The struggle for the right to reparation in the French Republic

A short history

The Struggle for the Right to Reparation in the French Republic: A Short History

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The following article provides a brief overview of the birth and development of the movement for reparations within the French Republic; a campaign that, much like the UK movement, is less well known when compared with its American and Caribbean counterparts.[1] Unlike scholars in America, France lacks an influential body of academics who have been willing to advocate for the need for reparations. The reasons for this are complex. Some scholars view reparations as a direct contravention of republican universalism because they would require recognizing a racialized body of citizens to whom reparations are due, and 'race' is anathema to universalist thinking.[2] Others fear blurring the line between what is constructed as serious academic scholarship grounded in rationality, neutrality and objectivity, and the more partisan and political work of activists. While a handful of French academics have, more recently, begun to tentatively engage with this subject, the concept of the engaged scholar-activist (as outlined by Paolo Freire) lacks credibility within the French academy because it risks accusations of 'communitarianism'.[3] This is markedly different from America with its long history of historically Black colleges and universities and wealth scholars writing in support of reparations for African enslavement, or the Caribbean with its Centre for Reparations Research.[4]

From the outset, it is also worth recalling two national specificities that differentiate the French reparations movement from its peers, and therefore provide a useful point of comparison to movements in the US, Caribbean and UK. The first is that the national reach of the French Republic still includes overseas territories in the Caribbean and Indian Ocean that are governed in the same way as any department of mainland France. The existence of these geographical sites within the national body is an ongoing reminder of France's colonial empire and its enslavement of African, Indigenous, Malagasy and Indian peoples. Reparations

[1] This article has been extracted from a book that will be coming out in 2024 called *Legacies of Slavery in the French Republic: Activism, Politics, Reparations* with Liverpool University Press. In this special edition, Esther Stanford-Xosei has written about the UK movement. See also, Nicola Frith and Esther Stanford-Xosei, 'Reparations Activism in the UK: A Pan-African Journey Towards Planet Repairs', in *Slavery, Colonialism, and Reparations*, ed. by Adekeye Adebajo (Johannesburg: Institute for Pan-African Thought and Conversation, forthcoming 2024).

[2] See, for example, François Blancpain and Marcel Dorigny, 'Annexe III: Réparation pour l'esclavage?', in Comité indépendant de réflexion et de propositions sur les relations Franco-Haïtiennes, 'Rapport au Ministère des affaires étrangères, M. Dominique de Villepin, du Comité indépendant de réflexion et de propositions sur les relations Franco-Haïtiennes', January 2004, https://medias.vie-publique.fr/data_storage_s3/rapport/pdf/044000056.pdf (accessed 16 November 2023), 84–88 (87).

[3] See, for example, Magali Bessone, 'Les réparations au titre de l'esclavage colonial: l'impossible paradigme judiciare', *Droit et société*, 102 (2019), 357–77. Other articles and books on reparations have tended to be authored by activists, such as Louis-George Tin, *Esclavage et reparations. Comment faire face aux crimes de l'Histoire* ([N.p.]: Stock, 2013). A key exception to this is the work of the scholar-activist Louis-Sala Molins, such as his book *Esclavage Réparation. La lanterne des capucins et les loupioutes des pharisiens* (Paris: Éditions Lignes, 2014).

[4] Notably examples from the US and the Caribbean include: Randall Robinson, *The Debt: What America Owes to Blacks* (Boston, MA: E. P. Dutton, 2000); Hilary McD. Beckles, *Britain's Black Debt: Reparations for Caribbean Slavery and Native Genocide* (Jamaica: University of West Indies Press, 2013); and William A. Darity and A. Kirsten Mullen's recent publication, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century*, 2nd edn (Chapel Hill, NC: University of North Carolina Press, 2022).

activists within the Republic are therefore directing many of their claims at their own nation-state. This marks a point of difference from their Caribbean neighbours, which are largely functioning as independent nations within the broader CARICOM Reparations Commission (CRC) framework. While activists in Martinique and Guadeloupe have formed their own 'national' reparations committees within the CRC, these are unable to act with State backing since the French government remains hostile to reparations for African enslavement.

The second point of difference is that the French State remains the first and only European government to have recognized chattel enslavement and the so-called 'slave trade' — or rather, the transoceanic trafficking and enslavement of Africans[5] — as a crime against humanity at a national level. This recognition took place through the passing of the first Taubira law in 2001 and means that activists within the French Republic are in a unique position.[6] Unlike many other national movements, they have the legal justification to trigger a reparatory justice process against their own State, in theory at least. And yet, over twenty-five years since the legacies of slavery were first debated in the *Assemblée Nationale*, little progress has been made to recognize the right for reparations for African enslavement at a national level.

This article will focus on the ways that reparations activists have been trying to make use of the Taubira law to press for the right to reparation. But it will begin by looking at the genesis of the reparations movement in the years leading up to the 150th anniversary of France's abolition of slavery in 1998, as well as the movements that emerged after the passing of the Taubira law in 2001. While I recognize that there are many movements linked to remembering the history and legacies of slavery within the French Republic, the focus here will be on one specific campaign: namely, the legal claim led by the Martinique-based *Mouvement International pour les Réparations* (MIR) in collaboration with other groups, such as the France-based *Conseil Mondial de la Diaspora Panafricaine* (CMDP) and the Guadeloupe-based *Comité International pour les Peuples Noirs* (CIPN).

The campaign to recognize the legitimacy of reparations for African enslavement can be dated back to events in Paris in 1992. While this was also the year that the Abuja Proclamation issued its call to recognize the 'unique and unprecedented moral debt owed to the African peoples', the events in Paris were not connected to this international movement.[7] Instead, its roots were more nationally orientated, being linked to the French Caribbean independence movements of the 1960s and 70s. The desire for independence, albeit a minority concern, was a response to the failures of the Departmentalization Law of 1946 that had not led to the promised equality between citizens in France and its overseas departments.[8] By 1992, the need for reparations for African enslavement offered a conduit through which to channel some of the former momentum of these independence movements

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[5] For more on this phrasing, see the International Network of Scholars and Activists for Afrikan Reparations (INOSAAR), 'Global Report 2019', https://www.inosaar.llc.ed.ac.uk/en/global-report-2019, p. 28.

[6] Christiane Taubira-Delannon, 'Loi n° 2001-434 du 21 mai 2001 tendant à la reconnaissance de la traite et de l'esclavage en tant que crime contre l'humanité', 23 May 2001, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000405369/ (accessed 14 December 2022).

[7] Abuja Pan-African Conference on Reparations for African Enslavement, 'The Abuja Proclamation', 27–29 April 1993, Abuja, Nigeria, http://ncobra.org/resources/pdf/TheAbujaProclamation.pdf (accessed 22 August 2017).

[8] Loi n° 46-451 du 19 mars 1946 tendant au classement comme départements français de la Guadeloupe, de la Martinique, de la Réunion et de la Guyane française, 19 March 1946, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000868445 (accessed 11 April 2024). For more on the long journey from enslavement to citizenship, see Silyane Larcher, *L'Autre Citoyen: L'idéal républicain et les Antilles après l'esclavage* (Paris: Armand Colin, 2014).

that were, by then, on the wane. This explains why many of the key players within the movement today are also those who were involved in the earlier push for independence, such as Luc Reinette (who founded the CIPN in 1992) and Garcin Malsa (who founded the MIR in 2005).

The year 1992 was pivotal since it marked the 500-year anniversary of Christopher Columbus's voyage to the so-called Americas, or rather *Abya Yala*, as some Indigenous peoples called it before colonial invasion. Since Columbus was being widely celebrated in Europe, Malsa and Reinette decided to organize a demonstration in Paris, while a posthumous trial against Columbus was simultaneously held in Martinique.[9] The French-Guyanese *députée* Christiane Taubira, who would later go on to author the 2001 Taubira law, was also present at this mock trial. It was during these two trans-Atlantic events that activists began to call for reparations. From the very outset, it was based around the three 'Rs'. First, there was a need for the *recognition* of slavery as a crime against humanity in national law. This would then trigger the right to *reparation*. Only once reparation had been achieved, could the final stage of *reconciliation* be attained.

From this basis, the 1998 anniversary of the abolition of slavery offered a window of opportunity in which to press for reparations claims. This also coincided with key changes at an international level with the creation of the International Criminal Court (ICC) in 1998 in which to judge crimes against humanity, as well as the global boom in public memories of enslavement, epitomized by the UNESCO Slave Route. These international contexts therefore provided a supporting framework in which activists operating at national and regional levels could place more pressure on the State for official forms of recognition.[10]

It was in this context that various calls were issued for France to acknowledge its historical involvement in enslaving African peoples as a crime against humanity. The first was in 1997 when José Toribio (then mayor of Le Lamentin in Guadeloupe) submitted a statement to the UN General Assembly 'to have slavery condemned as a crime against humanity'.[11] In the preamble, he stated that those responsible for these crimes 'must be tried by an international criminal court constituted by the General Assembly of UN States'.[12] This was followed by a silent march through the streets of Paris that was held on 23 May 1998 to honour the ancestors of those who were enslaved, which led to the gathering of 10,000 signatures to petition the State to recognize slavery as a crime against humanity. This resulted in Taubira submitting a draft law to the National Assembly on 22 December 1998 that not only provided legal recognition but also included the right to reparation. Article 5 stated that: 'A committee of qualified personalities shall be set up to determine the harm suffered and to examine *the conditions for reparation due in respect of this crime*' (emphasis added).[13]

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[9] 'Le procès de Christophe Colomb', *Informations Nationales*, 142 (1993), https://africa.smol.org/files/revue-presse15.pdf (accessed 20 September 2023), 3.

[10] Ana-Lucia Araujo, *Politics of Memory: Making Slavery Visible in Public Space* (New York: Routledge, 2012), 1–11 (2).

[11] Clicanoo, 'Qu'est-ce qu'un homme?' 19 December 1998, https://www.clicanoo.re/node/413608 (accessed 23 November 2020).

[12] Clicanoo (1998).

[13] Christiane Taubira, 'Proposition de loi tendant à la reconnaissance de la traite et de l'esclavage en tant que crimes contre l'humanité', 22 December 1998, http://www.assemblee-nationale.fr/11/propositions/pion1297.asp (accessed 30 June 2015).

The momentum behind this draft law was also driven by three conferences on reparations that were organized between 1998 and 1999 in Martinique and Paris.[14] While often overlooked, these activist-led events testify to the strength of the push for reparations at this time and were also attended by Taubira. Their discussions revealed the multifaceted nature of the crime and its legacies and sought solutions to address contemporary concerns with housing, employment, education, development, health, access to land, self-esteem, identity, non-/misrecognition, memorialization and cultural recognition. While participants understood that it was unlikely that a legal trial would ever be held against the French State, they still advocated for a pluralistic approach to reparatory justice that would move beyond just recognizing the crime. In this way, they anticipated the holistic approach later adopted by the UN Framework's 'Basic Principles on the Right to a Remedy and Reparation' that calls for restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[15]

While Taubira was able to channel some of these demands into the preamble of the draft law — for example, by calling for land redistribution — the debates that took place at State level soon led to the political decision to remove the word 'reparation' from Article 5. By the time of the third conference (21 May 1999), reparation had been replaced with a committee of experts 'to propose initiatives to guarantee that the *memory* of the crime continue for generations to come'.[16] It was this version that passed in May 2001, meaning that henceforth memory was the State's official policy, while reparations were rejected by all but the French Community Party [*Parti Communiste Français*].

The final Taubira law therefore betrayed many of the wishes of those most directly affected by the legacies of slavery. At the same time, if the legal right to reparations for slavery was not upheld by the State, the opposite was true for its treatment of the descendants of the Jewish Holocaust or Shoah. During the same years that the Taubira law was being debated in the *Assemblée Nationale* and *Sénat*, the State also passed a law to provide reparations and restitution to the descendants of French Jews directly affected by France's collaboration with Nazi Germany.[17]

In response to the Taubira law, Garcin Malsa would found the activist organization MIR in 2005, with a remit defend the right of descendant communities to reparation.[18] This resulted in a lengthy and complex series of court cases, lasting nearly twenty years, that circulated between the High Court and the Appeals Court in Martinique, the Court of Cassation and the Constitutional Court at a national level, and the European Court of Human Rights (ECHR). For MIR, CMDP and their lawyers, the fact that the Taubira law had recognized slavery and the so-called 'slave trade' as a crime against humanity was justification enough

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[14] For more information on the conferences (3 April 1998, 20 December 1998, 21 May 1999), see Serge Chalons, Christian Jean-Étienne, Suzy Landau et al. (editors), *De l'esclavage aux reparations* (Paris: Karthala, 2017).

[15] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', 16 December 2005, https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx (accessed 10 November 2020).

[16] This would remain the wording of the final 2001 law.

[17] Décret n°2000-657 du 13 juillet 2000 instituant une mesure de réparation pour les orphelins don't les parents ont été victimes de persécutions antisémites, 13 July 2000, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000582825 (accessed 29 July 2019).

[18] Mouvement International pour les Réparations (MIR), Cartographie des Mémoires de l'Esclavage, https://www.mmoe.llc.ed.ac.uk/fr/content/mouvement-international-pour-les-r%C3%A9parations (accessed 15 April 2024).

for starting a reparatory justice process; a claim further supported by the fact that French law also recognizes that crimes against humanity are legally imprescriptible, meaning that no time-bars can be applied to their prosecution.[19]

MIR's legal struggle was structured around two key demands: first, that provision be made for future reparation; and second, that an assessment of the harmful consequences of enslavement be undertaken to set the amount for the claim. In other words, they requested a return to the original wording of the Taubira law for a committee to properly assess the harm and reparations due.

The court cases would bring to light four main battlegrounds: first, to ascertain whether a statute of limitations to time-bar legal action against the State exists; second, to establish whether slavery was legal or illegal at the time of its perpetration; third, to decide whether the Taubira law represents a normative or declarative law; and fourth, to assess whether the State today can be held accountable for past crimes.

With the sole exception of the ECHR, the French courts consistently ruled in favour of the defendant (the French State). Their reasoning was based on the arguments that: the legal action was time-barred, meaning that too much time had passed to prosecute; that slavery was legal at the time, meaning that no crime had effectively been committed; and that the plaintiffs were unable prove transgenerational harm, meaning that the State today could not be held accountable for the crimes of the past or any continuation of harm since.

Meanwhile, in a devastating blow to MIR and their allies, magistrates in France's uppermost court — the Court of Cassation — ruled on 5 February 2013 that the Taubira law was merely a declarative law, meaning that it could not be used to raise any legal claim or sanction.[20] Although this judgement arose from a separate case, it had the effect of removing the right of organizations such as MIR to take legal action. MIR would successfully challenge this deformation of the Taubira law through the EHRC, which then meant that its own case could be heard one last time on 11–12 October 2021.[21] However, the results were much the same. The Court of Appeal in Fort-de-France and the Court of Cassation both upheld all previous judgements, again in favour of the State.[22]

To conclude then, on the one hand, this campaign could be viewed as 'unsuccessful'. But on the other, as MIR's lawyers Claudette Duhamel and Alain Manville have pointed out,

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[19] Code Pénal, 'Des crimes contre l'humanité et contre l'espèce humaine (Articles 211-1 à 215-4)', https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006136040/2004-08-07/#LEGISCTA000006136040 (accessed 3 December 2020).

[20] Cour de Cassation, 'Arrêt n° 456 du 5 février 2013 (11-85.909)', https://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/456_5_27256.html (accessed 5 September 2017). Loi du 29 juillet 1881 sur la liberté de la presse (1881). See also Bernard Jouanneau, 'Apologie de l'esclavage avec la "permission" des juges', *Mediapart*, 12 March 2013, https://blogs.mediapart.fr/edition/les-invites-de-mediapart/article/120313/apologie-de-lesclavage-avec-la-permission-des-juges (accessed 5 September 2017).

[21] Jean-Claude Samyde, 'Procès des reparations: déliberé le 18 janvier 2022', *FranceInfo*, 13 October 2021, https://la1ere.francetvinfo.fr/martinique/proces-des-reparations-delibere-le-18-janvier-2022-1126714.html (accessed 3 November 2023). See also Mouvement International pour les Réparations, 'Procès historique les 11 et 12 octobre 2021', https://www.mirmartinique.com/article/proces-historique-les-11-et-12-octobre-2021 (accessed 3 November 2023).

[22] Le Premier Président, 'Communiqué de Presse: MIR et autres contre État français', Cour d'Appel de Fort-de-France, 18 January 2022, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cours-appel.justice.fr/sites/default/files/2022-01/Communiqu%C3%A9%20de%20presse%20-%2018-01-2022.pdf (accessed 4 November 2023). Cour de Cassation, 'Appeal no. 22-13.457', 5 July 2023, https://www.courdecassation.fr/decision/64a50ab4b8594705dbfcc85a (accessed 5 November 2023).

their legal campaigns 'are likely to make Afro-descendants aware of their [ongoing] non-recognition by the French state', which has obstinately refused 'to recognize their right to reparation'.[23] Moreover, MIR has successfully demonstrated the limits of France's judicial (and indeed constitutional) system and proven it to be incapable of judging its own crimes against humanity. In so doing, MIR and its lawyers have revealed the inherent self-interest and coloniality of the French judicial system that, despite being separated from the State in theory, remains geared towards protecting State political interests in practice.

As for the future of this movement, having exhausted the possibilities of the French judicial system, Manville now points to the need for an international tribunal capable of judging these crimes that will function, ideally, in collaboration with African states.[24] While international jurisdiction is currently lacking, he ends on an optimistic note by seeing 'the establishment of such a court of justice is an unavoidable fact to come' and anticipating a time when there are 'African states brave enough to take the risk of a violent opposition from former slave powers'.[25] Perhaps, with the ousting of the French military from Niger, that it precisely what we are beginning to see.

[23] Claudette Duhamel and Alain Manville, 'Reparation, a Demand for Justice', in *Reparations: An Urgent Requirement for Humanity*, ed. by Garcin Malsa and Mame Hulo, trans. by Joséphine Ndiaye (Diaspora Noire, 2020), 29–50 (49).

[24] Alain Manville, 'For an International Tribunal for Reparation: The ICTR', in *Reparations: An Urgent Requirement for Humanity*, ed. by Garcin Malsa and Mame Hulo, trans. by Joséphine Ndiaye (Diaspora Noire, 2020), pp. 51–66 (p. 59).

[25] Manville (2020), 65–66. For more on international law, see Katarina Schwarz, *Reparations for Slavery in International Law: Transatlantic Enslavement, the Maangamizi, and the Making of International Law* (New York: Oxford University Press, 2022).