

The Rugged Trajectory of Africa's Reparations Agenda: From Aspiration to Claim and Action

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Abstract

The first advances of Africa's reparations agenda are traceable to the First International Conference on Reparations held in Nigeria in 1990. The profile of the subject was promptly raised to that of a regional undertaking at the level of the Organisation of African Unity (OAU) in 1991. The continent is henceforth seen to stumble into institutional formulations that lack the support infrastructure and formidability to operate. The momentum for reparations set by the Durban Declaration and Programme of Action of 2001 faltered in Africa, primarily because the continent prioritised development assistance, investment and market reforms with the very powers responsible for reparations. More than two decades after this conference, it is increasingly evident that reparations are crucial for dismantling the structural impoverishment that undermines even the most well-intentioned reforms. The African Union (AU) is currently resuscitating the continent's reparations agenda, amid some gains by Africa's diaspora, protracted litigation and advances by certain African societies and the renewal of the UN International Decade for People of African Descent, which is based on the pillars of recognition, justice and development. A continent's reparations agenda must be guided by clear and established principles of engagement, driven by a formidable and sustainable institution, with continental-wide representation and consensus. A holistic agenda must unify the continent, in its diversity, around the core objective. It should include strategies that exert influence over the nations owing reparations to fulfil their obligations and be supported by authoritative African-centred thought leadership rooted in an authentic African conscience. It is a multi-sectoral, multi-dimensional, multidisciplinary, multi-layered and resilient venture.

Keywords: reparations; Africa's agenda; African Union; Durban Declaration and Programme of Action; strategies



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Introduction

In his address at the Third World Conference against Racism, the minister of justice of the Republic of Sudan noted that:

The economic marginalization of Africa started by its deprivation of capable and strong [human] power by the slave trade, followed by the uneven exploitation and sometimes siphoning of its natural resources during the colonial era, and is culminating nowadays by virtue of economic globalization, where Africa lacks the capacity to compete commercially in the world economy.¹

Whereas ‘reparatory justice for historical crimes and mass atrocities committed against Africans and people of African descent has always been part of the complete decolonisation process of the Organisation of African Unity (OAU) and now the African Union (AU) since its inception in 1963,’² there is notable fresh impetus on the subject in the recent past. Global powers deliberated the matter at the World Conference against Racism of 2001 and a fundamental question was raised as to whether an international crime had been committed.³ The Durban Declaration and Programme of Action, 2001 specifies that ‘slavery, and the slave trade are a crime against humanity and should have always been so.’⁴ The effect of this statement was to establish a quasi-legal and moral obligation for states that perpetrated the slave trade and colonialism to accord reparations. There is, therefore, no doubt that the African continent has a valid claim for reparations for the legacies of the trade and trafficking in enslaved Africans, colonialism, apartheid-related atrocities and other contemporary forms of extortion and violation. The nature and form of such reparations are yet to be determined. The mere proposal of reparations for Africa is often met with disproportionately hostile, revisionist and defensive arguments, reflecting the deep-rooted marginalisation of the continent.

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- 1 AMO Yassin, minister of justice of the Republic of Sudan, ‘Statement before the Third World Conference against Racism’ Durban, South Africa 31 August–7 September 2001. <<https://sudan.un.org/en/154771>> accessed 9 June 2023.
 - 2 ‘Concept Note on the African Theme of the Year for 2025: Justice for Africans and People of African Descent Through Reparations’ Executive Council Forty-Fifth Ordinary Session, 19 June–19 July 2024, Accra, Ghana, EX.CL/1528(XLV) Rev. 1, 1.
 - 3 Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa 31 August–8 September 2001 <www.oas.org/dil/afrodescendants_durban_declaration.pdf> accessed 21 October 2024.
 - 4 Introduction, Durban Declaration and Programme of Action, 1, 2001 <www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf> accessed 21 October 2024.

The African Commission on Human and People’s Rights adopted a resolution calling for the urgent conceptualisation of Africa’s Reparations Agenda in November 2022.⁵ This was reinforced by the decision of the AU Commission on building a united front to advance the cause of justice and the payment of reparations to Africans.⁶ The respective AU Commission resolution explicitly acknowledges preceding efforts on the subject of reparations including the 1993 Abuja Proclamation on Reparations,⁷ the 2001 Durban Declaration and Programme of Action, the Continental Consultations on the Restitution of Cultural Property and Heritage of 2021⁸ and the Accra Declaration of 2022.⁹ It is intended to examine preceding and current actions with a view to devising a consolidation and fortification strategy towards an agenda that would achieve its purpose—obtaining adequate reparation for the African continent. This article explores the key components of a reparation’s agenda with a tangible promise for Africa, including normative and institutional frameworks, a strategic plan and a robust knowledge base.

The Normative Structure

A set of agreed principles on both the procedural and substantive aspects of reparations to Africa is essential for ensuring the integrity of the process, standardisation of practice and legitimacy of outcomes. The global momentum towards reparations is characterised by emerging agreements for reparations that raise concerns about their intended and actual effects. The agreement between Germany and Namibia leaves much to be desired,¹⁰ while the out-of-court settlement of the Mau Mau litigation was marked by a statement of regret rather than a binding apology or statement of obligation.¹¹ The Pre-

5 Resolution on Africa’s Reparations Agenda and the Human Rights of Africans in the Diaspora and the People of African Descent Worldwide, ACHPR/Res.543(LXXIII) 2022, 9 November 2022, accessed 20 October 2024.

6 Assembly/AU/Dec.847(XXXVI). Adopted at the 36th Ordinary Session of the Assembly of the Union, 18–19 February 2023, Addis Ababa, Ethiopia.

7 The Abuja Proclamation: A Declaration of the First Abuja Pan-African Conference on Reparations for African Enslavement, Colonization and Neo-Colonization, sponsored by the OAU and its Reparations Commission, 27–29 April 1993, Abuja, Nigeria <<https://africanlii.org/akn/aa-au/doc/declaration/1993-04-29/the-abuja-proclamation-a-declaration-of-the-first-abuja-pan-african-conference-on-reparations-for-african-enslavement-colonization-and-neo-colonization-sponsored-by-the-organization-of-african-unity-and-its-reparations-commission-april-27-29-1993-abuja-nigeria/eng@1993-04-29>> accessed 21 October 2024.

8 Continental Experts Workshop on Restitution of Cultural Property and Heritage, AU, 2 December 2021 <<https://au.int/en/pressreleases/20211202/continental-experts-workshop-restitution-cultural-property-and-heritage-holds>> accessed 21 October 2024.

9 Accra Proclamation on Reparations, AU <<https://au.int/en/decisions/accra-proclamation-reparations>> accessed 21 October 2024.

10 Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, para 11 (also referred to as the Germany-Namibia Accord); CS Namakula, ‘Reparations without Reparation: A Critique of the Germany-Namibia Accord on Colonial Genocide’ (2021) AYIHL 46–66.

11 Mau Mau Claims (Settlement), House of Commons Debate, 6 June 2013 <[https://hansard.parliament.uk/commons/2013-06-06/debates/13060646000005/MauMauClaims\(Settlement\)](https://hansard.parliament.uk/commons/2013-06-06/debates/13060646000005/MauMauClaims(Settlement))> accessed 21 October 2024.

amble of the 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 affirms the importance of addressing the respective questions in a systematic and thorough manner at both the national and international levels.¹²

The principles for reparations in Africa should guide the development of the law, policy and practice on i) the specification of the nature of harm or injury that warrants reparation; ii) the nature and *modus operandi* of a reparations process; iii) the consensual description of reparations to Africa; iv) the duty bearers and rights holders; v) the rights of participants in reparatory justice processes; vi) the time limitation factor including the non-temporal principle; vii) the criteria for a reparative effect; and viii) the applicability of the contemporary principle of universal jurisdiction to reparatory justice.

Reparation is described to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹³ It is about both tangible things, such as land and possessions, and the intangible aspects, such as values, dignity and worth, the voice of a people, identity and self-determination. The Caribbean Community has contextualised its framework of reparations to include psychological rehabilitation or the self-reflective process of freeing oneself from mental slavery and colonial ideology and decolonisation, and curricular reform to structurally inculcate values that promote self-worth, better understanding of oneself and ‘build bridges of belonging.’¹⁴

Institutional Structures

The Accra Declaration rightly notes that the ‘reparations and healing imperative is a multigenerational, transnational endeavour requiring the active engagement of the grassroots, civil society, private sector, policy makers and leadership at all levels to usher in the transformative change to the systems, structures, and institutions that have perpetrated harm against Africans and people of African descent worldwide.’¹⁵ A sustainable continental-backed institutional structure is therefore essential in leading the agenda and ensuring the requisite resilience. Previous attempts to formalise a reparations framework included the Group of Eminent Persons and the Commission for

12 General Assembly Resolution 60/147, adopted 15 December 2005. <www.ohchr.org/sites/default/files/2021-08/N0549642.pdf> accessed 21 October 2024.

13 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, para 18.

14 African Knowledge Program, CARICOM Ten Point Programme, paras 7 and 8.

15 The Accra Declaration on Reparations and Racial Healing, Institute of the Black World 21st Century, 9 October 2023, <<https://ibw21.org>> accessed on 18 October 2024.

Reparations of the OAU. The Abuja Proclamation also called for the establishment of a legal committee on the issue of reparations.¹⁶

The first attempts at institutional formulation were made by Nigeria's leadership, which established an International Committee for Reparations at the first World Conference on Reparations to Africa and Africans in the Diaspora held at the Nigeria Institute for International Affairs in December 1990.¹⁷ This conference was sponsored by Chief Moshood Abiola and deemed a personal campaign for reparations.¹⁸ Nigeria's noble advances, including enacting the African Reparation Act,¹⁹ remained isolated and limited in effect. South Africa's Promotion of National Unity and Reconciliation Act of 1995 set up a Committee on Reparation and Rehabilitation to bolster the national efforts to repair the damage caused by apartheid.²⁰ The mandate of the South African body was purely domestic with no noticeable links to regional developments.

In June 1991, the Council of Ministers of the OAU decided to establish a group of eminent Africans and Africans in the diaspora in relevant fields, tasked with clearly defining the extent of Africa's exploitation, the perpetrators' liability and formulating strategies for achieving reparations.²¹ A 12-member group of eminent persons was sworn in by the OAU at a meeting in Abuja on 28 June 1992 to pursue the goal of reparations for Africa.²² Originally chaired by Nigerian businessman Chief Bashorun M.K.O. Abiola, the group comprised J. F. Ade Ajayi (Nigeria); Samir Amin (Egypt); R. Dellums (US); Josef Ki-Zerbo (Burkina Faso); Graça Machel (Mozambique); Miriam Makeba (South Africa); Ali Mazrui (Kenyan, based in the US); Amadou-Mahtar M'Bow (Senegal); A. Pereira (Cape Verde); Alex Quaison-Sackey (Ghana); Dudley S. Thompson (Jamaican, based in the US).²³ The Group of Eminent Persons was urged to fully support the OAU's efforts to address the injustices inflicted through slavery and the slave trade.²⁴ Without questioning the eminence of any member of the group, the specific criteria used to select the respective members of the group is not clear. It is doubtful whether all the members were present at the Abuja Conference

16 A Declaration of the First Abuja Pan-African Conference on Reparations for African Enslavement, Colonisation and Neo-Colonisation, facilitated by the OAU and its Reparations Commission, 27–28 April 1993, Abuja, Nigeria.

17 Preamble to the African Reparation Act of the Federal Republic of Nigeria, 2004.

18 *ibid.*

19 The African Reparation Act of the Federal Republic of Nigeria, 2004: a law to ensure payment of reparations to Nigeria and Africa for injustices visited by Western and other nations and to halt the menace of odious and illegitimate foreign debts militating against and crippling African economies.

20 See ss 23, 25 and 26, Promotion of the National Unity and Reconciliation Act 34 of 1995.

21 Resolution of Reparation for Exploitation and Slavery in Africa, CM/Res.1339 (LIV) para 1.

22 RE Howard-Hassmann, 'Reparations to Africa and the Group of Eminent Persons' (2004) 173–174 *Cahiers d' études africaines* 81–97, 84.

23 *ibid.*

24 Resolution on the Reparations of the Wrong Done to Africa through the Exploitation and Slave Trade, CM/Res.1391 (LVI), para 3, Resolutions Adopted by the Fifty-Sixth Ordinary Session of the OAU Council of Ministers (12 June 2023).

to assume their roles, or were committed to, or even aware of them.²⁵ There was no secretariat or programme of activities to convene the members, who acted in their individual capacities rather than as a collective. The group also received *ad hoc* financial contributions from individuals without a streamlined source of funding.²⁶ The core mandate activity of setting out clearly the extent of Africa's exploitation required continent-wide research and documentation that could have been achieved by way of collaborations. Few of the members pursued the cause and filed reports of their work. Even these reports are not readily accessible.²⁷ A properly functioning group would have specified the tenure of members and set out procedures for succession. The Group of Eminent Persons lacked the necessary collective resolve, institutional support, sustainable functionality and rigour to advance the contested agenda of obtaining reparations for Africa. A Commission for Reparations of the OAU is mentioned in certain documents, but not much is written about its mode of establishment or its work.

Following the World Conference against Racism in 2001, advances in Africa's legitimate claim for reparations were relegated in lieu of the continent's urge for development cooperation, investment and market reforms from former colonial powers, but there is no evidence that these goals have led to sustainability on the continent. Reparations are still essential to address the barriers to the mutual benefit of such development cooperation and investment. It is imperative to integrate national and local perspectives on reparations in continental efforts by setting up national committees on reparations where there are none and creating pathways for collaboration among committees with similar mandates at all levels. Institutional gaps are evident in countries with ongoing reparation claims but with no mechanism to support their efforts. In certain countries, such as Namibia, the state has a parallel arrangement with the descendants of the victims, but the two are not aligned or in agreement.

Strategies

The Council of Ministers rightly envisaged the significance of strategies for achieving reparations.²⁸ Laremont also highlighted the need for the progression of the debate beyond arguments for reparations to developing strategies to satisfy the claims.²⁹ The pre-emptive controversies would be settled by successful strategies in retrospect. These strategies include the legal approach, the political approach, social movements or a combination of some or all of these.

25 Hassmann (n 23) 85.

26 *ibid.*

27 *ibid.*

28 Resolution on Reparation for Exploitation and Slavery in Africa, CM/Res.1339 (LIV) para 1. <www.peaceau.org/uploads/cm-res-1339-liv-e.pdf> accessed 21 October 2024.

29 RR Laremont, 'Political versus Legal Strategies for the African Slavery Reparations Movement' *African Studies Quarterly* <<https://ufl.edu/Political-Versus-Legal-Strategies-for-the-African-Slavery-Reparations-Movement>> accessed 14 June 2023.

The Legal Strategy

Specified victims and descendants of victims of colonialism and apartheid in Africa have advanced cases against former colonial powers and corporations for reparations among courts of different nations. These include the Mau Mau litigation,³⁰ the Nama and Herero cases against Germany³¹ and the Khulumani Action Group.³² Although these cases do not match the magnitude of a possible cause of action by any African country or regional body for 400 years of human enslavement, they provide valuable lessons. Litigation is protracted, costly, highly contested, dismissed and trivialised.

Laremont contends that African states could advance a case against states that perpetrated the slave trade in the International Court of Justice for genocide against its people.³³ Genocide is defined as acts committed with intent to destroy a racial group, in whole or in part. This includes killing members of the group, causing serious bodily or mental harm and other severe consequences.³⁴ The African continent was inhabited by persons of other races,³⁵ but it is clear that black Africans were specifically targeted. An indictment for genocide is seen as more likely to succeed due to the specific nature of the crime, which can be supported by the documented evidence of the human rights violations that occurred during the slave trade. Laremont's recommendation is valid but would limit the cause of action to the lives lost and not address the survivors who lost everything that pertains to life: a livelihood, identity, belonging, exercise of personal will and self-determination. The result of enslavement is people who lived without life, arguably, the highest form of human degradation. A selective action would, therefore, be incomplete and unsatisfactory.

A holistic legal strategy is currently pre-empted by i) statutes of limitation³⁶ and ii) the inter-temporal principle. Prescribed time limits within which events can lead to legal proceedings are defensible. There is, however, no time limit for cases relating to war

30 *Ndiku Mutua and Others v The Foreign and Commonwealth Office*, Case No: HQ09X02666 of 2012, filed by the Mau Mau veterans of Kenya in the United Kingdom on 23 June 2009 and settled out of court on 6 June 2023; see also 'The Long Walk to Justice and What it Took to Succeed' Kenya Human Rights Commission, press release, 21 June 2013 <<https://khrc.or.ke>> accessed on 14 June 2023.

31 *Hereros v Deutsche Afrika-Linien GMBLT & Co*, US Court of Appeals for the Third Circuit, Case No 06-1684, Decision of 10 April 2007, filed in 2001 by the Herero of Namibia in the US District Court, the case was dismissed for supposedly failing to state a claim, and the dismissal was affirmed by the Court of Appeals.

32 *Khulumani v Barclay National Bank*, 504 F. 3d 254 (2d Cir 2007) and in re South African Apartheid Litigation, 617 F. Supp. 2d 228 (S.D.N.Y. 2009).

33 RR Laremont, 'Political versus Legal Strategies for the African Slavery Reparations Movement' (1998) 2(4) *African Studies Quarterly* 13–17.

34 Article II(b), Convention on the Prevention and Punishment of the Crime of Genocide, GA Res 260 A (III) 9 December 1948, entered into force on 12 January 1951.

35 See BG Martin, 'Arab Migrations to East Africa in Medieval Times' (1974) 7(3), *The International Journal of African Historical Studies*, 67–390.

36 *Ndiku Mutua and Others v The Foreign and Commonwealth Office*, Case No: HQ09X02666 of 2012.

crimes and crimes against humanity.³⁷ The real issue to determine is when the time for actions against slavery and colonialism begins to run. The effects of slavery and colonialism were to effectively unravel, negate, dehumanise and disintegrate. People of African descent have obtained a voice as a victim group 23 years ago following the World Conference against Racism. This followed a failed previous attempt in 1978³⁸ and a foundational breakthrough in 1983.³⁹ It is not an accident of history that legal actions for slavery, colonialism and apartheid only started to emerge in courts after 2001. People of African descent have since taken on their matters to date. Unlike other victim groups that had backing from other proponents, one of the effects of the deep-rooted vice of anti-black racism that is also a direct consequence of slavery, was that people of African descent had to develop the capacity to lead their own liberation struggle. They had neither access nor infrastructural support to advance their claims through the established hierarchies of power. To use time as a factor against segregated persons is to use their compounded, transgenerational victimisation as a barrier to justice. It is self-defeat to flag the effects of the legacies for which justice is sought as a barrier to justice itself.

According to the intertemporal principle, which stresses the non-retrospective application of international law, ‘an act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation in question at the time the act occurs.’⁴⁰ Numerous states have appealed to the intertemporal principle to deny the obligation to provide reparations.⁴¹ Kanu’s statement stresses the exceptions to the intertemporal principle including when i) an act is ongoing and continues into a time when international law considered the act a violation or ii) the wrongful act’s direct ongoing consequences extend into a time when the act and its consequences are considered internationally wrongful.⁴² He rightly affirms that racial discrimination, rooted in or caused by colonialism and slavery, cannot be subject to the intertemporal bar because it continues after the abolition of slavery and the end of colonialism.⁴³ Furthermore, the intertemporal principle does not apply to present day racially discriminatory effects of slavery and colonialism, which states are obligated to redress, including through adequate reparation.⁴⁴ The conscience and universality of a body of international law that permits the degradation and violation of the lives of some by

37 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, GA Res 2391, 26 November 1968, entered into force on 11 November 1970.

38 See Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14–25 August 1978 <<https://un.org>> accessed 19 June 2023.

39 See Report of the Second World Conference to combat Racism and Racial Discrimination, Geneva, 1–12 August 1983 <<https://un.org>> accessed 19 June 2023.

40 Article 13, Responsibility of States for Internationally Wrongful Acts, 2001.

41 Statement by HE Dr MI Kanu, 77th Session of the Sixth Committee of the UNGA, 13 April 2023, para 14, Sierra Leone statement—Crimes Against Humanity—Sixth Committee (Legal)—77th session <<https://un.org>> accessed 19 June 2023.

42 *ibid* para 15.

43 *ibid*.

44 *ibid*, see also, Durban Declaration and Programme of Action, 2001, para 165.

others in the international cosmos is brought into question by the pre-emptive argument. It begs the question: whose international law was that, and how was such international law formed? International law is formed by way of international agreements, general principles of law or general practice accepted as law.⁴⁵ African societies were not state entities before the Berlin Conference of 1885 and were not privy to the formulation of ideology and infrastructure that perpetrated the enslavement of its people.

The Durban Declaration and Programme of Action concludes that ‘slavery and the slave trade are a crime against humanity and should have always been so.’⁴⁶ The test for a crime against humanity is a crime that shocks the conscience of humankind; it is undisputable that the project of slavery had that effect. Slave trade was illegal in Great Britain itself at the time it was perpetrated elsewhere. In the *Somerset* case of 1772, William Murray, the Lord Chief Justice, affirmed that slavery had no basis in common law and had never been established by positive law in England.⁴⁷ A state cannot contribute an illegal practice to international law. The racialised and large-scale nature of the trade reveals a conscious victimising approach. Hart’s dichotomy of law and morality is relevant to the subject and has led scholars, such as Curry, to question the prospects of success of any ethical arguments regarding reparations. Curry observed that ‘America is not capable of moral transformation concerning racism, because racism is a permanent and necessary feature of [the] American society. While ... reparation is justified politically, it cannot be justified as a moral charge to an immoral white supremacist society.’⁴⁸

A legal strategy is often thorough and far reaching while raising awareness of all the issues, but also underscored by the prerequisite of winning the arguments to access any benefit or lose everything. It is noteworthy that an unsuccessful legal strategy is not necessarily a failed endeavour. It forms the foundation for a negotiated settlement or political intervention. An expounded approach to the legal strategy includes out-of-court settlement mechanisms, such as mediation and arbitration, that are flexible enough to circumvent the limitations of a linear legal approach. Africa also needs to establish and domesticate jurisdiction over historical crimes. Overseas litigation inconveniences victimised communities that often must pay hefty legal fees to lawyers, primarily based in countries from which reparations are sought.

45 Article 38(1) Statute of the International Court of Justice.

46 Introduction to the Durban Declaration and Programme of Action, 2001.

47 *Stewart v Somerset* (1772) 98 ER 499: slavery was such an ‘odious’ condition that it was not compatible with the English Common Law or natural law and could only legally exist if Parliament had expressly established it. There was no such Parliamentary provision and therefore no legal justification for keeping anyone as a slave in England <<https://archives.lincolnsinn.org.uk/the-archives/law-reports-and-case-papers/somerset-case>> accessed 21 October 2024.

48 TJ Curry, ‘The Political Economy of Reparations: An Anti-Ethical Consideration of Atonement and Racial Reconciliation under Colonial Moralism’ (2011) 18(1–2) *Race, Gender and Class* 125–146.

The Political (Diplomatic) Strategy

States address reparations owing to political considerations. In 1988, following a decade of unfruitful litigation, the US Congress promulgated H.R. 442 directing the Attorney General to pay \$20 000 to each eligible citizen and permanent resident of Japanese ancestry, who was evacuated, relocated and interned during World War II.⁴⁹ Congress apologised on behalf of the nation, and each victim obtained a presidential letter of apology.⁵⁰ A redress programme, run by the Justice Department's Office of Redress Administration, was charged with addressing the claims for 10 years.⁵¹ In the recent past, H.R. 40 was introduced in Congress on 1 April 2021, calling for the establishment of a commission to study and develop reparation proposals for African Americans.⁵² From a transnational perspective, Italy signed and executed an agreement with Libya in 2008, regretting the suffering caused by Italian colonisation and committing \$5 billion to support basic infrastructure projects in Libya.⁵³ Similarly, the Federal Republic of Germany signed an agreement with the Republic of Namibia in June 2021, accepting the moral, historical and political obligation to tender an apology for the genocidal conditions it perpetrated in Namibia during the colonial era, tendering the apology and committing €1 100 towards development programmes.⁵⁴ Certain out-of-court settlements, such as the Mau Mau settlement, are political in nature.

Political strategies may promote mutual benefit, hence increasing the prospects of reaching negotiated agreements. For instance, the funds allocated to Libya in the agreement with Italy were managed directly by Italy,⁵⁵ and Italian companies were to take charge of the execution of the projects.⁵⁶ Consequently, no funds were transferred to Libya. This would imply that Italian companies would be responsible for the future maintenance of such infrastructure, at Libya's expense. There was also a commitment toward collaborating to prevent illegal immigration, which of necessity obligated Libya more than Italy.⁵⁷ The Germany-Namibia agreement recognises the atrocities

49 See H.R.442—100th Congress (1987–1988): Civil Liberties Act of 1987 <<https://congress.gov>>

50 *ibid*, see also press release by the Department of Justice, 19 February 1999, #059: 02-19-99 Ten Year Program to Compensate Japanese Americans Interned During World War II Closes its Doors <<https://justice.gov>> accessed 21 June 2023.

51 See the press release, *ibid*.

52 H.R.40—117th Congress (2021–2022): Commission to Study and Develop Reparation Proposals for African Americans Act <<https://congress.gov>> accessed 21 June 2023.

53 See preamble and Art 8 para 1, Treaty of Friendship, Partnership and Co-operation between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya, 30 August 2008 <<https://security-legislation.ly/latest-laws/law-no-2-of-2009-on-ratifying-the-treaty-of-friendship-and-cooperation-between-the-great-socialist-peoples-libyan-arab-jamahiriya-and-the-republic-of-italy/>> accessed 22 June 2023.

54 Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, paras 11, 13 and 18.

55 Article 8(4), Treaty of Friendship, Partnership and Co-operation between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya.

56 Article 8(2), *ibid*.

57 Article 19(3), *ibid*.

perpetrated during colonial rule as the basis of the pact, but it successfully advances its equal stake with Namibia, in developing a separate legal structure or trust fund to select and fund projects aimed at reconciliation.⁵⁸ According to the agreement, the governance and implementation structures of the programmes would operate specifically on the principles of equal partnership and joint decision-making.⁵⁹ The extent of mutual benefit must be moderated to avoid the disproportionate reward of the perpetrator. Reparations are meant to make amends for the harm caused to the victim(s); their satisfaction, and not that of the perpetrator, is the core objective.

The political strategy furthers the inclusion of Africa's agenda including reparations clauses in agreements for international cooperation. It is reinforced by strategic partnerships especially between Africa and its diaspora.⁶⁰ Such partnerships are, however, complementary to a formidable continent's reparations agenda. They cannot substitute the uniqueness of each region's agenda.

A Social Movement for Reparatory Justice in Africa

The people are the foundations and the beneficiaries of reparations. The leadership of the most noble agenda also derives credibility from the people who own the cause. The significance of a social movement in propelling a well-conceived and well-directed agenda for change in society cannot be underestimated and has, perhaps, been the gap in the continent's reparations efforts. A critical mass who owns and acts upon a noble agenda has prospects of obtaining results and reparations are no exception. In 2009, the Kenya Human Rights Commission, a non-governmental organisation, launched a Mau Mau Reparations Campaign in Kenya and the UK to raise support for the legal suit against Britain for colonial crimes.⁶¹ Similarly in 1995, survivors and families of victims of South Africa's apartheid past founded the Khulumani Support Group to campaign for truth, healing and redress. In 2002, the same group advanced a claim suit against 38 corporations, in the US District Court for the Southern District of New York, under the Alien Torts Claims Act, for profiteering from apartheid.⁶² Africa's diaspora formed the Africa Reparations Movement in 1993 following the Abuja Proclamation. The UK committee of the organisation commenced the Benin Bronzes campaign that contributed significantly to the ongoing gradual restitution of the Benin Bronzes to Nigeria.⁶³ The bronzes are a set of heritage art, plundered from the Kingdom of Benin in Nigeria,

58 Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, para 17.

59 *ibid* para 19.

60 See African Diaspora Programme of Action, Assembly/AU/17 (XIX), para I.

61 L Brownhill, 'Mau Mau Demand Reparations from Britain for Colonial Crimes' (2009) 20(2): Capitalism Nature Socialism <<https://tandfonline.com>> see also 'Support the Mau Mau reparations campaign' <<https://pambazuka.org>> accessed on 26 June 2023.

62 M Swart, 'When the State Fails: The Role of the Khulumani Support Group in Obtaining Reparations for Victims of Apartheid,' <<https://unisapressjournals.co.za/index.php/SAPL/article/download/2929/1723/14748>> accessed 21 June 2023.

63 CL Prugh, "'We Shall Be Telling Our Own Stories": Bernie Grant, the Africa Reparations Movement and the Restitution of the Benin Bronzes' *Politique Africaine* no 165/2022/1, 143–166.

during a British invasion in 1897.⁶⁴ Elsewhere in the world, 23 major international Jewish organisations founded the Claims Conference in 1951, to pursue justice for Holocaust survivors worldwide.

A social movement is described as ‘a collective form of activism that aims to affect transformation in existing structures of power that have created inequality, injustice and [alike].’⁶⁵ A progressive social movement for reparatory justice in Africa must i) rally collective action to advance the purpose of obtaining reparations for Africa, ii) forge a continental-wide mobilisation structure, iii) have formidable leadership with perpetual succession, and iv) bring about change. Institutionalising or professionalising such a movement is necessary to garner negotiating power with high-level stakeholders, including states, and ensure a sustainable structure to support the agenda for a long time. Africa is claiming reparations for four centuries of commodifying its people and over three decades of colonialism and extortion. The Claims Conference has been seeking reparations for the Holocaust, which lasted 12 years, for 72 years.⁶⁶ The people should be seen to demand reparations both by themselves and through their leaders, otherwise there is a risk of such leaders being deemed to act on their own whim. A question arises as to whether social movements should be supported by state structures to be successful. The Jewish Claims Conference sets a precedent for obtaining reparations as a non-governmental organisation. This result has, however, been attributed to the role of the US, which leveraged its global image and international leadership to seek justice and compensation for Holocaust victims.⁶⁷ A reparations debate that is presented as a state agenda to another state has better prospects of success in the contemporary structure of international relations. Thus far, the merits of the case as a compelling reason for reparations, rather than power dynamics, should be the primary consideration.

The success of a social movement is not only measured by obtaining the intended goal but also broadly as expounding boundaries of knowledge, changing attitudes and disseminating information.⁶⁸ A movement for reparatory justice in Africa would actively engage in research, documentation and the dissemination of empirical knowledge on the harm occasioned by the legacies of enslavement, colonialism and neo-colonialism to Africa and its people.

A Knowledge Base for the Africa Reparations Agenda

An authentic African knowledge base is needed to support Africa’s reparations debate. The Mau Mau litigation was salvaged by what are described as two groundbreaking

64 *ibid* 143–144.

65 G Martin, *Understanding Social Movements* (Routledge 2015) 1.

66 See Claims Conference, ‘About Us’ <<https://claimscon.org>> accessed 18 July 2023.

67 The Role of the US in Pursuing Compensation for Holocaust Victims and Heirs, and the Historical Bases for US Leadership, Claims Conference, 20 September 2020, 7 <<https://claimscon.org/wp-content/uploads/2020/09/2020.9.23-The-U.S.-Role-in-Holocaust-Compensation-.pdf>> accessed 25 July 2023.

68 *ibid* 4.

academic studies by historians on the Kenya Emergency. These works were the *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (2005) and *Histories of the Hanged: Britain's Dirty War in Kenya and the End of the Empire* (2006) by Professor Caroline Elkins of Harvard University and Professor David Anderson of Warwick University, respectively. According to her biography, Elkins spent nearly a decade travelling and working in rural Africa. There is much more empirical data on the continent that can be gathered and published. A more sustainable momentum for such scholarship needs to emerge here.

The relegation of African lives has led scholars to maintain dismissive arguments against Africa's claim for reparations. Unfavourable narratives advanced especially from the perspective of scholars from nations that are supposed to be making reparations dominate the mainstream and derail the course of collective thinking around this thorny issue. The role of Africans in the slave trade is presented without critical analysis of the concept of collaboration and the compelling effect of superior weaponry to the advantage of the perpetrators. Additionally, the perspective that African countries have not demonstrated better governance in the post-independence era is advanced as a counter argument, while underestimating the unravelling impact of the slave trade and colonialism on African governance structures. These structures were replaced by alien colonial mechanisms intended to subdue Africans and promote foreign domination. African scholars need to critically examine these viewpoints in order to challenge what seem to be regressive mainstream narratives about decolonisation.

Knowledge consolidates purpose, collective thinking and action. There is a need for a reference point where records of the movement are consolidated, preserved and disseminated freely to stakeholders who advance the legal, political and social strategies. The lack of integration of knowledge and historical knowledge leads to duplication of actions over time.

The academic project on reparations for Africa would also aim to build consensus on the appropriate forms for reparations for the crimes committed, identify the rightful beneficiaries and clarify the systematic approach required to advance the initiative.

Conclusion

Africa must advance its claim for reparation in a manner that is authoritative and effective, including by way of a legal claim, the high-level political strategy and the development of a continent-wide social movement for reparations. History shows that political approaches complement legal approaches effectively in advancing reparatory justice agendas. Pursuing reparations should be conceived as a multi-faceted, transgenerational role that is backed by principles, sustainable institutions, high-level diplomatic endeavours and scholarly work. The *ad hoc* individualised endeavours for reparation to Africa need to be substituted by structured, institutionalised and consistent mechanisms that translate efforts into a resilient movement. A social movement, whose tactical advocacy creates a political environment that can lead to legal change, is needed.

An indomitable strategy is the only possibility in view of the racism that informs even perspectives on reparation to Africa and people of African descent.⁶⁹

Yamamoto envisages a reparatory justice agenda that follows human rights principles as:

an approach that endeavours as best as possible in the political and social environment, to repair the damage to people's lives rooted in harms to psychological and emotional health, community belonging, education, employment, culture, political governance and the environment.⁷⁰

This enumeration is incomplete without the reference to the economic environment or financial sphere; economic justice is the nucleus of reparation. Chike notes the ease with which people make declarations about the equality of different ethnicities, 'but it is what they underline with material cost to them that points to the extent of their conviction.'⁷¹ This contextualises the regrets and equivocal apologies for slavery and colonial extortion from the UK,⁷² Belgium,⁷³ the Netherlands,⁷⁴ Germany⁷⁵ and France,⁷⁶ which are not followed by monetary commitments of reparative value. Whereas other groups are receiving reparation and support for their claims including Ukraine,⁷⁷ Africa's legitimate claim is being ignored, trivialised, dismissed as bitter and mocked as a distraction from causes of underdevelopment on the continent,⁷⁸ as if to suggest that Africa needs a further qualification for reparation besides suffering the greatest tragedy in humankind. Hassmann expresses the impossibility of the US offering any form of reparation to Africa.⁷⁹ Racism is entangling even humanity's noble cause of reparation to Africans and people of African descent. The assumption that reparation is driven by power and interests other than justice is contradictory. It is imperative not to prioritise

69 C Chike, 'Racism and the Case for Reparations: A Response to Michael Banner' (2022) 3(1) *Studies in Christian Ethics* 63–67.

70 EK Yamamoto, 'International Reparations: What Justice Amends Can and Should There Be?' (2023) *Southwestern Law Review* 141–160, 143.

71 C Chike, 'Racism and the Case for Reparations: A Response to Michael Banner' (2022) 3(1) *Studies in Christian Ethics* 63–67, 66.

72 R Hourcade, 'The Politics of Apology: Official Repentance and the Strategic Management of Guilt in a Former Slave Trade Port (Liverpool)' (2020) 50(1) *Ethnologie Française* 19–29.

73 G Nzongola-Ntalaja, 'Reversing a Bloody Legacy' (Fall 2020) *The Wilson Quarterly* <<https://wilsonquarterly.com>> accessed 16 October 2023.

74 Government apologises for the Netherlands' role in the history of slavery <www.government.nl> accessed on 16 October 2023.

75 See Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, para 13.

76 M Cottias, *Les vingt ans de la loi Taubira* <<https://openedition.org>> accessed on 16 October 2023.

77 A/RES/ES-11/5, *Furtherance of Remedy and Reparation for Aggression Against Ukraine*, General Assembly Resolution, 14 November 2022. The author affirms that reparations to Ukraine are well-deserved and their promptness needs to be consistent.

78 Hassmann (n 23) 83.

79 RE Howard-Hassmann, 'Should the USA Offer Reparations to Africa for the Trans-Atlantic Slave Trade?' (2022) 59 *Society* 339–348.

the interests of other people in advancing reparatory justice for Africans and people of African descent. Notions such as racial reconciliation reparations⁸⁰ argue for the inclusion of benefits to other races in addressing the damage caused to Africans and people of African descent, serving as a catalyst for broader reparative efforts. Levelling the ground for people of African descent to operate in systems equally should be the primary consideration; it exceeds sociological borders to economics and politics. Reconciliation may naturally follow levelling up.

Extensive research needs to be conducted, from an African perspective, on the legal questions raised against reparation to Africa. An authentic reckoning may not leave even the so-called international law intact. Africa's pursuit for wholeness, by way of reparation, embodies comprehensive legal and policy reforms that impact on centuries-old systems, philosophies and frameworks of engagement.

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