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Redressing Historical Racial Injustices:

A TOOLKIT FOR POLICYMAKERS AND ADVOCATES



ABOUT THE TOOLKIT

ABOUT CRRJ

The Civil Rights and Restorative Justice Project at Northeastern University School of Law is a mission-driven program of interdisciplinary teaching, research and policy analysis on race, history, and criminal justice. A project of NUSL’s Center for Law, Equity and Race, CRRJ is the preeminent academic center for the study of mid-twentieth century racial violence. Our original investigations, transformative pedagogies, and top-level scholarship facilitate local and national initiatives to uncover an accurate history of racial harms during the Jim Crow era and reconcile the ongoing damage.

AUTHORS

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HOW TO USE THE TOOLKIT

This toolkit seeks to introduce policymakers and advocates to a range of policy options for remediating historical injustices. This Executive Summary provides a brief roadmap and overview of the information contained in the toolkit, including a selection of abbreviated case studies. The full toolkit will include additional analysis and best practices for each category of policy; in-depth case studies; and an appendix of additional relevant legislation.

Although the federal government has an important role to play in remedying historical injustices, this toolkit focuses primarily on state and local policy. State and local governments have a unique opportunity to tailor legislative and administrative remedies to the histories and present needs of specific communities.

Every jurisdiction is different, and particular remedies may or may not be appropriate or feasible in different jurisdictions. The models discussed in this toolkit are drawn from state and local governments across the country and can be combined and adapted to meet the needs of different communities.



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02.

INTRODUCTION TO REDRESS FOR HISTORICAL RACIAL VIOLENCE

This toolkit introduces readers to a range of policy approaches to remediating historical racial injustices, including racial violence, oppression, and discriminatory policies and practices. In some cases, legislation may be appropriate to address a discrete event, such as a commission created to study a specific massacre and provide remedies to survivors and descendants. Other initiatives may aim to address a broader historical period or pattern of events – for example, a commission to study a state’s history of lynching or a task force to develop proposals for reparations for descendants of slavery. This toolkit serves as a resource to help state and local policymakers, staff, and advocates understand why such remedies are needed, what forms they may take, and what policies other states and localities have adopted to address historical injustices.

Historical racial injustices demand redress in the present day. Many of these historical wrongs have never been formally acknowledged, nor have many survivors and descendants ever received any form of justice, even as the effects of these harms are ongoing. Notably, in many cases, law enforcement or government actors played a direct or indirect role in facilitating racial violence or upholding racist policies and practices. This history has damaged relationships between impacted communities and their governments in ways that persist today. In considering appropriate and necessary steps to redress historical racial injustices, this toolkit draws on international human rights instruments and conventions, including The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), an international human rights treaty adopted by the UN General Assembly in 1984; and United Nations General Assembly Resolution 60/147, 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 in 2005.

The CAT aims to prevent torture around the world, and 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. As CRRJ’s Archive demonstrates, the treatment of African Americans in the United States involved violence and oppression based on race, and this violence was often perpetrated or facilitated by law enforcement or other public officials. Because racial violence is a form of torture as defined by the CAT, the CAT’s principles of redress provide appropriate guidance for considering options for redress for this history in the United States.

United Nations General Assembly Resolution 60/147 outlines the right of victims of human rights abuses to reparations and remedy. The Resolution affirms that victims are entitled to access to justice, including judicial and administrative remedies; reparation for the harm suffered; and access to relevant information about the causes of the human rights violations and the availability of remedies and reparations.

This toolkit draws from the principles of redress outlined by both the CAT and Resolution 60/147. These include:

- 01 Restitution**

The goal of restitution is to return the victim to their situation prior to the violation. Restitution may include addressing the structural causes that contributed to the violation, including structural discrimination.
- 02 Compensation**

Compensation should be sufficient to compensate for all harms, including medical and legal expenses and loss of educational and employment opportunities.
- 03 Rehabilitation**

Rehabilitation is intended to be holistic, including medical and psychological care, legal services, and social services.
- 04 Satisfaction and the right to truth**

This principle includes the verification and public disclosure of facts related to the violation; identification of victims; public apologies that recognize the facts and take responsibility; and commemoration.
- 05 Guarantees of non-repetition**

Steps must be taken to address impunity for violations and addressing underlying social causes of violations, including by changing relevant laws and implementing preventative measures and deterrents.

The toolkit also draws from policies adopted by states and localities in the United States to address historical injustices, such as apologies by state or local government officials or legislative bodies; truth and reconciliation commission; and material reparations for survivors and descendants. However, all redress efforts should be directly informed by, and developed in collaboration with, the communities most affected by the historical harms, particularly survivors and descendants. It is essential that reparative processes create opportunities for community engagement and input at all stages.

03.

AREAS COVERED BY THE TOOLKIT

The toolkit discusses how state and local governments can support efforts towards symbolic reparations, such as investigating historical injustices and promoting truth-seeking processes, and the best practices required by these efforts. Such efforts can include creating records repositories, facilitating reopening cold cases, and creating truth commissions. These activities are important to create a full and accurate accounting of the historical events and their impacts, as well as providing an important foundation for further remedies.

In addition to symbolic reparations, the toolkit also reviews material reparations, and how they should be incorporated into state and local redress policies to the fullest extent possible. Providing material reparations is essential to redress uncompensated historical harms, and to address the ongoing inequities stemming from these harms. While material reparations programs may vary widely in form and structure, they may include monetary payments, as well as non-monetary remedies in the form of programs or services, such as access to educational scholarships, housing programs, and healthcare services. In developing material redress programs, the toolkit states that legislators should work with communities to identify and incorporate appropriate forms of reparation to address the range of historical and ongoing harms, and meet the needs of survivors and descendants. Material redress programs should clearly define the individuals and communities that are the intended beneficiaries, as well as clearly identifying the injury or harm that they seek to remedy and outline a clear linkage between the harm and the beneficiaries.

The toolkit also considers the importance of litigation in obtaining reparations. Litigation may offer other benefits that legislative and executive remedies cannot provide, such as allowing victims and survivors to present evidence of individualized harms, and receiving particularized remedies, over the generic approaches typical of a legislative program. Litigation also requires that parties participate in a fact-finding and discovery program, which can enable the development of a historical record. However, because survivors were foreclosed from seeking remedies through the courts at the time of the harm, and the attenuated connection between those historical harms and those who seek recovery today, attempts to litigate historical injustices have seen limited success. The toolkit identifies retroactive legislation extending or eliminating the statute of limitations for bringing these sorts of claims as a possible means of overcoming a significant hurdle to bringing civil litigation for vulnerable populations who seek to bring these claims.

There is a growing movement to confront the U.S. history of racial violence and injustice. State and local governments have an obligation and an opportunity to respond to calls for repair and work with communities to advance policies that interrogate their local histories and provide redress.

This toolkit seeks to provide a framework for thinking about redress and reparations holistically and offer examples of redress policies that incorporate the components of restitution, compensation, rehabilitation, satisfaction, right to truth, and guarantees of non-repetition. In the current moment, communities and policymakers continue to innovate, and examples of reparative policies and programs continue to multiply around the country. This toolkit provides only a foundation and a starting point for understanding this landscape and identifying some of the steps that government entities can take toward repair.