

Recommendations

The recommendations herein have been compiled by the Global Initiative for Justice, Truth and Reconciliation based on the findings from a year-long research project evaluating the state of global reparations, and incorporating the input from international experts and victims' rights advocates during the 2018 Global Reparations Summit, held in Belgrade Serbia.

The Basic Principles should be updated to provide guidance on how to:

1. Expand victims' right and access to reparations

The Basic Principles should direct reparations frameworks to define "victim" inclusively, broadening the definitions of gross and/or serious violations to include a range of violations, and should avoid excluding or hierarchizing individuals on the basis of their gender or political, racial, national, ethnic, cultural, or religious background.

The Basic Principles should reflect the prevalence and gendered impact of rape and sexual violence and be revised to be gender-sensitive and gender responsive.

The Basic Principles should note that the principles apply before the cessation of violence, recognizing that the level of violence may affect the implementation of certain measures, such as truth initiatives, community healing processes, and those aimed at the cessation of hostilities.¹

2. Ensure that victims receive reparations

Taking into consideration available resources and engaging financial assistance from multilateral donors, the Basic Principles should direct states to allocate an adequate annual budget and staff that is specifically directed towards reparations and promptly disburse allocated funds.

The Basic Principles should direct states to establish an independent oversight mechanism with an adequate number of competent staff members to ensure the fair and transparent implementation

¹ Truth initiatives, community healing processes, and measures aimed at the cessation of hostilities contribute to satisfaction. Regarding the goals of reparations, truth initiatives recognize victims, community healing processes facilitate societal reconstruction, and the cessation of hostilities promotes the rule of law.

of reparations, evaluate and modify implementation efforts as necessary, and sanction state and non-state actors who do not fulfill their reparations obligations.

Taking into consideration the difficulties victims may face in gathering necessary documentation and the circumstances of victims, the Basic Principles should direct states to avoid establishing unfairly short statutes of limitations for reparations claims.

Taking into consideration the difficulties victims may face in gathering necessary documentation and the circumstances of victims, particularly of victims of sexual violence, the Basic Principles should direct states to impose a fair standard of proof for reparations claims that is lower than the standard for criminal convictions.

3. Emphasize the state's responsibility to provide reparations

The Basic Principles should note the significant role of international organizations and civil society in assisting and supporting the state-led implementation of reparations.

Noting that the state bears the primary responsibility to provide reparations, the Basic Principles should recommend that states engage and coordinate with international organizations and civil society without shifting the state's responsibility to provide reparations to other stakeholders.

Noting that changing governments may result in fragmented or unstable approaches to long-term reparations policies, states should ensure that reparations mechanisms and obligations continue even if a change in government occurs.

The Basic Principles should encourage states to establish fair, transparent, and inclusive partnerships with civil society, and victims.

The Basic Principles should note that all states have the responsibility to encourage and assist each other to prevent gross and/or serious violations, including through the implementation of reparations, particularly guarantees of non-repetition.

4. Implement collective reparations

The Basic Principles should emphasize that collective reparations may be an invaluable first step to restore communities, however should not be seen as the end to addressing victims' reparation needs.

The Basic Principles should direct states that are establishing development-type initiatives as a form of reparation, that seek seeking to recognize victims or provide redress for communities that suffered collective harms, to publicize them as reparations with the purpose of acknowledging the victims and their suffering and taking responsibility for gross and/or serious violations.

The Basic Principles should direct states to supplement community-based reparations with individual reparations in order to recognize victims as part of a collective and as individuals.

5. Address implementation gaps and emerging challenges

The Basic Principles should direct states to develop and adopt an access to information policy that details the scope of the right to access state-held information about gross and/or serious violations, the state's strategies for making available information about violations and how to access reparations mechanisms, and how victims can request information.

Noting that the public interest in information about gross and/or serious violations is of great importance, the Basic Principles should direct states to promptly disclose state-held information about such violations, including their root causes, dates, locations, and circumstances; the identities of the perpetrators who were found responsible by a transitional justice mechanism or domestic court; and the identities of victims in accordance with their rights, wishes, and safety.

The Basic Principles should direct states to enable victims to safely access state held information about gross and/or serious violations, including by refraining from intimidation state surveillance or by exploiting laws on data secrecy, data protection, and privacy.

As a guarantee of non-repetition, the Basic Principles should direct states to establish and implement transparent vetting and lustration processes that target clearly defined public sector positions and include protections against purges of individuals based on their identity or political affiliation instead of their individual actions.

As a guarantee of non-repetition, the Basic Principles should direct states to reform the education system and to include an accurate, comprehensive account of gross and/or serious violations, including information about the root causes and impact, in educational materials at all levels.

States should improve the implementation of reparations by taking steps to:

1. Demonstrate their commitment to redressing victims

States should demonstrate their commitment to proactively disclosing information about gross and/or serious violations, including by adopting an access to information policy that details the scope of the right to access state-held information about violations, the state's strategies for making available information about violations and how to access reparations mechanisms, and how victims can request information.

States should provide reparations "promptly," within a timeline defined by their reparations framework, but not later than within the lifetimes of living victims and of the eligible family members of deceased and disappeared persons.

States should promptly implement interim reparations to address urgent needs, such as the need for medical and psychosocial rehabilitation, without prejudice to the prompt establishment of a comprehensive reparations program.

States should promptly establish an independent oversight mechanism and take steps to revive and propel the implementation progress of stalled reparations measures. Taking into consideration available resources and engaging financial assistance from multilateral donors, states should preempt potential challenges and delays, including by promptly resourcing the independent oversight mechanism with an adequate number of competent staff members, allocating an adequate annual budget for reparations, and disbursing allocated funds.

Even during ongoing gross and/or serious violations, states should support reparations measures such as truth and documentation initiatives, particularly to gather information from victims to shape a comprehensive reparations program; communal healing processes; and local-level ceasefires.

States should incorporate binding reparations obligations into peace negotiation agreements.

States should incorporate reparations obligations into peace negotiation agreements, imposing binding reparations obligations on states to consult and coordinate with communities to implement a variety of reparations mechanisms.

States should undertake institutional reform, including legal and economic reform, to address structural discrimination that collectively victimizes whole groups.

States should establish and implement transparent vetting and lustration processes that target clearly defined public sector positions and include protections against purges of individuals based on their identity or political affiliation instead of their individual actions.

Recognizing that community faith in state institutions is often damaged during protracted conflict, states should strive to restore community trust by taking proactive measures to facilitate transparency, access to information and community engagement with reparations mechanisms.

2. Establish inclusive reparations

Reparations frameworks should strive to define “victim” inclusively, broadening the definitions of gross and/or serious violations to include a range of violations, and should avoid excluding or hierarchizing individuals on the basis of their gender or political, racial, national, ethnic, cultural, or religious background.

Reparations frameworks and their implementation should respond to gendered experiences and impacts of gross and/or serious violations, such as sexual violence, including through institutional reform to enable women to seek justice and receive benefits.

Reparations measures and programs should address the spectrum of gross and/or serious violations, including gross, systemic violations of economic and social rights.

Reparations frameworks should clearly explain their criteria for distributing reparations and for determining the amount of reparations.

Recognizing that perpetrators of crimes may also be victims, reparations frameworks should not exclude perpetrators who were also victims simply because they were perpetrators, and reparations should be proportional to the gravity of the gross and/or serious violations and harms they suffered.

Reparations frameworks should apply the same timeline for injuries for civilians and combatants.

Reparations in the context of armed conflict should not exclude victims of pre and post-conflict gross violations and should instead strive to redress all victims of violations, regardless of when they occurred.

Recognizing that reparations encompass the right to truth, the right to justice and guarantees of non-repetition, reparations should be viewed broadly as more than just compensation, and reparations mechanisms should always strive to address the holistic restorative needs of victims.

3. Expand victims' access to reparations

Recognizing that victims' needs can change over time, states should adopt long term reparations strategies derived from ongoing consultation and coordination with a wide array of victim groups and stakeholders to ensure adaptable and sustainable outcomes.

States should integrate and coordinate reparations with criminal prosecutions, truth processes, and institutional reform as part of a comprehensive transitional justice policy. To help ensure the implementation of reparations recommended by truth commissions, truth commissions should be given the ability to make binding recommendations on reparations.

In order to supplement the retributive function of courts, states should establish a victims' fund and mandate courts to award material and symbolic reparations—as individual and, where communities were targeted and experienced gross and/or serious violations as a group, collective reparations— using the fund as necessary.

As part of a comprehensive transitional justice policy, states should establish a state-financed independent reparations body that is not directly attached to court judgments or truth commission recommendations.

Following mass atrocities, states should distribute collective reparations to address the harms suffered by communities of victims while also taking steps to distribute individual reparations, including by allocating an annual budget and first awarding material benefits to victims who are most in need.

Recognizing victims' unique contexts, states should consider traditional, informal, and community-led justice mechanisms and processes for their potential to provide reparations and, where appropriate, be incorporated into formal reparations programs.

4. Ensure that victims receive reparations

States should ensure that the implementation of reparations is fair, including by keeping reparations mechanisms functionally separate from and outside the influence of corrupt institutions and processes.

States should establish an independent oversight mechanism to ensure the transparent implementation of reparations, evaluate and modify implementation efforts as necessary, and sanction state and non-state actors who do not fulfill their reparations obligations.

States should resource the independent oversight mechanism with an adequate number of competent staff members, including international, regional, national, and civil society stakeholders.

States should establish a division within the independent oversight mechanism to receive and integrate ongoing feedback from communities into reparations mechanisms in order to ensure their responsiveness to victims.

Taking into consideration the time needed to gather necessary documentation and the circumstances of victims, particularly of victims of sexual violence who may need additional time to cope with their trauma before coming forward to claim benefits, states should avoid establishing unfairly short statutes of limitations for reparations claims.

Taking into consideration the difficulties victims may face in gathering necessary documentation and the circumstances of victims, particularly of victims of sexual violence, states should impose a fair standard of proof for reparations claims that is lower than the standard for criminal convictions.

5. Publicize development-type reparations as reparations

Taking into consideration victims need for recognition, when states establish development-type initiatives that seek to recognize victims' or provide redress for communities that suffered collective harms, states should publicize them as reparations with the purpose of acknowledging the victims and their suffering and taking responsibility for gross and/or serious violations.

States should acknowledge that development-type initiatives are not automatically a form of reparation without specifically acknowledging the victims groups being redressed.

6. Lead the reparations process in consultation with other stakeholders

In collaboration with civil society, states should consult communities on their experiences and needs for reparations, proactively educate communities about available reparations mechanisms and how to access them, solicit and respond to feedback on the implementation process, and manage victims' expectations about the reparations process and outcomes.

In collaboration with civil society, states should provide all victims with information about different types of reparations through diverse and accessible means, including by employing mobile education units, holding public awareness campaigns, and establishing a victim outreach division.

States should engage with and coordinate the reparations contributions of international organizations and civil society without shifting the state's responsibility to provide reparations to other stakeholders.

Noting that providing reparations remains the state's responsibility, civil society may promote the implementation of reparations by taking steps to:

1. Engage communities in reparations processes

Civil society may consult communities on their vision for reparations and advocate for a reparations framework that addresses the experiences and diverse needs of victims.

Civil society may raise awareness of reparations mechanisms, including by employing mobile education units and holding public awareness campaigns.

Civil society may build the capacities of communities and individual victims to engage with reparations processes and mobilize their direct participation in reparations programs, reducing the need for non-victims' groups to represent victims in the reparations process.

2. Monitor, evaluate, and assist in the implementation of reparations

In accordance with the needs and desires of victims, civil society may advocate with states to establish reparations, including measures to address gaps in any existing state-led efforts. Civil society may monitor and evaluate reparations mechanisms to ensure that the implementation of reparations is transparent, inform the public when and how progress is stalled, and advocate with states to improve their implementation progress.

Civil society may provide technical assistance to states on the implementation of the operative paragraphs in the Basic Principles, including through model solutions, recommendations, and other forms of technical guidance and support.

3. Address gaps in the state's implementation of reparations

In the absence of the state's political will, civil society may consider contributing to or supplementing existing state-led reparations, including by supporting the search for disappeared persons, establishing memorialization initiatives, and providing medical and psychosocial care.

Civil society should engage in initiatives that generate creative ideas and approaches that meet reparations goals.