



WHAT IS THIS REPORT ABOUT?

The report addresses States' obligations under international law to provide reparations for slavery and colonialism. The Special Rapporteur emphasizes that reparations "concern both our past and our present" and "the urgent project of providing reparations for slavery and colonialism requires States not only to fulfill remedial obligations resulting from specific historical wrongful acts, but also to transform contemporary structures of racial injustice, inequality, discrimination and subordination that are the product of the centuries of racial machinery built through slavery and colonialism" ([A/74/321](#), para. 8).

DEFINING RACIAL DISCRIMINATION

International human rights law prohibits discrimination by States, including on the basis of race, and provides that all persons are equal under the law and entitled to equal protection of the law without discrimination ([UDHR](#), Art. 2; [ICCPR](#), Art. 2(1) and 26; [ICESCR](#), Art. 2(2)). Racial discrimination means "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" ([ICERD](#), Art. 1(1)).

SLAVERY AND COLONIALISM ARE HISTORICAL HUMAN RIGHTS VIOLATIONS THAT EMBODIED AND ENTRENCHED EXTREME FORMS OF RACIAL DISCRIMINATION

The transatlantic slave trade "has been described as the first system of globalization," which "[relied] on domestic and international legal frameworks to institute and protect racial hierarchy" around the world ([A/74/321](#), para. 16). At its core, slavery constituted "the dehumanization of persons on the basis of 'race': a social construct that to this day shapes access to fundamental human rights" ([Id.](#)).

For centuries, European colonialism "justified and relied upon brutal regimes of slavery and indentured servitude to establish and sustain transnational extractivist processes in exploitation and settler colonies" ([para. 18](#)). European colonial domination "consolidated 'race and racial identity' as 'instruments of basic social classification'" ([Id.](#)). Colonialism also "allocated human rights on a racial basis" and relied on domestic and international law to "[consolidate] and [further] global structures of racial domination and discrimination" ([Id.](#)).



STATES HAVE DUTIES TO PROVIDE REPARATIONS FOR INTERNATIONAL HUMAN RIGHTS VIOLATIONS

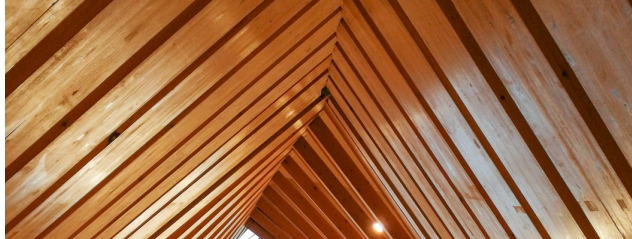
As outlined in the report: "The international human rights system operates on the fundamental premise that violations of international human rights law incur an obligation on violators to provide adequate and effective reparations to victims of those violations. Victims of human rights violations, including racially discriminatory violations, hold a corresponding right to full reparations" (See [paras. 29-35](#) for the evolution of the right to reparations in international law.)

The [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation](#) outline five forms of remedy and reparations for violations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (See definitions at [A/74/321](#), para. 37). The Basic Principles underscore "the role of reparations in the promotion of justice, the proper treatment of victims, and ensuring widespread access to information on reparations mechanisms" ([para. 38](#)). The Special Rapporteur notes that the Basic Principles are "non-exhaustive" and leave room for UN treaty bodies "to suggest appropriate, effective and victim-specific reparations" that are commensurate with the violations at issue ([paras. 38-41](#)).

THE LEGACIES OF SLAVERY AND COLONIALISM PERSIST IN CONTEMPORARY RACIAL DISCRIMINATION

Despite their formal abolition under international law, "contemporary structures of racial discrimination, inequality and subordination are among the most salient legacies of slavery and colonialism" ([A/74/321](#), para. 25). The report outlines various findings by international bodies and instruments to this effect, including the [Durban Declaration and Programme of Action](#) which "identifies both colonialism and transatlantic slavery as evils that remain contemporary sources of racial discrimination and persistent inequality" ([para. 20](#)).

One example of the persistent, racialized impact of slavery is in the United States, where even after the formal emancipation of enslaved people of African descent, many of them "continued to face economic exploitation and were forced into debt peonage through sharecropping" ([para. 23](#)). Emancipation was also followed by the implementation of Jim Crow, with laws and policies enacted to achieve racial segregation across southern U.S. states, and the widespread use of lynching and other forms of racial violence against Black Americans. Since the formal end to Jim Crow, the United States has continued to subjugate Black Americans through mass incarceration, the use of lethal violence by police, and their continued economic subordination to white Americans.



THE REPORT OUTLINES A STRUCTURAL APPROACH TO REPARATIONS FOR SLAVERY AND COLONIALISM

Some former colonial powers seek to “focus on the present, including through development aid and national reforms,” rather than issue formal apologies or remedy historic injustices (A/74/321, para. 53). However, as the Special Rapporteur notes, “such initiatives cannot do the necessary work of repairing structures of racial inequality and discrimination rooted in historic injustice,” particularly when they are offered in an “ahistorical and uncontextualized” manner (para. 54).

Instead, the report argues for a structural approach to providing reparations for slavery and colonialism, which requires States to “pursue a just and equitable international order as an urgent dimension of reparations for slavery and colonialism” (para. 9). As the report outlines, reparations do not just implicate individual wrongful acts but also “entire legal, economic, social and political structures that enabled slavery and colonialism, and which continue to sustain racial discrimination and inequality today” (para. 8). Reparations “entail moral, economic, political and legal responsibilities” (para. 9).

Further, the Special Rapporteur notes the interconnection of the right to self-determination and the obligation to provide reparations for racial injustice. In the Declaration on the Establishment of a New International Economic Order (1974), the United Nations “recognized that the right to self-determination, and to social progress more generally, requires States to eliminate colonialism, slavery and all its consequences” (A/74/321, para. 26). Because “the yoke of those historical violations continues to impede the enjoyment of human rights, States must treat the pursuit of a just and equitable international order as an urgent dimension of reparations for slavery and colonialism” (Id.).

Similarly, the Expert Mechanism on the Rights of Indigenous Peoples has stated that “recognition of the right of indigenous peoples to self-determination (including free, prior and informed consent), their rights to autonomy and political participation, their claims to their lands and the recognition of indigenous juridical systems and customary laws should be considered an essential part of recognition, reparation and reconciliation” (A/74/321, para. 27; A/HRC/EMRIP/2019/3/Rev.1, para. 73)

THE DOCTRINES OF INTERNATIONAL LAW THAT IMPEDE REPARATIONS FOR SLAVERY AND COLONIALISM – INCLUDING THE INTERTEMPORAL PRINCIPLE – NEED TO BE “DECOLONIZED”

The report describes how a “[c]onventional analysis of international law, including by former colonial nations, identifies a number of legal hurdles to the pursuit of claims for reparations for slavery and colonialism” (A/74/321, para. 48). This includes the intertemporal principle in international law, which “stresses that a State is responsible for violations of international law only if, at the time of the violation or its continuing effects, the State was bound by the legal provisions it transgressed” (Id.).

Many former colonial powers, which have been resistant to claims for reparations, have relied on the intertemporal principle to deny their legal obligation to provide reparations for slavery and colonialism, which were legally permitted when they occurred. For example, although Germany has acknowledged its “historical” and “moral” obligations for its genocide against the Ovaherero and Nama peoples of Namibia, the State argues that the intertemporal principle prevents any legal responsibility to provide reparations to these groups (Id.). This line of reasoning exemplifies how international legal doctrine, including the intertemporal principle, “has had a longer history of justifying and enabling colonial domination than it does of guaranteeing equal rights to all human beings” (para. 10). By continuing to rely on the intertemporal principle as a bar to reparations for slavery and colonialism, States are “insisting on the application of neocolonial law” (para. 50).

Further, as the Special Rapporteur notes, the intertemporal principle is not a complete bar to reparations for slavery and colonialism. First, “racial discrimination rooted in or caused by colonialism and slavery that occurred after each had been outlawed cannot be subject to the intertemporal bar” (para. 49). Second, “the intertemporal principle does not apply to present-day racially discriminatory effects of slavery and colonialism, which States are obligated to remediate, including through reparations” (Id.).

In addition to the intertemporal principle, the report outlines other hurdles to the legal determination of reparations, including the issue of assigning individual responsibility and identifying victims and their descendants. There have been some reparations schemes that have overcome these barriers and, as the Special Rapporteur notes, “with the requisite political will and moral courage, much more could be done through legal and political channels to pursue meaningful reparations for colonialism and slavery” (para. 51).

THE SPECIAL RAPPORTEUR’S RECOMMENDATIONS WITH RESPECT TO REPARATIONS FOR SLAVERY AND COLONIALISM

- States must ensure momentum in the implementation of the commitments in the Durban Declaration and Programme of Action, which “remain a profound milestone in articulating the harms of colonialism and slavery, both historically and in the present, with an important emphasis on the structural reforms of racism and racial discrimination that to this day require urgent attention.”
- States should fully implement their obligations under international human rights law to provide reparations for racial discrimination, including by ratifying and fully implementing ICERD. The Special Rapporteur notes that ICERD “provides a solid blueprint for dismantling racially discriminatory structures, including those rooted in historical racial injustices.”
- States should adopt “a structural and comprehensive approach to reparations” that “accounts for not only historical individual and group wrongs, but also the persisting structures of racial inequality, discrimination and subordination that have slavery and colonialism as their root causes,” and which recognizes how racial discrimination intersects with gender, class, disability status and other grounds of marginalization. Victims and survivors must be at the center of reparations processes.
- States should engage in law reform to “decolonize” the laws applicable to reparations for slavery and colonialism.
- States must “take urgent steps to ensure representative and accurate accounts of slavery, colonialism and their contemporary legacies, including in their education systems.”

See a full list of recommendations: A/74/321, paras. 55–63

