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By Glenda Mezarobba



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PRESENTATION



We have reached issue seven of *Sur – International Journal on Human Rights* with an excellent response from our readers and a new partnership with the International Center for Transitional Justice.

An evaluation of the journal was conducted to gain some feedback for us to improve the quality, to cater more to the interests of our readers and to make it even more accessible and critical. Of the 15% of readers who responded to an online survey, among them professors and human rights activists, 66% considered the journal to be excellent and 34% judged it to be good. The best qualities they identified were: (a) the high standard of the journal; (b) its potential to disseminate information on human rights; and (c) its broad application, both for university and non-university courses. The main challenges, meanwhile, are: (a) to address more specific thematic issues; (b) to publish new authors; and (c) to improve the dissemination of the journal. To meet these challenges, the following steps have already been taken: (a) we shall focus this and future issues on topics specifically related to the Global South, such as transitional justice, access to medicine and freedom of expression; and (b) we have staged launches in human rights centers at universities on different continents. Furthermore, we have plans in 2008 to establish a monitorial system, whereby new authors who have written promising articles will be supervised by more experienced researchers or professors. (For a more detailed account of the evaluation, please see the report at the end of this issue.)

In addition to the evaluation, we have also forged a partnership between Conectas Human Rights, which has published the journal since its first issue, and the International Center for Transitional Justice. This center was set up in 2000 with the mission to promote

justice, peace and reconciliation in societies emerging from repressive regimes or from armed conflicts, as well as to establish democracies where historical or systemic injustices remain unresolved.

The partnership was established so we could focus on a key topic for countries in the southern hemisphere: transitional justice. The balance between peace and justice and between reconciliation and retribution in post-conflict societies, or in cases of historical and persistent injustices, is dealt with by the authors from different geographical perspectives: Australia, Cambodia, Peru and Uganda. The authors, however, raise questions that often transcend these local contexts. By addressing the violated rights of aboriginal children in Australia who were forcibly taken from their families, for example, Ramona Vijayarasa questions whether Truth Commissions can help build more inclusive societies. By analyzing the Extraordinary Chambers in Cambodia, Tara Urs attempts to identify what truth commissions and extraordinary courts can realistically expect to accomplish. She also examines how culturally specific processes can help shape transitional justice and how best to respond to the interests of the victims. Looking at Peru's case, Elizabeth Salmón sheds some light on the links between conflict and poverty, and questions whether transitional justice should have a specific role beyond universalistic public policies. Finally, when addressing the situation in Uganda, Cecily Rose and Francis Ssekandi consider the role of amnesty in the consolidation of peace and question how to implement transitional justice in situations where peace agreements are still being reached.

To round off this subject, the journal is publishing an interview with Juan Méndez, director of the International Center for Transitional Justice.

This edition of the journal also carries an analysis of the recently established structure of the UN Human Rights Council (Lucia Nader) and a study on the influence of the inter-American system and "transnational legal activism" on the protection of human rights in Brazil (Cecília Santos).

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Glenda Mezarobba, Helena Olea, J. Paul Martin, Jeremy Sarkin, Juan Amaya Castro, Juan Carlos Arjona, Kawame Karikari, Maria Herminia Tavares de Almeida, Paula Ligia Martins, Richard Pierre Claude, Thami Ngwenya and Vinodh Jaichand.

Finally, we would like to announce that the next edition of the SUR Journal will be a special issue on access to medicine and human rights, to be published in collaboration with the Brazilian Interdisciplinary AIDS Association (ABIA). The journal will also carry articles on other topics.

The editors.

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RAMONA VIJAYARASA

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ABSTRACT

The Tasmanian State Government and the Australian Federal Senate have taken recent steps towards setting up a Reparations Tribunal for Aboriginal and Torres Strait Islander (ATSI) people who were separated from their families and communities under State-based forced removal policies of the 20th Century. This paper proposes a Truth and Reconciliation Commission drawing on international lessons.

RESUMO

O governo do Estado da Tasmânia e o Senado Federal da Austrália tomaram medidas recentes no sentido de criar um Tribunal de Reparações para os povos Aborígenes e Insulares do Estreito de Torres (ATSI). Os ATSI foram separados de suas famílias e comunidades por políticas estatais de remoção forçada do século 20. Este trabalho propõe uma Comissão de Verdade e Reconciliação que incorpore lições internacionais.

RESUMEN

El Gobierno del Estado de Tasmania y el Senado Federal Australiano están avanzando en la creación de un Tribunal de Reparaciones para los Aborígenes e Isleños del Estrecho de Torres (AIET). Los AIET fueron separados de sus familias y comunidades bajo políticas estatales de separación forzada durante el siglo 20. Este artículo propone la creación de una Comisión de Verdad y Reconciliación que incorpore lecciones internacionales.

Original in English.

KEYWORDS

Reparations – Indigenous – Truth-telling – Reconciliation



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FACING AUSTRALIA'S HISTORY: TRUTH AND RECONCILIATION FOR THE STOLEN GENERATIONS

Ramona Vijeyarasa

Introduction

From 1910 to the early 1980s, somewhere between one in three and one in ten Aboriginal and Torres Strait Islander (ATSI)¹ children in Australia were removed from their families.² Legislation was passed in the early years of the twentieth-century which gave Aboriginal protectors guardianship rights over ATSI people up to the age of sixteen or twenty-one, in all states of Australia and the Northern Territory, with the exception of Tasmania, where Aboriginal children were removed under general welfare legislation.³ Subsequently, police officers or other agents of the State began to locate and transfer babies and children of pure-blood or mixed descent, from their mothers, families or communities into government or missionary institutions.

The Australian Federal (then Labor) Government instituted a National Inquiry in 1995 into the Stolen Generations through the Human Rights and Equal Opportunity Commission (HREOC), as pressure swelled from various avenues through the late 1980s and early 1990s. The Federal Government issued its Terms of Reference for the National Inquiry to HREOC on 11 May 1995. The Inquiry was initially aimed at determining how many children were taken away and how this occurred, hearing from ATSI people about how they had been affected and what must be done to compensate and finally, considering whether the policies of removal fell within the definition of genocide in Article II(e) of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.⁴ This was later replaced by four goals: tracing the past

Notes to this text start on page 144 .

laws, practices and policies which resulted in the Stolen Generations; examining the adequacy of and the need for any changes in laws, practices and policies relating to services and procedures *currently* available to those ATSI persons affected by the Stolen Generations; examining the principles relevant to determining the justification for compensation for persons or communities affected by separation; and examining current laws, practices and policies with respect to the placement and care of ATSI children, taking into account the principle of self-determination.⁵

The achievement of reconciliation required the detailed and extensive implementation of the recommendations outlined in the resulting 1997 report *Bringing them home*,⁶ of which sixty thousand copies were sold in the first year of its release.⁷ Yet, the response of the Australian Federal Government (now Liberal Coalition, which has been re-elected twice since the 1996 National Inquiry, most recently in 2004) announced on 16 December 1997 fell far short of the reparations goals outlined in the van Boven principles.⁸ Van Boven found that under international law, the violation of any human right gives rise to a right to reparations for the victim and that particular attention must be paid to gross violations of human rights, which includes genocide, systematic discrimination and the forcible transfer of populations.⁹

The National Inquiry has been described as an example of a “historical truth commission” involving an historical inquiry into past government practices.¹⁰ Yet, the ongoing continual removal of ATSI children to date,¹¹ and the failure of the Australian Government to recognize the correlation between the sexual abuse experienced by members of the Stolen Generations and present-day sexual abuse that is rife in many indigenous communities, highlights the need for a Truth and Reconciliation Commission that acknowledges both past and present patterns of abuse.¹² The Australian Government, which has thus far refused to publicly apologize to the members of the Stolen Generations, has rejected the proposal for a Reparations Tribunal. Instead, it has left incremental efforts by the Tasmanian State Government in 2006 and the Australian Democrats in the Federal Senate in March 2007 to establish either a state-based or a national compensation program, a cursory paper-based solution with monetary compensation awarded for claims assessed by a Stolen Generations Assessor.

Despite the National Inquiry giving the ATSI people a voice, and *Bringing them home* creating the path for reconciliation, the opportunity was wasted. Ten years on, the Australian nation has still not moved forward and beyond its history of genocide and exploitation. This paper proposes, as the best model to address the historical wrongs perpetrated against members of the Stolen Generations, a Truth and Reconciliation Commission, with an attached Reparations Program. The Truth and Reconciliation Commission will build upon the work of past and

existing inquiries, including *Bringing them home*, whilst incorporating into its mandate a requirement to report on the implementation of recommendations at regular intervals after the completion of hearings. At the same time, the proposed Truth and Reconciliation Commission will incorporate culturally appropriate mechanisms to allow truth-telling and healing for ATSI victims, including special recognition of the difficulties for mothers and stolen children who were the victims of sexual abuse to tell of their suffering in the environments previously offered by the National Inquiry.

Today, a Truth and Reconciliation Commission will help facilitate this healing through truth-telling as well as enhanced public awareness of the experiences and consequences of “forced” removal. Therapeutic for both the Australian nation as well as individual victims, conducting hearings in each State or Territory, in a localised setting, with indigenous and non-indigenous Commissioners, will also require the involvement, and acceptance of responsibility by each state government. This process will also best facilitate recognition of the heterogeneity of each ATSI person’s experiences, the different ATSI clans living in the different states of Australia and the numerous languages spoken by former or present inhabitants of a particular state.

The success of such a decentralised model sitting under the umbrella of the Federal Government is premised on an apology being made by the Australian Federal Government towards all of those persons affected by the forcible removal policies of the 20th Century. The involvement of State Governments is additionally essential given their fundamental relationship to service delivery, carrying the prime responsibility for education, health services as well as law and order today.

The likelihood of success of this model can be assessed in accordance with the progress of the truth-seeking process presently being undertaken by the Canadian Government. In Canada, a package has been designed for the survivors of the Indian Residential Schools (IRS) to address the injustices of the policy of assimilation, forcible removal and cultural dilution, enforced by the Canadian Government, Anglican, United Presbyterian and Catholic Churches, for more than 100 years, most extensively from the 1920s to 1960s, during which time widespread sexual abuse occurred.¹³ Whilst this proposed model to address the harms suffered by ATSI persons differs from the Canadian Truth and Reconciliation Commission, the similarities of the experiences of indigenous Australians and Canadians provide Australia with a valuable learning opportunity. *Bringing them home* raised the issue of responsibility, which has since largely been neglected. A Truth and Reconciliation Commission as proposed in this paper will once again provide an opportunity for developing a collective memory and shared national history, and create the renewed vigour for the full achievement of reparations and the principles of reconciliation.

The national inquiry and its limited outcomes

The extent of forced removal

It is questionable how many non-Aboriginal Australians either did not know or were dimly aware that for a period of nearly seventy years, Australian State Governments were involved in a process of ATSI child removal. Children were removed for a number of reasons, the dominant being the view that the full-blood tribal Aborigine represented a dying race and that ATSI people were a lesser culture, believed not to be able to survive contact with higher civilisations.¹⁴ There was also an emergence of mixed descent children. These children were born to ATSI mothers after sexual encounters-sometimes fleeting, sometimes exploitative, occasionally more permanent or even matrimonial-with European and sometimes Chinese or Pacific Islander males. 'Half-caste institutions', government or missionary, were established in the early decades of the twentieth-century for the reception of these children.

With increasing pressure placed on the Australian Government to address this untold story, a National Inquiry was the preferred option because it was evident that, three years into the Royal Commission into Aboriginal Deaths in Custody, a Royal Commission was not a suitable form of inquiry. It was far too formal and did not permit significant participation by ATSI people. The National Inquiry held hearings in every capital city and several regional centres between December 1995 and October 1996 and received 777 submissions, including 535 from Indigenous persons and organizations, 49 from church organizations and seven from governments.¹⁵

Australia-wide, it is difficult to estimate the number of ATSI children who were removed. Peter Read, co-founder of Link-Up (NSW), estimates that around 50,000 were removed. In NSW, for example, he estimates that the total number removed between 1921 and 1985 is close to 10,000.¹⁶ Surprisingly, he believes that there are approximately 100,000 people:

[...]who do not identify as Aborigines but who are entitled to do so because their parent or grandparent had been removed.¹⁷

The Australian Bureau of Statistics conducted a survey in 1993, involving interviews with 15,700 ATSI people. It found that 5.7% of those interviewed reported having been taken away from their natural family by a mission, the government or "welfare". Applying these results with the 1991 Population Census data, out of a total ATSI population of 303,000 in 1991, these statistics indicate that approximately 17,000 had been removed from their families up until 1994.¹⁸ Whilst this is likely to be an under-estimation of the total number of removed persons, particularly when set against Read's estimate, it is a figure that might more realistically be accepted by the Australian Government when

establishing a Truth and Reconciliation Commission and moreover, funding a Reparations Program. It is hoped that a truth and reconciliation process will allow the stories of a broader depth of ATSI people to be told, reaching different language groups and ATSI people who have lost touch with or are otherwise unaware of their aboriginality. This will facilitate a more realistic account of the numbers of removed children.

Implementing the recommendations of Bringing them home

The legally significant consequences of forcible removal were that ATSI were denied the common law rights which other Australians enjoyed, suffered violations of their human rights and were often subjected to other forms of victimisation and discrimination.¹⁹ *Bringing them home* made 54 recommendations to address these violations. The recommendations covered all the components of reparations: acknowledgement of truth and an apology; guarantees of non-repetition of violations; rehabilitation; compensation and restitution.

A cursory review of the Australian Government's response is impressive, yet clearly reveals a failure to understand the importance of truth-telling and the centrality of an apology to the healing of ATSI people. The Australian Government outlined a plan to provide \$63 million over four years, primarily aimed at addressing "family separation and its consequences".

Most significantly, the awarding of monetary compensation for those removed and/or those affected by the removals received opposition within the Australia Government itself. In its submission to the National Inquiry, the Australia Government raised as a concern the difficulty in estimating the monetary value of losses, on the grounds that "[t]here is no comparable area of awards of compensation and no basis for arguing a quantum of damages from first principles",²⁰ a position that will not be tenable as the Canadian Truth and Reconciliation Commission begins its work.

Bringing them home recommended that all Australian Parliaments, State and Territory police forces, churches and other relevant non-government agencies, "acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal" and "apologise for the wrong committed".²¹ A Government apology is necessary for a sense of acknowledgment and to create a collective memory and social solidarity.²² Yet, the Australia Government has lagged behind state and territory governments in providing a formal apology to ATSI people. Instead, The Sorry Day Committee launched the first National "Sorry Day" independently of the Government on May 26, 1998. The National Sorry Day was designed as a "day when all Australians could [can] express their sorrow for the whole tragic episode, and celebrate the beginning of a new understanding"²³ with "Sorry Books" receiving hundreds of thousands of signatures and Bridge

Walks occurring in every major city in Australia in a gesture towards healing.²⁴ It was not until 26 August 1999 that the current Prime Minister, John Howard, proposed a Motion of Reconciliation to Parliament, offering a statement of regret but not sorry to Aboriginal people in an attempt to reaffirm the Australian Government's so-called commitment to reconciliation between Aboriginal and non-Aboriginal Australians.²⁵

Bringing them home specified that reparations include rehabilitation measures, such as "legal, medical, psychological and other care services".²⁶ These measures require culturally appropriate delivery of services. Yet, ATSI children continue to be severely over-represented within State and Territory welfare systems which continue to discriminate against ATSI children and their families through the application of Anglo-Australian perspectives. These values reject as non-beneficial ATSI values, culture and child-rearing practices. *Bringing them home* noted that welfare agencies continue to fail to consult with ATSI families and communities and their organizations.²⁷ Though the report recommended the establishment of minimum standards for the treatment of ATSI children, including the Indigenous Child Placement Principles which requires that ATSI children in out-of-home care be placed with ATSI carers,²⁸ the Australia Government ignored the *Bringing them home* recommendation for national standards for ATSI child removal. It resolved to leave the matter to the state governments.²⁹

Establishing a truth and reconciliation commission and reparations program

The shortfalls of Bringing them home

An ongoing flaw in the methods of compensation implemented to date relates to the approach of the National Inquiry. All fact-finding and truth-telling missions have been premised on a homogenous ATSI community. Services based upon the recognition of a divergence of ATSI cultures are often seen as "unnecessary duplication". It is this misconception that underlies the struggle of the Stolen Generations for access to many services such as archives and counselling. Furthermore, the National Inquiry did not recognize that the needs of the Stolen Generations differ from those of other ATSI non-removed people.³⁰

A further limitation of the *Bringing them home* was highlighted in the submission of Link-up (NSW).³¹ No mechanisms were incorporated into the National Inquiry to account for the extreme levels of trauma and the guilt felt by parents unable to tell their stories. Link-up (NSW) reported:

In preparing this submission we found that Aboriginal women were unwilling and unable to speak about the immense pain, grief and anguish that losing their children

*had caused them. That pain was so strong that we were unable to find a mother who had healed enough to be able to speak, and to share her experience with us and with the Commission [...].*³²

In addition to these “silenced” mothers, *Bringing them home* reports that children, especially girls, were vulnerable to sexual abuse. Based on testimony of witnesses before HREOC, almost one in ten boys and just over one in ten girls alleged they were sexually abused in a children’s institution, one in ten boys and three in ten girls alleged they were sexually abused in a foster placement or placements and one in ten girls alleged they were sexually abused in a work placement organization by the Protection Board or institution.³³ On this basis alone, it is an obvious concern that victims of sexual abuse can easily become “silenced” victims in a National Inquiry process if special mechanisms are not implemented to create an environment in which these victims are able to tell their story.

A Truth and Reconciliation Commission provides an opportunity to accommodate these “silenced” interest groups.³⁴ Vasuki Nesiah discusses the treatment of gender crimes by truth and reconciliation commissions in a paper titled, “Gender and Truth Commission Mandates”.³⁵ Nesiah highlights that truth commissions have been valuable in identifying sexual violence against women, as well as men. When testifying before the Peruvian Truth and Reconciliation Commission, there are a number of reasons why many female victims downplayed their suffering, including shame and fear of social condemnation. Rather, women vocalized suffering as the wives, mothers, daughters and sisters of predominantly male victims.³⁶ To encourage women to participate, the Peruvian Truth and Reconciliation Commission developed a series of training documents that included communication strategies on how to conduct investigations in the country’s rural areas and providing guidelines for interviewers, an aspect that would be a valuable contribution to culturally sensitive investigations amongst indigenous populations and in particular, with women unable to tell the stories of their stolen children. The Truth and Reconciliation Commission of South Africa organized several special hearings focused on women, with a female-only panel of commissioners, and in one case, “allowing a deponent to give testimony from behind a screen, in confidence and out of view of the glaring television cameras”.³⁷

A further example is the terms of reference of the Haitian Truth Commission which directed it to pay particular attention to “crimes of a sexual nature against female victims that were committed with political ends”.³⁸ This resulted in focused attention to the subject throughout its work and a subchapter of its report dedicated to sexual crimes. Hayner notes this approach, “of focusing attention to the matter in the mandate, should be seriously considered elsewhere”.³⁹ It is an ideal way to address both silenced and traumatised mothers and removed children

who are the victims of sexual abuse in the hearings of the Truth and Reconciliation Commission and its resulting report and recommendations.

A further issue is the unimplemented recommendations, which stemmed from a lack of ongoing reporting requirements in HREOC's initial National Inquiry mandate. On 24 November 1999, the Federal Senate requested the Senate Committee to conduct an inquiry into the Australian Government's implementation of the recommendations from the National Inquiry.⁴⁰ Tabled in November 2000, the Senate Committee Majority Report: *Healing: A Legacy of Generations*, made ten recommendations, largely in relation to the issue of reporting and monitoring the responses to *Bringing them home*⁴¹ and the establishment of a Reparations Tribunal.⁴² In June 2001, when the Australian Federal Government tabled its response to the Senate Committee's recommendations, it once again rejected the notion of a Reparations Tribunal and chose instead to allocate additional funding beyond 30 June 2002 for key family reunion and health services at a cost of \$52.9 million over four years to 30 June 2006.⁴³ Relying on the Dissenting Report of the Government Senators on the Senate Committee, the Australian Federal Government response indicates a lack of understanding of the functioning and benefits of a truth and reconciliation commission:

The government considers that establishing a tribunal with the comprehensive jurisdiction and extensive powers suggested would neither guarantee a less stressful consideration of matters nor less expense for either party than court proceedings. The same complex and costly legal and factual issues would need to be addressed in order to assess individual claims and such decisions would still be open to further judicial review. The experience of other administrative tribunals, including in the field of immigration and refugees, illustrates that it is not possible to insulate such deliberations from legal challenges and procedures [...].⁴⁴

Problems with proposed Reparations Tribunals and compensation packages

Numerous parties have recommended different forms of reparations programs, yet all of these recommendations can be critiqued on some level. Recommendations for a Reparations Tribunal have been made, though with significant limitations, by the Public Interest Advocacy Centre of NSW, an independent and non-profit legal and policy centre located in Sydney, Australia (PIAC) which was later endorsed by the Senate Legal and Constitutional References Committee (Senate Committee). Efforts have also been made by the Tasmanian State Government in the form of the Stolen Generations of Aboriginal Children Act 2006 (Tasmanian Act) to provide compensation for

Tasmanian members of the Stolen Generations. The Tasmanian Act was a catalyst for the Stolen Generations Compensation Bill (Compensation Bill), tabled before the Federal Senate, to provide for a national Stolen Generations compensation program.

These programs provide for monetary compensation. However, without multiple efforts towards reconciliation, these programs fail to fulfil the requirements of the van Boven principles. This should include guarantees of non-repetition including cessation and prevention of continuing violations. This is particularly important in light of the continually over-representation of ATSI children among children temporarily or permanently separated from their families or communities.⁴⁵ A further very applicable principle is public disclosure of the truth in terms of historical records of individual and group experiences and an official public apology by the Australian Federal Government. These are all essential factors in the “healing” of the Stolen Generations and act as a starting point for addressing some of the ongoing generational consequences of forced removal policies.⁴⁶

In PIAC’s view, reparations should be provided to people affected by forcible removal under the heads of damage proposed in *Bringing them home*: racial discrimination; arbitrary deprivation of liberty; pain and suffering; abuse, including physical, sexual and emotional abuse; disruption of family life; loss of cultural rights and fulfilment; loss of native title rights; labour exploitation; economic loss; and loss of opportunities.⁴⁷ PIAC also recommended monetary compensation to all those persons affected by forcible removal, including to those family members, community members and descendants of a person who were forcibly removed, if they can demonstrate a particular harm.⁴⁸

Yet, PIAC’s model remains heavily adversarial and is not sufficiently different from often unsuccessful attempts at litigation. The recent award of \$A500,000 by Justice Gray of the Supreme Court of South Australia on 1 August 2007 to Mr Bruce Trevor for unlawful removal almost 50 years ago from the Adelaide Children’s Hospital, whilst a watershed decision, does not indicate a lowering of standards of proof for future claims adjudicated through the traditional legal system.⁴⁹ A member of his legal team noted the “unusual” volume of evidence in this case, including letters exchanged between the victim’s mother and the Aboriginal Control Board.⁵⁰ Therefore, despite the recent precedent of the Trevor decision, there remain other obstacles, including difficulties in locating evidence, particularly when governments were lax in recording matters involving ATSI people, the emotional and psychological trauma experienced by claimants in the hostile environment of an adversarial court system, the length of time involved before the outcome of litigation is finalised and the problem of establishing specific liability for harms that have been caused and overcoming the judicial view that ‘standards of the time’ justified removal in the “best interests

of the child". Moreover, the significant size of the award recognises the seriousness of the harm and suffering caused by forced removal policies and the need for renewed widespread efforts to ensure compensation for all affected.

PIAC's proposed model provides for the Australian Federal Government to answer to (effectively defend) claims against it if it can demonstrate that the removal was in the best interests of the child.⁵¹ PIAC's proposed Reparations Tribunal provides that claimants must show sufficient evidence that they were affected by forcible removal and of the particular harm suffered.⁵² This onus of proof fails to recognize that the purpose of taking cooperative steps towards reconciliation recognizes that the policy of forcible removal had, at the very least, partly racist origins and ongoing harmful effects for those involved and their descendants. This onus of proof burdens victims with the challenge of evidence.

Further, a Reparations Tribunal based on proof of evidence of harm suffered, which requires locatable evidence, is not an ideal forum for healing but rather interrogatory. The monetary compensation awarded is linked to common law damages principles which leads to potential incoherence in the compensation awarded, given that the model recommends a minimum lump sum payment, as well as monetary compensation where it can be shown that a person additionally suffered "a particular type of harm or loss" resulting from forcible removal.⁵³ It also allows appeals from the Reparations Tribunal to the Federal Court on questions of law, resulting in a Reparations Tribunal closely linked, if not situated within, an adversarial litigious system. Rather than providing a system which recognizes the widespread and general harms suffered by the Stolen Generations that a Truth and Reconciliation Commission would facilitate, PIAC's Reparations Tribunal would involve legal representation, legal procedures and rules (albeit relaxed) and hearings or applications on papers that do not facilitate the truth-telling, extensive historical record-keeping and public participation that a Truth and Reconciliation model would encompass. It ignores the opportunity for a hearing in a sympathetic setting, which would provide victims validation through an official acknowledge.⁵⁴

Recent state and federal legislative efforts towards reparations have also failed to completely address the situation. The most robust efforts towards reconciliation by any state government were made by the Tasmania Government in 2006, following an election commitment to compensate ATSI Tasmanians who were removed from their families, a commitment which led to the passing of the Stolen Generations of Aboriginal Children Act 2006 (TAS) on 28 November 2006 (Tasmanian Act). The Tasmanian Act sets up a \$5 million compensation fund and provides for a one-off cash payment to children who were taken from their families between 1910 and 1975 and remained removed from his or her parents for a period of five months or more.⁵⁵ Approximately 124 Aboriginal people are expected to qualify for the Tasmanian compensation payment.⁵⁶ The package

includes compensation payments of up to \$5,000 for descendants of *deceased* members of the Stolen Generations⁵⁷ (capped at \$20,000 per family).⁵⁸ The remainder of the funding will be divided between living members of the Stolen Generations.⁵⁹ Applications for payment, which were reviewed by the Stolen Generations Assessor,⁶⁰ were accepted for a period of six months from 15 January 2007 to 15 July 2007, with decisions on all applications to be determined by January 15, 2008.⁶¹ The Tasmanian Act specifically provides that an ex gratia payment made pursuant to the Tasmanian Act does not render the State of Tasmania liable for the admission of children as wards of the State or removal from their families.⁶²

It is unfortunate that there was no scope for public hearings at a localised level.⁶³ What has been described as the “historicizing of the victim/survivor” is limited in this process.⁶⁴ Testimony, narration and storytelling can be key to situating victims in a specific historical context and reconstructing their identities and roles in that context,⁶⁵ particularly in light of the importance of story telling to many ATSI cultures. Instead, the Tasmanian Act provides that a Stolen Generations Assessor will prepare a report for the Minister for Community Development within 30 days of the last assessment made,⁶⁶ tabled before each House of Parliament.⁶⁷

The willingness of the Tasmanian State Government to pass the Tasmanian Act must be considered in light of the fact that Tasmania has the smallest ATSI population, outside of the Australian Capital Territory. In 2001, the majority of ATSI people live in New South Wales (29% of the ATSI population) and Queensland (27%), Western Australia (14%) and the Northern Territory (12%).⁶⁸ ATSI people comprise about 30% of the Northern Territory population but less than 4% in all other State/Territory populations, including in Tasmania.⁶⁹

Despite its limitations, the Tasmanian Act has been a major catalyst for Federal Government legislation: The Stolen Generation Compensation Bill 2007, tabled by Andrew Bartlett, Queensland Democrat Senator and spokesperson on Indigenous Affairs, at the end of March 2007. Modelled predominantly on the Tasmanian Act, the Exposure Draft of the Democrats Stolen Generation Compensation Bill (Compensation Bill) seeks to implement a federal reparations process for victims of the Stolen Generations and has called for feedback and comment from the wider community about how best to address the unimplemented recommendations from *Bringing them home*.⁷⁰ In the event that the Tasmanian Act acts as an impetus for other States to pass similar legislation, the Compensation Bill is intended to give coverage to those applicants in a State or Territory where there is no legislation. If legislation were later enacted, the applicant would be required to choose whether to claim under State or Federal law, and not both.

What is most problematic about the Tasmanian Act and Compensations Bill is that neither provides a forum for public hearings and discussion regarding the experiences of members of the Stolen Generation. Rather, both involve a speedy process, completed within one year, reducing the time-period for awareness raising and education.

*A national approach to truth and reconciliation
with localised hearings*

A national approach to setting up a Truth and Reconciliation Commission, to operate at a decentralized community-based level, is preferable to a system of state-by-state compensation, with the gaps filled by a federal statute. The national umbrella will help ensure a coherent approach to decisions made regarding in what circumstances and for which affected individuals compensation will be given under the Reparations Program. At the same time, hearings at a community level facilitate proper recognition of the experiences of heterogeneous indigenous groups.

Truth and Reconciliation Commissions should be established in each state or territory in Australia and should simultaneously accept the applications and hear the stories of ATSI people who qualify as members of the Stolen Generations. Each local Commission would include members of indigenous and non-indigenous communities and include the participation of tribal elders to give the process credibility amongst ATSI people. Localised Truth and Reconciliation Commissions also increase the potential for creating public awareness amongst non-indigenous people in each state or territory.

Most significantly, localised Truth and Reconciliation Commissions will help to address the problem that the ATSI community has thus far been treated as homogenous. The approach of the Tasmanian Act and Compensation Bill homogenises the ATSI population in two ways, only one of which is distinctly problematic. First, it homogenises the harm suffered, considered by some as problematic in terms of restoring a victim's dignity,⁷¹ yet in the author's view, to ensure a coherent system of reparations, is unavoidable.

Second, however, the approach of the Tasmanian Act and Compensation Bill homogenises the ATSI population as a mass whose heterogeneity is irrelevant.⁷² This is particularly problematic given the composition of the ATSI population:

The population of Australia's Aboriginal and Torres Strait Islander communities is extremely diverse in its culture with many different languages spoken. Think of the Kimberly region of Western Australia[...] if you travel through the Kimberly with its large Aboriginal population and the diversity of people within this region, it's just like travelling through Europe with its changing cultures and languages.⁷³

A forum to voice grievances

A Truth and Reconciliation Commission allows a much-needed move away from an adversarial approach. Litigation in the adversarial court system “is not a culturally appropriate or effective remedy for the situation confronting the stolen generations, their families and communities”.⁷⁴ The Tasmanian Act and Compensation Bill both reflect an adversarial, tort-based approach. They require a system of justice to award damages to each individual, on the basis of the evidence supplied by the victim as to the magnitude of the harm suffered, assessed under standard procedural and substantive rules.⁷⁵

Rather, a Truth and Reconciliation Commission has the advantage of providing indigenous persons affected by forcible removal with a forum in which their grievances can be heard and allows those individuals to receive public acknowledgement of the harm suffered. It also allows those affected by forcible removal a role in shaping the Reparations Programs. Participation is essential for reparations to be appropriate and effective. The Sixth Social Justice Report produced by HREOC states:

*The Indigenous perception of the inadequacy of government responses to recommendations on these matters is met, not merely with disappointment and a sense of exclusion from government processes, it confirms an expectation that this would be so. There is a strain of Indigenous response which reveals the cumulative effect of paternalistic policies and the lack of participation in government processes: of constantly being the subject of other people's decisions about what is best for you, what you deserve, what you are entitled to.*⁷⁶

The Canadian IRS Settlement Agreement most aptly addresses the issue of localised indigenous involvement by establishing an Indian Residential School Survivor Committee, composed of 10 representatives drawn from various Aboriginal organizations and survivor groups, designed to advise Truth and Reconciliation Commissioners on community issues, including criteria for community and national processes.⁷⁷ However, whilst Canada's IRS Settlement Agreement provides for Regional Liaisons,⁷⁸ neither the Regional Liaisons nor National Commissioners will conduct formal hearings.⁷⁹ In outlining this ATSI Truth and Reconciliation Commission Model, the author believes that public hearings provide the best solution for healing and acknowledgement for individuals, families and their communities. Public hearings, however, would not be compulsory. Either closed hearings would be conducted or victims would be able to submit electronic or paper statements, particularly in cases of physical and sexual abuse.

The absence of individual storytelling under the Tasmanian Act and Compensation Bill is key. Holocaust survivor Dory Laub has written about the

process of telling and listening as an essential first step towards healing.⁸⁰ Laub describes story-telling as a two-step process: the telling itself, which breaks previous frameworks of knowing and secondly, what happens beyond words, which allows emotional healing, the key to rediscovery of a lost identity.⁸¹ Since the tabling of *Bringing them home*, hundreds of indigenous life narratives have been published as well as films. For example, Philip Noyce's awarded-winning film, *Rabbit-Proof Fence*, based on the auto/biographical narrative of Doris Pilkington Garimara, tells the story of three removed children who experience a 1,600 kilometre journey in an attempt to return to their community rather than remain at the Moore River Mission in Western Australia.⁸²

The greatest role a Truth and Reconciliation Commission can play is allowing different ATSI peoples' stories to be heard and acknowledged, giving recognition to the different stories that need to be told. For example, when Lowitja O'Donoghue in an interview related that she was not "stolen" but "removed" as her mother had agreed to her separation believing it in the best interest of her daughter, the media exploited the remarks and cast doubt on the harm suffered and reparations needed for members of the Stolen Generations.⁸³ Similarly, Nancy Barnes in *Munyi's Daughter* wanted to tell a different story, one that highlighted triumph over adversity and the successful journey of a member of the Stolen Generations into relationships and employment, and yet found no audience, in her own community or others.⁸⁴ A Truth and Reconciliation Commission would provide an audience for a heterogeneous recount of history.

Determining the scope of those entitled to a hearing before the Truth and Reconciliation Commission and compensation

A significant issue to determine is how to address the harms suffered by the descendants of victims. Both the Tasmanian Act and Compensation Bill recognize compensation for the living biological child of a deceased person who would otherwise qualify for compensation but not descendants of a person who was directly removed, if the removed "child" is still living.⁸⁵ A recent study by the MCATSIA in June 2006 compares the relative socio-economic and health positions of those ATSI people who were removed (directly) and those not removed. The study combines the framework used by the National Aboriginal and Torres Strait Islander Social Survey 2002 (NATSISS), which surveyed 9,400 ATSI people and the National Aboriginal and Torres Strait Islander Health Survey 2004-2005 (NATSIHS), which surveyed 10,400 ATSI people. The surveyors recognized the limits in their methodology, and the resulting degree of uncertainty.⁸⁶ The NATSISS and NATSIHS data was used to draw conclusions regarding such indicators as the rates of disability, post-secondary education participation and attainment, labour force participation, victim rates for crime

and imprisonment and juvenile detention rates.⁸⁷ The results showed that the removed population had worse outcomes than for the non-removed population.⁸⁸ Disadvantage for removed populations was not concentrated in any particular area, but rather covered a broad spectrum of indicators.⁸⁹ For example, removed populations had lower rates of completion of year 10-12 school (28.5 per cent compared to 38.5 per cent), lower rates of living in owner occupied housing (16.9 per cent compared to 28.3 per cent); higher rates of being arrested more than once in a five year period (14.6 per cent compared to 8.8 per cent) and lower rates of full-time employment (17.8 per cent compared to 24.8 per cent).⁹⁰

The evident disadvantage is illustrative of the ongoing effects of forced removal policies, both on those persons directly removed as well as their descendants. Indigenous Australians are 45 times more likely to be a victim of domestic violence than other Australians, 8.1 times more likely to be homicide victims and 16.6 per cent more likely to commit homicide than the non-indigenous population.⁹¹ According to Reconciliation Australia, ATSI people experience higher rates of self-injury, suicide and incarceration-15 times the rate of other Australians.⁹² Alarming, the Australian National Audit Office reports that the mortality rate of ATSI people is twice as high as the Maori, 2.3 times the rate of indigenous people in the United States, and 3.1 times the total Australian rate.⁹³

Whilst monetary compensation will be difficult, if not impossible to award to descendants, particularly in terms of maintaining coherence within the compensation program, it is also questionable the extent to which such compensation will adequately address the present inequity experienced by ATSI descendants. However, this is further impetus for a Truth and Reconciliation Commission which can play a role in restoring the dignity of all members of the ATSI community. All descendants of the Stolen Generations would have an opportunity to tell of their experience with the ongoing effects of forced removal before a Truth and Reconciliation Commission, which is likely to impact both future government policy and public perception.

The awarding of reparations

It is essential to overcome the Australian Government's reluctance to award compensation. It is firstly importance to accept that under a Reparations Program, victims are likely to receive far less compensation than through successful litigation. For claims pursued through the Victims Compensation Tribunal, claimants may receive \$50,000 for the harm occasioned by one act of violence.⁹⁴ In civil courts, PIAC suggests that successful claimants "would receive substantially more" considering the harm identified in *Bringing them home*.⁹⁵ PIAC also identifies the recommendation of the Reparations and Rehabilitation Committee in South Africa, which provided that victims receive a sum equivalent to the median annual

household income per annum for six years, as a guide.⁹⁶ However, PIAC fails to note that, in practice, very few South African victims identified by the Committee have in fact received the recommended compensation. Reparations in South Africa have been highly controversial, with a failure by civil society to pursue and monitor the implementation of the South African Truth and Reconciliation Commission's reparations recommendations.⁹⁷

The Canadian IRS Settlement Agreement has set aside \$60 million for a range of truth and reconciliation measures.⁹⁸ Similarly, the amounts of monetary compensation allocated in the Tasmanian Act and Compensation Bill are realistic, within the bounds of state and national budgets. Whilst the compensation falls far short of what may be received through judicial means *if* the victim was to succeed, Pablo de Greiff uses the example of Peru which valuably illustrates the difficulties of parallel systems of "judicial" and "political" reparations.⁹⁹ The Peruvian Truth and Reconciliation Commission discussed its reparations recommendations, whilst simultaneously the Inter-American Commission and the Court decided cases of torture and disappearances, awarding between \$100,000 to \$200,000 per victim. This raised expectations of an impossible outcome for persons before the Truth and Reconciliation Commission. If each family of the more than 69,000 victims of death were awarded \$150,000, the total cost would be more than the entire national yearly budget of Peru.¹⁰⁰

De Greiff also notes that the mere disparity in the award made by courts compared to those distributed under mass reparations programs does not illustrate a lack of fairness in reparations programs. Rather, reparations programs provide other benefits by obviating the problems with litigation, such as long delays, high costs, having to gather evidence that will be closely scrutinised, emotional pain suffered through cross-examination and the real risk of an adverse decision.¹⁰¹

Conclusion

There has been a multitude of litigious attempts to seek redress for the Stolen Generations. Such litigation may force the Australian Government and possibly other private parties involved in the forcible removal, such as church-run schools, to recognize breaches of the law and provide compensation for the harm suffered as a result:

*Ultimately, governments will be forced to address the issue of liability for forcible removal. Better that it be in an equitable, efficient and constructive manner, than one that is inequitable, inefficient and adversarial.*¹⁰²

In response to the law-suits filed against the Canadian government by between 5000 and 8000 former residential school students, which the government initially

fought, the Canadian government began entering into settlement negotiations. In 1997-98, the Canadian government settled 220 claims out-of-court, paying more than \$20 million to former victims of the schools run solely by the federal government in cases where employees were convicted of sexual abuse.¹⁰³ In 1998-99, about \$8 million was paid to 70 alleged victims of abuse, with settlements ranging from \$20,000 to \$200,000.¹⁰⁴ According to data provided by the Canadian Government, as of May 21, 2007, the total value of litigation in relation to the Indian Residential Schools amounted to \$120.7 million, whilst the total value of damages awarded from ADR decisions amounted to \$128.2 million.¹⁰⁵ It is therefore unquestionably that it is financially beneficial for the Australian Government to pursue the model of a Truth and Reconciliation Commission with a Reparations Program attached, rather than continuing on an ad hoc road of litigation and victims compensation applications.

The model proposed in the Tasmanian Act and Compensation Bill is flawed in a number of key ways. First, the paper-based process, which is completed over a short time-frame, fails to involve the wider community. Whilst a report by the Stolen Generations Assessor will be tabled before parliament, it is unfortunate that the process does not give victims a voice to publicly re-telling their history, in a way that would recognize the heterogeneity of the ATSI population. This would also provide an opportunity for renewed vigour towards ATSI languages, particularly in light of the fact that a submission was made to the UN Commission on Human Rights describing the officially unacknowledged status of ATSI languages.¹⁰⁶

There are a number of benefits of a Truth and Reconciliation Commission, with simultaneous hearings taking place in each State or Territory, with members of the indigenous and non-indigenous community sitting as commissioners. This will be a positive move away from thus-far unsuccessful adversarial models. In addition, a Reparations Program should be attached to the Truth and Reconciliation Commissions and compensation coherently awarded in the amounts recommended by the Tasmanian Act and Compensation Bill.

The Australian community has, to a large extent, attempted to block out a very dark chapter of its history, or at least deal with it in a cursory manner. Given the ongoing consequences suffered by the descendants of the Stolen Generations, the Australian people, and in particular the Australian Government, cannot deny the facts of its past, however differently these have been interpreted. Unity and reconciliation between indigenous and non-indigenous Australians depends upon truth-telling, remembering the past and accurately re-writing Australia's history. The truth is necessary for the social catharsis of ATSI people and is an essential part of the national recognition of the ongoing consequences that the removal of ATSI children from their families and communities continues to have on the poorer health, employment, education and social status of present-day Aborigines and Torres Strait Islanders.

NOTES

1. Australia officially has two groups of indigenous people who are referred to as Aboriginal and Torres Strait Islander people. For the purpose of this paper, the acronym ATSI has been applied. See Australian Federal Government, Department of Aboriginal and Torres Strait Islander Affairs, *Indigenous Fact Sheet*, available at <http://www.atsia.gov.au/Facts/docs/FS_series23.pdf> accessed on 14 June 2007.
2. Human Rights and Equal Opportunity Commission, *Bringing them home: report of the national inquiry into the separation of Aboriginal and Torres Strait Islander child*, Canberra, AGPS, 1997, p. 31[Hereinafter *Bringing them home*], available at <http://www.humanrights.gov.au/social_justice/stolen_children/how_to.html> accessed on 20 January 2007.
3. A summary of all "removal" and general welfare legislation can be found in *Bringing them home*, note 2, pp. 600-648.
4. Nigel D'Souza, "Authors of our own history: the challenge for all Australians presented by the final report of the human rights commission national inquiry into the separation of aboriginal and torres strait islander children from their families forum-the stolen generation: from removal to reconciliation-authors of our own history", *University of New South Wales Law Journal*, v. 21, 1998, pp. 204-205 citing media release issued by SNAICC on 4 August 1991, National Aboriginal and Islander Children's Day.
5. *Bringing them home*, note 2, pp. 2-3.
6. *Ibid.*, which cites throughout to the range of evidence heard by the National Inquiry.
7. Anne Orford, "Commissioning the truth", *Columbia Journal of Gender and Law*, v. 15, 2006, p. 867.
8. In 1989, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation, rehabilitation for victims of gross violations of human rights and fundamental freedoms, taking into account relevant existing international human rights norm and relevant decisions and views of international human rights organs. See Theo van Boven, Final Report of the Special Rapporteur of the United Nations, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, UN Doc. E/CN.4/Sub.2/1993/8 (1993).
9. Van Boven, Final Report of the Special Rapporteur of the United Nations, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, UN Doc. E/CN.4/Sub.2/1993/8 (1993), p. 4.
10. Priscilla Hayner, *Unspeakable truths: facing the challenges of truth commissioners* Routledge, New York and London, 2002, pp. 17-18, 313.
11. See *Bringing them home*, note 2, p.15, regarding contemporary removals of ATSI children until the release of the report in 1997, such as non-custodial sentences applied to indigenous people.
12. See discussion of inter-generational transfer of the effects of forcible removal discussed in *Bringing them home*, note 2, pp.174-175, 188-189 and 481-483. See also research on the

association of past unresolved trauma experienced over many generations of ATSI people with present-day child sexual abuse in indigenous communities in Janet Stanley, "Child Sexual Abuse in Indigenous Communities", paper presented at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference, convened by the Australian Institute of Criminology and held in Adelaide, 1-2 May 2003, available at <<http://www.aic.gov.au/conferences/2003-abuse/stanley.pdf>>, accessed on 26 August 2007.

13. See International Center for Transitional Justice (ICTJ), "Canada-Background", March 2007, available at <<http://www.ictj.org/en/where/region2/513.html>>, accessed on 14 June 2007. See also Canadian Indian Residential Schools Settlement Agreement, Schedule N: Mandate for the Truth and Reconciliation Commission, 8 May 2006, [Hereinafter IRS Settlement Agreement], 5, §4(c), available at <<http://www.irs-rqpi.gc.ca/english/index.html>>, accessed on 14 June 2007.

14. IRS Settlement Agreement, note 13. See also *Bringing them home*, note 2, p. 231.

15. Coral Dow, Parliament of Australia-Parliamentary Library, *E-Brief: the stolen generation*, Issued April 2000 (Updated July 2006), available at <<http://www.aph.gov.au/library/intguide/SP/Stolen.htm>> accessed on 6 May 2007. See also *Bringing them home*, note 2, pp. 16-17 regarding Australia-wide hearings, support granted for witnesses giving confidential information and the obligation on HREOC to archive all evidence and submissions to the inquiry.

16. Peter Read, *A rape of the soul so profound*, Allen and Unwin, 1999, pp. 25-26.

17. *Ibid.*, p.26.

18. Public Interest Advocacy Centre, Submission to the Senate Legal and Constitutional References Committee: Inquiry into the Stolen Generation, Parliament of Australia, Canberra 2000, p. 29, available at <<http://www.austlii.edu.au/au/other/IndigLRes/2000/1/index.html>>, accessed on 23 July 2003 [Hereinafter PIAC Submission].

19. Antonio Buti, "Unfinished business: the Australian stolen generations", *E-Law Murdoch University Electronic Journal of Law*, 7(4), 2000, available at <<http://www.murdoch.edu.au/elaw/issues/v7n4/buti74.html>>, accessed on 14 June 2007, par. 21.

20. *Bringing them home*, note 2, p. 306.

21. *Bringing them home*, note 2, pp. 245-249.

22. See Pablo de Greiff, "Justice and reparations" in Pablo de Greiff (ed.), *The handbook of reparations*, Oxford, Oxford University Press, 2006, p. 468.

23. Sorry Day Committee, "A national sorry day", updated 16 May 1998, available at <<http://www.austlii.edu.au/au/special/rsjproject/sorry/>>, accessed on 23 May 2007.

24. Kay Schaffer & Sidonie Smith, *Human rights and narrated lives: the ethics of recognition*, Victoria, Palgrave Macmillan, 2004, p. 107.

25. Buti, note 19, par. 33.

26. *Bringing them home*, note 2, p. 344, citing van Boven Principle 14.

27. *Ibid.*, p. 389.

28. *Bringing them home*, note 2, p. 30.

29. Buti, note 19, par. 43.
30. Matthew Story, "The Stolen Generations: more than just a compo case", *Indigenous Law Bulletin*, v. 3, n. 86, 1996.
31. Link-up NSW, Submission 186 part III, pages 30-31 cited in *Bringing them home*, note 2, p. 185.
32. *Bringing them home*, above note 2, p. 185.
33. *Bringing them home*, above note 2, pp. 141-142.
34. See Anne Orford, "Commissioning the truth", note 7, p. 883.
35. Vasuki Nesiah, "Gender and truth commission mandates", International Center for Transitional Justice, available at <www.ictj.org>, accessed on 10 July 2007.
36. *Ibid.*, p. 2.
37. Priscilla Hayner, "Unspeakable truths", note 10, p. 78.
38. *Ibid.*
39. *Ibid.*
40. Senate Legal and Constitutional References Committee, Parliament of Australia, *Healing: a legacy of generations*, (2000) [1.3], 30 November 2003, Available at <http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/1999-02/stolen/report/index.htm> accessed on 23 July 2007, [Hereinafter Senate Committee Report].
41. *Ibid.*, Recommendations 1, 2 and 6.
42. *Ibid.*, Recommendations 7-9.
43. Coral Dow, Parliament of Australia, note 15.
44. Commonwealth, *Legal and Constitutional References Committee. Report: government response*, Parliament of Australia, Senate Hansard, 28 June 2001, available at <http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?TABLE=hansards&ID=1902233> accessed on 25 March 2007.
45. See *Bringing them home*, note 2, p. 15 regarding evidence of contemporary removals of ATSI children up until the release of the report in 1997.
46. See also the principles of the Canadian Working Group on Truth and Reconciliation and of the Exploratory Dialogues (1998-1999), which include accessible, victim-centered, public/transparent, holistic, inclusive, educational and forward-looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians in IRS Settlement Agreement, note 13, 1: Principles.
47. *Bringing them home*, note 2, pp. 303-307.
48. PIAC Submission, note 18, p. 32.
49. See Penelope Debelle and Jo Chandler, "Stolen generation payout", *The age*, 2 August 2007,

National, available at <<http://www.theage.com.au/news/national/stolen-generation-payout/2007/08/01/1185647978562.html>> accessed on 26 August 2007 for further discussion of the decision.

50. Nick Bryant, "The agony of Australia's stolen generation", *BBC News*, 9 August 2007, International, available at <<http://news.bbc.co.uk/1/hi/world/asia-pacific/6937222.stm>> accessed on 26 August 2007.

51. *Ibid.*, p. 3.

52. *Ibid.*, p. 33.

53. PIAC Submission, note 18, p. 32.

54. Martha Minow, "The hope for healing: what can truth commissions do?" in Robert I. Rotberg & Dennis Thompson (eds.), *Truth v justice: the morality of truth commissions*, 2000. See also Anne Orford, "Commission the truth", note 7.

55. Stolen Generations of Aboriginal Children Act 2006, §§ 5(1)(d) and 5(2)(c).

56. *Ibid.*, §5(3)(b).

57. *Ibid.*, §11(1)(a).

58. *Ibid.*, §11(2).

59. *Ibid.*, §11(1)(b).

60. *Ibid.*, §7.

61. *Ibid.*, §6(3). See also Office of the Stolen Generations Assessor, State Government of Tasmania, Available at <<http://www.dpac.tas.gov.au/stolengeneration/index.html>>, accessed on 1 June 2007.

62. Stolen Generations of Aboriginal Children Act 2006, §21.

63. *Ibid.*, §18.

64. See Brinton Lykes and Marcie Mersky, "Reparations and mental health: psychosocial interventions towards healing, human agency, and rethreading social realities" in Pablo de Greiff (ed.), *The handbook of reparations*, 2006, pp. 589, 605.

65. *Ibid.*, pp. 605-606.

66. *Ibid.*, §20(1).

67. *Ibid.*, §20(2).

68. *Ibid.*

69. Australian Bureau of Statistics, "4704.0-The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples", 29 August 2005, available on <<http://www.abs.gov.au/Ausstats/abs@.nsf/Lookup/3919938725CA0E1FCA256D90001CA9B8>>, accessed on 22 April 2007.

70. Australian Democrats Press Release, "Bartlett Tables Stolen Generation Compensation Bill", 28 March 2007, available at <http://www.democrats.org.au/news/index.htm?press_id=5774>, accessed on 7 May 2007.

71. Jaime E. Malamud-Goti and Lucas Sebastián Grosman, "Reparations and Civil Litigation: Compensation for Human Rights Violations in Transitional Democracies" in Pablo de Greiff (ed.), *The handbook of reparations*, 2006, p. 555.
72. Ibid.
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77. IRS Settlement Agreement, note 13, 7, §7(a) and (c).
78. Ibid., 6, §6(d).
79. Ibid., 3, §2(b). The IRS Settlement Agreement does provide, however, for several national events.
80. Dori Laub, "Bearing witness, or the vicissitudes of listening and an event without a witness: truth, testimony and survival" in Soshana Felman and Dori Laub (ed.), *Testimony: crisis of witnessing in literature, psychoanalysis, and history*, 1992, cited in Schaffer, note 24, pp. 21, 109.
81. Ibid.
82. See Schaffer, above note 24, p. 97 for a discussion of the power of the film to move audiences and educate about the experience of forced removal as well as the suspicion raised from the potential to universalize and commodify the experience of the Stolen Generations.
83. Schaffer, above note 24, p. 111.
84. Ibid.
85. See section 5(3) of the Tasmanian Act and Compensation Bill.
86. As a result of the Relative Standard Error, differences in outcome were not done by directly comparing estimates. Rather, significance testing was used, the process of determining if two population groups have different estimate rates after taking into account the uncertainty caused by sampling. See Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA), *Evaluation of responses to the bringing them home report*, 2003, available at <<http://www.mcatsia.gov.au>>, accessed on 25 March 2007, p. 6.
87. Ibid., p. 8.
88. Ibid.
89. Ibid.
90. Ibid., p. 9.

91. "Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland", prepared for The Aboriginal Healing Foundation by Linda Archibald, 2006, available at <<http://www.ahf.ca/publications/research-series>>, accessed on 23 May 2007.
92. Ibid, p. 18.
93. Australian National Audit office "The Aboriginal and Torres Strait Islander Health Program Follow-up Audit", The Auditor-General Report No. 15 Performance Audit on Department of Health and Ageing, Aboriginal and Torres Strait Islander Commission (ATIC), 2002/2003, tabled 29 October 2002, available at <http://www.anao.gov.au/uploads/documents/2002-03_Audit_Report_15.pdf>, accessed on 23 May 2007, par. 1.5.
94. See, for example, Schedule 1 of the Victims Support and Rehabilitation Act (NSW).
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98. ICTJ, note 13.
99. De Greiff, note 22, p. 456.
100. Ibid., pp. 456-457.
101. Ibid., p. 439.
102. PIAC Submission, note 18, p. 10.
103. Ibid., p. 16.
104. Ibid.
105. These statistics included all individuals who had filed a claim in litigation and all individuals who had participated in the Canadian Government pilot project. See "Indian Residential School Statistics", Indian Residential Schools Resolution Canada, available at <http://www.irsr-rqpi.gc.ca/english/dispute_resolution_adr_decisions.html>, accessed on 23 May 2007.
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