

**AN ASSESSMENT OF THE EFFECTIVENESS OF IHL REMEDIES TO THE CIVILIAN
POPULATION**

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ABSTRACT

This research was done with the general objective of assessing the effectiveness of IHL remedies for the civilian population. The other objectives which were done throughout the research which include showing examples of the remedies provided, possible mechanisms, problems involved and possible solutions.

In chapter two, I was able to show the legal framework governing the provision of IHL remedies to the civilian population, how the different countries apply these IHL remedies to the civilian population and the different laws that govern it in the select countries.

In chapter three, I provided the right to a remedy as shown within IHL, the different principles involved with the provision of the IHL remedies. The research also showed who as a civilian is entitled to the IHL remedies, and who is liable to provide the IHL remedies to these civilians. Also within this chapter, it showed the different factors that are hindering the provision of IHL remedies to the civilians.

In chapter four, I presented the summary of findings, conclusion of the research and recommendations.

DECLARATION

I declare that this work done within this research dissertation is my original work and the contribution of other sources have been properly referenced with proper citations in the dissertation.

OKWII SIDNEY JOHN

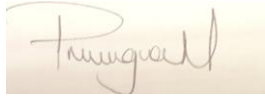
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APPROVAL

I have supervised this dissertation and it is now ready for submission to the Faculty of Law, Uganda Christian University.

SUPERVISOR; PATRICIA NDURU

Signature

A handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read 'Patricia Nduru'.

DEDICATION

First and foremost, I give thanks to the Lord for taking me through this journey and enabling me to carry out this dissertation. I also dedicate this dissertation to my parents, Kenneth Oyik and Molly Lanyero for their financial and emotional support throughout their academic journey. I also dedicate this dissertation to my friends which include Mark and Musa for their support and guidance during this process. My supervisor, Mrs. Patricia Nduru for her guidance and continued advice during my research work also gets a special mention.

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LIST OF ABBREVIATION

CSOs- Civil Society Organisations

ICC - International Criminal Court

ICRC - International Committee of Red Cross

ICTJ - International Centre of Transitional Justice

IHL- International Humanitarian Law

IRRC -International Review of the Red Cross

LRA- Lord Resistance Army

NGOs- Non Governmental Organisations

UN-United Nations

USA-United States of America

CHAPTER ONE

RESEARCH PROPOSAL

1.1 Introduction

This research proposes to assess whether the current remedies provided to civilians for IHL violations are effective. This will be based on relevant national and international statutes, renowned IHL textbooks by various authors, Articles and journals along with the relevant case laws that have been able to show this in IHL.

Civilians are seen as persons who are not members of the combatant forces, the ICRC customary rules also go ahead to show that all persons who are civilians make up the civilian population.¹They have ensured protection under IHL as shown under Article 48 of Additional Protocol 1 of the Geneva Conventions which stipulates distinguishing them from combatants during attacks, under Article 4 of the Geneva Conventions IV which provides for civilians being protected persons in the hands of a conflicting party. And the civilians are also entitled to several rights and obligations during the presence of armed conflict which include Article 48 that shows they should be distinguished from the combatants involved in an armed conflict. However as cited by the case book ICRC website, civilians have become the biggest victims to suffer during the occurrence of an armed conflict. ²This can be either through the carrying out of indiscriminate or proportionate attacks which are restricted against civilians under 51 (4) of the Additional Protocol 1 to the Geneva Conventions and a war crime under 8(2) of the Rome statute. However, IHL also establishes that these civilian victims will be

¹Beck Doswald John and Hackearts Jean Marie (2005) Customary International Humanitarian Law Volume I Rules, ICRC and Cambridge Press (Rule 5 at page 17).

²www.casebook.icrc.org (Civilian population) visited on 1st March 2024.

able to acquire the necessary remedies against these violations as shown in different international conventions or under case law³.

For example, as seen under the UN Basic Principles and Guidelines to the right of a remedy that provides for reparation of harm suffered through ways like compensation, satisfaction, rehabilitation, and guarantee of non-repetition among others.⁴We also have Article 75 of the Rome Statute that provides for reparation to victims under the statute who are paid through the trust fund under Article 79. We also have Article 3 of the Hague Convention 1907 which provides for the remedy of compensation.

Customary law also establishes the awarding of these civilians different remedies as shown in the customary international humanitarian law Volume I: rules,⁵ which is indicative of different scenarios where remedies were offered to civilians like the restitution to be provided for by the commission for real property claims of displaced people and refugees of Bosnia and Herzegovina, ⁶or the provision of satisfaction seen in the Spanish Civil War.⁷

³Zegvled Lisbeth (September 2003) "Remedies For victims of Violations of International Humanitarian Law "IRRC Journal; volume 85, pages 497 to 526(page 505 to 507).

⁴UN General Assembly Resolution (2005) Basic Principles on the right to a remedy and reparation for victims of gross violations of human rights law and serious violations of humanitarian law60/147, UN Doc A/RES/60/147(part nine).

⁵Supra note 1(rule 150 on reparations on page 537).

⁶Ibid (page 547).

⁷Ibid (page 549).

Case law is also indicative of the provision of remedies to the civilian population as seen in the recent decision by the ICC to grant compensation of 52 million Euros compensation to the LRA victims of Dominic Ongwen⁸.

Therefore in this research, I aim to show the effectiveness of these remedies by looking at different aspects and ideas like the concept of the legal framework providing for these remedies, the implementation and enforcement of these IHL remedies, mechanisms through which the civilians access these IHL remedies, different hindrances and issues that may arise as civilians want to get this remedies among many other aspects as provided within the confines of IHL.

1.2 Background of the study

IHL has been in application since past eras till present day armed conflicts. For example, as shown by King Hammurabi of Babylon stated,

“I establish the laws to prevent the strong from oppressing the weak”⁹

This is as shown in history whereby it is believed that during armed conflicts, different military units believed there was a need to have justifiable conduct during war but to also respect certain rights amongst different groups of people within the conflict. This can be shown for instance in the 1863 Lieber Code, that was established during the American Civil War and this established the conduct of combatants towards civilians and other belligerents and was adopted in various other international conventions and The Conference of 1864 in Geneva led to the committee of five being

⁸www.reuters.com (ICC orders \$ 56 million compensation for Ugandan victims) visited on 1st March 2024.

⁹ICRC (2014) International Humanitarian Law, (Answers to your questions), ICRC (page 13).

formed to provide relief and care for the wounded and military sick combatants during the war but also established a multi-lateral treaty that was established to treat the wounded and sick in the military during armed conflicts.¹⁰ This committee later went on to become the International Committee of the Red Cross in 1876. These different scenarios and rules led to the codification of IHL in different treaties and conventions like the Geneva Convention and the Hague Convention.

It's a cardinal rule that the protection of civilians must be there during hostilities under IHL.¹¹ International law bestows that civilians shall be protected during the presence of an armed conflict unless they are found to have been partaking in the hostilities themselves do they lose the protection. This is shown through the different rules and regulations provided for example the need to distinguish between the civilians and their objects along with those of the military and the different military objects during an attack by Article 48 of Additional Protocol 1, prohibiting indiscriminate attacks by Article 52 (4) of additional protocol 1, carrying out disproportionate attacks which is a war crime under Article 8(2) of the Rome Statute. The civilians are also protected persons under whereby hands of a belligerent party or an occupying power to whom they are not citizens during an armed conflict by Article 4 of the 4th Geneva Convention. The rationale for this is that civilians no longer have assured protection from their state and to protect civilians from arbitrary acts of an

¹⁰Ibid (page 12).

¹¹Article 51 of the Additiional protocol 1 as quoted by Nils Melzer (2019) International Humanitarian Law: Comprehensive Introduction, ICRC (conduct of hostilities page 80).

adverse party.¹² Therefore this ensures that the civilians shall still be obliged to be protected regardless of the presence of an armed conflict.

However, IHL is also cognizant of the fact that the civilian population may still become victims of violations under IHL during the presence of current armed conflicts henceforth the need to provide remedies for these violations under IHL. Remedy as defined in the Black's law dictionary is the means of enforcing a right or preventing or redressing a wrong; legal or equitable relief¹³. Other names for remedy have also been referred to as relief or reparation in international law. Various international legal Instruments have been very indicative of remedies to be provided for under IHL like Article 75 of the Rome statutes of the ICC that ensures there shall be principles provided to ensure reparation for the victims and that the reparation may come from the convicted or the trust fund, Article 91 of The Additional Protocol 1 of the Geneva conventions that provides that a state shall be held liable for compensations where it fails to meet there obligations during an armed conflict, Article 3 of the Hague conventions 1907 that provides for the remedy of compensation which states which a belligerent party which violates the provisions of the said Regulations shall if the case demands, be liable to pay compensation.

¹²Supra note 9 (page 27).

¹³Bryan A Garner (June 2014) Blacks Law Dictionary 10th Edition, Thomson West (Definition of remedy -page 1485).

Amidst all the treaties and customary rules that provide for remedies against violators of IHL, there is a need for the proper provision of the remedies to make sure they are effective enough and able to reach all victims of violations within armed conflicts. ¹⁴The Right to a remedy represents the primary right but there other legal secondary rights that should accompany the primary right like access to justice and access to relevant information. ¹⁵ The rights should also have bodies and organizations that can enforce the remedies in question. For example, the UN Basic Principles on the Right to a Remedy provide for access to justice and relevant information concerning the violations and reparations of victims incurred to facilitate the victims in their right to a remedy¹⁶.

We also acknowledge the fact that there have been many Present-day armed conflicts taking place all over the world. As shown in recent times, there have been continued violations by participants in armed conflicts. ¹⁷These violations have resulted in a lot of civilian victims arising out of these armed conflicts. Therefore, there is a need to have an efficient system to provide these remedies who have become victims as a result of violations under IHL. However, they have encountered several issues along the way that have resulted in the inability of civilians to access remedies in national courts of law, and sovereign immunity among many other issues within IHL. And as shown in the Emmanuel Gillard Report, this leaves a lot of the civilian population

¹⁴Christian Marxsen (2018) Unpacking the International Law on Reparation for Victims of Armed Conflict ,Unpacking the International Law <https://www.zaorve.de>, 521 to 540, (page 536).

¹⁵Supra note 4 (part seven).

¹⁶Ibid (part ten).

¹⁷Op cit note 2.

unable to access the appropriate redress.¹⁸ Henceforth there is a need to address these issues to ensure effective and efficient provision of remedies to civilians who are subject to violations under International Humanitarian Law.

It's on this background that propose this research.

1.3 Problem statement

As shown in the background of the study, there is a clear establishment of the right to provide IHL remedies to the civilian populations who are subject to the violations as provided for under relevant international provisions and the different cases indicative of a right to a remedy.

However, the problem of inadequacy in state and international legislation providing for these IHL remedies and the inability to enforce this given right to a remedy by the civilians has resulted in the creation of gaps like the inability of courts to award individual claimants the preferred remedies due to the inability to enforce the given rights,¹⁹ the continued presence of sovereign immunity²⁰ among other issues. This problems and the existing gap have severely hindered the provision of IHL remedies to the civilian population.

1.4 General objective of the study

To assess the effectiveness of IHL remedies to the civilian population.

¹⁸Emmanuel Gillard (2003) Reparation for the Violations of International humanitarian Law IRRC Journal; Volume 85, 529-553(page 549).

¹⁹The Vessalla Terzaiva (September 2019) Article on human rights remedies for violations of the law armed conflict: reflections on the right to reparation in light of the recent domestic cases in Netherlands and Denmark, International Criminal Database <https://www.InternationalCriminaldatabase.org> (page 21).

²⁰Supra note 21(page 537).

1.5 Specific objectives

1. To highlight the possible remedies that are provided to civilians who have suffered violations under IHL.
2. To examine the other different rights and mechanisms that are needed to enforce these remedies under IHL.
3. To identify the existing gaps and problems that are rendering the provision of remedies ineffective within IHL.
4. To recommend and provide solutions to ensure the effectiveness of remedies provided to civilians in IHL.

1.6 Research questions

1. What are the possible remedies that are provided to civilians who have suffered violations under IHL?
2. Whether there are other different rights and mechanisms that are needed to enforce these remedies under IHL?
3. Whether there are any existing gaps and problems that are rendering the provision of remedies ineffective within IHL?
4. What recommendations and plausible solutions can be provided to make IHL remedies effective to civilians?

1.7 Significance of the study

1. This research hopes to provide further exposure to the failures and gaps within the legal realm that are affecting the provision of these remedies in IHL.
2. The research also hopes to provide possible solutions to improve and enable the provision of these remedies to be more effective.

3. The research also hopes to re-echo the importance of providing remedies to victims and also ensuring the given remedies can be provided.
4. This research also intends to act as a reference for future research works by other scholars and students carrying out a study on this topic or any other related topics in IHL.

1.8 Justification of the study

In IHL there has been a difference between the recognition of the civilian's right to a remedy and the actual applicability of providing the right to a remedy to the civilian population. There are noticeable gaps like the lack of a universal legal enforcement mechanism providing for the IHL remedies²¹, that national courts don't allow civilians to access the remedies²² amongst many other gaps.

It's on this basis, that the findings and proposals like creation of a universally binding treaty, a formation of a regulatory body put within this research have the potential if implemented to address the existing gaps that impede the civilian population's right to access IHL remedies.

1.9 Literature review

Several studies have been carried out by different authors that reflect on the effectiveness of remedies that are given when one suffers a violation of IHL. This has been in the form of IHL Textbooks, Articles and journals, commentaries and different research done on the remedies in IHL. These different sets of literature offer more insight into the different remedies offered, different international rules and customs

²¹Supra note 21(page 549).

²²Supra note 3(page 529).

that provide for these remedies, application and enforcement of these remedies, and examples where there are remedies were offered among many other ideas expanded on within this literature. Some of them even offer references to certain gaps and inconsistencies as shown within the proposal along with others being exposed for lack of emphasis on these inconsistencies and gaps. The different literal books, journals, and Articles are reviewed as shown below;

Jean-Marie Henckaerts and Louis Doswald Beck ICRC's Customary International Humanitarian Law Volume 1, first of all, highlights the fact that giving remedies and Reparation is customary law under rule 150 of the book.²³ The authors showed the different remedies and how they are applied in the different scenarios within both the international and non-international armed conflicts for example in Kuwait there was the establishment of the UN Compensation Committee to provide compensation for the invasion and occupation by Iraq²⁴ or the establishment of The Victim's Trust Fund by Article 79 of the Rome statute of the ICC. However, Jean Marie and Doswald Beck are unable to indicate the practical application of these remedies under IHL and show how these different examples implemented these remedies in question. Jean Marie Henckaerts and Louis Donald Beck provided different obstacles that resulted in the civilians being unable to access the IHL remedies like lack of specification of the mechanisms for reviewing compensation claims, encountered obstacles when claiming or obtaining compensation in the courts of law, the consideration of state immunity as

²³Op cit note 1.

²⁴Ibid (page 545).

seen in the Shimonda case.²⁵ This in turn led to the hindrance of civilians being unable to access the relevant remedies.

Christian Evan's *The Right to Reparation in International Law for Victims of Armed Conflict* emphasizes the analysis of International law in relation to the right of reparation to victims and their practical applicability in different areas or states. Christian Evans shows how the right to reparation arose from the UN Basic Principles of Justice for Victims of Crime and Abuse of Power till the UN Basic Principles on the right to reparation.²⁶ Although the rights to reparation are of non-binding status, they should still be adhered to by the different individuals, states and other organized armed groups.²⁷ That the right to reparation has received recognition in general international law of individuals as beneficiaries of reparation.²⁸ Christian Evans also provided examples of where the reparation measures have been applicable like in East Timor, the special court in Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.²⁹ Christian Evans also highlights the significant discrepancies between recognizing the rights of victims and putting the right into action in the real world.³⁰ Christian Evans also shows that the main emphasis of criminal prosecution rather than victim compensation as seen by the chosen Tribunals though strides have

²⁵The Tokyo Shimonda case at the Tokyo District court, 7th December 1963 as quoted by Ibid (page 545).

²⁶ Christian Evans' *The Right to Reparation in International Law for victims of Armed Conflict* Cambridge studies in international and Comparative Law , Cambridge University Press(page 37).

²⁷Ibid (page38).

²⁸Ibid (page 125).

²⁹Ibid (page 131).

³⁰Ibid (page 232).

been made in the ICC.³¹Therefore emphasis is put on the difference between the law being stated and its application and usage in reality to expose the existing gaps for the civilian population to get remedies.

International Commission of Jurists the Right to a Remedy and Reparation for gross human rights violations: A Practitioners Guide 2018 provides a more expansive understanding of the basic principles of a right to a remedy.³²The International Commission of Jurists also provides for the notion of there being both ‘direct’ and ‘indirect ‘victims who are entitled to reparation as a remedy.³³ The guide also highlights the right of a remedy along with the important procedural rights that follow up the right.³⁴The International Commission of Jurists also highlights the presence of certain obstacles faced in the provision of the right to a remedy to the civilian like amnesties and statutes of limitations.³⁵

Redress; Basic Principles on the Right to a Remedy guideline book 2006 highlights the important considerations needed to implement the basic right to remedy in regards to providing reparation to victims. Redress also shows the different issues that may arise that may hinder the implementation of different remedies provided in IHL like the statutes of limitations and lack of universal civil jurisdiction³⁶ However, it provides for the ways the basic right to a remedy addresses these issues at hand and also shows

³¹Ibid (page 132).

³²International Commission of Jurists (2018) the right to a remedy and reparation for gross human rights violations: A Practitioners Guide (page 35 to 36).

³³ Ibid (page 31).

³⁴ Ibid (page 35).

³⁵ Ibid (part 9).

³⁶Redress (2006); basic principles on the right to a remedy guideline book, (pages 26 and 28).

the different important aspects that are part of the basic right to a remedy.³⁷ However, Redress doesn't provide any key notion on whether these said procedures are being implemented amongst the international and national systems and shows no probable enforcement of these remedies and rights as provided for under the basic right to a remedy henceforth it's mainly based on the ideal situation. Therefore, the Redress trust doesn't offer any inconsistencies or gaps since it operates as a guideline book simply offering the idealistic scenarios rather than basing on realistic application.

Dr. Lisbeth Zegveld's remedies for victims of violations of international humanitarian law also provided more insight into the rights to a remedy and reparation for victims. Dr. Zegveld then delves into who becomes a victim under IHL and goes ahead to show that those who can fall under the victim criteria are persons who are victims within the confines of IHL.³⁸ She then goes ahead to show the application of how these remedies are given through the national and international systems.³⁹ She further encourages domestic courts to recognize that individual claimants can institute suits for remedies against violators of IHL since it's provided for under the different treaties and should be implemented in domestic laws⁴⁰.

Emmanuel Gillard's reparation for violations of international Humanitarian Law also provides for the remedies and reparations of civilians under IHL. Gillard helps show that civilians have continued to suffer at the hands of abusive governments and armed

³⁷Op cit note 40.

³⁸Supra note 3(page 501).

³⁹Ibid (pages 507 to 525).

⁴⁰Ibid (page 525).

groups in situations of armed conflicts.⁴¹ Gillard indicated that reparation is an important way of enforcement and key to deterring future violations and offered more long-term reparations and gave types of reparation like restitution and satisfaction⁴². Gillard also indicated that there is no occurrence of armed organized groups don't provide reparation.⁴³The courts then offered important questions on who can claim and mechanisms for the awarding of the claim like who is entitled to compensation and can it be enforced by national courts.⁴⁴Gillard also referred to the fact that individuals are more able to claim under International fora than national courts.⁴⁵ Gillard also indicated certain issues like the lack of a universal legal enforcement mechanism and the fact that a small number of victims can access these remedies.⁴⁶ The above legal lacuna therefore is the proponents of the problem that is the failure of the civilian population to be able to access the relevant remedies.

The Rainer Hofman's Article on the 2010 International Law Association Declaration of International Principles on Reparations of Victims of Armed Conflict, provides also for the fact the International Law Commission organises a declaration stating or affirming the individuals' right to a remedy.⁴⁷Rainer Hofman also shows that Article 3 of the Hague Convention 1907 and Article 91 of the Additional Protocol 1 of the Geneva Conventions provide for compensation should be understood in the futuristic sense

⁴¹Supra note 21(page 531).

⁴²The Articles 35 and 37 of State Responsibility as quoted under Ibid (page 531).

⁴³Ibid (page 534 - 535).

⁴⁴Ibid (page 535).

⁴⁵Ibid (page 539).

⁴⁶Op cit note 21.

⁴⁷The Rainer Hofman (2018) 2010 International Law Association Declaration of International Principles on Reparations of Victims of Armed Conflict 551-554(page553).

that enables an individual to possess the right to reparation.⁴⁸ Rainer Hofman also doesn't offer up any inconsistencies or gaps within his Article that indicate anything to do in relation to the problem.

Christian Marxen's unpacking of the International Law on Reparation for Victims of Armed Conflict, provides that reparation is a well-established principle under international law.⁴⁹ Christian Marxen also provides important questions regarding the protection of an individual by granting individual rights and whether these rights exist within international law.⁵⁰ He also introduces the debate about whether there is an establishment of reparation mechanisms beneficial to individual victims during war.⁵¹ He is also reflective on the issue of domestic courts on the usage of "avoidance doctrines in awarding reparation to victims."⁵²

Naomi Roht-Arriaza's *Reparations Decisions and Dilemmas* divulges the different discrepancies between the acknowledgement of the right to a remedy and the practice of states providing for this remedy.⁵³ Some of the discrepancies shown can be the fact that national courts are rarely impartial in regards to the claim for a remedy by a victim or outside courts being able to provide an avenue for reparation.⁵⁴ Naomi also showed the weakness of the compensation system like its restrictive approach to

⁴⁸Ibid (page 553 to page 554).

⁴⁹Supra note 16 (page 529).

⁵⁰Ibid (page 531).

⁵¹Ibid (page 531).

⁵²Zegveld Remedies for Victims of violations of International Humanitarian law quoted by Ibid (page 531).

⁵³Naomi Roht-Arriaza (2004) *Reparations Decisions and Dilemmas*, Article 1, Volume 27, *Hastings International and Comparative Law Review*, https://repository.uchastings.edu/hastings_international_comparative_law_review/vol27/iss2/1, 157-219 (page 158).

⁵⁴Ibid (page 165).

the notion of the word "victim" ⁵⁵ or difficulty in the problems of designing and implementation.⁵⁶

The Vessalla Terzaiva Article on human rights remedies for violations of the law of armed conflict focuses on the national court application of the right to a remedy by the civilian individual.⁵⁷Terzaiva highlighted the fact that most of the court practice is inconsistent with the very applications of civilians for this remedies with these applications usually failing due to obstacles like state immunity.⁵⁸ However, Terzaiva highlights the two cases of Green Desert and Srebanica cases to act as the changing practice of the courts acknowledging the right to a remedy by a civilian individual.⁵⁹However, the Danish Supreme Court reversed the initial decision had held the Danish force couldn't be held liable for the actions in Iraq.⁶⁰

1.10 Scope of the Study

This research will apply to the civilian population who have endured the different violations under IHL. The content will also be centred on the different scenarios whereby the remedies were either applied or where the remedies failed in application and enforcement on both the international and national scenes.

⁵⁵Ibid (page177 to 179).

⁵⁶Ibid (page 179 to 178).

⁵⁷Supra note 18(page1).

⁵⁸Germany vs. Italy, paras 27 citing Ferrini v Federal Republic of Germany Decision No.5044/2044 as quoted by ibid (page 6).

⁵⁹ Ibid (page 1 to 2).

⁶⁰www.universityofcopehangen.com (Case summary on the Supreme Court of Denmark's judgment in Green Desert) visited on 30th April 2024.

1.11 Methodology

I intend to use mainly desktop reviews to facilitate my research. In desktop review, I plan to rely on the different IHL textbooks, Articles and journals that will enable me to gather and be able to collect important information from the different authors and IHL experts to facilitate my research. This will be mainly library-based due to the provision of enough literal material as a source for the research.

1.12 Chapter synopsis

Chapter One

This is an introduction to the research with an introduction, background, problem statement, general and specific objectives, research questions, and literature review methodology and chapter synopsis of the study.

Chapter Two.

This chapter provides the legal framework that governs the right to a remedy under IHL for the civilian populations. This chapter is also indicative of the application of other important methods to ensure that the civilian population are able to get the necessary IHL remedies. The chapter also provides the different laws and methods of how different countries ensure that there is the provision of remedies.

Chapter Three

In this chapter, there is the legal analysis, findings and assessment of the effectiveness of IHL remedies towards the civilian population.

Chapter Four

This chapter provides a summary of the findings, recommendations or any plausible solutions and a conclusion to the research

CHAPTER TWO

LEGAL FRAMEWORK GOVERNING REMEDY PROVISION TO THE CIVILIAN POPULATION

2.1 Introduction

As already shown within various legal Instruments there is the provision of rights to a remedy within different national and international rules of law. The following stated below shall consist of the legal instruments that provide for the provision of the IHL remedies to the civilian population. There has also been the different applications of the provisions of IHL remedies where states have been able to enforce and provide this remedies as shown below.

2.2 International Instruments that Provide IHL Remedies to the Civilian Population

2.2.1 The Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

These Basic guidelines were adopted by the UN General Assembly on the 16th December 2005.⁶¹ These guidelines hoped to serve as a way through which the victims of both human rights violations and International Humanitarian Law violations acquire various remedies provided to victims.⁶² These guidelines stem from the various International treaties and obligations that provide for the remedies within their international scene like The Hague Conventions and the Additional Protocol to the Geneva Conventions.⁶³

The guidelines were an advancement to the Basic principles of Justice for Victims of Crimes and Abuse of Power and they were adopted on 29th January 1985.⁶⁴ These principles sought to provide the necessary procedural factors and different redress mechanisms needed for victims to access these remedies. The remedies included restitution and compensation.⁶⁵

The Basic Guidelines therefore came as a modification to cater for the victims that were subject to the different human rights and international humanitarian violations.

⁶¹Op cit note 4.

⁶² Ibid (part 3).

⁶³ Ibid(preamble).

⁶⁴UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse Of Power (1985) UN Doc a/RES/40/34 adopted by the General Assembly.

⁶⁵Op cit note 27.

According to the preamble, the Guidelines wanted to create new obligations through which states can Martian to ensure proper and effective provision of remedies to the victims⁶⁶ . Such obligations included the need to provide access to justice to victims under part eight of the Basic Principles and Guidelines and access to relevant information under part ten of the Guidelines. The types of reparation provided include compensation, satisfaction, rehabilitation and restitution.⁶⁷

The Basic Guidelines are however represented as those that are of a non-binding status within the international system.⁶⁸ This is to assist states with practical applicability within their different national systems to ensure that states can implement them.⁶⁹ However, this could also prove to be a detrimental scenario since states can also

decide not to be bound by these guidelines and decide not to comply with them as they so wish.

The Rome Statute

The Rome Statute was introduced to ensure that people who carry out International crimes are held liable for their actions. Under Article 1 of the Rome Statue it provides for the establishment of the International Criminal Court to handle grave International war and other crimes. In regards to providing reparation to the various victims, this is done under Article 75 of the Rome Statute which provides for the

⁶⁶Op cit note 63.

⁶⁷Op cit note 4.

⁶⁸The UN basic principles to a right to a remedy as qouted by supra note 26(page 5).

⁶⁹Op cit note 18.

courts to provide the necessary remedies to the victims. This also enables the victims to interact with the court to establish the remedy needed by the court.

Under Article 79 it provides for the establishment of the Trust Fund whereby the different funds needed to provide for this reparation may be given to the victims under IHL. Rule 85 of the ICC Rules of Procedure and Evidence, provides for who is eligible for the Trust Fund as a victim. Under Rule 97(1) of the same rules of procedure, it provides for reparation to either be individually or collectively depending on the various circumstances.

Additional Protocol 1 of the Geneva Conventions

This Protocol is designed to further promote legal obligations to ensure the protection of victims regarding occurrences during an armed conflict .Although the additional protocol doesn't expressly provide for the right to a remedy to individual civilians, it does at least ensure compensation to victims who have been subjected to a party who goes ahead to violate the provisions of the conventions as provided for under Article 91.

The Hague Conventions 1907

This Convention, provided for the need for a belligerent party's liability to compensation in the instance of being found in violation of the Regulations under the Conventions. ⁷⁰Though not expressly providing for the reparation of the civilian victims, it has to be interpreted in modern times to address the civilian's right to a

⁷⁰Article 3 of the 1907 Hague Convention.

remedy in different scenarios and there is a stake to claim that this should ensure the right to a remedy for the civilian population.⁷¹

2.3 The Role of Transitional Justice Mechanisms

Transitional Justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation.⁷² This has been able to provide the necessary IHL remedies where needed to the civilian victims who have been subject to the different violations. Thus, Transitional Justice mechanisms are usually victim-oriented and they ensure that there is reconciliation and acknowledgement that takes place amongst the concerned parties.⁷³

They focus more or less on ensuring that the remedy is provided for don't offer the required judicial accountability that is usually given to the perpetrators in this instance. Examples of Transitional Justice mechanisms include the creation of Truth and Reconciliation Commissions.

Truth and Reconciliation Commission' can be seen to have existed in countries like South Africa, Colombia, and East Timor among many others.

In South Africa, they established a Truth and Reconciliation Commission that came out of the 1995 National Unity and Reconciliation Act 1995,⁷⁴ this act aimed to provide for

⁷¹Op cit note 49.

⁷²UN Secretary General (March 2010) guidance notes to the approach of Transitional Justice (page 3).

⁷³Lisa Magrel (2009) Reparation in Theory and in practice, the reparation justice series, the International Centre for Transitional Justice (page 3).

⁷⁴Avril MacDonald (2009) A right to truth, justice and a remedy for African victims of serious violations of International Humanitarian Law (page 164).

the truth reconciliation and reparation to the given victims of Apartheid. However, these victims were barred from pursuing criminal accountability for the violations during the Apartheid era.⁷⁵ They elected a committee on reparation and rehabilitation and according to this committee reparation and rehabilitation consisted of 'Reparation and rehabilitation' a term for what can be done to assist victims in restoring the damage that victims have suffered, to give them back their dignity and to make sure that these abuses do not happen again.⁷⁶

Another Truth and Reconciliation Commission can be seen to be established in the nation of Guatemala. This was after the prolonged armed conflict and warfare that had been occurring in the country. This led to the establishment of the Historical Clarification Commission in 1994.⁷⁷ One of the recommendations by the commission was the adoption of a national programme for reparation to cater for the victims who have been subject to the violence that had occurred in the country.⁷⁸ Later on, in 2003, the government went ahead to implement and introduce this programme as a law within the country.⁷⁹

Presence of the Claims Commission

The UN Claims Compensation Commission

⁷⁵Op cit note 74.

⁷⁶Ibid (page165).

⁷⁷The Guatemala commissions agreement as quoted under bid (page 161).

⁷⁸Supra note 26(page 153).

⁷⁹Ibid (page 156).

This commission was established by the Security Council in May 1991 soon after the liberation of the Kuwaitis who were held under siege by Iraq.⁸⁰ The commission was able to go ahead and oversee over 2.7 million awards from the Kuwaitis and ensured that most of the awards were given to the victims in this scenario.⁸¹ The payments for this claims arose from the Iraqi oil for food programme whereby the Iraqis were providing 30 % of their oil revenue to compensate the victims involved.⁸²

The UN's creation of the Claims Compensation Commission was seen as a unique step and there have been recommendations although to a futile nature for the creation of a compensation commission also to cater for the atrocities done within Darfur.⁸³

Another claims commission can be seen to be that of the Ethiopian Claims Compensation Commission. This was after the signing of the treaty between Eritrea and Ethiopia that provided for claims through binding arbitration between both of the parties.⁸⁴ And one of their decisions consisted of the fixed procedure of mass compensation to the victims.⁸⁵

2.4 Role of the ICRC

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the

⁸⁰Security Council Resolution 687 and Security Council Resolution 692 as quoted under *ibid* (page 140).

⁸¹*Ibid* (page 141).

⁸²Security Council Resolution 705 as quoted under *ibid* (page 143).

⁸³*Ibid* (page 144).

⁸⁴Eritrean - Ethiopian peace agreement article 5 as quoted by *Supra* note 3 (page 521).

⁸⁵ERITREA-ETHIOPIA CLAIMS COMMISSION Decision number 2: claims categories, forms and procedures (mass claims procedure and fixed amount compensation).

lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.⁸⁶

Though the ICRC and other national Red Cross bodies don't provide for the implementation of the right to a remedy to the civilians, being the chief enforcer of IHL in the world, they can still provide humanitarian assistance to the victims that may act as a form of reparation.⁸⁷ They can also carry out mobilisation also seek assistance from the different states involved.⁸⁸

2.5 Role of Humanitarian Organisations, NGOs and CSOs

There has been a concerted effort though not provided by law to provide for the different remedies being provided to the different civilians who are subject to the violations that occur under IHL. This is mainly done by select Individuals and civil society organizations.

Some of the organisations provide the necessary assistance that may be needed by the victims and help to campaign for the remedies needed by the civilian population. For example, the International Centre for Transitional Justice keeps on filing amicus curiae for the victims to receive reparation in the extraordinary chambers of Cambodia and other courts.⁸⁹

⁸⁶Supra note 11 (page 313).

⁸⁷Supra note 3 (page 515).

⁸⁸Op cit note 88.

⁸⁹International Centre of Transitional Justice (December 2009) Effective Remedies to Human rights violations (page 1).

Henceforth these organisations and entities have also proven important in ensuring that these civilians can access the right to a remedy in case of being injured or harmed by the IHL violations.

2.6 Presence of Peace Settlements or Declarations

This is where the remedies needed by the civilians can be acquired through a pact, an agreement or settlements reached by a state or between different groups among other entities.

For example, in the presence of the agreement between Bosnia and Herzegovina and Croatia ensured that there was return of the property and also the citizens and refugees to their property.⁹⁰

2.7 Select International Application

2.7.1 The Netherlands

The Dutch have seen a better application of the right to a remedy for the civilian population than many other countries. First of all Articles 93 and 94 of the Dutch constitution provides for the application of International treaties into the Dutch legal national law and any national law that violates the international provisions shall be set aside in accordance with the international provisions. Article 17 of the constitution also provides everyone within the Netherlands with access to justice. The different international obligations like the right to a remedy and the Rome statute are enshrined into the Dutch legal system that provides for the recognition of a right to a remedy.

⁹⁰Dayton agreement, November 1995 as quoted by supra note 16 (page 544).

An example of the acknowledgement of the civilian remedies can be seen in the case of Srebrenica .In this case, the claimants sought to hold the Dutch state responsible for their inability or role played in the Srebrenica massacre in Bosnia and Herzegovina and the Dutch courts indeed held that the Dutch armed forces could be held liable for the death of these 3 Bosnian Muslim men who were relatives to the claimants in this situation.⁹¹

2.7.2 USA

The Alien Tort Claims Act

This act enables the federal courts to have jurisdiction over matters that foreign nationals can be able to institute civil suits against violations that occurred against them in regard to international law. It was introduced through the 1789 Judiciary Act but signs of its first application were seen in the 1980 Filartiga case.⁹²

In this case, the plaintiffs sued the inspector general of Asuncion, Paraguay for extra judicial killings and kidnap of their relative due to his allegiance to an opposition party.⁹³ The initial court dismissed the law for being a tort that is not actionable however the 2nd circuit court allowed the tort since it held that violations of international law can be represented as actionable tort under the Act.⁹⁴

⁹¹ State of the Netherlands vs. Nuhanovic and Mustafic
www.InternationalCriminaldatabase.org

⁹²The Filartiga vs. Pena Irala, 630 F.2d.774 as quoted by the Congressional Research Institute's Alien Tort Statute: Primer (Updated on January 11th 2022) (page 6).

⁹³Op cit note 91.

⁹⁴Op cit note 91.

However, in the *Ol Ren vs. Libyan Republic* case, the court established that the Act doesn't entitle one to private relief but it's rather of a jurisdictional nature and that disputed the holding that was in the *Filartiga* case.⁹⁵

The Torture Victims Protection Act 1991

This act became a codification of what was discussed in the *Filaraga* case. The act was established in 1991 and came into force a year later in 1993 this act was established to provide for individuals who have been subject to seek damages against another individual who has subjected them to extra judicial killings This law is applicable to both USA citizens and non-citizens altogether. This can be seen under section 2 of the act that establishes a civil action. It provides liability to any individual and establishes that all local remedies have to be pursued by the victims. That means the civilian victims can pursue the relevant remedies under this Law.

The Civil Liberties Act 1988

This was an act created by the USA to handle and rectify the wrongs done to the people of Japanese descent. The Act was created with the purpose of recognising the harm or injustices done to the people or aliens of Japanese descent providing for a public education fund and discouraging further occurrence of such injustices, among other purposes.⁹⁶

It provided for remedies to the people of Japanese descent and this included restitution as shown under section 105 of the Civil Liberties Act 1988.

⁹⁵*Ol Ren vs Libyan Republic* 726 F.2d, 774 as quoted under *ibid* (page 7).

⁹⁶Section 1 of the Civil Liberties Act 1988.

2.8 Select African Application

2.8.1 Sierra Leone

The Sierra Leone conflict arose in 1991 led by the Revolutionary Union Front and proceeded to cause unrest until 1999.⁹⁷ After that, they initiated the peace agreement in Lome that brought an end to the conflict.

This culminated in the Truth and Reconciliation Commission arising from the Truth and Reconciliation Act 2000 whose objectives as shown under section 6 of the act which includes ensuring that they address the needs of the victims and promote reconciliation amongst the people.⁹⁸

Later on, there was the creation of the special court of Sierra Leone that was expected to carry out a combined effort to ensure that the victims would receive the necessary reparation however this was to no avail.⁹⁹

Though the Truth and Reconciliation Commission is faulted for being unable to provide the necessary remedies to the people of Sierra Leone, they went ahead to issue out recommendations like the fact that there should be specific remedies offered to the victims of the unrest and this should be supported by the special war fund that was meant to compensate some of the violations like those of sexual violence or those disabled by the war.¹⁰⁰

⁹⁷Supra note 26(page 165).

⁹⁸Ibid (page 169).

⁹⁹Ibid (page 175).

¹⁰⁰ Sooka, 'Dealing with the Past and Transitional Justice' as quoted by Ibid (page 176).

2.8.2 Rwanda

Rwanda suffered severe civilian casualties from the occurrence of the 1994 genocide between the Hutu and the Tutsi. However, the constitution of the International Tribunal for Rwanda did not provide for any reparation to the victims apart from the statutory aid from restitution provided for under Article 23(3) of the statute.

However, there has been the adoption of the GACACA system that has been seen as sort of a transitional form of justice for the victims. There is a provision for compensation of victims who suffered damage to property during the course of the genocide incurred by them ¹⁰¹

2.9 Domestic State Application

2.9.1 Uganda

The Ugandan Law doesn't outright provide for the right to a remedy for violations of IHL against the civilian population and there is no national record of court enforcement of the right to a remedy for individual civilians in this instance within Uganda. However, that doesn't mean that Ugandan civilians have been unable to access these relevant IHL remedies against them in IHL. This is due to the certain laws that have ensured Uganda provides certain remedies to civilian victims for them to acquire certain remedies. This is as shown by the submission of amicus curiae by the

¹⁰¹ Andrea Algård (2005 Does the Gacaca system provide an effective remedy in compliance with international norms and standards? university of Lund, faculty of law, (page 43).

FIDA Uganda to the ICC in regard to reparation for the victims of Dominic Ongwen¹⁰².

The laws are as shown as follows;

The Constitution of Uganda.

The Constitution of Uganda is considered the Supreme law of the country and no law shall be created in contradiction of the Constitution as provided for under Article two of the constitution.

The Constitution guarantees the right to equal treatment and non-discrimination under Article 22. Under Article 24 it ensures that a person shall not be subject to torture, cruel or degrading treatment under the Constitution. Article 44 of the constitution also ensures that there is no derogatory of the rights provided for under Article 24.

Article 50 of the constitution, ensures that whereby anybody is subject to these various violations they can seek the relevant remedy for these human rights violations.

The International Criminal Court Act

Uganda has the International Criminal Court Act of 2010. This act according to the preamble gives effect to The International Criminal Court, its jurisdiction and related offences within Uganda. This act also ensures full domestication and ratification of the Rome statute into the various Ugandan laws and the Rome statute provisions are therefore applicable Om Ugandan Law.

¹⁰²Prosecutor vs. Dominic Ongwen (December 2021) No. ICC-02-0Submissions-1820 (Submissions on Amicus Curiae observations on legal question).

In regards to the remedy provision of civilians, that act doesn't provide for that but under section 64 of the ICC Statute, it provides for enforcement of a victim's reparation in line with Articles 75 and 79 of the ICC Statute. That means the recent awarding of compensation to the Ongwen victims will be in line with this section of the act.

The Geneva Conventions Act Cap 363

This act in Uganda gives rise to the implementation of the Geneva Conventions and the various related Articles within Uganda this enables the application of the different provisions provided in all four Geneva Conventions along with the implementation of the conventions into Ugandan law.

Uganda National Transitional Policy 2019

Uganda has also gone ahead to formulate the Uganda National Transitional Policy 2019. This policy hopes to address the past conflict issues and achieve sustainable peace. They hope to provide both judicial and non-judicial approaches to rectify the conflicted regions in Uganda like ensuring proper truth and accountability, and access to justice among the other Transitional justice mechanisms they hope to adopt. This ensures that the civilian victims can get the necessary justice through the provided mechanisms and also ensures reconciliation and healing of past wounds.

Uganda is also bound by several international treaties and other international obligations which they went ahead to assent to and henceforth should be implemented by Uganda as shown below;

Uganda is also bound by the Nairobi Declaration on the right of women and girls to remedy and reparation 2007. This is the further implementation of principles that should be carried out to ensure that women and girls who are also subject to different violations under IHL are also expected to get the necessary remedies where needed. For example, part 3 of the declaration ensures that there should be truth-telling and reconciliation ensured within the treaty.

The Juba Agreement on Accountability and Reconciliation 2007 between the Ugandan Government and the LRA rebels' mandates both parties to provide reparation to the victims as seen under clause 9 of the agreement. ¹⁰³

There are other Ugandan laws that a civilian may be able to acquire the necessary remedy for the violation of IHL where not clearly stated within the law as seen below; Courts may grant compensation to the victim in addition to the lawful punishment as rectification for the loss suffered by the victim according to Section 126 of the Trials to Indictment Act.

Section 129 of the penal code provides for the fact that a defilement victim can be compensated through the courts of law.

In conclusion, few states exclusively provide IHL remedies to the civilian population though there have been attempts through different other applications that ensure that this right may be provided to the civilian victims like the application of transitional justice mechanisms.

¹⁰³The prosecutor vs Dominic Ongwen (4 February 2022) ICC-02/04-01/15(amicus curiae brief) page 18 paragraph 59.

CHAPTER THREE

LEGAL FINDINGS, ANALYSIS AND ASSESSMENT

3.1 Notion of a Remedy

The remedies provided to the different civilians are used as a way to rectify the wrongs done by the different people who subjected to the IHL violations within the law. It shows us that where a person or an entity does any act that contravenes the other persons rights the person then they ought to provide redress for carrying out

this violation.¹⁰⁴There had been a need to ensure that there is provision of remedies for victims during armed conflict as shown by the insistence by Gustav Mayneir who aspired to have it provided for in an international penal code.¹⁰⁵

The aim of establishment of the provision of IHL remedies to rectify the wrongs incurred by the parties as established customarily in the case of the Factory Chorzow Case, which established the obligation of where there is an international law violation, the party concerned should be able to compensate for that violation.¹⁰⁶ The Permanent Court of Justice went ahead to say the following;

"It is a principle of international law and even a general conception of law that any breach of an engagement involves an obligation to make reparation in adequate form ... reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself"¹⁰⁷

The aim for the rectification of the wrongs was mainly premised on the principle of state responsibility. Where any state was established to be accountable for any wrongful international act, they would be liable for it and had to remedy the wrong they had committed. This was later compounded into the Articles of State Responsibility for Wrongfully Acts. These articles establish the fact that states can be

¹⁰⁴Lisbeth Zegveld (2010) Victims' Reparations Claims and International Criminal Court: Incompatible Values? Journal of the International Court of Justice 8, 79-111, Oxford Press (page 81) .

¹⁰⁵Op cit note 49.

¹⁰⁶Case Concerning the Factory at Chorzow as shown in supra note 104 (page 81 to 82).

¹⁰⁷Chorzow factory case as quoted by Supra note 11 (page 283).

held accountable for any actions or omissions that they perform during the course of the international law scene and this could include IHL violations.¹⁰⁸

The article for state Responsibility's also provided for the different remedies a state may provide about the violations of the law governing armed conflict like restitution that was provided for under Article 35 or compensation provided for under Article 36 whereby the form of restitution was not possible. However this at held that states would be responsible for providing retain remedies where they have caused a breach and not articles that are giving of remedies to civilians or states in this regard.¹⁰⁹

Other legal instruments that established the right to a remedy for the civilian population included The U.N. Declaration on Enforced and Involuntary Disappearances which provided for compensation to be given to the victims and families of those who had disappeared¹¹⁰, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 imposed the duty on the domestic powers to enforce the laws that ensure there are provisions of the remedies like compensation and restitution against people who committed violation of these very Instruments.

All these different international treaties and legal provisions culminated in the creation of the Basic Principles and Guidelines on The Right to a Remedy and Reparation of Victims for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005. These Principles and Guidelines were expected to be implemented by the different states to ensure the

¹⁰⁸Article 2 of the Responsibility of States for Internationally Wrongful Acts 2001.

¹⁰⁹Supra note 104(page 82).

¹¹⁰The UN Declaration on Enforced and Involuntary Disappearances as quoted by Supra note 53 (page 162).

provisions and enforcement of the different IHL remedies to civilians. They were seen to be of great importance since the states were already referring to the even before being issued out as an instrument.¹¹¹

The Basic Principles ensured that victims of the gross IHL and human rights violations would be able to for the different remedies as a right under the eighth principle and entailed that this right provide for the need to access to justice and also the need to provide relevant information concerning the giving of this right to the victim and the reparation should be effective and adequate under the ninth principle, the Basic Principles also ensured that there would be justice given to the victim through redress and that the remedy should be equivalent to the harm suffered by the victims. These different guidelines and principles simply acted as rules that the different states had to follow in the implementation of the different remedies to the civilian population.¹¹²

The basic principles also provides for the following remedies for to the civilian population as shown below;

Compensation according to the Basic Principles provides for compensation to occur where there is physical or mental harm, lost opportunities like employment and social benefits, material damages and loss of earnings, including loss of earning potential moral damage Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.¹¹³ Compensation has also been seen to

¹¹¹Supra note 26 (page 154).

¹¹²Op cit note 26.

¹¹³Supra note 4 (principle 20).

be provided for under article 91 of the Additional Protocol 1 of the Geneva Convention and also Article 3 of the 1907 Hague convention.

Compensation examples include as shown the compensation offered by the UN Claims Compensation Commission to the different Kuwaiti victims.¹¹⁴ We can also see the compensation offered to the LRA victims who suffered injury at the hands of Dominic Ongwen ¹¹⁵ or the compensation offered to the victims of Katanga, a rebel leader in the DRC to his victims.¹¹⁶ Compensation is also shown to be the remedy that aims at helping the victims economically to sort out the damage inflicted in a proportionate sum.¹¹⁷

The other form of remedy provided for the civilian population includes that of restitution.¹¹⁸ Restitution ensures that the original state in which the civilian victim was before the occurrence of the violation is restored. This can be through the restoration of human rights citizenship, and employment among many other things. This can be seen in Kuwait whereby, the Iraqis were mandated to return their property.

¹¹⁹The other form of restitution that also acts as an example can be the restitution

¹¹⁴Op cit note 81.

¹¹⁵Op cit note 3.

¹¹⁶The Prosecutor v. Germain Katanga On 24 March 2017 ICC-01/04-01/07Situation in the Democratic Republic of the Congo (reparation order).

¹¹⁷In the case of the Prosecutor vs Thomas Lubanga Dyilo sNo. ICC-01/04-01/06 -AnxA 03-03-2015(situation in the Democratic Republic of Congo) (Reparation order as amended) page 8.

¹¹⁸Supra note 4 (principle 19).

¹¹⁹The UN Security Council report on Iraq's fulfillment of obligations of the Security Council quoted by Supra note 1 (page 539).

that was provided to the Japanese people under section 15 of the Civil Liberties Act of 1988 in the USA.

The other remedy provided is that of rehabilitation which may consist of medical care and psychological care along with legal and social services.¹²⁰ Rehabilitation incorporates different aspects like the diagnostic procedures, medicines, specialized aid, hospitalisation, surgeries, labouring, traumatic rehabilitation and mental health.¹²¹ Rehabilitation is important since it is usually applicable to civilian victims who have been subject to psychological and mental harm during the presence of an armed conflict.

Satisfaction. This remedy can entail compensation and tribute to the civilians and effective measures to ensure the into the violations occurring or a public apology¹²² for example the prosecutor of the ICC wanted Thomas Lubanga was to apologize to the victims as a remedy to the civilian victims involved.¹²³

Another remedy that may be provided may be that of guarantee of non-repetition through ensuring effective civilian control of military security forces, ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality, strengthening the independence of the judiciary among other ways.¹²⁴

¹²⁰Supra note 4(guideline 21).

¹²¹Supra note 36(page 37).

¹²²Supra note 4(principle 22).

¹²³Supra note 117 (18th April 2012) (Prosecution's Submissions on the principles and procedures to be applied in reparations) page 17 paragraph 26.

¹²⁴Ibid (principle 23).

The Basic Principles of a Right to a Remedy also presuppose the principle of proportionality whereby the amount of reparation should be equal to the gravity of the harm suffered by the victim.¹²⁵

It also establishes the principle of causality whereby the crime can only be linked to the responsible party where it shows that this party may either have committed the crime or led to the actions that resulted in the injury.¹²⁶

The factor of provision of remedies doesn't only become a way of remedying the victim for the violations under IHL but also act as a way of future deterrence of violations.¹²⁷ Henceforth providing of remedies is seen to perform two functions at a go.¹²⁸

3.2 Who is entitled to IHL Remedies within the Civilian Population

The notion of IHL remedies is that the remedies are provided to civilian who become victims of the IHL violations they are being subjected to. A victim is defined in the Basic Principles as persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international

¹²⁵Supra note 4(principle 15).

¹²⁶Op cit note 125.

¹²⁷Supra note 53(page 165).

¹²⁸Op cit note 127.

humanitarian law.¹²⁹ The Basic Principles also entail that the victims can also include family dependants of the direct victims in this instance.¹³⁰

However, the definition of the victim according to the ICJ practitioner guide of the right to a remedy enlists the fact that the definition of the word victim should be broadened to be all-inclusive to whom the harm affected or who suffered from it whether direct or indirect.¹³¹

This can be seen in the Thomas Lubanga reparation proceeding, whereby the prosecutor requested that victims of related crimes who may not be added as victims of the convict Lubanga also be considered victims and be added to the required reparation.¹³²

As already seen the victims under the civilian population to whom the remedies have been given should have been subjected to the harm caused by the responsible state or individual involved.¹³³ Therefore there should be a causal link between the actions of the responsible party's actions and the harm or injury faced by the victim.

The awarding of these remedies can either be done collectively or individually to the civilians involved as shown under rules 97 of the ICC rules of procedure.

¹²⁹Supra note 4(principle 8).

¹³⁰Op cit note 129.

¹³¹Op cit note 33.

¹³²The prosecutor vs. Thomas Lubanga Dyilo (18th April 2012): ICC-01/04-01/06 situation in the Democratic Republic of Congo (Prosecution's Submissions on the principles and procedures to be applied in reparations) page 12 to page 13.

¹³³Op cit note 127.

About the concept of individual and collective remedy, the judge of ICC, Chang-ho Chung pronounced the following;

"Collective reparations refer to their nature (type of goods or services distributed or mode of their distribution) or their recipients (communities or groups). They differ from individual reparations in that they benefit a group or category of persons who have suffered a shared harm"¹³⁴

He also referred to collective reparations as either community-based or collectively with individual aspects.¹³⁵

Therefore, the civilian population can receive their' IHL remedies either as an individual or collectively as a group.

3.3 Who is supposed to provide for Reparation of the Civilian Population

The general duty of who provides for the supposed remedies of the civilians relies on the onus of who perpetrated the actions that resulted in the violations caused against the civilians in this scenario. The parties involved have to establish that these different violations have indeed resulted in the harm of the civilian rights in order for the to party to be held liable for the provision of remedies to the civilian.

¹³⁴The Katanga reparation order , the Ali Mahdi reparation order, Lubanga amended order and UNSG guidance notes as quoted under The Prosecutor vs Bosco Ntaganda (8th March 2021)No.: ICC-01/04-02/06 (the situation of the Democratic Republic Of Congo) Reparation order,(page 32).

¹³⁵Op cit note 134.

The Basic Principles under principle 2(d) mandate that states should go ahead and provide reparation to the victims that are provided within the same principles and guidelines.

The principles also provide under principle 15, that states shall be held accountable or liable for the actions or omissions that they commit regarding IHL violations that they subject the civilian population to this is in line with the Articles for State responsibility as provided for under Article 2 of the Articles for State Responsibility. Article 31 of the State Responsibility for Wrongful Acts of the state also imposes liability on the responsible state to offer the required reparations to the victims injured by their wrongful act.

According to the ICRC Customary rules, a state can be held liable for the violations of IHL by the state organs like the armed forces, conduct given by entities or persons that possess government authority, persons or entities acting on their advice, instructions, and their directions or under their control.¹³⁶ Henceforth when the state commits the above violations they will be held liable to provide the civilians the necessary remedies for violations committed under IHL.

This can be shown in the case of DRC vs Uganda, where Uganda was held liable for the various breaches of IHL against the Congolese civilian population like torture and inhumane treatment and went ahead to subject Uganda to provide reparations for these said violations.¹³⁷ Also, in the occupied wall of Palestine, where Israel was

¹³⁶Supra note 1 rule 149 (page 530).

¹³⁷DRC vs. Uganda (19th December 2005) (case concerning the armed activities in the Democratic Republic of Congo).page 116, paragraph 345.

found to be responsible for repatriating the Palestinian victims who incurred harm or injury as a result of the construction of their security wall.¹³⁸

We have also seen that individual perpetrators may be held individually liable for the provisions of IHL remedies to the civilians in this scenario.¹³⁹

Also under Article 75 (2) of the Rome statute also gives the ICC powers to institute reparation against a convicted person and can include compensation, rehabilitation and restitution. This can be seen in the Bosco Ntaganda case where the defendant was issued an order to pay reparation to the tune of USD 30 million to the victims of his crimes within the democratic republic of Congo for crimes like rape and slavery against civilians.¹⁴⁰

However, where certain liability has been imposed on the individual to provide for remedies doesn't stop the same state from providing remedies to the civilians for the violations they have been subjected to.

Non state armed groups or other entities are also not exempt from being held liable to provide remedies where they have carried out violations against the civilians.¹⁴¹

¹³⁸Supra note 26 citing (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion as cited by page 30).

¹³⁹Supra note 4(principle 15).

¹⁴⁰ Supra note 134(page 97).

¹⁴¹Katharina Fortin (2022) The Procedural Right to a Remedy When the State has Left The Building? A Reflection on Armed Groups, Courts and Domestic Law, Journal of Human Rights Practice, Oxford Press, 387-414(page 395).

3.4 Factors that have rendered the provisions of IHL Remedies ineffective to the Civilian Population

Though there is cognisance of the fact that this civilian population is entitled to the right to a remedy, there is cause to show that this acknowledgement of the right has not translated into the actual reality of the provision of this right to the victims under IHL. As shown there has been a lot of the civilian victims being unable to get the necessary IHL remedies that they are required to receive.¹⁴² These factors are listed as shown below;

The lack of a universally binding treaty.

In international law, treaties act as a source of law to which states may be bound and have to fulfil the obligations to which they must abide by this treaty. These treaties are usually referred to as hard laws since they are mandatory for the states to abide by them in their given terms to which the states must abide by.¹⁴³ Such treaties include the 1998 Rome Statute.

However, no specific treaty within IHL outrightly refers to the provisions of a remedy to the civilian population.¹⁴⁴ No treaty shows the ways different IHL remedies can be enforced, the modes of application, ways of compliance and monitoring the application of these IHL remedies among many other different factors that may be important in implementing the provision of remedies to the civilian population.

¹⁴²Op cit note 18.

¹⁴³<https://www.ecchr.eu/en/glossary/hard-law-soft-law/> (hard law /soft law).visited on 6Th May 2024.

¹⁴⁴Op cit note 18.

A few of the treaties do highlight a number of the IHL remedies that may be provided for within the context of their treaty but only explain how his right would be enforced.¹⁴⁵ The only legal instrument which gives rise to a right to a remedy for the civilian population is the basic principle of a right to a remedy, however, these principles are actually of a non-binding status.¹⁴⁶ According to the annex of the basic principles they referenced the usage of draft guidelines and principles as shown below;

“Draft guidelines are merely non-binding sets of regulations that aim to form possible ways of practicability and application of the current rules within a given legal system.

“¹⁴⁷

And merely serve as a guide to the different states on what to go ahead and implement but are not seen as a must by the states during the presence of an armed conflict.

This has created a scenario whereby there is no specific requirement for states or individuals to provide the legal laws for which the right to a remedy may be provided to the civilian population. ¹⁴⁸And according to the Zegveld report, this has proven to be the most common scenario worldwide.¹⁴⁹

This has also proven to be an issue with most of the states claiming that some of the treaties that are provided for have non-self-executing clauses. Therefore, the civilian

¹⁴⁵Op cit note 18.

¹⁴⁶Op cit note 27.

¹⁴⁷Mr. Claudio Grossman Guiloff's Annex B UN Basic Principles to the Right to a Remedy and Reparation for Violations of International Human Rights and Gross Violations of International Humanitarian Law 358-369, page 363.

¹⁴⁸Supra note 3(page 507).

¹⁴⁹Op cit note 148.

victims have usually been unable to claim for the provision of remedies even when they refer to Article 91 of Additional Protocol 1 to the Geneva Convention and Article 3 of the Hague Convention 1907.¹⁵⁰

This can be seen in the case of n the Goldstar case in 1992 relating to the intervention by the United States in Panama, a US Court of Appeals found that Article 3 of the 1907 Hague Convention (IV) was not self-executing because there was no evidence of an intent to provide a private right of action.¹⁵¹ This has been a hampering factor when civilians apply for remedies in the courts whereby the courts base on the fact that this laws don't establish the need to provide for a remedy which a universally binding treaty would have solved.

This lack of a universal binding treaty that may have outrightly provided for the civilian provision of the remedies and related mechanisms has resulted in difficulty in providing the relevant IHL remedies to the civilian population.

This was reflected on by Emmanuel Gillard, who had wished that the makers of the Geneva Conventions and Additional Protocol had reflected on this and had gone ahead to provide for the right to a remedy within their treaty there would have been a lot of progress right now¹⁵² .

¹⁵⁰Op cit note 148.

¹⁵¹Op cit note 24.

¹⁵²Op cit note18.

He further acknowledged the progress being made however re-echoed the need for there to be one model for which the right to a remedy is provided to the civilian population.¹⁵³

Henceforth the lack of a a universally binding treaty has created a scenario where states don't have to adhere to providing the civilian with a right to a remedy and also created lacuna in providing remedies to the civilian population.

Lack of one proper system of provision of the relevant IHL remedies and their ways of enforcement of this remedy.

Another aspect of a lack of a legally binding mechanism in the provision of the right to a remedy is that this has led to the reliance on different ways through which the remedies may be provided to different civilians. Some of the methods through which there has been reliance on include the usage of the claims commission or the usage of the national courts, the reliance on national courts among the other adoptable methods.

Though credited with propelling the right to remedy for the civilians who have become victims in an armed conflict, this has also led to different issues arising and confusion caused amongst the civilians.

For example, one method may preclude the other victims from pursuing other ways of getting remedies from the responsible parties. For example, in South Africa, we saw that those civilians who offered themselves to the Truth and Reconciliation

¹⁵³Op cit note 18.

Commission were not supposed to present themselves before the courts of law.¹⁵⁴ Or where compensation claims were barred in Germany or Japan due to the existence of the very peace settlements that provide for these very remedies.¹⁵⁵ This has proven to become a restrictive factor towards which the civilian population can access the necessary remedies.

Some of these different methods also actually confuse the civilian population by the fact that the civilians may not know where to pursue the relevant remedies they may need for their situations. for example, the existence of a special court and the Truth and Reconciliation Commission in Sierra Leone gave the illusion that they would both provide for reparations to the supposed victims which turned out not to be the case in this scenario.¹⁵⁶

We should also fact in that these different methods each possess their factor of disadvantages in some of the methods chosen to provide for the remedies. For example, the courts are usually discredited for the use of avoidance doctrines when take with implementing a remedy to be provided to the victim in this scenario.¹⁵⁷

That this leads up to various methods through which the remedies may be provided and achieved by the parties need to go ahead and reform so that they could have one method of enforcement that would be most suitable to offer a needed remedy to the civilian victims.

¹⁵⁴Op cit note 74.

¹⁵⁵Japanese peace treaties as cited under supra note 18(page 535 to page 536).

¹⁵⁶Op cit note 99.

¹⁵⁷Op cit note 52.

This was reflected on by Gillard who acknowledged the growth of the different ways in which we are able to provide remedies to the it's, however he also recognised that the growth of providing this remedies but also stated the need for one method of enforcement being required.¹⁵⁸

Therefore , there was a need to promote one method through which this remedies an be provided to the civilians it's.the all for one method of centralised enforcement was also one of the alls b Marco Sassoli in regards to implementation of IHL ad this world include the provision of a remedy also.¹⁵⁹

Lack of substantial legal legislation and the states will to provide IHL remedies to the civilian population.

We have seen that now that states haven't been legally obliged to provide for the relevant laws. According to Nills Mezler, states are imposed the duty to incorporate the relevant legal provisions of IHL within their legislation and this ensures compliance with these IHL provisions.¹⁶⁰

This includes the need to provide the remedies to the different civilian victims. Within the course of a conflict. The basic principle of a right to a remedy also mandates that the states carry out several duties like providing access to justice¹⁶¹,

¹⁵⁸Op cit note 18.

¹⁵⁹Marco Sassoli IHL mechanism in armed conflict: where is the problem? , 109 to 105, Franco Angeli, Respecting International Humanitarian Law: Challenges and Responses, International Institute of Humanitarian Law (page 110).

¹⁶⁰The Geneva Convention obligations quoted by Supra note 11(page 268).

¹⁶¹Supra note 4(principle 12).

providing relevant information¹⁶² and ensuring that there is application of universal jurisdiction regarding the offences committed during the course of the armed conflict¹⁶³. As highlighted by domestic law is very important in provision to a right to a remedy.¹⁶⁴

However aside from a few states where this may be applicable like the USA through the Victims Protection Act or the Netherlands, most of the states have been able to oblige with the said provisions of providing the right to remedy to the given civilian victims¹⁶⁵.

It's been shown that hosts states lack the necessary legal system and laws to ensure that they provide for a remedies to the civilian and people who are need of the remedies for the violations being suffered by the people in this scenario.¹⁶⁶

This has been highlighted by the lack of political will by the different states to provide for these remedies within their given states.¹⁶⁷ This may be proven that by the fact by examples like Guatemala and other countries being slow in implementation of there proposed reparation progress.¹⁶⁸

This can also usually be attributed to the fact that states also usually bear the burden of providing these remedies even when the other perpetrators may have been non-

¹⁶²Ibid (principle 24).

¹⁶³Ibid (principle 5).

¹⁶⁴Supra note 141(page 392).

¹⁶⁵Supra note 3(page 512).

¹⁶⁶ Op cit note 148.

¹⁶⁷Supra note 159(page 115).

¹⁶⁸Supra note 53(page 158).

armed actors. This has imposed a burden on the states who are unable to seek reparation due to the existence.

States that also experience the armed conflicts usually lack the financial capacity to provide for this remedies, henceforth they also see to be avoiding the provision of the necessary remedies to the civilians has due to the armed conflict causing economic decline.¹⁶⁹

Even when there may be some sort of legislation or programme to the effect to provide a remedy to the civilian population, this has been lacking for instance in the amicus curiae by ICTY and Redress, they highlighted the fact that the support by the Ugandan government was partial and the fact doesn't meet the different needs of the victims involved.¹⁷⁰

The rigidity of the national courts regarding the provision of the right to a remedy.

The national courts are usually the most synonymous with which citizens are going to proceed to get a remedy that they desire.¹⁷¹ this may be down to the fact that the proximity of the courts to and familiarity that a national court would have with the facts of the issues the normal civilian would like to solve¹⁷² normal civilian will henceforth see these domestic courts of law as the first avenue through which they would go ahead and pursue the remedies for the violations they have been subjected to within an armed conflict.

¹⁶⁹Op cit note 1.

¹⁷⁰The prosecutor vs Dominic Ongwen (4th February 2022) ICC-02/04-01/15(the situation in Uganda), page 21.

¹⁷¹Supra note 53(page 165).

¹⁷²Supra note 104(page 91).

However the courts have actually turned out to be the hindrance that presents the normal civilian from pursuing the remedies needed by the normal civilian in this scenario this is due to a number of factors.

For one the courts have be seen to be biased on behalf on the state and have usually done and can't rule against there own state henceforth a lack of impartially and independence and be shown against the state¹⁷³

the national courts also lack the legal applicability to go ahead and try the people's issues in regards to IHL .Some of the remedies involved require an application and understanding of international nature yet the court judges are confined to understanding of all national law henceforth find in difficult to provide for IHL remedies which they can't comprehend.

This can be shown by the fact that the courts have employed a rigid understanding of civilians being benefactors of the remedies provided under The Hague Convention and Geneva Convention.¹⁷⁴ They claim that this rights don't provide for the private action to claim a remedy against there violators.¹⁷⁵ However different legal experts have shown this this views have proven to be archaic and there is need to apply the modern interpretation of this legal clauses.¹⁷⁶

Henceforth they employ methods they enable the to dodge all this cases when the different civilians go to courts to ask for an IHL remedy as shown by Christian Marxen

¹⁷³Op cit note 171.

¹⁷⁴Op cit note 148.

¹⁷⁵Op cit note 24.

¹⁷⁶Op cit note 48.

whom indicated the use of avoidance tactics to Dodge giving a remedy to the civilian victims of IHL.¹⁷⁷

Some the state courts also recognise the limited resources involved in the context of being able to provide for the necessary remedies to the civilian population therefore they are hesitant to provide judgement on this issues involved.¹⁷⁸

We also have to recognise that the courts can't go ahead and a handle and attend to huge numbers of victims who seek court for some of these remedies. It is well known that courts handle matters that usually include small numbers of its citizens.¹⁷⁹ Usually the matters involving the provision of the remedies require that they handle alot of victims and also different legal applications like the assessment of whether the harm caused actually impacted the victims which national courts may not be able to hence dealing with a small number of victims.

Most of the of the national courts also lack the necessary civil jurisdiction to hold a foreign state accountable when the issue of a civilian rising up to file for a remedy against a foreign state in this very instance .Henceforth the issue of sovereign immunity will bar this different civilian from a remedy against a foreign state in this very issue of getting a remedy against a foreign state.¹⁸⁰

¹⁷⁷Op cit note 52.

¹⁷⁸Op cit note 53.

¹⁷⁹Supra note 53(page 169).

¹⁸⁰ Ibid (page 165).

CHAPTER FOUR

SUMMARY OF FINDINGS CONCLUSION AND RECOMMENDATIONS

4.1 Summary of Findings

There is a general recognition that the different civilian population is entitled to different IHL remedies as provided within the context of international law. There is growing consensus whereby different methods have been adopted to ensure that where a civilian becomes a victim of the said violations of IHL, there have been efforts through ways like the establishment of the Truth and Reconciliation Commission, introduction in the domestic legislation, accepted acknowledgement by some of the national courts of the recognition of the remedy to the different civilians among other different methods.

However, we still have to factor in that not all the different the civilians have been able to access these IHL remedies. Yet the remedy rights ensure that there shouldn't be non-discriminatory and should be able to reach all the parties involved according to The Basic Principles. However the different bottlenecks like the lack of a universally binding treaty, poor domestic legislation and political will among the other issues have led up to many of the civilians have not received the remedies they are mandated to do so.

Therefore, there should be awareness that the civilian population are entitled to the different IHL remedies and should be aware of the issues that they are facing against the ability of the civilians to access these remedies.

4.2 Conclusions

In conclusion, this research has provided me with an understanding and importance of providing IHL remedies to the civilian population. The research has also created more awareness about impediments that are affecting this provision of remedies to the civilian population.

4.3 Recommendations

It's upon this basis, that I recommend the following as possible solutions to the problems listed in the research;

That a universally binding instrument be adopted that ensures the right to a remedy. This instrument should possess the mandatory clauses that provide for a civilians right to a remedy, the modalities and procedural rights along with the different remedies being provided. This treaty should be a reflection of the already existing Basic principles to a right to a remedy.

There should also be adoption of one proper centralised form of enforcement for providing the remedies to the civilians. The chosen method of providing these rights should also ensure that it's able to provide for the different rights of the civilian victims along with ability to reach a substantial amount of victims when providing the remedies.

That a regulatory body should be formulated so that ensures that there is compliance and enforcement of the different remedies to the civilian population within the confines of IHL.

Transitional justice mechanisms should also be adopted and embraced. The UN has already shown that this transitional justice methods have been able to provide and ensure reparation is provided to the different set of victims and also ensures that there is reconciliation amongst the people involved as victims. Therefore states should go ahead and adopt national transitional justice mechanisms and policies within their legal systems.

There should also be sensitization and education provided to the civilians especially those who have suffered in armed conflict in order for them to be aware of their rights and the procedures and methods through which they can go ahead and implement this rights.

Bibliography

LEGAL INSTRUMENTS, SATUTES, CONVENTIONS AND TREATIES

Additional Protocol 1 of the Geneva Conventions

Articles of the Responsibility of States for Internationally Wrongful Acts 2001.

The Hague Conventions 1907

The Rome Statute

UN Basic Principles on the right to a remedy and reparation for victims of gross violations of human rights law and serious violations of humanitarian law, 2005.

CASES

DRC vs Uganda (case concerning the armed activities in the Democratic Republic of Congo) (2005).

Filartiga vs Pena Irala, 630 F.2d.774.

Ol Ren vs Libyan Republic 726 F.2d, 774

State of the Netherlands vs Nuhanovic and Mustafic

The Prosecutor v. Germain Katanga ICC-01/04-01/07 (Situation in the Democratic Republic of the Congo).

The Prosecutor vs Bosco Ntaganda, ICC-01/04-02/06 (the situation of the Democratic Republic of Congo).

The prosecutor vs. Dominic Ongwen, ICC-02/04-01/15(the situation in Uganda).

The prosecutor vs. Thomas Lubanga Dyilo, ICC-01/04-01/06(situation in the Democratic Republic of Congo).

BOOKS, ARTICLES, JORUNALS AND RESEARCH PAPERS

2010 International Law Association Declaration of International Principles on Reparations of Victims of Armed Conflict (2018).

A right to truth, justice and a remedy for African victims of serious violations of International Humanitarian Law (2009).

Andrea Algård (2005 Does the Gacaca system provide an effective remedy in compliance with international norms and standards? university of Lund, faculty of law,

Annex B UN Basic Principles to the Right to a Remedy and Reparation for Violations of International Human Rights and Gross Violations of International Humanitarian Law.

Article on human rights remedies for violations of the law armed conflict: reflections on the right to reparation in light of the recent domestic cases in Netherlands and Denmark (2019).

Blacks Law Dictionary 10th Edition, Thomson west (June 2014).

ICRC Customary International Humanitarian Law Volume I Rules (2005).

ICRC International Humanitarian Law, (Answers to your questions) 2014

ICRC, International Humanitarian Law: Comprehensive Introduction, 2019

International Centre of Transitional Justice, Effective Remedies to Human rights violations (2009).

International Commission of Jurists the Right to a Remedy and Reparation for gross human rights violations: A Practitioners Guide 2018.

Marco Sassoli IHL mechanism in armed conflict: where is the problem? , 109 to 105, Franco Angeli, Respecting International Humanitarian Law: Challenges and Responses, International Institute of Humanitarian Law.

Redress, basic principles on the right to a remedy guideline book, 2006.

Remedies For victims of Violations of International Humanitarian Law "IRRC Journal; volume 85

Reparation for the Violations of International humanitarian Law IRRC Journal; Volume 85, (2003).

Reparation in Theory and in practice the reparative Justice series the International Centre for Transitional Justice (2009).

Reparations Decisions and Dilemmas, Article 1, Volume 27, Hastings International and Comparative Law Review (.2004)

The Congressional Research Institute's Alien Tort Statute :Primer.

The Procedural Right to a Remedy When the State has Left the Building? A Reflection on Armed Groups, Courts and Domestic Law, Journal of Human Rights Practice, Oxford Press, 2022.

The Right to Reparation in International Law for victims of Armed Conflict, Cambridge studies in international and Comparative Law , Cambridge University Press.

Unpacking the International Law on Reparation for Victims of Armed Conflict (2018).

Victims' Reparations Claims and International Criminal Court: Incompatible Values? Journal of the International Court Of Justice (2010).

ONLINE WEBSITES

<https://www.ecchr.eu/en/glossary/hard-law-soft-law>

www.casebook.icrc.org

www.InternationalCriminaldatabase.org.

www.reuters.com