insights

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The Colonial Policy of Racial Segregation and Forced Displacements of Mixed-Race Children (*métis*) on Trial: Belgium Held Liable for Crimes Against Humanity

Introduction

In a recent landmark judgment, the Brussels Court of Appeal found the Belgian state civilly liable for crimes against humanity as a result of its colonial policy of racially segregating and forcibly displacing mixed-race (*métis*) children as practiced in the then Belgian Congo and Ruanda-Urundi (now the Democratic Republic of Congo, Rwanda, and Burundi).[1] This *Insight* summarizes the litigation that led to the Court of Appeal's decision, examines the reasoning behind it, and discusses the importance of the judgment.

Background

Métis children were mostly born from a black Congolese, Rwandan, or Burundian mother and a white Belgian father. In most cases growing up with their mother, they were frequently torn away as toddlers from their families through deception, threats, and violence, and subsequently sequestered in religious congregations or other public institutions financed by the Belgian state in what was then the Belgian Congo and Ruanda-Urundi. These religious and public institutions were often situated hundreds of kilometres from their family homes.[2] While these forced displacements were—according to the Belgian state's official narrative—prompted by a need to provide the children with "decent" (i.e., Western) education,[3] the real reason behind this abduction policy was to

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ensure racial segregation. As “children of sin,” the *métis* were considered a threat to the colonial enterprise, which was grounded on the racial ideology of white supremacy.[4] When Belgian colonial authorities fled in chaos in the wake of independence in the 1960s, many *métis* children were left behind without any form of protection, sometimes exposing them to sexual abuse, molestation, and rape.[5] Others were transferred to Belgium or other Western countries, where they ended up in orphanages or with foster and adoptive families, with little prior screening of the latter’s suitability.[6]

In 2020, five *métis* women of Congolese descent filed a civil lawsuit against Belgium, seeking reparations for the damage they endured during their childhood (between 1948 and 1961) due to the state’s racial segregation and abduction policies towards *métis* children in its “former colonies”.[7] According to the appellants, the enforcement of these policies, executed with regard to the *métis* “for the sole reason of being born bi-racial,” constituted a crime against humanity.[8] Approached from a civil law perspective, they argued that such a crime triggered Belgium’s liability under Articles 1382-1383 of the former Civil Code.[9]

In a December 2021 judgment, the Brussels Court of First Instance dismissed the women’s claims, ruling that the acts described previously, committed between 1948 and 1961, were not yet punishable as crimes against humanity since, at the time, they still had to demonstrate a substantive link to an armed conflict.[10] However, on appeal, the Brussels Court of Appeal took an entirely opposing view, acknowledging the existence of crimes against humanity committed by the Belgian state in relation to its treatment of *métis* children and declaring the appellants’ request for reparations to be well-founded.

The Brussels Court of Appeal’s Decision

One of the main hurdles to overcome in this case was the issue of prescription, given that the facts leading to the liability claim occurred between 60 to 70 years ago. This explains why the appellants decided to base one of their main arguments regarding fault—which, in addition to damage and direct causal link, constitutes one of the three constitutive components of civil liability under Belgian law—on the claim of crimes against humanity, which constitute international crimes. Indeed, given that, according to Article 26 of the Preliminary Title of the Belgian Code of Criminal Procedure, (1) a civil action can never be time-barred before a criminal action if based on the latter, and (2) international crimes are not subject to a limitations period, one could argue that civil actions grounded in international crimes are likewise not subject to any limitations period. The Court, therefore, needed to first ascertain whether “crimes against humanity” were already

punishable between 1948 and 1961 and, if so, whether the Belgian policies of racial segregation and the forced removal of *métis* children could be classified accordingly.

While the concept of crimes against humanity was first codified in 1945 in Article 6(c) of the Nuremberg Charter and refers to inhumane acts—such as murder, extermination, and deportation—committed as part of a systematic and widespread attack directed towards any civilian population,[11] they only received a legal basis for prosecution under Belgian law in 1999.[12] Nevertheless, the Brussels Court of Appeal held, acts that occurred prior to the enactment of that law could still be prosecuted if they were punishable according to the "general principles of law recognised by all nations" at the time of their commission.[13] Given that the Nuremberg Tribunal, in its jurisprudence, recognized that its Charter "expresse[d] the international law in force at the time of its creation" and that the principles set forth by the Charter and the Tribunal's judgments were unanimously confirmed by the UN General Assembly (UNGA) in Resolution 95(I), the Court concluded that crimes against humanity were incorporated into customary international criminal law no later than December 11, 1946; i.e., the date that UNGA Resolution 95(I) was adopted.[14] While the Belgian state argued that such crimes were, at the time, in light of the text of Article 6(c) of the Nuremberg Charter, only punishable when committed in connection with an armed conflict[15] (specifically, World War II), the Court of Appeal rejected this interpretation. Rather, the Court emphasized that a distinction must be drawn between the definition of crimes against humanity provided by Article 6(c), which is universal and non-circumstantial, and the jurisdictional rule outlined in that article (i.e., nexus to the armed conflict).[16] The Court further noted that the gravity and universal nature of crimes against humanity also excluded the possibility that inhumane acts deemed unacceptable in wartime would somehow be considered humane and permissible in peacetime.[17] Thus, the Court concluded that the connection between crimes against humanity and armed conflict, reflected in Article 6(c) of the Nuremberg Charter, is not a constitutive element intrinsic to crimes against humanity, but merely a matter determining the appropriate forum for adjudicating them—in this case, the Nuremberg Tribunal.[18]

Having established that crimes against humanity existed under customary international law as of 1946, regardless of whether they occurred in the context of armed conflict, the Court then ascertained whether the facts in question qualified as such. In this context, it noted that the Belgian state had intentionally planned and executed the systematic abduction of *métis* children for racial motives, without their mothers' consent, even though they were neither orphans nor abandoned by their families.[19] Building on this finding, it determined that "the abduction of children under the age of seven, […] committed by a

State as part of a general and systematic policy targeting children born of a black mother and a white father, […], to separate them from their mother and their environment solely on account of their origin, is an inhumane act punishable under Article 6(c) of the Charter," thereby recognizing these acts as a crime against humanity.[20] It also identified a direct causal link between this fault on the part of Belgium and the range of damages suffered by the appellants, including: (1) forcible family separation, (2) registration as mulattoes, (3) isolation from other black children in the missions, (4) forcible name change, and (5) psychological trauma.[21] In light of these conditions and taking into account the young age at which the abductions and separations occurred, the Court ordered Belgium to pay financial compensation of €50,000, plus interest, per appellant.

Importance of the Judgment

This judgment is a landmark for many reasons. First, it appears that it is the first instance in Europe where a former colonial power has been required to answer in court for its segregation and forced displacement policies concerning *métis* children, which have been effectively recognised as crimes against humanity and for which reparations have been awarded.[22] Recently, Belgium has taken various measures to address the injustices against the *métis*, including the establishment of a special parliamentary truth and reconciliation commission regarding Belgium's colonial past (2020-2022),[23] the issuance of an apology by former Prime Minister Michel,[24] and the adoption of a resolution concerning the *métis*, which included recommendations for the opening of colonial archives, cooperation in identifying relatives, and conducting historical research into the role of civil and religious institutions in the treatment of *métis* children in the former colonies.[25] However, to date, no actions have been taken to financially compensate the *métis* for the damage they have endured. In the absence of any voluntary steps in that direction, the Court of Appeal has now compelled Belgium, through this formal assumption of liability, to take responsibility for these injustices and financially compensate the appellants. This may inspire other *métis* to initiate proceedings before Belgian courts and tribunals but whether compensation will be granted will have to be decided by courts and tribunals on a case-by-case basis as civil law countries such as Belgium do not know the system of binding precedents.

Beyond the reparation aspect, the designation of Belgium's racial segregation and forced displacement policies as a crime against humanity also represents a symbolic victory in the fight of the *métis* to secure recognition for the suffering they endured, which continues to have negative repercussions today, including psychological trauma, limited access to official documentation, and uncertainty regarding their identity, descent, and nationality.

Ultimately, this judgment may also have significant repercussions beyond the Belgian national legal order. Indeed, according to Article 38(1)(d) of the International Court of Justice's Statute, judicial decisions of national courts may serve as subsidiary means for determining rules of international law or may represent relevant "state practice" for identifying customary international law. By recognizing that large-scale atrocities committed against civilians within the framework of a colonial administration can constitute crimes against humanity, which are not subject to a period of limitation (at least when such acts occurred after the recognition of this concept in 1946) this jurisprudence may open the door to future liability claims for colonial violations in other jurisdictions. In terms of transitional justice, establishing fault and awarding compensation is indeed essential, not only to acknowledge the suffering endured by those directly affected, such as the *métis*, but also for former colonial powers to confront their pasts.

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[1] CA [Cours d'Appel] Brussels, Dec. 2, 2024, Nr. 2002/AR/262 ("Appeal Judgment").

[2] For an expert report on the issue of the *métis* in the Congo and Ruanda-Urundi, see, e.g., Commission Spéciale chargée d'examiner l'État indépendant du Congo et le passé colonial de la Belgique au Congo, au Rwanda et au Burundi, ses conséquences et les suites qu'il convient d'y réserver (rapport des experts), *Parl. St.* Kamer 2021-2022, nr. 1462/002, https://www.lachambre.be/FLWB/PDF/55/1462/55K1462002.pdf.

[3] *Id.* p. 256.

[4] Shaany N'sondé and Liliane Umubyeyi, *70 Years of Fighting for Justice and Reparations: Mobilizations by 'Métis' People from the Great Lakes Abducted by the Belgian Colonial Administration*, (Apr. 4, 2024), 4, https://www.afalab.org/news/2024-04-04-70-years-of-fighting-for-justice-and-reparations/.

[5] Appeal Judgment, § 3.

[6] MFA Belgium, *Research project into the segregation of metis starts new phase* (Jan. 21, 2022), https://diplomatie.belgium.be/en/policy/policy-areas/highlighted/research-project-segregation-metis-starts-new-phase.

[7] Legally speaking, Ruanda-Urundi was not a colony but given to Belgium after World War I as a mandate territory in the framework of Article 22 of the League of Nations' Covenant.

[8] The appellants also invoked as potential faults giving rise to the Belgian state's civil liability: (1) continued violations of their fundamental rights (inhuman and degrading treatment, racial discrimination and violation of the right to private life) and (2) the absence of access to administrative files (Appeal Judgment, § 11). As these claims were dismissed, they will not be further elaborated in this contribution.

[9] The Belgian Civil Code has recently been reformed, but this was not yet the case when the lawsuit of the five *métis* women was filed in 2020. As such, the Court still referred to the articles in force at the time of the filing of the lawsuit.
[10] Appeal Judgment, § 7; Civ. [Tribunal of First Instance] Brussels, Dec. 8, 2021, Nr. A/20/4655/A.
[11] *See also* Rome Statute of the Int'l Criminal Ct., July 17, 1998 (entered into force July 1, 2002), U.N.T.S. 2187 No. 38544, A/CONF.183/9, art. 7.
[12] Art. 136*ter* Criminal Code.
[13] Art. 7(2) European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950 (entered into force Sept. 3, 1953), E.T.S No. 005; art. 15(2) International Covenant on Civil and Political Rights, adopted Dec. 16, 1966 (entered into force Mar. 23, 1975), 999 U.N.T.S. 171.
[14] Appeal Judgment, § 31 (authors' translation).
[15] Int'l L. Comm'n, *First Report on crimes against humanity by Mr. Sean D. Murphy*, U.N. Doc A/CN.4/680, 233.
[16] Appeal Judgment, § 33.
[17] *Id.* § 35.
[18] *Id.* § 37.
[19] *Id.* § 44.
[20] *Id.* §§ 41, 47.
[21] *Id.* § 100.
[22] Maxim Smets, *Belgisch koloniaal beleid van raciale segregatie: een misdaad tegen de mensheid?* ['The Belgian colonial policy of racial segregation: a crime against humanity?'] (2022) N.J.W. 463, 434-441.
[23] *Parl. St.* Kamer, 2023-2024, nr. 1462/007.
[24] BBC, *Belgium apology for mixed-race kidnappings in colonial era* (Apr. 4, 2019), https://www.bbc.com/news/world-europe-47817530.
[25] *Parl. St.* Kamer 2018-2019, nr. 2952/007.