Reckoning with Legacies of Harm

Comparative Experiences with Truth, Justice, Reconciliation, and Reparation

Background Materials

Workshop Facilitated by Virginie Ladisch, Senior Expert, vladisch@ictj.org

Elena Naughton, Program Expert, enaughton@ictj.org

International Center for Transitional Justice

Vermont, February 2022

ICTJ Justice Truth Dignity

Table of Contents

For more additional information, please contact Virginie Ladisch at vladisch@ictj.org and visit **www.ictj.org**

ICTJ Justice Truth Dignity

ictj briefing

Virginie Ladisch
Anna Myriam Roccatello
April 2021

The Color of Justice

Transitional Justice and the Legacy of Slavery and Racism in the United States

The murders of George Floyd and Breonna Taylor in the spring of 2020 at the hands of police have set off a wave of national and international protests demanding that the United States (US) confront its unaddressed legacy of slavery and racial discrimination, manifest in persistent social and economic inequality.[1] Compared with previous protest movements in the US, this time, it seems more attention is being paid to the historical roots of the grievances being voiced. Only a few years ago, following the killing of Michael Brown in Ferguson, Missouri, protests broke out calling for an array of reforms, such as body cameras and greater accountability for individual police officers. However, across the country, the continued violence against Black people by police highlights that this is not a problem of individuals. It is rather a pervasive and systemic problem that began before the nation's founding and has been a constant through line in US history from the early colonial period to the present. This history includes the genocide of Native Americans, the enslavement of African Americans, and the internment of Japanese Americans during World War II. Putting an end to this continuing legacy requires an equally systemic response.

To understand what conditions led to the murder of George Floyd, and so many others before him and since, it is important to analyze the past and put current grievances in historical perspective. To that end, transitional justice can guide the discussion to focus on root causes of violence and racial injustice and provide ideas for what steps can be taken to undo systemic abuses and redress harms linked to the legacy of slavery. Historian John Hope Franklin urges citizens, "To confront our past and see it for what it is… It is a past that is filled with some of the ugliest possible examples of racial brutality and degradation in human history. We need to recognize it for what it was and is and not explain it away, excuse it, or justify it. Having done that, we should then make a good-faith effort to turn our history around." As part of that good-faith effort, the US should look to and learn from other countries that have undertaken efforts to address systemic human rights violations, provide reparations, and advance reforms.

CONTENTS

1 While many international protest events were held in solidarity with the US-based Black Lives Matter movement and to honor the life of George Floyd, protestors around the globe also used the opportunity to call out their own countries' racist histories. *Washington Post*, "How George Floyd's Death Sparked Protests Around the World," June 10, 2020.

About the Authors

Virginie Ladisch is ICTJ's senior expert in truth seeking and civic engagement and leads ICTJ's work on children and youth. She has provided technical expertise on truth seeking, acknowledgment, memorialization, and reparations in diverse countries including Canada, Colombia, Cote d'Ivoire, Cyprus, the Gambia, Kenya, Tunisia, and Uganda.

Anna Myriam Roccatello is ICTJ's Deputy Executive Director and Director of Programs and currently oversees all of its global and country programs. She has over 25 years of experience in the fields of international human rights, transitional justice, and the rule of law.

A Time for Global Inspiration

As is the case in many other countries, there has been a long and ongoing struggle in the US to achieve equal rights and representation for all citizens.[2] Yet, for much of US history, most citizens rested easy in the belief that the nation would uphold the founding principle of equality and any violation of it could be addressed through the fair administration of the justice system. But in reality, rather than protecting the rights of all US citizens, the justice system, including criminal prosecutions, has been used to discriminate against and infringe upon the rights of people belonging to communities of color. In particular, over the course of US history, the justice system has suppressed the rights of Black people.[3] Furthermore, laws intended to prosecute wrongdoing have often been applied discriminatorily based on the color of one's skin, further entrenching systemic racism and notions of white supremacy.[4]

Transitional justice encompasses a variety of approaches developed precisely to address structural and systematic abuses. With an emphasis on truth, justice, reparations, and reform, these approaches have helped countries emerging from periods of conflict and repression deal with large-scale or systematic human rights violations and take steps to prevent their recurrence. A common misconception is that transitional justice can only be applied in a society that is undergoing a significant transition, either at the end of a conflict or during a transfer of power. However, while such a transition does facilitate efforts to reform institutions and redress past atrocities, what is needed are a political, social, and cultural opening and a public demand for change. Moreover, over the past decade, the general understanding of transitional justice has evolved; initially conceived as a set of approaches to achieve justice and redress in the aftermath of war or authoritarian regimes, it is now seen as relevant to established democracies and has been increasingly applied in them to address legacies of abuse and historical injustices. For instance, Canada and Australia have undertaken transitional justice processes to deal with past violations against Indigenous populations, and in Belgium and the United Kingdom there has been growing recognition of the need to confront their colonial past and their role in slavery.[5] Arguably, the US now finds itself in such a moment of reckoning, as protests and citizen demands crack open the door to broader discussions on how to unravel the legacy of

2 See, for example, Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury Publishing, 2018); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers, 2002); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2009); Richard Hasen, *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy* (New Haven, CT: Yale University Press, 2020); Bernard Manin, *The Principles of Representative Government (Themes in the Social Sciences)* (Cambridge, UK: Cambridge University Press, 1997), pp. i-vi; Blanca Rodríguez Ruiz and Ruth Rubio-Marín, "The Gender of Representation: On Democracy, Equality, and Parity," *International Journal of Constitutional Law* 6, 2, (2008): 287-316; Adrienne LaFrance, "The 'Undesirable Militants' Behind the Nineteenth Amendment," *The Atlantic*, June 4, 2019, www.theatlantic.com/politics/archive/2019/06/most-dangerous-women-american-politics/590959/

3 See, for example, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing Corporation, 2017); Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers, 2002).

4 For an analysis of the criminalization of young African-Americans during the 1970s and 1980s, see Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2007).

5 Morgan Hollie, Human Rights Watch, "Emancipation Day – A Reminder That Caribbean Still Needs Justice, Repair," August 3, 2020, www.hrw.org/news/2020/08/03/emancipation-day-reminder-caribbean-still-needs-justice-repair#; *BBC*, "Belgian King Expresses 'Deepest Regrets' for DR Congo Colonial Abuses," June 30, 2020, www.bbc.com/news/world-europe-53232105

slavery and white supremacy in the US and reform institutions such the police and the criminal justice system.

The International Center for Transitional Justice (ICTJ) has accompanied victims, survivors,[6] and activists in their quest for justice and has advised and assisted policymakers and governments in their efforts to effectively deal with past human rights abuses and lay the foundation for a more just and inclusive future. Although every context is unique and requires a tailored response, experiences from transitional justice processes in places such as South Africa, Colombia, Tunisia, and Canada, along with lessons from ongoing work in the US, can offer inspiration and ideas for what can be done in the US to respond to current calls for broader and more comprehensive reforms.

Acknowledgment and Truth Seeking

"Say their names" has become a common refrain at recent protests and on social media. It is a call to acknowledge individual victims and overcome the inhumanity by which their lives were taken. Even well-written laws and comprehensive reforms are not enough on their own to get to the root causes of the racial injustice plaguing the US. Real change requires a transformation in the nation's narrative, beginning with how US history is taught and learned, particularly as it relates to race and how it was constructed to serve as a caste system that marginalizes people of color.[7] As James Baldwin writes, "[White people] are…still trapped in a history which they do not understand; and until they understand it, they cannot be released from it."[8]

Central to all efforts to acknowledge victims and the violations they suffered, challenge the dominant historical narrative, repair harms, and reform broken systems, are the need to connect the dots between past and present abuses and affirm the humanity and dignity of Black people. Slavery is far from a sin of the past. As historian Edward Baptist notes, "slavery's expansion shaped every crucial aspect of the economy and politics of the new nation…the commodification and suffering and forced labor of African Americans [are] what made the US powerful and rich."[9] While the Emancipation Proclamation may have formally ended the system of slavery as it then existed,[10] it did nothing to reverse the economic gains made by whites or to stop its mutation into other forms of systemic racism.[11] African Americans enjoyed a brief period of liberty during Reconstruction when the federal government took over governance of the South and attempted to enforce civil rights. The Thirteenth, Fourteenth, and Fifteenth Constitutional Amendments, passed between 1868 and 1870, were intended to protect African Americans from discrimination

6 ICTJ generally uses the term "victims" rather than "survivors" to indicate individuals who suffered human right violations because "victim" is the term under international law which defines a person whose rights have been violated. However, in certain specific contexts, such as the US, when the violations of fundamental rights have caused intergenerational harm, ICTJ uses the term "survivors."

7 Isabel Wilkerson, "America's Enduring Caste System," *New York Times*, July 1, 2020, www.nytimes.com/2020/07/01/magazine/isabel-wilkerson-caste.html

8 James Baldwin, *The Fire next Time* (New York: Dial Press, 1963).

9 Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

10 The documentary film *13TH* explains how slavery was never fully abolished but rather transformed into more covert but equally destructive policies see the documentary. Ava Duvernay and Jason Moran, *13TH*, United States, 2016.

11 See, for example, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012); Carol Anderson, *White Rage: the Unspoken Truth of Our Racial Divide* (New York: Bloomsbury, 2016); Nikole Hannah-Jones, "The 1619 Project," *New York Times Magazine*, August 14, 2019, nyti.ms/2LuLU8j; Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven, CT: Yale University Press, 2016).

and uphold their basic freedoms including the rights to vote and to equal protection under the law.

These gains, however, were short lived. Following a political compromise in 1877, Reconstruction ended and the federal government withdrew from the South.[12] A coordinated campaign spread across the South to disenfranchise Black voters through intimidation and by barring them from the polls.[13] State legislatures, filled with white supremacists, passed new laws in the 1890s to enforce segregation. Known as "Jim Crow" laws,[14] they represented a formal, codified system of racial apartheid that dominated the American South until the mid-1960s. For example, it was not until 1965, with the passage of the Voting Rights Acts, that racial discrimination was prohibited in voting, and 1967 that inter-racial marriage was legalized at the federal level. This system of segregation marginalized Black communities and entrenched a racial hierarchy into the social, political, and economic fabric of the United States, which remains painfully obvious today when comparing indicators of well-being among different racial groups in the United States.[15]

From about 1916 to 1970, an estimated 6 million Blacks migrated from the South to the North, fleeing racially motivated violence and discrimination and in search of better job opportunities. While housing discrimination was outlawed in 1917, white communities found ways to use restrictive covenants to prevent African Americans from buying houses in their neighborhoods.[16] Railroads, highways, and walls were also used to segregate residential areas.[17] As a result of this housing discrimination, Blacks created their own cities and districts within larger urban areas. A vibrant urban Black culture resulted, blossoming in the Harlem Renaissance and later inspiring the civil rights movement of the 1960s. At the same time, however, these dense urban areas were home to a disproportionate number of people who lacked adequate housing, schooling, health care, and employment. Fearing infringement on their neighborhoods and resources, white citizens, abetted by local police, sought to deny them access to these basic rights. This in turn enflamed tensions between law enforcement and communities of color.

In *The Condemnation of Blackness*, Khalil Muhammed describes black criminality as a process by which "people are assigned the label of criminal, whether they are guilty or not."[18] He further argues that this cycle—whereby black people were arrested to

12 Eric Foner, *Reconstruction: America's Unfinished Revolution*, 1863-1877 (New York: HarperCollins Publishers, 2002), 586-587.
13 Jim Rutenberg, "A Dream Undone: Inside the 50-year Campaign to Roll Back the Voting Rights Act," *New York Times Magazine*, July 29, 2015, nyti.ms/2n1DLOD; Gregory Downs, "Today's Voter Suppression Tactics Have A 150 Year History," *Talking Points Memo*, July 26, 2018, http://bit.ly/2QyQZQg
14 In 1883, the US Supreme Court found unconstitutional the Civil Rights Act of 1875, which Congress had passed to protect African Americans from discrimination in public accommodations such as hotels, theaters, and railroads. The Civil Rights Cases, 109 U.S. 3 (1883), opened the door to discrimination based on what became known as "separate but equal" policies.
15 One recent example is the differentiated impact of the coronavirus pandemic. Across the US, African Americans, Latinx, and other communities of color have been disproportionately affected by the disease at alarming rates. This, too, is a result of historically rooted socioeconomic inequalities, including unequal access to quality health care. Centers for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): Health Equity Considerations and Racial and Ethnic Minority Groups," updated June 25, 2020, www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html; Maria Godoy and Daniel Wood, "What Do Coronavirus Racial Disparities Look Like State by State?" *National Public Radio*, May 30, 2020.
16 Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (Chapel Hill, NC: University of North Carolina Press, 2019).
17 Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).
18 Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, MA: Harvard University Press, 2019).

prevent them from exercising their rights and then deemed dangerous because of their high arrest rates, which deprived them of their rights even further—has been repeated throughout US history.[19] In response to this repression, race riots broke out across the US in 1919, in what came to be known as the Red Summer of 1919. As an example, the race riot in Chicago that year lasted 13 days and left 38 people dead, 537 injured, and 1,000 black families without homes. In response, the governor of Illinois established the Chicago Commission on Race relations. Its 1922 report found there to be systematic participation of police in mob violence against Blacks and made a series of strong targeted recommendations.[20] The report, however, was shelved and the recommendations were never implemented.

In parallel to discriminatory laws, policies, and policing, has been consistent social acceptance of racist ideas and the "othering" of people of color throughout US history. Postcards from the early 1900s feature photographs of lynchings attended by families dressed in their Sunday best.[21] This type of behavior was not isolated to a small subset of racist individuals such as members of the notorious Ku Klux Klan; rather, broad sectors of society considered it acceptable. Furthermore, as mentioned above, this blatant racism and these coordinated acts of racial terror contributed to the migration of thousands of Blacks from the South to the North.[22] Often forced to flee overnight, families had to leave behind property and any wealth they had started to accumulate, only to face harsh conditions and discrimination in the North. An example of this discrimination is captured in this photograph from 1963, in which young boys are shown taunting and waving a belt at the Horace Baker family, the first African American family to buy a home in the all-white neighborhood of Folcroft, Pennsylvania. Overcoming the dehumanization associated with persistent racial and socioeconomic subjugation requires a conscious and explicit government effort to denounce it and inform all citizens about how it occurred throughout US history.

The caption reads: "Youngsters jeer as moving men tote possessions of the Horace Baker family up the steps of their new home in the formerly all-white Delmar Village development here 8/30. The Negro family finally gained entrance to their new home after two days of demonstrations by whites." (Library of Congress)

An essential element of any comprehensive transitional justice process, truth seeking brings to light past crimes, how they were committed and by whom, and the direct harms and repercussions experienced by victims and their families. Truth seeking goes

19 Anna North, "How Racist Policing Took Over American Cities, Explained by a Historian," June 2020, *Vox*, www.vox.com/2020/6/6/21280643/police-brutality-violence-protests-racism-khalil-muhammad

20 Chicago Commission on Race Relations, *The Negro in Chicago: a Study of Race Relations and a Race Riot* (Chicago: University of Chicago Press, 1922), https://archive.org/stream/negroinchicagostoochic#page/n31/mode/2up

21 A particularly disturbing image is the postcard of 18-year-old Jesse Washington From Waco, Texas, after being been burned alive. The message on the back reads, "This is the barbeque we had last night. My picture is to the left with a cross over it. Your son, Joe." The postcard was mailed in 1916. Karen E Quinones Miller, "Mr. Jesse Washington— Say His Name," *Medium*, October 25, 2019, https://medium.com/@authorkeqm/mr-jesse-washington-say-his-name-8f98a24fb130

22 Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* (New York: Vintage Books, 2011).

far beyond traditional fact-finding or clarifying individual cases; it is "an undertaking to understand comprehensively root causes, circumstances, factors, context and motives of countrywide situations of repression and/or violence."[23] By publicly calling attention to previously suppressed or marginalized narratives and piecing together past incidents in a way that explains the roots of current injustices, truth-seeking endeavors serve to "narrow the range of permissible lies" about the past and help provide a roadmap for achieving a just and inclusive society.[24] Crucially important, truth seeking also helps create the political will and public support for reparations and institutional reform.

With over 40 truth commissions worldwide,[25] there is a vast array of examples from which to take inspiration. Depending on the context and nature of violations, truth-seeking processes have varied in form and scope. For example, Tunisia's Truth and Dignity Commission focused on affirming human dignity in the wake of repression and marginalization of certain people and regions.[26] In Guatemala, the Historical Clarification Commission (CEH) mainly sought to reveal the systematic nature of the massive attacks on the Indigenous population. It situated what happened across thousands of villages within the broader historical context of the Guatemalan military's counter-insurgency campaign. In doing so, it dispelled popular misconceptions that those whom the military killed were criminals or merely victims of a neighborly feud and helped to clear the name of many victims. The commission's final report also revealed systemic repression against Indigenous Guatemalans within several state institutions, in particular the judiciary.

Early truth commissions largely gathered testimonies and documentation behind closed doors and presented their analysis in a written report. The South African Truth and Reconciliation Commission, established to examine the crimes of apartheid, was the first of its kind to emphasize public education and incorporate it in its work. All of its hearings were broadcast live on national radio and television stations. These hearings triggered a national conversation about the brutal realities of South Africa's apartheid regime, forcing some citizens who had looked the other way to finally acknowledge the inhumanity of the system. Since then, most subsequent truth commissions have held public hearings.

As different options are considered in the US, it is important that the truth-seeking process that is ultimately devised be feasible, examine the full range of atrocities perpetrated, and use multiple approaches to reach a diverse audience. Given the wealth of existing initiatives, along with the ongoing work of Black historians, authors, sociologists, artists, musicians, and filmmakers, steps should also be taken to collect, curate, and amplify this already impressive body of truth-seeking work.[27]

While the truth of the United States' legacy of slavery and racism and its connections to present-day injustices are well documented in scholarly materials, it has not been acknowledged by the government or adequately integrated into the country's collective

23 Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff*, September 7, 2015 (A/HRC/30/42), § 23, pp. 8, 40, available at https://undocs.org/A/HRC/30/42

24 Michael Ignatieff, "Articles of Faith," *Index on Censorship* 25, 5 (1996): 113.

25 Countries as diverse as Argentina, Colombia, East Timor, Morocco, Nepal, Peru, Sierra Leone, South Korea, and the Gambia, to name only a few, have set up truth commissions.

26 Instance Verité et Dignity (Tunisia), www.ivd.tn/?lang=en; for analysis of the process, see ICTJ, "Public Hearings Continue: Tunisians Testify to Violence, Corruption, and Marginalization," December 21, 2016, www.ictj.org/news/tdc-tunisia-violence-corruption-marginalization

27 See, for example, the proposal put forward by Dr. Marcus Anthony Hunter for the sustainable national, local, and regional Archives for Racial and Cultural Healing. Marcus Anthony, "Radical Reparations," *Global Dialogues* 11, 1 (2021), https://globaldialogue.isa-sociology.org/radical-reparations/

narrative. Instead, it is often overlooked or, in some circles, actively denied. As Carol Anderson writes, a belief in "racial innocence" dominates political structures and obfuscates the systemic racism that underpins US institutions and policies.[28] A public school textbook in Texas, for example, referred to enslaved people as "workers" who were transported to the US, effectively erasing the word "slavery" from the version of history it tells.[29] Calls for national truth seeking continue to face strong resistance from certain groups.[30] As Hannah-Jones aptly points out, "there is too much to know, and yet we aggressively choose not to know it."[31]

A truth-seeking process in the US could help debunk false or whitewashed historical accounts and set the record straight once and for all, as well as shed light on the causes and consequences of the continuous violence and racism that have persisted for over 400 years. At the federal level, there have been a number of investigations into and reports on institutional racism in the country, such as the report of the National Advisory Commission on Civil Disorders (known as the Kerner Commission) of 1968,[32] but they were all largely ignored, shelved, or blocked from proceeding. Most recently, Representative Barbara Lee sponsored a resolution calling for the establishment of a "Truth, Racial Healing, and Transformation Commission," to "properly acknowledge, memorialize, and be a catalyst for progress, including toward permanently eliminating persistent racial inequities.[33] The purpose of the proposed commission is to hold the US federal government accountable and advance necessary reforms to dismantle systemic racism.[34]

In the absence of a national process, several local truth-seeking processes have been launched at both the city and state level. A few examples include The Truth Telling

28 Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide*, (New York: Bloomsbury Publishing, 2016).

29 Laura Isensee, "Why Calling Slaves 'Workers' Is More Than an Editing Error," *National Public Radio*, October 23, 2015, www.npr.org/sections/ed/2015/10/23/450826208/why-calling-slaves-workers-is-more-than-an-editing-error. More recently, a group of high school students started a petition asking the Texas Board of Education demanding an anti-racist curriculum. The petition states, "The current TEKS [Texas Education Knowledge and Skills] standards ignore our nation's racist history as well as the present-day consequences of a past steeped in racial violence, slavery, and Jim Crow… Additionally, by refusing to acknowledge our long history and existing prevalence of redlining, racially motivated gerrymandering, and race-based voter suppression, we are failing to teach our high school students the long-lasting consequences of our history and how these continue to pose a threat to our society today." See, change.org, "The Texas State Board of Education Must Implement an Anti-Racist History Curriculum," www.change.org/p/the-texas-state-board-of-education-the-texas-state-board-of-education-must-implement-an-anti-racist-history-curriculum?original_footer_petition_id=&grid_position=&pt=

30 As just one example, Senator Tom Cotton has sought to block the teaching of the "1619 Project" in schools. Teo Armus, "Tom Cotton Tries to Ban Schools from Teaching '1619 Project' out of the Classroom. His Efforts Have Kept It in the Spotlight," *Washington Post*, July 27, 2020, www.washingtonpost.com/nation/2020/07/27/tom-cotton-1619-project-slavery/

31 Nikole Hannah-Jones, "What is Owed," *New York Times*, June 30, 2020, www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html

32 Alice George, "The 1968 Kerner Commission Got It Right, But Nobody Listened," *Smithsonian Magazine*, March 1, 2018, www.smithsonianmag.com/smithsonian-institution/1968-kerner-commission-got-it-right-nobody-listened-180968318/

33 US H.Con.Res.100 — Urging the Establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress (2021-2022), www.congress.gov/bill/117th-congress/house-concurrent-resolution/19, and S.Con.Res.6 — A concurrent resolution urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress (2021-2022), www.congress.gov/bill/117th-congress/senate-concurrent-resolution/6

34 This resolution is the result of a multiyear consultative process to develop the Truth, Racial Healing, and Transformation framework for the United States. For more information, see the Truth, Racial Healing, and Transformation website: https://healourcommunities.org/

Project in Ferguson, Missouri,[35] the Greensboro Truth and Reconciliation Commission in North Carolina,[36] and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission.[37] More recently, in April 2019, the governor of Maryland, with unanimous bi-partisan support from the state legislature, signed into law House Bill 307, establishing the Maryland Lynching Truth and Reconciliation Commission (ML TRC).[38] Mandated to address the legacy of racial-terror lynchings, the ML TRC is scheduled to begin holding public hearings in late 2021.

Whether local or national, truth-seeking initiatives must strike a balance between raising broad public awareness and providing a space for survivors and those most affected by systemic injustice to heal. Both objectives are important but require different approaches that in some cases may contradict each other. For example, the Truth and Reconciliation Commission of Canada was survivor centered and survivor led in many respects, and provided meaningful acknowledgment and potential personal healing for survivors of Indian Residential Schools.[39] Yet while the commission operated for over five years across Canada, the average non-Indigenous Canadian is unaware of it. It is therefore important for stakeholders in current or future truth-seeking initiatives in the US to think carefully about how to best reach out to those members of society who most need to engage in and learn from these initiatives, while still respecting the needs and dignity of survivors. This will likely involve a diverse set of activities, some targeting harmed communities and others the general public to educate them on the full scope of past violations and their enduring consequences. These activities could include closed-door sessions, public hearings, and other forms of outreach and awareness-raising campaigns.

A truth-seeking process closely examines and analyses past violations, why and how they were committed, and their enduring impact. It can also present opportunities for recommendations for the way forward, to ensure harms are repaired, to end ongoing violations, and to prevent their recurrence.

Steps Toward Repair

Reparations provide a direct symbolic or material benefit to survivors. Considered a fundamental right under international law,[40] they embody a society's recognition of and remorse and atonement for the harms suffered by victims of human rights violations. There is a significant body of research and practical guidance on reparations, as well as numerous reparations programs around the world, from which stakeholders can

35 For more information, see the Truth Telling Project website: https://thetruthtellingproject.org/
36 For more information and the commission's final report, see the Greensboro Truth and Reconciliation Commission, https://greensborotrc.org/. See also ICTJ, *Lessons in Truth-Seeking: International Experiences Informing United States Initiatives* (2006).
37 For more information and the commission's final report, see the Maine-Wabanaki REACH, www.mainewabanakireach.org. See also ICTJ, "Maine Truth Commission to Tell Story of Forced Assimilation of Wabanaki Children," February 19, 2013, www.ictj.org/news/maine-truth-commission-tell-story-forced-assimilation-wabanaki-children, and ICTJ, "Maine's indigenous Truth Commission Marks First Year," February 28, 2014, www.ictj.org/news/maines-indigenous-truth-commission-marks-first-year
38 For more information, see the Maryland Lynching Truth and Reconciliation Commission website: https://msa.maryland.gov/lynching-truth-reconciliation/
39 Indian Residential Schools were a network of schools for Indigenous Canadians, established by the Canadian government and run by Christian churches. The objective of this policy was to remove Indigenous children from their families and assimilate them into "Canadian" culture. For more information, see the Truth and Reconciliation Commission of Canada, www.trc.ca/index.html
40 UN General Assembly, B*asic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (New York: Official record A/RES/60/147, 2006).

draw when deciding how to provide redress for the wrongs committed against people and communities of color in the US.[41]

First, it is important to recognize the inherent paradox of reparations, namely that it is impossible to fully repair all past harms. Reparations are most commonly understood as payments of money to victims for the harm they suffered. However, monetary compensation is but one form of reparations. As laid out in the UN basic principles and guidelines on reparations, other forms may include restitution, rehabilitation, satisfaction (e.g., the full and public disclosure of the truth, an official apology, and commemorative activities), and guarantees of non-repetition (e.g., reviewing and reforming laws). Reparations can encompass material compensation, symbolic measures, individual and collective benefits, urgent and long-term programs, and comprehensive and targeted benefits.[42] In the US, because the injustices perpetrated against people of color have spanned generations and have taken many forms, a comprehensive approach is needed to address institutionalized wrongs such as slavery, Jim Crow, and the widespread and systematic oppression and discrimination that followed.

Other countries' experiences with administrative reparations programs can serve as examples for the US; the scope, size, and diversity of approaches of a number of them are even on par with what should be considered in the US.[43] In Colombia, for instance, the Victims' Land and Restitution Law, passed in 2011, consolidated previous reparative measures into a broad policy that provides comprehensive reparations to victims of the 50-yearlong internal armed conflict. With an estimated eight million victims,[44] the scale of the program is enormous and includes monetary compensation, comprehensive psychosocial and health care services, housing and land restitution for qualifying individuals, debt forgiveness, and access to educational training and employment. It also provides collective reparations to communities for infrastructural reforms and to help guarantee non-repetition.

Before defining specific reparative measures in the US, or even considering those that have already been floated (tax credits, targeted development funds, baby bonds, or cash payments), it will be important to establish the general parameters of the policy including the scope of what should and can be done and qualifying criteria. Communities of color and individual victims must play an active role in defining these parameters through an extensive consultation process. Peru, for example took this approach, implementing a comprehensive reparations plan based on the recommendations of the Truth and Reconciliation Commission, which had consulted with victims of the 20-year internal conflict about their concerns and expectations for redress and reparations.[45] Aspects of this work are already underway in the United States. For instance, the Center for Civil Rights and Restorative Justice at Northeastern University has tracked down descendants

41 Pablo de Greiff (ed.), *The Handbook of Reparations* (New York: Oxford University Press, 2006).
42 Lisa Magarrell, ICTJ, *Reparations in Theory and Practice* (2006). Cristián Correa, Julie Guillerot, and Lisa Magarrell, "Reparations and Victim Participation: Experiences with the Design and Implementation of Domestic Reparations Programmes," in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making, Second Revised Edition*, eds. Carla Ferstman, Mariana Goetz, and Alan Stephens (Leiden, the Netherlands: Brill Nijhoff Publishers, 2020), 240-270.
43 Administrative reparations programs are created by legislation and often provide redress, through a variety of measures, for specific types of violations and various classes of victims. See ICTJ, *Reparations in Theory and Practice* (2007).
44 ICTJ, "Colombia: Background: After Decades of Conflict, Cementing Peace and Securing Justice for Victims in Colombia," www.ictj.org/our-work/regions-and-countries/colombia
45 Cristián Correa, ICTJ, *Reparations in Peru: From Recommendations to Implementation* (2013), www.ictj.org/publication/reparations-peru-recommendations-implementation

of victims of lynchings, and helped them articulate their demands for reparations through a participatory process.[46]

Within the US, there is ample work that has already been done on the subject of reparations, and what it could and should look like for Black communities, from which to draw. The Movement for Black Lives (M4BL), for example, has made a clear demand for reparations for past and ongoing harms and who should provide them.[47] In its reparations toolkit, M4BL lays out a wide-ranging policy platform, noting that reparations "require a systematic accounting, acknowledgment, and repair of past and ongoing harms, monetary compensation to individuals and institutions led by and accountable to Black communities, and an end to present day policies and practices that perpetuate harms rooted in a history of anti-Black racism, along with a guarantee that they will not be repeated."[48]

In addition, M4BL calls for reparations for "African descended people in the United States and beyond." It goes on to say, "While we prioritize the demand for reparations for slavery, we do not limit our demand for reparations to slavery. We believe demanding reparations only for slavery erases the reality that the United States has continued to exploit and harm Black people through convict leasing, sharecropping, Jim Crow, redlining, and other policies of structural discrimination and exclusion, and mass criminalization and incarceration through policies such as the 'war on drugs.'"[49]

Critics may argue that if the category of victims is too broad, reparations become impossible. However, there are programs on a similar scale, such as the various post-World War II reparations programs. For example, the German government alone has paid out over $80 billion since 1952 in pensions and social welfare payments to some 800,000 Holocaust survivors through the Conference on Jewish Material Claims Against Germany.[50] This sum is in addition to other reparations payments made directly by the German government.[51]

Payments for individual reparations are also not without precedent in US history. In 1988, Congress allocated $1.25 billion for individual reparations, after President Ronald Reagan signed a bill providing $20,000 to each of the approximately 65,000 living Japanese Americans who had been interned during World War II.

Admittedly, most programs in the US have been much smaller in size and scope. The State of Florida approved $2.1 million for the living survivors of a 1923 racial pogrom that decimated the Black community in the town of Rosewood and resulted in multiple deaths. In 2014, the State of North Carolina, one of more than 30 other states

46 Center for Civil Rights and Restorative Justice at Northeastern University School of Law, "Restorative Justice," https://crrj.northeastern.edu/home/restorative-justice

47 "The government, responsible corporations, and other institutions that have profited off of the harm they have inflicted on Black people — from colonialism to slavery through food and housing redlining, mass incarceration, and surveillance — must repair the harm done." The Movement for Black Lives (M4BL), "Reparations," https://m4bl.org/policy-platforms/reparations

48 M4BL, "Reparations Now Toolkit," https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf

49 Ibid. p 35.

50 Conference on Jewish Material Claims Against Germany, "Learn More About Compensation Programs," www.claimscon.org/what-we-do/compensation/background/

51 For payments made directly, see, for example Conference on Jewish Material Claims Against Germany, "Programs Administered by the German Government," http://www.claimscon.org/what-we-do/compensation/germany-payments/

that practiced forced sterilizations, set aside $10 million for reparations payments to living survivors of the state's eugenics program, which forcibly sterilized approximately 7,600 people. In 2015, the State of Virginia, followed North Carolina's lead and passed legislation granting $25,000 to each survivor.

The same year, the Chicago City Council passed the Reparations for Burge Torture Victims Ordinance along with a concurrent apology from the city.[52] The ordinance officially acknowledged the torture that occurred in the city during the tenure of Jon Graham Burge, an American police detective and commander in the Chicago Police Department. Burge stands accused of torturing more than 200 innocent Black men over a period of decades. In addition, the city established a $5.5 million Reparations Fund for Burge Torture Victims that provided $100,000 in financial compensation to each eligible living victim of Burge's torture. The reparations package included a formal apology from former Chicago Mayor Rahm Emanuel and tuition waivers to city colleges. It also required Chicago Public Schools to educate students about police torture under Burge as part its curriculum and created a permanent, public memorial.

As reflected in Chicago's reparations program, symbolic measures are also important to repair past harms, in addition to financial compensation. These measures include building memorials to honor victims and removing others that glorify a racist history, among others. Across the US, local and state governments are beginning to take such measures. For example, in June, Mississippi lawmakers voted to remove the confederate battle flag from the state flag.[53] Elsewhere in the US and around the world, municipalities are pulling down statues and other monuments to colonialist or racist leaders and removing their names from streets and other public property.[54]

Some activists and leaders, however, reject these symbolic measures and consider them to be a distraction from meaningful and much needed institutional reforms. But while it is true that the immediate impact of these measures on the lives of victims and communities of color more generally may appear limited, they signal an official acknowledgment of and respect for narratives of the past that have been dismissed or actively repressed, and to that extent they represent a first step toward justice. A truth-seeking process, as mentioned earlier, can further reinforce this acknowledgment. From a transitional justice perspective, the social pressure on those with power to reexamine the life and legacy of these controversial historic figures represents an opening to push for a more sweeping public acknowledgment of past and ongoing violations. From that point, action can be taken to reform or dismantle the systems that perpetuate racial injustice.

An official apology can similarly bolster symbolic reparative measures and acknowledgment. To be meaningful, an apology should reflect a societal reckoning with past and present crimes and help unite the public behind common goals for moving

52 Chicago City Council, Reparations for Burge Torture Victims Ordinance, May 2016, www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf

53 Derrik Johnson, President of the National Association for the Advancement of Colored People stated, "This is a long time coming. Finally, Mississippi decided to be one of the 50 states, and not the one state standing alone still bearing the emblem of a segregated society." Paul LeBlanc, "Mississippi State Legislature Passes Bill to Remove Confederate Symbol from State Flag in Historic Vote," *CNN*, June 29, 2020, www.cnn.com/2020/06/28/politics/mississippi-flag-confederate-emblem/index.html

54 Bukola Adebayo and Samson Ntale, "From Uganda to Nigeria, Activists Are Calling on Their Governments to Remove Colonialists' Names from Streets," *CNN*, July 3, 2020, www.cnn.com/2020/07/03/africa/africa-campaign-rename-streets-intl/index.html; Santa Falasca, "Who Is Worth A Statue?" ICTJ, July 1, 2020, www.ictj.org/news/who-worth-statue

forward. In this way, an apology can mark a turning point and a commitment to deal with past wrongs. As ICTJ notes in its report, *More Than Words: Apologies as a Form of Reparation*, "an apology should signal the intention of a state and/or liable parties to recognize their obligations to victims and encourage citizens and society at-large to take steps toward addressing the root causes of conflict, violence, repression, or exclusion that have made massive and systematic human rights violations possible."[55]

There are precedents both in the US and around the world of leaders offering a meaningful apology. In Sierra Leone, for example, President Ernest Bai Koroma apologized to the women victims of the county's armed conflict for the brutalities they suffered. In a statement on International Women's Day in 2010, he said, "We will never as a nation move forward if we do not apologize to the women of this country for letting them down during the war; we will never as a nation know better days if we do not ask for the forgiveness of our mothers, sisters, partners, and female compatriots for what we let them go through during the war. It is almost a decade now since the war ended, but we must apologize for the wrongs of the war."[56]

In Australia, the government first acknowledged that its policies of forcibly removing Indigenous children and placing them in white families was a "mistake" in a statement to the UN Human Rights Committee in 1988.[57] It was not until 2008, however, that then Prime Minister Kevin Rudd publicly apologized to the Indigenous people of Australia in a speech delivered in Parliament.[58] The speech was part of a formal motion that the Parliament then adopted. It was simultaneously broadcast on national television, as well as on large screens outside the Parliament building, reaching a significant audience.

Leaders and officials can meaningfully apologize in many ways, and there are numerous examples of what might be said and what perhaps should not be.[59] An expression of "regret," however, is not sufficient.[60] Furthermore, the most effective apologies also consider the victims' present and future well-being.[61] For example, following the 1988 Civil Liberties Act,[62] Japanese Americans who had been interned received a formal letter of apology from President Reagan along with a check for individual reparations.[63]

55 Ruben Carranza, Cristian Correa, Elena Naughton, ICTJ, *More Than Words: Apologies as a Form of Reparation* (2015), p. 5, www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf

56 Sierra Leone President Ernest Bai Koroma, "Statement on International Women's Day," March 27, 2010.

57 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, *Bringing Them Home* (1997), p. 248.

58 Australian Government, "Apology to Australia's Indigenous Peoples," https://info.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples

59 For more information about official public apologies as an element of a transitional justice policy, see Ruben Carranza, Cristian Correa, Elena Naughton, ICTJ, *More Than Words: Apologies as a Form of Reparation* (2015), https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf

60 For example, on June 30, 2020, Belgian King Philippe wrote a letter to Congolese President Felix Tshisekedi, expressing his "deepest regrets" for the "acts of violence and cruelty" and the "suffering and humiliation" inflicted on Belgian Congo. This initial statement was welcomed by many, but also met by calls for a full apology along with a commitment to reparations. See Samuel Petrequin, "Belgium Takes Down Statue, King Regrets Colonial Violence," *Associated Press*, June 30, 2020, https://apnews.com/article/europe-belgium-virus-outbreak-ap-top-news-international-news-f55831878a4f94691f1b3451a818fddf

61 The case of the so-called comfort women provides an example of when mere rhetoric falls short. For these women, who were forced into sexual slavery during World War II, Japan's refusal to offer material reparations made the apologies of its leaders ring hollow.

62 US Civil Liberties Act of 1988, Public Law 100-383, www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf

63 President William J. Clinton, "Presidential Letter of Apology," October 1 1993, available a www.pbs.org/childofcamp/history/clinton.html; and President George H.W. Bush, "Presidential Letter of Apology," October 1990, available at https://americanhistory.si.edu/righting-wrong-japanese-americans-and-world-war-ii/redress-payments

Another example, Congress formally apologized to Native Americans in a joint resolution that it signed into law as part of the 2010 US Defense Appropriations Bill.[64] Though, the resolution included a caveat that the apology did not support or ground any legal claim against the United States. The apology was also criticized for not being delivered in a public manner; the resolution was signed into law without a public ceremony, and the apology was only publicly read aloud months later by a US Senator.[65]

To date, the US government has yet to apologize to African Americans for the profound harm they suffered as a result of slavery, centuries of systemic racism and discrimination, and other grave injustices. Although both the House of Representatives and the Senate have issued apologies in separate resolutions, neither have ever been signed by a president.[66] Legislatures in a number of states, including Virginia, Alabama, Maryland, North Carolina, Florida, and New Jersey, have passed similar resolutions.[67] Yet while significant, these apologies do not represent the overall US population and fall short of a national political commitment to policy that would meaningfully redress past and ongoing injustices.

Two US presidents have spoken about the wrongful nature of slavery, but neither actually apologized.[68] In the private sector, some US companies have acknowledged their past ties to the slave trade and expressed regret for the profits they reaped from slave labor.[69] And some religious organizations, like the Southern Baptist Convention, have lamented and repudiated "historic acts of evil such as slavery" and apologized to all African Americans for individual and systemic racism.[70] There have also been personal statements of regret, including by some notorious segregationists.[71]

While these apologies may be meaningful for some groups, none of them in fact demonstrates a full understanding of the horrors and magnitude of the crimes and injustices that were committed or the enormity of the harms Black people suffered. Taken together, they still do not provide any consensus of what the next steps should be.

64 US Department of Defense Appropriations Act, 2010, Public Law 111–118, December 19, 2009, 123 Stat. 3409.
65 *The San Diego Union Tribune*, "Kansas Senator Reads Apology to American Indians," May 19, 2010, www.sandiegouniontribune.com/sdut-kansas-senator-reads-apology-to-american-indians-2010may19-story.html
66 US House of Representatives, H. Res. 194 (2008), Apologizing for the Enslavement and Racial Segregation of African-Americans; US Senate, S. Con. Res. 26 (2009), A Concurrent Resolution Apologizing for the Enslavement and Racial Segregation of African Americans.
67 For an overview, see Angelique M. Davis, "Apologies, Reparations, and the Continuing Legacy of the European Slave Trade in the United States," *Journal of Black Studies* 45, 4 (2014): 1-16.
68 President Bill Clinton in 1998 acknowledged that the United States was "wrong" to benefit "from the fruits of the slave trade" during a trip to Uganda. And a few years later in 2003, President George W. Bush spoke more strongly about the evils of slavery on a visit to Goree Island, Senegal, a former slave port, when he stated that "slavery was . . . one of the greatest crimes of history" and acknowledged that "The racial bigotry fed by slavery did not end with slavery or with segregation." Some contend that Lincoln's second inaugural address, in which he describes the civil war as God's judgment on the United States for the evil of slavery, should be considered an apology for slavery; however, it fails to directly address formerly enslaved people. See, for example, Thomas Geoghegan, "Lincoln Apologizes," *New York Times*, April 5, 1998, www.nytimes.com/1998/04/05/opinion/lincoln-apologizes.html
69 *The Hartford Courant*, a newspaper based in Connecticut, apologized for advertising the sale of slaves. See Paul Zielbauer, "A Newspaper Apologizes for Slave-Era Ads," New York Times, July 6, 2000.
70 Southern Baptist Convention, Resolution on Racial Reconciliation on the 150th Anniversary of the Southern Baptist Convention (1995).
71 For instance, ardent segregationist, presidential candidate, and Governor of Alabama George Wallace has expressed regret. See Rick Bragg, "Emotional March Gains a Repentant Wallace," *New York Times*, March 11, 1995. Sheriff of Montgomery County also apologized in March 1965 after brutally routing 600 demonstrators, including the Reverend Martin Luther King, Jr., with horses and clubs. See Roy Reed, "Accord Reached in Montgomery: Sheriff Gives Public Apology for Violence, Marchers Agree to Get Permits," *New York Times*, March 18, 1965.

An adequate response to this moment of national protest and reckoning requires a formal, public, and nonpartisan apology by the federal government. This apology should not only reaffirm the founding principle that all people are created equal but articulate an unequivocal political commitment to make amends. In the end, what matters most is that the apology captures the essence of this particular moment in history and what it means not only for Blacks but also for a shared vision of a just American society, and sets in motion a transformational change in the country.

As an important first step, Congress should pass Bill HR40 into law, which would establish a "Commission to Study and Develop Reparation Proposals for African-Americans Act."[72] Under the bill, the commission would "examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. Among other requirements, the commission shall identify (1) the role of federal and state governments in supporting the institution of slavery, (2) forms of discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African-Americans and society." Congress should also pass H.Con.Res.19 calling for a US Commission on Truth, Racial Healing, and Transformation. These federal level initiatives should be complemented by state and city efforts, such as the California Task Force to Study and Develop Reparation Proposals for African Americans,[73] and the Reparations Program recently launched in Evanston, Illinois.[74]

Such truth-seeking and reparations processes could help map out necessary reforms by revealing the enduring impact of past violations on communities of color. Dismantling systemic racism will require reforms in virtually every sector of government and society, including the economy, elections, the health care sytem, housing, education, and the social safety net. One sector that merits particular attention in this process is law enforcement, which has been a flash point in discussions of race for decades. To describe the type of approach that is needed, the next section applies a transitional justice lens to this issue. It explores the history of racially biased policing practices and racially motivated police brutality and the need to reform the law enforcement and criminal justice sectors as part of any effort to repair past and ongoing harms.

Police Reform

Discriminatory policing against people of color in the US has been a problem since the founding of this country and has affected generations. Fearful that their slaves would revolt or escape, slaveholders formed slave patrols "(1) to chase down, apprehend, and return to their owners, runaway slaves; (2) to provide a form of organized terror to deter slave revolts; and, (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside the law." As one of the earliest and most widespread forms of policing in the South, these patrols focused on controlling—rather than protecting—a

72 US H.R.40 — Commission to Study and Develop Reparation Proposals for African-Americans Act, 117th Congress (2021-2022), www.congress.gov/bill/117th-congress/house-bill/40
73 California Assembly Bill No.3121, signed into law by Governor Gavin Newsom in September of 2020, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3121; and Taryn Luna, "California Task Force Will Consider Paying Reparations for Slavery," *Los Angeles Times*, September 30, 2020, www.latimes.com/california/story/2020-09-30/california-task-force-reparations-slavery-gavin-newsom-shirley-weber
74 City of Evanston, "Evanston Local Reparations," www.cityofevanston.org/government/city-council/reparations

subsection of the population.[75] Moreover, a clause in the US Constitution at the time and later the Fugitive Slave Act of 1850 legitimatized these patrols and their brutal practices.[76]

In the more than 150 years since the end of the Civil War and the abolition of slavery, law enforcement and the criminal justice system have targeted Black people, particularly young Black men, at different times and in varying ways: for instance, the uneven application of mandatory minimum sentencing laws, particularly during the so-called war on drugs in the 1980s and 1990s, which has contributed to the mass incarceration of people of color.[77] As the prominent journalist Nikole Hannah-Jones writes, "[while] the names and mechanisms of social control have changed…the presumption that white patrollers have the legal right to kill black people deemed to have committed minor infractions or to have breached the social order has remained."[78] George Floyd is only one in a long list of individuals whom police killed while under arrest, while in custody, or during police operations. Criminologists concur that race and gender remain determining factors in police violence in the US.[79] Recent data from the US Bureau of Justice Statistics on contact between police and the public confirm civilians' race, age, and gender to be the most significant factors associated with the police's use of force against them, with Black men representing the highest proportion of victims.[80]

Unsurprisingly, the public trust on which law enforcement depends to maintain law and order has eroded in recent decades, particularly in communities of color. Many in the Black community are skeptical that the police would implement in earnest whatever reform is adopted or have lost hope that any reform would produce real change.[81] This growing distrust is evident in the debates around "defunding" the

75 Gary Potter, *The History of Policing in the United States* (Richmond, KY: Eastern Kentucky University, School of Justice Studies, 2013), https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf

76 US Constitution, Article IV, Section 2: "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." Fugitive Slave Act of 1850, September 18, 1850, Ch. 60, 9 Stat. 462.

77 Mandatory minimum sentencing means a person convicted of a crime must be imprisoned for a minimum term, as opposed to leaving the length of punishment up to judges. Mandatory minimum sentencing provisions have been introduced in various jurisdictions as a deterrent for repeat offenders, particularly to prevent the commission of specific, violent crimes. In the US, they are aimed at mainly gun or drug related crimes. Mandatory minimum sentencing laws force judges to deliver fixed sentences to individuals convicted of the relevant crime, regardless of culpability or other mitigating factors. However, jurists and criminologists have raised doubts about the existence of a direct link between, for example, federal mandatory penalties and any declines in crime. Further, a broad range of research suggests that it is quite unlikely that these penalties would have such an impact. Studies, on the other hand, have highlighted the negative impact of mandatory minimum sentencing. Mandatory sentencing is now recognized to have contributed to prison overcrowding, the worsening of public health, and racial disparities in conviction rates. See Mark Mauer, The Sentencing Project, *The Impact of Mandatory Minimum Penalties in Federal Sentencing* (September 2010), www.sentencingproject.org/publications/the-impact-of-mandatory-minimum-penalties-in-federal-sentencing. See also Cause of Action Institute, "The Unintended Consequences of Mandatory Minimum," December 7, 2017, https://causeofaction.org/unintended-consequences-mandatory-minimums

78 Nikole Hannah-Jones, "What is Owed," *New York Times*, June 30, 2020, www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html

79 Roberto Cornelli, "Note Sulla Police Brutality a Partire Dai Fatti di Minneapolis," *Sistema Penale*, June 19, 2020, https://sistemapenale.it/it/articolo/cornelli-police-brutality-morte-di-george-floyd-minneapolis

80 The percentage of African Americans whom police threated or used force against is twice as high as the percentage of whites (5.2 versus 2.4 percent) and slightly higher than the percentage of Latinos (5.1 percent). The same research reveals that young men are more exposed to violence than women (4.4 versus 1.8 percent). Bureau of Justice Statistics, "Contacts Between Police and the Public, 2015," www.bjs.gov/index.cfm?ty=pbdetail&iid=6406

81 For more on the movement to abolish the police, see Mariame Kaba, "Yes, We Mean Literally Abolish the Police," *New York Times*, June 12, 2020, www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html; For additional resources on the abolitionist movement, see #8toAbolition, www.8toabolition.com;

police, with some of the more radical proposals going as far as abolishing the police all together.

Given this context, it will be challenging to bring about the fundamental changes needed to instill public trust in law enforcement. In South Africa, Kenya, and Northern Ireland, for example, the success of similar reform efforts "turned on whether the police would continue their past practices of treating the population as a threat to be managed through overwhelming force, or if they could become more responsive to civilians' need for protection, eventually winning trust across society."[82]

For government institutions such as law enforcement agencies to gain society's confidence, they must demonstrate a commitment to a process of institutional reform at the local, state, and federal levels, as well as to measures that hold individual wrongdoers in their ranks accountable.

A protester holds a sign saying "Demilitarize the Police" at a Black Lives Matter demonstration in Washington, DC, on November 10, 2015. (Johnny Silvercloud/Flickr)

Current narratives of police brutality must also change. Research on police brutality tends to explain police officers' excessive use of force as individual decisions made in particularly difficult situations and under institutional constraints (the "bad apples theory"). According to this theory, in using excessive force, the officers disregard clear limitations or otherwise deviate from the official code of conduct. The concerned police officers are diagnosed as having a problematic personality, often resulting from the intense pressure and constant danger of their work.[83] However, instances of police brutality cannot always be explained away as the actions of few bad apples.[84] Doing so overlooks the role that the institutional culture can play in shaping how police officers interpret an unfolding scenario, define the level of risk, and decide on the appropriate course of action.[85]

In the field of transitional justice, the aim of institutional reforms is to establish and develop civic trust between citizens and state institutions by transforming institutions that are abusive, apply discriminatory policies, and defend partisan or elite interests into agencies that uphold and respect the rule of law, protect human rights, serve the

82 Amanda Taub, "Police the Public, or Protect It? For a U.S. in Crisis, Hard Lessons from Other Countries," *New York Times*, June 11, 2020, www.nytimes.com/2020/06/11/world/police-brutality-protests.html?campaign_id=57&emc=edit_ne_20200611&instance_id=19319&nl=evening-briefing&regi_id=61778017&segment_id=30707&te=1&user_id=cf80a98f79de2328f7b4f43900249c23

83 J. J. Fyfe, "Split-second Syndrome and Other Determinants of Police Violence," in *Critical Issues in Policing: Contemporary Readings, Second Edition*, eds. Roger G. Dunham and Geoffrey P. Alpert (Long Grove, Illinois: Waveland Press, Inc., 1997), pp. 531-546.

84 Petter Gottschalk, Geoff Dean, and Rune Glomseth "Police Misconduct and Crime: Bad Apples or Systems Failure?" *Journal of Money Laundering Control*, 15, 1 (2012): pp. 6-24. Todd May and George Yancy, "Policing Is Doing What It Was Meant to Do. That's the Problem: Blaming Racist Violence on 'Bad Apples' Misses the Point," *The New Yorker*, June 21, 2020.

85 Roberto Cornelli, "Note Sulla Police Brutality a Partire Dai Fatti di Minneapolis," *Sistema Penale*, June 19, 2020, https://sistemapenale.it/it/articolo/cornelli-police-brutality-morte-di-george-floyd-minneapolis

public at large, and thereby safeguard democracy. These reforms should include measures for changing the underlying culture of law enforcement, while also addressing larger institutional failings. In the US, such reforms should both address systemic police brutality and seek to create a new relationship between law enforcement and citizens based on trust and shared responsibility that helps prevent violent interactions from occurring in the first place.[86]

True institutional transformation is a long-term process, and it requires that an institution's leaders become the first believers and implementers of the new values. In the case of law enforcement, transformation begins when its leadership and the majority of police officers come to recognize and perceive as unacceptable racially motivated decisions and behaviors in themselves and their fellow officers. This includes reacting to abuse by demonstrating solidarity with the victimized groups and promoting internal and external scrutiny of the force to ensure that incidents of police brutality are disciplined and prosecuted. After the murder of George Floyd, several individual police officers and police departments around the country showed precisely this sort of understanding and solidary with victims of police violence and protesters. The number of these officers and departments must grow to create the institutional and national political will for transformational reform.

A society's mores and norms evolve over time, and practices once considered appropriate can gradually become objectionable or prohibited. Accordingly, law enforcement agencies must undergo periodic institutional changes to better reflect current social values. In many countries emerging from conflict or repression, a reimagining of the police is necessary to distance the institution from the legacy of past abuses and ensure that moving forward it upholds and protects human rights and serves all members of society. This is certainly not an easy process, as institutions tend to resist adapting to socio-cultural changes, but experience shows that it can be done.

For example, Italy finally demilitarized its police force in 1981, after four decades of debate and controversy.[87] Police became a civil division at the service of citizens rather than against them (or more accurately, against some of them). In Spain, the *Policía Armada* was one of the most feared agencies of the Franco regime and functioned almost as a secret service. During the 1980s, the entire police force was transformed to embrace the new democratic spirit, and in 1986 the *Policía Armada* was demilitarized and placed under civilian oversight.[88] In Kenya, the 2010 Constitution, which was

86 In 2015, after several deaths at the hands of police officers reignited protests in the US, The Guardian monitored the number of the individuals killed in police operations for two years. The project revealed some gaps in the official statistics. According to the data recorded, 1,146 people died in 2015 and 1,093 in 2016. The data breakdown shows that while whites were still the majority of victims in absolute terms, when compared with the relative size of each racial group studied, Blacks, Native Americans, and Hispanics were killed at much higher rates. Blacks were 2 killed at 2.5 times the rate of whites in the first year and 2.6 in the second year. "The Counted: People Killed by police in the US," *The Guardian*, www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database. For a recent comparison of the violence applied during police operations in the US and in Europe, see Rob Picheta and Henrik Petterson, "American Police Shoot, Kill and Imprison More People Than Other Developed Countries. Here's the Data," *CNN*, June 8, 2020, www.cnn.com/2020/06/08/us/us-police-floyd-protests-country-comparisons-intl/index.html

87 (Italy) Law no. 121 of April 1, 1981 "Nuovo ordinamento dell'Amministrazione della pubblica sicurezza" (GU Serie Generale n. 100 del 10-04-1981 - Suppl. Ordinario), www.gazzettaufficiale.it/eli/id/1981/04/10/081U0121/sg. For a review of the implementation of the reforms, see Paolo Andruccioli, "20 anni che hanno cambiato la polizia", *Polizia e Democrazia*, July 9, 2020.

88 The reformed police supported the democratically elected government during an attempted coup in 1981, and in 1985 the police union protested against the far-right militants within their ranks and participated actively in attempts to discipline and prosecute officers who committed human rights violations. See Cuerpo Nacional de Policía, www.policia.es

adopted after the devasting electoral violence in 2007, provided for the establishment of a National Police Service to protect Kenyans' fundamental rights and freedoms and to replace the previous police force whose structure and culture traced back to the colonial regime.[89] Following the collapse of the Soviet Union, countries in Central and Eastern Europe subjected their security and police forces to broad and deep lustration processes as part of their democratic transitions.[90] By and large, these efforts were all aimed at establishing democratic policing, i.e., policing in the service of the public, not the Communist party or the state.

In each of these contexts, the reforms sought to change law enforcement's purpose, not only its organizational structures and operating procedures. Similarly, reforms in the US should aim to redefine the mission and scope of the police. Because of the country's federal system of government, most of these efforts will need to happen at the state and local levels.[91] That said, the federal government and Congress have important roles to play, for instance, by allocating federal funding to state-level policy initiatives, adopting standards on the use of force, and undertaking federal criminal investigations into cases of excessive use of force by police.

State-level measures could include improving and providing more resources to law enforcement training programs, reviewing applicable law and expunging any provisions that are discriminatory or legitimize abuse, and revising existing disciplinary mechanisms and procedures to give a plurality of civil society actors a role in monitoring the law enforcement agency. Other proposals have more recently gained traction since mass protests began in May, such as reducing police budgets and redirecting the money to social services that help prevent or reduce criminal behavior and crime, abolishing the use of military grade weapons by civilian police, banning chokeholds, and focusing more on community safety. If implemented, these measures could go a long way in ending discriminatory policing practices, preventing police brutality, reducing crime, and establishing public trust in law enforcement.[92]

Consideration should also be given to reforming state district attorney's offices to ensure that prosecutors exercise sound and independent discretion when making decisions. Their decisions should not markedly differ depending on the racial background of the plaintiffs or defendants, as appeared to be the case with the initial charges that prosecutors

89 Articles 243 and 244 of the 2010 Kenya Constitution. Article 244 stipulates "The National Police Service shall— (a) strive for the highest standards of professionalism and discipline among its members; (b) prevent corruption and promote and practice transparency and accountability; (c) comply with constitutional standards of human rights and fundamental freedoms; (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and (e) foster and promote relationships with the broader society."

90 For a comprehensive review of the police reform in Central and Eastern Europe, see DCAF, *Transforming Police in Central and Eastern Europe* (2004), www.dcaf.ch/transforming-police-central-and-eastern-europe

91 Almost all policing in the US is undertaken at the local and state, not federal, levels: Out of the nearly 18,000 law enforcement agencies, only a dozen or so are federal. German Lopez, "How to Reform American Police According to Experts," *Vox*, June 1, 2020, www.vox.com/2020/6/1/21277013/police-reform-policies-systemic-racism-george-floyd

92 For a review of the many different policing reforms in the US and their results, see Kenny Lo, "Assessing the State of Police Reforms," Center for American Progress, July 16, 2020, www.americanprogress.org/issues/criminal-justice/news/2020/07/16/487721/assessing-state-police-reform/. See also Seth W. Stoughton, Jeffrey J. Noble, Geoffrey P. Alpert, "How to Actually Fix America's Police," *The Atlantic*, June 3, 2020, www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/

filed in connection to the George Floyd's killing.[93] Prosecutorial strategy can either help perpetuate police brutality, entrench racism, and fuel unrest, or if employed sensibly can uphold the rule of law, reduce social tensions, and ultimately guarantee non-recurrence.

When structural abuse is suspected in a law enforcement agency, it may be recommended to undertake a wide-reaching, time-limited investigation of all personnel to identify officers who may be responsible for past misconduct and abuses or who actively supported the abusive culture within the institution.[94] This practice, known as vetting, aims to remove individuals—at all levels of the hierarchy—who are not fit to perform the relevant duties in accordance with those social or ethical values with which the reform process intends to align the institution.

From ICTJ's experience working in countries around world that have pursued police reform, even the best disciplinary measures depend on a combination of improved police officer training and greater cultural awareness among officers to succeed.[95] Disciplinary measures must therefore be accompanied by tailored awareness-raising and professional development programs that help officers enforce the law and avoid engaging in abusive or criminal conduct, while upholding the rights of all members of society as the absolute and foremost imperative.

Conclusion

Laws and policies continue to discriminate against people of color in the United States, both directly and indirectly. Reforms are desperately needed in the criminal justice system, voting, housing, education, and health care. However, as experiences in the US and other countries where ICTJ works have shown, any meaningful changes to laws and policies or institutional reforms must be grounded in a recognition and understanding of the society's past atrocities and its connection to present-day injustices, grievances, and violence. Countries grappling with historical or ongoing injustices should consider applying transitional justice principles and approaches to help identify and address the

93 The original prosecutorial strategy employed by the Hennepin County prosecutor in the Floyd case was wholly inappropriate and gave rise to suspicions that the prosecutor improperly pursued comparatively light charges against Derek Chauvin, one of the police officers accused of killing Mr. Floyd, and no charges against the officers who stood by and allowed the brutality to proceed uninterrupted, when they were clearly under a legal duty to protect persons in their custody from harm. It also went against the new US Justice Department prosecutorial policy that says prosecutors should pursue the most serious readily provable offense. See US Department of Justice, Principles of Federal Prosecution (9-27-300), www.justice.gov/jm/jm-9-27000-principles-federal-prosecution. That policy change was criticized at the time for reversing an Obama-era policy designed to soften sentences for low-level drug offenders and encouraged the restoration of the types of mandatory minimum sentences that had led to a vast rise in incarcerations across the US. The blatant hypocrisy of applying one rule to Black Americans for low-level offenses but not to the police for killing someone would unsurprisingly appear incendiary.

94 Vetting refers to the process of examining backgrounds of individual personnel and assessing their integrity—including adherence to relevant human rights standards—to determine their suitability for public employment and to eliminate or otherwise sanction abusive and corrupt officials. ICTJ, "Vetting," www.ictj.org/our-work/research/vetting. Lustration, on the other hand, is a government-sanctioned policy of "mass disqualification of those associated with the abuses under a prior regime." Ina Vukic, "What Is Lustration?" *Croatia, the War, and the Future*, November 10, 2018, https://inavukic.com/2018/11/10/what-is-lustration. For a comprehensive review of different models, see Alexander Mayer-Rieckh and Pablo de Greiff, eds., *Justice as Prevention: Vetting Public Employees in Transitional Societies* (Brooklyn, NY: Social Science Research Council, 2007).

95 "Police departments spend an average of 58 hours on gun training, 49 hours on defensive tactics, and eight hours on de-escalation, crisis intervention, and electronic control weapons like Tasers." Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), www.policeforum.org/assets/guidingprinciples1.pdf Texts used law by enforcement and criminal justice agencies largely lack any reference to the legacy of slavery and racial injustice. For a critical analysis of these texts, see K. B. Turner, David Giacopassi, and Margaret Vandiver, "Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts," *Journal of Criminal Justice Education* 17, 1 (2006): 181-195. For information on police academy curricula, see Bureau of Justice Statistics, "Law Enforcement Training Academies," www.bjs.gov/index.cfm?ty=tp&tid=77

root causes, acknowledge and redress the harms caused to victims, reform institutions, and prevent future recurrences. The US and other advanced democracies advocate for and support these principles as part of their foreign and international development policies. It is now time for the US to apply them domestically to at last reckon with its legacy of slavery and racism and build a more just future for the country and all its citizens.

Acknowledgments

The authors gratefully acknowledge Professor Roberto Cornelli of the University Milano-Bicocca for his expert insight and substantive contributions to this briefing paper.

ICTJ New York
50 Broadway, 23rd Floor
New York, NY 10004
Tel: + 1 917 637 3800
Fax: +1 917 637 3900

Memorandum on Commissioner Selection Process and Criteria

Prepared by Virginie Ladisch

ICTJ, May 2021

Contents

Introduction

The impact and success of a truth commission relies first and foremost on its legitimacy. Key to establishing that legitimacy is the composition of the commission, in particular the commissioners. As the public face of the commission, it is essential that the commissioners are seen as legitimate and independent leaders of the process.

In developing the terms of reference (ToR) or the mandate for a truth commission, one of the key provisions to consider is the composition of the commission. This includes provisions on the commissioner selection process, including the nomination process and the criteria for selection.

In the case of truth commissions, the international best practice is for commissioners to be nominated, vetted, and confirmed through an open and transparent process in which the public has multiple chances to comment on and contribute to the process. In order to ensure an independent and legitimate process, ICTJ recommends including a provision in the mandate that establishes an independent selection panel that will oversee the process of nominating and selecting the commissioners according to clear criteria, through an open, transparent and participatory process.

The following memo provides key information, guidance, and selected case studies to inform this recommendation.

The Independence of Commissioners

The former UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, affirmed that a truth commission's impact is largely derived from *the moral standing of its members*. As a general guideline, truth commissions have greater credibility if their members are perceived as fully independent impartial, honest, and committed to the truth.

Kenya provides a cautionary tale: there was insufficient scrutiny of the commissioners appointed to the Truth and Justice Reconciliation Commission in Kenya (TJRC). It was only discovered months after the TJRC had begun its operations, that earlier inquiries had made adverse findings against the Chairperson of the Commission. As a result of this oversight, the TJRC became discredited in the eyes of many Kenyans. The commission itself slid into a state of paralysis for more than a year of its mandate as it struggled to adjust in response to the findings against the Chairperson.

The Kenyan episode is perhaps an extreme example, but by no means the only one illustrating the need to ensure the best possible selection of commissioners. In 2003, in the Democratic Republic of Congo, the members appointed to a truth commission were not perceived as

independent because they were essentially representatives of the different political factions.[1] The commission was unable to gain societal trust, implement its constitutive functions, and it was incapable of issuing a report. In Canada, disagreements between the commissioners led to a year of paralysis, resignations, and—finally—the appointment of new members substituting the original ones.[2]

When commissioners demonstrate integrity and independence, truth commissions have a better chance at inspiring cooperation and constructive debates in society. Writers like Ernesto Sábato in Argentina, human rights activists like Driss Benzekri in Morocco, jurists like Christian Tomuschat in Guatemala, moral authorities like Archbishop Desmond Tutu in South Africa, lent credibility to their institutions and participated in strong teams, capable of channeling effectively the voice of victims and society.[3]

A clear and independent selection process rooted in the principles of inclusiveness and community outreach is crucial to establishing a legitimate commission. Survivors, civil society organizations, nongovernmental organizations involved in promoting and protecting human rights, and groups oriented toward victims, women, and marginalized people and communities within the state should fully participate in the selection and appointment process. This process should be transparent, effective, and have enough resources to ensure these groups are properly consulted.

1-Establishing a Selection Panel

In order to ensure the greatest independence and legitimacy of the commissioners, it is essential to develop a transparent and independent selection process. Previous truth commissions have used a variety of methods to select commissioners ranging from appointment by the executive or parliament, to an independent selection panel. Drawing on international best practice, it is advisable to create an independent panel tasked with selecting the commissioners.

The selection panel should comprise people who have moral authority and who are respected by the various sectors of society. In order to ensure they are seen as independent, the selection

[1] "In July 2003, seven of the eight members of the TRC bureau were appointed by their respective parties, although the process was not transparent and the criteria for appointing the members were related more to political affiliation than to the objective criteria set up in the ICD. Furthermore, the members were not appointed by consensus, as demanded by the resolution; their appointment was simply announced by their respective parties." See Federico Borello, "A First Few Steps The Long Road to a Just Peace in the Democratic Republic of the Congo", International Center for Transitional Justice, October 2004, available at http://ictj.org/sites/default/files/ICTJ-DRC-Just-Peace-2004-English.pdf, p. 41.
[2] Joint resignation statement available at http://www.trc-cvr.ca/09_01_09_s.html.
[3] Ernesto Sábato was the chair of the National Commission on the Disappearance of Person in Argentina, CONADEP (1983); Driss Benzekri was the president of the Equity and Reconciliation Commission in Morocco (2004-2005); Christian Tomuschat was the coordinator of the Commission for Historical Clarification in Guatemala (1997-1999); Archbishop Desmond Tutu was the chairman of the Truth and Reconciliation Commission in South Africa (1995-2002);

panel should not be too close to the political process that led to the creation of a truth commission. The panel should be tasked to review, vet and decide on the candidates who apply to serve as commissioners, based on an open call for application. The selection panel should have a time bound mandate; once the commissioners have been named, their role is finished.

There are several examples of selection panels established to select commissioners for truth commissions. In most cases the panel is composed of people of high moral standing appointed by credible institutions with broad legitimacy. For example:

- In Colombia, the negotiating parties to the peace agreement called for the establishment of an independent and autonomous body that would be made up of 5 delegates to be appointed by five trusted organizations or institutions voted on by the two parties to the agreement: the government of Colombia and the FARC-EP. Together they decided on the following five institutions:
  - The Secretary General of the United Nations,
  - The Supreme Court
  - The International Center for Transitional Justice,
  - The Permanent Commission of State Universities; and
  - The Pope.

  The Pope declined the invitation. In his place, the parties invited the European Court of Human Rights. Each of the five entities nominated one individual who would sit on the selection panel. The selection panel worked in close coordination, taking all of its decisions by consensus. The panel nominated one of their members to be the president of the selection panel and thus serve as the spokesperson for the panel. For many Colombians, the presence of international members represented a guarantee of impartiality.

  Overall, the selection panel worked for 8 months to design and carry out the selection process for 82 people appointed to the leaderships roles of the different mechanisms of Colombia's transitional justice process as laid out in the peace accords (11 of those were the commissioners for the truth commission).

- In Kenya, a selection committee was empaneled to choose the commissioners for the Truth, Justice and Reconciliation Commission (TJRC). The panel included individuals nominated by a cross-section of organizations, including the Law Society of Kenya, the Federation of Kenya Women Lawyers, the Kenya National Commission on Human Rights, and the Central Organization of Trade Unions and Kenya's National Union of Teachers, among others.

Several other examples are included in the Annex below. Overall, it is important to establish a process that secures the independence and credibility of the commission from the outset, by

putting the selection of commissioners in the hands of widely trusted and independent institutions and individuals.

2-Nominations

The nomination process for commissioners should be public, transparent, and inclusive. The specific details of the nomination process can be left to the selection panel to decide once established, or the mandate could provide some preliminary guidelines for the process.

Drawing from previous truth commissions here are a few guidelines to consider for the nomination process:

- A nomination form should be made available that includes the full name and other identifying features of the person making the nomination and the nominee (e.g. date of birth and/or address); a section to explain why the nominee would be a good commissioner; and a section where the nominee can acknowledge his or her willingness to be considered.
- While a form is recommended, certain contexts may require flexibility. In such cases, the selection panel should consider being open to nominations that provide all essential information but are not on an official form, i.e. provide a nomination form but not require it. Some people may not have access to such forms, and they should not be penalized for this.
- Because gathering signatures in support of particular nominees is likely to be problematic, it is not recommended because it could potentially politicize the issue.
- Likewise, any voting to select who will be nominated could be problematic. The commissioners, once appointed, are meant to be independent and to command a certain amount of moral authority of wide social appeal rather than to represent a certain constituency.
- The call for nominations should be broadly disseminated: This can encourage more people, from a wider cross-section of society, to come forward as potential commissioners. Dissemination though media channels, at the regional and national level can also stimulate public debate, raise awareness about the truth commission, and contribute to prepare communities and deepen the public's understanding about the role of the commission.

Additional questions to consider:

- Who will be eligible to submit potential candidates for nominees? Possibilities include:

    - Anyone (e.g. as for the TRC in Sierra Leone);
    - Individuals or/and organizations (e.g. TRC in Sierra Leone);
    - Only residents of a respective region (e.g. Greensboro TRC);
    - Only citizens of the country (e.g. TRC in South Africa);

- Will the list of all nominees be made public and available for comment?
  - The selection panel will have to decide whether it publishes the names of those nominated at the close of the nomination period and whether it will seek public feedback for a limited period of time. Publishing names allows for a very transparent process, which can gain the public's confidence and set the tone for the commission. This approach is consistent with principles of inclusion, consultation, and transparency.
    - The recently established Yoo-rrook Justice Commission in Victoria, Australia hired an Aboriginal led recruiting firm to oversee the logistics of the recruiting process for the 5 commissioners. The twenty shortlisted candidates had their photos and expressions of interest published online. The public was invited to send in comments on the candidates, either in support or to raise concerns, which were then considered by the independent selection panel. The comments were sent directly to the recruiting agency and required the commentors to share their name and personal information, to guard against false accusations. This proved helpful both as a way to engage the public in this process and to ensure that the selected commissioners were vetted by the public they are appointed to serve.

3- Qualifications/Criteria for Selection

It will be important to clearly lay out the necessary qualifications for commissioners and outline the key criteria that will be used to evaluate applications and select commissioners. The criteria should be both positive (track record of service in the public interest or for the cause of human rights) as well as negative (no conflict of interest or dubious link to subject matter of inquiry).

Drawing from other truth-seeking processes, some criteria to consider include:

- integrity
- high moral character
- General criterion of impartiality and independence. Independence from external influence requires that one is free from outside interference or manipulation.
  - not known to be actively involved in a political party or its sister organization
- no criminal record
- Candidates should possess competences relevant for the commission's work and should represent a wide range of disciplines including sociology, history, psychology, data analysis, etc.
  - See for example: ***Part II, Art. 3(2)(b) of the TRC Act 2000 (Sierra Leone)[4]:***

[4] http://www.sierra-leone.org/Laws/2000-4.pdf

(b) persons with high standing or competence as lawyers, social scientists, religious leaders, psychologists and in other professions or disciplines relevant to the functions of the Commission.

- Candidates should be persons committed to promoting human rights or serving public interest;
  - See for example: ***Section 4, 4(1) of the UNTAET Regulation 2001/10 (East Timor)***[5] *The Commission shall be composed of five to seven National Commissioners. National Commissioners shall be persons of high moral character, impartiality, and integrity who are competent to deal with the issues under the present Regulation and shall not have a high political profile and have a demonstrated commitment to human rights principles. No National Commissioner may be the spouse or blood relative in the first degree of any other National Commissioner. At least thirty per cent (30%) of the National Commissioners shall be women.*

Several commissions have also included a criterion for age, noting that a commissioner should be at least 35 years old. However, this was severely contested in Tunisia and eventually lowered to the age of 30, recognizing the key role youth played in bringing about the Tunisian Revolution. It is important to assess the role of youth and whether an age cut off is necessary, or if instead, the process should focus on other criteria such as integrity, engagement in relevant issues being explored by the truth commission, capacity to take on the task, and perceived legitimacy.

4- Vetting and Interview Process

The selection process for commissioners should be transparent. To this end, the selection panel should establish clear procedures for vetting nominated candidates and share that information publicly. Once the selection has been made, the panel should provide a public explanation of the selection process.

The details of this process can either be elaborated in the mandate or left to the selection panel to determine once established. At this stage, it may be important to include provisions for when and how the public will be involved in the vetting process. The following questions can serve as guidance:

- What will be the extent of public participation? (e.g. creating a shortlist; publishing names of those shortlisted; making applications and CVs public; holding interviews in public; seeking views on the potential candidates from the public);
- Will interviews of short-listed candidates be held in public or closed to the public? Will the panel hold deliberations behind closed doors?

[5] http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf

- Following the interviews will people be allocated time to raise objections against the candidates?

Generally, the vetting process includes the following key steps:

- Create a short list of qualified candidates – The selection panel should refine the list of qualified candidates and develop a short list of those who should be interviewed based on the criteria stipulated in the ToR, taking into account things such as the individual's reputation for integrity and objectivity, as well as his or her ability to work together with others and to build consensus.
    - Candidates should be asked to provide any information that could indicate either a conflict of interest or the perception of such because of views expressed, publications made, political, personal or business affiliations. This would have the added benefit of making it easier to remove a candidate if they failed to disclose such information.
- Conduct interviews with shortlisted candidates
    - Some commissions have made the interviews public, as was the case in Colombia where the video of each interview was published on the selection panel's website once all the interviews were completed. Other countries have adopted public hearings as part of their consultative process of selecting commissioners, such as South Africa,[6] Sierra Leone[7] and East Timor.[8]
- Reach consensus – When all the interviews have been conducted, the selection panel meets until consensus is reached.

5-Time Frame/Duration of the Selection Process

The selection process should strike a balance between inclusiveness and expeditiousness. The specific time period depends on the country context. However, it should be long enough to ensure a proper public vetting of candidates' credentials, but short enough not to lose the momentum. A longer period of time can enable a broader range of individuals and credible organizations to decide whether they want to take part in the selection process; allow time for

[6] The Truth and Reconciliation Commission of South Africa was the first to select commissioners based on an independent selection panel and public interviews of candidates. For more information, see Eduardo González and Howard Varney, eds., Truth Seeking: Elements of Creating an Effective Truth Commission. Brasilia: Amnesty Commission of the Ministry of Justice of Brazil; New York: International Center for Transitional Justice (2013). p. 18-19.

[7] The selection process in Sierra Leone was inspired by the pioneer example of South Africa, although their selection panel was slightly different and considerably important to their context: it was composed by both national and international members to nominate national and international commissioners. See González, Truth Seeking (2013). p. 19.

[8] In East Timor, the commissioners were appointed by a selection panel. It included one member appointed by each of several civil society organizations and political parties. In calling for public nominations, the panel was required to consult broadly with civil society and give special consideration to diversity issues, including regional and gender representation. See González, Truth Seeking (2013). p. 19.

dialogue in the different communities ensuring their best suitable candidates participate in the process; and preparing the necessary requirements established by the procedure.

If the selection process is rushed, it runs the risk of jeopardizing the legitimacy of the commission from the outset. For example, in the case of Nepal's Truth and Reconciliation Commission (TRC) and the Commission of Inquiry on Enforced Disappeared Persons (CIEDP), although a 'recommendation committee' was set up to manage the process of appointing commissioners to both commissions, less than a month was given for the public to respond to names nominated by the government. As a result, the two commissions have had to deal with a 'credibility deficit' that negatively impacted its engagement with victims and other stakeholders.

As a general guideline, the time frame for the selection panel to carry out its work could range from 3-6 months (for example, allocating three months for the presentation of the candidates and subsequent short-listing and another three months for the vetting and appointment process).

In determining the time frame, questions to consider include:

- How much time is needed to establish the selection panel?
- How much time is needed for the whole selection process to be completed once the panel is in place?
- How much time should be devoted for the public scrutiny of the shortlisted candidates?
- Will interviews be held in public and will there be space for the public to lodge objections?
- What social and political factors need to be considered as part of the timeline, for example is there a window of opportunity politically that should not be missed?

Examples of time limits:

Art.1 of the "Selection Process for the Greensboro Truth and Reconciliation Commission"

> ***"Within three months** of the public announcement of the "Mandate for the Greensboro Truth and Reconciliation Commission," a Selection Panel will be formed to consider nominations of persons as commissioners."*

Section 4, Art. 4(3)(b) and (c) of the UNTAET Regulation 2001/10 (East Timor)

> *(b) Provided that a majority of organizations and persons listed in Subsection (a)(I)-(xi) above have nominated a person for the Panel, **the Panel may commence functioning at the end of the period of one month**, notwithstanding the failure of any organization or person to nominate a person to serve on the Panel.*
>
> *(c) the Panel shall call for nominations from the people of East Timor of persons who wish to serve as National Commissioners, indicating a simple procedure for nominations and **a reasonable deadline by which nominations should be submitted;***

Additional Considerations

Number of Commissioners

There are no clear international standards on the ideal number of members for a truth commission. The final number is subordinate to the chief concern to ensure the appropriate representation of groups affected by human rights violations, in a form consistent with the need to establish a fair, effective and independent commission. Practice has shown that a higher number of commissioners can complicate its work with regards to generating consensus among the commissioners and the amount of resources required.

An examination of this issue around the world shows wide variance. The smallest number of commissioners being 3 as was the case in Canada (Truth and Reconciliation Commission of Canada, 2007-2015); El Salvador (Truth Commission, 1992-1993); Sri Lanka (Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, 1994-1997); and Guatemala (Historical Clarification Commission, 1997-1999). On the other end of the spectrum, the highest number of commissioners on a truth commission was 17 members as in South Africa (Truth and Reconciliation Commission, 1995 - 2000); and Morocco (Equity and Reconciliation Commission, 2004 – 2006).

In general, ICTJ recommends somewhere between 3-7 commissioners. If there is no consensus among the drafters of the mandate, the final decision could be left to the selection panel to decide based on the specificities of the context. In that case, the mandate could include a provision stating, for example: *The final number of commissioners will be determined by the selection panel, noting there shall be at least 3 and no more than 7 commissioners*.

Representation

The issue of representation is often the driving factor in increasing the number of commissioners appointed to a truth commission. The Office of the High Commissioner for Human Rights (OHCHR) has affirmed : "…truth commissions will garner the greatest public and international support if their members are selected through a consultative process, and an honest attempt is made to ensure a fair balance in the representation of ethnic, regional or religious groups, gender, and political views." [9] Building on that, the United Nations Human Rights Commission further added: "In determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have

[9] OHCHR. Rule of law Tools for Post-Conflict States. Truth Commissions. Section II-C New York and Geneva 2006

been especially vulnerable to human rights violations."[10] Furthermore, international best practice calls for equal gender representation, with several commissions noting in their mandate that at least one third of the commissioners be women.

Assuring a level of representation is important to secure societal credibility and support. However, overly focusing on representation risks limiting the selection panel's ability to select the best commissioners based on their pool of candidates which in turn could negatively impact the final composition of the commission. The issue of representation must be addressed without affecting other key elements, such as the exceptional personal qualities of the candidates, their prestige, knowledge of human rights issues and ability to carry out the work and establish appropriate, constructive links with all sectors of society, in particular victims.

In the context of The Gambia's ongoing Truth, Reconciliation, and Reparation Commission, the focus on regional representation was given priority to the detriment of the effectiveness of its commissioners. The focus on regional representation took precedence over qualifications to carry out the work. For example, several commissioners from the remote regions of The Gambia are illiterate. Without sufficient planning and allocation of resources to ensure their effective participation, this creates a significant obstacle for the commission. As one TRRC commissioner recently told ICTJ, "the diversity of the TRRC is beautiful but it poses many challenges."

Rather than stipulating every group or region must be represented in the commission, it is advisable to instead include a provision that calls for the nominees to reflect the diversity of the country, perhaps with the specification of a few key criteria in addition to gender balance.

Another element that can be considered when assessing the need for inclusion in the composition and number of commissioners is the creation of special posts for groups that otherwise would not be considered. The Peruvian government, for example, created the position of Special Observer for the Catholic Church in the TRC, and entrusted it to a highly respected bishop. The Timorese Commission for Reception Truth and Reconciliation created the position of Regional Commissioners for all the 13 districts of the country, who participated in periodic meetings with the National Commissioners.

More recently in Canada, the Truth and Reconciliation Commission's mandate established the Indian Residential School Survivor Committee (IRSSC), as playing a crucial advisory role to the commissioners noting:

> The Commission shall be assisted by an Indian Residential School Survivor Committee (IRSSC).
>
> (a) The Committee shall be composed of 10 representatives drawn from various

[10] UN Commission on Human Rights. Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher. Principle 7 (c) 2005

Aboriginal organizations and survivor groups. Representation shall be regional, reflecting the population distribution of Indian Residential Schools (as defined in the Agreement). The majority of the representatives shall be former residential school students;

(b) Members of the Committee shall be selected by the Federal Government, in consultation with the AFN, from a pool of eligible candidates developed by the stakeholders;

(c) Committee members are responsible for providing advice to the Commissioners on:

(i) the characteristics of a "community" for the purposes of participation in the Commission processes;
(ii) the criteria for the community and national processes;
(iii) the evaluation of Commemoration Policy Directive proposals;
(iv) such other issues as are required by the Commissioners. [11]

Conclusion

Overall, in planning the composition of a truth commission, the selection process for commissioners is key to establishing the legitimacy and independence of the commission. Taking the time now to plan a transparent and inclusive process will go a long way to enhance the success of the commission.

[11] Schedule N of the Indian Residential Schools Settlement Agreement" (PDF). http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf. 2006. Retrieved October 26, 2020.

Annex- Selected Case Studies

Timor-Leste

As required by the law establishing the Commission for Truth, Reception, and Reconciliation (CAVR), a selection panel was formed in 2001 to start the nomination process for national and regional commissioners. The panel was chaired by the head of the UN's transitional administration in Timor or his appointee. Members of the panel included:

- Two persons appointed each by four political parties that existed during the conflict
- A representative of Timor's NGO forum
- A representative of a women's network
- A representative of a youth network
- Two representatives of two victims' associations for political prisoners and families of the disappeared
- A representative of the Catholic Church
- A representative of the UN's Human Rights Unit

A public campaign was launched, using newspapers, radio, television, posters, and local networks to inform the public about the commission's role. In Timor-Leste, this included meetings organized by the UN's presence in each district, as well as local NGOs. In West Timor, Indonesia, the selection panel relied on Indonesian humanitarian NGOs working with refugees and church-linked organizations to organize the consultation meetings. At the end of the process, 60 people were nominated to be national commissioners and 160 for regional commissioners.

According to the law, those nominated should be people with the following characteristics:

- Strong moral character, impartiality, and integrity
- Competent enough to deal with the CAVR's mandate
- Do not have a high political profile; and
- Have a demonstrated commitment to human rights principles.

The panel was also required to give special consideration to the representation of a diversity of experiences and views, including attitudes toward the past political conflicts in East Timor, and regional and fair gender representation.

The panel interviewed a short list of candidates for national commissioners and made recommendations to the UN's transitional administrator. The transparent manner of selection and broad consultation were fundamentally important in giving people a sense of ownership. The law also said that the panel had to appoint one national commissioner whose political views represented Timorese who had supported integrating East Timor with Indonesia. This stimulated the selection panel to conduct a number of public meetings in West Timor, Indonesia, where tens of thousands of refugees were living in camps.

To be able to nominate individuals, the communities had to understand what these individuals were being nominated to do. As a result, the selection of the commissioners became an extensive outreach process covering the 13 districts in East Timor, as well as a consultation and nomination process with those still living in the camps in West Timor. The process of selection stimulated wide public debate about who would be a successful candidate, as well as input from the communities about truth, justice, and

reconciliation. Most significantly, there was a genuine effort to engage pro-Indonesia elements in West Timor.

South Africa

In the case of South Africa, those who were establishing the commission realized that there was a risk that parties would be competing for control over the truth commission. Therefore, rather than have a fight for power they decided it would be more constructive to give a space for political leaders to be involved in the process.[12] With this view the selection panel was created accordingly:

- Each of the four main national political parties was able to appoint one representative to serve on the selection panel
- The president of South Africa, Nelson Mandela, appointed 4 non-partisan, independent persons to be on the selection panel. These four appointees included: 2 church leaders, 1 human rights lawyer, and 1 representative of the trade union federation. The decision to divide the selection panel membership evenly from political parties and civil society was in aid of providing a balanced and fair panel.
- The selection committee was chaired by President Mandela's legal advisor.

Selection of Commissioners:

Once the selection panel was established, they began the process of recruiting commissioners. A call for nominations was advertised in the media.

- Any South African could nominate a commissioner. The one condition was that people had to be nominated by an organization. This provision ensured that nominations would have some backing from civil society.
- The goal was to find people of high integrity and who could inspire trust.
- Once the call for nominations was closed, the selection panel held a meeting to discuss their criteria for commissioners. Each member of the selection panel was looking for different things, but overall, they wanted to find people who could understand what people had suffered but who were not too traumatized by their own experiences. (Note: it is recommended that the criteria be developed before reviewing nominations and that the criteria be made public)
- They received over 300 nominations. This initial list was published and circulated to various media outlets
- Each member of the selection panel was as asked to review the applications and provide a list of 50-60 candidates they supported
- The panel had staff to do the legwork: compiling and summarizing information, setting interviews, getting people together.
- The process involved first rating by a number system all of the candidates looking at their overall qualities, using criteria agreed on by the panel. The tabulation of this information led to a list of the top 50. These were slated for face-to-face interviews.

[12] This case study draws from interviews conducted in 2007 with Peter Storey, member of the selection panel by Virginie Ladisch.

  - According to Peter Storey, a member of the selection panel, "the real genius of this process was that initially the representatives of different political parties were blocking each other to the point that they were finding themselves checkmated. Once they saw that they were not going to get their own person on the commission, they began looking for people who would be unbiased. The non-party people then began to have a lot more influence."
- This list of 50 candidates was then published in the newspapers so that the public could review them and send in any comments or concerns about specific nominees
  - Some people raised objections publicly within the media, and others sent in their concerns to the TRC secretariat that oversaw this process
- Interviews:
  - The interviews took the form of public hearings, though deliberations on nominees were private. The public interviews were to generate public comment and ensure that candidates were not there with some hidden agenda.
  - Peter Storey comments that: "I think it is absolutely critical to have public interviews. …In general people are not easily convinced that a truth commission is not just another political ploy. Therefore, the interview process should be as transparent as possible"
- After the interview process was concluded, the selection panel narrowed down the list to 25 people they recommended as commissioners. This list was then sent to President Mandela who made the final selection of the 17 commissioners.
  - Mandela added two people who were not on the short list of candidates in order to ensure a balance
  - "At the end of the day there was a compromise that had to be made. It was clear that we would not put an apartheid apparatchik on the commission. But we did search for a representative of the Afrikaner community who had acted with a fair degree of integrity because for the perpetrators to come forward, we felt that it was important to have at least one person who they could relate to," noted Peter Storey.
- In thinking about who should chair the commission, since a truth commission is not a legal body, a judge may not the best person to select as the chair. "If our truth commission had been chaired by a judge it would have collapsed within weeks," remarked someone close to the process in South Africa. Although judges usually chair commissions of inquiry, they may bring to the position a methodology suited to the exhaustive proof standards of a court of law, and probably inappropriate for a commission mandated to conduct, in addition to factual findings, historical explanations, recognition of victims and recommendations of policy.
- The entire selection process took a total of three months and was aided by a quick consensus early on about the criteria for judging nominees. (note: this timeline is very quick, they achieved an impressive process in a short amount of time. It is recommended to build in a more time in order to ensure a consultative and legitimate process).

Sierra Leone

The TRC Act of 2000 made provision for a selection process and schedule of both national and international Commissioners. Sub-section 3 section 1 of the Schedule provided for a consultative process that would consider both national and international expertise.

- The process commenced with the nomination by any person in or outside Sierra Leone of persons they deemed fit to become a Commissioner.

- The nominated list of persons was then forwarded through UNAMSIL Human Rights Section to the Special Representative of the United Nation Secretary General (SRSG) who served as the Selection Coordinator to the Selection Panel.[13] The list was then forwarded to the Advisory Committee that comprised of the three representatives of Inter Religious Council (IRC-SL), National Council of Paramount Chiefs and a member of the international community resident in Sierra Leone. With the assistance of the Selection Coordinator and the Office of High Commission for Human Rights, the advisory committee drew a list of 20 persons from among the nominated candidates.
- The listed 20 persons were then interviewed by the Selection Panel which comprised of a representative of the Armed Forces Revolutionary Council (AFRC), the Revolutionary United Front of Sierra Leone (RUF-SL), National Forum for Human Rights (NFHR), National Commission for Democracy and Human Rights and the Government of Sierra Leone. The interviewed candidates were then ranked, and comments submitted to Selection Coordinator.
- The interview and vetting process ended up with eight names that were presented to the Selection Coordinator. The Selection Coordinator then selected four names from the listed and ranked persons and recommended them for appointment as National Commissioners to the President of the Republic of Sierra Leone. The Chairman and Deputy Chairman of the Commission were recommended by the Selection Panel to the Selection Coordinator who then recommended them for appointment to the President. After the appointment, the Commissioners were in inaugurated on 5 July 2002.
- The selection panel did not hold public interviews. Some people are critical of this decision and of the panel that resulted, but it is not clear whether the lack of public exposure of the candidates would have changed the results.
- The Sierra Leone panel had to choose some commissioners from Sierra Leone and also international commissioners, so some of the concerns deal with how much an "outsider" should know about the reality of the place. Also, commissioners were to work full time, which also limited some candidates based on their availability.
- The panel used a list of 13 criteria and judged each candidate from 1 to 10 on each criterion. Then scores were averaged, and candidates were ranked accordingly. Note that this means that all criteria were weighted equally, which is certainly not the only way to proceed, though perhaps the simplest. In fact, some candidates might best be chosen to complement each other rather than duplicate competencies and qualities that are not essential to any individual member of the commission. That is, all should be impartial and objective, but not all need to know about human rights or have contributed to the country.
- The 13 criteria were as follows:
    - Ability to be impartial and objective with independence of mind
    - Knowledge of the historical and political dynamics of Sierra Leone, including traditional forms of reconciliation
    - Availability of individual
    - Public perception of the individual
    - Notable contributions to Sierra Leone (academic, legal, or other professional fields)
    - Ability to work in a multicultural/international setting
    - Ability to analyze large amounts of information regarding issues of national interest
    - Maturity and experience relevant to the work of the TRC, including record of employment
    - Good state of health and ability to work long hours and travel extensively

[13] The Selection Panel comprised of one representative each from the Government of Sierra Leone, one from the Revolutionary United Front of Sierra Leone, one from Armed Forces Revolutionary Council

- Some insight into and understanding of human rights issues
- Understanding of the TRC and its role in Sierra Leone (Lomé [peace accord] and TRC act)
- Communication and management skills
- Practical experience of the conflict

Peru

This case illustrates another approach entirely. The original commission was created by Executive Order of an interim president during the transition period, and seven commissioners were named, through a process that essentially involved rounds of voting by Cabinet members and their ultimate approval of the final seven. The process was not pre-determined to create a partisan commission because the cabinet was itself non-partisan.

Civil society groups (primarily human rights organizations that had been advocating the creation of a truth commission) sought out contacts within the executive branch to try to have input on potential candidates, but were mostly surprised when the names were announced, mainly because the cabinet conducted its nomination process without clear rules on the type of balances they wanted to strike in the creation of the TRC.

Protests from human rights groups ensued because, of the original seven, only one commissioner was a woman, and she had been an official in the Fujimori government. No member of the commission had a background on human rights advocacy and most of them were from Lima. The President-elect, to be sworn in a month or so later, was also offended that he did not have a say in the composition of the Commission. After he was sworn in, he issued a decree changing the number to 12 plus one observer and adding reconciliation to the commission's title. The additional 5 commissioners included a woman who was the head of a national coordinating body of human rights organizations. At the last minute, the President substituted a retired Lt. General for someone else who was expected to be named.

The President of the Commission, Dean of the Catholic University, was not welcomed enthusiastically at the outset by human rights advocates. He was a somewhat reticent scholarly type, rather than a spiritual leader in the mode of South Africa and other commissions. However, over the course of the commission's mandate he gained enormous respect across the country for his leadership.

Greensboro, North Carolina, USA

The following is an overview of the selection process for commissioners in the case of the Greensboro Truth and reconciliation Commission in the United States.[14]

1. Creation of Selection Panel

In order to make the selection of the Commissioners the most democratic process and community-wide initiative possible, the Greensboro Truth and Community Reconciliation Project (GTCRP) invited the following community groups to each appoint one person to the Selection Panel. This panel was formed

[14] This summary is taken from the commission's archives available at greensborotrc.org.

three months after the public announcement of the Mandate for the Greensboro Truth and Reconciliation Commission. The Selection Panel was formed to consider nominations from the entire Greensboro community and to choose from those nominations the seven Commissioners.

The following groups were chosen because they reflect the broad range of interests in this community. It was hoped that all residents of Greensboro could feel represented by at least one of these groups.

- Chairs of the student bodies (Bennett College, Greensboro College, Greensboro Technical Community College, Guilford College, North Carolina Agricultural & Technical State University, and the University of North Carolina at Greensboro)
- Chamber of Commerce
- Chancellors and Presidents of the six major colleges and universities of Greensboro
- Council of Community Organizations
- Greensboro Police Officers Association
- Greensboro Truth and Community Reconciliation Project (GTCRP)
- Guilford County Democratic Party
- Guilford County Republican Party
- Mayor of Greensboro
- NAACP
- National Conference for Community and Justice (NCCJ)
- The Jewish community
- The Muslim community
- The Pulpit Forum / African American Churches
- The Sons of Confederate Veterans and the Daughters of the Confederacy
- Traditional Protestant, Catholic, and Independent churches
- Triad Central Labor Council

Of these groups, fourteen chose to appoint a member to the Selection Panel.

As requested in the "Selection Process for the Greensboro Truth and Reconciliation Commission," written and approved by the Greensboro Truth and Community Reconciliation Project Local Task Force and the National Advisory Committee, and published in the Greensboro News & Record on May 6, 2003, the Selection Panel appointed its own Chairperson, Judge Lawrence McSwain, and worked independently and free of any outside influence.

2. Nomination and Selection Process for Commissioners

Once the Mandate was released in May 2003, a call for commissioner nominations from all Greensboro residents was sent out. Any resident of Greensboro or the immediate area was free to nominate any person according to the criteria set out in the Mandate. Over the next three months, sixty-seven nominations were collected. Each nomination was accompanied by a brief statement articulating who the nominee was and why he or she was nominated. The Selection Panel asked each nominee to complete an application to inform the panel's deliberations.

Acting independently, the Selection Panel created guidelines for processing the nominations and worked within the parameters of the Mandate to appoint seven commissioners to best serve the Commission. Racial, socio-economic, religious, and sexual diversity were given strong consideration in the selection of the commissioners.

Decisions within the panel were attempted by consensus, and failing that, by vote. There was a required two thirds majority of the panel membership for the selection of the commissioners after the interviewing of a short list of potential commissioners. The panel's deliberations were closed to the public and media, but the panel members were encouraged to record some general lessons learned and procedures followed in the selection process.

The panel made its final selections in May 2004, and the Greensboro Truth and Reconciliation Commission was sworn in on June 12, 2004, with over 500 supporters in attendance. The Commissioners selected their own chairpersons.

Victoria, Australia

The Yoo-rrook Justice Commission (Yoo-rrook means 'truth' in the Wemba Wemba/Wamba Wamba language), called for an independent selection panel to select the five commissioners, through an independent process outlined in the chart below. The open and transparent process helped the commission start with a level of legitimacy and public trust. The panel short-listed 20 candidates and then posted their photos and brief expressions of interest on a website that was shared with the public. People were invited to submit comments in support of or against any of the candidates, on condition that they disclosed their name and connection to the candidate. Comments were then reviewed by the selection panel and presented to the candidate if further clarification was required.

One challenge that came up in the selection process was that several of the representatives selected to serve on the assessment panel were very close to the process and knew most of the applicants. It therefore raised a question of independence and how to assess when there was a conflict of interest. Another challenge was how to balance representation with legitimacy and required skills in the selection of commissioners. These are questions that warrant careful consideration in each context.

1. Assessment Panel
It is proposed that an independent Assessment Panel be established to recommend to the Premier the Mechanism members for legal appointment.
1.1 Composition of Assessment Panel The Assessment Panel will be composed of 4 members • 2 appointed by the First Peoples' Assembly of Victoria, • 1 appointed by the government • 1 appointed by the International Centre for Transitional Justice
1.2 Requirements for Assessment Panel members • Must have a good understanding of the process and impacts of colonisation and structural injustice in Victoria or comparable contexts. • At least 2 must be Victorian Traditional Owners. • Must make unbiased decisions against selection criteria without having to revert to their relevant appointor

- Must have experience in making unbiased decisions against set selection criteria.
- Must be able to work collaboratively as part of a team.

1.3 Functions of the Assessment Panel

- Select one among their member to serve as Chair
- Must conduct an open and transparent assessment process based on community consultation and according to the criteria and Mechanism composition requirements detailed below.
- Will review nominations for candidates, conduct interviews of shortlisted candidates and recommend to the Premier 5 people for appointment under the relevant legal mechanism.
- The shortlist identified through this process may be used by the Chair of the truth and justice mechanism to identify replacement Commissioner/s if a Commissioner is not able to fulfil their term.
- Will protect the legal rights of candidates and ensure procedural fairness standards are followed in the assessment process.
- Must make recommendations by consensus (acting reasonably).
- Formal legal appointment of the members will take place in accordance with the *Inquiries Act 2014* .

1.4 Support for the Assessment Panel

The Assessment Panel will be assisted by a secretariat. The secretariat will:

- Coordinate technical and corporate support for the Assessment Panel
- Receive and acknowledge nominations and establish and maintain effective record keeping processes
- Review nominations for completeness and eligibility
- Assist with completing nominations or following up for further information if required
- Assist with scheduling meetings between panel members
- Develop protocols for public participation in the assessment process (community feedback)
- Other administrative support as required.

2. Assessment Panel's Recommendation of truth and justice entity members

The panel will make recommendations about the composition in line with the following points.

2.1 Composition of Mechanism members

- There should be five Mechanism members.
- The majority of Mechanism members must be Aboriginal, at least two of which are to be Victorian Traditional Owners (one of whom must be an Elder).
- The recommended Chair of the Mechanism must be Aboriginal.
- The panel will recommend a Chair based on its assessment process.
- There should be a gender balance among Mechanism members.

2.2 Criteria for individual members

- **Impartial** – Mechanism members should be free from external influence that could undermine or perceive to undermine their ability to perform their duties in an impartial and objective manner.

- **High moral character /cultural integrity** – Mechanism members should be respected by members of Victoria's Aboriginal communities
- **Empathetic and Trauma informed** – Mechanism members should understand trauma associated with Australian colonisation and be able to behave and communicate in a way that is sensitive to this.

2.3 Criteria for members as a group

- The final Mechanism composition should include the following additional criteria across the total group (not required in each individual member):
- Knowledge and understanding of systemic disadvantage and its causes.
- Expertise in issues such as indigenous rights, decolonisation, transitional justice, government system reform, official inquiries, historical record keeping, community engagement.
- Aboriginal members must be from different Aboriginal or Torres Strait Islander communities and include at least two Victorian Traditional Owners, one of whom must Elder.
- At least one member should be legally qualified and trained, and have high level expertise in law, ideally as a judge, Commissioner or similar role.

2.4 Call for nominations

- An open public call for nominations of qualified individuals who meet the selection criteria
- The process for applying and assessing will be open, consistent and transparent.
- Individuals are nominated in their personal capacity, even if nominated by an organisation
- Nomination form should not be difficult, eg require a short statement of why the person is nominated, the nominee's gender, consent to be nominated and to have information such as their personal statement made public, and a declaration of any actual, potential or perceived conflict of interest
- Support should be made available to assist completion of the nomination process.

2.5 Community participation in the assessment process

- The names and public statements of all candidates will be published with consent.
- The Assessment Panel will select and publish a shortlist of a reasonable number of candidates to interview.
- Subject to requirements of procedural fairness, the public may submit confidential comments to the Assessment Panel, to be put to shortlisted candidates. Any comments which may be considered harmful or detrimental to a candidate's application will not be considered or form part of the recommendation of the Panel without first giving the candidate an opportunity to be heard on the comment.
- Subject to full, prior and informed consent, statements of shortlisted candidates will be made public.

SCHEDULE "N"

MANDATE FOR THE TRUTH AND RECONCILIATION COMMISSION

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.

Principles

Through the Agreement, the Parties have agreed that an historic Truth and Reconciliation Commission will be established to contribute to truth, healing and reconciliation.

The Truth and Reconciliation Commission will build upon the "Statement of Reconciliation" dated January 7, 1998 and the principles developed by the Working Group on Truth and Reconciliation and of the Exploratory Dialogues (1998-1999). These principles are as follows: accessible; victim-centered; confidentiality (if required by the former student); do no harm; health and safety of participants; representative; public/transparent; accountable; open and honourable process; comprehensive; inclusive, educational, holistic, just and fair; respectful; voluntary; flexible; and forward looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians.

Reconciliation is an ongoing individual and collective process, and will require commitment from all those affected including First Nations, Inuit and Métis former Indian Residential School (IRS) students, their families, communities, religious entities, former school employees, government and the people of Canada. Reconciliation may occur between any of the above groups.

Terms of Reference

1. **Goals**

The goals of the Commission shall be to:

(a) Acknowledge Residential School experiences, impacts and consequences;

(b) Provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission;

(c) Witness,[1] support, promote and facilitate truth and reconciliation events at both the national and community levels;

(d) Promote awareness and public education of Canadians about the IRS system and its impacts;

(e) Identify sources and create as complete an historical record as possible of the IRS system and legacy. The record shall be preserved and made accessible to the public for future study and use;

(f) Produce and submit to the Parties of the Agreement[2] a report including recommendations[3] to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systemic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools;

(g) Support commemoration of former Indian Residential School students and their families in accordance with the Commemoration Policy Directive (Schedule "X" of the Agreement).

2. Establishment, Powers, Duties and Procedures of the Commission

The Truth and Reconciliation Commission shall be established by the appointment of "the Commissioners" by the Federal Government through an Order in Council, pursuant to special appointment regulations.

Pursuant to the Court-approved final settlement agreement and the class action judgments, the Commissioners:

(a) in fulfilling their Truth and Reconciliation Mandate, are authorized to receive statements and documents from former students, their families, community and all other interested participants, and, subject to (f), (g) and (h) below, make use of all documents and materials produced by the parties. Further, the Commissioners are authorized and required in the public interest to archive all such documents, materials, and transcripts or recordings of statements received, in a manner that will ensure their preservation and accessibility to the public and in accordance with access and privacy legislation, and any other applicable legislation;

---

[1] This refers to the Aboriginal principle of "witnessing".

[2] The Government of Canada undertakes to provide for wider dissemination of the report pursuant to the recommendations of the Commissioners

[3] The Commission may make recommendations for such further measures as it considers necessary for the fulfillment of the Truth and Reconciliation Mandate and goals.

(b) shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process;

(c) shall not possess subpoena powers, and do not have powers to compel attendance or participation in any of its activities or events. Participation in all Commission events and activities is entirely voluntary;

(d) may adopt any informal procedures or methods they may consider expedient for the proper conduct of the Commission events and activities, so long as they remain consistent with the goals and provisions set out in the Commission's mandate statement;

(e) may, at its discretion, hold sessions in camera, or require that sessions be held in camera;

(f) shall perform their duties in holding events, in activities, in public meetings, in consultations, in making public statements, and in making their report and recommendations without making any findings or expressing any conclusion or recommendation, regarding the misconduct of any person, unless such findings or information has already been established through legal proceedings, by admission, or by public disclosure by the individual. Further, the Commission shall not make any reference in any of its activities or in its report or recommendations to the possible civil or criminal liability of any person or organization, unless such findings or information about the individual or institution has already been established through legal proceedings;

(g) shall not, except as required by law, use or permit access to statements made by individuals during any of the Commissions events, activities or processes, except with the express consent of the individual and only for the sole purpose and extent for which the consent is granted;

(h) shall not name names in their events, activities, public statements, report or recommendations, or make use of personal information or of statements made which identify a person, without the express consent of that individual, unless that information and/or the identity of the person so identified has already been established through legal proceedings, by admission, or by public disclosure by that individual. Other information that could be used to identify individuals shall be anonymized to the extent possible;

(i) notwithstanding (e), shall require in camera proceedings for the taking of any statement that contains names or other identifying information of persons alleged by the person making the statement of some wrong doing, unless the person named or identified has been convicted for the alleged wrong doing. The Commissioners shall not record the names of persons so identified, unless the person named or identified has been

convicted for the alleged wrong doing. Other information that could be used to identify said individuals shall be anonymized to the extent possible;

(j) shall not, except as required by law, provide to any other proceeding, or for any other use, any personal information, statement made by the individual or any information identifying any person, without that individual's express consent;

(k) shall ensure that the conduct of the Commission and its activities do not jeopardize any legal proceeding;

(l) may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.

3. **Responsibilities**

In keeping with the powers and duties of the Commission, as enumerated in section 2 above, the Commission shall have the following responsibilities:

(a) to employ interdisciplinary, social sciences, historical, oral traditional and archival methodologies for statement-taking, historical fact-finding and analysis, report-writing, knowledge management and archiving;

(b) to adopt methods and procedures which it deems necessary to achieve its goals;

(c) to engage the services of such persons including experts, which it deems necessary to achieve its goals;

(d) to establish a research centre and ensure the preservation of its archives;

(e) to have available the use of such facilities and equipment as is required, within the limits of appropriate guidelines and rules;

(f) to hold such events and give such notices as appropriate. This shall include such significant ceremonies as the Commission sees fit during and at the conclusion of the 5 year process;

(g) to prepare a report;

(h) to have the report translated in the two official languages of Canada and all or parts of the report in such Aboriginal languages as determined by the Commissioners;

(i) to evaluate commemoration proposals in line with the Commemoration Policy Directive (Schedule "X" of the Agreement).

4. Exercise of Duties

As the Commission is not to act as a public inquiry or to conduct a formal legal process, it will, therefore, not duplicate in whole or in part the function of criminal investigations, the Independent Assessment Process, court actions, or make recommendations on matters already covered in the Agreement. In the exercise of its powers the Commission shall recognize:

(a) the unique experiences of First Nations, Inuit and Métis former IRS students, and will conduct its activities, hold its events, and prepare its Report and Recommendations in a manner that reflects and recognizes the unique experiences of all former IRS students;

(b) that the truth and reconciliation process is committed to the principle of voluntariness with respect to individuals' participation;

(c) that it will build upon the work of past and existing processes, archival records, resources and documentation, including the work and records of the *Royal Commission on Aboriginal Peoples* of 1996;

(d) the significance of Aboriginal oral and legal traditions in its activities;

(e) that as part of the overall holistic approach to reconciliation and healing, the Commission should reasonably coordinate with other initiatives under the Agreement and shall acknowledge links to other aspects of the Agreement such that the overall goals of reconciliation will be promoted;

(f) that all individual statements are of equal importance, even if these statements are delivered after the completion of the report;

(g) that there shall be an emphasis on both information collection/storage and information analysis.

5. Membership

The Commission shall consist of an appointed Chairperson and two Commissioners, who shall be persons of recognized integrity, stature and respect.

(a) Consideration should be given to at least one of the three members being an Aboriginal person;

(b) Appointments shall be made out of a pool of candidates nominated by former students, Aboriginal organizations, churches and government;

(c) The Assembly of First Nations (AFN) shall be consulted in making the final decision as to the appointment of the Commissioners.

6. **Secretariat**

The Commission shall operate through a central Secretariat.

(a) There shall be an Executive Director in charge of the operation of the Commission who shall select and engage staff and regional liaisons;

(b) The Executive Director and the Secretariat shall be subject to the direction and control of the Commissioners;

(c) The Secretariat shall be responsible for the activities of the Commission such as:

(i) research;

(ii) event organization;

(iii) statement taking/truth-sharing;

(iv) obtaining documents;

(v) information management of the Commission's documents;

(vi) production of the report;

(vii) ensuring the preservation of its records;

(viii) evaluation of the Commemoration Policy Directive proposals.

(d) The Executive Director and Commissioners shall consult with the Indian Residential School Survivor Committee on the appointment of the Regional Liaisons.

(e) Regional liaisons shall:

(i) act as knowledge conduits and promote sharing of knowledge among communities, individuals and the Commission;

(ii) provide a link between the national body and communities for the purpose of coordinating national and community events;

(iii) provide information to and assist communities as they plan truth and reconciliation events, coordinate statement-taking/truth-sharing and event-recording, and facilitate information flow from the communities to the Commission.

7. Indian Residential School Survivor Committee (IRSSC)

The Commission shall be assisted by an Indian Residential School Survivor Committee (IRSSC).

(a) The Committee shall be composed of 10 representatives drawn from various Aboriginal organizations and survivor groups. Representation shall be regional, reflecting the population distribution of Indian Residential Schools (as defined in the Agreement). The majority of the representatives shall be former residential school students;

(b) Members of the Committee shall be selected by the Federal Government, in consultation with the AFN, from a pool of eligible candidates developed by the stakeholders;

(c) Committee members are responsible for providing advice to the Commissioners on:

(i) the characteristics of a "community" for the purposes of participation in the Commission processes;

(ii) the criteria for the community and national processes;

(iii) the evaluation of Commemoration Policy Directive proposals;

(iv) such other issues as are required by the Commissioners.

8. Timeframe

The Commission shall complete its work within five years. Within that five year span, there are two timelines:

Two Year Timeline

(a) Preparation of a budget within three months from being launched, under the budgetary cap provision in the Agreement;

(b) Completion of all national events, and research and production of the report on historic findings and recommendations, within two years of the launch of the Commission, with the possibility of a 6 month extension, which shall be at the discretion of the Commissioners.

Five Year Timeline

(a) Completion of the community truth and reconciliation events, statement taking/truth sharing, reporting to the Commission from communities, and closing ceremonies;

(b) Establishment of a research centre.

9. Research

The Commission shall conduct such research, receive and take such statements and consider such documents as it deems necessary for the purpose of achieving its goals.

10. Events

There are three essential event components to the Truth and Reconciliation Commission: National Events, Community Events and Individual Statement-Taking/Truth Sharing. The Truth and Reconciliation process will be concluded with a final Closing Ceremony.

(A) National Events

The national events are a mechanism through which the truth and reconciliation process will engage the Canadian public and provide education about the IRS system, the experience of former students and their families, and the ongoing legacies of the institutions.

The Commission shall fund and host seven national events in different regions across the country for the purpose of:

(a) sharing information with/from the communities;

(b) supporting and facilitating the self empowerment of former IRS students and those affected by the IRS legacy;

(c) providing a context and meaning for the Common Experience Payment;

(d) engaging and educating the public through mass communications;

(e) otherwise achieving its goals.

The Commission shall, in designing the events, include in its consideration the history and demographics of the IRS system.

National events should include the following common components:

(f) an opportunity for a sample number of former students and families to share their experiences;

(g) an opportunity for some communities in the regions to share their experiences as they relate to the impacts on communities and to share insights from their community reconciliation processes;

(h) an opportunity for participation and sharing of information and knowledge among former students, their families, communities, experts, church and government officials, institutions and the Canadian public;

(i) ceremonial transfer of knowledge through the passing of individual-statement transcripts or community reports/statements. The Commission shall recognize that ownership over IRS experiences rests with those affected by the Indian Residential School legacy;

(j) analysis of the short and long term legacy of the IRS system on individuals, communities, groups, institutions and Canadian society including the intergenerational impacts of the IRS system;

(k) participation of high level government and church officials;

(l) health supports and trauma experts during and after the ceremony for all participants.

(B) **Community Events**

It is intended that the community events will be designed by communities and respond to the needs of the former students, their families and those affected by the IRS legacy including the special needs of those communities where Indian Residential Schools were located.

The community events are for the purpose of:

(a) acknowledging the capacity of communities to develop reconciliation practices;

(b) developing collective community narratives about the impact of the IRS system on former students, families and communities;

(c) involving church, former school employees and government officials in the reconciliation process, if requested by communities;

(d) creating a record or statement of community narratives - including truths, insights and recommendations - for use in the historical research and report, national events, and for inclusion in the research centre;

(e) educating the public and fostering better relationships with local communities;

(f) allowing for the participation from high level government and church officials, if requested by communities;

(g) respecting the goal of witnessing in accordance with Aboriginal principles.

The Commission, during the first stages of the process in consultation with the IRSSC, shall develop the core criteria and values consistent with the Commission's mandate that will guide the community processes.

Within these parameters communities may submit plans for reconciliation processes to the Commission and receive funding for the processes within the limits of the Commission's budgetary capacity.

(C) Individual Statement-Taking/Truth Sharing

The Commission shall coordinate the collection of individual statements by written, electronic or other appropriate means. Notwithstanding the five year mandate, anyone affected by the IRS legacy will be permitted to file a personal statement in the research centre with no time limitation.

The Commission shall provide a safe, supportive and sensitive environment for individual statement-taking/truth sharing.

The Commission shall not use or permit access to an individual's statement made in any Commission processes, except with the express consent of the individual.

(D) Closing Ceremony

The Commission shall hold a closing ceremony at the end of its mandate to recognize the significance of all events over the life of the Commission. The closing ceremony shall have the participation of high level church and government officials.

11. Access to Relevant Information

In order to ensure the efficacy of the truth and reconciliation process, Canada and the churches will provide all relevant documents in their possession or control to and for the use of the Truth and Reconciliation Commission, subject to the privacy interests of an individual as provided by applicable privacy legislation, and subject to and in compliance with applicable privacy and access to information legislation, and except for those documents for which solicitor-client privilege applies and is asserted.

In cases where privacy interests of an individual exist, and subject to and in compliance with applicable privacy legislation and access to information legislation, researchers for the Commission shall have access to the documents, provided privacy is protected. In cases where solicitor-client privilege is asserted, the asserting party will provide a list of all documents for which the privilege is claimed.

Canada and the churches are not required to give up possession of their original documents to the Commission. They are required to compile all relevant documents in an organized manner for review by the Commission and to provide access to their archives for the Commission to carry out its mandate. Provision of documents does not require provision of original documents. Originals or true copies may be provided or originals

may be provided temporarily for copying purposes if the original documents are not to be housed with the Commission.

Insofar as agreed to by the individuals affected and as permitted by process requirements, information from the Independent Assessment Process (IAP), existing litigation and Dispute Resolution processes may be transferred to the Commission for research and archiving purposes.

12. **National Research Centre**

A research centre shall be established, in a manner and to the extent that the Commission's budget makes possible. It shall be accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula.

For the duration of the term of its mandate, the Commission shall ensure that all materials created or received pursuant to this mandate shall be preserved and archived with a purpose and tradition in keeping with the objectives and spirit of the Commission's work.

The Commission shall use such methods and engage in such partnerships with experts, such as Library and Archives Canada, as are necessary to preserve and maintain the materials and documents. To the extent feasible and taking into account the relevant law and any recommendations by the Commission concerning the continued confidentiality of records, all materials collected through this process should be accessible to the public.

13. **Privacy**

The Commission shall respect privacy laws, and the confidentiality concerns of participants. For greater certainty:

(a) any involvement in public events shall be voluntary;

(b) notwithstanding 2(i), the national events shall be public or in special circumstances, at the discretion of the Commissioners, information may be taken in camera;

(c) the community events shall be private or public, depending upon the design provided by the community;

(d) if an individual requests that a statement be taken privately, the Commission shall accommodate;

(e) documents shall be archived in accordance with legislation.

14. Budget and Resources

The Commission shall prepare a budget within the first three months of its mandate and submit it to the Minister of Indian Residential Schools Resolution Canada for approval. Upon approval of its budget, it will have full authority to make decisions on spending, within the limits of, and in accordance with, its Mandate, its establishing Order in Council, Treasury Board policies, available funds, and its budgetary capacity.

The Commission shall ensure that there are sufficient resources allocated to the community events over the five year period. The Commission shall also ensure that a portion of the budget is set aside for individual statement-taking/truth sharing and to archive the Commission's records and information.

Institutional parties shall bear the cost of participation and attendance in Commission events and community events, as well as provision of documents. If requested by the party providing the documents, the costs of copying, scanning, digitalizing, or otherwise reproducing the documents will be borne by the Commission.

ELIZABETH THE SECOND, BY THE GRACE OF GOD

QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,

HEAD OF THE COMMONWEALTH:

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Premier, under section 5 of the *Inquiries Act 2014* and all other enabling powers, appoint you

Professor Eleanor Bourke, as Commissioner and Chairperson, and Dr Wayne Atkinson, Professor the Honourable Kevin Bell AM QC, Sue-Anne Hunter and Distinguished Professor Maggie Walter as Commissioners

to constitute a Royal Commission to be known as the Yoo-rrook Justice Commission to inquire into and report on the matters specified in the Terms of Reference.

1. BACKGROUND

- The First Peoples include the traditional owners of the lands currently known as the State of Victoria, over which they maintain that their sovereignty was never ceded.
- First Peoples' experiences of Colonisation have included grave historic wrongs and past and ongoing injustices and intergenerational trauma.
- The State of Victoria acknowledges both the continuing impacts arising from historical injustices and the ongoing strength and resilience of First Peoples and survival of their living cultures, knowledge and traditions.
- The State of Victoria also acknowledges its responsibility to advance and uphold the human rights of Victorian citizens, including First Peoples, under the *Charter of Human Rights and Responsibilities Act 2006*, the *Advancing the Treaty Process with Aboriginal Victorians Act 2018,* the *Traditional Owner Settlement Act 2010*, native title rights and other rights protected by law.
- The State of Victoria acknowledges the importance of non-discrimination, uncovering truth, providing justice and reparation, supporting wellbeing and preventing further harm to First Peoples.
- Relevant human rights are also recognised in international human rights instruments, including the:
    - *United Nations Declaration on the Rights of Indigenous Peoples*;
    - *International Convention on the Elimination of All Forms of Racial Discrimination*;
    - *International Covenant on Civil and Political Rights;*
    - *International Covenant on Economic, Social and Cultural Rights*;
    - *Convention on the Prevention and Punishment of the Crime of Genocide*;
    - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
    - *Convention on the Rights of the Child*;
    - *Convention on the Elimination of All Forms of Discrimination against Women*;
    - *Basic Principles and Guidelines on the Right to a Remedy and*

Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and

- *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*.

- Hearing First Peoples' stories and acknowledging the truth about their experiences is essential for healing and justice for First Peoples. It will also contribute significantly to a public dialogue, providing a foundation for new and positive relationships between First Peoples, non-Aboriginal Victorians and the State of Victoria.
- The First Peoples' Assembly of Victoria and the State of Victoria have resolved to establish an independent Truth and Justice Commission to examine the extent and impact of Systemic Injustice against First Peoples in Victoria, and to recommend appropriate forms of redress and other steps to address Systemic Injustice.
- The Royal Commission will promote the advancement of treaty or treaties between the State of Victoria and First Peoples by providing a shared narrative of the impact of Colonisation, founded on First Peoples' voices. Its recommendations for how the State can build new and stronger relations with First Peoples will inform the treaty-making process and enrich the heritage of all Victorians.

2. OBJECTIVES

The objectives of this Royal Commission are to:

a) establish an official public record based on First Peoples' experiences of Systemic Injustice since the start of Colonisation;
b) develop a shared understanding among all Victorians of the individual and collective impact of Systemic Injustice and the intergenerational trauma that has flowed from them since the start of Colonisation;
c) determine the causes and consequences of Systemic Injustice including the role of State policies and laws and which State Entities or Non-State Entities bear responsibility for the harm suffered by First Peoples since the start of Colonisation;
d) develop a shared understanding among all Victorians of the diversity, strength and resilience of First Peoples' cultures, knowledge, and traditional practices;
e) help build the foundations for a new relationship between First Peoples and the State of Victoria and all Victorians, based on truth and justice to prevent the recurrence of injustice;
f) support the treaty-making process between the State of Victoria and First Peoples, including through the identification of subject matters for potential inclusion in a treaty or treaties; and
g) identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice.

3. TERMS OF REFERENCE

Having regard to the objectives set out above, and subject to the *Inquiries Act 2014*, you are appointed to inquire into and report on:

a) Historical Systemic Injustice perpetrated by State and Non-State Entities against First Peoples since the start of Colonisation, including but not limited to:
   i. cultural violations such as breach and denial of First Peoples' law and lore;
   ii. theft, misappropriation and destruction of cultural knowledge and property;
   iii. eviction, displacement and dispossession;
   iv. massacres, wars, killing and genocide or other acts of a similar gravity;
   v. protectionist and assimilationist policies, including forced removal of children and attempts to eradicate language, culture or identity;
   vi. unfair labour practices, including treatment of returned soldiers;
   vii. unfair policies and practices relating to policing, youth and criminal justice, incarceration, detention, and the broader legal system;
   viii. unfair policies and practices relating to child protection, family or welfare matters;
   ix. unfair policies and practices relating to health and healthcare;
   x. invasion of privacy and the collection, possession and use of information and data about First Peoples; and
   xi. practices of structural and systemic exclusion of First Peoples from Victorian economic, social and political life;

b) Ongoing Systemic Injustice perpetrated by State Entities and Non-State Entities against First Peoples, including but not limited to the areas of:
   i. policing, youth and criminal justice, incarceration, detention, and the broader legal system;
   ii. child protection, family or welfare matters;
   iii. health and healthcare;
   iv. invasion of privacy and the collection, possession and use of information and data about First Peoples;
   v. economic, social and political life; and
   vi. any other ongoing Systemic Injustice considered appropriate by the Royal Commission;

c) The causes and consequences of Systemic Injustice, including a historical analysis of the impact of Colonisation and an evaluation of the contemporary relationship between First Peoples and the State of Victoria and the impact of contemporary policies, practices, conduct and /or laws on First Peoples;

d) How historical Systemic Injustice can be effectively and fairly acknowledged and redressed in a culturally appropriate way;

e) How ongoing Systemic Injustice can be addressed, and/or redressed including recommended reform to existing institutions, law, policy and practice and considering how the State of Victoria can be held accountable for addressing these injustices and preventing future injustice;

f) How best to raise awareness and increase public understanding of the history and experiences of First Peoples before and since the start of Colonisation; and

g) Any other matters related to these Terms of Reference necessary to satisfactorily inquire into or address the Terms of Reference.

4. CONDUCT OF THE INQUIRY

Without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, you are directed in the conduct of your inquiry to:

a) Direct your attention to both historical Systemic Injustice and ongoing Systemic Injustice, applying appropriate methodologies and processes, noting this may require different approaches for the historical and contemporary purposes;

b) Engage widely with First Peoples, including to determine priority areas of focus for the Royal Commission and by conducting your inquiries in rural and regional communities and carrying out events, media engagements, or public education activities, including at the request of affected communities;

c) Have due regard to the views and insights provided by the First Peoples' Assembly of Victoria, in a report or reports from community consultation undertaken by it, to be provided to you by 30 June 2021;

d) Regularly communicate with the Victorian community about your objectives and progress and encourage broad and inclusive participation in your work;

e) Establish an Expert Advisory Committee within three months of the gazettal of the letters patent, to act as consultants to the Royal Commission that includes:
   i. persons with expertise in First Peoples' history, cultural knowledge, information and data sovereignty and trauma, redress and healing;
   ii. at least one person who is an impartial expert with at least 10 years' experience in a jurisdiction outside of Victoria in driving practical reform or transformation of entrenched norms, practices, legislation, and/or policy in large institutions, particularly experience in providing independent oversight of such institutions to drive government system reform through assessment of strategy, governance, accountability and outcomes of large organisations or institutions; and
   iii. other experts, such as experts in comparative international processes and transitional justice and experts with any other particular expertise that you consider could assist you in achieving the objectives;

f) Provide a safe, supportive and culturally appropriate forum for First Peoples to exercise their rights to truth and justice with dignity and demonstrate their cultural resilience and survival, including by:
   i. receiving testimony from First Peoples who are victims, witnesses or survivors on their experiences and/or personal stories of historic injustice;
   ii. recognising First Peoples' cultural and legal practices of story-telling and witnessing as legitimate and valid sources of evidence;
   iii. accommodating to the extent possible First Peoples' choices in how they wish to participate, including their rights to free, prior and informed consent at all stages of participation;

iv. upholding the sovereignty of First Peoples over their knowledge and stories by consulting with them on how the information they provide should be treated and ensuring adequate information and data protection;
v. acknowledging and respecting differences between First Peoples, for example, through respecting different languages and practices;
vi. being responsive to the needs of participants in consultations, interviews and other activities; and
vii. providing culturally appropriate support to participants and affected communities as required;

g) Adopt practices and approaches to minimise harm and re-traumatisation for First Peoples;
h) Have due regard to, and coordinate as appropriate with, current and previous research, inquiries and processes in Australia and elsewhere, relevant to the subject matters and issues raised in this Royal Commission;
i) Hold healing or commemorative ceremonies as considered appropriate having regard to the views of affected communities;
j) Prioritise the employment of First Peoples by the Royal Commission;
k) Provide, through the Royal Commission, culturally appropriate community outreach, mental health and counselling, research, administrative and operations staff;
l) While noting that you are not asked to inquire specifically into, or report on, the actions of governments other than the State of Victoria, you should establish appropriate arrangements to assist the voluntary participation with the inquiry by persons or institutions (including the governments of the Commonwealth, the States and the Territories) located outside Victoria, which hold, or may hold, information relevant to the Terms of Reference;
m) Not inquire into, or report on, any executive decisions or specific outcomes made in legal proceedings which have been settled or determined in relation to the recognition of Traditional Owners, including but not limited to those under the *Native Title Act 1993* (Cth), the *Traditional Owner Settlement Act 2010*, or the *Aboriginal Heritage Act 2006*; and
n) Only inquire into, or report on, the specific outcomes of any other individual legal proceedings to the extent relevant to a pattern indicating Systemic Injustice.

5. RECOMMENDATIONS

You may make such recommendations arising out of your inquiry that you consider appropriate to achieve its objectives. This may include recommendations about practical actions and reforms needed in Victoria to provide effective redress for Systemic Injustice, address Systemic Injustice, and promote healing for First Peoples and the broader community, including but not limited to:

a) appropriate forms of cultural restoration and healing for affected communities and individuals, including further truth-telling, memorialisation, commemorations or other activities;
b) appropriate forms of public awareness and education strategies, including whether and if so, how, truth-telling and the outcomes of your inquiry can be embedded in the Victorian school curriculum;

c) appropriate redress for Systemic Injustice that should be specifically designed and effectively implemented through the treaty process, particularly where such redress is not already available to First Peoples;
d) policy, legislative, administrative or institutional reforms to address inequalities, remove systemic and structural injustices and prevent further harm;
e) particular subject matters that should be included in a treaty or treaties with the State; and
f) ongoing access and use of submissions, materials and records received and obtained in the course of the Royal Commission.

In formulating your recommendations, you may have regard to any matters you consider relevant including:

g) the evidence of First Peoples, including information from community consultation provided by the First Peoples' Assembly of Victoria in accordance with paragraph 4(c);
h) the advice of experts, including the Expert Advisory Committee;
i) evidence from relevant organisations or workforces, including Aboriginal Community Controlled Organisations and the justice, health and social services sectors who work with First Peoples;
j) international best practice in transitional justice and the rights of First Peoples; and
k) the need to recognise and respect the needs and diversity of different First Peoples groups and communities.

Your recommendations should focus on actions that may be taken by the State of Victoria, State Entities, Non-State Entities and First Peoples, recognising the actions of other governments may be outside your jurisdiction.

6. DEFINITIONS

In these Letters Patent:

Colonisation means colonisation of the lands which are currently known as the State of Victoria since 1788.

First Peoples includes:

a) all traditional owners of a place in the State of Victoria (including family and clan groups) and their ancestors; and
b) Aboriginal and/or Torres Strait Islander persons who are living, or who in the time before or since the start of Colonisation lived, in Victoria.

Non-State Entity means any body, association, club, institution, organisation or group of persons or bodies of any kind (whether incorporated or unincorporated), and however described, including those that no longer exist, but does not include individual natural persons or a State Entity.

State Entity includes:

a) any government, or entity exercising governmental power, over the lands currently known as the State of Victoria;
b) any government, or entity exercising governmental power, over the lands previously known as the Colony of Victoria;
c) any government, or entity exercising governmental power, over the lands currently known as the State of Victoria, including prior to the formal establishment of Victoria as a Colony or State; and
d) public authorities (including a local council) of these governments (whether or not they still exist).

Systemic Injustice means harm and/or impacts on human dignity (including, but not limited to, those as understood by reference to the application of current human rights instruments, including to events prior to the making of such instruments) experienced by First Peoples, that are part of a systemic or structural pattern, and which involve any policies, practices, conduct or laws which existed since the start of Colonisation. Unless otherwise stated, Systemic Injustice includes both ongoing and historical systemic injustices. This definition is not intended to limit the Royal Commission's ability to inquire into and report on individual experiences.

7. REPORT

You are required to report your findings and recommendations to the Governor and to the First Peoples' Assembly of Victoria as soon as possible, and in any event no later than:

a) an interim report by 30 June 2022, detailing progress to date, emerging themes and issues, and, if available, any initial findings or thematic areas that should be considered as immediate priorities through the Treaty making process; and
b) a final report by 30 June 2024, including methodology, key findings and recommendations, as well as the publication of First Peoples' testimonies in accordance with information and data sovereignty protocols, to be established.

8. EXERCISE OF POWERS

You may exercise the powers of a Royal Commission in accordance with the *Inquiries Act 2014*. These powers may be exercised, at the discretion of the Chairperson, from time to time and by one or more Commissioners.

9. EXPENSES AND FINANCIAL OBLIGATIONS

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to $44.445 million in conducting this inquiry.

These letters patent are issued under the Public Seal of the State.

WITNESS

Her Excellency the Honourable Linda Dessau, Companion of the Order of Australia, Governor of the State of Victoria in the Commonwealth of Australia at Melbourne this 12th day of May 2021.

By Her Excellency's Command

The Honourable James Merlino MP

Acting Premier of Victoria

Entered on the record by me in the Register of Patents Book No 47 Page No 173 on the 12th day of MAY 2021.

Secretary, Department of Premier and Cabinet

General Assembly

Distr.: General
21 March 2006

Sixtieth session
Agenda item 71 (*a*)

Resolution adopted by the General Assembly on 16 December 2005

[*on the report of the Third Committee (A/60/509/Add.1)*]

60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights,[1] the International Covenants on Human Rights,[2] other relevant human rights instruments and the Vienna Declaration and Programme of Action,[3]

Affirming the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

Recalling the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005[4] and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;

---

[1] Resolution 217 A (III).

[2] Resolution 2200 A (XXI), annex.

[3] A/CONF.157/24 (Part I), chap. III.

[4] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigendum (E/2005/23 and Corr.1), chap. II, sect. A.

2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

64th plenary meeting
16 December 2005

Annex

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Preamble

The General Assembly,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights,[1] article 2 of the International Covenant on Civil and Political Rights,[2] article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination,[5] article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[6] and article 39 of the Convention on the Rights of the Child,[7] and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV),[8] article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,[9] and articles 68 and 75 of the Rome Statute of the International Criminal Court,[10]

---

[5] Resolution 2106 A (XX), annex.

[6] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[7] Ibid., vol. 1577, No. 27531.

[8] See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

[9] United Nations, *Treaty Series*, vol. 1125, No. 17512.

[10] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights,[11] article 25 of the American Convention on Human Rights,[12] and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,[13]

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Noting that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

Affirming that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

Recalling that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

---

[11] United Nations, *Treaty Series*, vol. 1520, No. 26363.

[12] Ibid., vol. 1144, No. 17955.

[13] Ibid., vol. 213, No. 2889.

Noting that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

Adopts the following Basic Principles and Guidelines:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

(*a*) Treaties to which a State is a party;

(*b*) Customary international law;

(*c*) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

(*a*) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

(*b*) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(*c*) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;

(*d*) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(*a*) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(*b*) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(*c*) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(*d*) Provide effective remedies to victims, including reparation, as described below.

III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

IV. Statutes of limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

V. Victims of gross violations of international human rights law and serious violations of international humanitarian law

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. Victims' right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

(*a*) Equal and effective access to justice;

(*b*) Adequate, effective and prompt reparation for harm suffered;

(*c*) Access to relevant information concerning violations and reparation mechanisms.

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(*a*) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(*b*) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(*c*) Provide proper assistance to victims seeking access to justice;

(*d*) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(*a*) Physical or mental harm;

(*b*) Lost opportunities, including employment, education and social benefits;

(*c*) Material damages and loss of earnings, including loss of earning potential;

(*d*) Moral damage;

(*e*) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(*a*) Effective measures aimed at the cessation of continuing violations;

(*b*) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(*c*) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(*d*) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(*e*) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(*f*) Judicial and administrative sanctions against persons liable for the violations;

(*g*) Commemorations and tributes to the victims;

(*h*) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(*a*) Ensuring effective civilian control of military and security forces;

(*b*) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(*c*) Strengthening the independence of the judiciary;

(*d*) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(*e*) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(*f*) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(*g*) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(*h*) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

X. Access to relevant information concerning violations and reparation mechanisms

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

XI. Non-discrimination

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

XII. Non-derogation

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

ictj briefing

Cristián Correa and
Didier Gbery
August 2016

Recommendations for Victim Reparations in Côte d'Ivoire

Responding to the Rights and Needs of Victims of the Most Serious Violations

Introduction

Côte d'Ivoire is obligated to provide reparations to victims of both the political violence that shook the country following the 2010 presidential elections and the different episodes of political violence and armed conflict since 1990. Fulfilling this obligation will show that the state is willing to embark on a new democratic era in which the rights of all Ivorian citizens are respected and guaranteed.

After a consultation process that involved the active participation of victims, the National Commission for Reconciliation and Compensation for Victims (La Commission Nationale pour la Réconciliation et l'Indemnisation des Victimes des crises survenues en Côte d'Ivoire, CONARIV) made a series of recommendations on reparations and provided an initial list of victims to the government. Now the government must define a policy that is transparent and fair, based on those recommendations and victims' input.

The International Center for Transitional Justice (ICTJ) has been working with CONARIV, victims' groups, and other government entities on reparations since 2012, providing technical assistance, encouraging a process of consultation and dialogue, and learning from victims about their needs and demands. This has included consultations with youth and victims from some of the most affected areas of the country.

To help advance the process of defining a credible reparations policy for Côte d'Ivoire, this paper presents a series of proposals for the government and the general public. The aim is to advance discussions on the best strategy to address the rights of victims of serious human rights and international humanitarian law violations committed by the warring parties.

The proposals are based on four fundamental pillars for defining reparations in Côte d'Ivoire that could improve the effectiveness of a future reparations policy in responding to the most serious violations suffered by victims: a) the need to prioritize the victims of the most serious violations; b) the need to focus on natural persons as victims; c) the need to implement a comprehensive policy that responds to the different consequences caused by those violations; and d) the need for a clear implementation strategy that could provide certainty to victims. These principles have been included in several policy proposals made by different actors in Côte d'Ivoire, but still it is important to reemphasize them in relation to these proposals.

TABLE OF CONTENTS

ictj briefing

Recommendations for Victim Reparations in Côte d'Ivoire: Responding to the Rights and Needs of Victims of the Most Serious Violations

About the Authors

Cristián Correa is the Senior Associate in ICTJ's Reparative Justice Program and an expert in the definition and implementation of reparations programs for mass human rights violations. Previously, he was a legal advisor for a commission of the Presidency of Chile responsible for defining a human rights policy and the legal secretary of the Commission of Political Imprisonment and Torture of Chile.

Didier Gbery is the National Program Officer in Côte d'Ivoire for ICTJ.

This paper makes concrete proposals that could help to organize Côte d'Ivoire's reparations policy and respond to those principles. This includes some concrete definitions for forms of compensation, rehabilitation, and satisfaction of individual victims. It also includes proposals for community reparations, the search of the forcibly disappeared, access to documentation for those what have either lost them or have never been properly documented, a reconstruction policy specially focused on the areas most affected by the conflict, and symbolic reparations based on community participation. It also highlights the need to undergo a budgetary exercise, based on the profile and numbers of victims registered, that could help to define how to respond to the priorities outlined.

Through these recommendations, ICTJ seeks to present the knowledge and experience it has gained over several years working in Côte d'Ivoire with government entities, civil society organizations, and victims' groups that shared valuable insights on understanding the needs, priorities, and possible avenues for providing reparations. It is hoped that these proposals will help to define a reparations policy for Côte d'Ivoire that effectively addresses the consequences of violence that continue to impede the lives of victims.

Four Fundamental Principles for Defining Reparations

Four important issues should define a reparations policy that aims to address the consequences of the most serious crimes on victims' lives, the need to: 1) prioritize violations of the severest nature, 2) prioritize natural persons as victims, 3) implement forms of reparations that respond to the consequences of violations and go beyond mere compensation, and 4) develop a clear plan that allows for definitions of the priorities, budget, and implementation timeline of such a policy.

There is a general consensus on these issues, as the majority of victims and state entities support this approach. However, more clarification is needed.

1. Prioritizing Violations of the Severest Nature

It is understandable that some may think that, ideally, all harms caused by violations of human rights and humanitiarian law should be treated equally and that all victims should be entitled to reparations. However, a reparations policy that responds to massive harms, including gross violations of human rights, needs to have a sense of priority. To do so, the policy must define which violations are the most important to address. The reparations proposals designed by both CONARIV and the Programme National de Cohésion Sociale (PNCS) include a sense of prioritization, which is a very welcome development.

Most often, reparations programs prioritize victims who continue to be vulnerable and suffer serious consequences well after the crisis has subsided. During armed conflict, most of a society suffers, and many people lose goods and opportunities. Some suffer the destruction of property; others have to leave their homes due to either displacement or exile. These consequences are serious and have a severe impact on victims; as such, they need to be acknowledged as unjust. However, although suffering is severe and may have long-lasting impacts, it can hardly be equated with what a family suffers after the loss of a loved one, or of the consequences of suffering serious and disabling physical harm, or the suffering caused by sexual violence.

As such, the reparation process requires a prioritization of victims who suffered the most serious consequences, relating in particular to violations of the right to life (killings and enforced disappearances) and violations of the right to physical integrity (victims of sexual violence or torture or victims disabled as a result of serious injury).

Prioritization refers to the fact that the government's immediate and most substantial effort should be directed at the types of violations and victims identified as the most serious during consultations, including victim's experience of physical violence. Providing reparations to these victims, more than any other category of persons who suffered consequences during different periods of political violence, is both a moral and political imperative.

After priority needs are addressed, it may be possible to provide reparations to victims of other violations, such as material losses and violations to the rights to education, health, or information. However, such reparation must be defined in a way that does not affect the state's capacity to address the rights and needs of widows, orphans, those who suffered sexual violence, and others who suffered serious harms. In addition, Côte d'Ivoire has the obligation to provide conditions for the safe return or resettlement of displaced persons.

Abidjan: During consultations, women were given opportunities to work exclusively with other women, allowing them space to more comfortably express their needs and priorities. (ICTJ)

2. Limiting Reparations to Natural Persons

A corollary to the previous point is the need to focus on natural persons as victims. Indeed, human rights are established to protect natural persons. They are the ones who can experience suffering, humiliation, lack of education, health problems, or the loss of loved ones. They are the ones who can exercise freedom of speech, the right to vote, participate in political affairs, or be elected as officials. They are the ones who can marry, have children, and pursue happiness according to their own vocation.

That said, natural persons who own a small business or a corporation also have a right to property, but only as natural persons. Moral persons still have rights according to the legal system, but they are not entitled to the same scope of rights as natural persons, neither are they subject to human rights.

The question for those who suffered the loss of property, as mentioned above, is if their loss can be considered as having as severe a consequence on the individual as the serious violations that have been prioritized.

Similarly, communities that suffered from the destruction of infrastructure or places of worship also deserve reconstruction efforts and symbolic forms of reparations. Symbolic

and community reparations, as well as reconstruction efforts, are also part of this proposal, as individuals organized on collectivities may also be entitled to reparations, as will be explained below.

3. Reparations Should Include More Than Payment of Compensation

A third preliminary question to consider is what should constitute adequate reparations for flagrant violations of human rights or for serious violations of international humanitarian law. The nature of these crimes, their consequences, and their commission on a large scale require going beyond our typical understanding of reparations for individual cases, like those awarded in a courtroom.

Reparations cannot just take the form of compensation (cash payments); they must meet all dimensions of the damage caused. In addition to compensation, international law recognizes other forms of reparation: restitution, satisfaction, and guarantees of non-repetition. These include: health care services; psychosocial support; access to education for those who were unable to continue their education; recognition of crimes committed; criminal investigations; efforts to trace missing, forcibly disappeared, and buried persons and the organization of ceremonies for people who were buried in mass graves; public apology on behalf of the state; and reforming the police and security forces to reduce the likelihood that their members do not in future commit crimes against civilians or use violence to resolve political or ethnic disputes. Thus, reparations should not only be directed at addressing the consequences of crimes committed in the past, but should also address ongoing social issues.

Based on consultations carried out in different regions of the country, the following types of reparation measures were identified as needed:

- Some form of individual reparation, including compensation for victims of the most serious violations and the most vulnerable victims, but also other forms of rehabilitation and satisfaction
- A set of community measures (including psychosocial support) in neighborhoods or towns with a high concentration of victims
- The search for the missing and the forcibly disappeared, including those who were killed and buried in mass graves. This comprises honoring their remains and responding to the needs of the families
- A reconstruction policy to ensure certain minimum standards of access to social and economic rights, including the right to education and health care. This policy should give priority to the most affected areas or areas that have low development due to the armed conflict and political crisis
- Symbolic reparations and public apology

Some of these measures were included in CONARIV and PNCS's proposals, but they need to be recognized as priorities.

4. Making Sure Promises Are Fulfilled

Any reparations policy needs to be specific enough to ensure certainty about its feasibility. This is particularly true with regards to reparations that address violations of human rights and humanitarian law, where the ability to fulfill promises is a precondition for rebuilding trust.

In observing reparations programs in other countries, such as Peru and Colombia, it is clear that the more vaguely plans are defined, the less likely they are to be implemented,

even several years after reparations laws are enacted. In those cases, vaguely defined policies have been only partially implemented, health care has been promised to all victims without defining exactly how it would be provided or by whom, or ambitious collective reparations proposed in Colombia. In contrast, those defined in more concrete ways, like compensation, and implementation of community-defined projects, as in Peru, have been swiftly implemented.

Concrete measures that are defined after a process of consultation with victims and affected communities have the advantage of allowing for cost estimates, defining priorities, and establishing a clear implementation plan. Citizens can then know what to expect and hold government accountable to their promises.

Defining the Types of Reparation

An Ivorian reparation policy has already been partially defined, following the announcement that compensation amounting to 1 million CFA francs (approximately USD $1,685) would be paid to each victim who is in urgent need. It is expected that reparations for the severest violations would not be different from that standard. The announcement of support for health care is also a good precedent for defining reparations.

But how should reparations that meet the expectations of all consulted victims be defined, and should they go beyond the measures previously announced? Should they consist of long-term support for some victims, like a pension or a single cash payment? If so, what should be the amount? Should scholarships be included as a form of reparation? Should they also include measures of rehabilitation and psychosocial support? Different forms of reparation may have more or less impact on victims who are actually the most vulnerable, namely women, children, and the elderly.

An examination of the effectiveness of one-time cash payments for victims of the 2006 Toxic Waste Dump provides some helpful lessons, particularly in regard to the need for health care and social projects—and the amount to be distributed. This experience also warns about devoting resources to reparations of corporations, enterprises, and other types of moral persons, as it could lead to the appropriation of vast amounts of resources by people or organizations that are not in extreme need.

On the basis of interviews with victims and their representatives and existing lists, it should be possible to identify, in general, what needs have come up most often in Côte d'Ivoire and from there draw proposals for reparations.

Providing similar amounts and forms of reparations to all victims can have an equalizing message regarding victims' common dignity, even if the economic impact of reparations may be comparatively less significant for those who are wealthier. Further, such a policy can send the wrong message to victims that loss or suffering has a different value according to the victim's economic status.

Evaluations of individual harm are important for those who suffered physical harm, at least to determine the degree of harm. The need for such an evaluation should be balanced with the need for expediency and keeping the evaluation cost low in order to preserve resources for the actual reparations to victims. A detailed assessment might not be needed, but only a general one that helps to define who suffered a full or close-to-full disability and who does not.

One possibility is to define just two categories of victims: 1) Those either who are now disabled or who still suffer serious consequences but are not disabled; and 2) those whose

consequences are less serious. Those in the first category should receive reparations as a matter of priority.

Making an assessment of the individual needs of each victim is not recommended. These kinds of assessments are common practice in adjudicating individual cases in a court of law, but are impractical for massive reparations programs. It would be too costly to carry out such an assessment and it would be a waste of time and resources. Moreover, it might negatively affect those who lack evidence to provide proof of loss of income or other forms of harm, who in many cases would be the less educated and lower income.

If measures are meant to prioritize widows, orphans, victims of sexual abuse, disabled victims, or victims who have suffered torture, reparations cannot take the form of a single cash payment. Those who face serious ongoing obstacles to securing a living should receive other forms of support, like a pension.

Because of the nature of the violations and their ongoing impacts, it is impossible to meet the needs of these vulnerable groups in the long term by granting compensation alone or a single payment. Children and youth would benefit from scholarships or cash payments to encourage them to continue formal education or technical/vocational education or university, in accordance with their abilities. Victims should also receive specialized health care and psychosocial support. Community health care and psychosocial support centers could help to implement these services.

The following examples are based on reparations that victims have proposed to ICTJ and experiences in other countries:

CATEGORY OF VIOLATION	CURRENT CONSEQUENCES AND NEEDS	PROPOSED REPARATION
Murders and enforced disappearances (rights holders)	Poverty, economic impact	Compensation or pension
	Fragile health (due to poverty)	Free access to health care and medicine
	Psychological trauma	Access to psychosocial support programs
	Inability to finish studies	Scholarships or conditioned payments
	Inability to produce the required documents for inheritance	Specific procedures to gain free access to requested documents
Disabled, survivors of torture and sexual violence	Poverty linked to the inability to work, social stigma, psychological trauma, or abandonment by spouse	Compensation or pension
	Fragile health linked to poverty and physical consequences of violations suffered	Free access to health care and medicine
	Psychological trauma	Access to a psychosocial support program
	Inability to complete studies, both for survivors and their children	Scholarships or cash payment to encourage studies

The various proposed reparations are almost the same for all victims. By implementing them together it could prevent social stigmatization of certain categories of victims, like those who suffered sexual violence, from being identified publically. This could also allow for an expedient reparations process, instead of one where individual assessments and defining individual contracts require a large number of administrative staff to perform activities and more time to carry out.

Implementing these forms of reparation will require significant, long-term investments. If most of the resources of the reparation fund are used to compensate legal entities or those

who lost property, it will be difficult to fund reparations for victims who are in extreme need. Again, there is a real need to prioritize.

However, even if all of these forms of reparation are established for victims of the most serious crimes, they will be insufficient to meet all of the victims' needs.

In addition to reparations for victims of the most serious crimes, reconstruction, especially that which would improve access to education and health care, is also an imperative.

Specific Definitions for Each Reparation Proposal

a. Compensation or pension: Given the precedent of the emergency reparations program implemented since early August 2015, the payment of one (1) million CFA francs is a standard that cannot be reduced. It is recommended that the same amount be provided to widows, victims of sexual violence, and victims of a disability of at least 40%. An alternative would be to pay them a pension equivalent to the minimum wage of 60,000 CFA francs (USD $100) which would be added to an initial payment of 280,000 CFA francs (or USD $480), so that in the first year all victims would receive the same amount as that paid to those who received funds through the emergency program. As previously mentioned, all victims of the most serious violations should be entitled to this form of reparations.

Providing a pension of the same amount to all victims is recommended, including widows, widowers, spouses of those forcibly disappeared, those who suffered physical harms that cause disability or serious consequences, and those who suffered sexual violence. There should be no distinction among victims of severe crimes; not making decisions based on loss of earning or the economic condition of victims should make the process of determining eligibility and payment more expedient.

We propose using a sum equivalent to the minimum salary as a measure, to guarantee, at a minimum, the modest survival of those most affected by violations. It is understood that the pension would not be enough to repair the irreparable harm caused to victims, but it would at least guarantee them a better quality of life.

The pension should take the form of lifetime payments. A pension that is provided for just a few months or years cannot guarantee a better life to recipients, especially as time passes and victims become older and some of the physical consequences of violations intensify. The amount of the pension is modest enough not to be a heavy burden on the state budget.

Finally, compared with a one-time cash payment, a pension offers better guarantees that victims will not be defrauded or have their funds stolen by relatives or friends. It can also prevent misuse of funds by victims. It also better protects victims from falling into extreme poverty after promised income-generating projects have failed.

Additionally, symbolic payments should be provided to parents who lost a child, as a way to recognize their loss. One possibility would be to provide a one-time payment equivalent to the initial installment to be paid to widows, of CFA 280,000 francs. This amount should be paid to the mother (and only to the father in her absence), because mothers may be in more need of support. This amount should be paid in addition to the pension and initial installment proposed for a widow.

Only when these measures are defined and are being paid should an estimate be made of compensation owed for other losses. That way, resources to compensate for property destruction, for example, would not compete with the availability of resources for compensation for the most serious crimes; it would guarantee that victims of gravest crimes start receiving reparations first.

b. Free access to health care and medicine: Based on the list of victims and their place of residence, hospitals and health care centers in the relevant localities should strengthen their services by hiring more staff and purchasing any additional equipment and medicines needed to provide care for victims who appear on the list. An additional budget to cover these expenses should be provided to each health care center where there is a high density of victims.

Among the services to be included should be surgery for those suffering from injuries that still affect them, pain medication, as well as prosthetics and physical rehabilitation. Services should not be limited to these forms of medical care. To facilitate victims' access to health care, one approach may be to provide victims with a specific document that identies them as entitled to the services offered in the rehabilitation health care policy.

c. Access to psychosocial support programs: The psychosocial needs of victims vary significantly. In many cases, victims do not need to undergo psychotherapy or medication, but their fragile condition requires accompaniment and support from trusted people. Psychosocial support programs directed towards victims of violence are very different from the type usually provided by mental health programs. A concrete proposal would be to create a specific psychosocial support service in social centers located in areas where victims are concentrated. This service could be composed of a small team of two or three newly recruited people (with at least one woman) in addition to the center staff. The idea is to avoid assigning the service to existing personnel in order to provide an exclusively dedicated staff to support victims. It is recommended that the staff providing these new services receive specific training to enhance their capacity to provide victims with counseling. A proposal to be studied would be to encourage the establishment of psychosocial activities based on a community approach, which includes the involvement of victims and their organizations for the provision of some forms of care and accompaniment. Setting up this psychosocial support policy could be based on the experiences of victim support groups created in other countries—or other forms of community intervention, as explained below. An approach that relies only on mental health support is not enough on its own.

d. Scholarships and educational assistance: Continuing studies for victims and their children (including all orphans as well as all children of victims affected by disability or who suffered sexual violence) is an important form of reparation. Access to education for primary and secondary school for this group should be totally free of cost, including for technical and vocational school. Victims should also receive educational kits and other forms of assistance set up by the state. The list of school-age victims should be sent to the respective school directors to ensure that schools have the capacity to accommodate these students, exempt them from registration, maintenance, and other fees, and provide an educational kit.

There should not be a limit on the number of children per family who are eligible for such reparations, as all children may be affected to the same level. It would be unfair for parents and children to have to choose among the children who would receive education and who would not. Such a limitation may also lead to gender discrimination, as it is likely that sending boys to school would be prioritized over sending girls.

Limiting benefits to children conceived in a legal marriage is also a form of discrimination, according to the Convention on the Rights of the Child. All orphans and children of those disabled or who suffered sexual violence, no matter their gender or legal status, should be considered as having suffered similarly from the loss of a mother or a father; there is no reason to exclude them from this form of reparation. This is even more important if it is remembered that this form of reparation guarantees these victims another of their rights: the right to education and the right of parents to educate their children.

A university scholarship should be provided to victims who have been accepted to a university or who have matriculated, in order to enable them to pay for registration fees and tuition. Victims (both youth who have been victims or who are victims' children) who had their schooling interrupted because of the crisis should be provided with a scholarship so they can access vocational or technical training until they reach the age of either 30 or 35 years. Vocational training should be extended to youth victims; and their children should also receive full scholarships.

Bangolo: A group of men from different communities in Bangolo discuss the common consequences they face in the aftermath of the violence, February 2015. (ICTJ)

e. Access to civil status documents: Children of victims who lost administrative documents during the conflict should benefit from the establishment of accessible and free mechanisms for reconstitution and obtaining documents. A campaign should be implemented to restitute missing records (birth, marriage, death) and deliver certificates by prioritizing the most affected by the conflict free of charges.

Families of those murder victims who, because of violence and chaos, were buried without a death certificate should be able to easily obtain one, quickly and free of charge. In the past, exceptional state measures have been taken in Côte d'Ivoire to help facilitate access to death records (for example, from November 2010 to July 2011). A similar mechanism could be used for victims on CONARIV's list. Still, widows or spouses of those killed or forcibly disappeared who cannot produce a death certificate should not be required to do so in order to access reparations.

f. Regarding victims of enforced disappearances: For those victims of enforced disappearance whose death cannot be established, a simplified mechanism for obtaining a declaration of absence should be provided. The waiting period required to obtain a declaration of absence should also be reduced, because in such circumstances it is highly likely that the victim in question is deceased.

Given the circumstances under which most victims are forcibly disappeared, there is no longer a need to apply the 30-year requirement established by Ivoirian law for the declaration of presumptive death. Even requiring 10 years may still be an obstacle for many victims. If the enforced disappearance happened in the context of the conflict, and more than five years have passed without any news of the victim, families should be able to obtain such a declaration. The possibility of a few victims reappearing alive is limited

and does not justify keeping many spouses, most of them women, and their children from exercising their rights.

The declaration should be accessible and free of charge, based on the registry done by CONARIV, and not require any other forms of evidence, as most families will not have the resources to hire a lawyer for assistance or pay for specialized documents.

Lifting Additional Obstacles to the Exercise of Victims' Rights

Another essential element of reparation is simplifying the mechanisms in place to help victims who do not have identity documents. Indeed, the lack such documents for people who have suffered a serious crime should not be an obstacle to recieving reparation. Like the definition of types of reparations, guaranteeing access to reparations, despite the lack of official identity documents, could be particularly important for certain categories of victims who are most vulnerable, including women, children, the elderly, members of minority groups, and stateless persons.

Further, ensuring that documents are accessible to all people living in the country is a way to not only guarantee the availability of reparations, but also constitutes a form of relief in itself for many people who are not victims of serious violations but who face serious obstacles in exercising their rights. Thus, it is a means to prevent the recurrence of violations.

Registering births, marriages, and deaths (and other civil acts) was difficult during the conflict and other periods of instability and violence, particularly in the northern provinces after 2002. A universal and simplified process of registration, free of charge for those requiring documents, needs to be part of a comprehensive reparations policy.

Another potential difficulty is the use of intermediaries (NGOs, victims' groups, lawyers) to reach victims and provide them with reparations. In some cases, it is clear that this network is an effective way to reach victims, but there is also the serious risk that victims will not receive full reparation if no control measures are put in place. The effectiveness of the system should be combined with transparency and counterbalances in the form of both independent agencies and civil society.

Community Psychosocial Support Projects in Areas Most Affected or with a Higher Concentration of Victims

Psychosocial support was a frequent request from victims interviewed by ICTJ. Such support differs from what is provided by the regular network of mental health services, because this aid does not respond to pathologies but to the consequences of trauma, fear, and/or mistrust.

These services cannot be limited to the victims of the most serious crimes, because other members of the affected communities may also need psychosocial support to overcome their difficulties. Nevertheless, the services should be prioritized for victims of sexual assault and other forms of extreme violence.

A small team of psychologists and social workers with relevant training and work experience with victims should provide these services. They should not be limited to individual assistance or clinical work, but also involve community social assistants (positions for which qualified victims may be recruited). Other strategies can also be taken into account.

In Kenya and Colombia, experiences of creating victim support groups led by victims trained and supervised by an experienced professional demonstrate their effectiveness. This community-based approach also serves to ensure continuity in the provision of services, which

professionals cannot guarantee, considering regular turn over, particularly in the regions. Such turn over would disrupt the process of building patient confidence, which is essential for victims suffering from intense trauma or for those who are reluctant to tell their story.

NGOs that could partner with the program may play an important role in training staff. It is also recommended that these centers work closely with the different victims' groups and community organizations in the region.

These community psychosocial projects could respond to the recommendations by PNCS of providing health care and psychosocial rehabilitation to victims of other violations, such as the rights to education, health care, and information. Because those violations will be difficult to identify with precision, and compensation for them will not be appropriate in a context of scarce resources, a broad policy for guaranteeing psychosocial and health care support to affected communities might be easier to implement and direct to those with the greatest need.

The number and location of these centers could be defined according to the mappings of violence during different periods or the areas where victims and displaced persons or refugees moved. They should operate for a significant period of time, as the consequences of serious trauma cannot be addressed with limited, short-term interventions. Over time, these services could become part of the network of community and health care services. This should not be an extremely expensive policy; the state can easily finance it with its own resources.

Search for the Missing and Disappeared, Including Those Buried in Mass Graves, Honoring Their Remains, and Responding to the Needs of Their Families

A reparations policy aimed at providing conditions for reconciliation needs to respond to one of the most traumatic and long-term consequences of violence, uncertainty about the fate of those who were forcibly disappeared as well as those buried in mass graves. Both situations require specific attention.

For those whose whereabouts are unknown, especially if they were kidnapped or detained by an armed group or state agents, determining what happened to them—if they are alive or dead—is essential.

Enforced disappearance is recognized as a continuing crime by international law. The violation demands that authorities make efforts to alleviate the uncertainty relatives of the forcibly disappeared experience. This requires investigating all allegations of the violation and exhuming places where victims may be buried, identifying them, and returning them to their families, with the proper assistance so that they can be buried in dignity, according to the appropriate customs.

For those killed and buried in mass graves, a decision should be made—with the input of their relatives—as to whether the burial site should be left intact and consecrated according to the religion and customs, the bodies recovered and delivered to families for reburial, or other forms of remembrance. These efforts need to be done with due consideration for the needs and opinions of the families and communities involved and should be accompanied by forms of psychosocial support or accompaniment according to victims' needs.

Reconstruction Efforts to Improve Enjoyment of Social and Economic Rights

Both the Ivorian Constitution and the International Covenant on Economic, Social and Cultural Rights recognize the right to education. Ensuring "complete free, equitable and quality primary and secondary education" for both boys and girls is also a target of the

Sustainable Development Goals. Ensuring access to quality education—for all children of Côte d'Ivoire—is not strictly a form of reparation, but fulfills an existing law.

However, the destruction of some schools during the conflict, the poor management of the Ivorian education system in general, the insufficient number of teachers, and the indirect cost of the system (maintenance fees, cost of lunches, etc.) are all obstacles that negatively impact low-income children's access to education, especially children of widowed or single mothers.

A policy of improving education should aim to: reduce the number of students per class to fewer than 40 children; remove the registration fee, at least for child victims; and ensure that schools are not too far from children's places of residence, so that children can get to school safely. These measures should apply to primary and secondary education. This policy is not only important for the victims in overcoming the consequences of the conflict, but also for the prevention of future conflicts and the economic competitiveness of young Ivoirians.

Road maintenance and improvement of roadways is another area requiring significant reconstruction efforts. Some regions consider themselves economically isolated due to poor roads. Community leaders interviewed by ICTJ insisted that it is crucial to have navigable roads, in order to enable them to travel, discuss potential problems with government agents and other communities, advocate, and thus be in a position to help to prevent intercommunity conflicts.

Women interviewed by ICTJ complained of the lack of medical services, particularly midwives and gynecological services, and the low number of female staff. Further, they reported that medical specializations are rare in health centers and hospitals.

Bouaké: Consultation participants discusses how poverty and lack of access to health care and education are major issues facing victims in central Côte d'Ivoire. (ICTJ)

It must be stressed that none of these reconstruction projects constitute a reparation for human rights violations suffered by victims and communities. However, such efforts at reconstruction do give effect to the entire reparation process. For example, there would be no point in providing scholarships to child victims or victims' children if there were no preexisting schools or if they were overcrowded. These efforts also are important pre-conditions for peace and preventing conflict.

However, the specific definitions for reconstruction and development projects targeting the areas that were most affected or have suffered historical marginalization should be defined through consultation with each community. These policies should aim to give voice to the inhabitants of those regions regarding their needs and priorities and empower them as citizens. During these consultations, special attention should be given to women to make proposals and define projects that respond to their priorities.

Reparations for Property Damage

Only when the measures outlined above are defined and being paid can an estimate of compensation for other losses be made. This is to ensure that compensation for property destruction does not compete with the availability of resources for reparations for the most serious crimes. It would also guarantee that victims of such crimes begin receiving reparations first.

Providing reparations for property damage on a massive scale faces similar challenges to defining reparations for personal harm. The scale of the harm makes it impossible to provide full compensation in each case, as would be expected for single cases of property destruction adjudicated in a court of law. Because reparations for personal harms cannot return loved ones, give back the years lost, erase the suffering, or compensate for the absence of a parent or the social stigma suffered, reparations for property damages on a massive scale cannot attempt the impossible of providing each claimants with the equivalent of their loss. As a result, reparations can only be symbolic in nature.

Determining the exact extent of the damage is a huge administrative task that could take years, or even decades, to carry out, considering the provision and assessment of evidence and the discrepancies and appeal process that might be involved. An attempt to provide reparations in proportion to the harm caused, the amount loss, or the value or size of the property or business may end up channeling most resources to the wealthy, who often have a greater capacity to overcome the harm.

The reparations policy must be consistent. Even if the loss of property can have serious consequences, those who lost only property cannot receive more than what a widow, orphan, or victim of sexual violence or serious physical harm receives. If not, the policy may affirm a hierarchy of values that does not respond to the recognition of human dignity, a core principle of reparation.

Following these criteria, it is recommended that a policy defines a symbolic amount for all those who suffered a loss of property that would be identical for all and equivalent or lower than the CFA 280,000 proposed as the initial payment for victims of other violations. The amount should be the same for all sizes of businesses, regardless of the amount of property lost. Again, the compensation would be a symbolic payment in recognition of the loss.

For the lowest-income victims to whom the loss of property may have caused a more serious impact, this symbolic amount may be enough to help them reopen their business, start a new one, or repair a house. For those who lost more, it may only be of symbolic value. Those willing to donate the symbolic amount as contribution to the reparations program and their commitment to peace and reconstruction should be welcome to do so.

This proposal for reparations for property damage should be carefully examined in terms of its feasibility. The recommended budget exercise below may shed light on determining if even a modest amount could be provided to each victim. That would depend on the number of such victims registered by CONARIV.

Symbolic Reparations

Reparations are not just a matter of providing physical measures of repair to victims; it is also about recognizing the inherent dignity of victims, which must be affirmed. Material means can be used for this purpose, but a symbolic acknowledgment is always necessary.

Recognition of the victims and the harms they suffered marks the essential difference between humanitarian assistance (or measures implemented in solidarity with victims) and the recognition that these individuals were victims of wrongdoing and violations.

Two possible forms of symbolic reparations are described below, but the consultation process with victims and civil society could result in the definition of other forms.

Public apology made by the President of the Republic, inviting others to give apologies in turn

Official recognition that wrongdoing was committed based on the responsibility of the state and the lack of protection provided to victims could pave the way for a process to apologize to victims of past violations. In accordance with the principle of continuity of the state, the proper process is to request the president, himself, to apologize on behalf of the state for its part in past atrocities, as have the heads of state of Argentina, Australia, Canada, Chile, El Salvador, Germany, Great Britain, Sierra Leone, Togo, the United States, and many other countries. Both CONARIV and PNCS have emphasized the importance of this form of reparation for all types of violations committed.

Inviting other authorities or political leaders to also apologize could be an important addition, but these additional gestures should not be a pre-condition for victims to receive an apology from the state.

Special apologies should be presented by the leaders of all relevant political parties and factions that used or rallied youth for political purposes during the conflict and political crises and armed groups that recruited children or youth in violation of international law.

Monuments and Remembrance

Local commemoration is important because it can help communities to remember the victims. Only after consultation with the respective communities and victims' groups, to collectively decide on the place and content of the monument (for example, a public gathering place or a place linked with an event or a mass grave) should these measures be implemented. Memorial sites should enable families and victims to honor their loved ones.

This reparation policy could be achieved in the communities that have suffered the most. CONARIV's list can help to identify those communities; and the measures proposed by PNCS can also be a useful guide.

Specific monuments honoring different kind of victims could also be established, such as those honoring women, those who suffered as a result of violations committed against their loved ones, or those activists who sustained calls for reparations for victims. Another category of victim that should be given special consideration are youth who suffered forced recruitment, political manipulation, and crimes against their parents and loved ones, or who suffered directly, including abduction, killing, torture, enforced disappearances, and sexual violence. Victims should be honored without identifying their party affiliation or the sides they were recruited for. Planning cultural commemorative events defined with the participation of women or youth, depending on the memorial, may provide these gestures with more meaning.

This policy must always be carried out after the implementation of reconstruction measures: the construction of monuments, even the most modest, may face resistance if some schools or health centers, or even the streets or roads, have not been repaired.

This could also include rehabilitation of places of worship, by repairing them, adding plaques or other forms of memorialization of the events that happened in them, as well as performing ceremonies of acknowledgment, apology, and consecration.

Establishing a day in honor of victims, which has been done in many countries, could be important in Côte d'Ivoire. It is important, though, that such ceremonies are not used as occasions to demand victims to forgive, but for those responsible to ask for forgiveness from victims and to recognize the inherent dignity of victims.

Need for Budgetary Estimate Before Beginning

At this stage it is impossible to make an estimate of what a reparations policy for Côte d'Ivoire could cost. The provision of medical services; a psychosocial support program in all the most-affected areas of the country that victims could easily reach; different scholarships programs and school kits proposed; improved accessibility for civil documentation, including staffing of civil registration offices and courts; community reparations; reconstruction policies and the rehabilitation of the educational, health care, and roads infrastructure and services; a policy for the search for the forcibly disappeared and the provision of aid and support to victims to bury their loved ones; and memorialization initiatives all have a significant cost. However, these costs are not insurmountable, given the strength of the Ivoirian economy. They could be implemented over time, prioritizing those measures that directly benefit the most vulnerable victims in the poorest and most abandoned regions of the country.

It should be recognized that if the state were to recognize, for example, the importance of memorialization and remembrance (starting with building monuments) when schools and health care centers are needed, it could send a contradictory message about the country's priorities.

One of the main challenges to estimating a budget is the definition of the proposed pension for all victims. It is impossible to make a full estimate of the costs of the policy, as that requires knowing the number of victims of each category that should receive reparations. That is one of the most compelling reasons for demanding that the government publish CONARIV's report as well as make available basic statistical information about the registration of victims (not to release the full list), so as to know each category of victims, gender per category, and the number of children, as basic components for estimating costs.

A budget estimate may help in assessing the advantages or disadvantages of each policy proposal, particularly for defining the compensation method and deciding between one-time payments or pensions. It could also help stakeholders to understand what the costs might be for providing compensation payments for violations other than those described as to be prioritized in this paper. For example, again, if there is a large number of victims of property damage, it may be better to limit compensation to just a symbolic payment or even decide that it is impossible to provide any compensation at all.

Estimates should be compared with the national budget to define the feasibility of the policy. The policy needs to be implementable, as there is no worse promise than one that cannot be fulfilled.

ictj briefing

Recommendations for Victim Reparations in Côte d'Ivoire: Responding to the Rights and Needs of Victims of the Most Serious Violations

Acknowledgements

The International Center for Transitional Justice is grateful to Trust Africa and The John D. and Catherine T. MacArthur Foundation for their generous financial support, which enabled the printing and distribution of this report. ICTJ is also grateful to the European Union, UNICEF, and the UN Trust Fund to End Violence against Women for their contribution that supported some of the field work and activities upon which many of the paper's recommendations are based. The authors would also like to thank all of those who assisted in reviewing early drafts.

TRUSTAFRICA

MacArthur Foundation

Conclusions

The government of Côte d'Ivoire should define a reparations policy through a transparent and participatory process. This will require making public the reports of CONARIV, CDVR, the Commission Nationale d'Enquête (CNE), and others that could help stakeholders in assessing the number of victims and their needs. Following CONARIV's approach, the government should consult victims and other civil society organizations throughout the process of designing and implementing a comprehensive reparations policy. However, in defining its priorities, the government must consider the fact that some victims are more in need than others and that these victims should be prioritized.

Ultimately, the reparations program must respond to the most serious consequences of the violence for victims through measures that address their long-lasting socioeconomic, psychosocial, and education-related effects for victims and their children, and health and other consequences that limit victims' ability to exercise their rights. It should also include a reconstruction effort that can guarantee the enjoyment of basic rights in the areas of the country affected by violence, destruction, and marginalization.

Moreover, reparations should affirm the dignity of victims, ensuring that the services provided are defined and implemented in an interactive and respectful way for victims.

Implementation may require defining a clear policy first, and then a timeline for the different actions to follow. A decision must be made regarding the victims' registry as well as considerations of how to include those who were not able to apply because they resided abroad or suffered other obstacles. If such a registration process is carried out, it should be done using the same criteria and experience as CONARIV (and likely the same staff), in order to guarantee consistency.

Recognition of state responsibility with regard to these serious harms is another key factor for making reparations effective. Violence and destruction were not the result of natural causes, but of political decisions made by those in power. The most senior-ranking state officials should clearly apologize to victims, and victims should not be forced to provide forgiveness in return. Forgiveness is something that can be asked for, but never demanded.

If two other policies are not implemented contiguously, however, all of these efforts will fall short. The first are policies that work to guarantee the nonrepetition of acts of political violence and repression, which requires looking at the conduct of the armed forces, the police, the Gendarmerie, as well as armed groups that fought during the armed struggle. The second is the enforcement of respect for human rights and humanitarian law in all state institutions. Individuals found responsible for violating these norms should be prevented from promotion and removed from the services. Mechanisms for safeguarding how the police and the military recognize and respect citizens' rights is essential, and reforms establishing adequate oversight are needed.

Another crucial component of making the reparations policy a credible effort is investigating and prosecuting serious violations of human rights and humanitarian law. Those violations cannot go unpunished. Efforts to establish a strong democracy based on respect for human rights requires a combination of factors. Victims, and all of Ivoirian society, have the right to truth, justice, reparations, and guarantees of nonrepetition that the government, the National Assembly, and the judiciary are responsible for delivering.

ICTJ Justice Truth Dignity

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit **www.ictj.org**

ICTJ Abidjan
Cocody Les II PLATEAUX
Immeuble LES DUNES
2eme Etage, Avenue Emile BOGA Doudou
Abidjan, CÔTE D'IVOIRE

Evanston Policies and Practices Directly Affecting the African American Community

Report Compiled by:

Morris (Dino) Robinson, Jr.
Executive Director
Shorefront Legacy Center
www.shorefrontlegacy.org

Jenny Thompson, PhD
Director of Education
Evanston History Center
www.evanstonhistorycenter.org

Last update, November 2021

TABLE OF CONTENTS

AUTHORS' STATEMENT

This report was created at the request of City of Evanston staff in order to present evidence and factual information related to historic and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregative and discriminatory practices in all aspects of engagement with the Evanston Black community.

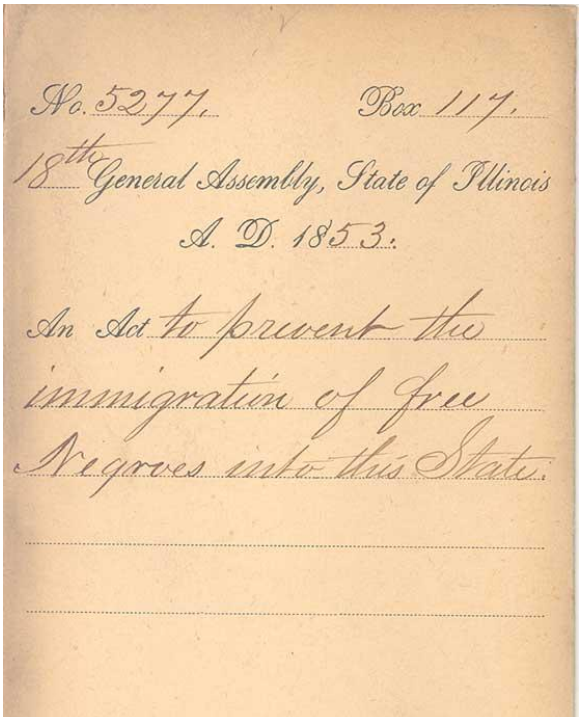
The intention of this report is to compile, in one cohesive document, published facts from various sources, works, studies, surveys, articles, recordings, policies, and resources that are available for public consumption. The authors have worked to compile this information, cite materials, and provide a list of resources in order to assist others in locating the document's original sources.

Further, the authors remain neutral and take no responsibility regarding the end use of this document and the information contained within the document. In addition, the authors do not take any positions other than fulfilling the fact finding assignment as requested by the City of Evanston.

This report is in progress and will have periodical updates when new information presents itself.

VERSION UPDATES

July 1, 2020	Start date
July 7, 2020	Review of initial findings and rough table of contents
July 10, 2020	First public viewing on an excerpt rough draft during Reparations meeting
Aug 27, 2020	First public viewing of the report in its entirety
Sept 2020-present	Periodic report updates


No. 5277. Box 117.
18th General Assembly, State of Illinois
A. D. 1853.
An Act to prevent the
immigration of free
Negroes into this State.

State of Illinois, Bill 5277, "The 1853 Black Law passed in Illinois was considered the harshest of all discriminatory Black Laws passed by Northern states before the Civil War," from the exhibition, "The 100 Most Valuable Documents at the Illinois State Archives." (See also excerpt from "Slavery in The North" by Douglas Harper, http://www.slavenorth.com/northwest.htm at the end of this document)

Historical Overview

Since its platting, the City of Evanston both supported and created systems to segregate, limit, deny, and control Black citizens. Prior to the American Civil War, the state of Illinois adopted a set of "Black codes" or laws that governed the mobility and livelihood of all Black residents in the state. In essence, the laws ensured that one could not be a free Black person in the state. The codes restricted residency, settlement, and independent job opportunities, and severe punishment was administered if any of the restrictions were violated. Whippings and imprisonment, along with being sold back into slavery, were a few of the common punishments.

In Evanston, the first documented Black Evanston resident was Maria Murray Robinson. Formerly enslaved, she was reportedly purchased from a Maryland plantation at the age sixteen and later emancipated by the Vane family, who settled in Evanston in 1855. Maria worked as a domestic servant for the family until her death in 1903. Maria married George Robinson, who settled in Evanston in the early 1860s, and the couple made their home on Dempster Street near Forest Avenue. There was a small and growing Black community in that area. (Shorefront Archives)

In the nineteenth century, several pockets of early Black settlement existed throughout Evanston, including in the downtown area. However, beginning as early as 1900, and in light of

a growing Black population in the city, the social climate began to exhibit changes in “race relations.” This was the beginning of systematic and institutionalized racist laws and restrictions that governed the lives of Black residents (as well as Black visitors to the city). These laws and restrictions evolved over the decades; the city’s government, civic institutions, recreational facilities, and retail establishments were dominated by white residents and they maintained control over the drafting and implementation of laws, as well as the cultural and social mores of the city; with little public and/or published comment or justification for the laws and restrictions, the city enacted and upheld a system of inequality and segregation.

For decades, Black Evanston residents were denied equal access to schooling, housing, retail, recreational, and commercial facilities, and many other areas. The city’s segregational and unequal systems were created over time and, for the most part, they were tacitly constructed both through private and public methods, including through the actions of the city government and its allies; while some policies were directly stated as a means to enact segregation, in most cases, rarely were the issues of discrimination and segregation mentioned or overtly identified in policies or practices that greatly impacted Black residents. Instead, through a variety of means, through the use of code words, and a focus on issues such as “development” and “safety”—all things that sounded “positive” but in truth masked the actual intentions of specific exclusionary and discriminatory policies-- the systems of segregation and processes of discrimination were enacted, upheld, and expanded for decades.

In 1939, Evanston’s first Black City Council member, Edwin B. Jourdain Jr., wrote one of many letters to his friend and ally, W.E.B. DuBois, the famous historian, civil rights activist, and co-founder of the N.A.A.C.P. Jourdain described the city he represented:

> Evanston was “a town that once forced negroes[1] to sit in balconies only of movie houses, to use only a ‘colored bathing beach’ on the lakefront, to use city owned parks only for ball games among all-white or all-Negro teams, to stay off all city boards and commissions, to have no colored school teachers at all.” (E[dwin] B. Jourdain, Jr. to W.E.B. Du Bois, February 17, 1939, W. E. B. Du Bois Papers (MS 312) Special Collections and University Archives, University of Massachusetts Amherst Libraries, http://credo.library.umass.edu/view/full/mums312-b088-i365.)

Jourdain’s letter described just a small portion of the larger picture of the city located just North of Chicago, the suburb known as a “city of homes,” the city that served as home to Northwestern University, and to tens of thousands of civic-minded residents who praised their city’s history and institutions.

[1] Use of the term “negro” and other antiquated and racist terms are quoted here in their original contexts.

Jourdain's letter was just one piece of evidence that Evanston also had another history; one not widely told among white residents, but one that Black Evanston residents knew well. It was the history of a segregated town.

Over the decades, policies, practices, and patterns of discrimination and segregation took place in Evanston. These not only impacted the daily lives and well-being of thousands of Evanston residents, but they also had a material effect on occupations, education, wealth, and property; and for each generation that encountered discrimination and segregation in Evanston, there was another that followed, and another. While the policies, practices, and patterns may have evolved over the course of these generations, their impact was cumulative and permanent. They were the means by which legacies were limited and denied. Documenting this history is critical to understanding the precise nature and impact discrimination and segragation had in Evanston.

Resistance

The Evanston Black community did not sit idly by as discriminatory practices were being enacted by the city officials and white residents. Although not official city policy, Evanston's "Jim Crow" practices were embraced by the vast majority of the general white population. As early as 1903, reports relating to segregated practices appeared in local papers:

> **"Evanston Blacks Fear Wave of Race Prejudice":** The article tells of a certain "colored" man frightening women and calls upon the colored people to keep their brother at home. The article is headed, "A Rope Might Do," and the colored people in Evanston take it seriously. . . (*Chicago Tribune,* May 6, 1903)
>
> **"North Shore Towns Aroused: Influx of Negroes Alarms the Residents of Evanston, Wilmette, Winnetka and Glencoe": .** . . As a solution to the problem suddenly presented, Evanston citizens are reviving the old scheme of a town for negroes, to be located near Niles Center. To this it is proposed to deport objectionable characters. (*Chicago Tribune,* January 22, 1904)
>
> **"Charges Stir a Post office: Race Discrimination on of accusations at Evanston – Trouble is said to arise out of Employment of Negro Carriers":** . . . DePugh accused Peterson frequently of discrimination against the colored carriers and is said to have made frequent threats that he would "tell what he knew." Several times he was threatened with dismissal. (*Chicago Tribune,* February 7, 1906)
>
> **"Jim Crow Cars for Cultured Evanston":** Evanston Southern (White) Society Successful in Jim Crow Theater, will now resort to Jim Crow street cars — The Unwarranted segregation a blight in cultured Evanston; Where there are as many churches as schools. The Rights of the negro citizen should be demanded and respected; the matter peaceably adjusted, once and always— The constitution of the United States must be respected and guarded as strictly as the "Monroe Doctrine" was in the case of Cuba and the Mother Country. (*Chicago Defender,* August 26, 1911)

> **“The Segregation Equivalent at Evanston”:**. . .Whether Evanston is to continue to maintain a clean, respectable, unbiased community such as she bears by reputation will be watched editorially by the Defender with great interest. (*Chicago Defender,* August 26, 1911)
>
> **“Forces are Fighting Jim Crowism”:** Rev. H. S. Graves of Ebenezer AME and Rev. E.H. Fletcher of Mt. Zion Baptist church charged against Jim Crowism from their pulpits on last Sunday evening. . . (*Chicago Defender,* September 2, 1911)

Leaders of several Black churches, businesses, and other civic organizations actively challenged the “Jim Crowing” of Evanston, bringing to light the issues of segregation in restaurants, theaters, street cars, and housing. By 1918, an Evanston Branch of the National Association for the Advancement of Colored People (NAACP) was established to champion these causes. At that time, the NAACP was a nine-year-old civic organization founded to advance civil rights and to combat racism and discrimination in the United States.

SEGREGATED PRACTICES

City Facilities

Transportation: As early as 1911, Black Evanston residents reported widespread experiences of discrimination both on city streetcars and "L" trains. (David Kenneth Bruner, "A General Survey of the Negro Population of Evanston," Northwestern University, May 1924, 31). That year, a lengthy article appeared in the *Chicago Defender* with the headline "Jim Crow Cars for Cultured Evanston," addressing issues of segregation in seating and the growing adoption of Jim Crow systems:

> Evanston southern (White) society successful in Jim Crow theater, wil now resort to Jim Crow street cars - the unwarranted segregation a blight in cultured Evanston, where there are as many churches as schools. (*Chicago Defender*, August 26, 1911, page 1)

Beaches: Evanston beaches were free prior to 1931. However, they were segregated. Blacks could go to a small section of the beach off of Lake Street. As city council member Edwin B. Jourdain, Jr. began challenging Evanston's segregated practices during the 1930s, one of his focuses was allowing public access to all beaches for all taxpaying residents without discrimination. To circumvent/control the beaches, the City had begun a "beachfront beautification program" to renovate some of the city beaches. To pay for this, beach tokens were sold beginning in 1931 through city agencies, thus allowing the city to screen Black residents and block them from purchasing the tokens. The Black community still had access to the free beaches in the segregated sections. The institution of beach tokens was one workaround that did not require written policies. The exclusion was maintained by the use of tokens to help maintain the "beautification" of some of the beaches, and to keep Blacks - and other "undesirables" - out. (Source: conversation with Edwin B. Jourdain, Jr's youngest son, Spencer Jourdain, summer of 2018 with Shorefront)

Public Parks: Evanston, as a social policy, bought into the concept of Jim Crow and applied it to housing, schools, civic engagement and public spaces. In the issue of parks, integrated activities were not allowed. Alderman Jourdain used baseball games as a visible challenge. Parks and Forestry would deny public park use permits to any group attempting to have integrated games. As permits were generated, this would allow the Parks department to question the uses and activities proposed by residents. If they were not deemed "socially" acceptable, permits were denied. Jourdain challenged the notion by organizing by hosting integrated games. He would attend wearing his aldermanic badge and challenge police who would come and attempt to end the games. He further took it up at the City Council and penned letters to the federal government arguing that public parks were supported by residential taxes and to put restrictions on them was illegal and unconstitutional. (Source: Shorefront Archives Edwin B. Jourdain Jr. collection, memos to city parks and recreation and to the mayor.)

Business Districts

Section of the Black Business Dist. along West Railroad (Green Bay Road) c1924. Photo by David Bruner

Retail and Restaurant Patronage:

> "Practically every restaurant in Evanston refuses to serve Negroes who, when they go to even the less respectable ones, are simply ignored," the *Daily Northwestern,* the university's student newspaper, reported in 1936. (Editorial, reprinted in "Score Northwestern Officials for Attitude on Race Students," *Pittsburgh Courier*, December 26, 1936.)

"Refusal to serve Negroes in eating places and discrimination in stores seemed to be rather frequent," reported David Bruner in his 1924 survey of Black Evanston residents. (Bruner, 31)

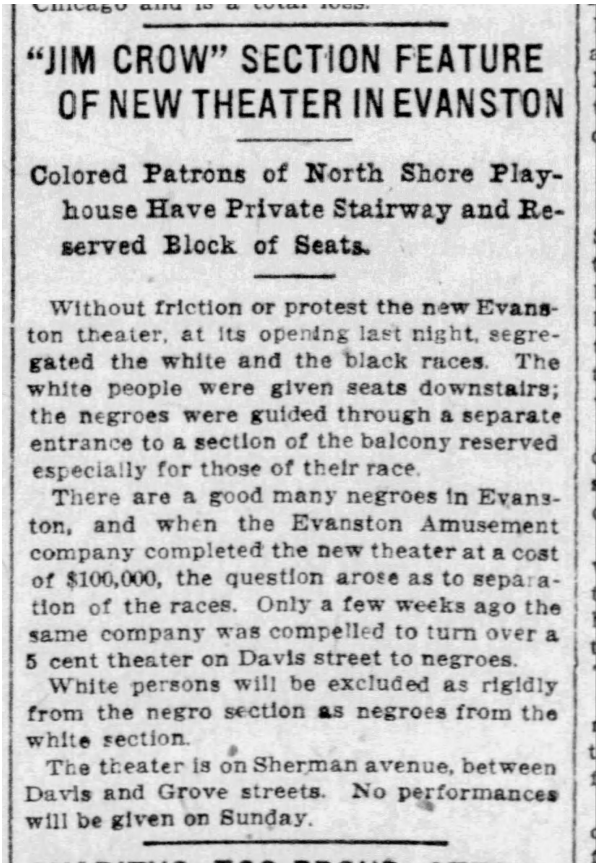
Evanston's Cooley's Cupboard restaurants, a popular place for collegiate students, regularly refused service to the Black community. Early sit-in protests were held at the establishment. One interviewed resident remembered an instance where he went into the establishment, "...when we got our food, my milkshake was loaded with salt. And my hamburger was loaded with salt, where it wasn't edible…" (Louis Mosley, Shorefront oral history collection, www.shorefrontvoice.org)

In regards to retail businesses, one Black resident commented that "It was understood that we do not go downtown Evanston to shop. If we did, no more than two at a time would enter a store. We would purchase what we need and leave immediately… Most everything we needed could be purchased within our own community." (Shorefront oral history collection)

Theaters: In 1911, the *Chicago Tribune* reported the opening of the New Theater of Evanston (on Sherman Ave) which featured a " 'Jim Crow' " section. Black patrons were forced to use a separate stairway and sit only in a "reserved block of seats" in the balcony. "Without friction of protest," the paper reported, the theater "segregated the black and white races." (*Chicago Tribune*, August 22, 1911.) The company that owned the theater had recently segregated another five-cent theater on Davis Street, allowing Black patrons there only. (See below.)

This was one of several incidents that were reported in the local newspapers. Other headlines covering multiple instances included:

> **"Colored People Admitted in All Parts of Evanston Theater":** The management of the Evanston theater came into camp with a flag of truce begging mercy of the butler of the Northwestern railroad president, Dr. and Mrs. Garnett, and Attorney Auter for trying to keep them out of a decent place to sit in their playhouse… (*Chicago Defender,* September 9, 1911)
>
> **"Evanston Theater Sued by Mrs. Garnett"**: Mrs. Helen W. Garnett, wife of Dr. Garnett, who lives in Evanston. The suit was brought for $500 in the circuit court. Hon. E.H. Morris is the man behind the law. (*Chicago Defender,* February 10, 1912)
>
> **"Evanston Theater Still Bars Negroes":** On last Saturday evening the Evanston Theater company again showed that it did not want and would not have Negroes sitting on the ground floor. . . Mr. Vance informed her that they would not tolerate Negroes on the first floor. (*Chicago Defender*), June 22, 1912
>
> **"Demands Right to Choose Seat":** Evanston, IL, May 5—John Smith, who was arrested after he had refused to take a seat to which he was directed in an Evanston movie show, today prepared to make a fight against the "Jim Crow" rules which are enforced in a number of similar places. . . (*Chicago Defender,* May 6, 1916)



"JIM CROW" SECTION FEATURE OF NEW THEATER IN EVANSTON

Colored Patrons of North Shore Playhouse Have Private Stairway and Reserved Block of Seats.

Without friction or protest the new Evanston theater, at its opening last night, segregated the white and the black races. The white people were given seats downstairs; the negroes were guided through a separate entrance to a section of the balcony reserved especially for those of their race.

There are a good many negroes in Evanston, and when the Evanston Amusement company completed the new theater at a cost of $100,000, the question arose as to separation of the races. Only a few weeks ago the same company was compelled to turn over a 5 cent theater on Davis street to negroes.

White persons will be excluded as rigidly from the negro section as negroes from the white section.

The theater is on Sherman avenue, between Davis and Grove streets. No performances will be given on Sunday.

Chicago Tribune, August 22, 1911

The practice of segregating theaters (and other establishments) would continue into the 1930s when Alderman Jourdain led the fight against the practice. The issue of whether or not to allow theaters to open on Sundays was before the City Council. Jourdain spoke out against allowing Sunday openings, arguing that it would only add another day that Black residents would experience segregation in theaters.

Jourdain had a deciding vote on the issue of Sunday openings for theaters. Jourdain challenged the theaters that he would not be in support of Sunday shows if Evanston theaters continued segregated seating arrangements and related "Jim Crow" practices. (Source: Edwin B. Jourdain Jr. collection, correspondences between Alderman Jourdain and movie theaters)

EMPLOYMENT

Black Evanston residents were limited in the kinds of employment they could find in Evanston and largely worked in domestic and blue collar jobs. Based on an informal survey of Black residents conducted by David Bruner in 1924: "Common laborer, janitor, chauffeur, and expressman head the list for the men in the order named, and indicate very well the occupations most common. Among women, the occupations heading the list are laundress, day laborer, hairdresser or beauty parlor operator, and caterer. As a matter of fact domestic service is the

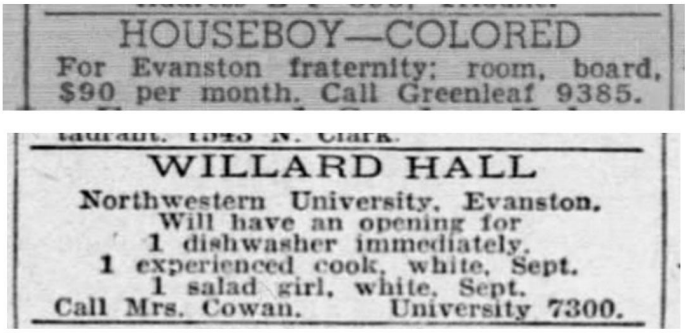
most common employment for women." (Bruner, 27). According to City Council member Edwin B. Jourdain, Jr., for many years, the City of Evanston did not hire Black teachers for the public schools, and there was a complete absence of Black employees in city government, save for one or two Black residents employed in the police department.

In 1915, white city employees were reportedly "aroused" when a rumor circulated that Mayor Pearsons might appoint W.H. Twiggs, a Black man, to serve as head of the city's general information department. In 1889, Twiggs had run unsuccessfully for Village Clerk. ("Negro Appointment Rumor Stirs Evanston City Hall," *Chicago Tribune*, December 29, 1915; "Evanston," *Inter-Ocean*, April 21, 1889.) Earlier, Twiggs had also been appointed to the position as "city sealer" as "a concession to the colored voters." ("Patten Names His Aides," *Chicago Tribune,* April 22, 1901). In January 1916, Twiggs was indeed appointed head of the general information department, the "first of race to hold office in Evanston." (*The Day Book,* January 4, 1916). Two months later, after he "failed to pass examination," he was forced to resign from his position. (*The Day Book,* March 1, 1916). (See also: Dino Robinson, "William H. Twiggs: Early Pioneer," *Shorefront Journal*, October 2013.)

It was not until 1931 that Evanston would elect a Black City Council member: Edwin B. Jourdain, Jr. Shortly afterward, however, Jourdain was dramatically unseated from office, "deprived of his seat by the Evanston City council" after having been charged with (unsubstantiated) election "irregularities" by his opponent. ("Colored Alderman Loses Seat in Evanston Council," *Chicago Tribune*, February 2, 1932.) In April 1932, Jourdain ran again for City Council and won, again, and thereafter, he would serve as a leader in the fight to end discrimination at Northwestern and in Evanston.

At Northwestern University, Black Evanston residents had "long been de facto excluded from the university in terms of employment." (Thompson, *The Takeover 1968,* 16). Those who did find jobs on the campus were largely relegated to positions of menial labor, including cleaning and garbage collecting.

Classified advertisements (below, reprinted from *The Takeover 1968*) over the years, serve as evidence of discriminatory hiring practices:



HOUSEBOY—COLORED
For Evanston fraternity; room, board, $90 per month. Call Greenleaf 9385.

WILLARD HALL
Northwestern University, Evanston.
Will have an opening for
1 dishwasher immediately.
1 experienced cook, white, Sept.
1 salad girl, white, Sept.
Call Mrs. Cowan. University 7300.

Newspaper help wanted ads for a "colored" houseboy and a white cook and salad girl, *Chicago Tribune,* December 30, 1946 (top) and *Chicago Tribune,* August 15, 1943 (bottom)

Such ads were reflective of the broader environment of discriminatory employment in Evanston.

HELP WANTED—FEMALE

WANTED—A WHITE GIRL ASSIS gen'l. hswk. Home nights, ref. re Tel. 6040. Address 2657 Broadway. 2-3t

WANTED A GIRL OR WOMAN T care for 1¼ yr. old boy evenings. Ad dress 2720 Eastwood Ave. or phon 3324-J. 2-3t

WANTED—A YOUNG GIRL, WHITE to assist with housework. Go hom nights. A competent gen'l. girl. N washing. Phone 3503. 2-3t

WANTED—COMPETENT WHITE MAI gen'l. housework. No laundry. Smal family, good salary. Glencoe 222. Re verse charges. Mrs. Ward. 2-3t

RELIABLE LAUNDRESS TUESDAYS Steady work $3.50. 1240 Forest Ave Dv. 7005. 2-3t

WANTED—COMPETENT WHITE MAI 2 in family. Apartment. Tel. 1331. 2-3tc

WHITE MAID WHO WILL GO HOME nights. Small family. Ph. Wil. 1512. 2-3tc

MAID FOR GEN'L. HSWORK. NO OB jections to new comer. Ph. Win. 1245. 2-3tc

EXPERIENCED MAID. GOOD SEAMS tress. Wages $20 per week. In Hub bard Woods. Address B 252. 2-3tp

WHITE GIRL TO ASSIST WITH housework. Light work. Small wash en. Cooking exp. not necessary, will teach. Good home. Wages $10 to $12. Phone 4042. 2-3tp

WANTED—WHITE GIRL OR WOMAN. No laundry. $10. Tel. 5879. 2-3tp

Classified Ads, *Evanston News Index*, January 4, 1922.

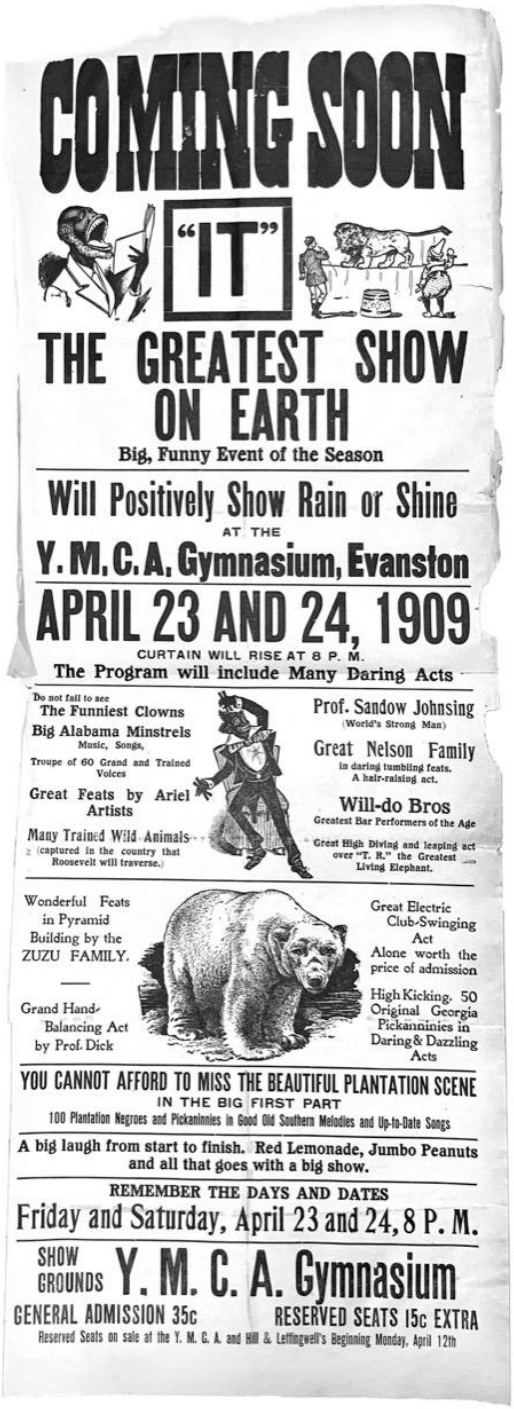
CULTURAL AND SOCIAL REPRESENTATIONS

Minstrel Shows in Evanston

Minstrel shows, which first gained popularity in the U.S. in the 1830s -1840s, were "popular" performances in which white people blackened their faces and performed a stereotype of and degrading representation of Black people. Racist in both representation and intent, minstrel shows derided and objectified the figure of the Black individual as comic, pathetic, and ignorant. As the National Museum of African American History and Culture explains: "Minstrelsy, comedic performances of 'blackness' by whites in exaggerated costumes and make-up, cannot be separated fully from the racial derision and stereotyping at its core. By distorting the features and culture of African Americans—including their looks, language, dance, deportment, and character—white Americans were able to codify *whiteness* across class and geopolitical lines as its antithesis." "Blackface: The Birth of An American Stereotype," National Museum of African American History and Culture, Smithsonian Institution, https://nmaahc.si.edu/blog-post/blackface-birth-american-stereotype

Indeed, the minstrel show was not merely a form of harmless entertainment. It was a means by which white people exerted control over Black people; it was a method of both defending and extending power. As professor David Leonard explained, minstrel shows were "an assertion of power and control [which] allows a society to routinely and historically imagine African Americans as not fully human. It serves to rationalize violence and Jim Crow segregation." Alexis Clark, "How the History of Blackface Is Rooted in Racism," History.com, February 15, 2019, https://www.history.com/news/blackface-history-racism-origins

Some Evanston organizations and newspapers propagated racist imagery in minstrel show entertainments offered to city residents, which were staged frequently. In April 1909, Evanston's YMCA hosted a program that included a minstrel show and "Plantation scene" advertised as featuring "100 Plantation Negroes and Pickanninies in Good Old Summer Melodies and Up-to-Date Songs." The racist imagery used in the advertisement (see below) reflected a widespread and "accepted" view among the mainstream white population of both minstrel performances and the racist depictions they perpetuated. At least one minstrel show was staged at an Evanston public school in 1921 (see below). Beginning in the nineteenth century, and for many years after, the Evanston Boat Club hosted an annual minstrel show. And, at Northwestern University, minstrel shows were performed frequently. According to our research, Northwestern's final minstrel performance took place in 1963 at the university's annual WAA-MU show.



COMING SOON

"IT"

THE GREATEST SHOW ON EARTH

Big, Funny Event of the Season

Will Positively Show Rain or Shine

AT THE

Y. M. C. A. Gymnasium, Evanston

APRIL 23 AND 24, 1909

CURTAIN WILL RISE AT 8 P. M.

The Program will include Many Daring Acts

Do not fail to see
The Funniest Clowns
Big Alabama Minstrels
Music, Songs,
Troupe of 60 Grand and Trained Voices
Great Feats by Ariel Artists
Many Trained Wild Animals
(captured in the country that Roosevelt will traverse.)

Prof. Sandow Johnsing
(World's Strong Man)
Great Nelson Family
in daring tumbling feats.
A hair-raising act.
Will-do Bros
Greatest Bar Performers of the Age
Great High Diving and leaping act over "T. R." the Greatest Living Elephant.

Wonderful Feats in Pyramid Building by the ZUZU FAMILY.

Grand Hand-Balancing Act by Prof. Dick

Great Electric Club-Swinging Act
Alone worth the price of admission

High Kicking. 50 Original Georgia Pickaninnies in Daring & Dazzling Acts

YOU CANNOT AFFORD TO MISS THE BEAUTIFUL PLANTATION SCENE
IN THE BIG FIRST PART
100 Plantation Negroes and Pickaninnies in Good Old Southern Melodies and Up-to-Date Songs

A big laugh from start to finish. Red Lemonade, Jumbo Peanuts and all that goes with a big show.

REMEMBER THE DAYS AND DATES

Friday and Saturday, April 23 and 24, 8 P. M.

SHOW GROUNDS Y. M. C. A. Gymnasium

GENERAL ADMISSION 35c RESERVED SEATS 15c EXTRA

Reserved Seats on sale at the Y. M. C. A. and Hill & Leffingwell's Beginning Monday, April 12th

Advertisement, April 1909.

BIG COON SHOW TONIGHT

FIRST W. A. A. MINSTREL READY FOR UNVEILING AT RAVINIA.

LOCAL HITS ARE NUMEROUS

Co-Eds Promise Snappy Entertainment —Financial Support Not Satisfactory.

The minstrel show is all in fine shape for the performance tonight at Ravinia, and it is going to be the best ever given at Northwestern. Miss Arnold and Mr. Lowrie, backed by the Woman's Athletic Association, have left nothing undone in order to give the student body a performance they will long remember.

Daily Northwestern, April 20, 1912

Razzy, Jazzy Music

will be the feature of the

OAKTON MINSTREL SHOW

The seating capacity is only 600—So come early

Oakton School Auditorium

Ridge Ave. and Oakton St.

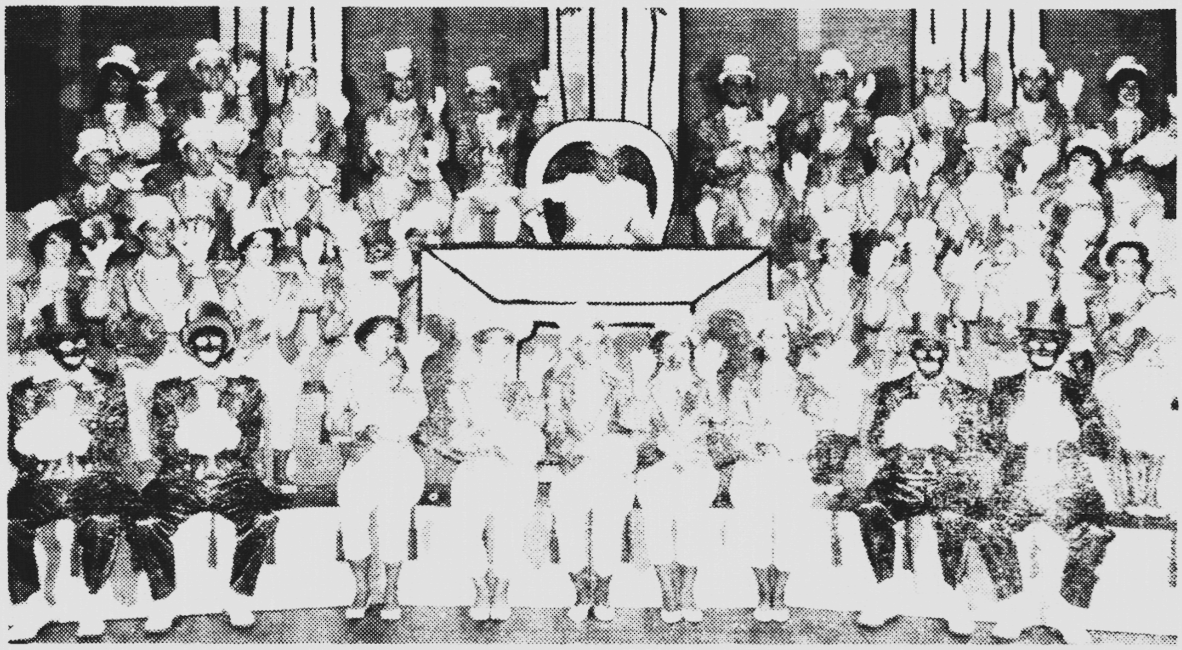
Friday and Saturday Nights

April 1st and 2nd, at 8 o'clock

ADULTS, 50c CHILDREN, 35c

Get your tickets early as none will be sold at the door until 7:45 p. m.

Advertisement for the "Oakton Minstrel Show," performed at Oakton School, an Evanston public school, *Evanston News-Index,* March 28, 1921



"Congressional Revue" is the finale of the first act of "Mud In Your Eye" and presents an imaginary session of the United States Congress in the form of a minstrel show with black-face end men, tambourines, and an interlocutor who might be the speaker of the House.

Daily Northwestern, May 9, 1963

SERVICES, PUBLIC AND PRIVATE

Community Hospital. Shorefront Photographic Collection

Community Hospital

For years, Evanston's two hospitals, the Evanston Hospital and St. Francis Hospital, restricted access to Black residents and employed no Black doctors on their staff. As a result, in 1914, two Black doctors, Arthur Butler and Isabella Garnett, opened a hospital for Black patients at 1918 Asbury Ave, known as the Evanston Sanitarium.

Over the next 15 years, the Sanitarium served Evanston's Black population from a converted residential home. The operating room was next to the furnace room, separated by a door. After Dr. Arthur Butler's untimely death, the Sanitarium was renamed Butler Memorial. At the same time, a new committee (interracial) formed to plan for the future of the hospital. The committee's goal had a dual purpose: to provide a new facility to serve the growing Black community and to keep Black patients away from both Evanston and St. Francis hospitals.

In 1951, an article in the *Alabama Tribune* appeared with the headline: "Illinois Town to Get New Jim Crow Hospital," (*Alabama Tribune,* May 18, 1951). The Sanitary District Board of Chicago (now known as the Metropolitan Water Reclamation District of Greater Chicago) agreed to grant a 99-year lease on two acres of Evanston property located on the east bank of the North Shore Chanel (between Brown and Gray Aves) for the site of a new 56-bed hospital to serve the "Negro population of Evanston." Eugene Beck, Evanston City Council member representing the fifth ward, said that the hospital was "sorely needed." The Evanston City Council endorsed the deal. Dr. J. B. Martin, the sole Black trustee on the Sanitary District Board of Chicago, voted against the deal stating that it would "promote segregation." ("Lease Sanitary District for Hospital," *Chicago Tribune,* May 11, 1951.)

The new "Community Hospital of Evanston" was promoted as being "interracial." When it opened in October 1952, six of the 21 doctors on staff were Black.

Father and Son Banquet c1922 at the Emerson Street YMCA. Shorefront Photographic Collection

Emerson Street Branch YMCA

The Evanston YMCA, established in Evanston in 1885, did not allow membership from the Evanston Black community. The historical evolution of a separate and segregated facility demonstrated the Evanston paternalistic viewpoint of its own history.

As a result of being denied membership in c. 1907, James Rayford Talley enlisted the assistance of a small group of leaders and businessmen to organize its own spiritual and outdoor recreational outlets for Black male youth just off of West Railroad (now Green Bay Road) and Foster Street and continued there for several years. Talley's efforts attracted an influential supporter of the Evanston Y.

> **Comes Dr. Harris, Negro's Friend**
> Now started, at the instance of an Evanston philanthropist, Dr. Dwight J. Harris, a movement of incalculable consequence in inter-racial responsibility. This city needed a Negro branch of Y.M.C.A. Central. There met, August 20, 1909—a good date to remember—at the headquarters of the big friend of all Evanston, seventy young Negro men who were addressed by sponsors of the project and by W. A. Hunton, International Secretary of Colored Y.M.C.A. work. Forty-two persons subscribed $165 and developments were committed to Dr. Harris, three Negro pastors and Mr. Dale. ("Half Century of Building Health and Character 1885-1935")

Dr. Harris continued his involvement as sort of a liaison between the Evanston YMCA and Rev. Talley. What was clear in the general social makeup of Evanston at that time was the notion of social responsibility for the less fortunate, in particular, the Black community. Many sources of early Evanston history had, in most cases, prescribed itself to paternalism. This notion is exemplified in several reports and studies and, in regards to the YMCA, in the pamphlet “A Half Century of Building Health and Character 1885-1935”.

Much work in garnering support of the branch YMCA brought graduates from the Hampton Institute to the site on December 27, 1913. Following a speech by Robert S. Abbot, founder of the *Chicago Defender*, presentations about the importance of education and trades offered at Hampton were facilitated by graduates of Hampton (*Chicago Defender*, Dec. 27, 1913, p. 2.)

The Emerson Street Department YMCA was formally dedicated on Sunday, July 5, 1914 with James R. Talley as Department Secretary. The event was covered in the *Evanston Daily News* and the *Chicago Defender*. (*Evanston Daily News*, February 5, 1914.)

The immediate years that followed the opening of the Emerson Street Branch YMCA proved its importance and, soon, it was already too small to service the rapidly growing Black community. In 1910, the Black population was 1,160. By 1920, it grew to 2,522 and by 1930 to 4,938 (U.S. Census data). Within a city that was facing the increasing presence of Jim Crow policies, the Branch provided needed services, a meeting place and networking for the Black community, and housing for Black Northwestern University students who were barred from campus housing. Thus, the Branch Y maintained a system paralleling “separate but equal” services.

By the mid 1920s, it was evident that the Emerson Street Branch needed bigger facilities. The Branch turned away 155 applications from young men competing for the eight available dorm rooms. It suffered a fire in the gym on March 8, 1924 which resulted in $5,390 damages, hosted its largest turn-out for the Father and Son Banquet in 1926, and closed out the same year without a deficit, all within a $9,600 allocated budget.

As the Evanston YMCA made plans to relocate its facility from the immediate downtown area of Evanston into a newly-built building, made possible by a major fundraising campaign, a portion of the funds raised were slated for the expansion of the Emerson Street Branch. In reviewing its options, the Evanston YMCA Board considered incorporating the Emerson Branch into the proposed new location of the Evanston YMCA at Grove Street, more than15 years before the national effort of integrating facilities began to take shape. The idea apparently was abandoned.

> “At first we thought the Emerson branch might be moved and made a part of the new Grove Street building, but we received so many requests from Negro members to keep the branch at its present location, at 1014 Emerson St., that we acceded to their wishes and made no plans for its removal.” (George R. Folds, “Plan New Building to House Negro Y,” *Evanston News Index,* Oct. 11, 1928, 2.)

The push for a larger facility that encompassed both the Evanston YMCA as well as the Emerson Street YMCA raised more than one million dollars. Of that fund, $941,283.05 was marked for the new construction of and contents of the central Evanston YMCA, while $106,471.54 was slated for the Emerson Street Branch for both the building's expansion and its contents. This included an appropriation of $17,500 from the Rosenwald Fund (*A Half Century of Building Health and Character 1885-1935*).

At this time, Northwestern University did not allow Black students to live in any campus dormitories. Students, if they did not commute, took up residence in the homes of local Black residents or at the Emerson Street Y. Students continued to room at the Emerson Branch until Northwestern fully desegregated its campus dormitories in the 1960s. (*Northwestern University, A History, 1850-1975*, 238-239; Thompson, *The Takeover 1968*.)

After the rededication of the expanded Emerson Street Branch in 1930, commissioned reports and surveys still suggested its facilities were inadequate, further demonstrating a very serious need for services, space and funds. Even with these inequities, the Emerson Branch continued to enjoy its heyday period pre and post-World War II.

By 1940, the Evanston Black population reached 6,026 and the Emerson Street Branch boasted a significant membership accomplishment. It was estimated that four out of five Evanston Black boys of eligible age were members of the Emerson Branch in 1941. There were 1,095 members recorded in 1942. (Norman J. Weston, "YMCA Reports New Records," *Evanston Review*, January 2, 1941.)

Exemplifying the need and use of the Emerson Street YMCA, it was utilized as a meeting place by other organizations within the Black community. Throughout the branch's history, clubs, organizations, religious groups and other initiatives had their beginnings within its walls. Black high school students held their swimming classes at the Emerson Street Branch as well as their prom. ETHS did not allow the Black student body to attend proms or swim in the pool. Sports and intramural sports were segregated, with nearby high schools barring Black and white students from playing together.

It should be noted that an active committee of women also oversaw the girls activities at the Emerson YMCA since the local YWCA also has segregated policies in place.

Desegregating Facilities

> "I remember when I came back from California in 1945 - 1946, and wanted to go swim in the Y pool. Not thinking twice about where to go, I went to the Grove Street YMCA. There I was politely told that my membership was for the Emerson Street Branch only." (Fred Hutcherson, III, Shorefront Interview, Dec. 2004)

The National YMCA began in earnest to desegregate all of its YMCAs across the United States in 1944. In two issues of the *National Council Bulletin*, (Vol. 28, No. II, Dec, 1954 and Vol. 29, No I, Jan, 1955) it was announced that areas in Philadelphia, PA, St. Louis, MO, and Brooklyn and Queens, NY, had completed integration processes.

> The Board of Managers of the West Branch YMCA believes that the West Branch YMCA is the best place in our community where white people and Negroes can maintain a socio-religious movement together. We deal with community needs. We serve youth. We are a cooperative enterprise. We can help you, and you can help us. We all believe in, and we all invest in the youth of West Philadelphia. *("Interracial Policy Becomes Practice",* National Council Bulletin*, Vol. 28, No. II, Dec, 1954)*

Recognizing the trend, the Evanston YMCA began to address the issue of desegregation. On December 21, 1954, the first interracial committee was formed in Evanston to address major developments between the two YMCAs (YMCA board minutes, December 21, 1954).

From these minutes it is clear that the serious matter of the financial stability of the Emerson Y was also at question. The interracial committee was appointed to address the financial and managerial concerns of the Emerson Street Branch YMCA. The minutes from the December 1954 meeting strongly suggest the beginning of the demise of the Emerson Street Branch YMCA. At the end of the meeting, the board asked for the resignation of Thomas Hummons after eleven successful years serving as the executive secretary of the Emerson Branch. A later public announcement indicated that Mr. Hummons himself resigned and took a position as "a Field Representative with the Chicagoland Clearance Commission" (*Evanston Review*, April 28, 1955).

One outcome of the interracial committee's work was the formulation of a plan to desegregate the Evanston Y on Grove Street. In 1957, the Evanston YMCA implemented its desegregation plan beginning with the 4th grade level, with each consecutive year desegregating each of its age groups. By December 18, 1963, the Grove Street location announced that it had fully desegregated its facilities with the 7th and 8th grade levels, the last levels to be integrated. Within 12 months, the nation passed its revised Civil Rights Act in 1964. Several youth from the Black community began to frequent the Evanston YMCA on a regular basis as a show of inter-racial cooperation.

The seven-year process was not an easy goal to meet and it was met with opposition, mostly from the Evanston YMCA membership. In all of the board minutes during this time period, it became clear that there were many board, staff and members of the Evanston YMCA that were against integrating the Evanston YMCA.

While most of the teen groups submitted written letters approving integration, the young women's group was adamantly against desegregation, especially for social events. Even though

many groups and members submitted letters of approval, the general off-the-record accounts leaned toward a general un-acceptance of the idea of desegregation. Many members suggested that they would cancel their memberships and/or donations to the organization if integration within the Grove Street YMCA were to happen. A survey was issued soliciting thoughts to “the issue” to board members, group leaders and staff. In the following years, debate and heated discussions in open and closed board meetings tackled the response gained from the survey (see appendix “1960 Staff Retreat Notes”). In the later years, the interracial committee was referred to as the “special committee” and the “liaison committee.”

Additionally, throughout the years, there was continued concern about the Emerson Branch’s financial stability. Between 1954 and 1961, the Branch reported an average “subsidy” (new term introduced from “budget”) of $20,000 per year. In these years, the total income had consistently come in at 45 percent of the budgeted expenses. Financial resources from the Black community, donations to the facility and corporate backed donations were in stark contrast to those of the Evanston YMCA.

The closing of the Emerson Street Department YMCA brought on an assortment of feelings within the Black community. Anger, resentment and abandonment were the resulting feelings of many in the local Black community. Others felt that the closing was long overdue. Not for what it offered, but for its symbol of racial prejudice and Jim Crow — an unwanted center in contradiction of the Black Power movement of the 1960s and 1970s. As the greater community was invited to join membership of the Y on Grove Street, it was met with mixed emotions from not feeling a part of a family represented in the negative symbolism of the Grove Street Y teen hang-out area, the Plantation Room. The room included a painting that depicted enslaved Black people working in a field.

Dozens of Black residents who have been interviewed and who have participated in past activities or who were employed at the Emerson Street Y, had nothing but fond memories of the Y. They shared times of dances, parties, club meetings, church activities and recreation. They also shared feelings on the closing of the Emerson Street YMCA in 1967. There were attempts to purchase the building for alternate community use (attempts that were rejected). In 1980, the Emerson Y building was demolished after the City of Evanston gave the building to the fire department for training. The building was set on fire before it was demolished.

SCHOOLS

"Fortunately," wrote David Bruner of Evanston's school system in 1924, "it has been possible to have one school district which is largely Negro and ever more becoming so." (Bruner, 57) For years, no Black school teachers taught in the city's schools. Grammar and middle schools were segregated, and the majority of Black students attended a single school, Foster School. Although Evanston Township High School was integrated, there were a variety of practices deployed to separate Black and white students, from enrolling Black students in basic, rather than advanced, courses to barring Black and white students from sitting together in the classroom.

Foster School c1910

Foster School

Between 1905 and 1967, Foster School provided all younger Black generations with education and by the 1940s, it was the predominant school where Black students were encouraged to attend and where Black teachers could find employment. This was a result of Evanston's participation in the segregated societal system of Jim Crow.

> **Transfer of Pupils, Causes Vigorous Protest in Evanton**
> The Transfer of 42 pupils from the North Evanston schools to the Foster School … caused an indignant protest from residents of the Fifth ward of Evanston. … "If they are not trying to get rid of the Negrop pupils,...it certainly is a curious coincidence that the entire overflow was 100 percent black." (*Chicago Defender*, March 30, 1918, p. 13)

On April 18, 1903, a vote was cast approving the construction of a new school building in the amount of $30,000 in bonds and an additional $20,000 tax levy. On July 1, 1903, School District 75 received a building permit to construct a two-story brick building at 2010 Dewey Avenue by architect Ernest Woodyatt. Also in 1903, Ellen Foster, who previously operated her own school at 1319-321 Emerson Street, was elected principal of Foster School. Named after a Northwestern University president, Randolph Sinks Foster, the school opened in 1905 with a student body nearly 100% White and faculty and staff 100% White. By 1945, the student body was nearly 100% African American.

Evanston's plan to segregate the Black community resulted in, and conveniently made, a segregated school. By the end of 1930, most Black residents resided in the Fifth Ward of Evanston and Foster school was centrally located in that ward. To ensure that Black students and not white students attended Foster School, boundary lines which determined the school zone for Foster were drawn down the middle of major streets and through alleys.

> "... when a street on the border of a school district has noticeably changes in racial composition, a redistricting is made, presumably for the benefit of both races. If a street bounding the Foster district becomes solidly colored in population, it is placed entirely in the Foster district..." (Alice Orian Rood, "Negroes in School District 75, Evanston, Illinois", 1926)

The few white students who were caught within the boundary were encouraged to attend other District 75 schools. Black students living outside the Fifth Ward and able to attend closer schools were often "persuaded" to attend Foster. Although the majority of the students who attended Foster before World War I were white, by 1928, 85% of the students were Black. By 1945, Foster had a 99% Black student body. A "testing-out" program enabled Black students who scored above a certain percentage to attend other predominantly white schools in Evanston.

Prior to the 1940s, a certified Black teacher could not be employed in Evanston as a teacher. The first known Black "teacher" at Foster was Mr. Charles Bouyer, who was employed as a physical education instructor during the 1930s. He is also believed to have been the first Black public school teacher in Evanston and the only Black teacher in either District 75 or 76.

As a response to much protest from the Black community between 1940 and 1950, Black teachers were hired. Foster School was the designated school where Black teachers could teach. Patsy Sloan was the first Black teacher hired to work within the school districts. Lorraine Morton was the first Black teacher hired who taught outside of Foster School at Nichols Middle School.

On October 30, 1958, a serious fire destroyed most of Foster School with estimated damages at roughly $500,000. The north wing of the building was usable after being repaired, and a new south wing was built and dedicated in December 1960. During the reconstruction, the displaced Foster school students forced a semblance of integration in surrounding schools. Instead of being incorporated into the existing classrooms, however, the Foster students were kept separate and met in the gyms, libraries or other makeshift accommodations.

In an effort to confront the pending mandate of a national desegregation plan, School District 65 implemented an experimental school in 1966. Based at Foster School, the Laboratory School (Lab School) involved bussing white children from several overcrowded schools via a lottery, adding classes each year. Classrooms were composed of equal numbers of Black and white students. Innovative curriculum programs were developed in partnership with Northwestern University.

By 1969 the Lab School, and Foster School, was renamed to the Dr. Martin Luther King Laboratory School. By 1979, the school was relocated to the former Skiles School and the Foster building was shut down.

The shuttered Foster School was met with further protest and the local NAACP chapter filed a racial bias lawsuit against the school district citing that the Black community wants "equity and parity in education." (*Evanston Review*, Pioneer Press, June 21, 1979)

Evanston Township High School (ETHS)

Evanston Township High School is the only public high school in Evanston. Historically, it was in the high school where Evanston's Black and white students would interact with each other for the first time in a public school setting, with some limitations. Black students were subjected to racial biases; they could not fully participate in intramural activities, swim in the pool, join certain clubs, or attend prom. Expectations in classes were not balanced. Black students were prevented from academic earned recognition.

> "I guess the only thing that I have any bad memory about [ETHS] is my math teacher telling me I couldn't get an 'A' because I was Black." (Helen Cromer Cooper, Shorefront oral history collection, www.shorefrontvoice.org)

Social restrictions were enforced and inter-racial dating was not approved. Black students who were caught were often suspended from school.

> "Evanston High School was very racial then and there was like a separation. We had one school, and Dr. Michaels was the principal. And he and I had our problems about out-of-race dating at that time or going out with people. We had our problems. I think I was suspended a couple of times for it." (James Burton, Shorefront oral history collection, www.shorefrontvoice.org)

In 1929, ETHS officials cancelled the junior prom which was scheduled to be held at the all-white Evanston Country Club. The cancellation was made after a group of Black students insisted on their right to attend the dance. Thomas Lord, the country club's president, announced that the dance could not be held at the club if Black students were allowed to attend. ("Cancel Evanston H.S. Prom Because of Negro Dispute," *Chicago Tribune,* June 8, 1929.)

It was not until Federal legislation was passed in the 1960s that Evanston began efforts to desegregate schools. In 1965, several schools were targeted for desegregation, including

Foster school (which had one hundred percent Black student enrollment) and Dewey school (which had sixty-seven percent Black student enrollment). School superintendent Oscar M. Chute announced the goal of achieving an "even mix in every school" within the district's fifteen schools (which also included several schools in nearby Skokie, IL). ("Evanston Plan Given to Integrate Schools," *Chicago Tribune,* May 18, 1965; Casey Banas, "O.K. Evanston School Quota," *Chicago Tribune,* November 22, 1966). Chute retired before the desegregation process was implemented. His successor, Gregory Coffin, became the focal point of many angry critics as he sought to carry out desegregation efforts, including bussing students and transferring teachers to other schools. Evanston residents were divided over his efforts and they packed the school board meetings that became increasingly tense. Two years into his job, Coffin was all but fired by a divided school board. (His contract was not renewed.) (Seth S. King, "Affluent Evanston, Ill., Divided Over Move to Drop School Integration Leader," *New York Times,* August 24, 1969.)

Northwestern University

While Northwestern University did not have an official policy banning Black students from enrollment, for years the miniscule number of Black students enrolled there, along with almost no Black faculty and administrators, meant that the university operated as a "predominantly white institution," a fact that the Northwestern University administration formally admitted in May 1968.

Evidence of discrimination at Northwestern is voluminous. In 1906, for example, Northwestern President A. W. Harris made his view on the desirability of school segregation known when he stated that he was "shocked" whenever he saw Black and white students enrolled at the same school, arguing that separate schools were far more "wholesome." ("Harris Favors Separate Schools for the Negroes," *Chicago Tribune,* November 11, 1906.)

For decades, the small number of Black students faced discrimination in almost all aspects of their lives as students: they were barred from using the university bathing beach and swimming pool. Black female students were not allowed to take physical education classes, despite a university requirement that all students take gym in order to graduate. Black students were barred from joining the basketball and swimming teams (part of widespread discrimination against Black student athletes at predominantly white universities). And some amenities, such as the Goodrich Grill, a campus dining facility, reportedly refused service to Black students. And like at the high school, academic achievement was often derided:

> "I had the same thing in my French class. I should have gotten all 'A's, and the kids used to come to me and say "I know you got an 'A' this time." But he told me right flat out that I could -- that a black could not earn an 'A'." (Helen Cromer Cooper, Shorefront oral history collection, www.shorefrontvoice.org)

From 1903 to 1947, (with one exception) no Black students or visitors were allowed to live in any campus housing facilities at Northwestern University. Black students were forced to find

lodgings elsewhere and for years students reported the difficulty and hardship of looking for housing in a deeply segregated city.

Poet, author, and professor Margaret Walker Alexander (1915-1998) was born in Birmingham, Alabama. She earned a BA from Northwestern in 1935. Forced to live off campus since the university would not allow Black students to live in campus housing, Alexander was one of 40 Black students who confronted a climate of discrimination and segregation of 1930s Northwestern and Evanston. On campus, Alexander recalled, “racism was rampant,” with professors telling “darky jokes openly in the classroom.” When white students laughed, she wrote, “you burned with shame but you could do nothing about it.” (quoted in *The Takeover 1968,* 27).

In 1943, Northwestern’s Business Manager, Harry L. Wells, offered one of the clearest statements on the university’s policy on housing: “It is the policy and the unwritten law of Northwestern University to prohibit all Negroes from living in any dormitory or house on the university campus,” he said. (“Northwestern Sued For $50,000 in Dorm Ban,” *Chicago Defender,* December 11, 1943.)

In March 1964, the *Daily Northwestern* published information drawn from an interview with a former admissions office employee who revealed that during the time she worked in the office, from 1959-1961, one of her duties “had been to designate the religion and race of applicants.” She explained the procedure: A numerical code was used on each application: Number 1 designated a Protestant applicant, 2, Catholic, 3, Jewish, and 4, “Negro.” “If the applicant were either of the last two numbers,” Scarritt said, “they were circled.” In April 1964, Albert J. Weiss, head of the Anti-Defamation League of Chicago’s B’nai B’rith Foundation, revealed that he had “evidence that, as recently as the spring of 1964, Northwestern University was coding applicants as to whether they were Protestant, Catholic, Jewish, or Black,” thus limiting the enrollment of Black, Jewish, and Catholic students, who, for decades, had only been admitted in very small numbers. (*The Takeover, 1968,* 58-59). University officials pledged to reform and cease using the process of coding applicants (for years, they had also required applicants to state their religion on their applications for admission and to include a photograph of themselves.) Not too long after, the university removed its admissions director, hired a new director, and began efforts to integrate the university.

Opal, an organization that tracks current racial disparities in Evanston who distilled data on their website, cites the following data:

- **Suspensions –** Although Black students made up only 22.4% of the District 65 student population, they made up 58% of suspension incidents. (Source: SY2018-19 Discipline Report, page 5.)
- **Discipline –** Only 6% of White students received 1 or more Office Discipline Referral (ODR) for a major infraction, compared to 23% of Black students. (Source: SY2018-19 Annual Discipline Report, page 6)

- **Hiring –** Despite research showing positive impact of Black teachers on Black student achievement, the District's percentage of Black educators consistently lags behind its percentage of Black students and has barely changed since 2014. (Source: State Report Cards 2010-2019.)

HOUSING AND ZONING POLICIES

Housing:
Until the 1910s, the majority of Black residents in Evanston lived in neighborhoods throughout the city. In the years just prior to World War I, the city's Black population began to expand and soon rapidly increased.

The increase in the Black population was part of the Great Migration (1910-1970), a movement of what amounted to over six million people leaving the South for cities and towns in the North, West, and Midwest. Many Black southerners moved to Evanston, with promises of a better life away from the violence and oppression of the Jim Crow South.

During the first years of the Great Migration, white Evanston residents began to enact some of the policies (both public and private) that would create a deeply segregated city, and whose patterns and effects are still apparent today. These policies evolved over time, and while there was some degree of opposition to them and in some cases public outcry, the opposition did not represent the majority of white city residents.

In 1925, the Urban League issued a "warning" to Chicago area residents owing to the "stream of Negro migration . . . still pouring steadily from the south." There was, the organization stated, a stark need for "friendly cooperation between the races." The Urban League reported widespread "friction" as Black people moved into cities and towns formerly occupied by a majority white population. ("Urban League Warns of Problem City Faces in Colored Migration," *Chicago Tribune*, November 19, 1925).

A primary response to the influx of Black residents into Evanston was segregation. As early as 1918, there was evidence of a segregated Evanston. The *Chicago Tribune* referred to Evanston's "negro section" which it identified as: west of the Chicago and Northwestern railroad. ("Evanston Negroes Plan to Be Neighbors of Evanston Elks, *Chicago Tribune,* February 6, 1918.) Indeed, this section was precisely located in the area that would be home to the vast majority of Black residents by 1940, the fifth ward. This was not by accident; it was by design.

In January 1918, the *Evanston News-Index* published an article with the headline: "Negroes Unable to Secure Homes Here." The article reported that a Black real estate firm had conducted research into the housing conditions of Evanston's Black residents. "With more than 400 tenantless residences in Evanston," the article read, " insanitary conditions are developing in the negro sections here because of the congestion in many homes." Nearly fifty Black families were crowded into too small residences because they were "unable to rent any of the hundreds of empty houses" in the city. The report explained that "owners and agents of vacant property plan to prevent the negroes from spreading from their own quarters." There was an "alleged plan to 'freeze out' the negroes from all parts of Evanston except their own neighborhoods." And this, the article stated, was done owing to "race prejudice." ("Negroes Unable to Secure Homes Here," *Evanston News-Index*, January 2, 1918.)

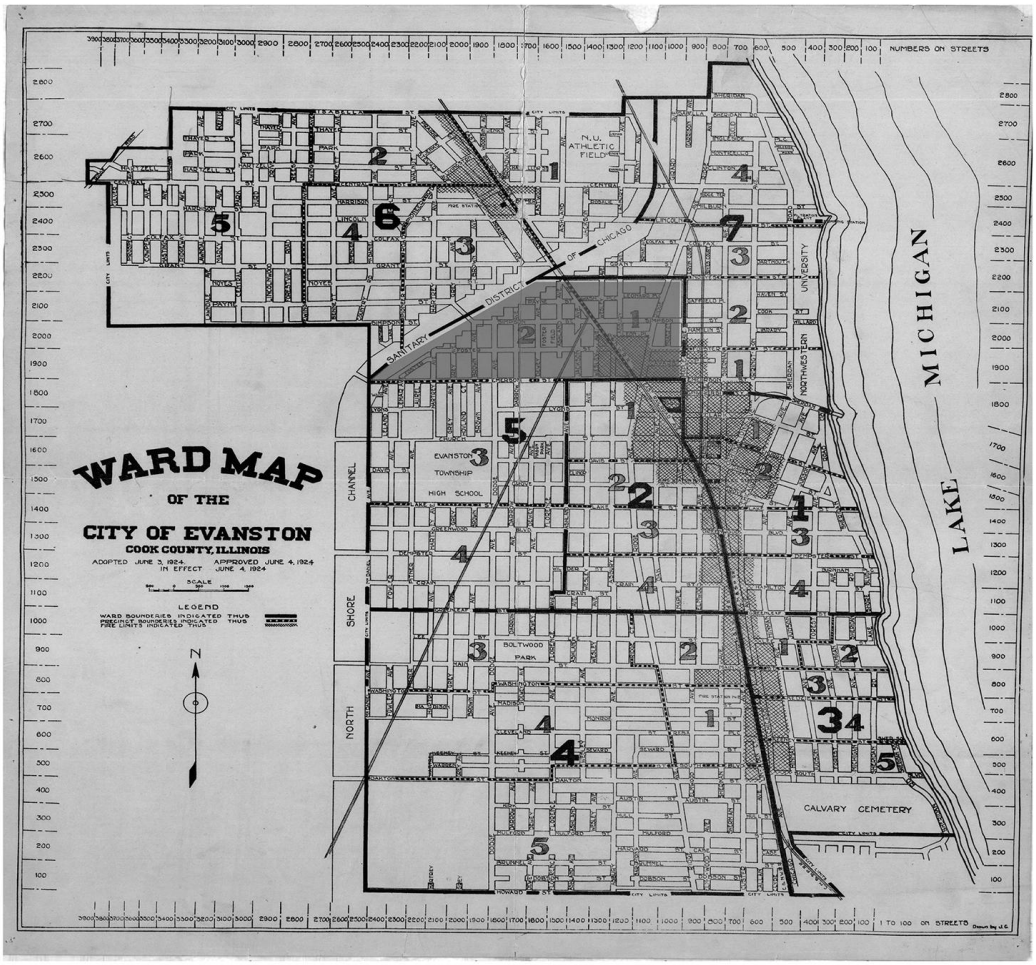
By 1940, Evanston had the largest Black suburban population in Illinois, with 6,026 Black residents in a total population of 64,000. “In response to black migration white Evanstonians erected a wall of segregation in public and private life, including the market for housing,” as historian Andrew Weise observed (436).

Black residents were steered toward buying and renting housing in the city’s Fifth Ward; attempts among Black residents to occupy areas beyond that ward were met with strong opposition.

“Classic Evanston will be invaded by Negroes” read the headline of the *Indiana Gazette* in 1918. The paper reported on the plan of a Black membership organization in Evanston to move into a clubhouse at 1326 Chicago Avenue because club members were unable to find appropriate accommodations in the “Negro section” of the city. The clubhouse was planned to be built in the so-called “white” section of the city, and thus Evanston would be “invaded,” as the paper reported. White residents responded that they would “not permit the invasion.” (*The Indiana Gazette,* February 23, 1918; “Negroes Plan to Be Neighbors of Evanston Elks, *Chicago Tribune,* February 6, 1918)

Between the 1910s and 1940, as historian Andrew Weise has documented in great detail, as more Black people moved into the city, real estate agents working in Evanston developed a practice of informal racial zoning, which offered Black residents housing largely on the city’s west side, largely excluding Black residents from residing in all other parts of Evanston.

“Evanston is growing!” one Evanston bank proclaimed in an ad in an Evanston newspaper in 1922. “Plans are now underway for extending boundaries and developing the open land to the west.” (Advertisement, *Evanston New Index,* January 4, 1922). For developers and realtors, steering Black residents to the west side was a financial boon, especially because that area had more vacant land and housing could be built there on land that had previously been considered undesirable (i.e. the land was on a floodplain and relatively far from the city’s downtown and transportation). And thus a Black section of Evanston began to “spread out to the west into a remote and undeveloped portion of municipal territory.” (Bruner, 47). For many Black residents this was the only choice for a place to live since many white landlords and realtors blocked access to housing in other areas of Evanston.



1924 Ward map of Evanston

Between 1920 and 1929 more than 400 new homes were constructed in this area and they were built “explicitly” for Black residents (Weise, 442). As a result, by 1924, Black Evanston residents had a fairly high percentage of homeownership (about ⅔ of Black residents owned their homes, according to David Bruner), largely due to the fact that they were unable to find rental housing that was open to them. As Bruner observed: “it is difficult for the colored man to get property anywhere; but many newcomers buy partly because they cannot find places to rent. One of the older colored residents of Evanston estimated that 2/3 of those who have been long in Evanston own their homes . . . although until about 10 years ago few even of the older residents owned property: 60 to 75% of the homes owned have been purchased in the last 10 years, he says.” (Bruner, 35)

The percentage of Black home ownership would, however, decline by 1940, when just over one quarter of Black residents owned their own homes. (Evanston Committee on Postwar Planning, “Evanston Housing, Some Facts, Some Problems,” Evanston, 1940, np.)

Owing to a tacit agreement among realtors and others, the informal process of steering Black residents into a single area, which began around 1910, translated into the fact that by 1940, 84% of Black Evanston residents lived within a single neighborhood, which was described as:

> "To the West and North, the enclave ended at the banks of a broad sanitary canal. To the East, black neighborhoods halted at the tracks of the Chicago and Northwestern railroad, with the exception of one small node, which protruded eastward on 2 streets to the tracks of the L train. To the South, Church Street formed the recognized boundary." (Wiese, 427-438)

In 1940, a total of 1,252 housing units citywide were occupied by Black residents. Of that number, 1,010 were located in the fifth ward, with 116 in the second ward. In the remaining 6 wards only 126 units were occupied by Black residents. (Evanston Committee on Postwar Planning, "Evanston Housing, Some Facts, Some Problems," Evanston, 1940, np.)

Now, the majority of Black residents were crowded in the 5th Ward, an area in which residents often paid higher housing prices for, in many cases, substandard dwellings. In fact, when Black residents began to move to the area they found that much of the housing had no electricity, water, or sewers, and some of the streets had yet to be paved. Bruner described the area "to the West, near the drainage canal": "Here is real urban homesteading: sewers and water, gas and electricity are in, but the streets are just being graded and often families move into their houses before sewer and water are connected. The houses often look amateurish, being in many cases built apparently from wreckage of other houses. All sorts of makeshifts are adopted. In one case on the records of the housing inspector a man had built a fairly good house, then rented it to two families and taken up his own residence in the barn at the rear of the lot with his horse. In another instance four adults were found living in a two room shed without water, light or sewer connections." (Bruner, 36).

(As late as 1940, some units of housing occupied by Black Evanston tenants were documented as having no bathing facilities, no running water, and no private toilets; other units still used gas, kerosene or gasoline for lighting, while others had no cooking facilities. (Evanston Committee on Postwar Planning, "Evanston Housing, Some Facts, Some Problems," Evanston, 1940, np.)

Also by 1940, Black families were reportedly paying higher rents for comparable properties rented by white tenants. (League of Women Voters, *This is Evanston*, 1949, 20.) Additionally, as Wiese documents, white bankers and mortgage lenders financed the mortgages of many Black-owned homes through discriminatory terms (charging higher interest rates than white mortgage holders were charged, for example.) John F. Hahn, Evanston City Clerk from 1899 to 1925 and president of the Commercial Trust and Savings Bank of Evanston, was active in financing mortgages for Black residents in Evanston. Hahn served as City Clerk at the time the city passed its first zoning ordinance, signed into law on January 19, 1921 by Mayor Harry P. Pearsons.

Zoning:

Along with the private and tacit practices that shaped a segregated city, the City of Evanston also officially supported and enabled the practice of segregation.

In January 1921, the City of Evanston officially codified this practice when the Evanston City Council passed the city's first zoning ordinance, a key piece of legislation that tacitly served as an effort by city officials to segregate the city by race. (The ordinance was revised over the years after the initial legislation was passed.)

The ordinance was designed "to classify, regulate, and restrict the locations of trades and industries and the location of buildings designed for specified uses and to regulate and limit the height and bulk of buildings hereafter erected, to regulate and limit the intensity of the use of lot areas and to regulate and determining the area of yards, courts and other open spaces within and surrounding such buildings, and to establish the boundaries of districts for the said purposes and prescribing penalties for the violation of its provisions." (Zoning Ordinance, Evanston, Illinois, 1921, 1.)

Evanston's zoning ordinance was created by a nine-person city Zoning Commission, which included the consultant Harland Bartholomew, whose firm Harland Bartholomew & Associates crafted similar ordinances across the United States in cities from Saint Louis, MO, to Oakland, CA. Bartholomew's work in creating zoning ordinances (along with concurrent efforts at crafting "comprehensive city plans") has increasingly come under scrutiny by scholars and historians who argue that one of the primary impulses behind such ordinances was to enforce segregation. And today, many scholars now view zoning ordinances as deeply damaging to the cities and towns in which they were enacted.

Indeed, some of the first zoning ordinances were designed to explicitly enforce racial segregation. Primarily in the South, some cities' zoning ordinances established "race districts" (Atlanta) or codified "race segregation" (Dallas). (Mary T. Voorhees, "Zoning Progress in the United States," *Engineering News-Record,* September 28, 1922, 519.)

This "racial zoning movement," however, was impeded in 1917 when the U.S. Supreme Court declared a racial zoning ordinance in Louisville, Kentucky, to be unconstitutional. (Christopher Silver, "The Racial Origins Of Zoning In American Cities," From: Manning Thomas, June and Marsha Ritzdorf eds. *Urban Planning and the African American Community: In the Shadows.* Thousand Oaks, CA: Sage Publications, 1997, 1.)

Around 1921, the zoning movement in the United States was shifting its language, but the primary goal remained: to control land use. As historian Christopher Silver has shown, both "racial zoning practices" and their advocates were not solely located in the South. In cities in the North, Midwest, and West, "especially those where the Black population increased rapidly," land control legislation was viewed as an "effective social control mechanism for Blacks and other 'undesirables.' " And nearby Chicago, it should be noted, was "a bastion of racial zoning enthusiasts." (Silver, 2)

After the Chicago riot of 1919, Illinois governor Frank Lowden commissioned a report to study the riot and race relations in Chicago. The report, *The Negro in Chicago*, was issued it 1922 with Charles S. Johnson, a Ph.D. student in sociology at the University of Chicago and director of research at the Chicago Urban League, as one of the report's key authors.

"The report identified inadequate housing conditions and the city's dramatic black population increase for shifting racial boundary lines, which stoked white racial resentment. The report also detailed roundly held suppositions, by real estate brokers and laypersons alike, that a more effective system of segregation with starker lines between black and white but better conditions in the black neighborhoods would reduce racial conflict." (Winling and Michney, *The Roots of Redlining: Academic, Governmental, and Professional Networks in the Making of the New Deal Lending Regime*,. 7-8.)

As Winling and Michney argued "Chicago real estate leaders took on this challenge locally as the city simultaneously became a national hub for the real estate profession and the study of real estate economics. These two developments were closely linked with Chicago's emergence as a racial tinderbox in which white realtors, lenders, and homeowners sought to maintain segregation as a constituent feature of residential real estate's structure and value. Many cities were experimenting with administrative forms of segregation, such as racial zoning in Saint Louis and Baltimore, while others suffered major outbreaks of anti-black violence across the color line. The imperative for racial peace was essential for cities in the midst of chaotic changes in immigration, industrialization, and urban growth." (Winling and Michney, 7-8.)

"Zoning is a means of directing the uses of land into a pattern that will best serve the needs of the entire city," observed the firm of Harland Bartholomew and Associates in its "A Preliminary Report Upon the Proposed Zoning Ordinance (Evanston, Illinois, 1939, 2-3). With the aim of "protecting" property values and guarding against "deterioration," zoning ordinances effectively controlled where and how city residents lived. The ordinances "sought to ensure control over the entire area of the city" and zoning itself "became an instrument that promoted spatial segregation, including racial segregation, but without directly mentioning the question of races." (Ana Cláudia Castilho Barone, "Harland Bartholomew and Racially Informed Zoning: The Case of St. Louis," *Estudos Urbanos e Regionais*, 20, 2018, 448, 454.)

In the 1920s, the practice of zoning was again challenged, most notably in the landmark 1926 U.S. Supreme Court case, ***Euclid v. Ambler,*** 272 US 365 (1926). Ambler Realty filed suit against the village of Euclid, Ohio, claiming the city's zoning ordinance violated the Fourteenth Amendment's protections of liberty and property described in the due process and equal protection clauses. The court upheld the constitutionality of the zoning ordinance, which set a precedent for the constitutionality of zoning laws. "Racial zoning," however, was still considered to be illegal.

A 1922 study of zoning law offers insight into the ways in which zoning advocates could at once affirm the illegality of racial zoning, while still conveying decidedly racist views:

"In all countries people of the same race tend to live in the same locality. As a result, large cities have their well defined Italian, Jewish, Syrian, Chinese, negro, and other quarters," observed the author of the study, Frank Backus Williams, a lawyer and influential city planner in New York. "Often the growth or change of districts inhabited by members of a race considered inferior, like the Chinese or negroes, or the desire of some of its members for betterment, brings them into contact with other peoples in the same block or multiple dwelling. This invasion of the inferior produces more or less discomfort and disorder, and has a distinct tendency to lower property values. As a result zoning on race lines has been attempted in various parts of our Southern States, where negroes are most numerous. Such zoning in this country, however, is illegal, and has never been attempted as a part of the zoning of any other country." Frank Backus Williams, *The Law of City Planning and Zoning* (New York: Macmillan, 1922), 200.

In 1923-1924, Northwestern University student, David Bruner, undertook a study of Black Evanston residents. Bruner's study included a survey of Black Evanston residents and an investigation of housing, aided by the work of Evanston's sanitary inspector, R.J. Lindsay. Bruner's study is valuable since it constitutes a detailed record of Black Evanston residents just three years after the city's first zoning ordinance had been passed and as the segregated city was taking shape. Bruner's approach to his work reflected the widespread attitude of many white Northerners to the influx of Black southerners. "The Negro population of Evanston," Bruner observed, presents "a very real problem." And, he asserted, "the white community regards it as such." (Bruner, 2.)

The so-called "problem" stemmed, in part, from population growth, Bruner argued. In 1920, the U.S. census recorded 2,522 Black residents in Evanston. This figure represented a more than 50% increase since 1910 when 1,160 Black residents lived in Evanston. Projecting into the future, Bruner argued that the continued influx of Black residents could mean that as many as 8,000 Black residents could soon call Evanston home. (Bruner, 18.)

"If in the space of a decade there come into a northern city growing from a population of 25,000 to 37,000, members of a socially isolated and inferior race to the number of 1,362 there may be a problem arising," wrote Bruner in 1924, "particularly when most of the number come during the last half of the decade. When the majority of the newcomers to the northern city arrive direct from the unexacting life of Southern plantation or village without knowledge of the city and ways of living in crowds, and when at the same time little building is done and the area in which they may buy or rent is rigidly restricted, there is inevitably a problem." (Bruner, 1.)

Bruner observed that thus far in Evanston, "race relations" had generally been positive (despite the fact that ⅞ of the Black residents he surveyed said they encountered discrimination in Evanston). But Bruner also set forth an argument concerning why the Black population in Evanston had to be addressed as problematic. "The problem presented by the Negro population

in Evanston is of course only a phase of the whole problem of the Negro in the United States," he wrote, "and a part of the problem arising from the great northward migration of the Negro since the beginning of the recent war." (Bruner, 4). The "problem" was in fact a problem belonging to racist white people who viewed Black people as inferior or dangerous, and believed that their presence in a given location would have a negative impact on the city itself; a large or growing Black population, therefore, was something that white people needed to control, according to Bruner; and as Bruner's study makes clear, methods for control were found in a number of ways, from hiring practices to city zoning ordinances.

Referring to the "use map" of Evanston's 1921 zoning plan, Bruner explained that the map "indicates the kind of territories the Negroes find open to them: largely commercial and light industrial areas along the tracks, and districts so remote from transportation facilities as to be comparatively undesirable. It will be seen that practically no Class 'A' residential district is occupied by Negroes and none is likely to be opened." (Bruner, 35.)

Indeed, it must be understood that Evanston's 1921 zoning ordinance imposed restrictions upon a city that was already, to some degree, unofficially zoned since a majority-Black neighborhood had already been established. The zoning ordinance essentially codified the process of limiting where Black residents could live, and ensured, as Bruner states clearly, that Black residents would not find "open" to them any of the areas zoned as Class A in the future. (The majority of Class A areas were found largely along the lakefront and extending several blocks west, and also in the northwest corner of Evanston. See Use Map.) "There can be no doubt that there are rather confined limits within which Negro may come to live in Evanston," Bruner wrote. "This will be more and more true in the future. The Emerson Street district, especially in its eastern portion is most likely to be the permanent center." (Bruner, 24-25.)

In a 1939 report of Evanston's zoning ordinance, the firm of Harland Bartholomew observed: "Evanston has enjoyed the benefits of zoning for almost twenty years. These benefits include protection of residential areas from intrusion by commercial, industrial and apartment house uses." (Harland Bartholomew and Associates, "A Preliminary Report Upon the Proposed Zoning Ordinance, Evanston, Illinois, 1939, 6). In fact, however, that statement did not embrace the reality that the areas in which the majority of Black residents lived (residential) were zoned to allow for the intrusion of both commercial and industrial uses.

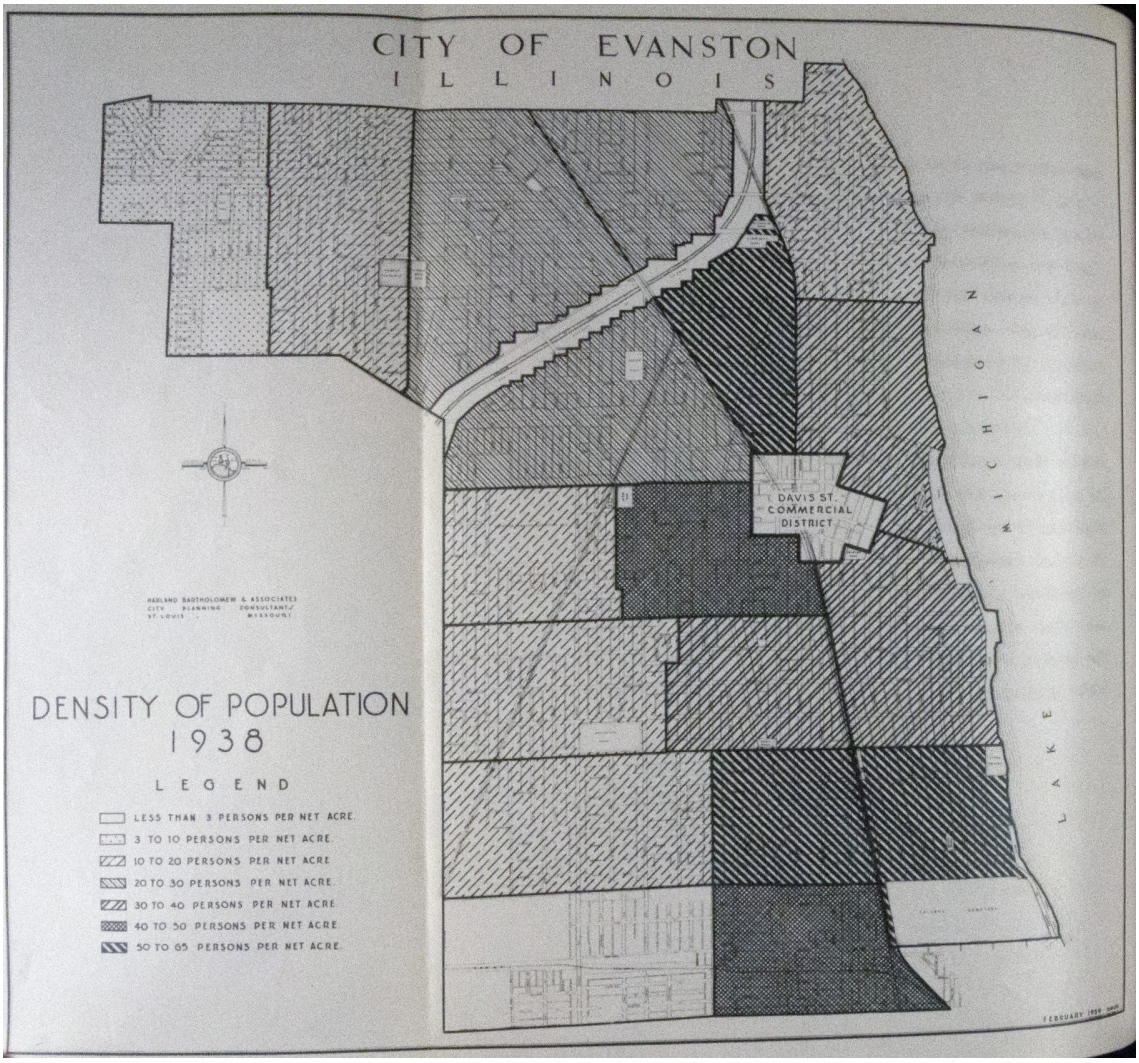
"After you have been restricted to this area (quite unintentionally of course since the main intention is to get you out of town altogether) then your troubles begin," wrote the editor of the *Newsette*, a Black newspaper in Evanston, about the push to segregate Black residents within the city's Fifth Ward or the west side in general. "Zoning laws permit anything short of a garbage dump to be built next door to your home, if you find one. The West side, as you know it, is zoned for industrial and commercial use. You will live, as usual, in the least desirable section of Evanston." ("Evanston's Housing Problem," *Newsette*, May 22, 1947).

In March 1939, the firm Harland Bartholomew and Associates, (which wrote Evanston's first zoning ordinance), submitted, upon request of the City's Zoning and Plan Commission, a plan

for a revised Zoning Ordinance. The report included information on the City's density, noting that it had "a very spotty density pattern." This pattern was owing to past zoning ordinances. Indeed, the report observes: "In the 'A' or single-family residence districts densities are relatively low as most of the subdivisions provided lots of generous size. In the high value residential districts lot areas per family as high as 20,000 or more square feet are not infrequent. These very low densities occur generally along the lake-front; along Ridge Avenue; in the central part of the city; and to a lesser extent in the north-western part of the city." (Harland Bartholomew and Associates, *A Preliminary Report on the Proposed Zoning Ordinance*, March 1939, 22-23). Meanwhile, the report notes "concentration of population" in areas zoned for multiple-family development … This is most apparent in the section between Ridge Avenue on the west, and the railroads on the east; the area west of the University; around the Davis Street commercial section; the south-eastern part of the city and certain small areas adjacent to Central Street." (26)

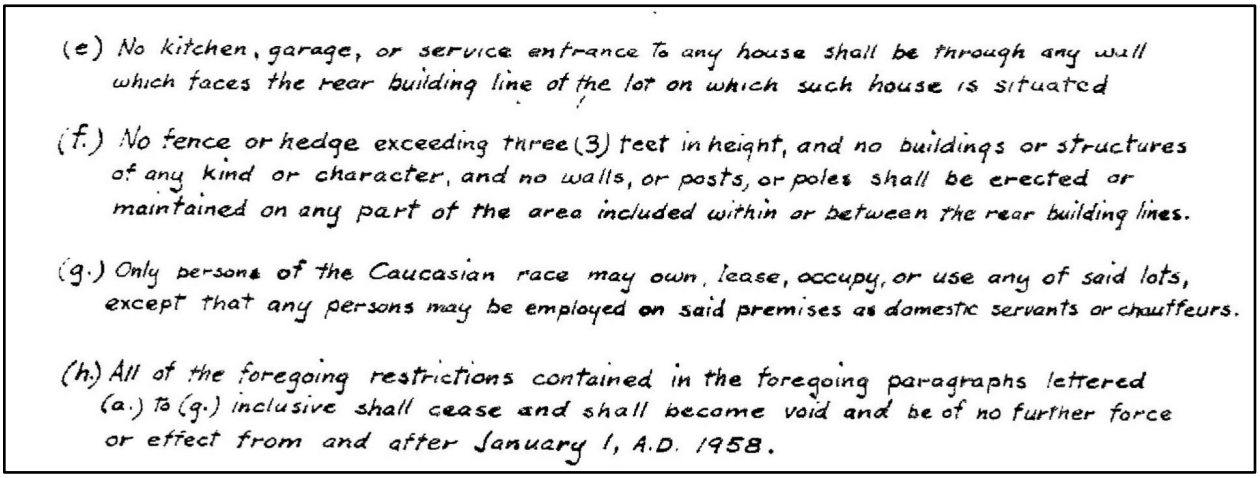
High density areas, which included the city's fifth ward, had as many as 50 to 65 people per acre" and some lots within those areas had "densities as high as 600 persons per acre." (29) "Such over-loading of the land creates serious municipal problems and should be discouraged," the report noted.

By 1939, however, the city had dramatically changed since the first zoning ordinance had been passed. The Great Depression had altered the trajectory of development and the needs for housing and commercial properties had shifted. A revised ordinance took into consideration these changes but also, in essence, affirmed the patterns established in the nearly two decades since the first zoning ordinance had been enacted.



Map showing population density in Evanston, 1938. The 5th Ward, a majority Black ward, is one of most densely populated areas in the city. From Harland Bartholomew and Associates, *A Preliminary Report on the Proposed Zoning Ordinance*, March 1939.

After the passage of the 1921 zoning ordinance, segregation had been upheld through various practices. Some white landlords continued to restrict access to housing in the city through "racially restrictive covenants" that provided that homes "shall not be conveyed, leased to, or occupied by anyone not a Caucasian (servants excepted)." Such covenants were legally effective until 1948, when the U.S. Supreme Court held them unenforceable. (Larry Gavin, "Developing a Segregated Town, 1900-1960," *Evanston Roundtable*, December 5, 2019).



(e) No kitchen, garage, or service entrance to any house shall be through any wall which faces the rear building line of the lot on which such house is situated

(f.) No fence or hedge exceeding three (3) feet in height, and no buildings or structures of any kind or character, and no walls, or posts, or poles shall be erected or maintained on any part of the area included within or between the rear building lines.

(g.) Only persons of the Caucasian race may own, lease, occupy, or use any of said lots, except that any persons may be employed on said premises as domestic servants or chauffeurs.

(h.) All of the foregoing restrictions contained in the foregoing paragraphs lettered (a.) to (g.) inclusive shall cease and shall become void and be of no further force or effect from and after January 1, A.D. 1958.

See “g” - Excerpt from restrictions for Burnham Park development in Evanston, Illinois, 1937. *(Source: Digital Chicago, Lake Forest College, https://digitalchicagohistory.org/exhibits/show/restricted-chicago/item/373. Plat #12075390,* Platbook *323, Page 8. Approved: October 15, 1937. Recorded: October 29, 1937. Expired: January 1, 1958)*

The Evanston Real Estate Board, organized and incorporated in 1918 and boasting a membership that included “every broker in good standing in the city,” also worked in tandem with others on restricting housing in the city. The board, led by seven white men, worked closely with Evanston city officials on various projects, including providing the zoning commission with “material assistance.” *(Evanston*, Evanston, IL: Kiwanis Club of Evanston, 1924, 23, 59.)

After the vast majority of Black residents were living in a single area, the work to complete the process of segregation continued. And, in many ways, the 1940s can be seen as the second wave of housing segregation in Evanston.

Home Demolition and Evanston’s Land Clearance Commission

By 1940, roughly 6,000 Black residents lived in Evanston, and some city officials saw fit to once again tackle the “problem” of “our non-white citizens.” Evanston Mayor S. G. Ingraham appointed a committee on postwar planning. In the committee’s report on Evanston housing, they outlined a list of “problems” associated with the housing of Black Evanston residents. (Evanston Committee on Postwar Planning, “Evanston Housing, Some Facts, Some Problems,” Evanston, 1940.)

“Negro groups as well as whites of low incomes do not pay enough taxes to support the services they consume,” advised the mayor’s committee. “A too large proportion in this group would soon mean poorer schools, streets and municipal services,” the members advised. “To conserve the white market for their services Negroes should maintain their proportion of population about where it is. Otherwise taxes will go up and whites will move out or taxes will remain as is and services will go down.” (Evanston Committee on Postwar Planning, “Evanston Housing, Some Facts, Some Problems,” Evanston, 1940.)

In order to protect property values, develop Evanston, and tackle the “problem” of Black housing, the city adopted a policy of home demolition, a means by which the city and private

citizens attempted to control and remove Black citizens from certain neighborhoods that lay beyond the west side ("clearing" those areas for "economic development.")

Often the argument was made that the housing to be demolished was "substandard" or "unsanitary" or that certain areas were "blighted" or "overcrowded." "Blighted neighborhoods must be cut out of the city before they spread," wrote the League of Women Voters in 1949. "Slum clearance and strict enforcement of zoning to prevent future overcrowding of the land must go hand in hand with rebuilding," the group advised.

For decades, white observers had noted the presence of what they called "substandard" housing in the Black section of Evanston. "Many places in colored [*sic*] area in particular should be condemned," wrote a white resident in 1941. "But no place for people to go." ("What are the Present Housing Facilities," 1941, Evanston History Center Archives.) But so-called "substandard" housing was the result of segregation itself. As mentioned above, many white landlords rented to Black tenants, charging more than white tenants would pay for comparable properties, and often failing to maintain the properties. Additionally, because there were so few opportunities for Black people to rent or own in the city beyond the west side, the area where the vast majority of Black residents lived became densely populated (and was zoned to allow that density). Many residents did not wish to live in housing that they considered overcrowded, too expensive, and lacking proper upkeep by landlords, but with nowhere else to go, they faced limited options.

In 1946, Council member Edwin B. Jourdain, Jr. addressed the city council stating that the "severe shortage of housing for Negro families serves to outline sharply additional factors which have existed for a number of years period one the arbitrary limitation of land available for Negroes' occupancy." (Evanston City Council Minutes, August 19, 1946, 10.) Citing a study on housing in Illinois, Jourdain acknowledged that in Evanston there were "too few units" for Black residents and most of those were "substandard.' " "Overcrowding of these inadequate units makes bad situations worse," Jourdain stated in one of his many attempts to urge the council to address the housing shortage, conditions, and restrictions (such as restrictive covenants) on Black residents.

Demolition of Black owned and occupied homes was seen as a boon to the city's tax revenues. The destruction of Black homes had begun in earnest in the 1940s. In 1941, roughly fifteen homes owned and occupied by Black residents in the area near Haven School were destroyed. The demolition took place in order to make way for the construction of a football field. Several other homes on Sherman Avenue were also destroyed that year to make room for an apartment building; and in south Evanston, more homes owned by Black residents were destroyed.

The demolition of housing was taking place as one of the final acts of segregation. "Where will we move?" asked the editor of the *Newsette,* as the destruction was underway. "Where can we buy property?. . . Because of the massive squeeze play directed against Negroes, you can move into the area generally called the 'west side,' bounded by the canal and the railroad tracks." "Eight to 10,000 of you are being herded into an area over which you can walk in less

time than an hour," the *Newsette* continued, warning Black Evanston residents. "You are compelled to live in kitchens, attics, basements, and, possibly, closets and bathrooms . . . If you do not buy, then you move out of town. That is just the exact purpose of the squeeze play against Negroes in Evanston. By their own admission, openly published, whites who are smoking Negroes out of town are interested in keeping Negores who can serve them as maids, chauffeurs, butlers, [and] dishwashers." ("Evanston's Housing Problem," *Newsette*, May 22, 1947).

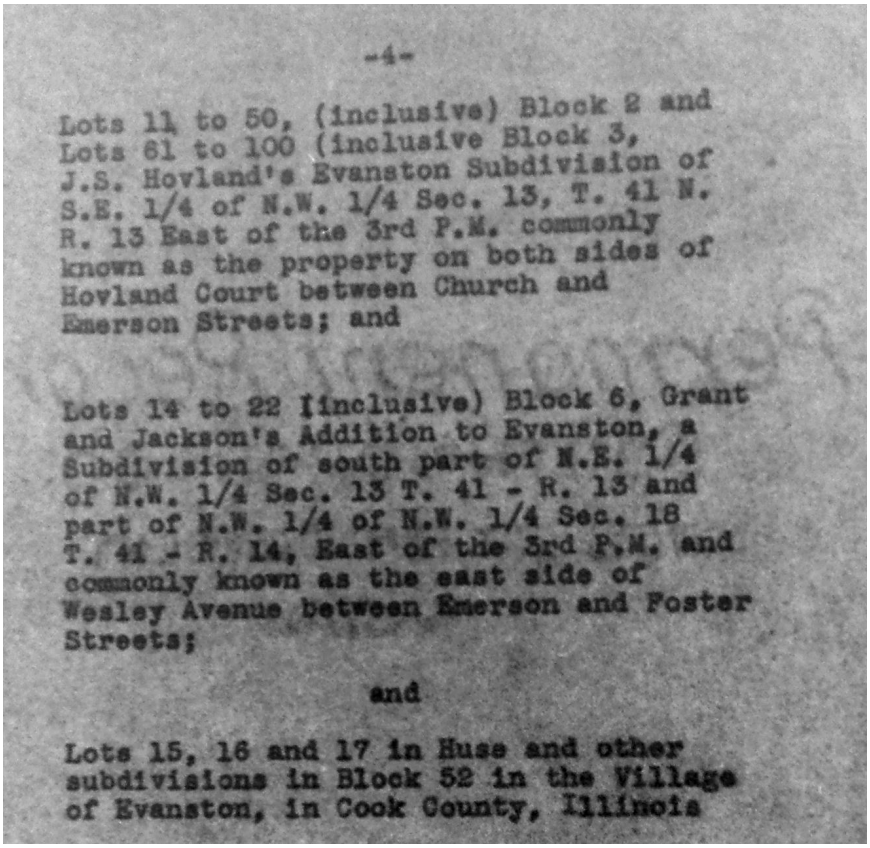
For a dozen years, Edwin B. Jourdain, Jr. had advocated for the creation of a Housing Authority in Evanston. "We have a housing problem in Evanston that is woeful in the bad housing it sets up, particularly in the North and 5th Ward, where poor structures and overcrowding are at the worst," he told other members of the City Council. (Evanston City Council Minutes, August 5, 1946, 7).

Jourdain was never able to convince the other members of the City Council to create such a body. And, on April 28, 1947, just two weeks after Jourdain left the Evanston City Council (he was defeated in his reelection attempt), the City Council issued a unanimously passed resolution creating the city's Land Clearance Commission. The resolution read:

"Resolution declaring the need for land clearance Commission in the City of Evanston, Illinois, be resolved by the City Council of the city of Evanston, Cook County, Illinois: that the City Council of the city of Evanston, Cook County Illinois pursuant to the statutes of the state of Illinois, hereby fines, determines and makes the following declaration: that the city of Evanston, Illinois, has more than 25,000 inhabitants. That unsanitary and unsafe inhabited dwelling accommodations and buildings exist in the city of Evanston, Illinois ; That the number of families in the city of Evanston, Illinois has increased from 16,413 in 1930 to 19,177 in 1940 and probably exceeds 20,000 at the present time period that in 1940 there were 2884 dwelling units over 45 years old; that there were 32 houses without indoor toilets; That there were 444 houses in which more than one family shared a single toilet. That the census of 1940 disclosed that there were 1,092 houses, which at that time were in need of major repairs, and that this number as well as the dire necessity of repair or demolition's since that time very material materially increased; The conditions revealed by the above statistics have not improved in the last five years but have increased within the city; That there are many buildings, houses and dwellings which, through continued neglect or over a long period of time, are in such condition as to require demolition, and that in the best interest of health and safety such dwelling should be torn down; That the existence of these unsanitary, unsafe and dilapidated structures constitutes a menace an hazard to the health and safety of the city and should be illuminated as soon as possible. That there is need for a Land Clearance Commission in the city of Evanston, Illinois. That a certified copy of this resolution, together with a certified copy of the statement of findings be forthwith forwarded to the city clerk of the city of Evanston, Illinois, to the state housing board of Illinois. Be it further resolved, that this resolution be effective immediately." (Evanston City Council Minutes, April 28th 1947, 4.)

With the establishment of the Land Clearance Commission, the demolition of homes was codified. The commission consisted of a five-member board appointed by the mayor with the consent of the City Council. (Evanston's future mayor, John Emery, chaired the commission at one point.) The commission's mandate was to focus on identifying so-called "substandard" housing in Evanston, purchase that housing, evict the tenants, and demolish the structures. This practice was presented as a means for city beautification and "redevelopment." This practice was similar to many other practices across the country variously known as "slum clearance" and "blighted neighborhood development." (In 1947, Illinois passed statewide legislation that legalized the demolition of private homes and businesses: the Blighted Areas Redevelopment Act of 1947. (315 ILCS 5/1)(from Ch. 67 1/2, par. 63.)

On June 14, 1948, Evanston's Land Clearance Commission issued a list of properties to be demolished. Those on the list were in the city's 5th Ward.



-4-

Lots 11 to 50, (inclusive) Block 2 and Lots 61 to 100 (inclusive Block 3, J.S. Hovland's Evanston Subdivision of S.E. 1/4 of N.W. 1/4 Sec. 13, T. 41 N. R. 13 East of the 3rd P.M. commonly known as the property on both sides of Hovland Court between Church and Emerson Streets; and

Lots 14 to 22 (inclusive) Block 6, Grant and Jackson's Addition to Evanston, a Subdivision of south part of N.E. 1/4 of N.W. 1/4 Sec. 13 T. 41 - R. 13 and part of N.W. 1/4 of N.W. 1/4 Sec. 18 T. 41 - R. 14, East of the 3rd P.M. and commonly known as the east side of Wesley Avenue between Emerson and Foster Streets;

and

Lots 15, 16 and 17 in Huse and other subdivisions in Block 52 in the Village of Evanston, in Cook County, Illinois

Land to be "cleared" in Evanston, Evanston City Council Minutes, June 14, 1948, 4

But what of those who were forced to move out of their homes only to have them destroyed? Evanston reportedly paid market costs to purchase the homes that were to be demolished, but those who were cast out did not necessarily have replacement housing made available to them. "Some cities have solved this dilemma," the League of Women Voters observed in 1949, "with temporary housing for the dispossessed. Evanston, as yet, has found no solution." (*This is Evanston*, 1949)

In August 1948, a mass meeting of Black residents was held in Evanston to address the new land clearance program. Several speakers presented an analysis of the city's new commission and observed that Evanston had failed to do anything constructive towards housing for Black residents. ("Hold Mass Meeting In Evanston on Housing," *Chicago Defender,* August 14, 1948).

In the fall of 1948, properties were demolished in the following areas: "both sides of Hovland court between Church and Emerson streets; the east side of Wesley Ave, between Emerson and Foster streets; A portion of the east side of Elmwood Ave between Lake and Grove streets; Also both sides of Gray Ave between Church and Emerson streets." (*This is Evanston*, 1949.) This described area, it should be noted, lies within the city's Fifth Ward.

Some of the condemned areas were set aside to use as parking lots. As the city undertook this clearance project no plans were in place to finance the construction of new housing or to authorize any kind of government authority to oversee the process of land clearance. At one point the Evanston City Council reportedly undertook consideration of establishing a Housing Authority but did not take that action.

In 1949, the commission filed suit in circuit court to condemn eight lots on the 1800 block of Grey Avenue in what the city deemed to be a "run down" area of the city, which was, in fact, the fifth ward. This was reportedly the commission's first suit of the kind. The city announced that it hoped to encourage "private developers" to build "low cost housing" on the lots. ("Evanston Land Group Sues to Condemn 8 Lots," *Chicago Tribune,* December 25, 1949.)

The City of Evanston was not the sole entity pursuing land clearance policies. Northwestern University also adopted this strategy. Purchasing homes and buildings, the university would then demolish them in order to construct its own (tax free) buildings.

In 1967, Northwestern University petitioned the Evanston City Council to amend the city's zoning ordinance in order to allow the university to build a $10,000,000 graduate student complex on a lot bounded by Emerson, Maple, and Foster streets and the CTA tracks (Again, this land was located in the City's 5th Ward). Most of that land was "taken up with residences and six small businesses" and many were owned and occupied by Black residents. In the announced plans for "clearance" of the land, only brief mention was made of the "hardship cases"- the current occupants and tenants who might need assistance in their "relocation effort." ("Northwestern U. Bids To Build Grad Flats: Evanston Zoning Laws Must Be Changed Though," *Chicago Defender,* October 24, 1967.)

"In order to make room for the graduate dormitories on Maple Ave between Emerson and Foster streets, Northwestern University demolished many apartment units and residential homes resulting in the displacement (removal) of over 70 families, 1/3 of which were black. The white families displaced simply moved to another area of town, but the Blacks, subject to racial discrimination, had no place to go and eventually left Evanston. In this sense the Blacks were

'removed.' " ("The Case Against Northwestern University," Northwestern University Archives, ND.)

Before beginning construction, the university petitioned the City of Evanston to amend the zoning ordinance in order to authorize its planned design. In March 1968 the Evanston City Council agreed to authorize a new zoning classification that would allow Northwestern to build the graduate housing complex according to its plan. By August 1968, all of the existing buildings had been "cleared" (demolished) after the families and business owners were bought out, save for William Spencer and his wife who had operated their business, "Foster Street Pharmacy," for 48 years. They were the last to leave. (Edith Herman, "N.U.'s Housing Project Delayed," *Chicago Tribune* , August 18, 1968.)

Construction, however, was delayed after the Evanston City Council asked Northwestern University "to make a payment to the city for fire and police protection." Because Northwestern University land is tax exempt, the university does not pay for the City's fire and police services, which are funded through taxes. In October 1968, the City Council voted to accept the university's offer of "the gift of a new $30,000 fire engine as partial compensation for fire protection and other municipal services provided by the city." The council also voted "to approve" another request from the university for the "rezoning of a tract of Northwestern University property bounded by Garnett Place, Foster St, Maple Ave and the L tracks for more graduate housing." ("Council O.K's Rezoning of N.U. Property," *Chicago Tribune*, October, 8, 1968.)

Critics of Northwestern University's development methods and projects objected to what was seen as the university's encroachment on Black neighborhoods and displacement of Black residents and businesses. "Northwestern University is engaged in an effort to expand its boundaries into the Black community. Northwestern University is not expanding northward or southward into the white affluent community, but westward into Black and mixed communities," critics observed. Further, they charged, owing to the tax exemption status enjoyed by Northwestern University, the tax burden to pay for city services was borne disproportionately by low-income residents, many of whom were Black. ("The Case against Northwestern University.")

Additionally, critics objected to Northwestern's reported "sell and lease back" arrangements, producing "large, tax-exempt incomes, while taking that much more property off the tax rolls." Such arrangements involved "wealthy homeowners, businessmen and corporations" selling their land to Northwestern University "which in turn leases the land back to the original owners for their disposition at a reasonable rate… Since the land is under the legal ownership of Northwestern University, the original owners no longer have to pay property taxes. Thus providing a 'tax dodge.' Consequently as property owned by the wealthy is removed from the tax rolls, the tax base is reduced creating a greater tax burden on low income families." ("The Case against Northwestern University; U.S. House of Representative, Hearings Before the Committee on Ways and Means, 81st Congress, Revenue Revision of 1950, Washington, D.C.: Government Printing Office, 810).

Finally, critics objected to Northwestern's often poor service as a landlord to some Black Evanston residents. In the area surrounding the new dormitory alone, Northwestern reportedly owned 25 dwelling units, all classified as income property and tax exempt, many of which reportedly had large numbers of code violations, along with defective plumbing, electrical, and heating systems, resulting in several fires. ("The Case against Northwestern University.")

---

[i] For more on housing, see: Andrew Wiese, "Black Housing, White Finance: African American Housing and Home Ownership in Evanston, Illinois, Before 1940, *Journal of Social History,* Winter 1999, 430.

Residential Housing:
Evanston African American residents had few options in purchasing a home. Evanston banks would not offer or provide home loans to Black families. Most families applied for mortgages in Chicago or had made arrangements with their employers.

A resident shared his experience dealing with banks:

> Being in the mortgage business now, I look back, and when my parents bought their house, like, 99 percent of the black folks then, or African Americans at that point, got their mortgages from somewhere outside this community. No banks would [lend] money to minorities to buy houses. And so when the banks wouldn't lend money to do anything, so when I became president of the NAACP that was one of my goals is to knock down the discriminatory practices at the banks . . . That was in 1972. (Carl Davis. Shorefront oral history collection, www.shorefrontvoice.org)

Another resident who eventually served as 5th ward alderman shared an instance that took place in 1965:

> "I just looked at the signs, found an apartment, and went to a local realtor, who is very much in business still to this day, and after going into the building with my wife, and being basically ignored for a long time as we were sitting sort of in, like, a little waiting room area, finally a man came out from a side office. . . And he walked up, and sort of drew in his breath . . . and asked if there was something that he could do for us, or what we wanted, -- it was nothing along the line of "may I help you". . . And when we told him that we had found an apartment in one of the buildings that his firm managed, and that we wanted to put in an application . . . He actually jumped back like a step, almost as if I had thrown something on the ground that had blown up and had suddenly startled him . . . he drew in his breath, and he said, "Why no. We don't rent to coloreds." (Mike Summers, Shorefront oral history collection, www.shorefrontvoice.org)

Housing segregation in Evanston was documented through the city's relationship with Northwestern University, which for years offered students a list of accredited off-campus rooming houses and rentals. Many owners of those private properties, it was known, "refuse[d]

to rent to Negroes." ("Discrimination Against Negro Students," *Daily Northwestern,* December 15, 1936.) It was not until 1965, when, acting under pressure from students and others, that university officials finally agreed to remove from the university's list of approved off-campus housing any landlord that was found to discriminate in renting to students. (Michael Whitney, "NU to Notify Landlords of its Policy," *Daily Northwestern*, February 4, 1965.) But discrimination against Black renters would persist.

Fair Housing

For years, Evanston residents, Northwestern students, and others brought pressure to the university to desegregate its own real estate holdings in Evanston. And pressure on the Evanston City Council to pass fair housing legislation had been ongoing for years, with numerous petitions presented before the City Council to no avail.

In October 1967, the Evanston City Council finally passed an ordinance providing a penalty for real estate agents found practicing discrimination. The ordinance created a city-issued license for real estate brokers that could be revoked if they were found to be practicing discrimination in the rental, sale and advertising of housing. ("Vote on Open Housing is Set for Evanston." *Chicago Tribune,* October 3, 1967; "New Housing Bill Urged," *Chicago Tribune.* April 14, 1968.) The ordinance was largely seen as ineffective since it did not address the larger issues related to housing discrimination.

It was not until after the assasination of Dr. Martin Luther King, Jr. in April 1968, that the Federal Government signed into law the Fair Housing Act, expanding on existing laws and prohibiting discrimination in the sale, rental, and financing of housing based on race, religion, and national origin. In Evanston, the City Council still refused to pass a fair housing law. After students and hundreds of Evanston residents took part in marches, and the Fair Housing movement's leaders stated "emphatically and unequivocally" that if an ordinance was not passed on or before April 29, 1968, they would move "from non-violent protest . . . to nonviolent resistance," involving an "economic boycott of all Evanston businesses, transportation systems, and profit making operations within the city limit of Evanston," that a law was finally passed. ("Statement of Intent," Collection 57, Evanston Housing Records, 1900-1995, Evanston History Center Archives, Evanston History Center, Evanston, IL; John Maclean. "O.K. Stiffer Housing Law," *Chicago Tribune,* April 30, 1968.)

The legislation did not solve the issue of housing discrimination in Evanston. By 1985, a study of Evanston real estate practices alleged that "racial steering" was being practiced by certain realtors, whereby Black renters and buyers were "steered" toward certain properties and away from other areas of the city. "Discrimination in Evanston's real estate market is very subtle and not always apparent," the report noted. Mayor James C. Lytle appointed a committee to investigate, pledging "to correct the problem." (Robert Enstad, "Evanston Cites Realty Steering," *Chicago Tribune,* March 27, 1985.)

The Postwar Housing Shortage and Veterans Housing:

After World War II, the city of Evanston, like many cities and towns across the country, experienced a severe housing shortage owing to a halt on residential construction during the war.

In the years following World War II, the City of Evanston declared a “housing emergency” and granted permits for a variety of temporary housing construction projects throughout the city. The City Council granted requested building permits with certain conditions applied to the temporary construction projects. In the case of Northwestern University, the conditions applied to the granting of new permits were described in the following paragraph:

“A majority of committee on buildings recommends that this application be granted for the period of the housing emergency, the City Council to determine the duration of the emergency, but in no case to exceed five years; provided that the University will undertake to keep the buildings in repair and the property in a neat and orderly condition for the duration of the permit.” (Evanston City Council Minutes, April 29, 1946, 4.)

Northwestern University did not allow Black students or visitors to live in its housing, nor would Black students, including Black veterans, be allowed to live in the temporary housing constructed during this period; and so, especially in 1946-1947, the issue of housing segregation and the Evanston City Council’s role in allowing it, came to the forefront.

In the face of the extreme housing shortage, Northwestern University applied for several permits to build temporary housing. Some examples of these projects are listed below:

In April 1946, Northwestern applied for a permit to build fourteen steel craft houses for “temporary living quarters for students and faculty on the property of 1420 Isabella St.” (Evanston City Council Minutes, April 22, 1946, 2).

The university also requested “permission to erect 12 prefabricated metal buildings . . . at the south end of the Evanston campus (1845 -1875 Sheridan Rd) and 13 on the south end of the music campus (1801-1807 Sherman Ave and 701-733 Clark St) to be used for temporary living quarters for single students.” (Evanston City Council Minutes, April 29, 1946, 4.)

In May 1946, the university applied for a permit to build fifty “single family units to be erected on property . . . located on the north side of Central St. between Girard and Ridge Ave.” (Evanston City Council Minutes, May 27, 1946, 2.)

In February 1946, Northwestern applied for a city permit to build a 280-unit housing facility for returning (white only) veterans. (“Evanston Lets N.U. Build More Huts for Ex-GIs,” *ChicagoTribune*, February 5, 1946.)

Many people were outraged at the barring of Black veterans from Northwestern’s housing. City Council member Edwin B. Jourdain, Jr. urged the council to “demand that the school drop its

color bar as a condition upon which permission would be granted" for any new structures. ("Northwestern Gets Ok on Jim Crow Dorm,"*Chicago Defender,* May 11,1946.)

As Chairman of the city's Building Committee, Jourdain engaged in correspondence with the National Housing Agency (NHA) to determine the legality of restrictions against Black veterans. "At this writing, nine Negro war veterans, — some with battle stars from the European and the South Pacific theaters, some drawing disabled war vets' pensions," he wrote, "are finding that their share in World War II means little to a university which today raises against them the very Hitler racist barriers they fought to destroy." (Quoted in Beverly, Jr., *Edwin B. Jourdain,* 97.)

But the Evanston City Council would continue to approve Northwestern University's applications for building permits. Council member Jourdain voted "nay" on each of the university's applications for permits.

Given that the City Council granted building permits to Northwestern University with "conditions" attached, as Jourdain observed, its members had the power to attach any conditions that a majority of council members approved. Jourdain objected time and again to the City Council's failure to add the condition that, in order to have a permit approved by the City Council, Northwestern must make the housing available to all- to both Black and white students. Jourdain took a strong stand in his opposition to the fact that these new housing facilities would be segregated (as was all Northwestern University housing). Further, he charged that by granting the permits to Northwestern, the City Council and the City of Evanston were complicit in acts of racial discrimination and segregation.

At the April 22, 1946 City Council meeting, Jourdain said, "It has been claimed that this Council is not involved in the University's housing matters. But now, when we are asked to grant a special application for added housing, this council can and has tonight set up certain conditions to the granting of the application. One of these conditions can be and should be that housing be open to all university students, regardless of their race or their color." (Evanston City Council Minutes, April 22, 1946, 2)

As Chairman of the Building Committee, Jourdain was required to present the applications for building permits from Northwestern University to the council, but each and every time he did so, he not only objected, but he also voted "nay." He also called attention to the fact that Northwestern's housing would not be open to Black students who had served in the war.

Jourdain pledged that he was "going to go on opposing every single one of these applications from Northwestern University. Just as long as this University insists on a Jim Crow housing policy, it has no right to come into the City Council asking these special favors. We represent the very citizens they bar. Northwestern shuts its dormitory doors on its own students. It turns from its houses the girls under its care, if they just happened to be colored. The University has no right to take special benefits from taxpayers' money, and then bar some of the taxpayers. This City Council has no right to vote special permits increasing University housing facilities,

without insisting that these facilities be open to all without color restrictions." (Evanston City Council Minutes, April 29, 1946, 4.)

Jourdain asked that the legal position of the city in this matter be investigated and reported to the council. "The city of Evanston has no right to grant special permits for University facilities from which some of its citizens will be barred because of color," he said. "I question how far you can go in extending facilities paid for by all taxpayers for uses from which some taxpayers are barred. I take the position that this City Council cannot be party to setting up Jim Crow housing facilities. I ask that this legal question be referred for report on the legality of our position to the Corporation Counsel." (Evanston City Council Minutes, April 29, 1946, 4-5.)

According to the minutes of the Evanston City Council, Jourdain's requests were not met. And Northwestern University continued to win approval for its requested building permits. On May 27, 1945, Jourdain addressed the council and submitted a "minority report" at the same time he presented "the report of the building committee on Northwestern University's application for additional housing units." "Some time ago, I stated on the floor of this council that I would continue to oppose every request of Northwestern University for additional housing, so long as this University continues to refuse to let people who happen to be colored use these housing facilities," Jourdain stated. "Once more I am calling attention to the fact that this city has no right to go on issuing permits for housing from which our taxpayers are barred because of merely color. This city council has no right to make itself a partner to this university's Jim Crow housing policy. I have informed the joint meeting tonight of the building and zoning committees of this stand and since these committees and joint meeting have not seen fit to adopt this position, I am bringing this to the floor of the council once more as a minority report. If Northwestern University draws a color line in housing this city cannot be a party to it." (Evanston City Council Minutes, May 27, 1946, 2).

At numerous City Council meetings, Jourdain reiterated his concerns. On June 3, 1946, he once again called "the attention of the City Council to the city's part in Northwestern University's housing development." Jourdain stated: "there are serious legal difficulties standing in the path of this city's continuing to cooperate with Northwestern's Jim Crow housing policy. We must definitely stop and face the legal question of how far we can afford to go in aiding and abetting race discrimination. There is a large question of public policy involved. Every city has real interest in the welfare of all its citizens. It certainly violates the decent interest we have in our citizens' welfare for us to help Northwestern University erect Jim Crow housing projects. The University could not get permits for these discriminatory projects, if we withheld them. This city has noticed and for years has known the university's long history of discriminating against its colored students. It should be the policy of this city, therefore, to refuse permits for any housing developments that bar any of our citizens, because of color it is against public policy of state and local governments to discriminate because of race. The city certainly has a clear right and duty to refuse to help a discrimination which is so strongly against public policy, against the constitution, against the Civil Rights Act of the Illinois statutes. In this housing shortage, houses are needed by everyone. This city should not issue permits for housing that bar so many

people. The city must not go on record as standing idly by and tacitly aiding and erecting the Jim Crow housing units. Every taxpayer has definite interest in this. Northwestern University is a tax exempt body by virtue of its state charter. Taxes on the humblest home in Evanston are more burdensome, just by this exemption. Yet the very parents who thus contribute to the University cannot get for their children University facilities for which this city goes on issuing permits. This city ought not help the University do that discriminating which the city itself has no right to do. There is another aspect to this matter. The federal government has expressed concern over veterans housing. Certain federal agencies give priorities to aid veterans housing so that all who shared in this war might find housing, regardless of what color they happen to be. I am therefore, moving a reference to the Corporation Council to write asking the National Housing Agency how Northwestern can get priorities for Jim Crow housing here, and what is the policy of this agency as to aiding erection of housing that bars war veterans." (Evanston City Council Minutes, June 3 1946, 7).

Jourdain's motion was seconded, but "held over for one week on the question of what right the City Council had to authorize such inquiry." (Evanston City Council Minutes, June 3, 1946, 7). However, no progress was made on the issue and a few weeks later, Jourdain reiterated his request that the City Council "rule that we had no legal right to aid and abet segregation." (Evanston City Council Minutes, June 24, 1946, 5).

"The City Council held up my reference," he said. "The council raised the question, did we have a right to order the Corporation Counsel to write such a letter? While the council was making up its mind on that point, I wrote the letter myself. Tonight I report on that correspondence with the National Housing Agency [NHA]." (Evanston City Council Minutes, June 24, 1946, 5).

Jourdain presented a response from the NHA regarding the construction of housing that bars Black veterans. The NHA stated that it would "not issue priorities to Northwestern University for housing that bar Negro veterans." (Evanston City Council Minutes, June 24, 1946, 5). In answer to the idea of building a separate dormitory for Black veterans only (an idea that had not been formally proposed, but had circulated), the NHA wrote: "[T]his agency could not subject itself to charges that it supports occupancy patterns that will unfortunately result in racially unequal housing accommodations," the NHA wrote. "It is difficult to contemplate a racially separate dormitory, open only to a relatively small Negro veterans group as an equal housing accommodation, in view of the nature of an educational institution, and the facilities which must be inaccessible to its students." (Evanston City Council Minutes, June 24, 1946, 5).

The NHA correspondence was included in the minutes. Jourdain concluded: "So Evanston veterans will get protection from insult through the ruling of a federal agency. Our own citizens should have looked to the ruling of their own City Council for this protection. This council might have ruled, and should still rule, that we too will refuse to be used in a program of segregation and insult to our own citizens." (Evanston City Council Minutes, June 24, 1946, 5).

The NHA also informed Northwestern officials of its policy to "administer its functions with racial equity." All educational institutions that sought federal aid or support for emergency construction

were required “to reply that in the administration of its temporary housing program, it will provide housing for racial minority groups substantially in accordance with its proportionate needs.” But university President Franklyn Bliss Snyder announced that the NHA’s policy would have no impact on planned, segregated construction projects. “It is not in my power to commit the university on the question of housing Negro veterans,” he said, “the university recommends that they stay with Negro families in Evanston and not on the campus.” This policy was, he explained, “determined by the board of trustees and the public sentiment of the community. There is no indication that it will change.” (R.B. Goldsberry, “Negro Vets Not Wanted in N.U. Dorms,” *Chicago Defender,* July 20, 1946).

Spencer Jourdain, Edwin’s youngest son, has written extensively on this subject. “The permit was issued, and university housing segregation would continue for several years thereafter. The city, the local builder, and the federal government had collaboratively authorized continued racial segregation.” (Spencer Jourdain, *Dream Dancers,* Vol III, 323.)

The issue of the Evanston City Council’s role in segregation of postwar housing was not limited to its dealings with Northwestern.

A veterans’ housing project in Evanston was the cause of controversy concerning charges that the housing was segregated and that housing was being assigned in a discriminatory way, with many of Evanston’s Black veterans disproportionately turned away. A total of thirty-seven buildings were allotted to the City of Evanston by the federal Public Housing Authority to be built on the shore of the sanitary district canal (on the city’s west side).

The new housing project was indeed segregated: A total of 111 four-room family units were built; the majority of which were open to white families only. Only a small number of the units, on one side of the canal, were set aside for Black families. The housing units were managed by an Evanston City official, the Veterans Housing Supervisor, a position created in 1946 by the Evanston City Council.

At a city council meeting on September 30, 1946, Jourdain stated: “War veterans are bringing me reports that the job of assigning GI housing units along the canal is not being fairly approached. That the yardstick is not simply need, but color. Only one rule should be used in allocating these veterans’ homes; the rule of the greatest need. But veterans say this is not the practice. They are telling me that Evanston boys back from battlefields are being told that only four houses are open to them if they are colored. This is being done not in Mississippi, but in Evanston.” (Evanston City Council Minutes, September 30, 1946, 5.)

Jourdain’s statement concerning the conditions faced by Black veterans in Evanston is worth quoting at length:

> “Evanston knows Negroes have the accutest housing shortages, worst housing conditions, because Evanston made it that way. Some Evanstonians have seen to it that year by year. Families of Negro GI’s have been pushed back, crowded

> back, into a tight ghetto area where housing was not equal, where living could not be free. And living in a ghetto hurts just as much in Evanston as it hurts in Mississippi, or in Hitler's Germany . . . A GI with 39 months overseas, with battle stars from Tunisia, Africa campaigns, says that he applied [for Evanston's veteran housing] last August, and was told . . . that only 12 colored families would be taken care of. Here is the wife of a GI, two years in Guam. She applied three months ago and was told that the same limitations hurt her chances. But she's living with six people in one room- two babies and four adults. . . Here is another GI living so crowded that when he comes home from work Thursdays, they have to send the seven year old child out to stay with relatives so the GI can have a place to sleep. He sleeps home other nights because the wife works days while he works nights. His whole family lives in one room, 9 by 10, with no closets. In a one story house live 14 people. There's no furnace; Until August no gas. There's no hot water. When you draw water in the bathtub it runs on the kitchen floor. Wiring is so bad ironing boards chords burn out repeatedly. Water left on the stove in a pan overnight in the winter freezes. Yet this GI's wife was told . . . that only 12 south bank units were for Negroes; once those were filled, no Negro GI need hope to live on that canal bank, where 100 units were. In one room in the same house lives another vet, with his whole family, and the same Jim Crow bars him too from getting on this North side of the canal. But for four months without interruption, this vet was on the front lines, under fire, with the 7th Army, steadily, in hot fighting. He has battle stars for battles all the way from southern France to Germany, and a special star for crossing the Rhine River, and if he was good enough to cross the Rhine under that German shellfire, he's good enough to cross that little piece of canal out there, and live on the side with the most houses. These vets fought their way across Africa, across France, through South Pacific islands, for freedom and a decent life for your families, and they tell me now they are ready to fight for freedom and a decent living for their own families. They're ready, they tell me, to fight through the courts for freedom from segregation when they seek a roof over their families' heads - for freedom to live decently, without being insulted and humiliated - these men who themselves fought for human liberties, with undemocratic and shameful restrictions. You can save them from this fight, if you'll only vote now to stop all this segregation and discrimination, to give colored GI's an even chance at veterans housing on the simple basis of actual need, without first stacking the cards against them by limiting their chances to houses." (Evanston City Council Minutes, October 7,1946, 4-A.)

Jourdain stated that because the Veterans Housing Supervisor was appointed by the Evanston City Council, the council must instruct the person serving in that role to "end immediately all segregation and discrimination in his housing allocation and handling. To end all plans for trying Negro veterans down to a quota of four houses, without any regard to the need of the other veterans, who will be left out." He continued: "If this City Council were to try to uphold . . .

barring colored veterans from any homes, just because of color, this council would be flying in the face of the Constitution of the United States. The Constitution and the federal statutes and the decisions of the Supreme Court of the United States all guarantee freedom from segregation at the hands of the city government. A municipality has absolutely no right to deal in residential segregation." (Evanston City Council Minutes, September 30, 1946, 5.)

Jordain then moved that the City Council must instruct the Veterans Housing Supervisor that "he was acting as its agent, appointed by the council and that veterans must be admitted to these homes without any regard to color. That any segregation be dropped immediately because of the fact that it cannot legally be carried out and that any case be considered entirely on the basis of actual need." The motion was seconded, but after discussion another council member (Mogg) "made a substitute motion that this matter be referred to the Mayor's Special Committee on Housing." The motion was seconded, while another council member (James) "expressed complete confidence in the method pursued" by the Veterans Housing Supervisor "and the committee in the allocation of the veterans housing." All voted "aye" on the motion, with the exception of Jourdain and Rubin, who voted nay. (Evanston City Council Minutes, September 30, 1946, 6.)

On October 7, 1946, the Mayor's Special Committee on Housing issued its report and categorically denied that the Veterans' Housing Supervisor or his office engaged in any discrimination. (Evanston City Council Minutes, October 7, 1946, 4.) "There is, and has been, no intent on the part of the committee on veterans housing to discriminate against any particular race or minority group in the matter of housing facilities," the report read. (Evanston City Council Minutes, October 7, 1946, 4.)

Jourdain countered: "The plain truth is one, that there is discrimination now; Two, that there has been discrimination aplenty; Three, that it is the Council's appointed agent . . . and his assistant who are telling Negro veterans, and have been telling them, that only four houses are open to them, all segregated on one side of the canal. That when these four are gone for Negro GI's all hope is gone." (Evanston City Council Minutes, October 7,1946, 4-A.)

At the City Council meeting on October 14, 1946, Jourdain presented a letter from an official at the Federal Public Housing Authority (FPHA) and telegram from a former FPHA official which, he stated, "plac[ed] every blame for segregation squarely on the city of Evanston." Jourdain explained that the segregation of veterans housing units had been done at the request of Evanston's Veteran Housing Supervisor. A portion of the FPHA letter read: "In reference to your project for temporary housing for returning veterans, ILL-V-11299, we would like to call your attention to a provision included in the project development program which requires that 12 units be provided for racial groups at the Darrow and Payne Avenue section. This was brought to our attention by Mr E. B. Jourdain, Councilman of the city of Evanston. Our records indicate this provision was made on the basis of a conversation between [Evanston's Veterans' Housing Supervisor] and Mr Robert H. Merriam of our office on May 10, and is no doubt based upon the specific request by [Evanston's Veterans' Housing Supervisor], in as much as this authority

does not in any way wish to influence a locality as to the disposition of a racial problem in its community. We would like to point out to you that this office did not specifically request the segregation of housing for minority racial groups from the main portion of the project." (Evanston City Council Minutes, October 14, 1946, 5-6.)

"Since this letter and telegram make it plain that the federal people are not asking for this," Jourdain concluded, "it is now squarely up to this City Council to withdraw this Jim Crow arrangement, drop the color line and make need the sole measure of who gets housing. The law of the land is against your segregation policy . . . The law of decency is against it." (Evanston City Council Minutes, October 14, 1946, 5-6.)

POLICING

On October 10, 2015, 25-year-old Lawrence Crosby pulled over, got out of his car with his hands up, and was taken to the ground by Evanston law enforcement. Earlier in the evening, a female observer called the police to report what she thought was a car break-in, when in fact, what she saw was only Crosby getting into his own car. (Later, and caught on a recording, the caller said she was not sure that Crosby was breaking in.) After receiving the initial call and pulling Crosby over, Evanston police officers appeared to demand conflicting orders and, in the end, Crosby was taken to the ground and struck repeatedly. Crosby filed a civil lawsuit against the Evanston police and won a $1.25 million settlement in 2019. No officers were disciplined following the stop nor was there an apology offered to Crosby. ("Northwestern Ph.D. Student Accused of Stealing His Own Car Wins Civil Suit", CBS News, January 20, 2019)

Countless incidents of over-policing Black residents in Evanston have occurred over the years, including:

In 2018 a minor was taken into custody for riding on the back pegs of a bike while his friend peddled in downtown Evanston. ("Evanson police undergoing internal investigation following arrest of Black 12-year-old cyclist", (*Daily Northwestern*, August 20, 2017).

In November 2016, Evanston's current (2020) city clerk was arrested by Evanston police in downtown Evanston as he was collecting signatures on a petition to get his name on the ballot for the race for city clerk. After an investigation, police announced the arrest "should never have happened." (Genevieve Bookwalter, "Arrested Evanston City Clerk Has Candidacy Challenged," *Pioneer Press*, December 9, 2016).

African-American residents are subject more often to be stopped and frisked by officers investigating crimes than any other racial or ethnic group in the city. Evanston's African-American residents make up about 18 percent of the town's population, but account for about 60 percent of the adult crime suspects identified by Evanston police, according to the city's police chief and data from the Evanston Police Department. "They are over-represented as suspects." ("Black residents in Evanston subjected to more stop and frisk encounters than any other group, police chief says", *Chicago Tribune*, March 27, 2018)

Statistics presented by Evanston police showed that of the adult suspects identified in 2017, 59.69 percent, or 1,479 people, were black; 29.22 percent, or 724 people, were white; and 4.8 percent, or 119 people, were Hispanic. The remaining suspects were of Asian, Indian or unknown descent. Of the adults who were arrested in 2017, 58.58 percent, or 782 people, were black; 24.27 percent, or 324 people, were white; and 11.99 percent, or 160 people, were Hispanic, police reported. (*Chicago Tribune*, March 27, 2018)

2018 Statistics continue to show percentages of stop and frisk activities in Evanston. 30.7% of drivers stopped were Black, 53% of drivers given citations were Black, 53% of drivers asked for a vehicle search were Black, 10 Black drivers were subjected to a dog sniff search, compared to

0 White drivers, 64% of pedestrians stopped were Black, 65% of pedestrians given pat downs were Black, 60% of pedestrians searched beyond a pat down were Black, 73% of pedestrians arrested were Black. (Illinois Traffic and Pedestrian Stop Study for 2018)

Evidence of over policing can be found in earlier decades as well. In September 1945, Evanston's mayor, S. G. Ingraham, ordered all "professional gamblers to get out of town." The order came after Ingraham had warned of an "outbreak of crime" in the city. Additional police officers were ordered to "walk beats in residential areas." Three Evanston council members, including Edwin B. Jourdain, Jr., "denied a crime wave existed" and protested what they said was a "wholesale arrest of Negroes" within Evanston. ("Mayor Orders Gamblers Out of Evanston," *Chicago Tribune*, September 25, 1945.)

LAWSUITS

Theaters

In 1912, Hellen Garnett, sued the Evanston Theater for the amount of $500 because of discriminatory seating. In 1923, two Evanston residents brought a lawsuit against the owners of the New Evanston Theater because they had been denied equal access to the theater; they, like all other Black patrons, were forced to sit in the balcony of the theater and to use a separate entrance. (*Chicago Defender,* February 10, 1912)

Northwestern University

In 1937, Northwestern University student, William Yancy Bell, Jr. (c. 1914 -1967) brought a suit against Northwestern for $5,000 in damages after he had purchased a token for admission to an Evanston bathing beach, operated by the university, and was refused entrance. According to *The Crisis* magazine, when Bell "presented himself for admission, he was told he could not enter because he was colored." Bell insisted upon his right to enter and was told by the beach guard, (a player on Northwestern's football team), that "he would be thrown out if he tried to enter."127 The lawsuit charged the university with violating Bell's civil rights. University officials responded that the 1885 Civil Rights Act of Illinois was not applicable in this case since Northwestern was a "charitable" institution and, as such, exempt from the law. ("State-Wide Battle on Illinois Jim Crow," *The Crisis*, February 1937, 43; *The Takeover 1968,* 35-36.)

In 1943, a visiting music student from Chicago, Robbie Shields (Terry), lodged a complaint against Northwestern University, charging that she had been barred from Willard Hall, a university dormitory, because she was Black. (Shields' niece was Marian Shields Robinson, Michelle Obama's mother.) Shields said she had been "humiliated, chagrined and insulted" when she arrived at Northwestern to take part in a music institute and was turned away by the dormitory director. Soon, her lawyers charged that the university had branded Shields "inferior to other normal young American women." In December 1943, Shields sued Northwestern for $50,000. ("Northwestern Sued For $50,000 in Dorm Ban," *Chicago Defender,* December 11, 1943; *The Takeover 1968,* 42-43).

Foster School Suit

The Evanston NAACP filed a class action lawsuit seeking to reopen the Foster-King Lab School. The suit charges District 65 School Board with racial bias in its school closing decisions. The suit further charges the school board' decision to close Foster-King Lab was a "powerful" plan to discriminate against black students by bussing them away from their neighborhood school to schools in white neighborhoods. .. the "entire burden of desegregation" would be on the blacks, the suit said. ("Second racial bias suit filed", *Evanston Review*, Pioneer Press, June 21, 1979. p. 5)

Two Real Estate Firms Fined in 1992

A settlement between the City of Evanston against Baird & Warner and Century 21 Shoreline for the total amount of $450,000, said to be the largest settlement ever delivered at that time. The funds were deposited in the City's general fund and payment made to the legal team in the amount of $300,000. The three-year suit arose from a testing audit by the Interfaith Housing Center of the Northern Suburbs and not from the direct complaint of a prospective renter/home buyer. (National Fair Housing Advocate Online, 1992)

Between 2003 and 2012, there were 38 housing discrimination complaints filed with HUD. Of the 38, Race was the most common basis for complaint, cited in 28.8% of all filings. ("Analysis of Impediments to Fair Housing Choice", City of Evanston, IL, Revised Ed, April 2014)

CURRENT PROTESTS AND POLICIES

Nationally, in 2020, peaceful protests against the murder of George Floyd by a Minneapolis police officer and against the many other attacks and murders of Black Americans by both police and private citizens have expanded to include tearing down statues and statutes that symbolized white nationalist ideas. Historically, these white nationalist ideas fueled and supported policies that excluded people of other nationalities, but most explicitly, excluded those of African descent. These events have led a resurgence in initiatives addressing harm that has affected Black communities both nationally and locally.

Fight for Black Lives rally. Photo by Shorefront

Fight For Black Lives Rally: The Fight For Black Lives rally in Evanston took place on May 31, 2020 in response to police brutality on the Black population across the nation and in Evanston. Inspired by the events surrounding the deaths by police of George Floyd during an arrest in Minneapolis, MN where police pinned him to the ground by kneeling on his neck for 8.5 minutes; and Breonna Taylor in Louisville, KY during a “no-knock search warrant” and was shot eight times while in her sleep. The rally was organized by eight recent ETHS students (all of who were 20 years old), who organized the rally in just two days. The public protest attracted an estimated 3,000 participants and is considered the largest walking protest in Evanston’s recent history combating police brutality and racial inequity in Evanston, IL.

Race and Equity: Resolution 58-R-19, Commitment to end Structural Racism and Achieve Racial Equity unanimously passes on June10, 2019. The City Council made an initial commitment to pursue equity with the FY 2017 Budget, approving the creation of the Equity and

Empowerment Coordinator position to focus on implementation and action strategies to help make the City equitable for all residents of Evanston. In 2018, to strengthen its original commitment, the City Council identified equity as a council goal, approved the creation of the Equity & Empowerment Commission, supported City-wide staff training, and participated in diversity training as a Council.

While these efforts are beneficial, we see racial tensions escalating both nationally and locally including in our schools. Following successful racial equity initiatives modeled in other cities, the Kellogg Foundation's Truth, Healing, and Racial Reconciliation model, and other equity best practices, it is important to realize that all work done to achieve equity must come from leadership and include acknowledgment of intentional (and unintentional) harm done to communities of color. While the City Council understands this resolution will not repair harm or make a tangible change in individuals life experience, we desire to make a public commitment to doing the hard work needed to begin unifying the community. (Evanston City Council minutes, June 10, 2019)

Reparations: Resolution 43-R-02, in support of House Resolution 40, allowing the U.S. government to begin to investigate the issue of reparations. In support of 43-R-02, a great deal of time was spent at the city council with public comment from residents, scholars and historians on the subject of Reparations, what it looks like and how it would ever be adopted. (Evanston City Council minutes, June 10, 2002)

Alderman Robin Rue Simmons addressing the audience at the Reparations Town Hall gathering December 11, 2019. Photo by Shorefront

Local Reparations and Funding: Resolution 126-R-19, establishing a City of Evanston Funding Source Devoted to Local Reparations. The City Council has discussed the funding of Reparations through the budget discussions held over the last two months. Through these discussions a $10 million dollar goal was set and the Cannabis Retailers Tax was selected as the funding source.

The Cannabis Retailers Tax allows municipalities to set a rate of up to 3% on gross sales of cannabis in the City where cannabis dispensaries are located. Based on early projections this tax could provide an estimated $500,000 to $750,000 per year in tax revenue. The State of Illinois will allow municipalities to start applying this tax on July 1, 2020. Staff has estimated $250,000 in revenue for the 6 months of 2020.

The Reparations Fund is also accepting donations from private businesses, organizations and individuals who wish to contribute. The Reparations Subcommittee started discussions on a variety of issues including: developing criteria for eligible individuals, a process for applicants, potential program funding, and evaluating how the money is allocated. (Evanston City Council Memorandum, November 25, 2019)

Illinois Historical Context: The Black Codes
(The excerpt below taken from "Slavery In The North" by Douglas Harper, http://www.slavenorth.com/northwest.htm):

"The new states that entered the union in the North after the gradual emancipation of northern slaves were just as concerned as the old ones with maintaining their racial purity. To do so, they turned to an old practice in the North: the exclusion law. Slaves could not be brought into the Northwest Territories, under the ordinance of 1787, but slaves already there remained in bondage. Once states began to emerge from the old territories, most of them explicitly barred blacks or permitted them only if they could prove their freedom and post bond. Ohio offered the first example, and those that followed her into the union followed her lead on race.

Both Indiana (1816) and Illinois (1818) abolished slavery by their constitutions. And both followed the Ohio policy of trying to prevent black immigration by passing laws requiring blacks who moved into the state to produce legal documents verifying that they were free and posting bond to guarantee their good behavior. The bond requirements ranged as high as $1,000, which was prohibitive for a black American in those days. Anti-immigration legislation was passed in Illinois in 1819, 1829, and 1853. In Indiana, such laws were enacted in 1831 and 1852. Michigan Territory passed such a law in 1827; Iowa Territory passed one in 1839 and Iowa enacted another in 1851 after it became a state. Oregon Territory passed such a law in 1849.[1]

The evidence seems to support the theory that these rules were not uniformly enforced. But they were invoked against 'troublesome' black residents, or they could be used against whole communities when white citizens found the increase in black population had reached an unacceptable level. Blacks who violated the law faced punishments that included being advertised and sold at public auction (Illinois, 1853).

Like colonization, exclusion ordinances often were advanced by self-professed friends of the black race who saw only tragedy in attempts of the races to share the same land. Robert Dale Owen, speaking in Indiana in 1850, asked if any decent person desired 'the continuance among us of a race to whom we are not willing to accord the most common protection against outrage and death.' The rhetoric hardly is an exaggeration: during the constitutional debate in the state that year, one speaker had frankly acknowledged, 'It would be better to kill them off at once, if there is no other way to get rid of them. ... We know how the Puritans did with the Indians, who were infinitely more magnanimous and less impudent than the colored race.'

Not content with mere legislation, Illinois, Indiana, and Oregon had anti-immigration provisions built into their constitutions. In Illinois (1848), in clause-by-clause voting, this clause was approved by voters by more than 2 to 1. Most of the opposition to it came from the northern counties of the state, where blacks were few. In Indiana (1851), it was approved by a larger margin than the constitution itself. In Oregon (1857), the vote for it was 8 to 1. The Illinois act stayed on the books until 1865. Such laws were seldom invoked, but they served blacks as

grinding reminders of apartheid intentions and legal subjugation, and they offered white authorities and mobs excuses for harassment and violence against blacks.

The Black Codes dealt with more than just settlement. Oregon forbids blacks to hold real estate, make contracts, or bring lawsuits. Illinois, Ohio, Indiana, Iowa, and California prohibited them from testifying in cases where a white man was a party. When the Illinois state constitution was adopted in 1818, it limited the vote to 'free white men' and excluded blacks from the militia.

Indiana's anti-immigration rule was challenged in the case of a black man convicted for bringing a black woman into the state to marry her. The state Supreme Court upheld the conviction, noting that, 'The policy of the state is ... clearly evolved. It is to exclude any further ingress of negroes, and to remove those already among us as speedily as possible.'

There was no legal segregation in Indiana's public schools: none was necessary. The white citizens of the state would keep the schools racially pure more thoroughly than any legal provision could. A court upheld the white-only Indiana public schools in 1850, finding that, in the eyes of the state, 'black children were deemed unfit associates of whites, as school companions.'

———

On closer examination, even the designation of 'free state' can be questioned in a case like that of Illinois. Illinois, as a territory where slaves were held, had been restricting the freedom of black residents since before it became a state. In December 1813, Illinois Territory prohibited free blacks to immigrate to the territory and decreed all who did must leave within 15 days after notice or receive 39 lashes. As a state, it maintained the black codes inherited when it had formed part of Indiana, and thus continued its system of what one historian has described as 'registered and indentured slavery.'[2]

> *[S]he permitted non-resident slave-owners to hire their slaves to citizens of Illinois for a period of twelve months, yet not give the slave his freedom; and justified her act with the excuse that laborers were wanted to erect mills and open up the country, and that salt could not be profitably manufactured by white men.*[3]

When the legislature once attempted to alter the black law to strip out the provision that allowed slaves to be imported into the colony, the governor vetoed it.

Furthermore, Illinois wouldn't even emancipate the few old slaves who had been in the territory since before 1787. Every person bound to service or indenture in the territory was to continue as such under state government, though children born of such persons were to be emancipated -- the boys at 24, the girls at 18.

> *The first General Assembly under the constitution fastened slavery on Illinois more firmly than ever by re-enacting the old laws regarding free negroes, mulattoes, servants, and slaves, and by adopting what in the Southern States would have*

> *been a slave code. Thenceforth, no negro, no mulatto, either by himself or with his family, was to be suffered to live in the State unless he produced a certificate of freedom bearing the seal of some court of record of the State or Territory whence he came; nor until the certificate, with a long description of himself and of each member of his family, had been duly recorded in the county in which he proposed to live. Even then the overseers of the poor might expel him at any time they saw fit.*[4]

As for blacks already living in Illinois in 1818, they were required to report to the circuit clerk before June 1, 1819, register their names, show evidence of their freedom, and have him issue a certificate. Any free black person in Illinois without such a certificate would be considered a slave and a runaway, and was liable to be arrested, arraigned before a justice, advertised in the newspapers for six weeks by the county sheriff. If no 'owner' came forth to claim the black person, the county still could sell him or her as an indentured servant for one year.

In other matters, too, the early law of Illinois was indistinguishable from a slave state code:

> *To employ an uncertified negro was to incur a fine of a dollar and a half for each day he labored; to harbor a slave or servant, or hinder his recapture, was felony, punishable by a fine of twice the value of the man and thirty stripes on the bare back; to sell to, or buy of, or trade with a slave or servant without consent of the master was absolutely forbidden. If a slave was found ten miles from home without a permit, he was liable to arrest and flogging. Should he appear at any house or farm without written permission from his master, the owner of the place to which he came might give him ten lashes well laid on. Should he commit any offense for which a white man would be fined, he was to be whipped at a rate of twenty lashes for every eight dollars of fine.*[5]

'To all intents and purposes,' McMaster concludes, 'slavery was thus as much a domestic institution of Illinois in 1820 as of Kentucky or Missouri ....' And in fact a few years later, Illinois itself attempted to become a slave state.

After the Missouri Compromise, thousands of slave-holders migrated across the southern tier of Illinois on their way to the new slave state across the Mississippi. The Illinois settlers scattered across the prairie watched with envy these processions of rich, educated, ambitious men from the east and their trains of goods and slaves, wishing the immigrants would settle in Illinois instead, and knowing what prevented it was the ban on outright slave ownership in the state.

Many people in Illinois decided that the state should open itself entirely to slavery. The new sentiment got a test in the elections of 1822. The governor's contest was a four-way race: two of the candidates were outright advocates of slavery in Illinois. They got a combined 5,000 votes, but the winner, by a small plurality, was an anti-slavery candidate, Edward Coles, who had been

born in Virginia and had freed the slaves he inherited. But the pro-slavery faction carried both houses of the state legislature.

Coles set out to persuade the state government to free the remaining slaves in the Illinois (those who had been in the land before the ordinance of 1787), loosen the harsh black codes, and crack down on kidnappings of free blacks. The legislature responded by refuting Coles and recommending instead that a referendum be put on the ballot at the next state election asking voters to decide whether Illinois should call a convention to amend its constitution and become a slave state.

This required a two-thirds majority in the legislature, and while the senate mustered it, in the state house it seemed destined to fall one vote short. But the pro-slavery forces unseated a man whose election had been disputed, and they replaced him with one who voted their way. The convention measure passed.

Citizens celebrated in the streets, holding processions, parades, and public dinners. At one, this toast was offered, 'The State of Illinois: the ground is good, prairie in abundance; give us plenty of negroes, a little industry, and she will distribute her treasures.'

The next election was Aug. 2, 1824. The political campaign that ensues was impassioned, fractious, and intense. The subject was preached tirelessly in the pulpits and the newspapers. The turnout on Aug. 2 was enormous. At the presidential election that fall, 4,532 voted in Illinois. On the slavery question, 11,612 went to the polls. When the votes were counted, the slavery faction had lost, 6,640 to 4,972."

(End excerpt from "Slavery in the North.")

1. Henry W. Farnam, Chapters in the History of Social Legislation in the United States to 1860, Washington: Carnegie Institution, 1938, pp.219-20.
2. John B. McMaster, History of the People of the United States, N.Y.: D. Appleton & Co., 1900, vol. V, p.186.
3. ibid.
4. ibid., p.187-8.
5. ibid., p.188.

REDLINING

Portions of Larry Gavin's article, "Developing a Segregated Town, 1900-1960," *Evanston Roundtable*, December 5, 2019, appear below:

"Evanston's first African American residents arrived in the 1850s, and by 1880 there were approximately 125 African Americans in Evanston. The number grew to 737 in 1900. At that time, many of the African Americans in Evanston worked in domestic and personal service.

With the Great Migration of African Americans from the rural south to the urban north, the black population in Evanston grew to 6,026 in 1940.

Unlike many suburbs that sought to exclude African Americans altogether, leading members of Evanston's real estate establishment played a role in the growth of Evanston's African American community, said historian Andrew Wiese in an article about segregation in Evanston published in the *Journal of Social History* in 1999.

He theorizes that Evanston was different in this respect from other suburbs, because Evanston was already home to a well-established African American community by the time of the Great Migration that began in about 1910. In addition, he says, African American workers supplied labor that was in demand by white elites in Evanston, and they had personal ties with white families all over town.

There was a major caveat, though. Mr. Wiese says, 'Evanston's white real estate brokers apparently developed a practice of informal racial zoning. In effect, they treated a section of west Evanston as open to African Americans, while excluding them from the rest of town.'

Impact

Evanston banks generally refused to make mortgage loans to black households seeking to buy homes on blocks that were not viewed as 'acceptable' for black people, said Mr. [Dino] Robinson. As an example, black people who owned vacant lots near the lake were denied loans to build on their properties, and were eventually forced to sell them.

Builders did not sell properties to black households if the homes were outside the area set aside for black people. Builders constructed more than 1,400 new homes in northwest Evanston during the 1920s and 1930s, none of which was sold to black households, according to Mr. Wiese.

White homeowners at times recorded racially restrictive covenants that provided that their homes 'shall not be conveyed, leased to, or occupied by anyone not a Caucasian (servants excepted).' These were effective until 1948, when the U.S. Supreme Court held them unenforceable.

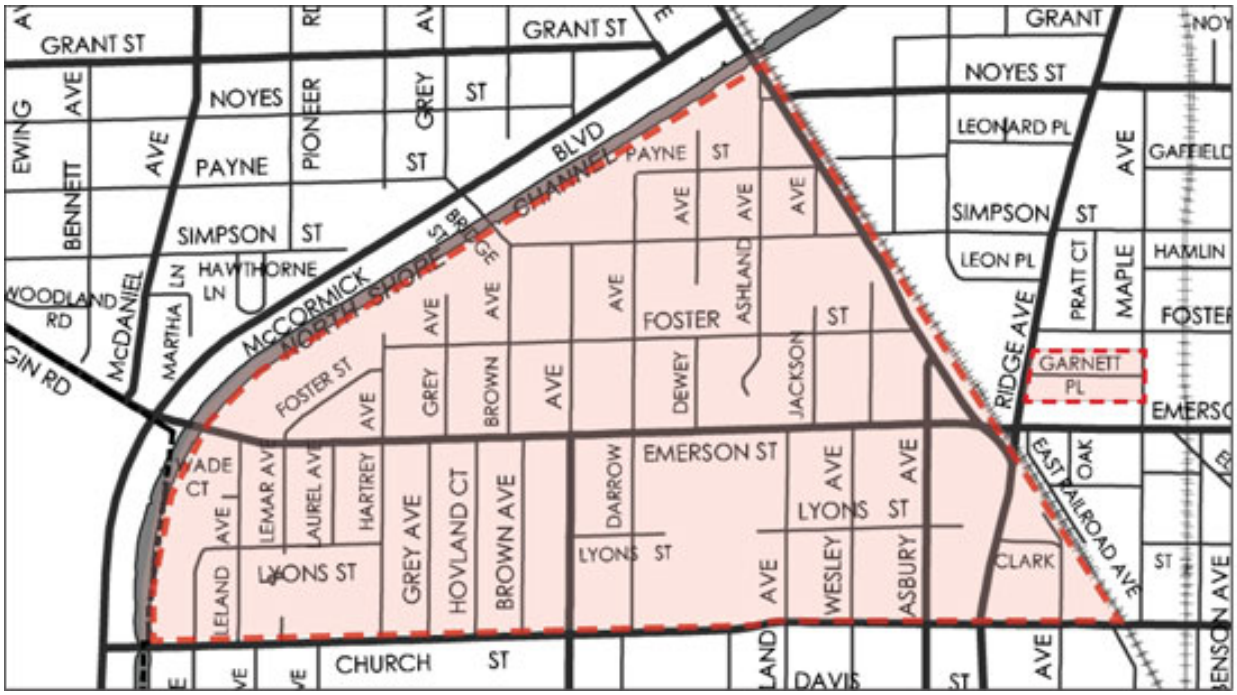
South of Church Street and west of Asbury Avenue, white homeowners formed the West Side Improvement Association 'to preserve [the neighborhood] as a place for white people to live.' As part of the plan, they formed a syndicate to buy homes that were at risk of being sold to a black family. At times, white homeowners got together and offered to buy back homes that had just been sold to a black household.

African American families were also displaced from neighborhoods outside the west side of Evanston. In 1921, the City passed a zoning ordinance that zoned for commercial use almost every block where black people lived outside of the west side of town. As these areas were converted to commercial use, 'black families were dislocated to the west,' said Mr. Wiese.

The effect of all these practices was stark. 'Between 1910 and 1940, there was not a single area of African American expansion outside of west Evanston, in spite of black population growth of

almost 5,000,' said Mr. Wiese. 'To the contrary, public and private actions reduced the number of African American housing units outside these boundaries.'

By 1940, census data showed that 84% of black households in Evanston lived in the triangular area that is shaded light red in the map below. This area was highly segregated – 95% black. Beyond these bounds, black families lived on Garnett Place (then called Ayars) and in a few pockets of older homes purchased before 1900.



While black people were segregated into the triangular area (pictured above), Mr. Wiese points out that black Evanstonians 'were almost as likely to own their own homes as middle class and elite whites.' Some white members of the Evanston and the Chicago real estate establishments and some financial institutions from Evanston and Chicago provided mortgages and construction loans to black people who were building or purchasing homes in the triangular area and on Garnett Place.

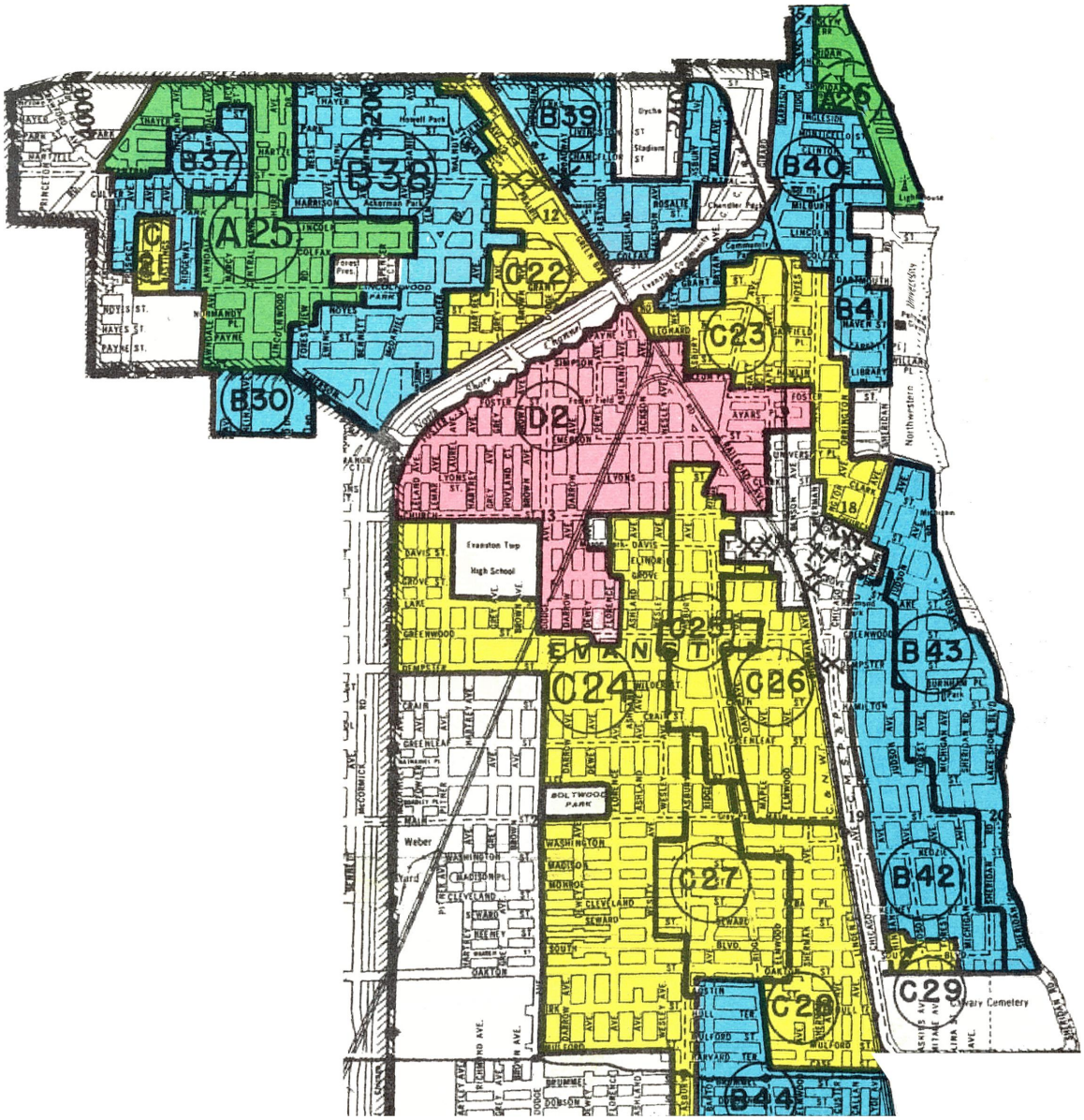
To help with the purchase of their homes, many black households shared housing costs with extended families or rented rooms or apartments for extra income. In 1920, about 30% of black households in Evanston included multigenerational and extended family members. The percentage grew to about 50% by 1940.

As in Chicago, segregation had the effect of limiting the supply of housing available to black families in Evanston. This resulted in over-crowding and higher housing prices. Mr. Wiese summed up the racial transition in Evanston through 1940 as follows:

'Ironically, evidence suggests that racial segregation in Evanston facilitated black suburbanization. Although the development of residential segregation in the suburb testifies to

the unease local whites felt about black migration, the establishment of clear geographic limits to black community building appears to have calmed white fears. Race relations in Evanston were structured by a high degree of inequality that favored (and flattered) local whites and minimized conflict through patterns of paternalism and deference symbolized by the relationship of domestic service. Separated as they were by income, occupation, and power, as well as clear geographic barriers, such as railroad tracks and a wide sanitary channel, African Americans posed little threat to the social status or perceived property values of Evans-ton's economic elite. Meanwhile, as workers, they provided services that were in high demand. As a result, the dynamics of local race relations combined with the aspirations of black southerners to shape a housing market that both supported black home ownership and accommodated the growth of a large black community in an otherwise affluent and white suburb.'

In 1940, the Home Owners Loan Corporation (HOLC), an arm of the Federal Loan Bank Board, prepared a map showing the risk of making mortgage loans in different neighborhoods in Evanston (pictured below). A portion of HOLC's Evanston map is shown below. The HOLC prepared this and similar maps for more than 200 cities in the United States to show the risk of making mortgage loans in different neighborhoods in these cities. The process took into account the age and quality of housing, the racial and ethnic makeup of the neighborhood and other factors.

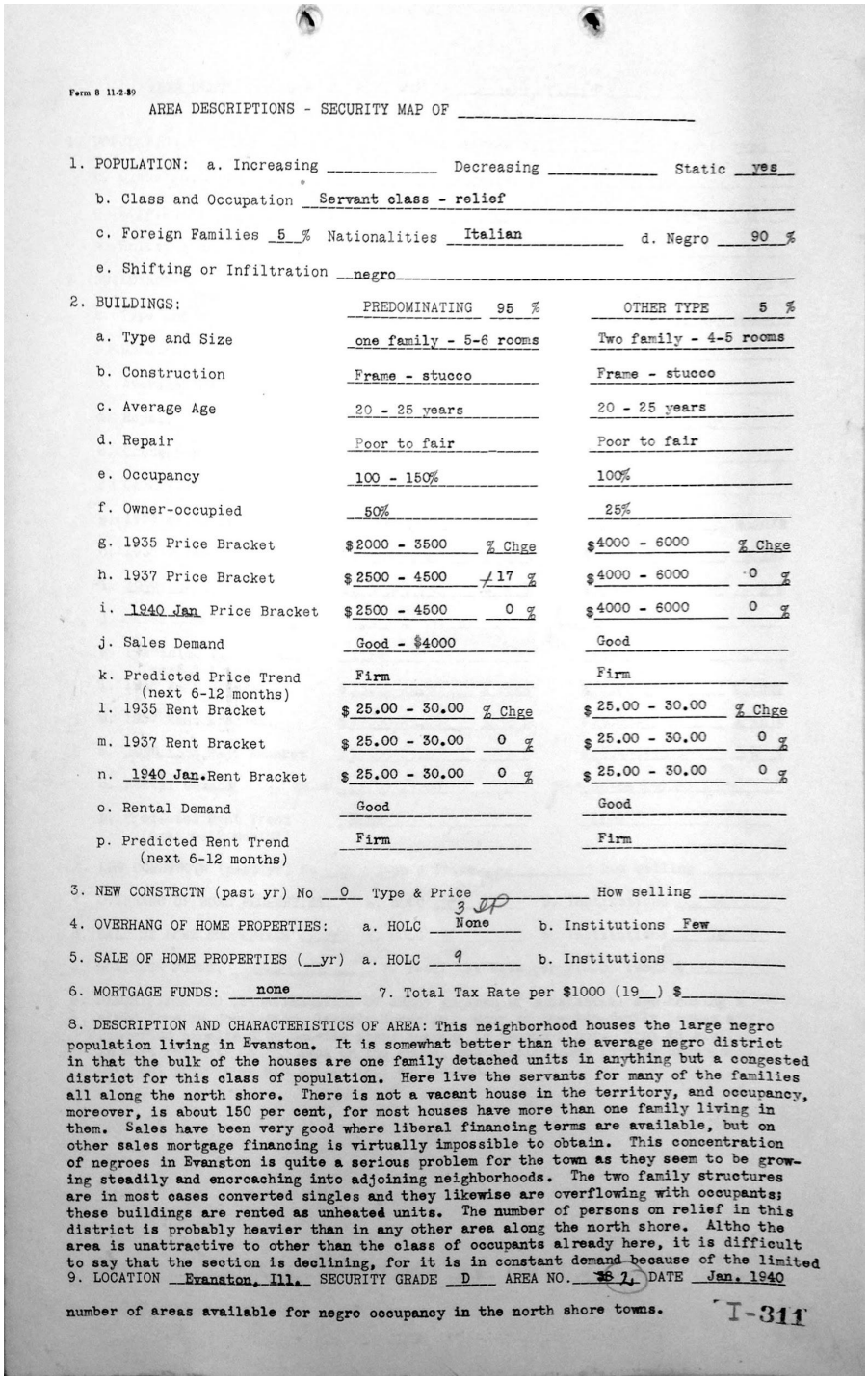


The Home Owners Loan Corporation prepared the above map of Evanston's neighborhoods in 1940. The core black area of the City - shaded red by HOLC was graded "D."

Areas were given one of four grades: “A” areas – shaded green – were deemed “homogeneous” and in demand as residential areas; “B” areas – shaded blue – were “still desirable;” “C” areas – shaded yellow – were characterized as old and at risk of an “infiltration of a lower grade of population;” and “D” – shaded red – were said to have detrimental influences and an “undesirable population or an infiltration of it.”

Black neighborhoods ‘were invariably rated’ in the D category, said researchers Kenneth Jackson and Jacob Krimmel.

HOLC's map of Evanston rated the segregated black triangular area of Evanston in the "D" category.



Form 8 11-2-39

AREA DESCRIPTIONS - SECURITY MAP OF _____

1. POPULATION: a. Increasing _____ Decreasing _____ Static yes

b. Class and Occupation Servant class - relief

c. Foreign Families 5 % Nationalities Italian d. Negro 90 %

e. Shifting or Infiltration negro

2. BUILDINGS:	PREDOMINATING 95 %		OTHER TYPE 5 %	
a. Type and Size	one family - 5-6 rooms		Two family - 4-5 rooms	
b. Construction	Frame - stucco		Frame - stucco	
c. Average Age	20 - 25 years		20 - 25 years	
d. Repair	Poor to fair		Poor to fair	
e. Occupancy	100 - 150%		100%	
f. Owner-occupied	50%		25%	
g. 1935 Price Bracket	$2000 - 3500	% Chge	$4000 - 6000	% Chge
h. 1937 Price Bracket	$2500 - 4500	↓17 %	$4000 - 6000	0 %
i. 1940 Jan Price Bracket	$2500 - 4500	0 %	$4000 - 6000	0 %
j. Sales Demand	Good - $4000		Good	
k. Predicted Price Trend (next 6-12 months)	Firm		Firm	
l. 1935 Rent Bracket	$ 25.00 - 30.00	% Chge	$ 25.00 - 30.00	% Chge
m. 1937 Rent Bracket	$ 25.00 - 30.00	0 %	$ 25.00 - 30.00	0 %
n. 1940 Jan. Rent Bracket	$ 25.00 - 30.00	0 %	$ 25.00 - 30.00	0 %
o. Rental Demand	Good		Good	
p. Predicted Rent Trend (next 6-12 months)	Firm		Firm	

3. NEW CONSTRCTN (past yr) No 0 Type & Price 3 DP How selling _____

4. OVERHANG OF HOME PROPERTIES: a. HOLC None b. Institutions Few

5. SALE OF HOME PROPERTIES (__yr) a. HOLC 9 b. Institutions _____

6. MORTGAGE FUNDS: none 7. Total Tax Rate per $1000 (19__) $_____

8. DESCRIPTION AND CHARACTERISTICS OF AREA: This neighborhood houses the large negro population living in Evanston. It is somewhat better than the average negro district in that the bulk of the houses are one family detached units in anything but a congested district for this class of population. Here live the servants for many of the families all along the north shore. There is not a vacant house in the territory, and occupancy, moreover, is about 150 per cent, for most houses have more than one family living in them. Sales have been very good where liberal financing terms are available, but on other sales mortgage financing is virtually impossible to obtain. This concentration of negroes in Evanston is quite a serious problem for the town as they seem to be growing steadily and encroaching into adjoining neighborhoods. The two family structures are in most cases converted singles and they likewise are overflowing with occupants; these buildings are rented as unheated units. The number of persons on relief in this district is probably heavier than in any other area along the north shore. Altho the area is unattractive to other than the class of occupants already here, it is difficult to say that the section is declining, for it is in constant demand because of the limited number of areas available for negro occupancy in the north shore towns.

9. LOCATION Evanston, Ill. SECURITY GRADE D AREA NO. 38-1 DATE Jan. 1940

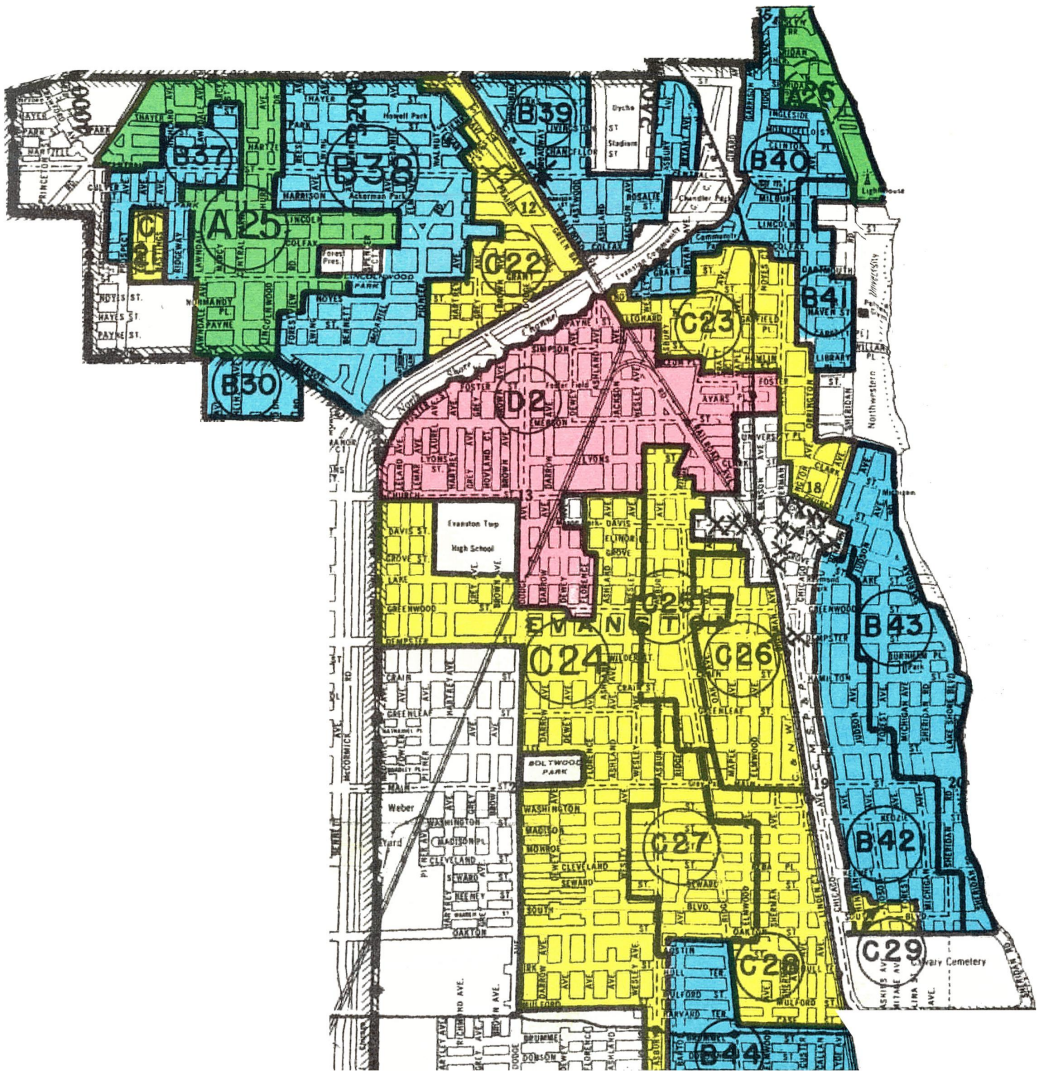
I-311

The HOLC also wrote a narrative description of the area shaded red in the Evanston map it prepared. The narrative … said: ‘ This neighborhood houses the large negro population living in Evanston. It is somewhat better than the average negro district for this class of population. Here live the servants for many of the families all along the north shore. There is not a vacant house in the territory, and occupancy, moreover is about 150 per cent, for most houses have more than one family living in them. Sales have been very good where liberal financing terms are available, but on other sales mortgage financing is virtually impossible to obtain. This concentration of negroes in Evanston is quite a serious problem for the town as they seem to be growing steadily and encroaching into adjoining neighborhoods. The two-family structures are in most cases converted singles and they likewise are overflowing with occupants; these buildings are rented as unheated units. The number of persons on relief in this district is probably heavier than in any other area along the north shore. Altho the area is unattractive to other than the class of occupants already here, it is difficult to say that the section is declining, for it is in constant demand because of the limited number of areas available for negro occupancy in the north shore towns.’

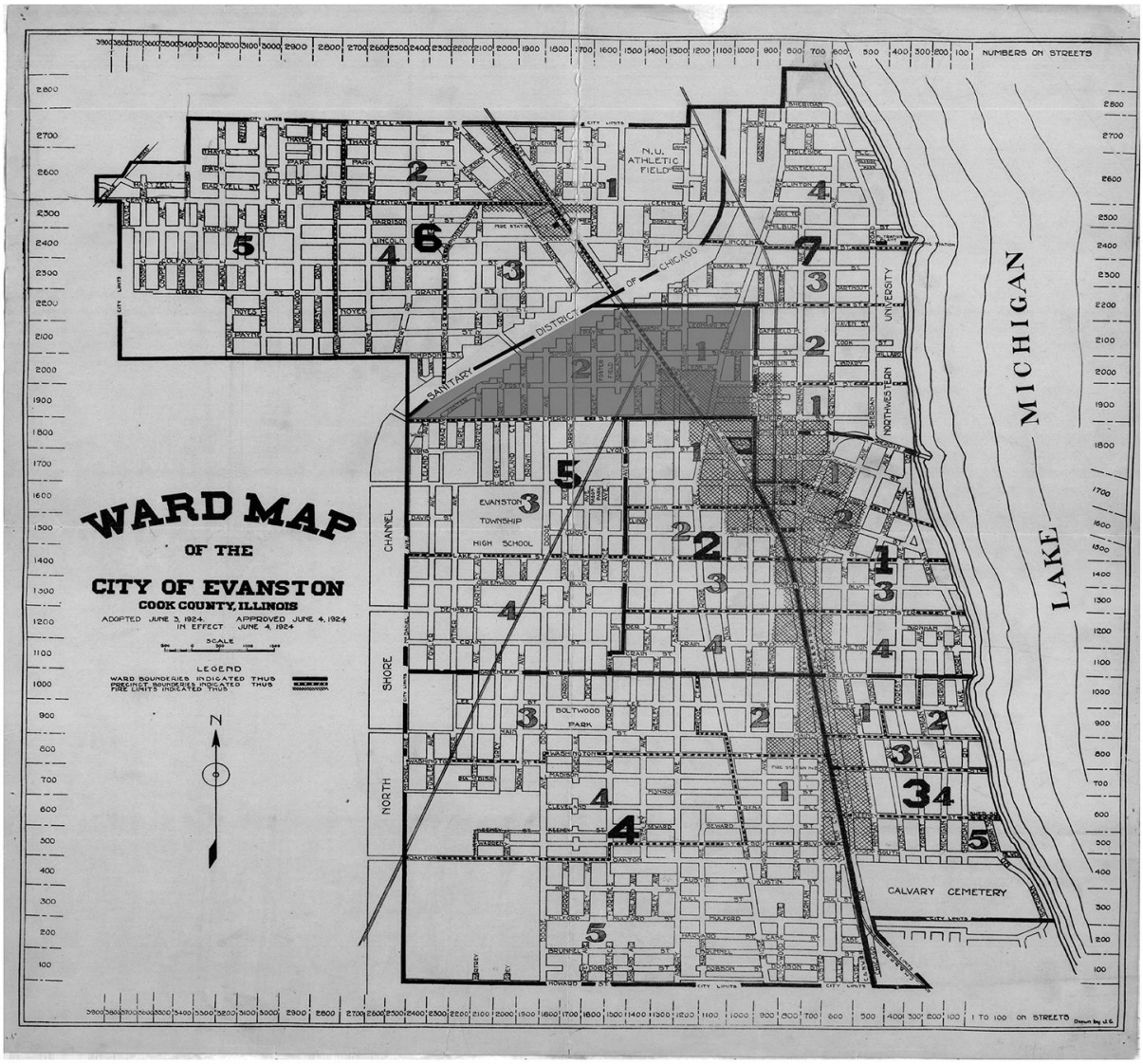
HOLC’s description highlights several adverse economic impacts of segregation. It severely limited the supply of housing available to black people, which increased overcrowding to the point where occupancy was 150%. In addition, the demand for housing and the steadily growing population meant that the black population was, in HOLC’s words – the words of a federal agency – ‘encroaching into adjoining neighborhoods.’ ” (End excerpt from “Developing a Segregated Town, 1900-1960.”)

MAPS

The series of maps in the following pages show the changing borders of the fifth ward. Comparisons will show in comparison, the 1924 map, the 5th ward covers most of today's 5th and 2nd ward. The HOLC map D2 zone covers the 5th ward, precincts 1-8 compared to the 1942 Evanston ward map.

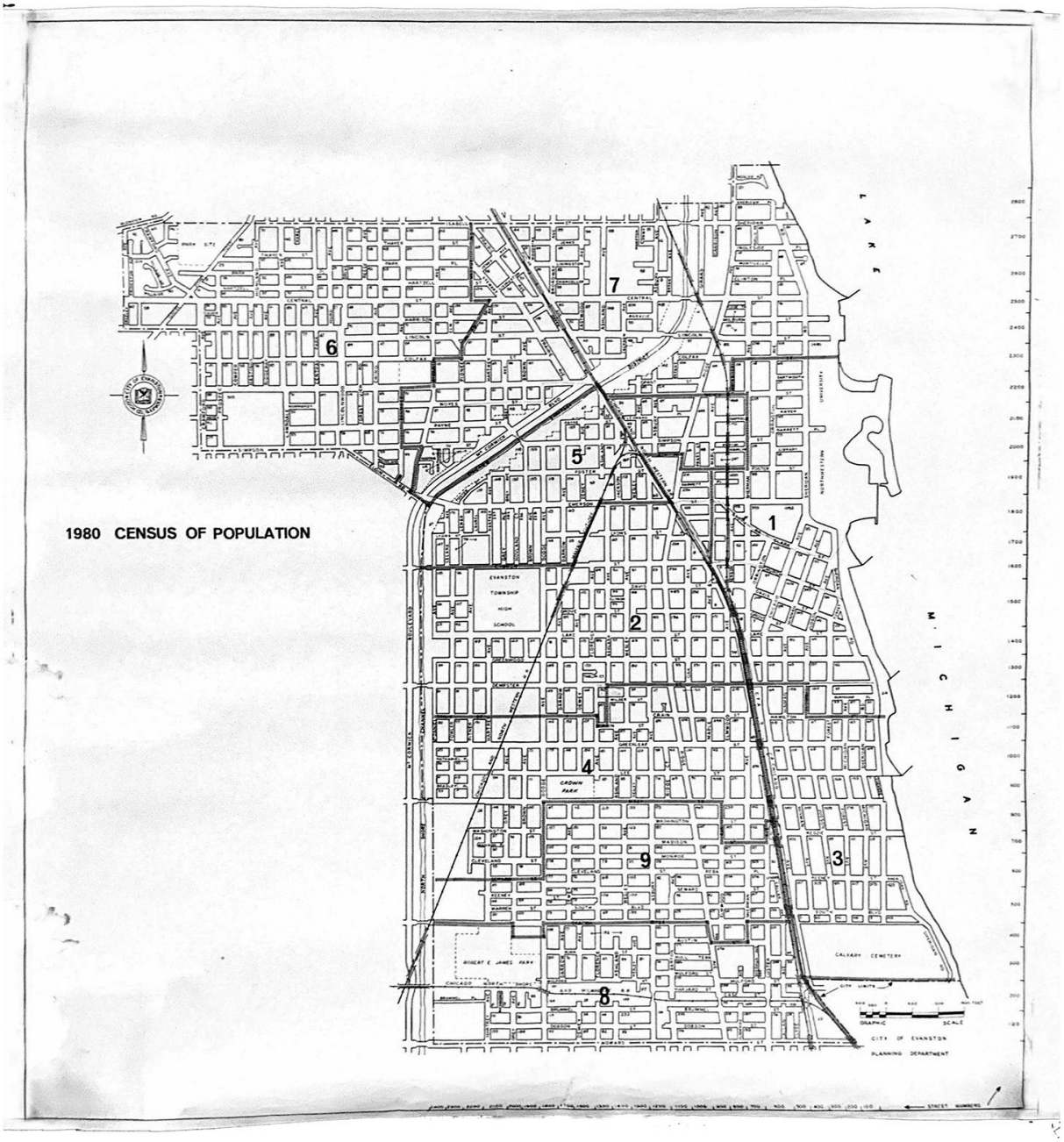


1940 HOLC map. D2 (in red) encompasses most of 5th ward
Source: Mapping Inequality: Redlining in New Deal America

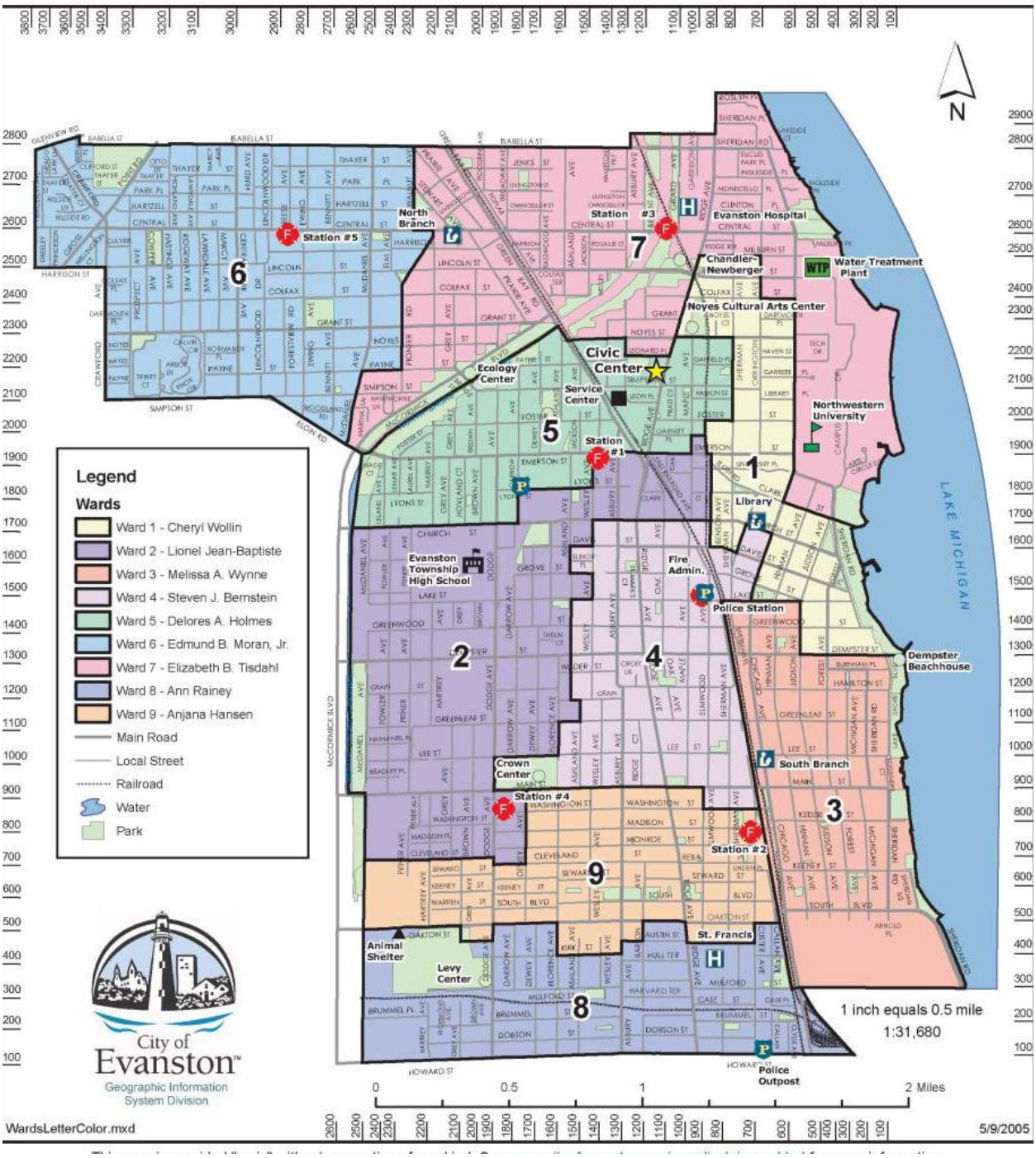


1924 Ward map (City of Evanston)

1942 ward map (City of Evanston)



1980 Ward map (City of Evanston)



2005 Ward map (City of Evanston)

CONCLUSION

This report draws from research and resources compiled over many years by its respective authors. While it is intended to provide an overview of relevant issues related to Evanston's history, it is only a small sample of the vast amount of information and data concerning the various issues it outlines.

We hope this report provides insight into the policies and practices that have impacted Black Evanston residents over the decades. There is a plethora of historical evidence that clearly shows patterns and practices of discrimination and segregation in the city. And, we should note, these were neither rare nor unusual in the United States during the period described here. Indeed, Evanston, along with cities and towns across the country, backed by state and federal laws, enacted discriminatory policies that, when taken together, constitute a network of national patterns aimed at segregating Black Americans and denying Black Americans equal access to opportunities and services, among other goals. Evanston was one city of many, to be sure, but the policies and practices of that one city are no less insidious and destructive merely because it did not act alone.

RESOURCES

Oral Histories

Both the Evanston History Center and the Shorefront Legacy Center have an extensive collection of audio oral histories from African American residents. The recordings took place as early as 1971 through present day, capturing over 150 audio hours of lived experiences in Evanston. In these recording, the consistent themes that presented themselves included 1) Housing issues and discrimination, 2) Foster School and its impact, 3) the Emerson Street Branch YMCA, a segregated branch of the Central (now McGaw) YMCA, 4) the Community Hospital, 5) Work, social and civic life, and 6) Engagement with members in the white community.

The oral history collections at the Evanston History Center are cataloged, many are transcribed and they all have been digitized. Specific to the African American experience, the recordings are mostly from the early 1970s as part of the Wayne Watson collection. Watson was employed at the Evanston Public Library while pursuing his Doctorate at Northwestern University. His resulting work included approximately 100 audio tapes, a transcript from a local radio station on Black issues, and indexed newspaper listings. The others are from the early 1980s and the early 1990s.

The oral history collections at Shorefront are available at the Shorefront Legacy Center. The bulk of the collection is in the process of being digitized. However, there is a select collection of 38 recordings that were primarily produced during the latter part of 1990s and is available online complete with transcriptions. (www.shorefrontvoice.org)

Books and Articles:

Beverly Jr., Sherman, *Edwin B. Jourdain, Jr: The Emergence of Black Political Power in Evanston, Illinois, 1931–1947*, Shorefront Press, 2018.

Brooks, Lawrence B., *The Integration of Foster School*, 1968, documentary film, Shorefront archives.

Bruner, David Kenneth, “A General Survey of the Negro Population of Evanston,” Northwestern University, May 1924.

Chicago Commission on Race Relations, *The Negro in Chicago: A Study of Race Relations and a Race Riot.* Chicago: University of Chicago, 1922.

City of Evanston, “Analysis of Impediments to Fair Housing Choice”, Revised, April 2014.

City of Evanston, Zoning Ordinance, Evanston, Illinois, January 1921.

Gavin, Larry, "Developing a Segregated Town, 1900-1960", *Evanston RoundTable*, December 5, 2019.

Gavin, Larry, "A History of Foster School and Desegregation in School District 65", *Evanston RoundTable*, June 19, 2002

Gavin, Larry, "Foster School: Its Role in Desegregating School District 65 in 1967 and Its Closing in 1979", *Evanston RoundTable*, October, 25, 2011.

Gavin, Mary Helt and Randhava, Heidi, "Police and Policing in Evanston: A Discussion", *Evanston RoundTable*, June 24, 2020.

Harper, Douglas, "Slavery In The North", 2003

Jourdain, Spencer, *Dream Dancers Volume III: E Pluribus Unum - The Battle for American Equality 1924-1947*, Evanston, IL: Shorefront Press, 2018.

Moser, Whet, "How Redlining Segregated Chicago and America," *Chicago Magazine*, August 22, 2017. https://www.chicagomag.com/city-life/August-2017/How-Redlining-Segregated-Chicago-and-America/

Robinson, Morris (Dino), *Gatherings: The History and Activities of the Emerson Street Branch YMCA*, Shorefront, 2004. (Portions of this book have been adapted here.)

Rood, Alice Orian, "Negroes in School District 75, Evanston, Illinois," 1926.

Thompson, Jenny, *The Takeover 1968: Student Protest, Campus Politics, and Black Student Activism at Northwestern University.* Evanston, IL: Evanston History Center Press, 2019. (Portions of this book have been adapted here.)

Wiese, Andrew, "Black Housing, White Finance: African American Housing and Home Ownership in Evanston, Illinois, Before 1940," *Journal of Social History*, Winter 1999.

Wiese, Andrew, *Places of Their Own: African American Suburbanization in the Twentieth Century* (Chicago: University of Chicago Press, 2004).

Williams, George W., *Conversations with Blacks in Evanston: An Evaluation of African-American Progress in this Suburb of Chicago* (Baltimore, MD: American Literary Press, Inc., 1998).

Williamson, Harold Francis and Payson Sibley Wild, *Northwestern University, A History, 1850-1975.* Northwestern University, 1975.

Winling, Ph.D., LaDale C., and Michney, Ph.D., Todd M., *The Roots of Redlining: Academic, Governmental, and Professional Networks in the Making of the New Deal Lending Regime.* JAH Submission date: 2/12/2020.

Collections:

Evanston History Center collections: Oral Histories, transcripts available on site for review. Online database.

Shorefront Legacy Center collections: Oral History collection www.shorefrontvoice.org, Articles www.shorefrontjournal.org, and Finding aids.

Other sources:

Edwin B. Jourdain, Jr. collection: Original documents from Jourdain's personal files housed at Shorefront.

Harland Bartholomew and Associates (HBA) Collection, 1919-1991, Washington University Archives, St. Louis, MO.

Housing related records, Evanston History Center, Evanston, IL.

Newspapers and Journals: *The Chicago Defender, The Chicago Tribune, The Crisis, The Daily Northwestern, The Day Book, Evanston Daily News, Evanston News-Index, Evanston Review, Evanston Roundtable, The Inter-Ocean,* and *Shorefront Journal.*

Records of the City of Evanston, Evanston, IL, online and from the Evanston City Clerk's office, Shorefront Legacy Center, and the Evanston History Center.

Northwestern University Archives, Northwestern University, Evanston, IL.

Mapping Inequality Project: https://dsl.richmond.edu/panorama/redlining/#loc=10/41.944/-88.047&city=chicago-il&area=D2

Organizing for Positive Action and Leadership (OPAL), http://www.opalevanston.com

U.S. Census records.

Further Reading:

Coates, Ta-Nehisi, "The Case for Reparations," *Atlantic Monthly,* June 2014.

Mitchell, Bruce, *HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality*, March 20, 2018, https://ncrc.org/holc/

Rothstein, Richard, *The Color of Law: A Forgotten History of How Our Government Segregated America,* Liveright, 2017.

ABOUT THE AUTHORS
This report was compiled by:

Morris (Dino) Robinson, Jr. is the founder and current Executive Director of the Shorefront Legacy Center. Shorefront collects, preserves and educates people about Black history on Chicago's suburban North Shore. A graduate of Loyola University with a B.A. in Communication Design and a minor in African American Studies. Outside of his career in advertising and design, his avocation with the creation of Shorefront began in 1995 and has since accumulated over 300 linear feet of archival material illustrating the lives and experience of Blacks on the North Shore for public use. He is the author of three books: *Through The Eyes of Us* (1997), *Gatherings: The History and Activities of the Emerson Street Branch YMCA* (2004), and *A Place We Can Call Our Home* (revised, 2014). Through Shorefront, he has engaged the local community in preserving its history through articles and oral history, provided resources for public use, and participated in dozens of lectures on the topics of the importance of community based archives and local history.

Dr. Jenny Thompson is a public history consultant and Director of Education at the Evanston History Center. She has a BA from San Francisco State University, an MA in American Studies from the George Washington University, and a PhD in American Studies from the University of Maryland. She has taught courses in American history at the University of Maryland and at Roosevelt University in Chicago. Her books include *The Takeover 1968: Student Protest, Campus Politics, and Black Student Activism at Northwestern University* (2019) and *War Games: Inside the World of 20th-Century War Reenactors* (2004). Her essays have appeared in various anthologies and publications, including the *New York Times.*

ICTJ Justice Truth Dignity

GERMAN REPARATIONS TO VICTIMS OF NAZI PERSECUTION

The magnitude of the “war crimes” and “crimes against humanity” committed by the Nazi regime leading up to and during World War II made it impossible to rely on ordinary courts of law to determine accountability and give justice to victims. There were more than 11 million victims of genocide, including persons of Jewish origin, Roma and Sinti minorities, Polish and other Slavic persons, Communists and other left-wing activists, prisoners-of-war, homosexual men, mentally and physically disabled persons and various other groups of victims. They were killed in concentration camps and ghettoes, through mass executions, forced medical experiments and forced labor. The millions more who survived the extermination and persecution suffered torture, hunger and inhuman conditions of prison and work carried out in the territories that the Nazi regime occupied. Almost all of these victims also had their property and personal assets stripped from them.

Some of the Nazi perpetrators who survived the war were prosecuted and punished at the end of the historic Nuremberg trials in 1949. These trials significantly contributed to the development of the Universal Declaration of Human Rights, to the treaty against genocide, and to the creation of what is now the International Criminal Court (ICC).

But reparations for the victims and their heirs only became possible when the new post-war states that represented the Jewish victims (Israel) and succeeded the Nazi government (West Germany) resolved their moral, practical, and legal dilemmas concerning reparations. From 1953 to 1965 in the then West Germany, three laws were enacted to provide reparations for Nazi persecution. Together, these are known as the BEG laws. Separately, Israel and Germany signed a treaty in 1952 through which Germany would pay reparations to Israel and to Jewish communities represented by the Jewish Claims Conference.

The huge number of victims and the vastly different circumstances of killing, pain, and loss that they went through made it impossible to cover all kinds of victims in one set of reparations programs. After the passage of the BEG laws and the Israel-German treaty, Germany entered into several bilateral reparation agreements with formerly Nazi-occupied countries in Europe. Germany also enacted a separate law granting reparations for victims of forced and slave labor. Other victims had filed “class suits” in U.S. courts against German industries, Swiss banks and various insurance companies that had profited from Nazi war crimes. These cases were settled and reparations arising from the settlements are still being distributed to different types of Nazi regime victims, including not only Jewish survivors but also survivors from the other ethnic and sexual minorities and political groups that were exterminated or persecuted by the Nazis. In Germany, all of these reparation programs are referred to as *wiedergutmachen*, which means "to make well again." Some victims, however, refuse to accept this term. They argue that the suffering of Nazi victims cannot be "made up for" by any amount of material compensation.

When combined in terms of number of victims, cost of reparations and duration of the implementation period, reparations for victims of the Nazi regime are the largest and most complex set of programs in the history of victim-centered reparations.

REPARATIONS PROGRAM	
GERMAN FEDERAL REPARATIONS FOR INDIVIDUAL VICTIMS OF NAZI PERSECUTION (B.E.G LAWS)	
Origin	The reparations program under the BEG laws are based on three laws passed in 1953, 1956 and 1965. This is distinct from the reparations provided by Germany to Israel under their 1952 Luxembourg Treaty. These laws are also distinct from the German laws on reparations for forced and slave labor and other reparations laws that came after 1965.
Time Frame	The programs began in 1953 and have ceased to accept applications.
Eligibility	The 1953 law covered persecution during the Nazi regime from 1933 until May 1945. The kinds of damage eligible for compensation included: ■ Compensation for life given to surviving relatives of a victim's wrongful death ■ Compensation for those who suffered damage to "health or spirit." ■ Compensation for those held in political or military jail, interrogation custody, correctional custody, concentration camp or ghettoes. ■ Compensation for damage to property, assets lost due to boycotts or payment of discriminatory taxes ■ Compensation for damage to career or economic advancement ■ Compensation for persons forced to wear the Star of David or to live illegally in inhuman conditions. The 1953 law required victims to have been persecuted by the Nazi regime from 1933-1945 because of race, religion, or ideology and for opposing the regime. It excluded survivors living in the then Soviet bloc of countries. The two subsequent laws corrected many of these exclusions. The 1956 law covered victims persecuted for opposing the Nazi regime or persecuted because of race, religion, or ideology. Despite the expansion of beneficiaries, the 1956 law still excluded several groups, such as (1) those persecuted outside Germany who did not fulfill the BEG law's residency requirements, (2) forced laborers in non-jail conditions (3) victims of forced sterilization; (4) the 'antisocial' (5) communists (6) Roma and Sinti minorities or "gypsies" and (7) homosexual men. Later, the 1965 "final" BEG law, covered Eastern European refugees who were previously ineligible for compensation. In addition, compensation for loss of life was expanded to include deaths that occurred either during persecution or within eight months from such incidents.
Procedure Application	Individual claims were sent to provincial reparations agencies. Claimants were then interviewed by doctors if they wanted to be compensated for physical or psychological damages. If an application was denied the victim could hire a

	lawyer to appeal. The court nominated experts in medicine or psychiatry to advice on the claim.
Priority Claims	Priority was given to claimants over 60 years old, the extremely poor, and the sick and infirm whose earning capacity had been reduced by at least half.
Standards of Evidence	There was a presumption that if a claimant had been incarcerated for a year in a concentration camp, then subsequent health problems were causally linked to their persecution under the Nazi regime.
Assessment of Claims	September 1966 was regarded as the final date to make a claim under the 1965 law. Subsequent laws, however, extended the period to file certain claims for those excluded earlier. In general, the period to file claims under the BEG laws ended in 2003.
Benefits	
Amount Received	■ Compensation for Life: Families were eligible for a pension based on the amount paid to families of civil servants who suffered accidental death. In 2001, the average pension was approximately US $697 per month. ■ Compensation for Health: Claimants were entitled to medical care and could apply for a pension. Claimant had to prove that persecution caused certain health damages that led to at least a one-third reduction of earning capacity. In 2001, the average pension was approximately US $450 per month. Under the 1956 law, if a claimant died as a result of physical harm, the surviving kin were eligible for compensation ■ Compensation for Damages to Freedom: DM 150 per month of custody ■ Compensation for Property, Assets, and/or Discriminatory Taxes: Claimants were entitled to compensation but not restitution of the property or asset lost. The maximum amount of compensation was approximately US $18,750 in 1953. The 1956 law set separate ceilings of compensation for different categories of property loss. ■ Compensation for damages to career or economic advancement: Claimants were entitled to a one-time maximum payment of approximately $6,250 (as of 1953). The exact amount was calculated as at least two-thirds of the relevant civil servant's pay for that time period. Under the 1956 law, privately-employed and self-employed claimants could choose a pension instead. ■ Compensation for death: A maximum of DM10,000 was awarded. Under the 1956 law, this level was raised to a maximum of DM 25,000. ■ Under the 1965 law, a "hardship fund" of US $300 million was created to support refugees from Eastern Europe
Applicants	Around 4,384,138 applications for individual reparations were received. 2,014,142 applications were finally approved.
	The German government provided all funds. Since 1952, the total cost of the program was equivalent to almost US$80 Billion (€71 billion). In 2019, pensions

Source of funding	were extended to allow a surviving spouse to continue collecting for up to nine months after their partner's death. A total of 30,000 people were expected to qualify, with some 14,000 spouses granted the payment retroactively. Previously, the compensation payments were halted when the Holocaust survivor died, which often left their spouse without a major source of income.
Evaluation/ Analysis	The processing of the claims was extremely slow and complex. The evaluation procedure and the medical interviews were considered unpleasant and humiliating by many victims. As a result, many survivors abstained from filing claims. While the subsequent BEG laws expanded the categories of beneficiaries, it still excluded several kinds of victims. It took another set of German reparations laws (involving forced and slave labor) and settlements in litigation outside of Germany (involving reparations for assets and the setting up of trust funds for victims' groups excluded by the BEG laws). The latter reparations programs covering forced labor and other minorities were the outcome of litigation, political pressure from those who were excluded and the governments of countries where excluded victims lived. In some of these instances, the German companies, Swiss banks, and several multinational insurance companies involved in the settlements opted to contribute funds for reparations not so much to accept responsibility, but to avoid larger future claims. While that is understandable, it is also clear that as a result of some of these settlements, other aspects of reparations – such as apologies, symbolic reparations, and assurances of non-repetition – may have been relegated in favor of monetary compensation. A notable exception would be Germany's own efforts to memorialize these events constitutionally and culturally. Furthermore, the reparative effects of more wide-ranging truth-telling that respects the distinct experiences of particular groups victims (such as the culturally-secretive Roma, for example) have been precluded by the sometimes mechanical application of actuarial principles in the computation of compensation. Still, the commitment of Germany to fund reparations and accept accountability has been exceptional among countries responsible for conducting war and committing systematic abuse on massive numbers of victims. Germany's conduct is in stark contrast, for instance, with that of Japan and Japanese political leaders who largely refuse to accept accountability for their share of atrocities in World War II.

Law on the Creation of a Foundation
"Remembrance, Responsibility and Future"

Preamble

Recognizing

that the National Socialist State inflicted severe injustice on slave laborers and forced laborers, through deportation, internment, exploitation which in some cases extended to destruction through labor, and through a large number of other human rights violations,

that German enterprises which participated in the National Socialist injustice bear a historic responsibility and must accept it,

that the enterprises which have come together in the Foundation Initiative of German Industry have acknowledged this responsibility,

that the injustice committed and the human suffering it caused cannot be compensated by financial payments,

that the Law comes too late for those who lost their lives as victims of the National Socialist regime or have died in the meantime,

that this Law and the German-U.S. intergovernmental agreement provide adequate legal security for German enterprises in the United States of America,

that the German Bundestag acknowledges political and moral responsibility for the victims of National Socialism. The Bundestag intends to keep alive the memory of the injustice inflicted on the victims for coming generations as well.

The German Bundestag understands that this Law, the German-U.S. intergovernmental agreement, the Statement of Interest of the U.S. Government, and the Joint Statement of all involved parties, provide adequate legal security for German enterprises and the Federal Republic of Germany, especially in the United States of America. It has, with the concurrence of the Bundesrat, passed the following Law:

Section 1: Establishment and Headquarters

(1) A legally recognized foundation with the name "Remembrance, Responsibility and Future" shall be established under public law. The Foundation comes into being as of the entry into force of this legislation.
(2) The headquarters of the Foundation shall be in Berlin.

Section 2: Purpose of the Foundation

(1) The purpose of the Foundation is to make financial compensation available through partner organizations to former forced laborers and to those affected by other injustices from the National Socialist period.
(2) A "Remembrance and Future" fund will be established within the Foundation. Its continuing task is to use the income produced by the fiinancial assets provided to the Foundation to foster projects that serve the purposes of better understanding among peoples, the interests of survivors of the National Socialist regime, youth exchange, social justice, remembrance of the threat posed by totalitarian systems and despotism, and international cooperation in humanitarian endeavors. In commemoration and respect of those victims of National Socialist injustice who did not survive, it is also intended to further projects in the interest of their heirs.

Section 3: Donors and the Foundation's Capital Assets

(1) Contributors to the Foundation's capital fund shall be the companies joined together in the Foundation Initiative of German Industry, and the Federal Government.
(2) The Foundation shall be endowed with a capital fund consisting of the following:

1. Five billion deutschmarks that the companies joined together in the Foundation Initiative of German industry have agreed to make available, including the payments that German insurance companies have provided to the International Commission on Holocaust Era Insurance Claims or will provide in the future.
2. Five billion deutschmarks that the German Federal Government is making available in the year 2000. The contribution of the Federal Government includes the contributions of enterprises of which the Federal Government is sole owner or in which it has a majority interest.

(3) There is no obligation for the donors to make supplementary payments.
(4) The Foundation is authorized to accept contributions from third parties. It shall endeavor to obtain additional contributions. The contributions are exempt from inheritance tax and gift tax.
(5) Income from the Foundation's capital fund and other income is to be used only for the purposes of the Foundation.

Section 4: The Bodies of the Foundation

The bodies of the Foundation are:
1. the Board of Trustees.
2. the Board of Directors.

Section 5: The Board of Trustees

(1) The Board of Trustees is made up of 27 members, namely:
1. the chairman, to be named by the German Chancellor;
2. four members to be named by the companies joined together in the Foundation Initiative of German Industry;
3. five members to be named by the German Bundestag and two by the Bundesrat;
4. one representative of the Federal Ministry of Finance;
5. one representative of the Ministry of Foreign Affairs;
6. one member to be named by the Conference on Jewish Material Claims against Germany;
7. one member to be named by the Central Council of German Sinti and Roma, the Alliance of German Sinti, and the International Romani Union;
8. one member to be named by the Government of the State of Israel;
9. one member to be named by the Government of the United States of America;
10. one member to be named by the Government of the Republic of Poland;
11. one member to be named by the Government of the Russian Federation;
12. one member to be named by the Government of Ukraine;
13. one member to be named by the Government the Republic of Belarus;
14. one member to be named by the Government of the Czech Republic;
15. one lawyer to be named by the Government of the United States of America;
16. one member to be named by the United Nations High Commissioner for Refugees (UNHCR);
17. one member to be named by the International Organization for Migration (IOM); and
18. one member to be named by the Federal Information and Counseling Association for Victims of National Socialism e. V. [Registered Association].

The sending body may designate a substitute for each member of the Board [which it names]. A different composition of the Board of Trustees may be decided by a unanimous decision of the Board of Trustees.

(2) The term of office for members of the Board of Trustees shall be four years. If a member should resign before the end of his term, a successor may be appointed for the remainder of the term. The members of the Board of Trustees can be recalled by the sending body at any time.
(3) The Board of Trustees shall establish its own rules of procedure.
(4) The presence of half the membership of the Board of Trustees plus one shall constitute a quorum. The board shall make decisions on the basis of a simple majority. In case of a tie, the vote of the chairman shall determine the outcome.
(5) The Board of Trustees has the right to decide on all fundamental matters that have to do with the tasks of the Foundation, specifically with regard to budgetary plans, the annual report, and the existence of the specific characteristics referred to in Section 12, Paragraph 1. It monitors the performance of the Board of Directors.
(6) The Board of Trustees makes decisions regarding the projects of the "Remembrance and Future" Fund based on proposals by the Board of Directors.
(7) The Board of Trustees establishes guidelines for the use of resources insofar as their use is not already specified in this Law. In this connection, it shall particularly endeavor to see to it that the partner

organizations are able to draw in fair shares upon the eligibilities for payment referred to in Section 11, Paragraph 1, Sentence 1, Numbers 1 and 2.

(8) Members of the Board of Trustees serve in a "pro bono" capacity. Necessary expenses will be reimbursed.

Section 6: The Board of Directors of the Foundation

(1) The Board of Directors shall consist of the chairman and two additional members. Members of the Board of Trustees may not at the same time belong to the Board of Directors.
(2) The members of the Board of Directors will be named by the Board of Trustees.
(3) The Board of Directors shall direct the day-to-day business of the Foundation and shall implement the decisions of the Board of Trustees. It is responsible for distributing the resources of the Foundation to the partner organizations and for the management of the "Remembrance and Future" fund. It oversees the purposeful and prudent expenditure of these funds. The Board of Directors shall be responsible in particular for seeing to it that the partner organizations follow the provisions of this Law and the guidelines established by the Board of Trustees for the use of its funds. The Board of Directors shall represent the Foundation, both in judicial and extrajudicial matters.
(4) The details shall be determined by the by-laws.

Section 7: The By-laws

The Board of Trustees shall adopt a set of by-laws by a two-thirds majority vote. If a set of by-laws has still not been adopted within three months of the initial meeting of the Board of Trustees, the chairman shall propose a set of by-laws that will be passed by a simple majority. The Board of Trustees may amend the by-laws on the basis of a two-thirds majority.

Section 8: Oversight, Budget, Auditing

(1) The Foundation is subject to legal oversight by the Federal Ministry of Finance; starting with the second period in office of the Board of Trustees, it shall be subject to legal oversight by the Ministry of Foreign Affairs.
(2) The Foundation shall prepare a budget in timely fashion before the start of each fiscal year. The budget shall require the approval of the Federal Ministry of Finance.
(3) The Foundation shall be subject to being audited by the Federal Audit Office (Bundesrechnungshof). Without prejudice hereto, the Foundation's accounts and the management of its budget and finances are to be audited by the Federal Office for the Settlement of Open Property Matters (Bundesamt zur Regelung offener Vermögensfragen).

Section 9: Use of Foundation Resources

(1) Resources of the Foundation that serve the purpose of the Foundation referred to in Section 2, Paragraph 1, will be allocated to partner organizations. They are to be used for one-time payments to persons eligible pursuant to Section 11, as well as for covering the personnel and other expenses of the partner organizations. Persons eligible under Section 11, Paragraph 1, Sentence 1, Number 1 or Sentence 5 can receive up to DM 15,000, and persons eligible under Section 11, Paragraph 1, Sentence 1, Number 2, or Sentence 2 can receive up to DM 5,000. Receiving a payment under Section 11, Paragraph 1, Sentence 1, Number 1 or 2 does not preclude receiving a payment under Section 11, Paragraph 1, Sentence 1, Number 3 or Sentence 4 or 5.
(2) The partner organizations shall have available 8.1 billion deutschmarks including 50 million deutschmarks in accrued interest for payments to persons who suffered personal damage as referred to in Section 11, Paragraph 1, Sentence 1, Numbers 1 and 2, and Section 11, Paragraph 1, Sentence 2, insofar as [the payments are] intended for compensation for forced labor. The total amounts shall be divided into the following maximum amounts:
    1 for the partner organization responsible for the Republic of Poland, 1,812 million deutschmarks,
    2. for the partner organization responsible for Ukraine and the Republic of Moldova, 1,724 million deutschmarks,
    3. for the partner organization responsible for the Russian Federation and the Republic of Latvia and the Republic of Lithuania, 835 million deutschmarks,
    4. for the partner organization responsible for the Republic of Belarus and the Republic of Estonia, 694 million deutschmarks,
    5. for the partner organization responsible for the Czech Republic, 423 million deutschmarks,

6. for the partner organization responsible for the non-Jewish claimants outside the states referred to in Numbers 1 through 5 (the International Organization for Migration), 800 million deutschmarks; the partner organization must pay over up to 260 million deutschmarks of this amount to the Conference on Jewish Material Claims against Germany.
7. for the Conference on Jewish Material Claims against Germany, which is responsible for the Jewish claimants outside the states referred to in Numbers 1 through 5, 1,812 million deutschmarks.

The partner organizations must use these monies to make the stipulated payments for all persons who on February 16, 1999, had their principal domicile in their [the organizations'] individual regional areas of responsibility and on that date belonged to their material sphere of responsibility. The partner organizations referred to in Numbers 2, 3, and 4 are also responsible for those persons who on February 16, 1999, had their principal domicile in other states, which were republics of the former USSR; in each case that partner organization is responsible from whose area the claimant was deported.

(3) 50 million deutschmarks are intended for compensation of other personal injuries in connection with National Socialist injustice. Claims are to be addressed to the partner organizations referred to in Paragraph 2. These organizations shall determine the merits and amount of the damage claimed. The amount of the compensation payments shall be determined by the Commission referred to in Paragraph 6, Sentence 2, in accordance with the ratio between the totality of the damages recognized by the partner organizations and the total amount of the monies referred to in Sentence 1, with due consideration given to Section 11, Paragraph 1, Sentence 5. The partner organizations may request the Commission referred to in Sentence 4 to assign the determinations referred to in Sentence 3 to an independent arbitrator. A partner organization that prefers not to make the determinations referred to in Sentence 3 itself must bear the costs of the arbitrator.

(4) The sum of one billion deutschmarks of the Foundation's monies is intended for payments to persons who suffered property loss. This amount is divided into the following maximum amounts:
1. 150 million deutschmarks for property losses resulting from persecution within the meaning of Section 11, Paragraph 1, Number 3,
2. 50 million deutschmarks for other property losses within the meaning of Section 11, Paragraph 1, Number 4,
3. 150 million deutschmarks for the International Commission on Holocaust Era Insurance Claims to compensate unpaid or revoked and not otherwise compensated insurance policies of German insurance enterprises, including the costs incurred in this connection.
4. 300 million deutschmarks for social purposes to the benefit of Holocaust survivors through the Conference on Jewish Material Claims against Germany; 24 million deutschmarks of this shall be paid over to the partner organization referred to in Paragraph 2, Number 6, which shall use it for social purposes vis-a-vis the similarly persecuted Sinti and Roma.
5. 350 million deutschmarks for the humanitarian fund of the International Commission on Holocaust Era Insurance Claims.

(5) If additional interest is earned from the monies made available to the Foundation except for the monies intended for the Future Fund, up to 50 million deutschmarks of this shall be made available to the International Commission on Holocaust Era Insurance Claims to compensate insurance losses within the meaning of Paragraph 3, Number 3, for foreign subsidiaries of German insurance enterprises and for costs incurred in this connection, as soon as the monies are available. Monies referred to in Sentence 1 and Paragraph 4, Number 3, may also be used for the other purpose in each case.

(6) Claims for payments from the monies envisaged in Paragraph 4, Sentence 2, Numbers 1 and 2, are to be addressed to the partner organization referred to in Paragraph 2, Number 6, regardless of the claimant's residence. Determinations concerning these payments shall be made by a commission to be formed under this partner organization. The commission shall consist of one member each to be named by the Federal Ministry of Finance and the Department of State of the United States of America and a chairperson to be chosen by those two members. The commission shall establish supplemental principles concerning the content and procedure of its determinations, insofar as these are not already established under this Law or the By-laws. The commission shall rule on the submitted applications within a year after expiration of the application deadline. Sentences 3 and 4 apply, mutatis mutandis, to the appeals organ to be established in accordance with Section 19. The costs of the commission, the appeals organ, and the partner organization are to be covered pro rata from the total amount referred to in Paragraph 4, Sentence 2, Numbers 1 and 2. If the amount of damages recognized by the commission exceeds the monies available under Paragraph 4, Sentence 2, Number 1 or 2, the payments to be made are to be reduced in proportion to the available monies.

(7) 700 million deutschmarks including the interest accruing thereto are to be used for projects of the "Remembrance and Future" Fund. Of this amount, 100 million deutschmarks may be made available

for other than its intended purpose, if well-founded requests are filed based on insurance claims that could not be met under Paragraph 4, Sentence 2, Number 3, and Paragraph 5.

(8) In concert with the Board of Trustees, the partner organizations may subdivide the category of forced laborers, within its quota, in accordance with Section 11, Paragraph 1, Sentence 1, Number 1, insofar as this involves persons interned in other places of confinement, as well as affected persons within the meaning of Section 11, Paragraph 1, Sentence 1, No. 2, into subcategories depending on the severity of their fate and may set correspondingly gradated maximum amounts. This also applies to the claims of heirs.

(9) The maximum amounts under Paragraph 1 may only be paid out for the time being in the amount of 50% for claimants under Section 11, Paragraph 1, Sentence 1, Number 1, and 35% for claimants under Section 11, Paragraph 1, Sentence 1, Number 2 or Sentence 2. Another payment of up to 50% of the amounts mentioned in Paragraph 1 for claimants under Section 11, Paragraph 1, Sentence 1, Number 1 and up to 65% of the amounts mentioned in Paragraph 1 for claimants under Section 11, Paragraph 1, Sentence 1, Number 2 or Sentence 2 shall be paid out after conclusion of the processing of all applications pending before the respective partner organization, to the extent possible within the framework of the available means. The partner organizations may set up a financial reserve for appeals under Section 19, in the amount of up to 5% of the monies allocated. To the extent the reserve has been set up, payment of the second instalment under Sentence 2 may be made before the conclusion of the appeal proceedings. The Board of Trustees has the right, at the request of individual partner organizations, to allow an increase in the instalment payments laid down under Sentence 1, insofar as it is assured that the monies allocated in Paragraph 2 are not exceeded.

(10) Payments under Section 11, Paragraph 1, Sentence 1, Number 3, with the exception of the payments of the International Commission on Holocaust Era Insurance Claims and payments under Section 11, Paragraph 1, Sentence 4 or 5 can take place only after all applications pending before the competent commission have been processed.

(11) Monies allocated under Paragraph 2 but not completely depleted are to be used for persons entitled to payments under Section 11, Paragraph 1, Sentence 1, Numbers 1 and 2. Should the funds provided under Paragraphs 2 and 3 not be completely depleted in spite of payment of the maximum amounts under Paragraph 1, Sentence 3, the Board of Trustees shall decide how they shall be used. Just as in the case of the use of additional monies, the Board must compensate, in particular, any shortage incurred by individual partner organizations in making payments under Section 11, Paragraph 1, Sentence 1, Numbers 1 and 2. [Monies referred to in Paragraph 4, Numbers 1 and 2, which are not drawn down despite full compensation of damages shall go to the Conference on Jewish Material Claims against Germany; those referred to in Paragraph 4, Number 3, to the International Commission on Holocaust Era Insurance Claims.] The Board of Trustees may allow the maximum amounts under Paragraph 1, Sentence 3 to be exceeded if all partner organizations can make payments in the amounts of these maximum amounts.

(12) Personnel and costs of materials shall be paid from the Foundation's funds, insofar as they are not to be assumed by the partner organizations in accordance with Paragraph 1, Sentence 2. The costs to be borne by the Foundation also include outlays for attorneys and counsel whose activity on behalf of persons entitled to payments under Section 11 contributed to the establishment of the Foundation or otherwise were favorable to its creation, particularly by taking part in the multilateral negotiations that preceded the establishment of the Foundation or by filing complaints on behalf of claimants under Section 11 between November 14, 1990, and December 17, 1999. There is no legal claim to payments pursuant to Sentence 2. An arbitrator named by the Foundation will determine the allocation of an amount set by the Foundation, based on guidelines that shall be determined and published by the Foundation. Requests for the payments stipulated in Sentence 2 are to be submitted to the Foundation by the attorneys and counsel themselves and on their own behalf within 8 months after publication of the guidelines. They must be accompanied by documentation of the outlays claimed. Every attorney and counsel shall make a declaration in the request proceedings to the effect that he waives any claims against his clients upon receipt of a payment under Sentence 2. He is under obligation to advise his clients that he has waived any claims [against them].

(13) For pending litigation concerning matters covered in this Law, court costs shall not be levied.

Section 10: Distribution of Resources through Partner Organizations

(1) The approval and disbursal of one-time payments to those persons eligible under Section 11 will be carried out through partner organizations. The Foundation is neither authorized nor obligated in this regard. The Board of Trustees may decide for another mode of payment. The partner organizations shall cooperate with appropriate associations of persecutees and local organizations.

(2) Within two months after entry into force of the Law, the Foundation and its partner organizations are to publicize the possibility of compensation under this Law in an appropriate manner to all groups of

eligible people in their respective countries of residency. These publications shall specifically include information about the Foundation and its partner organizations, the conditions on which compensation can be awarded, and application deadlines.

Section 11: Eligible Persons

(1) Eligible under this Law are:
1. persons who were held in a concentration camp as defined in Section 42, Paragraph 2 of the German Indemnification Law or in another place of confinement outside the territory of what is now the Republic of Austria or a ghetto under comparable conditions and were subjected to forced labor;
2. persons who were deported from their homelands into the territory of the German Reich (according to the borders of 1937) or to a German-occupied area, subjected to forced labor in a commercial enterprise or for public authorities there, and held under conditions other than those mentioned in Number 1, or were subjected to conditions resembling imprisonment or similar extremely harsh living conditions; this rule does not apply to persons who because their forced labor was performed primarily in the territory of what is now the Republic of Austria can receive payments from the Austrian Reconciliation Foundation;
3. persons who suffered property loss as a consequence of racial persecution with essential, direct, and harm-causing collaboration of German businesses as defined by the laws on indemnification and who could not receive any payment or could not file their claims for return or compensation by the deadline because they either did not meet the residency requirements of the Federal Indemnification Law or had their domicile or permanent residence in an area with whose government the Federal Republic did not maintain diplomatic relations, or because they could not prove that an asset that had been expropriated due to persecution outside the territory of the German Reich in its 1937 borders and could no longer be located there, had been removed to the Federal Republic of Germany, or the proofs of the validity of their claims under the Federal Restitution Act [Bundesruckerstattungsgesetz] and the Federal Indemnification Act [Bundesentschadigungsgesetz] became known and available only due to German reunification, and the filing of the claims under the Law on the Settlement of Open Property Matters or the Law on Indemnification of Victims of Nazism was not allowed, or to the extent that restitution payments for monetary assets expropriated outside Reich territory were denied for lack of the possibility of assessing them, and no payments could be claimed either under the Currency Conversion Act, the Federal Indemnification Act, the Equalization of [War] Burdens Act, or the Reparation Losses Act; that also applies to other persecutees within the meaning of the Federal Indemnification Act. Special arrangements within the framework of the International Committee of Holocaust Era Claims shall remain unaffected.
The partner organizations may also award compensation from the funds provided to them pursuant to Section 9, Paragraph 2 to those victims of National Socialist crimes who are not members of one of the groups mentioned in Sentence 1, Numbers 1 and 2, particularly forced laborers in agriculture. These awards, with reservation as to Section 9, Paragraph 8, must not result in any reduction in the payments to persons eligible under Paragraph 1, Sentence 1, Number 1. The funds provided for in Section 9, Paragraph 4, are intended to compensate property damage inflicted during the National Socialist regime with the essential, direct, and damage-causing participation of German enterprises, but not inflicted for reasons of National Socialist persecution. The funds referred to in Section 9, Paragraph 3, shall be awarded in cases of medical experiments or in the event of the death of or severe damage to the health of a child lodged in a home for children of forced laborers; in cases of other personal injuries they may be awarded.
(2) Eligibility shall be demonstrated by the applicant by submission of supporting material. The partner organization shall bring in relevant evidence. If no relevant evidence is available, the claimant's eligibility can be made credible in some other way.
(3) Eligibility cannot be based on prisoner-of-war status.
(4) Payments from the Foundation are exempt from inheritance tax and gift tax.

Section 12: Definitions

(1) Specific characteristics of other places of confinement referred to in Section 11, Paragraph 1, Number 1 are inhumane prison conditions, insufficient nutrition, and lack of medical care.
(2) German enterprises referred to in Sections 11 and 16 are those that had or have their headquarters within the 1937 borders of the German Reich or in the Federal Republic of Germany, as well as their parent companies, even when the latter have or had their headquarters abroad. Enterprises situated outside the 1937 borders of the German Reich in which during the period between January 30, 1933, and the entry into force of this Law, German enterprises as described in Sentence 1 had a direct or indirect financial participation of at least 25 percent are also considered German enterprises.

Section 13: Application Eligibility

(1) Awards under Section 11, Paragraph 1, Sentence 1, Numbers 1 or 2, or Sentence 2 or Sentence 5 are strictly personal and individual. As such, they must be applied for in one's own name. In a case where the eligible person has died after February 15, 1999, or where an award under Section 11, Paragraph 1, Number 3 or Sentence 4 is being applied for, the surviving spouse and children shall be entitled to equal shares of the award. If the eligible person left neither a spouse nor children, awards may be applied for in equal shares by the grandchildren, or if there are no grandchildren living, by the siblings. If no application is filed by these persons, the heirs named in a will are entitled to apply. Special arrangements within the framework of the International Commission on Holocaust Era Insurance Claims shall remain unaffected. The claim to payment cannot be ceded or attached.
(2) Juridical persons shall not be eligible. They can file applications as representatives of their shareholders eligible under this Law if specifically authorized by these shareholders. If a religious community or organization suffered property losses with the essential, direct, and damage-causing participation of German enterprises, Sentence 1 does not apply to them or their legal successors.

Section 14: Application Deadline

Applications must be made to the partner organizations within eight months after the entry into force of the Law (deadline). By way of exception, a deadline of twelve months is set for the area of responsibility of the partner organization referred to in Section 9, Paragraph 2, Number 6. The Board of Trustees shall be authorized to allow an extension of the application deadline by up to a year for individual partner organizations when justified by circumstances. In cases where a partner organization has not yet been given responsibility, applications within the application period may be submitted directly to the Foundation. Applications that are received directly by the Foundation or by inappropriate partner organizations will be forwarded to the appropriate partner organizations. Special arrangements within the framework of the International Commission on Holocaust Era Insurance Claims shall remain unaffected.

Section 15: Treatment of Other Payments

(1) Payments for injustices suffered under National Socialism are supposed to benefit the persons eligible and not lead to a reduction of income received from the social security or health care system.
(2) Payments made earlier by enterprises in compensation for forced labor and other National Socialist injustices, even if made through third parties, shall be counted against payments under Section 9, Paragraph 1. Special arrangements within the framework of the International Commission on Holocaust Era Insurance Claims shall remain unaffected.

Section 16: Exclusions from Claims

(1) Payments from public funds, including social security, and from German business enterprises for injustice suffered under National Socialism as defined in Section 11 may be claimed only under the terms of this Law. Any further claims in connection with National Socialist injustices are excluded. This applies also to cases in which claims have been transferred to third persons by operation of law, transition, or a legal transaction.
(2) Each claimant shall provide a statement within the framework of the application procedure irrevocably renouncing, without prejudice to Sentences 3 through 5, after receipt of a payment under this Law any further claim against the authorities for forced labor and property damage, all claims against German enterprises in connection with National Socialist injustice, and forced-labor claims against the Republic of Austria or Austrian enterprises. The renunciation becomes effective upon receipt of a payment under this Law. Accepting payments for personal damage under Section 11, Paragraph 1, Sentence 1, Numbers 1 or 2, or Sentence 2 shall not mean the renunciation of payments for insurance or other property damage in accordance with Section 11, Paragraph 1, Sentence 1, Number 3, or Sentence 4, and vice versa. Sentence 1 does not apply to claims arising from National Socialist injustice committed by foreign parent companies with headquarters outside the 1937 borders of the German Reich without having any connections with their German subsidiaries and the latter's involvement in National Socialist injustice. Sentence 1 also does not apply to any claims to return of artworks, insofar as the applicant undertakes to pursue this claim in Germany or the country from which the artwork was taken. The renunciation also pertains to compensation of legal costs for the prosecution of the claim, insofar as Section 9, Paragraph 12, does not provide otherwise. The details of the procedure shall be determined by the by-laws.

(3) More extensive compensation arrangements and settlements of the consequences of war at the public expense shall not be prejudiced by the above.

Section 17: Transfer of Funds

(1) The Foundation is to make funds available quarterly to the partner organizations according to their documented need as outlined in Section 9, Paragraphs 2 and 3. The utilization of funds will be appropriately monitored by the Foundation.
(2) The first allocation of funds to the Foundation requires as a precondition the entry into force of the German-American Intergovernmental Agreement Concerning the Foundation "Remembrance, Responsibility and Future," and the establishment of adequate legal security for German enterprises. The German Bundestag shall determine whether these preconditions exist.

Section 18: Requests for Information

(1) The Foundation and its partner organizations are authorized to receive information from agencies and other public bodies that is necessary for the fulfillment of their responsibilities. Information will not be provided if this would be contrary to specific official regulations on the use of the funds, or when justifiable protection of the interests of the party concerned outweighs the general interest favoring disclosure.
(2) The information received may be used only for the purpose of carrying out the goals of the Foundation, and an applicant's personal data may be used only for the grant procedure under Section 11. The use of these data for other purposes is admissible only with the express consent of the applicant.
(3) Applicants under this Law may request information from enterprises in Germany for which or for whose legal predecessors they performed forced labor, insofar as this is requisite for determining their eligibility for awards.

Section 19: Appeals Process

The partner organizations are to create appeals organs that are independent and subject to no outside instruction. The appeals process itself is to be free of charge. However, costs incurred by the applicant are not to be reimbursed.

Section 20: Entry into Force

This Law enters into force on the day following its promulgation.

Public Law 96-317
96th Congress

An Act

July 31, 1980
[S. 1647]

To establish a Commission to gather facts to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by Executive Order Numbered 9066, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Commission on Wartime Relocation and Internment of Civilians Act.
50 USC app. 1981 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Commission on Wartime Relocation and Internment of Civilians Act".

FINDINGS AND PURPOSE

50 USC app. 1981 note

SEC. 2. (a) The Congress finds that—

(1) approximately one hundred and twenty thousand civilians were relocated and detained in internment camps pursuant to Executive Order Numbered 9066, issued February 19, 1942, and other associated actions of the Federal Government;

3 CFR, 1938-1943 Comp., p. 1092.

(2) approximately one thousand Aleut civilian American citizens were relocated and, in some cases, detained in internment camps pursuant to directives of United States military forces during World War II and other associated actions of the Federal Government; and

(3) no sufficient inquiry has been made into the matters described in paragraphs (1) and (2).

(b) It is the purpose of this Act to establish a commission to—

(1) review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive order on American citizens and permanent resident aliens;

(2) review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and

(3) recommend appropriate remedies.

ESTABLISHMENT OF COMMISSION

50 USC app. 1981 note.

SEC. 3. (a) There is established the Commission on Wartime Relocation and Internment of Civilians (hereinafter referred to as the "Commission").

Membership.

(b) The Commission shall be composed of seven members, who shall be appointed within ninety days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives.

(3) Two members shall be appointed by the President pro tempore of the Senate.

(c) The term of office for members shall be for the life of the Commission. A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made. Term.

(d) The first meeting of the Commission shall be called by the President within one hundred and twenty days after the date of enactment of this Act, or within thirty days after the date on which legislation is enacted making appropriations to carry out this Act, whichever date is later. Meetings.

(e) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings. Quorum.

(f) The Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Commission.

(g) Each member of the Commission who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18 under the General Schedule contained in section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in the actual performance of his or her duties as a member of the Commission. A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties. Compensation.

DUTIES OF THE COMMISSION

SEC. 4. (a) It shall be the duty of the Commission to— 50 USC app. 1981 note.

(1) review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive order on American citizens and permanent resident aliens; Review. 3 CFR 1938-1943. Comp., p. 1092.

(2) review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and

(3) recommend appropriate remedies.

(b) The Commission shall hold public hearings in such cities of the United States that it finds appropriate. Hearings.

(c) The Commission shall submit a written report of its findings and recommendations to Congress not later than the date which is one year after the date of the first meeting called pursuant to section 3(d) of this Act. Report to Congress.

POWERS OF THE COMMISSION

SEC. 5. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production. 50 USC app. 1981 note.

(b) The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

ADMINISTRATIVE PROVISIONS

50 USC app. 1981 note.

SEC. 6. The Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS-18 of the General Schedule under section 5332 of such title;

5 USC 5101 *et seq.*, 5331.

5 USC 5332.

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

5 USC 3109.

(3) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(4) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(5) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

TERMINATION

SEC. 7. The Commission shall terminate ninety days after the date on which the report of the Commission is submitted to Congress pursuant to section 4(c) of this Act. 50 USC app. 1981 note.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. To carry out the provisions of this Act, there are authorized to be appropriated $1,500,000. 50 USC app. 1981 note.

Approved July 31, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1146 accompanying H.R. 5499 (Comm. on the Judiciary).
SENATE REPORT No. 96-751 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 126 (1980):
May 22, considered and passed Senate.
July 21, H.R. 5499 passed House; passage vacated and S. 1647, amended, passed in lieu.
July 24, Senate concurred in House amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 31:
July 31, Presidential statement.

Public Law 100-383
100th Congress

An Act

To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Aug. 10, 1988
[H.R. 442]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Human rights.

SECTION 1. PURPOSES.

50 USC app. 1989.

The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens;

(3) provide for a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the recurrence of any similar event;

Public information.

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law, for—

(A) injustices suffered and unreasonable hardships endured while those Aleut residents were under United States control during World War II;

(B) personal property taken or destroyed by United States forces during World War II;

Real property.

(C) community property, including community church property, taken or destroyed by United States forces during World War II; and

(D) traditional village lands on Attu Island not rehabilitated after World War II for Aleut occupation or other productive use;

(6) discourage the occurrence of similar injustices and violations of civil liberties in the future; and

(7) make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.

SEC. 2. STATEMENT OF THE CONGRESS.

50 USC app. 1989a.

(a) WITH REGARD TO INDIVIDUALS OF JAPANESE ANCESTRY.—The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a

failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.

(b) WITH RESPECT TO THE ALEUTS.—The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were relocated during World War II to temporary camps in isolated regions of southeast Alaska where they remained, under United States control and in the care of the United States, until long after any potential danger to their home villages had passed. The United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession or under its control. The United States has not compensated the Aleuts adequately for the conversion or destruction of personal property, and the conversion or destruction of community property caused by the United States military occupation of Aleut villages during World War II. There is no remedy for injustices suffered by the Aleuts during World War II except an Act of Congress providing appropriate compensation for those losses which are attributable to the conduct of United States forces and other officials and employees of the United States.

Civil Liberties Act of 1988.

TITLE I—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

50 USC app. 1989b.

SEC 101. SHORT TITLE.

This title may be cited as the "Civil Liberties Act of 1988".

50 USC app. 1989b-1.

SEC. 102. REMEDIES WITH RESPECT TO CRIMINAL CONVICTIONS.

(a) REVIEW OF CONVICTIONS.—The Attorney General is requested to review any case in which an individual living on the date of the enactment of this Act was, while a United States citizen or permanent resident alien of Japanese ancestry, convicted of a violation of—

(1) Executive Order Numbered 9066, dated February 19, 1942;

(2) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173); or

(3) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry;

on account of the refusal by such individual, during the evacuation, relocation, and internment period, to accept treatment which discriminated against the individual on the basis of the individual's Japanese ancestry.

(b) RECOMMENDATIONS FOR PARDONS.—Based upon any review under subsection (a), the Attorney General is requested to recommend to the President for pardon consideration those convictions which the Attorney General considers appropriate.

(c) ACTION BY THE PRESIDENT.—In consideration of the statement of the Congress set forth in section 2(a), the President is requested to offer pardons to any individuals recommended by the Attorney General under subsection (b).

SEC. 103. CONSIDERATION OF COMMISSION FINDINGS BY DEPARTMENTS AND AGENCIES.

50 USC app. 1989b-2.

(a) REVIEW OF APPLICATIONS BY ELIGIBLE INDIVIDUALS.—Each department and agency of the United States Government shall review with liberality, giving full consideration to the findings of the Commission and the statement of the Congress set forth in section 2(a), any application by an eligible individual for the restitution of any position, status, or entitlement lost in whole or in part because of any discriminatory act of the United States Government against such individual which was based upon the individual's Japanese ancestry and which occurred during the evacuation, relocation, and internment period.

(b) NO NEW AUTHORITY CREATED.—Subsection (a) does not create any authority to grant restitution described in that subsection, or establish any eligibility to apply for such restitution.

SEC. 104. TRUST FUND.

50 USC app. 1989b-3.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States the Civil Liberties Public Education Fund, which shall be administered by the Secretary of the Treasury.

(b) INVESTMENT OF AMOUNTS IN THE FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code.

(c) USES OF THE FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 105 and by the Board under section 106.

(d) TERMINATION.—The Fund shall terminate not later than the earlier of the date on which an amount has been expended from the Fund which is equal to the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, or 10 years after the date of the enactment of this Act. If all of the amounts in the Fund have not been expended by the end of that 10-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund $1,250,000,000, of which not more than $500,000,000 may be appropriated for any fiscal year. Any amounts appropriated pursuant to this section are authorized to remain available until expended.

SEC. 105. RESTITUTION.

50 USC app. 1989b-4.

(a) LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subject to paragraph (6), the Attorney General shall, subject to the availability of funds appropriated to the Fund for such purpose, pay out of the Fund to each eligible individual the sum of $20,000, unless such individual refuses, in the manner described in paragraph (4), to accept the payment.

(2) LOCATION OF ELIGIBLE INDIVIDUALS.—The Attorney General shall identify and locate, without requiring any application for payment and using records already in the possession of the United States Government, each eligible individual. The Attorney General should use funds and resources available to the Attorney General, including those described in subsection (c), to attempt to complete such identification and location within 12 months after the date of the enactment of this Act. Any eligible individual may notify the Attorney General that such individual is an eligible individual, and may provide documentation therefor. The Attorney General shall designate an officer or employee to whom such notification and documentation may be sent, shall maintain a list of all individuals who submit such notification and documentation, and shall, subject to the availability of funds appropriated for such purpose, encourage, through a public awareness campaign, each eligible individual to submit his or her current address to such officer or employee. To the extent that resources referred to in the second sentence of this paragraph are not sufficient to complete the identification and location of all eligible individuals, there are authorized to be appropriated such sums as may be necessary for such purpose. In any case, the identification and location of all eligible individuals shall be completed within 12 months after the appropriation of funds under the preceding sentence. Failure to be identified and located by the end of the 12-month period specified in the preceding sentence shall not preclude an eligible individual from receiving payment under this section.

Records.
Public information.

Appropriation authorization.

(3) NOTICE FROM THE ATTORNEY GENERAL.—The Attorney General shall, when funds are appropriated to the Fund for payments to an eligible individual under this section, notify that eligible individual in writing of his or her eligibility for payment under this section. Such notice shall inform the eligible individual that—

Claims.

(A) acceptance of payment under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B), and

(B) each eligible individual who does not refuse, in the manner described in paragraph (4), to accept payment under this section within 18 months after receiving such written notice shall be deemed to have accepted payment for purposes of paragraph (5).

(4) EFFECT OF REFUSAL TO ACCEPT PAYMENT.—If an eligible individual refuses, in a written document filed with the Attorney General, to accept any payment under this section, the amount of such payment shall remain in the Fund and no payment may be made under this section to such individual at any time after such refusal.

(5) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The acceptance of payment by an eligible individual under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B). This paragraph shall apply to any eligible

individual who does not refuse, in the manner described in paragraph (4), to accept payment under this section within 18 months after receiving the notification from the Attorney General referred to in paragraph (3).

(6) EXCLUSION OF CERTAIN INDIVIDUALS.—No payment may be made under this section to any individual who, after September 1, 1987, accepts payment pursuant to an award of a final judgment or a settlement on a claim against the United States for acts described in section 108(2)(B), or to any surviving spouse, child, or parent of such individual to whom paragraph (6) applies. Claims.

(7) PAYMENTS IN THE CASE OF DECEASED PERSONS.—(A) In the case of an eligible individual who is deceased at the time of payment under this section, such payment shall be made only as follows:

(i) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the eligible individual who are living at the time of payment.

If there is no surviving spouse, children, or parents described in clauses (i), (ii), and (iii), the amount of such payment shall remain in the Fund, and may be used only for the purposes set forth in section 106(b).

(B) After the death of an eligible individual, this subsection and subsections (c) and (f) shall apply to the individual or individuals specified in subparagraph (A) to whom payment under this section will be made, to the same extent as such subsections apply to the eligible individual.

(C) For purposes of this paragraph—

(i) the "spouse" of an eligible individual means a wife or husband of an eligible individual who was married to that eligible individual for at least 1 year immediately before the death of the eligible individual;

(ii) a "child" of an eligible individual includes a recognized natural child, a stepchild who lived with the eligible individual in a regular parent-child relationship, and an adopted child; and

(iii) a "parent" of an eligible individual includes fathers and mothers through adoption.

(b) ORDER OF PAYMENTS.—The Attorney General shall endeavor to make payments under this section to eligible individuals in the order of date of birth (with the oldest individual on the date of the enactment of this Act (or, if applicable, that individual's survivors under paragraph (6)) receiving full payment first), until all eligible individuals have received payment in full.

(c) RESOURCES FOR LOCATING ELIGIBLE INDIVIDUALS.—In attempting to locate any eligible individual, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record, document, or information that may be made available to the Attorney General. Records.

(d) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(e) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

(f) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

50 USC app. 1989b-5.

SEC. 106. BOARD OF DIRECTORS OF THE FUND.

(a) ESTABLISHMENT.—There is established the Civil Liberties Public Education Fund Board of Directors, which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) USES OF FUND.—The Board may make disbursements from the Fund only—

Research and development. Education. Public information.

(1) to sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission, so that the events surrounding the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood; and

(2) for reasonable administrative expenses of the Board, including expenses incurred under subsections (c)(3), (d), and (e).

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Board shall be composed of 9 members appointed by the President, by and with the advice and consent of the Senate, from individuals who are not officers or employees of the United States Government.

(2) TERMS.—(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of 3 years.

(B) Of the members first appointed—

(i) 5 shall be appointed for terms of 3 years, and

(ii) 4 shall be appointed for terms of 2 years,

as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of such member's term until such member's successor has taken office. No individual may be appointed as a member for more than 2 consecutive terms.

(3) COMPENSATION.—Members of the Board shall serve without pay, except that members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently

in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) QUORUM.—5 members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) CHAIR.—The Chair of the Board shall be elected by the members of the Board.

(d) DIRECTOR AND STAFF.—

(1) DIRECTOR.—The Board shall have a Director who shall be appointed by the Board.

(2) ADDITIONAL STAFF.—The Board may appoint and fix the pay of such additional staff as it may require.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The Director and the additional staff of the Board may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Board may not exceed a rate equivalent to the minimum rate of basic pay payable for GS-18 of the General Schedule under section 5332(a) of such title.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(f) GIFTS AND DONATIONS.—The Board may accept, use, and dispose of gifts or donations of services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORTS.—Not later than 12 months after the first meeting of the Board and every 12 months thereafter, the Board shall transmit to the President and to each House of the Congress a report describing the activities of the Board.

(h) TERMINATION.—90 days after the termination of the Fund, the Board shall terminate and all obligations of the Board under this section shall cease.

SEC. 107. DOCUMENTS RELATING TO THE INTERNMENT.

50 USC app. 1989b-6.

(a) PRESERVATION OF DOCUMENTS IN NATIONAL ARCHIVES.—All documents, personal testimony, and other records created or received by the Commission during its inquiry shall be kept and maintained by the Archivist of the United States who shall preserve such documents, testimony, and records in the National Archives of the United States. The Archivist shall make such documents, testimony, and records available to the public for research purposes.

Public information.

(b) PUBLIC AVAILABILITY OF CERTAIN RECORDS OF THE HOUSE OF REPRESENTATIVES.—(1) The Clerk of the House of Representatives is authorized to permit the Archivist of the United States to make available for use records of the House not classified for national security purposes, which have been in existence for not less than thirty years, relating to the evacuation, relocation, and internment of individuals during the evacuation, relocation, and internment period.

(2) This subsection is enacted as an exercise of the rulemaking power of the House of Representatives, but is applicable only with respect to the availability of records to which it applies, and supersedes other rules only to the extent that the time limitation established by this section with respect to such records is specifically

inconsistent with such rules, and is enacted with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

50 USC app. 1989b-7.

SEC. 108. DEFINITIONS.

For the purposes of this title—

(1) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946;

(2) the term "eligible individual" means any individual of Japanese ancestry who is living on the date of the enactment of this Act and who, during the evacuation, relocation, and internment period—

(A) was a United States citizen or a permanent resident alien; and

(B)(i) was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(I) Executive Order Numbered 9066, dated February 19, 1942;

(II) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173); or

(III) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry; or

(ii) was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone;

except that the term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country;

(3) the term "permanent resident alien" means an alien lawfully admitted into the United States for permanent residence;

(4) the term "Fund" means the Civil Liberties Public Education Fund established in section 104;

(5) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 106; and

(6) the term "Commission" means the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act (Public Law 96-317; 50 U.S.C. App. 1981 note).

50 USC app. 1989b-8. Contracts.

SEC. 109. COMPLIANCE WITH BUDGET ACT.

No authority under this title to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts. In any fiscal year, total benefits conferred by this title shall be

limited to an amount not in excess of the appropriations for such fiscal year. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal year 1989 and thereafter.

Effective date.

TITLE II—ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION

Aleutian and Pribilof Islands Restitution Act. Alaska.

SEC. 201. SHORT TITLE.

50 USC app. 1989c.

This title may be cited as the "Aleutian and Pribilof Islands Restitution Act".

SEC. 202. DEFINITIONS.

50 USC app. 1989c-1.

As used in this title—

(1) the term "Administrator" means the person appointed by the Secretary under section 204;

(2) the term "affected Aleut villages" means the surviving Aleut villages of Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska, and the Aleut village of Attu, Alaska;

(3) the term "Association" means the Aleutian/Pribilof Islands Association, Inc., a nonprofit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(4) the term "Corporation" means the Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established under section 7 of the Alaska Native Claims Settlement Act (Public Law 92-203; 43 U.S.C. 1606);

(5) the term "eligible Aleut" means any Aleut living on the date of the enactment of this Act—

(A) who, as a civilian, was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II; or

(B) who was born while his or her natural mother was subject to such relocation;

(6) the term "Secretary" means the Secretary of the Interior;

(7) the term "Fund" means the Aleutian and Pribilof Islands Restitution Fund established in section 203; and

(8) the term "World War II" means the period beginning on December 7, 1941, and ending on September 2, 1945.

SEC. 203. ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND.

50 USC app. 1989c-2.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States the Aleutian and Pribilof Islands Restitution Fund, which shall be administered by the Secretary. The Fund shall consist of amounts appropriated to it pursuant to this title.

(b) REPORT.—The Secretary shall report to the Congress, not later than 60 days after the end of each fiscal year, on the financial condition of the Fund, and the results of operations of the Fund, during the preceding fiscal year and on the expected financial condition and operations of the Fund during the current fiscal year.

(c) INVESTMENT.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code.

(d) TERMINATION.—The Secretary shall terminate the Fund 3 years after the date of the enactment of this Act, or 1 year following disbursement of all payments from the Fund, as authorized by this title, whichever occurs later. On the date the Fund is terminated, all investments of amounts in the Fund shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

Securities.

50 USC app. 1989c-3.

SEC. 204. APPOINTMENT OF ADMINISTRATOR.

Contracts.

As soon as practicable after the date of the enactment of this Act, the Secretary shall offer to undertake negotiations with the Association, leading to the execution of an agreement with the Association to serve as Administrator under this title. The Secretary may appoint the Association as Administrator if such agreement is reached within 90 days after the date of the enactment of this title. If no such agreement is reached within such period, the Secretary shall appoint another person as Administrator under this title, after consultation with leaders of affected Aleut villages and the Corporation.

50 USC app. 1989c-4.

SEC. 205. COMPENSATION FOR COMMUNITY LOSSES.

(a) IN GENERAL.—Subject to the availability of funds appropriated to the Fund, the Secretary shall make payments from the Fund, in accordance with this section, as restitution for certain Aleut losses sustained in World War II.

(b) TRUST.—

(1) ESTABLISHMENT.—The Secretary shall, subject to the availability of funds appropriated for this purpose, establish a trust for the purposes set forth in this section. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Secretary. Each affected Aleut village may submit to the Administrator a list of three prospective trustees. The Secretary, after consultation with the Administrator, affected Aleut villages, and the Corporation, shall designate not more than seven trustees from such lists as submitted.

(2) ADMINISTRATION OF TRUST.—The trust established under this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Secretary, after consultation with representatives of eligible Aleuts, the residents of affected Aleut villages, and the Administrator.

(c) ACCOUNTS FOR THE BENEFIT OF ALEUTS.—

(1) IN GENERAL.—The Secretary shall deposit in the trust such sums as may be appropriated for the purposes set forth in this subsection. The trustees shall maintain and operate 8 independent and separate accounts in the trust for purposes of this subsection, as follows:

(A) One account for the independent benefit of the wartime Aleut residents of Attu and their descendants.

(B) Six accounts for the benefit of the 6 surviving affected Aleut villages, one each for the independent benefit of Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska, respectively.

(C) One account for the independent benefit of those Aleuts who, as determined by the Secretary, upon the advice of the trustees, are deserving but will not benefit directly from the accounts established under subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C) an amount equal to 5 percent of the principal amount deposited by the Secretary in the trust under this subsection. Of the remaining principal amount, an amount shall be credited to each account described in subparagraphs (A) and (B) which bears the same proportion to such remaining principal amount as the Aleut civilian population, as of June 1, 1942, of the village with respect to which such account is established bears to the total civilian Aleut population on such date of all affected Aleut villages.

(2) USES OF ACCOUNTS.—The trustees may use the principal, accrued interest, and other earnings of the accounts maintained under paragraph (1) for—

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need; Aged persons. Handicapped persons.

(B) the benefit of students in need of scholarship assistance; Education.

(C) the preservation of Aleut cultural heritage and historical records; Historic preservation.

(D) the improvement of community centers in affected Aleut villages; and Community development.

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to the Fund to carry out this subsection.

(d) COMPENSATION FOR DAMAGED OR DESTROYED CHURCH PROPERTY.—

(1) INVENTORY AND ASSESSMENT OF PROPERTY.—The Administrator shall make an inventory and assessment of real and personal church property of affected Aleut villages which was damaged or destroyed during World War II. In making such inventory and assessment, the Administrator shall consult with the trustees of the trust established under subsection (b), residents of affected Aleut villages, affected church members and leaders, and the clergy of the churches involved. Within 1 year after the date of the enactment of this Act, the Administrator shall submit such inventory and assessment, together with an estimate of the present replacement value of lost or destroyed furnishings and artifacts, to the Secretary. Records.

(2) REVIEW BY THE SECRETARY; DEPOSIT IN THE TRUST.—The Secretary shall review the inventory and assessment provided under paragraph (1), and shall deposit in the trust established under subsection (b) an amount reasonably calculated by the Secretary to compensate affected Aleut villages for church property lost, damaged, or destroyed during World War II.

(3) DISTRIBUTION OF COMPENSATION.—The trustees shall distribute the amount deposited in the trust under paragraph (2) for the benefit of the churches referred to in this subsection.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund $1,400,000 to carry out this subsection.

(c) ADMINISTRATIVE AND LEGAL EXPENSES.—

(1) REIMBURSEMENT FOR EXPENSES.—The Secretary shall reimburse the Administrator, not less often than annually, for reasonable and necessary administrative and legal expenses in carrying out the Administrator's responsibilities under this title.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this subsection.

50 USC app. 1989c-5.

SEC. 206. INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS.

(a) PAYMENTS TO ELIGIBLE ALEUTS.—In addition to payments made under section 205, the Secretary shall, in accordance with this section, make per capita payments out of the Fund to eligible Aleuts. The Secretary shall pay, subject to the availability of funds appropriated to the Fund for such payments, to each eligible Aleut the sum of $12,000.

(b) ASSISTANCE OF ATTORNEY GENERAL.—The Secretary may request the Attorney General to provide reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages, and upon such request, the Attorney General shall provide such assistance. In so doing, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(c) ASSISTANCE OF ADMINISTRATOR.—The Secretary may request the assistance of the Administrator in identifying and locating eligible Aleuts for purposes of this section.

(d) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible Aleut under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering, and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The payment to an eligible Aleut under this section shall be in full satisfaction of all claims against the United States arising out of the relocation described in section 202(5).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this section.

Public lands. National Wildlife Refuge System. Conservation. 50 USC app. 1989c-6.

SEC. 207. ATTU ISLAND RESTITUTION PROGRAM.

(a) PURPOSE OF SECTION.—In accordance with section (3)(c) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(c)), the public lands on Attu Island, Alaska, within the National Wildlife Refuge System have been designated as wilderness by section 702(1) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417; 16 U.S.C. 1132 note). In order to make restitution for the loss of traditional Aleut lands and village properties on Attu Island, while preserving the present designation of Attu Island lands as part of the National Wilderness Preservation System, compensation to the Aleut people, in lieu of the conveyance of Attu Island, shall be provided in accordance with this section.

(b) ACREAGE DETERMINATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall, in accordance

with this subsection, determine the total acreage of land on Attu Island, Alaska, that, at the beginning of World War II, was subject to traditional use by the Aleut villagers of that island for subsistence and other purposes. In making such acreage determination, the Secretary shall establish a base acreage of not less than 35,000 acres within that part of eastern Attu Island traditionally used by the Aleut people, and shall, from the best available information, including information that may be submitted by representatives of the Aleut people, identify any such additional acreage on Attu Island that was subject to such use. The combination of such base acreage and such additional acreage shall constitute the acreage determination upon which payment to the Corporation under this section is based. The Secretary shall promptly notify the Corporation of the results of the acreage determination made under this subsection.

(c) VALUATION.—

(1) DETERMINATION OF VALUE.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall determine the value of the Attu Island acreage determined under subsection (b), except that—

(A) such acreage may not be valued at less than $350 per acre nor more than $500 per acre; and

(B) the total valuation of all such acreage may not exceed $15,000,000.

(2) FACTORS IN MAKING DETERMINATION.—In determining the value of the acreage under paragraph (1), the Secretary shall take into consideration such factors as the Secretary considers appropriate, including—

(A) fair market value;

(B) environmental and public interest value; and

(C) established precedents for valuation of comparable wilderness lands in the State of Alaska.

(3) NOTIFICATION OF DETERMINATION; APPEAL.—The Secretary shall promptly notify the Corporation of the determination of value made under this subsection, and such determination shall constitute the final determination of value unless the Corporation, within 30 days after the determination is made, appeals the determination to the Secretary. If such appeal is made, the Secretary shall, within 30 days after the appeal is made, review the determination in light of the appeal, and issue a final determination of the value of that acreage determined to be subject to traditional use under subsection (b).

(d) IN LIEU COMPENSATION PAYMENT.—

(1) PAYMENT.—The Secretary shall pay, subject to the availability of funds appropriated for such purpose, to the Corporation, as compensation for the Aleuts' loss of lands on Attu Island, the full amount of the value of the acreage determined under subsection (c), less the value (as determined under subsection (c)) of any land conveyed under subsection (e).

(2) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The payment made under paragraph (1) shall be in full satisfaction of any claim against the United States for the loss of traditional Aleut lands and village properties on Attu Island.

(e) VILLAGE SITE CONVEYANCE.—The Secretary may convey to the Corporation all right, title, and interest of the United States to the surface estate of the traditional Aleut village site on Attu Island, Alaska (consisting of approximately 10 acres) and to the surface

estate of a parcel of land consisting of all land outside such village that is within 660 feet of any point on the boundary of such village. The conveyance may be made under the authority contained in section 14(h)(1) of the Alaska Native Claims Settlement Act (Public Law 92-203; 43 U.S.C. 1613(h)(1)), except that after the enactment of this Act, no site on Attu Island, Alaska, other than such traditional Aleut village site and such parcel of land, may be conveyed to the Corporation under such section 14(h)(1).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 to the Secretary to carry out this section.

Contracts.
50 USC app. 1989c-7.

SEC. 208. COMPLIANCE WITH BUDGET ACT.

No authority under this title to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts. In any fiscal year, the Secretary, with respect to—

(1) the Fund established under section 203,

(2) the trust established under section 205(b), and

(3) the provisions of sections 206 and 207,

shall limit the total benefits conferred to an amount not in excess of the appropriations for such fiscal year. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal year 1989 and thereafter.

Effective date.

50 USC app. 1989c-8.

SEC. 209. SEVERABILITY.

If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE III—TERRITORY OR PROPERTY CLAIMS AGAINST UNITED STATES

SEC. 301. EXCLUSION OF CLAIMS.

Mexico.
Indians.
50 USC app. 1989d.

Notwithstanding any other provision of law or of this Act, nothing in this Act shall be construed as recognition of any claim of Mexico or any other country or any Indian tribe (except as expressly provided in this Act with respect to the Aleut tribe of Alaska) to any territory or other property of the United States, nor shall this Act be construed as providing any basis for compensation in connection with any such claim.

Approved August 10, 1988.

LEGISLATIVE HISTORY—H.R. 442:

HOUSE REPORTS: No. 100-278 (Comm. on the Judiciary) and No. 100-785 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Sept. 17, considered and passed House.

Vol. 134 (1988): Apr. 20, considered and passed Senate, amended.
July 27, Senate agreed to conference report.
Aug. 4, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):
Aug. 10, Presidential remarks.

PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT 34 OF 1995

[ASSENTED TO 19 JULY 1995] [DATE OF COMMENCEMENT: 1 DECEMBER 1995]
(Unless otherwise indicated)

(English text signed by the President)

as amended by

Promotion of National Unity and Reconciliation Amendment Act 87 of 1995
Judicial Matters Amendment Act 104 of 1996
Promotion of National Unity and Reconciliation Amendment Act 18 of 1997
Public Service Laws Amendment Act 47 of 1997
Promotion of National Unity and Reconciliation Second Amendment Act 84 of 1997
Promotion of National Unity and Reconciliation Amendment Act 33 of 1998
Judicial Matters Amendment Act 34 of 1998
Promotion of National Unity and Reconciliation Amendment Act 23 of 2003

Regulations under this Act

APPLICATION FOR AMNESTY (GN R238 in *GG* 16985 of 9 February 1996)

FURTHER INDEMNITY REGULATIONS (GN R3159 in *GG* 14415 of 12 November 1992)

INDEMNITY COMMITTEES (GN R2633 in *GG* 12838 of 9 November 1990)

LIMITED WITNESS PROTECTION PROGRAMME (GN R2122 in *GG* 17686 of 20 December 1996)

MEASURES TO PROVIDE URGENT INTERIM REPARATION TO VICTIMS (GN R545 in *GG* 18822 of 3 April 1998)

REGULATIONS PRESCRIBING MEASURES CONTEMPLATED IN SECTION 18 (2) (GN R791 in *GG* 17182 of 17 May 1996)

REGULATIONS PRESCRIBING TARIFF OF FEES CONTEMPLATED IN SECTION 34 (3) (GN R681 in *GG* 17989 of 9 May 1997)

REGULATIONS PRESCRIBING THE REMUNERATION, ALLOWANCES AND OTHER BENEFITS OF THE CHAIRPERSON, VICE-CHAIRPERSON AND COMMISSIONERS OF THE TRUTH AND RECONCILIATION COMMISSION (GN R239 in *GG* 16986 of 9 February 1996)

REPARATION TO VICTIMS (GN R1660 in *GG* 25695 of 12 November 2003)

TARIFF OF ALLOWANCES (GN R911 in *GG* 17225 of 1 July 1996)

ACT

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, comprising a Committee on Human Rights Violations, a Committee on Amnesty

and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.

[Long title substituted by s. 19 of Act 87 of 1995.]

SINCE the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization;

AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1
INTERPRETATION AND APPLICATION (s 1)

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'act associated with a political objective' has the meaning ascribed thereto in section 20 (2) and (3);

'article' includes any evidence, book, document, file, object, writing, recording or transcribed computer printout produced by any mechanical or electronic device or any device by means of which information is recorded, stored or transcribed;

'Commission' means the Truth and Reconciliation Commission established by section 2;

'commissioner' means a member of the Commission appointed in terms of section 7 (2) *(a)* ;

'committee' means the Committee on Human Rights Violations, the Committee on

Amnesty or the Committee on Reparation and Rehabilitation, as the case may be;

'Constitution' means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);

'cut-off date' means the latest date allowed as the cut-off date in terms of the Constitution as set out under the heading 'National Unity and Reconciliation';

'former state' means any state or territory which was established by an Act of Parliament or by proclamation in terms of such an Act prior to the commencement of the Constitution and the territory of which now forms part of the Republic;

'gross violation of human rights' means the violation of human rights through-

(a) the killing, abduction, torture or severe ill-treatment of any person; or

(b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph *(a)* ,

which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was carried out, advised, planned, directed, commanded or ordered, by any person acting with a political motive;
[Definition of 'gross violation of human rights' amended by s. 21 *(a)* of Act 104 of 1996.]

'joint committee' means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering matters referred to it in terms of this Act;

'Minister' means the Minister of Justice;

'prescribed' means prescribed by regulation made under section 40;
[Definition of 'prescribed', previously definition of 'prescribe', substituted by s. 1 *(a)* of Act 87 of 1995.]

'President' means the President of the Republic;

'reparation' includes any form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition;

'Republic' means the Republic of South Africa referred to in section 1 (2) of the Constitution;

'security forces' includes any full-time or part-time-

(a) member or agent of the South African Defence Force, the South African Police, the National Intelligence Service, the Bureau of State Security, the Department of Correctional Services, or any of their organs;

(b) member or agent of a defence force, police force, intelligence agency or prison service of any former state, or any of their organs;

'State' means the State of the Republic;

'subcommittee' means any subcommittee established by the Commission in terms of section 5 *(c)* ;

'victims' includes-

(a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights-

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted;

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph *(a)* who were in distress or to prevent victimization of such persons; and

(c) such relatives or dependants of victims as may be prescribed.

(2) For the purposes of sections 10 and 11 and Chapters 6 and 7 'Commission' shall be construed as including a reference to 'committee' or 'subcommittee', as the case may be, and 'Chairperson', 'Vice-Chairperson' or 'commissioner' shall be construed as including a reference to the chairperson, vice-chairperson or a member of a committee or subcommittee, as the case may be.

[Sub-s. (2) substituted by s. 15 of Act 104 of 1996.]

CHAPTER 2
TRUTH AND RECONCILIATION COMMISSION (ss 2-11)

2 Establishment and seat of Truth and Reconciliation Commission

(1) There is hereby established a juristic person to be known as the Truth and Reconciliation Commission.

(2) The seat of the Commission shall be determined by the President.

3 Objectives of Commission

(1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

(b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;

(c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs *(a)* , *(b)* and *(c)* , and which contains recommendations of measures to prevent the future violations of human rights.

(2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.

(3) In order to achieve the objectives of the Commission-

(a) the Committee on Human Rights Violations, as contemplated in Chapter 3, shall deal, among other things, with matters pertaining to investigations of gross violations of human rights;

(b) the Committee on Amnesty, as contemplated in Chapter 4, shall deal with matters relating to amnesty;

(c) the Committee on Reparation and Rehabilitation, as contemplated in Chapter 5, shall deal with matters referred to it relating to reparations;

(d) the investigating unit referred to in section 5 *(d)* shall perform the investigations contemplated in section 28 (4) *(a)* ; and

(e) the subcommittees, referred to in section 5 *(c)* , shall exercise, perform and carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

[Para. *(e)* substituted by s. 2 *(b)* of Act 87 of 1995.]

[Date of commencement of s. 3: 10 April 1996.]

4 Functions of Commission

The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall-

(a) facilitate, and where necessary initiate or coordinate, inquiries into-

(i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;

(ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;

(iii) the identity of all persons, authorities, institutions and organisations involved in such violations;

(iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and

(v) accountability, political or otherwise, for any such violation;

[Date of commencement of para. *(a)* : 10 April 1996.]

(b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such

violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;

[Date of commencement of para. *(b)* : 10 April 1996.]

(c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the *Gazette* ;

[Date of commencement of para. *(c)* : 10 April 1996.]

(d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

[Date of commencement of para. *(d)* : 10 April 1996.]

(e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;

[Date of commencement of para. *(e)* : 10 April 1996.]

(f) make recommendations to the President with regard to-

(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

(ii) measures which should be taken to grant urgent interim reparation to victims;

[Date of commencement of para. *(f)* : 10 April 1996.]

(g) make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of this Act;

(h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

[Date of commencement of para. *(h)* : 10 April 1996.]

5 Powers of Commission

In order to achieve its objectives and to perform its functions the Commission shall have the power to-

(a) determine the seat, if any, of every committee;

(b) establish such offices as it may deem necessary for the performance of its functions;

(c) establish subcommittees to exercise, carry out or perform any of the powers, duties and functions assigned to them by the Commission;

(d) conduct any investigation or hold any hearing it may deem necessary

and establish the investigating unit referred to in section 28;

(e) refer specific or general matters to, give guidance and instructions to, or review the decisions of, any committee, subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions and the carrying out of its duties, the working procedures which should be followed and the divisions which should be set up by any committee in order to deal effectively with the work of the committee: Provided that no decision, or the process of arriving at such a decision, of the Committee on Amnesty regarding any application for amnesty shall be reviewed by the Commission;

[Para. *(e)* substituted by s. 4 *(a)* of Act 87 of 1995.]

[Date of commencement of para. *(e)* : 10 April 1996.]

(f) direct any committee or subcommittee to make information which it has in its possession available to any other committee or subcommittee;

[Date of commencement of para. *(f)* : 10 April 1996.]

(g) direct the submission of and receive reports or interim reports from any committee, subcommittee or investigating unit;

[Para. *(g)* substituted by s. 4 *(b)* of Act 87 of 1995.]

[Date of commencement of para. *(g)* : 10 April 1996.]

(h) have the administrative and incidental work connected with the exercise of its powers, the execution of its duties or the performance of its functions carried out by persons-

(i) employed or appointed by it;

(ii) seconded to its service by any department of State at the request of the Commission;

[Sub-para. (ii) substituted by s. 35 (1) of Act 47 of 1997.]

(iii) appointed by it for the performance of specified tasks;

(i) in consultation with the Minister and through diplomatic channels, obtain permission from the relevant authority of a foreign country to receive evidence or gather information in or from that country;

[Para. *(i)* substituted by s. 4 *(c)* of Act 87 of 1995.]

[Date of commencement of para. *(i)* : 10 April 1996.]

(j) enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorized to make use of any of the facilities, equipment or personnel belonging to or under the control or in the employment of such person or department;

(k) recommend to the President that steps be taken to obtain an order declaring a person to be dead;

[Date of commencement of para. *(k)* : 10 April 1996.]

(l) hold meetings at any place within or outside the Republic;

(m) on its own initiative or at the request of any interested person

inquire or investigate into any matter in terms of this Act, including the disappearance of any person or group of persons.

[Para. *(m)* substituted by s. 4 *(e)* of Act 87 of 1995.]

[Date of commencement of para. *(m)* : 10 April 1996.]

6 Certain powers shall be exercised in consultation with Minister

Subject to the provisions of section 45, any power referred to in section 5 *(a)* , *(b)* and *(c)* , and, if it is to be exercised outside the Republic, any power referred to in sections 5 *(d)* and *(l)* , 10 (1) and 29 (1), shall be exercised in consultation with the Minister.

7 Constitution of Commission

(1) The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.

(2) *(a)* The President shall appoint the commissioners in consultation with the Cabinet.

(b) The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile: Provided that not more than two persons who are not South African citizens may be appointed as commissioners.

(3) The President shall make the appointment of the commissioners known by proclamation in the *Gazette* .

(4) The President shall designate one of the commissioners as the Chairperson, and another as the Vice-Chairperson, of the Commission.

(5) A commissioner appointed in terms of subsection (2) *(a)* shall, subject to the provisions of subsections (6) and (7), hold office for the duration of the Commission.

(6) A commissioner may at any time resign as commissioner by tendering his or her resignation in writing to the President.

(7) The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate.

(8) If any commissioner tenders his or her resignation under subsection (6), or is removed from office under subsection (7), or dies, the President in consultation with the Cabinet, may fill the vacancy by appointing a person for the unexpired portion of the term of office of his or her predecessor or may allow the seat vacated as a result of a resignation, removal from office or death to remain vacant.

8 Acting Chairperson of Commission

If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties, the other commissioners shall from among their number nominate an Acting Chairperson for the duration of such absence or incapacity.

9 Conditions of service, remuneration, allowances and other benefits of staff of Commission

(1) The persons appointed or employed by the Commission who are not officials of the State, shall receive such remuneration, allowances and other employment benefits and shall be appointed or employed on such terms and conditions and for such periods as the Commission with the approval of the Minister, granted in concurrence with the

Minister of Finance, may determine.

(2) *(a)* A document setting out the remuneration, allowances and other conditions of employment determined by the Commission in terms of subsection (1), shall be tabled in Parliament within 14 days after each such determination.

(b) If Parliament disapproves of any determination, such determination shall cease to be of force to the extent to which it is so disapproved.

(c) If a determination ceases to be of force as contemplated in paragraph *(b)* -

(i) anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been validly done; and

(ii) any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.

10 Meetings, procedure at and quorum for meetings of Commission and recording of proceedings

(1) A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence or inability of such Chairperson, by the Vice-Chairperson of the Commission or, in the absence or inability of both such Chairperson and Vice-Chairperson, by the Acting Chairperson of the Commission.

(2) Subject to section 40, the Commission shall have the power to determine the procedure for its meetings, including the manner in which decisions shall be taken.

(3) The Commission shall cause a record to be kept of its proceedings.

(4) *(a)* The quorum for the first meeting of the Commission shall be two less than the total number of the Commission.

(b) The Commission shall determine the quorum for any of its further meetings.

[Sub-s. (4) substituted by s. 22 of Act 104 of 1996.]

11 Principles to govern actions of Commission when dealing with victims

When dealing with victims the actions of the Commission shall be guided by the following principles:

(a) Victims shall be treated with compassion and respect for their dignity;

(b) victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;

(c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;

(d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of-

(i) the role of the Commission and the scope of its activities;

(ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry;

(e) appropriate measures shall be taken in order to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;

(f) appropriate measures shall be taken to allow victims to communicate in the language of their choice;

(g) informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims.

[Date of commencement of s. 11: 10 April 1996.]

CHAPTER 3
INVESTIGATION OF HUMAN RIGHTS VIOLATION (ss 12-15)

12 Committee on Human Rights Violations

There is hereby established a committee to be known as the Committee on Human Rights Violations, which shall in this Chapter be referred to as the Committee.

13 Constitution of Committee

(1) The Committee shall consist of-

(a) (i) a Chairperson; and

(ii) two Vice-Chairpersons,

who shall be commissioners designated by the Commission;

(b) such other commissioners as may be appointed by the Commission; and

(c) not more than ten other members.

[Para. *(c)* substituted by s. 5 *(a)* of Act 87 of 1995.]

(2) The Commission shall appoint, as the members referred to in subsection (1) *(c)* , South African citizens who are fit and proper persons and broadly representative of the South African community and shall, when making such appointments, give preference to persons possessing knowledge of the content and application of human rights or of investigative or fact-finding procedures.

(3) Any vacancies in the Committee shall be filled in accordance with this section.

[Sub-s. (3) added by s. 5 *(b)* of Act 87 of 1995.]

14 Powers, duties and functions of Committee

(1) In addition to the powers, duties and functions conferred on, imposed upon and assigned to it in this Act, and for the purpose of achieving the objectives of the Commission, referred to in section 3 (1) *(a)* , *(c)* and *(d)* -

(a) the Committee shall-

(i) institute the inquiries referred to in section 4 *(a)* ;

(ii) gather the information and receive the evidence referred to in section 4 *(b)* ;

(iii) determine the facts contemplated in section 4 *(d)* ;

(iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period;

(v) record allegations and complaints of gross violations of human rights;

(b) the Committee may-

(i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;

(ii) make recommendations to the Commission with regard to the matters referred to in section 4 *(f)* , *(g)* or *(h)* ;

(iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;

(iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter in terms of this Act;

[Sub-para. (iv) substituted by s. 6 *(b)* of Act 87 of 1995.]

(v) exercise the powers referred to in Chapters 6 and 7.

(2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of its duties in terms of this Act.

[Date of commencement of s. 14: 10 April 1996.]

15 Referrals to Committee on Reparation and Rehabilitation

(1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.

(2) After a referral to the Committee on Reparation and Rehabilitation has been made by the Committee in terms of subsection (1), it shall, at the request of the Committee on Reparation and Rehabilitation, furnish that Committee with all the evidence and other information relating to the victim concerned or conduct such further investigation or hearing as the said Committee may require.

[Date of commencement of s. 15: 10 April 1996.]

CHAPTER 4
AMNESTY MECHANISMS AND PROCEDURES (ss 16-22)

16 Committee on Amnesty

There is hereby established a committee to be known as the Committee on Amnesty, which shall in this Chapter be referred to as the Committee.

17 Constitution of Committee

(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and such other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community, as the President deems

necessary.
[Sub-s. (1) substituted by s. 1 *(a)* of Act 18 of 1997, by s. 1 of Act 84 of 1997 and by s. 1 of Act 33 of 1998.]

(2) The President shall appoint the Chairperson, the Vice-Chairperson and, after consultation with the Commission, the other members of the Committee: Provided that at least three of such other members of the Committee shall be commissioners.
[Sub-s. (2) substituted by s. 1 *(a)* of Act 18 of 1997.]

(2A) *(a)* The Chairperson of the Committee may from among the members of the Committee establish a subcommittee, the chairperson of which shall be a judge as referred to in subsection (3), designated by the Chairperson of the Committee.

(b) Any subcommittee established in terms of paragraph *(a)* shall have the same powers, functions and duties as the Committee in relation to any application for amnesty submitted in terms of section 18, and to the person who submitted such application.
[Sub-s. (2A) inserted by s. 1 *(b)* of Act 18 of 1997.]

(3) The Chairperson of the Committee shall be-

(a) a judge as defined in section 1 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989); or

(b) a judge who has been discharged from active service in terms of section 3 of the said Act.

(4) Any vacancies in the Committee shall be filled in accordance with this section.

18 Applications for granting of amnesty

(1) Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 7 (3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form.

(2) The Committee shall give priority to applications of persons in custody and shall prescribe measures in respect of such applications after consultation with the Minister and the Minister of Correctional Services.
[Date of commencement of s. 18: 10 April 1996.]

19 Committee shall consider applications for amnesty

(1) Upon receipt of any application for amnesty, the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or request the applicant to provide such further particulars as it may deem necessary.

(2) The Committee shall investigate the application and make such enquiries as it may deem necessary.
[Sub-s. (2) amended by s. 8 *(a)* of Act 87 of 1995.]

(3) After such investigation-

(a) the Committee may-

(i) inform the applicant that the application, judged on the particulars or further particulars contained in the application or

provided by the applicant or revealed as a result of enquiries made by the Committee, if any, does not relate to an act associated with a political objective;

(ii) afford the applicant the opportunity to make a further submission; and

(iii) decide whether the application, judged on the particulars referred to in subparagraph (i), and in such further submission, relates to such an act associated with a political objective,

and if it is satisfied that the application does not relate to such an act, in the absence of the applicant and without holding a hearing refuse the application and inform the applicant accordingly; or

[Para. *(a)* amended by s. 8 *(b)* of Act 87 of 1995.]

(b) the Committee may, if it is satisfied that-

(i) the requirements mentioned in section 20 (1) have been complied with;

(ii) there is no need for a hearing; and

(iii) the act, omission or offence to which the application relates, does not constitute a gross violation of human rights,

in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.

[Para. *(b)* amended by s. 8 *(e)* of Act 87 of 1995.]

[Sub-s. (3) amended by s. 8 *(b)* of Act 87 of 1995.]

(4) If an application has not been dealt with in terms of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 33-

(a) in the prescribed manner, notify the applicant and any victim or person implicated, or having an interest in the application, of the place where and the time when the application will be heard and considered;

(b) inform the persons referred to in paragraph *(a)* of their right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration;

(c) deal with the application in terms of section 20 or 21 by granting or refusing amnesty.

(5) *(a)* The Committee shall, for the purpose of considering and deciding upon an application referred to in subsection (1), have the same powers as those conferred upon the Commission in section 5 *(l)* and *(m)* and Chapters 6 and 7.

(b) Notwithstanding the provisions of section 18 (1), the Committee may consider jointly the individual applications in respect of any particular act, omission or offence to which such applications relate.

(6) If the act, omission or offence which is the subject of an application under section 18 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further

submissions in this regard, suspend those proceedings pending the consideration and disposal of the application.

[Sub-s. (6) substituted by s. 8 *(g)* of Act 87 of 1995.]

(7) If the person who submitted an application under section 18 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the Committee in consultation with the attorney-general concerned, may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application [for amnesty *].

[Sub-s. (7) substituted by s. 8 *(h)* of Act 87 of 1995.]

(8) *(a)* Subject to the provisions of section 33, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 33, shall be confidential.

(b) Subject to the provisions of section 33, the confidentiality referred to in paragraph *(a)* shall lapse when the Commission decides to release such information or when the hearing commences.

[Date of commencement of s. 19: 10 April 1996.]

20 Granting of amnesty and effect thereof

(1) If the Committee, after considering an application for amnesty, is satisfied that-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts,

it shall grant amnesty in respect of that act, omission or offence.

(2) In this Act, unless the context otherwise indicates, **'act associated with a political objective'** means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date, by-

(a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, *bona fide* in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another publicly known political organisation or liberation movement;

(b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed *bona fide* with the object of countering or otherwise resisting the said struggle;

(c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed-

(i) in the case of the State, against any former state; or

(ii) in the case of a former state, against the State or any other former state,

whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed *bona fide* with the object of countering or otherwise resisting the said struggle;

(d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed *bona fide* in furtherance of the said struggle;

(e) any person in the performance of a *coup d' état* to take over the government of any former state, or in any attempt thereto;

(f) any person referred to in paragraph *(b)* , *(c)* and *(d)* , who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority;

[Para. *(f)* substituted by s. 9 of Act 87 of 1995.]

(g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs *(a)* , *(b)* , *(c)* , *(d)* , *(e)* and *(f)* .

(3) Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria:

(a) The motive of the person who committed the act, omission or offence;

(b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;

(c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;

(d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;

(e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the

person who committed the act was a member, an agent or a supporter; and

(f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued,

but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted-

(i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or

(ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed.

(4) In applying the criteria contemplated in subsection (3), the Committee shall take into account the criteria applied in the Acts repealed by section 48.

(5) The Commission shall inform the person concerned and, if possible, any victim, of the decision of the Committee to grant amnesty to such person in respect of a specified act, omission or offence and the Committee shall submit to the Commission a record of the proceedings, which may, subject to the provisions of this Act, be used by the Commission.

(6) The Commission shall forthwith by proclamation in the *Gazette* make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted.

[Sub-s. (6) substituted by s. 23 of Act 104 of 1996.]

(7) *(a)* No person who has been granted amnesty in respect of an act, omission or offence shall be criminally or civilly liable in respect of such act, omission or offence and no body or organisation or the State shall be liable, and no person shall be vicariously liable, for any such act, omission or offence.

(b) Where amnesty is granted to any person in respect of any act, omission or offence, such amnesty shall have no influence upon the criminal liability of any other person contingent upon the liability of the first-mentioned person.

(c) No person, organisation or state shall be civilly or vicariously liable for an act, omission or offence committed between 1 March 1960 and the cut-off date by a person who is deceased, unless amnesty could not have been granted in terms of this Act in respect of such an act, omission or offence.

(8) If any person-

(a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or

(b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted,

the criminal proceedings shall forthwith upon publication of the proclamation referred to in subsection (6) become void or the sentence so imposed shall upon such publication lapse and the person so in custody shall forthwith be released.

(9) If any person has been granted amnesty in respect of any act or omission which formed the ground of a civil judgment which was delivered at any time before the granting of the amnesty, the publication of the proclamation in terms of subsection (6) shall not affect the operation of the judgment in so far as it applies to that person.

(10) Where any person has been convicted of any offence constituted by an act or omission associated with a political objective in respect of which amnesty has been granted in terms of this Act, any entry or record of the conviction shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes, including the application of any Act of Parliament or any other law, be deemed not to have taken place: Provided that the Committee may recommend to the authority concerned the taking of such measures as it may deem necessary for the protection of the safety of the public.

[Date of commencement of s. 20: 10 April 1996.]

21 Refusal of amnesty and effect thereof

(1) If the Committee has refused any application for amnesty, it shall as soon as practicable notify-

(a) the person who applied for amnesty;

(b) any person who is in relation to the act, omission or offence concerned, a victim; and

(c) the Commission,

in writing of its decision and the reasons for its refusal.

(2) *(a)* If any criminal or civil proceedings were suspended pending a decision on an application for amnesty, and such application is refused, the court concerned shall be notified accordingly.

(b) No adverse inference shall be drawn by the court concerned from the fact that the proceedings which were suspended pending a decision on an application for amnesty, are subsequently resumed.

[Date of commencement of s. 21: 10 April 1996.]

22 Referrals to Committee on Reparation and Rehabilitation

(1) Where amnesty is granted to any person in respect of any act, omission or offence and the Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.

(2) Where amnesty is refused by the Committee and if it is of the opinion that-

(a) the act, omission or offence concerned constitutes a gross violation of human rights; and

(b) a person is a victim in the matter,

it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 26.

[Date of commencement of s. 22: 10 April 1996.]

CHAPTER 5
REPARATION AND REHABILITATION OF VICTIMS (ss 23-27)

23 Committee on Reparation and Rehabilitation

There is hereby established a committee to be known as the Committee on Reparation and Rehabilitation, which shall in this Chapter be referred to as the Committee.

24 Constitution of Committee

(1) The Committee shall consist of-

(a) a Chairperson;

(b) a Vice-Chairperson;

(c) not more than five other members; and

(d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed to the Committee by the Commission.

(2) Commissioners designated by the Commission shall be the Chairperson and Vice-Chairperson of the Committee.

(3) The Commission shall for the purpose of subsection (1) *(c)* appoint as members of the Committee fit and proper persons who are appropriately qualified, South African citizens and broadly representative of the South African community.

[Sub-s. (3) substituted by s. 11 *(a)* of Act 87 of 1995.]

(4) Any vacancies in the Committee shall be filled in accordance with this section.

[Sub-s. (4) added by s. 11 *(b)* of Act 87 of 1995.]

25 Powers, duties and functions of Committee

(1) In addition to the powers, duties and functions in this Act and for the purpose of achieving the Commission's objectives referred to in section 3(1) *(c)* and *(d)* -

(a) the Committee shall-

(i) consider matters referred to it by-

(aa) the Commission in terms of section 5 *(e)* ;

(bb) the Committee on Human Rights Violations in terms of section 15 (1); and

(cc) the Committee on Amnesty in terms of section 22 (1);

(ii) gather the evidence referred to in section 4 *(b)* ;

(b) the Committee may-

(i) make recommendations which may include urgent interim measures as contemplated in section 4 *(f)* (ii), as to appropriate measures of reparation to victims;

(ii) make recommendations referred to in section 4 *(h)* ;

(iii) prepare and submit to the Commission interim reports in connection with its activities;

(iv) may exercise the powers referred to in section 5 *(l)* and *(m)* and Chapters 6 and 7.

(2) The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

[Date of commencement of s. 25: 10 April 1996.]

26 Applications for reparation

(1) Any person referred to the Committee in terms of section 25 (1) *(a)* (i) may apply to the Committee for reparation in the prescribed form.

[Sub-s. (1) substituted by s. 13 of Act 87 of 1995.]

(2) *(a)* The Committee shall consider an application contemplated in subsection (1) and may exercise any of the powers conferred upon it by section 25.

(b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of section 14.

(3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in section 25 (1) *(b)* (i) in an endeavour to restore the human and civil dignity of such victim.

[Date of commencement of s. 26: 10 April 1996.]

27 Parliament to consider recommendations with regard to reparation of victims

(1) The recommendations referred to in section 4 *(f)* (i) shall be considered by the President with a view to making recommendations to Parliament and making regulations.

(2) The recommendations referred to in subsection (1) shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations.

(3) The regulations referred to in subsection (2)-

(a) shall-

(i) determine the basis and conditions upon which reparation shall be granted;

(ii) determine the authority responsible for the application of the regulations; and

(b) may-

(i) provide for the revision and, in appropriate cases, the discontinuance or reduction of any reparation;

(ii) prohibit the cession, assignment or attachment of any reparation in terms of the regulations, or the right to any such reparation;

(iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestrated; and

(iv) provide for any other matter which the President may deem fit

to prescribe in order to ensure an efficient application of the regulations.

(4) The joint committee may also advise the President in respect of measures that should be taken to grant urgent interim reparation to victims.

[Date of commencement of s. 27: 10 April 1996.]

CHAPTER 6
INVESTIGATIONS AND HEARINGS BY COMMISSION (ss 28-35)

28 Commission may establish investigating unit

(1) The Commission may establish an investigating unit which shall consist of such persons, including one or more commissioners, as may be determined by the Commission.

(2) The period of appointment of such members shall be determined by the Commission at the time of appointment, but such period may be extended or curtailed by the Commission.

(3) The Commission shall appoint a commissioner as the head of the investigating unit.

(4) *(a)* The investigating unit shall investigate any matter falling within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of a committee investigate any matter falling within the scope of the powers, functions and duties of that committee, subject to the directions of the committee.

(b) The investigating unit shall in the performance of its functions follow such procedure as may be determined by the Commission or the committee concerned, as the case may be.

(5) Subject to section 33, no article or information obtained by the investigating unit shall be made public, and no person except a member of the investigating unit, the Commission, the committee concerned or a member of the staff of the Commission shall have access to such article or information until such time as the Commission or the committee determines that it may be made public or until the commencement of any hearing in terms of this Act which is not held behind closed doors.

29 Powers of Commission with regard to investigations and hearings

(1) The Commission may for the purposes of or in connection with the conduct of an investigation or the holding of a hearing, as the case may be-

(a) at any time before the commencement or in the course of such investigation or hearing conduct an inspection *in loco* ;

(b) by notice in writing call upon any person who is in possession of or has the custody of or control over any article or other thing which in the opinion of the Commission is relevant to the subject matter of the investigation or hearing to produce such article or thing to the Commission, and the Commission may inspect and, subject to subsection (3), retain any article or other thing so produced for a reasonable time;

(c) by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the subject matter of the investigation or the hearing;

[Para. *(c)* substituted by s. 24 *(a)* of Act 104 of 1996.]

(d) in accordance with section 32 seize any article or thing referred to in paragraph *(b)* which is relevant to the subject matter of the investigation or hearing.

(2) A notice referred to in subsection (1) shall specify the time when and the place where the person to whom it is directed shall appear, shall be signed by a commissioner, shall be served by a member of the staff of the Commission or by a sheriff, by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article is to be produced or the evidence is to be given.

(3) If the Commission is of the opinion that the production of any article in the possesion [sic] or custody or under the control of the State, any department of State, the Auditor-General or any Attorney-General may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the Commission shall take steps aimed at the prevention of any undue delay in or the disruption of such investigation or proceedings.

(4) The Commission may require any person who in compliance with a requirement in terms of this section appears before it, to take the oath or to make an affirmation and may through the Chairperson or any member of the staff of the Commission administer the oath to or accept an affirmation from such person.

(5) No person other than a commissioner, a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information furnished at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced or the information is furnished at a hearing in terms of this Act, or at any proceedings in any court of law.
[Sub-s. (5) substituted by s. 24 *(b)* of Act 104 of 1996 and by s. 20 of Act 34 of 1998.]

[Date of commencement of s. 29: 10 April 1996.]

30 Procedure to be followed at investigations and hearings of Commission, committees and subcommittees

(1) The Commission and any committee or subcommittee shall in any investigation or hearing follow the prescribed procedure or, if no procedure has been prescribed, the procedure determined by the Commission, or, in the absence of such a determination, in the case of a committee or subcommitte [sic], the procedure determined by the committee or subcommittee, as the case may be.

(2) If during any investigation by or any hearing before the Commission-

(a) any person is implicated in a manner which may be to his or her detriment;

[Para. *(a)* substituted by s. 15 *(a)* of Act 87 of 1995.]

(b) the Commission contemplates making a decision which may be to the detriment of a person who has been so implicated;

(c) it appears that any person may be a victim,

[Para. *(c)* substituted by s. 15 *(b)* of Act 87 of 1995.]

the Commission shall, if such person is available, afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the

matter under consideration or to give evidence at a hearing of the Commission.

[Date of commencement of s. 30: 10 April 1996.]

31 Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

(1) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act, or who has been subpoenaed to give evidence or to produce any article at a hearing of the Commission shall, subject to the provisions of subsections (2), (3) and (5), be compelled to produce any article or to answer any question put to him or her with regard to the subject-matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate him or her.

(2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission-

(a) has consulted with the attorney-general who has jurisdiction;

(b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and

(c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.

(3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 39 *(d)* (ii) of this Act or in section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1).

(5) Any person appearing before the Commission by virtue of the provisions of subsection (1) shall be entitled to peruse any article referred to in that subsection, which was produced by him or her, as may be reasonably necessary to refresh his or her memory.

[Date of commencement of s. 31: 10 April 1996.]

32 Entry upon premises, search for and seizure and removal of certain articles or other things

(1) Any commissioner, member of the staff of the Commission or police officer authorized thereto by a commissioner may on the authority of an entry warrant, issued in terms of subsection (2), enter upon any premises in or upon which any article or thing-

(a) which is concerned with or is upon reasonable grounds suspected to be concerned with any matter which is the subject of any investigation in terms of this Act;

(b) which contains, or is upon reasonable grounds suspected to contain, information with regard to any such matter, is or is upon reasonable grounds suspected to be,

and may on the authority of a search warrant, issued in terms of subsection (2)-

(i) inspect and search such premises and there make such inquiries as he or she may deem necessary;

(ii) examine any article or thing found in or upon such premises;

(iii) request from the person who is in control of such premises or in whose possession or under whose control any article or thing is when it is found, or who is upon reasonable grounds believed to have information with regard to any article or thing, an explanation or information;

(iv) make copies of or extracts from any such article found upon or in such premises;

(v) seize any article or thing found upon or in such premises which he or she upon reasonable grounds suspects to be an article or thing mentioned in paragraph *(a)* or *(b)* ;

(vi) after having issued a receipt in respect thereof remove any article or thing found on such premises and suspected upon reasonable grounds to be an article or thing mentioned in paragraph *(a)* or *(b)* , and retain such article or thing for a reasonable period for the purpose of further examination or, in the case of such article, the making of copies thereof or extracts therefrom: Provided that any article or thing that has been so removed, shall be returned as soon as possible after the purpose of such removal has been accomplished.

(2) An entry or search warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article or thing mentioned in paragraph *(a)* or *(b)* of subsection (1) is upon or in such premises, and shall specify which of the acts mentioned in paragraph *(b)* (i) to (vi) of that subsection may be performed thereunder by the person to whom it is issued.

(3) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable and any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including-

(a) a person's right to, respect for and the protection of his or her dignity;

(b) the right of a person to freedom and security; and

(c) the right of a person to his or her personal privacy.

[Sub-s. (3) amended by s. 16 *(c)* of Act 87 of 1995.]

(4) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(5) *(a)* Any commissioner, or any member of the staff of the Commission or police officer at the request of a commissioner, may without a warrant enter upon any premises, other than a private dwelling, and exercise the powers referred to in subsection (1) *(b)* (i) up to and including (vi)-

(i) if the person who is competent to do so consents to such entry, search, seizure and removal; or

(ii) if he or she upon reasonable grounds believes that-

(aa) the required warrant will be issued to him or her in terms of subsection (2) if he or she were to apply for such warrant; and

(bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.

[Para. *(a)* amended by s. 16 *(d)* of Act 87 of 1995.]

(b) Any entry and search in terms of paragraph *(a)* shall be executed by day, unless the execution thereof by night is justifiable and necessary.

(6) *(a)* Any person who may on the authority of a warrant issued in terms of subsection (2), or under the provisions of subsection (5), enter upon and search any premises, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon or search any premises unless he or she has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article or thing may be destroyed if such admission is first demanded and such purpose is first notified.

(7) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

(8) A warrant issued in terms of this section may be issued on any day and shall be of force until-

(a) it is executed; or

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(c) the expiry of one month from the day of its issue; or

(d) the purpose for the issuing of the warrant has lapsed,

whichever may occur first.

[Date of commencement of s. 32: 10 April 1996.]

33 Hearings of Commission to be open to public

(1) *(a)* Subject to the provisions of this section, the hearings of the Commission shall be open to the public.

(b) If the Commission, in any proceedings before it, is satisfied that-

(i) it would be in the interest of justice; or

(ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof: Provided that the Commission shall permit any victim who has an interest in the proceedings concerned, to be present.

(c) An application for proceedings to be held behind closed doors may be brought by a person referred to in paragraph *(b)* and such application shall be heard behind closed doors.

(d) The Commission may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors.

(2) Where the Commission under subsection (1) *(b)* on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the Commission may, subject to the provisions of section 20 (6)-

(a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner;

(b) direct that no person may, in any manner, make public any information which may reveal the identity of any witness in the proceedings;

(c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness:

Provided that the Commission may authorize the publication of so much information as it considers would be just and equitable.

[Date of commencement of s. 33: 10 April 1996.]

34 Legal representation

(1) Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative.

(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of witnesses or any address to the Commission.

(3) The Commission may appoint a legal representative, at a tariff to be prescribed, to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative.

[Sub-s. (3) substituted by s. 17 of Act 87 of 1995.]

(4) A person referred to in subsection (1) shall be informed timeously of his or her right to be represented by a legal representative.

[Date of commencement of s. 34: 10 April 1996.]

35 Limited witness protection programme

(1) The Minister shall, in consultation with the Commission, promote the establishment of a witness protection programme in order to provide for the protection and safety of witnesses in any manner when necessary.

(2) The witness protection programme contemplated in subsection (1) shall be prescribed by the President as soon as possible after the date referred to in section 7 (3).

(3) The regulations providing for a witness protection programme shall-

(a) provide for, among others, the appointment of a private person or the secondment of an official or employee of any department of State in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), to act as the witness protector; and

(b) be Tabled in Parliament for approval.

(4) *(a)* Until such time as the witness protection programme has been established the President may, in consultation with the Minister and the Commission, prescribe interim measures to be followed in order to provide for the protection and the safety of a witness: Provided that the provisions of section 185 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall, with the necessary changes, apply in the absence of such interim measures.

(b) The interim measures contemplated in paragraph *(a)* shall be Tabled in Parliament for approval.

(5) In this section-

'witness' means a person who wishes to give evidence, gives evidence or gave evidence for the purposes of this Act and includes any member of his or her family or household whose safety is being threatened by any person or group of persons, whether known to him or her or not, as a result thereof.

CHAPTER 7
GENERAL PROVISIONS (ss 36-49)

36 Independence of Commission

(1) The Commission, its commissioners and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity.

(2) To the extent that any of the personnel of the entities referred to in subsection (1) may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission.

(3) *(a)* If at any stage during the course of proceedings at any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions as such a commissioner, such a commissioner shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as to enable the remaining commissioners to decide whether the commissioner should be precluded from participating in the meeting by reason of that interest.

(b) Such a disclosure and the decision taken by the remaining commissioners shall be entered on the record of the proceedings.

(4) If a commissioner fails to disclose any conflict of interest as required by subsection (3) and is present at a meeting of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be reviewed and be varied or set aside by the Commission without the participation of the commissioner concerned.

(5) Every commissioner and member of a committee shall-

(a) notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice;

(b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of another office: Provided that the Commission may exempt a commissioner from the provisions of this paragraph.

(6) No commissioner or member of a committee shall-

(a) by his or her membership of the Commission, association, statement, conduct or in any other manner jeopardize his or her independence or in any other manner harm the credibility, impartiality or integrity of the Commission;

(b) make private use of or profit from any confidential information gained as a result of his or her membership of the Commission or a committee; or

(c) divulge any such information to any other person except in the course of the performance of his or her functions as such a commissioner or member of a committee.

37 Commission to decide on disclosure of identity of applicants and witnesses

Subject to the provisions of sections 20 (6), 33 and 35 the Commission shall, with due regard to the purposes of this Act and the objectives and functions of the Commission, decide to what extent, if at all, the identity of any person who made an application under this Act or gave evidence at the hearing of such application or at any other inquiry or investigation under this Act may be disclosed in any report of the Commission.

[Date of commencement of s. 37: 10 April 1996.]

38 Confidentiality of matters and information

(1) Every commissioner and every member of the staff of the Commission shall, with regard to any matter dealt with by him or her, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties as such a commissioner or member, preserve and assist in the preservation of those matters which are confidential in terms of the provisions of this Act or which have been declared confidential by the Commission.

(2) *(a)* Every commissioner and every member of the staff of the Commission shall, upon taking office, take an oath or make an affirmation in the form specified in subsection (6).

(b) A commissioner shall take the oath or make the affirmation referred to in paragraph *(a)* before the Chairperson of the Commission or, in the case of the Chairperson, before the Vice-Chairperson.

(c) A member of the staff of the Commission shall take the oath or make the affirmation referred to in paragraph *(a)* before a commissioner.

(3) No commissioner shall, except for the purpose of the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties or when required by a court of law to do so, or under any law, disclose to any person any information acquired by him or her as such a commissioner or while attending any meeting of the Commission.

(4) Subject to the provisions of subsection (3) and sections 20 (6) and 33, no person shall disclose or make known any information which is confidential by virtue of any provision of this Act.

(5) No person who is not authorized thereto by the Commission shall have access to any information which is confidential by virtue of any provision of this Act.

(6) For the purposes of this section the oath or affirmation shall be in the following form:

'I, A B, hereby declare under oath/solemnly affirm that I understand and shall honour the obligation of confidentiality imposed upon me by any provision of the Promotion of National Unity and Reconciliation Act, 1995, and shall not act in contravention thereof.'

39 Offences and penalties

Any person who-

(a) anticipates any finding of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;

(b) does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation;

(c) does anything in relation to the Commission which, if done in relation to a court of law, would constitute contempt of court;

(d) (i) hinders the Commission, any commissioner or member of the staff of the Commission in the exercise, performance or carrying out of its, his or her powers, functions or duties under this Act;

(ii) wilfully furnishes the Commission, any such commissioner or member with any information which is false or misleading;

(e) (i) having been subpoenaed in terms of this Act, without sufficient cause fails to attend at the time and place specified in the subpoena, or fails to remain in attendance until the conclusion of the meeting in question or until excused from further attendance by the person presiding at that meeting, or fails to produce any article in his or her possession or custody or under his or her control;

(ii) having been subpoenaed in terms of this Act, without sufficient cause refuses to be sworn or to make affirmation as a witness or fails or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

(f) fails to perform any act as required in terms of sections 37 (6) and 39;

(g) discloses any confidential information in contravention of any provision of this Act;

(h) destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

40 Regulations

(1) The President may make regulations-

(a) prescribing anything required to be prescribed for the proper application of this Act;

(b) prescribing the remuneration and allowances and other benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa;

(c) determining the persons who shall for the purposes of this Act be regarded as the dependants or relatives of victims;

(d) providing, in the case of interim measures for urgent reparation payable over a period of time, for the revision, and, in appropriate cases, for the discontinuance or reduction of any reparation so paid;

(e) prohibiting the cession, attachment or assignment of any such reparation so granted;

(f) determining that any such reparation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated;

(g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act;

(h) with regard to any matter relating to the affairs of the Fund, established in terms of section 42;

(h A) with regard to any matter which may be necessary for the effective allocation of the amounts as contemplated in section 42 (2A).

[Para. *(h* A *)* inserted by s. 1 of Act 23 of 2003.]

(i) with regard to any matter which the President deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Any regulation made in terms of subsection (1) which may result in the expenditure of State money shall be made in consultation with the Minister and the Minister of Finance.

41 Liability of Commission, commissioners and members of staff

(1) Subject to the provisions of subsection (2), the State Liability Act, 1957 (Act 20 of 1957), shall apply, with the necessary changes, in respect of the Commission, a member of its staff and a commissioner, and in such application a reference in that Act to 'the State' shall be construed as a reference to 'the Commission', and a reference to 'the Minister of the department concerned' shall be construed as a reference to the Chairperson of the Commission.

(2) No-

(a) commissioner;

(b) member of the staff of the Commission; or

(c) person who performs any task on behalf of the Commission,

shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted or made known in terms of this Act.

42 President's Fund

(1) The President may, in such manner as he or she may deem fit, in consultation with the Minister and the Minister of Finance, establish a Fund into which shall be paid-

(a) all money appropriated by Parliament for the purposes of the Fund; and

(b) all money donated or contributed to the Fund or accruing to the Fund from any source.

(2) There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President.

(2A) There shall be paid from the Fund all amounts payable by way of reparations towards the rehabilitation of communities as prescribed.

[Sub-s. (2A) inserted by s. 2 of Act 23 of 2003.]

(2B) Any funds or property which, by a trust, donation or bequest vests or accrues in the Fund, shall be dealt with in accordance with the conditions of such trust, donation or bequest.

[Sub-s. (2B) inserted by s. 2 of Act 23 of 2003.]

(3) Any money of the Fund which is not required for immediate use may be invested with a financial institution approved by the Minister of Finance and may be withdrawn when required.

(4) Any unexpended balance of the money of the Fund at the end of a financial year, shall be carried forward as a credit to the Fund for the next financial year.

(5) The administrative work, including the receipt of money appropriated by Parliament for, or donated for the purposes of, the Fund or accruing to the Fund from any source, and the making of payments from the Fund in compliance with a recommendation in terms of this Act, shall be performed by officers in the Public Service designated by the Minister.

(6) The Minister shall appoint an officer designated under subsection (5) as accounting officer in respect of the Fund.

(7) The Auditor-General shall audit the Fund and all financial statements relating thereto, and the provisions of section 6 of the Auditor-General Act, 1989 (Act 52 of 1989), shall apply in respect of any such audit.

43 Completion of work and dissolution of Commission

(1) *(a)* Subject to subsection (2), the Commission shall complete its work on 31 July 1998.

(b) The Commission shall, within three months after 31 July 1998, submit a report to the President, whereafter its activities shall be suspended until it is reconvened by the President in terms of subsection (3).

(c) The Commissioners whose activities are suspended shall not receive any remuneration whilst their activities are so suspended.

(2) Notwithstanding the provisions of subsection (1)-

(a) the Committee on Amnesty referred to in section 16 shall continue with its functions in terms of this Act until a date determined by the President by proclamation in the *Gazette* ; and

(b) for the duration of the period referred to in paragraph *(a)* -

(i) the Chairperson or the Deputy Chairperson of the Commission shall continue to represent the Commission for the purposes of any legal proceedings instituted by or against the Commission;

(ii) the Committee on Amnesty shall also exercise the powers and perform the duties and functions of the Committee on Human Rights Violations established by section 12, and of the Committee on Reparation and Rehabilitation established by section 23, in respect of-

(aa) responses to matters commenced before 14 December 1997 by the said Committees, but not yet finalised by 31 July 1998, excluding any inquiries or hearings in terms of section 29; and

(bb) matters emanating from the consideration of applications for amnesty by the Committee on Amnesty;

(iii) the President may, subject to section 17 (2) and from the ranks of the existing commissioners, appoint not more than two further commissioners to the Committee on Amnesty to assist in the exercising of the powers and the performance of the duties and functions referred to in subparagraph (ii); and

(iv) the Chairperson of the Committee on Amnesty shall submit quarterly reports to the President in respect of its activities.

(3) The President shall, by proclamation in the *Gazette* -

(a) reconvene the Commission for the purpose of completing its final report after the Committee on Amnesty has completed its work;

(b) determine a date for the dissolution of the Commission.

(4) The provisions of section 44 shall also be applicable in respect of the report referred to in subsection (1) *(b)* .

[S. 43 amended by s. 2 of Act 84 of 1997 and substituted by s. 2 of Act 33 of 1998.]

44 Publication of final report of Commission

The President shall, in such manner as he or she may deem fit, bring the final report of the Commission to the notice of the Nation, among others, by laying such report, within two months after having received it, upon the Table in Parliament.

[Date of commencement of s. 44: 10 April 1996.]

45 Approach to and review by joint committee of, and reports to, Parliament

(1) *(a)* The Commission may, at any time, approach the joint committee with regard to any matter pertaining to the functions and powers of the Commission.

(b) The Minister may at any time approach the joint committee with regard to any matter pertaining to functions and powers which may be performed or exercised by him or her in terms of this Act.

(c) The joint committee may at any time review any regulation made under section 40 and request the President to amend certain regulations or to make further regulations in terms of that section.

(2) The Commission shall submit to Parliament half-yearly financial reports: Provided that the Commission may, at any time, submit a financial report to Parliament on specific or general matters if-

(a) it deems it necessary;

(b) it deems it in the public interest;

(c) it requires the urgent attention of, or an intervention by, Parliament;

(d) it is requested to do so by the Speaker of the National Assembly or the President of the Senate.

46 Chief executive officer, secretaries, expenditure and estimates of Commission

(1) The Commission shall appoint in its service a person as the chief executive officer of the Commission and four other persons as secretaries to the Commission, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation, respectively.

(2) The chief executive officer-

(a) shall for the purposes of section 15 of the Exchequer Act, 1975 (Act 66 of 1975), be the accounting officer in respect of all State moneys received in respect of and paid out of the account of the Commission referred to in subsection (4), and shall keep proper accounting records of all financial transactions of the Commission;

(b) shall carry out such duties and perform such functions as the Commission may from time to time impose upon or assign to him or her in order to achieve the objectives of the Commission.

(3) The expenses in connection with the exercise of the powers, the performance of the functions and the carrying out of the duties of the Commission shall be defrayed out of money appropriated by Parliament for that purpose.

(4) The Commission shall, in consultation with the Minister of Finance, open an account with a banking institution, into which shall be deposited all moneys appropriated as mentioned in subsection (3) and from which all money required to pay for the expenses so mentioned shall be paid.

(5) *(a)* The Commission shall within three months from the date referred to in section 7 (3), for the first financial year, and thereafter in each financial year for the following financial year, in a format determined by the Audit Commission established by section 2 of the Audit Arrangements Act, 1992 (Act 122 of 1992), prepare the necessary estimate of revenue and expenditure of the Commission, which shall, after consultation with the said Audit Commission, be submitted to the Minister for his or her approval, granted in concurrence with the Minister of Finance, for furtherance in terms of subsection (3).

(b) The Commission shall not incur any expenditure which exceeds the total amount approved in terms of paragraph *(a)* .

(6) As from the date on which the Commission is dissolved in terms of section 43 (3) and after all the expenses referred to in subsection (3) have been paid, the account opened in terms of subsection (4) shall be closed and the balance of the moneys deposited into that account, if any, shall be transferred to the *fiscus* .

(7) *(a)* Upon the dissolution of the Commission, subject to subsection (6), all assets, including intellectual property rights, monies and liabilities of the Commission, shall revert to the Department of Justice to be dealt with according to law.

(b) The Minister shall-

(i) have the authority to wind up the affairs of the Commission; and

(ii) for the purposes of any legal relationships, including legal proceedings involving the Commission, be the legal successor of the Commission.

[Sub-s. (7) added by s. 3 of Act 33 of 1998.]

47 Consequences of dissolution

(1) Notwithstanding the dissolution of the Commission in terms of section 43 (3), the President's Fund shall continue to exist until a date fixed by the President by proclamation in the *Gazette* , whereupon all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund Raising Act, 1978 (Act 107 of 1978), and shall vest in the Disaster Relief Fund.

[Sub-s. (1) substituted by s. 4 of Act 33 of 1998.]

(2) After the date referred to in subsection (1), all the funds and property which would have accrued to the President's Fund, if the Commission had not been dissolved, shall vest in the Disaster Relief Fund.

(3) Any funds or property which, by trust, donation or bequest were vested in, or would have accrued to, the President's Fund, and which vest in the Disaster Relief Fund in terms of subsection (1), shall be dealt with by the board of the Disaster Relief Fund in accordance with the conditions of such trust, donation or bequest.

(4) As from the date referred to in subsection (1) the liabilities incurred by the Commission or the President's Fund in terms of this Act, shall pass to the Disaster Relief Fund: Provided that such a liability shall be defrayed only from funds or property which vest in the Disaster Relief Fund in terms of this section.

(5) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any funds or property in terms of this section.

[Date of commencement of s. 47: 10 April 1996.]

47A Minister may appoint subcommittee on amnesty after dissolution of Commission

(1) If, after the dissolution of the Commission, it appears that any matter that was dealt with by the Committee on Amnesty or any subcommittee thereof contemplated in section 17 (2A) needs to be dealt with further or anew as a result of-

(a) any order or finding of a competent court; or

(b) any settlement agreement reached pursuant to pending litigation

emanating from such a matter,

the Minister may, by notice in the *Gazette* , appoint a subcommittee as contemplated in section 17 (2A) to deal with the matter in such manner as may be required.

(2) A subcommittee appointed in terms of subsection (1) must consist of a judge as referred to in section 17 (3), as chairperson, and two other members, who are fit and proper persons.

(3) A subcommittee appointed in terms of subsection (1) shall have all the powers to deal with the matter for which it was appointed that a subcommittee referred to in section 17 (2A) would have had prior to the dissolution of the Commission.

(4) The Minister may, after consultation with the Minister of Finance, authorize the expenditure with regard to the functioning of the subcommittee and may determine how the expenditure is to be regulated.

(5) The Director-General of the Department of Justice and Constitutional Development shall provide the necessary administrative support, including staff required by the subcommittee for the performance of its functions.

(6) If a subcommittee appointed in terms of subsection (1) grants amnesty to any person, the Minister shall by notice in the *Gazette* , make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted.

(7) If a subcommittee has refused to grant amnesty to any person, the provisions of section 21 shall apply, with the necessary changes required by the context.

[S. 47A inserted by s. 3 of Act 23 of 2003.]

47B Minister may appoint other committees

(1) If, after the dissolution of the Commission, it appears that any other committee referred to in this Act, other than the Committee on Amnesty or any subcommittee thereof, needs to deal with a matter arising from the consideration of any matter by a subcommittee appointed in terms of section 47A (1), the Minister may, by notice in the *Gazette* , appoint a committee to deal with the matter in such manner as may be required.

(2) A committee appointed in terms of subsection (1) may consist of one or more fit and proper persons.

(3) A committee appointed in terms of subsection (1) shall have all the powers to deal with the matter for which it was appointed that the corresponding committee in terms of this Act would have had prior to the dissolution of the Commission.

(4) The provisions of section 47A (4) and (5) apply, with the necessary changes required by the context, in respect of a committee appointed in terms of subsection (1).

(5) Where a committee is appointed in terms of subsection (1) that performs the functions of a Committee on Reparation and Rehabilitation in order to consider a matter referred to it by a subcommittee appointed in terms of section 47A (1), that committee shall, if it is of the opinion that-

(a) the person is a victim, recommend to the Minister that such person be entitled to reparation as prescribed; or

(b) a determination needs to be made whether a person is a victim and whether an act, omission or offence constitutes a gross violation of human rights, refer the matter to a committee referred to in

subsection (6).

(6) Where a committee is appointed in terms of subsection (1) that performs the functions of a Committee on Human Rights Violations in order to determine a gross violation of human rights as contemplated in subsection (5) *(b)* , and the committee is of the opinion that-

(a) a gross violation of human rights has been committed; and

(b) a person is a victim of such violation,

it shall recommend to the committee appointed to perform the functions of a Committee on Reparation and Rehabilitation to forward such person's name to the Minister, who shall deal with the recommendation in terms of subsection (5) *(a)* .

[S. 47B inserted by s. 3 of Act 23 of 2003.]

47C Further powers of Minister after dissolution of Commission

(1) The Minister may, after the dissolution of the Commission, in order to correct any error contained in any notice, proclamation or any other publication issued in terms of this Act, excluding the final report by the Commission, amend by way of notice in the *Gazette* a publication so made.

(2) Subsection (1) does not detract from the general nature of section 46 (7) *(b)* .

[S. 47C inserted by s. 3 of Act 23 of 2003.]

48 Acts repealed

(1) The Indemnity Act, 1990 (Act 35 of 1990), the Indemnity Amendment Act, 1992 (Act 124 of 1992), and the Further Indemnity Act, 1992 (Act 151 of 1992), are hereby repealed.

(2) Any indemnity granted under the provisions of the Indemnity Act, 1990, the Indemnity Amendment Act, 1992, or the Further Indemnity Act, 1992, shall remain in force notwithstanding the repeal of those Acts.

(3) Any temporary immunity or indemnity granted under an Act repealed in terms of subsection (1) shall remain in force for a period of 12 months after the date referred to in section 7 (3) notwithstanding the repeal of that Act.

[Date of commencement of s. 48: 1 June 1996.]

49 Short title and commencement

This Act shall be called the Promotion of National Unity and Reconciliation Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette* .

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT ACT 87 OF 1995

[ASSENTED TO 11 OCTOBER 1995] [DATE OF COMMENCEMENT: 16 OCTOBER 1995]

(English text signed by the President)

ACT

To amend the Promotion of National Unity and Reconciliation Act, 1995, to effect improvements in both the English and the Afrikaans texts; and to provide for matters connected therewith.

1 Amends section 1 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes the definition of 'prescribe'; paragraph *(b)* substitutes in the Afrikaans text the definition of 'veiligheidsmagte'; and paragraph *(c)* substitutes in the Afrikaans text subsection (2).

2 Amends section 3 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes in the Afrikaans text subsection (1) *(c)* ; and paragraph *(b)* substitutes subsection (3) *(e)* .

3 Amends section 4 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting paragraph *(g)* .

4 Amends section 5 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes paragraph *(e)* ; paragraph *(b)* substitutes paragraph *(g)* ; paragraph *(c)* substitutes paragraph (i); paragraph *(d)* substitutes paragraph *(j)* in the Afrikaans text; and paragraph *(e)* substitutes paragraph *(m)* .

5 Amends section 13 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes subsection (1) *(c)* ; and paragraph *(b)* adds subsection (3).

6 Amends section 14 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes in the Afrikaans text subsection (1) *(a)* (ii); paragraph *(b)* substitutes subsection (1) *(b)* (iv); and paragraph *(c)* substitutes subsection (2) in the Afrikaans text.

7 Amends section 18 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

8 Amends section 19 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* deletes the proviso to subsection (2); paragraph *(b)* substitutes in subsection (3) the words preceding paragraph *(a)* (i); paragraph *(c)* substitutes in the Afrikaans text subsection (3) *(a)* (i); paragraph *(d)* substitutes in the Afrikaans text subsection (3) *(a)* (iii); paragraph *(e)* substitutes in subsection (3) the words preceding paragraph *(b)* (i); paragraph *(f)* substitutes in the Afrikaans text subsection (4); paragraph *(g)* substitutes subsection (6); and paragraph *(h)* substitutes subsection (7).

9 Amends section 20 (2) of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting paragraph *(f)* .

10 Amends section 21 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes the words proceeding subsection (1) *(a)* ; and paragraph *(b)* substitutes subsection (2) *(a)* .

11 Amends section 24 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes subsection (3); and paragraph *(b)* adds subsection (4).

12 Amends section 25 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (2).

13 Amends section 26 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

14 Amends section 29 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes subsection (1) *(b)* ; and paragraph *(b)* substitutes subsection (1) *(d)* .

15 Amends section 30 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes subsection (2) *(a)* ; paragraph *(b)* substitutes subsection (2) *(c)* ; and paragraph *(c)* substitutes in the Afrikaans text the words following upon subsection (2) *(c)* .

16 Amends section 32 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes in the Afrikaans text subsection (1) *(b)* ; paragraph *(b)* substitutes in the Afrikaans text subsection (2); paragraph *(c)* substitutes in subsection (3) the words preceding paragraph *(a)* ; and paragraph *(d)* substitutes in subsection (5) *(a)* the words preceding subparagraph (i).

17 Amends section 34 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (3).

18 Substitutes section 35 in the Afrikaans text of the Promotion of National Unity and Reconciliation Act 34 of 1995 .

19 Substitutes the long title of the Promotion of National Unity and Reconciliation Act 34 of 1995 .

20 Short title

This Act shall be called the Promotion of National Unity and Reconciliation Amendment Act, 1995.

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT ACT 18 OF 1997

[ASSENTED TO 26 JUNE 1997] [DATE OF COMMENCEMENT: 27 JUNE 1997]

(Afrikaans text signed by the President)

ACT

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the composition of the Committee on Amnesty; and to provide for matters connected therewith.

1 Amends section 17 of the Promotion of National Unity and Reconciliation Act 34 of 1995 , as follows: paragraph *(a)* substitutes subsections (1) and (2); and paragraph *(b)* inserts subsection 2A.

2 Short title

This Act shall be called the Promotion of National Unity and Reconciliation Amendment Act, 1997.

PROMOTION OF NATIONAL UNITY AND RECONCILIATION SECOND AMENDMENT ACT 84 OF 1997

[ASSENTED TO 26 NOVEMBER 1997] [DATE OF COMMENCEMENT: 10 DECEMBER 1997]

(Afrikaans text signed by the President)

as amended by

Promotion of National Unity and Reconciliation Amendment Act 33 of 1998

ACT

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as

to further regulate the composition of the Committee on Amnesty; to extend the period within which the Commission shall complete its work; and to provide for matters connected therewith.

1 Amends section 17 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

2 Amends section 43 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

3 .....

[S. 3 repealed by s. 5 of Act 33 of 1998.]

4 Short title

This Act shall be called the Promotion of National Unity and Reconciliation Second Amendment Act, 1997.

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT ACT 33 OF 1998

[ASSENTED TO 24 JUNE 1998] [DATE OF COMMENCEMENT: 30 APRIL 1998]

(English text signed by the President)

ACT

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the constitution of the Committee on Amnesty; to provide for the suspension of the activities of the Truth and Reconciliation Commission pending the completion of its work by the Committee on Amnesty; to extend the powers of the Committee on Amnesty and the period within which the Committee on Amnesty shall complete its work; to further regulate the consequences of the dissolution of the Commission; and to provide for matters connected therewith.

1 Amends section 17 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

2 Substitutes section 43 of the Promotion of National Unity and Reconciliation Act 34 of 1995 .

3 Amends section 46 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by adding subsection (7).

4 Amends section 47 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by substituting subsection (1).

5 Repeals section 3 of the Promotion of National Unity and Reconciliation Second Amendment Act 84 of 1997 .

6 Short title and commencement

This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 1998, and shall be deemed to have come into operation on 30 April 1998.

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT ACT 23 OF 2003

[ASSENTED TO 1 OCTOBER 2003] [DATE OF COMMENCEMENT: 1 OCTOBER 2003]

(English text signed by the President)

ACT

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to allow payments from the President's Fund towards the rehabilitation of communities; to make provision regarding funds and property vesting in or accruing to the Fund subject to conditions; to provide for the appointment of committees after the dissolution of the Commission; and to confer additional powers on the Minister; and to provide for matters connected therewith.

1 Amends section 40 (1) of the Promotion of National Unity and Reconciliation Act 34 of 1995 by inserting paragraph *(h* A *)* .

2 Amends section 42 of the Promotion of National Unity and Reconciliation Act 34 of 1995 by inserting subsections (2A) and (2B).

3 Inserts sections 47A, 47B and 47C in the Promotion of National Unity and Reconciliation Act 34 of 1995 .

4 Short title and commencement

This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 2003, and comes into operation on 1 October 2003 or on such earlier date as may be fixed by the President by proclamation in the *Gazette* .