

## Reparation and Restitution Justice for Colonial Crimes

By Chief Charles A. Taku

### **Abstract.**

I make no illusion about my status as an intergenerational victim of gross violations of international human rights law and serious violations of international humanitarian law during the German invasion of Africa. A German expeditionary force invaded my ancestral homeland, Bangwa, West Africa, in 1899. The German expeditionary campaign lasted about nine years.

Resistance to the German invasion was led by my great grandfather Fontem Asonganyi King of the Bangwa (ca. 1870-1951). During the expeditionary campaign, the Bangwa were subjected to well documented grave atrocity crimes. These violations occurred at a time when twenty-six states in Europe were establishing the Hague Conventions (1899 and 1907) for the limitation of the sufferings of war and provided protections for all *“moveable or immovable property of great importance to the cultural heritage of every people irrespective of origin”*.<sup>1</sup> The First Hague Conference (18 May and 29 May 1899) established a new foundation for international law.

Pursuant to the Hague Conventions and the Hague principles, the Bangwa cultural heritage was entitled to protections provided to *“cultural heritage of every people irrespective of origin”*. This did not occur. For these colonial powers, Africa was not a subject of international law and victims of gross colonial violations and serious crimes were not entitled to protections under international law and national jurisdictions of colonial powers.

Colonial crimes and the controlling neo-colonial world order are interlinked by an umbilical cord of exploitation, prejudice and injustice. Colonial criminal arrogance, impunity and systemic policy and culture of colonial prejudice, precluded African victims who were characterised as colonial possessions and conquered colonial

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<sup>1</sup> The protection was reemphasised in the Hague Convention 1954 and the Washington Pact of 1935.

peoples from equal protections under international law. International violations and crimes against colonised people were legitimised, encouraged, enabled and celebrated as blessings of Western civilisation.

The prejudice and harm caused by these violations have an enduring, continuing and intergenerational effect on victims. Requests by victims and their succeeding generations for reparations have not seared into the conscience of humanity. The controlling neo-colonial world order has evinced no meaningful effort to acknowledge responsibility for colonial crimes; apologies and a commitment of non-repetition. These would have constituted reasonable first steps toward reparation.

European institutions of perpetual dominance, superiority and prejudice were established on a foundation of gross human rights violations and serious international crimes. Neo-colonial states in Africa were established on this foundation. National jurisdictions in these countries were not empowered to provide effective reparations, restitution, repatriation and restorative justice for victims and affected communities.

In attempts to override the interest and rights of victims and affected communities, colonial powers are demonstrating preferences to negotiate reparations, restitution and repatriation claims with neo-colonial states in Africa. This is inconsistent with principles of reparation which are well founded in international law;<sup>2</sup> and the jurisprudence of the International Criminal Court in the Thomas Lubanga Appeal Judgment which established the principles of reparation principles in international criminal law.<sup>3</sup>

The ghost of colonialism has hampered effective individual and collective measures for securing reparation for colonial crimes and the repatriation of stolen or looted cultural objects and treasures. Africa does not have robust national and/or continental legal frameworks for reparation, restitution, repatriation, and restorative justice for colonial crimes. Available national legal frameworks are foster children of colonial

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<sup>2</sup> 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, 2005 attached to the UNGA Resolution 60/147 of 16 December 2005

<sup>3</sup> PROSECUTOR v. THOMAS LUBANGA DYILO, on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2 No. ICC-01/04-01/06 A A 2 A 3 Date: 3 March 2015 para.57-76

systems which conceived, legitimized, and benefited from colonialism. Profound reforms of the inherited colonial legal orders are required for effective reparations, restitution and repatriation justice for victims and affected communities. Without reparation, restitution, repatriation and restoration justice for victims, African countries cannot be said to have attained complete or meaningful independence.

This paper demonstrates the enduring nature of gross international human rights violations and serious violations of international humanitarian law which victims and affected communities endured and suffered. The paper has established a factual, legal and historical basis for reparation and restitution, and proposes a complementarity multi-pronged approach for successful outcomes.

## **A. Introduction**

It is an established historical fact that the partition of Africa in 1884 was an international criminal act. Independent African Kingdoms, nations, ethnicities, and families were dismembered and torn apart. It altered the identity of victims and unsettled the soul of Africa, its humanity, its civilisation, its spirituality, its creative ingenuity, science and technology, culture and history.

The partition opened the floodgates of international crimes which paradoxically occurred during the establishment of a multilateral treaty framework to limit the occurrence of atrocity crimes during armed conflicts in Europe and some Western states. A groundwork for a new system of international law was laid at the First Hague Conference between 18 May and 29 May 1899. The objective of the 26 participating countries was to limit the suffering of war.

During this period, the intensity and ferocity of Western wars of conquest, aggressive expeditionary campaigns and looting of African treasures and artefacts went unabated. The devastation caused by the German expeditionary campaign against the Bangwa from 1899 was horrifying. The Bangwa suffered collective punishment, abductions, massacres, human trafficking, looting of artefacts, desecration of revered shrines and places of worship, interdiction and destruction of spiritual beliefs, constituting war crimes and crimes against humanity.

## **B. Africa's cultural Heritage**

Wilfred Cartey and Martin Kilson stated that, *"To validate one's heritage, to explore one's culture, to examine thoroughly those institutions which have persisted through centuries, is perhaps the first step in a peoples' search for independence and in their quest for freedom from foreign domination"*<sup>4</sup>.

A first step towards reclaiming looted and stolen Africa's cultural heritage is to carry out robust enquiries about ownership and significance of looted cultural objects and colonial wrongs victims suffered during colonial rule.

Victims' accounts of gross violations and serious crimes constitute the basis for effective remedies. The colonial historical record is the prevailing narrative which was established by perpetrators of the atrocity crimes for which reparation, restitution and repatriation are sought. This historical record recognises the African origin of Africa's looted or stolen cultural objects.

The colonial value system projected stolen or looted cultural objects as booties of war, prizes of conquest which they characterised as colonial artefacts. These African cultural objects are identified by descriptive appellations linking them to their communities of origin from which they were stolen or looted. The name Bangwa Queen and Bangwa King were descriptive appellations which were given to two of the most revered stolen Bangwa cultural objects in colonial possession. .

## **C. Conscience of black civilisation**

A leading researcher and lawyer, Evelien Campfens, stated that cultural objects have a special, protected status because of their intangible "heritage" value to people, as symbols of identity.<sup>5</sup> Africa's cultural heritage is the conscience of black civilisation. The Desecration, looting and stealing these symbols of African identity and portraying them as prizes of conquest was a distinctive hallmark of colonial criminal agenda.

A foremost African nationalist Dr Nnamdi Azikiwe (Zik of Africa) delivered an address at the Plenary Session of the British Peace Congress in 1949 at Oxford University in

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<sup>4</sup> Cartey, Wilfred; Kilson, Martin (1970): *Introduction*, in: Cartey, Wilfred; Kilson, Martin (Eds): *The African Reader: Independent Africa*, New York 1970, p 3.

<sup>5</sup> Evelien Campfens, *Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Claims* Netherlands International Law Review (2020) 67:257–295 <https://doi.org/10.1007/s40802-020-00174-3> p.258

which he denounced imperialism as a crime against humanity because it destroys human dignity and is a constant cause of wars. The harm and prejudice caused by imperialism was aggravated by colonialism.

Colonialism dispossessed Africa of its spiritualism and relationship with God. It has distorted and blurred the divine image of God in Africans from generations to generations. Colonialism robbed Africa of its soul and defiled the biblical truth that “*God created man in his own image, in the image of God he created him, male and female*”.<sup>6</sup> Colonialism blighted the essence of life in Africa; and imposed confused existential ethos which are lacking in authenticity and sound spiritual content,

Land rights in many African communities, particularly, ancestral land rights were lost and have never been recovered. Ancestral land owners became indentured workforce on their own lands for colonial and neo-colonial expropriators. Local remedies for the recovery of colonial and neo-colonial lands by authentic owners are grossly inadequate or unavailable.

The projection of looted or stolen African cultural objects in Western Museums in humiliating colonial identity constructs of shame and guilt as booties of conquest and subjugation paints Africa as supposedly independent but not free. Indeed, with its cultural heritage in captivity, the decolonisation of Africa is incomplete. The imposed colonial identity status of Africa is a blight on the conscience of black civilisation.

#### **D. Challenges**

Claims for reparations, restitution, repatriation and restoration face significant challenges from individuals, institutions and countries which are holding looted/stolen cultural objects and also from intervening neo-colonial states in Africa. Colonial state holders are prioritizing cooperation with neo-colonial states over well-founded requests for reparations, restitution and repatriation by victims and affected communities where the violations occurred.

States, individuals, religious and commercial organisations bearing the greatest responsibility for atrocity crimes and gross violations against victims are reluctant to acknowledge responsibility, offer apologies, pay reparations and repatriate stolen

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<sup>6</sup> Genesis 1: 27

cultural objects in their possession to victims and affected communities. Efficient and effective national and international legal frameworks are required to deliver justice to victims and affected communities.

A coalition of justice seekers is required to create awareness and mobilise victims to seek reparation, restitution and repatriation justice. The coalition will effectively lobby national and international frameworks for enforceable national and international legal mechanisms for reparations, restitution and repatriation claims,

### **E. Surmounting challenges**

Looted or stolen artefacts are intrinsically linked to the essence of life in affected communities. Looting and stealing the artefacts constituted an existential threat to victims and their succeeding generations.

In order to surmount challenges to reparations, restitution and repatriation requests from victims and affected communities, a factual historical record of gross violations and serious crimes must be established from the perspective of victims. A search for looted or stolen cultural objects must be carried out and their significance, identity and spiritual value explained and established. The criminal origin of the cultural objects in Western Museums must be firmly proved and established.

- **The Role of The State**

The role of states of origin of looted and stolen cultural objects and victims of serious crimes and gross violations must be clearly defined. There are current trends toward conflating the role of states and that of victims and affected communities which suffered reparable harm.

A critical factor which is required for reparation and restitution justice is proof of the harm suffered and the prejudice caused. Restitution and reparation litigation is victim-based. Only victims of gross violations and serious crimes can establish proof of harm and prejudice which require effective remedies.

States which have attempted to supplant the interest of victims and affected communities in reparations, restitution and repatriation claims, seldom demonstrated sufficient victims' interests to justify their interventions. Such interventions are informed by political or pecuniary interests which aimed at permanently depriving

victims and affected communities of effective remedies for the harm and prejudice they suffered.

Many African states possess colonial records of colonial atrocity crimes and egregious human rights violations. Archives in which these records are kept are not easily assessable to victims and affected communities. Victims and affected communities have had to resort to litigation to have access the archives and the records. This has led to insufficient research on colonial crimes from the perspective of victims and affected communities. The colonial narrative is an incomplete forensic record to support requests for effective remedies of reparations, restitution and repatriation. .

In the case of the Bangwa, most of the cultural objects in colonial possessions are described as LEFEM objects. The colonial record does not explain the meaning and importance of LEFEM. It does not explain the significance of LEFEM in the spiritual lives, system of governance and civilisation of the Bangwa. LEFEM is the most revered spiritual centre of Bangwa spirituality and governance which regulates the lives of the Bangwa from time immemorial.

The colonial record does not explain that LEFEM was the focus and theatre of its armed operations and that most of the cultural objects in colonial possessions were stolen or looted from LEFEM. Many of the cultural spirit objects were connected to the Bangwa war capability. Many of the artefacts in the Municipal Museum in Braunschweig, Germany fall within this category. Isabella Bozsa, a provenance researcher at the Municipal Museum in Braunschweig carried out an enquiry to “reanimate” the relationship of the looted Bangwa cultural objects in the Museum collections and which knowledge and meanings we attribute to them<sup>7</sup>.

There is a state legal responsibility to assist victims and affected communities to gather evidence of colonial violations and crimes to support their requests for effective remedies. This is both a treaty obligation, an obligation under international

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<sup>7</sup> [retour.hypotheses.org > 1641](https://retour.hypotheses.org/1641) [Bangwa collection from colonial context revisited. Museum ...](#)

Sep 8, 2021

customary law and an obligation under the constitutions of several African countries<sup>8</sup>.

## F. Legality of Colonial Claims

Evelien Campfens highlighted the *tension between cultural objects as heritage – symbolic identity –and cultural objects as possessions-representing economic interests and exclusive rights and that they also illustrate an incentive for trade in looted artefacts-resulting in the destruction and of cultural heritage and a cause for legal insecurity in the art world.*<sup>9</sup>

The legitimacy and legality of claims of ownership of looted artefacts characterised as German colonial artefacts was eviscerated by Articles 119 and 22 of The Versailles Treaty (28 June 1919) which was signed after the First World War.<sup>10</sup> The Versailles treaty renounced the sovereignty of Germany over her former colonies and placed

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<sup>8</sup> International Human Rights Treaty Obligation, First Generational Rights

International Covenant on Civil and Political Rights (1966)

Article 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Each State Party to the present Covenant undertakes:

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 19: (Access to information).

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 27 In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language

Many constitutions in Africa contain provisions on enforceable rights of access to justice and right of information on matters affecting their interests and their lives.

<sup>9</sup> Evelien Campfens Ibid p.260

<sup>10</sup> The Treaty of Versailles, <https://www.nationalarchives.gov.uk/education/greatwar/g5/cs2/>, accessed 2 January 2023.



them the under League of Nations Mandate. The Versailles treaty-imposed sanctions and reparations on Germany.<sup>11</sup> The mandated territories of British Cameroon, French Cameroon, Tanganyika, Urundi, Rwanda, Southwest Africa, Togoland became trust territories under the United Nations after the Second World War<sup>12</sup>.

Following from this, gross violations and serious crimes which were committed against victims in the affected territories acquired the character of international crimes. Claims of ownership of looted artefacts in German possession under the pretext that they are colonial artefacts are untenable and of no legal effect.

### **G. Reparations, restitution and restoration**

Margaret Moore argued that, *“the discussion of reparations is related to the question of what precisely is the wrong of colonialism. The relationship between justice and colonialism may seem straightforward: almost everyone nowadays agrees that colonialism as a system was deeply unjust. But this conceals widespread disagreement over the very nature of colonialism, as well as over the features that make it unjust”*.<sup>13</sup>

There is a general agreement that colonialism is not only unjust, but is criminal.

There is a body of international human rights law and United Nations General Assembly Resolutions which have crystalized as customary law on the criminal nature of colonialism and colonial crimes and violations. The prevailing situation of international law prescribes reparations, restitution and repatriation as effective remedies for the harm suffered.

On December 18, 1973, the United Nations General Assembly passed Resolution 3187, for the return of cultural objects to “countries victims of expropriation”<sup>14</sup>

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<sup>11</sup> Former German territories which were forfeited and became League of Nations Mandated territories were Togo, Kamerun, South West Africa, German East Africa ( Tanganyika, Rwanda and Burundi)

<sup>12</sup> Chapters XII and XIII; Article 76(b) of the UN Charter states that the objective of the UN is to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

<sup>13</sup> Moore, Margaret (2016): Justice and Colonialism’ Margaret Moore\* Queen’s University Philosophy Compass Vol 11, No 8 , p. 447–461.

<sup>14</sup>UNGA Res.1514 (XV) of December 14<sup>th</sup> 1960 (Declaration on the granting of independence to colonial countries and peoples) on the need to promptly and unconditionally end colonialism in all its forms and manifestations; UNGA Res. 2106 (XX) (International Convention on the Elimination of All Forms of Racial Discrimination), condemned colonialism and all

A Sub-Commission of the United Nations Human Rights Council (Human Rights Advisory Committee) passed resolution 2002/5 of August 12, 2002, on violations of human rights which arose during the period of slavery, colonialism and wars of conquest.<sup>15</sup>

The United Nations General Assembly at its 44<sup>th</sup> plenary meetings adopted a resolution on the return or restitution of cultural heritage to countries of origin.<sup>16</sup>

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, 2005 attached to the UNGA Resolution 60/147 of 16 December 2005 provides a framework of guidance to seek remedy for reparations which specifically addresses access to justice (Article 12), Statute of limitations (Article 6) Restitution (Article 19), Satisfaction (Article 22).

The Basic Principles and Guidelines in its preamble referenced applicable international human rights law and international humanitarian law regimes.

**Article 6** states that where so provided for in applicable treaty or contained in other international legal obligations, *statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.*

**Article 7.** Domestic statutes of limitations for other types of violations that do not constitute under international law, including those time limitations applicable to civil claims and other procedures, *should not be unduly restrictive.*

**Article 12.** A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include *access to administrative and other bodies, as well as mechanisms modalities and proceedings conducted in accordance with domestic law.* Obligations

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segregationist and discriminatory practices –whatever form and where they exist; UNGA Res. 55/146 (Second International decade for the eradication of colonialism -2001-2010; UNGA Res.65/119 (Third Decade for the Eradication of colonialism-2011-20; [Restitution of works of art to countries victims of ...](#)Details. Symbol A/RES/3187 (XXVIII) Title Restitution of works of art to countries victims of appropriation. Access English: A\_RES\_3187 (XXVIII)-EN

<sup>15</sup> [www.colonialismreparation.org](http://www.colonialismreparation.org) › en › condemnation

<sup>16</sup> [UN. General Assembly \(76th sess.: 2021-2022\)](#)

arising under international law to secure access to justice and fair and impartial proceedings shall be reflected in domestic law.

The international framework plays a complementarity role to national jurisdictions.

Human rights restitution and reparations may be tenuous, expensive and time consuming. Most international human rights multilateral treaties require an exhaustion of local remedies as a procedural requirement for the admissibility of claims before them. The local remedies must be shown to exist and are effective.

Alternatively, admissibility may be established upon a showing that local remedies are not available or may be available but could not be accessed with reasonable diligence or are available but have no reasonable prospects of success.<sup>17</sup>

#### **H. Legality of Reparation and Restitution Claims.**

Cultural Property during armed conflict is protected under the conventions of The Hague (1899). At the time the German invasion and expeditionary campaign against the Bangwa from 1899, Bangwa cultural objects were entitled to protections under the Hague Conventions (1899). The Hague Convention on Cultural Property 1954 extended these protections to all *Moveable or immovable property of great importance to the cultural heritage of every people irrespective of origin, established in the conventions of the Hague of 1899 and 1907 and the Washington Pact of 1935. The non-discriminatory proviso, “immovable cultural property irrespective of origin”* of the Hague Convention 1899 was entitled to protect Bangwa cultural objects which were, plundered, stolen and /or looted during armed attacks in which the following egregious international human rights violations and violations of international humanitarian law occurred:

- Schutztruppe Commander Lt. von Pavell reported the *“capture of some prisoners and much booty”*.
- On April 24th, 1901, Lt. Strümpell secured the military *“in order to bring the Bangwa to order”*.

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<sup>17</sup> Mukong v Cameroon (UNHRC) Communication CCPR/C/51/D/458/1991 para.8.2, Engo v Cameroon, Communication 1397/2005 22 July, 2009 paras 6.3, 6.4

- On April 4<sup>th</sup>, 1903, the German military again assembled some twenty-three chiefs in Fontemdorf “*who had admitted defeat and paid most of the war damages*”.
- Lt. Rausch arrived with German soldiers and “*exact(ed) war damages in labour, guns and ivory and to ensure the maintenance of the routes opened by the expedition*”.
- On May 30, 1903, the German charged the King, Fontem Asonganyi for depriving Gustav Conrad of his freedom which pushed him to commit suicide, tough resistance to German expedition and refusing to surrender and to sue for peace.
- The King was deposed and exiled to Garoua far from the royal family, the throne and his people.
- With the King gone, the Germans imposed a harsh regime of collective punishment, forced labour, enforced disappearances, human trafficking, desecration of LEFEM, elaborate looting and stealing, mass torching of civilian settlements, massacres and mass enslavement.
- A century and two decades, I became the first great grandson of Fontem Asonganyi to be gain access to his ceremonial staff, his symbols of authority and power and several looted cultural objects of spiritual value in the Municipal Museum of Braunschweig, Cologne and the National Ethnological Museum in Berlin.

## **I. Legal Basis for Reparations and Restitution.**

Requests by affected communities, descendants and intergenerational victims of crimes and human rights violations for reparations and the restitution of stolen treasures and cultural objects are well founded in international law.

Pursuant to the treaty of Versailles (27 June 1919), Germany paid reparations for the harm and multiple violations which it caused during the First World War. The Permanent Court of International Justice which was established by the League of Nations decided in the Chorzow Factory Case that “*it is a principle of*

*international law that the breach of an engagement involves an obligation to make reparations in an adequate form.”<sup>18</sup>*

Germany breached its treaty obligations under the conventions for the protection of cultural property during armed conflict under the Hague Convention 1899 on the Protection of Cultural property, the 1954 Convention and the Additional Protocol 1954, by failing to protect the Bangwa cultural property during its invasion and armed attacks against the Bangwa. The Bangwa are entitled to reparations in an equal form and restitution of looted and stolen cultural objects.

The German framework Principles for dealing with collections from colonial contexts established by Germany dated 13 March 2019 has not been realised. Rather, some holders are inappropriately asserting ownership of the cultural objects and are refusing dialogue in good faith for restitution and reparations, while access to Justice is hampered, limited or denied.

The German framework promised to *“create conditions for the return of human remains and of cultural objects from colonial contexts which were appropriated in a way which is no longer legally and/or ethically justifiable.... with the requisite urgency and sensitivity. Through the violent appropriation of cultural objects in the wake of European colonialism, many societies were robbed of cultural objects which are crucial in defining their history and their cultural identity. Cultural objects embody connections which are of fundamental importance for the cultural self-image of the society from which they come”*.<sup>19</sup>

German policy and similar sentiments which have been expressed by some former European colonial states, have not led to effective reparation, restitution and repatriation justice to victims and communities which suffered from colonial crimes.

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<sup>18</sup> Chorzow Factory Case (Merits) Judgment 13 September 1928 PCIJ (Permanent Court of International Justice) PCIJ Series A. No 17

<sup>19</sup> Framework Principles for dealing with collections from colonial contexts agreed by the Federal Government Commissioner for Culture and the Media, the Federal Foreign Office Minister of State for International Cultural Policy, the Cultural Affairs Ministers of the Länder and the municipal umbrella organisations 13 March 2019.

## **J. The New World Order and Discriminatory International Justice**

The following pledge in the United Nations Charter to promote, protect and enforce human rights on a non-discriminatory basis, has come into sharp scrutiny in the face of the selective application of this objective to victims of gross colonial violations of international human rights law and serious violations of international humanitarian law.

Promotion, protection and enforcement of human rights without discrimination are a central objective of the United Nation in the UN Charter which pledged to “*reaffirm faith in fundamental human rights, in the dignity and worth of the human person and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”,

Article 1(2) of the Charter pledge to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 55 pledged to promoted (1) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (2) universal respect for, and observance of human rights *and fundamental freedoms* for all without distinction as to race, sex, language, or religion.

The non-discriminatory application of international human rights in the UN Charter and succeeding treaties, was not invoked and/or relied on to provide effective remedies to gross colonial violations and atrocity crimes against Africa. Rather, the Post World War II international system embraced these international violations and atrocity crimes and benefited from them.

Neo-colonial states in Africa are tied to the apron strings of colonialism. This makes the supposed independence of Africa an empty shell. Africa is not truly independent without the payment of reparations for colonial violations, restitution and repatriation of stolen African treasures and cultural objects. The case for reparations, restitution and repatriation is a case for the complete decolonisation of Africa.

Post WWII international legal order declared colonisation a crime against humanity and resolved that reparations should be paid for colonial crimes and violations. The International pledge for the return of stolen symbols of African cultural identity, creative ingenuity, civilisation and spirituality has increased.

These efforts have not significantly materialised despite the existence of an elaborate international human rights law regime for effective redress of these violations and crimes.

#### **K. Unfairness of the New World Order.**

The discriminatory international response to requests for reparations, restitution and repatriation elicited a strong response from the African Bar Association in March 1991. On March 18-22, 1991, Chief MKO Abiola (August 24, 1937, July 7, 1998) launched the campaign for reparations and restitution from the platform of the Africa Bar Association in Abuja Nigeria. I was in attendance.

In his keynote address titled "Social Justice and the New World Order" Chief Abiola exposed the unbalanced scales of reparation justice by the West. Chief Abiola submitted: "If we accept – and men and women of good will must – that Iraq should be punished and made to pay reparations for plundering Kuwait for six months, how can it be honestly said that Africa should not be compensated after being plundered for six centuries? If we cannot express concretely this expanded idea of equality before the law of individuals as well as of states, nations and continents, I regret to say it, but it must be said, that the law is an ass".

"Kindly tell what Iraq did to Kuwait which the United Kingdom, France, Spain, Portugal, Germany, Belgium, Italy and Holland did not do to Nigeria, Ghana, Zimbabwe, Namibia, Angola and every other African country except Liberia, which was used as a dumping ground for free slaves from the US? The Iraqis committed terrible crimes against the Kuwait people during six months of brutal occupation. Tell us a single thing that Iraq did to Kuwait that our colonial masters did not do to us for six centuries and still continue to do. Palaces were destroyed and looted in Kuwait. So were they in Benin, Sokoto, Ndebeleland, Timbuktu, Agadez and thousands of other African cities."

Justice and conscience, Chief Abiola forcefully submitted, demands that just as America and their allies were fighting to rebuild the palaces and cities of Kuwait, we,

too, demand that our cities and palaces be rebuilt. If Iraq were punished further for not returning treasures it stole from Kuwait, we, too, deserve an immediate “return of our own plundered treasures now on display in the magnificent museums of Europe and America.”

“Of far greater importance is the plunder of human treasures, the millions of young men and women in the full bloom of youth, plucked like fresh fruits from the soil of our motherland. We, as a people and a continent, have a right to be compensated for the far greater crimes of slavery, colonialism and neo-colonialism which lasted for centuries and cost hundreds of millions of lives. Many of the problems afflicting Africa today are products of damages done by slavery and colonialism. Without reparations these problems cannot be solved. In view of the excruciating debt burden imposed on the continent, time has come for us to seek for the economic kingdom since political kingdom advocated by Kwame Nkrumah had been attained.”

This address was made at the threshold of the First Iraq War (January 16, 1991- February 28, 1991). On September 23, 2021, the US reported that it was repatriating 17,000 Iraqi artefacts which were stolen and taken to the USA during the war from 2001-2003. African artefacts have not been repatriated and reparations for colonial wrongs have not been paid.

## **I. Conclusion**

The resurgence of systemic racism, prejudice, wars of conquest and existential threats to humanity have arisen as a consequence of the tacit embrace and validation of colonialism, atrocity crimes and gross violations of international human rights law by the international community. The indifference of national and international jurisdictions in granting effective remedies on reparation, restitution and repatriation requests by victims and affected communities have encouraged and energised the forces of prejudice, colonialism and racism.

Colonial crimes and gross violations are crimes against humanity and are non-prescriptive. By not providing effective reparation, restitution and repatriation remedies to victims and affected communities, the world may be missing redemptive importunities from which to reset a new world legal compass of justice, freedom and peace.



Post WWII legal order which provided a fig leaf of legitimacy on colonialism, colonial violations and crimes was manifestly unjust. It was founded on injustice, racism and discrimination against victims of crimes which were committed by supposed gatekeepers of international legality.

For victims of colonial crimes, uncoordinated actions and prolonged periods of waiting for the international rule of law to redeem universal measures which were established in 1899 (The Hague Conventions) and 1945 (United Nations), have not led to effective remedies.

Rather, the unattended effect of the harm is continuing with grave intergenerational consequences. The pledge by the African Bar Association to confront colonial crimes and the rallying cry for justice which was made by Chief MKO Abiola on the platform of the African Bar Association in Sheraton Hotel Abuja during its bi-annual conference which took place from 18-22 March, 1991 must hence resonate from all nooks and corners of the world until justice is done to victims and affected communities.

A multi-pronged approach will bring realisable results. As a strong coalition of justice seekers, we can engage continental action at the African Union, sub-regional organisations, international networks of support and national jurisdictions to slay the beast of impunity and indifference which has inflicted so much harm on the conscience of our collective humanity.

Reparations, Restitution, Repatriation Justice to Victims of Colonial Violations and Crimes Now, must be our rallying cry and that of humanity as well.

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**Bangwa LEFEM cultural object in the Cologne Municipal Museum**