



# United States Department of State TRANSITIONAL JUSTICE INITIATIVE REPARATION



## WHAT IS REPARATION?

Reparation (or “reparative justice” as it is sometimes called) is a key element of providing justice to victims of serious human rights abuses or atrocities. Reparation programs form part of a transitional justice framework that focuses on acknowledging the needs of victims for redress and seeks to address the consequences as well as the causes of violations in material and symbolic ways.

## TYPES OF REPARATION

- **Restitution:** restores the victim (to the degree possible) to the original situation before the violation took place. Examples may include return of property and the restoration of liberty, citizenship, or employment.
- **Compensation:** provides payment for damage that is appropriate and proportional to the harm suffered. Harms that are redressed through compensation often include physical or mental injury, lost opportunities and social benefits, lost earnings, and the cost of medical services.
- **Rehabilitation:** specifically seeks to mend the harm suffered, usually through medical and psychological care as well as legal or social services.
- **Satisfaction:** may include a cessation of continued violations and abuses and official recognition of the harm suffered. This may take the form of a search for the whereabouts of the disappeared, a public apology, commemorations and tributes to victims, memorials, and public disclosure of the truth.
- **Guarantees of non-recurrence:** while not necessarily technical or legal guarantees, these are practical measures taken to contribute to prevention of future violations and abuses. Examples may include institutional, legislative, economic, and educational reforms.

## PROVIDING REPARATION

Reparation may be provided under orders from a court or through legislative or administrative programs. Reparation may be called for in peace agreements, in the recommendations of truth commissions, through advocacy of civil society and victims groups, or as part of government initiatives to provide justice. Depending on the context, reparation may be provided individually or collectively to classes of victims. While they may look similar to development programs, reparation measures differ from development efforts in that they are provided in specific recognition of a victimization and harm suffered. Reparation programs are often most effective when they are based on a consultative process and an understanding of what forms of reparation are most important to victims.

*This policy paper series was developed to reflect U.S. policy understanding of a range of transitional justice (TJ) mechanisms related to peace-building, accountability, human rights, and reconciliation in post-conflict and post-authoritarian transitions. They were created by the State Department’s Office of Global Criminal Justice, Bureau of Democracy, Human Rights, and Labor, Bureau of International Narcotics and Law Enforcement Affairs, Bureau of Conflict and Stabilization Operations, and USAID’s Center for Excellence on Democracy, Human Rights and Governance.*

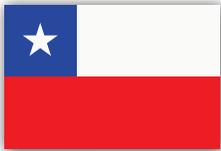
## RESPONSIBILITY FOR PROVIDING REPARATION

According to the UN's *Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, the party responsible for the violation or abuse is primarily responsible for providing reparation. Should the abuse be directly attributable to the State, then the State is responsible for providing the reparation. In the event the abuse is attributable to a party other than the State, that party has the primary responsibility for providing reparation. Should that party be unable to provide the reparation, the State may be secondarily responsible for providing reparation. This is because the State, even if it was not the cause of the harm, may be deemed responsible for its failure to protect its citizens from these abuses.

## COMMON CHALLENGES

- Obtaining political support and adequate funding;
- Ensuring fair, comprehensive, and transparent victim identification and participation;
- Fairly addressing the needs of massive numbers of victims and a broad range of violations and abuses;
- Dealing with issues of gender, class, marginalization and other disparities;
- Creating a scheme that adequately and fairly deals with the scope and range of victimization;
- Relating reparation programs to other transitional justice mechanisms.

### EXAMPLES OF REPARATIVE JUSTICE



It has been reported that Chile paid and estimated \$1.6 billion in pensions to certain victims of atrocities committed by the Pinochet regime, established a specialized health care program for survivors, and issued an official apology from its President.



Canada provided \$2 billion for the estimated 80,000 survivors of its Indian Residential Schools.



The ICC's Trust Fund for Victims implements court-ordered reparations as well as assistance, with a focus on physical and psycho-social rehabilitation and material support, to victims of crimes within the jurisdiction of the ICC. These activities are funded through fines and forfeitures (reparation) and donations (assistance)



The Extraordinary Chambers in the Courts of Cambodia (ECCC) ordered symbolic and collective reparations as part of its first judgment against a former Khmer Rouge cadre. This included ordering that the names of victims be listed on the Court's website, as well as that an apology be issued by the convicted person.



Morocco provided individual and community-based reparation funding for over 50 years of widespread abuse.



The President of Sierra Leone issued a formal apology to women victims of its armed conflict.