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МАГІСТЕРСЬКА ПРОГРАМА З ДОСЛІДЖЕННЯ ПАМ'ЯТІ ТА ПУБЛІЧНОЇ ІСТОРІЇ

ДИПЛОМНА РОБОТА

**How TRC Discursively Reshape Post-Conflict Memory Through the
Name-and-Shame Mechanism**

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ANNOTATION. This thesis explores Truth and Reconciliation Commissions (TRCs) as an instrument of transitional justice and examines the *name and shame* mechanism and its role in reshaping narratives about the past in post-conflict societies. This issue is examined through the lens of how two commissions identified by the author – the Canadian and South African TRCs. The study is based on an analysis of the TRCs' final reports and their summaries, as well as subsequent papers evaluating the commissions' activities shortly after their mandates ended. The relevance of this topic is due to Ukraine's need to develop mechanisms and policies for post-conflict resolution, reconciliation, and social recovery well in advance, before the armed conflict has ended. As it was found out, both examined commissions sought to create counter-narratives and transform the memory of the past but neither achieved its stated goal, and in some cases even deepened the trauma. However, they were able to create an invaluable archive of memory and establish a discourse in which denying past violence is impossible. Their experience can be valued for Ukraine's attempt to establish the same mechanism but should be studied carefully and adapted for Ukrainian context and request of victims and society at large.

Key words. Truth and reconciliation commission, name and shame policy, transitional justice, post-conflict memory, historical narrative, South African Truth and Reconciliation Commission, Canadian Truth and Reconciliation Commission, Ukraine

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LIST OF ACRONYMS

AFN	Assembly of First Nations
ANC	African National Congress
CAS	children's aid societies
CBC	Canadian Broadcasting Company
DIA/DIAND	Department of Indian Affairs / Department of Indian Affairs and Northern Development
IRSS	Indian Residential School System
IRSSA	Indian Residential Schools Settlement Agreement
NCTR	National Centre for Truth and Reconciliation
NWMP	North-West Mounted Police
PAC	Pan Africanist Congress
RCAP	Royal Commission on Aboriginal People
RCMP	Royal Canadian Mounted Police
SA TRC	South Africa Truth and Reconciliation Commission
SADF army	South African Defense Force army
SAP policy	South Africa Policy
SSC	(South African) State Security Council
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front

INTRODUCTION

In 2020, when I just entered the professional world of human right defenders, I delivered a presentation on the destruction and transformation of cultural heritage and following collective memory under the influence of the Russia Federation in the occupied Crimean Peninsula. The argument was straightforward: to avoid most of the post-conflict challenges that would eventually emerge after the Ukraine's victory and would inevitably be mostly shaped by the imposed discourse and narratives, Ukrainian society needed to prepare in advance by developing mechanisms and policies capable of addressing post-conflict resolution and reconciliation processes. One of such possible mechanism I mentioned during her speech was truth and reconciliation commission.

Unfortunately, at that time the response from other experts was considerably less sympathetic and more skeptical, as conflict was still ongoing and there were more pressing priorities as infrastructure rebuilding, security, legal and political recovery in post-occupied territories.

The objection was understandable, and it was wrong: not because of the priority of memory and culture upon the other things, but because they as important as reconstruction and rebuilding.

Today, it is already known how destructive and widespread nature of the Russian Federation's policies is toward all Ukrainian both in controlled and occupied territories. At the same time, many public figures and civil society activists started to speak about their potential negative influence on the post-conflict efforts and thus advocating for developing the policies for future peacebuilding and peacekeeping processes, as well as reconciliation and healing of society.¹ Additionally, there is also a strong call from the society, including direct victims and their relatives, for justice which should be accompanied by the compensation and rebuilding efforts. In their eyes – the perpetrator should be identified and punished for his crimes.

These unresolved calls exist alongside Ukraine's own ongoing process of rethinking own history and re-evaluation of historical narrative that were shaped for decades under Soviet and Russian influence.

However, despite the overall process of study and practical use of instruments of the transitional justice in Ukraine, there is still a lack of general understanding and public debate on one of its element – the right to truth, including the processes of memorialization of the past and shaping new understanding of history and narrative framework *with inclusion of occupation's experience*, and even less – as well as its instrument, truth and reconciliation commission.

Due to the limited amount of academic research and the small number of scholars working on this topic, discussions about such a TRC currently remain largely within the sphere of political statements and public proposals rather than being supported by a developed academic framework.

¹ Kyiv International Institute of Sociology, Dumky ta pohliady naselennia Ukrainy vidnosno zbroinoho konfliktu v Ukraini: hruden 2020 (Omnibus) [Views and Opinions of the Population of Ukraine on the Armed Conflict in Ukraine: December 2020 (Omnibus)] (Kyiv: Kyiv International Institute of Sociology, 2020), survey data tables, https://drive.google.com/file/d/1pnfpHnhUUhwceeHVLrG8nUyCu_BNwrHx/view

This thesis aims to contribute to these emerging academic discussions by examining the TRC's name-and-shame mechanism and its potential influence on post-conflict reconstruction, reconciliation, and the formation of collective narratives.

The central research question of this thesis is whether a Truth and Reconciliation Commission has the capacity to transform existing narratives and contribute to the creation of a new framework through which a post-conflict society can rebuild relationships, achieve reconciliation, and move toward peaceful coexistence. This question is studied through the lens of application of specific name-and-shame mechanism within the TRC.

For this purpose, I intentionally chose two of the most notorious and, one could say,² most successful commissions – the Canadian and South African Truth and Reconciliation Commissions. While one commission chose not to publicly identify perpetrators, the other incorporated public disclosure and naming as part of its approach. This research explores the motivations behind these differing choices, the ways in which each commission approached the identification of perpetrators, and how these decisions influenced the construction and transformation of national narratives.

To conduct this analysis, I examined the final reports and executive summaries produced by both commissions, as well as subsequent studies evaluating their work following the completion of their mandates. Attention is paid to the language used by the commissions to describe perpetrators, the framing of crimes, the narratives constructed around responsibility and victimhood, and the ways in which the commissions responded to criticism from both victims and perpetrators regarding the effectiveness and consequences of their approaches to naming and public accountability.

Finally, I have also examined how the experience and outcomes of these two commissions could inform current Ukrainian discussions on the implementation of transitional justice, including the right to truth and the possible establishment of a Ukrainian Truth and Reconciliation Commission.

² Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011)

WHAT IS A TRUTH AND RECONCILIATION COMMISSION?

Truth Commission (or Truth and Reconciliation Commission, TRC) – is a formally constituted, temporary, non-judicial investigative body established by a state or transitional authority to inquire into patterns of gross human rights violations, political violence, or systemic atrocities committed during a prior period of authoritarian rule, armed conflict, or state-sponsored repression.³ It operates as a state-sanctioned mechanism of transitional justice, occupying a distinct institutional space between criminal prosecution and collective amnesia.

Commissions are among the best-known and most common tools for realizing the right to truth and shaping a new collective memory in post-conflict communities. A defining feature of commissions is that they typically have a dual mandate, allowing them to carry out investigations into the truth of what happened during the conflict and to develop a roadmap for reconciliation and the achievement of lasting peace.

In this context, commission may study archives and materials from the conflict period, interview victims, witnesses, and those suspected of perpetrating of crimes, conduct in-depth research, as well as establish various support groups, provide funding and administer compensation payments, grant amnesties, and so on.

Two key outcomes of a commission's efforts should also be noted: (1) the creation of a comprehensive archive of data regarding the conflict, its circumstances, and all events that were part of or influenced its development, as well as testimonies from all parties to the conflict, and (2) the facilitation of a new narrative framework and understanding of the discourse and events of the conflict, which, as practice has shown, has undoubtedly influenced school education, state public policy, media rhetoric, public opinion, and the level of public trust in government, among other things.

The key features of the truth commissions are as follows:⁴

1. All commissions are established by formal state authority, typically through legislation, executive decree, or peace agreements. This provides the commission with a necessary authority, power and mandate to investigate the past via collecting testimonies and facts, to analyze the case, create the narrative and propose recommendations for better changes.
2. All commissions are by nature temporal bodies established specifically for the situation to analyze. Their limitations may vary from case to case depending on the prolongation of the conflict, its gravity, consequences for the community, as well as the direct request of victims.
3. Activities of the commissions have defined temporal and thematic jurisdiction as they are not typical human rights monitoring bodies, and they have the specific tasks to perform. The jurisdictional limits define what counts as relevant truth, which is itself a politically contested

³ Eduardo González and Howard Varney, eds., *Truth Seeking: Elements of Creating an Effective Truth Commission* (Brasília: Amnesty Commission of the Ministry of Justice of Brazil; New York: International Center for Transitional Justice, 2013), <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-Chapter2-2013-English.pdf>

⁴ González and Varney, *Truth Seeking*, <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-Chapter2-2013-English.pdf>

determination – where the mandate begins and ends shapes which violations are legible and which may remain forgotten forever.

4. Commissions are intended to focus on specific patterns of violence rather than individual cases leaving the latter to traditional justice mechanisms.
5. All commissions embrace victim-centered approach in their work to provide victims and witnesses with a possibility to be heard and understood, which, according to some studies, is intended to restore their dignity and help to reconcile.
6. Some commissions, mainly those named truth and *reconciliation* commissions, have a mandate to promote reconciliation among all parties to the conflict. Typically, this part of the activity is understood through three lenses: *interpersonal reconciliation*, which is about restoring relationships between victims and perpetrators, *political reconciliation*, which focuses on rebuilding the governance system sufficiently to enable in peace, stability and security, and *societal or historical reconciliation*, meaning the creation of the new narratives and concepts of understanding the past and dealing with it.

There are many pros and cons for TRC to be established after the conflict.

Speaking specifically about key aspects of the commissions, Marjorie D. Jobson⁵ says TRCs are valuable for truth-seeking, truth-building and documenting the history, as, through data collection, they gain access to a wide variety of testimonies and information, allowing them to map all perspectives on the conflict – both for research purposes and for justice. Unlike courts, which focus on individual guilt, commissions investigate the causes, nature, and scale of violations. They analyze the political, economic, and social context, as well as the role of institutions (the military, police, media, and religious communities) in supporting the repressive regime. This helps uncover the truth about how the system of violence itself functioned.

Another positive aspect worth noting is victim-centeredness: one of the main roles and missions of the commissions is to give voice to victims and witnesses of the conflict through public hearings, restoration of dignity and psychosocial support provided to them. This is arguably the most significant point of difference between TRCs and typical courts.

Another thing – TRCs aim for justice, but not in the typical and quite legal way but rather by creating a pathway for the future of the state and nation. In that way through the hearings, collecting of data and preserving it commissions are often described as *historical bridge* between past and future, aiming to transform social relations and restore the trust inside the society and between the society and the state itself. An important role of the commissions is to *pierce the veil of denial*.⁶ Public testimony becomes the primary tool for convincing society that the horrific events of the past did take place and

⁵ Marjorie D. Jobson, *Commentary on Transitional Justice After Transition*, in *Critical Perspectives in Transitional Justice*, 1st ed., ed. Nicola Palmer, Phil Clark, and Danielle Granville (Cambridge: Intersentia, 2012), 485–491, <https://doi.org/10.1017/9781839700224.027>

⁶ Carolyn Hoyle, *Can International Justice Be Restorative Justice? The Role of Reparations*, in *Critical Perspectives in Transitional Justice*, 1st ed., ed. Nicola Palmer, Phil Clark, and Danielle Granville (Cambridge: Intersentia, 2012), <https://doi.org/10.1017/9781839700224.012>

can no longer be denied. The commission's goal is to *narrow the space for permissible lies* in public discourse.

As a part of their activities commissions also engage, in some sense, in policy drafting and reformative justice, as at the end of its mandate a TRC is often requested to provide recommendations for reforms to prevent future crimes and improve the situation for the better (as a part of non-repetition component of the transitional justice). These recommendations can touch on a wide spectrum of the state-building issues, from economics and international relations to education and social issues. But the biggest area in which TRCs are most heavily involved is composing the new historical narrative as a new vital element of the nation-building and national heritage for the future needs.⁷

These are the initial positive aspects around commissions, but there also a lot of negative opinions on the real and practical effectiveness of the TRC and the results of their activities.

Among the biggest cons of commissions is that they can be influenced by various actors in the peacemaking processes and therefore focus solely on the part of the truth. That, for example, happened during Rwandan Commission's work, when only partial truth was presented to the public – the commission decided not to delve into crimes of Tutsi during the genocide, as the Tutsi were meant to be presented as a *perfect victim* to the public to build the state and future peace policies in the region.

There is also criticism regarding institutional limitations for the commissions.⁸ Typically, when established commissions are granted a particular period during which they can operate and with a particular time they can examine, which raises many questions and gaps in the end, preventing the mechanism from investigating properly and proposing more profound view on the situation and recommendations for a system change.

Commissions often do not establish the whole truth, but only the part of it that is *sufficient to achieve a national consensus*.⁹ The selectivity of the truth also often shaped by the principles and inner policies of TRCs regarding how testimonies are collected from victims and witnesses. As TRCs are intended to work with thousands of people and collect their stories they often use the same script or guidelines for interviews which forces victims to recount their stories according to a specific template, leading to the *ossification* of identity around trauma.¹⁰

There is also a concern that the creators of commissions, in following the idea of providing their country with the best model, don't always pay close attention to the local features, culture and social behavior inside the society. And just *copy-paste* the model that worked into quite a different environment without little or no adjustment. That happened for example with the model of South African commission which was later replicated in the Liberian context unsuccessfully (at the same time, for example, Morocco

⁷ Charles Villa-Vicencio and Erik Doxtader, eds., *Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice* (Cape Town: Institute for Justice and Reconciliation, 2005)

⁸ Hugo van der Merwe, *Prosecutions, Pardons and Amnesty: The Trajectory of Transitional Accountability in South Africa*, in *Critical Perspectives in Transitional Justice*, 1st ed., ed. Nicola Palmer, Phil Clark, and Danielle Granville (Cambridge: Intersentia, 2012), <https://doi.org/10.1017/9781839700224.025>

⁹ Barbara Cassin, Olivier Cayla, and Philippe-Joseph Salazar, eds., *Vérité, réconciliation, réparation*, Le Genre humain 43 (Paris: Éditions du Seuil, 2004), 296

¹⁰ Cheryl Lawther and Luke Moffett, eds., *Research Handbook on Transitional Justice* (Cheltenham: Edward Elgar Publishing, 2023), 181, <https://doi.org/10.4337/9781802202519>

and Canada also studied the results of South African TRC adapting and evolving the methods to suit better their local contexts).

Another concern for the TRC efficiency is absence of a mechanism to monitor the implementation of the recommendations.¹¹ Commission reports often remain merely on paper, as governments lack the political will or financial resources to implement recommendations on reparations and reforms.

¹¹ Cassin, Cayla, and Salazar, *Vérité, réconciliation, réparation*, 356-358

LITERATURE REVIEW

As the theory of transitional justice is quite modern in terms of the development of international law, there is still a lack of profound and extensive literature on certain narrow fields within it, including the studies of truth and reconciliation commissions and name-and-shame mechanism within them. However, a few significant papers have been published over the years analyzing how commissions have aimed to create a new society by helping it overcome trauma and deal with the past.

For this part of the thesis, it is proposed to examine several concepts formed over the past few years on the evolution of the truth commissions, including their capacity, through the name-and-shame mechanism to contribute to the construction of a grand-narrative, to provide accountability and the vindication of the right to truth, and to contribute to reconciliation and memorialization processes.

Additionally, an attempt is made to analyze the literature on the existing gaps, with general reference to the study of the commissions' activities and their intersection with narrative-creation and memorialization policies.

Origins of Truth Commissions in the Transitional Justice Theory

The earliest and most influential concepts regarding truth commissions were proposed by Ruti G. Teitel, whose work established the theoretical foundation for subsequent study of this part of the transitional justice and its influence on the post-conflict situations. Teitel, who is also considered one of the key contributors to theorization of criminal law, its intersection with history, truth and memory, reparations, administrative measures, and constitutional reform as complementary dimensions of transitional jurisprudence, situates truth commissions not as peripheral instruments but as one of the primary mechanisms through which post-authoritarian and post-conflict societies address the twin imperatives of accountability and political reconstruction. She argues that truth commissions, despite all pros and cons surrounding them, are an essential part on re-studying the past and re-interpreting it accordingly, that they are also not neutral in the way to work with history and memory, but rather serve as performative platforms that determine what kinds of truth can survive for the future needs.¹²

In her essay *Transitional Justice Genealogy* (2003) Teitel¹³ developed this idea further by adding a periodization aspect to the Truth Commissions evolution from a mere evidence-collective mechanism to a more comprehensive tool for reconciliation and reintegration. She sees the overall process developed into three main phases. Phase 1 began with a Nuremberg tribunal and the general need of the society to be heard and to persecute perpetrators. But because of the uniqueness of the context and needs there remained an open question as to how societies should embrace the court decisions and continue to live, which eventually led to Phase 2 focusing more on Cold War conflicts and post-Cold War proliferation of democratic transitions in different regions around the world, mainly in Latin America, sub-Saharan Africa and Balkans. At this phase there was a strong demand for the introduction of healing and truth-finding concepts as equally or even more prioritized than criminal investigations and court decisions, and

¹² Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 69-71

¹³ Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000)

the main idea was to shift the normative center of gravity from punishment toward recognition, from the attribution of individual criminal guilt to the collective acknowledgment of historical wrong.

But again, these concepts proved insufficient, as they were seen as one-sided approach to the real problem of overcoming the conflict and trauma in terms of establishment of long-lasting peace. This is when Phase 3 was introduced, which is currently ongoing. For this phase, which she calls the *steady state*, Teitel proposed understanding it not as move from the transitional justice but as unique response to a specific rupture (such as tribunals or truth commissions after the conflict) but as a normalized routine of recovering the international stability and peace. In other words – transitional justice now should be understood as irreplaceable and natural thing to any conflict and post-conflict situation.

Hayner took Teitel's ideas and developed them further approaching transitional justice more from the perspective of the right to truth and specifically truth commissions' concepts. In her academic attempt she tried to analyze over forty commissions established over six decades, each operating for a different length of time. As for the definition of the truth commission, Hayner proposed understanding it as a *temporarily body specifically created to focus on the past events rather than ongoing violations, to investigate the system and patterns of violations and sufferings, and to conclude its work with a report and recommendations to improve the situation.*¹⁴

TRCs as a Tool to Bring Justice and Secure the Right to Truth

This dimension of the commissions' studies is the most popular among scholars as all the research in this area either empirical or normative, is built around the question of whether the commissions can deliver on the justice claims set out in their mandates? To date there is no definitive answer to the question, as commissions have shown different results over the years across the various contexts in which they operated.

Nevertheless, Sikkink's 2011 study presents arguments and logic demonstrating that justice is more attainable when truth and reconciliation commissions operate in a region, gathering extensive testimony and factual evidence and producing a comprehensive, yet deeper, understanding of the past for which there is evidence. The researcher insists that effectiveness and success in restoring violated human rights and providing compensation are possible only if the mechanisms of traditional justice and truth and reconciliation commissions work simultaneously and complementarily.¹⁵ Roht-Arriaza and Mariezcurrena develop a similar line of reasoning, questioning the concepts of *truth above all* and *truth is superior to justice* – in their view, truth and justice are complementary elements of transitional justice that cannot be separated from one another, and are, by their nature, a political choice rather than a structural requirement of commissions or the broader system of post-conflict peacebuilding and reconciliation.¹⁶

¹⁴ Hayner, *Unspeakable Truths*, 11-14

¹⁵ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton, 2011), 183

¹⁶ Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press, 2006), 1-6

As for the normative dimension of these studies, there is a question regarding morality of public naming the perpetrators – whether all of them, or only the most notorious individuals. The dilemma lies between the basic human right privacy and correspondence and the practical impact such naming could have on the named individuals, as well as on their relatives and those close to them, in the future. In their analysis Rotberg and Thompson attempted to collect and map all the competing arguments on this issue.¹⁷

Among them, Minow¹⁸ takes a neutral position, arguing that the naming process is more about acknowledgment the acts committed than condemning them. From that point of view, it is possible to think that naming process aims to restore the epistemic dignity of victims and to publicly record what happened to them, their suffering and overall experience – so that society may come to know it. I agree with her point on difference between the naming in the truth commission's process and judicial one, as the latter is more strictly regulated and has a definite endpoint. However, I would argue against her position, as restoring the dignity of victims is not the only one consequence of the process, but there is also a significant impact on the named perpetrators and those close to them. A striking example is the well-documented difficulty of reintegrating named perpetrators back into the communities in which they lived before the events of genocide in Rwanda.

On the other hand, Rotberg and Thompson refer to Crocker's concept of deliberative democracy in which naming is treated as a politically contingent rather than a morally mandatory practice.¹⁹ According to his idea, naming can be properly discussed and enacted if communities from all parties to the conflict agree to it and decide on the relevant scope and form of accountability for those named. Reflecting on this process, it is worth mentioning it is a rather sophisticated procedure, carrying a significant risk of leading to the collapse of the system and of democratic processes in general but only if dominant political actors succeed in excluding victims from deliberative platforms, as has happened in some Latin American countries.

Finally, Gutmann and Thompson hold the harshest position, stating that naming is required by a robust conception of democratic accountability. If truth processes decide on amnesty or some other course of action toward perpetrators without naming them, this can turn into a form of collective self-deception that will, in some way, undermine democratic rights and freedoms.²⁰

However, the moral case for naming must confront serious objections that the literature sometimes underweights.

The epistemic problem is severe. TRC processes, however carefully designed, operate without the full evidentiary protections of criminal trials. Naming someone in a TRC report as a perpetrator based on victim testimony, without cross-examination, without rules of evidence, without the presumption of innocence, risks profound injustice to the named individual. This is not a mere technicality; it goes to the

¹⁷ Robert I. Rotberg, *Truth Commissions and the Provision of Truth, Justice, and Reconciliation*, in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 1-21

¹⁸ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 61-67

¹⁹ David A. Crocker, *Truth Commissions, Transitional Justice, and Civil Society*, in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 99-121

²⁰ Amy Gutmann and Dennis Thompson, *The Moral Foundations of Truth Commissions*, in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 22-44

core of what naming means. If a name carries social, professional, and personal consequences comparable to a criminal conviction (and it often does), then the moral justification for naming must be proportionate. The Gutmann-Thompson position tends to underestimate this, treating the accountability imperative as though it could override procedural concerns.

The risk of instrumentalization is also real. In some contexts, naming has been co-opted by political actors to settle scores rather than to establish truth. The selectivity of naming can reproduce, rather than redress, injustice. A commission that names low-level perpetrators while protecting the architects of atrocity, for reasons of political compromise, is not serving the right to truth – it is performing accountability while protecting power.

TRC as a Tool to Construct Narratives

Academia also raises a question as to whose narrative the commission is trying to construct, to whom it will belong, and whether it will fit within the community to which it is presented, both now and in the future.

The earliest scholarly accounts of truth commissions as narrative instruments were characterized by a broadly affirmative orientation toward the commission's capacity to generate a new, shared national story. Teitel's genealogical framework identifies this first-wave narrative optimism as characteristic of Phase II transitional justice, in which the commission's multi-dimensional architecture of public testimony, official acknowledgment, and structured report production encoded a theory of justice that was simultaneously legal, historical and therapeutic.²¹

During the work of the South African TRC, the idea emerged that the narrative function of this mechanism had liberal-humanist characteristics, in that, by creating a story, the commission neither condemns nor forgets but solely acknowledges the crimes and violations. Minow, who pioneered this idea, held the position that the commission occupies a distinctive institutional space between retributive punishment and impunity.²² In her view, the narrative that the commission elaborates should serve community reintegration and peacemaking processes – and this is, for Minow, both its distinctive strength and its most significant source of political tension.

The second wave of scholarship subjected the commission's narrative framework to systematic critical interrogation. The main idea of this wave is that the commission cannot force everyone to agree on a single version of the past, nor can it create an entirely new truth, but it can narrow the possibilities for lies and misleading claims.²³ In this way, the work of the commission can highlight and clarify certain matters, such as torture and missing-persons cases, state-committed violence, and systemic patterns of crime. In the case of South Africa, and in post-commission studies, it became obvious to some analysts that creating the narrative was also about legitimizing and granting a moral right to exist to the new community and state (i.e., government) established afterward. In her anthropological study of the South African TRC, Wilson demonstrated not only the positive effect on the recognition of the new post-apartheid government, but also the satisfaction of the needs of apartheid survivors. She also found that,

²¹ Teitel, *Transitional Justice*, 70

²² Minow, *Between Vengeance and Forgiveness*, 61-67

²³ Michael Ignatieff, *Articles of Faith*, Index on Censorship 25, no. 5 (1996): 113

within South African communities, there was a persistent disconnect between the commission's narrative and the demands of many local communities for the punishment of those responsible.²⁴

On the other hand, Posel sought to investigate the narrative function of the South African TRC through the lens of the fourfold concept of the truth developed within,²⁵ and its influence on narrative creation. She argued that the approach to truth, and the results this produced both inside and outside the Commission, was itself a rhetorical strategy for managing institutional tensions rather than a rigorous epistemological position, demonstrating that truth commission's reports must be read as politically constituted texts rather than as transparent historical records.²⁶

Daly's *Truth Skepticism* interrogates the foundational assumption that the production of truth is inherently valuable in transitional contexts, arguing that the different types of truth that commissions produce, including forensic, narrative, restorative, and social truth, generate tensions that are not resolved by the rhetorical assertion of their complementarity.²⁷ Humphrey's sociological framework theorizes truth commission testimony as a ritual inversion of state terror, in which the symbolic repositioning of victims from passive objects of state violence to active public witnesses reverses the anonymizing logic of the repressive state apparatus, while simultaneously demonstrating how this ritual operation tends to homogenize heterogeneous traumatic experiences into institutionally legible categories.²⁸ Sanders's *Ambiguities of Witnessing* examines TRC testimony as a legal-literary form of witnessing that produces truths which are neither fully judicial nor fully historical, shaped by the institutional requirements of the *full disclosure* standard and by the performative pressures of the hearing format.²⁹

TRC as a Tool to Reconcile and Memorialize

The dialogue between memory studies and TRC scholarship is particularly productive in the analysis of how testimony functions within commission proceedings.

By their very nature, commissions are conceived as mechanisms for reconciliation, truth-establishment, and the shaping of collective memory. Owing to their specific characteristics and the special mandate that society imposes on them in various ways, these commissions are capable of employing multiple mechanisms simultaneously to achieve their objectives, including the collection of testimonies from all parties to the conflict, public hearings, the establishment of an official archive, the facilitation of symbolic reparations, and the fostering or enabling of healing.

²⁴ Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), 22

²⁵ See in detail chapter *South African Truth and Reconciliation Commission*

²⁶ Deborah Posel, *The TRC Report: What Kind of History? What Kind of Truth?* in *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, ed. Deborah Posel and Graeme Graham (Johannesburg: Witwatersrand University Press, 2002), 152

²⁷ Erin Daly, *Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition*, *International Journal of Transitional Justice* 2, no. 1 (2008): 25

²⁸ Michael Humphrey, *From Terror to Trauma: Commissioning Truth for National Reconciliation*, *Social Identities* 6, no. 1 (2000): 15

²⁹ Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford: Stanford University Press, 2007), 22-25

On the one hand, these characteristics of commissions are viewed as positive and beneficial. Some researchers, such as James Gibson,³⁰ argue that commissions are thus capable of successfully constructing a shared collective memory, while simultaneously fostering conditions in which all parties acknowledge each other's suffering in one way or another and are willing to listen to the other side's truth. In this way, the commission functions as an instrument of reconciliation, providing an opportunity for reconciliation and the establishment of at least a negative peace.

At the same time, this position is open to debate, given the experience of certain commissions, including those in South Africa, Morocco, Cambodia, and Yugoslavia, which, in one way or another, resulted in greater polarization within society on certain issues, thereby undermining public efforts to achieve peace. According to other scholars, such as David Mendeloff,³¹ the claim that *truth leads to peace* is questionable and ambiguous. They point, among other things, to the lack of empirical evidence that publicly expressing trauma automatically leads to psychological healing or national reconciliation.

Furthermore, a commission's success largely depends on the government's political will and public support. Despite the significant work a commission can do in gathering evidence and compiling archives about the past, if there is no trust in the commission's work, or if its findings are subject to significant criticism, it is quite difficult to imagine that this work will have a positive impact on establishing peace and creating opportunities for a stable and prosperous future.

It is also widely believed that a TRC serves as an instrument of *restorative justice*, which, in turn, is primarily aimed at the moral rehabilitation of society by transforming violence, anger, other negative emotions, and feelings of vengeance into something that can contribute to the development of the community and its journey toward a new version of itself.³² Viewed through this lens, the South African Truth and Reconciliation Commission framed its work around the concept that *revealing is healing*. This concept was developed by Desmond Tutu, who believed that *without truth, there is no healing*.³³ To put it another way, he insisted that by giving victims and perpetrators the opportunity to express themselves publicly in a safe environment, they would experience a therapeutic and cathartic effect, which, in turn, would release internal tension, both within individuals and within entire groups and communities, subsequently allowing for the closure of *trauma* and the beginning of healing.³⁴ For this process to be complete, it must also run parallel to policies pursued by the government and the international community, which must publicly acknowledge and affirm the truth and suffering of victims, and condemn those who committed the crimes. Thus, both processes, running simultaneously according to

³⁰ James L. Gibson, *Truth, Reconciliation, and the Creation of a Human Rights Culture in South Africa*, *Law & Society Review* 38, no. 1 (2004): 5-40, <http://www.jstor.org/stable/1555111>

³¹ David Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?* *International Studies Review* 6, no. 3 (2004): 355-380, <https://doi.org/10.1111/j.1521-9488.2004.00421.x>

³² Brandon Hamber, *The Burdens of Truth: An Evaluation of the Psychological Support Services and Initiatives Undertaken by the South African Truth and Reconciliation Commission*, medico international report 26 (Frankfurt: medico international, n.d.), https://www.medico.de/download/report26/ps_hamber_en.pdf

³³ Wilma Jakobsen, *Reflections on Reconciliation, Justice and the Legacy of Archbishop Desmond Tutu*, transcript, Community of the Cross of Nails, Coventry Cathedral, n.d., <https://www.coventrycathedral.org.uk/uploads/media/CCN-Wilma-Jakobsen-transcript.pdf>

³⁴ Brandon Hamber, *Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with the Legacy of Political Violence*, in *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, ed. Nigel Biggar (Washington, DC: Georgetown University Press, 2001), accessed June 15, 2026, https://www.medico.de/download/report26/ps_hamber_en.pdf

Tutu, contributed to the integration and consolidation of the relevant, voiced experiences and narratives into the everyday life of the post-conflict community, which likewise led to the healing of the entire nation by ridding it of *official lies*.³⁵

At the time, this approach was criticized on the grounds that it was impossible to predict with certainty how the public would react to the facts that would be revealed, or how the commission itself would handle and subsequently present them. Furthermore, there is reason to believe that such public presentation of testimony could lead to the re-traumatization of both individuals and entire communities, regardless of whether they were the ones giving testimony or merely passive listeners to others' stories. According to Mendeloff, the claim that public truth has healing power is often based on faith rather than solid scientific data, and individual catharsis does not always contribute to national stability.³⁶

These debates about the therapeutic and healing effects of TRC activities are also reflected in memory studies, which examine not only the healing effect of testifying, but, more importantly, what happens to the individual or society at large afterward. In this context, Aleida Assmann's analysis of the transformation between history and memory provides the best basis in archival theory for interpreting institutionalized TRC testimonies: testimonies that originate as communicative memory in the hearing room subsequently become archival material, either activated as part of a living, culturally canonical memory, or left in a passive archive of texts no longer present in public discourse.³⁷

Another point of debate concerns the reliability of what is said during public hearings within the TRC system. On this point, scholars such as Theidon³⁸ and Leigh A. Payne³⁹ have developed analyses according to which testimony provided with the perpetrator's own interests in mind is often shaped to better suit the commission's mission. In other words, perpetrators are often inclined to manipulate the truth by altering or presenting their experience in a way that benefits them – securing amnesty, minimizing their responsibility, or presenting themselves as victims of circumstance, among other things. This occurred, for example, during the testimonies given by former members of the Sendero Luminoso,⁴⁰ active during the internal armed conflict in Peru from 1980 to 2000, who appealed to the idea that violence was a necessary part of the group leaders' revolutionary vision.

In addition, this may also happen with victims' testimonies, as these too are shaped by the commission's expectations and understanding of *victim*, *suffering*, and *reconciliation*. Some lived experiences may not be included in the broader image of the past that the commission is constructing, as they are deemed unsuitable or may conflict with other testimonies. A clear example of this is the process

³⁵ David Bloomfield, Teresa Barnes, and Luc Huyse, eds., *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International Institute for Democracy and Electoral Assistance [International IDEA], 2003)

³⁶ Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding*, 355-380

³⁷ Aleida Assmann, *Transformations between History and Memory*, *Social Research* 75, no. 1 (2008), page 55-58

³⁸ Kimberly Theidon, *Humble Remains: Guerrilla Soldiers and the Truth Commission*, *Comparative Studies in Society and History* 48, no. 3 (2006): 692-694

³⁹ Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham: Duke University Press, 2008), 15-18

⁴⁰ *Note*. Sendero Luminoso, or the Shining Path, is a radical Maoist terrorist organization in Peru, founded in the late 1960s, which has fought against the government to overthrow it and establish a communist regime. Sendero Luminoso was most active during the conflict of 1980-2000 in Peru; its members were later convicted, both judicially and, additionally, through the work of the Peruvian TRC, the *Comisión de la Verdad y Reconciliación* (CVR), of several crimes, including the massacre of villagers, torture, the persecution and killing of intelligence officers, terrorist acts, and the destruction of Peru's economic and social systems.

of evidence-sorting during the Argentinian TRC, CONADEP, where the Commission did not merely gather evidence but constructed a narrative into which all those testifying before it was expected to fit their stories.

Taken together, the way in which a commission's work expects both victims and perpetrators to provide testimony is largely at odds with the idea of healing and reconciliation, as it does not allow either party to fully present their experience of the past.

Hamber and Wilson likewise challenge the idea of the therapeutic and healing effect of TRCs, arguing that society cannot heal in the way an individual can. Furthermore, their argument that punishing perpetrators can be no less effective than reconciliation in providing a symbolic resolution for many survivors is one of the most significant points of criticism against the assumptions underlying truth and reconciliation commissions. It also calls into question whether exposure and acknowledgment lead to the promised effects of reconciliation.⁴¹

Understanding of the Origins and Concepts of Name-and-Shame Mechanism

The concept of naming-and-shaming as a political strategy is rooted in the literature on transnational advocacy networks and international norm dynamics, and its migration from civil society practice into the institutional design of truth commissions constitutes one of the most consequential transfers of political technology in the history of transitional justice.

The origins of the mechanism can be traced back to traditional societies, in which it was normal to use shame as a tool of public control. Formally established rituals of public humiliation existed in medieval and early modern Europe – the pillory, stocks, branding, and public penance. These practices were based on the idea that shame imposed by the community regulates behavior no less effectively than physical punishment, since humans, as social beings, depend on recognition and belonging to a group.⁴²

The mechanism became more institutionalized mostly in the second half of the 20th century, as it came to be frequently used by human rights organizations and movements in response to the inadequate reaction of formal institutions to widespread violence across the globe. Specifically, organizations such as Amnesty International and Human Rights Watch, by gathering evidence of human rights violations, preparing reports, and publishing them, drew the attention of the international community to the actions of governments that usually evaded accountability due to the absence of a supranational enforcement mechanism. These organizations, and many others that followed their example, transformed a traditional instrument into a powerful tool for shifting international policy and law to a practical and usable extent, and later helped it become part of the right to truth and of TRC practice.

The general concept underlying the instrument is that the naming process is understood as a political strategy for improving accountability for past wrongful acts, since perpetrators value their

⁴¹ Brandon Hamber and Richard A. Wilson, *Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies*, *Journal of Human Rights* 1, no. 1 (2002): 40-42

⁴² Ute Frevert, *The Politics of Humiliation: A Modern History*, trans. Adam Bresnahan (Oxford: Oxford University Press, 2020)

reputation and status and seek to avoid social rejection, as this might lead to a loss of social connections, opportunities to trade, gain support, and so on.

If we examine the name-and-shame mechanism from the perspective of international relations theory and law, then, according to the findings of Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, states behave appropriately not only because they calculate costs and benefits, but also because they strive to conform to the image of a *normal, civilized* state that adheres to common international standards. Exposing violations creates a mismatch between a state's claimed values and its actual practices, and it is this mismatch that becomes a lever of influence.⁴³

At the same time, in addition to these theoretical considerations, Keck and Sikkink also proposed understanding the effect of the name-and-shame mechanism as a *boomerang effect*, drawing on their research into transnational advocacy networks. In their work *Activists Beyond Borders*, these scholars analyze transnational advocacy networks as the primary vehicle through which naming-and-shaming strategies travel across borders to target state human rights violators. According to them, when local advocacy groups are blocked by unresponsive domestic institutions, they activate transnational networks that reintroduce pressure *from above*, naming the violating state or individual in international arenas where reputational consequences are significant. However, the strategy's effectiveness rests on the moral clarity that naming produces: by identifying a specific named actor as responsible for a specific violation against a specific victim, it transforms what might otherwise be an abstract structural condition into an individualized, reputationally consequential attribution of responsibility.⁴⁴

Keck and Sikkink's analysis identify two characteristic features of the issues that most effectively mobilize transnational naming campaigns: those involving bodily harm to vulnerable individuals, and those generating gross legal inequalities. Both features characterize the violations addressed by truth commissions: torture, enforced disappearance, and cultural genocide are paradigmatic cases of harm to vulnerable bodies, while the systematic denial of rights to racial, ethnic, or political minorities represents gross legal inequality. TRCs can accordingly be understood as an institutionalization of the transnational naming strategy within a state-authorized domestic mechanism, representing the maturation of a civil society practice into a formal institutional design.

Expanding on this idea, Thomas Risse, Stephen Ropp, and Kathryn Sikkink proposed a spiral model of human rights internalization, in which public exposure constitutes the initial phase of a long-term process: moving from state denial of violations $\Rightarrow$ through tactical concessions $\Rightarrow$ to the gradual internalization of norms.⁴⁵

By its very logic, the name-and-shame mechanism exposes and makes visible violations, along with their discourse and narrative framework, thereby illuminating the gap between the social norm of behavior and the actual actions it exposes, and ultimately forming stable groups of like-minded

⁴³ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013)

⁴⁴ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), https://systways.academy/wp-content/uploads/2021/10/GGHR_paper_Keck-Sikkink_Activists-Beyond-Borders.pdf

⁴⁵ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 20-28

individuals who begin to exert various forms of pressure on the perpetrator or on those exposing them. At the same time, this mechanism relies heavily on reputational cost as an incentive: the more a subject depends on external recognition, the more sensitive they are to condemnation, and the more open they are to positive change.

Franklin's empirical study demonstrates that publishing the names of perpetrators is more effective for accountability purposes when done by international and non-governmental organizations, as these enjoy greater trust from affected communities owing to their more neutral position and reputation with respect to the conflict.⁴⁶ However, it can be argued that the nature of a truth commission, combining the authority of a state body with the accountability claims of a civil society process, creates a form that does not quite fit Franklin's assumptions. This institutional hybridity may strengthen the symbolic force of naming, but it also complicates the question of enforcement, since the very institution responsible for exposing abuses is often structurally constrained from imposing sanctions.

A similar approach was proposed by James H. Lebovic and Erik Voeten, who conducted an empirical analysis of UN Human Rights Commission condemnations in 2006. They, too, are persuaded that public shaming is most effective when integrated into a broader architecture of pressure, combining sanctions, legal decisions, and material compensation. However, they also argued that when naming occurs as an isolated action, it leads to limited behavioral change.⁴⁷ This finding is directly applicable to the thesis's comparative analysis: the South African TRC's naming of perpetrators without subsequent prosecution, the Canadian TRC's prohibition on naming, which was not followed by the prosecutorial mechanism it was designed to protect, and the Moroccan Equity and Reconciliation Commission's confidential naming, which produced no public sanction, all represent variations on the same fundamental problem identified by Lebovic and Voeten: naming without enforcement produces limited behavioral change. In all three cases, the name-and-shame mechanism was structurally decoupled from the enforcement mechanisms necessary to translate reputational pressure into behavioral compliance.⁴⁸

Taken together, these studies demonstrate that the effectiveness of name-and-shame mechanisms depends not so much on the act of naming and shaming itself as on the institutional ecosystem in which it occurs. Public exposure can create reputational pressure, but reputational damage alone rarely changes behavior unless actors also face real risks of legal, political, or social consequences. This creates a fundamental tension for truth commissions: they are often established as institutions for disclosure and symbolic accountability, yet they frequently face political constraints on activating the enforcement mechanisms necessary for the naming process to have real consequences. As a result, the naming of individuals within the framework of truth commissions often produces strong moral statements but relatively weak results in terms of ensuring compliance.

⁴⁶ James C. Franklin, *Naming Names: The Human Rights Movement and State Accountability*, *Polity* 40, no. 2 (2008): 181-184

⁴⁷ James H. Lebovic and Erik Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNHCR*, *International Studies Quarterly* 50, no. 4 (2006): 865-869

⁴⁸ For the argument that the naming-shaming gap is particularly acute in post-occupation contexts, see Susan Slyomovics, *The Performance of Human Rights in Morocco* (Philadelphia: University of Pennsylvania Press, 2005), 131

Conclusion to the Chapter “Literature Review”

The literature review reveals that the understanding and perception of truth and reconciliation commissions as an effective tool for truth-seeking and truth-telling, restoring survivors’ dignity, and shaping a common narrative have shifted from positive assessments and expectations toward critical doubts regarding the mechanism’s effectiveness and its unambiguous role in these processes.

The literature review also demonstrates that the TRC mechanism should not be understood solely as a mechanism of reconciliation or healing, but rather as an instrument that creates the possibility for such processes to occur. Given this role of TRCs, there will always be a question as to the independence and full capacity of the mechanism to provide the platform and resources for reconciliation, the implementation of the right to truth, or memorialization for post-conflict society, as it may be subject to its own constraints, assumptions, or political considerations.

At the same time, the review reveals a gap within which this study is framed. Despite a significant body of literature on the individual functions of commissions, there is a lack of systematic analysis of how their activities intersect with the politics of narrative construction and memorialization, and of how the mechanism of public naming and shaming operates within these processes.

CASE STUDY

The synergy between public accountability and social reconciliation in post-conflict societies has always been a contested question in transitional justice. Whether the public naming of perpetrators outside formal legal procedures can contribute to lasting peace, and whether this mechanism can influence and shape society's understanding of its past – these are questions I keep in mind constantly, and questions that remain without a clear answer for many academics and commissioners alike.

The debate regarding these questions tends to focus on the following aspects raised by the name-and-shame mechanism.

On one hand, naming perpetrators can help define the narrative, contribute to the construction of a thorough historical record, affirm the dignity of victims and witnesses, and support truth-making and truth-telling processes, as well as shape the vision underlying institutional (radical) reforms and future accountability within formal legal procedures. On the other hand, this very mechanism of naming carries certain risks that can negatively affect the broader peace process, including the implementation of memorialization policies and the right to truth. Truth commissions, as non-judicial bodies, are almost always not bound by the evidentiary standards and adversarial safeguards required by formal legal procedures to name someone (not) guilty, which can result in harsh reputational and social consequences for the named individuals, leaving them without an adequate opportunity to contest the findings against them. All this also raises questions about trust in the commission, as well as about its necessity and role within the broader post-conflict process. As Priscilla Hayner observes in *Unspeakable Truths* (2011), this tension between truth-telling and due process has shaped the institutional design of commissions across different political contexts in fundamentally different ways.

To understand this controversy in practice, this chapter examines how two commissions – the South African and the Canadian – approached the policy of naming and shaming. Selected for their distinctive features, including varying degrees of institutional authority, geographical and political positioning, type of conflict, and the range of crimes, and thus perpetrators, involved, these commissions provide fertile ground for understanding different approaches to publicly naming perpetrators as part of a narrative-construction strategy, how both named individuals and survivors responded to the outcomes of the commissions' decisions, and what long-term consequences these choices had for the broader project of historical reconciliation.

To understand this controversy in practice, this chapter examines how two commissions: the South African and the Canadian, approached the policy of naming and shaming. Selected for their distinctive features, and what long-term consequences these choices had for the broader project of historical reconciliation.

Methodologically, this chapter proceeds as a structured, focused comparison of two cases, in which each commission is examined along the same set of analytical dimensions so that the contrasts between them become interpretable rather than merely descriptive. Because the South African and Canadian commissions were selected precisely for their divergence – in mandate and institutional authority, in the legal and evidentiary constraints governing the attribution of responsibility, in the nature of the underlying conflict, and in the categories of perpetrators and crimes at stake – the analysis follows

a most-different logic: where two bodies operating under markedly different conditions nonetheless confront the same dilemma of whether and how to name, the points at which their approaches converge or diverge can be read as meaningful rather than incidental. Each case is reconstructed primarily from the commissions' own final reports and procedural records, read against the scholarly literature that has assessed their work, and the two are then compared across four recurring axes: the formal rules and thresholds governing the naming of individuals; the naming practices actually adopted; the responses of those named and of the survivors; and the longer-term consequences for the historical record and for reconciliation. This design does not aim at statistical generalization, two cases cannot sustain it, but rather at analytical insight into the conditions under which naming supports, or strains, the broader work of transitional justice.

South Africa Truth and Reconciliation Commission



Picture 1.

Logo of the South Africa Truth and Reconciliation Commission

The apartheid regime in South Africa started to dismantle in 1990 with unbanning the African National Congress (ANC) and release of Nelson Mandela from the prison after the 27 years of imprisonment.⁴⁹ Yet it would take more than additional four years⁵⁰ before the more meaningful and productive discussions regarding the establishment of the commission would take place. It became clear to the majority that a special mechanism needed to be created to establish, at minimum, what Johan Galtung⁵¹ termed *negative peace* in the region: the cessation of the active violence and the creation of conditions and mutual understanding of the past under which reconciliation might become possible. This, in turn, demanded something that neither political reform nor legislative change could ultimately produce on its own – a mutually recognized version of the past and a shared understanding of future processes, in other words, a conceptual narrative of the past and future recognized by the majority. For these reasons, formal legal proceedings alone were not enough.⁵²

The origins of what later came to be called the Truth and Reconciliation Commission date back to 1990, when the ANC put forward the idea of establishing a special investigative body to document and analyze allegations of human rights violations in its own training camps in Angola, explaining that it was impossible to reach lasting peace without rationally examining one's own actions.⁵³ This idea was later developed by Kader Asmal, a professor at the University of the Western Cape, whose 1992 inaugural lecture at the university, and his subsequent article in the *South African Journal on Human Rights* (1992)⁵⁴ proposed the first-ever framework for the future commission, grounded in restorative rather than

⁴⁹ Facebook. *Video*. Accessed May 16, 2026, <https://www.facebook.com/watch/?v=1942102499749245>

⁵⁰ African National Congress Parliament, *The South African General Elections 1994*, ANC Parliament, accessed May 16, 2026, <https://www.ancparliament.org.za/the-south-african-general-elections-1994/>

⁵¹ Johan Galtung, *Violence, Peace, and Peace Research*, *Journal of Peace Research* 6, no. 3 (1969): 167-191, <http://www.jstor.org/stable/422690>

⁵² Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report*, vol. 1, chap. 1 (Cape Town: Truth and Reconciliation Commission, 1998)

⁵³ Cassin, Cayla, and Salazar, *Vérité, réconciliation, réparation*, 21-22

⁵⁴ Jeremy Sarkin, *review of Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance*, *Human Rights Quarterly* 21, no. 4 (1999): 1129-1133, <https://dx.doi.org/10.1353/hrq.1999.0053>

retributive justice. His thesis was widely well received, and over the following two years, two preparatory conferences were held in 1994 – *Dealing with the Past* and *The South African Conference on Truth and Reconciliation*⁵⁵ – which transformed Asmal’s theoretical work into concrete institutional proposals. The government subsequently moved, both politically and legally, toward the creation of the commission, resulting in the adoption of the Promotion of National Unity and Reconciliation Act in 1995,⁵⁶ which finally established the South African Truth and Reconciliation Commission.

The overall goal⁵⁷ of the newly established TRC was to promote national unity and reconciliation in a spirit of understanding that transcends the divisions of the past. The Commission was tasked with documenting, examining, and analyzing events of the apartheid regime between 1960 and 1994, as well as with naming the perpetrators behind the crimes and grave human rights violations and facilitating the amnesty process for them. Another task was to restore victims’ dignity by giving voice to their stories, and, finally, to produce a comprehensive report along with recommendations on a crime-preventive institutional and narrative framework for future peace.

Nelson Mandela, as the newly elected President of South Africa, decided to appoint Desmond Tutu as Chairperson of the Commission, and Alex Boraine as his Vice-Chairperson. He additionally appointed 15 commissioners representing different racial, religious, and national groups.⁵⁸ All of this was done to make the Commission as impartial, flexible, and independent as possible.

Within the Commission, there were three committees: the Human Rights Violations Committee (HRVC), the Amnesty Committee (AC), and the Reparation and Rehabilitation Committee (RRC), responsible, respectively, for testimony collection and documentation, reviewing perpetrators’ claims for amnesty, and providing special psychological, mental, social, and cultural support for survivors. For the purposes of this thesis, the work of two committees: the HRVC and the AC, is of greatest interest, as they worked directly with perpetrators, contributed to the development of naming mechanisms, and had the most influence on shaping the new narrative.

Yet, to understand in detail how the Commission worked with the name-and-shame mechanism, it is necessary to first examine the origins of apartheid policy and its narratives, and how these were shaped and received by the different groups present in the region.

Origins and Narrative Framing of the Apartheid Policy

It is common to understand the policy of apartheid as covering the period from 1948 to 1994, when it was officially proclaimed and established as state policy. However, its origins trace back to the late seventeenth century, with the arrival of the Dutch East India Company in the region, and later the British Empire. The former laid the groundwork with a new economic system based on the slave labor of the local population of South Africa at the time, the Khoikhoi, and a resettlement policy that replaced them

⁵⁵ Cassin, Cayla, and Salazar, *Vérité, réconciliation, réparation*, 21-22

⁵⁶ South Africa, *Promotion of National Unity and Reconciliation Act*, No. 34 of 1995, Government Gazette, July 26, 1995

⁵⁷ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 4

⁵⁸ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 3

with white farmers, as well as establishing a new group called the *Boers*, or *farmers* in Dutch.⁵⁹ They also established a new political ideology based on Calvinism, known latter as *Afrikaner nationalism*.⁶⁰

When control of the territory fell to the British Empire, it issued several laws – specifically, the abolition of slavery, the equalization of the rights of the Khoikhoi and Europeans, and a refraining from further territorial expansion into the interior of the continent. In this context, the Boers began to feel oppressed by the British and ashamed to be placed on the same social level as the Black slaves whom they used daily in their rural lives. All of this prompted a great relocation (the *Great Trek*) of the Boers, who became increasingly aggressive in defense of their heritage and identity, establishing new states with rights exclusive to Whites. Between 1880 and 1902, there were two Boer-British wars, which led to the loss of the Boer states' independence and their incorporation into British territory, thereafter, known as the Union of South Africa.⁶¹

At the end of the nineteenth century, following the discovery of diamond and gold deposits, the Union of South Africa established a new, harsh system of migrant labor, labor camps, and restrictions on land ownership,⁶² specifically, by passing, in 1913, the first law of what would become the apartheid system: the Land Act, which confined the Black population of South Africa to designated reserves, prohibiting Black Africans from owning or renting land outside these reserves, which amounted to about 7% of the total land.⁶³

To facilitate the implementation of these regulations, new narratives began to circulate publicly. They were developed by the British but also by the Boers, who later became part of the Union and remained biased against the Black population.

The core narrative was developed and publicly disseminated by a secret organization, the *Broederbond*,⁶⁴ created in 1918 by the Boers, or, as they later came to be called, the Afrikaners.⁶⁵ This narrative was grounded in the ideology of Afrikaner nationalism, at the center of which was the idea of the Afrikaners as a chosen people, called by God to rule southern Africa and to protect their purity from racial mixing. The most notorious articulation of this idea was given in a 1944 speech by the then-chairman of the Broederbond, who encapsulated it in the phrase: “We must believe that God has called us to be servants of His righteousness in this place.”⁶⁶

In support of this idea, another narrative was developed – that of the *Empty land or Vacant land*. This myth aimed to persuade the world that the ancestors of the Afrikaners had arrived in an empty land and were the first people to settle and live there, thereby denying the existence of the local tribes, and asserting an equivalent historical claim to the land.⁶⁷ This narrative was widely adopted and disseminated

⁵⁹ Nancy L. Clark and William H. Worger, *South Africa: The Rise and Fall of Apartheid* (Harlow: Longman, 2011), 11

⁶⁰ See Glossary

⁶¹ Clark and Worger, *South Africa*, 12

⁶² Clark and Worger, *South Africa*, 13-15

⁶³ Robert N. Kraft, *Violent Accounts: Understanding the Psychology of Perpetrators Through South Africa's Truth and Reconciliation Commission*, *Qualitative Studies in Psychology* 9 (2014), 30

⁶⁴ Note. The name of the organization translates as “Brotherhood.” It was originally created in 1918 to develop and protect Afrikaner culture but later transformed into a completely secret society exclusively for Afrikaners.

⁶⁵ See Glossary

⁶⁶ Clark and Worger, *South Africa*, 2nd ed., 32

⁶⁷ Clifton C. Crais, *The Vacant Land: The Mythology of British Expansion in the Eastern Cape, South Africa*, *Journal of Social History* 25, no. 2 (1991): 255-275, <http://www.jstor.org/stable/3788752>

through education, the press, and cartography, which was used to visually reinforce it. Later, this cartographic instrument was used by the apartheid government to justify the adoption of the Homelands Act, under which the local population was required to live in designated areas, the *Homelands* (of which there were ten), comprising almost 13% of the total territory of South Africa, while the remainder was inhabited by white people as the *true owners* of the land.^{68 69}

This myth was reinforced by another concept, developed in the 1940s, known as *separate development*. The central idea behind it was to persuade the Black population that the apartheid policy was in their interest, as each race should develop and exist separately to avoid conflict and to preserve its own culture, language, and religion. This narrative was widely used in foreign media, such as *South African Panorama* and *Informa*, and in other communications intended to persuade the world that the apartheid policy was beneficial. The South African government even employed Black Americans – Max Yergan⁷⁰ and Andrew Hatcher⁷¹ – to lend it greater credibility.

According to Hendrik Verwoerd, Prime minister of South Africa in 1958-1966, and known as the architect of apartheid, the concept of *separated development* was as follows:

“*Separate development means the growth of something for oneself and one’s nation, due to one’s own endeavours. Separate development is a tree, a fruit tree which this Government gave the Bantu of South Africa. It planted the tree, but that tree must be tended in order to grow. Let it grow slowly. Do not be impatient. Let the branches become strong so that they can bear many fruits . . . do not look at the more developed tree of the white man with jealous eyes because then you will neglect your own small tree which will one day also be big*”.⁷² This quotation is a striking example of how the aggressive ideology of segregation and apartheid was *naturalized* through the comparison of the policy to a tree tended by a gardener-state. In this way, apartheid could be made to appear a policy of self-development and organic growth, when it was something else entirely.

Against this backdrop, the Afrikaners also invoked the narrative of *Baasskap*, or “Dominion,” implying that Whites were the superior race in terms of civilization and were duty-bound to act as custodians of the “barbaric” indigenous population, for its own good. For this reason, the apartheid regime frequently used offensive terms – such as “dogs,” “baboons,” and “snakes” – for the Black population, to dehumanize them and narratively transform them into a usable resource. The South African TRC’s report also mentions the use of derogatory terms such as “kaffirs,” “baas,” “boy,” and “Jim Doe”⁷³ – as example, the Commission presented the citation from the SADF amnesty applicant saying, “*Boys, hier gaan julle duisende kaffers doodskiet (Boys, here you will shoot dead thousands of ‘kaffirs’)*”.⁷⁴ In addition, the apartheid regime constructed a narrative of inherent violence among the Black population, framing it as evidence of their supposedly barbaric nature. Despite being the false accusation, the state used special units and surrogate structures – vigilantes,⁷⁵ mobs, police – to stage

⁶⁸ Crais, *The Vacant Land*, 255-275

⁶⁹ See Picture 1 and 2 of Annex 2

⁷⁰ Ron Nixon, *Selling Apartheid: South Africa’s Global Propaganda War* (London: Pluto Press, 2016), 23

⁷¹ Nixon, *Selling Apartheid*, 84

⁷² Clark and Worger, *South Africa*, 2nd ed., 65

⁷³ See Annex 1

⁷⁴ Truth and Reconciliation Commission of South Africa, *Report*, vol. 2, chap. 1, para. 20

⁷⁵ See Glossary

such incidents of violence, and then, through the media, transformed them into powerful propaganda imagery.⁷⁶

Drawing on the ideas of Frantz Fanon, colonizers (in this case, the Afrikaners and their ancestors) sought to portray the local people as lazy, unintelligent, and incapable of producing decent work or art, thereby cultivating the idea of the white supremacy over the Black population. The idea was installed through education and religion, particularly by portraying Black religious practices as nothing more than witchcraft or black magic.⁷⁷ The Dutch Reformed Church or Nederduitse Gereformeerde Kerk (NGK), played a significant role in popularizing this narrative, by lending it biblical justification: “*God divided humanity into races, languages and nations. Differences are not only willed by God but are perpetuated by Him. [...] Equality between natives, coloureds and Europeans includes a misappreciation of the fact that God, in His Providence, made people into different races and nations. [...] Those who are culturally and spiritually advanced have a mission to leadership and protection of the less advanced. [...] The natives must be led [...]*”.⁷⁸

Accordingly, South Africa’s political and legislative systems began to transform to fit this narrative framework. Most of the laws adopted were aimed at controlling and restricting the Black population while simultaneously broadening opportunities and privileges for Whites. Among them were: the Prohibition of Mixed Marriages Act of 1949, prohibiting interracial marriage; the Population Registration Act (No. 30) of 1950, requiring the state registration of each person according to race; the Group Areas Act of 1950 (implemented in 1954), dividing the country for exclusive occupation by designated racial groups and forcing mass population relocations; the Bantu Education Act (1953), introducing a separate and deliberately inferior education system for Black children, preparing them solely for roles as unskilled laborers; and others.

Throughout the entire period of apartheid, there was resistance, which initially took the form of peaceful protests and attempts to prevent apartheid and its laws through political and legislative means. However, following a series of events – the ANC’s 1952 defiance campaign,⁷⁹ the 1955 Freedom Charter,⁸⁰ the 1960 Sharpeville massacre,⁸¹ and Nelson Mandela’s 1962 arrest and the next Rivonia Trial in 1964⁸² – the struggle turned into armed conflict. Separately, anti-apartheid movements operated abroad, particularly in Britain and the United States, seeking to overthrow the oppressive system through various means, including the establishment of the UN Special Committee against Apartheid.⁸³ Ultimately, the movement gained enough momentum that, in 1990, then-South African President F. W.

⁷⁶ Truth and Reconciliation Commission of South Africa, *Report*, vol. 2, chap. 3, para. 67

⁷⁷ Frantz Fanon, *The Wretched of the Earth* (London: Penguin Books, 1967), 32

⁷⁸ Clark and Worger, *South Africa*, 2nd ed., 56

⁷⁹ African National Congress, *Defiance Campaign 1952: The Defiance Campaign in South Africa, Recalled*, ANC Official Website, <https://www.anc1912.org.za/defiance-campaign-1952-the-defiance-campaign-in-south-africa-recalled/>

⁸⁰ African National Congress, *The Freedom Charter*, ANC Official Website, <https://www.anc1912.org.za/the-freedom-charter-2/>

⁸¹ South African History Online, *Sharpeville Massacre 21 March 1960*, <https://sahistory.org.za/article/sharpeville-massacre-21-march-1960>

⁸² Nelson Mandela Foundation, *Nelson Mandela Sentenced to Life Imprisonment 44 Years Ago*, <https://www.nelsonmandela.org/news/entry/nelson-mandela-sentenced-to-life-imprisonment-44-years-ago>

⁸³ African Activist Archive, *Organization Record*, Michigan State University, <https://africanactivist.msu.edu/organization/210-813-65/>

de Klerk delivered a speech in which he acknowledged apartheid as a criminal policy, legalized previously banned liberation movements, and announced the release of Nelson Mandela.⁸⁴

Thus ended the era of apartheid in South African history, but a new era began: the creation of a new state in which there would be no place for discrimination or violence.

The ideological architecture examined in this part of the chapter did not remain confined to the realm of discourse. As shown above, it was translated into law and the systematic political repression, persecution, and forced segregation that followed. Ultimately, these narratives produced a regime whose human costs included mass detentions without trial, torture, enforced disappearances, and widespread sexual violence.

Yet the same narratives that fueled apartheid also defined the terms on which it would eventually be challenged and dismantled. The Commission that was eventually established was specifically tasked with researching and naming and shaming those responsible for establishing and implementing this ideological architecture, and with reimagining it as part of a new narrative to support reconciliation and lasting peace.

The following sub-chapters will examine how the South African TRC set out to fulfill this task and to name and shame perpetrators.

Defining the Perpetrators, Their Crimes and the Narratives Surrounding Them in South Africa

Since the South African TRC was authorized to publicly name those involved in apartheid-era crimes, it was clear that it also needed to develop guidelines for determining and identifying such perpetrators. The criteria were first set out in the Promotion of National Unity and Reconciliation Act of 1995 and later restated in the Commission's final report.⁸⁵

To be classified as a perpetrator, an organization and/or individual had to meet several conditions, in particular:

- a. the perpetrator had committed crimes such as killing, abduction, torture, and severe ill-treatment;
- b. the crimes were politically motivated and committed in the interest of apartheid policy or of a recognized liberation movement (ANC, PAC, etc.);
- c. the perpetrator had derived no personal profit from the crimes committed.

On the one hand, this helped the Commission narrow the otherwise endless list of suspected perpetrators, present a clear picture of the chain of command from the President down to the executors, and remain more impartial in deciding whom to designate as a perpetrator. On the other hand, this

⁸⁴ F. W. de Klerk Foundation, *Speech: The Role of Communication in South Africa's Transition to Non-Racial Constitutional Democracy*, <https://fwdeklerk.org/speech-the-role-of-communication-in-south-africa-s-transition-to-non-racial-constitutional-democracy/>

See also <https://www.youtube.com/watch?v=ng-BHuP5zEw>

⁸⁵ Truth and Reconciliation Commission of South Africa, *Report*, vol. 6, sec. 5, chap. 1, paras. 589-591

approach also gave rise to several issues that remain unresolved even today, contributing to further problems and to the Commission's inability to achieve reconciliation in full – issues that will be described later.

Proponents of this approach argued that, by adopting such a definition, the TRC sought a broader understanding of who should be named a perpetrator, to avoid problems of technical inconsistency and issues of equality and inclusivity. This, in turn, was meant to steer society toward the symbolic dimension of the definition – namely, that committing human rights violations is entirely unacceptable and carries consequences. As noted above, it did not matter to the Commission which party to the conflict the perpetrator belonged to. From its point of view, a crime remained a crime and had to be named and punished appropriately and impartially. Additionally, the Commission found it useful to demonstrate that many people were simultaneously identifiable as both victims and perpetrators,⁸⁶ since a strict division of the past into black and white did not serve the purpose of lasting peace.

The SA TRC also chose to frame named perpetrators through the Hannah Arendt's concept of the *banality of evil*,⁸⁷ drawing on both the historical study and the nature of crimes committed during apartheid. Among victims, there was a strong belief that those who committed such crimes operated on another moral plane altogether, one that had somehow permitted them to act as they did. The Commission believed that the concept of the banality of evil could additionally help society move beyond the narrative framework built during apartheid, in which the Black population had been discursively and physically placed below the White.⁸⁸

On the other hand, the drawbacks of this approach are more than evident. In my view, the core issue is that the definition the TRC proposed for a perpetrator was limited to certain crimes and certain conditions. In other words, the TRC recognized as crimes only acts of physical and bodily violence, while paying no attention to the social, cultural, economic, and religious dimensions of apartheid's consequences – thereby excluding many other violations that occurred at the time, such as the forced transfer of populations, economic pressure, and discriminatory regulations, among others.

Additionally, according to Mamdani, such TRC's approach to define perpetrators *did not convey the overall destructiveness of apartheid* inevitably led to millions of white beneficiaries of apartheid successfully evading responsibility for the system, transforming a systemic crime into a collection of personal tragedies.⁸⁹ In support of Mamdani's argument, this definition also risked undermining the historical narrative function that truth commissions are specifically designed to serve. Understanding the structure of systematic violations, who planned, who enabled, who executed, is essential to producing a credible and complete account of the past. A uniform perpetrator category flattens this structure, potentially obscuring the very hierarchies of responsibility on which future accountability and reconciliation efforts depend.

⁸⁶ Annelies Verdoolaage, *Reconciliation Discourse: The Case of the Truth and Reconciliation Commission* (Amsterdam and Philadelphia: John Benjamins Publishing Company, 2008), 112

⁸⁷ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking Press, 1963), <https://archive.org/details/eichmanninjerusa0000arendt>

⁸⁸ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 7, paras. 87-93, 283-285

⁸⁹ Kraft, *Violent Accounts*, 42

Ultimately, the Commission determined who would be classified as a perpetrator based on the concept of the *balance of probabilities*,⁹⁰ which was also used to determine a victim's eligibility for reparation, as well as victim's testimony or a perpetrator's statement was true for the purpose of its inclusion in the new national history and narrative framework. This approach had a considerable influence on the narrative construction, as on the one hand, it was the only way to establish the truth in a context where physical evidence had largely been destroyed.⁹¹ It also allowed courts to advance investigations to some extent, since they were otherwise unable to work with evidence that fell short of the criminal standard of *proof beyond reasonable doubt*. On the other hand, the use of such an approach to establishing the truth actually undermines the truth itself and weakens any resulting narrative, since, regardless of method, it relies on the absence of concrete evidence and draws solely on the memories of survivors – memories that may already have been distorted and altered by various factors, and by the passage of time, by the moment of testimony. The use of this approach to naming the guilty also raises considerable doubt, since the Commission effectively identified individuals as perpetrators of crimes while lacking the legal authority to make such a determination – which effectively turned its findings into a form of public trial.

Nevertheless, it is worth noting that the Commission itself acknowledged the negative effects of narrow definition of the *perpetrator*, stating in its Final Report that “*all persons found by the Commission to have committed gross violations of human rights*,” – a phrasing that was, the Commission conceded, also a source of some discomfort, as it drew no distinction between the kinds of acts committed, the reasons for their commission, their consequences, or their context. Nor did it distinguish between *perpetrators* who committed a single act and those whose entire operation and purpose was the commission of such acts.⁹²

There is one further argument against this definition concerning the way the TRC applied in its own reports and public communications. An analysis of the TRC's materials makes clear that the definition was applied disproportionately: it did not matter what type or number of crimes an individual had committed – they were deemed equally guilty as someone who had committed only minor offenses. A related issue concerns the context in which crimes were committed. Despite detailed questioning and public hearings involving personal statements, the Commission rarely, if ever, gave attention to the moral position, intent, or context of individual perpetrators – all were treated as equally guilty of the crime of apartheid, which produced an outcome that was both unjust and analytically inadequate. Without at least a minimal gradation of guilt, it is impossible to provide proper reconciliation and compensation for society.

Additionally, from the legal standpoint, this approach is flawed, as it effectively denies the *chain of command* principle in the commission of crimes: those lower down the chain can rarely refuse an order from those above them, which risks turning them accomplices to a crime absent any independent motivation or personal interest.

⁹⁰ See Glossary

⁹¹ Note. When it became increasingly obvious that the apartheid regime would be dismantled, the apartheid leaders and those below them began the mass destruction of any evidence that might testify against them.

See also US Department of State, *Destruction of Apartheid Records*, Bureau of Public Affairs, <https://2001-2009.state.gov/r/pa/ho/time/pcw/98678.htm>

⁹² Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 4

There were also other criticisms of the implementation of the name-and-shame mechanism, which heavily influenced public acceptance of the SA TRC's outcomes and its efforts at narrative construction, and which are presented below.

Racial Aspects of Name-and-Shame Mechanism. Mamdani's central critique is structural: the TRC's naming framework defined perpetrators as identifiable agents of discrete *gross human rights violations* – that is, specific acts of physical violence against specific victims. This individualist definition rendered most white South Africans un-nameable as beneficiaries and routine participants in apartheid (e.g., employers, judges, teachers, and voters) – not through investigative omission, but by legislative design: the Act's harm-based definition simply did not reach systemic complicity.⁹³

Mamdani's critique of the Commission's perpetrator framework has direct implications for the analysis of its narrative function. If naming is a constitutive act of the Commission's historical account, then the decision about who is nameable is simultaneously a decision about what kind of history the Commission will produce. By naming individual perpetrators of spectacular violence while leaving systemic beneficiaries entirely outside its accountability framework, the Commission produced a narrative of apartheid as a system of exceptional cruelty administered by identifiable bad actors, rather than a narrative of apartheid as a structure of racial domination in which the ordinary participation of an entire racialized class constituted the mechanism of oppression.⁹⁴

This narrative choice served specific political interests within the post-apartheid settlement: it allowed white South Africans who had not personally ordered or committed acts of physical violence to understand themselves as outside the Commission's accountability framework, and thus as potential participants in the new South Africa on terms of relative innocence.

Gender Aspects of the Name-and-Shame Mechanism. There also research, with which I genuinely agree, on the gender dimension of the naming processes, arguing that the said mechanism was designed primarily to investigate crimes committed by men against male victims, despite the significant scale of sexual violence and other harm suffered by women, including as well economical coercion and the social consequences of the detention, torture, or killing of male relatives. In her paper, Fiona Ross argues that during public hearings, women's testimonies were intentionally and systematically redirected away from their own experiences and toward accounts that would support the case against named male perpetrators. She further argues that, in this way, the process of identifying perpetrators and their actions was artificially shaped to fit the Commission's own views and its particular understanding of the crime of apartheid.⁹⁵ A similar point of view is shared by Pumla Gobodo-Madikizela,⁹⁶ who served as a psychologist during the TRC's work and argues that the logic underlying the investigation and naming

⁹³ Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)*, *Diacritics* 32, no. 3/4 (2002), 35

⁹⁴ Mamdani, *Amnesty or Impunity?*, 43

⁹⁵ Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission of South Africa* (London: Pluto Press, 2003), 23-36

⁹⁶ Pumla Gobodo-Madikizela, *Trauma, Forgiveness and the Witnessing Dance: Making Public Spaces Intimate*, *Journal of Social Philosophy* 53, no. 2 (2008), 169-188, <https://doi.org/10.1111/j.1468-5922.2008.00715.x>

of crimes grounded in the *ubuntu principle*⁹⁷ disproportionately placed the burden of forgiveness and healing on women, since they were seen as having suffered less from crimes than men. This positioned also echoed by Beth Goldblatt and Sheila Meintjes, who submitted a report to the TRC criticizing the notion of a gender-neutral policy for its one-sided and narrow approach to understanding the crimes of apartheid in full. In response to these efforts, the Commission held special women's hearings in Cape Town, Durban, and Johannesburg,⁹⁸ but still failed to secure a proper recognition of women victims' sufferings.

Regional Aspects of the Name-and-Shame Mechanism. In a conflict as intense and prolonged as this one, it is natural that the scale of crimes and human rights violations would differ from region to region and from community to community. However, several studies of the regional dimensions of the Commission's work reveal significant gaps in certain areas – specifically in KwaZulu-Natal, where a considerable number of political persecution and torture crimes committed by both the ANC and Inkatha were documented. Analysts have noted that a severe shortage of resources, strict time limits, and other institutional pressures forced the Commission to prioritize cases, meaning that those not accompanied by an amnesty application were often left uninvestigated – leaving victims without a publicly named perpetrator and, consequently, without reconciliation.⁹⁹

Another study points to sharp polarization among different communities across the region regarding the TRC's work. Among Black South Africans, the TRC's findings were largely welcomed as a form of public acknowledgment, even though several perpetrators who should have been named were not.¹⁰⁰ White South Africans, on the other hand, largely rejected the TRC's findings and responded defensively, believing that the Commission was biased and intent on conducting a *witch hunt* against white South Africans as a whole. According to Gibson, this resulted in improved inter-racial attitudes among the first group, while leaving the second group largely unaffected.¹⁰¹

Perpetrator's Perception of the Name-and-Shame Mechanism in South Africa

The initial idea of the South African Commission, and mainly of Desmond Tutu himself, was that alleged perpetrators would publicly share their testimonies in which they would describe in detail all the crimes they had committed, their motives and the context of the time. In this way Tutu stated that it is not the

⁹⁷ See Glossary

⁹⁸ Beth Goldblatt and Sheila Meintjes, *Gender and the Truth and Reconciliation Commission: A Submission to the Truth and Reconciliation Commission* (May 1996), <https://www.justice.gov.za/trc/hrvtrans/submit/gender.htm>

⁹⁹ Lars Buur, *Monumental Historical Memory: Managing Truth in South Africa's Everyday History Commission Work*, in *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, ed. Deborah Posel and Graeme Graham (Johannesburg: Witwatersrand University Press, 2002), 73-81

¹⁰⁰ Gunnar Theissen, *Common Past, Divided Truth: The Truth and Reconciliation Commission in South African Public Opinion*, IISL Paper (Berlin: Free University of Berlin, 2004), 12, <https://userpage.fu-berlin.de/~theissen/pdf/IISL-Paper.PDF>

¹⁰¹ James L. Gibson, *Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process*, *American Journal of Political Science* 48, no. 2 (2004), 207

Commission, but rather the perpetrators, who named themselves as *perpetrators*, providing the TRC with a self-justifying argument for its naming authority.¹⁰²

From one point of view, such a statement could work well to demonstrate to the public the power and authority of the Commission to collect information from multiple sources, including alleged perpetrators, and to use it for historical and narrative purposes. From another point of view, however, there is a question regarding the full disclosure of information from such self-reports, the wording used by alleged perpetrators in them, and the subsequent decision to share this information publicly. A striking example is the report submitted by former State President F.W. de Klerk, whom the Commission intended to name as having been aware of illegal operations by the security forces against Black opposition groups, including a 1980s bombing campaign targeting anti-apartheid offices. De Klerk submitted his report to the Commission while simultaneously initiating a court case to prevent the publication of the Final Report, arguing that the overall work of the Commission looked like a vendetta against him and others involved in apartheid.¹⁰³ His claim was successful, and, as a result, parts of the Final Report presented by the Commission were heavily censored.¹⁰⁴

Similar claims of *vendetta* and *wrong accusations* were also raised by other political forces that had played a part in implementing apartheid policy – namely, the Inkatha Freedom Party and the Freedom Front.¹⁰⁵ There were also rumors that the TRC had approached a considerable number of high-profile figures to warn them on damaging allegations against them. In these terms, it is obviously that the name-and-shame policy in SA TRC didn't work perfectly and created far more problems than it solved, – specifically raising a question about the limits of accusation and presumption regarding who is who and what they have done, as well as about the need for a more critical and more verified approach to naming facts and individuals, which the Commission lacked in some respects.

But, from a positive perspective, it is fair to mention that the Commission was quite even-handed regarding such claims, which came from both sides of the conflict, as we see the same kind of claim from the ANC, which was itself refused by the court. This parallel legal challenge, from the very movement the Commission might have been expected to favor, produced a deeply significant narrative effect: by naming perpetrators from both sides of the apartheid conflict, and by defending those findings against legal challenges from both the outgoing apartheid establishment and the incoming post-apartheid government, the Commission constituted itself as a genuinely independent historical authority standing above the partisan interests of all parties. Du Toit's recent scholarship, the most thoroughly researched account of the perpetrator findings and their institutional aftermath, demonstrates that this assertion of independence was precisely what made the naming mechanism politically catastrophic for the Commission's long-term institutional legacy: it was the perpetrator findings, more than any other element of the Commission's work, that drove the ANC's subsequent abandonment of the TRC's recommendations.¹⁰⁶

¹⁰² South African Press Association, *Hard-Hitting TRC Report Fingers Political Leaders on All Sides*, October 29, 1998, <https://web.archive.org/web/20110603083318/http://www.justice.gov.za/trc/media/1998/9810/s1029h.htm>

¹⁰³ BBC News, *South Africa's Truth Process Faces Criticism*, October 29, 1998, <http://news.bbc.co.uk/2/hi/africa/202367.stm>

¹⁰⁴ André du Toit, *The Truth Commission and its Burdens: Perpetrator Findings and Their Consequences* (Cape Town: African Minds, 2023), 44-61

¹⁰⁵ BBC News, *South Africa's Truth Process Faces Criticism*, <http://news.bbc.co.uk/2/hi/africa/202367.stm>

¹⁰⁶ Du Toit, *Truth Commission and its Burdens*, 71-88

As for the actual perpetrators of apartheid policies, particularly former members of the security forces, they viewed the Commission with hostility and deep suspicion. In their view, the Commission was to blame for the fact that they had lost their careers and their only means of earning a living and supporting their families, since they had come under its scrutiny.¹⁰⁷

Internal mistrust also began to grow among perpetrators, as those lower in the apartheid hierarchy, watching higher-ranking officials rush to admit their guilt before the Commission, felt anger and resentment, believing that they had been abandoned.¹⁰⁸

In general, anyone suspected of committing crimes during the apartheid era, across the country, tried by any means to prevent the Commission from investigating them – as already mentioned, through lawsuits,¹⁰⁹ requests for access to information, and cross-examination of witnesses, all of which eventually led the TRC to be perceived by the public as *perpetrator-friendly*,¹¹⁰ as well as by simply refusing to appear before or interact with the Commission in any way. One of the most striking cases of the latter was that of former Prime Minister P.W. Botha, who refused to appear before the Commission, which led to criminal charges being filed against him.¹¹¹

At the same time, those who nevertheless agreed to cooperate with the Commission insisted on their innocence, justifying their actions as the fulfillment of their duty as honest citizens in the fight against communism – styling themselves as *anti-Communist crusaders*¹¹² waging a just war against the criminal apartheid regime, as in the case of Mr. Luyanda Humphrey Gqomfa.¹¹³

Indeed, the testimonies given by the perpetrators differed significantly from those given by the victims, for whom, the crime committed against them was a catastrophe that totally and irrevocably changed their lives, while for the perpetrators, it was often just a *routine incident* or a *minor matter* in the context of their daily work. Moreover, even when admitting their guilt, the perpetrators cited rational reasons for their actions and almost never admitted to acting out of pure hatred or sadism, which also gave the impression that their actions were blameless.

The reception of the Commission's perpetrator findings demonstrated precisely this limitation: the named individuals and their political communities consistently rejected the findings against them, not merely as legally defective but as politically motivated.

Victims' Perception of the Name-and-Shame Mechanism in South Africa

In most cases, victims had mixed reactions to the Commission – some experienced a sense of complete catharsis, as the Commission itself notes, while others felt re-traumatized, with increased suspicion and a loss of hope that peace would ever come for them.

¹⁰⁷ Truth and Reconciliation Commission of South Africa, *Report*, vol. 6, sec. 3, chap. 1, paras. 12-14

¹⁰⁸ Truth and Reconciliation Commission of South Africa, *Report*, vol. 6, sec. 3, chap. 1, paras. 12-14

¹⁰⁹ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 7, paras. 1-6

¹¹⁰ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 6, paras. 44-51

¹¹¹ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 7, paras. 114-116

¹¹² Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 2, para. 57

¹¹³ SABC TRC Special Report, *Hearing Record*, SAHA TRC Archive, <https://sabctr.c.saha.org.za/hearing.php?id=54649&t=&tab=hearings>

Indeed, for those who viewed the Commission favorably, their perception was such that the very opportunity to tell their story to an official body and be listened to with respect had a healing effect on them. For instance, one of the victims mentioned by the Commission in its report, Lukas Baba Sikwepere, who was shot in his eyes and beaten with electric ropes during a police raid in his city, stated after his testimony: *“I feel that what has been making me sick all the time is the fact that I couldn’t tell my story. But now it feels like I got my sight back by coming here and telling you the story”*.¹¹⁴ For those who were relatives or close friends of members of the resistance movements, there was a sense of joy and peace, as the latter were recognized as fighters for freedom and equality – as heroes, rather than as criminals or terrorists, as the apartheid government had usually labeled them.¹¹⁵

Overall, the public acknowledgment of crimes in connection with their actual perpetrators helped many victims regain a sense of dignity and respect, since other mechanisms that were supposed to facilitate this were, in fact, stagnant and ineffective.

There were also successful cases of reconciliation following all the hearings and the Commissions’ findings. Thus, its reports describe two situations:

- a. when the victim Neville Clarence, who had been blinded by the Church Street bomb in Pretoria 15 years ago before the hearing, shook hands with the words *“I don’t hold any grudges”* with Aboobaker Ismail, the man who planned and organized the attack, adding, *“Talking about it is the only way to become reconciled”*¹¹⁶; and
- b. when the Trust Feed community residents, where 11 people were massacred in 1998 on Captain Mitchell’s orders, agreed to meet with him after his release from prison and accepted his offer to help rebuild their village as a gesture of repentance.¹¹⁷

However, not all the Commission’s efforts to identify perpetrators and engage with victims were successful.

For instance, the South African TRC’s decision to consider cases for amnesty sparked significant disagreement and criticism among victims. Many victims felt that amnesty sacrificed justice for the sake of truth, allowing murderers to walk free. Another issue was that perpetrators were released immediately following the Commission’s decision, while victims had to wait years for Parliament’s decision on reparations. This created an imbalance between perpetrators and victims, leading the latter to label the TRC *perpetrator-friendly* and to place little trust in any of the Commission’s actions.

There were also victims who went so far as to mount legal challenges against the TRC – specifically, the Commission’s final report cites the examples of the families of Steve Biko and Griffiths Mxenge, who believed that the Commission had not provided an opportunity to restore their dignity but had, on the contrary, deprived them of their right to justice and truth.¹¹⁸

¹¹⁴ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 9, paras. 7-9

¹¹⁵ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 9, paras. 20-21

¹¹⁶ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 9, paras. 63-65

¹¹⁷ Truth and Reconciliation Commission of South Africa, *Report*, vol. 5, chap. 9, paras. 70-82

¹¹⁸ Truth and Reconciliation Commission of South Africa, *Human Rights Violations Submissions – Questions and Answers*, April 11, 1996, accessed June 15, 2026, <https://www.justice.gov.za/trc/media/1996/9604/s960411d.htm>

The Commission's naming mechanism indeed did bring to some victims and witnesses a form of symbolic reparations and helped some of them to reconcile. But even this was heavily criticized, as such reparation was almost always incomplete and dependent on each individual's psychological and cultural understanding of, and feelings toward, the specific circumstances of the violation they had suffered.¹¹⁹ For example, communities living in areas affected by the ANC-Inkatha violence entirely rejected the Commission's findings and proposals on reconciliation, believing that perpetrators should be prosecuted in the courts rather than merely named in the "list of bad guys".¹²⁰

The final blow to victims' trust in the Commission was its handling of reparations – despite the victims' modest expectations regarding the amount of compensation, the Commission was unable to process these claims quickly and efficiently, often owing to complex and bureaucratic procedures. Furthermore, most of those who testified did not ask for money but rather for information about where their loved ones were buried, assistance with their children's education, or the erection of headstones, – none of which the Commission, despite all its work and efforts to uncover the truth of the past, was unable to provide.

Additionally, the 1998 submission by the Centre for the Study of Violence and Reconciliation and the Khulumani Support Group, which systematically documented the perceptions of victims who had participated in the Commission's statement-taking and public hearing processes, also found that most victims who had named perpetrators in their statements believed that the Commission had done too little to follow up on those accusations.¹²¹ The Khulumani submission documented a near-universal view among its respondents that truth was a necessary but insufficient condition for reconciliation, and that justice, including the possibility of prosecution, was what most victims understood to be the meaningful endpoint of the SA TRC's work. The gap between the Commission's formal naming findings and any prosecutorial consequence constituted, in the experience of many victims, not accountability but a sophisticated form of impunity.

Constructing a Historical Narrative Through the Name-and-Shame Mechanism

Apart from the Commission's general, and one might say, genuinely impressive results,¹²² its attempt to produce a narrative that would unite all communities across the region neither fully succeeded nor entirely failed. On the one hand, the Commission's work made it impossible to deny, at any central or major level, the existence and true nature of apartheid policies. At the same time, the Commission failed at unite everyone around a single, common version of history: many communities to this day hold their own views on the past, and much of the younger generation rejects the TRC's efforts on construct a shared narrative framework, arguing that it favored the White population.

¹¹⁹ Hamber and Wilson, *Symbolic Closure*, 42

¹²⁰ Wilson, *Politics of Truth and Reconciliation*, 97-113

¹²¹ Centre for the Study of Violence and Reconciliation and Khulumani Support Group, *Survivors' Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report*, submission to the TRC, 1998, 18, <http://www.csvr.org.za/docs/trc/tellingitlikeitis.pdf>

¹²² Note. The Commission managed to collect testimony from almost 21 000 individuals and document more than 36 000 human rights violations

Looking at the Commission's approach to shaping new narratives from a more positive perspective, several key factors and innovations introduced by the Commission stand out.

In its final report, the Commission set out its vision of what truth is and how it should be understood. In its view, truth, and, consequently, the history of the past, cannot be presented through a single narrative, as doing so would render it one-sided and incomplete, and would not improve the situation. The Commission therefore proposed viewing the past through a combination of four concepts of truth: forensic, narrative (personal), social (dialogical), and healing (restorative) truth.¹²³ In support of this position Boraine,¹²⁴ the Commission's Vice-Chairperson, stated that this approach would be more effective than the judicial traditional one, as it helps to understand the context and the motives of the perpetrators, the point from victims and witnesses to his crimes, but also this approach gave Commission's naming findings their particular moral authority.

The Commission explained each of these truths as follows:

1. *Factual or forensic truth*¹²⁵ – based on the collection of verified evidence and accurate information through impartial and objective procedures. The Commission was able to establish indisputable evidence, based on numerous reports, protocols, and other documents, photographs, and videos, confirming the systematic and widespread nature of torture, discriminatory persecution, and the involvement of the state and individuals in violence against Black people, among other things.
This truth also made it possible to see apartheid not as a series of isolated acts committed by individuals or organizations, but as a politically driven, systematic policy of discrimination that took place across the entire country.
2. *Personal and narrative truth*¹²⁶ – involves the collection of personal stories, testimonies, and memories of witnesses and those involved in events, as well as serving as a mechanism for restoring dignity and the right to one's own history, particularly for victims. It was precisely this truth that later had the greatest impact on public perception of the Commission's findings and on the shaping of a new interpretation of history. It facilitated the uncovering of South Africa's history from the perspective of the Black population itself.
3. *Social truth, or the truth of dialogue*¹²⁷ – the result of the Commission's interactions with various groups involved in the events of apartheid, as well as of their own internal interactions, discussions, and public debates. In some ways, this truth overlapped in nature with personal truth, differing only in that it emerged specifically through the Commission's interactions with different participants in the process and through cross-examination. At the same time, this concept of truth holds that there is no single line of truth, but rather different opinions and views on any given incident, as expressed during dialogues and other

¹²³ Cassin, Cayla, and Salazar, *Vérité, réconciliation, réparation*, 44-45

¹²⁴ Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Oxford: Oxford University Press, 2000), 290

¹²⁵ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 5, paras. 30-37

¹²⁶ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 5, paras. 35-38

¹²⁷ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 5, paras. 39-42

interactions. In this sense, social truth served as a way of helping participants with opposing views find common ground on which they could accept one another.

4. *Restorative and healing truth*¹²⁸ – the core of this truth, beyond its mere revelation, lay in its public acknowledgment, which, as the Commission noted, served as confirmation that people's suffering was real and worthy of society's attention.

At the same time, it is worth noting, in criticism of this approach, that such a definition of *truth* considerably narrows the Commission's ability to properly analyze and study the context of the conflict and the motives behind the actions of all parties involved, since, during the hearings of victims and witnesses, the Commission most often questioned them according to a fixed set of questions, effectively requiring them to voice the particular narratives and impressions of the apartheid perpetrators that the Commission sought. A further level of criticism was later voiced by Henderson¹²⁹ and Posel,¹³⁰ who argued that the SA TRC sought to wield the authority of both a court and a historian, without the safeguards that typically accompany court rulings – and that this constituted a major problem and source of conflict. After all, labelling a person a perpetrator was based exclusively on the testimony of survivors and witnesses, which, to some extent, meant subjecting that person to public pressure and judgment, thereby generating a hostile environment incompatible with a healthy society and, indeed, with the Commission's own mandate.

The process of naming was not confined to written form in the final reports. The Commission also decided that this process should be as public and comprehensive as possible, to ultimately form a broadly unified understanding of these crimes, the perpetrators, and the overall policy of apartheid – and, on that basis, to construct a new narrative. For the Commission, naming was a tool for creating a historical record that could not be disputed in the future. Accordingly, the hearings were broadcast live on radio and television. The South African Broadcasting Corporation (SABC) produced a special weekly one-hour program, *Special Report*, which aired every Sunday evening from April 1996 to March 1998.¹³¹ People sometimes referred to the program as the *Kleenex Report*, a reference to the brand of tissues, because of the wave of emotion and tears that listening to, or watching, the testimonies of survivors, witnesses, and perpetrators evoked.¹³² Broadcasting the hearings, along with most of the Commission's decisions, subsequently helped reinforce public knowledge of the existence of apartheid policies, specific crimes, victims, and perpetrators, as well as their overall negative consequences – thereby preventing those who had supported apartheid policies from claiming, in the future, to have been ignorant of this period of history.

The Commission also sought to introduce a new vocabulary for recounting stories from the apartheid era – the so-called *vocabulary of peace*.¹³³ In particular, the Commission proposed terms that, in its view, would promote national unity and underscore the change in the political system, such as

¹²⁸ Truth and Reconciliation Commission of South Africa, *Report*, vol. 1, chap. 5, paras. 42-45

¹²⁹ W. Henderson, *Metaphors, Narrative and "Truth": South Africa's Truth and Reconciliation Commission*, *African Affairs* 99, no. 396 (2000), 458

¹³⁰ Posel, *The TRC Report*, 147

¹³¹ Verdoolaage, *Reconciliation Discourse*, 25, 49

¹³² Verdoolaage, *Reconciliation Discourse*, 70

¹³³ Verdoolaage, *Reconciliation Discourse*, 156

democratization, affirmative action, transformation, transition, healing, rainbow-nation. The last of these terms was intended to convey an image of South Africa as a multicultural and multilingual state where different groups form a single whole.¹³⁴

The Commission also proposed viewing those who had fought against apartheid regime not as a *terrorist* or *barbarians* as they had been described by the previous government, but as *heroes* and *fighters for freedom*, a reframing that, as noted earlier in this chapter, brought a sense of relief to their relatives and friends. At the same time, this new vocabulary was not used in isolation, but rather as part of a broader discourse in which the TRC, through its public statements, proceeded to assess the actions of specific individuals and hold them accountable for the crimes they had committed. To remain impartial, the Commission used the same vocabulary to describe the actions both of those who had been part of the apartheid regime and of those who had fought against it – which ultimately created a sense of equivalence between them, despite their differing motivations and overall context. This, in turn, contributed to a situation in which the new post-apartheid generation, known as the *Born Frees*, does not fully recognize the TRC's decisions and its efforts at narrative construction, arguing that these efforts were more symbolic than a genuine attempt to change the situation for the better. In addition, the position of the Born Frees generation also conflicts with the memory of those who experienced apartheid firsthand, particularly with respect to their understanding of Mandela's role and the image of the apartheid victim.

Taken together, the Commission did indeed propose a new narrative, but it failed to anticipate how that narrative would be received by society, and it also failed to invest the effort needed to make this new vocabulary and narrative more accessible and understandable to people, a failure that continues, today, to generate new conflicts and debates over how the past should be remembered and interpreted.

Conclusions

Most of the South African TRC's work was organized around the name-and-shame mechanism directed at perpetrators. Since the TRC was established as a mechanism of restorative rather than punitive justice, public exposure and shaming became the sole means of retribution and of preventing future crimes.

Although this approach was heavily criticized, both by scholars and by those who witnessed apartheid, it did offer victims and witnesses a genuine opportunity to be heard and recognized, and to obtain answers about the fate of their missing loved ones – something considered critical for *closing the wound* and beginning the healing process. At the same time, it also allowed the Commission to arrive at a complete and more detailed picture of events.

In general, the concept of the name-and-shame mechanism as implemented by the SA TRC was organized around a binary perception of "victim ⇔ perpetrator" (thereby avoiding more complicated relations, such as collaboration), and was applied unevenly across geography and race, reflecting the institutional pressures and resources limitations of the TRC, including the exclusion of the majority of ordinary White perpetrators of the apartheid system. The TRC and its Final Report are still regarded as

¹³⁴ Verdoolaege, *Reconciliation Discourse*, chap. 6.2.3, "Reconciliation Discourse after 1995," 158-160

a great achievement in the post-conflict, but also as a highly contested material that generated further uncertainty and difficulties in its aftermath.¹³⁵

Specifically, the TRC's approach to implementing the name-and-shame policy met with a denial of recognition from perpetrators, and, as later years would show, from the new post-apartheid generation as well. The Commission's position on granting amnesty to those responsible for crimes, together with its one-sided understanding of the nature of these crimes, viewed mostly through a male-centered lens, became a major obstacle to the broader acceptance of the TRC's findings.

Finally, in her comparative study of global truth commissions practices, Hayner identifies the South African TRC as one of the few commissions in the world to have exercised its right to publicly disclose names in a systematic manner, describing the Commission's findings regarding perpetrators as among the most comprehensive and politically significant in the history of truth and reconciliation commissions,¹³⁶ – a claim that, quite honestly, is hard to deny even in 2026.

¹³⁵ Du Toit, *Truth Commission and its Burdens*, 112-125

¹³⁶ Hayner, *Unspeakable Truths*, 87

Canadian Truth and Reconciliation Commission



Picture 2.

Logo of the Canadian Truth and Reconciliation Commission

Today, the Canadian Truth and Reconciliation Commission is considered one of the most forward-thinking commissions – thanks to its clear and consistent policies, the broad involvement of all parties to the conflict in the TRC’s work, the well-organized digital archiving of testimonies and evidence of violence, and its commitment to self-reflection and to the implementation of recommendations, among other factors. Furthermore, it is currently the only commission to have undertaken an academic and empirical examination of the legal concept of *cultural genocide*,¹³⁷ expanding its interpretation specifically through the examination of the residential school system and its impact on Indigenous children.

The Canadian Commission was established in response to the persistent and unrelenting calls for justice from survivors of the residential school system and their families, most of whom were members of Canada’s Indigenous communities. Starting in the 1970s and 1980s, former residential school students began speaking out publicly for the first time about the abuse they had endured and collectively demanded that the government acknowledge the harm inflicted. Unfortunately, at that time, their efforts went unnoticed and unheeded by Canadians, since the main problem, and, indeed, the obstacle to the survivors’ demand to change the *status quo*, was a general lack of knowledge and awareness regarding the very existence of the residential school system and the policies applied within it toward Indigenous peoples.¹³⁸

The culmination of the survivors’ ongoing protests came in 1990, when Phil Fontaine, a leader of Canada’s Indigenous peoples and then-National Chief of the Assembly of First Nations, spoke openly on live CBC television about the sexual abuse he had suffered while attending the Fort Alexander residential school. His speech marked the first open discussion of the Indigenous experience of colonialism on a national scale,¹³⁹ helping other survivors find the courage to share their own experiences

¹³⁷ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015), 1-6;

CBC News, *Truth and Reconciliation Commission Urges Canada to Confront ‘Cultural Genocide’ of Residential Schools*, CBC News, June 2, 2015, <https://www.cbc.ca/lite/story/1.3096229>

¹³⁸ Thomas L. McMahon, *‘And Then the Pope Died’: The Timeline for How Canada Reached a Settlement Agreement on Indian Residential Schools* (working paper, SSRN, November 25, 2021), <https://ssrn.com/abstract=2995639>

¹³⁹ CBC News, *Phil Fontaine’s 1990 Account of Physical and Sexual Abuse at Residential School*, The Journal, October 30, 1990, <https://www.cbc.ca/player/play/1776926760>

See also University of Ottawa, *Former AFN National Chief Phil Fontaine on Residential Schools and the Power of Education: ‘We Had to Confront,’* <https://www.uottawa.ca/en/news-all/former-afn-national-chief-phil-fontaine-residential-schools-and-power-education-we-had-confront>

of the boarding schools. Additionally, Fontaine's speech prompted most Canadians to finally begin taking an interest in history, and specifically in the history of Canada's Indigenous peoples. Gradually, there was increasing talk across the country about the need for thorough research into the past, for studying the experiences of victims, and for formulating a demand for compensation and reparations for the violence they had endured.

All this later led to the establishment of the Royal Commission on Aboriginal Peoples (RCAP) in 1991, with a mandate to investigate the past and provide victims with the necessary compensation. Over 178 days of work, the Commission conducted hundreds of interviews in 96 Indigenous communities. The results of its hearings, along with several of its reports, drew greater attention from Canadians to their own history and to the issue of the residential schools. However, most of the Commission's practical recommendations were never implemented, owing to the government's unwillingness to act.

To address this, in 2002 the government of Canada decided to establish a mechanism of alternative dispute resolution (ADR) to manage the growing demand from survivors and their supporters for justice. But once again, the mechanism quickly proved incapable of meeting these demands, as it was too legalistic and bureaucratic, failed to take cultural factors into account, and often led to the re-traumatization of victims.¹⁴⁰

Taken together – thousands of legal claims stuck in the Canadian judicial system since 1980s,¹⁴¹ the failure of both the RCAP and the ADR to achieve compensation and reconciliation, the government's unwillingness to act proactively, and a general lack of basic knowledge and understanding among Canadians of Indigenous history and of the very existence of the residential school system – all of this eventually forced the government to sit down at the negotiating table at the demand of Canada's Indigenous leaders¹⁴². Among these leaders was again Phil Fontaine, who played a crucial role in establishing what would become the Truth and Reconciliation Commission, insisting that the financial compensation initially proposed by the government be combined with the implementation of the right to truth and proper memorialization policies. In the view of Phil Fontaine and the AFN, the Commission was to become part of a broader process of public acknowledgment, one that would include an official apology from the state, the documentation of the truth, and support for the long-term recovery of affected communities.

These processes led to the signing in 2006, of the Indian Residential Schools Settlement Agreement (IRSSA), followed by an official apology delivered by then- Prime Minister Stephen Harper, on behalf of the Government on June 11, 2008.¹⁴³ Under this agreement, particularly in the annex called

¹⁴⁰ David B. MacDonald, *Canada's Truth and Reconciliation Commission: Assessing Context, Process, and Critiques*, Griffith Law Review 30, no. 1 (2021): 1-30, <https://doi.org/10.1080/10383441.2020.1868282>

¹⁴¹ Note. Estimates suggested that litigation costs could exceed CAD 1.5 billion, with individual cases potentially continuing for decades, compounding the suffering of aging survivors through adversarial legal proceedings.

¹⁴² *Litigation and Courts*, Indigenous Peoples Atlas of Canada, <https://indigenouspeoplesatlasofcanada.ca/article/litigation-and-courts/>

¹⁴³ Government of Canada, *Indian Residential Schools Resolution Canada*, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.rcaanc-cimac.gc.ca/eng/1100100015644/1571589171655>

Schedule N, or *Mandate Document*, the Canadian Truth and Reconciliation Commission was established and officially began its work in 2008.¹⁴⁴

The TRC was mandated with three tasks to establish (1) *documentary truth* (assembling the most complete historical record possible of the residential school system), (2) *testimonial truth* (gathering testimonies and evidence from victims, their relatives, witnesses, and communities at large), and (3) *historical truth* (examining the case, in particular, through the lens of colonialism). The reconciliation mandate was a separate, but still key, part of the Commission's activity, one that operated somewhat without a clear definition or planned outcomes, to avoid further political and societal pressure.

The Commission was led by a three-member panel¹⁴⁵ – a Chief Commissioner (Murray Sinclair) and two co-commissioners (Wilton Littlechild and Dr. Marie Wilson). To operate effectively, a Secretariat was established in Winnipeg, which served as the operational hub for document collection, statement-gathering, event planning, and research, along with a National Research Centre at the University of Manitoba, which served as a permanent repository for all the Commission's findings.

In addition, the Canadian TRC established a series of systematic public hearings known as National Events, which combined formal commission hearings, survivor testimony, cultural programming, and public education components. Alongside these, there were also Community Hearings, held specifically for smaller communities across the country.

The Canadian Truth and Reconciliation Commission was active from 2008 to 2015 and produced a ten-volume Final Report titled *Honouring the Truth, Reconciling for the Future*, complemented by an index of Canada's residential school records containing names and information on missing children, schools, and the history of the violence.¹⁴⁶ An additional set of *94 Calls to Action* was also presented, together with an implementation roadmap.¹⁴⁷

The TRC concluded its mandate in 2015 and transferred its records to the safekeeping of National Centre for Truth and Reconciliation (NCTR),¹⁴⁸ which continues to support the outcomes of TRC's work and the narrative framework it developed.

To understand the narrative framework that emerged, it is therefore worth examining the historical context preceding the Commission, and understanding the policies, concepts, and discourse surrounding the residential school system, including the ways in which it was portrayed in Canadian society throughout most of the 20th century.

¹⁴⁴ Indian Residential Schools Settlement Agreement, *Schedule N: Truth and Reconciliation Commission*, 2006, https://www.residentialschoolsettlement.ca/schedule_n.pdf

¹⁴⁵ National Centre for Truth and Reconciliation, *TRC Commissioners*, <https://nctr.ca/about/trc-commissioners/>

¹⁴⁶ National Centre for Truth and Reconciliation, *Reports*, <https://nctr.ca/publications-and-reports/reports/>

¹⁴⁷ Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf

¹⁴⁸ National Centre for Truth and Reconciliation, *Truth and Reconciliation Commission of Canada*, <https://nctr.ca/about/truth-and-reconciliation-commission-of-canada/>

Origins and Narrative Framework of the Indian Residential School System

The Indian Residential School System existed from 1876 (or 1894)¹⁴⁹ until 1997, funded by the Canadian government's Department of Indian Affairs and administered by four churches in Canada. The main idea behind it was to re-educate and forcibly assimilate the Indigenous tribes then living on the territory of Canada. This policy was carried out through the forcible separation of children from their families, the suppression of native languages and culture within the school system, and the forcible imposition of a new identity through Christianization and overall abuse. Approximately 150.000 Indigenous people passed through the system.¹⁵⁰

The idea of establishing schools specifically for Aboriginal children arose both from the Canadian government's intention and desire to fulfil what it saw as its sacred duty as a European Christian civilization, and from the requests of Aboriginal parents to provide their children with a proper education, so that they might stand on equal footing with Canadians in economic and social life.¹⁵¹

At that time, Canadians were already present in every major sphere of the country's life, from trade to politics, while Indigenous peoples were forced to enter into unfair and unequal agreements simply for the sake of survival. This was the case even though, just a few decades earlier, it had been the Aboriginal peoples who held a dominant position and exerted great influence over trade and territorial control. With the significant influx of new immigrants to Canada between 1815 and 1912,¹⁵² however, the situation changed dramatically, as Europeans, also called newcomers, began to occupy more land, brought in their own technologies, and developed their own industries and agriculture. They began to displace the Indigenous population, forcing it to relocate, at times to regions less suitable for living, to cease trading with Indigenous peoples, or to conclude unfair economic agreements with them. At some point, the idea of *uneducated and uncivilized tribes in Canada* began to emerge among the newcomers, further reinforced by Victorian notions of racial hierarchy. There was a strong belief that God *had given the Christian nations the right to colonize the lands they 'discovered' as long as they converted the Indigenous population*, and, ultimately, that Europeans, and thus their descendants, stood above all other peoples, so that wherever they settled, they brought only benefit to those already living there.^{153 154}

As for the Aboriginal peoples, their leaders called for the establishment of schools, guided by a strategic vision for the future of their communities, since they were losing ground and being forced into an unequal economic and social status, a situation compounded by their way of life, as most Aboriginal peoples were nomadic. Aboriginal parents wished for their children to receive a better education, including reading, writing, mathematics, and languages, so that they could adapt fully to the rapidly emerging economy and world of the newcomers. In addition, Indigenous peoples understood education, and the process surrounding it, as a means of learning about and protecting their own rights and freedoms, to prevent the growing number of unfair economic agreements mentioned above. Some tribal leaders,

¹⁴⁹ Note. Indian Act was issued in 1876 basically establishing the whole system, but the first schools started to appear only later, in 1894

¹⁵⁰ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 20

¹⁵¹ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 20

¹⁵² Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 23

¹⁵³ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 26

¹⁵⁴ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1

such as Chief Ahtahkakoop (Star Blanket), believed that *we Indians can learn the ways of living that made the white man strong*, and, in this way, determine their own destiny.¹⁵⁵

Unfortunately, Aboriginal peoples were not in a strong position in these discussions about education, and so the system was largely shaped and designed to suit the preferences of the newcomers. They, in turn, drew on the experience of British boarding schools and the American model of boarding schools for Indigenous peoples. With respect to the latter, then-Prime Minister of Canada John A. Macdonald even commissioned the journalist and politician Nicholas Flood Davin to conduct a detailed analysis, with a view to developing recommendations and a vision for building a similar school system in Canada. The resulting report was published in 1879 under the title *Report on Industrial Schools for Indians and Half-Breeds*. It served as the starting point both for the formation of the system itself and for the narrative that accompanied it, emphasizing that to *civilize* Native peoples, children needed to be separated from their parents.¹⁵⁶

The Church was also heavily involved in establishing the new education system, as churches were the main providers of land, buildings, educational materials, and staff. The government, for its part, believed that the process of *civilization* was impossible without conversion to Christianity, and so spiritual and moral guidance was left in the hands of the clergy.

The system officially began operating in 1883, in Battleford, where all the necessary resources were available. The choice of location is now considered quite controversial, however, as the First Nations tribe living there was often referred to as the *scum of the Plains*.¹⁵⁷

Beyond the arrogance of the newcomers in pursuing what they saw as their sacred mission of benefiting everyone, there was also a belief that the Aboriginal way of life should be regarded as *savage*, and that the children of *savage* parents would inevitably be raised the same way – so that, to avert this supposed catastrophe, children had to be separated and isolated from their families. To appear more welcoming, the Canadian government later replaced the term *savage* with *citizenship*, and schools came to be presented as a valuable instrument for equipping children with everything necessary to live *on equal footing* with other Canadians in a desegregated society.¹⁵⁸

Later, in the 1940s and 1950s, the narrative shifted to a somewhat gentler tone, with claims that the boarding schools were ineffective, since they were *whitening* children and cutting them off from their communities; there was even discussion of converting the system into a network of regular schools. In the 1950s and 1960s, boarding schools began to be portrayed less as educational institutions and more as *social welfare institutions* for children from *dysfunctional families*, or for orphans.¹⁵⁹

But despite this shifting discourse, conditions inside the schools remained largely unchanged: torture, the suppression of native languages and culture, forced religious instruction, and so on. And so, too, did the demands of Aboriginal peoples for justice remain unchanged – specifically, that the

¹⁵⁵ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 155

¹⁵⁶ Nicholas Flood Davin, *Report on Industrial Schools for Indians and Half-Breeds* (Ottawa, 1879), National Centre for Truth and Reconciliation, <https://nctr.ca/wp-content/uploads/2021/01/Davin-Report.pdf>

¹⁵⁷ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, 150

¹⁵⁸ John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*, foreword by Mary Jane Logan McCallum (Winnipeg: University of Manitoba Press, 1999), 33

¹⁵⁹ Milloy, *A National Crime*, 211-212

residential school system be closed, that the whole truth about it be told publicly, and that an official apology be issued by the government and by the four churches responsible for administering the schools, whom they regarded as the primary perpetrators.

Defining the Perpetrators, Their Crimes and the Narratives Surrounding Them in Canada

Although the Commission did not name perpetrators individually, it still managed to define categories under which such actors could be identified and, where necessary, anonymized, structuring its definition into several parts, each dedicated to a generic category of those who had committed crimes, the state, the church, and certain individuals, with the primary focus on institutional rather than individual responsibility on the part of those who ran the IRSS.

It is also worth to mention that the term *perpetrator* was not defined in a strictly legal sense, but rather as a more philosophical term that would not create legal complications for the Commission, given the constraints imposed by the IRSSA mandate.

State as primary perpetrator. The TRC found that the Government of Canada was responsible for establishing the IRSS and for implementing, over many years, a policy of forcible assimilation of Aboriginal children.

In defining what should be understood as *the Government*, and which of its actions should be considered part of this assimilationist policy, the Canadian TRC settled on the following explanation of the guilt attribution: “*The Canadian Government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources. If every Aboriginal person had been ‘absorbed into the body politic’, there would be no reserves, no Treaties, and no Aboriginal rights*”.¹⁶⁰

The Commission decided to focus primarily on the State as the main perpetrator to work within the framework of the concept of *cultural genocide* developed by Raphael Lemkin in his *Axis Rule in Occupied Europe*.¹⁶¹ In brief, cultural genocide, in addition to the destruction and looting of cultural heritage, also includes the indoctrination of children through the education system and the suppression and persecution of language and culture. It should be noted, however, that cultural genocide is not a legal category, and exists only within academia. In other words, this allowed the Commission to characterize the system as a crime, but not in a strictly legal sense, which may also raise the question of whether there was a genuine intention to investigate the past properly, and whether the Commission was truly concerned with the victims.

A review of the Canadian TRC’s reports also makes clear that state guilt was attributed to specific institutions for their role in implementing the IRSS and in shaping the discourse surrounding it. The institutions named include the Federal Government, the Department of Indian Affairs (DIA/DIAND), the Department of the Interior and its later successor, the Northern Affairs Branch of the Department of

¹⁶⁰ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The History, Part 1*, vol. 1, 14

¹⁶¹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), 84-85

Mines and Resources, the Department of Justice, the National Health and Welfare Service, the North-West Mounted Police (NWMP) and its successor since 1920, the Royal Canadian Mounted Police (RCMP), and, finally, regional administrations and several children's aid societies (CAS).

The Federal Government and the Office of the Prime Minister stood at the top of this system, having officially sanctioned and financed it, including by providing materials for the construction of schools, meals, clothing, and so on. They came to view the schools as part of a broader state system; one wrapped in a narrative that presented the IRSS as a *sacred trust* and a sound investment in the new society being built.¹⁶² It was typical, in this context, to use terms such as *emancipation*, *absorption*, or *the granting of full citizenship* when referring to the forced assimilation of Aboriginal children – terms that made government statements sound more abstract and less harmful.¹⁶³

A special institution dedicated to managing the day-to-day lives of, and control over, Indigenous people was the DIA/DIAND, which was specifically tasked with providing schools with regulations and directives regarding standards of care, education, and discipline for children. It was also tasked with the authority to forcibly remove children from their families, a practice it justified through the narrative of the *destructive impact of the wigwam*, the notion that the home environment of Aboriginal people was as *savage* as they themselves were said to be, and that, in order to build a civilized society, children needed to be separated from this savagery, that is, from their families and homelands.¹⁶⁴ At the same time, in an effort to appear friendly and caring, the DIA/DIAND referred to Aboriginal children euphemistically as *wards of the Department*,¹⁶⁵ while, contradictorily, describing their parents as *unimprovable*.¹⁶⁶

To assist in controlling and forcibly removing children, the DIA/DIAND turned to the police, first the NWMP, and later the RCMP, who were also responsible for keeping children within the school system and preventing them from escaping. For this purpose, a special position was created within the police force, known as *truant officers*. According to the Commission, the state described these police officers as national heroes and peacekeepers who had brought lasting peace to the west of the country.

Finally, there were the children's aid societies, or CAS, which acted as social welfare agencies responsible for the care of children who were victims of neglect. In this way, they too effectively denied the crimes committed within the IRSS, while nonetheless becoming part of the system, taking in more than 50% of all Aboriginal children by 1960. The Report also identifies them as having served as a kind of *dumping ground*, a place from which children were subsequently taken to foster families.¹⁶⁷ In 1960s, the activities of the CAS led to the massive transfer and abduction of children to non-Indigenous families abroad, an event known as the *Sixties scoop*, justified at the time by claims that Aboriginal parents were in *state of moral incapability* of caring for their children.¹⁶⁸

The Government also used television and radio to promote the image of happy Aboriginal children within the IRSS, yet none of the named institutions were found guilty in the Commission's

¹⁶² Milloy, *A National Crime*, 6

¹⁶³ Naomi Angel, *Fragments of Truth: Residential Schools and the Challenge of Reconciliation in Canada*, ed. Dylan Robinson and Jamie Berthe (Durham: Duke University Press, 2022), introduction

¹⁶⁴ Milloy, *A National Crime*, 8

¹⁶⁵ Milloy, *A National Crime*, 111

¹⁶⁶ Milloy, *A National Crime*, 25

¹⁶⁷ Milloy, *A National Crime*, 212-214

¹⁶⁸ Margery Fee, *The Truth and Reconciliation Commission of Canada*, *Canadian Literature* 215 (Winter 2012), 6-10

findings, despite their active role in these crimes. The most famous piece of such propaganda was produced and widely broadcast in 1955. This segment, titled *A New Future*, depicted a school and its children in Moose Factory, Ontario. Naomi Angel, in her *Fragments of Truth*, notices a moment in which the camera pans to the blackboard bearing several words: *conceal, remain, grateful, purchase* and *wealthy*.¹⁶⁹ To us, these words may seem unremarkable, but for Aboriginal children, whose traditional way of life differed profoundly from that of other Canadians, they carried a different meaning. For these children, Angel continues, the words were about concealing their identity, shifting from traditional values toward Western materialism, and adopting various Christian denominations (Catholic, Church of England, Anglican Church of Canada, United Church of Canada, and Presbyterian, etc.). *A New Future* even includes a narrator's voice stating: "*They [note. Children] learn not only games and traditions such as the celebration of St. Valentine's Day but the mastery of words which - will open to them the - whole range of the ordinary Canadian curriculum [...] For the oldest Canadians, a new - future*",¹⁷⁰ which clearly reveals an awareness of the policy and an explicit intention to assimilate the children.

Church as institutional perpetrator.¹⁷¹ The Canadian TRC acknowledged that four main churches were involved in the operating the system: Roman Catholic Church, Anglican Church, United of Canada and Presbyterian Church. It portrayed them as active participants *and junior partners of the state*, whose values, methods, and goals shaped the system for most of its history.

The Commission also attempted to differentiate the role and narrative associated with each church and its staff. In general, the churches were responsible for the design and day-to-day administration of the schools, including disciplinary regimes and punishments, the suppression of language and culture, as well as the overall structure and running of each institution. As the Commission found, the way the churches ran these schools had lasting, negative effects on the children and, consequently, on their families and relatives, resulting in numerous deaths across all schools within the IRSS. According to John S. Milloy, there was a strong belief among the churches that they should substitute for the children's own parents¹⁷².

The narrative framework presented children as *potential converts* who had come to learn of God, and thus of a better life – "*Jesus said: Suffer the little children to come unto me [...] and he took them up in his arms [...] and blessed them*".¹⁷³ In this way, the churches presented forced assimilation as an act of saving children from their *savage* parents, and the process of removal itself as an act of Christian mercy and charity. Away from the public eye, however, church staff at these schools demonized and tortured children, calling them *dirty Indians*. As the Commission's investigation found, the process of humiliation did not end even with the deaths of children who could no longer endure this *education*: most Indigenous children were buried without any ceremony, often in mass graves, and their relatives were

¹⁶⁹ Angel, *Fragments of Truth*, 43-46

¹⁷⁰ *Residential School Survivor Testimony*, YouTube, https://www.youtube.com/watch?v=s_V4d7sXoqU

¹⁷¹ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, chap. 2, 38-55

¹⁷² Milloy, *A National Crime*, 40-43, 103-107

¹⁷³ Milloy, *A National Crime*, introduction

denied the opportunity to mourn their loss. By contrast, Christian burials were accompanied by proper funeral rites and grave markers.

It is also worth noting that the Commission chose to explain the churches' guilt partly through reference to their European origins and to papal policy at the time. This allowed the Commission to present the IRSS not as an isolated instance of assimilation, but as part of a broader, transnational policy. At the same time, it is difficult not to notice that such a framing risk implying a kind of victimization of the churches in Canada, as though they had no choice but to follow the policies set by their headquarters in Europe, and specifically by the Pope in the Vatican. The Commission does not comment directly on this tension, but what is clear is the controversy surrounding the question of an apology from the churches for their involvement in the system. The Protestant churches (Anglican, United Church of Canada, and Presbyterian) apologized in the 1980s and 1990s. The Roman Catholic Church, however, despite having controlled over 70% of all schools within the IRSS, did not consider an apology necessary,¹⁷⁴ declining to acknowledge the harm caused and instead pointing to the Vatican's position¹⁷⁵ and to *Lumen Gentium*,¹⁷⁶ according to which the Church itself, likened to a Holy Mother, cannot commit a crime, even though its individual members can.¹⁷⁷

In this respect, the TRC also succeeded in demonstrating how the internal hierarchy of the church influenced both the scale and the character of the violence, particularly through the maintenance of institutional silence regarding conditions in the schools. The Final Report indicates that church authorities were often aware of mistreatment occurring in their schools but failed to intervene appropriately, and in some cases actively concealed misconduct by quietly transferring offending personnel rather than reporting them to civil authorities¹⁷⁸. This shifts the analytical understanding of church responsibility from mere negligence to active institutional concealment.

Individual, unnamed perpetrators. Despite the general prohibition on naming perpetrators, the Commission nevertheless included certain names in its reports. This was justified on the grounds that these names were either already part of the public record, had already been identified as perpetrators in official court rulings, or that the individuals concerned had themselves consented to such disclosure.¹⁷⁹

Survivors and bystanders nonetheless attempted to include names in their testimonies and to make them public; however, owing to its own restrictions, the Commission asked those who testified not to mention names, or anonymized such references in the final versions of testimonies and reports. The *Literary Review of Canada* articulated the practical consequences with precision: the Commission was “expressly prohibited from naming names in its proceedings,” lacked “subpoena power to compel

¹⁷⁴ Canadian Conference of Catholic Bishops, *Catholic Response to Truth and Reconciliation Commission Call to Action 48* (Ottawa: CCCB, n.d.), <https://www.cccb.ca/wp-content/uploads/2017/11/catholic-response-call-to-action-48-2.pdf>

¹⁷⁵ PBS NewsHour, *Pope's Apology to Indigenous Peoples for Abuse at Residential Schools Insufficient, Canada Says*, July 25, 2022, <https://www.pbs.org/newshour/world/popes-apology-to-indigenous-peoples-for-abuse-at-residential-schools-insufficient-canada-says>

¹⁷⁶ See Glossary

¹⁷⁷ Second Vatican Council, *Lumen Gentium: Dogmatic Constitution on the Church* (Vatican City: Libreria Editrice Vaticana, 1964), https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html

¹⁷⁸ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, chap. 2

¹⁷⁹ Indian Residential Schools Settlement Agreement, *Schedule N*, art. 2(h)

testimony or attendance,” and “could not suggest criminal or civil liability”. The result was institutionally unprecedented: where a survivor wished to identify an individual who had harmed them, that identification was made in camera rather than publicly, creating a kind of shadow archive of named perpetrators that neither the Commission nor the public could access.¹⁸⁰

The context and discourse in which specific perpetrators’ names did appear are, however, themselves open to question. An analysis of the Commission’s reports shows that even those names that were ultimately disclosed were not cited in connection with the individual’s own guilt or motivation for the violations with which they were associated, but rather in the context of the systemic violence of the system as a whole, as part of a broader apparatus of state violence. Such treatment of these names can be read as an attempt by the Commission to shield perpetrators from exposure and public condemnation, an approach that, according to Canadian scholars, subsequently contributed to a broader system of impunity and denial of wrongdoing, both on the part of perpetrators themselves and of Canadian society more generally, a phenomenon later termed *settler amnesty*¹⁸¹.

Regarding those individuals who were named in the report, three categories can be identified:

1. Those previously found guilty by a court of law

There were approx. 50 such names in total by the time the Commission’s reports were published. Most of the relevant trials took place in the 1990s and 2000s, more than a decade after the crimes in question had been committed.

In doing so, the Commission effectively confirmed the guilt of these individuals, though one might also read this as an attempt by the Commission to compensate survivors, in some measure, for its inability to name perpetrators more broadly, by specifically naming those for whom convictions had already been secured.

An analysis of the context in which such terms were used shows that the Commission engaged largely in factual citation and paraphrase, preserving the same connotations found in the relevant court decisions and communications. One such case involved a dormitory supervisor at Alberni School, who, in 1995, pleaded guilty to eighteen counts of indecent assault and was sentenced to eleven years in prison; in 1997, he pleaded guilty to a further seventeen counts. The judge described him as a “*sexual terrorist*,” a term the Commission deliberately and pointedly quoted in its subsequent report.¹⁸²

At the same time, the Commission sought to describe other convicted individuals as neutrally as possible, without any emotional framing of their history, focusing entirely on the perpetrator’s own biography rather than linking it to specific victims. Of particular interest here is the case of Derek Clark, sentenced in 1988 to twelve years in prison for eight counts of sodomy and six counts of indecent assault. The court at the time determined that Clark had committed at least 140 unlawful sexual acts, though the true number may have been as high as 700. The Commission chose to present his case as an example of

¹⁸⁰ Literary Review of Canada, *The Limits of the TRC*, October 2014, <https://reviewcanada.ca/magazine/2014/10/the-limits-of-the-trc/>

¹⁸¹ Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools, *Executive Summary of Final Report on the Missing and Disappeared Indigenous Children and Unmarked Burials in Canada* (Ottawa: Office of the Independent Special Interlocutor, 2024), 35-37

¹⁸² Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: Missing Children and Unmarked Burials*, vol. 4, 423-424

the IRSS system's failure to properly vet the staff it employed, rather than as a story centered on his personal guilt. Several paragraphs of the Report make no mention at all of Clark's actual responsibility for the crimes committed.¹⁸³

2. Those who were part of the public record and who made a significant contribution to the design and implementation of the IRSS

By their very nature, these were well-known historical figures whose influence extended across the period during which the residential school policy was implemented. With respect to them, the Commission constructed a discursive framework in which these individuals were presented as the architects and chief ideologues of the policy, a framing intended to reinforce the Commission's broader claim regarding the crime of cultural genocide, for which the disclosure of the specific names of the policy's ideologues and principal implementers was considered essential.

Thus, the Commission's report specifically named several of Canada's leaders of the time, notably *Sir John A. Macdonald*, a former Canadian prime minister whom the Commission portrayed as having directly justified, before Parliament in 1883, the removal of children from their families, stating that a child on a reservation remained "*a savage who can read and write,*" and that children needed to be removed from parental influence to "*acquire the habits and mindset of a white person,*"¹⁸⁴ and *Duncan Campbell Scott*, presented as a key architect whose 1920 statement became a symbol of aggressive assimilation: "*Our goal is to continue until there is not a single Indian left in Canada who has not been absorbed into the political organism.*"¹⁸⁵

On the one hand, the Commission sought to demonstrate the cruelty and intransigence underlying these figures' actions and views by making extensive use of direct quotation. In particular, the Commission occasionally drew a contrast in its reports between what these individuals had said and what was implemented. For example, it noted that John A. Macdonald had insisted on building schools of the simplest design and from the cheapest possible materials, a fact the Commission framed within a broader narrative of institutional neglect of the welfare and rights of Indigenous children.¹⁸⁶

At the same time, however, a close reading of the full text of the Commission's report reveals that it ultimately portrayed these figures as products of an assimilationist policy: individuals operating under the pressure of contemporary society and of an ideology that persisted in Canada even decades after the mass immigration of Europeans to the continent.

Regarding other figures, the TRC also sought, through its narrative choices, to shift perceptions of their role and significance in Canadian history. For instance, it had long been common practice in Canadian society to portray figures such as Nicholas Flood Davin and Egerton Ryerson as distinguished educators and scholars. The Commission, however, drew attention to how their specific actions, and the research they published, directly shaped the policy of forced child assimilation. With respect to Davin's work, the Commission was sharply critical of his report, in which he examined the practice of boarding schools in the United States and formulated recommendations for their implementation in Canada,

¹⁸³ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, pt. 2, 424-426

¹⁸⁴ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, pt. 2, 164

¹⁸⁵ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, pt. 2, 4

¹⁸⁶ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1*, vol. 1, pt. 2, 162

describing his analysis as “not particularly thorough.”¹⁸⁷ Unlike its treatment of the two previously mentioned figures, the Commission unambiguously identified Davin as one of the architects of the policy, acting on his own initiative. Ryerson was portrayed in a similar light, described as the figure who laid its ideological foundation, arguing that it was impossible to civilize Native peoples without religious instruction delivered through residential schools.¹⁸⁸

3. Those who voluntarily requested to be named in the report

Compared to the number of specific victims and survivors who were named, the number of perpetrators who voluntarily expressed a wish to be identified was strikingly small.

On the one hand, this was because the Commission lacked the authority to grant amnesty; on the other, many staff members and representatives of religious organizations adopted a defensive posture aimed at protecting their reputations. They refused to acknowledge that the policy in general, or the treatment of children within the schools, had been destructive, insisting instead that they had “done everything they could” with limited resources, and that their work had been, in nature, largely self-sacrificing and missionary.

At the same time, those who did consent to having their names published in the Commission’s report tended to speak about their specific roles and motivations within the system. The Commission presented their testimonies not as accounts of perpetrators, but as those of witnesses or participants in a broader process of reconciliation achieved through the disclosure of truth.

Perpetrator’s Perception of the Name-and-Shame Mechanism in Canada

Certain processes related to acknowledging the criminal nature of the school system, and to publicly expressing shame and offering apology, began even before the Commission announced who the specific perpetrators were.

This concerned, first and foremost, the state, its individual representatives and institutions, and certain churches. With respect to individuals, however, the process of examining and understanding their own perception of events began only after the TRC’s massive investigation and collection of testimonies, despite the numerous public judicial trials pitting *victims against perpetrators*.

State’s perception. For most of the system’s history, the state systematically ignored reports of appalling conditions in the schools, dismissing them as unfounded, slanderous, or otherwise baseless. However, once survivors began, in the 1990s and 2000s, to speak out publicly en masse, recounting their experiences and simultaneously initiating lawsuits against their abusers, the state came to recognize that it needed to change its approach. It may also have been prompted to do so by the immense financial costs involved and by the strain these lawsuits placed on the judicial system.

¹⁸⁷ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The History, Part 1*, vol. 1, pt. 2, 154-158

¹⁸⁸ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The History, Part 1*, vol. 1, pt. 2, 64-66

In 1998, the then-Minister of Indian and Northern Affairs, Jane Stewart, issued a statement expressing “deep regret” for the physical and sexual abuse that had occurred.¹⁸⁹ This statement, however, was widely criticized, since Stewart recognized violations only in the context of what had happened within the schools, without addressing the existence of the system as a whole, or its broader cultural, socio-economic, and psychological consequences. Many Indigenous leaders also noted that Stewart’s language was rather cautious, as the text of statement contained no instance of “*we apologize*,” but only “*we deeply regret*.” The context in which Stewart delivered her statement is likewise noteworthy: according to Contrassel and Holder, she made it during the lunchtime ceremony held in a government meeting room in Ottawa,¹⁹⁰ which might suggest a certain lack of awareness of appreciation for the full weight of the system, its consequences, and the significance of a proper government apology to the victims, or perhaps even a denial of the need for one at that time. Later, the Commission itself noted this cautious and ambiguous approach in its report, adding that the statement should be regarded merely as an unofficial government position, since it was not signed by the then-leader or representatives of the Canadian Parliament.¹⁹¹

The next step toward acknowledging guilt was the signing, in 2006, of a settlement agreement between the government and approximately 86.000 survivors – the Indian Residential Schools Settlement Agreement, or IRSSA.¹⁹² This Agreement should be viewed as yet another attempt by the Government to prevent the collapse of the judicial system and to reduce the ever-mounting financial costs of compensation. Indeed, according to rough Government estimates at the time, resolving all pending lawsuits through the courts would have taken approximately 53 years and cost around CAD 2 billion in administrative expenses alone, not including the compensation itself.¹⁹³ Under the agreement, the government provided a payment of CAD 10.000 to all former residential school students, plus an additional CAD 3.000 for each subsequent year of schooling. The agreement also proposed the creation of a TRC, whose work has been discussed above.¹⁹⁴

At the same time, the agreement also faced criticism, particularly regarding the compensation process, which was procedurally complex and highly bureaucratic.¹⁹⁵ Indeed, in a later report, the Commission cited a figure of 40% of victims who described experiencing re-traumatization and neglect at the hands of the state. One participant in this process recalled “*brought up the memories [...] I had a panic attack. I ended up in the hospital [...] Just to realize that, yes, it was true, it did really happen.*”¹⁹⁶ The Government, in response, remained silent.

¹⁸⁹ *Statement of Reconciliation: Learning from the Past*, Nunatsiaq News, January 7, 1998, https://nunatsiaq.com/stories/article/statement_of_reconciliation_learning_from_the_past/

¹⁹⁰ Jeff Cornassel and Cindy Holder, *Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru*, Human Rights Review 9, no. 4 (2008), 465-489, <https://doi.org/10.1007/s12142-008-0065-3>

¹⁹¹ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The History, Part 1*, vol. 1, pt. 2, 559

¹⁹² Government of Canada, *Statement of Reconciliation*, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074>

¹⁹³ Indian Residential Schools Resolution Canada, *Departmental Performance Report, 31 March 2004*, 2026, http://www.nrsss.ca/Resource_Centre/IndianAffairs/IRSRC_DPR_31March2004_FINAL_wm.pdf, para. 6.2

¹⁹⁴ Class Action Services, *Ontario Settlement Agreement*, 2026, <http://www.classactionservices.ca/irs/phase2/PDFs/Ontario.pdf>

¹⁹⁵ MacDonald, *Canada’s Truth and Reconciliation Commission*.

¹⁹⁶ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy*, vol. 5, 163

The final chapter in this process came with the Government's official apology on June 11, 2008, delivered by then-Prime Minister Stephen Harper, who acknowledged that the residential school policy had been wrong and had caused irreparable harm, uttering the words so long awaited by many survivors: "*The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly. <...> Nous le regrettons <...> We are sorry <...> Nimitataynan <...> Niminchinowesamin <...> Mamiattugut.*"¹⁹⁷ The Commission later found that, for many survivors, the Prime Minister's words acknowledgement of the goal of "*killing the Indian in the child*" was of immense significance, moving many to tears and giving them a sense that their pain had finally been recognized.¹⁹⁸

The churches' perception. The churches' response to the way the TRC interpreted their role was complex, and was often marked by a defensive stance, a denial of systemic responsibility, and accusations of bias against the Commission. Although some individual church representatives expressed sincere remorse, at the institutional level there was frequently resistance to the narrative of "cultural genocide."

On the one hand, churches and their representatives felt that, by portraying their activities during the system's height in an entirely negative light, the Commission had created what might be called a "negative orthodoxy" – one that completely ignored and denied the churches' positive experiences and missionary work in education.¹⁹⁹ Indeed, some critics of the Canadian TRC spoke of its "anti-Christian" tendencies, and even accused it of "*pagan*" leanings – for instance, the incorporation of Indigenous spiritual practices (smudging, prayers to the Creator) into the Commission's sessions was perceived by some church leaders as a manifestation of bias against Christianity. This is particularly striking given that these same officials held the view that students had already become Christians by the time they left the residential schools, and that such ceremonies therefore constituted a violation of their true identity.²⁰⁰

It was also a common view among church officials that the TRC was excessively cautious about avoiding offense to Indigenous people, and that, as a result, the testimonies and statements included in the Final Report were unbalanced and failed to fully represent the position of the churches or their representatives. In this context, it is also worth recalling that many church representatives themselves refused to cooperate with the Commission, to testify, or to share their own version of events, on the grounds that they did not consider themselves guilty of any wrongdoing.

One particularly telling example is the response of the Roman Catholic Church, which at one time operated the majority of residential schools: the Church actively denied any involvement in wrongdoing, invoking, as already mentioned, the theological concept of the "Holy Mother Church", which, unlike its "sinful children" cannot itself sin. In 2015, a major scandal erupted when survivors, through the Commission's *Call to Action 58*, demanded that the Pope apologize for the Church's activities in Canada, calling for him to travel there in person within a year of the Report's publication to apologize to survivors

¹⁹⁷ Government of Canada, *Indian Residential Schools Resolution Canada*, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655>

¹⁹⁸ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol.6, 84-85

¹⁹⁹ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol. 6, 170-172

²⁰⁰ MacDonald, *Canada's Truth and Reconciliation Commission*

and their families for the Catholic Church's role in "spiritual, cultural, emotional, physical, and sexual abuse."²⁰¹ At that time, the Pope declined. In 2018, then-Prime Minister Justin Trudeau, during a visit to the Vatican, personally asked Pope Francis to travel to Canada to deliver such an apology but was again refused. This refusal triggered a wave of condemnation: Indigenous leaders called it a "slap in the face," and Trudeau himself expressed deep disappointment with the Church.²⁰² An official apology was finally issued by the Roman Catholic Church in 2022, following the discovery, a year earlier, of numerous unmarked graves, 215 unidentified burials, of Indigenous children on the grounds of a former residential school, a discovery that sparked international pressure and massive domestic protests across Canada.²⁰³

Even this apology, however, failed to address the full extent of what Canada's Indigenous peoples had endured within the residential school system: it was addressed by specific individuals within the Church, rather than by the institution as such, and focused exclusively on physical, verbal, and spiritual abuse, without any mention of sexual abuse.

As a result, the Church's position can be understood as largely unchanged with respect to its view of its own role and involvement in the residential school system – more a response to criticism and to a crisis of reputation than a genuine and sincere expression of remorse.

Individuals' perception. As for the specific individuals responsible for implementing the policy, teachers, school staff, and church representatives, a significant number, as already noted, denied any involvement in what they termed the *so-called* criminal residential school system, arguing that the Commission had unfairly accused them of violence that had never been proven, despite the existence of thousands of survivor testimonies.

Several former church representatives insisted that the testimonies provided by victims to the Commission were false, arguing that the victims had been children at the time and had not fully understood what was happening. The Commission, for instance, recorded a statement from one nun who declared that she "was prepared to walk through fire because she knew they were innocent, and she holds their pain," since such unfounded accusations *destroy* people.²⁰⁴

The reactions of those involved in public hearings, however, were often intense: the Commission recorded, on the one hand, instances of total confusion and shock, and, on the other, expressions of guilt and shame.

In the former category were instances in which perpetrators testified in the presence of those they had harmed. In Volume 6 of the Report, for example, the Commission describes an incident in Victoria in which, during the testimony of Brother Tom Cavanaugh, then the district superior of the Oblates of Mary Immaculate for British Columbia and the Yukon, regarding his experience at Christie Residential School, survivors and their family members suddenly began shouting at him, "*Tell the truth.*" This

²⁰¹ *Call to Action 58*, TRC Talk, Acadia University, <https://courseware.acadiau.ca/trctalk/call-to-action-58/>

²⁰² Helen Pidd, *Trudeau Asks Pope Francis to Apologise to Indigenous People for Church's Abuses*, The Guardian, May 30, 2017, <https://www.theguardian.com/world/2017/may/30/trudeau-asks-pope-francis-to-apologise-to-indigenous-people-for-churchs-abuses>

²⁰³ *Pope Francis's Apology to Indigenous Peoples*, Contending Modernities, University of Notre Dame, <https://contendingmodernities.nd.edu/global-currents/pope-francis-apology/>

²⁰⁴ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol. 6, 168-169

reaction was prompted by Cavanaugh's description of the school environment as "*a safe, loving environment for the children.*"²⁰⁵ This was because Cavanaugh described the school environment as "*safe and loving*". Following this sharp reaction from the audience, a "visibly shaken" Cavanaugh reconsidered his testimony and ultimately acknowledged the abuse that had occurred, expressing regret for having betrayed survivors' trust.²⁰⁶

Meanwhile, that same day, Ina Seitcher, a survivor from the school where Cavanaugh had once worked, gave testimony diametrically opposed to his own regarding her experience there; in response, the Commission concluded that reconciliation remained impossible so soon after the dissolution of the IRSS.²⁰⁷

Victims' Perception of the Name-and-Shame Mechanism in Canada

There is no unified understanding or experience among survivors regarding the Canadian TRC's decision not to name perpetrators: for some of victims, it was more important to reclaim their own stories and to be heard, while for other it was crucial that the public know the names of those who had committed violence against them. This varied depending on a community's collective sense of justice, its region, the specific nation involved (First Nations, Métis, or Inuit), and the general quality of communication between the Commission and victims.

The naming prohibition did not simply impose a decision on a unified community of victims who opposed it; rather, it intersected with a deep disagreement among survivors themselves about what accountability required, what privacy demanded, and what healing meant.

That said, the weight of documented survivor testimony, advocacy positions taken both before and during the TRC's work, and scholarly accounts of community responses all suggest that the naming prohibition produced significant and lasting dissatisfaction among most survivors and their relatives.

Survivors who accepted the TRC's approach. Some victims, including prominent advocates for the TRC, accepted the naming prohibition, explaining it as a pragmatic approach that allowed the Commission to give victims a genuine opportunity to be heard and understood in detail, while avoiding duplication with the outcomes of the criminal proceedings that were ongoing at the time.

the argument concerning criminal prosecution held that the TRC's confidentiality regarding individual perpetrators was not a permanent form of protection, but a temporary legal precaution intended to preserve the possibility of future prosecution. According to Cultural Survival,²⁰⁸ an NGO advocating for the rights of Indigenous peoples, the Commission's de-personalized approach was necessary to safeguard the right to a fair trial, so that nothing would interfere with, or in any way influence, ongoing criminal proceedings. For this reason, the Commission was meant to function as a supplement or

²⁰⁵ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol. 6, 10

²⁰⁶ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol. 6, 10

²⁰⁷ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol. 6, 10-12

²⁰⁸ Cultural Survival, *Indian Residential School Truth and Reconciliation*, Cultural Survival Quarterly, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indian-residential-school-truth-and-reconciliation>

complement to court cases, rather than a substitute for them. Victims who held this view explained that perpetrators remained unprotected by the policy set out in *Schedule N*, and they accepted the argument that the Commission's nature was not judicial or prosecutorial but rather aimed at reconciliation and healing.

Another argument for accepting the TRC's decision not to name perpetrators arose from concerns about the effects such naming might have within closely knit Indigenous communities, particularly where perpetrators were themselves community members, or where the children of named perpetrators still lived among survivors. Phil Fontaine, former National Chief of the Assembly of First Nations and a residential school survivor himself, stated in his affidavit that, within local communities, publicly identifying individuals responsible for violence, and their victims, risked perpetuating, even into future generations, the very legacy of dysfunction and trauma that the schools had created.²⁰⁹ This view, that naming risked perpetuating harm within communities rather than resolving it, was held by a segment of survivors, particularly those who had been abused by fellow students rather than by staff.

The final argument was what might be called the "hearing as verification" argument, which held that the primary value of the TRC lay in giving survivors a space to be heard and believed, and that this value did not depend on whether individual perpetrators had been named.²¹⁰ What the Commission could, and did, help achieve was the creation of a space in which survivors could finally speak the truth and be heard. For survivors who had spent decades having their accounts rejected, minimized, or denied, official public acknowledgment of what had happened, even without individual naming, represented a meaningful form of recognition that many had not expected to receive in their lifetime.

Survivors who rejected the TRC's approach. For this category of victims, the Commission's approach felt insulting, unjust and inadequate, and was perceived as a mechanism for shielding perpetrators from public shame. They advanced several arguments in support of this view.

One of the strongest arguments from survivors who rejected the TRC's approach concerned a conflict in understanding what it means to reveal the "whole truth." Specifically, while the Church emphasizes the privacy of the sinner, in the philosophy of many Indigenous peoples (for example, in the concept of *kintohpatatin* among the Cree), justice means having been heard, and forgiveness becomes possible only through the public acknowledgment of wrongdoing before the community.²¹¹ For these survivors, it was common to understand the Commission's confidentiality as a form of concealment.²¹²

Another issue raised was what might be called the impunity critique arising from the decision not to name perpetrators. While a few trials did proceed against individuals who had committed sexual violence and physical abuse against children in the schools, most individual perpetrators escaped justice altogether, their actions never investigated or prosecuted. Victims argue that, despite the TRC's extensive

²⁰⁹ Gloria Galloway, *Evidence of Abuse in Residential Schools Could Be Destroyed*, The Globe and Mail, <https://www.theglobeandmail.com/news/politics/evidence-of-abuse-in-residential-schools-could-be-destroyed/article19234467/>

²¹⁰ Cultural Survival, *Indian Residential School Truth and Reconciliation*.

²¹¹ National Centre for Truth and Reconciliation, *In a Moment of Reflection* (Winnipeg: NCTR, 2025), 19-22, https://nctr.ca/wp-content/uploads/2025/10/In_a_Moment_of_Reflection.pdf

²¹² National Centre for Truth and Reconciliation, *In a Moment of Reflection*, 19-22

and thorough documentation and its *94 Calls to Action*, very little has actually changed: the same systems that established the residential schools remain largely in place, and while the federal government has acknowledged some of the harm and offered compensation to certain categories of victims and survivors, it continues, at the same time, to contest their claims in court at considerable cost to Canadian taxpayers. From this perspective, the naming ban was not merely a procedural technicality, but a structural expression of a broader pattern – one that certain analyses have termed *settler amnesty*, in which the Canadian state systematically organized its accountability processes so as to minimize individual guilt while still performing an appearance of institutional recognition.²¹³

Constructing a Historical Narrative Through the Name-and-Shame Mechanism

Applying Pierre Nora's concept of *lieu de mémoire* to the TRC's Final Report reveals a distinctive configuration of memorial architecture.²¹⁴ The Report functions simultaneously as an archive of survivor testimony, a historical account of institutional violence, an official government document, and a founding text of post-colonial Canadian identity. As a site of memory, it is material (a seven-volume physical and digital document), functional (a reference point for policy, litigation, and public discourse), and symbolic (the most authoritative official acknowledgment of residential-school harm). Unlike the South African TRC's Final Report, which functions as a site of memory that names specific perpetrators alongside the systems that enabled them, the Canadian Final Report is a site of memory that encodes collective responsibility without individual attribution. The NCTR, established at the University of Manitoba to preserve the TRC's archive, extends this memorial function into permanence: the stories held there, including the in-camera testimonies naming individuals who cannot be publicly identified, are preserved, but remain only asymmetrically accessible.

Quinless's methodological critique of colonial research frameworks in *Decolonizing Data* is relevant to this thesis at a meta-analytical level: her argument that the quantitative and institutional frameworks through which Indigenous harm is documented risk reproducing the very epistemological structures of colonialism applies equally to the TRC's own methodology.²¹⁵ The Commission's approach, which involved collecting and categorizing testimony through institutional templates, produced a narrative that was comprehensive within the bounds of those templates, but that may have foreclosed other forms of knowledge, including Indigenous legal traditions of witnessing and accountability, that could not be accommodated within the Commission's institutional framework.

According to the Canadian TRC's own reports, the Commission understood its mission as transforming Canadian national history and identity by constructing a new narrative to replace the colonial myths of the past. It saw itself not so much as the creator of this narrative as an agent intervening in history to shift public discourse for the better. The Commission's central premise was that genuine reconciliation is possible only through the reshaping of a shared national collective memory. It

²¹³ Kathleen Martens, *Settler Amnesty: Canada Has Been Told It Has a Culture of Impunity over Residential School Atrocities – Here's What That Means*, Justice in Conflict, January 27, 2025, <https://justiceinconflict.org/2025/01/27/settler-amnesty-canada-has-been-told-it-has-a-culture-of-impunity-over-residential-school-atrocities-heres-what-that-means/>

²¹⁴ Pierre Nora, *Between Memory and History: Les Lieux de Mémoire*, Representations 26 (1989), 19

²¹⁵ Jacqueline M. Quinless, *Decolonizing Data: Unsettling Conversations about Social Research Methods* (Toronto: University of Toronto Press, 2022), 5-12

emphasized the need to move away from an idealized version of history, in which Canadian settlers are portrayed as “benevolent peacemakers,” and toward a version of the past that fully incorporates the experiences of Indigenous peoples and makes them part of the everyday consciousness of all Canadians.²¹⁶

By collecting survivor testimonies, documenting experiences of violence, and analyzing the functioning of the residential school system, the Commission sought to challenge colonial notions of Indigenous peoples as “uncivilized” or incapable of self-development. In this way, the TRC sought to replace the discourse of assimilation, and the justifications once offered for colonial policy, with a history grounded in the recognition of harm, accountability, and the lived experiences of Indigenous peoples themselves.²¹⁷

Reading the reports closely, one might argue that the Commission sought not so much to establish a single new narrative as to create the conditions under which access to data, information, and evidence about the past would be open and accessible enough to preclude a one-sided view of history, or the denial of any group’s experiences. This concept was later termed “*arming the reasonable*,” a phrase coined by Commission Chair Murray Sinclair.²¹⁸ Sinclair also acknowledged that the Commission had not been able to achieve full reconciliation or establish the peace that had been hoped for. I would nonetheless commend the Commission’s work and its findings as such, since, by their very nature, they created the conditions under which Canadians began to question their own history and to develop a genuine desire to explore it further.

Furthermore, some of the material presented in the Commission’s reports was later incorporated into school curricula across Canada.²¹⁹

Thus, the main outcome of the TRC’s work was not the complete elimination of colonial myths, nor the immediate achievement of reconciliation, but rather the creation of a new moral and documentary foundation for public memory. The Commission fundamentally changed the terms of discussion around the past: following its work, it became far more difficult to ignore the truth about the residential schools, and questions of accountability and historical justice moved to the center of Canadian public discourse.

Conclusions

When the Truth and Reconciliation Commission of Canada released its Final Report in December 2015, culminating six years of testimony collection, archival research, and national reconciliation events, it produced one of the most comprehensive official accounts of colonial violence in any democratic country’s history.²²⁰ And yet, unlike its South African namesake, it did so without naming a single individual perpetrator. The Commission was constitutionally and legally prohibited from identifying,

²¹⁶ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: Reconciliation*, vol. 6, chap. 1

²¹⁷ Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: Reconciliation*, vol. 6, chap. 1

²¹⁸ Murray Sinclair, *Conversations with Leaders*, Wilfrid Laurier University Speakers Series, September 13, 2016, <https://www.youtube.com/watch?v=8KXvjDrOYgs>

²¹⁹ See Annex 4

²²⁰ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015), 1-3

accusing, or condemning any person who had administered, staffed, or participated in the system of Indian residential schools.²²¹

The grounds for that decision were explained through different reasons: (1) the limitations of the Commission as a mechanism of truth-finding not as a legal one,²²² (2) the aim to create a victim-centered approach, so those who witnessed or survived the IRSS would feel safer and sounder during the testimonies to the Commission,²²³ and (3) a pressure from Ministry of Justice of Canada, religious organizations and Churches themselves on the Government to keep confidential all the data they keep for years of the IRSS existence to control the narrative and to move it from the guiltiness of institutions and system to the “individual suffering”.

This led to the limited representation of the past in the Final Reports of the Commission with heavily redacted victim’s testimonies, as they also were obliged not to mention the actual names of their perpetrators. That set up the situation when most of the victims were not satisfied with the TRC’s results and work, stating about the re-traumatization and disappoint in reconciliation overall process. Many scholars called the commission as perpetrator-friendly, developing the concept of *settler amnesty*, describing the avoidance of the punishment and public judgment of the perpetrators and their crimes committed within the IRSS, that protect all living perpetrators as well as their families from being persecuted, which eventually led to the creation and cultivation of the culture of impunity in Canada even now.²²⁴ Additionally, according to Matt James, such decision to not publicly name-and-shame perpetrators evolved into a phenomenon of “quasi-apology” meaning that the apology was expressed, but not sincerely and without the proper respect.²²⁵

Taken together, it created the concern of construction the asymmetrical history and truth about the past, stigmatization of victims and the cultivation of denialism culture within the governmental structures.

As for the narrative framework, the Commission set itself a fairly achievable goal: through eyewitness accounts, a detailed analysis of archives, and an examination of guilt through the theory of cultural genocide to make Canadian society to recognize the systematic and widespread nature of the residential school policy and its criminal nature, and to provide all the necessary tools for coming to terms with the past.

Overall, it can be said that the commission’s efforts were aimed at fostering citizens who understand why and how the past is relevant to their own lives and the country’s future.

²²¹ *Schedule N*, clauses 2(e), 2(j)

²²² *Schedule N*, clause 2(h)

²²³ Kim Stanton, *Canada’s Truth and Reconciliation Commission: Settling the Past?* International Indigenous Policy Journal 2, no. 3 (2011), <https://doi.org/10.18584/iipj.2011.2.3.2>

²²⁴ Office of the Independent Special Interlocutor, *Executive Summary of Final Report*, 37

²²⁵ Matt James, *A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission*, International Journal of Transitional Justice 6, no. 2 (2012): 182-204, <https://doi.org/10.1093/ijtj/ijts010>

Conclusions to the Chapter “Case Study”

Both commissions – the Canadian and South African – were established at the request of post-conflict societies seeking to recover and heal from the trauma and horrific experiences they had endured.

These two commissions are, in a sense, considered benchmarks among other similar mechanisms. At the same time, their approaches to disclosure and the prosecution of perpetrators were radically different: in South Africa, it was decided that names must be made public, as this was the only way to achieve a complete picture of the past and thus form a robust counter-narrative for the future; in Canada, they decided to focus more on the survivors, keeping the names of most perpetrators confidential, as they had set themselves the goal of “balancing” past experiences among themselves.

Both commissions sought to create counter-narratives and transform the memory of the past in such a way that society could move beyond aggression and a desire for revenge and build a new society and state.

At the same time, the results were questionable for both commissions – neither achieved its stated goal, and in some cases even deepened the trauma. But on the positive side, they were able to create an invaluable archive of memory and establish a discourse in which denying past violence is impossible.

NAME-AND-SHAME MECHANISM: RELEVANCE FOR UKRAINE

Starting around 2014, the Ukrainian media began publishing articles exploring the possibility of establishing a truth and reconciliation commission in Ukraine. At the time, however, these ideas remained largely speculative, without deeper analysis or further development. Somewhat later, the concept of a commission as a tool for seeking and establishing truth gained traction among broader circles of human rights advocates, who began to study the potential of this mechanism in greater detail. At a certain point, the state also showed interest in the mechanism: in 2017, it announced the drafting of a bill “*On the Principles of State Policy for the Protection of Human Rights in the Context of Overcoming the Consequences of Armed Conflict*.”²²⁶ This process lasted several years, but the final version presented 2021 contained only isolated elements of the right to truth, rather than the idea of a commission as such.²²⁷

At the same time, these cautious steps increased the interest of human rights defenders in understanding transitional justice policy, and in the years that followed, a series of reports was published examining this issue through the lens of the Ukrainian conflict. Most of these focused on ensuring the right to truth; in particular, ZMINA proposed that the investigation and establishment of the historical truth about the conflict be considered one of the elements of a successful transitional justice policy.²²⁸

In recent years, the discussion has picked up significantly. In April 2025, the issue was elevated to the strategic level: a draft of the new Transitional Justice Strategy for the period up to 2026, along with an operational plan for its implementation, was presented.²²⁹ In May 2025, the Human Rights Institute of the Ukrainian Bar Association, in collaboration with the International Center for Transitional Justice (ICTJ), launched a series of webinars on international experience, the first of which focused on South Africa.²³⁰ In October 2025, a coalition led by the Legislative Initiatives Lab released the Shadow Report 2025, containing 500 recommendations for the government.²³¹ In December 2025, an international voice also weighed in on the question of timing: American lawyer David Tolbert

²²⁶ Ukrainian Helsinki Human Rights Union, *Prezentatsiia zakonoproiektu ‘Pro zasady derzhavnoi polityky zakhystu prav liudyny v umovakh podolannia naslidkiv zbroinoho konfliktu’* [Presentation of the Draft Law “On the Principles of State Policy for the Protection of Human Rights in Overcoming the Consequences of the Armed Conflict”], 2018, <https://www.helsinki.org.ua/articles/prezentatsiya-zakonoproiektu-pro-zasady-derzhavnoji-polityky-zahystu-prav-lyudyny-v-umovah-podolannya-naslidkiv-zbroinoho-konfliktu/>

²²⁷ Verkhovna Rada of Ukraine, Draft Law No. 5844, *Pro zasady derzhavnoi polityky perekhidnoho period* [On the Principles of State Policy of the Transition Period], registered August 9, 2021, <https://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=72625&pf35401=551954>

²²⁸ ZMINA, *Iak zhyty ta koho sudyty pislja viiny – pravozakhysnyky rozroblyli zakonoproiekt pro perekhidne pravosuddia* [How to Live and Whom to Judge after the War: Human Rights Defenders Have Drafted a Bill on Transitional Justice], April 26, 2018, https://zmina.info/news/jiak_zhity_ta_koho_suditi_pislja_vijni_pravozahisniki_rozrobili_zakonoproiekt_pro_perekhidne_pr_avosuddjia/

²²⁹ Laboratory of Legislative Initiatives, *Perekhidne pravosuddia: iak ta koly do noho pereity?* [Transitional Justice: How and When Should It Be Approached?], n.d., <https://parlament.org.ua/analytics/perekhidne-pravosuddia/>

²³⁰ Ukrainian Bar Association, *Pivdenna Afryka: uroky pravdy i prymyrennia dlia Ukrainy* [South Africa: Lessons of Truth and Reconciliation for Ukraine], May 29, 2025, <https://uba.ua/ukr/news/pvdenna-afrika-uroki-pravdy-primirennja-dlja-ukraini>

²³¹ LB.ua, *Koalitsiia ekspertiv proanalizuvala postup Ukrainy z pytan pravosuddia na shliakhu do IeS i dala vladi 500 rekomendatsii* [Coalition of Experts Assessed Ukraine’s Progress on Justice Issues on the Path to the EU and Gave the Authorities 500 Recommendations], October 24, 2025, https://lb.ua/pravo/2025/10/24/703236_koalitsiya_ekspertiv_proanalizuvala.html

emphasized that establishing a truth commission as soon as possible would be a crucial step precisely once peace has been restored.²³² Finally, in March 2026, a new body effectively took up the task: the Ministry of Community and Territorial Development was tasked with developing the government's concept of transitional justice, in accordance with the government's action plan, while civil society, the ZMINA Human Rights Center, for example, continues to emphasize the need for a coordinated state framework.²³³

This process is still ongoing, and the overarching question remains: what form should a Ukrainian commission take, if one is established?

Several key arguments are put forward in favor of such a commission. These include: establishing the truth as a tool for countering Russian propaganda and prospective revisionism, and for recording an accurate historical record; victim-centeredness, the opportunity to be heard, moral satisfaction, and the restoration of dignity; and laying the foundation for sustainable peace and guarantees of non-recurrence, since the collection of testimonies and evidence is important both for criminal justice and for establishing the truth about the war – that is, the commission could fuel investigations, not merely record history.²³⁴

There are no fewer reservations.

First is a matter of timing: many, including Tolbert, believe that such a commission could only function fully once peace has been restored, since, during active warfare, security measures, the screening of people from occupied territories, prosecution for collaboration, conflict with human rights principles.

Second, there are doubts about the format itself: Kateryna Busol notes that it need not necessarily take the form of a truth commission; a parliamentary temporary investigative commission could fulfill the same function, provided the final report is made public. She also criticizes the insufficient attention paid to sexual and gender-based violence in such processes.²³⁵

Third, there is the lack of a unifying framework: there is no single state structure, and different agencies address the issues of victims and documentation in an unsynchronized manner. Fourth, there are doubts regarding the appropriate legislative form: the Legislative Initiatives Laboratory argues that a single legislative act would be ineffective for such a broad range of issues, and that a set of measures is needed, rather than a single law.²³⁶ Added to this are broader concerns: the risk of “conflict preservation”

²³² UNIAN, *Pislia viiny Ukraini varto stvoryty 'komisii pravdy' – amerykanskyi iuryst* [After the War, Ukraine Should Create “Truth Commissions” – American Lawyer], December 10, 2025, <https://www.unian.ua/society/pislya-viyni-ukrajini-varto-stvoryti-komisiji-pravdi-amerikanskyi-yurist-12897822.html>

²³³ ZMINA Human Rights Centre, *Ukraini potribna uzgodzhena ramka polityky pidtrymky postrazhdalych – Alona Lunova vziala uchast u dyskusii pro polityku perekhidnoho pravosuddia* [Ukraine Needs a Coordinated Policy Framework to Support Victims – Alona Lunova Takes Part in a Discussion on Transitional Justice Policy], March 16, 2026, <https://zmina.ua/event/ukrayini-potribna-uzgodzhena-ramka-polityky-pidtrymky-postrazhdalych-alona-lunova-vzyala-uchast-u-dyskusii-pro-polityku-perekhidnoho-pravosuddia/>

²³⁴ UNIAN, *Pislia viiny Ukraini varto stvoryty 'komisii pravdy' – amerykanskyi iuryst*

²³⁵ Babel, “*Perekhidne pravosuddia maie dopomohty ukraintsiam podolaty travmy viiny y vidchuty spravedlyvist...*”: interview with Kateryna Busol [“Transitional Justice Should Help Ukrainians Overcome the Traumas of War and Feel a Sense of Justice...”] interview with Kateryna Busol], March 26, 2026, <https://babel.ua/texts/125765-perekhidne-pravosuddia-maye-dopomogti-ukrajincyam-podolati-travmi-viyni-y-vidchuti-spravedlivist-skilki-treba-chasu-groshey-i-vbitih-rosiyan-vidpovidaye-ekspertka-katerina-busol>

²³⁶ Laboratory of Legislative Initiatives, *Perekhidne pravosuddia: iak ta koly do noho pereity?*

arising from an excessive fixation on trauma (citing David Riff²³⁷), and the limited impact commissions tend to have on structural problems – as demonstrated by the experience of South Africa, where inequality has never been overcome.

What Ukraine can learn from the experiences of South Africa and Canada. Many researchers draw on the experiences of earlier commissions, primarily those of South Africa and Canada.

The first thing that distinguishes the Ukrainian case from both is that work on the mechanism is beginning while the conflict is still in its active phase. Some experts, notably David Tolbert, emphasize that such a commission will only become fully functional once peace has been restored. While the war continues, the state is forced to adopt security measures, ranging from the screening of people from occupied territories to the prosecution of collaboration, and these measures often directly conflict with the human rights principles on which a truth commission should be based (telling example being the debate surrounding the use of polygraphs, which infringes on human dignity). Hence the need for caution: a premature, or poorly balanced, mechanism risks deepening divisions rather than healing them. At the same time, as noted in the introduction to this work, the conversation itself cannot be postponed, the rules by which the truth will eventually be established must be prepared in advance.

The experience of these two commissions with the name-and-shame mechanism is particularly instructive here.

A key difference between the Ukrainian approach and the South African one is already laid out in the Concept: war crimes, crimes against humanity, and gross human rights violations are not subject to amnesty. Whereas, in South Africa, the disclosure of names functioned as an exchange, truth in return for amnesty, the Ukrainian model leans in the opposite direction: the public recording of facts is not intended to replace punishment, but rather to support criminal investigations by supplying evidence. In this sense, the Ukrainian mechanism is closer to a retributive logic than the South African one.

At the same time, a strong feature of the South African experience that Ukrainian researchers are adapting to their own context is the very effect of naming individuals by name. For many perpetrators, the punishment lay not in the sentence itself, but in the fact that society came to know them by face; this *symbolic stamp of guilt* was something the person had to carry within the community ever after. The public disclosure of the names of those who ordered and carried out crimes is seen as a form of moral satisfaction for victims, and as a safeguard against the same *bomb of silence* exploding again in the future. At the same time, as A. Slavko notes, even in South Africa the commission had limited influence on structural transformation: it did not overcome economic inequality, which continues to undermine the stability of peace.²³⁸

The Canadian experience serves as a warning against the opposite extreme. As Plotnikov notes, the Canadian commission was established because general commissions are often unable to address violations that have persisted for decades; yet it lacked judicial powers, it could not summon perpetrators,

²³⁷ David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies* (New Haven: Yale University Press, 2016).

²³⁸ Anna Slavko, *Komisii pravdy ta prymyrennia: dosvid Pivdennoafrykanskoi respubliki* [Truth and Reconciliation Commissions: The Experience of the Republic of South Africa] (conference paper abstract, Sumy State University, 2022), <https://essuir.sumdu.edu.ua/handle/123456789/88069>

compel them to testify, or hold them formally accountable, and this is considered its principal weakness from the standpoint of justice, since survivors were often left to prove the facts of abuse separately, in court.²³⁹ Its strength, instead, lay in comprehensive documentation: over six thousand survivor testimonies, and the official recognition, in 2015, of the residential school policy as cultural genocide.²⁴⁰ For Ukraine, the lesson here is straightforward: a body lacking enforcement powers can still provide a powerful narrative and a measure of recognition, but it cannot replace the courts, and should therefore be designed, from the outset, to work alongside criminal justice rather than as a substitute for it.

Shaping the narrative. The second major function for which a Ukrainian body would be designed is the shaping of a credible narrative about the war. Here, the logic aligns closely with the findings of this study: the commission's primary long-term value lies not in the mere act of naming, or of refraining from naming, but in its capacity to create an archive and establish a discourse in which the past can no longer be denied. For Ukraine, this carries an additional, very concrete dimension: countering Russian propaganda, which distorts both the causes of the aggression and the reality of life under occupation. Officially established and documented facts serve as a safeguard against future revisionism, and as the foundation for a collective memory.

Ukrainian researchers also emphasize the dialogical, communicative function of such a mechanism: the creation of inclusive spaces in which trauma can be voiced allows for the formation of a shared account of events, one in which the victim is heard and the causes of the harm are named (Styazhkina, in particular, emphasizes this in discussing reconciliation through the verbalization of trauma).²⁴¹ Unlike in some other contexts, the Ukrainian narrative requires, from the outset, a clear distinction between victim and aggressor, a distinction that must not be lost when adapting foreign models.

Possible limitations. Finally, both cases highlight the limitations of the mechanism itself. The South African experience has shown that a commission cannot resolve deep-seated structural problems on its own; for Ukraine, this means that a commission should not be expected to assume responsibilities that properly belong to other policymakers, nor to substitute for the political and institutional reforms on which durable accountability ultimately depends.

There is also a risk, as noted with reference to David Rieff,²⁴² that an excessive fixation on trauma can perpetuate conflicting narratives, and that the continual public rehearsal of past wrongs may harden divisions rather than dissolve them – meaning that a degree of *functional forgetting* may sometimes serve unity better than a constant return to past pain. Added to this is a distinctly Ukrainian problem: the

²³⁹ Oleksii V. Plotnikov, *Komisiiia z pravdy i prymyrennia iak perspektyvnyi instrument vidnovlennia prav krymskotatarskoho narodu* [The Truth and Reconciliation Commission as a Promising Tool for Restoring the Rights of the Crimean Tatar People], in *Pravove zhyttia suchasnoi Ukrainy: materialy Mizhnarodnoi naukovo-praktychnoi konferentsii* [The Legal Life of Contemporary Ukraine: Proceedings of the International Scientific-Practical Conference] (Odesa, September 17, 2018), ed. H. O. Ulianova, comp. O. V. Dykyi and I. I. Bratinov (Odesa: Helvetyka, 2018), 131-134

²⁴⁰ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*

²⁴¹ Olena Styazhkina, *Niurnberzkyi trybunal chy komisiia pravdy?* [Nuremberg Tribunal or a Truth Commission?], *Ukrainian Week* (Tyzhden.ua), <https://tyzhden.ua/niurnberzkyj-trybunal-chy-komisiia-pravdy/>

²⁴² Rieff, *In Praise of Forgetting*

absence of a unified state framework capable of coordinating documentation, victim support, security measures, and criminal justice across the various agencies involved, which risks leaving each of these tasks fragmented among bodies that neither share information nor answer to a common mandate.

In summary, the Ukrainian case does not fit neatly into either of the two models examined here. From South Africa, it draws strength from the recognition of individuals by name, while rejecting amnesty for the most serious crimes; from Canada, it draws the depth of documentation and sensitivity to the rights of Indigenous peoples, while rejecting the powerlessness Canada's commission showed in the face of perpetrators. As this study has shown, a commission is not a ready-made recipe for reconciliation: it merely creates the possibility for it. Ukraine's task, then, is not to copy someone else's model, but to consciously decide whom to name, when, and how, anticipating in advance the cost of each of these decisions.

CONCLUSIONS

When, in 2020, I publicly suggested that Ukraine consider developing policies of truth and reconciliation and think about how to approach memory and commemoration policy even before the war had ended, I was met with skepticism. At the time, I cited a truth and reconciliation commission as one mechanism that could help with this, and was told, in response, that there were more pressing matters at hand: infrastructure, security, and territorial recovery.

The experts' reaction at the time, or, rather, their objection, was an honest one, but I still consider it incomplete. Nevertheless, this clash of perspectives sparked my own research interest in the role and significance of such commissions in post-conflict processes, and in their capacity to influence public opinion.

In pursuing this line of inquiry, I was keen to explore how societies approached questions of truth-seeking and truth-telling, how they engaged with a tool such as a truth and reconciliation commission, and how they interacted with it. In practice, however, I encountered a significant obstacle: while there were numerous studies on commissions as instruments of reconciliation and truth-seeking, there were none examining how such commissions shaped discourse and narrative through their work, and specifically through their central tool, the name-and-shame policy. In Ukrainian academia, such studies do not exist at all to date; there are only isolated studies of transitional justice processes more broadly, in which commissions and their objectives are mentioned only in passing.

For me, this research became a genuine challenge: to conduct an applied and in-depth analysis that would not only make a meaningful contribution to the international academic literature on this topic but would also demonstrate the ability of Ukrainian scholars to carry out research of this kind and to translate it into material that could be practically applied, in the future, to the pursuit of peace in Ukraine.

Two commissions were selected for this study: those of South Africa and Canada – the two commissions best known, and most widely recognized, as successful worldwide. In their approaches to dealing with the past, these commissions adopted radically different strategies: in South Africa, the decision was made to identify and publicly name all possible perpetrators and architects of apartheid policy, and to condemn them publicly. In Canada, by contrast, a markedly different path was chosen, with all attention focused on victims and the names of all perpetrators kept confidential.

Both commissions also sought to act as catalysts for changing public discourse about the past, and to shift the prevailing narrative away from the rhetoric of violence and toward a more neutral framework, one more conducive to building a stable and peaceful society. However, despite their radically different approaches to naming perpetrators, both commissions ultimately fell short in their efforts to reshape that discourse.

In South Africa, where the Commission operated within a logic of restorative rather than punitive justice, the publication of names became almost the sole form of punishment and deterrence available to it. This gave victims a voice, but it also reduced the picture to a binary “victim ⇌ perpetrator” framework, remained geographically and racially uneven in its application, and excluded most ordinary, rank-and-

file perpetrators of apartheid. Amnesty, together with a one-sided understanding of the violence, continues to fuel denial of the Commission's findings to this day.

Canada, for its part, decided that its commission should remain purely a truth-seeking body; to maintain a victim-centered approach, and under pressure from both the state and the churches, it redacted most perpetrators' names, despite many survivors' own wish to see them made public. As a result, the truth that emerged was left incomplete: victims' testimonies were published in edited form, stripped of perpetrators' names. This left many victims dissatisfied and gave rise to widespread talk of re-traumatization. Researchers have termed this phenomenon *settler amnesty* and a "quasi-apology," seeing in it the foundation of a culture of impunity that persists to this day.

To answer, briefly, the question that started all of this: yes, a commission can change narratives but not in the way, or to the extent, that is often expected of it. Neither of the two commissions fully achieved its stated goal, and in some respects, each even deepened the trauma it was meant to address. A commission is not a mechanism for reconciliation or healing; it is, rather, a tool that merely creates the possibility for these things. And that possibility is always constrained by the commission's own institutional framework, its resources, and the political circumstances in which it operates.

There is, however, something both commissions did manage to achieve, and it may be the most important outcome of their work. Both created an invaluable archive of memory, and both helped establish a discourse in which denying past violence is no longer possible.

And here it is worth returning to that 2020 report. The skeptics were right about one thing: the demands of wartime are indeed urgent. But they were wrong about the more fundamental point: the conversation about truth, memory, and about whom we will hold accountable, and how, cannot be postponed indefinitely. Ukraine is already hearing a loud call for justice, from victims themselves and their families, who want perpetrators named and punished, even as it undergoes its own reckoning with a history long distorted by decades of Soviet and Russian influence. This work does not offer a ready-made blueprint for a Ukrainian commission. But it shows that the question which first prompted that skeptical conversation has not gone away, and that we will have to answer it consciously, with our eyes open to the cost of every decision we make.

GLOSSARY

- Afrikaner nationalism** an ethnic nationalist ideology constructed by the descendants of Dutch, French, and German settlers who arrived in South Africa in the nineteenth and twentieth centuries, as a response to British settlement and its aggressive policies toward them.
The core idea of this ideology was to protect, by whatever means necessary, Afrikaner culture and language. Later, it became central to the ideology of the apartheid regime, transforming into an aggressive policy of protectionism and segregation.
- Afrikaners** an ethnic group in South Africa descended primarily from Dutch, German, and French (Huguenot) settlers, who began arriving in the country in the mid-17th century.
Their distinguishing features included the Afrikaans language (a blend of German, Creole, Dutch, Malay, and Portuguese), a predominantly rural way of life, a distinctive process of identity construction that differed ideologically from that of English-speaking white colonizers and other Europeans, and the establishment of specific Christian-National schools and organizations aimed at preserving the group's exclusivity within the region.
- Lumen Gentium (1964)** a Dogmatic Constitution on the Church adopted by the Second Vatican Council, which describes the Church's role in the salvation of humanity as a whole and sets out the description of its internal structure and the role of its members.
This document served as a core text for understanding the narrative framework of the Canadian Roman Catholic Church's activity within the IRSS, and its aftermath, during the process of apologizing for the crimes committed against the Aboriginal peoples of Canada.
- Name-and-shame policy** a strategy of publicly naming those who have been involved, in any way, in human rights violations, other acts of violence, or breaches of social norms or ethics, with the aim of compelling them to change their behavior through public condemnation and reputational pressure.
In practice, this strategy is typically used in court proceedings or in public statements issued by international organizations such as the UN.
At the same time, within the framework of a TRC, this mechanism can also become central, provided the Commission decides to apply it. Its absence, however, does not preclude the use of other means to establish a new narrative framework, one that serves as a counterpoint to the dogmas that had previously prevailed and had, at one time, contributed to the conflict.

Post-conflict memory	the set of ways in which society remembers, reflects on, represents, and transmits the experience of an armed conflict, war, or mass violence after it has ended.
Right to truth	one of the elements of transitional justice policy, grounded in the principles of international human rights law, according to which victims of gross human rights violations, their families, and society as a whole have the right to know the truth about the circumstances of these violations: what actually happened, who is responsible, where missing persons may be found, where the deceased are buried, and so on. The right to truth typically has two dimensions: individual and collective. TRCs generally work with the individual dimension with the aim of shaping the collective one.
Transitional justice	an essential component of every conflict and post-conflict situation, whose mechanisms, tools, and doctrines are intended to help societies overcome the tragedy and trauma caused by conflict, and to build the capacity for a secure and stable environment conducive to future peace. Transitional justice has traditionally comprised four components: <i>justice</i> (understood as the legal system for prosecuting perpetrators of crimes), <i>reparations</i>, <i>non-repetition policies</i>, and <i>the right to truth</i>. In recent years, a fifth element has also begun to emerge: memorialization.
Truth Commission (or TRC)	a formally constituted, temporary, non-judicial investigative body established by a state or transitional authority to inquire into patterns of gross human rights violations, political violence, or systemic atrocities committed during a prior period of authoritarian rule, armed conflict, or state-sponsored repression. It operates as a state-sanctioned mechanism of transitional justice, occupying a distinct institutional space between criminal prosecution and collective amnesia.
Unbuntu principle	a concept adopted by the SA TRC, literally translated as “<i>umuntu ngumuntu ngabantu</i>” (“<i>I am human because we are all human</i>”), meaning that humanity, and humane behavior, are realized through relationships with others. Its key pillars include compassion, empathy, collective unity, and respect for human dignity.
Broederbond, or Afrikanerbond	a highly influential, secret, all-male Afrikaner organization, established in 1918 in South Africa. The name of the organization translates as “Brotherhood.”

In 1993, the Broederbond became an open organization, and was subsequently reorganized and renamed the Afrikanerbond in 1994.

The core mission of the Broederbond was to protect and promote Afrikaner culture, traditions, and way of life. It later became central to the discourse of apartheid and to the establishment of its narrative framework.

Most of the Broederbond's members occupied positions of prominence in South African society, holding posts in government, law enforcement, the judiciary, and education. At the height of apartheid's implementation, it was virtually impossible to obtain employment in these fields without membership in the Broederbond.

The Broederbond still exists today, though it has since transformed to serve the goal of building a successful, unified South Africa.

Balance of probabilities

a standard of proof used by the Truth and Reconciliation Commission (TRC) to establish the facts of violations and to identify those responsible for them.

When the Commission encountered conflicting statements regarding the same incident, it had to determine which version was the most probable, reasonable, or plausible, based on the totality of the available evidence. Even in the absence of extensive evidence, if a victim's account was consistent and plausible given the known circumstances, the Commission would reach a positive conclusion.

Vigilantes

paramilitary groups that originated within Black communities, typically established to counter liberation movements such as the United Democratic Front (UDF) and the African National Congress (ANC).

Vigilante groups formed part of the apartheid government's broader policy of countering revolutionary movements within society. The government used them to destabilize resistance within communities, seeking to portray the resulting conflict as "violence among Black South Africans," or as natural resistance by moderate forces against anarchy.

They were often composed of conservative community members loyal to the government, homeland administration staff, or Black police officers, and were supplied and trained by state security structures such as the South African Police (SAP) or the South African Defence Force (SADF).

The most notorious vigilante groups, mentioned in the South African TRC's Report, included Witdoeke, Imbokodo, A-Team, Eagles Club, Black Cats, and AmaAfrika.

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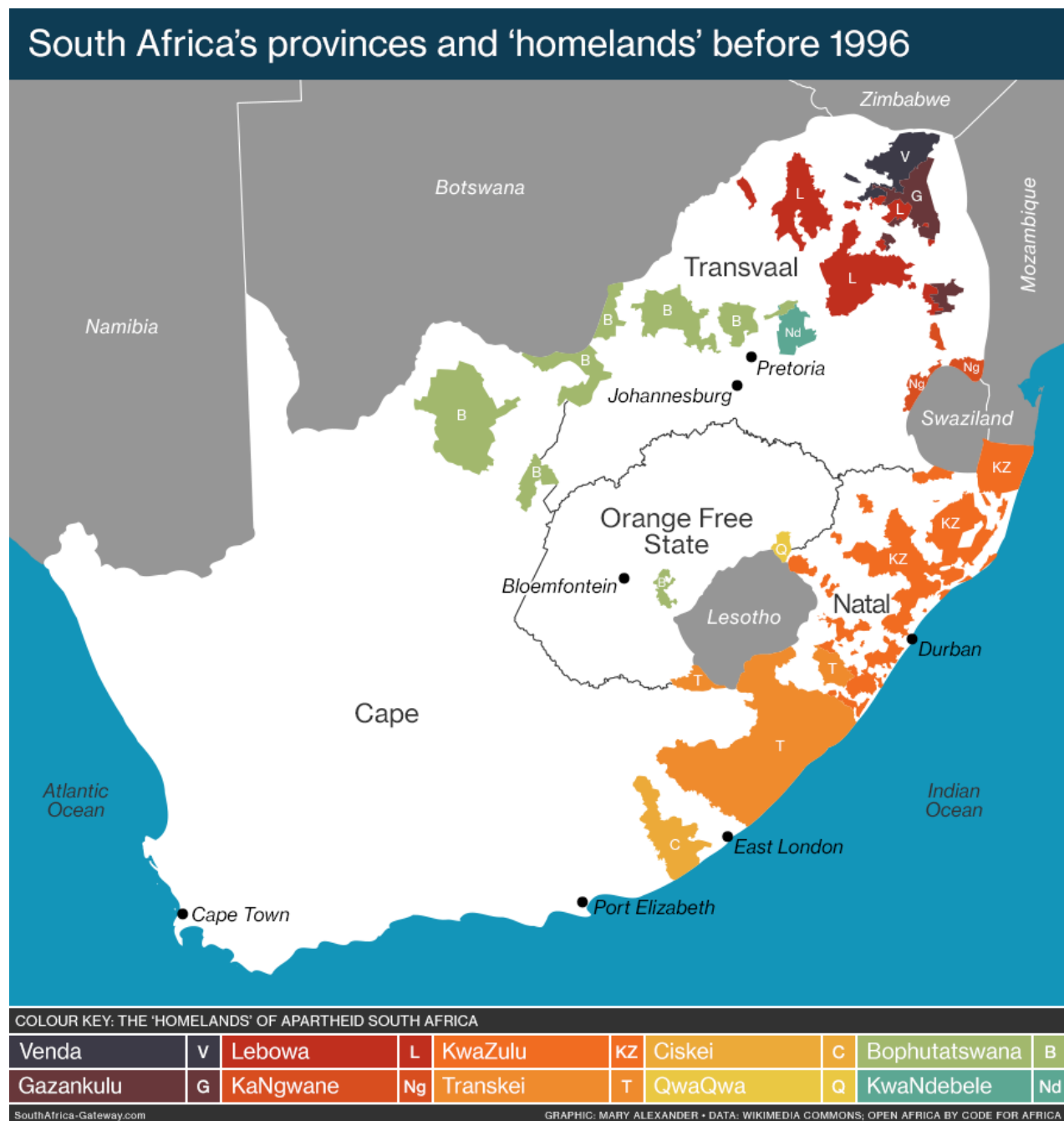
ANNEX 1. Dictionary of Apartheid

Note. All terms and definitions listed in the table are taken from the South African TRC's Final Reports (Vol. 1-6)

Native	Official term used until the 1950s to describe a Black person as “indigenous,” “prehistoric,” “archaic,” and not a citizen
Bantu	Official term introduced in 1950-60s as more polite to <i>native</i> . <i>Bantu</i> means “people” in the Nguni and Sotho languages, but in the context of apartheid, it became synonymous with subordination
Coloured / non-white	Official term used when addressing representatives of mixed race, or other non-white races
Kaffir	non-official term, a crude and offensive way to call Black population which was wildly used both in everyday life and by the police
Baas	Non-official term used as a form of address that Whites demanded from Blacks. Literal translation of the term is “master” or “boss”
Boy	Non-official term used by Whites to call Blacks. The <i>baas/boy</i> system of relations reinforced the hierarchy in everyday interactions
Jim Does	Non-official term, in short, from <i>Jim Goes to Johannesburg</i> – stereotypical image of a naive Black man from the countryside who moves to the city and gets lost
Temporary sojourners	Official term used by the Government to describe Black Africans in “white” urban areas who were merely temporary migrants and whose presence was justified solely by their work
Aliens	Official legal term used by the describe all Black population who automatically lose their citizenship after <i>homelands</i> gained its independence, so become non-citizen in own country
Idle and undesirable	Official legal term under the 1945 Urban Areas Act typically used to describe Black population as “lazy” (unemployed) or “undesirable” that could be forcibly evicted to homelands or sent to labor camps
Surplus people	Official legal term used to describe those whose presence in urban areas was not considered economically necessary. They were subject to “removal” to reservations

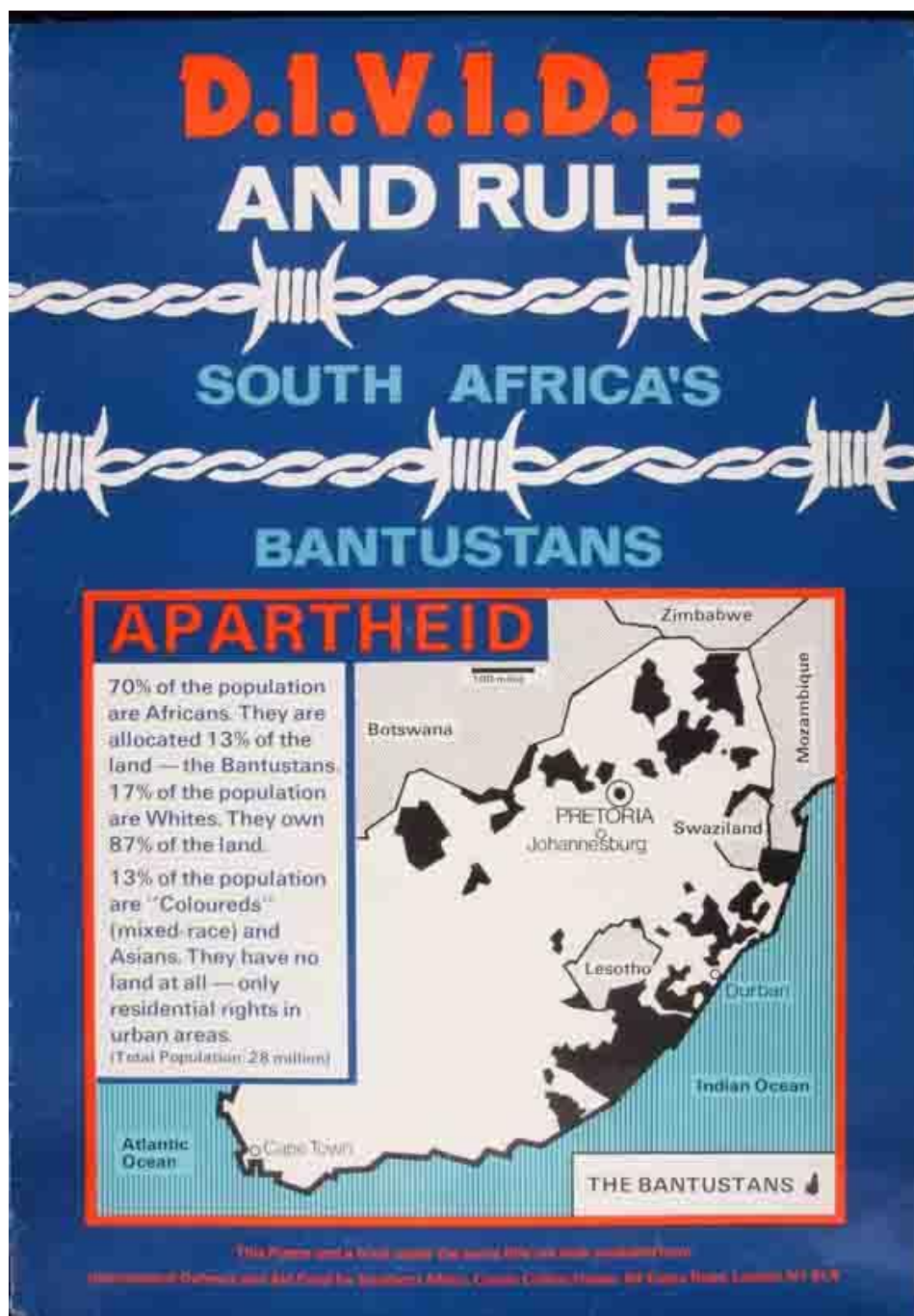
Hooligans / vandals / thugs	Official legal term to be used instead use of the political terms’ “protester” or “boycotter” according to 1984 Memorandum of SSC
Enemy	Official term used to describe resistance movements in the orders of South African army
Terrorist	Official term used to describe any member of resistance movements or political activists, despite their methods of fight
Agitator	Official term used to describe protest leaders to portray public discontent as the result of outside instigation
Total onslaught	Official term used to describe the state narrative that any internal resistance was part of a global communist conspiracy against South Africa
Swart gevaar	Non-official term used to mobilize the white electorate by appealing to their fear of the Black majority
Moderate blacks	Official term used to describe to those members of the Black community whom the state attempted to co-opt or use against liberation movements (for example, vigilantes or Homelands administrators)
Black on black violence	Official term used to describe the narrative that the state promoted through the media (particularly the SABC) to portray political conflicts as “ethnic strife” and conceal its role in fueling the strife
White man’s circumcision school	Non-official term used to describe army service for white boys, which was supposed to turn a white young man into a “real man” through violence

ANNEX 2. Visual Materials from Apartheid Period



Picture 1. Colored zones in the map are the dedicated places – *Homelands* – where over 70% of the local population were obliged to live

Source: Anti-Apartheid Movement Archives. *What Was Apartheid?* AAM Archives.
<https://www.aamarchives.org/history/apartheid.html>



Picture 2. D.I.V.I.D.E. and rule poster (1980) by International Defense and Aid Fund showing the situation with Bantustans in South Africa

Source: Alexander, Mary. *Map of South Africa's Provinces, Bantustans and Homelands before 1996*. South Africa Gateway. https://southafrica-info.com/land/nine-provinces-south-africa/attachment/map_south_africa_provinces_bantustans_homelands_before_1996/

ANNEX 3. Dictionary of IRSS

Note. All terms and definitions listed in the table are taken from the Canadian TRC's Final Reports (Vol. 1-6)

Cease to be Indian	Official legal term used in state papers to describe the process of losing social status through marriage or gaining civil rights (enfranchisement), which was the goal of assimilation
Deterious / evil home	Non-official term used to describe a living environment of Aboriginal people
Final absorption	Official legal term used to shortly describe the aim of the state policy, which called for the complete eradication of indigenous peoples as distinct legal and cultural entities
Genetic predisposition to tuberculosis	Non-official term used to as a part of pseudoscientific discourse to describe the high level of Aboriginal children' mortality in residential schools
Hostages	Non-official term used to describe the state of Aboriginal children in residential schools, which state representatives used in their communication to explain the guarantee of Aboriginal parents' peaceful behavior in reservations
Ignorant / superstitious / selfish / uninterested	Non-official term used to describe Aboriginal parents who refused to follow the requirements of the government to transfer their children to IRSS
Influence of wigwam	Non-official term used to describe a living environment of Aboriginal people, a belief meaning that keeping a child at home "stunts" their development and reverts them to a "primitive" state
Inherited aversion to toil	Non-official term used to as a part of pseudoscientific discourse to describe Aboriginal people as naturally lazy and unwilling to work on the farms, arguing that they need to be forced to learn how to work
Institutional cases	Official term used to refer to children whom the state deemed necessary to place in institutions due to "unfavorable conditions" at home, typically used in 1940-60s
Juvenile delinquents	Official term used to describe Aboriginal children who had the attempt to escape the IRSS even once. That term might later appear in their

	personal dossier, and lead to more severe punishment after returning to school, which eventually might end up with tortures and death
Little pagan	Non-official term used to describe Aboriginal children before their enrollment to the IRSS
Outcasts / Waifs / Half-breed	Non-official term used to describe children born in mixed or unregistered marriages. These children had no social or political rights in their future
Psychology of chase	Non-official term used to describe a mindset of Aboriginal people as chaotic and hunting-orientated, that eventually made them “people of the moment,” or else – incapable of planning
Rude habits of savage life	Non-official term used to describe a way of living of Aboriginal people
Savage who can read and write	Non-official term used by the Prime Minister John A. Macdonald to describe Aboriginal children, who received her education at a day school on the reservation, but was not cut off from her family’s influence
Sqauw / Redskins	Non-official term used to describe Aboriginal people used in school textbooks at the end of 1960s
Truant	Official legal term used to describe Aboriginal children who ran away from residential school, or didn’t return after the vacation, that allowed the policy to chase them and forcibly bring back
Unfit or unwilling	Official legal term to describe parents of Aboriginal children were unable or unwilling to provide an education that met State standards. After legally calling these parents <i>unfit</i> or <i>unwilling</i> the State could easily abduct their children
Wards of Government	Official term used by the Government, including DIA/DIAND, to describe Aboriginal children who were in the system

ANNEX 4. Handouts for Teachers on Discussing the IRSS in Schools Today

Regret and Reconciliation

6.1.4
k

Finish the Speech

1. Read the following text aloud with a partner.
2. Make sure you both know what the word "reconciliation" means.
3. Use your knowledge about the effects of treaties, reserves, and government actions during the time of the 1885 Northwest Resistance and **write one more paragraph to add to this speech.**
4. Be sure to state which actions the government regrets and what actions the government will take to make reconciliation possible.

The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together. . .

No attempt at reconciliation with Aboriginal people can be complete without reference to the sad events culminating in the death of Métis leader Louis Riel. These events cannot be undone; however, we can and will continue to look for ways of affirming the contribution of Métis people in Canada and of reflecting Louis Riel's proper place in Canada's history.

Finish the speech...



Excerpts from "Statement of Reconciliation: Learning from the Past" signed on behalf of the Government of Canada and read by Jane Stewart, at that time the Minister of Indian Affairs on 7 January 1998 in Ottawa, printed in *The Globe and Mail* on 8 January 1998.

Picture 1. The extract from the school curriculum for 6 Grade in Social Studies, para 6.1.4.k
Source: Manitoba Education. *Grade 6 Social Studies Blackline Masters*. Manitoba Education and Early Childhood Learning. https://www.edu.gov.mb.ca/k12/cur/socstud/foundation_gr6/blms/index.html



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Gladys We Never Knew

Scroll 8: Assimilation

The government thought the "Indian problem" would solve itself as more and more Indigenous people died from diseases and others became part of the larger Canadian society.

Narrator:

You had to become more like the Europeans by giving up your rights to do as you wish. Instead you were forced to farm, go to school and pray in church like the settlers.

Scroll 9: Residential Schools

From the mid-1800s until the 1990s, the federal government took First Nations, Métis and Inuit children from our homes and communities and put them in boarding schools that were run by churches. As parents we didn't have a choice about this, and neither did you. Sometimes the police arrived to take you away. These schools were often very far from your homes and you had to stay at them all or most of the year. Mostly you were not allowed to speak your own language and you were punished if you did. Often children weren't given enough food.

Narrator:

Many Indigenous communities asked for schools for their children that would be close to home. The people in Spuzzum, where Gladys lived, wrote to ask for a school. Here's part of their letter. It was written by Patrick Charley, March 13, 1925. Gladys would have been seven years old. (See photo in lesson 1)

Scroll 10: The Letter

Dear Mr. Indian Agent,

Please help us to get the school started as early as you can as we have twenty one children here old enough to go to school and a lot more small children will go to school as they get old enough to. I'm sending you a list of names of children on a separate sheet as you will see for yourself what to do. Please come down and see our school house, let us know when you can come or write to me and I will explain to Chief James and his people. Hoping to hear from you at an early date.

Yours Truly,

Patrick Charley

Scroll 11: The List

Walter Johnson
Helda Johnson
Maggie Johnny
Gladys Johnny
Francisco Johnny
Aleck Mack
Martin Mack

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Lesson 4: Nlaka'pamux Blanket Exercise



The life of a child in a BC Indian Residential School

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Narrator:

The school in Spuzzum was never built for these children. Instead, the government sent the kids who were on the list to a school outside their community and far away from their families.

All people with yellow cards raise your hands. You must now move to a separate, empty blanket. You represent those who were taken out of your communities and placed in residential schools far from your homes.

[The European should take the kids to the blanket.]

Narrator:

While some students say they had positive experiences at the schools, most of you say that you suffered from very bad conditions and from different kinds of abuse. Many of you lost connections with your parents, grandparents, aunts, uncles, and cousins. Many of you didn't learn your language, culture, and traditions. Because you grew up in the schools away from your parents and rarely went home, many of you never learned how to be parents. Some students died at the schools. Many of you never returned home, or had trouble fitting back in if you did go home.

Sometimes the government would let the kids go home for Christmas, but only if your parents came to get you and got you back to the school on time. If you broke one of these rules, you wouldn't be able to go home the next Christmas.

Scroll 12: The Kamloops Indian Residential School Christmas holiday letter

"It will be your privilege this year to have your children spend Christmas at home with you. This is a privilege which is being granted if you observe the following regulations of the Indian Department... If the children are not returned to School on time they will not be allowed to go home for Christmas next year."

European:

The person with the yellow index card marked with an "X", please step off the blanket. You represent one of the thousands of children, like Gladys, who died at the schools or who died later as a result of your experience.

[Pause for the person to leave the blanket.]

Next, choose someone who was not alone on their blanket and ask them to return to their community. Say to them:

You can go home, but please sit down on the edge of your blanket while those in the community remain standing, or turn their back on you, to show how difficult it was to learn to fit in again once you went home.

Pause while this takes place.

Everyone else with yellow cards, please find a spot nearby on the floor. You represent those whose connection to your family and community was broken and you never made it home. Some of you ended up in cities, others ended up in prison due to your experience at residential school.

Lesson 4: Nlaka'pamux Blanket Exercise

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Picture 2. The extract from the school textbook "Gladys We Never Knew," 2017
Source: BC Teachers' Federation. *Gladys We Never Knew: The Life of a Child in a B.C. Indian Residential School*. Issuu, March 28, 2017. <https://issuu.com/teachernewsmag/docs/ebookr>