

**RECKONING  
WITH  
LEGACIES OF  
HARM**

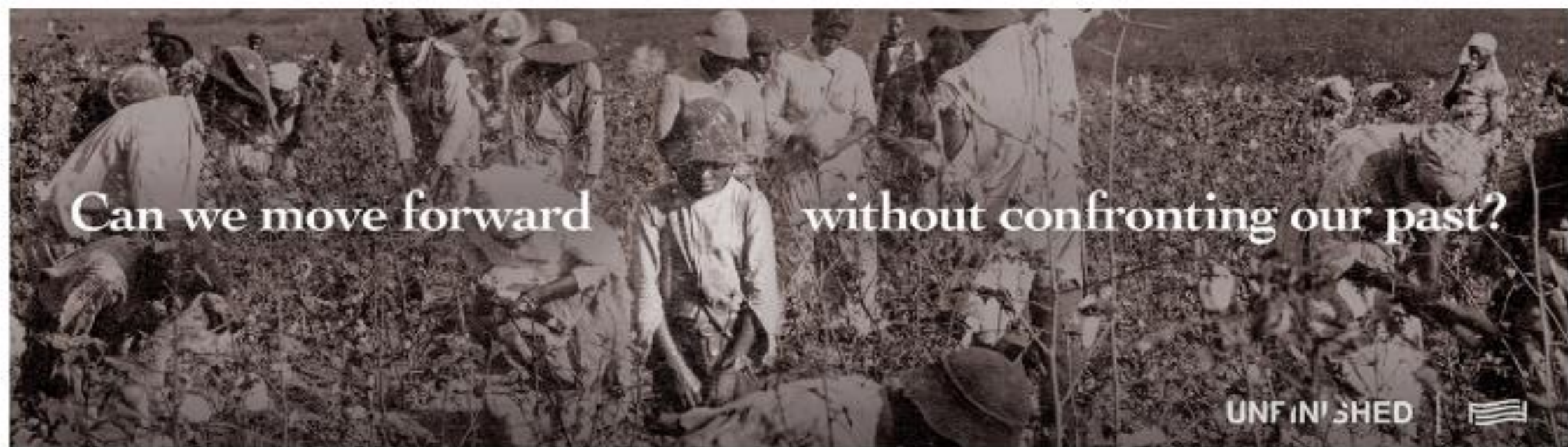


**TRANSITIONAL  
JUSTICE  
IN CONTEXT**

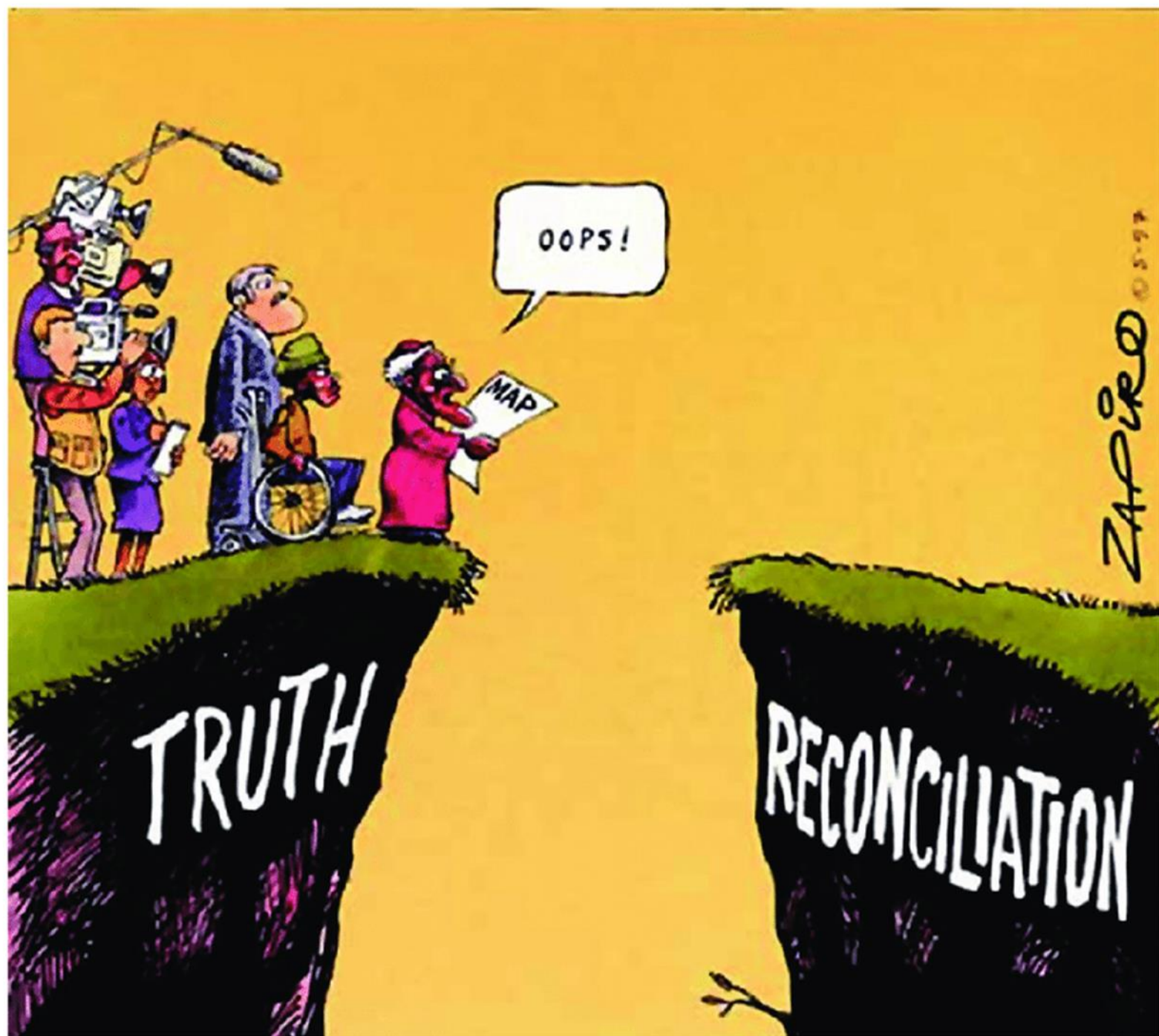
Presentation by Virginie Ladisch and Elena Naughton  
International Center for Transitional Justice

February 9<sup>th</sup>, 2022

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Billboard by Micah Bozeman  
posted in Bessemer, AL

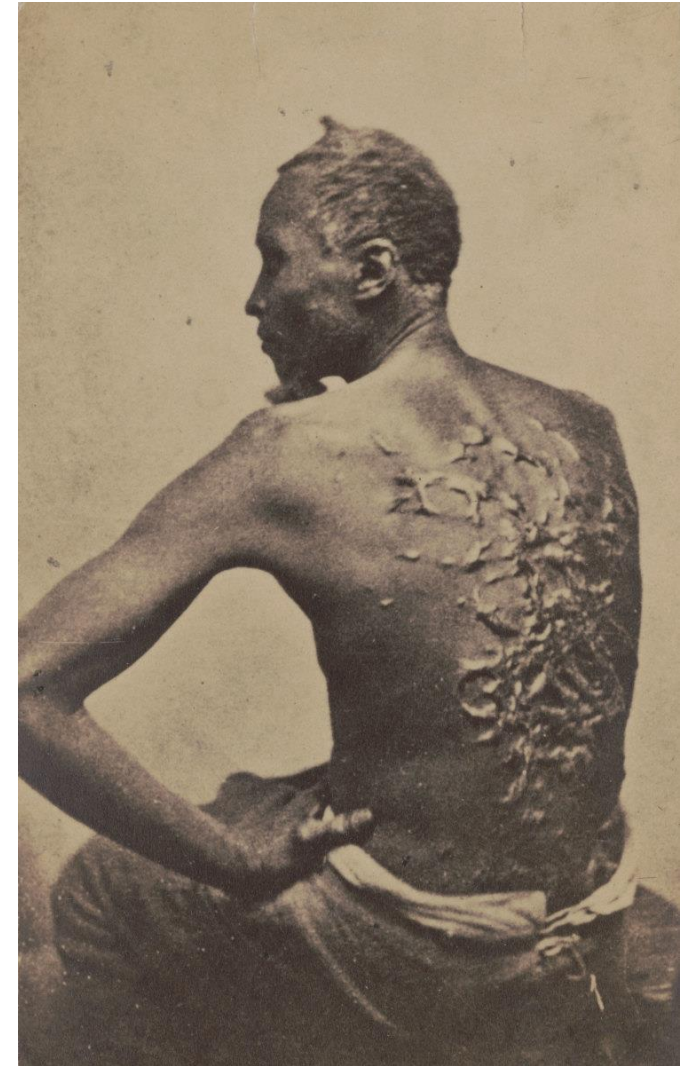


# CRIMES AGAINST HUMANITY

**Crimes against humanity, namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, including persecutions on political, racial or religious grounds**

## **Article 6 of the Nuremberg Charter**

- Because it aggrieves not only the victims and their communities, but all human beings
- Offenses which cut so deep that they violate the core humanity that we all share.
- To ignore them is to exonerate it.



**“Being freed is not the same as being free.”**



# TRANSITIONAL JUSTICE PROCESSES

- **Do No Harm**, in truth and reparations processes, ensure victims are not placed in worse circumstances, physically and economically than they are now
- **Dignifying**, acknowledge not only harm done, but resilience of those who have suffered
- **Assessments** of the harms, needs, and reparative priorities
- **Addressing vulnerability and insecurity where they exist**, truth commissions unearth hard truths some need to be addressed immediately, Sierra Leone amputees
- **Participatory processes**
- **Inclusivity** in approach
- **Diversity** of Expertise as well as representativeness
- **Special attention to gender dynamics** in processes, in research, in outcomes, including intra-family and within communities.
- **Establishing standards for transparency and conduct**, rebuilding trust in institutions



TURNING KNOWLEDGE INTO ACKNOWLEDGMENT



# VICTIMS' VOICES GROUNDED IN SOCIAL MOVEMENTS



The “TJ is also for Women Network” ensured women’s testimonies were heard.

**In Contrast with Criminal Justice Processes**





# SOUTH AFRICA (1995-2002)



- Formal setting
- Solemn process
- Simultaneous translation
- Victim psychological support
- Widely broadcast on national television and radio; hour-long episodes on its work as well as live hearings were broadcast every week. Only victims who testified to the TRC were eligible to take part in the reparations program, which led to a significant increase in testimonies.
- Powerful and emotional testimonies

*The TRC took the testimony of approximately 21,000 victims; and 2,000 of them appeared at public hearings. The commission received 7,112 amnesty applications. Amnesty was granted in 849 cases and refused in 5,392 cases, while other applications were withdrawn.*





# PERU (2001-2003)



*At 86, Angelica Mendoza, known by all as "Mama Angelica", is still strong despite her years. She has spent the last three decades searching tirelessly for her son, Arquimedes Ascarza Mendoza. She gave her testimony to the TRC in Peru in Quechua, her mother language.*

- Formal setting
- Commissioners and victims are at the same level and the same table – to show no distinction among them
- Psychological support
- Simultaneous translation to indigenous language
- Hearings were done in different regions of the country
- Victims were chosen in advance for the hearings based on their experiences and representativeness among the community



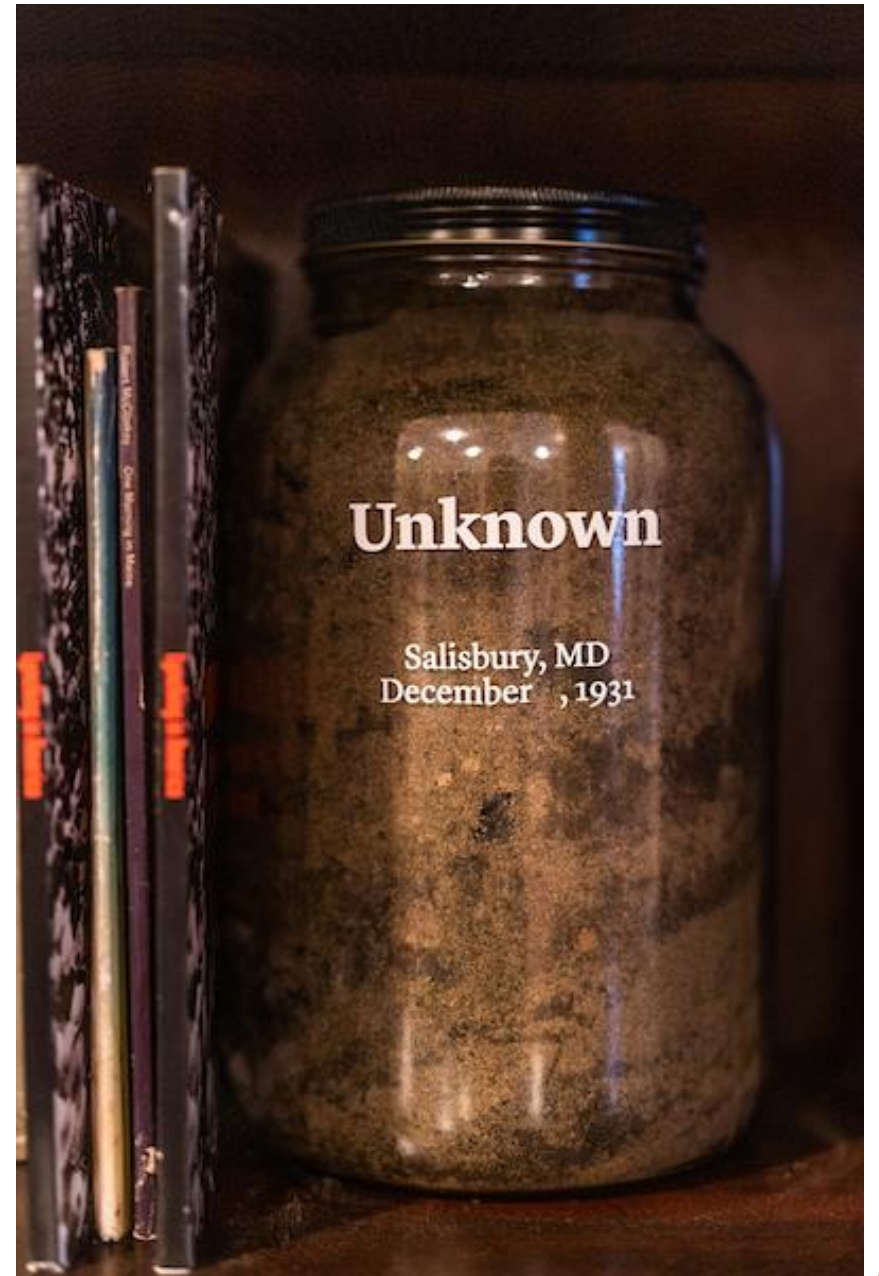
# CANADA (2009-2015)

- Formal and informal settings
- Events were held throughout the country – thousands of victims recounted stories
- Created **Education Day**- one day dedicated to bringing students and teachers to the TRC national event
- Solemn process, honoring the victim
- Call for online statement gathering, documents, audio/video and photographs
- Victim psychological support



# MARYLAND LYNCHING TRUTH AND RECONCILIATION COMMISSION (2019-2023)

- The Maryland Lynching Truth and Reconciliation Commission was established by House Bill 307. The Commission is authorized to **research cases of racially motivated lynchings** and **hold public meetings and regional hearings** where a lynching of an African American by a white mob has been documented.



# SHARE YOUR TRUTH

The TRC National Event offers many ways for you to share your truth with the Commission.

## COMMISSIONERS SHARING PANEL

Commissioners Sharing Panels provide an opportunity for Survivors, Intergenerational Survivors, former teachers, those who worked in the schools, or anyone else who wants to speak publicly about the affect of the schools on their lives to share their truth directly with the Commissioners of the Truth and Reconciliation Commission of Canada.

- \* Registration: begins March 26 in the Assembly Level Foyer
- \* Members of the public and the media may witness.

DATES: **March 27-30** LOCATION: **Hall A**  
 BEGINS: **See Program at a Glance**

## SHARING CIRCLES

Facilitated by members of the TRC Indian Residential School Survivors Committee (IRSSC), Sharing Circles enable Survivors, their family members, former staff and anyone else affected by the residential schools to share their truth with others in a public setting.

- \* Registration: begins March 26 in the Assembly Level Foyer
- \* Members of the public and the media may witness.
- \* Separate sharing circles will also be held in the Churches Listening Area.

DATE: **March 28-30** LOCATIONS: **Salon 4 and Salon 11**  
 BEGINS: **See Program at a Glance**

## PRIVATE STATEMENT GATHERING

Those wishing to share their experiences with the TRC in a private and confidential setting can do so. The Private Statement Gathering Area, located in Hall C, has individual rooms where private statements may be video or audio recorded. Health Supports will be available.

- \* Registration: begins March 26 in the Assembly Level Foyer

DATE: **March 27-30** LOCATION: **Hall C**  
 BEGINS: **See Program at a Glance**



PHOTO: Confirmation class, S. John's Indian Residential School, Wabasca. Anglican Church of Canada Archives. P75-103-53 (77)

## HOW TO SHARE YOUR TRUTH INFORMATION SESSION

Your statement is very important and can help Canadians understand the legacy of Residential Schools. Those who lived, attended and worked at the schools are given a voice through the statement gathering process.

This workshop will provide information on how you can share your experience. The three statement-gathering options will be discussed: private statement-gathering; sharing circles; and Commissioners' sharing panels. The role of Health Supports will also be discussed.

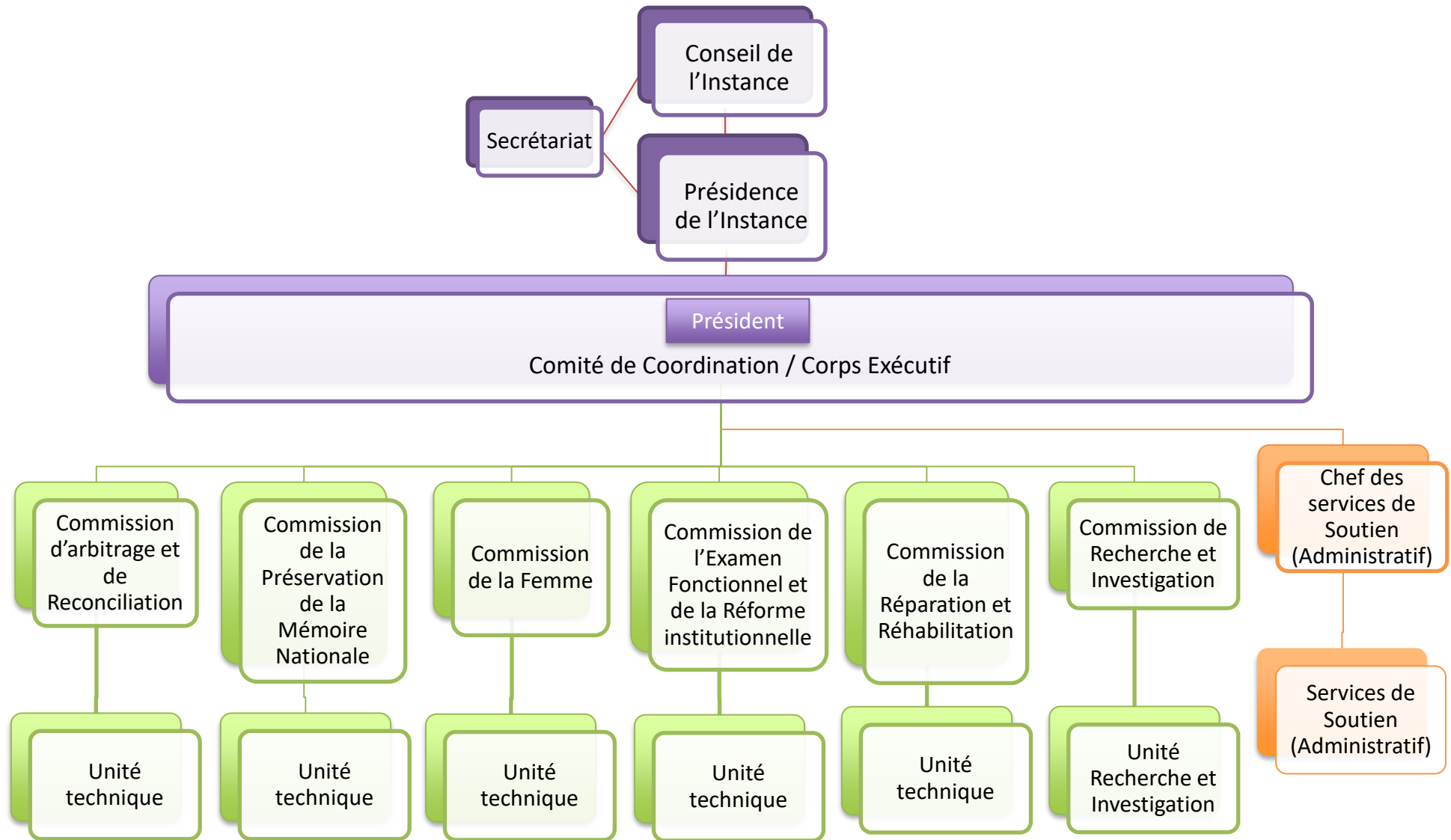
DATE: **March 27**  
 BEGINS: **11am and 1pm**  
 LOCATION: **Salon 4**

# STRUCTURES

- **South Africa Truth and Reconciliation Commission**
  - Committee on Human Rights Violations
  - Committee on Amnesty
  - Committee on Reparation and Rehabilitation
- **Organ-o-gram (bodies reporting lines)**
- **Lebanon's Commission on the Missing** "may form committees composed of its members in order to fulfill permanent or specific tasks, according to its internal bylaws."
- **Sri Lanka, Office on Missing Persons** granted power to "establish from time to time, ... such Committees and/or Divisions and/or Units as are required for the effective administration and functioning of the OMP and shall have the power to delegate such powers and functions as are necessary to such Committees, Divisions, and Units."



# 1. Niveau supérieur de la Charte Organisationnelle



Chaque Comité doit concevoir son propre organigramme et flux de travail et indiquer les liens avec les autres entités de la commission

Voir diapo 6 pour l'organigramme des Services de Soutien



“While a defining feature of truth and reconciliation commissions is that they are victim-centered, the whole point of this kind of process is that it’s not only about victims, but also about the people who have been perpetrators, or the people who have been complicit with the violations, and the bystanders and the beneficiaries.

It’s really important to think how to engage the beneficiaries in the conversation. This was the mistake in my country where it was a conversation sometimes which did not affect the elite...one issue that got lost was this question of benefit and the fact that there were successive white communities who voted overwhelmingly for the former National Party and the apartheid government because they benefited from that.

- Yasmin Sooka’s remarks on February 23, 2021 at the Inaugural panel of the Transitional Justice in the USA Speaker Series



# OUTREACH

*“You need to have an intentional strategy for reaching beyond those who already know. You will need to create opportunities for people to get their heads around what happened in a very real way; to help move them on the journey between head and heart.”*

- Marie Wilson, Commissioner of the Canadian Truth and Reconciliation.





**FROM THE EARLY 1830s TO 1996, THOUSANDS OF FIRST NATION, INUIT, AND MÉTIS CHILDREN, SOME AS YOUNG AS FOUR YEARS OLD, WERE FORCED TO ATTEND RESIDENTIAL SCHOOLS IN AN ATTEMPT TO ASSIMILATE THEM INTO THE DOMINANT CULTURE. THE MENTAL, PHYSICAL, AND SPIRITUAL ABUSES SUFFERED BY THESE CHILDREN HAVE HAD A DEEP IMPACT, NOT ONLY ON THE CHILDREN THEMSELVES, BUT ALSO ON THEIR FAMILIES AND COMMUNITIES.**

**Why is this important to non-Aboriginal Canadians?**

**Why should it matter to a Canadian who has not attended a residential school?**

**IF YOU WANT** to understand the impact of residential schools on the lives of the major cities of the country and other forms of residential schools.

**IF YOU WANT** to understand the impact of poverty, race, and social inequality on the lives of the people of the country.

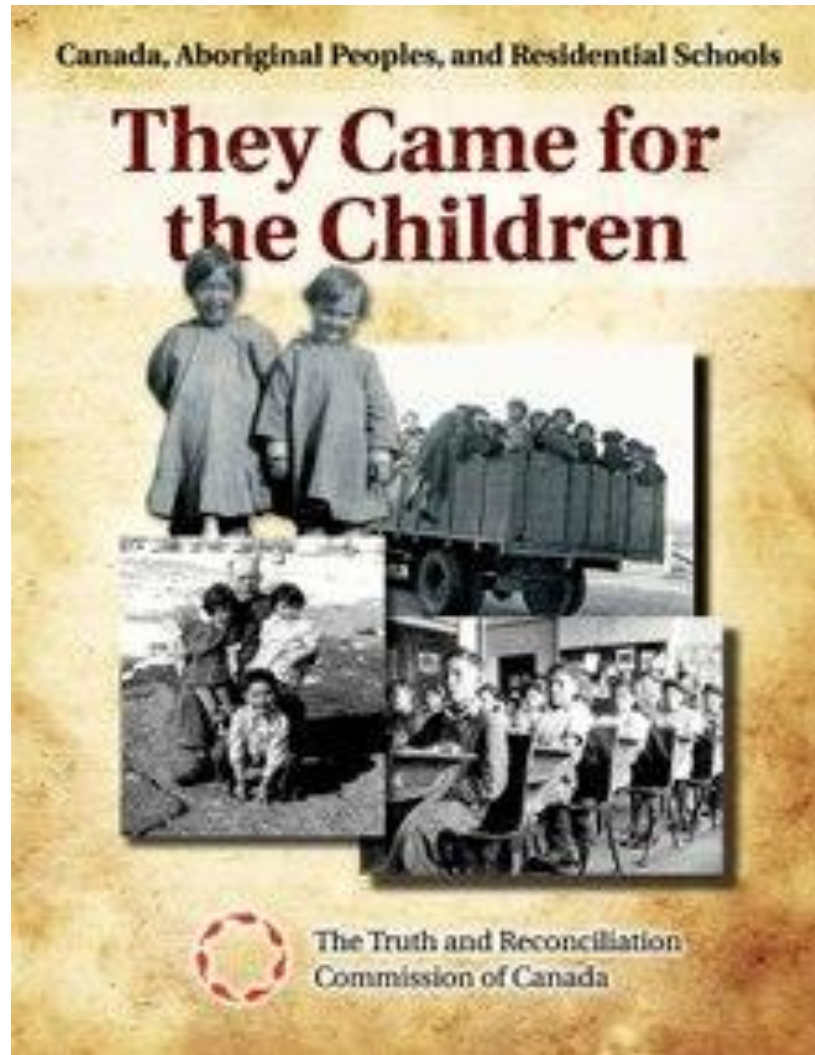
**IF YOU WANT** to understand the impact of residential schools on the lives of the people of the country.

This is why we must all understand the impact of residential schools on the lives of the people of the country.



# LOOKING INTO THE DISTANT PAST AND THE NOT-TOO-DISTANT PAST...

## Canada's Truth and Reconciliation Commission



I'm so filled with belief and hope because when I hear your voices at the table, I hear and know that the responsibilities that our ancestors carried ... are still being carried ... even through all of the struggles, even though all of what has been disrupted ... we can still hear the voice of the land. We can hear the care and love for the children. We can hear about our law...our stories, our governance, our feasts, [and] our medicines... We have work to do. *Elder Mary Deleary*

- TJ and, in particular TCs, help map out reforms based on enduring impact of past violations across sectors of government and society
- Help establish the **Unbroken Link**: transgenerational harm
- Truth commissions and the colonial period: for example, land dispossession in Kenya. Thematic hearings on Ethnic Tensions held in Kenya.
- Reparations paid for crimes of the past: Canada (class action), Germany (recent past), some in South Africa (distant past)



# DOCUMENTING HARMS

- **Crimes of humanity: widespread and systematic like enslavement, persecution against an identifiable group, e.g., Native Peoples**
- **Documenting and mapping both individual violations but also the patterns and systems, including discrimination and exclusion**
- **At national, state and local levels**
- **For identifying reforms**
- **For repairing harms**
- **For acknowledging and recognizing the public and private institutions responsible**
- **For addressing root causes: The Whys**

## Evanston Policies and Practices Directly Affecting the African American Community



Report Compiled by:

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Last update, November 2021



# HARMS . . . NEEDS . . . PRIORITIES



## Listening

**The Equity and Empowerment Commission held community meetings to solicit feedback from community members on what reparations would look like for the City of Evanston, Illinois.**

**Affordable housing and economic development were the top priorities identified during those meetings**



# VERMONT: REPARATIONS CONSIDERATIONS

For what harms?

During what time period?

Caused by whom?

Against whom?

And how to address the harms? Most often through either **judicial reparations**, ordered by a court and/or **administrative reparations programs** provided by a government through legislation.



# REPARATIONS ARE...

A right under international law...

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

A state obligation to repair the harm caused by human rights abuses (obligations under treaties, customary int'l law, domestic law)

They enumerate five categories of possible remedies: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence

Tailor priorities to the harm

Each offers a message to victims and society about the harms caused and the dignity that should be accorded victims



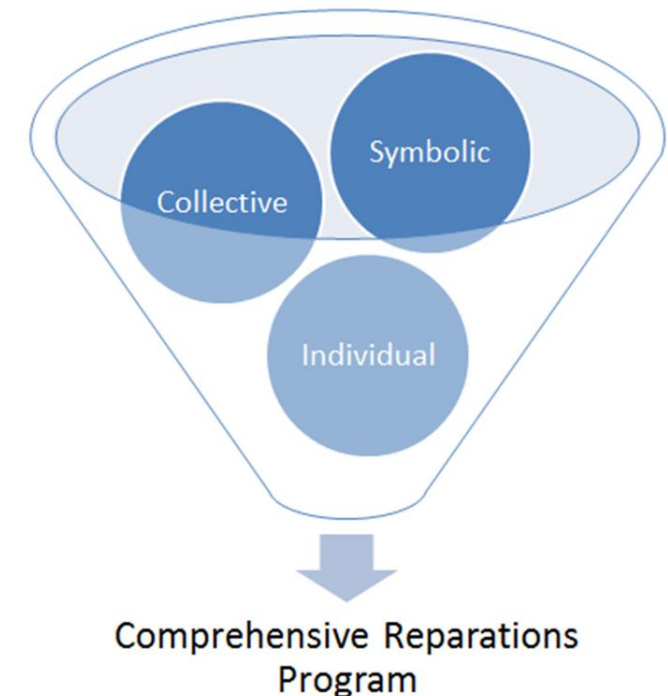
“Reparations—by which I mean the full acceptance of our collective biography and its consequences—is the price we must pay to see ourselves squarely.”

Ta-Nehisi Coates



# REPARATION—A COMPOSITE TERM

- **Measures** taken to remedy a human rights violation, material/moral, individual/collective
- **Compensation**, e.g., one-time payments, pensions, waiver of fees or taxes
- **Restitution of rights**, linked to livelihood, status, relationships or property
- **Physical and psychological rehabilitation**
- **Satisfaction**, the subjective sense that justice had been done, including by punishing perpetrators or the form of truth of finding a missing person
- **Guarantees of non-recurrence**, changes in law and policy
- **Development, assistance, humanitarian relief, recovery and reparations**, similarities and differences





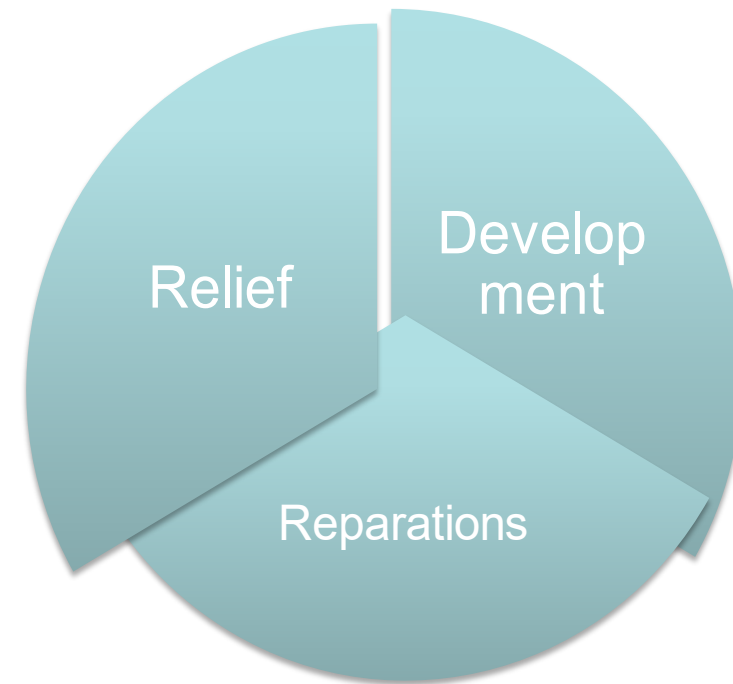
# COLLECTIVE REPARATIONS

- **Crimes that effect the community as a whole or a particular collective**
- Damage to structures and property of community
- Economic impact to community for instance loss of a boat or car that was communal property
- **Collective benefits** for example mental health care (training of local mental health professionals or a mobile clinic)
- Can improving services and access to services not only to victims but to other members of the community.
- Memorials
- Apologies



# REPARATIONS AND DEVELOPMENT

- Collective reparations in the form of development carry less “stigma”
- West Germany: Reparations funded purchases of ships, about a third of the total investment in Israel’s electrical system, and nearly half the total investment in the railways.”
- Morocco & Peru: community initiation
- But.... synergies and differences
- Relief not linked to truth-seeking, to individual accountability, and to State responsibility
- Reparations accompanied by a commitment to ensure it will not happen again.



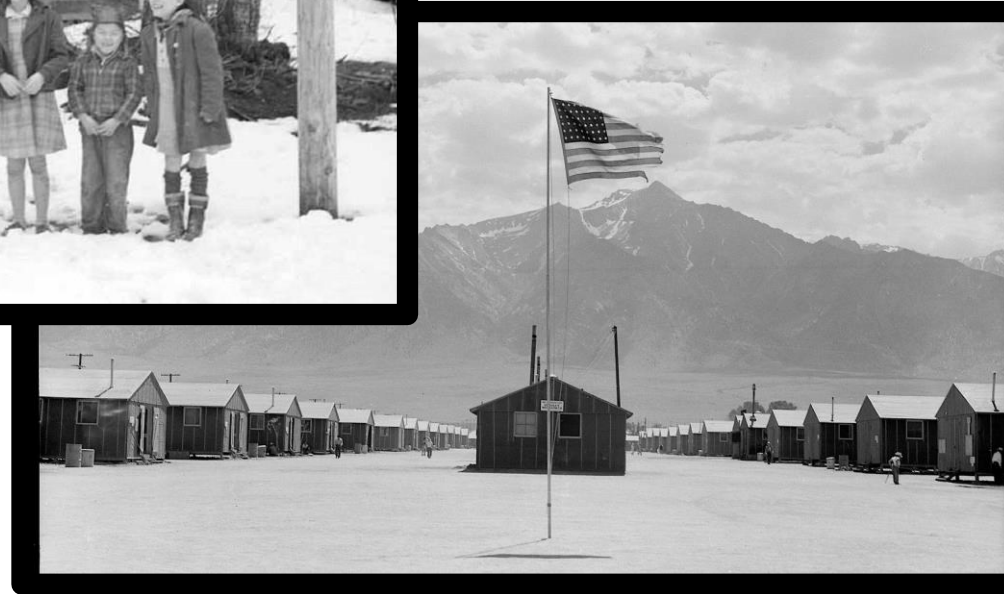
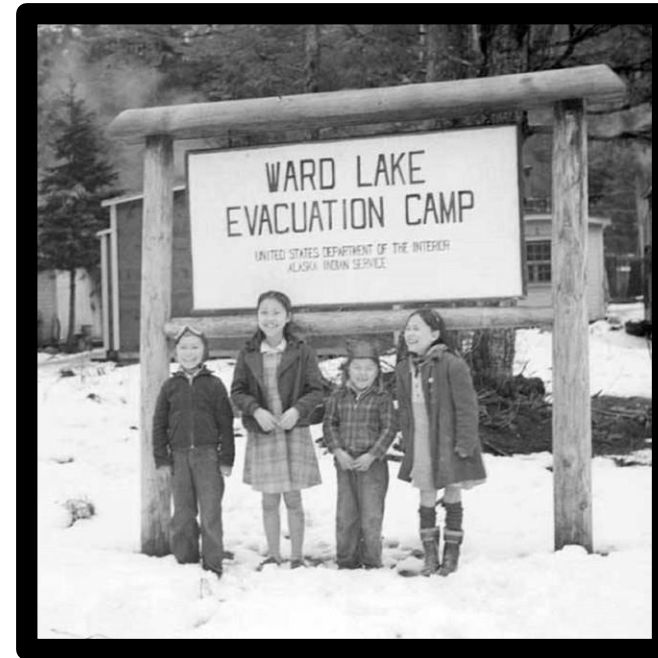
# COMPARATIVE EXAMPLES

- **Look at the process taken for determining the truth and deciding on reparative priorities**
  - WWII Internment: court cases, commission, implementing agencies
  - German: Nuremberg trials, treaties/laws, implementing organizations
  - Sierra Leone, SCSL, TRC, NaCSA, PBF
  - South Africa: TRC, including a Committee on Reparations and Rehabilitation, President's Fund
- **Consider the types of harms identified**
- **Types of reparations provided**
- **Role that victims played in these processes**



# REPARATIONS FOR WWII-ERA INTERNMENT

- President Roosevelt signed Executive Order on February 19, 1942
- **1944:** Supreme Court 6-3 decision, that the detention was a “military necessity” not based on race.
- **1980:** "Commission on Wartime Relocation and Internment of Civilians Act": inquire and “recommend appropriate remedies”
- **1983:** Convicted brought an action to set aside an erroneous judgment resulting from an error of fact in the proceeding.
- **1988:** Implement recommendations of the Commission on Wartime Relocation and Internment of Civilians




Internment camps in Alaska and in  
Manzanar, California



# COMMISSION ON WARTIME RELOCATION AND INTERNMENT

- Seven-members
- Mandated to “review the facts and circumstances surrounding Executive Order Numbered 9066” and “directives...of military forces”
- “Recommend appropriate remedies”
- Held 20 days of hearings in 10 cities (750 witnesses)
  - Acknowledgment of injustices, “unfairly denied fundamental liberties during World War II”
  - An apology on “behalf of the people of the United States”
  - Lump-sum compensation: \$20,000, \$12,000, and restitution for land
  - Inform the public so it doesn’t happen again

SEATTLE JAIC COMMUNITY COMMITTEE ON REDRESS/REPARATIONS  
URGES YOU TO  
**ATTEND THE COMMISSION HEARINGS**



MINDOKA TULELAKE HEART MOUNTAIN TOPAZ POSTON  
GILA RIVER MANZANAR GRANADA JEROME ROHWER

**U.S. COMMISSION ON  
WARTIME RELOCATION AND  
INTERNMENT OF CIVILIANS**

SEATTLE CENTRAL COMMUNITY COLLEGE AUDITORIUM  
1701 BROADWAY • TESTIMONIES WILL BE GIVEN SEPTEMBER 9,10,11,1981

WEDNES. SEPT. 9	THURS. SEPT. 10	FRIDAY SEPT. 11
10:00 AM-5:00 PM 7:00 PM-9:00 PM	10:00 AM-5:00 PM	9:00 AM-5:00 PM

OTHER PROGRAMMING:

WEDNES. SEPT. 9	THURS. SEPT. 10	FRIDAY SEPT. 11
*MINDOKA* (film) Slide presentation	VIDEO TAPED PRODUCTIONS "Justice Overdue" "Return to Mindoka" White River Valley Country Potluck	Legal Remedies Panel Asian Law Association

For further information: Call(206) 623-5088



**Commission hearings before Congress and in the states**



# REPARATIONS FOR WWII-ERA INTERNMENT

## ■ Harms

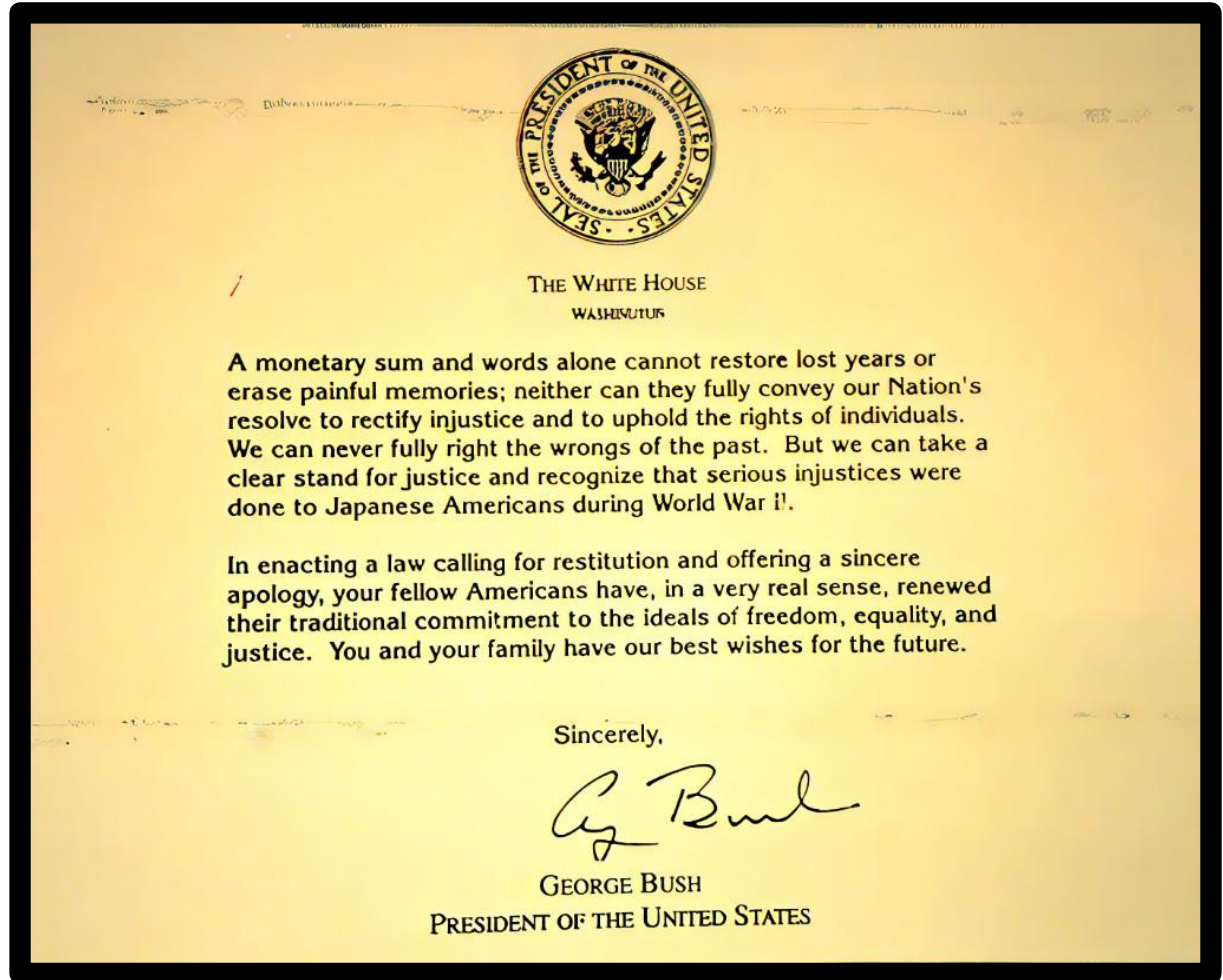
- Wrongful convictions
- Violations of civil liberties
- Injustices suffered and hardships endured during internment
- Personal property taken
- Community property taken or destroyed
- Traditional lands on Attu island not rehabilitated

## ■ Forms of Reparations

- Acknowledgment
- Apology
- Restitution in form of lump-sum payments (\$20,000)
- Public education efforts
- Discourage future injustices and violations of civil liberties

## ■ Implementing Agencies

- Attorney General for reviewing convictions, recommending pardons, and determining eligibility
- Established the Civil Liberties Public Education Fund (9-member board): sponsor research and public educational activities, distribute the hearing findings, and recommendations of the Commission for acknowledgment and remembrance
- \$1.25 billion



# WIEDERGUTMACHEN: “TO MAKE WELL AGAIN...”

- Series of laws establishing reparations for victims persecuted by the Nazi regime from 1933-1945 because of race, religion, or ideology and for opposing the regime
- Luxembourg treaty in 1952 with Israel
- German Federal Reparations for **Individual Victims** of Nazi Persecution (B.E.G. Laws): **compensation – lump-sum, pensions** for loss of life, damage to limb or health, loss of liberty, loss of property or possessions, damage to vocational or economic pursuits
- Public/Private Reparations: **Forced and Slave Labor: individual and collective**
- Compensation, **projects**: Germany: compensation for “damages to freedom” (DM150 per month of custody) and “damages to career or economic advancement”



Because no amount of material compensation could  
“make up” for the unspeakable horrors



# SIERRA LEONE AND DISABLED VICTIMS

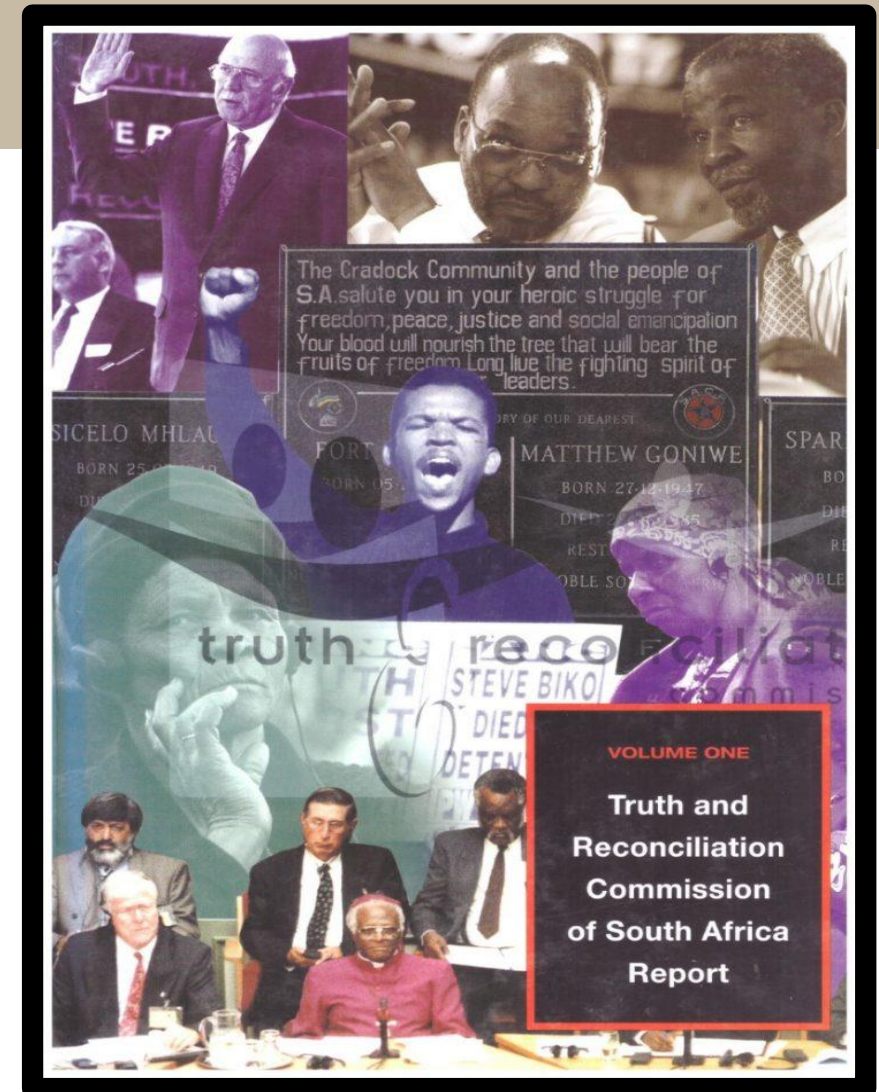
- **Ten-year conflict in Sierra Leone**
- **Social services package for “most vulnerable”**
- **Amputees:** victims who lost their upper/lower limb(s) or both as a result of the conflict.
- **Other War Wounded:** victims who have become temporarily or permanently physically disabled, either totally or partially, as a consequence of the conflict and who as a result have experienced a 50% or more reduction in earning capacity
- **PBF grant, totaling 3 million USD**
- PBF provided \$100,000 in funding to IOM and its implementing partner in Sierra Leone, the Single Leg Amputee Sports Club (SLASC), to develop the capacity of the club. The SLASC serves both war and non-war related amputees in five districts. Although the SLASC chiefly works to provide a place for amputees to gather and play football, the project seeks to promote “coexistence and social acceptance of marginalized groups that are still affected by the legacy of the civil war, in particular access to resources for socio-economic integration in the social fabric of Sierra Leone.





# SOUTH AFRICA TRUTH AND RECONCILIATION COMMISSION

- Seventeen commissioners and a 34-year mandate period
- Three subcommittees, including a **Committee on Reparation and Rehabilitation (CRR)**
- One of the objectives to provide for “the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights...”
- During hearings, CRR established an Urgent Interim Reparations Program for victims with “urgent medical, emotional, educational, material and/or symbolic needs.” Economic compensation and referrals for services
- In addition to interim reparations, a limited number of victims also received one-time payments of approximately US\$4000 (in 2003 values) given as a lump sum.
- Application process underway now by the Department of Justice and Constitutional Development calls for educational assistance (tuition fees).



# PRINCIPLES AND PRECEDENTS, A PARTIAL LIST...

- **Sea Islands, South Carolina:** (1861-1862): land grants, but...
- **Georgetown University scholarships** and Jesuit's commitment
- **Claims of “unjust enrichment”** made against insurance companies
- **Freedwoman Belinda Royall (1783)** petitioned the commonwealth of Massachusetts for reparations: **forced labor and lost wages**



“For generations of unpaid wages”

Brig. General Rufus Saxton



# REPARATIONS, STRUCTURAL RACISM, AND ITS LEGACY

- Germany: compensation for “damages to freedom” (DM150 per month of custody) and “damages to career or economic advancement”
- Moral reparations: Peru & ECCC, projects proposed by civil society
- Standardized set of benefits for within each category of violations like those for victims of enforced disappearance and unlawful killings under the IRP
- Complex program in Sierra Leone for 5 categories of vulnerable victims (war widows, amputees, children, sexual violence victims and disabled)
- Open police records, official archives, Indian boarding schools



'Nkyinkim' by Kwame Akoto-Bamfo -- National Memorial to Peace and Justice Montgomery (AL) March 2019





# MOROCCO MARGINALIZED REGIONS

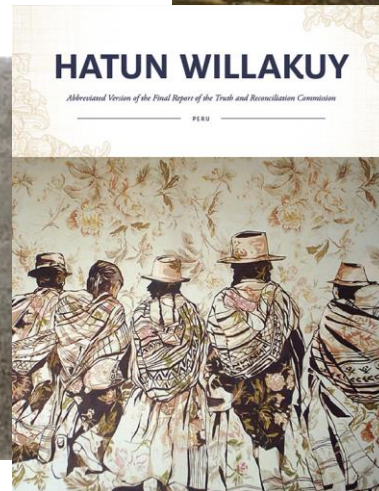


- Individual program for those killed as well as victims of prolonged detention or torture
- CCDH as the policymaking body, together with the Fondation Caisse de Dépôt et de Gestion (a non-profit foundation established and funded by a state-owned financial institution) as the project management agency
- Targets provinces and communes punished collectively for political views
- Community reparations carried out by government bodies and agencies through agreements signed with the CCDH and by local NGOs through calls for proposals funded by government agencies or international donor.
- CCDH created institutional framework to follow up on community reparation program. National steering committee to see to compliance with IER recommendations. Local coordination bodies set up in all regions, as well as a Board of Local coordination bodies.
- CCDH created management units entrusted with technical monitoring of the program.

*Reclaiming Sites of Trauma-From Torture Centers to Museums*



# PERU'S COMMUNITY PROJECTS



*Child develops a list of rights as part of an educational project that incorporated the findings of the Peruvian Truth and Reconciliation*

More than **69,000 people** were killed or forcibly disappeared during Peru's 20-year conflict. Thousands more were victims of torture, illegal detention, sexual violence, forced recruitment, and massive displacement.

- Based on recommendations made by the truth commission in its final report.
- Programs range from specialized health care and education to memorialization and monetary compensation, which is delivered as one-time cash payments of 10,000 soles (or USD\$ 3,700).
- Redress for crimes suffered individually and by communities.
- Communities receive investment projects up to USD \$37,000.
- Based on **priorities negotiated** between communities and state through the creation of local implementation councils.
- More than 5,000 projects registered and assessed. Participatory process for deciding what to do. In 8 years, close to 2,000 communities received a project.



# PROPOSALS

- *Apology: formal, public, and nonpartisan apology by the federal government.*
- *Increase the estate tax – intergenerational holding of wealth*
- *Community land trusts across country*
- *Investments in HBCs*
- *Tax and fee waivers*
- *Direct financial support to victims and/or support for fundamental needs*
- *Low-interest loans without collateral (zero interest loan facilities)*
- *Pensions*
- *Job placement programs and support for employment*
- *Additional job placement programs for victims' children*



possible



# ELIGIBILITY

- *ICTJ, Forms of Justice*
- *Applications*
- *Outreach*
- *Ancestors of Slaves and questions of proof*
- *Victims include family members, including children*



# WHAT YOU AIM TO ACCOMPLISH?

- **What can be done?**

*Not cookie-cutter, no recipe*

*Political processes: transitional justice processes can be disruptive of the “AGENDA” and the public sphere*

*National and local level responsibilities and powers: Brazil, Mexico*

*Not just a snapshot but root causes: understanding **WHAT** and **WHY***

- **Defining priorities? How many processes? When? Linking Mechanisms?**

*Inclusivity in processes and in approach*

*Flexibility: series of commissions (Chile)*

*How to turn knowledge into acknowledgment*

*It’s all about the journey: Building a bridge*

- **Presenting priorities for a shared future?**

*Making findings*

*Laws and more laws*

*Politically feasible*

*Sustaining the energy: Bosnia and the ICTY*

