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CARIBBEAN/EU: Reparations claim will not succeed

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Abstract

The outlook for reparations demands over the trans-Atlantic slave trade.

The leaders of 14 Caribbean Community (CARICOM) countries have agreed a wide-ranging plan calling on European former colonial powers to address their central historical role in the trans-Atlantic slave trade and to help the region to overcome the damaging and persistent legacies of colonialism and slavery. The CARICOM Reparations Commission is pursuing both a political and legal strategy, but with strong resistance from most of the former colonial powers and limited legal options, the chances of success are slim.

Full Text

SUBJECT:The outlook for reparations demands over the trans-Atlantic slave trade.

SIGNIFICANCE:The leaders of 14 Caribbean Community (CARICOM) countries have agreed a wide-ranging plan calling on European former colonial powers to address their central historical role in the trans-Atlantic slave trade and to help the region to overcome the damaging and persistent legacies of colonialism and slavery. The CARICOM Reparations Commission is pursuing both a political and legal strategy, but with strong resistance from most of the former colonial powers and limited legal options, the chances of success are slim.

ANALYSIS: Impacts.

The timing of the reparations claim, with economic recovery in Europe still fragile, minimises prospects of success.

Any eventual legal action before the ICJ would not prosper.

Solutions to regional woes will remain primarily the region's own responsibility; the reparations debate cannot distract from this reality.

In July 2013, CARICOM leaders agreed to establish a Reparations Commission, tasked with the role of establishing a "moral, ethical and legal case for the payment of reparations by the former colonial European countries, to the nations and people of the Caribbean Community, for native genocide, the transatlantic slave trade and a racialised system of chattel slavery".

Factors that influenced the creation of the Commission included the legal victory and subsequent payment of 20 million pounds (currently 33.2 million dollars) compensation to a group of Kenyans who were tortured by colonial authorities during the Mau Mau rebellion in the 1950s, as well as unhappiness over then-UK Prime Minister Tony Blair's expression of "deep sorrow and regret" for the UK's role in the slave trade in 1997 (see INTERNATIONAL: Colonial-era civil cases may multiply - December 8, 2011). Blair's words, which stopped short of a full apology, were criticised as inadequate, and resonated of legal caution (see INTERNATIONAL: Apologies may grow as political tool - November 3, 2010). Some commentators have also suggested that the present focus on the reparations issue aims to distract attention from local policy failures on issues of corruption, high crime rates, low growth, unsustainable levels of debt and regional disunity.

The demands.

On March 11, CARICOM leaders approved a ten-point plan to achieve "reparatory justice", focussing on:

a full formal apology;

a repatriation programme to resettle persons who wish to return to Africa;

an indigenous peoples' development programme to improve the position of the remaining native peoples, whose ancestors were largely wiped out by the colonisers (the Reparations Commission calls this "genocide");

cultural institutions -- to establish museums and research centres to catalogue and explain the colonial and slave experience;

the public health crisis -- for Europe to help alleviate the high incidence of chronic diseases, such as hypertension and type two diabetes, which the Commission claims is a direct result of the "nutritional experience, physical and emotional brutality, and overall stress profiles associated with slavery, genocide and apartheid";

illiteracy eradication, with Europe contributing to Caribbean initiatives to improve literacy rates, very low at the time of decolonisation;

African knowledge programme to strengthen the links between Africa and the Caribbean in order to build "bridges of belonging" to ameliorate the "cultural and social alienation from identity and existential belonging" caused by the slave trade;

psychological rehabilitation, to overcome the psychological damage caused by 400 years of Africans and their descendents being classified in law as "non-human, chattel, property and real estate";

technology transfer to overcome structural weaknesses left by colonial rule which meant there was little economic activity beyond agriculture; and

debt cancellation to reduce debts caused by heavy spending needed to address the development failures caused by colonialism.

Caribbean strategy.

The Reparations Commission has attempted, with variable success, to link the Caribbean's present-day ills directly to the role of slavery and colonial rule, hoping to make the claim for reparatory justice as strong as possible. CARICOM has also suggested that reparations should be a key part of a new development agenda for the region. In order to achieve its objectives, CARICOM has a three-pronged strategy:

a strong public relations campaign;

a call to European countries to participate in negotiations; and

as a final course of action, a possible case before the International Court of Justice (ICJ) in The Hague.

The first two parts of the strategy are operating in tandem, coordinated by the London law-firm Leigh Day, which represented the Kenyans in the Mau Mau case. The Caribbean hopes that the International Convention on the Elimination of Racial Discrimination can be used as the basis for negotiation. However, the convention dates from only 1965. Similarly, given that slavery was legal under international law in the period in question, a legal case before any international court appears implausible. Any 'compensation' by former colonial powers would be given -- if at all -- strictly ex gratia.

The region has asked the United Kingdom, France, Spain, Portugal, the Netherlands, Norway, Sweden and Denmark to participate, and hopes that a conference in London can be organised "to gauge whether or not our concerns are being taken seriously". If the response is lukewarm, then an ICJ case will be considered.

Europe's response.

So far the response has been minimal:

A spokesman for the UK Foreign and Commonwealth Office said that it was difficult to make any specific comment because no formal claim had yet been made, adding that "we should concentrate on identifying ways forward, with a focus on shared global challenges that face our countries in the 21st century" and that "governments today cannot take responsibility for what happened over 200 years ago".

The Swedish ambassador to the Caribbean, meanwhile, said his country would "look at the claim when we receive it" and promised "to have respect for the process", but he questioned how "compensation" could be offered. (Sweden controlled St Barthelemy between 1784-1878.)

Legal viability.

Given the weakness of the legal basis of the claim, it is likely that Europe will be disinclined to deal directly with the reparations claim and will be unwilling to provide a full and unequivocal apology, fearing that this could prompt other nations that suffered the consequences of colonialism to demand compensation. As for possible ICJ legal action, the Court's jurisdiction is voluntary: it is unlikely that European litigant states would consent to it for such a case.

According to general rules of international law, treaties -- such as those dealing with discrimination and slavery -- are not applicable retroactively. Slavery predates all the legal developments that form international human rights law, which developed primarily after the Second World War. The UN General Assembly or the Security Council could in theory ask the ICJ for an advisory opinion on the legal question of reparation for slavery, but such rulings are consultations and are not legally binding.

CONCLUSION: Despite the best efforts of the Reparations Commission to link the crimes of the past to current economic and social problems, it is unlikely that the legal route will be successful. However, concerted diplomatic efforts could possibly create enough pressure for European countries to reassess development policies towards the Caribbean, which have become less supportive over the last two decades.

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Details

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