

INHERITANCE – GLOBAL CASES

South Africa's Truth & Reconciliation Commission

a) Formation of the Commission/ The Mandate of the TRC

The first call for a South African truth commission came from the African National Congress (ANC) before the first democratic elections in 1994.¹ That year, two major conferences took place, in which international legal scholars and human rights professionals from around the world were consulted. These conferences each produced reports titled “Dealing with the Past” and “The Healing of a Nation,” which were distributed widely across South Africa. In addition, the country’s parliamentary standing committee on justice used input gathered from public awareness workshops to finalize the Promotion of National Unity and Reconciliation Bill, which was passed by an overwhelming majority in 1995.² The Promotion of National Unity and Reconciliation Act brought the Truth and Reconciliation Commission (TRC) into being. South Africans from all walks of life were encouraged to apply to be part of the commission. Following public hearings, twenty-five names were sent to President Mandela who, in consultation with his cabinet, appointed the seventeen commissioners, who formed the heart of the TRC.³ Its main task was to develop a process to acknowledge and address the atrocities that occurred during the reign of the apartheid government and serve as the central body to oversee the work of reparations hearings. The major goal of establishing the commission and this elaborate process was to promote reconciliation and national unity.⁴

The TRC was comprised of the following committees:

- **Human Rights Violations Committee**, that conducted public hearings for victims/survivors

¹ “TRC Final Report - Volume 1,” 49.

² Brooks, *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*, 10:471.

³ Brooks, 10:471.

⁴ “TRC Final Report - Volume 1,” 49.

- **Reparations and Rehabilitation Committee**, which worked on policies and recommendations arising from those hearings
- **Amnesty Committee**, which heard applications for amnesty⁵

b) Work/Methods of the Commission

The Promotion of National Unity and Reconciliation Act charged the TRC with investigating and documenting gross human rights violations committed within or outside South Africa during the period 1960-94, the core years of the apartheid regime, which lasted from 1948-1994.⁶ One of its main tasks was to uncover the truth about past gross violations of human rights. Truth telling about violations experienced from different perspectives would facilitate the process of understanding the country's past, while the public acknowledgement of 'untold suffering and injustice' would help to restore the dignity of victims and afford perpetrators the opportunity to come to terms with their own past actions.⁷

The TRC was given four major tasks to achieve the overall objectives of promoting national unity and reconciliation:

- a) Analyzing and describing the "causes, nature and extent" of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organizations responsible for such violations.
- b) Making recommendations to the President on measures to prevent future violations of human rights.
- c) Restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims.
- d) Granting amnesty to persons who made full disclosure of relevant facts.⁸

⁵ "TRC Final Report - Volume 1," 44.

⁶ "TRC Final Report - Volume 1," 24.

⁷ "TRC Final Report - Volume 1," 49.

⁸ "TRC Final Report - Volume 1," 57.

In addition to its unique formation, adequate budget, staffing, and mandate, the TRC process had a few additional distinguishing factors and characteristics. Firstly, the commission was a non-religious, secular, quasi-judicial institution that had powers of subpoena, search and seizure, which were much stronger than those of other truth commissions.⁹ It was the first commission of its kind to be given the power to grant amnesty to individual perpetrators. Typically, where amnesty has been introduced to protect perpetrators from being prosecuted for the crimes of the past, the provision is broad and unconditional, with no requirement for individual application or confession of crimes. The South African format was conditional and required individual application. This system proved advantageous in that it elicited detailed accounts from perpetrators and institutions, unlike commissions elsewhere which have received very little cooperation from those responsible for past abuses.¹⁰ Secondly, the TRC was a very public and transparent process and it made the critical decision to open the hearings to the public, allowing for as many people as possible to attend in person as well as creating accessibility to media for broadcast on television and radio.¹¹ The commission published the names of the victims and perpetrators, including some of the human rights violations that were suffered by them. This level of transparency and publicity was unprecedented. Thirdly, the South African hearings also included institutional and special hearings which allowed for direct contributions by NGOs and organizations involved in specific areas of activism, policy proposals and monitoring in the past.¹²

c) Results of the Commission

The Committee proposed a Reparation and Rehabilitation Policy consisting of five parts¹³:

⁹ "TRC Final Report - Volume 1," 54.

¹⁰ "TRC Final Report - Volume 1," 54.

¹¹ "TRC Final Report - Volume 1," 104.

¹² "TRC Final Report - Volume 1," 54.

¹³ "TRC Final Report - Volume 6 - Section 2," 93.

1. Interim Reparation – urgent payments to victims
2. Individual Reparation Grants (IRG) – to be paid out over six years
3. Symbolic Reparation, Legal and Administrative measures – National Day of Remembrance, memorials,
4. Community Rehabilitation Programmes – renaming of streets, health care, mental health
5. Institutional Reform – legislative, administrative and institutional changes to ensure guarantees for non-repetition

White Planters/Slaveholders Reparations

During the Civil War – through the ratification of the thirteenth amendment – President Abraham Lincoln signed the Emancipation amendment to free slaves on April 16, 1862, in Washington D.C.¹⁴ [Seems like a sentence or two are missing.] To ensure that reparations were successful, the Lincoln administration appointed a board of commissioners led by Daniel Reaves Goodloe to oversee applications and review petitions. This board reviewed more than 1000 petitions from slave owners who claimed compensation for over 3000 slaves and recommended successful petitions receive payment from the federal government.

The District of Columbia Emancipation Act guaranteed white planters who owned slaves but were also loyal to the Union a payment of \$300 for every enslaved person they freed. At the same time, the 2,989 African Americans who had been affected by the enslavement policies and whose former owners received compensation received no compensation or benefits after surviving abuse, bondage, and murder at the hands of white slave owners. However, the federal ensured emancipation capital of approximately \$100,000, enough to free 3000 slaves and to fund their resettlement¹⁵ and eventually more than 2.000.000 slaves were freed.¹⁶ It also opened doors for enslaved Africans' claims to American citizenship and paved a way for black

Commented [1]: What was the Emancipation amendment? Why did it require reparations? How were reparations defined in this context?

¹⁴ Henry L. Chambers Jr., "Lincoln, the Emancipation Proclamation, and Executive Power," *Maryland Law Review* 73, no. 1 (2013): 100-132; also see Wilson, Kirt H.

¹⁵ Masur, Kate. "The African American Delegation to Abraham Lincoln: A Reappraisal." *Civil War History*, vol. 56, no. 2, USA: The Kent State University Press, pp. 117-119.

¹⁶ Guelzo, Allen C. "Lincoln and the Abolitionists." *The Wilson Quarterly (1976-)* 24, no. 4 (2000): 58

men to enlist in the United States armed forces.¹⁷ Furthermore, “it was from the proclamation that blacks over and over again dated a conclusive sense of liberation from slavery.”¹⁸

Jewish Reparations

On September 20, 1945, only four months after the Allied victory over the Nazi armed forces, the first demands for Jewish reparations were put forth by the World Zionist Organization. In October 1951, more than 20 Jewish organizations met in New York and formed the Conference on Jewish Material Claims Against Germany. In March 1952, they -held negotiations with the Government of Israel and the Claims Conference, which in September 1952 led to two agreements known as the “Luxembourg Agreements.” West Germany, the Allied controlled successor state to the Nazi Third Reich, and the newly formed nation of Israel signed the Luxembourg Agreement on September 10, 1952.

Israel sought payment for the burden of settling Jewish refugees fleeing Europe. financial compensation for the pain, suffering, and loss of the Jewish people, and the return of seized Jewish property and other material goods. The state of Israel was established only in May 1948, and as a new burgeoning state, required financial resources, imported goods, and materials to build up the national community. Not as much wealth was being brought into the new country because of who their new migrants were - those who managed to flee before

Commented [2]: What is the Claims Conference? Who was at the table? Which nations and their representatives?

¹⁷ Ibid, 17, also see “Debating the Great Emancipator: Abraham Lincoln and Our Public Memory.” *Rhetoric & Public Affairs*. East Lansing: Michigan State University Press, 2010:462; Accounts of Lincoln’s interest in colonization include Eric Foner, “Lincoln and Colonization,” in *Our Lincoln: New Perspectives on Lincoln and His World*, ed. Eric Foner (New York, Norton, 2008).

¹⁸ Guelzo, Allen C. “How Abe Lincoln Lost the Black Vote: Lincoln and Emancipation in the African American Mind.” *Journal of the Abraham Lincoln Association* 25, no. 1 (2004):6

genocide and those who survived targeted annihilation. Constructing and organizing a new nation was particularly difficult as many new Jewish refugees came with little or nothing as they searched for a safe place to resettle. Entire families had been wiped out in the Holocaust and many came to Israel with their remaining family members or as lone individuals searching for a new life.

This successful bid for reparations continues to ~~pay individuals and organizations who suffered persecution by the Nazis as well as the state of Israel, paid out to Israel as well as individuals and organizations for those who suffered persecution by the Nazis.~~ While this financial agreement was originally decided in 1952, additional funds and payments have been made available to different groups over time. Funds for Central and Eastern European survivors before and after the collapse of the Soviet Union, individuals who were part of the Kindertransport program, child survivors, spouses of survivors, and even ~~funds for~~ descendants of Holocaust survivors have received payments and support since that time. Many of these individuals were eligible for funds that offset life and medical expenses as they aged until their natural deaths.

As of 2021, the continued negotiations between the German government and the Claims Conference on Jewish Material Claims Against Germany, Germany has paid \$90 billion to individuals over the last 70 years. Germany has taken many steps as a nation to confront its role as the perpetrator of the Holocaust as the many irreparable damage and devastation Nazi governance wrought. Germany has worked to craft a culture of remembrance and commemoration to the victims of the Holocaust. Germany has identified – including art works, books, and objects within larger collections – and has returned 16,000 objects to survivors and their heirs over the last 20 years.

Japanese Internment Reparations

The Japanese attack on Pearl Harbor in December 1941 marked the United States entrance into World War II and resulted in extreme anti-Asian sentiments. President Franklin D. Roosevelt signed *Executive Order 9066*, which created the War Relocation Authority to incarcerate from 1942-1946 all people of Japanese descent on suspicion of espionage.¹⁹ Although *Executive Order 9066* “did not explicitly mention civilians of any ethnicity and was justified as military action, informed by the period’s racial attitudes, it made way for the detention of Japanese American civilians (including women and children).²⁰ As a result, in February 1942, more than 120,000 Japanese Americans were relocated to internment camps from the West Coast.

Following the war’s end, because of lingering racial prejudice, survivors' attempts to reintegrate into former communities proved difficult. In 1978, the Japanese American Citizens League (JACL) formed the Redress Committee chaired by John Tateishi, to demand reparations for property lost, rights denied, trauma experienced, death, and racial oppression in the internment camps. Ten years later, the government of the United States acknowledged its part in the civil rights’ violation with passage of the

¹⁹ Brooks, Roy L. “When Sorry Isn’t Enough the Controversy over Apologies and Reparations for Human Injustice.” Book. *Critical America*. New York: New York University Press, 1999: 157-225

²⁰ Valentina Rozas-Krause. “Apology and Commemoration: Memorializing the World War II Japanese American Incarceration at the Tanforan Assembly Center.” *History and Memory* 30, no. 2 (2018): 40–78

Civil Liberties Act, which granted each survivor \$20,000.²¹ The order and its corresponding effects would later inform the debates and policy surrounding the September 11, 2001 Twin Tower attacks.²²

Commission on Wartime Relocation and Internment of Civilians (CWRIC) formed in 1980 to investigate the process of incarceration - This is similar to what HR40 is trying to do in the case of African Americans.

The Herero and Nama Reparations from Germany

The Von Trotha's proclamation of October 2nd, 1904, led to the extermination of 80% and 50% of the Herero and Nama indigenous people, respectively. The Germans would succeed in both exterminating and persecuting these and other indigenous communities in Namibia by killing them, driving them into the Kalahari Desert, poisoning their wells and raping and abusing women between 1904-1908.²³ The killings would make way for 4500 German settlers to claim indigenous land and livestock to create cattle farms of their own. Some of the killings

²¹ Yamamoto, Eric K. "Racial Reparations: Japanese American Redress and African American Claims." *Boston College Law Review*. Boston College Law School, 1998:478; Saito, Natsu Taylor. "Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians - a Case Study." *Boston College Law Review*. Boston College Law School, 1998: 77

²² Mark Jurkowitz, "The Big Chill: One Casualty of the War on Terrorism is America's Boisterous Discourse," *The Boston Globe*, 27 January 2002.

²³ "Herero and Nama Genocide." *United States Holocaust Museum*. Retrieved on September 20th 2022 from <https://www.ushmm.org/collections/bibliography/herero-and-nama-genocide>; David Olusoga & Casper W. Erichsen, *The Kaiser's Holocaust*, (London: faber and faber, 2010); 193, Jeremy Sarkin-Hughes (2008) *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, p. 142; Horst Drechsler, 'Let Us Die Fighting': The Struggle of the Herero and Nama against German Imperialism, 1884-1915 (Berlin: Akademie Verlag, 1966:161; Steinmetz, G. From "Native Policy to Exterminationism: Germany West Africa 1904." *Comparative Perspective, Theory and Research in Comparative Social Analysis*. Paper 30, 4-5. Los Angeles: Department of Sociology, UCLA, 1. 2005.

were done to support Germany's racial science and experimentations. Later, the *United Nations Whitaker Report* would describe these events as a genocide against the Nama and Herero.²⁴

Yet, for a long time the perpetrators went unpunished. After Namibia's independence in 1990, the victims' descendants noted that indigenous people continued to live as second-class citizens, experiencing both segregation and wealth disparities. The Namibian Statistics Agency indicated that "70 percent of a total of 12,380 commercial farms were still owned by whites, while 250 of these were under foreign (mainly German, followed by South African) ownership."²⁵ For indigenous communities, activists, politicians, and scholars sought to expose the German colonial crimes and the consequences of white supremacy to the Herero and Nama indigenous people of Namibia. These people would later go on to make demands aimed at recovering their ancestral land and livestock and acquiring their people decent work, employment opportunities, and good hospitals.²⁶

In reference to the United Nations Declaration on the Rights of Indigenous people, and Germany's Holocaust reparations to Jewish victims, the Nama and Herero demanded reparations on the grounds of genocide, abusive scientific experimentation, land theft and economic power.²⁷ Thus, in 2001 their representatives filed a lawsuit on behalf of Nama-Herero indigenous people in the United States against the German government and Deutsche Bank

²⁴ Aboudounya, Seebal. "Demanding Reparations for Colonial Genocide Using Historical Documents: Do the Herero of Namibia Have Legal Evidence to Support Their Demand for German Reparations?" *Journal of Namibian Studies*. Essen: Otjivanda Presse.Essen, 2022; von Hammerstein, Katharina. "The Herero: Witnessing Germany's 'Other Genocide.'" *Contemporary French and Francophone Studies*. Abingdon: Routledge, 2016.

²⁵ Melber, H. (2019). Colonialism, Land, Ethnicity, and Class: Namibia after the Second National Land Conference. *Africa Spectrum*, 54(1), 76.

²⁶ Dirk Moses, *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History*, p. 301

²⁷ Sarkin, Jeremy, and Jeremy Sarkin-Hughes. *Colonial Genocide and Reparations Claims in the 21st Century: the Socio-Legal Context of Claims under International Law by the Herero Against Germany for Genocide in Namibia, 1904-1908*, ABC-CLIO, LLC, 2008:124-131

(financer of Germany and other companies into German Southwest Africa). This lawsuit was unsuccessful. In 2017 the Herero Chief Vekuli Rukoro and the Nama Traditional Leaders Association led by David Frederick filed a class action lawsuit in the federal court in New York under the Alien Tort Claims Act to get collective reparations from the German government.²⁸ The lawsuit was unsuccessful as was a 2020 appeal because the judges found no evidence of German property in the United State, which was needed to establish jurisdiction and allow the U.S. to judge against Germany.²⁹

Moreover, it is important to note that reparations demanded by the Herero and Nama were not supported by the Namibian government, which had received over 500 million Euros of developmental aid since their independence from Germany.³⁰ In fact, under a joint declaration, the Nama and Herero were excluded from reparations negotiations when representatives of the Namibian and German governments conducted private negotiations on the matter of compensation. The two negotiating governments pursued forgiveness without listening to the victim's descendants. And although the German government ultimately agreed to pay the Herero and Nama 1.05 billion Euro over a period of 30 years, the compensation for earlier wrongs never included use of the word reparations.³¹

²⁸ Allan D. Cooper, Reparations for the Herero Genocide: Defining the limits of international litigation, *African Affairs*, Volume 106, Issue 422, January 2007, Pages 113–126, Reinhart, Kössler. Genocide in Namibia, the Holocaust and the Issue of Colonialism, *Journal of Southern African Studies*, 38:1, 2012: 233-238,

²⁹ See; Allan D. Cooper, Reparations for the Herero Genocide: Defining the limits of international litigation, *African Affairs*, Volume 106, Issue 422, January 2007, Pages 113–126.

³⁰ German Federal Foreign Office, Namibia: Relations Between Namibia and Germany. Retrieved on October 9th, 2022, on http://www.auswaetiges-amt.de/www/en/laenderinfos/laender/laender_ausgabe_html?land_id=118

³¹ However, this would create internal conflict as some chiefs were accused of selling out their people. See, Shelleygan Petersen, "Ovaherero/OvaMbanderu and Nama Council chiefs accept genocide offer", *The Namibian*, June 3, 2021, <https://www.namibian.com.na/102196/read/OvahereroOvaMbanderu-and-Nama-Council-chiefs-accept-genocide-offer> ; Ngatjiheue and Petersen, "Sell-outs and Judases' ..."

The Band Reparation Action for Native Americans in Canada

Between 1831 and 1997, more than 150,000 First Nation children (7 to 15 years) were forcibly abducted from their families and made to attend Christian schools in Canada. The Canadian government mandated and legitimized this removal when it passed the 1920 Indian Act.³² This move aimed at assimilating natives into the Euro-Canadian society through Christian civilization. This was not only because adults were too set in their traditions to become Christian but it was also a way of policing and eradicating native identity, language, culture and religious

³² Smith, Andrea. "Boarding School Abuses, Human Rights, and Reparations." *Social Justice* 31, no. 4 (98) (2004): 89–102, Reparations; Daigle, Michelle. "The Spectacle of Reconciliation: On (the) Unsettling Responsibilities to Indigenous Peoples in the Academy." *Environment and Planning. D, Society & Space*. London, England: SAGE Publications, 2019; Coleman, C. Michael. "Counterfactuals I'd Rather Not Contemplate: What if the Government Schooling Campaigns (1820-1920): To Americanize the Indians and to Anglicize the Irish Had Never Taken Place?" *IJAS* 2 (2010): 9–26. *A Knock on the Door: The Essential History of Residential Schools from the Truth and Reconciliation Commission of Canada*. Book. Winnipeg: University of Manitoba Press, 2016: Introduction and chapter 1; Griffith, Jane. Words Have a Past: *The English Language, Colonialism, and the Newspapers of Indian Boarding Schools*. Book. Toronto: University of Toronto Press, 2019.

practices. The children who were removed were not only subjected to psychological abuse, many endured physical and sexual abuse, too. These abductions resulted in the reduction of the number of people who identified as native Americans and the Canadian government's obligations to them.³³

Indian residential schools' graduates would for years individually pursue legal actions against the government on grounds of sexual, physical and mental abuse, but the indigenous leaders were left out. However, in 2005, Phil Fontaine, the National Chief of the Assembly of First Nations (AFN) initiated the class-action collective lawsuit on behalf of all the First Nations survivors.³⁴ AFN leaders sought recognition of their injuries, apologies for what transpired and reparations for cultural genocide, for theft of indigenous ancestral lands, for abuse of all kinds, and for the deleterious effects on survivors health and wellbeing.

Following the Indian Residential School's Settlement Agreement, the Truth and Reconciliation Commission (TRC) began to facilitate extensive research into the various cases of human rights violations.³⁵ Between 2007 and 2015, with close to \$72 million in support from the government, the TRC would gather testimonies from 6500 witnesses, including – residential schools victims (survivors), their families, former staff and members of the community in different regions. In a bid to educate Canadians about the dark history and the legacy of residential schools, the TRC hosted seven national events that shared and honored the experiences of the concerned parties.

³³ See, Hanson, Erin. *The Residential School System*. 2009. Accessed on November 10th, 2022, retrieved on https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/

³⁴ *A Knock on the Door*: vii, xx, 189; AFN Class Action Lawsuit Over Residential Schools Policy.

³⁵ The Truth and Reconciliation Commission of Canada, accessed on November 3rd, 2022, retrieved from <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>

These hearings strengthened Native American claims, influenced government policies, and resulted in the collection of 5 million documents that are archived at the University of Manitoba. For instance, the government allocated \$350 million to the Aboriginal Healing Foundation, whose role was to provide funding for community-based wellness projects.³⁶ The foundation also prescribed procedures for government and church officials to jointly develop solutions for dealing with the schools' aftermath and for litigation strategies for promoting settlement and reconciliation out of court. The Canadian government also created the Alternative Dispute Resolution Project for the purpose of moving dialogues among the victims, churches, and government out of the courts.³⁷ Characterized by long administrative procedures, this aspect of the project was contested by many discouraged victims.

On June 11, 2008, the House of Commons issued a formal public apology for its involvement in the infamous school systems. It recognized that the assimilation schools produced both moral and human rights abuses that had long lasting impacts on Native Canadian culture, heritage, and language. Finally, after a prolonged hesitancy, the Canadian government signed and ratified the UN Declarations on the Rights of Indigenous Peoples in 2016, leading to the agreements' adaptation into federal law for protecting indigenous people and their lands.³⁸

³⁶ Million, Dian. "Therapeutic Nations: Healing in an Age of Indigenous Human Rights." *Critical Issues in Indigenous Studies*. Tucson: The University of Arizona Press, 2013:19

³⁷ The Truth and Reconciliation Commission of Canada, accessed on November 3rd, 2022, retrieved from <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>

38 "UN Declaration on the Rights of Indigenous Peoples." *Assembly of First Nations*. Accessed on November 3rd, 2022, retrieved. <https://www.afn.ca/implementing-the-united-nations-declaration-on-the-rights-of-indigenous-peoples/> Fontaine, Tim. "Canada officially adopts the UN declaration on rights of Indigenous Peoples." CBS. 2016. <https://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>

Eventually the government agreed for reparations to be carried out as guided by the recommendations outlined in a report by the Assembly of First Nations. The report recommended that the lump sum payment be at least \$10,000 per student, plus \$3,000 for each year each student spent in school.³⁹ The lump sum payment will be made to any student who attended an Indian residential school where the lump sum payments go to direct victims with the elderly being prioritized.

39 Austen, Ian. "Millions in Reparations for Residential Schools." *The New York Times*. 2022.