

Redress and Reparations for Historical Racial Violence:

*Tennessee, Chicago, and
Legislative Proposals for Change*



**Christine Salazar, Northeastern University School of Law (2019)
Civil Rights and Restorative Justice Clinic
Fall 2018 (working document)**

TABLE OF CONTENTS

- I. Introduction**
- II. Restorative and Transitional Justice: An Overview**
- III. The Need for Transitional and Restorative Justice**
- IV. State and Local Efforts to Provide Reparations and Other Remedies:**
 - A. The Tennessee Civil Rights Cold Case Act**
 - B. The Chicago Reparations Ordinance**
- V. International Principals of Reparations and Two Cases**
 - A. The United Nations Convention Against Torture**
 - B. International Case Studies**
- VI. Efforts to Provide Remedies**
- VII. Legislative Proposals**
- VIII. Conclusion**

I. Introduction

Since its inception in 2008, the Civil Rights and Restorative Justice Project (“CRRJ”) has been committed to the investigation of incidents of racial violence and the creation and maintenance of an archive to preserve and recognize the lives of those who died by such violence. CRRJ scholars and students collect and examine legal documents of law enforcement investigations, court records, census records, media accounts, and other documents in homicide cases spanning the decades from 1930 through 1970.

In addition to its investigative work, CRRJ supports restorative justice projects within states and communities, work which has led to official apologies from law enforcement officials, engagement with the families of perpetrators, the provision of new burial markers for victims, civil rights markers, the correction of public records, high school curriculum, and commemorative events. The goal of this paper is to explore the possibilities of statewide policy initiatives that would further community healing and the remediation of historical wrongs. The proposals herein have been developed based on an exploration of both domestic and international case studies and utilize principles of reparations and the obligations of states to redress harms, as laid out by the United Nations in general comment 3 of its Convention Against Torture. These proposals are not intended to be an exhaustive list of options, nor will all of them be necessarily applicable to or desired by all communities. As such, these initiatives are proposed with the understanding that they should be tailored as much as possible to affected communities, and adopted only after collaboration with those communities.

II. Restorative and Transitional Justice: An Overview

The terms “transitional justice” and “restorative justice” appear frequently in modern texts discussing justice projects; however, not all scholars use these expressions with the same understandings, which makes a single definition difficult to conceptualize. One definition describes transitional justice as referring to “those transitional processes through which radical transformations of a given social and political order are carried out” and notes that, “(i)n these processes, the need of equilibrating the contradictory demands of peace and justice is present.”¹ The same scholars believe restorative justice “refers to an alternative model for facing crime, which is based on the social importance of reconciliation between victim and perpetrator.”² Restorative justice in this sense views retributive punishment as insufficient to truly and effectively restore social harmony.

Restorative justice and transitional justice are complementary frameworks, and CRRJ utilizes both. Under a restorative justice framework, there is an understanding that justice is a community project and that the remediation of wrongs should be undertaken by those affected. CRRJ uses restorative justice to foster accountability, support reparations, honor the healing process, memorialize victims, and further racial reconciliation. Simultaneously, transitional justice projects that focus on collective responsibility, such as truth commissions and public apologies, are also used as tools for reconciliation and healing.

¹ Rodrigo Uprimmy and Maria Paula Saffon, “Transitional Justice, Restorative Justice and Reconciliation. Some Insights from the Colombian Case.” Working Paper. based on a publication by Rodrigo Uprimmy, Catalina Botero, Esteban Restrepo, and Maria Paula Saffon. “¿Justicia transicional sin transición? Verdad, justicia y reparación para Colombia [Transitional Justice without Transition? Truth, Justice and Reparations for Colombia].” (Bogotá: DeJuSticia: 2006) 109-138. Accessible online at: <https://www.dejusticia.org/en/transitional-justice-restorative-justice-and-reconciliation/>.

² Id.

III. The Need for Transitional and Restorative Justice

In order to frame and draft proposals to address historical racial violence, it is important to note what avenues already exist to allow individuals to seek justice and what the limitations of those avenues are. Currently, federal and state laws may allow for individual redress for historical racial violence in limited circumstances; however, these remedies are not comprehensive enough to provide the full spectrum of restorative justice measures that would promote healing for entire communities.

The crime of murder, present in most cases examined by CRRJ does not have a statute of limitations. Therefore, one of the important aspects of passing state-level legislation such as the Tennessee Civil Rights Cold Case Act discussed later on, is to remind state officials who are considering any type of restorative justice that there may still be the possibility of prosecution in those cases where no one was ever tried. In other cases there may have been trials and perhaps sentences, yet where there was never a trial, even if the state is now willing to prosecute the matter, there may be evidentiary concerns. In some cases, it may simply be too difficult or impossible to locate documents, find witnesses who are still living, or otherwise gather enough evidence for a prosecutor to prove a case beyond a reasonable doubt. At the federal level, although technically 18 U.S.C § 242 enables federal officials to criminally prosecute civil rights crimes committed by

state actors, and federal law enforcement may have jurisdiction to prosecute other crimes, such as kidnapping over state lines, the same concerns exist as at the state level.³

In the civil law context, there are both state and federal claims that could be brought for these cases, although they also are heavily constrained. A state civil claim in response to a racially motivated homicide would likely be a wrongful death suit with a limited statute of limitations. For the purposes of CRRJ's work, where all cases took place nearly 40 years ago, state claims would be time barred. At the federal level, civil rights claims could be brought under 42 U.S.C § 1983 and § 1985, but a series of Supreme Court cases has severely limited the ability to bring these claims by expanding the scope of qualified immunity for law enforcement and increasing the burden for what a plaintiff must show to successfully attach liability to institutions rather than individual actors.⁴

Additionally, even if there is a successful prosecution and/or a successful civil suit, and a victim's family is able to receive monetary damages, there is a serious question of whether that truly suffices to provide justice for victims, for their families, and for communities.

IV. State and Local Efforts to Redress Historical Racial Violence

A. The Tennessee Civil Rights Cold Case Act

1. Background

³ See *Screws v. United States*, 325 U.S. 91 (1945) (application of 18 U.S.C. § 242 to crime of racial violence).

⁴ See e.g. *Plumhoff v. Rickard*, 572 U.S. 765 (2014); *White v. Pauly*, 137 S. Ct. 548 (2017); *Kisela v. Hughes*, 138 S. Ct. 1148 (2018); *Connick v. Thompson*, 131 S. Ct. 1350 (2011).

In 2017, the General Assembly of Tennessee passed H.B1306, “An Act...relative to unsolved civil rights crimes,” which created a Special Joint Committee (“SJC”) of the General Assembly to “study issues relating to the investigation and prosecution of unsolved civil rights crimes and cold cases from the civil rights era” and “make recommendations concerning the desirability of a statutorily established commission or other appropriate means to conduct investigations and prosecutions of these heinous civil rights crimes that may still take place.”⁵ The law called for the SJC to consist of three members of the Senate and three members of the House of Representatives with members appointed by the respective Speaker and mandated the filing of a report with recommendations no later than January 15, 2018.

Although this SJC was not specifically framed as a truth commission, it undertook the work of one. In collaboration with the Tennessee Historical Justice Coalition (“the Coalition”), a group of volunteers comprised of Tennessee educators, lawyers, historians, clergy, students, and civil rights leaders, the SJC seriously engaged with the issue of historical racial violence in Tennessee and the need for investigations. In order to craft its recommendations, the SJC held several hearings to solicit testimony regarding both primary and secondary accounts of cold cases, ultimately hearing both from victims and survivors of racially-motivated violence and law enforcement officials. Testimony from law enforcement acknowledged the challenges to investigating and prosecuting cold case crimes; however, the general consensus was that cases “deserve renewed attention in order to bring actual justice to victims of these crimes, where available, and to help restore confidence in the judicial system both to the community at large and for the surviving families of

⁵ Tennessee H.B. 1306 (2017). <http://www.tba.org/sites/default/files/housebill1306.pdf>

victims.”⁶ The SJC further heard from journalists, academics, a member of the clergy, and a civil rights lawyer about several unsolved bombings in Nashville and had academic researchers and students compile a list of cases for review. Unlike the work of CRRJ, which is limited to racially-motivated homicides, the SJC considered murder, kidnapping, and bombings of public, private, and religious structures.

On January 11, 2018, the SJC submitted its report and recommendations to the General Assembly. Legislation was expected to follow, and indeed it did. H.B2624 was introduced on February 1, 2018 with bipartisan support. It moved smoothly through committee markups and was ultimately passed nearly unanimously, becoming law on May 18, 2018.

2. Provisions of the Tennessee Cold Case Act (“The Act”)

The primary provision of the Act creates the “Tennessee Civil Rights Crimes Information, Reconciliation, and Research Center” within the office of minority affairs and charges the Center with “conducting a statewide survey of civil rights crimes in Tennessee, both solved and unsolved, by utilizing available volunteer resources.”⁷ The Center is also required to determine whether any cases could still be subject to criminal prosecution; communicate with the Department of Justice around unsolved civil rights crimes; collect and maintain information on civil rights related events such as conferences and workshops, in addition to meetings regarding unsolved civil rights crimes; coordinate with the state archivist; work with federal, state, and local government entities around inquiries for cold case information; submit reports to the General Assembly; research and apply

⁶ Special Joint Committee of the Tennessee General Assembly to Study Unsolved Civil Rights Crimes and Cold Cases: Status Report and Preliminary Observations. (January 11, 2018). Accessed at: <http://www.capitol.tn.gov/Archives/Joint/reports/docs/FINALSJCStatusReport.pdf>

⁷ Tennessee H.B. 2624 (2018).

for public and private grant funding, and; initiate reconciliation actions on behalf of the state. The Center is also required to operate a website and phone line to receive information related to cold cases as well as to promote public awareness of the Center, especially in counties with the highest numbers of cold cases.

3.Limitations

There are limitations to this legislation. When the SJC submitted its report, there was hope that no matter what type of investigatory body the General Assembly elected to establish to work on civil rights cold cases, the body would be provided with staff, funding, and subpoena power to conduct its investigations.⁸ This did not happen.

Regarding staffing and funding, the Act provides that much of the work of the Center should be designated to volunteers. To this end, the General Assembly submitted fiscal memos during the legislative process finding that current appropriations for the office of minority affairs should be sufficient to carry out the provisions of the Act. The reasoning was that the office only had one staff member despite having a budget for three, and that the filling of empty positions should provide a reasonable amount of staff. At the time of the fiscal memos, the General Assembly claimed that the unused portion of the office's budget being returned to the legislature at the end of each fiscal year was approximately \$228,000.⁹

Regarding subpoena power, the Act does not provide the Center with any sort of subpoena power. Although the Center is meant to conduct investigations, it has no explicit power to require

⁸ Legislature Moving on Civil Rights Cold Cases. (n.d.). Retrieved from <https://www.memphisdailynews.com/news/2018/jan/12/legislature-moving-on-civil-rights-cold-cases/>
⁹ Fiscal Memo, H.B. 2624. (2018) Accessed at: <http://www.capitol.tn.gov/Bills/110/Fiscal/FM2789.pdf>

responses from anyone.

4. Impact

As of this writing, the Act has led to the reopening of at least one significant case.¹⁰ NAACP leader Elbert Williams, known for his civil rights work registering black voters in Brownsville, Tennessee, was taken from his home to the Brownsville City Jail on June 20, 1940. Three days later, his body was pulled from the Hatchie River six miles south of Brownsville. Although his death was ruled a homicide, no autopsy or external medical examination was performed. In addition to the reopening of the Williams case, there are reports that Tennessee residents are beginning to come forward with information about other cases.

B. Chicago Reparations Ordinance

A. Background¹¹

From 1972 through the 1990's, over 100 African-American men were tortured by members of the Chicago Police Department under the command of Police Commander Jon Burge. In many cases, officers subjected these men to beatings, electric shock, and suffocation with plastic bags. Over decades, the City of Chicago and its officials consistently acted to defend against claims by torture survivors, denying, and in some cases, actively covering up evidence of torture. In 1993, Jon Burge

¹⁰Stockard, S. (2018, September 17). Civil rights cold-case legislation warms Memphis lawmakers. Retrieved from <https://dailymemphian.com/article/46/Civil-rights-cold-case-legislation-warms-Memphis-lawmakers>

¹¹ Garcia/MCT, A., Lott, J., Ortiz/VII, C. J., Johnson, M., HayesSarah-Ji, K., Chicago Torture Justice Memorial, . . . Circuit Court of Cook County. (2018, October 31). How Chicago's Survivors of Police Torture Won Reparations. Retrieved from <https://www.themarshallproject.org/2018/10/30/payback>

was finally fired; however, the fight for justice lasted decades longer, even after the United Nations condemned the Chicago's practices of police torture in 2005.

In 2012, a group of activists and artists, the Chicago Torture Justice Memorials (CTJM), organized a memorial in support of the torture survivors. Attorney Joey Mogul with the People's Law Office, a Chicago-based civil rights organization that represented the first Burge torture survivors in civil lawsuits, drafted a reparations ordinance providing compensation for the survivors in the form of a speculative memorial submission to the CTJM project, and community activists felt the idea had merit. During the next three years, activists, organizers, attorneys, and survivors came together to also push for reparations, engaging in teach-ins, sing-ins, the creation of memorials, petitions, and other actions to raise awareness and pressure public officials. The final ordinance drew from various international reparations schemes in its proposals

B. The Reparations Ordinance ("The Ordinance")

On May 6, 2015, the city council of Chicago finally adopted the Ordinance. Included in the package, the city council appropriated \$20 million to finance direct payments to survivors, the construction of a health center, the development of an educational curriculum, and the creation of public memorials.¹² In terms of direct compensation, each of the documented survivors was designated to receive approximately \$100,000. In addition to having a memorial constructed in the city, survivors and their families were granted access to free tuition at city colleges, were provided services at a newly constructed health center, and Chicago public schools developed a new curriculum to teach the history of Chicago police torture to 8th and 10th graders.

¹² The Reparations Ordinance. (n.d.). Retrieved from https://www.chicagotorture.org/?page_id=63

VI. Efforts to Provide Remedies

The Tennessee Cold Case Act and the Chicago Ordinance discussed herein highlight the importance of community involvement in restorative and transitional justice projects. Although the Tennessee General Assembly did not pass legislation implementing all of the recommendations to come from the SJC's report, the Tennessee Cold Case Act would not exist without years of community work not only from the loved ones of victims of violence, but from civil rights leaders, educators, clergy, and other advocates. The Chicago Reparations Ordinance would not have come to pass without decades of community work from lawyers, activists and organizers, torture survivors, and youth. Collaboration with members of the affected community allowed the Ordinance to move beyond direct payments to a more comprehensive package of benefits, one that acknowledged a need for mental health services, education, and communal memory. As discussed later, in the international sphere, community members in Chile continued to organize and push for further justice and reparations after truth commissions failed to fully account for the scope of violations that occurred during the Pinochet military regime. Community involvement in the redress process and the centering of victim or survivor voices cannot be overstated.

V. International Principles of Reparations and Two Case Studies

In the United States, discussion of reparations has predominantly come up in the context of atonement for slavery, and the only example of a federal reparations scheme can be seen in direct payments to Japanese-Americans who were subjected to internment during WWII. At the state

level, survivors of racial violence in Rosewood, Florida¹³ were also compensated, although the legislation was not framed as reparations, but rather compensation for direct losses suffered such as private property damage.¹⁴ However, reparations as a concept goes beyond direct financial compensation for a harm and encompasses a wide range of policy initiatives, as discussed in the following case studies.

C. UNCAT General Comment 3: A Roadmap for Reparations

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) is an international human rights treaty that aims to prevent torture around the world. Adopted by the UN’s General Assembly in 1984, the United States is one of 83 signatories pledging to take steps to prevent and investigate acts of torture occurring within or committed by individuals under its jurisdiction.¹⁵ The CAT also establishes the Committee against Torture, an international body that is empowered to hear complaints about violations of the CAT. When fighting for the passage of the Chicago Reparations Ordinance, activists in Chicago brought complaints to the Committee, leading the Committee to issue a report condemning the practices of police torture in Chicago and recommending the passage of the Ordinance.¹⁶

¹³ On New Year’s Day in 1923, a white woman claimed to have been assaulted by a black man, setting off a wave of racial violence that led to several murders, burnings, and other extensive property damage, destroying the predominately black residential settlement of Rosewood, Florida. See Glenza, J. (2016, January 03). Rosewood massacre a harrowing tale of racism and the road toward reparations. Retrieved from <https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations>

¹⁴ *Id.*

¹⁵ United Nations, Treaty Collection. Accessed at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en

¹⁶ How Chicago’s Survivors of Police Torture Won Reparations. Retrieved from <https://www.themarshallproject.org/2018/10/30/payback>; United Nations Committee Against Torture, Concluding Observations on the Third to Fifth Periodic Reports of United States of America,

The CAT defines “torture” as:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, *or for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁷

In the context of historical racial violence in the United States, CRRJ’s case archive showcases a broad and continuing culture of violence, including torture and murder, that existed with the ongoing tacit or open support of public officials, especially law enforcement in the United States. As a result, the following provisions laying out the obligations of state parties to redress violations provide a map that individual states within the United States can and should look to if attempting to take steps towards redressing histories of racial violence. As noted earlier, the policy proposals within this paper were heavily influenced by the CAT and general comment 3.

Article 14 of the CAT provides that:

“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”¹⁸

General comment 3 then provides guidance for how states should carry out Article 14, explicitly stating the obligations states have to provide redress and reparations for human rights violations.

Under general comment 3, states have both procedural and substantive obligations to provide

CAT/C/USA/CO/3-5 (Nov. 20, 2014), available at <http://www.state.gov/documents/organization/234772.pdf>.

¹⁷ United Nations, Convention Against Torture and Other Cruel, Unhuman, or Degrading Treatment or Punishment, Art. 1 (2012). Accessed at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

¹⁸ Id. at Art. 14.

redress. The principles of reparations under general comment 3 are: restitution; compensation; rehabilitation; satisfaction and the right to truth, and; guarantees of non-repetition.¹⁹ Notably, when the general comment refers to “victims” it does not only refer to the single individual most directly impacted. Instead, it specifically provides that the term “also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or prevent victimization.”²⁰

The goal of restitution under the CAT is to return the victim to their situation prior to the violation. Related to this goal is compensation, which includes but is not limited to direct monetary payments. Instead, the CAT states that compensation “should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary.”²¹ As examples, the CAT suggests that compensation could include reimbursement for past and future medical expenses and redress for lost educational and employment opportunities.

Rehabilitation under the CAT is intended to be a holistic project, including medical and psychological care, legal services, and social services. General comment 3 specifically states that, “Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.”²²

¹⁹ Convention Against Torture and Other Cruel, Unhuman, or Degrading Treatment or Punishment, general comment 3 (2012). Accessed at: https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf

²⁰ Id.

²¹ Id.

²² Id.

Satisfaction and the right to truth as principles encompass the obligation of states to undertake investigations and criminal prosecutions for crimes. The CAT further recognizes a need for:

“[V]erification of the facts and full and public disclosure of the truth...the search for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims’ bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.”²³

In the implementation of this principle, the establishment of truth and reconciliation commissions is a common practice. Of note as well is the recognition of memorials as a necessary tool and the clarification that public apology requires acceptance of responsibility.

Although guarantees of non-repetition may be the most self-explanatory of the CAT’s reparations principles, it may also be the one that raises the most questions as to practice. In the context of racial violence where civil rights violations were not the result of, for example, a military regime attempting to silence political dissidents, but rather came about from a culture of white supremacy and a desire to enforce racial subjugation post-slavery, non-repetition requires a holistic culture shift. How to make such a shift come about likely requires significant social changes, for which legislation is not necessarily the most effective tool.

D. International Case Studies

Chile:²⁴

²³ Id.

²⁴ See e.g. Lira, Elizabeth. “The Reparations Policy for Human Rights Violations in Chile.” *The Handbook of Reparations*. 2006.; Hayner, Priscilla B. *Unspeakable Truths: Confronting State Terror and Atrocity*. Routledge, New York, 2001.; Carla Ferstman, Mariana Goetz and Alan Stephens, Eds., *Reparations for Victims of Genocide*,

On September 11, 1971, the democratically elected government of Chile was overthrown through a military coup that brought General Augusto Pinochet into power. During the following decade and a half, tens of thousands of individuals were subjected to torture, imprisonment, and disappearance. After the restoration of democracy in 1990, President Aylwin established the National Commission for Truth and Reconciliation to write a report and issue recommendations for reparations based on human rights violations during the Pinochet regime. A reparations program was established following the issuance of the report, a central component of which was the establishment of the Program of Reparation and Integral Health Care (PRAIS), run by the Ministry of Health. For individuals who had been included in the report, specifically those determined to have been killed or disappeared by the military during the regime, their families received pension payments, education benefits, full medical coverage, and waiver of mandatory military service. However, since the first commission's mandate did not include torture survivors or political prisoners, those individuals did not receive pension payments or education benefits, although they did have access to PRAIS for social services and medical care.

Due to the limitations of the initial commission report and reparations scheme, human rights groups and organizations of former political prisoners organized to put pressure on the government as the 30th anniversary of the 1973 coup approached. These efforts resulted in the establishment of a second truth commission, the National Commission on Political Imprisonment and Torture

War Crimes and Crimes Against Humanity, Brill Academic Publishers (2009). Excerpt: Reparations and Victim Participation: A Look at the Truth Commission Experience (p. 16).; United States Institute of Peace: Commission of Inquiry: Chile 03 (accessed at <https://www.usip.org/publications/2003/09/commission-inquiry-chile-03>); United States Institute of Peace: Truth Commission: Chile 90 (accessed at <https://www.usip.org/publications/1990/05/truth-commission-chile-90>)

(Valech Commission) in 2003. The Valech Commission was charged with the investigation of torture cases, the identification of victims, and the proposal of additional reparations. A law was ultimately passed providing for lifelong monetary compensation to survivors as well as health and education benefits; however, reparations efforts are still ongoing. In 2010, President Michelle Bachelet, herself a torture survivor, reopened the Valech Commission. In the 18 months during which the Commission operated, it certified close to 10,000 more cases of torture or forced disappearance. In 2015, the Chilean Congress approved an additional one-time payment for former political prisoners and torture survivors.

Argentina:²⁵

From 1976 through 1983, a series of military regimes in Argentina resulted in the disappearance of over 30,000 people during a period of widespread fear, torture, and kidnappings. A truth commission was established in 1983 to investigate the disappearances of individuals during the course of the “dirty war” and uncover facts of the cases, including locations of the bodies.

The commission’s report, issued in 1984, reported 8,960 disappearances from 1976-1983, but the commission estimated that real numbers ranged from 10,000-30,000, suspecting that families were too afraid to come forward. The report also determined that disappearances, torture, secret detention, and the disposal of bodies in unknown sites were systematic practices, that all disappeared people were killed and the lack of information was a deliberate act of the government

²⁵ See e.g. Rohter, L. (2002, March 12). Argentine Default Reopens 'Dirty War' Wounds. Retrieved from <https://www.nytimes.com/2002/03/12/world/argentine-default-reopens-dirty-war-wounds.html>; Argentina & Transitional Justice | ICTJ. (2018, June 04). Retrieved from <https://www.ictj.org/our-work/regions-and-countries/argentina> Truth Commission: Argentina. (2018, October 18). Retrieved from <https://www.usip.org/publications/1983/12/truth-commission-argentina>

to sow discord and confusion. The commission recommended establishing a reparations program for the families of the disappeared and continued prosecutions and follow-up investigations concerning persons who remain missing; however, no reparations were authorized by the government until the 1990s, and it remained an ongoing struggle to hold the government accountable for payments even into the 2000s.

In addition to difficulties accessing monetary compensation, families of the disappeared also fought for years to hold perpetrators accountable. Over the years since the end of the war, the government passed several amnesty laws preventing the prosecution of military personnel and the military obstructed access to documentation that families needed to prove a claim for reparations. Due to efforts by families and human rights organizations, the Argentine Supreme Court ruled the amnesty laws unconstitutional in 2003, an action that resulted in trials of over 700 individuals.

VII. Legislative Proposals

As noted above, and in keeping with the principles of UNCAT general comment 3 emphasizing the importance of victim participation in the redress process, the following proposals allow for the inclusion of affected community members. Efforts to implement a redress process should take into account that there may be areas of the country where communities have elected to foster their own form of healing and perhaps not initiate a more public process. There may be families that do not want anyone to be criminally prosecuted for a variety of reasons, including that they may have their own concerns with the criminal justice system. Therefore, the following proposals should be viewed as proposals rather than mandates, and should involve community participation as much as possible.

A. Truth and Reconciliation Commission

Acknowledging that within many communities, there exists a culture of silence around historical racial violence, CRRJ recommends the establishment of state truth and reconciliation commissions (“TRCs”) in order to gather facts, write reports, and make recommendations about future policy proposals aimed at redressing historical racial violence. Looking at the Tennessee SJC, which served the function of a truth commission, one should note that although the SJC ultimately conducted its work in collaboration with the Coalition the SJC was originally solely comprised of legislators with no explicit community representation. In furtherance of the goal of centering victim needs and the importance of victim participation, proposed TRCs should be composed not only of legislators, but of victims/family members, historians, educators, and other community members.

B. Investigations

Although the work of CRRJ and other private parties regarding investigations into cases of historical racial violence is necessary, CAT principles, and the experiences of other activists involved in truth and reconciliation work indicate that having the endorsement of a governmental entity, such as a state, signals an importance to the efforts which extends beyond the work of the particular commission, such as permanent integration into school curriculum and permanent public memorials. Public offices have connections amongst one another that private actors do not, which would likely make it easier for an office or division within the state system to access the types of records that students or other private parties can struggle to find. Therefore, CRRJ recommends the passage of cold case legislation like that in Tennessee that would establish a body within the government responsible for receiving and maintaining information about crimes of

historical racial violence and conducting investigations or unsolved cases. Such a body should also maintain a telephone line and/or website where members of the public can submit information regarding cases. Legislation should further include a duty to compile and make publicly available all documentation related to investigations, subpoena power for investigations, and appropriate funding.

C, Educational Units for Public Schools

One of the important pieces of the Chicago Reparations Ordinance was the development and implementation of a curriculum for public school students in 8th and 10th grades to learn about the history of police torture in Chicago. In addition to learning about those victims of Chicago police chief Jon Burge,, the curriculum will also teach students about the culture of racism and corruption throughout Chicago institutions that allowed the torture to continue for as long as it did. The curriculum was developed by Chicago Public School officials in collaboration with torture survivors, African-American community leaders, civil rights advocates, law enforcement, academic researchers and the Chicago Teachers Union. This curriculum spans 116 pages and covers topics such as individual and institutional racism, government failure to respond to civil rights violations, and the relationship between crime and police practices.²⁶

The CRRJ proposal herein which includes an educational unit in public schools as a form of redress is based on the Ordinance. States interested in adopting an educational unit could develop a

²⁶ Sabella, J., Ali, T., & Cherone, H. (2017, September 13). A Police Torture Lesson Plan: Here's What CPS Kids Will Learn About Burge. Retrieved from <https://www.dnainfo.com/chicago/20170913/jefferson-park/jon-burge-police-torture-cps-lesson-plan-reparations-police-brutality/>

curriculum on the history of racial violence in the state using examples of cold cases within the state. Such a curriculum would include discussions about the culture of white supremacy that allowed racial violence to flourish in the state and the country, the complicity of public officials, especially law enforcement in crimes of historical racial violence, and how the impact of that violence can still be seen in the present day. An educational unit on the history of racial violence fully distinct from any other unit that may exist on the Civil Rights Movement would be a step toward bringing truth to communities and would offer opportunities for frank conversations about the continuing culture of white supremacy and racism in the United States.

D. Training for Law Enforcement

As an example of one way states can take steps toward addressing human rights violations, general comment 3 offers the following: “providing, on a priority and continued basis, training for law enforcement officials...on human rights law that includes the specific needs of marginalized and vulnerable populations.”²⁷ Of the cases CRRJ investigates, many contain some form of law enforcement involvement, either with police officers as the direct perpetrators of crimes of racial violence or law enforcement complicity in racial violence by either failing to sufficiently investigate crimes or by actively working to cover them up. Of the cases where police officers were direct perpetrators, there are unsettling similarities between the actions of officers in 1930-1970 and present-day police killings of, in particular, young black men. In order to properly address both past and present cultures of white supremacy within police departments and redress historical racial violence, CRRJ proposes the mandatory and regular training of law enforcement

²⁷ Convention Against Torture and Other Cruel, Unhuman, or Degrading Treatment or Punishment, general comment 3 (2012). Accessed at: https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf

officers on the history of racial violence and law enforcement complicity with historical racial violence.

E. Tuition at Public College and Universities and/or Appropriations for Affordable Housing

As noted earlier, the Chicago Ordinance also included tuition for survivors and their family members at city colleges. CRRJ recognizes that historical racial violence often led to the dispossession of family wealth, and that such violence and its aftermath often deprived families of educational opportunities they otherwise may have been able to access. As a result, historical racial violence has contributed to wealth and educational inequality within affected communities. The proposal for truth and reconciliation would provide that descendants of victims of historical racial violence be granted free tuition at state colleges and universities. This proposal would further recommend additional appropriations for affordable housing within the state.

F. Memorials

Whereas the commemoration of the lives of victims of historical racial violence is an important piece of the redress process, CRRJ proposes the appropriation of funds for the development of state and county memorials. In addition, or in the alternative, states could appropriate funds to counties seeking to claim monuments to lynching victims from their county from the Equal Justice Initiative's National Memorial for Peace and Justice in Montgomery, Alabama.

G. Grants for Arts Projects

In addition to public memorials, the arts are a significant cultural healing tool that could also be used to bring attention to and commemorate historical racial violence. To this end, CRRJ proposes

the appropriation of funds to be designated as arts grants and reserved for arts projects addressing the subjects of lynching and/or other forms of historical racial violence.

H. Public Apology

Finally, CRRJ proposes that states and localities or even individual public officials issue apologies for historical racial violence. In keeping with the principles established in the CAT, public apologies should include acknowledgment of facts and acceptance of responsibility. Apologies should be meaningful. Along those lines, apology should generally be undertaken not as an individual or exclusive remedy, but in addition to other forms of redress.

VIII. Conclusion

Given the limitations of existing legal remedies and their abilities to meaningfully address historical racial violence, CRRJ has sought to provide examples of alternative solutions using frameworks of transitional and restorative justice. Although this list of proposals is not exhaustive, it does provide a starting place for states interested in taking steps toward addressing and redressing their histories of racial violence.