas, the need to continue the struggle is obvious albeit horrifying. In the twenty-first century, people of color continue to have higher unemployment and poverty rates, are over-represented in homeless populations, have lower educational attainment and higher drop-out rates, are less healthy, earn less, and are arrested more often than whites.²³

Discrimination in employment and in lending practices by banks, failure to clean up neighborhood environmental hazards, allegations of policy brutality, hate crimes, and language discrimination contribute to the bleak picture. In 1995, the U.S. Bureau of the Census reported that while 11.2 percent of the white population lived below the poverty level, three times that percentage of Blacks and Latino populations are that poor. As daily newspapers attest, patterns of police violence against African Americans continue in notorious forms.

Between January 1995 and July 1996, more than forty predominately African American and integrated churches were burned to the ground, primarily in rural regions in the Southeastern U.S., and in the Pacific Northwest. Racists painted graffiti and hate epithets on several of the churches before setting fire to them. Racist and other forms of hate messages are

be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matter of public concern, without doubting for a moment the correctness of this opinion. (emphasis added).

23. 1990 UNITED STATES CENSUS REPORT (1990).

rapidly increasing and widely distributed throughout the U.S. and the world through a variety of low and high technologies, including anonymous phone calls and letters, posters, books, magazines, pamphlets, e-mail, cable television, recorded phone messages, computer networks, bulk mail, graffiti, and leafleting. At universities, administrators have been faced with an onslaught of diverse racist conduct. Asian American students have been spat on; Nazi literature has appeared on Jewish holidays; cross-burnings, racist slurs and homophobic degrading insults are all university problems.²⁴ When a few scholars and advocates began to call for campus regulations directed at racist hate speech, waves of protest were mounted. Their arguments: we cannot punish speech; academic freedom and the First Amendment require people to remain free to say what they please at a university. These attacks on people of color, Jews, immigrants, and ethnic minorities have spread throughout Europe as they have in the United States. In February of 2001, I participated in a conference convened in Rome, Italy sponsored by the International Association of Democratic Lawyers ("I.A.D.L.") and the Center for Research and Elaboration for Democracy (CRED-Italy) on the topic "Lawyers Against Racism and Fascism." Lawyers and academics from Eastern and Western Europe, India, the Middle East, and the United States met to discuss the origins of racism and anti-semitism; the impact of globalization and immigration on overt racism; the ways in which racism as ideology legitimizes discrimination; the stress between the democratic right to freedom of expression and the need to fight the dehumanization and emotional brutalization of targeted groups which result from racist language and writings; and the links between new forms of racism and nationalism.

There is insufficient space in this Foreword to discuss the reconciliation of First Amendment protections that protect dissent and stimulate the flowering of debate and ideas that are essential for democracy to work and the ways in which racist hate speech impedes these goals by cutting off debate, silencing by wounding. The U.N. has chosen to outlaw racist and hate propaganda in Article 4 of the International Covenant on the Elimination of All Forms of Racial Discrimination and requires nation States to criminalize racist hate messages.²⁵ However, in an effort to reconcile the conflict between concepts of free speech, Article 4 acknowledges the need for "due regard" for rights protected by the Universal Declaration of Human Rights and by Article 5 of the Covenant which includes the rights to freedom of speech, association

24. See Mari J. Matsuda, *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT*, (Mari J. Matsuda et al. eds. 1993).

25. See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

and conscience.²⁶ There is still much to be done to achieve an international jurisprudence that recognizes both the primacy of the rights of speech and thought, and freedom from racist verbal attacks.

In these last decades even the inadequate civil rights remedies have been drastically diluted by the continuous erosion of any gains by the United States Supreme Court. The Court is packed with conservative appointees whose patent hostility to legal remedies that compensate for past or present racism is well documented. After the elevation of George W. Bush to the White House by a decision of the Supreme Court which can only be described, all things considered, as political rather than legal, the need to resurrect a people's movement for justice and equality is urgent and the need to seek international remedies is even more obvious.

It was particularly heartening to be asked to contribute to the Washington and Lee Race and Ethnic Ancestry Law Journal after meeting Latanya White, the distinguished Solicited Articles Editor of this journal, in Havana, Cuba in October 2000 at the XVth Congress of the International Association of Democratic Lawyers. I recognized that she like many other law students, lawyers, and other young activists are organizing again to use the law as the sword of justice and the shield for those who experience injustice. It may be that international law will be our last and best hope.

Let us seek the only jurisprudence available for us to invoke support for our efforts to stop the rising tide of hate. I particularly encourage anyone who can to join me and other legal and social activists from throughout the world in Durban, South Africa to participate in the U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, August 31 - September 9, 2001. Representatives of non-governmental organizations, not-for-profit groups, and individuals committed to social and economic justice under a rule of law from throughout the world will attend along with representatives of nations from every corner of the globe.²⁷

It may not be fashionable to quote Dr. Martin Luther King in the twenty-first century, but as I exhort you to consider the use of your professional skills in support of social, economic, political justice in our country and abroad, I am reminded of Dr. King's essay which he wrote in 1963 while sitting in an Alabama jail after having been arrested for breaking the law for "marching without a permit."

26. *See id.*; *see also* Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. doc A/810 (1948).

27. Further information may be obtained from the U.N. website: www.un.org. Information regarding the I.A.D.L.'s plans to participate in Durban may be obtained from my office in New York at 116 W. 111th Street, New York, NY 10026 or via e-mail at lhindsshw@aol.com.

[T]he question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice?²⁸

I invite you to join me and other extremists in support of justice.

28. MARTIN LUTHER KING, JR., LETTER FROM BIRMINGHAM JAIL, (April 16, 1963), *reprinted in* AFRO-AMERICAN RELIGIOUS HISTORY: A DOCUMENTARY WITNESS 440 (Milton C. Jernett, ed. 1985).

