



**African Court
Coalition**

AFRICAN COURT COALITION STAKEHOLDERS' PLATFORM ON THE MARGINS OF THE 76TH ORDINARY SESSION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
30 JANUARY - 3 FEBRUARY 2025
PAPU TOWER, ARUSHA TANZANIA

DAY 3:

SESSION 7:

Discussions on the AU 2025 Theme on Reparative Justice; "Justice for Africans and People of African Descent Through Reparations" AND the 2025 African Court theme "Advancing Justice through Reparations"

PANELISTS:



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SESSION 7:

DISCUSSIONS ON THE AU 2025 THEME ON REPARATIVE JUSTICE; "JUSTICE FOR AFRICANS AND PEOPLE OF AFRICAN DESCENT THROUGH REPARATIONS" AND THE 2025 AFRICAN COURT THEME "ADVANCING JUSTICE THROUGH REPARATIONS"

Keynote Address:

Brian Kagoro, Managing Director of Programs, Open Society Foundations - OSF

Panellists:

- Waikwa Wanyoike, Director, Strategic Litigation and Learning, Open Society Justice Initiative - OSJI
- Dr. Rudo Sithole, Founding/Executive Director, African Museums and Heritage Restitutions-AFRIMUHERE
- Gretchen Rohr, Legal Counsel, Open Society Justice Initiative - OSJI
- William Carew, Head of Secretariat, African Union Economic, Social and Cultural Council -AU-ECOSOCC
- Henrietta M. Ekefre, Legal Advisor -Africa Reparations Program, Africa Judges and Jurists Forum - AJJF

Panel Chair:

Don Deya, Pan-African Lawyers Union - PALU

This session fully explored ideas on how to advance and shape the conversation on reparative justice in conformity with the AU 2025 theme of the year; "Justice for Africans and People of African Descent through Reparations". Consequently, the Session outcome included creative ideas and recommendations on stakeholders' engagements from the legal and jurisprudential perspective for a broader reparations discourse.

The panel introduced the session by providing a critical timeline tracing international discussions and meetings around the question of reparations:

- December 1990 – First World Conference on Reparations was held at the Nigerian Institute of International Affairs;
- June 1991 at the 27th AU Assembly of Heads of State and Government and the 55th Council of Ministers – Reparations Resolution was adopted;
- June 1992 at the 28th Summit of Heads of States and Governments – appointed Group of Eminent Persons in Reparations;
- 1993 – First Pan-African Conference on Reparations – Abuja, Nigeria;
- 1993 – there was an attempt to come up with an Africa Reparations Act;
- 1994 – Pan-African Congress in Kampala Uganda the seventh African Congress – there are resolutions on reparations;
- 1999 in Accra a Declaration on Reparations was adopted;
- 2001 – Durban Racism Conference where there was a resolution and attempt reparations;
- 2008 – Civil Society gathered in Accra and adopted a Declaration;
- In 2013 at the AU 50th Anniversary a communique was issued which included the question of Repair;
- In 2022 there was another Accra Declaration on Reparations and Healing;
- In 2023, the Ghanaian Government hosted on behalf of the African Union, the Global Conference on Reparations at which a Declaration was adopted.

Though it appears there are many declarations, there has been little progress, and the problem has in part been, lawyers and Africans appearing to understand "reparations" as a concept of international practice that is confined within a western construct of what is possible at law.

There was a historical understanding that black people were not "actual humans" and thus could not own property but could themselves be bought, sold or owned just like property. The natives were regarded as having no sense of ownership; hence the blacks' land was labelled terra nullius (no man's land). For this reason, there were resolutions to evict blacks as they owned no land, could be raped, arrested and jailed for daring to demand their freedom.

Africans are being repaired for the atrocity of dehumanisation that came up with slave trade; colonisation and apartheid, where blacks were not regarded as people but property.

The legal precedent for reparations is there e.g. in the US. So far it has focused more in monetary compensation as opposed to the full scope of reparations for colonisation, slave trade, apartheid etc.

Compensation is not only about payments but re-establishment of equal humanity for instance in pandemics our people are still being used for experimentation for new medicine.

Also shared in the panel discussions is the issue of looting of cultural artefacts and even human remains of African ancestry taken to the western world. The power imbalance between locals and settlers is a testimony that ancestors fought back against settlers. That intrigue could have caused the settlers to expatriate their remains perhaps as show of victory.

The Kumasi expedition when gold was looted; Madala expedition of 1868; and Benin expedition of 1889 – looted objects about the life of Benin people and the whole city was burnt in the process. There are estimated 200 000 in Germany; 180 000 in Belgium; 70 000 in Paris; and 66 000 in the Netherlands; etc.

Africans have been pursuing reparations of these artefacts. There have been two movements one chasing after reparations and another restitution, but these two have since converged into a singular movement. Its important to interview people and hear their stories of torture; humiliation; expropriation; and non-burial of murdered ancestors.

Prominent African leaders have been vocal about this. In 1973, Mobutu spoke about colonial pillage and advocated for the return of cultural heritage as he addressed the UN General Assembly. In 1999 Nelson Mandela called for the remains of Sarah Baartman, a South African woman whose remains were exported to the west, finally in 2002, her remains were returned to South Africa. In 1982 Robert Mugabe spoke on the return of the soap stones and remains of ancestral leaders whom they continue to deny that they are there, and his successor Emmerson Mnangagwa continues on the call.

Speakers also informed the house that lawyers have a role to play in the reparations discourse. There is no international framework covering reparations as a human rights violation. No framework adjudges colonisation and apartheid as crimes against humanity.

The Herero and Nama case in Namibia is a good example where Germany has proposed payment of USD 1 Billion over time, against government of Namibia's valuation of EUR35 Billion over a shorter time, though victim communities have a grievance that they have not been consulted. The Mau Mau case in Kenya was adjudicated in the UK to the tune of EUR19 Billion. Backlashes by countries with the duty to repair include independence and continuing obligations of new governments. It must be understood that violations took place back then and not under current governments.

More precedents on reparations include;

- Jewish Holocaust Reparations;
- Indigenous Land Restitutions in Canada and Australia;
- US-Japanese to American Internment Reparations;
- Herero/Nama in the US – failed;

As on legal framework, participants were further informed that Article 14 of the UN Principles on the Right to Remedies adopted in 2005 remains one of the most advanced legal frameworks when dealing with such issues, as other frameworks are inherently restrictive. By and large the legal framework is so inadequate to hold foreign government accountable. At the end of the day, African governments need to be at the forefront of this agenda due to the inherent limitations of the law.

The legal framework should answer questions such as the following:

- Who is the violator? Or were these violations succeeded by the independence governments?
- Who is the victim?
- What is the nature of the harm? Is it backward or forward looking?
- Which law is applicable? Tort law or similar?
- How do we deal with statutes of limitations?
- What is the jurisdiction of the chosen forum?

The Barbados Ten Point Agenda Plan on Reparations Plan could be a starting point and summarised as follows:

- Seeking a formal apology;
- Development Programmes;
- Funding for reparations to Africa;
- Establishment of cultural institutions;
- Return of cultural heritage;
- Assisting in remedying public health crisis;
- Enhancement and development of cultural knowledge and exchanges;
- Psychological rehabilitation as a result of transmission of trauma;
- Right to development through the use of technology;
- Debt cancellation

The house was further apprised that in the aftermath of the Accra Global Conference in 2023, the AU has indicated its intentions to draw a common position on reparations and a raft of institutions such as the African Committee of Experts on Reparations, which body shall define “reparations” from an African perspective. However, the movement cannot wait for this as this may take a while.

Speakers stressed on the need to decolonise the mind; educational systems; the legal frameworks; curriculum etc. Decolonisation is a condition precedent to the reparations agenda. This should be done in schools and more so in legal education across the African continent. There is need for a hard law on this subject to support this agenda.

Participants were also informed that any reparations regime or movement should be victim-centred and tangible. It should be about the victim and nothing else. The reparations ought to suit the circumstances of victims, thus forms of reparations such as apology and acknowledgment should be part of this. This is key as it is part of the right to be heard.

Proposals:

- Focus on return of cultural artefacts;
- Study compensation for various injustices to make solid cases;
- Consider climate change effects in Africa and include it in the reparations discourse because of environmental damage by the global north countries;
- Develop a policy framework outlining reparations scope, eligibility criteria and funding mechanisms where relevant.
- Institution-building – establish an institute to oversee reparations implementation including managing claims and distributing any compensation;
- Community engagement – no compensation but debt cancellation; educational programmes; economic development; infrastructure; cultural restitution etc.
- Reparation regime with all tentacles of reparations.
- Adopt a reparations strategy that is victim-centred and tangible.
- Adopt a strategy that is both back and forward looking in terms of reparations.



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