

REPARATIONS FRAMEWORK & DEFINITIONS

What Are Reparations?

From its dictionary definition, reparations can be understood as ‘a repairing’, ‘the act of making amends, or ‘the payment of damages’.¹ However, despite this seemingly simple definition, the term has no clear theoretical margins that “demarcates reparations from ordinary legal remedies, on one hand, and other large-scale government transfer programs, on the other.”² To address this, scholars, international organizations and private institutions have suggested various structures, whether resulting from case-specific research as in the work of historians William Darity and A. Kristen Mullen, or from the United Nations Office on Human Rights that offers guidelines to authorities engaging in the work of overseeing reparations programming. Both frameworks are described in more detail below.

1) William A. Darity Jr., and A. Kirsten Mullen, *From Here to Equality: Reparations for Black Americans in the Twenty First Century* (Chapel Hill: University of North Carolina Press, 2020)

a) **Reparations Definition:** A program of **acknowledgement, redress & closure**.³ (ARC)

- i) **Acknowledgement:** recognition and admission of the wrong by the perpetrators (apology); recognition by those who benefited from the atrocities and commitment to redress.
- ii) **Redress:**
 - (1) **Restitution:** restoration of survivors to their condition before the injustice occurred or to a condition they might have attained had the injustice not taken place.
 - (2) **Atonement:** perpetrators meet conditions of forgiveness acceptable to the victims.
- iii) **Closure:** mutual conciliation between African Americans and the beneficiaries of slavery and legal segregation. Once the reparations program is executed and racial inequality eliminated, African Americans would make no further claims for race-specific policies on their behalf from the American government.

b) **Reparations Framework:**

- (i) **Compensation:** “We begin by calling upon the U.S. Congress to assert leadership and authorize **payments to be made by the U.S. government**... While it makes complete sense to seek recompense from clearly identified perpetrators, when the entire political order is complicit, it is not sufficient to bill individual perpetrators. Laissez-faire or piecemeal reparations may assuage individual guilt but cannot meet the collective national obligation. The invoice for reparations must go to the nation’s

¹ “Merriam-Webster.Com Dictionary, s.v. ‘Reparation,’ Accessed October 10, 2022, <https://www.Merriam-Webster.Com/Dictionary/Reparation.Merriam-Webster,”> n.d.

² Eric Posner, “Reparations for Slavery and Other Historical Injustices,” *Columbia Law Review* 103, no. 3 (April 2003): 691.

³ William Darity Jr. and Kristen A. Mullen, *From Here to Equality* (Chapel Hill: University of North Carolina Press, 2020), 2.

government... Specifically, the invoice should go directly to the U.S. Congress, the legislative branch of the national government.” (256)

- (ii) Long-term research and recommendations: “Given its traditional connection to these issues, the legislative branch can lay the groundwork for the design of a reparations program, first by **establishing a commission** that can investigate the history of racial injustice in the United States... The report, produced by a commission that does a thorough analysis and constructs an official statement of the record of American racial injustice, can be a valuable instrument in widening public support for the reparations project... It is imperative that the appointees make an authentic commitment to developing a comprehensive program of reparations and that the commission have **an eighteen-month deadline** to issue its report.” (257)
- (iii) Institutions Support: “Institution building as a use of reparations funds has a precedent in the reparations program developed by the German government in the aftermath of the Nazi Holocaust. In addition to payments made to individual victims and the relatives of victims, funds were given to the state of Israel to aid its economic development and financial stability. While a personal check or its equivalent need not be the only form in which the program makes payments, both the symbolism and the **autonomy** it conveys will be a key dimension of a black reparations program. For both symbolic and substantive reasons, an effective program of restitution must include direct payments to eligible recipients.”
 - a. Public Information and Education: “Further, the National Reparations Bureau will be charged with implementing a concerted education effort to **document, preserve, and communicate America’s history of racial injustice**—the conditions that led to the adoption of a reparations program—and the impact of the reparations program on African American well-being and the nation as a whole. The intensive phase of the public education effort should last for a minimum of three generations, or ninety years. As was the case with the National Holocaust Museum’s “Never Forget” campaign, it is vital that America’s racial history be put at the fore of the conversations Americans have about the nation’s past, present, and future. Therefore, beyond the intensive phase, the educational dimension of the reparations program should continue in perpetuity. The reparations agency can promote **age-appropriate textbooks and lesson plans** designed to be used at all levels of public school. In addition, the agency can devote resources to support educators, historians, and artists in developing plays, music, visual art, video games, board games, documentary films, feature films, and new biographies and research studies that bring greater accuracy and depth to America’s racial history.”(268)
 - b. Memorialization and Media: “With the support of the NRB, the National Museum of African American History and Culture, the National Register of Historic Places, **state historic sites**, plantations and Civil War battle sites all can contribute to a transformative national process of reinterpretation and learning. Dissemination of the most up-to-date knowledge and scholarship on race, history, and reparations can take place via social media

as well as traditional media (print journalism, television, radio—especially public television and public radio). **New plaques** or markers can be installed that commemorate persons who were heroes of the struggle for racial equality and justice and commemorate victims of lynchings or riots conducted by white supremacists. **New markers** also can be installed at sites where there are statues of or buildings named after iconic figures from the Confederacy and the Lost Cause movement to provide descriptions of these figures' activities in the secession movement and/or white terror campaigns to eliminate black political participation after the Civil War. **New national holidays** can be adopted; for example, an Emancipation Day commemorating the Emancipation Proclamation and the Thirteenth Amendment to the U.S. Constitution would be fitting. The work of national memory and national consciousness is an essential component of an effective program of black reparations." (268)

- c) **Higher Education:** "It will be far more useful for **colleges and universities to become sponsors** of a national effort for reparations than for them to individually address reparations claims among their immediate constituents. Joining the charge in a national campaign for reparations would give these institutions an excellent opportunity to demonstrate both a recognition of their own complicity and the importance of mobilizing their considerable resources to compensate for the harms." (269)

2) [United Nations](#) (UN)

Source: United Nations, General Assembly Resolution 60/147, "*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*," <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> (December 16, 2005).

Reparations Definition: *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* states that "victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims" (3)

a. **Reparations Framework:** "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to **justice**; (b) Adequate, effective and prompt **reparation** for harm suffered; (c) **Access to relevant information** concerning violations and reparation mechanisms." (6)

1. **Restitution:** "Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms." (7)

2. **Compensation:** “Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.” (7)
3. **Rehabilitation:** “Rehabilitation should include medical and psychological care as well as legal and social services.” (8)
4. **Satisfaction:** “Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the 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 harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable 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 law and international humanitarian law training and in educational material at all levels.” (8)
5. **Guarantees of non-repetition:** “Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) 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 by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; A/RES/60/147 9 (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.” (8)