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DISCUSSION PAPER

PRESENTATION

BY

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The need for a Framework on Reparations to Address Colonial Abuses, Economic Imbalances, and the Accumulation of Foreign Debt

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I. Introduction

Despite multiple international legal pronouncements on the obligation to adopt measures to facilitate the autonomy and independence of Non-Self-Governing Territories, administering -and occupying- powers continue to maintain conditions of oppression and colonial intervention. The right to self-determination cannot be freely exercised under conditions of extreme vulnerability. New forms of subjugation continue to impede the development of independent economies and curtail the exercise of fundamental rights in the intervened territories. Furthermore, in the case of island nations, colonial subjugation, climate change and debt accumulation have compounded effects.

These new conditions are exploited by the administering powers, deepening the relationship of economic inequality and dependence between them and non-self-governing territories. In the case of Puerto Rico, an unsustainable debt has been imposed, with re-payments that have no deadline in sight. Also, a Financial Control Board with sweeping governing powers is managing Puerto Rico's economy and public policy, in total disregard for the peoples of Puerto Rico rights to political participation and representation. These types of impositions condemn the territory to a permanent state of national servitude. In this sense, debt is a colonial tool which allows the imposition of conditions that facilitate multiple human rights violations including the right to political participation in public affairs, but also generate poverty and impedes the possibility of economic development by and for native people.

This paper discusses these new forms of oppression, and the need for an updated analysis on comprehensive reparations for damages caused in colonial contexts. Reparations should be considered paramount to any decolonization process, which should apply as a matter of justice and as a matter of pure international responsibility for wrongful acts. Colonization -as a proscribed political subjugation- generate multiple violations of human rights law, thus international principles of human rights law are applicable to the decolonization process and should serve as a

guide in determining the amount and type of reparations applicable. Without a proper discussion on applicable reparations, there is little possibility for a meaningful, autonomous, and adequate exercise of self-determination.

To conclude, this paper provides recommendations for urgent actions that the Committee should take, both individually and jointly with other UN human rights bodies, including treaty-based mechanisms, working groups and special procedures.

II. Debt, Climate Change, Human Rights Violations and Perpetual Conditions of Colonial Subjugation

Public debt is a legacy of colonial times that continue to suffocate developing countries' economies today. Former colonized countries were forced to assume colonial debts over which they had no control or decision-making powers. In some cases, such as Puerto Rico, the territory continues to accrue debt under economic systems that benefit the administrative or occupying States.

The accumulation of debt has soared in recent decades. Island nations in the Caribbean region have been particularly affected by debt. Between 1980 and 2020, the average public debt in the Caribbean region increased from 41%, to 59% of their GDP.¹ Unfortunately, this same region is severely affected by climate change and global warming, facing a growing financial demand for adaptation and reconstruction mechanisms. Financial assistance for climate adaptation in the Caribbean comes mostly in the form of debt, which creates a cycle of renewed indebtedness.

At the same time, conditions imposed for financing public debt have a negative effect on the capacity of island nations to provide public services and guarantee minimum protections for its population. Austerity loans are loans with many strings attached, which require reduction in public spending, privatization of public services, capping or lowering salaries, labor laws flexibilization, increased consumption and income taxes, among others. These types of conditions undermine the

¹ E. Cavallo et al., *Climate Change, Hurricanes, and Sovereign Debt in the Caribbean Basin* (Jan.2024), at p. 2. IDB Working Paper Series No. IDB-WP-1551. Available at: <https://publications.iadb.org/en/climate-change-hurricanes-and-sovereign-debt-caribbean-basin>

socio-economic rights of the population, generate higher poverty and unemployment rates, push people out of the territory and exacerbate conditions of racial and gender discrimination.

The case of Puerto Rico showcases the combination of these factors at work. In 2015 Puerto Rico's outstanding debt was over \$70 billion, representing 68% of its GDP. From 2005 to 2015, Puerto Rico was subjected to a series of austerity measures, which included massive layoffs, closing of public schools and the privatization of the health system. These measures did nothing to manage the accumulated debt, instead, they aggravated the overall living conditions in the archipelago. In 2016, the US Congress unilaterally imposed a federal law on Puerto Rico (PROMESA), which established a Financial Oversight Board ("Board"), with total authority over Puerto Rico's budget and public spending. The Board is comprised of 7 members, appointed unilaterally by the President of the United States and the US Congress. Puerto Rico has no say on who sits on the board and lacks any oversight authority over its work and decision-making processes. The imposition of this board is a unilateral action by the occupying state, diminishing the little areas of autonomy that the local government had left.

Today, Puerto Rico is controlled by this Board, which main task is to guarantee the repayment of an illegal public debt which is the result of the colonial system of exploitation. The Board is the local administrator of the colony and works to ensure debt repayment, even at the expense of the fundamental rights and protections of the residents of Puerto Rico. Among the effects of the austerity measures adopted in Puerto Rico during the last two decades are the following:

(a) Right to Education

- Massive closing of public schools. Between 2007 and 2018, 673 public schools were closed, representing 44% of the schools in the country. (Rubiano et al., 2020). The largest number of closings happened under the direction of the Board, 63.5%. These closings affected primarily, children living under the poverty level (80%) and rural communities (65%). (Sulbarán, 2017).
- Spending cuts affected the Special Education Program: Austerity measures and public school closings resulted in the temporary stagnation of some Special Education Programs, therapists and specialized personal received salary reductions.

- **Public University:** The University of Puerto Rico, is the best and only public higher education system in the archipelago. There has been a massive reduction of public funds destined to the public university, threatening its survival and the possibility to continue providing high level education to low income and poor students in the archipelago.

(b) Right to housing

- By June 2017, an average of 14 families were losing their homes per day. The accumulated effect of the debt crisis, increased tax rates, and labor layoffs, had a devastating impact on low-income families, who were financially compromised and had to choose between eating food or pay the rent.

(c) Right to health

- The privatization of public health services changed the role of the government, from one of being the principal provider of health services to being an administrator of private health plans. Many medical facilities were transferred to private administrators, and medical personnel and their salaries were reduced. Important public health decisions were handed over to the private sector.

(d) Right to Clean Electric Energy:

- In 2017, Hurricane María devastated Puerto Rico, causing a total collapse of the electric energy public system. The lack of energy affected also the communications systems in the islands. It is estimated that over 3,000 persons died as a result of the lack of infrastructure, energy and communications after the hurricane. A year later, under directions of the Board, the electric system was privatized. Puerto Ricans widely opposed such a measure and demanded a public, clean, sustainable solar energy system. These claims have been largely ignored by the Board or the internal government, even when the privatization have resulted in higher costs, expensive fees, and unstable energy system.

The Board continues to apply broader asphyxiating austerity measures that have done little to address the accumulation of debt but continues to negatively affect the rights of the people of Puerto Rico. The imposition of this Board is a clear violation of the international obligations of the United States, particularly of its duty to guarantee Puerto Rico's right to self-determination.

The prevalence and scale of the harm perpetrated by the US government during its 125 years of illegal occupation, continues to aggravate the socio-economic conditions in the islands, including through unequal access to health, persistent environmental degradation, pervasive military contamination of the island of Vieques, ongoing dispossession of public lands, cultural imperialism, among others. Puerto Rico has been deprived of the possibility of development, curtailed from the development of its economy, and limited in its international relations within the Caribbean region and internationally.

By diminishing local authority and autonomy, the US extends its illegal occupation of the territory, and reduces the possibility of a free exercise of self-determination. The cumulative measures taken by the US Government and the Board have made life in Puerto Rico expensive and difficult for the native population. In the last decade, tax subsidies adopted to attract foreign investors have ignited speculation over the price of lands and property. These policies have had an impact in the housing market, making it impossible for locals to pay the rising costs of housing, public electricity, and water bills, while foreigners are increasingly buying homes and land. Gentrification is the result of collective dispossession ignited by the colonial socio-economic system imposed on Puerto Ricans. This is particularly acute in the island of Vieques, which was used by the US Navy for military practices for 60 years. Today, the native population of Vieques is being constantly pushed out of the island by way of extremely high housing costs, lack of public health services, and a deficient transportation system.

If Puerto Rico is stripped of its native population, there is no way possible for the exercise of self-determination. Urgent measures need to be drawn to halt the ongoing dispossession of public institutions, land, property, and public services in the territory of Puerto Rico. These urgent measures should be part of a larger framework of reparations intended to create the necessary conditions for the development of an independent and strong economy, that can stand on its own

feet, with the support of the international community, and the guidance of this UN Committee on Decolonization.

III. Reparations as a Critical Component of the Process of Decolonization and the Right to Self-Determination

The concept of reparations is intrinsic to international relations and international public law. The Draft Articles on State Responsibility for Internationally Wrongful Acts clearly establishes that a breach of international law by a State entails its international responsibility. It is also a long-established principle, that a State that violates international law has a duty to provide full reparations for the injuries caused.²

The Permanent Court of Justice has reiterated the content of the obligation to make reparations, emphasizing its broad, comprehensive character.

*The essential principle contained in the actual notion of an illegal act [...] is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.*³

Colonization today is considered a breach of international law. As such, it entails the international responsibility of the occupying States and a corollary obligation to provide full reparations. An occupying State is in violation of its international obligations when it adopts measures that further aggravate the colonial condition of an occupied territory. Perpetual colonial rule is proscribed and condemned under international law because it frustrates the sovereign exercise of the right to self-determination. Perpetual conditions of subjugation also result in multiple human rights violations, both of individual and collective nature.

² Art. 31 of the Draft Articles on State Responsibility for Internationally Wrongful Acts.

³ Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 47

There is general understanding that colonization and neo-colonization practices continue to regenerate, conditions of economic oppression, social inequality, and racial discrimination. These conditions are the result of multiple violations of international law and international human rights protections. For non-self-governing territories, these colonizing practices have not ceased to exist, and in many cases, new forms of exploitation, annexation and dependency have been created impeding the possibility of self-sufficiency and economic independence.

Although Resolution 1514 unequivocally states that “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence”⁴, it is also true that long-time colonial conditions of dependency and economic oppression may limit the possibility of effective independence and sovereignty. There are many examples of former colonies struggling with economic dependency, foreign interventionism, unsurmountable external debt, and lack of autonomy.

It is imperative to re-think the way in which self-determination is envisioned and incorporate the duty to repair in the early stages of a process towards independence.

As Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, have stated: “the colonial transfer of wealth and racist oppression had created a legacy of social, economic, and cultural exclusion whose effects had been felt for generations. The duty to provide effective remedies to victims, ensure accountability, and to provide reparation to victims was incumbent on the former colonizing power.”⁵

Salvioli also suggests that mechanisms and processes developed in the area of transitional justice may prove useful to address the deeper causes of “colonial violence, structural violence and systemic exclusion in the economic, political and social spheres”.⁶ Some of these mechanisms include truth commissions, reparation programmes, and public apologies, among others. These

⁴ Resolution 1514 (XV).

⁵ Human Rights Council Interactive Dialogue. Addressing the Legacies of Colonialism Can Contribute to Overcoming Inequalities Within and Among States and Sustainable Development Challenges of the Twenty-First Century. Meeting Summaries. September 29, 2022. Available at: <https://www.un Geneva.org/en/news-media/meeting-summary/2022/09/afternoon-acting-high-commissioner-addressing-legacies>

⁶ Id.

processes apply to both, national territories under current situations of colonization and territories and in contexts where former colonies have attained independence. In both these contexts, the transition process should seek to reverse and repair the effects of domination and colonization practices. According to the Rapporteur this should include: (a) the occupying State's recognition of international responsibility and public apology; (b) the development of individual and collective reparations; (c) restoration of the dignity of the victims. It is important to include a wide range of reparations according to the different damages caused to the peoples of the occupied territories, in accordance to their specific needs.

This process of reparations requires that formal conversations take place early in the process, between the colonizing power and the colony. A human rights framework should lay the foundation for these conversations, understanding that there is an obligation to provide effective remedies and generate conditions of equality and mutual respect. As E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination and related intolerance has stated: "A debt was owed that must be repaid [...]. There could be no excuses on the parts of Member States as to what actions are required."⁷

IV. Recommendations

In light of the discussion provided in this paper, I would like to formulate the following recommendations:

1. This Committee should support the creation of political space to discuss and consider reparations approaches as part of decolonization efforts;
2. A framework for reparations in the decolonization process should be developed in consultation with NGT and former colonies still affected by the legacies of their colonial past;
3. Colonial debts and those accrued as part of an economic and power imbalance between former colonies and administrative States should be erased and re-evaluated;

⁷ Id.

4. This Committee should use its good offices to moderate possible negotiations between NGT and Administrative States on the basis of friendly relations, human rights protections, reparations for the colonial past, and the right to self-determination.
5. A socio-economic analysis should be developed to analyze the current effects of colonial contexts.
6. The Committee should invite the Special UN Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, the Special Rapporteur on contemporary forms of racism, racial discrimination and related intolerance, the Special Rapporteur on Sovereign Debt and Human Rights, and others to discuss, analyze and develop Principles on Reparations and Remedies to Address Structural Violence, Racial Discrimination and Economic Abuse in the Context of Decolonization Processes.
7. The Committee should make an official visit to Puerto Rico and other NGT in the Caribbean region to assess the ongoing effects of debt exploitation as part of the colonial structural violence that is still present in these territories.