



Data for Governance Alliance Policy Brief No.15

The pursuit for legal claims on Reparations for Slavery and colonialism in Africa under international human rights law

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15 September 2023



Data for Governance Alliance
African voices for African policy



Funded by the
European Union



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Introduction

In April 1993, the first [Pan-African Conference on Reparations was held in Abuja](#), Nigeria, which urged the international community to recognize the unique and unprecedented 'moral' debt owed to the African peoples as a result of slavery and colonialism. In September 2001, the United Nations (UN) adopted the Durban Declaration and Programme of Action as the UN's blueprint to combat racism, racial discrimination, xenophobia and related intolerance globally. In this Declaration is a commitment to redress the injustices which arose from slave trade and colonialism.¹ In December of 2013, the United Nations General Assembly, through Resolution 68/237 proclaimed the International Decade for People of African Descent, commencing on 1 January 2015 and ending on 31 December 2024, with the theme "People of African descent: recognition, justice and development." During this decade the United Nations committed towards combating all the scourges of racism and other forms of injustices suffered by people of African descent. Amongst these injustices is the trans-Atlantic slave trade and colonialism, whose enduring legacy of poverty, racism and general development of African people is self-evident. In June 1991, through Resolution [CM/Res.1339 \(LIV\)](#),² the Council of Ministers of the Organization of African Unity (now the African Union) expressed the desire "to ensure that those powers responsible for the centuries of damage to Africa, take measures to make reparation for the exploitation and slavery of Africa."³ In February 2023, the 36th Ordinary Session of the AU General Assembly adopted another [resolution](#) calling for, amongst other steps, the establishment of "an African Committee of Experts on Reparations for the purpose of developing a Common African Position on Reparations and incorporate therein, an African Reparatory Programme of Action; and collaborate with the Caribbean Community (CARICUM) to establish an African Caribbean Joint Mechanism on Reparative Justice."⁴ Since then, efforts have been made by African civil society, lawyers and academics to explore pathways for advocacy for reparatory justice. One of the key questions which have arisen is whether there are any possible legal channels within the international legal system to pursue legal claims for reparations? In this paper, we examine the international human rights legal system to offer our opinion on this important question. However, before providing our opinion on this question, it is important to provide context to our views by making a connection between slavery, colonialism and human rights.

¹ See United Nations Durban Declaration and Programme of Action, September 2001 at p48.

² See <https://africanlii.org/akn/aa-au/resolution/resolution/AU-EC/1991/1339/eng@1991-06-01>

³ Ibid.

⁴ See paragraph 6 of 'Decision on Building a United Front to Advance the Cause of Justice and the Payment of Reparations to Africans', adopted February 2023 at the 36th Ordinary Session of the AU General Assembly, available at <https://africanlii.org/akn/aa-au/doc/decision/2023-02-19/decision-on-building-a-united-front-to-advance-the-cause-of-justice-and-the-payment-of-reparations-to-africans-item-proposed-by-the-republic-of-ghana/eng@2023-02-19>

Trans-Atlantic Slave Trade, Colonialism and Human Rights

Through slave trade and colonialism, people of African descent were victims of some of the most heinous crimes ever witnessed in the world and in the process of these crimes, several of their human rights were gravely violated. During the transatlantic slave trade (which took place between the 16th and 19th century), an estimate of 10 million and 12 million African men and women were kidnapped from their homes and were sold off to perform cheap labour for slave owners in places including the United States and the Caribbean islands of Barbados, Jamaica, and Cuba. Taken against their will from their home countries and separated from their families, many of them were forced to work without pay and under harsh conditions in plantations and other labour-intensive industries, such as shipbuilding.⁵

In addition to being kidnaped from their countries and being forced to work as cheap labourers, they were subjected to degrading and inhuman treatment at the hands of their owners, including through beatings, torture, racism, killings, and rape. For example, the Bussa Rebellion is recorded in history as one of the major slave revolts in the history of Barbados, and in the British West Indies between the United States abolition of the slave trade in 1807 and general emancipation by the British in 1838.⁶ The rebellion was led by African-born slave, Bussa and is thus, named after him. The two other rebellions occurred in the Crown colony of Demerara-Essequibo (now part of Guyana) in 1823, and Jamaica in 1831.⁷ The Bussa rebellion started on Easter Sunday night of 14 April 1816. It broke out with cane fields being burned in St. Philip parish before spreading to other parishes. Authorities responded through a crackdown which resulted in the killing of an estimate of 120 Africans, including through executions in the plantation fields. Another 300 people were taken to Bridgetown for trial, of which 144 were executed and 132 were sent away to another island.⁸ The brutal killings of those who opposed their slavery was widespread across the Caribbean Islands, resembling a catastrophic series of human rights violations which constitute crimes against humanity.

During a recent study tour carried out by the African Union, to Barbados and organised by the Africa Judges and Jurists Forum,⁹ historical accounts were shared which demonstrate that African women were sexually abused, including being raped in order to force them to produce more slave labourers for the slave owners.¹⁰ Rape and sexual assault were also used as weapons to punish those who opposed their slavery.¹¹ The descendants of the slaves, who continue to inhabit in the Caribbean islands are still experiencing the traumatic experience of knowing how their ancestors were exposed to such horrific and degrading punishment at the hands of the slave owners who enjoyed the protection of Western governments, particularly the United Kingdom. There are several similar accounts of ill-treatment of slaves in the United States of America.

Similar crimes and human rights abuses were committed against people of African descent during colonialism by mostly Western imperial powers, including the United Kingdom, Germany, Spain, Portugal and France, especially after the Berlin Conference of 1884. A major motivation for colonialism was the desire by European colonial powers to plunder Africa's natural resources, including land and minerals. Colonialism involved the invasion and conquering of African states, the subjugation of African people, the pillage of African natural resources, decimation of African culture and the brutalisation (through torture, genocide, and murder) of Africans who resisted the colonial conquests. For instance, in Namibia in 1904 German unleashed a campaign of killing and torturing indigenous tribes who rejected colonialism and as a result, an estimated 80% of all the Herero people and 50% of Nama were killed

⁵ <https://www.aljazeera.com/features/2021/10/12/stealing-africa-how-britain-looted-the-continents-art>.

⁶ <https://www.blackpast.org/global-african-history/bussa-rebellion-1816/#:~:text=The%20Bussa%20Rebellion%20was%20the,Bussa%2C%20who%20led%20the%20uprising>.

⁷ Ibid.

⁸ Ibid.

⁹ In collaboration with the AU Economic and Social Council.

¹⁰ Also see Rachel A Feinstein 'When Rape Was Legal: The Untold History of Sexual Violence During Slavery', Routledge (2019).

¹¹ Ibid.

(translating to between 34,000 and 100,000 people).¹² This significantly reduced their population size so much that, today they are counted as amongst the marginalised minorities in Namibia. They were also deprived of 80% of their (Nama) ancestral land and this land remains in the hands of Germans today, which is further testimony of the lingering devastating effect of colonialism more than centuries of its occurrence. It is reported that German Namibians currently own an estimate of 70% of the country's farmland, acquired through colonial conquest.¹³

In Kenya, the British authorities conducted a brutal campaign against Kenyans who rose against British colonialism in what came to be known as the Mau Mau rebellion. According to a recent study¹⁴, between 160,000 and 320,000 indigenous Kenyans were rounded up and detained in camps. In addition, Kenyan (Kikuyu) women and children were detained in about 800 enclosed villages dispersed across the countryside, which (in typical Nazi fashion) were cordoned off by barbed wire, spiked trenches, and watchtowers. While detained, these Kenyans were subjected to forced labour, starvation, torture, rape, and murder.¹⁵

Apart from plundering natural resources, colonial forces also looted millions of pieces of African art, which today is showcased in several European museums as if they are European products, at a huge fee which is not paid to the places where the art was stolen from. A case in point is that of the British explorer Richard Lander who removed what is thought to be the first artefact taken from Nigeria during Britain's process of colonisation-the Yoruba stool that is ironically now named after Lander and held in the British Museum.¹⁶

Another example is that of the arrows and spears used by the Nigerian Chibok people to resist British colonial forces. These arrows and spears were confiscated by British colonial forces and were moved to London where they are held in storage today, and are their labels make no mention of the Chibok town's resistance against British colonialism.¹⁷ This Museum is believed to hold around 73,000 African objects and artefacts.¹⁸ The looting of these artefacts has clearly deprived Africans of important symbols of their history and culture. The fact that they continue to be held in European Museums contributing towards European tourism with no benefit accruing to Africa resembles the continuing legacy of underdevelopment, cultural and economic impoverishment of Africans as a result of colonialism. It also resembles evidence that although slave trade and colonialism formally ended several decades ago, the countries who supported slave trade and colonialism continue to benefit to this day. Skulls of Nama and Herero people continued (until recently in 2018) to be displayed in German Museums,¹⁹ without proper acknowledgement that these skulls belong to heroes and heroines who resisted German colonialism in Namibia. This further demonstrates the continued and lingering legacy of colossal indignity and dehumanisation, wrought by colonialism upon not just the Nama and Herero people of Namibia but all people of African descent.

There can never be doubt therefore, that slavery and colonialism constitute crimes against humanity because they were targeted against a certain people and resulted in serious crimes being committed against African people, including systematic kidnappings, rape, murder, and torture, with the knowledge and active support of the United States of America and European imperial governments. The identity of the countries who supported slavery and colonialism and who continue to benefit from slavery and colonialism is not in doubt. It is mostly the United States of America, the United Kingdom and some of the countries who constitute the European Union, including Spain, Portugal, and Netherlands.

¹² See <https://www.theguardian.com/global-development/2023/feb/03/namibia-genocide-victims-herero-nama-germany-reparations>

¹³ <https://www.news24.com/news24/namibia-vows-to-change-status-quo-of-white-farm-ownership-20191208>

¹⁴ See Caroline Elkins 'Britain's Gulag: The Brutal End of Empire in Kenya' Jonathan Cape (2005). Also see <https://www.theguardian.com/news/2016/aug/18/uncovering-truth-british-empire-caroline-elkins-mau-mau>.

¹⁵ Ibid.

¹⁶ See Noshir Gbadamosi 'Stealing Africa: How Britain looted the continent's art', *Al Jazeera* (2021). Also see <https://www.aljazeera.com/features/2021/10/12/stealing-africa-how-britain-looted-the-continent-art>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ See <https://www.bbc.com/news/world-africa-45342586>

International law and the right to reparations

The right to reparations is recognised as a human right under international law.²⁰ Reparations are due as part of the appropriate relief to be accorded to victims to redress violations of their human rights. As has already been aptly demonstrated by other scholars and lawyers,²¹ slave trade and colonialism are violations of human rights of people of African descent, constituting (in most cases) crimes against humanity. Reparations for these violations are due. According to the United Nations, the term "reparation" encapsulates measures aimed at redressing violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities.²² Reparations include measures for restitution, compensation, and rehabilitation of the victims, and measures targeted at cessation of continuing violations, truth-seeking, search for the disappeared persons or their remains, reburial of remains, public apologies etc.²³

In order to repair the damage or harm caused by slavery and colonialism, which includes the continuing legacy of poverty, underdevelopment, loss of cultural identity, racism, and debt crisis being suffered by people of African descent, reparations must be adequate, effective, prompt, and proportional to the gravity of the violations and the harm suffered.²⁴ Failure to repair the harm caused by human rights violations as a result of slave trade and colonialism undermines justice, renders human rights to be illusory for people of African descent and may lead to escalated racial conflicts, global conflicts and loss of confidence by the African people in the international human rights legal system itself. This may bring about other catastrophic consequences to humanity including the breakdown of world peace and international cooperation.

The right to reparations is recognised as an element of the right to effective remedies and is protected under international law²⁵ and [African regional human rights law](#).²⁶ However, this right has not been implemented to redress violations of the trans-Atlantic slave trade and colonialism suffered by people of African descent. There is lack of political will amongst responsible States to make amends on this issue of grave injustice. Although in recent times officials²⁷ of several European governments have apologized or expressed regret for the role of their predecessor governments in slave trade and colonialism, there is still reluctance to accept responsibility for reparations for these historical injustices. The fact that other races, including the Jews, were afforded reparatory justice for the wrongs they suffered at the hands of the Nazi authorities, and yet there is no political commitment to redress violations suffered by Africans (as a result of slavery and colonialism) illuminates the hypocrisy of the

²⁰Article 2(3) of the International Covenant on Civil and Political Rights. Also see 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, adopted December 2005 by the UN General Assembly resolution 60/147, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

²¹ Caroline Elkins 'Britain's Gulag: The Brutal End of Empire in Kenya' Jonathan Cape (2005). Also see Anthony Gifford 'The Legal Basis of the Claim for Slavery Reparations' - *Human Rights Magazine*, Spring (2000), available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol27_2000/spring2000/hr_spring00_gifford/

²² See <https://www.ohchr.org/en/transitional-justice/reparations>

²³ See paragraphs 19-23 of 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 (A/RES/60/147), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

²⁴ See para 15 of 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 (A/RES/60/147).

²⁵ Including article 8 of the UDHR, article 2(3) (a) of the ICCPR and article 6 of the CERD.

²⁶ Article 7(1) (a) of the African Charter on Human and Peoples' Rights https://africanlii.org/akn/aa-ou/act/charter/1981/human-and-peoples-rights/eng@1981-06-27#part_I_chp_I_art_7_para_1

²⁷ Dara Adamolekun 'Royal Apologies for the Belgian Colonization of Congo' *Harvard International Review* (2022), available at <https://hir.harvard.edu/once-the-blood-on-our-hands-dries-royal-apologies-for-the-belgian-colonization-of-congo/>. Also see <https://www.dw.com/en/netherlands-king-has-apologized-for-slavery-but-then-what/a-66073086>.

Global North towards Africans. It is certainly reinforcing the perception that the Global North continues to discriminate against African people, long after slavery and colonialism was formally abolished.

In recent times, debates have arisen within the Africa reparations movement on whether they are any legal options within the international legal system, which people of African Descent can utilise to compel responsible States to make reparations for the wrong they caused through slave trade and colonialism. Are there viable options within the international legal system to compel the provision of reparations for slavery and colonialism? As will be shown in the paragraphs below, the answer to that question is negative. The international human rights legal system currently lacks a mechanism which can make binding judicial decisions to address claims for reparation by people of African Descent, for the injustices their ancestors suffered, and the contemporary generations continue to suffer as a result of slave trade and colonialism.

The international criminal and human rights legal system

In respect of claims for reparations for slavery and colonialism by African people, there are a few mechanisms which exist within the international legal system, whose mandate could be explored. These mechanisms are the International Criminal Court, the International Court of Justice and the United Nations Human Rights Bodies with specific mandate on people of African Descent.

The International Criminal Court

The International Criminal Court (ICC) was established through the Rome Statute.²⁸ Of crucial significance is to note that the ICC may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after 1 July 2002 and (amongst other requirements) the crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court.²⁹ Therefore, although slavery and colonialism are crimes against humanity, the ICC has no competence to receive and determine claims for reparations for these crimes because they occurred prior to 1 July 2002.

United Nations Human Rights Bodies with specific mandate on people of African Descent

a) The Permanent Forum of People of African Descent

The Permanent Forum of People of African Descent (Permanent Forum) was established through the United Nations General Assembly Resolution 69/16 of November 2014. It was established as “a consultative mechanism for people of African descent and other relevant stakeholders [and to act] as a platform for improving the safety and quality of life and livelihoods of people of African descent, as well as [being] an advisory body to the Human Rights Council.”³⁰ The details of its mandate are set out quite elaborately in the UN General Assembly Resolution 69/16.³¹ Crucial for the advocacy for reparatory justice by people of African Descent is that the Permanent Forum has the mandate “To contribute to the full political, economic and social inclusion of people of African descent in the societies in which they live as equal citizens without discrimination of any kind and contribute to ensuring equal enjoyment of all human rights.”³² Therefore, part of the mandate of the Permanent Forum is to promote equal enjoyment of all human rights of people of African descent. In addition, the Permanent Forum has the mandate “to offer advice and recommendations on matters concerning the protection, promotion and respect of all human rights of people of African descent, and to undertake any specific task as requested by the Human Rights Council or the General Assembly”.³³ Although the mandate of the Permanent Forum does not include adjudicating legal claims arising from violations of

²⁸ The Rome Statute of the International Criminal Court, 17 July 1998.

²⁹ *Ibid*, at articles 5 and 11.

³⁰ Para 1 of Resolution

³¹ See para 1 (a)-(i).

³² See para 1(a).

³³ See para 1 (i).

the human rights of people of African descent, the mandate allows the Forum to engage stakeholders within and outside of the United Nations system and make recommendations on how certain human rights violations suffered by people of African descent can be addressed.

There is enough evidence that has been provided to prove beyond any reasonable doubt that slavery and colonialism were *ipso facto* serious human rights violations against people of African descent, which to date remain unaddressed. Yet, every human being whose rights have been violated has a right to reparations under international human rights law.³⁴ Other groups of people who suffered similar violations have received reparations. For example, in 1952, the Federal Republic of Germany reached an agreement with Israel for the payment of \$222 million, following a claim by Jews who had fled from Nazi-controlled countries.³⁵ In 1990, Austria made payments estimated to be \$25 million to survivors of the Jewish Holocaust.³⁶

In 1988, the United States passed a law³⁷ which enabled the government to make restitution (estimated to be \$1.2 billion) to Japanese Americans for the losses suffered as result of their internment and ill-treatment at the hands of United States of America authorities during World War II. These cases are evidence of the upholding of and enforcement of the right to reparations as relief for the human rights violations suffered by these groups. As part of its mandate to ensure equal enjoyment of all human rights by people of African descent, the Permanent Forum of People of African Descent has a duty to exercise its powers to ensure that Africans are accorded the right to reparations as was done in respect of other population groups. Amongst its powers, the Permanent Forum can make recommendations to the United Nations Security Council, through the United Nations General Assembly, to establish a special mechanism with the mandate to investigate and adjudicate claims for reparations for slavery and colonialism suffered by people of African descent. Although established jurisprudence of the International Court of Justice³⁸ shows that the United Nations General Assembly does not have the authority to establish a judicial body with the mandate to investigate and or adjudicate legal claims arising from crimes under international humanitarian law (such as slave trade and colonialism), the United Nations Security Council has the authority under article 41 of the United Nations Charter, to establish such special international tribunals. There are several cases in which the United Nations Security Council has established such tribunals.³⁹ Of course, it must be acknowledged that some of the permanent members of the United Nations Security Council who enjoy veto powers are likely to oppose such a recommendation because it would expose them to being held accountable for their role in slave trade and colonialism. Nevertheless, the recommendation to the United Nations Security Council, for the setting up of a special tribunal should still be considered as a way of putting pressure on the responsible States to agree to negotiate with people of African descent on the provision of reparations for the heinous injustices suffered as a result of slave trade and colonialism.

b) UN Working Group on the rights of people of African descent.

The Working Group of Experts on People of African Descent (Working Group) was established in 2002 through Resolution 2002/68 (as a Special Procedure) of the Commission on Human Rights. The mandate was subsequently renewed by the Commission on Human Rights and the Human Rights Council through successive resolutions,⁴⁰ of which the latest is Resolution A/HRC/RES/45/24) which extends the mandate by three years from October 2020.⁴¹ The Working Group's mandate includes "to propose measures to

³⁴ See article 2(3) of the ICCPR.

³⁵ See Israel and Federal Republic of German agreement of 10 September 1952 available at

<https://treaties.un.org/doc/Publication/UNTS/Volume%20162/volume-162-I-2137-English.pdf>

³⁶ <https://www.dw.com/en/holocaust-survivors-in-austria-to-finally-receive-compensation/a-1811660>

³⁷ Civil Liberties Act of 1988 [904, 50a U.S.C]

³⁸ An early advisory opinion of the International Court of Justice confirms this view. In assessing the legality of the General Assembly -established United Nations Administrative Tribunal (UNAT)—a tribunal for resolving disputes between U.N. staff and the United Nations. The ICJ found that Article 22 alone does not empower the General Assembly to establish a judicial body because the General Assembly enjoys no judicial authority under the Charter. See <https://www.justsecurity.org/10721/u-n-general-assembly-authority-establish-international-criminal-tribunal-syria/>

³⁹ <https://www.un.org/securitycouncil/content/repertoire/international-tribunals>

⁴⁰ CHR 2003/30, A/HRC/RES/9/14, A/HRC/RES/18/28, A/HRC/RES/27/25 and A/HRC/RES/36/23.

⁴¹ See para 1 of Resolutions A/HRC/RES/45/24.

ensure full and effective access to the justice system by people of African descent.”⁴² The absence of an international mechanism with jurisdiction to address, through judicial orders, the most serious human rights violations suffered by Africans-slavery and colonialism- undermines access to justice for people of African descent. Therefore, the Working Group offers an additional pathway through which recommendations can be made to the various United Nations bodies, as part of the advocacy for the establishment of a special judicial mechanism for the adjudication of claims for reparations for slavery and colonialism suffered by people of African descent.

The International Court of Justice

The International Court of Justice (ICJ) was established as one of the principal organs of the United Nations. Its mandate is to adjudicate and settle disputes between Member States, in accordance with international law.⁴³ The International Court of Justice has two forms of jurisdiction. First is what is characterised as the “contentious jurisdiction” which entails resolving disputes of law between Member States under international law. Decisions made by the ICJ in exercise of its contentious jurisdiction are final and binding upon the Member States.⁴⁴

As a general rule, any State that is a party to the ICJ Statute, can bring cases before the ICJ against another State which is also party to the Statute. All the 193 Members of the United Nations are *ipso facto* parties to the Statute of the ICJ.⁴⁵ However, Member States are permitted to deposit declarations with the United Nations Secretary General, through which they prescribe conditions under which they recognise the jurisdiction of the Court.⁴⁶ For instance, several Member States have stipulated that they only recognise the jurisdiction of the ICJ to settle legal disputes which arise from facts which arise after a certain period. For example, the United Kingdom has stipulated that it accepts the jurisdiction of the International Court of Justice only over disputes arising after 1 January 1987.⁴⁷ Similarly, the government of Spain has excluded from its recognition of the ICJ's jurisdiction all disputes arising prior to 29 October 1990⁴⁸ or relating to events or situations which occurred prior to that date, even if such events or situations may continue to occur or to have effects thereafter.⁴⁹ German (which colonised Namibia) has deposited a declaration stipulating that it recognises the jurisdiction of the ICJ in legal disputes whose facts arose after 30 April 2008 and other than legal disputes which “relate to, arises from or is connected with the deployment of armed forces abroad, involvement in such deployments or decisions thereon.”⁵⁰ Portugal, which colonised Angola and Mozambique, amongst other polities in Africa) deposited its initial declaration recognising the jurisdiction of the ICJ in December 1955. However, in February 2005, it amended this declaration to, amongst other requirements, stipulate that it recognises the jurisdiction of the ICJ only in legal disputes whose facts arose after 26 April 1974.⁵¹

Such exceptions restrict the ICJ's jurisdictional competence to receive and adjudicate legal disputes which may be brought by African States against countries who are party to the ICJ statute and who were responsible for slave trade and colonialism. The United Kingdom, Spain, Portugal, France and Germany are amongst countries who were responsible for slave trade and or colonialism, but the ICJ cannot have jurisdiction over these countries on such disputes by virtue of the above sated exceptions. However, Belgium, which is responsible for the colonial plunder of the Democratic Republic of Congo and Rwanda (amongst other African polities) has deposited a declaration stating that it recognises the jurisdiction of the ICJ only in legal disputes arising after 13 July 1948 concerning situations or facts subsequent to that date.⁵² Belgium's (formal) colonial conquest of Congo lasted from 1908 to 1960,

⁴² Para 8(b) of Resolution A/HRC/RES/9/14.

⁴³ Article 36 and 38 of the Statute International Court of Justice.

⁴⁴ Ibid.

⁴⁵ Article 35 (1) read together with article 93 (1) of the Statute International Court of Justice. See full list on <https://www.icj-cij.org/states-entitled-to-appear>

⁴⁶ Article 36(2) of the Statute of the International Court of Justice.

⁴⁷ See para 1 of declaration available at <https://www.icj-cij.org/declarations/gb>

⁴⁸ The date on which it deposited its declaration with the Secretary-General of the United Nations, in terms of article 36 of the Statute.

⁴⁹ Para 1 (d), available at <https://www.icj-cij.org/declarations/es>

⁵⁰ Para 1 (ii) (a) of the declaration, available at <https://www.icj-cij.org/declarations/de>

⁵¹ See Para 1 (iii) of the Declaration, available at <https://www.icj-cij.org/declarations/pt>

⁵² <https://www.icj-cij.org/declarations/be>

while for Ruanda-Urundi (modern Rwanda and Burundi) it was from 1922 to 1962. These historical facts may offer opportunities for bringing cases against Belgium before the ICJ because the facts surrounding the colonial injustices over its colonial occupation arose in the period after 13 July 1948—the effective date from when Belgium recognises the jurisdiction of the ICJ. However, Belgium has also indicated that it reserves (as other States Party do) to amend its declaration on the recognition of the jurisdiction of the ICJ.

The second form of jurisdiction enjoyed by the ICJ is called the advisory jurisdiction.⁵³ This involves issuing non-binding advisory opinions upon request, on issues concerning the interpretation of international law. The United Nations organs and its specialised agencies are permitted to seek these advisory opinions from the ICJ. For example, the United Nations General Assembly has on numerous occasions sought advisory opinions from the ICJ.⁵⁴ This offers a pathway for the UN General Assembly to seek an advisory opinion particularly on whether the international community has an obligation to establish a special tribunal to adjudicate legal claims for reparations for slavery and colonialism suffered by people of African descent. That question arises from the fact that international human rights law recognises the right to reparations for persons who suffered serious human rights violations. Slave trade and colonialism constitute crimes against humanity committed against people of African descent. Yet, there is currently no mechanism in place to receive and adjudicate complaints arising from those heinous violation of human rights. In addition, article 2(3) of the International Covenant on Civil and Political Rights recognises the right to judicial remedies for the redress of human rights violations.

Thus, an advisory opinion can be sought from the ICJ on whether the absence of an international mechanism to receive and adjudicate complaints and claims for reparations, arising from slavery and colonialism, is not a contravention of article 2(3) of the ICCPR. Furthermore, article 26 of the ICCPR recognises the right of all peoples to enjoy their rights equally without any discrimination. An advisory opinion could be sought from the ICJ on whether the refusal by certain countries to pay reparations for their role in slavery and colonialism, yet they paid reparations for violations of the rights of other people (e.g the Jews) does not constitute unfair discrimination.

Recommendations

Given the absence of an international mechanism with the mandate to receive and adjudicate legal claims for reparations by African people, for injustices suffered through slavery and colonialism, and given that the proposals to establish such a mechanism may be vetoed against by the States responsible for slavery and colonialism, the global campaign for reparatory justice by Africans needs to be pursued from multiple angles. Essentially this is a fight that must be won politically first, to pave way for legal reforms within the international human rights system. Therefore, collective political advocacy by people of African descent at a global level, galvanising actions by both States, civil society, academia, artists, and the media, working with like-minded people in Europe and the United Nations will be key. However, the search for legal options to pursue this agenda and compliment political advocacy efforts must continue. With this in mind, we offer the following suggestions:

- a. People of African descent should continue to engage the United Nations Permanent Forum of People of African Descent and the United Nations and the United Nations Working Group of Experts on People of African Descent, to advocate that these two bodies collaborate to design and submit to the General Assembly and other relevant bodies of the United Nations, a proposal on the establishment of an international special mechanism with a clear and adequate judicial mandate to adjudicate over claims for reparations by African people for the heinous injustices suffered as a result of slavery and colonialism
- b. Concerted, well planned and unified efforts must be made by people of African descent to utilise the advisory opinion jurisdiction of the International Court of Justice. To that end, the submission of a request for an advisory opinion through the United Nations

⁵³ Article 65 to 68 of the the Statute International Court of Justice.

⁵⁴ See list on <https://www.icj-cij.org/organs-agencies-authorized>

General Assembly, should be contemplated. The advisory opinion should address, amongst others, the following key legal questions:

- i. Whether slave trade and colonialism constitute crimes against humanity committed against people of African descent.
- ii. Whether the absence of an international mechanism to receive and adjudicate complaints and claims for reparations, arising from slavery and colonialism against people of African descent is a contravention of article 2(3) of the ICCPR.
- iii. Whether, in light of article 26 of the ICCPR which recognise the right of all peoples to enjoy their rights equally without any discrimination, the absence of a mechanism to ensure reparatory justice for people of African descent constitutes unfair discrimination against people of African descent under the international legal system.
- iv. Whether the United Nations Security Council or any other organ of the United Nations has an obligation to establish a special tribunal with the mandate to receive and adjudicate complaints and claims for reparations, arising from slavery and colonialism against people of African descent. If successful, this request may result in an advisory opinion which can be used as a resource for further political engagements by African and Caribbean states with the global North, to either push for the establishment of a special tribunal or for genuine negotiations to be conducted between the people of African descent with the aim of making reparations for the injustices they suffered through colonialism.



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