

OHCHR Paper: Call for inputs for the 2023 report of the United Nations Secretary-General on the implementation of the programme of activities of the International Decade for People of African Descent

By: Tull Osman (Maryville University of St. Louis), Susanna Major (Spelman College), Age Okojie (Spelman College), Bryan Duncan (Morehouse College), Benjamin Ogbonna (Johns Hopkins University), and Dr. Thomas Pogge (Yale University)

INTRODUCTION

This paper, written by students of the National African Student Association in conjunction with Dr. Thomas Pogge, a Leitner Professor of Philosophy and International Affairs at Yale University, is a response to the call by the OHCHR requesting ideas for measures to be taken on a local, regional, or continental level to address the reparatory justice for people of African descent. In the most simplistic view, reparatory justice calls on reparative actions done by perpetrators on recipients of these past injustices. According to some of the established methods stated by CARICOM (Caribbean Community), these include (but are not limited to) formal recognition and apology of injustices done by the perpetrators, multinational debt cancellation, and the establishment of a repatriation program for displaced people of African descent. Although these measures, amongst others, are welcomed by African nations, there tends to be a lack of consensus between European and African governments on the necessity and priority of these reparative measures to rectify these injustices. There also seems to be a shared unwillingness by European nations that profited and continue to benefit from these injustices to engage in authentic dialogue to implement policies to provide various restitutions to these African countries. This paper explores and connects the historical significance of past injustices

done unto these nations, such as colonialism, to the pressing need for actions addressing reparatory justice. In the end, recommendations will be provided on how continental reparatory justice can be obtained for people of African descent.

It is vital to note that while we address and focus on specific countries, the examples we provide do not and cannot wholly represent the entire continent's nations. These references are highlights whose situations are simply a lens to better understanding.

HISTORICAL SIGNIFICANCE

Colonization has had a lasting impact on the Democratic Republic of Congo's economic landscape. Before gaining independence Congo was a personal colony of King Leopold II of Belgium. When Belgium discovered that rubber grew in abundance in the country's rainforest, Belgium turned to rubber extraction using forced labor of the natives, resorting to beatings, killing, and mutilation when production quotas were not met. Due to the vile treatment endured by the natives of Congo, it is estimated 10 million people, approximately half of the population of Congo, died between 1880 and 1920. The king's goal was to bring civilization to the people of the Congo.

Today, Congo is still dealing with the atrocities committed by King Leopold. DRC gained independence in 1960, but sporadic political conflicts arose due to Mobutu Sese Seko's dictatorship, which lasted until the 1990s, causing violence to erupt again. The almost constant warfare since independence is related to imperialism's legacy, as European powers carved up Africa's borders without considering the various tribes living in the area. Some people were separated between different countries, and enemy tribes sometimes coexisted within the same domain, leading to political instability due to a lack of a coherent vision for the country's future.

When the Democratic Republic of Congo gained its independence from Belgium, there was no established framework for self-governance - decades of European colonialism had left a void of political leadership. Despite efforts to end the violence, the international community's response deprived the country of much-needed resources. Companies refused to conduct business with the DRC due to its human rights abuses, which led to job losses in the mining industry and, ultimately, more violence as people were forced to join rebel groups. The cycle of violence that started with Belgian colonization continued even after the 1990s, with subsequent leaders relying on violence to maintain their hold on power.

To add to the already not ideal government structure it adopted, Congo astonishingly has been saddled with debt courtesy of Belgium's colonization. The colonial authorities, including King Leopold II and later the Belgian state, ran up a large amount of debt during their exploitation of Congo, including a \$120 million loan from the World Bank that was primarily used to buy products exported from Belgium. Congo was forced to take on the debt accrued by Belgium, paying for the costs of its past exploitation. This has significantly undermined the country's ability to fund vital services for its citizens. Today, the Democratic Republic of Congo is one of the poorest countries in the world, despite its wealth of natural resources.

Belgium has done virtually nothing to atone for its horrendous exploitation of Congo, lacking even an official apology. In 2020, King Philippe, in a speech to Congo's parliament, expressed regret for the "paternalism, discrimination, and racism" of the colonial regime: "I wish to reaffirm my deepest regrets for those wounds of the past," Understandably, for many, the acknowledgment of the past does not suffice, and many in the diaspora demand reparations.

Despite the abundant natural resources in Congo, the untapped deposits of raw minerals owned by the DRC are estimated at \$24 trillion, including the world's largest reserves of cobalt

and significant quantities of diamonds, gold, and copper. Part of the reason for the underdevelopment of Congo's economy is the heavy reliance on the dollar, which limits the ability of its central bank to function as a lender of last resort; almost all the banks in Congo are foreign-owned.

ECONOMIC AND HUMAN STATUS OF AFRICAN NATION POST-COLONIALISM

It is well known that Africans suffered horrendous wrongs in the past. A large proportion of them were enslaved and shipped under most inhumane conditions to overseas destinations, tens of millions were murdered, and nearly all African land was occupied by colonial powers who appropriated natural resources and exploited the native populations at will. Well-organized by advanced European states, sustained over centuries, and employing advanced technologies, these were among the gravest wrongs ever committed in the history of humankind.

Many people believe that we cannot repair these wrongs. There is some truth in this belief. Nothing can be done now to relieve the unimaginable suffering of those who were enslaved, raped, whipped, and murdered, those who, when they could not meet their work quota, had to watch their children's limbs being cut off. But there is something we can do now by way of mitigating the lasting effects of those past harms.

Their most obvious lasting effect is the persistent inequality in the accumulation of human and economic capital. The European raid upon the rest of humanity transformed a world of roughly equal living standards into one of extreme inequality: in 2021, Sub-Saharan Africa's GNP per capita was \$1556 while that of the former colonial powers in Western Europe was about 30 times greater¹. This enormous inequality is of course traceable to past wrongs. The

¹ GNI per capita, Atlas method (current US\$) - The World Bank:
<https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

colonial powers unjustly appropriated natural resources and labor that put them on a much higher growth path than they could have reached without such exploits. And the colonized populations were put on a much lower growth path as their cultures and social institutions were destroyed, their populations decimated, and they were for centuries prevented from developing themselves freely.

To be sure, in time even very large inequalities can be overcome if a poorer region achieves higher economic growth than the richer ones. Some countries have indeed grown faster than others, and one might hope that the African countries as a group might achieve a long-term real annual growth rate of perhaps 0.5% or even 1% above the affluent industrialized countries. Do note, however, that, even if this hope for such faster growth were realized, it would take between 682 and 342 years for Africa to overcome its 30:1 disadvantage, to fully erase the huge handicap imposed upon it in times past.

But then faster growth is very difficult for poor countries to achieve. One main reason for this is their lack of power and influence. Our world is highly interdependent, with countries' fortunes heavily tied to rules and practices governing global politics and the world economy (business, debt, investment, taxation, natural resources, pollution, labor and much else). Rich and powerful countries can shape these rules to their advantage, and a large multinational corporation can easily buy favors from the political and military elites in the poorer states, outbidding their much poorer compatriots. As a result, we actually observe the poorest countries falling farther and farther behind. Real per capita GDP growth over the 1990-2020 period was 49.0% in the high-income countries, it was less than half that in Sub-Saharan Africa: only 23.5%².

² GDP per capita - Our World in Data:

https://ourworldindata.org/grapher/gdp-per-capita-worldbank?tab=chart&country=OWID_WRL~Sub-Saharan+Africa~High+income

Here are some of the important rules and practices that, thanks to their vastly greater political, economic and military power, the rich states are able to impose upon the poor and divided states of Africa.

Under international law as it is, affluent countries and their firms can buy huge quantities of natural resources from the rulers of African countries without regard for how such rules came to power and how they exercise power. In many cases, this amounts to collaboration in the theft of these resources from their owners: the country's people. It also enriches their oppressors, thereby entrenching the oppression: tyrants sell their victims' natural resources and then use the proceeds to buy the weapons they need to keep themselves in power.

Under international law as it is, affluent countries and their banks also lend money to such rulers and compel the country's people to repay such debts even after the ruler is gone. Many African populations are still servicing debts incurred, against their will, by dictators such as Mobutu in the DRC and Abacha in Nigeria. Again, this amounts to theft: the unilateral imposition of debt burdens on impoverished populations.

Affluent countries facilitate embezzlement by public officials in African states by allowing their banks to accept such funds. This complicity could easily be avoided: banks are already under strict reporting requirements with regard to funds suspected of being related to terrorism or drug trafficking. Yet Western banks still eagerly accept and manage embezzled funds, with governments ensuring that their banks remain attractive for such illicit deposits. Global Financial Integrity (GFI) documents such illicit outflows³.

Affluent countries facilitate tax evasion in the less developed countries through lax accounting standards for multinational corporations. Since they are not required to do country-by-country reporting, such corporations can easily manipulate transfer prices among

³ Out of Africa: Capital Flight - GFI: <https://gfintegrity.org/out-of-africa-capital-flight/>

their subsidiaries to concentrate their profits where they are taxed the least. As a result, they often report little or no profit in African countries where they extract, manufacture or sell goods or services, having their worldwide profits taxed instead in some tax haven where they only have a paper presence. The illicit financial outflows associated with such tax abuse are estimated to dwarf all foreign aid and foreign investment flowing into the continent⁴.

Under international law as it is, affluent countries can harm the rest of the world with their pollution without ever owing any compensation. Their emissions are prime contributors to serious health hazards, extreme weather events, rising sea levels, and climate change, to which African populations are especially vulnerable. The human and economic losses, now and forward-going, are enormous⁵.

Under international law as it is, affluent countries maintain a rigged global trading regime that permits rich states to continue to protect their markets through tariffs and anti-dumping duties and to gain larger world market shares through export credits and subsidies (which alone amount to some \$700 billion each year⁶) that poor countries cannot afford to match. Since production is much more labor-intensive in Africa than in affluent countries, such protectionist measures destroy many more jobs in Africa than they create or preserve in the high-income countries.

Under the WTO Treaty's TRIPS Agreement, innovators can claim 20-year product patents for their innovations in all WTO member states. With their large advantages in human

⁴ Trade mispricing costing Africa billions - Reuters:

<https://www.reuters.com/article/us-africa-trade/trade-mispricing-costing-africa-billions-study-idUSBREA4A0AH20140511>

⁵ The cost to Africa - Christian Aid:

<https://www.christianaid.org.uk/sites/default/files/2022-11/the-cost-to-africa.pdf>

⁶ Why agricultural subsidies must be reformed to enable a regenerative food system - World Economic Forum:

<https://www.weforum.org/agenda/2023/01/reforming-agricultural-subsidies-to-enable-a-regenerative-food-system>

and financial capital, it is typically innovators from more affluent states who reach innovations first. Under the protection of patents, they can extract vast amounts in monopoly rents from those who need these innovations. As a side effect of this value extraction, millions of Africans die every year because they cannot gain access to patented products that could be produced, in Africa, at extremely low prices – access to sofosbuvir, for example, a highly effective drug against hepatitis-C.

These examples show how the unjustly accumulated inequality between Africa and Europe is self-entrenching: those at the top of this inequality continue to derive benefits from it through the political, military and economic dominance past wrongs have bestowed upon them. And those at the bottom of this inequality – African populations, mostly – continue to be harmed by their inability to exert meaningful influence on international rules and decisions. In these ways, present European populations continue to enjoy the fruits of the horrendous crimes of their ancestors while present African populations continue to suffer harms that were triggered by those crimes and are perpetuated by present European populations. It is this large imbalance of present unjust advantages and disadvantages that our generation can still repair. This is what the discourse about reparations ought to focus on.

THE AFRICAN UNION, G20, AND TRUTH & RECONCILIATION COMMISSIONS

The thrice-colonized nation of South Africa faced horrific apartheid in its history of colonization, and its unique efforts to unite its citizens have allowed for the successful dismantling of its discriminatory social structure. Part of its success in doing so can be attributed to the implementation of South Africa's Truth and Reconciliation Commission in 1995, which aimed to "heal the country and bring about a reconciliation of its people by uncovering the truth

about human rights violations that had occurred during the period of apartheid.” South Africa’s TRC was uniquely successful but is an example that we can still learn from and view as a model, one that garnered international attention by holding accountable those guilty of human rights violations.

The Democratic Republic of Congo attempted to address the crimes committed there similarly by establishing a TRC but ultimately failed because of a lack of resources, funding, training, and slow government response. To date, 14 African countries have developed TRCs in the past few decades investigating genocides, human rights violations, war crimes, and other injustices committed in their countries, some of whom produced results detailing the involvement of North American, Dutch, British, and French parties in such atrocities^{7,8}. Despite the reports and recommendations (not all of which were well-founded, such as Congo’s) provided by each TRC, few of their countries actually succeeded in even beginning to serve justice accordingly, some of which can be attributed to attention being focused on national political instability, a lack of resources, funding, and training to address recommendations, lack of stable, responsive governance and organization, and slow to virtually no response. It’s important to note that many of the reasons for these failures are largely due to the financial inability of these countries to successfully invest in the process that TRCs carry out, part of which, again, is partially attributed to colonization (which all 14 countries did face). None of these inadequate reactions can be justified when it is not just a country’s respective government that is responsible. All relevant parties should play a role in such a process, especially as the effects of these crimes dictate the current state of a country’s people. Ensuring the responsibility

⁷ Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions: https://edisciplinas.usp.br/pluginfile.php/4215774/mod_resource/content/0/Unspeakable%20Truths_%20Transitional%20Justice%20and%20the%20Challenge%20of%20Truth%20Commissions%20%20-Routledge%20%282010%29.pdf

⁸ The Truth, Justice and Reconciliation Commission of Kenya (TJRC): <https://participedia.net/case/8092>

of Western and European nations as partakers in these injustices requires their acknowledgment of their past roles in these crimes and how that has played a role in the current positioning of these countries, and actively engaging in reparatory justice, including official apologies, active participation in restorative efforts that directly benefit the people who now suffer the consequences of colonization.

It is essential to pledge such an initiative instead of waiting for it to be requested – African nations have countlessly called for reparations yet continue to be ignored and dismissed. One could argue that these nations’ citizens have given up on their hope for restitution or that we are at too far a point in time to be focusing on past crimes, but that is far from the truth; Gambia’s TRC findings and recommendations have not only resulted in compensation for the victims of the massacres and oppressions that their final 2021 report identified; the United States’ Civilian Security, Democracy, and Human Rights at the Department of State recently recognized the success of the Gambian people in delivering transitional justice, and through the Bureau of International Narcotics and Law Enforcement has announced \$1.1 million in funding to “work closely with Gambian justice and judicial stakeholders to build technical infrastructure, develop procedural systems, and enhance the capacity of justice sector officials”⁹. Sudan has been fighting internal wars for decades, and its citizens show no plans of slowing down or stopping in demanding justice for its citizens. South African activists continuously demanded the restoration of stolen diamonds, a recurring call that arose once more after the death of Queen Elizabeth II.

Our recommendation for developing a TRC supervising division within the African Union and for the African Union to be represented within the G20 would be a substantial means

⁹ Improving Access to Justice in The Gambia Project Launch Event:
<https://www.state.gov/improving-access-to-justice-in-the-gambia-project-launch-event>

to ensuring that involved countries serve reparatory justice. Having a stronger voice and a seat at such a table would provide the needed oversight and organization of TRCs in various countries, also establishing the seriousness and visibility of the Commissions' findings and allowing them to reach a much broader, accountable audience than previous ones had - more eyes on & responsibility for the process leaves a lot less room for a slow response. Such a division would supervise these TRCs and would each be made of a body of local leaders selected by their people for their honesty, ability, and change-making actions. There also must be an anti-corruption verification process that consistently and actively monitors these TRCs to ensure that no corruption whatsoever becomes an obstacle to the mission of these TRCs, and (importantly) to assure nations' people that these commissions are reliable and will bring justice to them for both international and local crimes committed in their countries.

Despite the diversity of, in all aspects, African nations that warrant separate representation, having the African Union being part of G20 is, at the very least, a beginning to a world where all involved parties can account for all injustices.

RECOMMENDATIONS & CONCLUSION

In conclusion, the importance of reparatory justice for people of African descent cannot be overstated. As we approach the culmination of the International Decade for People of African Descent, it is crucial to acknowledge the moral obligation and the collective responsibility that the international community holds in addressing historical injustices and persistent inequalities faced by Africans and their descendants.

Reparatory justice serves as a moral imperative and presents an opportunity for self-interest and incentivization. By addressing these injustices, we can foster social cohesion,

promote peace and security, and stimulate economic growth in regions that have long been marginalized. Reparatory justice investment is an investment in a more just and prosperous world.

We reiterate the key recommendations for the United Nations Secretary-General's 2023 report, which are as follows:

- **Establish a division within the African Union that oversees and closely supervises Truth and Reconciliation Commissions throughout the continent with the mandate to investigate and document the historical wrongs committed against people of African descent and provide a platform for healing and reconciliation.**
- **Identify and allocate funding for establishing a pilot Truth and Reconciliation Commission(s) in a specific country that meets set criteria to ensure the success of future Commissions.**
- **Review past Commissions' failures and challenges, and make active efforts to foresee and mitigate any possible issues that may arise during the implementation of the pilot Commission(s).**
- **Welcome the African Union as a member of the G20 to provide a platform of transparency, accountability, and all aspects of reparatory justice for parties involved in the recommendations of TRCs.**

As the International Decade for People of African Descent draws to a close, let us remember the importance of reparatory justice and the work that is yet to be done. It is our collective responsibility to ensure that the lessons learned from this Decade contribute to the creation of a

more equitable, inclusive, and just world for people of African descent and all those affected by historical injustices. The time for action is now.

BIBLIOGRAPHY

1. *Caricom ten point plan for reparatory justice*. CARICOM. (2020, July 10). Retrieved from <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/>
2. IBW21. (2018, April 24). *Samia Nkrumah on African unity and Reparatory Justice*. Institute of the Black World 21st Century. Retrieved from <https://ibw21.org/commentary/samia-nkrumah-on-african-unity-and-reparatory-justice/>
3. *Reimagining reparations for African enslavement*. The University of Edinburgh. (1970, March 23). Retrieved from <https://www.ed.ac.uk/impact/our-shared-world/reimagining-reparations-for-african-enslavement>
4. *Colonial debt and reparations*. The Ecologist. (2022, February 9). Retrieved from <https://theecologist.org/2021/oct/14/colonial-debt-and-reparations>
5. Guardian News and Media. (2011, November 28). *Rwanda demands end to tied aid*. The Guardian. Retrieved from <https://www.theguardian.com/global-development/2011/nov/28/busan-deadline-to-end-tied-aid>
6. Gbadamosi, N. (2022, June 15). *Belgium offers regret - but no reparations - to Congo*. Foreign Policy. Retrieved April 29, 2023, from <https://foreignpolicy.com/2022/06/15/belgium-congo-king-philippe-colonialism-tshiseke-di/>
7. Ugeux, G., & Mbuluku, J. (2022, October 21). *African capital markets: The case of the Democratic Republic of Congo*. – Columbia Law School Blue Sky Blog. Retrieved from

<https://clsbluesky.law.columbia.edu/2022/10/24/african-capital-markets-the-case-of-the-democratic-republic-of-congo/amp/>

8. Éric Toussaint. (2020, July 9). *Reply to the letter by Philippe, king of the Belgians, about Belgium's responsibility in the exploitation of the Congolese people*. MR Online. Retrieved from <https://mronline.org/2020/07/09/reply-to-the-letter-by-philippe-king-of-the-belgians-about-belgiums-responsibility-in-the-exploitation-of-the-congolese-people/>
9. Ndebele, L. (n.d.). *Explainer: Dutch apology and South Africa's place in the slave trade*. News24. Retrieved from <https://www.news24.com/news24/africa/news/explainer-dutch-apology-and-south-africas-place-in-the-slave-trade-20220914>
10. Baazil, D. (2022, September 12). *Netherlands plans to launch Slavery Apology Fund for Awareness Projects*. Bloomberg.com. Retrieved from <https://www.bloomberg.com/news/articles/2022-09-12/dutch-government-plans-to-launch-slavery-apology-fund#xj4y7vzkg>
11. Guardian News and Media. (2023, January 14). *Why the Dutch apology for slavery leaves a bitter taste in my mouth | Jermain Ostiana*. The Guardian. Retrieved from <https://www.theguardian.com/commentisfree/2023/jan/14/dutch-apology-slavery-reparations-caribbean>
12. Gibson, J. L. (2006). *The Contributions of Truth to Reconciliation: Lessons from South Africa*. *The Journal of Conflict Resolution*, 50(3), 409-432. <https://doi.org/10.2307/27638497>

13. Truth Justice and Reconciliation Commission (TJRC), Kenya. *Report of the Truth, Justice and Reconciliation Commission*. Vol. 1. Nairobi, Kenya: 2013.