



## PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: REPARATIONS

### What are reparations in international law?

Reparation refers to the process and result of remedying the damage or harm caused by an unlawful act under international law. The purpose of reparation is generally understood to re-establish the situation that existed before the harm occurred. It can also serve as a measure to end ongoing violations and to deter future ones, as a vehicle for reconciliation or to restore relations between the violator and injured parties, as well as a basis to repair or rehabilitate physical and psychological integrity and dignity of victims and survivors.

In international law, a breach of an international obligation gives rise to a duty to repair the harm caused. If a State violates international law, it is responsible to immediately cease the unlawful conduct and offer appropriate guarantees that it will not repeat the illegal actions in the future. The obligation to make reparation follows a determination that a particular act caused, or sufficiently contributed to, the harm or damages and implies a level of wrongfulness. This determination can sometimes come in the form of a court judgement. International law recognises that reparation must fully repair, where possible, an injury, including any material or moral damage caused by the wrongful act. However, in the case of many severe violations of human rights, this may prove difficult in practice. Reparations can also be the result of violations of international law that include gross violations of international human rights law and international humanitarian law.

There are two main instruments in international law that deal with reparations; the United Nations [Basic Principles and Guidelines 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](#), adopted by the UN General Assembly in 2006, and Article 34 in the [International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts](#).

### What types of reparations are there?

The UN Basic Principles and Guidelines have identified 5 recognised forms of reparations; restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The International Law Commission's Draft Articles lists restitution, compensation, and satisfaction as the forms of reparation. Cessation and non-repetition are dealt with separately, as independent obligations stemming from the wrongful act.

**Restitution:** To restore the victim to their original situation before the violation occurred, where materially possible. Examples include the restoration of liberty, reinstatement of employment, return of property, return to one's place of residence.

**Compensation:** Financial compensation for the damages caused and includes compensation for material damages that can be valued in money, such as loss of income and treatment for physical harm; or non-material damages, such as lost opportunities of education, as well as mental harm.

**Rehabilitation:** As money can never undo psychological harm and trauma caused by violations of international humanitarian law and human rights, rehabilitation shall be offered for the victims' healing process. Rehabilitation should include medical and psychological care as well as legal and social services.

**Satisfaction:** Acknowledgement of the breach and the cessation of continuing violations, truth-seeking, search for the disappeared person or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.

**Guarantees of non-repetition:** Acts to prevent breaches from happening again.

## Who has the right to reparations?

In international law, traditionally, reparations were between States. However, over time, international law has come to acknowledge that individuals and not State entities are often the direct victims of violations of international law. This has led to an extension of the right to reparations. In particular, victims of genocide, crimes against humanity, war crimes, and torture have a right to full and effective reparation.

The right to reparations is a principle in international law that has become *customary*, which means that it is a non-derogable principle in international law. A non-derogable principle such as this means that such a right is absolute and may not be subject to any derogation, even in time of war or emergency.

## How can reparations be enforced?

The right of victims to reparations can be enforced either on the international or national levels. Individuals can claim damages in a national court of the violating State, in international or regional courts, or in certain cases, before a court of a third State.

Under international law, claims between two States can be brought to the International Court of Justice (ICJ) in The Hague. The Court can also issue an advisory opinion that may recommend reparations be provided by the violating State. For example, the ICJ issued a [Reparations Judgment](#) in the Democratic Republic of the Congo v. Uganda case, awarding the DRC US\$330 Million as total compensation for damage caused by Uganda's violations of international law. Another avenue in international law is bringing a claim to the International Criminal Court (ICC), which prosecutes individuals accused of war crimes, crimes against humanity, and genocide. The ICC can issue reparation orders and ask the Court's [Trust Fund for Victims](#) to compensate victims of crimes, following the conviction of individuals.

A UN Security Council resolution can also lead to reparations, which can establish an obligatory reparation mechanism. For example, after the Iraqi invasion of Kuwait, a UN Compensation Committee was established, through which [Iraq paid damages](#) to numerous companies, States, and individual victims who suffered damages in Kuwait.

States may also introduce their own reparations programmes. For example, in [Argentina](#), after the military dictatorship in the 1980s, such programmes were set up where large numbers of individuals received damages, without having to stand the same high threshold for evidence as in a court.

Agreements between States also can lead to reparations programmes, such as the one between [Germany and Israel](#) for violations of the Nazi regime in the Second World War.

## Have reparations been granted in Asia?

The Extraordinary Chambers in the Courts of Cambodia has issued reparations orders, in its cases on the Khmer Rouge regime. As international criminal mechanisms, the ECCC, along with the ICC have limited the harm that can be repaired to the crimes the accused was found guilty of. In the specific case of the ECCC, this meant that the Court only awarded collective and moral reparations, upon the guilty conviction of the accused, and the Court's Internal Rules clearly state that the Chambers would not provide individual reparations or compensation.

In the Court's [first judgement](#), it awarded reparations in the form of publishing the judgement from the case along with all the names of the civil parties and victims, and compiled and published all statements of apology and remorse that the perpetrator had made during the course of the trial. The Court's second case was so large that it was split into two, and in its first part, [Case 002/01](#), the Court endorsed 11 reparations projects including a national remembrance day project, construction of a memorial, testimonial therapy, exhibitions and educational projects, among others. In the second part of the case, [Case 002/02](#), the Court awarded further reparations projects around satisfaction such as mental heal and reconciliation, memorialization projects, and educational projects, connected to guarantees of non-repetition.