Chapter 15

Examples of Other Reparatory Efforts and the History of the Reparations Movement in the United States (Gov. Code, § 8301.1, subd. (b)(3)(A))

Introduction

AB 3121 directed that the Task Force address how its recommendations "comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings." (Gov. Code, § 8301.1, subd. (b)(3)(A)) The preceding chapter provides an overview of the United Nations Principles on Reparations and the manner in which those principles have been interpreted. This chapter provides examples of reparatory efforts and special measures that preceded AB 3121 or that are ongoing. Examples of reparatory efforts by other countries are followed by such efforts in the United States at the federal, state, and local level.

The reparatory efforts detailed below are not exhaustive of those that have been completed or otherwise begun across the globe or elsewhere in the United States. For example, the Task Force heard testimony from representatives of numerous California localities that are in the process of endeavoring to craft reparations and racial equity measures for the harms and atrocities committed against African Americans who reside or previously resided in those jurisdictions, and the Task Force is aware of other similar efforts.[1] Also not included here are other international reparatory efforts,[2] instances of litigation seeking reparations,[3] and reparatory efforts of private institutions such as universities that played an active role in or otherwise profited from enslavement.[4] The decision not to include these efforts at atonement does not reflect any judgment regarding their value.

Many a well-intentioned effort to provide reparations has fallen short of meeting the standard set by the United Nations. In fact, it is difficult to point to an example as to which there is universal agreement that the outcome was a model of fully satisfying all five of the elements that the United Nations requires for true reparations—namely, restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.[5] Some point to the reparations made by Germany after World War II as the example that comes closest to doing so. Interestingly, those reparations were crafted more than 50 years before the United Nations issued its Principles on Reparations.

Many of the programs described in this chapter are thus more properly classified as racial equity measures rather than reparations. A not infrequent basis for this conclusion is where the monetary component of the reparatory effort has fallen short of being commensurate with the nature of the atrocity and the harm that was suffered. A program can also fall short if it only

[1] Cite testimony. Include example of SM. Also cite Palm Springs.
[2] See, e.g., [Democratic Republic of Congo and at least one other]
[3] Cite Tulsa litigation and Pigford litigation
[4] See, e.g., [Georgetown and at least one other].
[5] See Chapter 14, *supra*.

compensates a small number of beneficiaries, as compared to the number who suffered the harms. These are just two of the more common critiques that can arise. But one may observe that given efforts have not met the bar set by the United Nations and still see where there has been value in those efforts.

The Task Force has considered the examples in this chapter, seeking through the recommendations in this report to build on their positive aspects and learn from their challenges and shortfalls. The lessons learned from these examples as well as witness testimony, public comment, research, analysis, and debate across the Task Force have been brought to bear on the full panoply of the Task Force's recommendations, as set forth in the chapters that follow—all for the purpose of ensuring that the reparations program contemplated by AB 3121 and enacted by California will fully meet the required elements of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition and provide the justice demanded of the Task Force and the State.

The examples offered below are instructive in one additional regard that bears repeating. As the below cases and others illustrate, our federal government *has* undertaken reparatory efforts in several instances.[6] Although the outcomes of these programs have been far from perfect, they are an inescapable indictment of the federal government's failure to undertake reparations for the harms and atrocities of slavery and its ongoing legacy. The Task Force trusts that its work will help spur the federal government to begin to address America's crimes against humanity flowing from enslavement.

Examples of Other Reparatory Efforts

International Reparatory Efforts

1. **Germany-Israel**

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met at Luxembourg and signed an agreement that required the FRG to pay reparations to Israel for the material damage caused by the criminal acts perpetrated against the Jewish people during the Third Reich.[7] Although the 1952 Luxembourg Agreement (Luxembourg Agreement) predates the United Nations General Assembly's Resolution,[8] which identifies the five requirements for a full and effective reparations scheme, the Agreement comes close to fully embodying those principles. In particular, its provisions make significant attempts at providing effective compensation for the victims of war and

[6] For further examples, see Chapter 33, pp. __, *infra*.
[7] De Greiff, *Luxembourg Agreement: Excerpts* in The Handbook of Reparations ("*Luxembourg Agreement*") (2006) page 886; Colonomos and Armstrong, German Reparations to the Jews After World War II in The Handbook of Reparations ("*German Reparations*") (2006) page 391.
[8] United Nations General Assembly, *Adopted Resolution 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*, (March 21, 2006) (UN Principles on Reparation).

genocide even though the moral debt for the harm the victims suffered was one that could never "be quantified and … would remain eternal."[9]

The Luxembourg Agreement consisted of three parts, two of which were protocols. The first part of the Luxembourg Agreement required the FRG to pay Israel 3,000 million Deutsche Mark (DM) or DM3 billion to help resettle Jewish refugees in the new State of Israel.[10] The DM3 billion sum would be paid in annual installments.[11] The second part, Protocol 1, required the FRG to enact laws to pay individual compensation to "former German citizens, refugees, and stateless persons" for harms suffered during the Third Reich.[12] And the third part of the Luxembourg Agreement , Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million for the "relief, rehabilitation (social and cultural), and resettlement of Jewish victims of Nazi persecution living outside of Israel."[13] In total, the FRG agreed to pay DM3,450 million, the equivalent of $820 million U.S. dollars in 1952.[14]

The Luxembourg Agreement was intended to address the harms inflicted on Jewish people living in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945.[15] Beginning in 1933, the Third Reich implemented several reforms that were intended to control and limit the citizenship and freedom of its Jewish citizens. The Nuremberg Laws were two race-based measures that were approved by the Nazi Party at its convention in Nuremberg in 1935.[16] American citizenship and anti-miscegenation laws, which oppressed African Americans in the United States, directly influenced the Nazi Party in formulating these two laws.[17] One of the laws, the Reichsbürgergesetz or the "Law of the Reich Citizen," deprived German Jews of citizenship, designating them as "subjects of the state."[18] The other law prohibited miscegenation between Jews and "citizens of German or kindred blood."[19]

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[9] Colonomos and Armstrong, *German Reparations*, supra, at p. 397

[10] The Luxembourg Agreement sets out the FRG's financial obligations in Deutschemark or Deutsche Marks, which is abbreviated as DM. When the Agreement was executed, one dollar equaled 4.2 Deutschemark or Deutsche Marks. (Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* ("*Reparations Agreement*") 48 Am. J. Int'l L. 564, 566, 566, fn. 11.)

[11] De Greiff, *Luxembourg Agreement, supra*, at p. 887.

[12] Colonomos and Armstrong, *German Reparations*, supra, at p. 399; De Greiff, *Luxembourg Agreement, supra* note 3 at pp. 895-897.

[13] The Claims Conference is an umbrella organization comprised of 23 Jewish organizations. It was founded in 1951 after a meeting in New York. (Colonomos and Armstrong, *German Reparations*, *supra*, at p. 394)

[14] The Luxembourg Agreement sets out the FRG's financial obligations in Deutschemark or Deutsche Marks, which is abbreviated as DM. When the Agreement was executed, one dollar equaled 4.2 Deutschemark or Deutsche Marks. (Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* ("*Reparations Agreement*") 48 Am. J. Int'l L. 564, 566, 566, fn. 11.) In 1952, DM3 billion equaled $820 million in U.S. dollars. (Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* ("*Reparations Agreement*") 48 Am. J. Int'l L. 564, 566.)

[15] Third Reich, official Nazi designation for the regime in Germany from January 1933 to May 1945.

[16] Britannica Nurnberg Laws

[17] Whitman, Hitler's American Model pp. 113, 120-123, 138 (Princeton University Press Overview (Pub. Feb 21, 2017).)

[18] Britannica Nurnberg Laws

[19] Britannica Nurnberg Laws

Other laws were passed which excluded Jewish citizens from certain positions, schools, and professions.[20] For example, Jews were barred from earning university degrees, owning businesses, and providing legal and medical services to non-Jews.[21] Jews were also barred from participating in German social life. They were "denied entry to theatres, forced to travel in separate compartments on trains, and excluded from German schools."[22]

During the Third Reich, the Nazis also confiscated Jewish property in a program called "Aryanization."[23] It is estimated that around $6 billion in property was stolen from the Jewish people living in Germany and the territories controlled by Germany.[24]

After the war began and Germany expanded its territories, more Jewish people came under German control.[25] The Nazi response was to create "ghettos" and force the Jewish population to live there until the German government decided what to do with them.[26] Eventually, these acts culminated in the final solution, which was the murder of Jewish citizens in concentration camps throughout Germany and territories controlled by Germany.[27] Although there is some debate about when the Nazis decided to kill Jewish people, it is undisputed that "in June of 1941, the Nazis began the systematic killing of Jews."[28]

Just two months after his election, Konrad Adenauer, the Chancellor of the newly formed FRG expressed a willingness to address claims of reparations for the harms inflicted on the Jewish people by Nazi Germany.[29] He acknowledged that "unspeakable crimes were committed in the name of the German people, which create a duty of moral and material reparations…."[30]

The idea of providing reparations to Holocaust survivors or the heirs of those who died, did not begin with Adenauer, however. Beginning in 1949, the Council of States in the American-occupied zone established a law of compensation. They implemented a reparations or restitution scheme that was designed to restore to Jewish citizens the property taken from them.[31] By including concepts like the right of displaced people to compensation and the categories of harm that constitute persecution, the law of compensation "established the foundations of the first nationwide law on reparations…."[32]

Discussions about reparations were being held in the Jewish community even earlier—at the beginning of the war.[33] The idea gained support and was discussed at the War Emergency

[20] https://encyclopedia.ushmm.org/content/en/article/antisemitic-legislation-1933-1939
[21] Britannica Nurnberg Laws
[22] Britannica Nurnberg Laws
[23] Britannica Nurnberg Laws
[24] Honig, *Reparations Agreement*, *supra*, at p. 565.
[25] Britannica Nurnberg Laws
[26] Britannica Nurnberg Laws
[27] Authers, *German Compensation for Forced and Slave Laborers* in The Handbook of Reparations ("German Compensation") (2006) 420, 421- 422.
[28] Britannica Nurnberg Laws
[29] Colonomos and Armstrong, *German Reparations, supra*, at p. 394.
[30] Colonomos and Armstrong, *German Reparations*, supra, at p. 393.
[31] *Id.* at p. 392.
[32] *Ibid*.
[33] *Id.* at p. 393.

Conference organized by the World Jewish Congress in 1944.[34] In the Jewish community, both in the diaspora and Israel, there was strong opposition to the idea of reparations, however. The opposition was so intense that the head of the Jewish World Congress had to have "clandestine discussions" with Chancellor Adenauer until they could produce an agreement that would be acceptable to both sides. [35]

The Luxembourg Agreement was eventually signed in September 1952.[36] The first part of the Agreement required the FRG to pay DM3 billion in installments to Israel to help meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control. Specifically, those funds provided the means for Israel "to expand opportunities for the settlement and rehabilitation" of Jewish refugees in Israel.[37] Israel invested those funds into its industrial development by purchasing goods and services from the FRG to build and expand its infrastructure.[38] In addition to providing Israel with funds to purchase goods and services, the Luxembourg Agreement required the FRG to ensure the delivery of goods and services to Israel.[39] To ensure the participation of German suppliers, the Agreement provided incentives like tax refunds to suppliers "on deliveries of commodities in pursuance of the Agreement."[40]

The payments would be paid according to the schedule in the Luxembourg Agreement.[41] The first installment was made in two payments in 1952. The first payment of DM60 million was due on the day the Agreement was entered into force.[42] The remaining DM140 million was due three months later.[43] For 1953, the FRG was required to pay DM200 million.[44] The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.[45] After 1954, if the FRG determined that it could not comply with the obligation, it was required to give Israel notice in writing that there would be a reduction in the amount of the installments, but in no way could any of the installments be reduced below DM250 million.[46]

Four agencies were established to ensure that the Agreement would be carried out.[47] The Israeli Mission was the sole agency that could place orders with German suppliers on behalf of the

[34] *Ibid*.
[35] Colonomos and Armstrong, *German Reparations, supra*, at p. 394.
[36] De Greiff, *Luxembourg Agreement: Excerpts* in The Handbook of Reparations ("*Luxembourg Agreement*") (2006) page 886; Colonomos and Armstrong, German Reparations to the Jews After World War II in The Handbook of Reparations ("*German Reparations*") (2006) page 391.
[37] De Greiff, *Luxembourg Agreement, supra* note 3, at p. 886; Honig, *Reparations Agreement, supra*, at p. 566.
[38] Colonomos and Armstrong, *German Reparations*, supra note 5 at p. 400; Heilig, From the Luxembourg Agreement To Today: Representing A People 20 Berkeley J. Int'l L. page 176, 179-180; Honig, *Reparations Agreement, supra*, at p. 569.
[39] Honig, *Reparations Agreement, supra*, at p. 569.
[40] *Ibid*.
[41] De Greiff, *Luxembourg Agreement, supra*, at p. 888.
[42] De Greiff, *Luxembourg Agreement, supra* note 3, at p. 888.
[43] *Ibid*.
[44] *Id.* at p. 887.
[45] *Ibid*.
[46] *Id.* at pp. 887-888.
[47] Honig, *Reparations Agreement, supra*, at p. 573.

Israeli Government.[48] But jurisdiction was conferred on German courts to decide disputes arising out of the performance of *individual* transactions involving individual German suppliers.[49] The second agency was the agency designated by the FRG to examine all orders placed by Israel to ensure that they conformed to the Agreement. [50]

The third agency was the Mixed Commission, which was responsible for supervising the operation of the Agreement. [51] Its members were appointed by their respective governments. [52] It had no adjudicative power.[53]

The fourth agency, the Arbitral Commission had adjudicative power over disputes between Israel and the FRG, except for those disputes that involved individual German suppliers.[54] Each country appointed one arbitrator, and the arbitrators, by mutual agreement, appointed an umpire who could not be a national of either contracting party. [55] If the parties could not agree on the appointment of an umpire, the President of the International Court of Justice would select one.[56] The arbitrators serve five years and were eligible to serve another term once their five-year term expired. [57]

Individual Compensation

The second part of the Agreement, Protocol 1, required the FRG to enact laws for payment of individual compensation to former German citizens, refugees, and stateless persons.[58] The FRG enacted the first supplementary law for the compensation of victims in compliance with Protocol 1 in 1953.[59] The Compensation Law covered harms that occurred between January 30, 1933, the beginning of the Third Reich, and May 8, 1945.[60] Preceding the Compensation Law was a general acknowledgment of the wrongs committed by the Nazi regime:

> In Recognition of the Fact that wrongs have been committed against persons who under the oppressive National Socialist regime, were persecuted because of their political opposition to National Socialism or because of the race, religion or ideology, that the resistance to the National socialist regime based on conviction, faith or conscience was a service to the welfare of the German people and state and, that democratic, religious and economic organizations, too, have suffered damages by the oppressive National Socialist regime in contravention of the law,

[48] *Ibid*.
[49] *Id*. at p. 574.
[50] *Id.* at p. 575.
[51] *Ibid*.
[52] *Ibid*.
[53] *Ibid*.
[54] *Id.* at pp. 575-576.
[55] *Id.* at p. 575, fn. 40.
[56] *Ibid.*
[57] *Id.* at p. 575.
[58] Colonomos and Armstrong, *German Reparations*, *supra*, at p. 403; De Greiff, *Luxembourg Agreement, supra* at p. 889.
[59] Colonomos and Armstrong, German Reparations, *supra*, at p. 402.
[60] Colonomos and Armstrong, German Reparations, *supra*, at p. 403.

> the Bundestag with the consent of the Bundesrat has enacted the following Law[.][61]

The Compensation Law identified the following categories of harm that were eligible for compensation:

- Compensation for Life: Under this category, widows, children, and dependent relatives could apply for an annuity for wrongful death, based on the amount paid to families of civil servants.[62]
- Compensation for Health: Under this category claimants were entitled to medical care for "not insignificant damage to health or spirit." For damages beyond claims for medical care, claimants could apply for an annuity but had to prove that the persecution caused health damages that led to at least a 30 percent reduction in their earning capacity.[63]
- Compensation for Damages to Freedom: This category included claimants subjected to political or military jail, interrogation custody, correctional custody, concentration camp, ghetto, or punishment entity. It also included forced labor "insofar as the persecuted lived under jail-like conditions."[64]
- Compensation for Property, Assets, and Discriminatory Taxes: Claimants could file claims for the loss of property that occurred because the claimant fled the country, emigrated, or was robbed of their freedom. They were also entitled to compensation for property damage and paying discriminatory taxes such as the Reich Flight tax.[65]
- Compensation for Damages to Career or Economic Advancement: This category entitled self-employed and privately employed claimants from the time persecution began until January 1, 1947. The exact amount would be calculated at 2/3 of the relevant civil servant's pay. If a claimant was unable to resume their career, they could elect to receive their pension early. The amount of the pension was 2/3 that of a civil servant's pension. Those who wanted to reestablish their business were entitled to a loan of up to DM30,000. Claimants could also claim assistance to make up for their missed education.[66]
- Compensation for Loss of Life or Pension Insurance: The claimant could claim up to DM10,000.[67]

Claimants could pursue compensation for harm endured under each of the various categories simultaneously, meaning they were not limited to one category when filing claims.[68] If a claim

[61] De Greiff, *Luxembourg Agreement, supra*, at p. 901. .Bundestag and Bundesrat are the two legislative chambers of the Federal Republic of Germany. (Bundesrat | German government | Britannica.).
[62] *Id*. at p. 403.
[63] *Ibid*.
[64] *Ibid*.
[65] *Id. at* p. 404.
[66] *Ibid*.
[67] *Ibid*.
[68] Colonomos and Armstrong, German Reparations, *supra,* at p. 403

was denied, the victim could file a case in court.[69] For damage to body or health claims, the claimant would have to be interviewed and examined by court-nominated experts.[70]

There were some deficiencies in the 1953 Compensation Law, which Parliament tried to fix in the 1956 Federal Compensation Law.[71] The 1956 Law increased the maximum compensation for loss of life to DM25,000 and improved the claims process to make it easier for claimants.[72] The 1956 Law still excluded those persecuted outside of Germany, forced laborers, victims of forced sterilization, the "antisocial," Communists, Gypsies, and homosexuals.[73]

In 1965, the FRG enacted the Federal Compensation Final Law. The Final Law made the following changes:

- It created a hardship fund of DM1.2 billion ($300 million U.S. dollars) to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965.[74]
- Compensation for Health: Eased burden on claimants to prove damages to their health were caused by their earlier persecution by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime.[75]
- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after. [76]
- The ceiling for education claims increased to DM10,000.[77]
- Claims already adjudicated were to be revised based on the new law. [78]

The Final Law still excluded some of the same groups as the prior versions of the compensation laws. [79] And it did not include a category for compensation for work performed by slave or forced labor. [80]

Over the course of the reparations process, the German government received over 4.3 million claims for individual compensation, of which 2 million were approved.[81] It is estimated that by

[69] Colonomos and Armstrong, *German Reparations supra*, at p. 410.
[70] Colonomos and Armstrong, *German Reparations supra*, at p. 410.
[71] *Id. at pp.* 404-405.
[72] Colonomos and Armstrong, German Reparations, *supra,* at p. 405.
[73] *Id.* at p. 406.
[74] *Id.* at p. 407.
[75] *Ibid.*
[76] *Ibid*.
[77] *Ibid*.
[78] *Ibid*.
[79] *Ibid*.
[80] Colonomos and Armstrong, German Reparations, *supra,* at p.407
[81] Colonomos and Armstrong, *German Reparations, supra*, at p. 408.

2000, Germany had paid more than DM82 billion in individual reparations or $38.6 billion U.S. dollars.[82]

Protocol 2: Claims Conference

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million, the equivalent of $107 million U.S. dollars,[83] for the "relief, rehabilitation (social and cultural), and resettlement of Jewish victims of Nazi persecution living outside of Israel."[84] The money would be paid to Israel and Israel would disburse the funds to the Claims Conference for it to disburse the money.[85]

Post 1952 Luxembourg Agreement Measures

The 1953, 1956, and 1965 Compensation Laws excluded compensation for forced labor and slave labor. The process for compensating these harms began in the German parliament in 1998.[86] The World Jewish Congress and the Claims Conference began placing pressure on German companies that benefited from slave labor and forced labor during World War II to pay reparations.[87] These companies also faced foreign political pressure from governments like the United States.[88] There was no political pressure from organizations like the United Nations, however.[89] Lawsuits in the United States against German companies that operated in the United States also applied pressure to the German government and the German companies to provide compensation for the labor they benefited from during the war.[90]

These efforts culminated in the enactment of the Forced and Slave Labor Compensation Law in July 2000.[91] Eight countries were involved: Germany, the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and Ukraine.[92]

The fund contained DM8.1 billion to compensate slave and forced laborers.[93] The compensation scheme implemented "rough justice."[94] Former slave laborers[95] received DM15,000 or the equivalent of $7,500 U.S. dollars.[96] Former forced laborers received DM5,000 or $2,500 U.S.

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[82] Colonomos and Armstrong, *German Reparations, supra*, at p. 408.
[83] Honig, *Reparations Agreement,* 48 Am. J. Int'l L. at p. 567
[84] Colonomos and Armstrong, *German Reparations, supra*, at p. 399.
[85] *Ibid.*
[86] Authers, *German Compensation, supra*, *at* p. 429.
[87] *Id.* at pp. 429-430.
[88] *Id.* at p. 431.
[89] *Ibid*.
[90] *Ibid*.
[91] *Id.* at p. 433.
[92] *Id.* at p. 432.
[93] Authers, *German Compensation, supra*, p. 434. In 1999, $1 equaled 2.08 Deutchemarks. (Historical US Dollars to German Marks currency conversion (ucsb.edu).) Based on the conversion rates, the DM8.1 billion fund to compensate laborers was the equivalent of approximately $3.9 billion U.S. dollars.
[94] Authers, *German Compensation, supra*, p. 434
[95] Slave labor was work performed in a concentration camp or ghetto or other places of confinement under conditions of hardship. Forced labor was work performed by force other than slave labor in the Third Reich or its territories under conditions resembling imprisonment. (Authers, *German Compensation, supra*, p. 435.)
[96] *Id.* at p. 434.

dollars.[97] Payments were limited to claimants only and not extended to descendants. However, heirs of anyone who died after February 1999, the date negotiations regarding compensation began, could file a claim.[98]

The Law also allowed for compensation for all non-Jewish survivors living outside the five Eastern European countries.[99] The International Organization for Migration processed those claims.[100] Claimants had to complete applications by December 31, 2001.[101] By the deadline, the International Organization of Migration had received 306,000 claims.[102]

In filing their claims, claimants had to provide details of previous claims made and provide a copy of their IDs.[103] They were also required to declare whether they received slave labor compensation directly from a German company.[104] They also had to identify a place where they were forced to perform slave or forced labor and waive their legal rights against the German government and in connection with Nazi-era activities against all German companies.[105]

Every check that was issued under the Forced and Slave Labor compensation law had the following apology from the President of Germany included:

> This compensation comes too late for all those who lost their lives back then, just as it is for all those who died in the intervening years. It is now therefore even more important that all survivors receive, as soon as possible, the humanitarian agreement agreed today. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. I pay tribute to all those who were subjected to slave and forced labor under German rule, and in the name of the German people, beg forgiveness. We will not forget their suffering.[106]

Assessments of the FRG-Israel Reparations Scheme

Initially, there was significant opposition to the idea of reparations in Germany.[107] Chancellor Adenauer's reparations initiative did not have the full support of German citizens.[108] Germans considered themselves victims of the war.[109] And the majority believed that German widows and orphans should receive support first, with Jewish citizens at the bottom of the list.[110] Government officials were also against reparations. One concern was that a potentially large expenditure, as

[97] *Ibid*.
[98] *Id.* at p. 435.
[99] *Id.* at p. 437
[100] *Ibid.*
[101] *Id.* at p. 435.
[102] Authers, *German Compensation, supra* p. 435
[103] *Id.* at p. 436
[104] *Ibid.*
[105] *Ibid.*
[106] Authers, *German Compensation, supra* at p. 427
[107] Colonomos and Armstrong, *German Reparations, supra*, at p. 394
[108] Colonomos and Armstrong, *German Reparations, supra*, at p. 394
[109] Colonomos and Armstrong, *German Reparations, supra*, at p. 394
[110] Colonomos and Armstrong, *German Reparations, supra*, at pp. 394-395

reparations would likely require, could be risky for Germany given its financial position after the war. [111]

There was also opposition in the Jewish community. This initial opposition was so intense that the initial negotiations were held in secret until they could reach an agreement that would be acceptable to both countries.[112] Underlying the opposition was the idea that the Jewish people should not accept money to absolve the German people of the harm they caused.[113] The debt the Germans had incurred was a moral one that could not be paid off. [114] Pragmatism eventually won. Reparations could help develop Israel so that the country would be stronger and could save Jews from all over the world quickly in another crisis.[115] But it was understood that the moral debt Germany had acquired because of its actions towards the Jewish people could not be "quantified and hence would remain eternal."[116]

Scholars have noted that the Luxembourg Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate another country that was not the victor in a war.[117] Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation."[118] And the Agreement was formed by two states that were "descendant entities of the perpetrators and victims."[119] The program was the largest reparations program ever implemented.[120] And it had significant economic and political consequences for both Israel and the FRG.[121] The treaty enabled a substantial trade relationship between the two countries.[122] When reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.[123]

2. **Chile**

Under the 1973 to 1990 dictatorship of General Augusto Pinochet, the people of Chile were subjected to a systematic campaign of torture and state violence: an estimated 2,600 to 3,400 Chilean citizens were executed or "disappeared," while another estimated 30,000 to 100,000 were tortured.[124]

The dictatorship began with a coup the morning of September 11, 1973, under the guidance of U.S. Secretary of State Henry Kissinger to seize the democratic socialist government of Dr.

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[111] Colonomos and Armstrong, *German Reparations, supra*, at p. 395
[112] Colonomos and Armstrong, *German Reparations, supra*, at p. 394.
[113] Colonomos and Armstrong, *German Reparations, supra*, at pp. 396-397
[114] Colonomos and Armstrong, *German Reparations, supra*, at p. 397
[115] Colonomos and Armstrong, *German Reparations, supra*, at p. 397
[116] Colonomos and Armstrong, *German Reparations, supra*, at p. 397
[117] Barkan, Between Restitution and International Morality (2001) 25 Fordham Int'l L.J. 46, 49
[118] *Ibid*.
[119] *Ibid*.
[120] Colonomos and Armstrong, *German Reparations, supra*, at p. 408.
[121] Colonomos and Armstrong, *German Reparations, supra*, at p.408
[122] Colonomos and Armstrong, *German Reparations, supra*, at p.409.
[123] Colonomos and Armstrong, *German Reparations, supra*, at p.409
[124] *The Center for Justice & Accountability, Chile (as of December 27, 2022).*

Salvador Allende.[125] Pinochet's military junta seized power, ending Chile's long tradition of constitutional government.[126] Pinochet's military dictatorship defined segments of the Chilean population as ideological enemies – the "subversive" – and detained, tortured, and murdered suspected opponents of the dictatorship.[127] According to the 2004 Valech Report on Political Imprisonment and Torture, at least 27,255 people were tortured from 1973 to 1990, and approximately 2,296 people were killed or "disappeared," although an additional 1,000 still remain unaccounted for.[128] The National Truth and Reconciliation Commission found 899 additional cases of individuals "disappeared" or killed by state agents in the same period.[129]

In 1988, a national plebiscite, or referendum, was held to determine whether General Augusto Pinochet should remain president of the country. The plebiscite voted against his continuation. In March 1990, Patricio Alywin was sworn in as President of the Republic of Chile and one month later, he created the National Truth and Reconciliation Commission. This eight-member commission was tasked with disclosing the human rights violations that occurred under the previous dictatorship, gathering evidence to allow for victims to be identified, and recommending reparations in a legal, financial, medical, and administrative capacity.[130] In February 1991, the Commission delivered its first report, the Retting Report, to the President. The report determined that between September 11, 1973 and March 11, 1990, 2,298 persons had died as a result of human rights violations or political violence.[131] The Chilean armed forces and Supreme Court officially rejected the report, arguing that it did not take into account the historical and political context in which these acts occurred. Despite such criticism, however, the actual content of the Retting Report was not denied.[132] President Alywin sent a draft bill on reparations for the victims to Congress using the recommended measures of reparations from the Retting Report. The bill was approved and signed into law (Law 19.123) on February 8, 1992.

Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.[133] As written in Law 19.123, the national corporation would, but not be limited to, do the following:

- Promote reparations for the moral injury caused to the victims and provide the social and legal assistance needed by their families so that they can access the benefits provided for in Law 19.123.[134]

[125] The National Security Archive, Kissinger and Chile: The Declassified Record (as of December 27, 2022).
[126] *The Center for Justice & Accountability, Chile (as of December 27, 2022).*
[127] *Ibid.*
[128] *Ibid.*
[129] *Ibid.*
[130] *Greiff, The Handbook of Reparations (2010) p. 57; United States Institute of Peace, Truth Commission: Chile 90 (as of Dec. 23, 2022).*
[131] *Greiff, The Handbook of Reparations (2010) p. 57*
[132] *Id. at p. 58*
[133] *Id. at p. 748*
[134] *Id. at p. 749*

- Promote and assist in actions aimed at determining the whereabouts and circumstances surrounding the disappearance or death of the detained or disappeared persons and of those persons whose bodies have not been located, even though their death has been legally recognized. In pursuing this objective, the corporation should collect, analyze, and systematize all information useful for this purpose.[135]
- Serve as a depository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar to those treated by it that may be compiled in the future. It may also request, collect, and process existing information in the possession of public and private institutions in relation to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission.[136]
- Compile background information and perform the inquiries necessary to rule on the cases that were brought before the National Truth and Reconciliation Commission, in which it was not possible to reach a well-founded conclusion as to whether the person detrimentally impacted was a victim of human rights violations or political violence, or rule on cases that were not brought before the Commission in a timely fashion, or, if they were, in which the Commission did not reach a decision due to lack of sufficient information..[137]
- Enter into agreements with nonprofit institutions or corporations so that they may provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.[138]
- Make proposals for consolidating a culture of respect for human rights in the country.[139]

Law 19.123 also established a monthly reparations pension for the families of the victims of human rights violations or political violence as identified in the report by the National Truth and Reconciliation Commission.[140] The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country. In 1996, the monthly pension amounted to $226,667 Chilean pesos (US $537).[141] This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123. Beneficiaries received a portion of the monthly pension:

- A surviving spouse received 40 percent of the total, or $90,667 pesos (US $215);[142]
- The mother of the petitioner or, in her absence, the father, received 30 percent of the total, or $68,000 pesos (US $161);[143]

[135] *Ibid.*
[136] *Ibid.*
[137] *Ibid.*
[138] *Id. at p. 750*
[139] *Ibid.*
[140] *Id. at p. 59*
[141] *Ibid.*
[142] *Ibid.*
[143] *Ibid.*

- A surviving mother or father of a victim's out-of-wedlock offspring received 15 percent of the total, or $34,000 pesos (US $80);[144]
- Each of the children of a disappeared person received 15%, or $34,000 pesos (US $80), until the age of twenty-five. There was no age limit for children with disabilities.[145]

A one-time compensatory bonus equivalent to twelve months of pension payments was also awarded.[146] A beneficiary would also receive the pension in the proportion determined by the law, even if there were no other beneficiaries in the family.[147] Also, if the amount required by the number of beneficiaries exceeded the reference amount, each of them still received the percentage established by law.[148]

At the time of the passage of Law 19.123, other, smaller, programs were created to remedy specific issues, including a program within the Chilean Ministry of Health, financed by the United States Agency for International Development, to provide comprehensive physical and psychological health care for those who were most affected by human rights violations.[149]

There have been public criticisms of the reparations measures implemented by the government. Critics have objected to the declaration of the presumed death of the victims, the creation of a public interest corporation with no juridical faculties to investigate the whereabouts of disappeared detainees, and an unfair single pension model that does not take into account the number of members in each family.[150]

There were also notable issues with Law 19.123, which excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children born outside of marriage) and lacked recognition or remedy for specific victims (those illegally detained and tortured).[151]

On December 31, 1997, under new presidential leadership, the Corporation closed down and issued a final report, declaring that the work of the institution had contributed effectively to political reconciliation, but that the pending cases of more than 1,000 disappeared detainees undermined these efforts and that some of the obligations assigned to the Corporation had not been fulfilled.[152] With these unfulfilled obligations, and with an obligation to continue searching for disappeared victims under Article 6 of Law 19.123, the state continued some of the work of the Corporation following its closure. On April 25, 1997, the state issued Supreme Decree Num. 1.005, which established that a new "follow-up program" be created to follow up on specific duties and responsibilities of Law 19.123.[153] This included:

[144] *Ibid.*
[145] *Ibid.*
[146] *Ibid.*
[147] *Ibid.*
[148] *Ibid.*
[149] *Id. at pp. 67-92*
[150] *Id. at p. 58*
[151] *Id. at p. 63*
[152] *Id. at p. 63*
[153] *Greiff, The Handbook of Reparations (2010) p. 64*

- Implementation of the recommendation by the Truth and Reconciliation Commission.[154]
- Provision of the legal and social assistance for the families of the victims upon request.[155]
- Preservation and safekeeping of documents and archival records collected by the National Truth and Reconciliation Commission and the former National Corporation of Reparations.[156]

The next president, Eduardo Frei Ruiz-Tagle, continued this work on reparations and initiated roundtables on human rights between 1999 and 2000.[157] These roundtables culminated in a supplementary report of 200 new cases of disappeared detainees.[158] In response, elements of the follow up program for Law 19.123 were integrated into the Human Rights Program of the Ministry of Interior. The new program continued to work with families, and a newly reorganized judicial program provided logistical support to special judges conducting investigations in regiments, clandestine cemeteries, and other places indicated in the report by the armed forces.[159]

In August 2003, the next president, Ricardo Lagos, proposed and sent three bills to Congress to strengthen the work of the Follow-Up Program, increase pension amounts, and expand beneficiary access to pensions.[160] The President argued that the human rights violations of the dictatorship represented a social, political, and moral scar that required additional meaningful reparation measures and a responsible recognition of the magnitude of the problem.[161] In September 2003, President Lagos created the National Commission on Political Imprisonment and Torture Report (Valech Commission) to continue the work of reparations by identifying victims, proposing new measures of reparations, and producing a final report.[162] On November 10, 2004, the Valech Commission delivered its first 1,200-page report to President Lagos, who then presented it to the nation in a televised speech later than month.[163] The President asked the Valech Commission to produce a complementary report taking into account approximately 1,000 additional cases submitted by victims and their families.[164] That report was delivered in June 2005.[165]

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately US $200 per month) and free education, housing, and health care.[166] In 2009, the Chilean Congress passed Law No. 20.405 creating the Institute for Human Rights.[167] Under this law, Chilean President Michelle Bachelet

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[154] *Ibid.*
[155] *Ibid.*
[156] *Ibid.*
[157] *Id. at p. 65*
[158] *Ibid.*
[159] *Ibid.*
[160] *Id. at p. 66-67*
[161] *Ibid.*
[162] United States Institute of Peace, Commission of Inquiry: Chile 03 (as of Dec. 27, 2022).
[163] *Ibid.*
[164] *Ibid.*
[165] *Ibid.*
[166] *Ibid.*
[167] *Ibid.*

was tasked with creating a consultative commission, the Valech II Commission, for the qualification for reparations for disappeared detainees, persons killed by extrajudicial executions, prisoners of conscience, and victims of torture.[168] At this time, the Chilean government entered into international networks to help address the human rights abuses that occurred in Chile. In 2009, Chile joined the Rome Statue of the International Criminal Court in 2009.[169] In 2015, Chile became a signatory party to the Agreement on the Statue and Functions of the International Commissions on Missing Persons.[170] Today, the Chilean government continues to work to address past human right abuses through new commissions and instruments, including the Chilean System of National DNA Databases to test and match DNA samples between relatives and missing persons.[171]

3. South Africa

"Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority black population of basic rights and securing the white minority's power over the country's government, economy, and resources."[172] Following the election of Nelson Mandela as the country's first non-white president, the South African government passed the Promotion of National Unity and Reconciliation Act (the Act) to help transition South Africa out of the apartheid era and into an era of democracy in which Black South Africans would have full participation. To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees. One committee was the Committee on Human Rights Violations (CHRV) which investigated the gross human rights violations committed during the apartheid regime. Another committee of the Commission was the Amnesty Committee, which was responsible for determining which perpetrators of gross human rights violations would receive amnesty, that is, immunity from civil and criminal liability for their crimes. And the final committee was the Committee on Reparations and Rehabilitation (CRR) which was responsible for developing an urgent interim reparations program and submitting final reparations policy recommendations to the government.

Included in the final reparations policy recommendations were financial and symbolic reparations as well as community rehabilitation programs and institutional reforms. The financial reparations recommendation was that the government pay individual reparations grants to 22,000 confirmed victims each year, for six years. To ensure successful implementation, the CRR also recommended that the government appoint a national body to implement the reparations program and a secretariat within the office of the President or the Vice President to oversee implementation.

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[168] *Ibid.*
[169] *International Commission on Mission Persons, Where are the Missing: Chile (as of Dec. 27, 2022).*
[170] *Ibid.*
[171] *Ibid.*
[172] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 454-455.

The government adopted some of the CRR's symbolic reparations recommendations, its community rehabilitation program recommendations, and its institutional reforms. The government did not adopt the recommendation for a national implementing body. Nor did it adopt the CRR's recommendation that it pay individual reparation grants for six years. Instead, in 2003, five years after the CRR submitted its final reparations policy recommendations, the South African government paid a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars to some of the 22,000 victims.[173] The payment was about one-fifth of the amount the CRR recommended to justly compensate victims for their suffering. By 2004, only 10 percent of the confirmed victims had received their payment.

The History of the Apartheid and Gross Human Rights Violations

De jure racial segregation was widely practiced in South Africa since the first white settlers arrived in South Africa.[174] When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid. [175] This system of "separate development" was furthered by the Population Registration Act of 1950, which classified all South Africans as either Bantu (all Black Africans), "Coloured" (those of mixed race), or white.[176] Another piece of legislation, the Group Areas Act of 1950, established residential and business sections in urban areas for each race, and barred members of other races from living, operating businesses, or owning land in areas designated for a different race. The law was designed to remove thousands of "Coloureds," Blacks, and Indians from areas classified for white occupation. As a result of the confluence of laws, specifically, the Population Registration Act, the Group Areas Act, and several "Land Acts" adopted between 1913 and 1955, more than 80 percent of South Africa's land was set aside for the white minority. [177]

The government also passed laws limiting education for Black South Africans. Specifically, the Bantu Education Act enacted in 1953, provided for the creation of state-run schools, which Black children were required to attend.[178] The goal of these state-run schools was to train Black children for "manual labour and menial jobs" the government "deemed suitable" for their race.[179] Black South Africans were also barred from attending universities in South Africa.[180]

To help enforce the segregation of the races and prevent Black South Africans from encroaching on white areas, the government strengthened existing "pass" laws, requiring "nonwhites to carry

[173] The rand is the official currency of South Africa. (rand Definition | Britannica Money.) The rand's value has fluctuated against the value of the American dollar over the years. (U.S. Dollar / South African Rand Historical Reference Rates from Bank of England for 1975 to 2023.) In 2003, R30,000 was the equivalent of $4,000 U.S. dollars. (Colvin, *Reparations Program in South Africa* in The Handbook of Reparations (De Greiff edit. 2006) at p. 209.)

[174] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[175] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[176] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023). A fourth category for Asian, that is Indian and Pakistani, was added later.

[177] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[178] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[179] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[180] The 1959 Extension of University Education Act prohibited established universities from admitting nonwhite students. (Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).)

documents authorizing their presence in restricted areas."[181] Many private companies, including ones based in the United States and Europe, enabled apartheid by manufacturing the military and police vehicles[182] used to enforce segregation and by creating the document system that stripped Black South Africans of their citizenship and their rights.[183]

Responses to violations of apartheid laws were brutal. Under South African law, police officers could commit acts of violence, that is, torture or kill, in the pursuit of their official duties.[184] One confirmed victim of gross human rights abuses was tortured by police on four different occasions.[185] On one occasion he was electrocuted.[186] On another "they put a tire around [his] neck, placed [his] hands behind [his] back and threw matches at [his] hair."[187] On one occasion, he was tortured for five days.[188] And on yet another occasion, he was detained for six months without charges and tortured. [189]

There were also numerous large-scale shooting incidents that involved police officers roaming through Black townships in vehicles called Hippos and shooting Black people, including children.[190] In one incident in 1985, a thirteen-year-old was shot and killed by security forces while traveling from his grandmother's house to his home to pick up his schoolbooks.[191] Other children were shot and killed while playing outside with friends.[192]

The Commission's Final Report documented the "extreme violence necessary to maintain the apartheid regime."[193] In essence, the system of apartheid was held in place by gross human rights violations, "including prolonged arbitrary detention, forced exile, forced relocation, revocation of citizenship, forced and exploited labor, extrajudicial killings, and torture" committed by state and private actors.[194]

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[181] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[182] A Ford plant in Port Saint Elizabeth manufactured vehicles that were used by the military and police. (Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 462-463.)

[183] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 455

[184] The 1961 Indemnity Act gave police officers authority to commit acts of violence to uphold apartheid. See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).

[185] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,368-369.

[186] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,368.

[187] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,368.

[188] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,368-369.

[189] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367, 369.

[190] See Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 473-475.

[191] See Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 474.

[192] See Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 473-475.

[193] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,380.

[194] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 455

There was resistance to apartheid from the beginning. One of the first demonstrations against apartheid took place in Sharpeville on March 21, 1960.[195] As a result of the demonstration, police officers opened fire on the crowd, "killing about 69 Black Africans and wounding many more." [196] The primary political group that spearheaded the fight to eliminate apartheid was the African National Congress (ANC).[197] The government banned the ANC from 1960 to 1990. [198] Eventually, there was outside economic pressure on South Africa to abandon apartheid, including from the United States and Europe, which imposed selective economic sanctions on South Africa. [199]

Secret negotiations between the National Party, the ruling apartheid party, and the ANC, the resistance, to end apartheid began under President Botha and concluded under President F.W. de Klerk on February 2, 1990, when he announced that he would release all political prisoners and unban anti-apartheid organizations, like the ANC.[200] De Klerk's announcement began formal negotiations to end apartheid.[201] The bargain struck required the NP to give up power and allow free elections in exchange for amnesty.[202] Those negotiations culminated in the Interim Constitution, which enfranchised Black South Africans and provided for elections in 1994.[203] The Interim Constitution required the new Parliament to draft a final constitution and draft the framework for the new government of South Africa.[204]

The Interim Constitution also included an unnumbered section called the coda, post-amble, or epilogue, which provided for amnesty for the outgoing government in exchange for it giving up power peacefully and having the votes of everyone respected.[205] The coda also included language calling for reparations: "[T]he violent effects of apartheid can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparations but not for retaliation, a need for Ubuntu but not for victimization."[206] Essentially the bargain struck during the negotiations to end apartheid called for the perpetrators of gross human rights violations to receive amnesty and the victims to receive reparations.[207]

Reparations and the Creation of the Truth and Reconciliation Commission

[195] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[196] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[197] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[198] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[199] Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[200] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations (De Greiff edit. 2006) p. 176, 177.)
[201] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations (De Greiff edit. 2006) p. 176, 177.
[202] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,371.
[203] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,371.
[204] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,371.
[205] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,371
[206] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 179.
[207] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367,372

In addition to creating the Commission and outlining the duties of its three committees, the Promotion of National Unity and Reconciliation Act (the Act) identified the need for reparations as a primary concern, requiring the Commission "to provide for … the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights."[208] It also defined several key terms that would be used throughout the reparations process. First, it defined reparations using a very broad and open-ended definition: "any form of compensation, *ex gratia* payment,[209] restitution, rehabilitation or recognition."[210] The Act also distinguished between a longer-term reparations policy and an interim urgent reparations policy that would provide urgent reparations to "victims."[211] The urgent reparations would go to those "victims not expected to outlive the [Commission]" and "those who had urgent medical, emotional, educational, material, and/symbolic needs."[212]

A "victim" was defined as a person who "suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or 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."[213] "A gross violation of human rights is defined as (a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit [killing, abduction, torture or severe ill-treatment.]"[214]

The Act also provided for but did not require, the creation of a President's Fund (Fund) that would hold and disburse funds as reparations.[215] The Fund would hold and invest money appropriated to it by Parliament and money donated by nongovernmental sources.[216]

Even though it addressed reparations, the Act did not codify or otherwise guarantee the right to reparations.[217] Nor did it grant the Commission power to implement any of the final reparations policy proposals.[218] The Commission's power ended with the submission of the final report.

The Committee on Human Rights Violations (CHRV)

[208] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 181 [internal quotes omitted].

[209] *Ex gratia* payment means any payment given out of a sense of moral obligation instead of as a legal obligation.

[210] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182

[211] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182

[212] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182

[213] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182

[214] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182

[215] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183

[216] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 184

[217] See De Greiff, The Handbook of Reparations (2006) at p. 777 (Chapter 5, ¶ 27, granting the President authority to revise and, in appropriate cases, discontinue or reduce "any reparation.") The final Constitution did not guarantee the right to reparations either. But it adopted all the amnesty provisions in the Interim Constitution. (Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 179.)

[218] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 181

The Commission's CHRV was responsible for investigating human rights abuses. One significant limit set on the work of the CHRV was that it could only investigate *gross* violations of human rights defined as killing, abduction, torture, and severe ill-treatment that were politically motivated and which occurred between 1960 and 1994.[219] This definition of gross human rights violations meant that forced removals to unfertile land, wholesale appropriation of land that left the majority of the population living on 13 percent of the land, oppressive labor conditions in mines and on farms, educational deprivations, and legal restrictions from birth to death would not be investigated.[220] Nor would any of the racially-based abuses that occurred before 1960 be included.[221] Also excluded from investigation were practices that excluded Black South Africans from educational institutions and professions or restricted access to resources based on race.[222]

The Act also required a victim's claim of gross human rights violations to be corroborated before the victim could qualify for reparations.[223] There was a documented massive document destruction campaign during the reparations process, however, which likely affected the ability of many victims to obtain corroborating evidence of human rights abuses they suffered.[224] Further, there were outside critiques that the requirement for corroboration "placed an insurmountable burden on many individuals who lacked supporting evidence of their experiences of being tortured, kidnapped, or losing loved ones."[225]

With these limitations, the CHRV dispatched "specially trained statement-takers" to all parts of the nation to take statements of victims.[226] From the thousands of statements they received, several "individuals whose stories would shed light on the broader patterns of abuses" were asked to tell their stories during televised hearings held throughout the country between 1996 and 1997.[227] Of the three committees, the CHRV's work is the most well-known because of the televised hearings showcasing the victims' stories.

Once a claim was filed, an investigation was conducted to determine whether there was enough to corroborate that the individual was a victim of gross human rights violations.[228] If the claim was corroborated, the victim received a letter confirming their status as a "victim" of human rights abuses.[229] If the claim could not be corroborated, the person was also informed by letter

[219] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,373
[220] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,373
[221] See Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,373
[222] See Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 456
[223] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,375
[224] See Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,375
[225] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,375
[226] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,373-374 (internal quotes omitted)
[227] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,373
[228] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,374
[229] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,374, fn. 15

and notified of their right to appeal the decision.[230] Ultimately, 22,000 individuals were identified as victims of gross human rights violations.[231]

Amnesty Committee (AC)

Several clauses in the Act guaranteed amnesty, that is, immunity from criminal and civil liability, for perpetrators of gross human rights violations, which included individuals and the State itself.[232] Perpetrators of human rights abuses and/or violations could apply for amnesty for acts associated with a political objective in the course of the conflicts of the past as long as they made full disclosure of all relevant facts.[233] They did not have to express regret or remorse. Nor offer an apology or request forgiveness to be granted amnesty.[234] Ultimately, the Commission granted amnesty to approximately 1,200 individuals, turning down 5,000.[235] If amnesty was granted, that meant a victim of the gross human rights violation could not pursue civil or criminal remedies against the perpetrator for the harms suffered. Instead, victims had to rely on the new government for reparations.[236]

Six months after the Commission began its work, three widows of victims of the security forces and the Azanian People's Organization (AZAPO) challenged the constitutionality of the Act based on the amnesty provisions, which absolved individuals and the state from civil and criminal liability for the human rights violations committed during apartheid.[237] The Constitutional Court held that the Act was constitutional despite the amnesty provisions because the amnesty provisions made it possible for "the truth of human rights violations to be known and the cause of reconciliation and reconstruction to be furthered."[238] The State authorized "the Parliament to balance the rights of the victims against the broad reconstructive goals of the Constitution."[239]

The Committee on Reparations and Rehabilitation (CRR)

The Commission's CCR was responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final reparations policy recommendations to the President. The policy recommendations for the urgent interim reparations policy were to be implemented during the life of the CRR and the CRR would be responsible for implementing those recommendations.[240] The CRR was also responsible for determining which individuals qualified as victims under the Act's definition.[241] This obligation required it to review referrals from both the CHRV and the Amnesty Committee and "make recommendations … in an endeavor to

[230] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,374, fn. 15
[231] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,374
[232] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 184
[233] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 372
[234] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 372
[235] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 372
[236] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 184
[237] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 184-185
[238] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 185
[239] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 185
[240] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[241] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183

restore the human and civil dignity of such victim."[242] The work of the CRR ended once the final reparations policy recommendations were submitted to the president.

Development and Implementation of the UIR Program

The UIR was an interim financial reparations program. CRR sent UIR policy recommendations to the government in September 1996. The government did not pass regulations to implement the UIR until April 1998.[243] The UIR regulations required information and referrals to services and financial assistance to access services that were necessary to meet urgent medical, emotional, educational, material, and symbolic needs to be provided to applicants whose needs the CRR deemed urgent.[244] Those applicants whose needs were deemed urgent included individuals who:

- Were terminally ill and would not survive beyond the term of the Commission
- Had no fixed home or shelter
- Were orphaned because of the violation
- Physical impairments markedly affected their social functioning
- Required special education because of mental or physical disability[245]

The UIR payments were calculated based on need and the number of dependents the person supported, ranging from a maximum of R2900 (US $250) for a victim with no dependents to a maximum of R5705 (US $713) for beneficiaries with five or more dependents.[246] The regulations prohibited UIR funds from being transferred or ceded by victims.[247] Further, the proceeds could not be attached as part of a court judgment or pass to the victim's estate.[248]

The first UIR payments were made in July 1998.[249] The UIR "process was mostly completed in April 2001."[250] The President's Fund paid out about R44,000,000 (US $5.5 million) in cash payments to 14,000 victims for three years.[251] Those payments ranged from R2000 (US $250) to R5600 (US $700).[252]

The reactions of the beneficiaries who received reparations under the UIR program were mixed.[253] None of the beneficiaries considered the reparations "blood money" that was used to buy their silence.[254] Some of the victims interpreted the funds, not as compensation for the harm

[242] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 182
[243] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 187-188
[244] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 188-189
[245] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 188
[246] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 188
[247] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 188
[248] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 188
[249] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 188
[250] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[251] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[252] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[253] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[254] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189. This was a significant issue with other reparations programs, including the FRG-Israel Reparations scheme following World War II. (See Colonomos & Armstrong, *German Reparations to the Jews after World War II: A Turning Point in the*

suffered, but as a symbolic gesture acknowledging their suffering.[255] Others felt the compensation was inadequate to meet "the tangible needs of their daily suffering" they experienced because of apartheid.[256] This group believed the UIR, even as a symbolic gesture, was inadequate.[257] The recipients of UIR also were sometimes threatened by those who did not receive UIR payments.[258]

Some critics of the UIR program contend that one inadequacy of the program was the lack of information shared with victims about the Commission.[259] Specifically, victims were not given information about how the Commission was organized or how it functioned.[260] Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next steps in the reparations process.[261] And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.[262]

One evaluation of the UIR program concluded that it "has not made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even adequate attempt at reparations."[263] Another critique was that the process for determining who would receive payments and providing payments to those individuals who qualified under the UIR took longer than expected.[264] Although the CRR sent recommendations to the government in September 1996, the government did not pass regulations until April 1998, more than a year later.[265] The government's delay in passing regulations caused the CRR to abandon the step in the process that called for the formation of a body that would coordinate and disburse the UIR reparations benefits.[266] The CRR assumed those duties instead.[267]

Final Reparations Policy Recommendations

The CRR was also responsible for developing final reparations policy recommendations that were submitted to the President for review. Once the final recommendations were submitted to the President, the President would review them and submit a set of policy proposals, including some of his own to the Parliament for debate.[268] After a debate, the Parliament would pass a resolution approving the reparations policy recommendations.[269] Once the parliamentary resolution was passed, the President was required to "publish the appropriate regulations to enact

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History of Reparations in the Handbook of Reparations at p. 396.) Here, by contrast, the beneficiaries did not consider the money paid under the UIR "blood money."

[255] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[256] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[257] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[258] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[259] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[260] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[261] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[262] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[263] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 190
[264] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 188-189
[265] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 187-188
[266] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[267] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 189
[268] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[269] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183

the resolution."[270] The regulations determined the basis and conditions upon which reparations would be granted and the authority responsible for implementing them.[271] The regulations also provided for revision, discontinuance, or reduction of reparations where the President deemed fit to ensure the efficient application of the regulations.[272]

In creating its reparation policy recommendations, the CRR could consider all forms of reparations, including financial, symbolic, and community-wide benefits.[273] The CRR could also make recommendations for 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."[274]

In developing its proposals, the CRR turned to international sources and structured its policies around the five international reparations principles: redress, restitution, rehabilitation, restoration of dignity, and reassurance of non-recurrence.[275] Once it defined the principles that would serve as the foundation for its reparations recommendations, the CRR began a consultative process with individuals, victim advocacy groups, NGOs, churches, civil society, and human rights organizations to develop a final reparations policy.[276]

The final reparations policy the CRR submitted to the President observed that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation."[277] More specifically, reparations were "necessary to counterbalance amnesty" given the perpetrators.[278] The CRR reminded the government that reparations were a moral requirement for the transition out of apartheid and that moral obligation required substantial reparation grants not token awards to victims.[279] Granting reparations to the victims, added value to the truth-seeking process by enabling survivors to experience the state's acknowledgment of the harm victims, their families, and South Africa as a whole experienced from apartheid.[280] Reparations also restored the survivors' dignity and affirmed the values, interests, aspirations, and rights of those who suffered.[281] Just as important, granting reparations also raised consciousness about the public's moral responsibility to participate in healing survivors and facilitating nation-building.[282]

The Commission through the work of its committees identified 22,000 victims.[283] Although victim advocates urged the CRR to keep the list of victims open so that victims who came

[270] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[271] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[272] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[273] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[274] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 183
[275] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 191
[276] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 191
[277] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 193
[278] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 193
[279] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 194
[280] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 193
[281] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 193
[282] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 193
[283] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367,374; Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 192

forward later could qualify for reparations, it declined to do so for two reasons.[284] It concluded that the government was unlikely to accept an open-ended list.[285] And the CRR was without power to expand the definition of a victim under the language of the Act to expand the list of people who qualified as victims beyond the 22,000 identified victims.[286] The CRR made the following final reparations policy recommendations:

Individual Reparations Cash Grants

The CRR recommended that the government pay annual payments ranging between R23,023 ($2,878 in U.S. dollars) and R17,029 ($2,129 U.S. dollars), based on the size of the family for six years.[287] The amount of the grants was based on the median annual household income for a family of five in South Africa, which was R21,700 or $2,713 U.S. dollars in 1997.[288] People in rural communities or with large numbers of dependents would receive more.[289] Despite the CRR's justification for its reparations grant recommendations, the government rejected its recommendation and decided to give victims a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars, each.[290] The financial costs for the reparation grants of R30,000 amounted to .067% of the Gross Domestic Product (GDP) and .25% of the government's total annual expenditure.[291]

The CRR's policy recommendations also included several alternative schemes for financing the reparations grants:

- Imposing a wealth tax
- Imposing a one-off levy on corporate and private income
- Requiring each company on the Johannesburg Stock Exchange to make a one-off donation of one percent of its market capitalization
- Levying a retrospective surcharge on corporate profits
- Imposing a surcharge given to senior public servants since 1990
- Suspending taxes on land and other material donations to formerly disadvantaged communities[292]

Recommendations for Broader Macroeconomic Reforms

As a broader restructuring of macroeconomic policies for the country, the CRR made the following recommendations:

- Reallocation of resources from the defense force budget;
- Donations from individuals, international aid organizations, and the business sector;

[284] See Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 191.
[285] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 191
[286] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 191
[287] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 194.
[288] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 194.
[289] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 194.
[290] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 197,209
[291] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 198
[292] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 199

- Request that the EU divert unspent funds earmarked for development projects into the President's Fund;
- Exert pressure on Swiss and other governments and banks for contributions;
- Restructure social spending limits, the tax system, and the Government Pension Fund to release more money for social spending;
- Cancellation of foreign debt.[293]

One organization recommended that multinational corporations, which extracted roughly R3 billion a year between 1985 and 1993 from South Africa be required to return 1.5 percent of those profits for six years, which would pay for the individual reparation grants.[294]

Recommendations for Symbolic Reparation and Community Rehabilitation

In addition to the individual reparation grants, the CRR recommended symbolic, community, and national reparation and rehabilitation policy proposals. The symbolic measures fell into three categories:

Individual interventions

- Issuing death certificates
- Exhumations, reburial, ceremonies
- Headstones and tombstones
- Declarations of death
- Expungement of criminal records,
- Acceleration of outstanding legal matters related to human rights violations

Community Interventions

- Renaming streets and facilities
- Memorials and monuments
- Culturally appropriate ceremonies

National interventions

- Renaming of public facilities
- Monuments and memorials
- A National Day of Remembrance

The community rehabilitation recommendations focused on programs and remedies that would address the harm caused to communities by apartheid policies:[295]

- National demilitarization
- Resettlement of displaced persons and communities
- Construction of appropriate local treatment centers

[293] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 199
[294] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 199
[295] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 195-196

- Rehabilitation of perpetrators and their families
- Support for mental health services and community-based victim support groups
- Skills training
- Specialized trauma counseling services
- Family-based therapy
- Educational reform at the national level
- Study bursaries (monetary education awards)
- Building and improvement of schools
- Provision of housing

The CRR also recommended several proposals aimed at transforming institutions and a wide range of sectors in South African society, including the judiciary, media, security forces, business, education, and correctional services, to prevent the recurrence of human rights violations that characterized apartheid.[296]

The CRR had no power to implement any of the recommendations in its final reparations policy proposal because its term ended with the submission of the Commission's final report.[297] Recognizing that implementation would need to be organized at the national and local levels, the CRR recommended that the President appoint a secretariat, with a fixed term to oversee the implementation of the reparations and rehabilitation proposals.[298] The CRR also recommended the appointment of a national body, headed by a national director, to implement the reparations scheme.[299] Among its duties, the national body would be responsible for implementing and administering any financial reparations policy, monitoring and evaluating the implementation of the reparations policies, and establishing provincial reparations desks to implement reparations policies at the local level.[300] The provincial reparations desks would report directly to the National Director. [301]

Government Implementation

After the CRR submitted its final reparations policy recommendations, a core group of NGOs and victim advocacy groups emerged as leaders in the fight to ensure that the government implemented the final reparations policy recommendations implemented.[302] The government resisted their efforts, however, on the grounds that not all of the Commission's work was completed, and until the Commission's final report was submitted, the government was not in a position to do anything with reparations.[303] The final report was submitted in 2003.[304]

[296] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 196
[297] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 200
[298] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 196
[299] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 196
[300] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 196-197
[301] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 197
[302] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 200
[303] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 201
[304] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 201

In late 2002, before the Commission's final report was submitted, several individual victims and victim advocacy groups filed lawsuits in a US federal district court under the Alien Tort Statute[305] against several multinational corporations that conducted business with South Africa during apartheid and manufactured products that helped the South African government maintain apartheid.[306]

In the end, the government did not adopt the CRR's recommendations to appoint a secretariat to oversee reparations. Nor did it appoint a national implementing body. It also did not adopt the recommendation for the government to pay individual reparations grants to victims for six years. Instead, in November 2003, five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars.[307] A year later about 10 percent of victims had not received payment because there was difficulty in locating them or confirming bank account information.[308] The total individual reparation grants paid to victims amounted to one-fifth of the CRR's original financial reparations recommendation.[309]

The government did enact some of the symbolic reforms and institutional reform recommendations. The government provided around R800,000 in reburial expenses to 47 families of disappeared persons whose remains were found and reburied.[310] Public symbols of martyrs and those opposed to apartheid have replaced those public symbols of apartheid.[311] The country's largest airport is no longer named after the first apartheid prime minister.[312] And institutions have been integrated even if tensions remain.[313] Much has been done for community rehabilitation in terms of housing, education, and access to healthcare. [314] "[T]here is still much to do" to ensure equity for Black South Africans in these areas of basic human needs, however.[315]

As of 2013, the President's Fund stands at around 1 Billion rand.[316] The government has proposed to use part of this for medical and higher education assistance to the same registered

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[305] The Alien Tort Statute allows non-U.S. citizens to sue in U.S. courts for violations of International law done in concert with state officials. (Farbstein, *Perspectives From a Practitioner: Lessons Learned From the Apartheid Litigation* (2020) 6 Harv. Int'l L.J. 451,458, fn. 25 (citing 25 U.S.C. § 1350).)

[306] Farbstein, *Perspectives From a Practitioner: Lessons Learned From the Apartheid Litigation* (2020) 6 Harv. Int'l L.J. 451,458. The district court dismissed the lawsuit in 2014. The Second Circuit affirmed the dismissal. And the U.S. Supreme Court denied certiorari in 2016. (Farbstein, *Perspectives From a Practitioner: Lessons Learned From the Apartheid Litigation* (2020) 6 Harv. Int'l L.J. 451, 461-462.)

[307] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 209

[308] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 209-210

[309] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 210

[310] International Center for Transitional Justice: South Africa South Africa | International Center for Transitional Justice (ictj.org)

[311] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 383

[312] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 383

[313] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 383

[314] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 383

[315] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 383

[316] International Center for Transitional Justice: South Africa South Africa | International Center for Transitional Justice (ictj.org)

victims who received compensation previously. It has also proposed to fund "community rehabilitation projects" in economically distressed communities.[317] Victims and survivors have criticized both policies and have argued that medical and higher education assistance should be given as well to an additional 30,000 more survivors who, for various reasons, were not able to register with the Commission during its tenure.[318] These organizations have asked that individual compensation get equal priority over community reparations and that the selection of communities for the latter program should be done in consultation with survivors' organizations.[319]

Throughout the life of the Commission and after, victims raised the objection that the Commission and the government have been much more interested in placating and protecting perpetrators than they have been in meeting the needs of victims.[320] Another key critique of the South African reparations process was that there was no institutional support for victims after the final reparations policy recommendations were submitted to the government because the Commission formally ended with the submission of its final report.[321] "The failure to plan beyond the recommendations, however, resulted in many disappointed South Africans who assumed that meaningful reparations would begin at or before the close of the TRC process. Now that the TRC has formally shut down, the victims are left with their own meager resources and without any significant institutional support."[322] The structure of the Commission, including the limitations placed on its power to implement its reparations policy recommendations or even be involved in the process after submitting its recommendations to the President, almost guaranteed that the victims would not receive reparations based on the final reparations policy recommendations.[323]

Some scholars believe the problem with the implementation of the reparations scheme began with the secret negotiations to end apartheid and carried through the Constitutional Court's decision in the AZAPO case that the amnesty provisions were legitimate even if they stripped victims of remedies for actual harm suffered.[324] From the inception of the negotiations to end apartheid, there was no guarantee that victims would receive an adequate remedy or compensation. Although reparations were discussed at points during the negotiation process, a reparations policy that entitled victims to reparations was not codified in any of the official documents of the new government.[325] Indeed, the Act allowed the President to discontinue

[317] International Center for Transitional Justice: South Africa South Africa | International Center for Transitional Justice (ictj.org)

[318] International Center for Transitional Justice: South Africa South Africa | International Center for Transitional Justice (ictj.org)

[319] International Center for Transitional Justice: South Africa South Africa | International Center for Transitional Justice (ictj.org)

[320] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 208
[321] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 385-386.
[322] Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 385-386.
[323] See Daly, *Reparations in South Africa: A Cautionary Tale,* 33 U. Mem. L. Rev. 367, 385-386.
[324] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 184-187
[325] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 178

reparations if the President deemed it necessary to do so.[326] A perpetrator's entitlement to amnesty, however, was guaranteed by the Interim Constitution, the final Constitution, the Act, and the Constitutional Court.[327]

The 1948 Universal Declaration of Human Rights asserted that an effective remedy should be provided for violations of fundamental human rights.[328] "In this context reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process."[329]

4. Canada

The Canadian federal government entered into the Indian Residential Schools Settlement Agreement in September 2007. It acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to assist former students of residential schools in their recovery.[330] It has five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.[331] The Settlement Agreement allocated $1.9 billion to the Common Experience Payment for all former students of the residential schools.[332] Every former student was given $10,000 for the first year at school and $3,000 for each additional year.[333]

Indigenous children in Canada were sent to residential schools from the 17th century until the late 1990s.[334] First established by Roman Catholic and Protestant churches, and based on racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity.[335] The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada, and the Act's further amendment in 1894 made attendance at residential schools mandatory.[336] Starting in the 1880s, the Canadian government made a concerted effort to establish and expand the residential school system to assimilate Indigenous peoples into settler society and to reduce Indigenous dependence on public assistance.[337]

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[326] See De Greiff, The Handbook of Reparations (2006) at p. 777 (Chapter 5, ¶ 27, granting the President authority to revise and, in appropriate cases, discontinue or reduce "any reparation.")

[327] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 178-179

[328] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 178

[329] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at p. 208

[330] de Bruin, *Indian Residential Schools Settlement Agreement* (Jul. 11, 2013) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter "de Bruin").

[331] *Ibid.*

[332] *Ibid.*

[333] *Ibid.*; All dollar amounts referred to in this section refer to Canadian dollars.

[334] *The Residential School System* (Sept. 9, 2020) Government of Canada (as of Jan. 24, 2023)

[335] *Ibid.*; de Bruin, *supra*.

[336] De Bruin, *supra*.

[337] *Ibid.*; Miller, *Residential Schools in Canada* (Oct. 10, 2012) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter "Miller').

There were 130 residential schools in Canada between 1831 and 1996.[338] During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools.[339] Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing.[340] Children were forced to leave their homes, parents, and some of their siblings, as the schools were segregated based on gender.[341] Their culture was disparaged from the moment they arrived at school; children surrendered their traditional clothes and had to wear new uniforms, the boys had their hair cut, and many were given new names.[342] At some schools, children were banned from speaking their first language, even in letters home to their parents.[343] The Christian missionary staff at these schools emphasized Christian traditions while they also simultaneously denigrated Indigenous spiritual traditions.[344] Physical and sexual abuse were common.[345] Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.[346]

Daniel Kennedy (Ochankuga'he), a former student at Qu'Appelle, recounted his experience:

> In 1886, at the age of twelve years, I was lassoed, roped and taken to the Government School at Lebret. Six months after I enrolled, I discovered to my chagrin that I had lost my name and an English name had been tagged on me in exchange . . . "When you were brought here [the school interpreter later told me], for purposes of enrolment, you were asked to give your name and when you did, the Principal remarked that there were no letters in the alphabet to spell this little heathen's name and no civilized tongue could pronounce it.
>
> 'We are going to civilize him, so we will give him a civilized name,' and that was how you acquired this brand new whiteman's name.'" . . . In keeping with the promise to civilize the little pagan, they went to work and cut off my braids, which, incidentally, according to the Assiniboine traditional custom, was a token of mourning—the closer the relative, the closer the cut. After my haircut, I wondered in silence if my mother had died, as they had cut my hair close to the scalp. I looked in the mirror to see what I looked like. A Hallowe'en pumpkin stared back at me and that did it. If this was civilization, I didn't want any part of it. I ran away from school, but I was captured and brought back. I made two more attempts, but with no better luck.
>
> Realizing that there was no escape, I resigned myself to the task of learning the three Rs . . . visualize for yourselves the difficulties encountered by an Indian boy

[338] Glover, *Residential Schools in Canada (Plain-Language Summary)* (Jan. 15, 2020) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter "Glover").
[339] *Ibid.*
[340] *Ibid.*
[341] Miller, *supra*.
[342] *Ibid.*
[343] *Ibid.*
[344] *Ibid.*
[345] Glover, *supra*.
[346] *Ibid.*

> who had never seen the inside of a house; who had lived in buffalo skin teepees in winter and summer; who grew up with a bow and arrow.[347]

Indigenous communities struggled to heal from the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation.[348] A group of 27 former students filed a class action lawsuit, *Blackwater v. Plint*, against the Government of Canada and the United Church of Canada in 1996.[349] *Blackwater* specifically pertained to the abuses perpetrated at Alberni Residential School on Vancouver Island in British Columbia.[350] The lawsuit spanned nine years, with the Supreme Court of Canada finally concluding that churches were not immune from damage claims and shared blame with the federal government.[351] Thousands of other former students began to sue the federal government and churches for, *inter alia*, assault, negligence, breach of fiduciary duty, and vicarious liability.[352] The sheer number of cases pending in the Canadian court system threatened to create a logjam, and the federal government in June 2001 "convened a series of dialogues on the subject of developing alternative dispute mechanisms between representatives from the church organizations, the federal government, and Aboriginal peoples, leaders, and healers."[353]

The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation.[354] In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution ("ADR") process.[355] In 2003, the ADR process began to provide psychological support and calculate compensation. The Indian Residential Schools Settlement Agreement was signed on May 8, 2006, and it went into effect in September 2007.[356] It is the largest class action settlement agreement to date in Canadian history.[357] On June 11, 2008, former prime minister Stephen Harper offered a public apology to those harmed by the residential schools; the leaders of the Liberal Party, the New Democratic Party, and the Bloc Quebecois also made official apologies.[358]

As stated previously, under the Settlement Agreement, every former student was given $10,000 for the first year at school and $3,000 for each additional year.[359] By the end of 2012, 98 percent

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[347] Miller, *supra.*
[348] de Bruin, *supra*.
[349] *Litigation and Courts* (as of Oct. 20, 2022) Canadian Geographic Indigenous Peoples Atlas of Canada (hereinafter "Indigenous Peoples Atlas").
[350] *Ibid.*
[351] *Ibid.*
[352] Llewellyn, *Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice* (2002) 52 U. Toronto L.J. 253, 262.
[353] *Id.* at pp. 262–265.
[354] de Bruin, *supra*.
[355] *The Indian Residential School Settlement Agreement* (as of Oct. 20, 2022) The University of British Columbia.
[356] *Indian Residential Schools Settlement Agreement* (May 8, 2006); de Bruin, *supra*.
[357] de Bruin, *supra*.
[358] Indigenous Peoples Atlas, *supra.*
[359] de Bruin, *supra*.

of the 80,000 eligible former students received payments.[360] The Independent Assessment Process provided a mechanism to resolve sexual abuse claims as well as serious physical and psychological abuse claims.[361] By the end of 2012, it provided more than $1.7 billion to former students.[362] Survivors had to detail the abuse they faced at a hearing, such as the duration, the abusers' identities, and medical and personal information.[363] This often led to the reopening of old wounds. For both the Common Experience Payment and Independent Assessment Process, rejections, inability to establish attendance at schools, failures of the process, and dismissal of claims led to re-traumatization of survivors and further harm.[364] Additionally, the Settlement Agreement allowed attorneys to charge clients up to 15 percent for difficult cases seeking compensation before the Independent Assessment Process.[365] Unfortunately, some unethical private attorneys charged 15 percent, in addition to further improper interest, fees, and penalties.[366]

The Settlement Agreement allocated $60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue.[367] The Commission issued a report in December 2015 entitled *Honouring the Truth, Reconciling for the Future* that documented the experiences of the 150,000 survivors.[368] In addition, the Settlement Agreement allocated $20 million for commemorative projects and $125 million for the Aboriginal Healing Foundation.[369] It also established the Indian Residential Schools Resolution Health Support Program, which offers former students mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.[370]

Residential schools continue to be in the news. In 2021, Indigenous communities reported they uncovered hundreds of unmarked graves of children who possibly died at residential schools due to disease or neglect, or who were possibly even killed.[371] The federal government responded by announcing in August 2021 an additional $320 million "for Indigenous communities facing the fallout of the residential school system," of which $83 million "will go toward burial site search efforts and commemoration for the victims."[372] The federal agency responsible for Indigenous relations will also create an advisory committee that includes experts in archaeology, forensics, and mental health as the grave searches continue.[373] Canada's minister of justice will also

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[360] *Ibid.*
[361] *Ibid.*
[362] *Ibid.*
[363] Indigenous Peoples Atlas, *supra*.
[364] *Ibid.*
[365] de Bruin, *supra*.
[366] *Ibid.*
[367] *Ibid.*
[368] *Ibid.*
[369] *Ibid.*
[370] *Ibid.*
[371] Austen, *With Discovery of Unmarked Graves, Canada's Indigenous Seek Reckoning*, N.Y. Times (June 26, 2021) (as of Jan. 24, 2023).
[372] Austen, *How Thousands of Indigenous Children Vanished in Canada*, N.Y. Times (Jun. 7, 2021, updated Mar. 28, 2022) (as of Apr. 11. 2023).
[373] *Ibid.*

appoint a special investigator to make recommendations about the grave sites and changes to federal law.[374] These discoveries have led to a federal investigation of similar schools in the United States.[375]

Additionally, despite the Settlement Agreement, litigation has not stopped.[376] In October 2022, the Canadian Supreme Court dismissed an appeal from a group of survivors from St. Anne's residential school in northern Ontario, who have alleged the federal government breached the Settlement Agreement because "it withheld documentation of abuse when deciding upon their compensation."[377] In 2014, the Ontario Superior Court ordered 12,300 pages of records (including transcripts of criminal trials, investigative reports from the Ontario Provincial Police, and civil proceedings about child abuse) be produced as a part of the compensation process.[378] The documents were heavily redacted and survivors claimed the redactions made it impossible to determine adequate compensation.[379] The minister for Crown-Indigenous Relations has stated the office will still discuss the case with St. Anne's survivors and has pointed to a 2021 report that noted 11 compensation cases that could be eligible for further payments.[380]

In January 2023, Canada stated it had agreed to pay $2.8 billion "to settle the latest in a series of lawsuits seeking reparations" for the harm to Indigenous communities through the residential schools.[381] This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture.[382] Under the terms of the settlement, the federal government will establish a trust fund for Indigenous communities to use for educational, cultural, and language programs.[383] A federal court judge approved the $2.8 billion settlement on March 9, 2023, noting that it is "fair, reasonable, and in the best interests" of the plaintiffs.[384] As a part of this agreement, the First Nations plaintiffs consented to "fully, finally and forever" release the federal government from claims related to the harms inflicted on the First Nations at the residential schools.[385] The First Nations communities will decide what to do with these funds "based on the 'four pillars principles outlined in the agreement: the revival and protection of Indigenous language; the

[374] *Ibid.*
[375] Hauser and Paz, *U.S. to Search Former Native American Schools for Children's Remains*, N.Y. Times (June 23, 2021) (as of Jan. 24, 2023).
[376] See, e.g., Deer, *Less than Half of the Over $200M Requested for Burial Searches at Residential Schools Funded*, CBC News (Sep. 29, 2022) (as of Jan. 24, 2023); Alhmidi, *Canadians reflect about residential schools on Truth and Reconciliation Day*, The Canadian Press (Sep. 30, 2022) (as of Jan. 24, 2023); Forester, *Trial Put on Hold in Residential School Reparations Class Action After Parties Agree to Negotiate*, CBC News (Sep. 28, 2022) (as of Jan. 24, 2023).
[377] The Canadian Press, *Supreme Court Will Not Hear from St. Anne's Residential School Survivors*, MSN (Oct. 20, 2022) (as of Jan. 24, 2023).
[378] *Ibid.*
[379] *Ibid.*
[380] *Ibid.*
[381] Austen, *Canada Settles $2 Billion Suit Over 'Cultural Genocide' at Residential Schools*, N.Y. Times (Jan. 21, 2023) (as of Jan. 24, 2023).
[382] *Ibid.*
[383] *Ibid.*
[384] The Canadian Press, *'Historic' $2.B Class-Action Indigenous Court Settlement Approved*, CBC News (Mar. 9, 2023) (as of Mar. 10, 2023).
[385] *Ibid.*

revival and protection of Indigenous culture; the protection and promotion of heritage; and the wellness of Indigenous communities and their members."[386] The settlement will go to an appeal period after which the money will be managed by a board of Indigenous leaders through a not-for-profit fund.[387] The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.[388]

Domestic Reparatory Efforts

5. History of the Movement for Reparations for African Americans

The earliest calls for reparations for African Americans precede the Civil War, with enslaved people demanding compensation for their labor and bondage.[389] In 1783, Belinda Sutton, a formerly enslaved woman in Massachusetts, petitioned the Massachusetts General Court for a pension from the estate of her enslaver, Isaac Royall, Jr.[390]

> Fifty years her faithful hands have been compelled to ignoble servitude for the benefit of an Isaac Royall . . . The face of your Petitioner, is now marked with the furrows of time, and her frame feebly bending under the oppression of years, while she, by the Laws of the Land, is denied the enjoyment of one morsel of that immense wealth, apart whereof hath been accumilated [sic] by her own industry, and the whole augmented by her servitude.[391]

Sutton's petition is one of the first narratives of African Americans demanding reparations. The court granted her petition, partially due to Royall's resistance to American independence and allegiance to the Tories.[392]

Calls for reparatory justice gained momentum at the end of the Civil War, after the federal government failed to fulfill General William T. Sherman's promise to give forty acres and a mule to those who were formerly enslaved.[393] African American abolitionist Frederick Douglass demanded land distribution for the formerly enslaved, comparing their plight to the Russian serfs who received land grants following their emancipation.[394]

In the late 1800s, African American freedmen led the call for reparations. Callie House and Isaiah Dickerson chartered the first national reparations organization, the National Ex-Slave Mutual Relief, Bounty, and Pension Association (MRBPA), in Nashville, Tennessee, in 1898.[395]

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[386] *Ibid.*
[387] *Ibid.*
[388] *Ibid.*
[389] Sinha, *The Long History of American Slavery Reparations* (Sept. 20, 2019) Wall Street Journal (as of Apr. 12, 2023).
[390] *Ibid.*
[391] Sutton, Belinda Sutton's 1783 Petition, Royall House & Slave Quarters (as of Apr. 12, 2023).
[392] Sinha, *supra*.
[393] Darity and Mullen, From Here to Equality: Reparations for Black Americans in the Twenty-First Century (2nd ed. 2022) p. 9.
[394] Darity and Mullen, *supra,* at p. 10.
[395] Darity and Mullen, *supra,* at p. 11.

The MRBPA grew to 300,000 members by 1916.[396] Their mission included: (1) identifying the formerly enslaved and adding their names to the petition for a pension; (2) lobbying Congress to provide pensions for the nation's estimated 1.9 million formerly enslaved—21 percent of all African Americans by 1899; (3) starting local chapters and providing members with financial assistance when they became incapacitated by illness; and (4) providing a burial assistance payment when a member died.[397] MRBPA's founders were inspired by the federal pension program for disabled veterans of the Civil War.[398] MRBPA filed a lawsuit against the federal government on behalf of African American freedmen for $68 million—the value of the cotton that had been grown and harvested by enslaved persons and that had been confiscated by Confederates around the end of the Civil War.[399] The claim was denied.[400]

The MRBPA faced strong opposition from the U.S. government.[401] In 1916, the government indicted Callie House for fraud, claiming that the leaders of MRBPA obtained money from the formerly enslaved by fraudulent circulars advertising that reparations from the government were forthcoming.[402] House was convicted and served time in a penitentiary in Missouri.[403]

Another reparations trailblazer was "Queen Mother" Audley Moore, known as the "Mother" of the modern reparations movement.[404] Moore founded several organizations, including the Committee for Reparations for Descendants of U.S. Slaves, dedicated to fighting for land and other reparations for African Americans.[405] In 1957 and 1959, she formally petitioned the U.N. for reparations for African Americans.[406] In 1968, Moore helped found the Republic of New Afrika, an organization that advocated for the formation of a separate majority-Black nation in the southeastern United States.[407]

Around the same time as Moore's UN petitions and creation of the Republic of New Afrika, many civil rights and Black Nationalist groups also demanded reparatory justice in addition to legal equality. For example, in the Black Panther's Ten-Point Program, they called for the "end to the robbery by the [w]hite man of our Black community" and demanded the debt owed of forty acres and two mules.[408] In a speech to students at Michigan State University in 1963, Malcolm X called for reparations:

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[396] Darity and Mullen, *supra,* at p. 12.
[397] Darity and Mullen, *supra,* at p. 11.
[398] *Ibid.*
[399] *Ibid.*
[400] *Ibid.*
[401] Perry, *No Pensions for Ex-Slaves: How Federal Agencies Suppressed Movement to Aid Freedpeople* (Summer 2010) 42 Prologue Magazine 2.
[402] Darity and Mullen, *supra,* at p. 12.
[403] *Ibid.*
[404] National African-American Reparations Commission, *Who is Queen Mother Moore?* (July 27, 2013) (as of Apr. 12, 2023).
[405] Darity and Mullen, *supra,* at p. 13.
[406] *Ibid.*
[407] *Ibid.*
[408] *The Black Panther Party's Ten-Point Program*, UC Press Blog (as of Apr. 12, 2023).

> The greatest contribution to this country was that which was contributed by the Black man . . . Now, when you see this, and then you stop and consider the wages that were kept back from millions of Black people, not for one year but for 310 years, you'll see how this country got so rich so fast. And what made the economy as strong as it is today. And all that, and all of that slave labor that was amassed in unpaid wages, is due someone today.[409]

In 1969, activist James Forman proclaimed a Black Manifesto that demanded $500 million from white Americans, paid by churches and synagogues, for their role in perpetuating slavery.[410] The Black Manifesto resulted in donations of $500,000, which supported the establishment of several Black political and economic organizations such as a Black-owned bank, four television networks, and the Black Economic Research Center.[411]

The reparations movement surged in the 1980s.[412] The National Coalition of Blacks for Reparations in America was founded in 1987,[413] and, with its help, U.S. Rep. John Conyers in 1989 introduced H.R. 40, a bill to establish the Commission to Study and Develop Reparation Proposals for African Americans.[414] Rep. Conyers introduced the bill 20 times without success.[415]

The publication of the 2014 essay "The Case for Reparations" by Ta-Nehisi Coates in *The Atlantic*[416] catalyzed the federal government to hold committee hearings to consider H.R. 40.[417] In the summer of 2020, the murder of George Floyd by police in Minneapolis sparked racial justice protests across the country that further pushed demands for reparations to the forefront of public conversation.[418] Reparations became a topic in the 2020 Democratic presidential primary.[419] In April 2021, with U.S. Rep. Sheila Jackson Lee as the bill's present sponsor, H.R. 40 was voted out of the House Judiciary Committee for the first time, but failed to receive consideration by the full House of Representatives in the 117th Congress (2021-2022).[420] H.R. 40 has been reintroduced in the 118th Congress, but as of May 2023, it was awaiting consideration by the House Judiciary Committee.[421] In the absence of federal action, states, cities, and municipalities have taken calls for reparations into their own hands.

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[409] X, The Race Problem (Jan. 23, 1963).
[410] Darity and Mullen, *supra,* at p. 14.
[411] Darity and Mullen, *supra,* at p. 14-15.
[412] Darity and Mullen, *supra,* at p. 15.
[413] National Coalition of Blacks for Reparations in America, *About* (as of Apr. 13, 2023).
[414] Darity and Mullen, *supra,* at p. 15.
[415] Felton, *Supporters Say They Have the Votes in the House to Pass a Reparations Bill after Years of Lobbying* (Feb. 25, 2022) Washington Post (as of Apr. 13, 2023).
[416] Coates, *The Case for Reparations* (June 2014) The Atlantic (as of Apr. 14, 2023).
[417] Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3121 (2019- 2020 Reg. Sess.) May 11, 2020, p. 7, (as of Apr. 14, 2023).
[418] Sotomayor, *House Panel Approves Bill to Create Commission on Slavery Reparations* (Apr. 14, 2021) Washington Post (as of Apr. 13, 2023).
[419] *Ibid.*
[420] Felton, *supra*.
[421] Congress.gov, H.R.40 - Commission to Study and Develop Reparation Proposals for African Americans Act.

6. Federal Reparatory Efforts

a. U.S. Indian Claims Commission

The United States Indian Claims Commission ("Commission" or "ICC") was established in 1946 through federal legislation.[422] The Commission provided a forum for Native Americans to pursue legal claims against the United States based on the government's appropriation of tribal land during the 18th and 19th centuries.[423] Congress established the forum out of a recognition that the treaties underlying many land transfers were inequitable.[424] However, the Commission was not empowered to transfer land back to tribes, and instead made financial awards to successful claimants.[425] Over the course of approximately 30 years, the Commission resolved over 500 claims and awarded approximately $800 million to tribal claimants.[426]

The ICC was ostensibly established to redress the harms inflicted on Native populations during the United States' campaign of colonization and relocation that began in the late 18th century. Government transgressions during this period were as diverse as they were devastating.[427] They included not only a staggering dispossession of land, but also the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide.[428] During this period, spurred by the doctrine of Manifest Destiny, the government acquired nearly two billion acres of land from Indigenous peoples, leaving just 140 million acres under Native control.[429] This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.[430]

Although the government's misconduct during this period was far-reaching, the ICC's focus was solely on land transactions, mostly notably in the treaty process. Many government leaders and historians have claimed that these transactions were fair and equitable,[431] but others have recognized that they were a means "to dismantle Native land ownership and codify its expropriation."[432] The treaties were "[n]egotiated under duress or facilitated with bribes, [and]

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[422] Kuykendall et al., United States Indian Claims Commission, Final Report at p. 5 (Sept. 30, 1978) ("Final Report").
[423] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1050.
[424] U.S. Congress House Committee on Indian Affairs, Hearings on H R 1198 and H. R. 1341 to Create an Indian Claims Commission. 79th Cong. 1st sess. March 2, 3, 28 and June 11, 14, 1945.
[425] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1050.
[426] Final Report, *supra*, at p. 21.
[427] *See, e.g.*, Cohen, Cohen's Handbook of Federal Indian Law (2005) at § 1.03[4][a] (discussing the Trail of Tears and several other forcible relocations associated with Indian Removal).
[428] Dunbar-Ortiz, Yes, Native Americans Were the Victims of Genocide (May 12, 2016) History News Network (as of Feb. 15, 2023); Dobuzinskis, California governor apologizes to Native Americans, cites 'genocide' (June 18, 2019) Reuters (as of Feb. 15, 2023).
[429] Final Report, *supra*, at p. 1.
[430] Saunt, The Invasion of America (Jan. 7, 2015) Aeon (as of Feb. 13, 2023).
[431] Churchill, Charades, Anyone? The Indian Claims Commission in Context (2000) 24 American Indian Culture and Research Journal 43.
[432] Derocher, *supra*, at p. 523.

were often violated soon after ratification, despite the language of perpetuity."[433] Moreover, the Indian Removal Act of 1830[434] codified the federal policy of relocating Native Americans to make way for settlers, which left tribal land owners with a Hobson's choice: either sell their land via treaty, or be forcibly removed without compensation.[435] Those removals led to many atrocities, including the Trail of Tears, in which the forced migration of Cherokee and other native peoples led to the deaths of thousands of Native Americans from disease and starvation[436]

Against the backdrop of these takings, tribes began to file legal claims in the U.S. courts in the early 19th century. But a succession of legal rulings and legislation precluded Native Americans from even having their claims heard.[437] Small progress was made in 1881 when Congress passed a jurisdictional act granting the Choctaw tribe access to the United States Court of Claims.[438] This theoretically made the legal process available to Native Americans, but any tribe seeking redress first needed individual Congressional approval.[439] By 1946, almost 200 tribal claims had been filed in the Court of Claims, but only 29 received awards, and most of the remaining claims had been dismissed for jurisdictional technicalities.[440] "The Government, the Indians, and impartial researchers all deemed this process to be inadequate[,]" and the prevailing dissatisfaction led to the creation of the Indian Claims Commission.[441]

The Commission was established with the goal of efficiently and conclusively resolving tribal claims against the United States government. It had jurisdiction to hear claims from "any identifiable group of Indian claimants residing in the United States or Alaska."[442] Much of the debate leading up to the enacting legislation centered on whether the entity should be adversarial or investigatory, and also on what role, if any, Congress should play in resolving individual claims.[443] It was ultimately decided that, though labeled a "commission" with investigatory powers, the ICC would also be a quasi-judicial and adversarial forum.[444]

The ICC was limited to awarding monetary relief and thus did not have jurisdiction to restore title to land.[445] The authorizing legislation permitted various claims, including those premised on "fraud, duress, [and] unconscionable consideration" as well as those based on "fair and honorable dealings."[446] The Congressional Committee on Indian Affairs stated that the bill was

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[433] The Invasion of America, *supra*.
[434] Indian Removal Act, Pub. L. No. 21-148, 4 Stat. 411 (1830).
[435] Leeds, By Eminent Domain or Some Other Name: A Tribal Perspective on Taking Land (Fall 2005) 41 Tulsa L. Rev. 51, 63 (as of Feb. 13, 2023).
[436] Cohen, *supra*, § 1.03[4][a].
[437] Final Report, *supra*, at p. 2.
[438] *Ibid*.
[439] *Ibid*.
[440] *Id*. at 3.
[441] *Ibid*.
[442] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1050. The question of what constituted an "identifiable group" was heavily litigated in the early years of the Commission. *See* Final Report, *supra*, at p. 9.
[443] *Id*. at 4-6.
[444] *Ibid*.
[445] Derocher, Manifesting a Better Destiny: Interest Convergence and the Indian Claims Commission (2021-2022) 24 New York University Journal of Legislation and Public Policy 511, 535 (as of Feb. 2, 2023).
[446] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049,

"primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted."[447] Indeed, the majority of claims alleged that "the United States acquired valuable land for unconscionably low prices in bargains struck between unequals."[448] Another large swath of claims alleged that the government had failed to abide by treaty provisions and called for an historical accounting, including in instances where the government was alleged to have mismanaged tribal funds.[449]

The Commission initially comprised three members, all appointed by President Harry Truman.[450] It acted as a "quasi-judicial branch of the legislature" that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.[451] Claims could be filed only during the first five years of the Commission.[452] Neither the statute of limitations nor doctrine of laches could be raised as a defense to tribal claims, but all other defenses were available to the government.[453]

In 1946, the Commission sent notice of the claims procedures to every recognized tribe within the United States.[454] Native American tribes secured counsel of their choice and the government was represented by the Attorney General.[455] All land claims were divided into three phases: title, value-liability, and offsets.[456] In the title phase, the Commission sought to identify the territorial boundaries that the tribe exclusively occupied. This phase frequently relied on the testimony of historians and anthropologists.[457] If the tribe successfully established title, the Commission proceeded to determine whether the government bore any liability, and, if so, for what amount. During this stage, expert appraisers valued the land as of the treaty date and historical records were reviewed to determine the compensation originally paid.[458] The award was calculated based on the difference between the fair market value and the original compensation.[459] Lastly, the Commission deducted "offsets" from any award based on "all money or property given to or funds expended gratuitously for the benefit of the claimant."[460] Adverse rulings could be appealed to the Court of Claims and, in certain instances, the United States Supreme Court.[461]

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[447] U.S. Congress House Committee on Indian Affairs, Hearings on H R 1198 and H. R. 1341 to Create an Indian Claims Commission. 79th Cong. 1st sess. March 2, 3, 28 and June 11, 14, 1945.

[448] Final Report, *supra*, at p. 8.

[449] *Id*. at p. 6.

[450] *Id*. at p. 5.

[451] *Id*. at 7.

[452] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1052.

[453] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050.

[454] Final Report, *supra*, at pp. 6-9.

[455] *Ibid*.

[456] Final Report, *supra,* at p. 6.

[457] *Id*. at p. 9.

[458] *Ibid*.

[459] *Ibid*.

[460] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, 60 Stat. 1049, 1050.

[461] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat.

If a trial led to a financial award, the amount was certified and reported to Congress after all appeals were exhausted.[462] The award was then automatically included in the next year's appropriations bill.[463] Final payment was deposited in the Treasury and Congress directed how it should be distributed.[464]

The ICC was initially set to terminate ten years after its first meeting,[465] but it was repeatedly extended until its termination in 1978.[466] Individual cases often took several years to complete,[467] and the appeal process alone typically took between eight months and three years.[468] During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.[469] It awarded approximately $800 million in total compensation to tribal claimants.[470] At its termination in 1978, the Commission had not fully cleared its docket and the remaining matters were transferred to the Court of Claims.[471]

Historians and legal scholars have argued that the Commission did not go nearly far enough to address the centuries-long displacement and oppression of Native Americans.[472] The Commission was not empowered to convey land back to tribes,[473] yet its rulings have barred all subsequent claims, including those to repossess land.[474] Nor did the Commission address issues such as the suppression of native languages, religions, and forms of government.[475] And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways. For example, awards were whittled down by offsets for monies purportedly spent by the government on behalf of the tribes.[476] Moreover, except in the rare claim premised on a Fifth Amendment "taking," the Commission ruled that interest on amounts owed was not recoverable.[477] The unpaid interest on successful claims likely amounted to several billion dollars.[478]

1049, 1054.
[462] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, 60 Stat. 1049, 1055.
[463] Final Report, *supra*, p. 7.
[464] *Ibid*.
[465] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1055.
[466] Final Report, *supra*, at p. iii.
[467] Final Report, *supra*, at p. 6.
[468] Final Report, *supra*, at p. 6.
[469] Final Report, *supra*, at p. 21.
[470] *Ibid*.
[471] Final Report, *supra*, at p. iii.
[472] *See, e.g.*, Danforth, Repaying Historical Debts: The Indian Claims Commission (1973) 49 N.D. L. Rev. 359, 374-80; Lurie, The Indian Claims Commission (1978) 436 Annals of the Am. Soc. Of Poli. & Soc. Sci. 97; Vance, The Congressional Mandate and the Indian Claims Commission (1969) 45 N.D. L. Rev. 325. 332-35 (as of Feb. 14, 2023); Churchill, *supra*.
[473] Churchill, *supra*, at p. 53.
[474] Cohen, Cohen's Handbook of Federal Indian Law (2005) § 5.06[3].
[475] Churchill, *supra*, at p. 57.
[476] Churchill, *supra*, at pp. 48, 53.
[477] Final Report, *supra*, at p. 11.
[478] *Ibid*.

Many historians have argued that a core defect in the ICC's structure and practice was the adversarial rather than investigative nature of the proceedings.[479] One scholar has observed that "the Commission, submissive to the requests of the lawyers who practice before it, has provided for a bewildering series of hearings on title, value offset, attorneys [sic] fees and all the motions that any party chooses present."[480] Moreover, the government's role as adversary against the claimants meant that government attorneys often aggressively fought *against* proper compensation for tribal claimants, and, as a matter of policy, the Attorney General did not pursue settlement.[481] Finally, the tribe's obligation to retain counsel at its own cost diminished any eventual financial award.[482] In light of these and other inefficiencies, many have argued that the Commission should have operated as an investigative rather than quasi-judicial body.[483] Indeed, the Commission was statutorily authorized to conduct its own investigations,[484] but it rarely employed those powers and instead consistently acted as a tribunal.[485]

Despite its shortcomings, many contemporaneous political leaders and early historians pointed to the ICC as proof that the United States had acted benevolently and had atoned for past transgressions.[486] Some have called these claims mere sanctimony and have argued that the ICC was established out of the government's self-interest in cloaking itself with moral authority, especially in the context of the United States' efforts to establish the post-World War II Nuremberg Trials.[487] Others have similarly argued that the Commission was simply a means of efficiently disposing of the "Indian problem."[488] For example, Professor Harvey Rosenthal, author of a comprehensive history of the ICC,[489] has observed that "the [C]omission broke no new ground and was really a government measure to enhance its own efficiency by disposing of the old claims and terminating the Indian Tribes."[490]

b. Tuskegee Study of Untreated Syphilis in the Negro Male

From 1932-1972 in Macon County, Alabama a medical study observed the natural history of untreated syphilis in African American men. Following revelation of the study, a class-action lawsuit was filed against the federal government that resulted in a settlement of nearly $10 million, which was divided amongst the study participants and their families. In 1974, the federal government enacted legislation to require regulations s to better protect human subjects in

[479] Danforth, *supra*, at pp. 376-77.
[480] Vance, *supra*, at p. 334.
[481] Churchill, *supra*, at p. 48; Vance, *supra*, at p. 334 (noting that although settlement at the ICC was authorized by statute, the prevailing Department of Justice policy at the time was to not make settlement offers).
[482] Final Report, *supra*, at p. 9.
[483] Vance, *supra*, at p. 334; Danforth, *supra*, at p. 376-77.
[484] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, 60 Stat. 1049, 1052.
[485] Danforth, *supra*, at p. 376-77.
[486] *Id*. at p. 52.
[487] *Ibid*.
[488] Nesterak, Uprooted: The 1950s Plan to Erase Indian Country (Nov. 1, 2019) American Public Media (as of Feb. 14, 2023).
[489] Rosenthal, Their Day in Court: A History of the Indian Claims Commission (1990).
[490] Rosenthal, Indian Claims and the American Conscience: A Brief History of the Indian Claims Commission, in Irredeemable America: The Indians' Estate and Land Claims (1985) p. 35.

biomedical and behavioral research and issued a formal apology to the surviving syphilis study victims.

From 1891 to 1910, around 2000 white patients with syphilis were admitted to a Norwegian hospital under the care of Professor Caesar Boeck, the head of the hospital's skin department.[491] Professor Boeck held the belief that one should wait for the natural course of the disease and refrain from drug treatment.[492] Professor Boeck documented the diagnosis and the clinical course in detail in all his patients, and the materials gathered from this clinical trial formed the basis for current knowledge about the course and prognosis of syphilis infections.[493] The work of Professor Boeck and his successors eventually culminated in a 1955 dissertation referred to as the "Oslo study of untreated syphilis."[494] The significance of these findings served as the precursor to the Tuskegee Study of Untreated Syphilis in the Negro Male conducted in Macon County, Alabama between 1932 and 1972 on the campus of the Tuskegee Institute.[495] "In particular, it was the relative frequency of cardiovascular affections compared to neurological affections in patients with advanced syphilis that interested [the Americans.] In the eyes of the Americans, the weaknesses of the material justified a prospective study, while they were also interested in discovering whether the findings would be the same with 'the negro.'"[496]

The United States Public Health Service Syphilis Study, also called the Tuskegee Study of Untreated Syphilis in the Negro Male, was intended to observe the natural history of untreated syphilis in African American men.[497] A total of 600 African American men[498] were enrolled in the study and told by researchers that they were being treated for "bad blood," which colloquially in the region referred to a number of diagnosable ailments including but not limited to anemia, fatigue, and syphilis.[499] The African American men in the study were only told they were receiving free health care from the federal government of the United States.[500] Of the 600 enrolled men, most of whom were poor and illiterate sharecroppers, 399 of them who had syphilis became part of the experimental group and 201 became part of the control group.[501]

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[491] Sandvik and Lie, *Untreated syphilis – from Oslo to Tuskegee* [English translation] (Dec. 20, 2016) Journal of the Norwegian Medical Association (as of Feb. 13, 2023); Reverby, *Examining Tuskegee: The Infamous Syphilis Study and its Legacy | Timeline* (Nov. 1, 2009) Chapel Hill: University of North Carolina Press (as of Feb. 13, 2023).
[492] Sandvik and Lie, *Untreated syphilis – from Oslo to Tuskegee* [English translation] (Dec. 20, 2016) Journal of the Norwegian Medical Association (as of Feb. 13, 2023).
[493] Sandvik and Lie, *Untreated syphilis – from Oslo to Tuskegee* [English translation] (Dec. 20, 2016) Journal of the Norwegian Medical Association (as of Feb. 13, 2023).
[494] *Ibid*.
[495] *About the USPHS Syphilis Study* (undated) National Center for Bioethics in Research and Health Care, Tuskegee University (as of Feb. 13, 2023).
[496] *Ibid*.
[497] *The U.S. Public Health Service Syphilis Study at Tuskegee* (Nov. 3, 2022) Centers for Disease Control and Prevention, Office of Science (as of Feb. 13, 2023); *About the USPHS Syphilis Study*, *supra*.
[498] *Tuskegee Patient Medical Files* (Jan. 13, 2021) National Archives at Atlanta (as of Feb 13, 2023).
[499] *About the USPHS Syphilis Study* (undated) National Center for Bioethics in Research and Health Care, Tuskegee University (as of Feb. 13, 2023).
[500] Reverby, *Examining Tuskegee: The Infamous Syphilis Study and its Legacy* (Nov. 1, 2009) Chapel Hill: University of North Carolina Press (as of Feb. 13, 2023); Nix, *Tuskegee Experiment: The Infamous Syphilis Study* (Dec. 15, 2020) History (as of Feb 14, 2023).
[501] *About the USPHS Syphilis Study*, *supra*.

The men were enticed and enrolled in the study with incentives including medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments, and guarantees that provisions would be made after their deaths in terms of burial stipends paid to their survivors.[502] Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947—however the medicine was withheld from both groups enrolled in the study, resulting in blindness, deteriorating mental health, and in some cases, sever health issues and death.[503]

Following a leak of the study and subsequent reporting by the Associated Press in July 1972, international public outcry led to a series of actions taken by U.S. federal agencies.[504] The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel, comprised of nine members from fields including health administration, medicine, law, religion, and education, to review the study.[505] The panel ultimately concluded that there was evidence that scientific research protocol routinely applied to human subjects was either ignored or deeply flawed and thus, failed to ensure the safety and well-being of the men involved.[506] Specifically, the men were never told about or offered the research procedure called informed consent.[507] Researchers had not informed the men of the actual name of the study, its purpose, and the potential consequences of the treatment or non-treatment that they would receive during the study.[508] The men never knew of the debilitating and life threatening consequences of the lack of treatments they were to receive, the impact on their wives, girlfriends, and children they may have conceived once involved in the research; and there were no choices given to the participants to quit the study when penicillin became available as a treatment and cure for syphilis.[509] One month after the panel's October 1972 findings, the Assistant Secretary for Health and Scientific Affairs officially declared the end of the Tuskegee Study.[510]

Following the Ad Hoc Advisory Panel's findings in October 1972, attorney Fred Gray filed a class-action suit on behalf of the men in the study, their wives, children and families resulting in a nearly $10 million out-of-court settlement in 1974.[511] Under the 1974 settlement, 70 living syphilitic participants received $37,500 each. The 46 living men in the control group received $16,000 each. The 339 deceased syphilitic participants received $15,000 each. The deceased members of the control group received $5,000 each.[512] Attorney Gray also negotiated free healthcare for life for the participants who were still living, as well as healthcare for their

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[502] *Ibid*.
[503] *About the USPHS Syphilis Study*, *supra*; Nix, *supra*.
[504] *About the USPHS Syphilis Study*, *supra*.
[505] *Ibid*.
[506] *About the USPHS Syphilis Study*, *supra*; Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report* (April 28, 1973) U.S. Department of Health, Education, and Welfare Public Health Service (as of Feb. 13, 2023).
[507] *About the USPHS Syphilis Study*, *supra*; Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report*, *supra*.
[508] *About the USPHS Syphilis Study*, *supra*; Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report*, *supra*.
[509] *About the USPHS Syphilis Study*, *supra*; Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report*, *supra*.
[510] *About the USPHS Syphilis Study*, *supra*; Tuskegee Syphilis Study Ad Hoc Advisory Panel, *Final Report*, *supra*; *Memorandum Terminating the Tuskegee Syphilis Study* (Nov. 16, 1972) Department of Health, Education, and Welfare Office of the Secretary (as of Feb 13, 2023).
[511] See *Pollard v. U. S.* (M.D. Ala. 1974) 384 F.Supp. 304.
[512] Gray, *The Tuskegee Syphilis Study: An Insider's Account of the Shocking Medical Experiment Conducted by Government Doctors against African American Men* (1998) Montgomery: New South Books (as of Feb 13, 2023).

infected wives, widows, and children.[513] Attorney Gray was not able to locate 36 syphilitic participants and 8 members of the control group.[514]

In 1974, Congress passed the National Research Act and created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research to study and write regulations governing studies involving human participants.[515] The Commission was directed to consider: (1) the boundaries between biomedical and behavioral research and the accepted and routine practice of medicine; (2) the role of assessment of risk-benefit criteria in the determination of the appropriateness of research involving human subjects; (3) appropriate guidelines for the selection of human subjects for participation in such research; and (4) the nature and definition of informed consent in various research settings.[516] In 1976, the Commission published the Belmont Report, which identified basic ethical principles and guidelines that address ethical issues arising from the conduct of research with human subjects.[517] The Belmont Report attempted to summarize the basic ethical principles identified by the Commission in the course of its deliberations.[518] In applying the general principles, the Belmont Report established new requirements for the conduct of research, including informed consent, risk/benefit assessment, and the selection of subjects of research.[519]

Following the Belmont Report, the Office for Human Research Protections (OHRP) was established in June 2000 within the United States Department of Health and Human Services to oversee clinical trials.[520] OHRP replaced the Office for Protection from Research Risks (OPRR), which was created in 1972 and was part of the National Institutes of Health.[521] OPRR had primary responsibility within the U.S. Department of Health and Human Services for developing and implementing policies, procedures, and regulations for the protection of human subjects involved in research.[522] OPRR and its successor agency was created to lead the Department of Health and Human Services' efforts to protect human subjects in biomedical and behavioral research and to provide leadership for all federal agencies that conduct or support human subject research under the Federal Policy for the Protection of Human Subjects.[523] To further protect patient interests and to ensure that participants are fully informed, Section 474 of the National

[513] Gray, *supra*.
[514] Watkins, *Charlie W. Pollard: The Man Who Led The Fight For Justice For Tuskegee Syphilis Study Participants* (Dec. 20, 2022) (as of Feb 13, 2023).
[515] PL 93–348 (HR 7724), PL 93–348, JULY 12, 1974, 88 Stat 342.
[516] *Ibid*.
[517] The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (April 18, 1979) U.S. Department of Health, Education, and Welfare (as of Feb 13, 2023).
[518] The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *supra*.
[519] The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *supra*.
[520] *Office of Human Research Protection History* (June 18, 2020) U.S. Department of Health, Education, and Welfare (as of Feb 13, 2023).
[521] *Office of Human Research Protection History*, *supra*.
[522] See Ellis, *Office for Protection from Research Risks (OPRR)* (Aug. 1994) Politics and the Life Sciences, 13(2), 271-73 JSTOR (as of Feb 13, 2023).
[523] *Office of Human Research Protection History* (June 18, 2020) U.S. Department of Health, Education, and Welfare (as of Feb 13, 2023).

Research Act also established Institutional Review Boards.[524] Institutional Review Boards were established at the local level consisting of at least five people, including at least one scientist, one non-scientist, and one person not otherwise affiliated with the institution.[525] No human subjects research may be initiated, and no ongoing research may continue, in the absence of an Institutional Review Board's approval.[526]

In February of 1994 at the Claude Moore Health Sciences Library in Charlottesville, Virginia, a symposium was held entitled "Doing Bad in the Name of Good?: The Tuskegee Syphilis Study and Its Legacy."[527] The one-day symposium featured seven humanities scholars discussing the Tuskegee Syphilis Experiments, their troubling historical reality, and their legacy.[528] Following this symposium, the Tuskegee Syphilis Study Legacy Committee was formed to develop ideas that had arisen at the symposium.[529] The Committee issued its final report in May 1996,[530] presenting two goals:

(1) To persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community. This apology is necessary for four reasons: the moral and physical harm to the community of Macon County; the undeserved disgrace the Study has brought to the community and Tuskegee University, which is in fact a leading advocate for the health of African Americans; its contribution to fears of abuse and exploitation by government officials and the medical profession; and the fact that no public apology has ever been made for the Study by any government official.

(2) To develop a strategy to redress the damages caused by the Study and to transform its damaging legacy. This is necessary because an apology without action is only a beginning of the necessary healing. The Committee recommends the development of a professionally staffed center at Tuskegee for public education about the Study, training programs for health care providers, and a clearinghouse for scholarship on ethics in scientific research.[531]

The Committee's report set forth an outline for the context of the apology, and provided possible functions for the proposed Tuskegee research center.[532]

On May 16, 1997, President Bill Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee study participants. Along with the apology, President Clinton pledged a $200,000 planning grant to allow Tuskegee University to pursue building a Center for

[524] PL 93–348 (HR 7724), PL 93–348, JULY 12, 1974, 88 Stat 342.
[525] Ellis, *supra* at pp. 271-73.
[526] *Ibid*.
[527] *Syphilis Study Legacy Committee* (undated) National Center for Bioethics in Research and Health Care, Tuskegee University (as of Jan 14, 2023).
[528] Klein, *Doing Bad in the Name of Good: The Tuskegee Syphilis Study and Its Legacy* (1992) University of Virginia Health System Claude Moore Health Sciences Library (as of Feb 14, 2023).
[529] *Syphilis Study Legacy Committee*, *supra*.
[530] Tuskegee Syphilis Study Legacy Committee, *Final Report* (May 1996) (as of Feb. 14, 2023).
[531] Tuskegee Syphilis Study Legacy Committee, *supra*.
[532] *Ibid*.

Bioethics in Research and Health Care.[533] The President also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission until 1999. Additionally, the President directed the Health and Human Services Secretary to draft a report outlining ways to better involve all communities—especially minority communities—in research and health care.[534]

In June 2022, the Milbank Memorial Fund—the foundation that paid the funeral expenses of the deceased study participants as an incentive for their participation—publicly apologized to descendants of the study's victims for its role in the study.[535] The Milbank Memorial Fund conditioned the payment of these funeral expenses on consent by the deceased's descendants to conduct autopsies.[536] These autopsies facilitated the study's ultimate purpose of observing untreated syphilis in African American men. The apology and an accompanying monetary donation to a descendants' group, the Voices for Our Fathers Legacy Foundation, were presented during a ceremony in Tuskegee at a gathering of children and other relatives of men who were part of the study.[537]

c. Japanese American Mass Incarceration

In 1988, the federal government enacted legislation to acknowledge and provide redress for the mass incarceration of Japanese Americans in the United States between 1942 and 1946. The federal government's plan included a cash payment of $20,000.00 for each surviving incarceree, a program to fund public education of the events, and an apology.

In early 1941, the United States House Committee on Un-American Activities (Committee) began investigating Japanese espionage in the United States.[538] The Committee, which existed since 1938, was authorized to make from time to time investigations of (1) the extent, character, and objects of un-American activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by the United States Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.[539] The Committee's focus on Japan reflected general European and American suspicion of Japanese espionage.[540] A year before the Japanese attack on Pearl Harbor in Hawai`i, the United States Army's Signal Intelligence Service broke Japan's

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[533] Ross, *AP WAS THERE, Tuskegee Syphilis Study: Clinton apologized* (May 10, 2017) The Associated Press (as of Feb. 14, 2023); *Remarks by the President in Apology for Study Done in Tuskegee* (May 16, 1997) The White House Office of the Press Secretary (as of Feb. 14, 2023).
[534] Ross, *supra*; *Remarks by the President in Apology for Study Done in Tuskegee*, *supra*.
[535] By The Associated Press, *A fund apologizes for its role in the Tuskegee syphilis study that targeted Black men* (June 11, 2022) NPR (as of Feb 14, 2023).
[536] *Ibid*.
[537] *Ibid*.
[538] Everest-Phillips, *The Pre-War Fear of Japanese Espionage: Its Impact and Legacy* (April 2007) Journal of Contemporary History, vol. 42, no. 2, p. 243 *JSTOR*, (as of Oct. 21, 2022).
[539] Schamel, *Records of the House Un-American Activities Committee, 1945-1976* (July 1995) Center for Legislative Archives National Archives and Records Administration, (as of Oct. 21, 2022).
[540] Everest-Phillips, *The Pre-War Fear of Japanese Espionage: Its Impact and Legacy* (April 2007) Journal of Contemporary History, vol. 42, no. 2, p. 243 *JSTOR*, (as of Oct. 21, 2022).

highest-level diplomatic code.[541] The message appeared to reveal widespread Japanese espionage networks operating along the West Coast of the United States, which proved decisive for President Franklin D. Roosevelt's authorization of the mass incarceration of Japanese Americans.[542]

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 incarcerating Japanese Americans and creating a zone "from which any or all persons may be excluded," at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona.[543] By the fall of 1942, all Japanese Americans were forcefully removed from California and sent to one of ten detention camps that were built to imprison them.[544] Many incarcerated Japanese Americans lost their property and assets as they were prohibited from taking more than what they could carry with them, and what remained was either sold, confiscated, or destroyed in government storage.[545] The Masuda family for example, were owners of the Wanto Grocery in Oakland, California, who proclaimed that they were American, even as they were forced to sell their business before they were imprisoned in August 1942.[546] The Masudas and others were among the tens of thousands of Japanese Americans who were incarcerated in desolate detention camps for up to four years.[547]

Nearly 70 percent of those incarcerated were American citizens by birth, and the remaining 30 percent were Japanese nationals who were legally barred from naturalization because of the de jure racist policies of the time.[548] Many resisted the curfews and the constitutionality of the exclusion orders on U.S. citizens based on racial ancestry, however many found their convictions upheld by the United States Supreme Court in decisions that argued that the court was not in a position to question claims of military necessity.[549] In the mid-1980s, these convictions were eventually vacated by federal court orders for *writ of error coram nobis*, which helped spur the

[541] Everest-Phillips, *The Pre-War Fear of Japanese Espionage: Its Impact and Legacy* (April 2007) Journal of Contemporary History, vol. 42, no. 2, p. 261 *JSTOR*, (as of Oct. 21, 2022).
[542] Everest-Phillips, *The Pre-War Fear of Japanese Espionage: Its Impact and Legacy* (April 2007) Journal of Contemporary History, vol. 42, no. 2, p. 261 *JSTOR*, (as of Oct. 21, 2022).
[543] Everest-Phillips, *The Pre-War Fear of Japanese Espionage: Its Impact and Legacy* (April 2007) Journal of Contemporary History, vol. 42, no. 2, p. 261 fn. 60 *JSTOR*, (as of Oct. 21, 2022); Exec. Order No. 9066, 7 Fed.Reg. 1407 (Feb. 19, 1942); Golden Gate National Recreation Area, *Remembering Executive Order 9066* (Feb. 23, 2021) U.S. National Park Service, (as of Oct. 21, 2022).
[544] Golden Gate National Recreation Area, *Remembering Executive Order 9066* (Feb. 23, 2021) U.S. National Park Service, (as of Oct. 21, 2022).
[545] Golden Gate National Recreation Area, *Remembering Executive Order 9066* (Feb. 23, 2021) U.S. National Park Service, (as of Oct. 21, 2022).
[546] National Museum of American History Behring Center, *The Roundup* (undated) Smithsonian, (as of Oct. 21, 2022).
[547] National Museum of American History Behring Center, *The Roundup* (undated) Smithsonian, (as of Oct. 21, 2022).
[548] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022).
[549] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, pp. 503, 506. *JSTOR*, (as of Oct. 21, 2022); See *Hirabayashi v. U.S.* (1943) 320 U.S. 81 [63 S.Ct. 1375, 87 L.Ed. 1774]; See also *Korematsu v. U.S.* (1944) 323 U.S. 214 [65 S.Ct. 193, 89 L.Ed. 194] *abrogated by Trump v. Hawaii* (2018) 201 L.Ed.2d 775 [138 S.Ct. 2392].

passage of the Civil Liberties Act of 1988—the law that eventually provided a formal apology and redress from the United States to Japanese Americans.[550]

In 1948, President Harry S. Truman signed the Japanese American Evacuation Claims Act (1948 Act) to to compensate Japanese Americans for losses incurred at the time of their official removal from the West Coast in 1942.[551] The 1948 Act was the first civil rights-associated law enacted in the 20th century. However, the legislation proved largely ineffectual in compensating victims because the claims process placed onerous burdens on them to prove their losses and included a lot of bureaucratic red tape that slowed the claims process to a crawl.[552] "In all, the government paid $38 million to settle damage claims—a fraction of actual losses by Japanese Americans. Many families paid more in lawyer's fees than they received in compensation."[553]

In 1980, Congress and President Jimmy Carter approved the Commission on the Wartime Internment and Relocation of Civilians (Commission).[554] The Commission was established to: (1) review the facts and circumstances surrounding the relocation and incarceration of thousands of American civilians during World War II under Executive Order Numbered 9066 and the impact of that Order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and incarceration of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands (The Aleutian Islands stretch westward for about 995 miles beyond the Alaska Peninsula in south-western Alaska, separating the Bering Sea from the North Pacific Ocean; the Aleuts have occupied this island chain for at least 8,000 years, and the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were removed from their land during World War II to temporary detention 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

[550] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022); See *Ex parte Endo* (1944) 323 U.S. 283 [65 S.Ct. 208, 89 L.Ed. 243]; See also *Korematsu v. U.S.* (N.D. Cal. 1984) 584 F.Supp. 1406.
[551] Robinson, *Japanese American Evacuation Claims Act* (October 5, 2020) Densho Encyclopedia, (as of Oct. 21. 2022).
[552] Robinson, *Japanese American Evacuation Claims Act* (October 5, 2020) Densho Encyclopedia, (as of Oct. 21. 2022). "[The Japanese American Evacuation Claims Act] provided up to $25 million to compensate Japanese Americans for actual losses pursuant to their 'evacuation.' […] Those Japanese Americans who wished to recoup losses were forced to swear that this was their sole and final claim against the government for their wartime ordeal. Congress refused to settle claims for lost wages or anticipated profits, personal injury, pain and suffering, or any of the other costs of removal and confinement. Even the procedure instituted for allowable claims under the Act was exceedingly harsh. The former inmates were in [sic] required to provide sworn testimony and to produce receipts and other proofs of their losses. If their claim amounted to over $2,500, they were required in effect to sue the government for damages, and await fresh appropriation of funds to pay claims. The Justice Department strongly contested each claim, using a legalistic definition of what could be counted as a 'loss.' […]"
[553] Robinson, *Japanese American Evacuation Claims Act* (October 5, 2020) Densho Encyclopedia, (as of Oct. 21. 2022).
[554] Yang, *Redress Movement* (August 24, 2020) Densho Encyclopedia, (as of Oct. 21. 2022).

their home villages had passed[555]);[556] and (3) recommend appropriate remedies.[557] In December 1982, the Commission released a unanimous 467-page report titled Personal Justice Denied detailing the history and circumstances of the wartime treatment of people of Japanese ancestry and the people of the Aleutian Islands.[558]

Two years after the Commission was approved, California enacted legislation permitting the filing of claims with the state for salary losses for up to five years at $1,000.00 per year for employees who were dismissed from state service because of their Japanese ancestry (Los Angeles and San Francisco later enacted similar provisions).[559]

The Commission's findings and recommendations along with state and local efforts to provide compensation to the victims helped bring about the passage of the Civil Liberties Act of 1988 (1988 Act). The 1988 Act, which was signed by President Ronald Regan, provided "redress" from the nation in the form of $20,000.00 for each surviving incarceree.[560] Under the 1988 Act, the U.S. Attorney General was charged with identifying and locating eligible individuals within 12 months of the date the 1988 Act was signed.[561] No application was required. The onus was on the Attorney General to complete the identification and notification process.[562]

Eligible individuals had the right to refuse payment.[563] If they accepted payment, they had to waive all claims against the government.[564] The 1988 Act allowed for payments to survivors of eligible individuals who were deceased, priority payments to the oldest eligible individuals, and tax treatment that excluded payments as income under the internal revenue laws.[565] By 1999, redress payments had been distributed to approximately 82,220 claimants.[566] About thirty lawsuits were filed against the United States by those who had been found ineligible for redress.

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[555] McCartney and Veltre, *Aleutian Island Prehistory: Living in Insular Extremes* (Feb. 1999) World Archaeology, vol. 30, no. 3, p. 503. *JSTOR*, (as of April 13, 2023); See 50 U.S.C.A. § 4202(b).

[556] From the Civil Liberties Act of 1988, discussed below, came the Aleutian and Pribilof Islands Restitution Act of 1988. This Act provided monetary compensation for the loss of land and property, but did not return the Attu Island lands to the Aleut People. The funds were made available by appropriation and were administered by the Secretary of the Interior with the assistance of the Attorney General. 50 U.S.C.A. § 4231 et seq.

[557] Commission on Wartime Relocation and Internment of Civilians Act, H.R. No. 5499, 96th Cong., (1979).

[558] Yamato, *Commission on Wartime Relocation and Internment of Civilians* (July 8, 2020) Densho Encyclopedia, (as of Oct. 21. 2022).

[559]Reparations for State Civil Service Employees, AB2710 (Feb. 19, 1982) *Press Conference Statement by Patrick Johnston on Introduction on Legislation* (as of Oct. 21, 2022); Koseff, *California Expected to Apologize to Japanese Americans for WWII Incarceration* (Feb 18, 2020) San Francisco Chronicle, (as of Oct. 20, 2022); Report of the Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied Part 2: Recommendations*, (June 1983).

[560] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022); H.R. No. 442, 100th Cong., (1988) [50 U.S.C.A. § 4211 et seq.]

[561] 50 U.S.C.A. § 4215

[562] 50 U.S.C.A. § 4215

[563] 50 U.S.C.A. § 4215

[564] 50 U.S.C.A. § 4215

[565] 50 U.S.C.A. § 4215

[566] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022).

A later settlement on a lawsuit filed by Japanese Latin Americans resulted in $5,000 redress payments for those claimants.[567]

To operationalize the 1988 Act, the federal government established the Office of Redress Administration (ORA) located within the Civil Rights Division of the Department of Justice. The ORA had 10 years to complete its work from the date the Act was signed. At its peak, the ORA had around 100 employees.[568] Because the 1988 Act only authorized redress payments and did not itself appropriate funds, separate appropriations had to be secured from Congress.[569] By 1990 only $20 million was available for redress payments, or about 1.6 percent of the amount authorized.[570] Congress later resolved this issue by amending the 1988 Act, turning it into an entitlement program that did not require annual appropriations.[571]

The ORA worked to build trust within the community, working with Japanese American organizations, including the Japanese American Citizen League and the National Coalition for Redress/Reparations.[572] It organized redress check ceremonies throughout the country, and held workshops to meet community members and disseminate information on the redress program.[573]

As the life of the ORA drew to an end, the remaining focus turned to paying on claims that had initially been denied, or locating recipients who had not responded to outreach. The ORA prioritized the oldest living recipients. Cases that were initially denied and subsequently reviewed for reconsideration included Japanese Latin Americans, children of "voluntary evacuees," minor children who had gone to Japan with their families, and those Japanese Americans who lived in Hawai`i and were excluded from their homes, but were not necessarily incarcerated.[574] In some cases, where written documentation did not exists, the ORA was able to approve redress claims based on affidavits by contemporaneous witnesses.[575]

The 1988 Act also established the Civil Liberties Public Education Fund (Public Education Fund) within the U.S. Treasury, which was to be administered by the Secretary of the Treasury and used for disbursements by the Attorney General and the newly established Civil Liberties Public Education Fund Board of Directors.[576] The Public Education Fund initially received appropriations totaling $1,250,000,000, and the Public Education Fund's purpose was "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

[567] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022); See *Mochizuki v. U.S.* (Fed. Cl. 1999) 43 Fed.Cl. 97.
[568] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[569] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[570] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[571] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022); See Civil Liberties Act Amendments of 1992, PL 102–371, Sept. 27, 1992, 106 Stat 1167.
[572] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[573] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[574] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[575] Niiya, *Office of Redress Administration* (January 28, 2022) Densho Encyclopedia, (as of Oct. 21, 2022).
[576] 50 U.S.C.A. § 4214, 4216

Japanese ancestry will be remembered . . . ."[577] The Public Education Fund would terminate once the funds appropriated to it were exhausted or 10 years after the enactment of the 1988 Act.[578] Additionally, all documents, personal testimony, and other records created or received by the Commission during its inquiry were kept and maintained by the Archivist of the United States who was directed to preserve such documents, testimony, and records in the National Archives of the United States and make them available to the public for research purposes.[579] The Act also called upon each department and agency of the U.S. Government to review with "liberality," giving full consideration to the findings of the Commission, any application by an eligible individual for the restitution of any position, status, or entitlement lost because of any discriminatory act of the U.S. Government against those of Japanese ancestry during the period of internment.[580] Finally, the Act provided a formal letter of apology for each surviving incarceree.[581] President George H. W. Bush signed the first letters of apology in 1990.[582] One such letter from President Bush read:

> A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation's resolve to rectify injustice and to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II.
>
> In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future. []

d. September 11, 2001

The federal government passed legislation in 2004, 2011, and 2019 to compensate victims of the September 11, 2001, terrorist attacks. Congress's plan includes a Victim Compensation Fund where victims who have a physical injury or condition caused by the terrorist attacks can file claims for pain and suffering and past and future lost earnings.

The militant Islamist network al-Qaeda carried out four coordinated suicide terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.[583] Terrorists hijacked four commercial airliners and crashed two planes into the Twin Towers of the World Trade Center in New York City, one plane into the Pentagon in Arlington, Virginia, and one

[577] 50 U.S.C.A. § 4214, 4216
[578] 50 U.S.C.A. § 4214
[579] 50 U.S.C.A. § 4217
[580] 50 U.S.C.A. § 4213
[581] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022); H.R. No. 442, 100th Cong., (1988) [50 U.S.C.A. § 4211 et seq.]
[582] Kunioka et al., *Relocation and Internment: Civil Rights Lessons from World War II* (July 2006) PS: Political Science and Politics, vol. 39, no. 3, p. 503. *JSTOR*, (as of Oct. 21, 2022).
[583] Jackson, September 11 Attacks: What Happened on 9/11? (Aug. 3, 2021) BBC News (as of Feb. 14, 2023).

plane in a field in Shanksville, Pennsylvania that was intended to hit a federal government building in Washington, D.C.[584] Nearly 3,000 people died in the attacks.[585]

The incineration of the Twin Towers and the crashed aircrafts on September 11, 2001, released clouds of noxious toxins at each of the crash sites.[586] First responders, volunteers, and residents near Ground Zero inhaled harmful dust, smoke, toxic chemicals, and particle remnants.[587] This toxics exposure subsequently caused various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders.[588] Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses and thousands more have died.[589] The compensation provided to 9/11 victims and their families or representatives addresses the damages from both the terrorist attacks and the clean-up efforts.

Almost immediately after the terrorist attacks on September 11, 2001, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF).[590] This bill was enacted to bring financial relief to any individual, or relative of a deceased individual, who was physically injured or killed as a result of the terrorist attacks.[591] The claims window for this first round of funding under the VCF, or "VCF1," closed in 2004.

The VCF was reopened on January 2, 2011, when President Barack Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act).[592] While VCF1 only covered the victims (or their representatives) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks and to exposure to the toxic air in lower Manhattan and the other crash sites during that time.[593] Eligible individuals must have been present at the World Trade Center, the surrounding New York City exposure zone, the Pentagon crash site, or the Shanksville, Pennsylvania crash site at some point between September 11, 2001, and May 30, 2002, and diagnosed with a 9/11-related illness.[594] Compensation was available to first responders; those who worked or volunteered in construction, clean-up, and debris removal; and people who lived, worked, or went to school in the exposure zone.[595] The claim filing deadline was October 2016.[596]

The 2011 Zadroga Act also established the World Trade Center (WTC) Health Program to provide medical monitoring and treatment for responders and survivors with chronic health

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[584] *Ibid.*
[585] *Ibid.*
[586] CDC World Trade Center Health Program, Toxins and Health Impacts (as of Feb. 14, 2023).
[587] *Ibid.*
[588] *Ibid.*
[589] *Ibid.*
[590] *Virgilio v. City of New York*, 407 F.3d 105, 109 (2d Cir. 2005).
[591] September 11th Victim Compensation Fund, 20th Anniversary Special Report (September 2021) at p. 4 (as of Feb. 14, 2023).
[592] *Ibid.*
[593] *Ibid.*
[594] September 11th Victim Compensation Fund, Frequently Asked Questions (FAQs) (as of Feb. 14, 2023).
[595] *Ibid.*
[596] *Ibid.*

conditions arising from the 9/11 attacks.[597] Unlike the VCF, the WTC Health Program covers mental health conditions.[598]The WTC Health Program is administered by the director of the National Institute for Occupational Safety and Health (NIOSH) and conducts scientific research to better identify, diagnose, and treat physical and mental health conditions related to 9/11-related exposures.[599]

In 2015, the Zadroga Act was reauthorized and extended until December 2020. Certain award calculations were changed.[600] The original VCF paid an average death claim award of over $2 million[601] and awarded anywhere from $500 to over $8.6 million in personal injury claims.[602] Due to budgetary concerns, the reauthorization of the Zadroga Act in 2015 restricted victim compensation.[603] It capped awards for non-economic loss from cancer conditions at $250,000, awards for non-economic loss from non-cancer conditions at $90,000, and awards for economic loss of annual income at $200,000.[604]

In early 2019, the VCF announced reductions to claim awards by 50 to 75 percent because of insufficient funds.[605] Outraged, the public demanded increased funding and Congress held hearings on fund and claim deadline extensions.[606] In July 2019, Congress passed the Never Forget the Heroes, James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (VCF Permanent Authorization Act), fully funding the VCF as necessary to pay all eligible claims through the extended filing deadline of October 1, 2090.[607] It also compensated any victims who received reduced awards due to budgetary restrictions with the full value of their award.[608]

Now, to receive compensation, claimants must meet two deadlines: the registration deadline and the claim deadline.[609] For both personal injury and deceased claims, a new or subsequent government determination that a condition or injury is 9/11-related triggers a two-year registration window. The two-year time frame applies when claimants know of both the physical injury and its causal connection to 9/11. Registration alerts VCF of a potential claim and preserves the right to file a claim in the future.[610] Claimants can still register prior to having a

[597] 20th Anniversary Special Report, *supra* at p. 4.
[598] September 11th Victim Compensation Fund, Annual Report 2022 at p. 14 (as of Feb. 14, 2023).
[599] CDC World Trade Center Health Program, About the Program (as of Feb. 14, 2023).
[600] 20th Anniversary Special Report, *supra* at p. 4
[601] September 11th Victim Compensation Fund of 2001, Compensation for Deceased Victims (as of Feb. 14, 2023).
[602] CNN Editorial Research, September 11 Victim Aid and Compensation Fast Facts (Sept. 7, 2022) CNN (as of Feb. 14, 2023).
[603] September 11th Victim Compensation Fund, About the Victim Compensation Fund (as of Feb. 14, 2023).
[604] *Ibid.*
[605] About the Victim Compensation Fund, *supra.* September 11th Victim Compensation Fund, Annual Report 2019 at p. 7 (as of Apr. 11, 2023).
[606] *Ibid.*
[607] *Ibid.*
[608] September 11th Victim Compensation Fund, VCF Permanent Authorization Act: Questions and Answers (Aug. 2019) (as of Feb. 14, 2023).
[609] September 11th Victim Compensation Fund, Section 1: Eligibility Criteria and Deadlines (Jan. 9, 2023) (as of Feb. 14, 2023).
[610] *Ibid.*

diagnosis that their injury or condition is 9/11-related.[611] If registration is timely for any condition or injury, then all eligible conditions are considered for a claim.[612]

The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the terrorist attacks.[613] Claimants who participate in this compensation scheme waive their right to sue for damages for injury or death as a result of the terrorist attacks.[614] A compensation fund was chosen as an alternative to potential class action toxic tort litigation because it is a more efficient and effective solution for compensating victims.[615] The VCF was enacted to relieve victims and their families from navigating through the legal system and possibly having their claims rejected under government immunity or other potential bars.[616]

The VCF is administered by the U.S. Department of Justice.[617] To be eligible for compensation from the VCF, claimants must have a physical injury or condition caused by the 9/11 terrorist attacks or by the rescue, recovery, and debris removal efforts during the immediate aftermath of the terrorist attacks.[618] Claimants must have at least one of the pre-determined WTC-Related Physical Health Conditions in order to be eligible. [619] Claimants must demonstrate a diagnosis through a private physician process and/or a WTC Health Program.[620]

After a diagnosis, claimants then fill out a claim form that includes eligibility and compensation information and attach certain supporting documents to demonstrate presence at a 9/11 crash site, at a debris-removal route, or within a exposure zone.[621] Examples of acceptable documentation include sworn affidavits, medical records, lease or mortgage documents, and employer letters.[622] The VCF first reviews the claim for eligibility and if approved, the VCF then reviews the losses claimed for compensation.[623] At the claimed losses stage, the VCF reviews non-economic loss (pain and suffering) based on the severity of the physical harm and reviews economic loss based on past and future lost earnings.[624] Once the total amount of compensation is calculated, the claimant is informed of the outcome and has an opportunity to appeal within 30 days.[625] If no

[611] *Ibid.*
[612] *Ibid.*
[613] Isaacson, Terrorism and Mass Toxic Torts: An Examination of the James Zadroga 9/11 Health and Compensation Act, 25 Fordham Envtl. L. Rev. 509 (2014).
[614] *Ibid.*
[615] *Ibid.*
[616] *Ibid.*
[617] Frequently Asked Questions (FAQs), *supra.*
[618] *Ibid.*
[619] *Ibid.*
[620] *Ibid.*
[621] September 11th Victim Compensation Fund, Claim Review Process (Feb. 4, 2021) (as of Feb. 14, 2023).
[622] Section 1: Eligibility Criteria and Deadlines, *supra.*
[623] Claim Review Process, *supra.*
[624] *Ibid.*
[625] *Ibid.*

appeal is exercised, then the U.S. Treasury authorizes the payment and disburses it to the bank account designated in the claim application.[626]

The most significant issue with implementation has been the consistent capitalization of the fund. Over the past two decades, the Fund struggled to meet rising medical costs and cancer rates.[627] Many exposure symptoms and 9/11-related diseases took years to manifest.[628] Additionally, as described above, the fund went through various iterations of funding and scope throughout its lifetime.

Another issue has been claimants providing inadequate documentation for their claim or filing premature claims. According to the VCF's 2022 Annual Report, 54 percent of claims are deactivated for failure to provide the minimum required information, 41.9 percent of all claims are submitted with insufficient proof of presence documents, and 32.2 percent do not have a certified physical condition at the time the claim is filed.[629]

e. Sandy Hook Elementary School

In the years following the 2012 Sandy Hook Elementary school shooting, one of the deadliest in U.S. history, the federal Departments of Justice and Education issued several grants to establish a new Sandy Hook school at a vacant campus, to hire and train staff, including mental health professionals, and to help staff private charities that were handling donations intended for victims and victims' families.

On December 14, 2012, Adam Lanza shot and murdered twenty children and six adult staff members, including the school principal and school psychologist, at Sandy Hook Elementary School in Newton, Connecticut, after killing his mother.[630] Lanza had gathered an AR-15, two semi-automatic pistols, as well as several hundred rounds of ammunition stored in high-capacity magazines; his mother had purchased several of the guns.[631] When he arrived at the school, he shot and killed the school's principal and school psychologist.[632] Teachers, who heard the gunshots, entered lockdown procedures, but Lanza was able to enter a classroom where he killed the teacher and fourteen children.[633] He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.[634] When police

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[626] *Ibid.*
[627] Goldmacher, With Ground Zero Payments Slashed, a Push to Replenish a 9/11 Fund (Feb. 28, 2019) New York Times (as of Feb. 14, 2023).
[628] Gordy, The 9/11 Cancer Conundrum: The Law, Policy, & Politics of the Zadroga Act, 37 Seton Hall Legis. J. 33, 50 (2012).
[629] Annual Report 2022, *supra* at p. 8.
[630] Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html> (as of Feb. 14, 2023).
[631] Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) < https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting> (as of Mar. 13, 2023).
[632] *Ibid.*
[633] *Ibid.*
[634] *Ibid.*

arrived at the school, they discovered that Lanza had killed himself.[635] It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.[636] The school was demolished in 2014 and replaced by a new building in 2016.[637]

On January 3, 2013, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission, to investigate the facilities, recommend public policy implementation, and recommend law enforcement reforms.[638] The Commission concluded that Lanza acted alone, but did not identify a motive.[639] The Commission made several recommendations, including investment in mental health professionals and funding for short-term and long-term recovery plans and behavioral health and education responses to crisis events.[640]

At least $28 million was raised by more than 77 charities in the years after the shooting, with about half of that amount distributed to families by the end of 2014.[641] Families settled a lawsuit with Remington, the manufacturer of the gun used by Lanza, for $73 million[642] and won judgements of $965 million and $473 million against Alex Jones, the founder of Infowars, for defamation, infliction of emotional distress, and violations of Connecticut's Unfair Trade Practices Act.[643]

The federal Departments of Justice and Education have awarded several grants to supplement these funds. A *Hartford Courant* review found that the federal government had given the town of Newton and several agencies related to Sandy Hook over $17 million in aid, used primarily to

[635] Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html> (as of Feb. 14, 2023).
[636] Gamio & Hubler, *Texas Massacre Is the Second-Deadliest School Shooting on Record*, N.Y. Times (May 24, 2022) <https://www.nytimes.com/interactive/2022/05/24/us/texas-school-shooting-deaths.html> (as of Feb. 14, 2023).
[637] Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) < https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting> (as of Mar. 13, 2023).
[638] Sandy Hook Advisory Commission, Final Report (March 6, 2015) at p. 1 < <https://portal.ct.gov/-/media/Malloy-Archive/Sandy-Hook-Advisory-Commission/SHAC_Final_Report_3-6-2015.pdf?sc_lang=en&hash= BDF55EC4ACE382E87941870AD9BF2A34> (as of Feb. 15, 2023).
[639] *Id.* at pp. 10-12.
[640] *Id.* at pp. 211-213.
[641] Altimari, *Sandy Hook Two Years Later: Where is the Aid Going?*, Hartford Courant (Dec. 14, 2014) <https://www.courant.com/news/connecticut/hc-sandy-hook-shooting-two-years-later-20141214-story.html> (as of Mar. 13, 2023).
[642] Rojas, Zraick, & Closson, *Sandy Hook Families Settle With Gunmaker for $73 Million Over Massacre*, N.Y. Times (Feb. 15, 2022) <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html> (as of Feb. 15, 2023).
[643] Slater, *Alex Jones ordered to pay nearly $1 billion to Sandy Hook families*, Wash. Post (Oct. 12, 2022) <https://www.washingtonpost.com/nation/2022/10/12/alex-jones-sandy-hook-verdict/ > (as of Feb. 15, 2023); Collins, *Alex Jones ordered to pay $473M more to Sandy Hook families*, Associated Press (Nov. 11, 2022) <https://www.boston.com/news/local-news/2022/11/11/alex-jones-ordered-to-pay-473m-more-to-sandy-hook-families> (as of Feb. 15, 2023)

enhance mental health services and school security, in the two years following the shooting.[644] Much of the money from the grants went directly to opening the new Sandy Hook Elementary.[645]

On December 17, 2013, the U.S. Department of Justice granted $1.5 million to reimburse organizations and agencies that provided direct support to victims, first responders and the Newton community, granted by the Department of Justice's Office for Victims of Crime to the Connecticut Judicial Branch.[646] The grant provided reimbursements for costs incurred by organizations that provided crisis intervention services, trauma-informed care, victim-related law enforcement support, and costs incurred in moving students from Sandy Hook to a new school location.[647] The grant was distributed through the Antiterrorism and Emergency Assistance Program, which grants awards for crisis response, and is funded by the Crime Victims Fund for the Antiterrorism Emergency Reserve Fund.[648] The Department of Justice also provided $2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.[649]

In June 2014, the Department of Justice issued another grant for $7.1 million through its Office for Victims of Crime.[650] This grant was for victim services, school safety efforts, and new mental health services.[651] Additionally, the town of Newton and the state received $2.5 million from the Department of Justice for police overtime costs.[652]

The federal funding was split between several groups. Newton Recovery & Resiliency Plan received $826,443: $618,000 went to hiring four fulltime staffers.[653] The second group, Resiliency Center of Newton, received $501,000, with $408,000 used for hiring therapists.[654] The United Way of Western Connecticut received around $131,355 from the Department of Justice, of which half was spent to hire a lobbying firm for public relations.[655] The Sandy Hook Foundation used $122,000 of the funds to hire an Executive Director.[656]

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[644] Altimari, *Sandy Hook Two Years Later: Where is the Aid Going?*, Hartford Courant (Dec. 14, 2014) <https://www.courant.com/news/connecticut/hc-sandy-hook-shooting-two-years-later-20141214-story.html> (as of Feb. 15, 2023).
[645] *Ibid.*
[646] U.S. Dept. of J., Attorney General Holder Announces $1.5 Million to Reimburse Support Efforts to Victims of the Sandy Hook Elementary School Shooting (December 17, 2013) <https://www.justice.gov/opa/pr/attorney-general-holder-announces-15-million-reimburse-support-efforts-victims-sandy-hook> (as of Feb. 15, 2023).
[647] *Ibid*.
[648] *Ibid.*
[649] U.S. Dept. of J., Attorney General Holder Announces $2.5 Million to Connecticut Law Enforcement for Costs Related to Sandy Hook School Shootings (August 28, 2013) <https://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-25-million-connecticut-law-enforcement-costs-related> (as of Feb. 15, 2023).
[650] New Haven Register, *Newtown receives $7.1M federal grant to support Sandy Hook Victims* (June 17, 2014) <https://www.nhregister.com/connecticut/article/Newtown-receives-7-1M-federal-grant-to-support-11380111.php> (as of Feb. 15, 2023).
[651] *Ibid.*
[652] Altimari, *supra*. 1
[653] *Ibid.*
[654] *Ibid.*
[655] *Ibid.*
[656] *Ibid.*

School Emergency Response to Violence (SERV) Grants from the Department of Education totaled $6.4 million; $1.3 million was earmarked for mental-health providers working with student survivors.[657] The rest was used to hire teachers, security guards, and other personnel. In total, the federal government has given $17 million in additional aid for mental health services and school security.[658]

The grants were designed to strengthen the aid infrastructure and create programs that will aid in the recovery process for many years.[659] Immediately after the shooting, there was an increase in crisis referrals for mental health assistance, an increase in chronic absenteeism, and an increase in school nurse visits.[660]

Parents and community members criticized the fund disbursement process, since most of the grants were for support services, and none of the federal money was designated for survivors or their families.[661] Parents have said in public meetings that "trying to get help has been at best confusing, and at worst impossible, for many families" and that the advertised supports were inaccessible and difficult to identify.[662] Parents and community members have also argued that the funds have gone towards hiring public relations and lobbying firms rather than going to direct aid.[663] The Sandy Hook Foundation, for example, raised $12 million for victims' families through private donations and distributed only $7.7 million, without accounting for the rest.[664] The Department of Justice still granted the Foundation $173,830, most of which was used to pay the salary of the director.[665]

f. Iranian Hostages

In 2015, Congress created the United States Victims of State Sponsored Terrorism Fund to compensate American diplomats and staff who had been abducted and held hostage by Iranians at the U.S. Embassy in Tehran for 444 days between 1979 and 1981.[666] Each former hostage is entitled to receive $10,000 for each day they were held in captivity; spouses and children of the former hostages are entitled to a lump sum of $600,000 each.[667] However, due to issues with

[657] *Ibid.*
[658] *Ibid.*
[659] *Ibid.*
[660] *Ibid.*
[661] Altimari, *supra*.
[662] *Ibid.*
[663] *Ibid.*
[664] *Ibid.*
[665] *Ibid.*
[666] See Herszenhorn, *Americans Held Hostage in Iran Win Compensation 36 Years Later*, N.Y. Times (Dec. 25, 2015) p. A1 <https://www.nytimes.com/2015/12/25/us/politics/americans-held-hostage-in-iran-win-compensation-36-years-later.html> (as of Feb. 15, 2023).
[667] See Justice for United States Victims of State Sponsored Terrorism Act, Notice, 81 Fed.Reg. 135 (July 14, 2016) <www.usvsst.com/docs/Notice.pdf> (as of Feb. 15, 2023).

funding, the former hostages and their families have yet to receive the entire amount each are due.[668]

On November 4, 1979, a group of 3,000 Iranians stormed the U.S. embassy in Tehran and took 63 American men and women hostage, including diplomats.[669] The seizure took place shortly after the Iranian Revolution. Mohammed Reza Shah Pahlavi, the previous ruler of Iran who was deposed in January of 1979, had been a close ally to the U.S.; after he was deposed, the revolutionary government treated the U.S. cautiously and suspiciously.[670] The U.S. embassy had been the scene of frequent demonstrations by Iranians who opposed the American presence in Iran and, on February 14, 1979, the embassy was attacked and briefly occupied by guerillas, trapping the U.S Ambassador William H. Sullivan and 100 members of his staff inside.[671] The Ambassador called on Ayatollah Khomeini, the revolutionary leader of Iran for help; Khomeini's forces freed the hostages, but several personnel were wounded or killed.[672] No compensation program has been proposed for the February 14 hostages.

In October 1979, the Shah Pahlavi travelled to New York City to obtain medical treatment. U.S. authorities informed the Iranian prime minister, Mehdi Bazargan, of the trip and Bazargan guaranteed the safety of the U.S. embassy and its staff from potential retaliation for Americans welcoming the deposed ruler.[673] The leaders of the storming of the embassy, a group of about sixty Iranian university students who called themselves the Students Following the Imam's Line, demanded that the Shah be returned immediately to face the revolution.[674] In the following days, the Carter Administration and diplomats from other countries attempted but failed to negotiate the release of the hostages.[675] On November 12, acting foreign minister Abolhasan Bani-Sadr proposed a release of the hostages if: (1) the United States ceased interfering in Iranian affairs, (2) the Shah was returned to Iran for trail, and (3) assets in the possession of the Shah were declared stolen property.[676] The U.S. responded by stating that it would support establishing an international commission to investigate human rights abuses under the Shah's regime, and by refusing to purchase Iranian oil, instituting an international economic embargo against Iran, and freezing billions of dollars in Iranian assets in the United States.[677] On November 17, 13

[668] See Parvini, *They were hostages in Iran for 444 days. Decades later, they're waiting for compensation*, L.A. Times (Nov. 3, 2019) <https://www.latimes.com/world-nation/story/2019-11-03/iran-hostages-444-days-decades-later-waiting-compensation> (as of Feb. 15, 2023).
[669] Encyclopedia Britannica, *Iran Hostage Crisis* <https://www.britannica.com/event/Iran-hostage-crisis> (as of Feb. 14, 2023).
[670] *Ibid.*
[671] Gage, *Armed Iranians Rush U.S. Embassy*, N.Y. Times (Feb. 15, 1979) p. A1 <https://www.nytimes.com/1979/02/15/archives/armed-iranians-rush-us-embassy-khomeinis-forces-free-staff-of-100-a.html> (as of Feb. 14, 2023).
[672] Encyclopedia Britannica, *supra*.
[673] *Ibid.*
[674] Bowden, *Among the Hostage Takers* (Dec. 1, 2004) The Atlantic <https://www.theatlantic.com/magazine/archive/2004/12/among-the-hostage-takers/303596> (as of Feb. 14, 2023).
[675] Encyclopedia Britannica, *supra*.
[676] *Ibid.*
[677] *Ibid.*

hostages, all women or African Americans, were released on orders of Khomeini on the grounds that they were unlikely to be spies.[678]

On April 24, 1980, a small group of special operations soldiers attempted to free the hostages by force.[679] Their mission failed, however, when three of eight helicopters malfunctioned; U.S. forces withdrew, and one helicopter crashed, killing eight U.S. servicemembers.[680] No diplomatic progress was made until later in the year. In Mid-August, Iran implemented a permanent government; in September, Iraq invaded Iran. The economic embargo and Iran-Iraq War led to Iran re-engaging in hostage negotiations. Algerian diplomats eventually brokered an agreement, the Algiers Accords, and the hostages were released on January 20, minutes after the inauguration of Ronald Reagan. The hostage crisis is widely believed to have contributed to Reagan's victory over Carter.[681] The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.[682] As a result, former hostages and their families have never successfully won judgments or collected damages from the harms of the hostage crisis.

The Hostage Relief Act of 1980, passed during the crisis, did not provide a cash payment to former hostages or their families, but did provide other benefits, including: the creation of an interest-bearing salary savings fund including retroactive interest; reimbursement of medical expenses; extension of various forms of service members' relief to hostages; tax relief, including deferred assessment of taxes for the period of captivity and refunding of tax collected prior to enactment of the Act; and educational expenses for family members and hostages.[683] A proposal to provide each hostage with $1,000 per day of captivity, to be funded by frozen Iranian assets, was rejected by the State Department on the grounds that it would complicate negotiations.[684]

On the same day that the Algiers Accords were signed, President Carter created the President's Commission on Hostage Compensation, with the goal of providing recommendations on financial compensation to former hostages. The commission issued a report that the United States, as the employer of the former hostages, should not be held liable in a "tort sense" but that the former hostages should receive a payment of tax-exempt detention benefits in the amount of $12.50 per day of captivity, similar to benefits paid to Vietnam War prisoners of war.[685] These recommendations were debated in Congress, but ultimately not adopted.[686]

In 2015, Congress passed the United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2015.[687] The Fund initially

[678] *Ibid.*
[679] *Ibid.*
[680] *Ibid.*
[681] *Ibid.*
[682] P.L. 96-449, 94 Stat. 1967 (1980); see also Elsea, Congressional Research Service, The Iran Hostages: Efforts to Obtain Compensation (November 2, 2015) at p.1 <https://sgp.fas.org/crs/misc/R43210.pdf> (as of Feb. 15, 2023).

[683] Elsea, *supra*.
[684] *Ibid.*
[685] *Ibid.*
[686] H.R. No. 2851, 99th Cong. (1985).
[687] Originally 42 U.S.C. § 10609; now, as amended, 34 U.S.C. § 20144.

included an appropriation for $1.025 billion for Fiscal Year 2017.[688] Further funding has been provided by proceeds of federal enforcement actions.[689] At the time of passage, 39 former hostages were still alive.[690] Each hostage is entitled to receive $10,000 per day of captivity, and spouses and children are each entitled to a lump sum of $600,000.[691] Some of the appropriated money came from a $9 billion penalty assessed on Paris-based bank BNP Paribas, for violating sanctions against Iran, Sudan, and Cuba.[692]

In November 2019, Congress enacted the United States Victims of State Sponsored Terrorism Fund Clarification Act, amending the original legislation by extending the life of the Fund and expanding eligibility to receive payments from the Fund.[693] The Consolidated Appropriations Act of 2021 again amended the legislation.[694]

An eligible claimant was originally statutorily limited to:

(1) a U.S. person[695] with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism;
(2) a U.S. person who was taken and held hostage from the United States embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that person, and who is also identified as a member of the proposed class in case number 1:00-CV-03110 (EGS) of the U.S. District Court for the District of Columbia (*Roeder I*);[696] or
(3) the personal representative of a deceased individual in either of the two categories.[697]

On May 17, 2016, the Attorney General appointed Kenneth R. Feinberg as the Special Master to administer the Fund.[698] The Clarification Act removed the requirement that the former hostage

[688] Feinberg, United States Victims of State Sponsored Terrorism Fund, Report from the Special Master (Jan. 2017) <http://www.usvsst.com/docs/USVSST%20Fund%20Congressional%20Report%201-9-17.pdf> (as of Feb. 14, 2023) (2017 Report).
[689] United States Victims of State Sponsored Terrorism Fund, Special Master's Supplemental Report Regarding the Third Distribution (Dec. 2022) <http://www.usvsst.com/docs/USVSST%20Fund%20Supplemental%20Congressional%20Report%20Dec%202022.pdf> (as of Feb. 15, 2023) (2022 Report).
[690] Herszenhorn, *Americans Held Hostage in Iran Win Compensation 36 Years Later*, N.Y. Times (Dec. 25, 2015) p. A1 <https://www.nytimes.com/2015/12/25/us/politics/americans-held-hostage-in-iran-win-compensation-36-years-later.html> (as of Feb. 15, 2023).
[691] 34 U.S.C. § 20144, subds. (c)(2)(B) – (c)(2)(C).
[692] Herszenhorn, *supra*.
[693] 2022 Report, *supra*.
[694] *Id.*
[695] U.S. person is not limited to U.S. citizens, but is defined as a natural person who has suffered an injury arising from the actions of a foreign state. (2017 Report, *supra*).
[696] *Roeder v. Islamic Republic of Iran* (2002) 195 F.Supp.2d 140, was a class action brought by former hostages and their families against Iran to recover tort damages. The D.C. district court dismissed the claims as barred by the Algiers Accords. *Id.* at p. 162.
[697] 2017 Report, *supra*.
[698] *Ibid*.

be identified as a class member of *Roeder I*, but the requirement remains for the hostages' spouses and children.[699]

Former hostage applicants for the fund were required to apply by October 12, 2016.[700] Each applicant needed to establish eligibility. Former hostages were required to verify their identities and the date that they were released; spouses were required to verify that they were married to the former hostage during the hostage period, and children were required to produce birth records showing that they were born before January 20, 1981.[701]

The Special Master has ultimate authority over compensation of the fund, and their decisions are not subject to administrative or judicial review.[702] A claimant whose claim is denied may request a hearing before the Special Master within 30 days of receipt of the denial.[703] The Special Master hosted two telephonic town hall meetings to provide potential claimants, their lawyers, and the public with the opportunity to ask questions concerning the Act, and the Special Master also met personally with victims and their advocates.[704]

The Special Master extended the application deadline to December 2, 2016, and received a total of 2,883 applications for both the former Iran hostages and their families, and those who had received eligible judgements.[705] By August 2017, $1 billion had been disbursed, and $9.7 billion in compensatory damages and statutory awards remained unpaid.[706]

The Fund distributed another $1 billion between 2017 and 2019, and another $1.2 billion between 2019 and 2022. As of the latest report, $93.4 billion in compensatory and statutory damages remained unpaid for the former hostages other individuals eligible for compensation from the fund.[707] The Fund is scheduled to terminate in 2039, and the Special Master predicts authorizing annual payments if sufficient funds are available.[708]

The Act was amended in 2019 to include 9/11 victims who had won judgements against Iran and the Fund was converted to be disbursed on a pro rata basis.[709] Following the amendment, the Fund was to be divided in half: half to be provided for 9/11-related victims of state sponsored terrorism and half to non-9/11 victims.[710] The half allocated to non-9/11 related victims is further

[699] 2022 Report, *supra*.
[700] Justice for United States Victims of State Sponsored Terrorism Act, Notice, 81 Fed.Reg. 135 (July 14, 2016) <www.usvsst.com/docs/Notice.pdf> (as of Feb. 15, 2023).
[701] *Ibid.*
[702] 34 U.S.C. § 20144, subd. (b)(3).
[703] 34 U.S.C. § 20144, subd. (b)(4).
[704] 2017 Report, *supra*.
[705] 2022 Report, *supra*. For privacy reasons, the Special Master Reports do not designate which applicants received funds or how much each applicant received in funds. *Id.* at p. 9.
[706] 2022 Report, *supra*.
[707] *Id.* at p. 12.
[708] *Id.* at p. 13.
[709] 34 U.S.C. § 20144, subd. (d)(3).
[710] 34 U.S.C. § 20144, subd. (d)(3)(A)(i).

divided on a pro rata basis, based on the amounts outstanding and unpaid on eligible claims, until such amounts are paid in full.[711]

As a result of the inclusion of 9/11-related claimants to the fund, only a fraction of the amount designated for former hostages and their families has been distributed.[712] The former hostages have received occasional payments; Fund administrators estimate that the non-9/11 beneficiaries, including the former hostages, have received about 24% of what they are eligible for.[713] As of September 26, 2021, only 35 hostages remained alive.[714] As long as the Fund is maintained and there are outstanding payments, the Special Master will authorize payments on an annual basis; the Fund sunsets on January 2, 2039.[715]

7. State and Local Reparatory Efforts

a. Rosewood, Florida

The Florida Legislature passed a claim bill in May 1994 to acknowledge and provide redress for the destruction and massacre of Rosewood, Florida, a small, predominantly African American community with approximately 120 residents that had wealth in the form of homes and businesses.[716] Florida's restitution to victims included approximately $2.1 million in compensation and a state scholarship fund for direct descendants.

The decimation of Rosewood started on January 1, 1923, when a white woman named Fannie Taylor reported an attack by an unidentified African American man in the town next to Rosewood.[717] Many African American descendants of Rosewood contend that the "attack" was a cover-up for a visit from her white lover.[718] Hearing the report from Taylor, a white vigilante mob led by Levy County Sheriff Robert Elias Walker descended upon Rosewood.[719] The mob tortured and killed an African American man named Sam Carter.[720] For the next week, hundreds of white vigilantes, consisting of KKK members and other deputies from neighboring counties, arrived in Rosewood.[721] They burned every home and building structure, such as churches and

[711] 34 U.S.C. § 20144, subd. (d)(3)(A)(i)(II).
[712] Parvini, *They were hostages in Iran for 444 days. Decades later, they're waiting for compensation*, L.A. Times (Nov. 3, 2019) <https://www.latimes.com/world-nation/story/2019-11-03/iran-hostages-444-days-decades-later-waiting-compensation> (as of Feb. 15, 2023).
[713] Gearan, *40 years later, a dwindling band of Iran hostages awaits a promised payment*, Wash. Post (Sept. 26, 2021) <https://www.washingtonpost.com/politics/2021/09/26/40-years-later-dwindling-band-iran-hostages-awaits-promised-payment> (as of Feb. 15, 2023).
[714] *Ibid*.
[715] United States Victims of State Sponsored Terrorism Fund, Important Dates, <http://www.usvsst.com/important.php> (as of Mar. 13, 2023).
[716] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 505-506.
[717] Colburn, Dye, Jones, Rivers, and Rogers, A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923: Submitted to the Florida Board of Regents (Dec. 1993) p. 23.
[718] *Id.* at p. 27.
[719] *Ibid*.
[720] *Id.* at p. 31.
[721] *Id.* at p. 56.

schools, murdered six African American residents, and wounded dozens more.[722] Two white men also died in a shootout.[723] News of the "race war" traveled quickly throughout the state and country,[724] but the Florida Governor never sent in the National Guard to protect African American residents and end the violence.[725] Many of Rosewood's African American residents fled to the nearby swamps and hid during the riots.[726] A rescue train evacuated fleeing residents to Gainesville.[727] At the end of the violence, only the house of John and Mary Jane Hall Wright, the white residents of Rosewood, remained standing.[728] On February 12, 1923, a grand jury convened in Bronson, Florida, to investigate the Rosewood massacre.[729] Four days later, the grand jury found insufficient evidence to prosecute.[730] African American residents never returned to Rosewood.[731]

In 1994, restitution to Rosewood victims passed the Florida House of Representatives as a claim bill, sponsored by Representative Miguel DeGrady.[732] A claim bill provides compensation to those injured by an act or omission of the state, its subdivisions, agencies, officers, or employees.[733] The bill "recognized an equitable obligation to redress the injuries as a result of the destruction of Rosewood" and consisted of: (1) a finding of facts; (2) a direction to the Florida Department of Law Enforcement to conduct a criminal investigation in and around the Rosewood incident; (3) $500,000 to be distributed from the General Revenue Fund to African American families from Rosewood to compensate for demonstrated property loss; (4) compensation up to $150,000 from the General Revenue Fund for each of the nine living survivors; (5) the establishment of a state scholarship fund for direct descendants of Rosewood families; (6) a direction to the state university system to continue researching the Rosewood incident and the history of race relations in Florida and develop educational materials about the destruction of Rosewood.[734]

After weeks of sensation in the news following the violence in January 1923, the story of the Rosewood massacre disappeared from public media, as survivors largely never spoke of the event.[735] In 1982, investigative reporter Gary Moore from the *St. Petersburg Times* unraveled the history of Rosewood in a comprehensive article that later became a story on CBS's *60*

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[722] *Ibid*.
[723] *Ibid*.
[724] *Id.* at p. 47.
[725] *Id.* at p. 49.
[726] *Id.* at p. 3.
[727] *Id.* at p. 4.
[728] Real Rosewood Foundation, Rosewood Remembered (as of Oct. 20, 2022).
[729] Colburn, Dye, Jones, Rivers, and Rogers, A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923: Submitted to the Florida Board of Regents (Dec. 1993) p. 85.
[730] *Id.* at p. 4.
[731] *Id.* at p. 87.
[732] Florida House Bill No. 591 (1994 Reg. Sess.).
[733] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 504.
[734] Florida House Bill No. 591 (1994 Reg. Sess.).
[735] Times Staff Writer, *Arnett Doctor, Driving Force Behind Rosewood Reparations, Dies at 72* (Mar. 26, 2015) Tampa Bay Times, (as of Oct. 20, 2022).

Minutes.[736] The media attention galvanized Arnett Doctor, a descendent of Rosewood residents, who had been gathering the history of Rosewood for years.[737] Doctor was the driving force behind Rosewood becoming a public issue.[738] He secured the pro bono counsel of Holland & Knight to help descendants and victims seek compensation from the state for the violence and destruction of Rosewood.[739] With the firm's help, former Rosewood residents and their descendants were named in a claim bill, alleging physical and emotional suffering that resulted from acts or omissions of law enforcement and other county and state officials.[740] However, they missed the filing deadline for the 1993 session, so the bill was not introduced.

That year, however, two other bills addressing Rosewood's history were introduced and failed to pass.[741] Nonetheless, coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.[742] Chaired by Dr. Maxine Jones of the Florida State University Department of History, the team issued its December 1993 report, *A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923*.[743] Opponents attacked the report as hearsay.[744] One of the authors of the report admitted that "perhaps the most damaging charge against the historical report was that it failed to include statements or interviews by accused whites or their friends or relatives."[745] But white people in the area refused to be interviewed for the report and were even hostile to the historians in some instances.[746] The historical report was enough evidence to support an equitable cause of action, even if it might not have survived scrutiny in a court proceeding.[747]

The claim bill for compensation was reintroduced in the legislative 1994 session and hearings were held to elicit testimony from Rosewood survivors.[748] At the hearings, survivors and expert witnesses testified about post-traumatic stress disorder symptoms and other suffering from the violence of the Rosewood massacre.[749] When the bill was on the state House floor, opponents attacked the bill with similar arguments—the violence was over 70 years ago, there was a lack of definite evidence of who committed the harms, and there was a fear that passing this bill would

[736] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 508.
[737] Times Staff Writer, *Arnett Doctor, Driving Force Behind Rosewood Reparations, Dies at 72* (Mar. 26, 2015) Tampa Bay Times, (as of Oct. 20, 2022).
[738] *Ibid.*
[739] *Ibid.*
[740] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 508.
[741] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 510-12.
[742] Dye, The Rosewood Massacre: History and the Making of Public Policy (1997) The Public Historian, vol. 19, no. 3, p. 39.
[743] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 513.
[744] *Id*. at p. 34.
[745] *Ibid.*
[746] *Ibid.*
[747] *Ibid*.
[748] *Id*. at p. 514.
[749] *Ibid.*

set a precedent for other groups injured in Florida's past to make claims.[750] The equitable nature of the claim bill served as a retort to these arguments since claim bills were not precedential. The bill passed on May 4, 1994; the House vote was 71-40 and the Senate vote was 26-14.[751]

The flexibility of a claim bill was critical to the descendants' success in securing compensation. If the descendants had asked for compensation in a claims proceeding in a court of law, their case would have been barred by hearsay or statutes of limitations, but since the claim bill hearing was an equitable proceeding, the legislature was not bound by those rules of law.[752] Restitution for the Rosewood massacre became a moral issue for Florida, thus securing its passage even if it could not have been adjudicated in a court of law. Additionally, advocates of the bill were careful not to use the word "reparations" during discussions seeking compensation, and the word cannot be found in the bill.[753] This was done in order to build consensus across party lines.[754] Attorneys at Holland & Knight focused the bill on private property rights and the moral obligation Florida had to Rosewood victims and descendants.[755]

The Rosewood Family Scholarship Program is codified in the state's Education Code[756] and the Florida Department of Education promulgated the criteria to receive an award.[757] The Rosewood Family Scholarship provides student financial assistance to a maximum of 50 students annually and currently provides up to $6,100 per student per academic year.[758] To be eligible, applicants must: be direct descendants who complete a Florida financial aid application; provide documentation of ancestry such as a birth certificate, marriage license, death certificate, church record, or obituary; and enroll in a state university, Florida College System institution, or career center authorized by law.[759] Applicants are selected based on need.[760]

The General Appropriations Act provides funding for the Scholarship program.[761] The scholarship award is distributed before each semester's registration period on behalf of the student to the president of the university or Florida College System institution, his or her representative, or to the director of the career center where the recipient is attending.[762] Since the bill's enactment, there have been no notable issues with implementation. Some recent scholarship recipients have noted the pressure of Rosewood's history looming over them on

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[750] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 509.
[751] Dye, The Rosewood Massacre: History and the Making of Public Policy (1997) The Public Historian, vol. 19, no. 3, p. 38.
[752] Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 509.
[753] Glenza, *Rosewood Massacre a Harrowing Tale of Racism and the Road Toward Reparations* (Jan. 3, 2016) The Guardian (as of Oct. 20, 2022).
[754] *Ibid*.
[755] *Ibid*.
[756] Fla. Stat. § 1009.55.
[757] Fla. Admin. Code, rule 6A-20.027.
[758] Florida Department of Education, Rosewood Family Scholarship Fact Sheet 2022-23 (2022).
[759] Florida Department of Education, Rosewood Family Scholarship Fact Sheet 2022-23 (2022).
[760] Fla. Stat. § 1009.55, subd. (2), par. (c).
[761] Fla. Stat. § 1009.55, subd. (4).
[762] *Ibid.*

campus, resulting in a sense of purpose and worry about upholding the legacy of their ancestors.[763]

In 2004, a Florida Historical Marker co-sponsored by the state and the Real Rosewood Foundation, a non-profit dedicated to preserving the history of Rosewood, was placed on State Road 24 to note where the community once was.[764] It states: "Those who survived were forever scarred."[765]

b. North Carolina Sterilization

In 2002, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina's Eugenics Board.[766] In 2013, North Carolina was the first state to pass legislation to compensate victims of state-sponsored eugenic sterilizations. The law set aside a $10 million pool for compensation payments, and at least 215 victims received $20,000 in 2014, $15,000 in 2015, and a final payment of around $5,000 in 2018.

In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received even some state funding to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."[767] The North Carolina Supreme Court invalidated the law in 1933 because it failed to provide any notice or opportunity for appeal.[768] In response, the North Carolina Legislature created the North Carolina Eugenics Board to implement the new forced-sterilization law that had very limited appeal rights.[769]

The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be sterilized due to being either epileptic, "feebleminded," or mentally diseased.[770] There was a very limited appeal process, but the Board approved about 90 percent of the petitions.[771] The state ultimately sterilized around 7,600 persons, the third-largest number in the country.[772] The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just

[763] Samuels, *After Reparations* (April 3, 2020) Washington Post, (as of Oct. 20, 2022).
[764] Banks, *Reparations after Rosewood Massacre a Model, Descendants Say* (Dec. 24, 2020) Tampa Bay Times, (as of Oct. 20, 2022).
[765] *Ibid.*
[766] AcessWDUN, "N.C. Governor Apologizes to Sterilization Victims," (Dec. 13, 2002), at https://accesswdun.com/article/2002/12/186617#:~:text=%60%60,of%20stories%20on%20the%20program (as of Apr. 11, 2023).
[767] North Carolina P.L. 1929, c. 34.
[768] *Brewer v. Valk*, 204 N.C. 186 (1933).
[769] North Carolina P.L. 1933, c. 224.
[770] North Carolina P.L. 1933, c. 224.
[771] Railey & Begos, *"Still hiding," Against their Will: North Carolina's Sterilization Program, Part One*, Winston-Salem Journal (Mar. 13, 2003) at https://www.journalnow.com/news/local/still-hiding/article_e26e967e-8fe4-11e2-b104-0019bb30f31a.html [as of Jan. 23, 2023].
[772] Bakst, *North Carolina's Forced-Sterilization Program: A Case for Compensating the Living Victims*, John Locke Found. Policy Rep. (2011), p. 7, at https://www.johnlocke.org/wp-content/uploads/2016/06/NCeugenics.pdf [as of Jan. 20, 2023].

those residing in penal or mental facilities. Moreover, the vast majority of sterilizations took place after World War II.[773]

Governor Bev Perdue established the North Carolina Justice for Sterilization Victims Foundation as part of the North Carolina Department of Administration in 2010 to function as a clearinghouse to help victims of the former North Carolina Eugenics Board.[774] During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.[775] This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.[776]

The statute set out a program to compensate individuals who were asexualized or sterilized involuntarily under the authority of the Board under either the 1933 or 1937 version of the law.[777] This requirement that the state Board have been involved and/or have a record of the sterilization caused implementation issues, as it turned out that many individuals were sterilized at the county level without the involvement of the state Board.[778] A sterilization was "involuntary" under the statute if done in the case of a minor child, an incompetent adult, or a competent adult without the adult's informed consent.[779] A claimant must also have been alive on June 30, 2013 in order to receive compensation.[780]

The State Legislature allocated $10 million to pay compensation claims, with payments to be made in stages.[781] The first payment was to be made to those claimants deemed qualified by October 31, 2014.[782] Any claimants determined to be qualified recipients after that date received their initial payment within 60 days, and final payment checks splitting the remaining funds among qualified recipients were to be sent out within 90 days of the exhaustion of the last

[773] Ibid.
[774] Brochure, N.C. Justice for Sterilization Victims Foundation (Sept. 2014), at https://ncadmin.nc.gov/media/3165/download [as of Jan. 23, 2023].
[775] Ibid.
[776] N.C.S.L. 2013-360, sec. 6.18, subd. (a), creating N.C.G.S. §§ 143B-426.50 – 143B-426.57.
[777] N.C.G.S. § 143B-426.50, subd. (5).
[778] Mennel, *Why Some NC Sterilization Victims Won't Get Share of $10 Million Fund*, WUNC.org (Oct. 6, 2014) at https://www.wunc.org/2014-10-06/why-some-nc-sterilization-victims-wont-get-share-of-10-million-fund.html [as of Jan. 24, 2023].
[779] N.C.G.S. § 143B-426.50, subd. (3).
[780] N.C.G.S. § 143B-426.50, subd. (1).
[781] N.C.G.S. § 143B-426.51, subd. (a).
[782] N.C.G.S. § 143B-426.51, subd. (a). This initial payment was $20,000, see Craver, *N.C. Eugenics Victims Projected to Get Final State Compensation Payment Soon*, Winston-Salem Journal (Jan. 17, 2018) at https://www.journalnow.com/n-c-eugenics-victims-projected-to-get-final-state-compensation-payment-soon/article_87e3c891-7828-5f2d-856f-498b6405781a.html (as of Jan. 23, 2023).

appeal.[783] Applications needed to be received by September 23, 2014 in order to be considered for the program.[784]

Now-Senator Thom Tillis was a co-sponsor of the legislation while he was North Carolina Speaker of the House. Discussing the need for financial payments, Tillis stated:

> "We decided that we were going to take the hits and do the right thing for the victims. It was not easy. We had opposition from both sides, some saying we shouldn't do it at all, others saying we weren't doing enough. But those had been the arguments that had prevented it from happening in the past, and we decided that we were going to push through and do the right thing for the victims."[785]

The financial compensation was specifically limited to those who were themselves directly harmed by the State Eugenics Board and still alive at the time the legislation was passed.[786]

The bill specifically stated that financial compensation would not be subject to tax and other limitations: (1) Any payment should not be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any State or local program financed in whole or in part with State funds; and (2) the N.C. Department of Health and Human Services should disregard compensation money in the determination of public assistance or recovery of Medicaid-paid services.[787] Once he became a United States Senator, Tillis authored a bill to protect compensation payments from any determination for federal benefits.[788]

North Carolina only repealed its sterilization law in 2003. As part of the repeal, then-Governor Easley issued a public apology.[789] He stated, "To the victims and families of this regrettable episode in North Carolina's past, I extend my sincere apologies and want to assure them that we will not forget what they have endured."[790]

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[783] N.C.G.S. § 143B-426.51, subd. (a). A second payment of $15,000 went out in 2015, but the final payment did not go out until 2018. See Craver, *N.C. Eugenics Victims Projected to Get Final State Compensation Payment Soon*, Winston-Salem Journal (Jan. 17, 2018) at https://www.journalnow.com/n-c-eugenics-victims-projected-to-get-final-state-compensation-payment-soon/article_87e3c891-7828-5f2d-856f-498b6405781a.html (as of Jan. 23, 2023).

[784] N.C.G.S. § 143B-426.51, subd. (e).

[785] Press Release, *Tillis Discusses Eugenics Compensation Legislation and the Moral Obligation to Assist Victims* (Oct. 5, 2016) at https://www.tillis.senate.gov/2016/10/tillis-discusses-eugenics-compensation-legilsation-and-the-moral-obligation-to-assist-victims (as of Jan. 24, 2023).

[786] Bakst, *North Carolina's Forced-Sterilization Program: A Case for Compensating the Living Victims*, John Locke Found. Policy Rep. (2011), p. 12, at https://www.johnlocke.org/wp-content/uploads/2016/06/NCeugenics.pdf (as of Jan. 20, 2023).

[787] N.C.G.S. § 143B-426.56.

[788] Press Release, *Tillis Discusses Eugenics Compensation Legislation and the Moral Obligation to Assist Victims* (Oct. 5, 2016) at https://www.tillis.senate.gov/2016/10/tillis-discusses-eugenics-compensation-legilsation-and-the-moral-obligation-to-assist-victims (as of Jan. 24, 2023).

[789] Reynolds, *Easley Signs Law Ending State's Eugenics Era"* Inclusion Daily Express: International Disability Rights News Services (Apr. 17, 2003) at https://www.inclusiondaily.com/news/institutions/nc/eugenics.htm (as of Jan. 23, 2023).

[790] *Ibid.*

The statute creating the compensation program formed the Office of Justice for Sterilization Victims in the North Carolina Department of Administration to administer claims. Applicants were able to submit claims to the Office between January 2013 and June 30, 2014.[791] Claims needed to be dropped off in person or mailed, and be received by the above date to be considered. Claims were assessed by the North Carolina Industrial Commission ("Commission").[792]

A deputy commissioner first assessed the claims to determine eligibility, and if the claim was not approved, the deputy commissioner had to set forth in writing the reasons for the denial and notify the claimant.[793] If not approved, a claimant could submit additional documentation and request a redetermination by the deputy commissioner.[794] A claimant whose claim was not approved at either previous stage had the right to request a hearing before the deputy commissioner, where the claimant could be represented by counsel, present evidence, and call witnesses.[795] The deputy commissioner who heard the claim had to issue a written decision of eligibility.[796]

A claimant could then file a notice of appeal with the Commission within 30 days; such appeal was to be heard by the full Commission, and the Commission had to notify all parties concerned in writing of its decision.[797] A claimant could appeal the decision of the full Commission to the state Court of Appeals within 30 days of the date notice of the decision is given.[798] Decisions favorable to the claimant were final and not subject to appeal by the State.[799]

If a claimant was determined to be a qualified recipient, the Commission gave notice to the Office of Justice for Sterilization Victims and the Office of State Controller. The Office of State Controller then made a payment of compensation to the qualified recipient.[800] Compensation was intended to be in the form of two payments, with the first by October 31, 2014 (or 60 days after a claim was approved if approval happened after October 31, 2014), and the second payment after the exhaustion of all appeals arising from denial of eligibility.[801] Several court cases appealing denials of claims took several years to progress through the courts, so the State ultimately sent three payments to victims between 2014 and 2018.

There were two groups of court cases regarding who qualified as a claimant under the program. First, a group of plaintiffs argued they should be eligible for compensation payments as heirs to victims of sterilization. The state court ruled it was not an Equal Protection Violation for the

[791] N.C.G.S. § 143B-426.52, subds. (a), (b).
[792] N.C.G.S. § 143B-426.50, subd. (2).
[793] N.C.G.S. § 143B-426.53, subd. (b).
[794] N.C.G.S. § 143B-426.53, subd. (c).
[795] N.C.G.S. § 143B-426.53, subd. (d).
[796] *Ibid.*
[797] N.C.G.S. § 143B-426.53, subd. (e).
[798] N.C.G.S. § 143B-426.53, subd. (f).
[799] N.C.G.S. § 143B-426.53, subd. (h).
[800] N.C.G.S. § 143B-426.53, subd. (g).
[801] N.C.G.S. § 143B-426.51, subd (a).

statute to provide compensation only to those victims alive on the date the statute was passed.[802] Second, a group of plaintiffs challenged the limitation of compensation to only those whose sterilization was directly under the auspices of the State Eugenics Board, rather than a county official or state judge. The state court eventually ruled it was constitutional for the statute to limit compensation to those sterilized directly under the auspices of the State Eugenics Board.[803]

c. Virginia (Eugenics)

On May 2, 2002, 75 years after the *Buck v. Bell* Supreme Court decision that upheld Virginia's eugenics statute, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.[804]

In 1924, Virginia passed its Eugenical Sterilization Act, which authorized the sexual sterilization of inmates at state institutions. The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and the requirements of the Act were met.[805] The Act responded to fifty years of scholarly debate over whether certain social problems, including shiftlessness, poverty, and prostitution, were inherited and ultimately could be eliminated through selective sterilization.[806] The Act was passed alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as "white," "colored," or "mixed" with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian." The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which saw non-White people as having inferior genes. One inmate, Carrie Buck, appealed her order of sterilization, but U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) by a vote of 8 to 1. [807] The controversial ruling was never overturned, but the law was repealed in 1974.[808] Between 1927 and 1972, about 8,300 Virginians were sterilized. [809]

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[802] See, e.g., *Matter of Hughes, by and through Ingram*, 253 N.C. App. 699, 801 S.E.2d 680 (N.C. Ct. App. June 6, 2017).
[803] See, e.g., *Matter of Davis*, 256 N.C. App. 436, 808 S.E.2d 369 (N.C. Ct. App. Nov. 21, 2017).
[804] Leung, E. (2014, March 18). Virginia becomes the first US state to issue a formal apology for sterilization. Retrieved November 4, 2022, from https://eugenicsarchive.ca/discover/tree/532874b8132156674b00029c
[805] Encyclopedia Virginia, Chapter 46B of the Code of Virginia § 1095h–m (1924), https://encyclopediavirginia.org/entries/chapter-46b-of-the-code-of-virginia-%c2%a7-1095h-m-1924/
[806] Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[807] On October 19, 1927, John H. Bell, the colony's superintendent, performed a salpingectomy, sterilizing Carrie Buck. She was released from the institution a month later. Historians have since found evidence that neither Carrie Buck nor her daughter suffered from any mental illness and that Bell's sterilization relied on a false diagnosis. Vivian Dobbs, Carrie Buck's daughter, was placed on the honor roll at her elementary school in 1931, a year before she died at the age of eight. Carrie Buck Eagle Detamore, who married twice, died in a nursing home in Waynesboro on January 28, 1983, and is buried in Oakwood Cemetery in Charlottesville. Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[808] Encyclopedia Virginia, Buck v. Bell (1927), supra.
[809] *Ibid.*

In 1980, the American Civil Liberties Union sued the Lynchburg Training School and Hospital (previously the Virginia State Colony for Epileptics and Feebleminded) on behalf of the men and women who had been sterilized there. In *Poe v. Lynchburg Training School and Hospital* (1981), the U.S. District Court for the Western District of Virginia ruled that while the sterilizations had been legal, there was cause to believe that correct procedure had not always been followed. The plaintiffs later settled with the state out of court, with the state agreeing to attempt to locate all living persons who had been sterilized, to inform them of the consequences of the operation, and to provide them with counseling and medical treatment.[810]

In 2014, Virginia House Member Robert G. Marshall introduced House Bill 1529, the Justice for Victims of Sterilization Act. The bill as introduced would have provided compensation in the amount of $50,000 to persons involuntarily sterilized between 1924 and 1979. Funds would be administered by the Department of Social Services. The provisions of the bill would expire July 1, 2018. The bill however never left the House and died in Appropriations by February 2013.

In 2014, Virginia House Member Robert G. Marshall reintroduced the Justice for Victims of Sterilization Act as House Bill 74. The bill included an updated sunset of July 1, 2019. House Bill 74 was referred to the Committee on Appropriations but was voted on to be continued in 2015.

In 2015, Virginia House Member Patrick Hope reintroduced the Justice for Victims of Sterilization Act as House Bill 1504. The bill remained the same and included a sunset provision. The House assigned House Bill 1504 to the General Government and Capital Outlay Subcommittee, but by February 2015, the bill was left in Appropriations. The same year, Virginia House Member Benjamin Cline introduced an identical bill, House Bill 2377. However, House Bill 2377 was left in Appropriations in February 2015.

Despite both bills not making it out of Appropriations, an amendment was added to the 2015 House Budget Bill, HB 1500, to allocate $400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015.[811] As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to $25,000 per person instead of the proposed $50,000.[812] Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the department was ordered to continue to collect applications.[813] The department was required provide a report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who had applied. The Virginia House and Senate approved House Bill 1500, and the bill was signed by the Governor on March 26, 2015, establishing the Virginia Victims of Eugenics Sterilization Compensation Program (VESC). As of the enactment, there were only 11 surviving victims.[814]

[810] Need citation.
[811] https://budget.lis.virginia.gov/bill/2015/1/
[812] *Ibid.*
[813] *Ibid.*
[814] Need cite for this fact.

To apply for compensation through the Victims of Eugenics Sterilization Compensation Fund, authorized through the 2015 Appropriation Act, claimants must complete and mail an application form and provide supporting documentation to the Virginia Department of Behavioral Health and Developmental Services.

An individual or lawfully authorized representative is eligible to request compensation under this program if the individual was:

1. Involuntarily sterilized pursuant to the 1924 Virginia Eugenical Sterilization Act;
2. Living as of February 1, 2015; and
   Sterilized while a patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern State Hospital; or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).

On October 7, 2016, the Treatment of Certain Payments in Eugenics Compensation Act was signed by the President and became law as Public Law 114-241. This federal law provides that payments made under a state eugenics compensation program shall not be considered as income or resources for purposes of determining the eligibility of a recipient of such compensation for, or the amount of, any federal public benefit.[815]

d. California Sterilization Compensation Program

In 2003, the State of California formally apologized for its eugenic sterilization program that took place until 1979. This included apologies from Governor Gray Davis, Attorney General Bill Lockyer, and a resolution passed by the State Senate expressing profound regret over the program.[816] In 2021, the California State Legislature passed Assembly Bill (AB) 137 creating the California Forced or Involuntary Sterilization Compensation Program, apologizing for sterilizations at state prisons, ordering the creation of memorial plaques, and allocating $4.5 million for financial compensation to those sterilized by the State.[817]

California's eugenic sterilization program began in 1909, with the passage of Chapter 720 of the Statutes of 1909 (revised in 1913 [Chapter 363 of the Statutes of 1913] and 1917 [Chapters 489 and 776 of the Statutes of 1917]), which authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.[818] This allowed medical personnel to perform vasectomies for men and salpingectomies for women who were identified as "afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeblemindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."[819]

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[815] Virginia Department of Behavioral Health & Developmental Services, Victims of Eugenics Sterilization Compensation Program, https://dbhds.virginia.gov/developmental-services/victimsofeugenics/.
[816] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (g)-(h).
[817] Galpern, *Social Justice Coalition Key to Success in California's New Sterilization Compensation Program*, Genetics and Society (Jan. 26, 2022), at https://geneticsandsociety.org/biopoliticaltimes/social-justice-coaltion-key-success-californias-new-sterilization-compensation (as of Jan. 12, 2023).
[818] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (a), (b).
[819] *Ibid.*

The law passed unanimously in the State Assembly, and drew only one dissenting vote in the State Senate in 1909. The subsequent amendments shifted the focus of the program from the castration of those imprisoned in state prisons and towards the sterilization of those held in state mental hospitals.[820]

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities. While many sterilizations included the use of consent forms, such consent was often a condition of release from commitment. This, along with other conditions such as lack of full information, prevented true consent.[821] Moreover, AB 137 notes that even though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women."[822] For example, between 1919 and 1952, "women and girls were 14 percent more likely to be sterilized than men and boys," "male Latino patients were 23 percent more likely to be sterilized than non-Latino male patients, and female Latina patients were 59 percent more likely to be sterilized than non-Latina female patients."[823]

California's eugenic sterilization law was repealed in 1979, but sterilization without proper consent continued in state institutions. In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system's medical facilities between fiscal years 2005-06 and 2012-13.[824] The auditor discovered 144 women imprisoned by the State were sterilized through bilateral tubal ligation, which is not medically necessary and is solely used for female sterilization.[825] The auditor found that officials failed to receive informed consent in at least 39 of these cases, but more broadly, expressed serious reservations about all of the procedures as it was "unable to conclude whether inmates received educational materials, whether prison medical staff answered inmates' questions, or whether these staff provided the inmates with all of the necessary information to make such a sensitive and life-changing decision as sterilization."[826] Following this report, the Legislature prohibited the sterilization for the purpose of birth control for any individual under the control of the California Department of Corrections and Rehabilitation (CDCR).[827] There are an estimated 244 survivors of illegal prison sterilization.[828]

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[820] Sen. Com. On Judiciary, Analysis of Assem. Bill. No. 1007 (2021-2022 Reg. Sess.) Jul. 1, 2021, p.5. The provisions creating a reparations scheme for the state sterilization programs were originally in a stand-along bill, Assem. Bill No. 1007. Identical provisions were then placed in Assem. Bill 137 (Committee on Budget, 2021), which as a budget trailer bill, took effect immediately. The legislative history for Assem. Bill 137 does not include detailed discussion of the reparations scheme, which can be found in the legislative history for Assem. Bill 1007.
[821] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (c).
[822] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (e).
[823] *Ibid.*
[824] Cal. State Auditor, *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed* (June 2014), at https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf (as of Jan. 12, 2023).
[825] *Id.* at 19.
[826] *Id.* at 19, 3.
[827] Assem. Bill No. 1135 (2013-2014 Reg. Sess.).
[828] Sen. Com. On Judiciary, Analysis of Assem. Bill. No. 1007 (2021-2022 Reg. Sess.) Jul. 1, 2021, p.6.

The California Legislature passed, and the Governor signed, AB 137 in the 2021-2022 legislative session. AB 137 created the California Forced or Involuntary Sterilization Compensation Program (FISCP or Program), which financially compensates survivors of state-sponsored sterilization. The California Victim Compensation Board (CalVCB) administers the Program.

AB 137 sets out specific criteria for those who can apply for compensation from the Program: "(1) Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. (2) Any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979."[829]

To be eligible under the first category, a person must have been: (1) sterilized pursuant to the eugenics laws in place between 1909-1979; (2) sterilized while the individual was at a facility under the control of the State Department of State Hospitals or the State Department of Developmental Services; (3) and alive at the start date of the Program, July 1, 2021.[830]

To be eligible under the second category, the following conditions must be met: (1) sterilization procedure occurred after 1979; (2) claimant was sterilized while in the custody of CDCR; (3) sterilization was not required in an emergency life-saving medical situation or due to a chemical sterilization program for convicted sex offenders; (4) sterilization was for birth control purposes; and (5) the claimant was sterilized under one of the following conditions: without consent, with consent given less than 30 days before sterilization, with consent given without counseling or consultation, or with no record or documentation of providing consent.[831] The law also requires CalVCB to affirmatively identify and disclose coercive sterilizations that occurred in California prisons after 1979 so that individuals may then apply for compensation.[832]

AB 137 allocated $4.5 million for direct financial compensation to applicants who met the above eligibility criteria. Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility.[833] After all applications are processed and all initial payments are made, any remaining program funds will be disbursed evenly to the qualified

[829] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, subd. (b), codified at Health & Saf. Code § 24210, subd. (b)(1), (2).
[830] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, subd. (c)(3)(A), codified at Health & Saf. Code § 24210, subd. (c)(3)(A). Claimants can designate a beneficiary for their compensation in the case they pass away prior to resolution of their claim.
[831] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, subd. (c)(3)(B), codified at Health & Saf. Code § 24210, subd. (c)(3)(B).
[832] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24211, subd. (a)(4).
[833] Beam, *California Trying to Find, Compensate Sterilization Victims*, A.P. News (Jan. 5, 2023), at https://apnews.com/article/politics-health-california-state-government-prisons-b560ec0a0155d8cc13730310e1073d9d (as of Jan. 12, 2023).

recipients by March 31, 2024.[834] Applications to the program are accepted from January 1, 2022, through December 31, 2023.[835]

Sponsor of the bill, California Latinas for Reproductive Justice, summarized the rationale for the apology and financial compensation:

> California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). It will also become the first state to compensate survivors of involuntary sterilizations performed outside of formal eugenic laws. Enactment of this bill would send a powerful message around the country that forced sterilizations will not be tolerated in carceral settings, including prisons, detention centers, and institutions.[836]

The bill specifically stated that financial compensation would not be subject to tax and other limitations:

> Notwithstanding any other law, the payment made to a qualified recipient pursuant to this program shall not be considered any of the following: (1) Taxable income for state tax purposes; (2) Income or resources for purposes of determining the eligibility for, or amount of, any benefits or assistance under any state or local means-tested program; (3) Income or resources in determining the eligibility for, or the amount of, any federal public benefits as provided by the Treatment of Certain Payments in Eugenics Compensation Act (42 U.S.C. Sec. 18501); (4) Community property for the purpose of determining property rights under the Family Code and Probate Code.[837]

Moreover, the financial compensation shall not be subject to an enforcement of a money judgment under state law, a money judgment in favor of the Department of Health Care Services, the collection of owed child support, or the collection of court-ordered restitution, fees, or fines.[838]

In 2003, the State Legislature, Governor, and Attorney General all issued formal apologies for the 1909-1979 eugenic sterilization program.[839] Specifically, the State Senate passed a resolution expressing "profound regret over the state's past role in the eugenics movement and the injustice done to thousands of California men and women," addressing "past bigotry and intolerance against the persons with disabilities and others who were viewed as 'genetically unfit' by the eugenics movement," recognizing that "all individuals must honor human rights and treat others

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[834] CalVCB, *Forced or Involuntary Sterilization Compensation Program Frequently Asked Questions*, at https://victims.ca.gov/fiscp/#:~:text=your%20eligibility%20reviewed.-,CalVCB%20will%20accept%20applications%20from%20January%201,%2C%20to%20December%2031%2C%202023.&text=Applicants%20may%20submit%20documentation%20demonstrating,state%20records%20for%20eligibility%20documentation (as of Jan. 17, 2023).
[835] *Ibid.*
[836] Sen. Com. On Pub. Saf., Analysis of Assem. Bill. No. 1007 (2021-2022 Reg. Sess.) Jun. 29, 2021, p.10.
[837] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24217, subd. (a).
[838] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24217, subd. (b).
[839] Ingram, *State Issues Apology for Policy of Sterilization*, L.A. Times (Mar. 12, 2003), at https://www.latimes.com/archives/la-xpm-2003-mar-12-me-sterile12-story.html (as of Jan. 12. 2023).

with respect regardless of race, ethnicity, religious belief, economic status, disability, or illness," and urging "every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should it arise in the future."[840]

In 2021, as part of the passage of AB 137, the State Legislature formally expressed regret for the sterilizations that took place after 1979. Specifically, the Legislature stated, "The Legislature also hereby expresses its profound regret over the state's past role in coercive sterilizations of people in women's prisons and the injustice done to the people in those prisons and their families and communities."[841]

AB 137 also requires the State Department of State Hospitals, the State Department of Developmental Services, and CDCR, in consultation with stakeholders to establish markers or plaques at designated sites.[842] Stakeholders must include at least one member and one advocate of those who were sterilized under California's eugenics laws between 1909 to 1979, and of those who were sterilized without proper authorization while imprisoned in California state prisons after 1979.[843] These memorials should "acknowledge the wrongful sterilization of thousands of vulnerable people under eugenics policies and the subsequent sterilization of people in California's women's prisons caused, in part, by the forgotten lessons of the harms of the eugenics movement."[844]

The compensation program is administered by CalVCB. The law gives CalVCB six months from passage to have applications ready for the public, and applications are accepted from January 1, 2022, through December 31, 2023.[845] Applications are available through CalVCB's website, over the phone, through the mail, or by visiting in person, and they can be returned by mail, email, or fax.

The individual submitting the application will receive a letter from CalVCB either confirming a complete application or requesting additional information. Once the application is screened and deemed complete, the application will be considered for eligibility. The statute sets out eligibility criteria (discussed above) and the specific documents and document types CalVCB may use to determine eligibility.[846] Upon completion of the eligibility review, a letter will be sent out with the determination.[847]

If eligibility is verified, the claimant will receive a confirmation letter, and they shall receive an initial payment of $15,000 within 60 days of the CalVCB's determination.[848]

[840] Assem. Bill No. 137, (2021-2022 Reg. Sess.) § 34, subd. (h), citing Sen.Res. No. 20 (2003-2004 Reg. Sess.).
[841] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (l).
[842] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24215.
[843] *Ibid.*
[844] *Ibid.*
[845] CalVCB, *Forced or Involuntary Sterilization Compensation Program Frequently Asked Questions, supra* n.19.
[846] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24213, subd. (a).
[847] CalVCB, *Forced or Involuntary Sterilization Compensation Program Frequently Asked Questions, supra* n.19.
[848] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24213, subd. (b)(1).

If eligibility is not verified, the application will be denied. Notification will be sent with the necessary appeal information. An individual may file an appeal to CalVCB within 30 days of the receipt of the notice of decision, and after receiving the appeal, CalVCB shall again attempt to verify the claimant's identity pursuant to statutory requirements.[849] If the claimant's identity cannot be verified, the claimant can provide additional evidence including, but not limited to, documentation of the individual's sterilization, sterilization recommendation, surgical consent forms, relevant court or institutional records, or a sworn statement by the survivor or another individual with personal knowledge of the sterilization.[850] CalVCB has 30 days to rule on an appeal, and any successful appeals will receive compensation as above.

After exhaustion of all appeals arising from the denial of an individual's application, but by no later than two years and nine months after the start date of the program, CalVCB shall send a final payment to all qualified recipients. This final payment shall be calculated by dividing the remaining unencumbered balance of funds for victim compensation payments by the total number of qualified recipients.[851]

According to CalVCB, as of December 20, 2022, the program has received 309 applications. Of those, 45 have been approved, 102 have been denied, three have been closed as incomplete, and 159 are being processed.[852] Experts estimate there may be about 600 people alive today that qualify for compensation, and the CalVCB is undertaking several actions to try to spread the word about the program.[853] This includes sending posters and fact sheets to 1,000 skilled nursing homes and 500 libraries, and distributing more than 900 posters to the state's 35 correctional institutions to post in common areas and housing units, in hopes of reaching more people.[854] The State also signed a $280,000 contract in May with JP Marketing to launch a social media campaign that will run through the end of 2023. The biggest push began in December 2022, when the State will pay for TV and radio ads in Los Angeles, San Francisco, and Sacramento that will run through October 2023.[855]

e. Chicago Police Department

[849] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24213, subd. (a)(5).
[850] *Ibid.*
[851] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, codified at Health & Saf. Code § 24213, subd. (b)(2).
[852] CalVCB, *At Program's Halfway Point, California Continues to Search for Survivors of State-Sponsored Forced Sterilization to Compensate Them* (Dec. 21, 2022), at https://victims.ca.gov/news-releases/at-programs-halfway-point-california-continues-to-search-for-survivors-of-state-sponsored-forced-sterilization-to-compensate-th%E2%80%A6 (as of Jan. 17, 2023).
[853] Beam, *California Trying to Find, Compensate Sterilization Victims*, A.P. News (Jan. 5, 2023), at https://apnews.com/article/politics-health-california-state-government-prisons-b560ec0a0155d8cc13730310e1073d9d (as of Jan. 12, 2023).
[854] CalVCB, *At Program's Halfway Point, California Continues to Search for Survivors of State-Sponsored Forced Sterilization to Compensate Them* (Dec. 21, 2022), at https://victims.ca.gov/news-releases/at-programs-halfway-point-california-continues-to-search-for-survivors-of-state-sponsored-forced-sterilization-to-compensate-th%E2%80%A6 (as of Jan. 17, 2023).
[855] Beam, *California Trying to Find, Compensate Sterilization Victims*, A.P. News (Jan. 5, 2023), at https://apnews.com/article/politics-health-california-state-government-prisons-b560ec0a0155d8cc13730310e1073d9d (as of Jan. 12, 2023).

Between 1972 and 1991, Jon Burge, a high-ranking officer in the Chicago Police Department , led a group of detectives and officers in an organized operation to torture and abuse over 120 African American criminal suspects, with some cases resulting in coerced confessions.[856] Investigations revealed that Burge led operations of abuse that included physical torture and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture."[857] Evidence also suggests that judges and some city officials were complicit in Burge's abuses for many years.[858] Many of Burge's African American victims ended up in prison due to coerced confessions and some were sentenced to death.[859] Efforts to hold Burge accountable for his actions were unsuccessful because the statute of limitations had expired for many of the cases of torture. Community members sought alternative methods to obtain justice, and those efforts eventually led to the passage of the Ordinance for Reparations for the Chicago Police Torture Survivors (Reparations Ordinance).[860]

For twenty years before the Reparations Ordinance was passed, community activist organizations in Chicago, including the Chicago Torture Justice Memorial (CTJM) and attorney Joey Mogul of Peoples Law Office, fought to have the harms inflicted by Burge and his officers acknowledged and the survivors compensated.[861]

, They litigated torture cases in court seeking justice for the survivors.[862] One of those survivors was Andrew Wilson who had been sentenced to death because of the false confession Burge and other officers coerced from him using torture.[863] Wilson filed suit under 42 U.S.C. § 1983 seeking damages from Burge..[864] An all-white jury found in favor of Burge, but the United States Court of Appeal for the Seventh Circuit reversed the verdict and ordered a new trial.[865]

Another survivor who sought relief through the courts was Aaron Patterson who was sentenced to death.[866] His claim against Burge was raised in a post-conviction petition, which asked the court to determine whether Patterson was a victim of torture.[867] After denials in the lower court, the Illinois Supreme Court heard the case, specifically to address whether evidence of physical injury was necessary to prove that a confession was coerced using torture.[868] The Illinois

[856] Baer, *Dignity Restoration and the Chicago Police Torture Reparations Ordinance* (2019) 92 Chi.-Kent L.Rev. 769, 769-70.
[857] *Id.* at 769.
[858] *Id.* at 770.
[859] *Id.*
[860] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 340; Macaraeg & Kunichoff, *How Chicago Became the First City to Make Reparations to Victims of Police Violence* (Mar. 21, 2017) Yes Magazine.
[861] [Cite.]
[862] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 343.
[863] *Id.* at 331-32.
[864] *Id.* at 331-32.
[865] *Id.* at 333.
[866] *Id.*
[867] *Id.*
[868] *Id.*

Supreme Court held that proof of physical injury was not required to establish that a confession was physically coerced.[869]

These were two examples of the many cases where survivors pursued remedies through the courts with mixed results. Some claims were raised in post-conviction proceedings, seeking damages; others were filed to address limited issues/questions, and other actions were filed seeking new trials based on the coerced confessions. The results varied, and the overall frustration of the survivors, their attorneys, and activists led them to seek support from international human rights organizations like the Inter-American Commission for Human Rights (Inter-American Commission) and the United Nations Committee Against Torture (Committee Against Torture) to hold Burge and the City of Chicago accountable. They filed petitions with the Inter-American Commission and the Committee Against Torture seeking redress.[870] The Inter-American Commission did not take official action.[871] But the Committee Against Torture issued a report affirming the survivors' position and urging the United States to provide redress "by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors."[872] In its report, the Committee Against Torture expressed concern that no police officer had been convicted for their crimes and that the majority of victims still had not receive "compensation for the extensive injuries suffered."[873] Although Burge was convicted for perjury and obstruction of justice, there was not sufficient evidence to prosecute him for violating the constitutional rights of the survivors. [874]

In May 2015, the efforts of the survivors, their attorneys, and the activists culminated in the Chicago City Council "approv[ing] a municipal ordinance giving reparations to Burge torture survivors."[875] The Reparations Ordinance approved a $5.5 million fund that would be used to award each survivor $100,000 in financial compensation along with non-financial reparations such as psychological counseling, healthcare, and an official memorial. [876] The Ordinance was drafted by attorney Joey Mogul who worked with survivors, their families, and other activists.[877] There was no temporal limit for filing claims..

The intended recipients of the Reparations Ordinance included all torture survivors that have credible claim of torture or physical abuse at the hands of Job Burge or his subordinates, their immediate family members, and in some cases, to their grandchildren. The ordinance requires the individual must have a credible claim of torture or physical abuse by Jon Burge or one of the officers under his command between May 1, 1972, and November 30, 1991.[878]

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[869] *Id.* at 334.
[870] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 337-38.
[871] *Id.* at 337, 346.
[872] *Id.* at 337, 346.
[873] U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, U.N. Doc. CAT/C/USA/CO/3-s (Nov. 2014).
[874] U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, U.N. Doc. CAT/C/USA/CO/3-s (Nov. 2014).
[875] Taylor, *supra*, at p. 771.
[876] *Id.*
[877] *Joey L. Mogul*, People's Law Office.
[878] Chicago Ord. No. SO2015-2687.

The Reparations Ordinance intended to fully address the harm Burge and his subordinates caused by providing for a formal apology, financial compensation, services and support for survivors, funding for public education, and a memorial. First, the formal apology acknowledged the extent of the police abuse and admitted that the City of Chicago and other public officials were complicit in the abuse of over 100 African Americans.[879] Second, each survivor with a credible claim of torture or abuse by Burge or one of the officers under his command would receive financial reparations of $100,000..[880] The Ordinance created the Chicago Police Torture Reparations Commission, which was responsible for disbursing financial reparations to the survivors.[881] Third, the Ordinance provided survivors free tuition at the City Colleges of Chicago, free access to job training and certification programs, and access to city programs that offer job placements and other support services and programs to formerly incarcerated individuals.[882] Fourth, in addition to financial and educational reparations, the Ordinance also provided psychological services to survivors and family members at a dedicated community center.[883] Finally, the City of Chicago promised to work with the activist group CTJM to "construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, the Chicago Public Schools [would] incorporate into its existing U.S. history curriculum for eighth-grade and tenth-grade students a lesson about the Burge case and its legacy" [884]

The claims process for obtaining reparations under the Ordinance began with CTJM providing the City of Chicago with a list of individuals CTJM determined were eligible for reparations. Both the City and CTJM would investigate the claim, and if both parties agreed the survivor had a credible claim, the survivor would be entitled to the financial reparations from the fund.[885] If CTJM and the City disagreed about an individual's credibility, that individual would have the opportunity to present information and evidence to an independent arbitrator who would make a final and binding decision.[886]

[879] *Id.* (The apology included the following language: "Whereas, The City Council wishes to acknowledge this exceedingly sad and painful chapter in Chicago's history, and to formally express its profound regret for any and all shameful treatment of our fellow citizens that occurred; and whereas, The City Counsel recognizes that words alone cannot adequately convey the deep regret and remorse that we and our fellow citizens feel for any and all harm that was inflicted by Burge and the officers under his command. And yet, words do matter. For only words can end the silence about wrongs that were committed and injustices that were perpetrated, and enable us, as a City, to take the steps necessary to ensure that similar acts never again occur in Chicago; and whereas, The apology we make today is offered with the hope that it will open a new chapter in the history of our great City, a chapter marked by healing and an ongoing process of reconciliation . . . Be it resolved, that we, the Mayor and Members of the City Council of the City of Chicago, on behalf of all Chicagoans . . . apologize to the Burge victims for these horrific and inexcusable acts . . .").

[880] *Id.*

[881] [Cite.]

[882] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 349; https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf

[883] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 349.

[884] https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf

The only remaining unfulfilled reparation is the memorial. This is, in part, because the Reparations Ordinance did not specify the timeline for the memorial and specific funding was not provided.[887] As of 2021, the memorial still had not been built, but individuals at CTJM have been meeting with the Mayor and remain hopeful the process for building the memorial will start soon. [888]

f. Evanston, Illinois

The City of Evanston passed a racial equity scheme, the Restorative Housing Program (37-R-27), in March 2021 to redress the city's discriminatory practices in housing, zoning, and lending that created a wealth and opportunity gap between white and African American Evanstonians.[889] Under this scheme, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.[890] On March 27, 2023, the City Council unanimously added direct cash payments as a fourth option.[891] The Restorative Housing Program was the first reparatory program enacted by the City, but Evanston has also studied its discriminatory past and produced a report, created a City Reparations Fund, honored local historical African American sites, and issued an apology.

The City Council enacted the Restorative Housing Program to redress the injustices found in the report commissioned for the City Council's Reparations Subcommittee, *Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (and Present)*.[892] According to the report, "the City of Evanston officially supported and enabled the practice of segregation"[893] by passing a zoning ordinance in 1921 that condoned implicit race-based housing segregation; demolishing homes owned by African American families for economic development on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating post-World War II temporary housing for veterans; and failing to enact a fair housing ordinance to outlaw housing discrimination until the late 1960s.[894]

The Restorative Housing Program was created in March 2021[895] with the aim of increasing African American homeownership in order to revitalize and preserve African American owner-occupied homes in Evanston.[896] To be eligible, the home must be located in Evanston and be the applicant's primary residence.[897] The program has three categories of intended recipients—Evanston residents over the age of 18 years, of Black/African American ancestry, and, in order of priority, either: (1) an Ancestor, a resident who lived in Evanston between 1919 and 1969,

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[887] *Id.*

[889] Evanston Resolution No. 37-R-27.
[890] *Ibid*.
[891] Castro, Gina, *City Council Approves Direct Cash Payment Reparations*, (Mar. 27, 2023) Evanston RoundTable, (as of Apr. 3, 2023.) Evanston Resolution No. 27-R-23.
[892] Gavin, *Report Examines the City of Evanston's Practices That Impacted the Black Community, 1900-1960*, (Oct. 12, 2020) Evanston RoundTable, (as of Oct. 4, 2022).
[893] Robinson and Thompson, Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present), (Aug 2020) p. 39.
[894] *Id.* at pp. 35-57.
[895] Evanston Resolution No. 37-R-27.
[896] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 3.
[897] *Id.* at p. 8.

was at least 18 years old during that time, and experienced housing discrimination due to the City's polices/practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (3) a resident that does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to City ordinance, policy, or practice after 1969.[898] The City Manager's Office is primarily responsible for administering this program.[899] The City Manager's Office takes in applications and verifies eligibility based on the guidelines established by the Reparations Committee, discussed below.[900] At the close of the first round of applications, 122 Ancestor-applicants were verified by the city and 16 were randomly selected on January 13, 2022, via the City's lottery to receive the first round of payments.[901] In March 9, 2023, Evanston planned its second round of disbursements for 35 to 80 Ancestors.[902]

Upon approval by the City Council, funds are sent electronically or via check to the closing agent for disbursal when the applicant closes on a home purchase, to the contractor upon receipt of invoice, or to the lender for mortgage payment.[903] City Council selected this method of fund disbursement due to Internal Revenue Service (IRS) reporting requirements; the City lacks the requisite authority to exempt direct payments from either state or federal income taxes. Consequently, a recipient would be liable for the tax burden associated with the award.[904] A recipient could end up being required to pay between 24 to 28 percent to the IRS and Illinois.[905] By distributing payments to the financial institution or vendor, instead of the Evanston resident, the financial institution or vendor becomes responsible for the tax liability.[906] For the direct cash payment option that was added to the Restorative Housing Program in March 2023, the Law Department of the City of Evanston determined that payments made under the "General Welfare Exclusion" will not qualify as taxable income.[907] Accordingly, applicants who wish to utilize the cash payment option must be income qualified in order to avoid tax liability and must receive a grant from the general welfare fund.[908] For the other three grant options in the Restorative Housing Program, contracts are paid in installments, with half of the money arriving upfront, a quarter halfway through the job, and the final quarter upon completion.[909] Approved funds must be utilized within the year of approval.[910] Funding can be layered with other housing assistance programs by the city, state, or federal government.[911]

Evanston's recent movement for reparatory justice began in 2019. Former Evanston Alderperson Robin Rue Simmons led the charge for reparatory justice with the support of the City's Equity

[898] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) pp. 6-7.
[899] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 6.
[900] *Ibid.*
[901] Brown and Cahan, *Evanston Reparations Begin: Random Drawing Selects 16 Black 'Ancestors' to Receive $25,000 Grants* (Jan. 13, 2022) Evanston RoundTable, (as of Oct. 4, 2022).
[902] Castro, *Reparations Committee Approves Cash Payments for 2 Ancestors* (Mar. 2, 2023) Evanston RoundTable, (as of Mar. 9, 2023).
[903] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 10.
[904] City of Evanston, Evanston Local Reparations, (as of Oct. 3, 2022).
[905] *Ibid.*
[906] *Ibid.*
[907] Kerr, Tasheik, Memorandum on Resolution 27-R-23, Amending the Restorative Housing Program to Include Direct Cash Payment as an Option (March 27, 2023.)
[908] *Ibid.*
[909] Abraham, *Evanston's First "Reparations" Payments Have Gone Out. Here's How It Was Spent* (July 7, 2022) Next City, (as of Oct. 4, 2022).
[910] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 8.
[911] *Ibid.*

and Empowerment Commission.[912] First, the Commission studied the discriminatory past of the City by enlisting the help of two Evanston-based historical organizations, the Shorefront Legacy Center and the Evanston History Center, to identify past harms inflicted against African American Evanstonians. These organizations produced a draft report that provided justification for the enactment of a racial equity scheme by listing historical and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregated and discriminatory practices.[913] The report described Evanston's historic segregated practices in transportation, public spaces, and employment, delayed desegregation efforts, and housing and zoning policies that led to overcrowding, higher rents, and segregated inferior housing for African American residents.[914] The Commission also held community meetings to gather public input and recommend actions to the City Council.[915] Both the National Coalition of Blacks for Reparations in America (NCOBRA) and the National African American Reparations Commission (NAARC) provided advice regarding Evanston's reparatory process.[916] Additional town halls and meetings were hosted by the City to further engage residents in program specifics.[917]

In November 2019, Evanston adopted Resolution 126-R-19 to study community recommendations for "repair and reparations" and create the City Reparations Fund to collect tax revenues.[918] Resolution 126-R-19 committed the first $10 million of the City's Municipal Cannabis Retailers' Occupation Tax (three percent on gross sales of cannabis) to fund local reparations for housing and economic development programs for African American Evanston residents over the course of 10 years.[919] Individual residents, churches, and local businesses can also donate to the City Reparations Fund.[920] Following the establishment of the funding source, Evanston formed a permanent Reparations Subcommittee and hosted several town hall and Subcommittee meetings to solicit feedback on the structure of local reparations.[921] In June 2020, the Evanston Preservation Commission of City Council passed Resolution 54-R-20 to preserve and honor historical African American sites in Evanston's 5th Ward.[922] In November 2022, the City Council passed a resolution to delegate $1 million annually from the graduated real estate transfer tax (collected from all property purchased above $1.5 million) to the City Reparations Fund for a period of 10 years.[923] More funding came in December 2022 when the City Council passed Resolution 125-R-22 to transfer $2 million from the City's General Fund to the Reparations Fund.[924]

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[912] Manjapra, *How the Long Fight for Slavery Reparations is Slowly Being Won* (Oct. 6, 2020) The Guardian, (as of Oct. 3, 2022).
[913] Robinson and Thompson, Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present) (Aug 2020).
[914] *Ibid.*
[915] City of Evanston, Evanston Local Reparations, (as of Oct. 3, 2022).
[916] *Ibid.*
[917] *Ibid*.
[918] Evanston Resolution No. 126-R-19.
[919] *Ibid*.
[920] City of Evanston, Evanston Local Reparations, (as of Oct. 3, 2022).
[921] City of Evanston, Evanston Local Reparations, (as of Oct. 3, 2022); City of Evanston, Reparations Committee, (as of Oct. 3, 2022).
[922] Evanston Resolution No. 54-R-20.
[923] Evanston Resolution No. 120-R-22.
[924] Evanston Resolution No. 125-R-22.

Prior to creating a racial equity scheme, the City Council of Evanston created the Equity and Empowerment Commission in 2018 to address systemic inequalities and adopted Resolution 58-R-19, "Commitment to End Structural Racism and Achieve Racial Equity." In Resolution 58-R-19, Evanston's City Council: (1) apologized for the damage caused by its history of racially-motivated policies and practices such as zoning laws that supported neighborhood redlining, municipal disinvestment in the African American community, and a history of bias in government services; (2) declared itself an anti-racist city; and (3) denounced white supremacy.[925] The Resolution begins with findings laying out the foundation for an apology and then proceeds with a series of pronouncements against anti-Black racism:

> Now, therefore, be it resolved by the city council of the City of Evanston, Cook County, Illinois, that in accordance with the fundamental principles set forth in the declaration of independence, which asserts as a fundamental basis that all people are created equal and are endowed with the unalienable rights of life, liberty and the pursuit of happiness:
>
> **Section 1:** The City Council of Evanston hereby acknowledges its own history of racially-motivated policies and practices, apologizes for the damage this history has caused the City, and declares that it stands against White Supremacy…[926]

To receive funds from the Restorative Housing Program, interested applicants must provide proof of eligibility based on the sample list of documents cited in the program guidelines.[927] To prove Ancestor eligibility, applicants must provide documentation of their age, race, and residency.[928] To prove Direct Descendent eligibility, applicants must provide documentation of age, race, and relationship to an Ancestor via birth certificate, marriage record, hospital record of birth or death, yearbook, or other means.[929] To prove eligibility based on discrimination as a resident, applicants must show proof of age, residency, and the City ordinance, policy, or procedure that served to discriminate against the applicant in the area of housing.[930]

Issues of funding, restrictive eligibility and spending, distribution, and other criticisms arose during the implementation of Evanston's Restorative Housing Program. First, the cannabis tax has not generated enough revenue to provide payments to all eligible applicants. When the City Council drafted the resolution, it expected three cannabis stores to open in Evanston; however, so far only one, Zen Leaf, has opened.[931] In late 2022, the City secured alternative sources of funding to supplement the cannabis tax—the graduated real estate transfer tax and the general

[925] Evanston Resolution No. 58-R-19.
[926] Evanston Resolution No. 58-R-19.
[927] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 4.
[928] *Id*. at pp. 4-5.
[929] *Ibid.*
[930] *Id*. at 4.
[931] Brown, *City OKs Paying out $3.45 Million in Reparations* (Aug. 9, 2022) Evanston RoundTable, (as of Oct. 4, 2022).

fund. Additionally, community members and business contribute private donations to the Reparations Community Fund.[932]

Funding restrictions have also been a critique of the Evanston racial equity scheme. Only Ancestors who currently reside in Evanston are eligible, leaving out many African American homeowners who were victims of Evanston's discriminatory policies but moved away. Alderman Peter Braithwaite (2nd Ward), chair of the Reparations Committee, said that restricting reparations to current residents was necessary because of the city's limited staff and resources.[933] Other residents complained that funding was too narrowly constrained to housing-based projects, ignoring other potential needs for reparatory justice.[934] In response, leaders stated that the housing program was only the first of many reparatory justice programs to come and housing was identified as the most urgent need among those who attended the public subcommittee and town council meetings.[935] As an example of the funding's restraints, two of the 16 selected in the first round of applications for funding did not own property and almost lost the funds.[936] On March 2, 2023, the Reparations Committee approved a direct cash payment for those two Ancestors.[937] Less than one month later, the City Council approved an option to provide direct payment to all reparations recipients.[938]

Another issue in the disbursement process is that many residents believed the money should have gone directly into the hands of the eligible and not to the banks who facilitated racial discrimination in the first place. To address this concern, the City hopes to provide a resource guide for grant recipients with a list of Black banks, banks with a history of fair lending, and a directory of Black contractors, realtors, real estate attorneys, appraisers, and surveyors that fund recipients can hire.[939] Many residents have complained that the pace of the racial equity scheme is too slow.[940] Seven Ancestors died before they were selected for a restorative housing grants.[941] The Reparations Committee added a requirement for Ancestors to name a beneficiary to pass down the rights of the grant once they have been awarded.[942]

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[932] Lydersen, *Can Liberal Evanston, Illinois, Atone for Its Racist Past?* (Sept. 26, 2022) New Republic, (as of Oct. 4, 2022).
[933] Gomez-Aldana, *For Some People, Evanston's Reparations Program Remains Incomplete* (Mar. 31, 2022) WBEZ Chicago, (as of Oct. 4, 2022).
[934] Abraham, *Evanston's First "Reparations" Payments Have Gone Out. Here's How It Was Spent* (July 7, 2022) Next City, (as of Oct. 4, 2022).
[935] Misra, *Illinois City's Reparations Plan was Heralded – But Locals Say It's a Cautionary Tale* (Aug. 18, 2021) The Guardian, (as of Oct. 4, 2022).
[936] Castro, *City Plans Second Round of Reparations, for up to 80 More Ancestors* (Mar. 9, 2023) Evanston RoundTable, (as of Mar. 9, 2023).
[937] Castro, *Reparations Committee Approves Cash Payments for 2 Ancestors* (Mar. 2, 2023) Evanston RoundTable, (as of Mar. 9, 2023).
[938] Cite?
[939] Misra, *Illinois City's Reparations Plan was Heralded – But Locals Say It's a Cautionary Tale* (Aug. 18, 2021) The Guardian, (as of Oct. 4, 2022).
[940] Ma, '*Too Little, Too Late': Black Residents Disillusioned by Pace of Evanston Reparations Program* (Feb. 2, 2023) Evanston RoundTable (Mar. 13, 2023).
[941] Castro, *A 7th Ancestor Dies While Waiting for City's Reparations Process* (March 10, 2023) Evanston RoundTable (as of Mar. 13, 2023).
[942] *Ibid.*

Finally, some experts critiqued the Evanston reparatory program as being piecemeal and potentially distracting from the priority of a comprehensive national reparations program.[943] Economic and public policy experts William A. Darity Jr. and A. Kirsten Mullen objected to the Evanston program's restrictions on funding, preferring unrestricted direct payments, and said that the program did not go far enough to address the huge racial equity gap between Black and white Evanston residents.[944] They also said that Evanston's municipal government lacks the budget necessary to adopt an adequate reparations proposal, which would require $3.85 billion to close the $350,000 per capita racial wealth gap.[945]

g. Asheville, North Carolina

The City of Asheville, North Carolina, unanimously passed Resolution 20-128 on July 14, 2020, to consider reparations for the city's participation in and sanctioning of the enslavement of Black people, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple successful Black communities.[946] Asheville has formed a Reparations Commission, which anticipates presenting final policy recommendations to be voted upon by August 30, 2023, and submitting a written report by October 31, 2023.[947] Only two recommendations have been made as of May 2023— one, to provide funding in perpetuity and two, to request a third-party audit of the City of Asheville and Buncombe County to ensure harms done to Black residents are stopped.[948]

According to Resolution 20-128, the Reparations Commission intends to address the following harms to Black people: unjust enslavement, segregation, and incarceration; the denial of housing through racist practices in the private realty market, including redlining, steering, blockbusting, denial of mortgages, and gentrification; discriminatory wages paid in every sector of the local economy regardless of credentials and experience; the disproportionate unemployment rates and reduced opportunities to fully participate in the local job market; systematic exclusion from historic and present private economic development and community investments; segregation from mainstream education and within present day school programs; denial of education through admission, retention, and graduation rates of every level of education in Western North Carolina and through discriminatory disciplinary practices; historic and present inadequate and detrimental health care; unjust targeting by law enforcement and criminal justice procedures, incarceration at disproportionate rates, and subsequent exclusion from full participation in the

[943] Lydersen, *Can Liberal Evanston, Illinois, Atone for Its Racist Past?* (Sept. 26, 2022) New Republic, (as of Oct. 4, 2022).
[944] Darity and Mullen, *Opinion: Evanston, Ill., Approved 'Reparations.' Except It Isn't Reparations* (March 28, 2021) Washington Post, (as of Oct. 4, 2022).
[945] Darity and Mullen, From Here to Equality: Reparations for Black Americans in the Twenty-First Century (2nd ed. 2022) pp. xv-xvi.
[946] Asheville Res. No. 20-128 (hereinafter "Asheville Resolution"); Davis, *Asheville reparations resolution is designed to provide Black community access to the opportunity to build wealth* (Jul. 20, 2020) The City of Asheville (as of Oct. 3, 2022) (hereafter "Davis"); see also Honosky, *'Slap in the face;' Asheville Reparations Commission balks at proposed timeline changes*, Citizen Times (Jan. 10, 2023) (as of Mar. 9, 2023) (hereinafter "Honosky").
[947] 2023 Reparations Project Timeline and IFA Recommendation Development, January 9, 2023 Meeting, City of Asheville and Buncombe County Community Reparations Commission (as of Feb. 10, 2023).
[948] Honosky, *supra*.

benefits of citizenship that include voting, employment, housing, and health care; disproportionately forced to reside in, adjacent to, or near Brown zones and other toxic sites; disproportionately limited to confined routes of travel provided by public transportation; and disproportionately suffering from isolation of food and childcare deserts.[949] Asheville did not provide any specific timeline of the harms the Reparations Commission is intended to address.

Resolution 20-128 states that the Reparations Commission will make short-, medium-, and long-term recommendations to "make significant progress toward repairing the damage caused by public and private systemic racism."[950] The resolution tasks the commission to issue a report so the City of Asheville and local community groups may incorporate it into their short- and long-term priorities and plans.[951] The resolution states the "report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice."[952]

The city manager and city staff have recommended a three-phase process that includes: information sharing and truth-telling; formation of the reparations commission; and finalization and presentation of the report.[953] Phase One occurred from May 2021 to June 2021, and was intended to:

- Provide a better understanding of policy impacts and where those impacts occurred;
- Identify and understand current disparities and areas that need focus;
- Identify barriers to addressing generational wealth; and
- Inspire our community to identify collaborative opportunities to create a more equitable Asheville.[954]

During Phase One, three events were held in June 2021 — namely, three information sharing and truth-telling speaker series regarding past policies and practices, present trends and disparities, and future initiatives.[955] Information from this speaker series was used to inform the development of the Reparations Commission and itsscope of work.[956]

Phase Two was the formation of the Reparations Commission, which will address disparities in housing, economic development, public health, education, public safety and justice.[957] The City announced on March 8, 2022, the approval of five members for the Reparations Commission appointed by the Asheville City Council, as well as 15 members and two alternates appointed by

[949] Asheville Resolution, *supra*.
[950] *Ibid.*
[951] *Ibid.*
[952] *Ibid.*
[953] The City of Asheville Reparations, The City of Asheville (as of Oct. 3, 2022) (hereinafter "The City of Asheville Reparations").
[954] *Ibid.*
[955] *Ibid.*
[956] *Ibid.*
[957] The City of Asheville Reparations, *supra*.

the historically impacted Black neighborhoods.[958] The Commission members are serving on five Impact Focus Area ("IFA") workgroups — criminal justice, economic development, education, health and wellness, and housing — which are responsible for analyzing information on these areas and reporting key findings to the full Commission.[959]

As of the publication of this report, the Commission is in Phase Three, but according to documents from the January 9, 2023 Commission meeting, the priorities are no longer short-, medium-, and long-term recommendations but rather feasibility and community impact.[960] The documents also reflect an updated timeline with ten different activities, the last six of which are slated to occur in 2023 — reaffirm resolution and commission role, develop IFA recommendations (by May 31), community engagement and input (by May 31), recommendation vetting and refinement (by July 31), present recommendations for commission voting (by August 30), and submit written report and close project (by October 31).[961] The documents reflect a few draft recommendations, but no final recommendations have yet been presented.[962]

On June 8, 2021, the Asheville City Council voted to allocate $2.1 million of the city's proceeds from the sale of city-owned land (a portion of which includes land the city purchased in the 1970s through urban renewal, a policy that "resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing").[963] The city anticipates that of the $2.1 million, $200,000 will fund the Reparation Commission's planning and engagement process, leaving approximately $1.9 million in initial funding for reparations.[964]

Asheville's reparations scheme has not gone without any criticism. Economic expert William A. Darity stated that he was "deeply skeptical about local or piecemeal actions to address various forms of racial inequality being labeled 'reparations.'"[965] Darity has written that reparations would "have to close the pretax racial wealth disparity in the United States, which would cost about $10 to $12 trillion," in order to be effective.[966] Darity further notes that "piecemeal reparations taken singly or collectively at [the state and municipal level] cannot meet the debt for American racial injustice."[967] With respect to the local community, reactions have been mixed. During the virtual meeting at which the reparations resolution was passed, a resident of Montford, North Carolina, "argued that the city's Black police chief, city manager and council members are 'an indication that Blacks can succeed in Asheville. So, to dump this all on us

[958] Miller, *Announcement of New City of Asheville Reparations Commission Members* (Mar. 8, 2022) The City of Asheville (as of Oct. 3, 2022).
[959] Community Reparations Commission, The City of Asheville (as of Sept. 27, 2022).
[960] 2023 Reparations Project Timeline and IFA Recommendation Development, January 9, 2023 Meeting, City of Asheville and Buncombe County Community Reparations Commission (as of Feb. 10, 2023).
[961] *Ibid.*
[962] *Ibid.*
[963] Traynum-Carson, *Asheville City Council makes initial $2.1 million in reparations funding appropriation* (Jun. 8, 2021) The City of Asheville (as of Oct. 3, 2022) (hereinafter "Traynum-Carson"); *Davis*, *supra*.
[964] Traynum-Carson, *supra*.
[965] Vigdor, *North Carolina City Approves Reparations for Black Residents*, N.Y. Times (Jul. 16, 2020) (as of Oct. 3, 2022 (hereinafter "Vigdor").
[966] *Ibid.*
[967] *Ibid.*

[w]hite folk — I think is offensive."[968] Conversely, a resident who identifies as white, stated "White people: We have to realize that we are complicit, and our souls are in jeopardy."[969]

A number of news articles have been written about Asheville's reparations scheme.[970] Bloomberg noted:

> Asheville's reparations are not focused on slavery or redlining — though it was not innocent of either — but rather on its participation in what was considered one of the largest urban renewal projects in the South, if not the country. Throughout the 1960s and 1970s, Asheville's clearance of areas considered blighted ended up displacing thousands of Black Ashevillans, stripping them of their land, businesses and properties without recompense. According to local historian Wesley Grant, one Black neighborhood alone, East Riverside, lost "more than 1,100 homes, six beauty parlors, five barber shops, five filling stations, 14 grocery stores, three laundromats, eight apartment houses, seven churches, three shoe shops, two cabinet shops, two auto body shops, one hotel, five funeral homes, one hospital, and three doctor's offices." Most of the Black families and workers displaced ended up living in housing projects, mostly cut off from the rest of Asheville society and its growing economy.[971]

Bloomberg further noted that Asheville's reparations scheme will be a "community reparations model," which means that instead of making direct payments to individuals, Asheville will look for areas within the city's budget to add resources to address the racial disparities that persist today.[972] The city manager will also work with surrounding Buncombe County and other community stakeholders to define what reparations will be.[973] Accordingly, the exact form of reparations will remain unknown until the issuance of the final report in 2023 and eventual adoption of specific reparations measures.

h. Providence, Rhode Island

After the murder of George Floyd in the summer of 2020, the mayor of Providence, Rhode Island signed an executive order to launch a "Truth, Reconciliation and Municipal Reparations" process to "eradicat[e] bias and racism" against its Black and Indigenous residents and other people of color.[974] Following that three-part process, the city has issued a formal apology and

[968] Mizelle, *North Carolina city votes to approve reparations for Black residents*, CNN (Jul. 15, 2020) (as of Oct. 3, 2022) (hereinafter "Mizelle").
[969] *Ibid.*
[970] See, e.g.,; *North Carolina's Asheville unanimously approves reparations for slavery*, BBC (Jul. 16, 2020) (as of Oct. 3, 2022); Burgess, *North Carolina city makes history on local reparations, but not all experts 'applaud'*, USA Today (Jul. 16, 2020) (as of Oct. 3, 2022); Associated Press, *North Carolina city commits $2.1M for reparations*, ABC News (Jun. 9, 2021) (as of Oct. 3, 2022); Vigdor, *supra*; Mizelle, *supra*.
[971] Mock, *What It Actually Means to Pass Local 'Reparations'*, Bloomberg (Apr. 15, 2021) (as of Oct. 3, 2022).
[972] *Ibid.*
[973] *Ibid.*
[974] Providence, Rhode Island Mayor's Exec. Order No. 2020-13 (Jul. 15, 2020).

enacted a 2023 city budget which includes $10 million earmarked for reparatory programs, but does not include direct cash payments solely to African Americans or Descendants.[975]

Beginning with a truth-telling phase, the Rhode Island Black Heritage Society collaborated with city and state historical institutions to publish a 200-page report, titled, A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020).[976] The report documents the history of harm that Providence sought to remedy, including the lasting wounds caused by slavery, the genocide of Indigenous People, and the ongoing racial discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.[977]

In the reconciliation phase, the Providence Cultural Equity Initiative and Roger Williams University published a report detailing their efforts to survey Providence community members, develop guiding principles for reparations, and develop a model and proof of concept to continue reconciliation in perpetuity, including through a multimedia initiative.[978] For its guiding principles on reconciliation, the Reconciliation Report noted the need for ongoing, communal learning, a focus on particular people, places, and the importance of efforts to cross barriers of identity and empathy.[979] The city's reconciliation principles also rejected depictions of participants that reduce them to racialized categories or tropes, while celebrating resilience both past and present.[980] Finally, Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally supported process, and the principle that reconciliation cannot be accomplished without reparations.[981]

In the third and final phase, labeled reparations, the mayor of Providence signed an executive order creating the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.[982] The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.[983] Among other things, presenters at the public meetings discussed the international framework for reparations and its five elements, as well as international treaties and reports, including the Universal Declaration for Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (which the United States ratified in 1994), the Civil Rights Congress's petition to the United

[975] Kalunian, *Providence Finalizes Plan to Invest $124M in Federal COVID Money*, WPRI.com (May 20, 2022) (as of Oct. 3, 2022).
[976] Rhode Island Black Heritage Society, *A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020)* (2021), pp. 1-2 (as of Oct. 7, 2022).
[977] *Ibid.*
[978] Roger Williams University & Providence Cultural Equity Initiative, *Truth-Telling and Reconciliation: Proposing a Framework for the City of Providence* (Feb. 9, 2022), p. 10 (as of Oct. 7, 2022).
[979] *Id.* at pp. 4-8.
[980] *Id.* at p. 8.
[981] *Id.* at pp. 8-9.
[982] Providence, Rhode Island Mayor's Exec. Order No. 2022-4 (Feb. 28, 2022). Seven of the Commission's members were appointed by the mayor, while six were appointed by the city council. *Ibid.*
[983] *Providence Municipal Reparations Commission* (as of Oct. 7, 2022).

Nations for Relief from Crimes Against Humanity by the United States Government, and a UNESCO publication titled, Healing the Wounds of Slave Trade and Slavery.[984]

Following its public hearings, the Commission published a report listing its final recommendations for an 11-point reparatory program.[985] In its recommendations, the Commission defined "reparations" as "closing the racial wealth and equity gap between Providence residents and neighborhoods[.]"[986] When defining the communities eligible for its reparatory programs, the Commission identified Indigenous People, African Heritage People, Providence residents facing poverty, and Providence residents living in qualifying census tracts and neighborhoods.[987] While the latter two categories—residents facing poverty and those in qualified census tracts—include Providence residents of any race, the Commission included those categories of eligibility to comply with limitations imposed by federal funding, as the city was relying upon federal COVID-19 relief as a source of initial funding for its reparatory program.[988]

In November 2022, the mayor of Providence signed a city budget allocating $10 million—provided to the city from the American Rescue Plan Act—to fund programs across seven of the Commission's recommendations:[989]

Recognition of Harm	
Reimagining Building & Sites	$400,000
Equity Building	
Homeownership & Financial Literacy	$1,000,000
Home Repair Fund	$1,000,000
Capacity Investments in Community Organizations	$500,000
Earn & Learn Workforce Training	$1,000,000
Small Business Acceleration	$1,500,000
Expansion of Guaranteed Income Program	$500,000
Expansion of Youth Internship Program	$250,000
Establish A Legal Defense Fund Facing Rental Evictions	$250,000
Creation & Development of Media	
Invest In Media Firms	$250,000
Expand Operational Capacity	$1,000,000
Preserve, Safeguard & Promote Cultural Programs	$200,000

[984] See Providence Municipal Reparations Commission (May 31, 2022), *Testimony of Robin Rue Simmons* (as of Oct. 7, 2022); see also Providence Municipal Reparations Commission (May 16, 2022), *Testimony of Linda J. Mann* (as of Oct. 7, 2022) (also discussing the Durban Declaration, the UN General Assembly's Resolution proclaiming an International Decade for People of African Descecnt, and the UN's creation of the Permanent Forum of People of African Descent).

[985] Providence Municipal Reparations Commission, *Report of the Providence Municipal Reparations Commission* (August 2020) Summary (as of Oct. 7, 2020).

[986] *Id.* at § 5.

[987] *Ibid.*

[988] See Providence Municipal Reparations Commission (May 2, 2022), *Testimony of Diana Perdomo* (as of Oct. 7, 2022).

[989] City of Providence, *Ordinance 38099 COVID-19 Equities Program Budget* (as of Oct. 7, 2022); Russo, *Elorza Signs Providence's $10M Reparations Budget. Here's What's in It*, The Providence J. (Nov. 18, 2022) (as of Mar. 13, 2023); Abdul-Hakim et al., *Providence Establishes Reparations Program to Praise and Criticism*, ABC News (Jan. 31, 2023) (as of Mar. 13, 2023).

Creation Of Survivors & Descendants of Urban Renewal Fund	
Establish A Fund Dedicated To Urban Renewal Impacts	$200,000
Develop Grant Program To Assist Urban Renewal Impacted Neighborhoods	$200,000
Expansion Of Cultural Engagement & Educational Opportunities	
Creation of K-12 "A Matter of Truth" Curriculum	$50,000
Advancing Public Education Campaigns	$50,000
Funding To Establish History School	$50,000
Creation Of Artist In Residence Fund	$100,000
K-12 Curriculum Grounded In Rhode Island & New England History	$100,000
Creation Of Resident Scholarship Fund	$500,000
Creation of Fund For Home-Based Day Care Providers	$250,000
Invest In District Wide Coordinator For Educational Enrichment	$100,000
Movement Towards A More Equitable Healthcare System	
Expansion of Mental & Behavioral Support Programs	$150,000
Collaborate With Neighborhood Providers Including Barbershops	$250,000
Accelerate The Evolution of AAAG Into Policy Institute Model	
Creation of Policy & Research Center	$150,000
TOTAL	**$10,000,000**

While some Commission and community members expressed concern that $10 million would be insufficient to redress the harms identified in the Truth Report,[990] others observed that the $10 million represented a start to the reparatory programs, not the end, and that once the programs were enacted, future funding could be drawn from other public and private sources.[991]

The mayor of Providence also issued an executive order recognizing and apologizing for the city's role in discriminating against African Heritage and Indigenous People.[992] The order apologizes for the city's role in "discriminatory practices, including lack of equal access to public education, voting rights and general civil rights that led to the subjugation, enslavement, de-tribalization, death, and control of African Heritage and Indigenous People in past and present day."[993] The order also apologizes for Providence's actions after the King Philip's War, where city leaders transferred captured and surviving Indigenous People into slavery in the West Indies.[994] The Order further apologizes for the systemic harm enacted upon African Heritage and Indigenous families through school segregation; unjust incarceration; police use of force; family destabilization; employment discrimination; warning out laws; deliberate denials of public assistance, including red-lining policies; and the city's failure to intervene in the destruction of

[990] See, e.g., Marcelo, *Mayor Proposes $10M Reparations Spending Plan*, Associated Press (Aug. 25, 2022) (as of Oct. 3, 2022) (chair of Commission noting that $10 million "is nice, but . . . definitely not enough for true reparations").
[991] See, e.g., Providence Municipal Reparations Commission (May 31, 2022), *Testimony of Keith Stokes* (as of Oct. 7, 2022).
[992] Providence, Rhode Island Mayor's *Exec. Order No. 2022-6* (Aug. 25, 2022) (as of Mar. 13, 2023).
[993] *Ibid.*
[994] *Ibid.*

African Heritage and Indigenous neighborhoods and communities, including during riots in the 1800s.[995]

[995] *Ibid.*