



GOVERNMENT OF JAMAICA

IN THE MATTER OF SECTION 4 OF THE JUDICIAL COMMITTEE ACT 1833

AND IN THE MATTER OF A PETITION ON BEHALF OF THE PEOPLE OF JAMAICA INVITING HIS MAJESTY THE KING TO REFER TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL QUESTIONS AS TO THE LAWFULNESS OF THE SEIZURE, TRANSPORTATION, CHATTELISATION AND ENSLAVEMENT OF THEIR ANCESTORS OF AFRICAN DESCENT, AND AS TO THE LAWFULNESS OF THE ABSENCE OF ANY ATTEMPT BY THE UNITED KINGDOM TO PROVIDE A REPARATORY REMEDY FOR THESE ACTS AND THEIR CONTINUING EFFECTS

THE PETITION OF THE ATTORNEY GENERAL OF JAMAICA, DR. DERRICK MCKOY

7 SEPTEMBER 2026

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AND IN THE MATTER OF A PETITION ON BEHALF OF THE PEOPLE OF JAMAICA INVITING HIS MAJESTY THE KING TO REFER TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL QUESTIONS AS TO THE LAWFULNESS OF THE SEIZURE, TRANSPORTATION, CHATTELISATION AND ENSLAVEMENT OF THEIR ANCESTORS OF AFRICAN DESCENT, AND AS TO THE LAWFULNESS OF THE ABSENCE OF ANY ATTEMPT BY THE UNITED KINGDOM TO PROVIDE A REPARATORY REMEDY FOR THESE ACTS AND THEIR CONTINUING EFFECTS

THE PETITION OF THE ATTORNEY GENERAL OF JAMAICA, DR. DERRICK MCKOY, SHOWS AS FOLLOWS:

1. INTRODUCTION

- 1.1. This petition is signed by the Attorney General of Jamaica, on behalf of the people of Jamaica. It is further co-signed by the Honourable Minister of Culture, Gender, Entertainment and Sport, and the Chair of the National Council on Reparation of Jamaica, on behalf of that body.
- 1.2. The Attorney General of Jamaica, on behalf of the people of Jamaica, hereby petitions His Majesty, as Head of State, to refer to the Judicial Committee of the Privy Council (“**The Judicial Committee**”) issues of constitutional importance in exercise of his wide powers under section 4 of the Judicial Committee Act 1833 (“**JCA**”). These issues arise out of the unlawful seizure, forced transportation, across the Atlantic Ocean, and chattel enslavement in Jamaica of African people whose descendants are now citizens of Jamaica and subjects of His Majesty. The process of the “chattelisation” of Africans, inaugurated by European imperial powers between the 15th and 16th centuries and continuing for some 300-400 years, involved their forced capture and transportation to the Americas and the Caribbean for sale and subsequent chattel enslavement. This process is collectively referred to in this document as “Transatlantic Chattel Slavery”.¹ This

¹ The compendious term “Transatlantic Chattel Slavery” is specifically used in Coleman Bazelon et al, *Report on Reparations for Transatlantic Chattel Slavery in the Americas and the Caribbean* (Report, Brattle Group, 8 June 2023) (“**Brattle Report**”).

petition is therefore concerned with the practice of Transatlantic Chattel Slavery as it affected Jamaica.

1.3. The petitioner seeks the following:

- (i) A determination as to whether Transatlantic Chattel Slavery, as practised in Jamaica, was in fact ever lawful under English law, or whether it was offensive to the fundamental principles of the common law and indeed to certain express statutory provisions of the Westminster Parliament;
- (ii) A further determination as to whether the said forced transportation and chattel enslavement was a breach of relevant international obligations. These obligations include those arising out of general principles of law, the peremptory prohibitions of slavery, torture, racial discrimination and crimes against humanity and obligations derived from other sources of international law; and
- (iii) Finally, His Majesty is respectfully invited to refer the issue of whether there is a legal obligation on the part of the United Kingdom to provide a reparatory remedy to the people of Jamaica, as descendants of those subject to these dehumanising practices, and as a community of persons on whom the practices have had indelible, and continuing, negative effect.

1.4. His Majesty is invited to have particular regard to the fact that the Attorney General of Jamaica petitions His Majesty both in his capacity as King of the United Kingdom and as the Head of State of Jamaica.

The role of the National Council on Reparations

1.5. The question of reparatory justice for Transatlantic Chattel Slavery and its continuing effects has been a long-standing concern across all sectors of

Jamaican society. The precursor to the National Council on Reparations (“**NCR**”), the National Commission on Reparations, was established in 2009 to explore the specific forms that reparations could take, to receive testimony from the Jamaican public and other experts, and to engage with Jamaican civil society on this issue of serious concern to a broad cross-section of Jamaicans. CARICOM, the inter-governmental body established to promote regional integration in the Caribbean and of which Jamaica is a member-state, itself established the Caribbean Reparations Commission (“**CRC**”) in 2013. The CRC recommended the creation of national reparations committees in each Member State whose chairpersons would, in turn, sit on the CRC. Following the establishment of the CRC Jamaica’s National Commission on Reparations was then re-named the National Council on Reparations.

- 1.6. On 27 January 2015 the Jamaican Parliament passed a motion that provided for the Government of Jamaica, on behalf of the people of Jamaica, to seek reparations from the United Kingdom as a consequence of the practice of Transatlantic Chattel Slavery.² The motion was tabled by the Hon. Mike Henry MP, a stalwart of the Jamaican reparations movement and was unanimously adopted on a bi-partisan basis. Mr. Henry’s enduring commitment to the issue of reparations led to his engagement of Mr. Frank Phipps KC, and latterly the NCR, to consider legal and other processes by which the motion could be given effect. This petition is the result of the unwavering commitment of the Jamaican government, and the assiduous work of the NCR, in the pursuit of reparatory justice.
- 1.7. In addition to the chattel enslavement of Africans, European colonisation in the Caribbean and the Americas also involved the prior decimation of indigenous communities and the indentureship of labourers brought from Asia to work the

² ‘Order of Business of the Honourable Jamaica House of Representatives: Tuesday January 27, 2015, *Jamaica House of Representatives* (2015) 11
<https://www.japarliament.gov.jm/attachments/article/1397/1397_ORDER%20OF%20BUSINESS.pdf>.

plantations after the formal abolition of chattel slavery. Whereas this petition's sole focus is on Transatlantic Chattel Slavery, it is important to note that similar arguments can and may yet be made in respect of the destruction of indigenous communities, the injustices of indentureship and other colonial harms.³

- 1.8. During the colonial period and since, enslaved Africans and their descendants have demonstrated their objection to Transatlantic Chattel Slavery. The objection of Jamaicans, and indeed the peoples of other former colonies of Great Britain in the Caribbean, to indigenous genocide, chattel enslavement, indentureship, and to the legacies of these practices is well documented.⁴ Nonetheless, it is only since the date of Jamaica's formal independence on 6 August 1962 that the Jamaican Parliament has been in a position to petition His Majesty on behalf of the Jamaican people.
- 1.9. The petitioner avers that some of the matters complained of in this petition occurred before the Act of Union of 1707 which united the Kingdoms of England and Scotland. This did not create a new State but continued the legal personality of the English Crown in the form of the Kingdom of Great Britain, and later the United Kingdom. The present-day United Kingdom comprises England, Scotland, Wales and Northern Ireland. Accordingly, all relevant acts attributable to the English or British Crown prior to or after 1707 are, as a matter of State continuity, acts for which the present United Kingdom remains responsible. All references in

³ See, for example, the joint Communique published at the 2024 Commonwealth Heads of Government Meeting ("**CHOGM**") in Samoa. The Communique highlighted British responsibility for other forms of colonial harm, in addition to Transatlantic Chattel Slavery: "Heads, noting calls for discussions on reparatory justice with regard to the trans-Atlantic trade in enslaved Africans and chattel enslavement and recognising the importance of this matter to member states of the Commonwealth, the majority of which share common historical experiences in relation to this abhorrent trade, chattel enslavement, the debilitation and dispossession of Indigenous People, indentureship, colonialism, blackbirding and their enduring effects, agreed that the time has come for a meaningful, truthful and respectful conversation towards forging a common future based on equity": Samoa Communiqué of the Commonwealth Heads of Government Meeting *The Commonwealth* (26 October 2024) [22] <<https://thecommonwealth.org/news/chogm2024/Samoa-communique-leaders-statement-and-declarations>>.

⁴ See the description of the genealogy of Caribbean resistance movements against enslavement and its sequelae in Caribbean Community Secretariat, *The CARICOM Ten Point Plan for Reparatory Justice: A Manifesto for the coming Enlightenment* (Paper, 2026) 15-17.

this document to the “United Kingdom”, unless otherwise qualified, are to the continuing State entity, the present-day United Kingdom.

2. SUMMARY OF THE ISSUES HIS MAJESTY IS INVITED TO REFER

2.1. The matters that His Majesty is asked to refer to the Judicial Committee for clarification are as follows:

- (i) Whether the forced transportation of African people from their homelands to Jamaica, their subsequent chattelisation and enslavement in Jamaica until 1 August 1834,⁵ were unlawful because such unauthorised removal and subsequent enslavement was contrary to the fundamental principles of the common law, and because any local legislation that purported to authorise their subjection to chattel slavery was void as repugnant to fundamental principles of English law;
- (ii) Whether, in any event, the capture, forced transportation, and subsequent chattel enslavement of people of African descent in Jamaica up until 1 August 1834 (with a further 4 years of apprenticeship for those over 6 years), was contrary to the United Kingdom's international obligations including those arising under general principles of law, the peremptory prohibitions of slavery, torture, racial discrimination and crimes against humanity and obligations derived from other sources of international law; and
- (iii) Whether in light of the said illegalities, the United Kingdom is under an obligation to provide a remedy to the Jamaican people for the unlawful

⁵ The Slavery Abolition Act 1833, which received royal assent on 28 August 1833, partially freed enslaved people in the British-colonized Caribbean on 1 August 1834. However, it also introduced the “Apprenticeship System” which was, in effect, a period of continued slavery for enslaved people over 6 years of age. The Apprenticeship System, as implemented in Jamaica, meant that “full free” only came on 1 August 1838. Emancipation therefore had no material or practical effect for the majority of those enslaved in Jamaica until that date.

transportation and subsequent chattel enslavement of African people in Jamaica under British rule up until 1 August 1834 and for the continuing effect of the same, evident in a society consisting of a majority of people of African descent.

- 2.2. The detailed legal submissions addressing these questions are set out at Parts 6-11 below.

3. **THE BACKGROUND OF THE PETITION**

- 3.1. From a period spanning the mid 17th century to 1808,⁶ African people were forcibly transported by the English, and after the Act of Union 1707, the British, from the African continent to Jamaica to work as enslaved persons there – predominantly on sugar plantations. It is estimated that over a period of more than three hundred years, at least 15.4 million Africans were forcibly captured and transported across the Atlantic.⁷ It is recorded that approximately 1.2 million people were transported to Jamaica alone.⁸

⁶ The database SlaveVoyages records 1661 as the year in which the first English “slaver”, the name given to the ships transporting the enslaved, was engaged in the forced transportation of Africans to Jamaica: *SlaveVoyages* (Web Page) <<https://www.slavevoyages.org/>>. The Act for the Abolition of the Slave Trade 1807, which took effect from 1 May 1807, permitted slavers already on their way to Africa to continue on their journeys. Therefore, Africans continued to be transported to Jamaica for enslavement after 1807 with the *George* arriving at Kingston Harbour on 17th February 1808: Audra A Diptee, *From Africa to Jamaica: The Making of an Atlantic Slave Society, 1775-1807* (University Press of Florida, 2010) 115-118. According to David Eltis and David Richardson in *Atlas of the Transatlantic Slave Trade* (Yale University Press, 2010), “The era [of the transatlantic trafficking in enslaved peoples] is generally considered to have begun in 1501 when vessels crossing the Atlantic from Spain began to carry some African captives for sale in the Greater Antilles... and ended in 1867, when the last ship from Africa is thought to have disembarked its captives in Cuba”: at 21.

⁷ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 40 on reparatory justice for the harms and continuing consequences of colonialism, the trafficking in enslaved Africans across the Atlantic and other routes, and racialized chattel slavery* (Advance Unedited Version, 25 August 2026) [8] accessible at <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no40-reparatory-justice-harms>> (**‘CERD GR 40’**).

⁸ *Report on the work of the National Commission on Reparation, May 2009-October 2013* (presented to the Jamaican Parliament in 2013) 37 (**‘Report of the National Commission on Reparation’**).

- 3.2. The staggering numbers of those who arrived in Jamaica, chilling in themselves, obscure the additional detail of the significant numbers of Africans who were killed, in particular on the infamous “Middle Passage”. Mortality rates on the “slavers”, that is the ships that transported the enslaved, were extremely high in the early years of the trade in enslaved persons.⁹ By way of example, on arrival in Jamaica in 1732, the *Saint Michel* recorded a shocking mortality rate of 96.5%.¹⁰
- 3.3. The depravity of the mercantile enterprise that systematically transformed humans into commodities was laid bare in a 1783 case about another slaver, the *Zong* (*Gregson v Gilbert* 99 ER 629) (“**Gregson**”).¹¹ Serious navigational errors caused the voyage of the ship to become protracted, and to imperil all onboard.¹² A number of the 442 enslaved Africans who started the journey died *en route*. The poor physical condition of those still alive as the vessel neared Jamaica meant that as “perishable goods”, they would have little re-sale value on arrival. A deliberate decision was made by those in charge of the ship to drown some 134 captive Africans in 3 batches.¹³ The ship’s owners argued, in order to make good a claim for insurance, that this calculated decision was *not* murder. Rather, the argument went, it was merely the preservation of healthy “cargo” by removing the contaminants; by disposing of the frail and the infirm: There was, according to the case report in *Gregson*, only “the throwing overboard of goods, and of part to save the residue” (99 ER 629 at 630).

⁹ The database, SlaveVoyages, records the voyages of individual slavers from the 1600s onwards: ‘Trans-Atlantic Voyages’, *SlaveVoyages* (Web Page) <<https://www.slavevoyages.org/voyage/trans-atlantic#voyages>>.

¹⁰ SlaveVoyages records that 175 captives departed from Nantes, with only six remaining alive on arrival in Jamaica: *Ibid*.

¹¹ David Scott, *Irreparable Evil: An Essay in Moral and Reparatory History* (Columbia University Press, 2024) 2.

¹² James Walvin, *The Zong: A Massacre, the Law and the end of Slavery* (Yale University Press, 2011).

¹³ Jeremy Krickler, ‘A Chain of Murder in the Slave Trade: A Wider Context of the *Zong* Massacre’ (2012) 57(3) *International Review of Social History* 393, 393.

- 3.4. The story of the *Zong* “stands figuratively for the horror of the whole slavery era”.¹⁴ Only some 208 of the original 442 (a 53% mortality rate) captive Africans on the *Zong* made it to Jamaica. Many were flung overboard still handcuffed, with some opting to jump rather than be pushed to their deaths. Those who died are commemorated by the “Zong Monument” in Black River in the parish of St. Elizabeth in Jamaica and the episode is remembered by Jamaicans, and those of Caribbean ancestry all over the world, as evidence of Imperial Britain’s disregard for the very humanity of captive Africans, the forebears of Jamaicans of African descent. Liverpool’s International Museum of Slavery now houses “Stitching Souls: Threads of Silence”, an installation by British-Trinidadian artist, Karen McLean, comprised of 132 mannequins with heads made of African textiles carefully sutured together as part of what the artist describes as a reparative act.¹⁵ The book length elegy, “Zong!”, by Trinidadian-Canadian poet M N’ourbeSe Philip, purposely re-fashioned the words of the judgment in *Gregson* and juxtaposes the disordered words against ancestral names attributed to the drowned.¹⁶ The *Zong*, as a testament to the horrors of Transatlantic Chattel slavery, therefore, remains alive culturally and artistically for descendants of the enslaved in Jamaica, the wider Caribbean and its diasporas.¹⁷
- 3.5. The forced transportation of captive Africans to Jamaica, with the ever-present risk of death, was contrary to fundamental principles of the English common law. It was never properly authorised by any express statutory enactment and was therefore conducted unlawfully. It was characterised by notorious brutality and inhumanity, and left survivors mentally and physically scarred.¹⁸ As recorded in Thomas

¹⁴ Scott (n 11) 138.

¹⁵ John Kerrigan, ‘No Illusions’ (2025) 47(21) *London Review of Books*.

¹⁶ M NourbeSe Philip, *Zong!* (Silver Press, 2023).

¹⁷ See also Fred D’Aguiar, *Feeding the Ghosts* (Granta Books, 2014).

¹⁸ See by way of example, CLR James, *The Black Jacobins: Toussaint L’Overture and the San Domingo Revolution* (Penguin Books, 2001); Eric Williams, *Capitalism and Slavery* (University of North Carolina Press, 1944); Emilia Viotti da Costa, *Crowns of Glory, Tears of Blood* (Oxford University Press, 1997); Lucille Mathurin Mair, *The Rebel Woman in the British West Indies during Slavery* (University of the West Indies Press, 2007); Hilary McDonald Beckles, *Britain’s Black Debt: Reparations for Caribbean Slavery and Native Genocide* (University of West Indies

Clarkson's Report of 1789, citing Hill's *Naval History*; "Here began the horrid practice of forcing the Africans into slavery, an injustice and barbarity which, so sure as there is vengeance in heaven for the worst crimes, will sometime be the destruction of all who allow or encourage it."¹⁹

- 3.6. Thereafter, those transported and their descendants were held as "chattel" in Jamaica. That is to say that, as a matter of law, they were categorised as property, bought, sold, and branded with the imprimatur of their enslavers. Enslaved women, girls, and young boys, were sexually assaulted with impunity. Their status as human beings was denied, and an intricate and cynical web of colonial laws passed to reify such categorisation.²⁰ Indeed, as the Judicial Committee itself noted in 1789 "...Negroes were Property and a species of Property that needed a rigorous vigilant Regulation".²¹ The doctrine of Roman Civil Law previously reserved for chattel, *partus sequitur ventrem* (that which is born follows the womb), was applied to children born to enslaved mothers so that they automatically inherited their mother's captive status.
- 3.7. Jamaican anthropologist, David Scott, aptly characterises the wretched form of life that Transatlantic Chattel Slavery bestowed upon the enslaved as a "traumatised, terrorized life, a foreshortened, distorted, an eminently disposable life...a life devoid of vitality".²² To use the coinage of another prominent Jamaican anthropologist, Orlando Patterson, it was a form of "social death".²³ The system of

Press, 2013); Marissa J Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (University of Pennsylvania Press, 2016); Marjoleine Kars, *Blood on the River: A Chronicle of Mutiny and Freedom on the Wild Coast* (The New Press, 2020).

¹⁹ Thomas Clarkson, *The Substance of the Evidence of Sundry Persons on the Slave-trade, Collected in the Course of a Tour Made in the Autumn of the Year 1788* (James Phillips, 1789).

²⁰ Elsa V Goveia and CJ Bartlett, *The West Indian Slave Laws of the 18th Century* (Caribbean University Press, 1970).

²¹ *House of Commons Accounts and Papers* (1789) 26, no 646q, pt.iii cited in Beckles (n 18) 64.

²² Scott (n 11) 2.

²³ Orlando Patterson, *Slavery and Social Death* (Harvard University Press, 1982).

slavery as practised in Jamaica permitted enslavers the right to “use, destroy, sell and control all aspects of the life of the enslaved”.²⁴

- 3.8. In its *General Recommendation No. 40 on reparatory justice for the harms and continuing consequences of colonialism, the trafficking in enslaved Africans across the Atlantic and other routes, and racialized chattel slavery* (“**CERD GR 40**”), the United Nations Committee on the Elimination of Racial Discrimination (“**CERD**”) describes both the essence of Transatlantic Chattel Slavery and its ruinous consequences. CERD GR 40 reflects an emerging international consensus in which the uniquely tyrannical nature of the system of Transatlantic Chattel Slavery has begun to be properly recognised.²⁵ The General Recommendation “offers authoritative guidance and clarity on the legal basis for State responsibility to provide reparatory justice for harms resulting from both direct and indirect involvement in the trafficking of enslaved Africans and chattel slavery”.²⁶ The Recommendation describes the harms of Transatlantic Chattel Slavery in the following terms:

“Trafficking in enslaved Africans and racialized chattel slavery inflicted grave and systematic harms, including kidnapping, forced labour, extreme violence and inherited lifetime bondage ... Sexual and reproductive violence was integral to slavery. Enslaved women, girls and men were subjected to rape and other forms of sexual abuse and exploitation. Women and girls were also subjected to reproductive violence, including forced pregnancy, and coerced breeding which caused irreversible harm and deprived them of their dignity, bodily autonomy and reproductive autonomy

²⁴ Britta Redwood, ‘Property, Slavery, and Illegality’ (2026) *Social Science Research Network* (13 available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4937706>. Redwood used these words as a description of Transatlantic Chattel Slavery generally, but they are equally applicable to the system as it affected Jamaica specifically.

²⁵ New World slavery is described by David Scott as an “institutionalised system of domination characterised by unmitigated violence”: Scott (n 11) 2.

²⁶ CERD GR 40 (n 7) [1].

... Enslaved persons, including children, were denied legal personality and judicial protection and excluded from civic and political life.”²⁷

3.9. On 25 March 2026, the United Nations General Assembly adopted an historic Resolution, the *Declaration of the Trafficking of Enslaved Africans and Racialised Chattel Enslavement of Africans as the Gravest Crime Against Humanity* (“**UNGA RES/80/250**”).²⁸ Of profound import was the fact that UNGA RES/80/250:

3.9.1. Expressly recognised racialised chattel enslavement as a global project “historically unprecedented in its legal and structural design” and the first of its kind to “codify human beings and their descendants as inheritable, alienable and perpetual property, to convert human reproduction into a mechanism of capital accumulation, and to institutionalise racial hierarchy as a governing principle of international political and economic order.”²⁹

3.9.2. Declared the trafficking of enslaved Africans and racialised chattel enslavement to be “the gravest crime against humanity” and a violation of peremptory norms (*jus cogens*).³⁰

3.9.3. Emphasised that trafficking in Africans and racialised chattel enslavement was the gravest crime against humanity “by reason of the definitive break in world history, scale, duration, systematic nature, brutality and enduring consequences that continue to structure the lives of all people through racialized regimes of labour, property and capital”.³¹

²⁷ CERD GR 40 (n 7) [1]. It is also important to note that CERD GR 40 was the product of an extensive drafting process that involved a first draft put out for consultation, a widely attended conference, and 56 written submissions and input from States parties, United Nations entities, academic experts and civil society. It builds on the landmark UN General Assembly Resolution, Declaration of the Trafficking of Enslaved Africans and Racialised Chattel Enslavement of Africans as the Gravest Crime Against Humanity, GA Res 80/250, UN Doc A/RES/80/250 (26 March 2025) (“**UNGA RES/80/250**”).

²⁸ UNGA RES/80/250 (n 27).

²⁹ Ibid 33rd preambular paragraph.

³⁰ Ibid [2] and [4].

³¹ Ibid [3].

- 3.9.4. Expressly recognised the resistance of peoples of African descent to Transatlantic Chattel Slavery, as manifested in abolitionist traditions, in rebellion and armed struggle, and latterly in the continued commitment of peoples of African descent to seek redress via litigation and diplomacy.³²
- 3.9.5. Reaffirmed a collective recognition that chattel slavery and colonialism continue to have profound, enduring and multifarious material effects.³³
- 3.9.6. Affirmed the “importance of addressing historical wrongs affecting Africans and people of African descent in a manner that promotes justice, human rights, dignity and healing” and emphasised that claims for reparations represent a concrete step towards righting a historical wrong.³⁴
- 3.9.7. Noted that in “various historical contexts, reparations and other forms of redress have been provided in respect of other grave crimes committed against particular groups, reflecting the principle under international law that international wrongful acts entail a duty of reparation” and further noted, with concern, that no similar reparatory framework had been developed for the trafficking of enslaved Africans “despite its scale, duration and enduring consequences”.³⁵
- 3.9.8. Reaffirmed that crimes related to the trafficking of enslaved Africans and racialised chattel enslavement of Africans, as crimes against humanity, “are not subject to statutory limitations”.³⁶ The Resolution stated that “there can be no statutory limitations for crimes against humanity and that grave

³² Ibid 20th preambular paragraph.

³³ Ibid [5].

³⁴ Ibid [6].

³⁵ Ibid [7].

³⁶ Ibid 29th preambular paragraph.

crimes generate continuing obligations until addressed through truth, justice and reparation”.³⁷

3.9.9. Reaffirmed that under international law, including the principles of the articles on responsibility of States for internationally wrongful acts “States bear responsibility for internationally wrongful acts and have an obligation to cease the act if it is continuing and to offer appropriate assurances and guarantees of non-repetition if the circumstances so require, and to make full reparation for the injury caused, which may take the form of restitution, compensation and satisfaction, either singly or in combination.”³⁸

3.9.10. Called upon Member States to engage in initiatives designed to develop frameworks for good faith dialogue on reparatory justice which should include “a full and formal apology, measures of restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition and changes to laws, programmes and services to address racism and systemic discrimination.”³⁹

3.10. The project of Transatlantic Chattel Slavery, so described, was wholly inconsistent with fundamental common law principles, “repugnant to the laws of England” and ultra vires the original law-making power conferred on the Colony of Jamaica by the Royal Commission to Lord Windsor (see [7.7] below).⁴⁰ Transatlantic Chattel Slavery as practised in Jamaica was repugnant to the laws of England for the reasons set out below.

3.11. The regime to which the enslaved were subjected was characterised by inhumane and torturous treatment, whether expressly sanctioned by local slave codes or not.

³⁷ Ibid 30th preambular paragraph.

³⁸ Ibid 31st preambular paragraph.

³⁹ Ibid [8].

⁴⁰ The petitioner’s contention is that ‘*repugnant to the laws of England*’ includes inconsistency with the fundamental principles of English common law and statute: see Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (Stevens & Sons, 1966) 401.

By way of example, the Slave Act of 1717 (“An Act for the more effectual punishment of Crimes Committed by Slaves”)⁴¹ permitted the punishment of “cutting off one of the feet” for running away. Historical research indicates that, at least until the progressive amelioration of permissible punishments for enslaved persons in the late 18th century, punishment could involve, “nailing [the enslaved] down on the ground with crooked sticks on every limb and then applying the Fire by degrees from the Feet and Hands, burning them gradually up to the Head whereby their pains are extravagant.”⁴² This treatment was plainly contrary to the provisions of the Bill of Rights 1689 which prohibited “cruel and unusual” punishment.

- 3.12. The diaries, journals and notes of Thomas Thistlewood, an English plantation overseer and enslaver in Jamaica in the 18th century, represent gruesome archival testimony to the sexual exploitation and gender-based violence that also defined plantation slavery.⁴³ The mistreatment of enslaved women was a specifically egregious feature of Transatlantic Chattel Slavery in Jamaica. Indeed, as UNGA RES/80/250 notes, enslaved women were uniquely vulnerable to multiple and aggravated forms of domination at the same time as being crucial to familial and cultural survival, and to resistance, under conditions of extreme coercion.⁴⁴
- 3.13. The systematic transportation, chattel enslavement and mistreatment of enslaved persons in Jamaica was also in breach of the United Kingdom’s international obligations, including those arising out of general principles of law and the

⁴¹ 4 Geo I, Cap 4, Sec 8 (1717).

⁴² Hans Sloane, *A Voyage to the Islands Madera, Barbados, St. Kitts, Nieves, and Jamaica ...* (printed by BM for the author, vol I, 1707) 1vii, cited in Robert Wothington Smith, ‘The Legal Status of Jamaican Slaves Before the Anti-Slavery Movement’ (1945) 30(3) *Journal of Negro History* 293, 300.

⁴³ Thomas Thistlewood’s papers are archived by Yale University and can be accessed online: ‘Thomas Thistlewood papers’, *Archives at Yale* (Web Page) <<https://archives.yale.edu/repositories/11/resources/1050>>. See also Verene A. Shepherd, *Livestock, Sugar and Slavery: Contested Terrain in Colonial Jamaica* (Kingston: Ian Randle Pubs. 2009)

⁴⁴ UNGA RES/80/250 (n 27) 37th preambular paragraph.

peremptory prohibitions of slavery, torture, racial discrimination and crimes against humanity and obligations derived from other sources of international law. In particular, the declaration following the United Nations Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001 (**“The Durban Declaration”**), specifically noted that slavery and the transatlantic slave trade were, in fact, crimes against humanity and ought always to have been seen as such because of their “magnitude”, “organised nature”, “abhorrent barbarism” and the resultant “negation of the essence of the victims.”⁴⁵ In June 2020, the European Parliament also adopted a resolution that specifically declared slavery to be a crime against humanity.⁴⁶

- 3.14. The transatlantic slave trade and chattel slavery are further described in CERD GR 40:

*“Over at least four centuries, transatlantic chattel slavery became a vast, interdependent system involving State and non-State actors, including business enterprises, financial institutions and religious organizations. It began with the capture of Africans for sale and evolved into a global economy exploiting enslaved African labour for profit. Chattel slavery became an international illicit enterprise spanning precolonial societies, colonial powers and postcolonial settler colonies, all enriched by the labour of enslaved Africans in the ‘New World’”.*⁴⁷

- 3.15. Transatlantic Chattel Slavery was, according to CERD GR 40, “the largest forced deportation in history”, leaving in its wake “lasting harm on Africa, destabilizing societies, entrenching economic dependency, destroying cultures and causing

⁴⁵ World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Durban Declaration*, UN Doc A/CONF.189/12 (8 September 2001).

⁴⁶ *European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd 2020/2685 (RSP)* [2021] OJ C 362/67.

⁴⁷ CERD GR 40 (n 7) [8].

immense loss”.⁴⁸ This assessment is reflected in the letter and spirit of UNGA RES/80/250 cited above.

- 3.16. The descendants of enslaved Jamaican people have continued to suffer the consequences of chattelisation and enslavement long after the passing of the Emancipation Act in 1833 and the end of Apprenticeship in 1838. They have suffered those consequences in myriad ways: physical, psychological, social, economic and ecological. The petitioner contends that the commemorative declarations and statements of regret issued by British government officials and other institutions fail, on their own, to take proper account of the correlation between Britain’s status as a global economic power and the contemptible traffic in Africans for use as enslaved labour on plantations in the Caribbean and across the Americas.⁴⁹ Such gestures do not offer adequate redress either for the iniquity of Transatlantic Chattel Slavery or for the widespread race-based inequality that this project helped to create.
- 3.17. Transatlantic Chattel Slavery dehumanised people of African descent. Its impact is not limited by national boundaries. It has caused and contributed to the enduring perception of those of African descent as inferior and has helped to entrench corrosive notions of racial hierarchy. Its dependence upon extreme violence, in order to subjugate, is reflected in the excessive use of force against black people in many countries with significant African and Caribbean diasporic communities. Unsurprisingly, in both the United Kingdom and the USA there is a disproportionate use both of force, and of incarceration, against people of African descent. By way of example *The Lammy Review*, published in 2017 and authored by the former Deputy Prime Minister, found that people of African descent accounted for 12% of the adult prison population, and over 40% of those in youth custody, despite representing just 3% of the general population. The review explicitly noted that

⁴⁸ Ibid [8].

⁴⁹ Ibid [13]-[15].

these statistics reflect a level of disproportionality greater than that recorded in the United States at the time.⁵⁰

- 3.18. Persons of African descent also continue to feature disproportionately in indices of poverty across the globe. As the UN Working Group of Experts on People of African Descent concluded following their 2023 visit to the United Kingdom, “stark and unsustainable inequalities are underpinned by systemic racism, bias, racially disparate and discriminatory policing, and surveillance and control of people of African descent”.⁵¹ It recommended:

*“Reparations are an internationally recognized human right. Combating racism requires understanding the legacies of the trade and trafficking in enslaved Africans and colonialism, and the right to reparations. The responsibility of the United Kingdom for reparations extends beyond its borders and should have a global reach.”*⁵²

- 3.19. The injuries suffered by the enslaved, and their descendants in Jamaica as a result of Transatlantic Chattel Slavery reflect the experiences of those of African descent across the world. These injuries are properly characterised as intergenerational; they “have had lasting and damaging effects in the psychological, material and social conditions of those victimised and on generations of their progeny.”⁵³

The precedent for reparations

⁵⁰ David Lammy, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (Report, September 2017) 3.

⁵¹ UN Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its visit to the United Kingdom of Great Britain and Northern Ireland*, UN Doc A/HRC/54/67/Add.1 (5 February 2024) [17] and [68].

⁵² Ibid [77] and [83].

⁵³ Beckles (n 18) 11. See also Verene A Shepherd et al (eds), *Jamaica and the Debate over Reparation for Slavery: a discussion paper prepared by the Jamaica National Bicentenary Committee* (Pelican Publishers, 2012).

- 3.20. Historic wrongs of such gravity and scale call for some proper reparation from the State that inflicted those wrongs, and which derived enormous economic benefits over a period of centuries from those wrongs, at the expense of an identifiable group of victims. There are a number of legal and political precedents for the provision of restitution or reparation by a State to the victims of its own historic injustices, particularly where those injustices amount to “crimes against humanity” directed against an identifiable group defined by race, ethnicity or nation.
- 3.21. Germany has enacted several measures to pay more than US \$50 billion in post-war reparations to victims of Nazi war crimes and has made direct payments to the State of Israel.⁵⁴ Moreover, in recognition of the wrongs committed against former “comfort women”, Japan reached a settlement with South Korea which involved a formal apology and the creation of a special fund worth US \$1 billion both to compensate victims still alive and to undertake cultural and vocational projects.⁵⁵ The United States Civil Liberties Act 1988 devised a compensation scheme to pay reparations for World War II internment of Japanese Americans.⁵⁶ The United Kingdom has itself paid £19.9 million in compensation for colonial-era harms to Kenyan victims as part of the settlement of claims brought in respect of the British colonial administration’s response to the Kenya Emergency/Mau Mau uprising between 1952 and 1960. It is of material relevance that the settled claims in the *Mau Mau* litigation included claims related to systematic torture, hard labour, sexual abuse, malnutrition and starvation.⁵⁷

The special case for reparations in the Jamaican context

⁵⁴ Ana Lucia Araujo, *Reparations for Slavery and the Slave Trade: A Transnational and Comparative History* (Bloomsbury, 2017) 156.

⁵⁵ Max Du Plessis, ‘Historical Injustice and International Law: An Exploratory Discussion of Reparation for Slavery’ (2003) 25(3) *Human Rights Quarterly* 624, 639.

⁵⁶ *Report of the National Commission on Reparation* (n 8). It is worthy of note, by contrast, that Haiti, the first independent black republic in the Americas, rather than being the recipient of reparations from its former colonisers, was required to pay compensation to France in order to have its independence recognised: Araujo (n 54) 83.

⁵⁷ *Hansard*, House of Commons, 6 June 2013, vol 563, col 1692 (William Hague).

- 3.22. Firstly, the transatlantic trade in enslaved Africans and the centuries of chattel slavery that followed were contrary to fundamental principles of the English common law. These practices also amounted to a breach of the United Kingdom's international obligations, including those arising under general principles of law and the peremptory prohibitions of slavery, torture, racial discrimination, crimes against humanity and obligations derived from other sources of international law.
- 3.23. Secondly, after the conquest of the island from Spain, the United Kingdom (England, then Great Britain) was directly responsible for the regime of plantation slavery in Jamaica and the Caribbean, and for the theory and practice of "chattel" slavery. It was also responsible for the maintenance of that regime by force of arms at the hands of soldiers of the Crown. Moreover, the United Kingdom, as the "mother" country with effective power over Jamaica as a colony, both countenanced and acquiesced in the brutal regime contained in the Jamaican Slave Codes, even as those codes remained unlawful under English common law and international law.⁵⁸
- 3.24. Thirdly, the United Kingdom derived spectacular economic benefit from chattel slavery in the Caribbean. Jamaica had by far the largest enslaved population of any English Caribbean colony, with 319,074 enslaved people in 1830 out of a total enslaved population of 684,996 across the English Caribbean.⁵⁹ The University College London Centre for the Study of the Legacies of British Slavery has tracked the extent of the impact of slavery on the development of modern Britain in its landmark database project commenced in 2009.⁶⁰ Its work has, at least in part, substantiated the thesis of Dr Eric Williams that the profits from Transatlantic

⁵⁸ The first complete slave code, An Act for the better Order and Government of Slaves 8 William, Cap 2 (1696) was passed in 1696. The Acts passed by the Jamaican Assembly directed at the regulation of slavery on the island are often described as slave codes in historico-legal research: see, for example, Smith (n 42) 293.

⁵⁹ Pieter C. Emmer and Stanley L. Engerman 'The non-hispanic west indies' In: David Eltis, Stanley Engerman, Seymour Drescher, David Richardson (eds) *The Cambridge World History of Slavery*. (Cambridge University Press; 2017) Table 4.1, 73-97.

⁶⁰ 'Context', *Centre for the Study of the Legacies of British Slavery* (Web Page) <<https://www.ucl.ac.uk/lbs/project/context/>>.

Chattel Slavery contributed significantly to the “accumulation of capital in England which financed the Industrial Revolution”.⁶¹ A more recent study has concluded that “...slavery wealth raises aggregate income by the equivalent of around a decade of economic growth, and increases local income in places with the greatest involvement in slavery by more than 40 percent.”⁶²

- 3.25. Fourthly, at the time of emancipation the enslavers of Jamaican enslaved persons were paid vast sums of money in compensation for the loss of their “property”, that is to say, those forcibly held by them in conditions of sub-human bondage. Thus, between 1834 and 1843, £20 million, estimated to be the equivalent of approximately £70 billion by the measure of the early 21st century,⁶³ was paid by the British Government to former enslavers in the Caribbean as recompense for the loss of this valuable human “chattel”. This sum was added to the national debt and was only repaid in full 181 years later, in 2015.⁶⁴ Perversely, this debt burden will have been borne in part by generations of British taxpayers of African descent.
- 3.26. Since the Jamaican enslaved population was the largest in the British-colonised Caribbean (319,074), a proportionately high share of the compensation was paid to those who enslaved in Jamaica. Treasury Records indicate that 20.5% of that £20 million (£4.1 million or an estimated £3 billion today) was paid to 16,114 Jamaican enslavers who owned or had an interest in enslaved people in Jamaica.⁶⁵ Not one penny in compensation was paid to the formerly enslaved.

⁶¹ Williams (n 18) 52.

⁶² Stephan Hebllich, Stephen J Redding and Hans-Joachim Voth, ‘Slavery and the British Industrial Revolution’ (Working Paper, August 2023) 1
<https://www.princeton.edu/~reddings/papers/SBIR_Paper.pdf>.

⁶³ Beckles (n 18) 144 citing Nicholas Draper, *The Price of Emancipation: Slave Ownership, Compensation and British Society at the End of Slavery* (Cambridge University Press, 2010) 106-7.

⁶⁴ Kirsty Parsons and Jennifer Adam, ‘Marking the Bank of England’s links to transatlantic slavery’, *Bank of England* (Web Page, 4 November 2024)
<<https://www.bankofengland.co.uk/museum/online-collections/blog/marking-the-bank-of-englands-links-to-transatlantic-slavery>>.

⁶⁵ Professor Verene Shepherd and Ahmed Reid, ‘Jamaica Paid a Heavy Price for Freedom’ *Caricom Reparations Commission* (Web Page, 3 March 2018)
<<https://caricomreparations.org/jamaica-paid-heavy-price-freedom/>>.

There has been no formal accounting for the debt owed, and no analogous compensation paid to them, or their descendants, for the unlawful regime of Transatlantic Chattel Slavery and the profound and lasting intergenerational damage it caused.

- 3.27. These four special features provide very particular and compelling reasons for the United Kingdom to accept responsibility to provide redress to the descendants of enslaved persons in Jamaica. Similar factors may apply equally to other Commonwealth Caribbean countries whose populations include descendants of enslaved persons. They too have a similar legal claim to reparations. But the size of the Jamaican enslaved population was greater, the profits derived from slavery were greater, and the total compensation paid to ex-enslavers was also correspondingly greater. Jamaica is, therefore, a paradigm case for the righting of a glaring historical injustice by the provision of reparations.

Efforts to raise the issue of reparations and responses on behalf of the United Kingdom

- 3.28. There have been several past unsuccessful attempts to raise the issue of reparations.⁶⁶ In 1996, Lord Gifford's invitation to the House of Lords to consider whether the British Government should make appropriate reparation to African nations and descendants of Africans for the damage caused by Transatlantic Chattel Slavery was rejected.⁶⁷ In the specific Jamaican context, in 2002, an attempt to seek declarations against Her Majesty the Queen for genocide, unjust enrichment, ruining Africa and a failure to pay reparations brought by four Rastafari was struck out by the Supreme Court of Jamaica.
- 3.29. In 2006, Prime Minister Tony Blair recognised Britain's role in the transatlantic slave trade. He described it as "one of the most inhuman enterprises in history" but

⁶⁶ See generally, Araujo (n 54) chapter 5.

⁶⁷ *Hansard*, House of Lords, 14 March 1996, vol 570, cols 1042-62.

failed to engage substantively with the issue of reparations.⁶⁸ Statements by Westminster parliamentarians in 2007 encouraging the discussion of reparations during the House of Commons debate on the Bicentenary of the Abolition of the Slave Trade failed to produce earnest engagement by the British State.⁶⁹

- 3.30. During a state visit to Jamaica in 2015, Prime Minister Cameron also refused to address the question of reparations in substance, choosing instead, much to the offence of many Jamaicans, to offer a £25 million contribution by the United Kingdom to the construction of a prison in Jamaica.⁷⁰ When the issue was again taken up on behalf of the Caribbean Community in 2016 by then Barbadian Prime Minister, Freundel Stuart, Prime Minister Cameron expressly stated that the “British Government does not believe that reparations are the answer”.⁷¹
- 3.31. More recently, former Prime Minister Sir Keir Starmer agreed to a joint Communique at the Commonwealth Heads of Government Meeting (“**CHOGM**”) in Samoa in 2024 which promised “a meaningful, truthful and respectful conversation towards forging a common future based on equity”.⁷² This appeared to represent a positive move away from the then Prime Minister’s previously reported statement

⁶⁸ ‘Blair expresses ‘deep sorrow’ over slavery’, *Politics.co.uk* (Web Page, 27 November 2006) <<https://www.politics.co.uk/news/2006/11/27/blair-expresses-deep-sorrow-over-slavery/>>.

⁶⁹ Beckles (n 18) 208-10.

⁷⁰ ‘Mere acknowledgment insufficient – PJ Patterson to British PM on slavery’ *CARICOM* (Web Page, 10 October 2015) <<https://caricom.org/mere-acknowledgement-insufficient-pj-patterson-to-british-pm-on-slavery/>>.

⁷¹ ‘Barbados PM Writes Britain on Reparation on Behalf of CARICOM’, *CARICOM* (Web Page, 2 March 2016) <<https://caricom.org/barbados-pm-writes-britain-on-reparation-on-behalf-of-caricom/>>.

⁷² The Communique highlighted British responsibility for other forms of colonial harm, in addition to Transatlantic Chattel Slavery: “Heads, noting calls for discussions on reparatory justice with regard to the trans-Atlantic trade in enslaved Africans and chattel enslavement and recognising the importance of this matter to member states of the Commonwealth, the majority of which share common historical experiences in relation to this abhorrent trade, chattel enslavement, the debilitation and dispossession of Indigenous People, indentureship, colonialism, blackbirding and their enduring effects, agreed that the time has come for a meaningful, truthful and respectful conversation towards forging a common future based on equity”: Samoa Communique of the Commonwealth Heads of Government Meeting *The Commonwealth* (26 October 2024) [22] <<https://thecommonwealth.org/news/chogm2024/Samoa-communique-leaders-statement-and-declarations>>.

that he was more interested in “looking forward” than having “very long endless discussions about reparations on the past”.⁷³

- 3.32. Against this background of meagre expressions of regret uttered on behalf of successive United Kingdom Governments, the Government of Jamaica welcomed His Majesty’s specific and solemn commitment, given at the Commonwealth Heads of Government meeting in 2022, to finding “new ways to acknowledge our past” and to “acknowledge the wrongs that have shaped our past”.⁷⁴ In this respect, His Majesty was echoing the sentiments of his forebear King George III, who made statements condemning Transatlantic Chattel Slavery in an essay written in the late 1750s. King George III summarised the arguments made against slavery by the French philosopher de Montesquieu in his classic Enlightenment text *The Spirit of the Laws*, published in 1748, and then made the following personal comments;

*“[T]he pretexts used by the Spaniards for enslaving the New World were extremely curious ... the propagation of the Christian religion was the first reason, the next was the [Indigenous] Americans differing from them in colour, manners and customs, all [of] which are too absurd to take the trouble of refuting. But what shall we say to the European traffic of black slaves, the very reasons urged for it will be perhaps sufficient to make us hold this practice in execration”.*⁷⁵

- 3.33. After summarising and adopting Montesquieu’s reasons for condemning the Spaniards’ treatment of indigenous people and for enslaving African people in the Americas, Prince George, as he then was, went on to conclude as to slavery

⁷³ Eleni Courea and Aamna Mohdin, ‘Starmer says he wants to ‘look forward’ and not talk about slavery reparations’, *The Guardian* (Web Page, 23 October 2024) <<https://www.theguardian.com/world/2024/oct/23/keir-starmer-slavery-reparations-commonwealth-summit>>.

⁷⁴ James Crawford-Smith, ‘Prince Charles says ‘time has come’ for commonwealth slavery conversations’, *Newsweek* (Web Page, 24 June 2022) <<https://www.newsweek.com/prince-charles-commonwealth-slavery-conversations-1718873>>.

⁷⁵ Andrew Roberts, *George III: The Life and Reign of Britain’s Most Misunderstood Monarch* (Allen Lane, 2021) 29.

generally that, “as to these arguments for an *inhuman custom wantonly practised* by the most enlightened polite nations in the world, *there is no occasion to answer them for they stand self-condemned*”⁷⁶. As Andrew Roberts concluded in his biography of King George III, “George’s writings on this subject were much more than merely ventriloquizing Montesquieu, and have been described as being at the vanguard of the radical argument over slavery, since they predated even the arguments made in George Wallace’s pioneering anti-slavery book *A System of the Principles of the Law of Scotland* (published in 1760)”.⁷⁷ His Majesty is now presented with an opportunity to provide similar moral leadership on this vital issue and build on the important steps that have already been taken.

- 3.34. By way of example, in response to 2023 research that revealed the transfer of shares in the slave-trading Royal African Company to King William III 1689,⁷⁸ His Majesty gave express support for further research on the Crown’s involvement in and benefit from the slave trade by way of allowing access to the royal collection and royal archives.⁷⁹ The Government of Jamaica thanks His Majesty for publicly recognising the importance of confronting the painful consequences of Britain’s history. The earnest exploration of transnational archival sources, including the royal archives, will be crucial to the process of rectification.⁸⁰ In the view of the

⁷⁶ Ibid (emphasis added). The petitioner additionally draws specific attention to Montesquieu’s outright condemnation of slavery in his treatise on *L’Esprit de Loi* in the mid-18th century and on the future King George’s adoption of his arguments to condemn the enslavement of Africans in the Americas as evidence of recognition in the 18th century of the self-evident truth that there was no rational justification for the inhuman practice of the enslavement of African people by European enslavers at that time.

⁷⁷ Ibid.

⁷⁸ David Conn, Aamna Mohdin and Maya Wolfe-Robinson, ‘King Charles Signals first explicit support for research into monarchy’s slavery ties’, *The Guardian* (Web Page, 6 April 2023) <<https://www.theguardian.com/world/2023/apr/06/king-charles-signals-first-explicit-support-for-research-into-monarchys-slavery-ties>>.

⁷⁹ Ibid; Michael Holden, ‘King Charles backs research into monarchy’s slave links’, *Reuters* (Web Page, 6 April 2023) <<https://www.reuters.com/world/uk/king-charles-backs-research-into-monarchys-slave-links-2023-04-06/>>.

⁸⁰ See CERD GR 40 (n 7) [59], which states that “States Parties who were involved in transatlantic chattel slavery must promptly release all information needed to reconstruct the full historical record, including details on events, responsible individuals and institutions, beneficiaries and victims. They must preserve and guarantee full, free and effective access to archives and records relating to human rights and humanitarian law violations, including records concerning violations committed against enslaved persons, with a view to ensuring the right to truth.”

Jamaican Government, however, that process can neither be confined to the royal archives or to the past. The wrongs to which His Majesty alluded, and to which this petition refers, also define Jamaica's *present*.

- 3.35. It is therefore the position of the Jamaican Government, on behalf of its people, that any meaningful or respectful conversation should begin with a discussion of measures designed to address, and repair, the devastating effect of Britain's protracted, violent and lucrative colonial past on the people of Jamaica as a whole, and peoples of African descent in particular.⁸¹ A meaningful and respectful conversation requires active engagement with the principles of reparatory justice found both in UK domestic law and international law.

Other developments in respect of the cause of reparatory justice

- 3.36. Despite the prevarications of the United Kingdom governments referred to above, the powerful case for reparatory justice in respect of Transatlantic Chattel Slavery has gained increasing momentum.
- 3.37. At the supra-national level, there have been significant initiatives by regional bodies in the Global South to articulate the case for reparations, and to identify the myriad forms that reparations might take.
- 3.38. Under the aegis of CARICOM, the Caribbean Reparations Commission ("**CRC**") devised a "Ten Point Action Plan" in 2014 which included an enjoinder to former European colonial powers to consider a raft of reparatory measures aimed at

⁸¹ The following is a list of publications, specific to Jamaica, which have advocated for reparative justice: Anthony Gifford, *The Passionate Advocate* (Arawak Publications, 2007); Mike Henry with Reginald Allen, *Many Rivers to Cross: A Political Journey of Audacious Hope, with Reflections on 2012* (LMH Publishing, 2013); *Report of the National Commission on Reparation* (n 8); Bert S Samuels, 'The Jamaican Case for Reparations against the British Government for Slavery and Colonization', in Jacqueline Bhabha, Margareta Matache and Caroline Elkins (eds), *Time for Reparations: A Global Perspective* (University of Pennsylvania Press, 2021) 59; Shepherd et al (n 53); 'Special Issue on Reparations' (2020) 68(3/4) *Social & Economic Studies* (edited by Hilary Beckles, Verene Shepherd & Ahmed Reid).

addressing the material present day effects of colonial-era harms.⁸² Those measures range from reparatory cultural, educational and health-related investment programmes to compensation and debt-relief. The Ten Point Action Plan was revised in June 2026 and is now entitled “The CARICOM Ten Point Plan for Reparatory Justice: A Manifesto for the Coming Enlightenment”.⁸³

- 3.39. In 2021 the UN High Commissioner for Human Rights recommended that States “initiate comprehensive processes to halt, reverse and repair the lasting consequences and ongoing manifestations” of enslavement, the trade in enslaved Africans and colonialism.⁸⁴
- 3.40. In December 2022, the Government of the Netherlands issued a formal apology for its role in slavery, the slave trade and their material and intergenerational consequences.⁸⁵ At the sub-national level, the Church of England has committed £100 million in funding over a nine-year period, commencing in 2023, in response to research revealing the Church’s historic links to Transatlantic Chattel Slavery.⁸⁶
- 3.41. In 2023, at the “Accra Conference” in Accra, Ghana, delegates from the African Union (“**AU**”), CARICOM, Latin America, the USA and the United Kingdom signed the “Accra Proclamation on Reparations”. The Accra Proclamation saw the African Union commit, among other things, to greater cooperation with CARICOM in order

⁸² ‘10 Point Reparation Plan’, *Caricom Reparations* (Web Page) <<https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/>>.

⁸³ Caribbean Community Secretariat (n 4). It should be noted that there was an earlier revision of the Ten Point Action Plan in 2018.

⁸⁴ United Nations High Commissioner for Human Rights, *Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers*, UN Doc A/HRC/47/53 (9 July 2021) [62].

⁸⁵ ‘Speech by Prime Minister Mark Rutte about the role of the Netherlands in the history of slavery’, *Government of the Netherlands* (Web Page, 19 December 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>>.

⁸⁶ ‘Church Commissioners publishes full report into historic links to transatlantic chattel slavery and announces new funding commitment of £100m in response to findings’, *Church of England* (Web Page, 10 January 2023) <<https://www.churchofengland.org/media/finance-news/church-commissioners-publishes-full-report-historic-links-transatlantic-chattel>>.

to advance the reparations agenda and the amplification of otherwise marginalised voices.⁸⁷ There has since been an AU-CARICOM Summit in 2025 on reparatory justice⁸⁸ and other international collaborative ventures continue apace.

- 3.42. On 15 May 2026, Pope Leo XIV, Head of State of the Vatican, in his encyclical letter *Magnifica Humanitas*, apologised for the Catholic Church's implication in the practice of slavery from antiquity to the 19th century.⁸⁹ Though his was a broad reference to all forms of slavery through the ages, his description of enslavement as incompatible with the "dignity of every human being" applies with greater force to Transatlantic Chattel Slavery; a form of slavery defined by domination and unremitting violence, perpetrated for immense profit and justified on the basis of invented racial hierarchies. The encyclical decries the fact that slavery was "long tolerated before it was unequivocally condemned" and describes the Church's complicity as a "wound in Christian memory". It stated:

"It is impossible not to feel deep sorrow when contemplating the immense suffering and humiliation endured by so many in stark contrast to their immeasurable dignity as persons infinitely loved by the Lord. For this, in the name of the Church, I sincerely ask for pardon."⁹⁰

- 3.43. On 25 March 2026, as referred to at [3.9] above, the United Nations General Assembly passed the most significant international resolution in respect of Transatlantic Chattel Slavery to date. The Government of Jamaica was dismayed to note that the United Kingdom and the European Union – a group comprising the principal beneficiaries of the injustices complained of – abstained from voting with the majority of Member States in favour of the resolution. The Jamaican

⁸⁷ African Union, *Accra Proclamation on Reparations* (Web Page, 14 November 2023) <<https://au.int/en/decisions/accra-proclamation-reparations>>.

⁸⁸ 'The 2ND Africa-CARICOM Summit', *African Union* (Web Page) <<https://au.int/en/newsevents/20250907/2nd-africa-caricom-summit>>.

⁸⁹ Pope Leo XIV, *Magnifica Humanitas* (Encyclical Letter, 15 May 2026) <<https://www.vatican.va/content/leo-xiv/en/encyclicals/documents/20260515-magnifica-humanitas.html>>.

⁹⁰ Ibid, at paragraph 176.

Government submits that the United Kingdom Government's position does not do justice to His Majesty's attempt to find "new ways to acknowledge our past". As argued below, and as recognised by the General Assembly in its resolution of 25 March 2026, "historical injustice must be translated into present day legal and institutional responsibility."⁹¹

- 3.44. It is the position of the Jamaican Government, in view of these developments, that the issue of reparations for Transatlantic Chattel Slavery must be given urgent and serious consideration.
- 3.45. Notwithstanding the existence of a clear legal, and indeed, moral claim to reparations, Jamaica is prevented from commencing inter-state litigation against the United Kingdom before the International Court of Justice ("ICJ") under Article 36(2) of the Statute of the International Court of Justice ("**ICJ Statute**") in relation to the harms resulting from Transatlantic Chattel Slavery. In order, it must be assumed, to preclude precisely the kind of complaint raised here on behalf of the people of Jamaica, the United Kingdom has placed specific reservations on the compulsory jurisdiction of the ICJ which prevent the Court from adjudicating on disputes between the United Kingdom and "the government of any other country which is or has been a Member of the Commonwealth".⁹² The United Kingdom's reservation prevents former colonies from challenging the conduct of the United Kingdom during the entire colonial era in contentious proceedings before the ICJ initiated under Article 36(2) of the ICJ Statute. Jamaica is, of course, a member of the Commonwealth.
- 3.46. In consequence, grievous, deliberate and organised wrongs committed across centuries, "remain unrepaired in the present".⁹³

⁹¹ Luis Eslava, 'Three Lessons from the UN Declaration on Enslavement', *Verfassungsblog* (Web Page, 9 April 2026) <<https://verfassungsblog.de/un-resolution-enslavement/>>.

⁹² 'Declarations Recognising the Jurisdiction of the Court as Compulsory: United Kingdom of Great Britain and Northern Ireland', *International Court of Justice* (Web Page, 22 February 2017) <<https://www.icj-cij.org/declarations/gb>> ("**UK ICJ Declaration**").

⁹³ David Scott, 'Evil Beyond Repair' (2018) 22(1) *Small Axe* vii, viii.

3.47. The specific refusal of the United Kingdom to submit to the ICJ's compulsory jurisdiction in respect of disputes raised by past and present Commonwealth States means that the Judicial Committee of the Privy Council is the appropriate forum for scrutinising Jamaica's contention that Transatlantic Chattel Slavery, its sequelae, and the continuing failure to provide any adequate remedy for injustices of such magnitude, are all unlawful under domestic and international law.

3.48. The exercise of His Majesty's discretion, as the Sovereign of the United Kingdom, to refer this matter to the Privy Council, pursuant to section 4 of the JCA, is therefore necessary to give effect to the principle that where there is, or has been a fundamental wrong, there must be a remedy (*ubi jus, ibi remedium*).

4. STRUCTURE OF THIS PETITION

4.1. Against this background, your petitioner will deal in turn with the following points:

- (i) **Part 5:** the wide jurisdiction of His Majesty to refer legal or constitutional issues of this nature to the Judicial Committee of the Privy Council pursuant to section 4 of the Judicial Committee Act of 1833;
- (ii) **Part 6:** the unlawful nature of the seizure and forced transportation of African people to Jamaica;
- (iii) **Part 7:** the unlawfulness of the practice of chattel enslavement in the colonies;
- (iv) **Part 8:** analysis of the Jamaican National Council on Reparation;
- (v) **Part 9:** the unlawful imposition of "cruel and unusual" punishments;

(vi) **Part 10:** the forced transportation and enslavement of African peoples as a violation of international law; and

(vii) **Part 11:** the obligation to provide a reparatory remedy.

5. **SECTION 4 OF THE 1833 JUDICIAL COMMITTEE ACT**

5.1. The ambit of section 4 of the JCA is explicitly wide. It provides:

“It shall be lawful for His Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit; and such committee shall thereupon hear or consider the same and shall advise His Majesty thereon in manner aforesaid.”

5.2. The plain and ordinary meaning of the relevant wording in section 4, namely “*any such other matters whatsoever* as His Majesty shall think fit” (emphasis added), confers the broadest possible discretion on His Majesty to lawfully refer matters to the Judicial Committee. Lord Mance observes in *Privy Council Practice* that “there are no legal limitations on the kinds of questions which the Queen [King] may refer to the JCPC under s.4”.⁹⁴

5.3. The Judicial Committee of the Privy Council’s Practice Directions 2024 state at paragraph 1.12 that “His Majesty has the power to refer *any matter* to the [Judicial Committee] for ‘consideration and report’ under section 4 of the Judicial Committee Act 1833” (emphasis added).

5.4. The learned author Roberts-Wray recognises that “there are no legal limitations, geographical or otherwise, on the kinds of questions which may be referred to the Judicial Committee under this section”.⁹⁵ The breadth of the issues that can

⁹⁴ Jonathan Mance and Jacob Turner, *Privy Council Practice* (Oxford University Press, 2017) 29 [2.57].

⁹⁵ Roberts-Wray (n 40) 449.

properly be referred under section 4 is recognised by Roberts-Wray to include such matters as “the annexation of one colony to another”; “the interpretation of an agreement between governments”, and “the national status and deportation of an inhabitant of a colony”.⁹⁶ One example that demonstrates the width of the issues on which the Privy Council can be invited to rule in a case specially referred under section 4 is *In re Southern Rhodesia* [1919] AC 211. There, the Judicial Committee ruled on the legal status of a large part of Matabeleland but did not do so in the course of conventional civil litigation.

- 5.5. The kind of issues fit for referral under section 4 are issues of a legal or constitutional nature “where proceedings would be conducted in a manner similar to a court hearing”.⁹⁷ This includes any such issue of legal or constitutional importance that “cannot be determined through the ordinary judicial process” (as recognised by Lord Neuberger in his judgment in the case of *The Cayman Islands Chief Justice* (2014) AC 198 at [34]-[35]).
- 5.6. Further, in terms of the outcome of any referral, it is established as a matter of constitutional practice that the United Kingdom Government will accept the advice of the Judicial Committee on matters referred to it as a result of the exercise of His Majesty’s discretion pursuant to section 4 of the JCA.⁹⁸
- 5.7. Given the above, it is submitted that the issues of law formulated in Part 2 above are eminently fit for referral to the Judicial Committee under section 4. Thus:
 - (i) They are not matters that can be raised and determined in ordinary court proceedings before domestic or international courts.⁹⁹

⁹⁶ Ibid.

⁹⁷ Mance and Turner (n 94) 27 [2.48].

⁹⁸ *Hansard*, House of Commons, 6 March 1967, vol 742, cols 1038-9.

⁹⁹ Noting our submissions above that Jamaica is prevented from commencing inter-state litigation under Article 36(2) of the ICJ Statute before the ICJ in relation to this dispute due to the United Kingdom’s reservations in its declaration under Article 36(2).

- (ii) They are issues of a primarily legal and constitutional nature, even if they are also matters of some political significance; and they are of fundamental importance since they concern systematic breaches of domestic and international law in respect of subjects of the British Crown, whose descendants in Jamaica remain subjects of His Majesty the King to this day.

5.8. What follows is a brief summary of the legal basis on which it is submitted that the issues call to be referred to the Judicial Committee by His Majesty pursuant to section 4 of the JCA.

6. THE UNLAWFUL NATURE OF THE SEIZURE AND TRANSPORTATION OF AFRICAN PEOPLE TO JAMAICA

6.1. Firstly, it is submitted that there was no positive law in force from the year 1655 onwards (the year of the annexation of Jamaica) to justify or authorise the forcible transportation of African people to Jamaica.

6.2. As to the seizure, removal and transportation of African people from their homeland across the ocean to Jamaica, this was contrary to both English common law and international law.

6.3. Section 29 of the Act for extending and improving the Trade to Africa (“The Act of George II”)¹⁰⁰ provided as follows:

“No commander or master of any ship trading to Africa shall by fraud, force or violence, or by any other indirect practice whatsoever, take on board, or carry away from the coast of Africa, any negro or native of the said country or commit, or suffer to be committed, any violence on the natives, to the prejudice of the same trade.”

¹⁰⁰ 3 George II, Chapter 81, 1749-1750.

- 6.4. Yet there can be no doubt that it was only by “*force*” and “*violence*” that those described as “*negroes*” or “*natives of the said country*” in section 29 of the Act were taken on board from the “*coast of Africa*” and transported to Jamaica. Therefore, that transportation was directly contrary to the prohibition in the section 29 of the Act of George II.

7. THE UNLAWFULNESS OF THE PRACTICE OF CHATTEL ENSLAVEMENT IN THE COLONIES

- 7.1. Furthermore, there is every reason to question the legality of the institution and practice of enforced slavery in the colony of Jamaica from 1655 onwards and, in particular, the institution of chattel enslavement which treated Africans not as human beings, but as property. This was contrary to fundamental principles of English law.
- 7.2. The underlying principle of English law applicable to the subjection of any human being to the state of slavery was first understood to be stated in the 1596 case of *Cartwright*.¹⁰¹ No law reports of the case survive, however references to the principle established by the case dating from the 17th and 18th centuries are well established. The case concerned a merchant named Cartwright who was prevented from flagellating a Russian man enslaved by him on the basis that the Russian man was freed at the moment of his arrival in England. In his 1646 text *Vindications of the Profession and Professors of the Law* John Cook referred to the principle in *Cartwright* as follows:

¹⁰¹ England had a longer history of prohibiting slavery, dating back to the medieval era. England, alongside France and the Netherlands, abolished slavery within its territories during the medieval era in accordance with what has become known as the “free soil” principle. The principle evolved from a clutch of cases in which it was decided that, since slavery was prohibited in England, enslaved people became free upon entering England’s territory. For example, a legal text from 1188 invokes the free soil principle in the context of describing how to prove that one does not have the status of an unfree labourer, known as a villein: Redwood (n 24) 35; Stephen Alsford, ‘Urban Safe Havens for the Unfree in Medieval England: A Reconsideration’ (2011) 32(3) *Slavery & Abolition* 363, citing his own translation of GDG Hall (ed), *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (Thomas Nelson, 1965) 58.

“... me thinkes these necessitous things should be as a golden Key to open the doore of hope for poore Prisoners; it being almost a Proverbe beyond Sea, or rather a prodigie, that an English Usurer may have as many slaves as he please, though a Lord could not imprison his Villaines; and it was resolved that a slave brought from Russia by an English Merchant was instantly a Free-man, comming upon English grounds, and breathing our pure ayre.” (emphasis added)

- 7.3. This principle was repeated in slightly simplified terms by John Rushworth in his 1680 text *Historical Collections*, where he stated:

“In the eleventh of Elizabeth [1596], one Cartwright brought a slave from Russia, and would scourge him, for which he was questioned; and it was resolved, That England was too pure an air for slaves to breath in.” (emphasis added)

- 7.4. The same principle was affirmed in the 1696 case of *Harvey v Chamberlayne* Cart 397, 90 ER 830. Chamberlayne, a Barbadian planter, attempted to recover an unnamed enslaved person from a London resident, Robert Harvey, on the basis that he had inherited the enslaved person from a relative. Chamberlyne introduced a writ of detinue against Harvey, while Harvey argued that the man was a paid employee. Relying on Magna Carta, and the laws of England,¹⁰² the Court ruled that an enslaved person could not be treated as property and, therefore, that property actions such as trover and detinue could not be applied: “no action of trespass would lie for the taking away a man generally”.¹⁰³

- 7.5. The *Cartwright* principle was adopted and confirmed as part of Chief Justice Mansfield’s reasoning in the seminal case of *Somerset v Stewart* (1772) 98 ER

¹⁰² Redwood (n 24) 49.

¹⁰³ Ibid.

499. The principle as set out in Rushworth's *Historical Collections* was cited by counsel for James Somerset, an enslaved African. Somerset sought to challenge his owner, Charles Stewart, in his attempts to place Somerset on a ship to Jamaica where he would be sold into slavery on a plantation. Echoing *Cartwright*, Chief Justice Mansfield held that "*the state of slavery is of such a nature, that it is incapable of being introduced on any reasons moral or political*". Moreover, Chief Justice Mansfield stated, "*it is so odious, that nothing can be suffered to support it, but positive law*". In other words, chattel slavery could only be authorised at any time after the annexation of Jamaica in 1655, by express statutory enactment. And yet there was no such express statutory enactment of the Westminster Parliament in England, and no lawfully passed statute of the Jamaican colonial legislative assembly, which provided a positive law to support chattel enslavement in the colonies.

7.6. Starting with the enactments of the Westminster Parliaments, there was in fact no positive act of Parliament that expressly authorised chattel slavery in the colonies or any part of the United Kingdom.

7.7. Turning next to the laws enacted by the Jamaican colonial legislature, these were all subject to the overriding principle enunciated in the Royal Commission to Lord Windsor in 1662. This empowered him to govern the island in accordance with:

"all such reasonable laws, customs and institutions as are exercised and settled in our other colonies and plantations, or such others as shall upon mature advice and consideration be held necessary and proper for the good government of Jamaica and the said islands adjacent to Jamaica, provided that they be not repugnant to our laws of England, but agreeing thereto as near as the conditions or affairs will permit" (emphasis added).

7.8. Against that background, the first question is whether any laws enacted by the Jamaican colonial legislature did in fact expressly authorise the forcible holding of

transported African people and their descendants in the state of enslavement. The answer by the learned author Robert Worthington Smith in his 1945 article in the *Journal of Negro History*, after an exhaustive study of the relevant Jamaican slave legislation, is as follows:

*“No statute has been found expressly allowing slavery in Jamaica, nor declaring the child of a slave should inherit the condition of his mother”.*¹⁰⁴

- 7.9. This terse statement of the legal position prior to emancipation points to the fact that slavery existed, *de facto*, but was never lawful and was never properly authorised by any positive law of either the local legislature or the Westminster Parliament.
- 7.10. It is undoubtedly true that there were local Jamaican statutes regulating the practice of chattel slavery and the status and punishment of enslaved people, such as the Jamaican Slave Acts of 1696¹⁰⁵ and 1781¹⁰⁶. These might be interpreted as implicitly recognising the institution of slavery in Jamaica. However, none of them was express in their authorisation of the forcible holding of African or other people in slavery or the forcible holding of the children of an enslaved mother as chattel enslaved from birth.
- 7.11. Moreover, to the extent that any such local laws *could* be interpreted as necessarily recognising or authorising the status of chattel slavery, and the forced inheritance of that status from birth, these would be local laws “repugnant to our laws in England” and therefore invalid and *ultra vires* by reference to the Royal Commission to Lord Windsor in 1662.¹⁰⁷ They would be repugnant to the laws of

¹⁰⁴ Smith (n 42) 299.

¹⁰⁵ 8 William III, Cap 2 (1696) (‘An Act for the better Order and Government of Slaves’).

¹⁰⁶ 22 George III, Cap 17 (1781) (‘An Act to repeal several Acts and Clauses of Acts respecting Slaves and for the better Order and Government of Slaves and for other Purposes’).

¹⁰⁷ Cf. also Roberts-Wray (n 40) 397: ‘As early as 1695 Parliament had produced a rignmarole which seems to have meant that any written or unwritten law regarded as *in force in a Colony in Asia*,

England in the most fundamental way since chattel slavery was not recognised by the common law. Indeed, there was a reasonably consistent body of case law from 1596 onwards that recognised and declared that slavery was incompatible with the common law.

- 7.12. The only reasonable conclusion is that the capture and transportation of African people to Jamaica, their subsequent chattel enslavement in the colony of Jamaica, and the system of imposing slavery from birth on the children of enslaved persons, were never properly authorised by any positive law and were wholly alien to the common law. That is quite apart from the fact that all of these practices were in breach of international law. And yet it is equally clear that this denial of the most fundamental of human rights was acquiesced in, facilitated and promoted *de facto* by the successive governments of England, and later (after 1707) of Great Britain (the United Kingdom of England and Scotland).

8. ANALYSIS OF THE NATIONAL COUNCIL ON REPARATION

- 8.1. The petitioner draws specific attention to the analysis by the Jamaican National Council on Reparation submitted to Parliament in 2013 which states as follows, in its analysis of Britain's domestic laws and transatlantic slavery:

“Opposing Argument 3: Britain’s Domestic Laws and transatlantic slavery

No statute or common law principle gave precedent to any legality of transatlantic slavery; it is not maintained by any authority to be a natural right. It was not until the creation and establishment of The Company of

Africa or America (and there was then none elsewhere) which was repugnant to any Act of Parliament relating to the Colony was void.’

Royal Adventurers Trading to Africa in 1663, which later became the Royal African Company in 1672 that regulations were passed dealing with transatlantic slavery.

When John Hawkins returned from his debut expedition to the continent of Africa and the island of Hispaniola in 1562, where he had brought enslaved Africans, Queen Elizabeth 1 of England summoned him to her chambers, where she articulated her worry, *“lest any of the Africans should be carried off without their free consent it would be detestable, and call down Heaven’s vengeance upon the undertakers”*.

The Act for the extending and improving the trade to Africa (23 George Two, Chapter 81, 1749-1750) Section 29 instructs that *“No commander or master of any ship trading to Africa shall by fraud, force or violence, or by any other indirect practice whatsoever, take on board, or carry away from the coast of Africa, any negro or native of the said country or commit, or suffer to be committed, any violence on the natives, to the prejudice of the same trade.”* This is a clear statement that the TTA [Transatlantic Trafficking in Africans] was illegal.

In 1677, in the case of *Butts v Penny* a court upheld the distasteful governmental conceptualisation of Africans captured and transhipped during the TTA. The court ruled that since Africans were *“usually bought and sold among merchants, as merchandise, and being infidels there might be a property in them to maintain trover.”*

Even so, the view that was predominantly held by the courts was that chattel slavery was incompatible with British law. In 1701, Chief Justice Sir John Holt ruled that an enslaved person became free as soon as he arrived in Britain; *“One may be a villain in England but not a slave.”* In 1706 in the case of *Smith v Gould* Chief Justice Holt ruled that, *“by the common law no man can have property in another.”*

On the other hand Lord Chancellor Hardwicke in *Pearne v Lisle* 1749 ruled that enslaved Africans were chattels. He held that *“a slave is as much property as any other thing.”* The ruling held by Lord Chancellor Harwicke may be categorised as a one off ruling, as most cases show that a human having another human being as property was incompatible with English law.

Lord Chancellor Henly at the Chancery in *Shanley v Hervey* in 1762 ruled that *“as soon as a man puts foot on English ground, he is free: a Negro may maintain an action against his master for ill usage, and may have Habeas Corpus, if restrained of his liberty.”* Chief Justice Sir John Holt in 1765 in the case of *Smith v Brown and Cooper* was constant in his former ruling, stated that, *“as soon as a negro comes into England, he becomes free: one may be a villein (serf) in England, but not a slave.”* And in the case of *Knight*

v Wedderburn held in a Scotland court in 1778, the judge declared that “the state of slavery is not recognised by the laws of this Kingdom...the laws of Jamaica, being unjust, could not be supported in this country.” He had therefore decided that the Defendant had no right to maintain the African as an enslaved person.

In the well-known case of *Somerset vs Stewart* of 1792, Chief Justice William Murray, Lord Mansfield ruled that, “So high an act of dominion must be recognised by the law of the country where it is used. The power of a master over his slave has been extremely different, in different countries. The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law...It’s so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.”¹⁰⁸

9. **THE UNLAWFUL IMPOSITION OF “CRUEL AND UNUSUAL” PUNISHMENTS**

- 9.1. The successive Slave Codes of Jamaica authorised a series of punishments which were, by any standard, “cruel and unusual” punishments that were wholly inconsistent with the prohibition in the Bill of Rights 1689 and the common law. From as early as 1696 and up until emancipation in 1834, the Slave Codes authorised the infliction of torturous and gruesome punishments upon the enslaved. The punishments for protest included burning alive. The punishments for lesser protest actions deemed “crimes” by the colonizers included castration and dismemberment until 1781.¹⁰⁹ Suffice it to say that the Slave Codes permitted the imposition of particular types of punishments on the enslaved that had long since been outlawed and abandoned pursuant to the Bill of Rights’ prohibition of the imposition of cruel and unusual punishments in 1689. Again, by any standards, the laws authorising such punishments were “repugnant” to English common law and the Bill of Rights – which applied to the colonies. Therefore, the standard authorisation of such punishments for the particular class of enslaved people was

¹⁰⁸ *Report of the National Commission on Reparation* (n 8) 34-5.

¹⁰⁹ Smith (n 42) 302.

not only in breach of international law but also unlawful because such punishments were “repugnant to English law”.

10. TRANSATLANTIC CHATTEL SLAVERY IN JAMAICA AS CONTRARY TO INTERNATIONAL LAW

General principles of law and the peremptory prohibitions of slavery, torture and racial discrimination

- 10.1. In addition to the contention that Transatlantic Chattel Slavery was repugnant to English law, the petitioner submits that it was also in breach of the United Kingdom’s international obligations, including those arising under general principles of law, the peremptory prohibitions of slavery, torture, racial discrimination and crimes against humanity and obligations derived from other sources of international law.¹¹⁰
- 10.2. Transatlantic Chattel Slavery was a breach of an international obligation during the relevant period, that is, the period covering the start of the transatlantic trade of enslaved Africans to Jamaica, their chattelization and the continued failure to provide full reparation, in so far as it was contrary to **general principles of law**. Article 38(1) of the ICJ Statute specifically identifies the sources of international law as including “general principles of law recognised by civilised nations” and “international custom, as evidence of a general practice accepted as law”.¹¹¹ The fact, therefore, that there were no international instruments or treaties that

¹¹⁰ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) II(2) *Yearbook of the International Law Commission* 31 ('*ARSIWA*') 85 [5] (Commentary on Article 26): “Peremptory norms that are clearly accepted and recognised include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination”.

¹¹¹ The four sources of international law referred to in Article 38(1) of the *Statute of the International Court of Justice* are: 1) treaty law; 2) customary law; 3) general principles of law recognised by civilised nations; and 4) judicial decisions and the teachings of the most highly qualified publicists.

outlawed Transatlantic Chattel Slavery at the relevant time cannot be taken as proof of the absence of a relevant international obligation.¹¹²

- 10.3. In determining the content of general principles of law, regard may be had to the principles recognised across the domestic legal systems of States during the relevant period. The petitioner contends in Part 7 above that Transatlantic Chattel Slavery was unlawful as a matter of English common law. There is a sound historical basis for the proposition that slavery had also been outlawed in France and the Netherlands during the medieval era.¹¹³ Enslavement and chattelisation similarly violated religious laws promulgated by the Catholic Church, which maintained jurisdiction over much of Europe. The 1537 Papal Bull of Pope Paul III, on the Enslavement and Evangelisation of Indians expressly stated that “the said Indians and *all other people who may later be discovered by Christians*, are by no means to be deprived of their liberty...*nor should they be in any way enslaved*; should the contrary happen, it shall be null and have no effect” (emphasis added).¹¹⁴ In 1526 King Afonso of Kongo sent a letter to the King of Portugal stating that “it is our will that in these kingdoms [of Kongo] there should not be any trade in slaves nor market for slaves.”¹¹⁵ Similarly, there is much evidence of resistance and rebellion by enslaved persons in the course of forced transportation and on the plantations of Jamaica.

¹¹² This is supported by CERD GR 40 (n 7) [30]: “As such, even if certain practices were not explicitly prohibited by treaty at the time, general principles of law, customary international law and the later crystallizations of jus cogens norms render such defence insufficient.”

¹¹³ See CERD GR 40 (n 7) [10] “Britain, France and the Netherlands, *in contravention of their domestic norms*, later imposed colonial slave codes that made chattel slavery permanent and hereditary”. (emphasis added). See further CERD GR 40 (n 7) [12], citing Susan Peabody, ‘Race Slavery, and the Law in Early Modern France’ (1994) 56(3) *The Historian* 501, 502 and Susan Peabody, ‘Slavery, Freedom, Statehood and the Law in the Atlantic World, 1700–1888’, in Charlotte Wallin and Daniel Silander (eds), *Democracy and Culture in the Transatlantic World: Third Interdisciplinary Conference* (Växjö University, 2004).

¹¹⁴ See Pope Eugene IV, *Sicut Dudum* (1435), Pope Paul III, *Sublimus Deus* (1537), prohibiting the enslavement of Christianised Indigenous peoples; Adam Hochschild, *King Leopold’s Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Houghton Mifflin, 1999) 19-20; Sue Peabody and Keila Grinberg, ‘Free Soil: The Generation and Circulation of an Atlantic Legal Principle’ (2011) 32 *Slavery & Abolition* 331. It should be noted that the 1537 Papal Bull of Pope Paul III superseded those of 18 June 1452 and 8 January 1455 referred to in the UNGA RES/80/250 (n 27) 4.

¹¹⁵ Whittman, N, Slavery Reparations Time is Now, Power of the Trinity Publishers, 2013 [180].

- 10.4. Not only, therefore, did the practice of Transatlantic Chattel Slavery in Jamaica contravene English common law at all relevant times, it was also categorically different from other forms of slavery. Characterised as it was by extensive ownership rights enjoyed by slaveholders, including treating human beings as “inheritable, alienable and perpetual property”,¹¹⁶ it represented a significant departure from other forms of slavery and chattelisation.¹¹⁷ It both relied upon and reinforced a false notion of the racial inferiority of Africans and allowed for “complete rights of possession, use and alienation that were historically and legally unprecedented”.¹¹⁸ The enslaved were, in fact, codified as property precisely because they were known to be human. Their exploitation, and domination, required their classification as chattel in order to lend legitimacy to otherwise inhuman treatment. These practices involved a uniquely dehumanising regime of enforcement that was divergent from other forms of enslavement that either preceded or succeeded it.¹¹⁹ To this extent, there is little argument that this form of chattelisation and enslavement, outlawed in England and different from other forms, amounted to a clear breach of the general principles of law.
- 10.5. The **prohibition on slavery** is recognised as a non-derogable peremptory norm.¹²⁰ The sources of the prohibition – which include the English common law, the law of other relevant States and European religious laws – were international obligations during the period in which Transatlantic Chattel Slavery occurred. The very exceptional features, specifically underscored by the General Assembly in UNGA RES/80/250, distinguished Transatlantic Chattel Slavery from all other

¹¹⁶ UNGA RES/80/250 (n 27) 33rd preambular paragraph.

¹¹⁷ Redwood (n 24) 11.

¹¹⁸ Redwood (n 24) 1; See CERD GR 40 (n 7) [10]: “Unlike earlier forms of servitude, transatlantic chattel slavery targeted people by assumed race, promoted racial inferiority and treated human beings as property”.

¹¹⁹ Ibid. See also Remarks by Judge Patrick Robinson in Lovall and Stefanelli, (Eds), *Reparations Under International Law for Enslavement of African Persons in the Americas and the Caribbean* (American Society of International Law, 2022) [173].

¹²⁰ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (Second Phase)* [1970] ICJ Rep 3, 32 [33].

known forms of slavery. By its very character, Transatlantic Chattel Slavery in Jamaica violated this non-derogable norm.

- 10.6. The **prohibition on torture** is similarly a peremptory (*jus cogens*) norm of long standing. Early prohibitions on torture date back to antiquity, with Roman law prohibiting the torture of Roman citizens under the *Jus Quiritium*.¹²¹ In 866 Pope Nicholas I stated that “no law either of God or man justifies such a practice [as torture]”.¹²² Under the English common law, torture has never been lawful in principle.¹²³ This was explicitly affirmed in *Felton’s Case* of 1628 when the court concluded that the assassin Felton “ought not to be tortured by the rack because no such punishment is known or allowed by our law”.¹²⁴ Sir Edward Coke re-affirmed this principle in 1642 and 1644 when he stated that “there is no law to warrant tortures in this land”.¹²⁵ The 1685 *Code Noir*, the French colonial law designed to regulate the practice of slavery in French territories, whilst permitting some physical punishments which would now be characterised as cruel and inhuman, did contain express prohibitions on torture and mutilation.¹²⁶ As such, during the relevant period commencing in 1655 with the acquisition of Jamaica, the United Kingdom was in breach of the well-established prohibition on torture.
- 10.7. The peremptory norm prohibiting **racial discrimination** is widely recognised and reflected in the International Convention on the Elimination of All Forms of Racial Discrimination (“**ICERD**”). One of the key legacies of transatlantic chattel

¹²¹ Henri Coursier, ‘The Prohibition of Torture’ (1971) 126 *International Review of the Red Cross* 475, 477.

¹²² Alec Mellor, *La Torture: Son histoire, Son abolition, Sa réapparition au XXe siècle* (Les Horizons Littéraires, 1949) 123.

¹²³ Trial by ordeal was prohibited by statute in 1219: Danny Friedman, ‘Torture and the Common Law’ (2006) 2 *European Human Rights Law Review* 180, 182.

¹²⁴ *Felton’s Case* (1628) 3 Howell’s State Trials 369, page 371.

¹²⁵ Edward Coke, *The Second Part of the Institutes of the Laws of England: Concerning the Magna Carta* (1642) 48; Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and other Pleas of the Crown, and Criminal Causes* (1644) 34-37.

¹²⁶ *Code Noir* (1685), Article XLII: “[Slave owners] shall be forbidden however from torturing them or mutilating any limb, at the risk of having the slaves confiscated and having extraordinary charges brought against them”.

enslavement is that of systemic and persistent racial discrimination.¹²⁷ To address this kind of ongoing harm, Articles 1(4), 2(2) and 5 of ICERD require the adoption of “special measures” to overcome economic and social inequality and “the structural discrimination affecting people of African descent”.¹²⁸ The Committee on the Elimination of Racial Discrimination (“**CERD**”), in its General Recommendation 34 from 2011, specifically recommended that States adopt special measures which recognise the negative effects of “colonialism and the transatlantic slave trade, the effects of which continue to disadvantage people of African descent today”. The United Kingdom has failed to enact special measures of this kind and is therefore committing an internationally wrongful act.¹²⁹ Further, despite longstanding demands made by people of African descent, the United Kingdom has denied access to appropriate reparations. This amounts to racial discrimination and to a separate and distinct breach of Article 2(2) of ICERD.¹³⁰

Crimes against humanity

¹²⁷ CERD GR 40 (n 7) [21]-[23]. In its General Recommendation 34, CERD recommends that States “effectively acknowledge in their policies and actions the negative effects of the wrongs occasioned on people of African descent in the past, chief among which are colonialism and the transatlantic slave trade, the effects of which continue to disadvantage people of African descent today”: CERD, General Recommendation 34 on racial discrimination against people of African descent (2 October 2011) UN Doc CERD/C/GC/34 [17] (**‘GR 34’**).

¹²⁸ CERD GR 40 (n 7) [21] and [38]; GR 34 (n 127) [7].

¹²⁹ See also CEDAW Committee’s report concerning discrimination against Indigenous women in Canada, which concluded that disproportionate levels of violence against Indigenous women is a direct legacy of colonisation. The Committee concluded that Canada’s failure to adopt relevant measures to address this legacy constituted a grave breach of their Convention rights: Committee on the Elimination of Discrimination against Women, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (30 March 2015) UN Doc CEDAW/C/OP.8/CAN/1 [129] and [214]-[215].

¹³⁰ The CEDAW Committee reached a similar conclusion in a complaint made regarding sexual slavery carried out by the Japanese Imperial Army during WWII. The Committee found that Japan’s failure to provide remedies and redress for continuing discrimination stemming from Japanese wartime abuses was an actionable breach under Articles 1 and 2(b) and (c) of the convention: Committee on the Elimination of Discrimination against Women, Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 155/2020 (8 March 2023) UN Doc CEDAW/C/84/D/155/2020 [8.5].

10.8. “Crimes against humanity” were first formally recognised in the Charter of the Nuremberg Tribunal (“**The Nuremberg Charter**”) but the Nuremberg Charter was, in fact, merely declaratory of a fundamental principle of international human rights law and the dictates of natural law.

10.9. The Nuremberg Charter, signed on 8 August 1945 to establish the Nuremberg Tribunal, describes “crimes against humanity” as including:

“...murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”
(emphasis added).

10.10. A crime against humanity is a crime of scale and must be committed in the context of, and as part of, a widespread attack against a civilian population.¹³¹ Protection against such crimes is not dependent upon membership of a particular national, racial or ethnic group or the existence of armed conflict. This species of international criminal offence is intended to prohibit “atrocities committed outside the context of an armed conflict or independent of it”¹³² and includes “some of the most serious criminal offences known to all legal systems (such as rape, murder, and torture, but also...extremely serious violations of human rights (in particular persecution, apartheid, and enforced disappearance).”¹³³

¹³¹ See *Prosecutor v Naletilić & Martinović* (Judgment) (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Case No IT-98-34-T, 31 March 2003).

¹³² Guenael Mettraux, *International Crimes: Law and Practice: Volume II, Crimes Against Humanity* (Oxford University Press, 2020) 38.

¹³³ Ibid 800.

10.11. Crimes against humanity are regarded as so egregiously offensive to humanity as a whole that their prosecution is subject to no statutory time limits.¹³⁴

10.12. “Laws of Humanity” that regulate the conduct of “men” above and beyond the laws of individual nations pre-dated the codification of “crimes against humanity” in the Nuremberg Charter. In 1469, Peter von Hagenbach, governor of the Upper Rhine, was tried for “tramp[ing] under foot of the laws of God and Man.”¹³⁵ Hagenbach’s large-scale campaign of violence against local people was not committed in the context of war and he was adjudged to have infringed upon laws that superseded municipal law. Such “higher” law formed the basis of allegations made against Captain Henri Wirz for the mistreatment and murder of Union prisoners during the American Civil War. The military commission hearing Wirz’s trial described his actions as “outrages of humanity”.¹³⁶ These overarching principles, marked as being outside of the relevant domestic law and the laws of war, were reflected in the Saint Petersburg Declaration of 1686 and the *Martens Clause* in the Preamble to the 1899 and 1907 Hague Conventions.

10.13. In the Nuremberg Tribunal, “crimes against humanity” were the principal charges brought against Nazi leaders. Although this species of crime was not codified in any international instrument prior to the Nuremberg Charter, many Nazi Leaders were convicted of “crimes against humanity” in respect of conduct that took place before the offence was defined in that Charter. The conduct of Nazi Leaders was considered, correctly, to be so egregious as to offend against the laws of humanity even if those principles were not yet outlawed by international instrument.

10.14. The forced transportation of Africans to Jamaica and their subsequent chattel enslavement, including the systematic brutality with which these practices were deployed, plainly meet the definition of crimes against humanity contained in the

¹³⁴ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, GA Res 2391 (XXIII), UN Doc A/RES/2391 (26 November 1968).

¹³⁵ Mettraux (n 132) 1.

¹³⁶ Ibid 2.

Nuremberg Charter and as clarified in relevant jurisprudence. This was expressly recognised by Article 13 of the Durban Declaration in 2001 and more recently by UNGA RES/80/250, which declared that “the trafficking of enslaved Africans and racialized chattel enslavement of Africans [was] the gravest crime against humanity”.¹³⁷

10.15. Transatlantic Chattel Slavery and its sequelae, as imposed upon people of African descent in Jamaica, involved a regime in which the enslaved were made subject to practically every single example given in the Nuremberg Charter of conduct that could be constitutive of this crime. It is a quintessential “crime against humanity” in respect of which there should be no limitation period.¹³⁸ This was explicitly recognised in both CERD GR 40¹³⁹ and by the General Assembly, in the preamble to UNGA RES/80/250 which records that “there can be no statutory limitations for crimes against humanity”¹⁴⁰ and that Transatlantic Chattel Slavery is “not subject to statutory limitations”.¹⁴¹

10.16. The petitioner submits, therefore, that the United Kingdom’s refusal to permit claims of this nature to be determined by the ICJ under Article 36(2) of the ICJ Statute should not be capable of preventing the proper consideration of the lawfulness of this ignoble practice and should not be permitted to foreclose the possibility of reparatory justice in respect of this paradigm example of a “crime against humanity”.

Reparations under international law

¹³⁷ UNGA RES/80/250 (n 27) [2].

¹³⁸ CERD GR 40 (n 7) [66]: “... international law recognises that statutes of limitations do not prevent access to justice and effective remedies for gross human rights violations or crimes against humanity”. CERD elsewhere noted in the same General Recommendation that the same principle can be derived from African legal and moral philosophies, which hold that “a crime does not rot” and therefore “no time limitation exists for the redressing of a wrong”: CERD GR 40 (n 7) [9].

¹³⁹ CERD GR 40 (n 7) [9], [66].

¹⁴⁰ Ibid 30th preambular paragraph.

¹⁴¹ Ibid 29th preambular paragraph.

10.17. The principal international instrument governing state responsibility for breaches of international law is the Draft Articles on Responsibility of States for Internationally Wrongful Acts (“**ARSIWA**”).¹⁴² In broad terms, ARSIWA provides that a State responsible for an internationally wrongful act is first under an obligation to cease the prohibited conduct and to offer guarantees of non-repetition. Further, ARSIWA places the State responsible for the wrongful act under an obligation to make full reparation for any injury caused. The term “reparations” is used in this document to refer to measures directed at repairing the damage caused by the matters complained of. It corresponds to, but is not necessarily limited to, the way the term is used in Articles 31-38 of ARSIWA.¹⁴³ Article 34 of ARSIWA provides that full reparation for injuries shall take the form of restitution, compensation and satisfaction, either singly or in combination.¹⁴⁴

10.18. Article 13 of ARSIWA relevantly states that: “An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs”.¹⁴⁵ Article 13 therefore gives effect to the “intertemporal principle”, a principle of international law akin to the more commonly known legal principle of non-retroactivity: For an act to be considered wrongful, a State must violate an international obligation in existence at the time of the breach. The principle does not, however, act as a bar where:

- (i) The international obligation was in fact in existence at the time of the breach;¹⁴⁶
- (ii) Derogations are permitted as required by the interests of justice;¹⁴⁷ or

¹⁴² ARSIWA (n 110).

¹⁴³ Ibid. Further possible examples of reparatory measures are set out in CERD GR 40 at [52]-[84].

¹⁴⁴ ARSIWA (n 110) article 34 (page 95).

¹⁴⁵ Ibid article 13 (page 57).

¹⁴⁶ Ibid.

¹⁴⁷ The Nuremberg and Tokyo Trials were justified on the basis that non-retroactivity is not absolute, which was supported by the judgment of Justice Jaranilla in the Tokyo War Crimes Trial where he held that *nullum crimen sine lege* did not apply: at *The Tokyo War Crimes Trial*, Judgment, 18-19 (1948) (Jaranilla, J., concurring) <<https://www.legal-tools.org/en/doc/2393ff>>; *The Tokyo War*

- (iii) The acts or omissions of the State concerned are continuing or composite in nature.¹⁴⁸

10.19. In the case of the prohibitions of slavery, torture and crimes against humanity, the foregoing analysis demonstrates that binding international obligations existed prohibiting Transatlantic Chattel Slavery at the time of breach.¹⁴⁹ General principles of law also prohibited Transatlantic Chattel Slavery during the relevant period as a distinct form of slavery, characterised by the overwhelmingly unfettered ownership rights enjoyed by enslavers/slaveholders and representing a departure from other forms of slavery and chattelisation.¹⁵⁰

10.20. Where crimes against humanity have been committed, it is well established that derogations from the intertemporal principle are permitted in the interests of justice (see [10.11]-[10.14] above). Derogations are also permissible in respect of obligations derived from other sources of international law. One such source is international human rights law, where justice demands derogation from the intertemporal principle.¹⁵¹

10.21. The United Kingdom's failure to adopt special measures addressing systemic racial discrimination or to provide adequate reparations amount to continuing violations and composite acts under international law.¹⁵²

Crimes Trial, Judgment, 10 (1948) (Bernard, J., dissenting) <<https://www.legal-tools.org/en/doc/d46836/>>.

¹⁴⁸ ARSIWA (n 110) articles 14 and 15 consider situations where State acts are continuing or composite in nature. Article 14 holds that illegality will extend for as long as an act is continuous and has not been corrected. Article 15 addresses situations where an aggregate of interrelated actions can collectively amount to a grave breach.

¹⁴⁹ See (n 114) above citing Pope Eugene IV, *Sicut Dudum* (1435), Pope Paul III, *Sublimus Deus* (1537), Hochschild (n 114) 19-20; Peabody and Grinberg (n 114).

¹⁵⁰ Redwood (n 24).

¹⁵¹ Universal Declaration of Human Rights, GA Res 217A, UN Doc A/810 (10 December 1948) article 8; See CERD GR 40 (n 7) [66]: "... international law recognises that statute of limitations do not prevent access to justice and effective remedies for gross human rights violations or crimes against humanity".

¹⁵² ARSIWA (n 110) 62 [2] (Commentary on Article 15) defines composite acts to include systemic racial discrimination: "Composite acts covered by article 15 ... include the obligations concerning genocide, apartheid or crimes against humanity, systematic acts of racial discrimination,

10.22. For these reasons, it is submitted that the intertemporal principle does not operate to prevent the breaches of the United Kingdom's international obligations referred to in this petition from being justiciable.

10.23. The petitioner submits that:

- (i) the arguments set out above demonstrate that the practice of Transatlantic Chattel Slavery in respect of Jamaica was contrary to fundamental principles of the English common law; and
- (ii) these practices were also contrary to the United Kingdom's international obligations including those arising under general principles of law, the peremptory prohibitions of slavery, torture, racial discrimination and crimes against humanity and obligations derived from other sources of international law.

10.24. Transatlantic Chattel Slavery should, therefore, be recognised as unlawful *ab initio* and in breach of the United Kingdom's obligations under domestic and international law.

11. THE OBLIGATION TO PROVIDE A REMEDY

11.1. There is a fundamental principle of law that an injustice of the magnitude complained of must be capable of remedy. Legal history is replete with examples

systematic acts of discrimination prohibited by a trade agreement etc.”; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (*‘ICERD’*); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 articles 2 and 26 (*‘ICCPR’*); See also CERD GR 40 (n 7) [28]: “[the intertemporal] principle does not, however, preclude responsibility for conduct that continues after the relevant obligation has entered into force” and at [28] “... where those consequences are manifested in continuing or contemporary racial discrimination States Parties have obligations under articles 2 and 6 of the Convention to address such violations and to provide reparatory justice – such as restitution, compensation and guarantees of non-repetition.”

on the national and international level where reparations have been made for fundamental breaches of international law. His Majesty is referred to the earlier analysis at paragraph [3.20] above. There is also precedent for the payment of such reparations to the descendants of those who have suffered historic wrongs, particularly where those historic wrongs have continuing effects. It is clear also that atrocities which meet the threshold of “crimes against humanity” have no time bar.

11.2. Articles 1 and 2 of ARSIWA provide that a State has international responsibility for an internationally wrongful act which is attributable to it as a matter of international law and which constitutes a breach of its international obligations. The petitioner contends that the United Kingdom has breached the international obligations set out at paragraphs [10.1]-[10.16] and must therefore provide a remedy. As a State Party to ICERD, the United Kingdom must provide access to appropriate forms of reparations under Article 6 of that Convention. CERD GR 40 clearly states that “States Parties must ensure that their legal frameworks enable competent national tribunals and other State institutions to award and enforce appropriate forms of reparation and that people of African descent have effective access to the relevant procedures”.¹⁵³ The General Recommendation further states that “States Parties must recognize their involvement in transatlantic chattel slavery, accept accountability and make reparations to injured States, the international community and people of African descent”.¹⁵⁴

11.3. In the case of Jamaica, no reparation of any kind has ever been made to the enslaved or their descendants. Rather, both private and public wealth has been accumulated by and in the United Kingdom because of the cruel, exploitative and inhumane practices described in this petition. Indeed, the payments made to slaveholders created a 181-year-old national debt, described by the Bank of England as “unprecedented ... outside of wartime”, that was only settled as

¹⁵³ CERD GR 40 (n 7) [65].

¹⁵⁴ CERD GR 40 (n 7) [81].

recently as 2015.¹⁵⁵ The iniquity of the absence of any redress or remedy for the enslaved or their heirs in the face of this is striking; it is indicative of profound disregard.¹⁵⁶ An appropriate analysis, therefore, is that the United Kingdom itself, its civic and commercial institutions, and private citizens, have been the beneficiaries of unjust enrichment at the expense of the people of Jamaica.¹⁵⁷ For this there should be some proper remedy commensurate with the gravity of the wrong.¹⁵⁸

- 11.4. As set out at [3.44] above, Jamaica is prevented from commencing inter-state litigation against the United Kingdom before the ICJ under Article 36(2) of the ICJ Statute in relation to the harms resulting from Transatlantic Chattel Slavery. This is because of the United Kingdom's reservation under Article 36(2) which states that the United Kingdom does not accept the compulsory jurisdiction of the ICJ in respect of disputes "with the government of any other country which is or has been a Member of the Commonwealth."¹⁵⁹ However, it is still necessary and just for the United Kingdom itself, through its own courts and responsible institutions, to determine the lawfulness of the matters complained of; to determine further whether breaches of international law have been committed; and if so, to so declare; and thereafter give effect to the principle that where there has been a fundamental wrong, there must be a remedy (*ubi jus, ibi remedium*).¹⁶⁰

¹⁵⁵ Michael Anson and Michael Bennett 'The collection of slavery compensation, 1835-43' (Bank of England Staff Working Paper No. 1006, November 2022) < <https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2022/the-collection-of-slavery-compensation-1835-43.pdf?>>.

¹⁵⁶ David Scott has described the inherent injustice resulting from unredressed wrongs as a mark of fundamental disrespect; See Scott, D, "Preface: Debt, Redress", *Small Axe, Duke University Press, Vol. 18, No. 1, March 2014*, (no.43), pp. vii-x at [x].

¹⁵⁷ The authors wish to thank Professor Kamari Clarke, PhD. FRSC, Distinguished Professor of Transnational Justice and Sociolegal Studies, University of Toronto for the provision of a review of scholarship and jurisprudence relevant to an analysis of reparatory justice through the lens of unjust enrichment.

¹⁵⁸ See *Banque Financière de la Cité v. Parc (Battersea) Ltd.* [1999] 1 A.C. 221.

¹⁵⁹ UK ICJ Declaration (n 92).

¹⁶⁰ *Riley v AG of Jamaica* [1983] AC 719, 729 G-H.

11.5. Therefore, the Judicial Committee would, if this matter were referred to them, be asked to declare that some proper form of remedy must be devised for the perpetration of such egregious conduct which the petitioner contends is in breach of domestic and international law. The conduct complained of occurred with the acquiescence and support of the British State, against enslaved people in Jamaica, whose descendants now seek justice. The petitioner does not seek a ruling from the Judicial Committee as to the specific nature, or quantum, of any remedy. Rather the petitioner simply seeks to establish that there have been fundamentally unlawful acts for which there must be some remedy commensurate with the magnitude of the wrong.

12. CONCLUSION

12.1. For all these reasons, the petitioner respectfully asks His Majesty the King to refer the issues of law set out at Part 2 of the petition above to the Judicial Committee of the Privy Council for their determination.

12.2. It is accepted that if Your Majesty refers this matter to the Privy Council, the determination of this issue would then be governed by the Judicial Committee (Appellate Jurisdiction) Rules 2024, and in particular Rule 60.

13. **THE SIGNATORIES OF THE PETITION**

13.1. This petition was drafted by Frank Phipps KC, Edward Fitzgerald KC, Bert Samuels, Ulele Burnham and Harj Narulla.¹⁶¹ The members of the UK Bar (Edward Fitzgerald KC, Ulele Burnham and Harj Narulla) were instructed by Lawrence Cartier of Keystone Solicitors who has carriage of this matter in the United Kingdom.

13.2. The petition is signed by the Attorney General Dr. Derrick McKoy CD KC on behalf of the people of Jamaica and further co-signed by the Honourable Minister of Culture, Gender, Entertainment and Sport, Olivia Grange OJ, CD, MP and the Chair of the National Council on Reparation, Laleta Davis-Mattis CD JP, on behalf of its members. The members of the NCR include Deputy Chair Mr. Bert Samuels, Ms. Jo-Anne Archibald, the Hon. Frank Phipps KC, Lord Anthony Gifford, Mr. Steven Golding, Professor Verene Shepherd, Professor Rupert Lewis, Professor Clinton Hutton, Dr. Jahlani Niaah, Dr. Michael Barnett, Mr. Vivian Crawford, Dr. Winsome Gordon, Rev. Stephen Jennings, Pastor Bruce Fletcher, Dr. Michael Holgate, Mr. Lanceroy (Ras) Ho-Shing, Mr. Danny Roberts, Ms. Ariane Roxburgh, Ms. Akeisha James, and Mr. Oliver Fagan. The NCR played a pivotal role in pursuing the issue of reparations, both generally and by means of significant contribution to this petition, on behalf of the people of Jamaica.¹⁶²

13.3. Finally, His Majesty is invited to note that “full and unanimous” support has been given to the filing of this petition by CARICOM. The letter to the Prime Minister of

¹⁶¹ Those who have settled this petition wish to acknowledge the invaluable bibliographical assistance and insight provided by Professor Alissa Trotz, the Director of Caribbean Studies, New College and Professor at the Women and Gender Studies Institute of the University of Toronto. They wish to thank Professors Kamari M. Clarke and Ricardo Medina of the University of Toronto, Professor Sonjah Stanley Noah of the University of the West Indies-Mona and Professor Wumi Asubiaro Dada at the University of Guelph for generously providing their insights on reparations and unjust enrichment in August 2026.

¹⁶² The drafters wish to specifically record their gratitude to Professor Verene Shepherd, Vice-Chair of CERD and former Chair of the NCR, for her input and guidance, over several years, on the historical information contained in this petition.

Jamaica, the Honourable Andrew Holness, ON, PC, MP from the Chair of CARICOM and Prime Minister of Saint Lucia, Mr. Philip J Pierre pledging this support is appended hereto. Also appended are further letters in support from the Prime Minister of Antigua and Barbuda, the Honourable Mr. Gaston Browne; the Prime Minister of Barbados, the Honourable Mia Amor Motley, SC MP; the Prime Minister of Saint Vincent and the Grenadines, the Honourable Mr. Godwin Friday, and the President of Ghana, the Honourable Mr. John Mahama.

AND YOUR PETITIONER RESPECTFULLY REQUESTS THAT YOU REFER THE ISSUES SET OUT ABOVE TO THE PRIVY COUNCIL FOR ITS ADVICE IN ACCORDANCE WITH SECTION 4 OF THE JUDICIAL COMMITTEE ACT 1833.

SIGNED:

Dr. Derrick McKoy CD KC

Attorney General of Jamaica, on behalf of the people
of Jamaica

Olivia Grange OJ, CD, MP

Minister of Culture, Gender, Entertainment and Sport

Laleta Davis-Mattis CD JP

Attorney-at-Law
Chair of the National Council on Reparation, on
behalf of the Council members

7 SEPTEMBER 2026



OFFICE OF THE PRIME MINISTER

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LETTER FROM THE CHAIRMAN OF CONFERENCE

2 July 2026

Dr. The Most Hon. Andrew Holness, ON, PC, MP
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10
JAMAICA

Dear Prime Minister

Re: CARICOM Letter of Support – Jamaica's Reparations Petitions under Section 4, Judicial Committee Act 1833

I write further to the decision of the Conference of Heads of Government of the Caribbean Community at its Forty-Ninth Regular Meeting held in Montego Bay, Jamaica, in July 2025, on Jamaica's planned submission of a Petition to His Majesty King Charles III.

I acknowledge that the Conference unanimously endorsed Jamaica's initiative to seek reparatory justice for slavery and colonialism through a Petition to His Majesty King Charles III under Section 4 of the Judicial Committee Act 1833. The Conference noted that Section 4 empowers His Majesty, should he think fit, to refer "any such other matters whatsoever" to the Judicial Committee of the Privy Council for its advice on matters affecting the welfare of the peoples of the Commonwealth Caribbean. The Conference resolved that the matter raised by Jamaica is of profound constitutional, historical and human significance, not only for the people of Jamaica, but for all Caribbean peoples whose development was shaped by slavery and colonialism.

The Caribbean Community hereby affirms its full and unanimous support for Jamaica's Petition. We endorse the referral of the questions relating to the Crown's continuing responsibility for the transatlantic trafficking of enslaved Africans and colonial rule and their lasting impact on the economic, social and cultural welfare of the people of Jamaica.

I trust that our united efforts will persuade His Majesty to make the necessary referral, to advance the discourse and redound to meaningful actions towards reparatory justice and the further development of the people of the Caribbean Community.

Please accept, Prime Minister, the assurances of my highest consideration.

Sincerely

A handwritten signature in black ink, appearing to read 'P. J. Pierre', written over the printed name.

PHILIP J. PIERRE
PRIME MINISTER, SAINT LUCIA AND
CHAIRMAN, CONFERENCE OF HEADS OF GOVERNMENT



Government of Antigua and Barbuda
Office of the Prime Minister

Queen Elizabeth Highway
St. John's
Antigua and Barbuda

Tel: (268) 460-5100
pmsecretariat@ab.gov.ag

2 July 2026

Dr. The Most Honourable Andrew Holness, ON, PC, MP
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10
JAMAICA

Dear Prime Minister

**Re: CARICOM Heads of Government Letter of Support for Jamaica's Reparations Petition
under Section 4, Judicial Committee Act 1833**

I write to convey **Antigua and Barbuda's** unequivocal support for Jamaica's decision to petition His Majesty King Charles III, under Section 4 of the Judicial Committee Act 1833.

The Forty-Ninth Regular Meeting of the Conference of Heads of Government held in Montego Bay, Jamaica, July 2025, reviewed Jamaica's proposed Petition relating to reparatory justice for the transatlantic trafficking of enslaved Africans, slavery and colonialism. The Conference resolved that the questions to be posed to His Majesty are of profound constitutional, historical and human significance for all peoples of the Caribbean Community.

I note that Section 4 of the Judicial Committee Act empowers His Majesty, "if he shall think fit," to refer "any such other matters whatsoever" to the Judicial Committee of the Privy Council for its advice on matters affecting the welfare of his subjects. The Conference agreed that Jamaica's Petition raises issues affecting the welfare of the people of Jamaica and by extension, the welfare of all Caribbean peoples whose development was shaped by slavery and colonialism

Antigua and Barbuda therefore identifies with the issues raised in Jamaica's Petition and urges His Majesty to positively consider referring the questions to the Judicial Committee so that the Committee's advice may contribute to truth, justice, healing and the advancement of reparatory justice for the people of the Caribbean.

I commend your leadership and by extension that of the Government of Jamaica for pursuing this historic constitutional path. **Antigua and Barbuda** stands in full solidarity with Jamaica as you file the Petition in London on 7th September 2026, and commits to participating in the activities leading up to the filing, to show our strong support for the action being undertaken by Jamaica.

Please accept, Prime Minister, the assurances of our highest consideration.

Sincerely,



HONOURABLE GASTON BROWNE
PRIME MINISTER



July 14, 2026

Dear Prime Minister Holness,

**Re: CARICOM Heads of Government Letter of Support for Jamaica's
Reparations Petition under Section 4, Judicial Committee Act 1833**

I write to convey Barbados' unequivocal support for Jamaica's decision to petition His Majesty King Charles III, under Section 4 of the Judicial Committee Act 1833.

The Forty-Ninth Regular Meeting of the Conference of Heads of Government held in Montego Bay, Jamaica, July 2025, reviewed Jamaica's proposed Petition relating to reparatory justice for the transatlantic trafficking of enslaved Africans and chattel slavery and colonialism. The Conference resolved that the questions to be posed to His Majesty are of profound constitutional, historical and human significance for all peoples of the Caribbean Community.

I note that Section 4 of the Judicial Committee Act empowers His Majesty, "if he shall think fit," to refer "any such other matters whatsoever" to the Judicial Committee of the Privy Council for its advice on matters affecting the welfare of his subjects. The Conference agreed that Jamaica's Petition raises issues affecting the welfare of the people of Jamaica and by extension, the welfare of all Caribbean peoples whose development was shaped by slavery and colonialism.

Barbados therefore identifies with the issues raised in Jamaica's Petition and joins Jamaica in solidarity as it seeks to have His Majesty positively consider referring the questions to the Judicial Committee so that the Committee's advice may contribute to truth, justice, healing and the advancement of reparatory justice for the people of the Caribbean.

Dr. The Most Honourable Andrew Holness, ON, PC, MP
Prime Minister of Jamaica



Page 2

July 14, 2026

Dr. The Most Honourable Andrew Holness, ON, PC, MP

I commend your leadership and by extension that of the Government of Jamaica for pursuing this historic constitutional path. Barbados stands in full solidarity with Jamaica as you file the Petition in London on 7 September 2026, and commits to participating in the activities leading up to the filing, to show our strong support for the action being undertaken by Jamaica.

Please accept, Prime Minister, the assurances of our highest consideration.



THE HON. MIA AMOR MOTTLEY, S.C., M.P.
Prime Minister of Barbados



**The Prime Minister
Saint Vincent and the Grenadines
West Indies**

3rd July, 2026.

Dr. The Most Honourable Andrew Holness, ON, PC, MP
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10
JAMAICA

Dear Prime Minister,

**Re: CARICOM Heads of Government Letter of Support for Jamaica's Reparations Petition
Under Section 4, Judicial Committee Act 1833**

I write to convey Saint Vincent and the Grenadines' unequivocal support for Jamaica's decision to petition His Majesty King Charles III, under Section 4 of the Judicial Committee Act 1833.

The Forty-Ninth Regular Meeting of the Conference of Heads of Government held in Montego Bay, Jamaica, July 2025, reviewed Jamaica's proposed Petition relating to reparatory justice for the transatlantic trafficking of enslaved Africans, slavery and colonialism. The Conference resolved that the questions to be posed to His Majesty are of profound constitutional, historical and human significance for all peoples of the Caribbean Community.

I note that Section 4 of the Judicial Committee Act empowers His Majesty, "if he shall think fit," to refer "any such other matters whatsoever" to the Judicial Committee of the Privy Council for its advice on matters affecting the welfare of his subjects. The Conference agreed that Jamaica's Petition raises issues affecting the welfare of the people of Jamaica and by extension, the welfare of all Caribbean peoples whose development was shaped by slavery and colonialism

Saint Vincent and the Grenadines, therefore, identifies with the issues raised in Jamaica's Petition and urges His Majesty to positively consider referring the questions to the Judicial Committee so that the Committee's advice may contribute to truth, justice, healing and the advancement of reparatory justice for the people of the Caribbean.

.../2 Dr. The Most Honourable Andrew Holness, ON, PC, MP
3rd July, 2026.

I commend your leadership and by extension that of the Government of Jamaica for pursuing this historic constitutional path. Saint Vincent and the Grenadines stands in full solidarity with Jamaica as you file the Petition in London on 7th September, 2026, and commits to participating in the activities leading up to the filing, to show our strong support for the action being undertaken by Jamaica.

Please accept, Prime Minister, the assurances of our highest consideration.

Sincerely,



Dr. The Honourable Godwin Friday
Prime Minister
Saint Vincent and the Grenadines

GF/nds-d

**Tel: 784 456-1703 ♦ Email: pmosvg@gov.vc
Website: www.gov.vc**



REPUBLIC OF GHANA

Jubilee House

The President

27th August, 2026

Dear Prime Minister,

I write to express Ghana's support for the decision of the Government of Jamaica to petition His Majesty King Charles III, under Section 4 of the Judicial Committee Act 1833, to refer questions concerning reparatory justice arising from the transatlantic trafficking of enslaved Africans, racialised chattel enslavement and colonialism to the Judicial Committee of the Privy Council for its advice. We are confident that the Committee will not miss this unique opportunity to correct these historical injustices.

The decision to pursue this constitutional path, which received the full support of the Forty-Ninth Regular Meeting of the Conference of Heads of Government of the Caribbean Community, held in Montego Bay, Jamaica, in July 2025, represents a momentous contribution to the wider pursuit of reparatory justice. The questions raised by the Petition speak to matters of deep historical and human consequence and to the continuing effort to secure recognition, accountability and meaningful redress for the injustices inflicted upon generations of Africans and people of African descent.

The adoption of the landmark United Nations General Assembly Resolution A/RES/80/250 on 25 March 2026 marked a significant milestone in efforts to address the historical and continuing consequences of the trafficking of enslaved Africans and racialised chattel enslavement. Following the adoption of the Resolution, I convened the High-Level Consultative Conference on the Next Steps to the Landmark United Nations General Assembly Resolution A/RES/80/250 in Accra from 17 to 19 June 2026, which adopted The Accra Next Steps Commitments on Reparatory Justice as a framework for coordinated action. These initiatives reflect the growing resolve of Africa, the Caribbean and the wider African Diaspora to move beyond recognition of historical wrongs towards meaningful action.

I recall our discussions during my recent State Visit to Jamaica, when we reaffirmed the deep historical bonds between Ghana and Jamaica and our shared commitment to advancing reparatory justice for Africans and people of African descent. The issues raised by the Petition resonate deeply with Ghana, given the shared history that binds Africa and the Caribbean through the forced displacement of millions of Africans across the Atlantic and the systems of enslavement and colonial exploitation that followed.

The pursuit of reparatory justice must, therefore, remain a shared endeavour, grounded in solidarity and cooperation between Africa, the Caribbean and the wider African Diaspora.

I therefore wish to commend the resolve and leadership you have demonstrated in pursuing this historic initiative. As Jamaica proceeds with the filing of the Petition in London on 7 September 2026, I assure you of the solidarity and support of the Government and people of the Republic of Ghana in this important endeavour and in our broader collective pursuit of truth, justice and reparatory justice.

Please accept, Prime Minister, the assurances of my highest consideration and best wishes for your continued good health and well-being.



JOHN DRAMANI MAHAMA

**DR. THE MOST HONOURABLE ANDREW HOLNESS, ON, PC, MP
PRIME MINISTER OF JAMAICA
KINGSTON**

