HUMAN RIGHTS REPARATIONS
CHR 30701-01; KSGA 30404-01; LAW 70414-01; MGA 60310-01; IIPS 30421-01
Prof. Dr. Diane A. Desierto
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De Bartolo Hall 224, MW 3.30 pm – 4.45 pm
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COURSE DESCRIPTION:
This course explores the current state of reparations for State and non-State responsibility human rights violations, as adjudicated or prescribed by international courts, tribunals, commissions, and specialized bodies and examines their sufficiency and adequacy in light of primary norms (treaty, custom, and general principles) of international human rights law and the general law of international responsibility. After exploring current limitations in the existing frameworks for adjudicated or prescribed human rights reparations, the course proceeds to examine, scrutinize, critique, and analyze five complex cases of hitherto-unmet reparations of egregious human rights violations: 1) slavery and the trans-Atlantic slave trade; 2) colonialism, intergenerational harms, and indigenous peoples’ rights; 3) climate change-driven or related environmental harms; 4) cross-border migration and the treatment of refugees; and 5) State aggression towards other States resulting in serious human rights violations.

COURSE OBJECTIVES:
At the end of this course, students are expected to:
1. Develop a foundational understanding of the international legal frameworks governing the adjudication or prescription of reparations for serious human rights violations, engaging its legal, policy, and interdisciplinary moorings reflected in international, regional, and national judicial and arbitral decisions;
2. Situate the limitations of current international legal frameworks for adjudicated or prescribed reparations for serious human rights violations, within the broader contexts of law, policy, and interdisciplinary considerations of decision-makers in the international system;
3. Identify possible legal pathways for reforms that ensure meaningful, just, adequate, and effective reparations for human rights violations; and
4. Strengthen analytical, collaborative, and deliberative skills alongside ethical decision-making in the evaluation and dissection of problems and pathologies in the international legal frameworks currently regulating the adjudication and prescription of reparations for serious human rights violations.

COURSE ASSESSMENT:
70% Individual seminar paper on topic approved by the professor, due Tuesday, May 5, 2020, no later than 5 pm EST.
For Law students: Maximum 30 pages, double space, 8.5 x 11 inch paper
For MGA students: Maximum 20 page policy memorandum, double space, 8.5 x 11 inch paper
For Undergraduate students: Maximum 10 page essay, double space, 8.5 x 11 inch paper
30% In-campus project work with the Notre Dame Reparations Design and Compliance Lab (co-directed and supervised by Professors Diane Desierto and Anibal Perez-Linan)
**COURSE MATERIALS AND CLASSROOM POLICIES:**

There is no prescribed textbook for this class. This course outline contains hyperlinks to all the Required Readings for each week. **Readings are differentiated according to the students (e.g. there are specific readings designated for all students, and further readings only required for law students and MGA students).** Hyperlinked materials will often require access to [https://inside.nd.edu](https://inside.nd.edu). Class discussions will assume students have read the Required Readings pertaining to them.

This is an interdisciplinary, multi-level seminar class. While I aim to draw insights from the diverse student constituencies that comprise our class, students will only be able to maximize their learning if they respectfully participate, inquire, challenge, critique, and scrutinize each other's insights from the course materials and ongoing project work. As you will discover from this course, there are serious structural, institutional, system, and normative deficits in the international legal frameworks regulating the adjudication and prescription of reparations for serious human rights violations. Our task is to expose those deficits, as well as to examine pathways to redress them.

**PART I: CURRENT INTERNATIONAL LEGAL FRAMEWORKS REGULATING THE ADJUDICATION AND PRESCRIPTION OF REPARATIONS FOR SERIOUS HUMAN RIGHTS VIOLATIONS**

**WEEK ONE:** 13 January and 15 January

*Professor’s Lectures (students not expected to have read assigned readings yet):*

**For Whom and What Exactly Does International Law ‘Repair’?**

**Required readings:**

3. *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*, UN General Assembly Resolution 60/147, 16 December 2005
4. *Case Concerning the Factory at Chorzow (Germany v. Poland)*, 1928 P.C.I.J. (Series A) No. 17, Judgment on the Merits, 13 September 1928, at 47.

**WEEK TWO:** 20 January and 22 January

**Architecture of Reparations in the Law of State Responsibility**

**Required readings:**

*For all:*


**Additional for Law Students:**


**Additional for MGAs:**


**WEEK THREE:** 27 January and 29 January

*Substantive and Procedural Considerations in Framing Reparations Claims*

**Required readings:**

For all:


**Additional for Law Students:**


**Additional for MGAs:**


**WEEKS FOUR and FIVE:** 3 February and 5 February, 10 February and 12 February

*The Problem of Jurisdiction and Reparations*

**Required readings:**

For all:


Additional for Law Students:
1. *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, with Amended Order for Reparations*, International Criminal Court Case No. ICC-01/04-01/06 A A 2 A 3, 3 March 2015.

Additional for MGAs:

WEEKS SIX, SEVEN, and EIGHT: Readings sequentially assigned for 17 February and 19 February; 24 February and 26 February; 2 March and 4 March (cf. each set of readings in subheadings to be differentiated according to undergraduates, law students, MGAs).

*Paradigms for Reparations in International Courts and other Tribunals*


A. The International Court of Justice
1. *Statute of the International Court of Justice*, Articles 56 to 60; *Rules of Court*, Articles 65-70;

B. African Court of Justice and Human Rights


C. Inter-American Court of Human Rights


2. *Statute of the Inter-American Court of Human Rights*


4. Douglass Cassel, *The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights*


D. European Court of Human Rights

1. *European Convention on Human Rights*

2. *Rules of Court of the European Court of Human Rights*, 1 January 2020


E. United Nations Compensation Commission and Claims before National Courts and Commissions


F. Treaty-based UN human rights bodies

G. International criminal courts and tribunals

**SPRING BREAK: 7 March 2020 to 15 March 2020**

**PART II: COMPLEX CASES OF UNMET OR UNRESOLVED REPARATIONS CLAIMS**

**WEEKS NINE AND TEN**: 16 March and 18 March; 23 March and 25 March

*Slavery and the Global Slave Trade*

For all:
   4. CARICOM Reparations Commission, 10-Point Reparation Plan.
   5. Ta-Nehisi Coates, *“The Case for Reparations”*, The Atlantic, June 2014.

Additional for Law Students:
   1. Doug Criss, *“People are again talking about slavery reparations. But it’s a complex and thorny issue.”*, CNN, 15 April 2019.

Additional for MG.As:

WEEK ELEVEN: 30 March, 1 April, and 6 April

**Colonialism, Intergenerational Harms, Indigenous Peoples**

For all:

Additional for Law Students:

Additional for MG.As:

WEEK TWELVE: 8 April and 15 April

**Climate Change and Environmental Reparations**

For all:
Additional for Law Students:

Additional for MGAs:

EASTER BREAK: 10 April to 13 April
WEEK THIRTEEN: 20 April and 22 April
**Cross-Border Migration and Treatment of Refugees**
For all:

Additional for Law Students:

Additional for MGAs:

WEEK FOURTEEN: 27 April and 29 April
**State Aggression resulting in serious human rights and humanitarian law violations**
For all: