



By: The Editorial Board

# Jamaica seeks a legal response on reparations from the Crown it intends to leave



A **Jamaican government delegation**, led by Culture Minister Olivia Grange, presented a formal petition to **King Charles III** in London on 7 September. The monarch is required to refer three legal questions on slavery, British responsibility and possible legal redress to the Judicial Committee of the Privy Council.

The petition does not include a claim for damages or specify an amount to be paid by the UK Treasury; its immediate aim is to equip the campaign for reparations with an advisory opinion from the institution that remains Jamaica's highest appellate body.

On the same day, the British government reiterated that the **United Kingdom** does not, and will not, pay reparations. In responses provided to Reuters and the Associated Press, Buckingham Palace emphasised the **King's political neutrality**, alongside his commitment to understanding the consequences of slavery and finding ways to address historical injustices.

These two reactions precisely define the scope within which the request will operate: Charles's personal position on historical heritage does not have the force of a ruling, and the broad authorisation granted by the 1833 statute is being applied within a **constitutional order** in which the monarch acts on the advice of responsible ministers.

## Questions that turn history into a legal dispute

Jamaica has framed the request so that it offers the Judicial Committee not a general discussion of the empire's moral responsibility, but three specific questions whose answers could determine the basis for future **negotiations**.

The first question concerns the legality, under English law at the time, of the forced removal of Africans to Jamaica and their enslavement. It includes the claim that the colonial regulations governing slavery may have been void because they were contrary to the

fundamental principles of English common law.

The petition then requests an assessment of whether the forced removal and enslavement of Africans, together with the system of forced labour to which freed slaves were subjected until 1838, constituted crimes against humanity under international law and whether the United Kingdom bears responsibility for them.

### **Jamaica is seeking a legal characterisation that would change the terms of political negotiation**

The final question concerns any present-day obligation on Britain to provide compensation, restitution or other forms of satisfaction for historical actions and their lasting legal consequences.

The difference between a petition and a claim is crucial to understanding its scope. There is no defendant who must enter an appearance, no fixed sum of damages, and a favourable opinion on a single legal issue would not, in itself, pave the way for enforcement against British assets.

Jamaica is seeking a legal characterisation that would change the terms of political negotiation. If the Judicial Committee were to accept at least part of the argument regarding a current obligation to remedy the consequences, London would in future find it harder to reduce reparations to a question of discretionary development aid or symbolic regret.

## A route through the 1833 Act

The legal route chosen in Kingston derives from Section 4 of the **Judicial Committee Act 1833**, under which the King may refer virtually any matter to the Committee, which then considers the question and advises the monarch.

The provision is drafted in very broad terms, but it neither imposes an obligation on the King to accept the petition, nor prescribes a deadline for a decision, nor grants the applicant a procedural right to a hearing.

Its value to Jamaica lies in the fact that the claim can be formally submitted without the prior consent of the British government on the substance of reparations, while its weakness stems from the discretionary nature of the entire procedure.

### Judicial Committee is a British institution whose advisory remit is founded on an Act of the British Parliament

The relationship between London and Kingston is further complicated by the dual constitutional position of Charles III, who is King of the United Kingdom and, separately, King of Jamaica. The petition is addressed to him as monarch of the requesting state, but the Judicial Committee is a British institution whose advisory remit is founded on an Act of the British Parliament.

**Buckingham Palace** assisted the Jamaican delegation in lodging the petition through the proper channels but declined to comment on whether the request would be forwarded to the Judicial Committee.

Although the petition was formally addressed to Charles III, the decision within the British constitutional order cannot be reduced to the King's personal inclination.

Any referral will be preceded by a legal and political assessment by the British executive, which remains aware that initiating this procedure could have ramifications far beyond bilateral relations with Jamaica, including similar requests from other former colonies.

## The advisory procedure has limited scope

Even if the petition came before the Judicial Committee, Jamaica would have no guarantee of receiving responses covering the breadth it seeks.

In the **2012 case** of Chief Justice of the Cayman Islands v Governor of the Cayman Islands, brought under the same statutory route, the Committee explained that the section 4 procedure cannot serve as a substitute for ordinary proceedings when a dispute requires fact-finding, the presentation of evidence and the participation of all interested parties.

Judges may give an answer limited to the questions they consider suitable for this procedure or conclude that without a full factual inquiry no substantive answer can be given.

In the Jamaican claim, this obstacle particularly affects the first two questions. The court would need to reconstruct the relationship between English common law and colonial enactments over several centuries, determine which rules of **international law** were in force at the time of the slave trade, and explain whether the modern concept of crimes against humanity can generate retrospective state responsibility.

### Institutional restraint is therefore more likely than an opinion that attempts to resolve all three tiers

The judgment in **Somerset v Stewart (1772)** concerned the forced removal of an enslaved man from England and did not abolish slavery across the British colonies.

In Jamaica, slavery continued to be governed by **legislation** passed by the Governor, the Council and the House of Assembly. From Somerset, therefore, it cannot be directly inferred that the entire Jamaican slave system was already unlawful at that time.

The temporal problem becomes even more acute regarding crimes against humanity, since modern international criminal law recognises **enslavement** as one of the acts that

may constitute such an offence when it forms part of a widespread or systematic attack directed against any civilian population, while the legal category itself, in its current form, was developed long after the abolition of slavery in British colonies.

The Judicial Committee would have to explain whether a historical characterisation is required under the international law of the relevant era, constitutes a contemporary evaluation of a historical system, or provides a basis for current state obligations. A broad response would have serious ramifications far beyond Jamaica; institutional restraint is therefore more likely than an opinion that attempts to resolve all three tiers.

## The strongest legal support lies in the present

The third question gives Jamaica firmer ground by shifting the debate from retroactive criminal responsibility to the present-day consequences of racial discrimination and the colonial system.

At the end of August, the United Nations Committee on the Elimination of Racial Discrimination adopted general recommendations stating that states' current obligations under the **Convention** can be triggered by contemporary discrimination and structural inequalities associated with slavery and colonialism, even though the historical practices themselves predate the Convention. At the same time, the Committee emphasises that the lasting consequences of historical conduct do not, in themselves, turn a completed act into a continuing wrongful act.

This approach does not automatically convert every historical wrong into an enforceable debt of reparation, but it does require states to give serious consideration to contemporary structural consequences, acknowledge responsibility and pursue various forms of reparative justice.

In this context, reparations need not be

limited to cash disbursements to individuals. They may encompass development finance, debt relief, investment in education and healthcare, the restitution of cultural artefacts, the opening of archives and memorialisation, alongside institutional guarantees that the enduring effects of historical discrimination are actively tackled.

**The history does not, in itself, create a legally enforceable claim for reparations today**

This strategic direction suits Jamaica politically because it can pursue the campaign in concert with the Caribbean Community (**CARICOM**), the regional organisation of Caribbean states that endorsed the petition, and call upon Britain to negotiate concrete, measurable forms of redress without reducing the entire dispute to an onerous assessment of historical loss.

The British position is further complicated by the manner in which slavery was abolished. In 1833, **Parliament** allocated £20 million to compensate slave owners – a sum representing roughly 40 per cent of the government's annual budget at the time – while enslaved people received nothing.

In Jamaica, enslaved people were formally emancipated on 1 August 1834, but the majority were compelled to continue working for their former enslavers under a **statutory regime** of forced labour that endured until 1 August 1838.

That history does not, in itself, create a legally enforceable claim for reparations today, but it makes it considerably more difficult for London to maintain that the modern British state bears no material connection to the legacy of slavery.

The British Parliament has already determined once who would bear the cost of emancipation and to whom the funds would flow, directing public money to slave owners as compensation for the loss of people treated as their property under the law of the period.

## Jamaica seeks a response from the institutions it intends to leave

The political force of the petition lies in the timing of its submission, given that the government of Prime Minister Andrew Holness has already initiated a **constitutional reform** process designed to remove the British monarch as head of state and to transition Jamaica to a republic. In parallel, debate has continued for years over severing ties with the Judicial Committee in London and acceding to the Caribbean Court of Justice as the nation's final court of appeal.

Kingston is now using the two remaining constitutional links to the imperial order – the Crown and the London-based appellate court – to demand a formal legal response from Britain before those institutional ties are extinguished.

**The petition binds the campaign for reparations directly to the culmination of Jamaica's constitutional decolonisation**

Such a strategy makes sense even if the request never reaches the court. A refusal would allow the Jamaican government to show the domestic electorate that the continuing monarchical framework offers no viable mechanism for the legal examination of questions the country regards as fundamental to its history.

Acceptance, conversely, would draw one of the oldest institutions of the British constitutional system into a substantive inquiry into the historic responsibility of the order from which it emerged.

In either scenario, the petition binds the campaign for reparations directly to the culmination of Jamaica's constitutional decolonisation, reinforcing the argument that the final determination of Jamaican law should no longer reside with a court in London.

## The most likely response will be narrow and politically managed

The British government has strong grounds to resist a wide-ranging judicial inquiry, given that a favourable opinion, while falling short of creating an immediate obligation to pay, would fundamentally shift London's position in bilateral talks with Jamaica, CARICOM and African states formulating their own claims for **reparative justice**.

Referring the Jamaican questions to the Judicial Committee could encourage other former colonies to pursue proceedings over land expropriation, forced labour and other enduring consequences of colonial rule.

The British government, having already publicly rejected reparations, exercises decisive control over whether the matter comes before the court at all, since the King exercises his statutory power strictly on the advice of responsible ministers.

It is politically safer for London to halt the proceedings at the outset, because once referred, the substantive determination passes entirely to the Judicial Committee.



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Should the matter reach the Committee, judges are likely to confine themselves strictly to the procedural limits and to potential contemporary obligations, avoiding any declaration of historical unlawfulness or financial compensation.

Such assessment is based on the wide discretion in referrals, the caution shown by the Judicial Committee in the Cayman case, and the British government's open opposition to reparations. The legal force of the Jamaican arguments can be assessed on the merits only if the issues come before the judges.

For Kingston, such an outcome would also have practical political value. The petition compels British institutions to respond through a formal constitutional mechanism, rather than dismissing the issue with yet another expression of regret.

If London declines to make the reference, momentum will build to elevate the dispute to alternative international fora and direct bilateral negotiations with CARICOM. At the same time, Jamaica's argument will gain concrete evidence that the constitutional links with the British Crown confer no genuine diplomatic leverage.

If there is a limited legal ruling, that is, the Judicial Committee agrees to consider the third question in the petition, it could declare that Britain has an obligation to eliminate the continuing consequences of slavery, without determining the total monetary value of the historical damage.

In either scenario, London can delay the legal debate over compensation, but it will find it difficult to push the issue of reparations back into the framework of ceremonial regret from which Jamaica has just removed it.