“For the Sole Reason of Being Born Mixed-Race”

The Case of the Métis Children of the Belgian Congo

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Where there is a will, there is a way. This phrase could sum up the logic behind the judgment of the Brussels Court of Appeal of 2 December 2024, which condemned the Belgian government to compensate for the damage resulting from the abduction and racial segregation of children of white fathers and Black mothers (hereafter métis) during its colonisation of the Congo. Contrary to what has been released in the press (see e.g. here, here and here), Belgium was not criminally convicted of crimes against humanity since the Brussels Court had no jurisdiction to rule on this matter. The judgment nonetheless sets a historic precedent: it is the first time that a domestic Court has ordered the government to pay financial compensation for acts that could have had amounted to crimes against humanity during its colonial past.

This landmark decision has received little attention outside of Belgium until now (see, however, Ajabu Mastaki and Kabula Wa Kalumba; de Vaucleroy; Bertouille; de Hemptinne, 2025), even though its reach extends far beyond the case itself: it highlights the inherent tension in adjudicating historical events through a contemporary lens, while remaining bound by the legal standards in effect at the time those events occurred. This dynamic, in turn, challenges the judiciary’s ability to lead, rather than simply follow, in processes of post-colonial reckoning.

Abduction and racial segregation of mixed-race children as part of Belgian colonial policy

The Congo was under Belgian colonial rule from 1885 to 1960. During the first phase of colonialism, running from the Berlin conference to 1908, the Congo – very inappropriately named “the Congo Free State” – was the personal property of the Belgian King of the time, Leopold II. By the turn of the 20th century, the brutality inflicted on the Congolese sparked significant international criticism of Belgium, ultimately prompting the government to assume formal control of the territory in 1908. From this moment onwards, the Congo became a Belgian colony. This second phase of colonialism ran until the independence of the Congo in 1960 (Ndaywel è Nziem; Vanthemsche; Van Reybrouck).

Colonialism brought Belgian people to the Congo. Belgian white men soon encountered Congolese black women. Although interracial intimate relations were not prohibited by law, they were considered socially inappropriate. Ultimately, very few marriages were recorded, but the number of children born of these relationships increased significantly over time, from several thousand in the 1930s to over 10,000 in the 1950s (Lauro, 2020). While some fathers recognized their children, this was the exception rather than the rule.

Mixed-race children were an area of concern for the Belgian administration of the time. Since colonial society was based on racial distinctions, their existence called into question the existing legal categorization. Moreover, mixed-race children were considered less valuable than white children and potentially more dangerous than black children as they could incite blacks against whites (Ekin; Budagwa, p. 68-69). Therefore, the colonial state developed a policy encouraging or even forcing their placement into religious missionary institutions. A decree of 4 August 1952 (BOC, 1952, p. 2062) provided for the separation of mixed-race children from their mothers and community from an early age – by force or threat if necessary. Guardianship commissions were set up in each district and tasked with identifying, monitoring and removing the children from their communities.

The Belgian State then placed the children under its guardianship, even though they had not been abandoned, neglected, or orphaned. Allegedly, the aim was to educate them and integrate them into the so-called *évolués* group, a Black elite forming a (small) intermediate social group between the Congolese and the Belgians (see § 44 of the judgment). This policy is at the heart of the action brought before the judiciary.

Context and subject of the dispute

In June 2020, five claimants, born in the Belgian Congo to a Black mother and a white father and now in their 70s, seized the Brussels Trial Court seeking the liability of the Belgian State for the damage they suffered.

Their stories are astonishing (see §§ 15-20 of the judgment). When they were younger than 7 years old, they were forcefully separated from their families and placed at a great distance from their home in the religious mission of Katande. Their names and dates of birth were changed. They were constantly told that their father was unknown (although it was untrue), and that they were "children of sin". They also suffered ill-treatment and deprivation of food and were kept separate from black children, which broke any connections with their culture and language.

In the claimants' view, their abduction and targeted segregation breached several human rights, including the prohibition of inhuman or degrading treatment, the prohibition of discrimination on the ground of race and color and the right to private life. They argued that it ultimately amounts to a crime against humanity. However, on 8 December 2021, the Brussels Trial Court dismissed the claim. As to the alleged breach of fundamental rights, the Court declared the claim time-barred as the facts occurred between 1948 and 1961. As to the alleged crime against humanity, the Court ruled that it was not a criminal offence incriminated as such at the time (for comments on this judgment, see Royen, 2022; Smets, 2022; Vervoort, 2023).

The applicants appealed against the decision, which was overturned by the Brussels Court of Appeal. The Court found in favour of the applicants, ruling that the Belgian State had to repair the harm caused by their abduction and the racial segregation they experienced during the colonial period. The applicants also alleged that they were obstructed in acquiring Belgian nationality and in accessing documents necessary to reconstruct their personal histories and identities. These claims were dismissed for lack of supporting evidence (see §§ 73–85). They further contended that the absence of financial compensation for the wrongs committed against them constituted a breach of international law. However, since the Court awarded compensation, it dismissed the claim of insufficient redress (§§ 86–88).

An overview of the Court's legal reasoning

The crux of the case lay in the rules of prescription. Was it still possible to claim compensation for what happened almost 65 years ago?

As a general rule, civil actions seeking remedies resulting from a criminal offence cannot be prescribed before criminal action. Prescription for civil action therefore varies depending on the criminal offence at stake. Since 1999, crimes against humanity are not subject to any statute of limitations under Belgian law. However, since the facts are older, the Court relied on Art. 7(2) ECHR, as interpreted in *Kolk and Kislyiy v Estonia* to judge so. In this judgment from 2006, the European Court of Human Rights ruled that the trial and punishment of a person for any act which, at the time it was committed, was criminal according to the general principles of international law cannot be time-barred (§§ 66-69). Therefore, provided that abduction and segregation of mixed-race children can be seen as a crime against humanity, the same ban on prescription applies to civil proceedings.

Consequently, it does not come as a surprise that most of the legal battle concerns the legal qualification of the facts. The defendant acknowledged that under today's standards, planning the systematic search for and abduction of children solely because of their origins would be a crime against humanity of persecution. However, the principle of legality as enshrined, inter alia, in Art. 7 ECHR and 15 ICCPR, requires to assess the Belgian policy under the law in force when the acts were committed.

The Court agreed and elaborated on the existence of the offence of crimes against humanity from 1948 onwards (§§ 21-37). Relying on Art. 6(c) of the Charter of the Nuremberg Tribunal and on Resolution 95(1) of the UN General Assembly adopted unanimously in December 1946, it ruled that at that time, crimes against humanity were already a criminal offence under general principles of international law.

In a second step, the Court explored whether abduction and racial segregation of mixed-race children in the context of colonisation qualify as a crime against humanity. In this process, it had to address two claims from Belgium. First, contrary to the Trial Court, the Court of Appeal dismissed the so-called war nexus argument, according to which facts have to unfold in the context of the second World War – or at least in a context of war – to qualify as crimes against humanity as defined in Art. 6(c) of the Statute. Endorsing once again the legal reasoning of the European Court of Human Rights in *Kolk and Kislyiy v Estonia*, the Court disentangled the definition of crimes against humanity from the rule of jurisdiction applying to the Nuremberg Tribunal. Drawing on the work of scholars such as Bettati and Meyrowitz, it held that the phrase "before or during the war" in Art. 6(c) did not constitute an element of the crime of crimes against humanity, but rather served to limit the Tribunal's jurisdiction over such offences (§§ 35-36). Second, the Court gave short rift to the idea that the incriminated policy was part of a colonial mindset shared by other colonial States at the time and consequently Belgium could not have foreseen that it could have amounted to a crime against humanity (§ 42).

The Court concluded that the Belgian policy relating to mixed-race children was an inhuman act of persecution and hence fell within the scope of crimes against humanity under international criminal law as it existed at the latest in 1946. It then ruled that the immunity from criminal prosecution that the State enjoyed until the 2018 reform of the criminal liability of Public legal entities did not prevent the victims from bringing a civil action arising from a criminal offence (§ 57). The Court thus applied rules governing the calculation of prescription periods and concluded that the case was not time-barred.

On the merits, the Court established a causal connection between the Belgian State's fault and the resulting damage to the five plaintiffs (§§ 95-102), thereby satisfying all three conditions for civil liability under Belgian tort law. The government was therefore required to provide financial compensation.

The role of law in post-colonial reconstruction

This ruling could have a significant impact on the ongoing discussions in Belgium about the nature of compensation for colonial damage. Over the last few years, public authorities have begun to demonstrate a willingness to engage in post-colonial reconstruction. Following resolutions from several Belgian Parliaments (see here, here, here and here), the federal government apologised for the abduction of mixed-race children in 2019, which enhanced academic research on the Belgian colonial past. Administrative and archival inquiries from victims have also been greatly facilitated, helping them to reconstruct their identity.

One year later, in 2020, a special parliamentary commission was set up to examine the colonial history of the Congo more broadly and the appropriate follow-up. Over two and a half years, the Commission carried out a huge amount of work but its 128 recommendations were not endorsed politically due to a lack of political consensus. The main bone of contention lay in the apology for "colonial domination and exploitation" in general but also for "individual and collective human rights violations during this period", the Liberals and Christian Democrats considering the risk of huge financial reparations too high (Vervoort, p. 2; Declercq).

Despite such political reluctance, the Brussels Court of Appeal's judgment awarded the requested amount of money (50,000 euros) to the appellants, increased by compensatory interest intended to cover the loss caused by the delay in compensation (§§ 104-111). This judgment paves the way for many similar legal proceedings in the years to come, given the number of mixed-race children who were victims of

abduction and segregation in their childhood. What is more, the fate of these children is just one of the many abuses committed at the time, and it is not difficult to imagine that the suffering resulting from colonisation is much greater.

Arguably, judicial channels alone are insufficient to provide a broader, collective reckoning with the colonial past. This being said, the judgment does have the merit of forcing the government to address the issue of financial reparations more concretely. Interestingly, the coalition agreement (p. 203) of the new federal government, adopted two months after the Brussels Court of Appeal's judgment, commits the government to implementing the parliamentary resolution, yet makes no mention of the judgment or financial reparations to other victims.

Conclusion

The judgment of the Brussels Court of Appeal of 2 December 2024 was highly symbolic as it found that the Belgian colonial government's policy towards mixed-race children could qualify as a crime against humanity. However, formally, the Belgian state was not convicted of crimes against humanity given the civil nature of the proceedings. Beyond the importance of legal qualifications and symbols, the judgment's insistence on financial compensation marks a historic turn – particularly in light of the government's longstanding reluctance to offer reparations for colonial harm.

Still, reckoning with one of the darkest chapters in Belgian history cannot be left to the courts alone. The applicants themselves emphasized on appeal that they were not seeking to "judge Belgium's colonial past". Indeed, judges must assess past policies based on the worldviews that existed at the time, they cannot apply today's criteria and standards or address persisting structural inequalities. As a 2019 report of the UN Working Group of Experts on People of African Descent observed, "inequalities are deeply entrenched" in Belgium and "racial discrimination is endemic in institutions in the country" (§ 65). In this context, a truly effective post-colonial reconstruction demands a collective effort – one that links past atrocities to current forms of racism and inequality.

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