

SUMMARY PARALLEL REPORT TO CERD

Redeeming colonial injustices is not a mere question of political negotiation leverage nor a mere question of morality.

The colonial crimes of expansion, extraction and exclusion require a constitutional and human rights-based approach to reparations, restitution and “restorative justice”.

The state review procedure before United Nations human rights bodies offers civil society actors such as NGOs the forum to present and raise attention to facts and arguments regarding pressing human rights violations and violations of respective state obligations to a wider audience on the international level. This opportunity presents a meaningful site of engagement, since these expert committees are not only in charge of the state review procedures as an independent organ. More importantly, their attributed function is also to overview state action under the respective human rights treaty, to review them accordingly and, in case they identify infringements of human rights and non-abidance to the treaty obligations to ensure and respect those rights, to hold states accountable for those actions. This review process creates a space to scrutinize states politics, policies and practices. It allows for a critical, counter-argumentative and evidentiary challenge of a state’s perspective on its own actions and whether it is, in fact, in accordance with human rights standards. The expert committee thereby presents an institutionalized forum, a so called quasi-judicial body with its basis in the treaty’s text the states agreed upon, yet independent from their will in their assessment of the state that is under review presented human rights record. It is important to understand that states are legally obliged to submit their report on a regular basis. Hence civil society actors and NGOs can contextualize these reports with their own reports to the expert committee, the so-called parallel reports. If necessary, they are able to deliver additional and/or missing information, thereby complement the picture from a non-state perspective. Moreover, within this framework, NGOs can submit and promote their demands vis-à-vis governments they deem to be infringing human rights, call for action to redeem these violations and submit how to avoid future human rights violations best.

With the given parallel report, ECCHR together with its partner organizations Berlin Postkolonial e.V., Decolonize Berlin e.V., Flinn Works and Initiative Schwarze Menschen in Deutschland e.V. (ISD) seizes the opportunity these state review procedures before human rights bodies present. The aim is to raise awareness for the topic of so-called human or ancestral remains from colonial contexts in German archives as well as of questionable state practices regarding restitution demands of ancestral remains and why these claims matter. The coalition submits its parallel report to the Committee on the Elimination of Racial Discrimination (CERD) that is in charge of supervising state actions under the Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The Committee assesses whether state actions and policies present a form of racial discrimination. It also evaluates whether states act in accordance with their obligation to ensure that state officials and institutions do not take measures that result in racial discrimination and whether states abstain from actions that could lead to racial discrimination and promote actions to counter any form of racial discrimination. The main message of this parallel report is that the way ancestral remains are treated by German institutions and museums and how the question of restitution is handled by state officials represents a racial discrimination pursuant to Article 1 ICERD. Furthermore, Germany does not abide by its obligations as laid out in particular in Articles 2, 5, 6 and 7 ICERD.

Two points in particular are to be highlighted:

It is important to understand that the acknowledgement of restitution claims is closely related to any form of legitimate redress for colonial wrongs. Restitution of ancestral remains is

essential in order to fully and genuinely acknowledge (legal) responsibility for colonial crimes and the establishment of colonial systems of injustice.

The last German state report to CERD fails to address the intersection between colonial past and current experiences of racial discrimination in the present, and this is despite the fact that the restitution debate is nothing completely new.

It is for this reason that the parallel report reconnects with ICERD's decolonial tradition, which can clearly be drawn from the text of the convention itself. The preamble states: *that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist.*¹ The human remains from colonial contexts in German archives, often archived in a deplorable and undignified way, are the remains of a human, individual life, of an individual with human dignity, a person who is part of, whose memory is part of a community, a family. The dehumanization of these people, these humans first by means of the way they were brought to Germany and later until today by the way they are treated creates a transgenerational trauma. Both, again past and present, engender colonial repercussions that perpetuate a colonial logic and world view. This logic and world view understand the to be colonized subject as an object, the then colonized (Black) person as a commodity. That means slavery and the commodification of the living (Black) body as well as the commodification of human remains in form of using those remains for the purpose of undignified exhibition and (racist) science. All of this, for instance leaving the ancestral remains to rot in the archives, whilst denying access to them, or hampering sensitive provenance research, leads to acts and/or omissions of racial discrimination of those who were and are victims of colonialism. These acts or omissions deny the victims and their descendants their human and constitutional rights to human dignity, to rest in peace and to commemorate the deceased in a dignified manner – rights which are universally guaranteed under the German constitution.

Finally, it is important to understand that there is a lack of a consolidated (legal) basis or at least a consolidated commitment beyond the performative, to effectively initiate and formalize a constitutional and human rights-based restitution policy and practice. Instead, what we have is single cases, based on individual, hence, legally speaking, arbitrary decisions on a case-by-case basis. As a result, descendants and affected communities cannot rely on principles of the rule of law when they ask for restitution. Yet, we need to understand that what we have here is a question of the law, a legal claim against the German state and not acts and relations of *noblesse oblige*.

We therefore demand a systematic change, most importantly in the law and the legal practices. We argue that we need a decolonial legal practice of application and interpretation of the positive law, e.g. as regards the fundamental rights entailed in Articles 1 and 2 of the Basic Law, the German constitution, to (postmortem) human dignity, the right to rest in peace, and to commemorate the dead.

Against this critique, the objective to participate in this upcoming state report before CERD is to enter into a constructive dialogue with the German government on this topic.

To strive for a better understanding for the colonial past, the colonial injustices and the effects that are still reverberating in the present lives of the descendants and affected communities that lost so much during the colonial rule needs to be the base line for any fruitful engagement on the topic. That is equally true for a genuine and actual willingness to concretize and put into action those commitments solemnly made in various recent international and European accords, aiming at eliminating racial discrimination and enforcing human rights of people of African descent as we can see in the Durban Declaration, which reads “*We recognize that*

¹ ICERD preamble, which then refers to GA, Res. 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/15/1514, 14 December 1960.

*colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, and people of Asian descent and indigenous peoples were victims of colonialism and continue to be victims of its consequences. We acknowledge the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its reoccurrence prevented. We further regret that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today;*²

Against this background, these are the main demands/ recommendation of the report:

- (1) Germany must assume a comprehensive understanding of its obligation under ICERD that takes into account the particular intersection between its colonial past and the racial discrimination in the present. This understanding must be reflected in new concrete practices based on principles of „restorative justice“. That entails an effective constitutional and human rights-based approach to restitution, with more decolonial provenance research as well as more and effective access to information in order to realize real restitutions.
- (2) Comprehensive and coherent legislation that fosters restitution, transparency and security based on the rule of law for descendants and affected communities claiming their rights to restitution.
- (3) On the basis of Isabelle Reimanns‘ report „on the presence of human remains from colonial contexts in Berlin“: The establishment of an advisory board or a commission is recommended to accompany the further provenance research and repatriation work, including the handling of the inventory information. The Advisory Board or commission should be made up of experienced repatriation practitioners as well as representatives of communities and indigenous organizations whose ancestors are likely to be in the collections.
- (4) As well as a recommendation for cross-institutional processing project(s), meaning one or more cross-institutional, interdisciplinary and transnationally oriented research projects/repatriation projects with the participation of the advisory board are recommended for inventory determination, clarification of the origin and reconstruction of the appropriation contexts of the human remains from colonial contexts.

² Durban Declaration, UN Doc. A/CONF.189/12, 8 September 2008, para. 14.