Abstract

Following the Berlin conference of 1884, which sought to partition Africa into various spheres of influence that would be ruled by European powers, the young nation of Belgium acquired the Congo basin.¹ From this area Belgium’s King Leopold II sought to collect rubber to be used in manufacturing. However, by making it so Leopold became the sole proprietor of the land through a company he had established, thereby avoiding parliamentary oversight. This would allow him to operate the country in such a way that brutally exploited the Congolese people for their labor.² Thus, leading to thousands of substantiated instances of mutilation along with reports of kidnapping in the Congo Free State. Eventually Belgium’s parliament would remove the area from Leopold’s purview, due to the abuses and rule it as a colony until the Congo gained its independence in 1960.³

The colonial government showed negligible improvement as they continued the use of forced labor to gather resources and build railroads while also barring any native Congolese involvement in the legislature.⁴ These human rights abuses, despite being well documented and the subject of the highly acclaimed book *Heart of Darkness* by Joseph Conrad, never amounted to any form of reparations granted to the

² *Id.*
³ *Id.*
families of victims. By examining precedent set by the Nuremberg trials and the reparations that would follow as an example of human rights abuses that were successfully prosecuted, a framework can be formed and applied such that the descendants of victims of the Congo Free State receive proper legal compensation and justice.

Reports From the Congo Basin

The first publicly available denouncement of the Congo Free State came in the form a published letter by the American, politician George Washington Williams, in 1890. Williams was initially sent as an envoy of the U.S. to survey the prospect of giving African American laborers the opportunity to work in the Congo Basin. Upon exploring the area and meeting with members of King Leopold’s administrative company he would discover egregious human right abuses. This included soldiers who stole resources “at the mouths of their muskets; and whenever the natives refuse ... white officers came with an expeditionary force and burn away the homes of the natives.” This brought him to the conclusion that “Your Majesty's Government is engaged in the slave-trade, wholesale and retail ... The labour force at the stations of your Majesty's Government in the Upper River is composed of slaves of all ages and both sexes.” Williams would go on to publish these comments, shortly before his death, in his so-called “open letter,” to the King sparking public outrage at the situation in the Congo Basin and prompting the United Kingdom to send Irish diplomat Roger Casement to investigate the claims.

Following his investigation Casement wrote the so-called “Casement report,” to be read before Parliament. This document provides the most

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7 *Id.*
8 *Id.*
9 *Id.*
detailed evidence of crimes against humanity committed in the Belgian Congo. This includes portions concerning slave camps along the Congo River at which soldiers would demand rubber quotas from the inhabitants as taxes; failure to pay taxes resulted in the removal of their hands.\textsuperscript{10} Casement also describes how “… grievances include forced labor on the roads, and restrictions that practically amount to slavery; natives have been flogged without trial by Magistrate’s orders and are constantly subject to imprisonment for frivolous causes.”\textsuperscript{11}

**Human Rights Abuses in the Context of International Law**

As detailed by the UN, crimes against humanity include, “…the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation of forcible transportation of population; (e) Imprisonment or any other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture.”\textsuperscript{12} All of which were perpetuated throughout the Congo Free State and can be verified through the letter of Williams along with the Casement Report. In fact, these abuses were so apparent at the time that Williams’ conversation on the matter with the U.S. Secretary of State seems to contain the first use of the word ‘Crimes Against Humanity,” to ever describe such issues.\textsuperscript{13}

\begin{footnotes}
\item[11] Id.
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Article 9 of this agreement details that “…these territories shall not serve either for a market or way of transit for the trade in slaves of any race whatever.”\textsuperscript{15} Thus, assigning each nation the responsibility to “…employ all means in its power to put an end to this commerce and to punish those who are occupied in it.”\textsuperscript{16} Not only did Leopold knowingly use slave labor through his company and contribute to the mutilation and torture of millions of Congolese, but he also did so in direct violation to an international agreement he had signed only a few years prior. Despite this readily available evidence, he would never be brought to justice in an act of international cooperation. Instead, he simply relinquished the Congo to the Belgian parliament which did not show substantial improvement and still plundered resources under the guise of colonialism. Such levels of international legal cooperation in the pursuit of rectification of crimes against humanity would not be successful until the Nuremberg tribunal.

\textbf{Success of the Nuremberg Tribunal and Holocaust Reparations}

This success was initially owed to the London Charter of the International Military Tribunal, commonly known as the Nuremberg Charter, which established the court and determined its rules of organization. This document primarily builds off the Moscow Declaration created by the Allies in 1943, in which they agreed that “…perpetrators of atrocities, such as mass murder of jews, would be tried by the nations where the crimes were committed,” and “…criminals whose crimes could not be tied to a particular geographic location would be punished by joint decision of the Allied

\textsuperscript{15} \textit{Id.}
\textsuperscript{16} \textit{Id.}
governments.”

Similarly the document used framework from pre-existing international law governing the prosecution of war crimes, such as the Geneva Convention which ensured justice for mistreated prisoners of war. This use of precedent was accompanied by new rules detailing the prosecution of crimes against humanity that would hold individuals liable regardless of whether they were acting on orders and sought to charge the larger criminal organization for their involvement, in this case the Nazis.

The Charter itself begins by acknowledging the signatory countries in Article 1, reinforcing the idea of international cooperation and support for investigating crimes committed during the Holocaust. This information is followed by a series of articles dictating what constitutes war crimes and the power of the court to punish Axis war criminals after a trial presided over by a legal representative from each signatory country. By organizing these trials and stressing international legal cooperation in the punishment of atrocities, while denoting a certain degree of specificity in its articles the Nuremberg Charter was successfully used to prosecute war criminals in such a way that had not been achieved before.

Additionally, after the Nuremberg trials, the Prime Minister of Israel at the time, Moshe Sharett, reintroduced the idea of reparations paid by

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21 Id.
particularly Western Germany, which hadn’t been talked about since an earlier unsuccessful request was made immediately after the war. The difference this time was the support of the Allied governments which made occupied Western Germany agree along with having the support of the Israeli Parliament which after debate had voted to accept the money should an agreement be reached. The result was 845 million dollars paid to Israel, followed by 125 million allocated to survivors in 1988, and an apology from unified Germany in 1990. Furthermore, using class action lawsuits filed in the American court system survivors sued German companies and banks that had profited from Jewish slave labor during the war leading to Germany creating a separate foundation for those subject to forced labor to avoid litigation.

Acknowledging Key Differences

Despite reparations and prosecution because of the Nuremberg trials being a success, those steps cannot simply be reused in relation to the current Democratic Republic of the Congo and Belgian State in hopes of producing the same outcome. This is primarily a result of the time since these crimes against humanity occurred in that the Nuremberg charter was signed shortly after World War Two when the public’s attention was focused on crimes committed during the Holocaust. This support made it far easier to gather resources necessary and cooperate with allied nations to create a well-informed plan. However, in the case of the Congo Free State and its successive colonial government these abuses were committed some time ago and may not carry the same level of interest.

22 Holocaust Restitution: German Reparations, Jewish Virtual Library
23 Id.
24 Id.
25 Id.
Similarly, it would be impractical to exactly copy the reparation process undergone by Israel and Western Germany. Such a situation would require Belgium to freely admit to having perpetuated these crimes, which has not been done. With Belgium’s current King apologizing for some colonial abuses but refusing to directly denounce Leopold. Belgium’s Parliament has taken a different approach by creating a truth and reconciliation committee focused on investigating these issues. Even with this, it is difficult to determine the consensus of the Belgian government on the issue and whether they would be willing to cooperate with Democratic Republic of the Congo.

**Conclusion**

A solution ensuring justice and reparations for the families of Congolese victims would have to adapt previous practices to create a plan tailored to the situation. This would likely begin with the Democratic Republic of the Congo presenting the issue to the UN allowing the idea of reparations to receive international attention, which solves the initial problem of lack of interest. This would also involve gaining the support of other countries in their endeavor that could possibly seek to establish an investigation into crimes against humanity using similar specificity and organization as the Nuremberg trials. This has already been done in Bosnia and Rwanda, both of which used a special UN international criminal tribunal to punish crimes against humanity in relation to genocide. Plus, just as the Nuremberg charter built off the already existing Geneva Convention a special tribunal could adopt framework from both the charter and Belgium’s own truth

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27 *Id.*

and reconciliation committee making the task easier. The added advantage being that an international tribunal would be able to access records from multiple countries like the U.S. and the United Kingdom, both of which sent diplomats to the Belgian Congo in the form of Williams and Casement respectively. Based on the decisions of such a tribunal, criminals who perpetuated forced labor in the Congo’s colonial government prior to independence in 1960 along with the Belgian state may be held responsible for abuses. If successful, an agreement with the support of the UN like that made between Western Germany and Israel can be created ensuring a monetary value assigned to damages done so that it may be repaid to the DRC and redistributed per capita. Any successive litigation after reparations aimed at financial institutions and companies can be channeled through the American court system. This being based on precedent established by Holocaust victims who received compensation for their slave labor after filing class action lawsuits in the U.S. 29 Meaning that while efforts to achieve reparations could occur years after the event, with persistence and UN support they are achievable. Additionally similar models that actively establish separate tribunals based on precedent and seek further reparations through legal action can foreseeably be applied to other human rights abuses, so long as flexibility is maintained.

29 Holocaust Restitution: German Reparations, Jewish Virtual Library
https://www.jewishvirtuallibrary.org/german-holocaust-reparations. (last visited Feb. 22·2023)