States' Legal Obligations to Make Reparations for Transatlantic Chattel Slavery

The submitting organizations **Institute for Justice and Democracy in Haiti (IJDH)**, **Bureau Avocats des Internationaux (BAI)**, and the **Georgetown University Law Center Human Rights Institute (HRI)** work on advancing Haiti's claim for reparations for Transatlantic Chattel Slavery, including especially restitution for the so-called "Independence Debt," imposed on it by France. We base our input on Haiti-specific reports we deem credible based on our expertise, supplemented by observations made in the course of our work in Haiti and information from trusted partners and legal scholars.

IJDH has worked for over two decades to advance human rights in Haiti, including Haitians' economic and development rights hindered by the lasting impacts of the "debt." BAI is a Haitian human rights law firm that has worked for thirty years in constitutional and international human rights law, grassroots solidarity, and building networks and movements to advance justice and protection of human rights in Haiti. HRI trains Georgetown Law students in human rights law and advocacy, including through a hands-on, year-long Human Rights Advocacy in Action practicum; this year's practicum project is the aforementioned research and strategic planning in support of Haiti's restitution claim.

The submission is endorsed by the **Bahamas National Reparations Committee (BNRC),**[1] **L'École Supérieure Catholique de Droit de Jérémie (ESCDROJ)**,[2] **Groupe d'Appui au Développement et à la Démocratie (GRADE)**,[3] the **Women's All Points Bulletin (WAPB),**[4]

[1] The BNRC was formed in 2014 after the 34th CARICOM heads of government meeting in 2013. At this meeting, the CARICOM Reparations Commission was established to advocate for reparations from former colonial governments for the crimes against humanity that they perpetuated in the form of native genocide and the transatlantic chattel slave system. As a member state of the larger CARICOM body, the BNRC engages this work with and for Bahamians through various means inclusive, but not limited to, lectures, conferences, school tours, social and traditional media campaigns.

[2] ESCDROJ is a Haitian law school that aims to prepare and build a new generation of lawyers and jurists. It strives to produce lawyers that are (1) aware of the importance of the law, the need for a functioning judicial system, and the primacy of the individual; and (2) willing to reside and work in Haiti despite the disastrous social and political conditions. Furthermore, the school aims to instill in its members the strength to apply or enforce the rule of law, a passion for justice, and the constant search for peace.

[3] GRADE is a Haitian civil society organization that seeks to promote civic engagement among young people and the strengthening of civil society for sustainable development.

[4] WAPB is a community policing and human rights social entrepreneurship based out of Chicago, IL, whose mission is to become the premier organization providing services, education, and training to eradicate violence against women during policing encounters, including female officers.

and the following individuals: Carl-Henry Cadet; Marie Lemy; Aksanti Muhemeri; Rosebrune Vixamar; Pedro Albuquerque Dias; and Dr. Paula Rhodes.

This submission uses Haiti as a case study to support our legal conclusions because, as explained below, (1) restitution for Haiti will unlock reparations for the broader movement for reparatory justice, and (2) both the "Independence Debt" forced on Haiti and the suppression of its restitution claim seeking justice for it were intended to prevent Haiti from inspiring broader liberatory struggles, as it did during the Haitian Revolution. We have included the individual questions posed by CERD with our responses.

Q3: Are there relevant issues of non-retroactivity of legal acts to be considered? To what extent do statutes of limitations and the non-retroactivity principle apply to grave breaches of human rights?

Statutes of limitations and the non-retroactivity principle should not apply to grave breaches of human rights such as Transatlantic Chattel Slavery (TCS). These time-bars do not apply to crimes against humanity, and as slavery is a crime against humanity, they should not—and logically, do not—apply to matters involving chattel slavery. Conventions, judicial opinions, and general principles of law all counsel against applying time-bars to crimes like TCS. As explained below, Haiti's unique history reinforces the conclusion that TCS claims should not be time-barred.

International law, according to the ICJ, "does not lay down any specific time-limit," and it is up to the court to assess the circumstances of each case.[5] While there is no specific time-limit, "even in the absence of any applicable treaty provision, delay on the part of a claimant State may render an application inadmissible."[6]

Formerly-colonizing States may argue that a case for reparations for TCS should be time barred because of how much time has passed, but under international law there is no time bar on crimes against humanity, which includes slavery.[7] The Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity is a convention that, as the name suggests, sets out that statutes of limitations do not apply to crimes against humanity,[8] and this principle has been

[5] Certain Phosphate Lands in Nauru (Nauru v. Austl.), Judgment, 1992 I.C.J. 240, at 253-54 (June 26) (finding that the application was still admissible despite Nauru's twenty-year delay in bringing the case).
[6] *Id.* at 253.
[7] World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban Declaration and Programme of Action, at 1, U.N. Doc. A/CONF.189/12 (2001).
[8] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), art. 1(b) (Nov. 26, 1968) (*entered into force* Nov. 11, 1970) ("No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: . . . (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 . . . even if such acts do not constitute a violation of the domestic law of the

reaffirmed in international legal discourse for decades.[9] The inapplicability of statutes of limitations to crimes against humanity is also reflected in Article 29 of the Rome Statute;[10] this principle is foundational enough to span across both civil and criminal international law.

We see this principle implemented in domestic courts as well. For example, in late 2024, the Brussels Court of Appeals heard a case about colonial Belgium's practice of forcibly kidnapping biracial children from their mothers and placing them in orphanages.[11] Five women who were taken away from their mothers brought the case and won after the court found that, because Belgium had committed crimes against humanity, the statute of limitations did not apply to the case.[12] The court rejected Belgium's argument that the practice was not an infraction at that time—the policy started in the late 19th century and continued until the 1960s—and awarded the women restitution payments.[13]

Haiti's case: The facts of Haiti's claim provide an illustrative example of how concerns regarding proximity in time can be overcome in TCS-related cases and should give way to the core legal principle of the inapplicability of time-bars to crimes against humanity. First, judges may be concerned that there would not be adequate records to submit into evidence for a claim that arose so long ago. In Haiti's case, there are detailed, written records documenting the "debt" payments, the amount paid, to whom they were paid (and therefore who benefited from enslavement), and the loan agreements between Haiti and the French/U.S. banks involved in predatory lending schemes that exacerbated the debt.[14]

Second, Haiti's claim also illustrates an issue that plagues post-colonial States: interference, especially by States that developed their power through TCS, has prevented Haiti from having the democratic, independent, and accountable government necessary to assert its restitution claim against France. After overthrowing their enslavers and winning their independence, Haitians

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country in which they were committed."); Charter of the International Military Tribunal, art. 6(c), Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 (defining "crimes against humanity" to include "enslavement").

[9] *See, e.g.*, 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, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf.

[10] Rome Statute of the International Criminal Court art. 29, July 17, 1998, 2187 U.N.T.S. 90. The Statute also reaffirms that slavery is considered a crime against humanity. *Id*. art. 7(1)(c) ("For the purpose of this Statute, 'crime against humanity' means any of the following acts . . . (c) Enslavement").

[11] Jenny Gross and Elian Peltier, *5 Women Win Reparations From Belgium for Crimes Under Colonial Rule*, N.Y. TIMES (Dec. 2, 2024), https://www.nytimes.com/2024/12/02/world/europe/5-women-win-reparations-from-belgium-for-crimes-under-colonial-rule.html.

[12] *Id.*

[13] *Id.*

[14] Catherine Porter, Constant Méheut, Selam Gebrekidan & Matt Apuzzo, *The Ransom: A Look Under the Hood*, N.Y. Times (May 20, 2022), https://www.nytimes.com/2022/05/20/world/americas/haiti-bibliography.html#link-1512057b.

have been held down by colonizing States for centuries of systematic oppression, designed to keep Haiti unstable and dependent on foreign aid, including: the "Independence Debt"; a nineteen-year U.S. military occupation; corrupt government elites funded by the U.S. and Europe; and, most damningly, a coup in 2004 when the first democratically-elected president in modern Haitian history publicly prepared to assert Haiti's restitution claim.[15] Colonizing States should not benefit from applying statutes of limitations when their actions caused the delay in bringing the claim—to do so would be to incentivize destabilizing governments of States they formerly colonized. This is another reason that the default principle of declining to apply statutes of limitations to crimes against humanity should be followed in TCS-related cases.

Q5: Share perspectives on the following:

- **Racial discrimination and chattel enslavement constitute serious breaches of international law and have always been violations of peremptory norms of general international law.**
- **The crimes of the transatlantic chattel enslavement of Africans and the de facto systems of structural racism that have followed until present day give rise to the obligation of offending states to make reparations, including the pre-colonial, colonial, and post-colonial independent states.**

A. Transatlantic Chattel Slavery constitutes a serious breach of international law and has *always* been a violation of peremptory norms of general international law.

TCS is and has always been a violation of peremptory norms of general international law, or *jus cogens* norms.[16] While the ICJ did not officially recognize the prohibition on slavery as a *jus cogens* norm until 1970,[17] even agreements made *during the time of TCS* affirm the idea that TCS is a violation of natural law, meaning it has always been a breach of international law.

For example, the Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade, part of the Congress of Vienna of 1815,[18] described the slave trade as "repugnant to the principles of humanity and universal morality," and called for the parties to take steps toward the

[15] Aristide was the first democratically-elected president in modern history when he was elected the first time in 1990—removed in 1991 via a U.S.-backed coup. Catherine Porter, Constant Méheut, Selam Gebrekidan & Matt Apuzzo, *The Ransom: The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. Times (May 20, 2022), https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html.

[16] We note that much of the analysis in this section may also be helpful to the Committee in answering Question 2 of its Call for Inputs regarding general principles of law.

[17] Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, 32 (Feb. 5); *See* Ilias Bantekas & Lutz Oette, *International Human Rights Law and Practice* 71 (4th ed. 2024).

[18] Jean Allain, *Slavery Convention*, U.N. Audiovisual Library of International Law (Sept. 2017), https://legal.un.org/avl/ha/sc/sc.html.

abolition of slavery.[19] That same year, States signed the Treaty of Paris of 1815, in which they agreed to renew the efforts and convictions expressed during the Congress of Vienna of 1815 to effectuate the "definitive abolition of a commerce so odious, and so strongly condemned by the *laws of religion and of nature*."[20] The descriptions used by colonizing States themselves to describe TCS make it clear that they did not view freedom from chattel slavery as an evolving norm but as something demanded by the evergreen "laws of . . . nature." These types of characterizations, in combination with the centuries-old conceptualization of free will described in Q3, strongly suggest that this has always been a "norm" of Common Era society.[21]

Modern day domestic law reflects the notion that TCS was a crime against humanity and therefore always a *jus cogens* violation.[22] For example, the French "Taubira Law," enacted in 2001, states in its first article: "The French Republic acknowledges that the Atlantic and Indian Ocean slave trade on the one hand and slavery on the other, perpetrated from the fifteenth century in the Americas, the Caribbean, the Indian Ocean and in Europe against African, Amerindian, Malagasy and Indian peoples *constitute a crime against humanity*."[23] While not "laws," official declarations by the United States, the United Kingdom, and the Netherlands that slavery was a crime against humanity[24] also showcase perpetrator States' acknowledgement that TCS was always a *jus cogens* violation.

B. <u>The grave human rights abuses of Transatlantic Chattel Slavery and the de facto systems of structural racism that have followed until today give rise to the obligation of offending states to make reparations.</u>

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[19] Randall Lesaffer, *Vienna and the Abolition of the Slave Trade*, Oxford Pub. Int'l L., https://opil.ouplaw.com/page/498 (last accessed Oct. 18, 2024).

[20] Kristen Casey et al., *France's Overdue Debt to Haiti*, N.Y.U. J. Int'l L. and Pol., (Jan. 27, 2022) https://nyujilp.org/frances-overdue-debt-to-haiti/.

[21] In any event, even if a court were to find that abolition of TCS was not generally accepted as *jus cogens* by this era, the norm against re-establishment or expansion of TCS certainly was. *See* Günther Handl, *Redress for Historical Injustices: Haiti's Claim for the Restitution of post-Independence Payments to France*, 55 U. MIAMI INTER-AM. L. REV. 48, 63-64 (2023).

[22] Crimes against humanity are a *jus cogens* norm by definition. Cornell Law School Legal Information Institute, *jus cogens*, https://www.law.cornell.edu/wex/jus_cogens (last accessed Mar. 5, 2025).

[23] Loi n° 2001-434 du 21 mai 2001 tendant à la reconnaissance de la traite et de l'esclavage en tant que crime contre l'humanité [Law No. 2001-434 of May 21, 2001, Recognizing the Slave Trade and Slavery as a Crime Against Humanity], LEGIFRANCE, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000405369?init=true&page=1&query=2001-434&searchField=ALL&tab_selection=all (unofficial translation).

[24] H. R. Res. 194, 110th Cong. (2008), https://www.congress.gov/bill/110th-congress/house-resolution/194/text; *See* Anti-Slavery International, *Tony Blair Apologises for Britain's Role in the Slave Trade*, https://www.antislavery.org/latest/tony-blair-apologies-britains-role-slave-trade-2/ (last accessed Mar. 5, 2025); Mark Rutte, *Speech by Prime Minister Mark Rutte about the Role of the Netherlands in the History of Slavery*, Gov't of the Netherlands (Dec. 19, 2022), https://www.government.nl/documents/speeches/2022/12/19/speech-by-prime-minister-mark-rutte-about-the-role-of-the-netherlands-in-the-history-of-slavery.

Offending States have a legal obligation to make reparations because offending States have been unjustly enriched by TCS and the structurally racist systems that followed. For a successful unjust enrichment claim under international law, a party must show the following elements concurring: (1) the enrichment of one party; (2) to the detriment of the other; (3) both must arise as a consequence of the same act or event; (4) there must be no justification for the enrichment; and (5) no contractual or other remedy available to the injured party whereby they might seek compensation from the party enriched.[25]

TCS is textbook unjust enrichment, and therefore offending States must pay. Offending States were enriched by the free forced labor of enslaved Africans for hundreds of years, instead of the usual costs of paying employee wages. This was to the detriment of those enslaved peoples, both financially and in loss of life; economists estimate $55 trillion USD in losses from stolen labor and lives lost alone.[26] TCS satisfies the causal link element, as the enrichment and the losses both arose from the systematic kidnapping, enslavement, and forced labor of African peoples that was part of a unified economic scheme. As explained above, TCS has *always* violated peremptory norms as a crime against humanity, so there is no lawful justification for the enrichment. And given courts' reticence to award individual payouts for reparations,[27] there is likely no other alternative remedy available. As all five elements are met, offending States are obligated to make reparations.

Haiti's case: Haiti's case for restitution for the so-called "Independence Debt" is a uniquely strong example of an unjust enrichment claim that gives rise to a legal obligation of an offending State—here, France—to make reparations. France, together with predatory lenders involved in the debt scheme, was enriched to the tune of $560 million in today's dollars.[28] (This is in addition to the massive amounts of wealth the French State garnered from operating TCS itself.) This was absolutely to Haiti's detriment, as economists estimate that this "double debt" robbed Haiti's economy of between $21 billion and $115 billion.[29] Both arose because of the same event: France's demand, under threat of reinvasion and potential re-enslavement, that *Haiti* pay *France* reparations for the "losses" to enslavers—namely, the economic "value" of the very Haitians themselves who the enslavers claimed to own as property. The causal link between the

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[25] Christina Binder & Christoph Schreuer, *Unjust Enrichment*, Oxford Pub. Int'l L., at 2 (June 2017), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1002.

[26] Coleman Bazelon et al., *Quantification of Reparations for Transatlantic Chattel Slavery*, Brattle Grp. (June 2023), https://www.brattle.com/wp-content/uploads/2023/07/Quantification-of-Reparations-for-Transatlantic-Chattel-Slavery.pdf.

[27] *See* Cour de cassation [Cass.] [supreme court for judicial matters], 1e civ., Apr. 17, 2019, pourvoi n° 18-13.894 (Fr.) (unofficial translation) (relying on tort claims); *In re African Am. Slave Descendants Litig.*, 471 F.3d 754 (7th Cir. 2006).

[28] Catherine Porter, Constant Méheut, Matt Apuzzo & Selam Gebrekidan, *Haiti's Lost Billions*, N.Y. Times (May 20, 2022), https://www.nytimes.com/interactive/2022/05/20/world/americas/enslaved-haiti-debt-timeline.html.

[29] *Id.*

detriment and enrichment is especially well documented here, especially the detriment to the *State* of Haiti.[30]The perverse irony is that the enrichment, while depriving Haiti of economic development and internal investment, gave France the funds to develop the Eiffel Tower, build up its young banking industry, and pad the French State's own coffers.[31]

There was no justification for the enrichment, as the French enslavers were committing crimes against humanity by enslaving the Haitian people in the first place, so there were certainly no legal grounds to make Haiti pay its way out of being victims of those crimes. And finally, while we argue above that statutes of limitations should not apply here as TCS was a crime against humanity, if courts were to throw out Haiti's claims to invalidate the 1825 Ordinance under contract law because of a time-bar, unjust enrichment would be a strong subsidiary claim given the striking injustice of forcing formerly enslaved people to pay for recognition of their freedom in dollars after they have already paid with their blood.

Q8: There is ample evidence that the unjust enrichment from the slave economies flowed into myriad institutions beyond state bodies, such as banks, insurance companies, corporations, and universities, some of which still exists. Museums across Europe and the Americas benefitted from enlarging their collections of "biological artifacts" taken without appropriate provenance to support theories of racial inferiority. What are the State obligations with respect to such items and forms of unjust enrichment?

States have an obligation to research the enrichment of private entities within their jurisdiction from TCS and facilitate the return of money and items. Haiti's case provides an excellent example of the need for this obligation.

- **Private entities, such as banks, were unjustly enriched by TCS in Haiti.**

The French and U.S. banks involved in the lending scheme underlying the so-called "Independence Debt" were unjustly enriched. The French bank, Crédit Industriél et Commercial (CIC), financially benefited and gained from the 1875 loan with Haiti, the establishment of the National Bank of Haiti (NBH) in 1881, and a second loan from NBH in 1896,[32] making CIC an enriched entity. The detriment to Haiti is clear: had the wealth siphoned off by CIC through the National Bank stayed in Haiti, "it would have added at least $1.7 billion to Haiti's economy."[33]

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[30] This is notable given recent cases denying plaintiffs' various claims seeking reparations, in part, due to standing issues. *See* Cour de cassation [Cass.] [supreme court for judicial matters], 1e civ., Apr. 17, 2019, pourvoi n° 18-13.894 (Fr.) (unofficial translation); In re African Am. Slave Descendants Litig., 471 F.3d 754 (7th Cir. 2006). A claim on behalf of the entire State of Haiti would likely not face the same hurdle.

[31] *See* Porter, et al., *supra* note 14.

[32] Over these three decades, shareholders from CIC made at least $136 million in profits from the National Bank of Haiti, as calculated in today's dollars. *See* Matt Apuzzo, et al., *How a French Bank Captured Haiti*, N.Y. Times (May 20, 2022) https://www.nytimes.com/2022/05/20/world/french-banks-haiti-cic.html.

[33] *Id*. Both the 1875 and 1896 loans were guaranteed by Haiti's primary source of income: coffee taxes. By choking Haiti of its most important source of revenue, the Haitian government was only left with "6 cents of every $3 collected

The causal link is similarly clear: money left the hands of Haitians to pass directly into the pockets of CIC and Citibank. The enrichment was unjust (i.e., there was no lawful justification), because CIC shareholders earned so much money off NBH transactions "that in some years, their profits exceeded the Haitian government's entire public works budget for a country of 1.5 million people;"[34] these profits were not typical for French investments;[35] the bank engaged in "fraudulent overbilling;"[36] and assent to the initial Ordinance of 1825 was predicated on the insidious threat of re-enslavement. Similarly, Citibank in a filing to a Senate Finance Committee in 1932, stated it secured one of its largest profit margins during the 1920s from the debt it controlled in Haiti.[37] In particular, "a quarter of Haiti's total revenue went to paying debts controlled by National City Bank and its affiliate over the course of a decade – nearly five times the amount spent on government-run schools in Haiti."[38]

- **States should be required to conduct fact-finding on private enrichment from TCS within their jurisdictions and require restitution from those private entities.**

States should be obligated to intervene in private institutions' restitution and repatriation of goods and moneys obtained by way of TCS and its progeny. States have an international legal obligation to protect and fulfill the human rights of the individuals within their lands, including a duty to protect against abuse from third parties.[39] The UN Guiding Principles on Business and Human Rights, while not binding, counsel that "States must protect against human rights abuse within their . . . jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, *investigate*, punish, and *redress*, such abuse through effective policies, legislation, regulations and adjudication."[40] And given that TCS is a crime against

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to run the country." While this period was marked by rapid growth and industrialization in France, "Haiti had vanishingly little to invest in basics like running water, electricity, or education." The burdensome loans by CIC thus directly prevented money from circulating in the Haitian economy and made it impossible for the government to devote funds to "the sort of projects that help nations prosper," such as infrastructure and education. By forcing Haiti into a cycle of borrowing, the French banks exacerbated the country's financial dependency and perpetuated its impoverishment.

[34] *Id.*

[35] *Id*. At the time, average returns on French investments "hovered around 5 percent." In contrast, NBH board members and shareholders earned a whopping *15 percent* (sometimes even reaching 24 percent).

[36] *Id.* In 1903, Haitian authorities accused the bank of "fraudulent overbilling, double-charging loan interest and working against the best interest of the country."

[37] *See* Selam Gebrekidan et al., *Invade Haiti, Wall Street Urged. The U.S. Obliged.*, N.Y. Times (May 20, 2022), https://www.nytimes.com/2022/05/20/world/haiti-wall-street-us-banks.html.

[38] *Id.*

[39] United Nations Office of the High Commissioner for Human Rights, *Guiding Prinicples on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework* 3 (2011), https://shiftproject.org/wp-content/uploads/2020/01/GuidingPrinciplesBusinessHR_EN.pdf.

[40] *Id.* (emphasis added).

humanity and has always been a violation of peremptory norms, the non-retroactivity principle should not apply here, so States must investigate and redress those abuses even from long ago.

The so-called "Independence Debt" scheme illustrates why this obligation is so important in the TCS context. The young French banks brought in by the French Crown to lend Haiti money for the initial payments were inextricable from the government actors themselves, as the banks' role was all part of the overarching plan for imposing the debt.[41] In order to fully redress its role in the "Independence Debt," the State of France cannot simply pay back the money it received directly; it must take accountability for the role that it had in facilitating the third-party human rights abuse, both by directly organizing the loans and by creating the TCS scheme within France that allowed for such private-party abuses in the first place.

[41] *See* Gebrekidan et al., *supra* note 37.