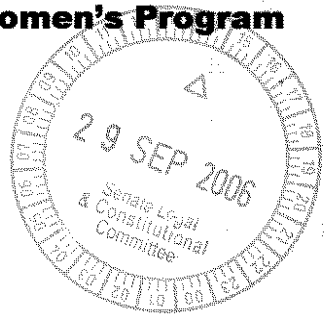
WOMEN'S LEGAL SERVICES NSW

Indigenous Women's Program



SUBMISSION OF

INDIGENOUS WOMEN'S PROGRAM WOMEN'S LEGAL SERVICES NSW

TO

THE SENATE LEGAL & CONSTITUTIONAL REFERENCES COMMITTEE

INQUIRY INTO STOLEN WAGES

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Women's Legal Resources Limited ACN: 002 387 699 ABN: 88 002 387 699

A. INTRODUCTION

1. Women's Legal Services NSW ('WLSNSW') is a Community Legal Centre, specialising in women and children's legal issues. The Service provides specialist legal advice for Aboriginal women in NSW through the Indigenous Women's Program ('IWP') and auspices the Walgett Family Violence Prevention Legal Service and Bourke/Brewarrina Family Violence Prevention Legal Service.

2. IWP welcomes this inquiry by the Senate Legal & Constitutional References Committee ('the Committee'). The issue of Stolen Wages in Australia is complex. Some State Governments have or are attempting to try and resolve these issues by creating Repayment Schemes. The underpayment, withholding and misappropriation of wages and endowments to Aboriginal and Torres Strait Islander peoples were a miscarriage of justice. A second miscarriage of justice will occur if entitlements go unrecognized or are inadequately compensated.

B. SCOPE OF THIS SUBMISSION

3. IWP is currently assisting women with applications to the NSW Aboriginal Trust Fund Repayment Scheme ('NSW ATFRS'). The NSW scheme has been operational since December 2004. IWP provided two submissions to the NSW ATFRS in relation to concerns of our clients (13 August 2004 & 7 April 2005 - see appendices 'A' & 'B').

4. Specifically we wish to comment on item *G* and *I* of the Committee's *Terms of Reference* and the commitment shown by the NSW Government in redressing this gross injustice. We submit that a timely discussion on a federal level to *'set the record straight'* is necessary and welcome a national forum to publicly air this topical issue.

5. We submit the following issues as significant concerns that IWP would like the Commission to take under consideration:

    - The difficulties of next of kin applications under the NSW Scheme
    - Evidence gathering
    - Difficulties of claimants seeking remedy under the NSW Scheme

C. DESCENDANT CLAIMS

"What happened to their ancestors matters to people; recalling the injustices done to their family or community can cause distress. A history of injustices can be demoralizing, destructive of esteem, or the cause of depression."[1]

6. To date the NSW Scheme has proven to be a challenge for people wanting to make a descendant claim. The NSW ATFRS has already identified prioritising direct claimants over descendant claimants[2]. Information is readily available on the NSW ATFRS website for descendants[3]. However whilst a descendant interest can be registered with the NSW Scheme, as of the date of this submission, the NSW Scheme has yet to finalise and distribute descendant application forms or give any guidance as to the amount of monies potentially to be repaid or how long the process will take once an application is lodged by a descendant.

7. We submit that the claim process needs to be as straightforward and expeditious as possible.[4] An accessible, streamlined process is required to minimize disruption and emotional upheaval to claimants.

D. EVIDENCE GATHERING

8. Anecdotal evidence suggests that the evidence gathering processes adopted by some State Governments Schemes has had unintended impact on claimants that has been distressing and traumatic.

9. Under the NSW Scheme the claimant gives the ATFRS the authority to investigate and gather evidence in relation to their application. It appears that there have been situations where the Schemes have uncovered information previously unknown to the Claimant

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[1] "Taking responsibility for the past: Reparation and Historical Injustice" by Janna Thompson. November 2002, Polity Press at p.106.
[2] Section 5.1 Guidelines for the Administration of the NSW Aboriginal Trust Fund Repayment Scheme, February 2006.
[3] http://www.premiers.nsw.gov.au/AboutUs/OurStructure/AboriginalTrustFundRepaymentScheme/PublicationsLinks/default.htm
[4] We refer to Annexure B – IWP Submissions to the NSW ATFRS dated 7 April 2005.

resulting in distress and trauma[5]. There is a plethora of information about the consequences of the 'Stolen Generation' on individuals and communities and the psycho/social impact that experience has had on generations of Indigenous Australians.

10. We submit that the Committee needs to consider the evidence gathering procedures adopted by the State Government Schemes and the wider ramifications of the evidence that is discovered. It is important to acknowledge that the potential information uncovered by these Schemes may have an adverse psycho/social impact on claimants.

E. DIFFICULITES IN SEEKING REMEDIES UNDER THE NSW SCHEME

"Injustice can cast a long shadow. It harms not only its immediate victims. Descendants of these victims are likely to lack resources or opportunities that they would have had if the injustice had not been done, or to have been adversely affected in other ways by the suffering of their parents and grandparents, or by other more indirect social ramifications of the wrong."[6]

11. The fact that the focus of the State Schemes are on debts owed to individual claimants and as such has been properly characterized as a 'repayment' Scheme, would not preclude or make it inappropriate to provide additional reparation/compensation for the long term negative effect on indigenous families and their communities over generations as a result of the fact that monies were not paid at the time they became due.

12. It is submitted that the Committee ought to consider that State Governments should also have an additional compensation component in respect to each claimant to account for issues such as noted above, trauma associated with the evidence gathering. The additional compensation component could account for counseling, both on an individual basis and potentially for family or community groups.

13. The systematic non-payment to indigenous Australians of monies held in trust can properly be characterised as systematic discrimination on the basis of race. Under human rights law

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[5] The IWP received a report of a woman making an application to a scheme of another state who always believed her parents had died when she was a child. Through her application the Scheme uncovered that her parents had not died when she was a child but later on when she was an adult. Obviously this information was distressing to the claimant.

[6] "Taking responsibility for the past: Reparation and Historical Injustice" by Janna Thompson. November 2002, Polity Press at p.104.

principles this gives rise to a right to reparations on the part of claimants and their descendants for such monies.

14. An additional reparation/compensation scheme for individual and/or group counseling assistance would by a symbolic gesture from the State Governments to acknowledge the disadvantaged suffered by claimants that has been compounded and perpetuated through subsequent generations of indigenous Australians.

F. CONCLUSION

15. The issue of descendant claims under the NSW ATFRS has yet to be resolved. IWP urges the Committee to recognize in it's report that if the NSW Government adopts inadequate processes that do not clarify descendant entitlements under the Scheme then a second miscarriage of justice will occur.

16. The IWP supports item I in the Committee's Terms of Reference. It is clear that this country needs to discuss these issues on a National level to 'set the record straight' and to inform the public of the gross violation of human rights that occurred in Australia during the 20th century.

29 September 2006
Indigenous Women's Program
Women's Legal Services NSW

"A"

WOMEN'S LEGAL SERVICES NSW

Incorporating
Women's Legal Resources Centre
Domestic Violence Advocacy Service
WDVCAP Training & Resource Unit
Indigenous Women's Program
Walgett Violence Prevention Service

13 August 2004
Our ref: CC:JW:9907205

Isobel Bothwell
Aboriginal Trust Fund Reparation Scheme
Locked Bag 28
Ashfield NSW 1800

BY FACSIMILE: 02 9716 2290

Dear Ms Bothwell,

RE: ABORIGINAL TRUST FUND REPARATION SCHEME

We refer to your advertisement in the Sydney Morning Herald and the Koori Mail and would like to respond to your request for feedback with the following submission and attached schedule[1].

Women's Legal Services NSW provides services to Aboriginal women through our Indigenous Women's Program and auspices the Walgett Violence Prevention Service. Women's Legal Services NSW is a community legal centre, specialising in women and children's legal issues. Women's Legal Services NSW provides legal advice for all women in NSW through telephone legal advice services and legal outreach services for women in Western Sydney.[2] The Service undertakes casework and regularly represents women seeking Apprehended Violence Orders at Court. The Service also provides community legal education programs to women in both metropolitan Sydney and rural areas across NSW.

In making this feedback we are drawing on the views of our clients Beryl Ah Sam and Muriel Brandy, the surviving children of Mrs Alice Carney (nee Fox).

Factual Background

- Mrs. Carney was removed from her family and put into domestic service by the Aborigines Protection Board (the "Board") in 1928 when she was 12 years and 8 months old.
- The Board has a record of earnings of Mrs. Carney between 6 June 1930 and 4 June 1931 together with the interest to 1 July 1933 amounting to 6 pounds, 18 shillings and 5 pence.

[1] We thank the work of Freehills in the preparation of the Schedule, in particular the work of Desmond Sweeney, Georgina Robinson and especially Brooke Massender.
[2] at Campbelltown, Fairfield, Penrith, Blacktown, Liverpool and Wyong.

- Mrs. Carney left her employment in 1931.

- There is no evidence as to whether any wages accrued to Mrs. Carney during the period 31 May 1928 to 6 June 1930, although Beryl Ah Sam and Muriel Brandy have instructed us that Mrs. Carney told them she worked during this period.

- There is also no evidence that Mrs. Carney was ever paid the wages accrued to her by the Board, and Beryl Ah Sam and Muriel Brandy have advised us that she informed them she was never paid.

Negotiations undertaken to date

- Negotiations were entered into with the State Government through the Department of Community Services beginning in 1997. After a long period of inaction, a complaint was made to the Minister of Community Services, Faye LoPo and the Minister for Aboriginal Affairs, Andrew Refshauge.

- As a result of the above complaint, a meeting was requested between our clients and Carmel Niland, Director General of DoCS that took place on 2 September 1999. DoCS' stated reason for convening the meeting was for our clients' to be given a formal apology for the delay, the manner in which the case had been handled and to further discuss how the claim was to proceed in the future.

- It has been made clear by DoCS from telephone conversations and correspondence as early as 28 April 1998, and at the above meeting on 2 September 1999, that they have accepted the validity of our client's claim. Negotiations with the Department have at all times proceeded on this basis with the principal issues being one of the assessment of quantum and the appropriate way to assess compensation entitlements.

Eligibility to the Aboriginal Trust Fund Reparation Scheme

In relation to your request for feedback, we wish to specifically address the issue of how the proposed scheme should make payments to the beneficiaries of deceased estates.

Difficulties and inefficiencies associated with the current legal avenues available to heirs of claimants

- We direct you to section two of the schedule, that states "an accessible, streamlined process is required in order to obviate the need for the heirs of indigenous claimants to navigate the current complex, costly, unfamiliar and intimidating legal processes involved in seeking justice."[3]

- We submit that without a statutory scheme, heirs of deceased claimants will be forced to pursue legal remedy through the Court process that is both time-consuming and expensive. For our clients, seeking formal redress through the Court system is highly problematic.

[3] See 2(a) of the Schedule

- It is also submitted that making a claim through the Courts also places a huge burden on both our clients and on the judicial system.

Legislative Scheme

- It is submitted that the real challenge for the Aboriginal Trust Fund Reparation Scheme will be the statutory difficulties in relation to the beneficiaries of deceased estates.

- We further submit that this obstacle could be overcome if the scheme is supported by legislation that sets out comprehensible rules of entitlements.[4]

Human Rights Perspectives

- We note that in terms of human rights, a denial of reparations, as outlined in section four of the schedule, can be seen as a systemic racial discrimination and in breach of international human rights law principles, most notably the United Nations Charter of 1945, the Universal Declaration of Human Rights 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

- We also note the principles established by the United Nations in the 1993 and 1996 van Boven Reports. The 1996 Report advised that reparations for victims of violations of human rights may be claimed by the direct victims, the immediate family, dependents or other persons or groups of persons connected with the direct victims.[5]

- We submit that under international human rights norm our clients are entitled to some form of reparation.

Conclusion

- We submit that it is important for the NSW Government to acknowledge the injustice suffered by indigenous people in this state by the historic failures to adequately provide payments that they were legally entitled to.

- We submit that any form of reparations under the Scheme has to be accessible. Alternative legal recourse is expensive, time consuming, administratively complex and ultimately onerous on claimants as well as the judicial system.

- We submit that if the process adopted by the scheme is not readily accessible to claimants, a direct result will be the continuation of the inequity suffered by those not paid their entitlements and more importantly perpetuating a cycle of intergenerational disadvantage.

We thank you for the opportunity to provide our feedback. Please contact Catherine Carney or Jenny Wong if you require further comments or information on 02 9749 7700.

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[4] See 3 of the Schedule
[5] See 4.4 and 4.5 of the Schedule

Yours faithfully,

Catherine Carney
Principal Solicitor
Women's Legal Services NSW

Schedule

1 Introduction

A key issue for the consideration of the panel administering the Aboriginal Trust Fund Reparation Scheme (**scheme**) will be "how do we make payments if people are no longer living"?[1]

Our primary submission is that the heirs of deceased "members of indigenous communities who have been denied access to wages, allowances and pensions held in trust by the Aborigines Welfare Board (and subsequently the New South Wales (NSW) Government)" (**claimants**), must also be entitled to make a claim for reparation under any potential scheme.

This submission focuses on the issue of the eligibility of heirs of deceased claimants to make a claim under any potential scheme, and aims to provide assistance to the panel as to how to proceed in circumstances where:

(a) monies were held in trust for the claimant;

(b) monies were owed to the claimant under the trust;

(c) the claimant was not paid the monies owing; and

(d) the claimant is deceased.

As a preliminary matter, it is clear that in such circumstances the NSW Government owes a debt which constitutes property of the personal estate of the deceased.[2]

This submission aims to highlight the practical difficulties that would be encountered by the heirs of claimants in the event that any reparation scheme introduced did not extend to them, as there are various difficulties and inefficiencies associated with the current legal avenues available to heirs of claimants in attempting to obtain redress.

It is submitted that the difficulties and inefficiencies associated with the current legal avenues available to heirs of claimants could be avoided if the any reparations scheme is

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1 Aboriginal Trust Fund Reparation Scheme Media Release dated Friday 18 June 2004.

2 Section 3 of the *Wills, Probate and Administration Act 1898* No. 13 defines "personal estate" to include "moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods..." etc.

underpinned by legislation which sets out clear rules for entitlement in relation to heirs of deceased claimants.

Finally, the submission will outline how the systematic non-payment to indigenous Australians of monies held in trust under the auspices of the Aborigines Protection Board and later Aborigines Welfare Board, can properly be characterised as systemic discrimination on the basis of race. Under human rights law principles this gives rise to a right to reparations on the part of the victims and their descendents for such monies.

"The difficulties and inefficiencies associated with the current legal avenues available to heirs of claimants could be avoided if the any reparations scheme is underpinned by legislation which sets out clear rules for entitlement in relation to heirs of deceased claimants."

2 Difficulties and inefficiencies associated with the current legal avenues available to heirs of claimants

(a) Disadvantages of having to bring a legal action

The heirs of deceased claimants must be afforded a statutory entitlement to make a claim for reparation under any potential scheme. An accessible, streamlined process is required in order to obviate the need for the heirs of indigenous claimants to navigate the current complex, costly, unfamiliar and intimidating legal processes involved in seeking justice.

If the scheme does not make such provision, then the heirs of deceased claimants will be forced to pursue the alternative avenue of legal redress though the courts. This would inevitably be expensive, time consuming, administratively complex and would place a huge burden on both the indigenous community and on the judicial system. If all of the heirs of deceased claimants were forced to pursue their rights to the property of the deceased estate through the courts this would lead to a grave waste of legal resources.

"An accessible, streamlined process is required in order to obviate the need for the heirs of indigenous claimants to navigate the current complex, costly, unfamiliar and intimidating legal processes involved in seeking justice."

"The alternative avenue of legal redress in the courts is expensive, time consuming, administratively complex and burdens both the indigenous community and the judicial system."

(b) Legal and bureaucratic obstacles associated with the administration of estates

In order to bring an action to recover property of the deceased estate, an heir of a claimant who died intestate would face the preliminary administrative hurdle of having to obtain Letters of Administration. This would generally involve the following procedural steps:

- Under section 61 of the *Wills Probate and Administration Act 1898 (NSW)* No 13 the estate of a deceased person who dies intestate is vested in the Public Trustee.[3] The Public Trustee holds the estate, subject to the payment of funeral expenses, debts and other liabilities, for the benefit of deceased's spouse, children, parents or other remaining family as applicable.[4]
- The court may then grant administration of the estate to the spouse of the deceased or one or more of the next of kin.[5] Depending on the precise circumstances, the administrator may be required to furnish a bond supported by two sureties as security against loss caused by improper administration of the

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3 **"61. Property of deceased to vest in Public Trustee**

(1) From and after the decease of any person dying testate or intestate, and until probate, or administration, or an order to collect is granted in respect of the deceased person's estate, the real and personal estate of such deceased person shall be deemed to be vested in the Public Trustee in the same manner and to the same extent as aforetime the personal estate and effects vested in the Ordinary in England." *Wills Probate and Administration Act 1898* (NSW) No 13.

4 **"61B. Succession to real and personal property on intestacy**

(1) Where a person dies wholly intestate, the real and personal estate of that person shall, subject to the payment of all such funeral and administration expenses, debts and other liabilities as are properly payable out of that estate, be distributed or held in trust in the manner specified in this section, and the real estate of that person shall be held as if it had been devised to the persons for whom it is held in trust under this section.

(2) If the intestate leaves a spouse but no issue, the estate shall be held in trust for the spouse absolutely.

...

(4) If the intestate leaves issue but no spouse, the estate shall be held in statutory trust for the issue of the intestate." etc

"61C. Statutory trusts in favour of issue and other classes of relatives of interstate

(1) Where under this Division the estate, or any part of the estate, of an intestate is directed to be held in statutory trust for the issue of the intestate, that estate or part shall be held in trust:

(a) for any child of the intestate, or if more than one, for any children of the intestate in equal shares, living at the death of the intestate..." etc *Wills Probate and Administration Act 1898* (NSW) No 13.

5 **"63. To whom administration may be granted**

The Court may grant administration of the estate of an intestate person to the following persons, not being minors, that is to say to:

(a) the spouse of the deceased, or

(b) one or more of the next of kin, or

(c) the spouse conjointly with one or more of the next of kin, of if there be no such person or no such person within the jurisdiction:

(i) who is, of the opinion of the Court, fit to be so trusted, or

(ii) who, upon being required in accordance with the rules, or as the Court may direct, to pay for administration, complies with the requirement or direction,

then to:

(d) any person, whether a creditor or not of the deceased, that the Court thinks fit." *Wills Probate and Administration Act 1898* (NSW) No 13.

estate.[6] The amount of the bond will be equal to the value of the property of the estate, unless the court exercises its discretion to dispense with the bond.[7]

- Bringing an application for Letters of Administration can, depending on the precise circumstances, involve having to complete and file, for example: a notice of intended application for administration,[8] an Affidavit of applicant for administration,[9] a consent to administration and Affidavit of witness to consent,[10] an administration bond,[11] an Affidavit of surety,[12] and, particularly in the case of indigenous Australians, Affidavits evidencing or negativing a de facto relationship.[13]

(c) Particular disadvantages for indigenous communities

The current law in NSW in relation to the administration of estates is particularly ill suited to the needs of the indigenous community due to the following factors:

- It is often the case that there are no significant assets within indigenous families and therefore members of the indigenous community have very little experience in dealing with estates.
- Members of the indigenous community would have serious difficulties with the formality and administrative complexity associated with the administration of estates. It was recently noted by Murray Chapman, the administrator of the NSW Aboriginal Land Council, that:

  "Aboriginal people live on the margins of our economy and to a lot of [them] the most substantial commercial transaction [they] have been involved in is the purchase of a motor car."[14]

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6 Supreme Court Rules Part 78 Rule 24A(5) and Section 64 *Wills Probate and Administration Act 1898* (NSW) No 13:

"64. Administration bond to be executed

(1) Every person to whom a grant of administration is made shall, previous to the issue of such administration, execute a bond to Her Majesty and her successors with one or more sureties conditioned for duly collecting, getting in, and administering the personal estate or real and personal estate of the deceased, which bond shall be in the form directed by the rules."

7 The court has the discretion to dispense with or limit the bond (section 65 *Wills Probate and Administration Act 1898* (NSW) No 13 read with Supreme Court Rules Part 78 rule 24A(6)).

8 Supreme Court Rules Part 78, Rule 10. Supreme Court prescribed Form 92.

9 Supreme Court Rules Part 78, Rule 24A,(2)(a), 25(2)(a), 25A(2)(a). Supreme Court prescribed Form 98.

10 Supreme Court Rules Part 78, Rule 24A(3)(a), and 25A(3)(a). Supreme Court prescribed Form 101.

11 Supreme Court Rules Part 78, Rule 24A(5). Supreme Court prescribed Form 102.

12 Supreme Court Rules Part 78, Rule 24A(8). Supreme Court prescribed Form 103.

13 Supreme Court Rules Part 78, Rules 25A(2)(d). Supreme Court prescribed Form 103A.

14 "Millions lost from land grants" by Debra Jopson and Gerard Ryle Sydney Morning Herald 31 July 2004.

- The legal and administrative processes involved in obtaining Letters of Administration are complex and bureaucratic and would necessitate obtaining legal advice which members of the indigenous community generally cannot afford.

(d) Cost and economic efficiency

The relative cost of bringing a claim, as compared to the actual value of the claim, is such that in many cases it would be economically inefficient to proceed with an action for recovery of trust monies.

It is probable that many claimants, or heirs of claimants, have claims the current value of which is a few thousand dollars plus interest.

The cost of obtaining Letters of Administration, including fees for associated legal advice and filing costs, could absorb a disproportionate component of the unpaid wages.

It is essential that any reparations scheme that is implemented provides an economically efficient method of recovery where costs are kept to a bare minimum, particularly in relation to lawyers fees and other costs associated with the provision of legal services.

There needs to be an efficient scheme that avoids the need to obtain Letters of Administration.

"The legal and administrative processes involved in obtaining Letters of Administration are complex and bureaucratic and would necessitate obtaining legal advice which members of the indigenous community generally cannot afford."

"There needs to be an efficient scheme that avoids the need to obtain Letters of Administration."

3 Legislative scheme

The proposed reparation scheme should be underpinned by legislation which sets out clear rules for entitlement in relation to heirs of deceased claimants.

A direct statutory provision dealing with the rights of the heirs of deceased claimants is required:

- to avoid the need for heirs to engage in the complex and legalistic procedures involved in obtaining Letters of Administration;
- to reduce the financial cost for heirs in applying for Letters of Administration and other legal services;
- to reduce the burden on the court system; and
- in the interests of economic efficiency, particularly in light of the relatively minor quantum of the majority of claims.

Any potential legislation should include direct provisions for the heirs of deceased claimants, an example of such a clause is set out below:

Payments in the case of deceased claimants

(a) In the case of a claimant who is deceased at the time of payment under this section, such payment shall be made only as follows:

(i) If the claimant is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the claimant who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no living children described in clause (ii), such payment shall be made in equal shares to the grandchildren of the claimant who are living at the time of payment etc

(b) For the purposes of this paragraph:

(i) the spouse of a claimant means a wife or husband of a claimant who was married (or recognised as married in accordance with Aboriginal customs or laws of the claimant or in a de facto relationship) to that claimant for at least 1 year immediately before the death of the claimant;

(ii) a "child" of a claimant includes a recognized natural child, a stepchild who lived with the eligible individual in a regular parent-child relationship, and an adopted child.

4 The right to reparations – a human rights perspective

4.1 Summary

In this section it is submitted that the systemic and repeated non-payment to indigenous Australians of monies held in trust under the auspices of the Aborigines Protection Board and later Aborigines Welfare Board, can properly be characterised as systemic discrimination on the basis of race.

This proposition can be tested simply by asking whether there is any other group of persons which has not been paid wages held in trust by the NSW Government or NSW Government agencies or statutory Boards? The answer is a clear no. This conduct applied only to indigenous Australians. Even if, the discrimination was not intentional, it was:

- systemic;
- carried out over a considerable period of time; and
- repeated.

Accordingly, the conduct of the Aborigines Protection Board and later the Aborigines Welfare Board clearly constitutes systemic discrimination on the basis of race. Systemic discrimination on the basis of race constitutes a violation of human rights.

When human rights are violated by States this gives rise to a right to reparation on the part of the victim:

> "... the obligations resulting from State responsibility for breaches of international human rights law entail corresponding rights on the part of individual persons and groups of persons who are under the jurisdiction of the offending State and who are victims of those breaches. The principal right these victims are entitled to under international law is the right to effective **remedies and just reparations**".[15]

"The conduct of the Aborigines Protection Board and the Aborigines Welfare Board constitutes systemic discrimination on the basis of race."

[15] van Boven, T. 1993: *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*: Final report submitted by Mr Theo van Boven, Special Rapporteur, UN Doc: E/CN.4/Sub.2/1993/8 paragraph 45.

4.2 Systemic racial discrimination as a violation of international human rights law principles

There are various international instruments which impose obligations upon Australia relating to the elimination of racial discrimination:

(a) **United Nations Charter of 1945**

Racial discrimination was recognised as contrary to international law pursuant to the establishment of the United Nations in 1945. The UN Charter, which Australia ratified in that year, provides that:

> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> ...
>
> (c) universal respect for, and observance, of human rights and fundamental freedoms for all without distinction as to **race**, sex, language or religion" (Article 55)

(b) **Universal Declaration of Human Rights of 1948**

Article 1 of the 1948 Universal Declaration of Human Rights provides that: "All human beings are born free and equal in dignity and rights". Article 2 states that:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as **race**, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Furthermore, Article 8 states that:

> "Everyone has the **right to an effective remedy** by the competent national tribunals for acts violating the fundamental rights granted...by the constitution or by law"

The Universal Declaration set out a catalogue of human rights to which everyone is entitled without any distinction based on race. Indigenous Australian families and children under the auspices of the Aborigines Protection Board and later Aborigines Welfare Board were repeatedly denied equal enjoyment of virtually all the rights recognised by the Universal Declaration.

(c) **International Convention on the Elimination of All Forms of Racial Discrimination of 1965**[16]

The International Convention on the Elimination of All Forms of Racial Discrimination, finalised in 1965 and ratified by Australia in 1975, gave greater precision to principles that were already acknowledged as part of international law. Article 6 of the Convention provided:

> "States Parties shall assure to **everyone** within their jurisdiction effective **protection and remedies**, through the competent national tribunals and other State institutions, against any acts of **racial discrimination** which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate **reparation** or satisfaction for any damage suffered as a result of such discrimination."

(d) **Continued failure of the NSW Government to remedy non-payment of trust monies**

It was clear from 1945 onwards that the prohibition of systemic racial discrimination and the right to an effective remedy for such breaches of human rights were both internationally recognised legal norms.

Notwithstanding the introduction of instruments such as the UN Charter, the Universal Declaration and the International Convention, the NSW Government has failed in the decades since to remedy the non payment of wages held in trust funds. This is particularly reprehensible considering the number of claimants who had wages withheld in the first half of the century who have died over recent decades. Unless the right to claim reparations in respect of unpaid trust monies is extended to the heirs of deceased claimants, the NSW Government will remain unjustly enriched. It will also be in breach of international legal norms.

"Unless the right to claim reparations in respect of unpaid trust monies is extended to the heirs of deceased claimants, the NSW Government will remain unjustly enriched. It will also be in breach of international law norms.

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16 Entered into force for Australia on 30 October 1975.

4.3 UN human rights principles – the van Boven report

Over the past fifteen years the United Nations (UN) has been developing a set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law. Whilst such guidelines may not be of binding force in domestic law, the principles enunciated represent an international norm and an appropriate benchmark.

The initial incarnation of these principles was drafted by Special Rapporteur Mr Theo van Boven, and attached to his 1993 report to the UN Commission[17] which stated:

> "1. Under international law, **the violation of any human right gives rise to a right of reparation for the victim**. Particular attention must be paid to gross violations of human rights and fundamental freedoms, which include at least the following: genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and **systematic discrimination**, in particular based on **race** or gender."[18]

It is universally recognised that systemic racial discrimination is generally prohibited by customary international law where ever it forms part of State policy.[19]

It is submitted that the repeated non-payment of wages held in trust for indigenous Australians by the Aborigines Protection Board and later Aborigines Welfare Board could properly be characterised as systemic discrimination on the basis of race.

The van Boven Report identified indigenous rights as an issue of special interest and attention:

> "Vital to the life and well-being of indigenous peoples are land rights and rights relating to natural resources and the protection of the environment. Existing and emerging international law concerning the rights of indigenous peoples lays special emphasis on the protection of these collective rights and stipulates the entitlement of indigenous peoples to compensation in the case of damages resulting from exploration and exploitation programmes pertaining to their lands, and in case of relocation of **indigenous peoples**."[20]

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17 van Boven, T, 1993: *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*: Final report submitted by Mr Theo van Boven, Special Rapporteur, UN Doc: E/CN.4/Sub.2/1993/8.

18 United Nations document number E/CN.4/Sub.2/1993/8 page 56 - http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1b5e2c6a294f7bec1256a5b00361173?Opendocument

19 See for example, *Restatement of the Law: Third Restatement of US Foreign Relations Law* Vol 2 (1987) at § 702 "Customary international law of human rights."

20 United Nations document number E/CN.4/Sub.2/1993/8 page 9 paragraph 17 - http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1b5e2c6a294f7bec1256a5b00361173?Opendocument

The van Boven Report concluded:

> "It appears that large categories of victims of gross violations of human rights, as a result of the actual contents of national laws or because of the manner in which these laws are applied, **fail to receive the reparation which is due to them**. Limitations in time, including the application of **statutory limitations**; restrictions in the definition of the scope and nature of the violations; the failure on the part of authorities to acknowledge certain types of serious violations; the operation of amnesty laws; the **restrictive attitude of courts**; the incapability of certain groups of victims to present and to pursue their claims; **lack of economic and financial resources**: the consequence of all these factors, individually and jointly, is that the principles of equality of rights and due reparation of all victims are not implemented."[21]

4.4 van Boven's revised report

In 1996 Special Rapporteur van Boven published a set of revised basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law which included the following relevant principles:

> "1. Under international law **every State has the duty to respect and to ensure respect for human rights and humanitarian law.**
>
> 2. The obligation to respect and to ensure respect for human rights and humanitarian law **includes the duty**: to prevent violations, to investigate violations, to take appropriate action against the violators, and **to afford remedies and reparation to victims**. Particular attention must be paid to the prevention of gross violations of human rights and to the duty to prosecute and punish perpetrators of crimes under international law.
>
> ...
>
> *Reparation*
>
> 6 Reparation may be claimed individually and where appropriate collectively, **by the direct victims, the immediate family, dependants** or other persons or groups of persons connected with the direct victims.
>
> 7 In accordance with international law, **States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations**. Reparation shall render justice by removing or redressing the

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[21] United Nations document number E/CN.4/Sub.2/1993/8 page 49 paragraph 124 - http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1b5e2c6a294f7bec1256a5b00361173?Opendocument

consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8 Every State shall make known, through public and private mechanisms, both at home and where necessary abroad, the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights and humanitarian law. **Civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations.**"

4.5 Bassiouni's revised basic principles

The basic principles conceived by van Boven are still being considered and revised by the UN and are evolving in response to consultation with member states.[22]

In 1998, the Commission on Human Rights appointed Mr M. Cherif Bassiouni to further revise the draft principles and guidelines, taking into account the views of States and NGOs.[23] In 2000 Mr Bassiouni submitted his final report to the Commission on Human Rights, to which the revised basic principles were annexed.[24] The revised basic principles proscribe an unconditional obligation on States to ensure that their domestic legislation provides for adequate, effective and proportional reparations, applicable to all human rights violations and in keeping with international law.

Relevantly, revised basic principle 2(c) states that States *shall* ensure that domestic law makes adequate, effective and prompt reparation. Such reparation should, according to principle 15, be proportional to the gravity of the violation and the harm suffered.

This obligation placed on States is further developed by the obligations contained in basic principles 3(d) and (e) to afford appropriate remedies to victims; and to either provide or facilitate reparation to victims of violations of international human rights law or humanitarian law.

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22 See United Nations document number E/CN.4/2003/63 - http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/cfa3b412f00b0486c1256cd30049e591/$FILE/G0312853.pdf

23 Mr Bassiouni was appointed pursuant to Commission on Human Rights resolution 1998/43 (E/CN.4/RES/1998/43, 17 April 1998).

24 See Final report of the Special Rapporteur, Mr M Cherif Bassiouni E/CN.4/2000/62 Annex, (available at http://www.unhchr.ch/huridocda/huridoca.nsf/testframe/42bd1bd544910ae3802568a20060e21?Opendocument) The revised basic principles are attached and marked Annexure A.

Basic principle 7 states that statutory limitations should not unduly restrict the ability of a victim to pursue civil claims. This principle addresses the concern outlined by van Boven in his 1993 report that the application of statutory limitations can present a practical impediment to effective reparations.[25]

Basic principle 8 makes it clear that dependents or family members who have suffered economic harm are also included.

Under basic principle 11 a victim is afforded a right to access justice and also to access the factual information concerning the violations. It is submitted that, in the present context, the application of principle 11, in concert with basic principle 26 (relating to public access to information), should oblige the NSW Government to mandate access to all NSW Government archives and records concerning wages, pensions and other monies held in trust.

Principle 12(a) requires that States should make all available remedies known to potential claimants through public and private mechanisms. Accordingly, any reparation scheme implemented as a result of the current consultation processes should be widely publicised, not only in the national media but also within remote indigenous communities in rural NSW.

Under basic principle 12(c) States should "make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation". The application of this principle should oblige the NSW Government to establish an effective and accessible legislative mechanism for making claims for reparations which extends to the heirs of claimants.

Basic principle 21 provides for several different forms of reparation, that States are obliged to provide to the victims of human rights violations, including restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

Relevantly, basic principle 23(c) notes that compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as material damages and loss of earnings, including earning potential.

Further, basic principle 25(b) notes that guarantees of non-repetition should include "verification of the facts and full and public disclosure of the truth". It is submitted that

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25 United Nations document number E/CN.4/Sub.2/1993/8 page 49 paragraph 124 - http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1b5e2c6a294f7bec1256a5b003611732?Opendocument.

this supports the contention that the responsibility should be on the NSW Government to identify potential claims on the basis of NSW Government records.

The Commission on Human Rights noted the revised principles on 18 January 2000. In its resolution 2002/44, the Commission on Human Rights requested the High Commissioner for Human Rights to hold consultative meetings for interested states and NGOs with a view to finalising the basic principles. The outcome of these consultations was reported in a report of the Rapporteur to the Human Rights Commission on 27 December 2002. The report recommended establishing a mechanism for finalizing the principles and for taking into account the discussions held during the consultative process.

Although the basic principles do not currently have the status of rules of international law, and remain under consideration by the United Nations, this does not affect their influence or appropriateness as international norms for guiding the development of an appropriate statutory scheme in NSW for the Aboriginal Trust Fund Reparation Scheme. The basic principles are a synthesis of existing standards from a variety of international and domestic human rights sources, including several of the main human rights treaties to which Australia is a party.

Drawing on both international human rights and humanitarian law, they assist in consolidating and systematizing the *corpus juris*, and they provide guidance at national and international levels.

Additionally, Australian courts have generally regarded customary international law as a "source" or "influence" on the common law, rather than a part of it.[26] Statutes are generally read to be consistent with customary international law, where no express legislative intention is evinced.[27] Accordingly, the importance of international law as an influence on domestic law is acknowledged in our legal framework. International norms as to reparations, including making reparations available to heirs of deceased claimants, are appropriate benchmarks for the panel to have regard to in developing the Aboriginal Trust Fund Reparation Scheme.

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26 *Mabo v Queensland* (1992) 107 ALR 1 at 42 (Brennan J, Mason CJ and McHugh J concurring.)

27 *Polites v Commonwealth* (1945) 70 CLR 60 at 77.

4.6 Summary of principles to be derived from international norms:

- *Inequality brought about by racial discrimination is often compounded by lack of economic and financial resources to pursue claims for compensation.*

- *Under international law, the violation of human rights due to systemic discrimination on the basis of race, gives rise to a right of reparation for the victim.*

- *Statutory limitations should not unduly restrict the ability of a victim to pursue reparations in relation to civil claims.*

- *Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as material damages and loss of earnings*

- *Reparations should be paid to heirs where the original claimant is now deceased..*

- *Guarantees of non-repetition should include verification of the facts and full and public disclosure of the truth.*

5 Conclusion

An accessible, streamlined legislative process is required in order to obviate the need for the heirs of indigenous claimants to navigate the current complex, costly, unfamiliar and intimidating legal processes involved in seeking justice.

The alternative avenue of legal redress in the courts is expensive, time consuming, administratively complex and burdens both the indigenous community and the judicial system.

The disadvantage suffered by direct claimants at the hand of the Aborigines Protection Board and later Aborigines Welfare Board will be compounded and perpetuated through subsequent generations if the heirs of deceased claimants are not eligible for payments under any scheme implemented.

In relation to intergenerational disadvantage, it has been commented that:

> "Injustice can cast a long shadow. It harms not only its immediate victims. Descendants of these victims are likely to lack resources or opportunities that they would have had if the injustice had not been done, or to have been adversely affected in other ways by the suffering of their parents and grandparents, or by other more indirect social ramifications of the wrong."[28]

Further:

> "What happened to their ancestors matters to people; recalling the injustices done to their family or community can cause distress, A history of injustices can be demoralising, destructive of esteem, or the cause of depression."[29]

"A failure to compensate the heirs of claimants would perpetuate a cycle of intergenerational disadvantage."

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28 "Taking responsibility for the past: Reparation and Historical Injustice" by Janna Thompson, November 2002, Polity Press at page 104.

29 Taking responsibility for the past: Reparation and Historical Injustice" by Janna Thompson, November 2002, Polity Press at page 106.

ANNEXURE A

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW[30]

I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

1. Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, inter alia:

   (a) Contained in treaties to which it is a State party;
   (b) Found in customary international law; or
   (c) Incorporated in its domestic law.

2. To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:

   (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

   (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

   (c) Making available adequate, effective and prompt reparation as defined below; and

   (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

II. SCOPE OF THE OBLIGATION

3. The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, inter alia, a State's duty to:

   (a) Take appropriate legal and administrative measures to prevent violations;

   (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;

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30 See Final report of the Special Rapporteur, Mr M Cherif Bassiouni E/CN.4/2000/62 Annex, (available at http://www.unhchr.ch/huridocda/huridoca.nsf/testframe/42bd1bd544910ae3802568a20060e21f?Opendocument)

(c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;

(d) Afford appropriate remedies to victims; and

(e) Provide for or facilitate reparation to victims.

III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

4. Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.

5. To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

IV. STATUTES OF LIMITATIONS

6. Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.

7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is "a victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

9. A person's status as "a victim" should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

VI. TREATMENT OF VICTIMS

10. Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. VICTIMS' RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim's right to:

(a) Access justice;

(b) Reparation for harm suffered; and

(c) Access the factual information concerning the violations.

VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

(a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

(b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

13. In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

14. The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which

an individual may have legal standing and should be without prejudice to any other domestic remedies.

IX. VICTIMS' RIGHT TO REPARATION

15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.

16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.

17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.

18. In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

19. A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.

20. In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

X. FORMS OF REPARATION

21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

23. Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities, including education;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Harm to reputation or dignity; and

(e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

24. Rehabilitation should include medical and psychological care as well as legal and social services.

25. Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

(a) Cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;

(c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;

(e) Apology, including public acknowledgement of the facts and acceptance of responsibility;

(f) Judicial or administrative sanctions against persons responsible for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;

(i) Preventing the recurrence of violations by such means as:

(i) Ensuring effective civilian control of military and security forces;

(ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;

(iii) Strengthening the independence of the judiciary;

(iv) Protecting persons in the legal, media and other related professions and human rights defenders;

(v) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;

(vi) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;

(vii) Creating mechanisms for monitoring conflict resolution and preventive intervention.

XI. PUBLIC ACCESS TO INFORMATION

26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

XII. NON-DISCRIMINATION AMONG VICTIMS

27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.