AN APPRAISAL OF THE REPARATION MECHANISMS FOR VICTIMS OF SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW

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BENIN CITY, EDO STATE, NIGERIA.

APRIL, 2024

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A DISSERTATION SUBMITTED TO THE FACULTY OF LAW, BENSON IDAHOSA UNIVERSITY, BENIN CITY, EDO STATE, NIGERIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LL.M.) OF BENSON IDAHOSA UNIVERSITY.

APRIL, 2024

CERTIFICATION

I, **ALARI, Rachael Enaluna,** with Matriculation No **PG/LAW/230075**, hereby certify that apart from the references made to other person's work which have been duly acknowledged, the entire work is the product of my personal research and this project has neither in whole nor in part been presented for another degree elsewhere.

ALARI, Rachael Enaluna **Date**

APPROVAL

We certify that **ALARI, Rachael Enaluna**, with Matriculation Number **PG/LAW/230075** completed this project in partial fulfillment of the requirements for the award of Master of Laws Degree (LL.M) of Benson Idahosa University.

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DEDICATION

This work is dedicated first and foremost, to the all mighty God whose benevolent grace has seen me through this phase. Also to all sincere seekers of knowledge, who challenge boundaries, and tirelessly pursue the truth. May this research dissertation serve as a beacon of insight and inspiration for all who embark on the journey of discovery.

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ACHR	American Convention on Human Rights
CRC	Convention on the Rights of the Child
CRPC	Commission for Real Property Claims
DARS	Draft Articles on Responsibility of States for Internationally Wrongful Acts
DPA	Dayton Peace Agreement
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGOs	International Governmental Organizations
IHL	International Humanitarian Law
IMT	International Military Tribunal
NGOs	Non-Governmental Organisations
OHCHR	Office of the High Commissioner for Human Rights
SCSL	Special Court for Sierra Leone
TFV	Trust Fund for Victims
TRC	Truth and Reconciliation Commission
UN	United Nations
UNC	United Nations Charter
UNCC	UN Compensation Committee
UNDP	United Nations Development Programme
ILC	International Law Commission

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ABSTRACT

Armed conflict is characterized by various degrees of violations of International Humanitarian Laws (IHL) as well as International Human Right Law, the plight of victims who endure these violations remains a pressing concern for the international community. This research endeavors to provide a comprehensive appraisal of the mechanisms and challenges associated with reparations for these victims. This study critically analysed existing frameworks, assessed their effectiveness, and proposed avenues for improvement while adopting the doctrinal methodology. This research discussed the principles of IHL as well as classifications and definition of serious violations, encompassing war crimes, crimes against humanity, and genocide, which has necessitated robust responses from the international community. Central to this inquiry is the principle of reparations, rooted in notions of justice, accountability, and the restoration of dignity for victims. An examination of existing mechanisms for reparations reveals a complex landscape marked by both progress and persistent challenges. The study scrutinised the existing legal and institutional framework for reparations for victims. It highlighted the limitations of these mechanisms, including jurisdictional hurdles, resource constraints, and procedural complexities, which often impede access to justice for victims. Furthermore, the research explored alternative approaches to reparations, such as restorative and transitional justice programs, their potential to complement traditional legal avenues by fostering healing, reconciliation, and social cohesion in post-conflict societies. Drawing upon case studies from diverse regions afflicted by armed conflict, the study elucidated the implementation and efficacy of these approaches. It interrogates the challenges of addressing victims' needs in jurisdictions where the relevant international legal instruments are not domesticated or implemented, which often exacerbate the vulnerabilities of affected populations. Through an intersectional lens, the study advocates for victim inclusive and participatory processes centered on the needs and experiences of victims especially the

marginalized in the design and implementation of reparative measures. The study examined the role of state actors, international organizations, civil society groups, and multilateral institutions in advancing the agenda for reparations and fostering accountability for serious violations of IHL. Ultimately, this research contributes to ongoing debates and policy deliberations surrounding reparations for victims of serious violations of international humanitarian law. The research finds that despite the existence of legal framework for reparations, there are enormous challenges and gaps which the extant law has not covered. Based on the findings the research recommends that there is need to review the extant legal framework and mechanisms with the aim of making reparation mechanisms and processes victim-centric, thereby improving the experiences of victims in their quest for reparations for serious violations of IHL. And concludes that by applying the victim centered approach to reparation, the needs and rights of victims through such robust reparation programs will be better catered for.

CHAPTER ONE
INTRODUCTION

In times of armed conflict, International Humanitarian Law (IHL) stands as a beacon of protection for civilians, and those who are no longer taking part in the conduct of hostilities ensuring that even amidst the chaos and brutality of war, certain fundamental rights and principles are upheld. However, despite the existence of these legal safeguards, countless individuals continue to suffer unimaginable harm as a result of serious violations of IHL. War crimes, crimes against humanity, and genocide leave behind a trail of devastation, inflicting profound physical, emotional, and socio-economic wounds on persons and their communities who thereafter becomes the victims. Amidst the rubble and despair, the concept of reparations emerges as a beacon of hope, offering a pathway towards healing, justice, and restoration for those whose lives have been shattered by the horrors of conflict.

1.1.Background to the Study

International Humanitarian Law (IHL) is established through treaties such as the Geneva Conventions, and their Additional Protocols, as well as International Customary Law. IHL places limits on the conduct of hostilities, and provides protection for those who do not take part in fighting such as civilians, medical and religious military personnel. It also protects those who have ceased to take part in hostilities, such as the wounded, the sick combatants, the shipwrecked and prisoners of war. Before and during armed conflict, States are required to respect and ensure respect for rules and principles of IHL.[1] Where members of armed forces of a State violates rules and principles of IHL, the State is responsible for such violations and is therefore required to make full reparations for the loss or injury caused.[2]

[1] Common Art 1 to the four Geneva Conventions of 1949
[2] ICRC, Rule 149. *Responsibility for violations of International Humanitarian Law* <https://ihl-database.icrc.org > accessed on January 8, 2024.

Despite these indispensable steps towards the protection of individuals, the reality today is that individuals continue to suffer serious abuses, violations and dehumanizing situations in times of armed conflict. In response to this disheartening reality, a number of significant initiatives have been undertaken in recent years to improve compliance with Human Rights Law and International Humanitarian Law. In addition to the creation of various international human rights tribunals, we have seen the establishment of various tribunals to try persons accused of serious violations of international humanitarian law in several jurisdictions, as well as the permanent International Criminal Court. Alongside these developments at the international level, there has been a marked increase of activity by national courts in prosecuting persons accused of serious violations of human rights and international humanitarian law. Against this background a review of current law and practice relating to reparation for violations of international humanitarian law is timely. At first sight, it may legitimately be asked why reparations which, by definition, become relevant only once a violation of the law has occurred.

While in each individual case reparation can only address the consequences of a violation, on a more general level, a body of law is strengthened if a breach thereof gives rise to an entitlement to reparation. Reparation is an important part of enforcement and can play a significant role in deterring future violations. Of course, the making of reparation is also extremely important for very practical reasons, particularly for individuals who have been victims of violations of international humanitarian law. Even when the immediate consequences of the violation have been dealt with, such persons remain extremely vulnerable. They may need long-term medical care, may no longer be able to earn an income and are likely to have lost home and belongings. It would be callous and naive to think that an award of

compensation, for example, would restore victims to the situation they were in prior to the violation and re-establish the *status quo ante* as required by international law.[3]

Nevertheless, the receipt of timely and adequate compensation is an important element in enabling victims to try to rebuild their lives. Between States, the principle that every violation of international obligations gives rise to a duty to make reparation is well established in law and functions reasonably well in practice.[4] However, with regard to individual victims of violations of human rights law and international humanitarian law, the position remains more uncertain. Reparation by definition, become relevant only once a violation of the law has occurred, the provision of reparation for victims can enhance compliance with a body of law prohibiting such wrongful acts.[5] While in each individual case reparation can only address the consequences of a violation, at a more general level a body of law is strengthened if a breach thereof gives rise to an entitlement to reparation. Reparation is an important part of enforcement and can play a significant role in deterring future violations. Of course, the making of reparation is also extremely important per se for very practical reasons, particularly for individuals who have been victims of violations of international humanitarian law. A good understanding of the historical background and origin of reparation will help in the objective appraisal of reparations in the context. The concept of reparations in international law has evolved over centuries and is deeply rooted in the principles of justice, accountability, and the need to address wrongs committed between states, by states against individuals or other States.[6] The origins of reparations can be traced through historical events, customary practices, and the development

[3] Emanuela-Chara Gillard, 'Reparation of Violations of International Humanitarian Law' *ICRC* (2003) (85) (851) 530 <https://icrc.org/en/doc/assets/files/other/irrc_gillard.pdf> accessed on January 1, 2024.
[4] *Ibid.*
[5] *Ibid.*
[6] M Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer Law International 2014) (2) 44-48.

of international legal norms such as the Peace of Westphalia in 1648 is often considered a foundational moment in the development of modern international law.[7]

It was a series of peace treaties signed between May and October, 1684 in the Westphalian cities of Osnabruck and Munster. The treaties ended the thirty years war[8] Furthermore, while it did not explicitly address reparations, the principles of state sovereignty and non-intervention laid the groundwork for the idea that states should be held accountable for harm caused to other states.[9] The principles of state responsibility, as articulated by early legal scholars like Grotius, formed the basis for the idea that states are responsible for internationally wrongful acts. Customary international law recognized that a state causing harm to another state should make reparations.[10]

In 1919, after World War I, the peace treaty, otherwise known as the Treaty of Versailles was signed. It included reparations as a means of holding Germany accountable for the war crimes committed during the war. The imposition of reparations, however, had significant political and economic consequences and contributed to the rise of tensions leading to World War II. Furthermore, the 1945-1946, Nuremberg Trials marked a turning point in the prosecution of individuals for international crimes. The concept of individual criminal responsibility laid the foundation for the idea that individuals, not just States, could be held accountable, and reparations could be sought for victims. In the same vain, 1945 saw the birth of the United Nations Charter which emphasized the principles of sovereignty and non-intervention but also recognized the importance of promoting human rights and addressing acts of aggression.[11]

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[7] *Ibid.*
[8] Lumen Learning "*The Peace of Westphalia and Sovereignty" (Lecture notes)https://courses.lumenlearning.com/atd-herkimer.com> accessed on November 28, 2023.*
[9] *Ibid.*
[10] Rule 150 Customary International Law <https://www.ihl-databases.icrc.org> *accessed on January 11, 2024.*
[11] Articles 1 (3), 62 (2) United Nations Charter

The UN system became a forum for addressing claims of reparations between States. The wake of the Cold War Era and Decolonization process led to an increased focus on addressing historical injustices and reparations for the harms caused during the colonial era. Many newly independent States sought reparations for the exploitation and oppression they had endured.[12] The International Court of Justice (ICJ) has played a significant role in adjudicating disputes between States and addressing claims for reparations. Its decisions contribute to the development of customary international law in this regard.[13] The most recent in the jurisprudence of the ICJ is its reparation judgment in the case between *DR Congo v Uganda* in 2022.[14] Also, the development of international human rights law has further emphasized the need for reparations in cases of human rights violations. Instruments like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights underscore the right to an effective remedy.[15] The United Nations Charter (1945) emphasized the principles of sovereignty and non-intervention but also recognized the importance of promoting human rights and addressing acts of aggression. The UN system became a forum for addressing claims of reparations between States.

This study aims to assess the current state of reparation mechanisms available to victims of serious violations of International Humanitarian Law. It seeks to analyze the effectiveness, accessibility and adequacy of existing reparation programs and policies in providing justice and redress to victims of war against crimes such as war crimes, genocide, crimes against humanity and other serious violations of international humanitarian law. It is motivated by the

[12] Robert L. Allen, 'Past Due: The African American Quest for Reparations' *The Black Scholar* (1998) (28) (2) 18 <https://www.jstor.org/stable/10.5816/blackscholar.44.3.0007> *accessed on January 11, 2024*
[13] Stefan Talmon, 'Determining Customary International Law: ICJ'S Methodology between Induction, Deduction and Assertion' *European Journal of International Law (2015) (26) (2) 417-443 <https://doi.org/10.1093/ejil/chv020> accessed January 11, 2024.*
[14]*DRC v. Uganda*, ICJ Judgment delivered February 9, 2022, https://www.icj.cij.org/en/case/116 (accessed 24 February, 2024).
[15] Robert L. Allen, 'Past Due: The African American Quest for Reparations' *The Black Scholar* (1998) (28) (2) 18 https://www.jstor.org/stable/10.5816/blackscholar.44.3.0007 *accessed January 11, 2024.*

recognition that victims of serious violations of IHL often suffer physical, psychological, and socio-economic harm. These violations can have long lasting impacts on individuals, families, and communities, disrupting their lives, livelihoods, and overall well-being.

Therefore, it becomes crucial to assess and evaluate the available reparations mechanisms to determine their ability to address the needs of victims and contribute to their recovery and rehabilitation. This study draws on various sources, including international humanitarian law, relevant jurisprudence, international Legal instruments and academic research. It examines the legal frameworks at both international and national levels, focusing on rights and obligations of governments, international obligations in providing reparations to victims. More so, it analyses the different forms of reparations under international law such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition,[16] and their applicability to different situations.

This research also evaluates the current challenges and obstacles faced by victims in accessing reparations, including legal, procedural, financial and cultural barriers.[17] It explores the role of truth commissions, criminal prosecutions, and other accountability mechanisms in promoting reparation efforts.[18] Additionally, the study considers the experience and best practices of countries that have implemented successful reparation programs, aiming to draw recommendations for improving existing mechanisms and establishing new ones.

Overall, the study aims to provide a comprehensive appraisal of reparation efforts for victims of serious violations of International Humanitarian Law. By examining the existing systems and identifying gaps in the existing systems, it intends to contribute to the ongoing

[16] Rowman and Littlefield, *The Practical Guide to Humanitarian Law*, [Doctors Without Borders (2013)] <https://guide-humanitarian-law.org/content/page/Auteurs_et_intervenants> accessed November 19, 2023.
[17] Isabella De Los Rios Hernandez, "Enough Already": The Challenges of Restorative Justice in War Crimes" (2023) *Harvard International Review* <https://hir.harvard.edu/enough-already-the-challenges-of-restorative-justice-in-war..>. accessed November 24, 2023.
[18] ICRC Database, Customary IHL Rule 150 2, Cap 42, S B Reparation,< https://ihl-database.icrc.org/en/customary-ihl/VI/rule150> accessed November 24, 2023

discuss on ensuring justice, accountability, and redress for victims of grave human rights abuses.

1.2 Statement of the Problem

The world has witnessed an alarming increase in serious violations of international humanitarian law (IHL), leading to widespread human suffering and a demand for justice.[19] In the aftermath of such atrocities, the imperative to provide effective reparations for the victims becomes paramount. Justice is served and seemed served when there is sufficient and adequate reparation for the victim or the injured party. While international legal frameworks and mechanisms exist to address the reparation needs of victims, the efficacy and adequacy of these mechanisms in practice remain underexplored.[20]

This research comprehensively examines the existing mechanisms for the reparation of victims of serious violations of international humanitarian law. Several challenges and gaps persist in the current system, including issues related to accessibility, timeliness, adequacy, and the enforcement of reparations awarded.[21] Furthermore, the diverse nature of conflicts, the varying degrees of accountability, and the complexities of assessing individual and collective harm present additional layers of complexity in the reparation process.[22]

The Key questions this research seeks to address are:

[19] *ICRC, "*Twelve Issues For 2022: What States Can do to Improve Respect For International Humanitarian Law *"*(Geneva) March 2022, 2 <https://www.icrc.org> accessed November 23, 2023.
[20] Emanuela-Chiara Gillard, 'Reparation for Violations of international humanitarian law" (2013) ICRC IRRC International Review of the Red Cross? (85) (851) 529 <https://icrc.org> accessed> on December 19, 2024.
[21] Lumen Learning "*The Peace of Westphalia and Sovereignty" (Lecture notes)* <*https://courses.lumenlearning.com/atd-herkimer.com*> *accessed on November 28, 2023.*
[22]*Ibid.*

1. How effective are the current mechanisms for the reparation of victims of serious violations of international humanitarian law, and how do they address the diverse needs and circumstances of the individuals affected?

2. To what extent does the legal, institutional, and practical challenges impede or facilitate the successful appraisal and implementation of reparations for victims of serious violations of international humanitarian law, and how can these obstacles be mitigated to enhance the overall reparative process?

Through a comprehensive examination of these questions, this research seeks to contribute valuable insights to the ongoing discourse on enhancing the reparative justice system for victims of serious violations of international humanitarian law. The finding is intended to inform policy recommendations, legal reforms, and practical strategies aimed at improving the lives of those affected by the breaches of international humanitarian law.

1.3 Aim and Objectives of the Study

The aim of this research is to examine the effectiveness of the reparation mechanisms available to victims of serious violations of international humanitarian law, with the goal of enhancing understanding of the challenges and opportunities in addressing the needs of these victims. On the other hand, the specific objectives are:

a. To examine the existing legal framework and mechanisms for the reparation of victims of serious violations of international humanitarian law visa vis the implementation and enforcement of reparation measures at the national and international levels.

b. To identify and discuss the gaps and shortcomings in the current reparation mechanisms, as well as the experiences of victims in accessing and benefiting from reparation processes, with a goal to propose potential improvements or alternative approaches are some of the objectives of this research.

c. To analyse the impact of reparation efforts on the broader goals of justice, accountability, prevention of future violations and proffer recommendations to enhance the effectiveness of reparation mechanisms that better support victims of serious violations of international humanitarian law.

d. To make recommendations and add to the existing body of Knowledge.

1.4 Scope and Limitations of the Study

The research endeavors to comprehensively evaluate the mechanisms and effectiveness of reparations available to victims of serious violations of international humanitarian law. The study covers the subject matter of this research in both the international and national levels although comparatively. The study includes an in-depth analysis of legal frameworks, institutional processes, and the lived experiences of victims in diverse global contexts. The study contributes insight into the challenges, gaps and successes of reparation initiatives, exploring their impact on individuals and communities affected by grave breaches of international humanitarian law.[23] The expansion of the study to include some national laws is premised by the fact that some national laws are more victims oriented than others. While in some jurisdictions, there are little or nothing on ground or going on in terms of reparation for victims of violations of international humanitarian laws.

However, variations in reparation programs across different jurisdictions and conflicts may complicate generalisations limiting the extent to which findings can be universally applied. Also, limited availability of data, especially in conflict zones or areas with restricted access, may hinder a comprehensive understanding of the reparation processes and outcomes. The study may not fully capture the intricate legal and political dynamics influencing the implementation of reparations, potentially overlooking nuances in the negotiation and

[23] *Ibid.*

execution of reparation measures. More so, assessing the success of reparation programs involves subjective judgments, influenced by the diverse perspectives of stakeholders, including victims, policymakers, and legal practitioners in this realm. The availability of resources, both in terms of time and funding, may limit the depth and breadth of the research, potentially leaving certain aspects of reparation initiatives underexplored. The study may face challenges in capturing the long-term effects of reparation efforts on individuals and communities, as these effects may unfold over extended periods.

Finally, reparations are often intertwined with broader social, economic, and political issues, and the research may not fully address the complexity of these interconnections within the scope of the study.

1.5 Significance of the Study

An appraisal of the reparation of victims of serious violations of international humanitarian law holds profound significance in the realm of human rights justice and global significance as it addresses the crucial aspect of justice in the aftermath of conflict.[24] This research delves into the crucial aspect of post-conflict resolution and seeks to illuminate the multifaceted implications of providing reparations to victims who have endured egregious consequences of breaches of international humanitarian law.

First and foremost, the research addresses a critical gap in existing international legal frameworks. While IHL outlines provisions for the protection of civilians during armed conflicts, the question of how to address the aftermath and provide adequate reparations for victims has remained relatively underexplored. By appraising the reparation mechanisms, the study enhances our understanding of lacunae in the current legal framework and offers insights into potential reforms needed to ensure more comprehensive protection for victims.

[24] Robert L. Allen, 'Past Due: The African American Quest for Reparations' *The Black Scholar* (1998) (28) (2) 18 <https://www.jstor.org/stable/10.5816/blackscholar.44.3.0007> *accessed* on December 29, 2023.

Furthermore, the significance of this research extends to transitional justice processes. Reparations play a pivotal role in the restoration of justice and the rebuilding of societies shattered by conflict. This, in turn, facilitates the establishment of sustainable peace and fosters reconciliation among communities affected by conflict.

The study is significant as its findings provide:

1. Information to policy makers and practitioners at both international and local levels
2. The study's relevance is heightened by its potential to inform policy and practice at both national and international levels. Policymakers, legal practitioners, and human rights advocates can benefit from the insights gained through the research to shape more robust reparation mechanisms. By bridging the gap between theory and practice, the study provides a foundation for crafting policies that prioritize the needs of victims and adhere to the principles of justice outlined in international law.
3. It underscores the imperative for accountability and the moral obligation to address the harm inflicted upon innocent civilians. In doing so, the study reinforces the international community's commitment to upholding human rights and promoting a culture of accountability in the face of atrocities.
4. Additionally, the significance of this research extends to its potential impact on public awareness and education. By shedding light on the challenges and complexities surrounding the reparation of victims, the study can foster a more informed and engaged global citizenry. Increased awareness of the plight of victims of serious IHL violations may catalyze collective efforts to prevent such violations and strengthen mechanisms for accountability and redress.
5. Contributes to legal scholarship, informs transitional justice processes, guides policymaking, promotes accountability, and enhances public awareness. By addressing

this critical aspect of post-conflict resolution, the study serves as a catalyst for positive change in the realms of human rights, justice, and global governance.

1.6 Research Methodology

The study shall be based on the doctrinal research methodology. This research methodology primarily focuses on existing legal principles, doctrines, and legal rules. It involves the study of legal texts, statutes, case laws, and other legal authorities. Both the primary and secondary sources of data/information which includes the use of textbooks, journals, statutes, newspaper publications, legislations, case law, online law reports and other various online sources and materials were relied upon in this research. Various approaches were employed in this research, such as the conduct an extensive review of existing literature, including legal texts, academic articles, and case studies, to establish a comprehensive understanding of the current state of reparation mechanisms and their effectiveness.

The research applies legal analysis to relevant international treaties, conventions, and case law to identify key principles and standards related to the reparation of victims. Assess the evolution of legal frameworks and their practical implementation; examine specific cases of serious violations of international humanitarian law, and analyzing the reparation processes that followed. This includes studying both successful and unsuccessful instances, identifying common challenges and best practices. Also, the research employs comparative analysis to understand reparation mechanisms across different conflict contexts and regions, and identify similarities and differences, drawing lessons that can inform more effective practices as well as evaluate the impact of reparation policies on broader peace building and transitional justice processes while assessing how reparation measures contribute to reconciliation and the prevention of future violations. Ultimately, policy recommendations and proffering potential improvements to existing mechanisms based on the results of the study is the goal.

1.7. Chapters Analysis

The research work is divided into five chapters.

The first will introduce the topic and intimate the reader(s) of the general scope of this research study. It addresses the Introduction, background of the study, statement of research problem, aim and objectives of the research, methodology to be adopted, its Scope and Limitations of the study, significance of the study, and the research structure.

Chapter two will examine the conceptual classifications by trying to give meanings and definitions to words and terms in the research work. The theoretical foundation of the research work will also be discussed under this chapter. The literature review which is a careful review of available authorities, literatures and materials also further enriches this chapter. This chapter will further analyze and discuss reparations in line with international humanitarian law (IHL): The need for reparations, Historical Context of reparations, Review of historical cases of serious violations of IHL, examination of past attempts at reparations for victims.

Chapter three will identify and extensively discuss the existing legal framework for reparations in cases of IHL in the international and national contexts. A little bit of comparisons will be done here, based on the existing legal framework earlier identified and discussed. In this chapter, challenges and gaps bedeviling mechanisms, policies and system of administration of the reparative justice system under the IHL will be carefully identified and discussed as well as the Legal, practical, and political obstacles hindering the effective administration of the process.

Chapter four will discuss the Role of International Committee of the Red Cross (ICRC) and other international bodies in facilitating or hindering reparations. Analysis of the effectiveness of institutions involved, Victim-Centric Approaches, Discussion on the importance of considering victims' perspectives in designing and implementing reparations, Human rights

and dignity considerations, National Implementation, variation in approaches and outcomes, and Examination of how individual nations implement reparations for IHL violations shall also be discussed here.

Chapter five concludes the research and contains the summary of findings, recommendations, contribution to knowledge, areas for further research and the conclusion.

CHAPTER TWO
CONCEPTUAL CLARIFICATION, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1. Conceptual Clarification

A. Meaning of Reparation

The Advanced English Dictionary defined the word 'Reparation' as "Payment for harm or damage"[1]. According to the United Nations reparations are measures to redress violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities[2] Reparation means recompense given to one who has suffered legal injury at the hands of another; to make amends, provide restitution, or give satisfaction or compensation for a wrong inflicted; it also refers to the thing done or given to the injured party.[3] In the factory of Chorzow's case, the court in fact declared itself competent to pass upon the claim for reparation because it regarded reparation as the corollary of the violation of the obligations resulting from an engagement between States.[4] The term "reparation" refers to the wide range of measures that may be taken in response to an actual or threatened violation, embracing both the substance of the relief as well as the procedure through which it may be obtained.[5]

It is now a generally acceptable principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the

[1] Cambridge Advanced Learner's Dictionary, Cambridge University Press (4th edn, 2013)
[2] United Nations Human Rights Office, OHCHR: *Transnational Justice and Human Rights* (official statement) <https://www.ohchr.org>transnationaljustice>reparations> accessed January 10, 2024
[3] Dinah Shelton, Anne Peters ed,'Reparations' MPEPIL Oxford Public International Law, (2024)>https://opil.ouplaw.com>law:epil. Accessed on January 10, 2024.
[4] *Government of Germany v Government of Polish Republic* [1928] Jus Mundi https://jusmundi.comdecisions>en/document/decision/en-factory-at-chorzow-merits-judgment-thursday-13th-september-1928> accessed on January 16, 2024.
[5] *Ibid*

injured State have suffered as a result of the act which is contrary to international law.[6] Reparation therefore, refers to the act of making amends or compensating for a wrongdoing or harm inflicted upon an individual or group. It involves providing restitution, often in the form of financial compensation, to address the damages or injustices suffered. Reparations can also extend beyond monetary restitution, encompassing various forms of redress, acknowledgment, and efforts to rectify historical or systemic injustices. In modern practice, the term reparation is often used to refer to forms of substantive redress, including restitution, compensation, rehabilitation, satisfaction, as well as other forms of injunctive reliefs[7]. According to the UN Principles on Reparation,[8] full and effective reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[9]

The concept is rooted in the idea of seeking justice and reconciliation by addressing the consequences of past wrongs. Reparations can be conceptualized as a relationship between three terms, namely, victims, beneficiaries and benefits. A reparations programme aims to guarantee that every victim will receive at least some sort of benefit from it, thereby becoming a beneficiary.[10]

B. Meaning of Victim

The word victim literarily means someone or something that has been hurt, damaged, killed or has suffered, either because of the actions of someone or something else, or because

[6] International Court of Justice, Reparations of Injuries Suffered in Service of the UN, 'Advisory Opinion' 147 [1949] < http://www.worldcourts.com/icj/eng/decisions/1949.04.11 reparations for injuries.html> accessed on January 10, 2024.
[7] International Commission of Jurists, *The Right to a Remedy and Reparations for Gross Human Rights Violations*: A Practitioner's Guide (Geneva 2018) (2)
[8] United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', Resolution 60/147, 16 December 2005.< https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed on January 18, 2024.
[9] International Commission of Jurists, *The Right to a Remedy and Reparations for Gross Human Rights Violations*: A Practitioner's Guide (Geneva 2018) (2)
[10] United Nations Department of Economic and Social Affairs, "Rule of Law, Tools for Post-Conflict States" (UN-iLibrary 2008) https://doi.org/10.18356/b4166c36-en accessed on February 17, 2024.

of illness or chance[11]. Also, a person who has been attacked, injured, or killed as the result of a crime, a disease, an accident etc.[12] The Basic Principles and Guidelines on the Right to a remedy and reparation for Victims of Gross Violations of International human rights law and serious violations of international humanitarian law, define victims 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 humanitarian law.[13]

The term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[14] A victim can also be defined as a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime.[15]

Some civil rights groups have rightly noted that some civilians face increased risk of harm during wars. These include women, older people, people with disabilities, and children.[16] In this context, I understand the word victims refer to individuals who have suffered harm, injury, or loss as a result of a criminal offense. They are the ones directly affected by the

[11] Oxford Advanced American Dictionary, Oxford University Press [2024].
[12] Office of the High Commissioner UNHRs, New York& Geneva 'International Legal Protection of Human Rights in Armed Conflict (Official Report) (2011). <https://www.oxfordlearnersdictionaries.com/definition/american_english/victim#:~:text=victim-,noun,disease%2C%20an%20accident%2C%20etc> Accessed on January 17, 2024.
[13] *Ibid.*
[14] Department of Justice, Government of Canada, Canadian Bill of Rights, 2021 <https://www.justice.gc.ca/eng/cj-jp/victimsvictimes/rightsdroits/whoqui.html#:~:text=A%20victim%20is%20defined%20as,a%20result%20of%20a%20crime> accessed on January 10, 2024.
[15] UNODC Handbook on Restorative Justice Programmes (criminal justice handbook series) Vienna (2) (2020) <https://www.unodc.org/documents/justice-and-prison reform/20.01146_Handbook_on_Restorative_Justice_Programmes.pdf> accessed on January 10, 2024
[16] Amnesty International 'Armed Conflict' (Newsletter 2024) <https://www.amnesty.org/en/what-what-we-do/armed-conflict> accessed on January10, 2024.

unlawful actions of the perpetrator for whom the legal system aims to protect and seek justice for through appropriate legal processes and remedies.

C. What Constitutes 'Serious Violations of International Humanitarian Law'?

Serious violations of international humanitarian law are "war crimes." The two terms are today interchangeable. They can take place in international or non-international armed conflicts.[17] Violations are serious, and are war crimes, if they endanger protected persons (e.g. civilians, prisoners of war, the wounded and sick) or objects (e.g. civilian objects or infrastructure) or if they breach important values. Serious violations of international humanitarian law in international law refers to 'gross violations' and 'grave breaches. Serious violations denote types of violations that affect the victims in qualitative and quantitative terms the most basic rights of human beings.[18]

Serious violations of IHL are considered war crimes punishable under international criminal law.[19] This essentially includes any violations described as "grave breaches" of the 1949 Geneva Conventions and Additional Protocol I, and other serious violations of IHL recognized as war crimes in the Rome Statute or in customary law. In substantive terms, the extensive lists of war crimes provided by the 1949 Geneva Conventions[20], Additional Protocol I and the Rome Statute essentially comprise violations of the core protection afforded either to persons and objects in the power of the enemy or to persons and objects protected against attack in the conduct of hostilities[21]. For persons and objects in the power of a belligerent party, this includes

[17] ICRC files 'What are Serious Violations of International Humanitarian Law (2012) <https://www.icrc.org/en/doc/assets/files/2012/att-what-are-serious-violations-of-ihl> assessed on January 10, 2024.

[18] Redress, *Implementing Victims' Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation* (London, 2006)

[19] Customary IHL, Rule 156

[20] Article 129 of the Geneva Convention 1949

[21] Nil Melzer coordinated by Etienne Kester, *International Humanitarian Law: A Comprehensive Introduction* (ICRC Reference Geneva 2016) 289

crimes such as murder, torture and other forms of inhuman treatment, including sexual violence, pillage and wanton destruction, hostage-taking, unlawful imprisonment and the denial of a fair trial, as well as forced recruitment into hostile armed forces, child recruitment and unlawful deportations and transfers[22].

It is generally assumed that genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination fall into this category. Serious violations are to be distinguished from 'grave breaches' and 'gross violations. While the former refers to atrocious violations that are defined in international humanitarian law but only relating to international armed conflicts, the later refers to violations defined in international law but relating to non-international armed conflict[23]. The term 'serious violations' is referred to but not defined in international humanitarian law. It denotes severe violations that constitute crimes under international law, whether committed in international or non-international armed conflict. The acts and elements of 'serious violations' (along with 'grave breaches') are reflected in article 8 of the Rome Statute of the International Criminal Court under 'war crimes[24]. The majority of war crimes involve death, injury, destruction or unlawful taking of property.[25] Some acts can amount to war crimes because they breach important universal values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies and recruiting children under 15 years of age into the armed forces.[26] Serious violations of

[22] *ibid*
[23] *Ibid*
[24] *Ibid*
[25] *Ibid.*
[26] *Ibid.*

international humanitarian law are: grave breaches as specified under the four Geneva Conventions of 1949[27] grave breaches as specified under Additional Protocol I of 1977.[28]

War crimes as provided under Article 8 of the Rome Statute of the International Criminal Court, are grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

a. Wilful killing;
b. (ii) Torture or inhuman treatment, including biological experiments;
c. iii) Willfully causing great suffering, or serious injury to body or health;
d. (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
e. (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
f. (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

Other war crimes in international and non-international armed conflicts, in customary international humanitarian law include:

(a) Unlawful deportation or transfer or unlawful confinement;

(b) Taking of hostages.

[27] Geneva Conventions of 1949 (Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively).
[28] Articles 11 and 85

(c) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiii) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xiv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xv) Pillaging a town or place, even when taken by assault;

(xvi) Employing poison or poisoned weapons;

(xvii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(viii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.[29]

Rape and other forms of sexual violence, when committed in the context of an international or non-international armed conflict, constitute violations of IHL in line with their obligation to respect and ensure respect for IHL.[30] War crimes has also been defined by Amnesty International as serious violations of international humanitarian law that include willful killings, direct attacks on civilians, torture, use of prohibited weapons, the murder or ill-treatment of prisoners of war or others who have been captured, surrendered or injured and crimes of sexual violence.[31] It is generally assumed that genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination fall into this category.

2.2. Theoretical Framework

The concept of reparation for victims of serious violations of IHL cannot be exhaustively discussed without talking about international human right law. IHL has deep roots in international law, with early precedents found in the aftermath of World War II and the establishment of the Nuremberg and Tokyo Tribunals. The recognition of individual rights and the need for accountability for violations of human rights and humanitarian law gained further

[29] Article 8 of Rome Statute of the ICC, (2002).
[30] ICRC, Inter-Parliamentary Union, *International Humanitarian Law: A Handbook for Parliamentarians* (2016) (25) 69<https://www.ipu.org/resources/publications/handbook/2016..> accessed on February 1, 2024.
[31] Amnesty International Newsletter 'Armed Conflict' (2024) < <https://www.amnesty.org/en/what-we-do/armed-conflict/#:~:text=War%20crimes%20%E2%80%93%20serious%20violations%20of,and%20crimes%20of%20sexual%20violence> accessed on January 11, 2024.

momentum with the development of international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court.[32] The reparation for victims of serious violations of international humanitarian law has gained significant attention in recent years. As conflicts and atrocities persist worldwide, it is crucial to examine the theoretical framework underpinning the concept of reparation. This research aims to provide an appraisal of the theoretical framework surrounding reparation for victims of serious violations of international humanitarian law, with a focus on the key principles and challenges associated with its implementation.

The theoretical foundation for reparations for victims of serious violations of international humanitarian law is rooted in principles of justice, accountability, and the recognition of the rights of victims. It draws upon various legal frameworks, including human rights law, international criminal law, and principles of transitional justice. Reparations aim to acknowledge the harm suffered by victims, provide them with redress, and contribute to their rehabilitation and empowerment. Restorative justice focuses on repairing the harm caused by the violation, promoting healing, and facilitating reconciliation between victims and perpetrators of the violations.[33] Also, the principle of individualized reparation recognizes the unique needs and experiences of each victim. It acknowledges that reparations must be tailored to address the specific harm suffered, taking into account factors such as the nature of the violation, the severity of the harm, and the socio-cultural context. Individualized reparation ensures that victims receive appropriate compensation, rehabilitation, and satisfaction.[34]

[32] M Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer Law International the Hague 2014) (2) 44-48.
[33] United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', Resolution 60/147, 16 December 2005.< <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed January 18, 2024.
[34] *Ibid.*

Furthermore, the principle of state responsibility plays a crucial role in the theoretical framework of reparation. It holds states accountable for violations of international humanitarian law committed by their agents or within their jurisdiction. States have an obligation to provide effective remedies to victims, including compensation, restitution, rehabilitation, and guarantees of non-repetition. The principle of restorative justice serves as a fundamental pillar in the theoretical framework of reparation. It emphasizes the need to restore the dignity and rights of victims by addressing the harm they have suffered.[35] This principle reinforces the need for states to establish comprehensive legal frameworks and mechanisms to ensure access to justice for victims.[36]

According to *James E Bruce*[37] there are four theories of justice namely: conservative justice, which is judicial and familial; socialist justice, which is political and familial; libertarian justice, which is economic and judicial, and progressive justice, which is economic and political[38]. However, there are other several prominent theories of justice. These various theories of justice offer different perspectives on the concept of reparations, each providing insights into how societies might address historical injustices[39] how they relate to the idea of reparations is the focus of this section. Some of the theories includes but not limited to Retributive, Restorative, Transitional, Social and Distributive justice theories which have been briefly discussed below.

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[35] *Ibid.*

[36] *Ibid.*

[37] James E Bruce, *Four Theories of Justice* (2022) available at < https://jamesebruce.com/four-theories-of-justice/ accessed on February 25, 2024.

[38] *Ibid*

[39] Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice', *Seattle Journal for Social Justice* (2017) (16) (1) 11 <https://digitalcommons.law.seattleu.edu/sjsj/vol16/iss1/11> accessed February 20, 2424.

Retributive justice theory has been perceived to focuses on the idea that punishment should be proportional to the wrongdoing.[40] In the context of reparations, this theory advocates for reparations as a form of punishment for past injustices.[41] The idea is to restore balance by ensuring that those who suffered receive compensation or restitution from those who caused the harm.[42] On the other hand, restorative justice focuses on repairing the harm caused by wrongdoing and restoring relationships between victims and perpetrators. In the context of reparations, this theory emphasises the importance of acknowledging past injustices, facilitating reconciliation, and providing support to affected communities.[43] Howard Zehr,[44] insists that restorative justice theory finds punishment as often counterproductive and unsatisfying and argues that what will create a sense of balance is a process of restoration. That usually involves the person who caused harm taking responsibility and making an effort to "make things right," even if it is only possible to do that symbolically.[45]

Howard Zehr, comparing the retributive and restorative theories of justice further stated as follows,

> As philosophies, retribution and restoration have much in common. Both argue that those who cause harm must be treated as a moral agent. Both argue that the "victim" is owed something by the "offender." Both intuit that there is a kind of balance that must be restored, but they different significantly in what is thought to restore that balance. Retribution argues that punishment – the infliction of harm – will restore a balance. Restorative justice argues punishment is often counterproductive and unsatisfying and what will create a sense of balance is a process of restoration. That usually involves the person who caused harm taking

[40] Donald H.J. Hermann, 'Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice', *Seattle Journal for Social Justice* (2017) (16) (1) 11 <https://digitalcommons.law.seattleu.edu/sjsj/vol16/iss1/11> accessed February 14, 2424

[41] *Ibid.*

[42] *Ibid.*

[43] *Ibid.*

[44] Sandra Martinez Domingo and Eugenia Riera Casals '*The Culture of Punishment : A Critical Approach'* Interview with Howard Zehr, pioneer of the concept of restorative justice (International Catalan Institute of Peace <https://www.icip.cat/perlapau/en/article/interview-with-howard-zehr-pioneer-of-the-concept-of-restorative-justice/> accessed February 14, 2024

[45] *Ibid.*

> responsibility and making an effort to "make things right," even if it is only possible to do that symbolically.[46]

In the same vain, it has been argued that because there is a tendency to slip from retributive justice to an emphasis on revenge, it is suggested that restorative justice processes are more effective.[47] While a retributive justice approach conceives of transgressions as crimes against the state or nation, restorative justice focuses on violations as crimes against individuals. It is concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community. Victims take an active role in directing the exchange that takes place, as well as defining the responsibilities and obligations of offenders.

Furthermore, distributive justice is perceived to concerns the fair allocation of resources and opportunities in society. In the context of reparations, this theory argues that reparations are necessary to rectify historical inequalities and distribute resources more equitably.[48] On this theory, *Olufemi Taiwo*[49] argues that most of those theorizing about reparations treats it as a social justice project - either rooted in reconciliatory justice focused on making amends in the present; or, they focus on the past, emphasizing restitution for historical wrongs. He further contends that neither approach is optimal, and advances a different case for reparations - one rooted in a hopeful future, with distributive justice at its core. This view, which he calls the "constructive" view of reparations, argues that reparations should be seen as a future-oriented project engaged in building a better social order; and that the costs of building a more equitable

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[46] *Ibid.*

[47] Michelle Maiese **and** Heidi Burgess**,** ***Types of Justice*** **(Beyond Intractability (2020) <**https://www.beyondintractability.org/**> accessed February 20, 2024.**

[48] Max du Plessis, 'Historical Injustice and International Law: Reparation for Slavery' Human Rights Quarterly (2003) (25) 624-659 <https://www.jstor.org/stable/20069681> accessed February 16, 2024.

[49] Olufemi Taiwo, Reconsidering Reparations (Oxford University Press 2022).

world should be distributed more to those who have inherited the moral liabilities of past injustices.[50]

Moreso, social justice focuses on addressing systemic inequalities and promoting fairness and equality in society. In the context of reparations, this theory emphasizes the need to address historical injustices that continue to affect marginalized communities and highlight the intersections of various forms of oppression and the importance of recognizing and remedying historical injustices to achieve social justice.[51]

Finally, transitional justice deals with addressing human rights abuses and injustices in societies transitioning from conflict or authoritarianism to democracy or peace. Reparations play a significant role in transitional justice processes, aiming to acknowledge victims, hold perpetrators accountable, and prevent future conflicts.[52] Transitional justice is an approach to systematic or massive violations of human rights that both provides redress to victims and creates or enhances opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses.[53]

According to the backgrounder,[54] transitional justice today is a diverse and vibrant field. As it has grown, it has found common ground with social justice movements, as well as the fields of conflict resolution, peace building, and historical memory, to name a few. To be effective, transitional justice should be holistic. That is, it should be made up of several

[50] *Ibid.*
[51] Max du Plessis, 'Historical Injustice and International Law: Reparation for Slavery' Human Rights Quarterly (2003) (25) 624-659 <https://www.jstor.org/stable/20069681> accessed January 30, 2024.
[52] Margaret Urban Walker, "Making Reparations Possible: Theorizing Reparative Justice" (2015) <https://ePublications.Marquette.edu/cgi/viewcontent.cgi...> accessed January 20, 2024.
[53] *Ibid.*
[54] United Nations Regional Information Centre for Western Europe, *UNRIC Library Backgrounder: Transitional Justice* (2008) <https://unric.org/en/unric-library-backgrounder-transitional -justice/> accessed January 20, 2024.

initiatives that complement and reinforce each other. The elements of such initiatives often include criminal prosecutions, truth commissions, and reparation programs.[55]

Therefore, one can safely say that reparation forms part of the transitional justice framework which is encompassing and all-embracing of modern justice theories such as restorative theory. This research seeks to examine the effectiveness of the existing mechanisms of reparations in ensuring comprehensive, equitable, and effective promotion of justice and reconciliation vise a visa the experiences of the victims of violations of IHL.

2.3 Literature Review

Recently, the results of an internal study on the adequacy of IHL led the ICRC to conclude that the law could be strengthened in four specific areas which include the Protection of persons deprived of their liberty in non-international armed conflicts, the protection of internally displaced persons, the protection of the environment and Implementation mechanisms including reparation for victims.[56] Central to the principles of IHL is the notion of reparation for victims of serious violations. Reparation encompasses a range of measures aimed at addressing the harm suffered by individuals or communities as a result of violations of IHL. This comprehensive literature review examines the concept of reparation for victims of serious violations of international humanitarian law (IHL).

The review provides an overview of the historical development of reparation mechanisms, explores the challenges and limitations associated with implementing effective reparations, and highlights the importance of victim-centered approaches. The findings underscore the need for a comprehensive and multidimensional approach to reparations that addresses the diverse needs of victims and promotes justice, healing, and reconciliation.

[55] *Ibid.*
[56] J. Rehman, *International Human Rights Law (*Pearson Education Limited, England, 2010) 2 edn.

Numerous scholars have traced the roots of reparations in IHL back to ancient civilizations and religious texts that contained rudimentary rules for the conduct of war. However, modern IHL began to take shape in the 19th century, influenced by figures such as Henry Dunant and the experiences of the Napoleonic Wars and the American Civil War.[57] The evolution of international humanitarian law (IHL) and the development of reparation mechanisms for victims have been shaped by historical events, legal frameworks, and shifts in global norms.[58]

According to *Luke Moffet*,[59] the Geneva Conventions are the first significant milestone in the codification of IHL. The adoption of the Geneva Conventions in 1864, which established protections for wounded soldiers on the battlefield. Subsequent revisions and additional protocols expanded these protections to include civilians, prisoners of war, and other persons affected by armed conflict[60] recognized the need for justice and reparations for victims. He further noted that the establishment of the International Criminal Court (ICC) in 2002 marked a significant advancement in the accountability of individuals for serious violations of IHL. Moffet further asserted that the Rome Statute of the International Criminal Court, establish a comprehensive legal framework pertaining to the reparation of victims of serious violations of international law.

On her part, *Emmanuela Chiara Gillard*,[61] noted that reparation is extremely important for very practical reasons, particularly for individuals who have been victims of violations of international humanitarian law. Even when the immediate consequences of the violation have

[57] Emanuela-Chiara Gillard, 'Reparation for Violations of international humanitarian law" (2013) ICRC IRRC *International Review of the Red Cross* (85) (851) 529 <https://icrc.org> accessed January 10, 2024.
[58] *Ibid.*
[59] Luke Moffett, *Reparations and War* (Oxford University Press 2023). DOI: 10.1093/oso/9780192865588.003.0004 Doi is usually stronger. So, when cited, you do not need a we address <https://academic.oups.com> accessed January 20, 2024.
[60] *Ibid*
[61] Emanuela-Chiara Gillard, 'Reparation for Violations of international humanitarian law", (2013) ICRC IRRC *International Review of the Red Cross* (85) (851) 529 <https://icrc.org> accessed on accessed on January 14, 2024.

been dealt with, such persons remain extremely vulnerable. They may need long-term medical care, may no longer be able to earn an income and are likely to have lost home and belongings. He further maintains that it would be callous and naive to think that an award of compensation, for example, would restore victims to the situation they were in prior to the violation i.e. re-establish the status quo ante as required by international law. Nevertheless, the receipt of timely and adequate compensation is an important element in enabling victims to try to rebuild their lives. She added that between States, the principle that every violation of international obligations gives rise to a duty to make reparation is well established in law and functions reasonably well in practice.

However, with regard to individual victims of violations of human rights law and international humanitarian law the position remains more uncertain. Gillard's primarily focused on examining the legal principles, existing mechanisms, and challenges associated with ensuring reparations for victims of such violations. She discussed the fundamental principles of IHL, emphasizing the obligation of parties to armed conflicts to adhere to its provisions, which are designed to protect civilians and combatants not actively participating in hostilities. She also insists that violations of IHL can result in various forms of harm, including physical, psychological, and socio-economic, to individuals and communities. However, international humanitarian law instruments are silent as to who are the beneficiaries of reparation for violations of international humanitarian law. They only address the *responsibility* to compensate. She however noted that there is increasing acceptance that individuals do have a right to reparation for violations of international law of which they are victims. This is particularly well established with regard to human rights law. Not only do many of the specialized human rights tribunals have the right to award “just satisfaction” or “fair compensation”, but a number of human rights treaties also expressly require States to establish

a remedy for violations before national courts. The position of individual victims of violations of international humanitarian law is more problematic.

According to her, there is general consensus that there is no reason for limiting the right to compensation referred to in the Hague Convention and Additional Protocol I to States, rather, individual victims should also benefit, problems have arisen when such persons have attempted to enforce this right to reparations — usually compensation — directly before national courts. These difficulties are principally due to the fact that the traditional position under international law is that only States are subjects of international law with full rights and obligations. Individuals are merely beneficiaries and must claim their rights via their State of nationality. Gillard noted that this traditional view is still at the base of many of the hurdles faced by individuals when attempting to directly enforce their rights under international law.[62] Gillard further noted that even though most claims by individual victims before national for a failed due to sovereign immunity and or inability to enforce awards, individuals have been more successful in asserting and enforcing their rights against States for violations of international law before international fora.[63]

Vessela Terzieva[64] observed that the application of the rule of state immunity to claims involving potential international crimes has been a subject of judicial debate for more than two decades, the trend in municipal jurisprudence to deny immunity on the basis of a conflict between the rule and the victims' right to access to court emerged recently. She further noted that the first court to take this position was the Italian Constitutional Court when it ruled that

[62] *Ibid.*
[63] *Ibid.*
[64] Vessela Terzieva, 'State Immunity and Victims' Rights to Access to Court, Reparation and the Truth' *International Criminal Law Review* (2022) (22) 780-804, <https://brill.com/view/journal/icla/22/4/article-p870> accessed on February 20, 2024.

Italian courts could not deny their jurisdiction to civil claims based on sovereign acts constituting war crimes and crimes against humanity, committed on Italian territory.[65]

Vessela noted that the court ruled that under Italian law, the introduction of generally recognized norms of international law was limited by the fundamental constitutional principles, including the right to bring a case before a court, under Article 24, and the protection of the inviolable human rights under Article 2 of the constitution. The court saw these two provisions as inseparably connected, Article 2 being the substantive norm safeguarding the inviolability of human rights and Article 24, the procedural one, protecting the right to access to justice when rights under Article 2 are concerned.[66] It accepted that a prevailing public interest in favour of a limitation of the right to judicial protection could be identified only when 'immunity' is connected substantially and not just formally to the sovereign functions of the foreign state.[67] She noted that the court's decision granting immunity with respect to claims based on *jus cogens* violations entailed 'the absolute sacrifice' of the victims' right to judicial protection while a prevailing public interest could not be identified.[68]

The views of the Italian Constitutional Court seem to have found support in a ruling of the Seoul Central District Court. Deciding on a claim brought by victims of sexual slavery during the Second World War, the 34th division concluded that the rule of state immunity did not apply to sovereign acts committed in the forum state, violating *jus cogens* norms of international law and fundamental rights of forum state citizens.[69] The Court found that limitations of the right to trial should be approached with caution. It considered that denying jurisdiction for claims based on acts breaching *jus cogens* norms of international law, violating fundamental human rights deprives the victims of their right to trial and would be unreasonable.

[65] *Ibid.*
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*

She maintained that in the court's view, the purpose of the rule of state immunity was to protect sovereign states and prevent abuse of jurisdiction. The rule thus was not intended to allow a state to avoid compensating victims for damage caused by its acts in breach of international law. She concluded that the three municipal Courts seem to have agreed that the rule of state immunity does not apply to sovereign acts that could be characterised as international crimes committed in the forum state territory, where no alternative mechanisms for access to court are available to the victims.[70]

According to *Bassiouni*,[71] the complexities of international legal frameworks, including jurisdictional issues and enforcement mechanisms pose significant challenges to the effective implementation of reparation measures. He further maintains that implementing reparations can be hindered by challenges such as resistance from states, lack of political will, and difficulties in enforcing reparations orders. He insists that in recent years, there has been growing recognition of the need for comprehensive and victim-centered approaches to reparation, as well as efforts to integrate reparation into broader transitional justice processes. This includes initiatives to enhance participation and consultation with victims in the design and implementation of reparation programs, strengthen coordination and cooperation among relevant stakeholders, and promote innovative mechanisms for delivering reparation, such as community-based initiatives and symbolic reparations. He added that, there has been increased attention to the role of truth-telling, acknowledgment, and memorialization in addressing the needs of victims and promoting reconciliation in post-conflict societies.

Liesbeth Zegveld[72] advocating for the rights of victims of violations during armed conflicts highlights the crucial need for effective legal remedies to address the suffering and

[70] *Ibid.*
[71] M Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer Law International 2014) (2) 44-48.
[72] L Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (*IRRC* (2003) (85) (851) 497)

injustices faced by individuals impacted by breaches of international humanitarian law. One of Zegveld's key ideas is the imperative of holding perpetrators accountable for their actions. She argues that accountability serves not only to deliver justice to the victims but also to deter future violations and uphold the rule of law. Emphasising the role of both national and international legal mechanisms in prosecuting perpetrators and ensuring that those responsible are held to account, she also underscores the importance of providing comprehensive reparations to victims. She argues that reparations should go beyond mere financial compensation and encompass measures aimed at restoring dignity, providing access to healthcare and psychosocial support, facilitating truth and reconciliation processes, and promoting societal reconciliation. Zegveld also discussed the challenges and shortcomings in the current legal frameworks for addressing violations of international humanitarian law. She calls for reforms to enhance the effectiveness of legal remedies, including improvements in access to justice for victims, strengthening international legal mechanisms, and promoting cooperation between states and international organizations. Overall, she underscores the critical need for robust legal remedies to address the plight of victims of violations of international humanitarian law. By advocating for accountability, reparations, and legal reform, she seeks to ensure that victims receive the justice and support they deserve in the aftermath of armed conflicts.

According to her, international humanitarian law ("IHL") has never been limited to the only relations between States. However, the initiators of the nineteenth century conventions already believed that human persons had inalienable rights even during armed conflicts. On the contrary, recognition of rights is one thing; the right to claim those rights is another. So far, States have been reluctant to entitle, explicitly and in general, victims of violations of international humanitarian law to claim reparation. As humanitarian law treaties do not expressly envisage causes of action for victims in national or international law, they are hardly able to exercise their rights. On this point international humanitarian law is largely at variance

with tendencies in international law. In spite of the gap in the International Law Commission's Articles on State Responsibility, which were finally adopted in 2001 but fail to mention rights of individuals in the regime of secondary rights, it is generally known that human rights treaties provide a remedy, both substantive and procedural, for individuals suffering injury from unlawful conduct by State authorities.[73]

In his book, *Olufemi Taiwo*[74] argues that most of those theorizing about reparations treats it as a social justice project - either rooted in reconciliatory justice focused on making amends in the present; or, they focus on the past, emphasizing restitution for historical wrongs. He further contends that neither approach is optimal, and advances a different case for reparations - one rooted in a hopeful future, with distributive justice at its core. This view, which he calls the "constructive" view of reparations, argues that reparations should be seen as a future-oriented project engaged in building a better social order; and that the costs of building a more equitable world should be distributed more to those who have inherited the moral liabilities of past injustices.[75]

This approach to reparations, as Taiwo shows, has deep and surprising roots in the thought of Black political thinkers in the likes of James Baldwin, Martin Luther King Jr, and *Nkechi Taifa*, as well as mainstream political philosophers like John Rawls, Charles Mills, and Elizabeth Anderson. Taiwo's project has wide implications for our views of justice policies.[76] Overall, the evolution of IHL and the development of reparation mechanisms for victims reflect a growing recognition of the importance of addressing the needs and rights of individuals affected by armed conflict and other situations of violence. While significant progress has been made, challenges remain in ensuring effective implementation and access to justice for all.[77]

[73] *Ibid.*
[74] Olufemi Taiwo, Reconsidering Reparations (Oxford University Press 2022).
[75] *ibid*
[76] *Ibid.*
[77] *Ibid.*

2.4 Discussion of the Review

It is the opinion of this research that most authors agree on the fact that despite international recognition of the right to reparations, most individual victims have difficulties assessing reparations. The legal and institutional framework available to victims of violations of IHL is dependent on either the State, international mechanisms. Although there are fragmentary provisions in the existing legislation that may be explored to ground the rights to reparations of victims of violations of IHL arising from international and non-international armed conflict before national fora, international humanitarian law as a whole or any specific part of it, or any provision of any international instrument imposes an obligation on States to give direct effect of the provisions of IHL in their national legal systems, to the effect that IHL norms could be invoked by individuals before national courts in the same way as national norms. Where a State does choose to domesticate or integrate the substance or verbatim any provisions of IHL rules, norms or Laws, the specific article or provision may be invoked directly before national courts. But where none of these is adopted, victims are left empty-handed. This seems to be the more common situation worldwide. Most authors, including those discussed above agree that the victim-centered approach is the only means of achieving satisfactory reparation programs. There is no gain saying that there exists a lacuna in IHL which indeed is a huge clog in the wheel of justice in this context.

CHAPTER THREE
LEGAL AND INSTITUTIONAL FRAMEWORK ON REPARATION

3.1 Legal Framework

A. International Framework

B. Local/Domestic Framework

Treaties establish the legal framework for States to provide reparations to victims of various human rights violations, ensuring accountability and promoting justice and redress.[102] This was expressly laid down as long ago as 1907 in the Hague Convention (IV) respecting the Laws and Customs of War on Land. This foundation is supported by international legal instruments such as the Geneva Conventions, the Rome Statute of the International Criminal Court, and various UN resolutions and declarations.[103] It is an established fact that international humanitarian law (IHL) is a set of rules that seek to limit the effects of armed conflict. It lays out the responsibilities of States and non-State armed groups during an armed conflict.[104] International Humanitarian Law (IHL) does not only govern the conduct of armed conflict, it also provides for protections for victims of such conflicts, including the right to reparations.[105] Despite explicit provisions in international law, it should be noted that the obligation to make reparation arises automatically as a consequence of an unlawful act, without the need for the

[102] United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', Resolution 60/147, 16 December 2005.< https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed on 18th January, 2024.
[103] Ariel Colonomos & Andrea Amstrong, 'German Reparations to Jews After World War II: Turning Point in the History of Reparations' in Pablo De Greiff (ed) *Handbook of Reparations* (Oxford University Press 2009) 390.
[104] The DG European Civil Protection & Humanitarian Aid Operations Statement< https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law_en#:~:text=Why%20is%20this-,important,-%3F> accessed on 10th January, 2024.
[105] *Ibid.*

obligation to be spelled out in Conventions.[106]It is worthy of note that the legal framework for reparation under international humanitarian law cannot be extensively discussed without delving into international human rights provisions which is akin to IHL. Some of the legal framework laid down in international law are discussed below:

A. International Framework

3.1.1 Hague Conventions on the Laws and Customs of War on Land of 1907

Also referred to as the Hague Convention (IV), represents a significant milestone in the development of international humanitarian law (IHL) and serve as a foundational legal framework for addressing serious violations of IHL and providing reparations for victims. The Hague Conventions were a series of international treaties negotiated at two international peace conferences held in The Hague, Netherlands, in 1899 and 1907.[107] These Conventions aimed to codify laws and customs of war and to limit the effects of armed conflict. The 1907 Convention, in particular, addressed various aspects of warfare, including the treatment of civilians, prisoners of war, and the means and methods of warfare.

The Hague Convention of 1907 introduced several principles regarding the protection of civilians during armed conflict. It prohibited acts such as the targeting of civilian populations, the destruction of civilian property unless absolutely necessary for military operations, and the use of certain types of weapons deemed excessively harmful to civilians. By establishing these principles, the Convention laid the groundwork for safeguarding civilians from the worst effects of warfare and provided a legal basis for holding parties accountable for violations. While the Hague Conventions primarily focused on establishing rules and

[106] Jean-Marie Henckaerts, "Bringing the Commentaries on the Geneva Conventions and their Additional Protocols into the Twenty-first Century" International Review of the Red Cross: Reports and Documents (94) (888) (2012) 1550 *DOI*: https://doi.org/10.1017/S1816383113000465 accessed on 10th January, 2024.
[106] *Ibid.*
[107] Geneva Internet Platform Digwatch, "The Hague Conventions of 1899 and 1907" (September, 2015)

limitations for the conduct of warfare, they also recognized the need for providing reparations to victims of violations. Article 3,[108] for example, stipulates that a belligerent party which violates the provisions of the Convention must make reparation for the damages caused. This provision underscores the importance of accountability and restitution for victims of violations of IHL. While the Hague Conventions laid the groundwork for the protection of civilians and the provision of reparations, subsequent developments in international law further elaborated on these principles.[109]

3.1.2 The Geneva Conventions (GCs) of 1949 and their Additional Protocols of 1977

Although there are no express provisions or mention of reparations in the GCs and their additional protocols, they constitute the backbone of international humanitarian law. They contain many of the essential rules of humanitarian law protecting civilians, medical and religious personnel, and other persons hors de combat.[110] The Geneva Conventions enjoy universal adherence, while more than 80 per cent of all countries are States party to the Additional Protocols of 1977.[111] The requirement to pay compensation for violations of international humanitarian law is expressly reiterated in Article 91 of Additional Protocol 1.7.[112]

3.1.3 International Criminal Laws

International criminal statutes such as the Nuremberg Charter of 1946, and the Rome Statute of the International Criminal Court (ICC) 2002. The international criminal law is practiced by and prosecuted within the international tribunals and courts: Such as the

[108] Hague Convention (IV) 1907
[109] *Ibid.*
[110] Jean-Marie Henckaerts, "Bringing the Commentaries on the Geneva Conventions and their Additional Protocols into the Twenty-first Century" International Review of the Red Cross: Reports and Documents (94) (888) (2012) 1550 *DOI*: https://doi.org/10.1017/S1816383113000465 accessed on 10th January, 2024.
[111] *Ibid.*
[112] Additional Protocol 1.7 to the Geneva Conventions 1949

International Criminal Court (ICC) or ad hoc tribunals like the International Criminal Tribunal for the former Yugoslavia (ICTY) or the International Criminal Tribunal for Rwanda (ICTR), which may order reparations as part of their judgments.[113]

The Rome Statute established the International Criminal Court to prosecute individuals for the most serious crimes of international concern, including genocide, war crimes, crimes against humanity, and aggression. It provides for assistance, support, and reparations to victims in its legal framework.[114]

The Nuremberg Charter, officially known as the "Charter of the International Military Tribunal (IMT)," was a legal document that served as the foundation for the Nuremberg Trials. It was drafted and agreed upon by the Allied powers (United States, United Kingdom, Soviet Union, and France) in 1945, following the end of World War II. The Charter established the legal basis for the prosecution of major war criminals from Nazi Germany[115]. The Nuremberg Charter laid the groundwork for subsequent international criminal law developments and has been recognized as a landmark in the evolution of modern international criminal justice. It established the precedent that individuals could be held accountable for committing grave international crimes, even if they acted pursuant to orders from their governments. The Nuremberg Trials themselves set a crucial precedent for the prosecution of individuals responsible for atrocities committed during armed conflict.[116] While the Nuremberg Charter itself does not provide a direct legal framework for reparations, its principles and legacy have contributed to the development of international law and norms that support victims' rights to reparations for serious violations of IHL. Subsequent legal instruments and mechanisms have

[113] Legal Information Institute Cornell Law School, 'International Criminal Law' https://www.law.cornel.edu/wex/international_criminal_law accessed on 17th February, 2024.
[114] *Ibid.*
[115] *Ibid.*
[116] *Ibid.*

built upon the foundations laid at Nuremberg to provide avenues for victims to seek redress and reparations for the harms they have suffered.[117]

3.1.4 International Human Rights Law including treaties such as the International Covenant on Civil and Political Rights (ICCPR) 1976 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976, also supports the right to reparations for victims of human rights abuses, including those occurring in armed conflict[118] These covenants recognizes the rights of victims to seek reparations for human rights violations, including those committed during armed conflict.[119] It provides a robust legal framework for reparations for victims of serious violations of international humanitarian law. By guaranteeing the right to an effective remedy, reinforcing principles of accountability and non-impunity, enabling universal jurisdiction, and leveraging international and regional human rights mechanisms, IHRL contributes to ensuring justice, redress, and the protection of victims' rights in the aftermath of armed conflict.[120]

3.1.5 Customary International Law 2005

Customary international law, which consists of the general practices accepted as law by States, also plays a role in shaping the legal framework for reparations. Customary norms regarding the responsibility to provide reparations to victims of serious violations of IHL have evolved over time through State practice and *opinio juris* even in the absence of formal treaties.[121] Customary international law recognizes victims' rights to remedies, including reparations, for serious violations of IHL. This principle is based on the broader concepts and principles such as State responsibility, recognition of victims' right to remedy, principle of

[117] *Ibid.*
[118] *Ibid.*
[119] J. Rehman, *International Human Rights Law (*Pearson Education Limited, England, (2) 2010).
[120] *Ibid.*
[121] Emanuela-Chiara Gillard, 'Reparation for Violations of international humanitarian law" (2013) ICRC IRRC? International Review of the Red Cross? (85) (851) 529 https://icrc.org accessed on 24 January 2024

non-discrimination under international law, and the principle of restitution, compensation, and rehabilitation which includes the right to an effective remedy for human rights abuses.[122]

3.1.6 United Nations Resolutions and Declarations

The United Nations General Assembly and Security Council have adopted resolutions and declarations that reaffirm the importance of providing reparations to victims of serious violations of IHL. These resolutions contribute to the development of norms and standards in this area.[123] Some examples are discussed hereunder.

A. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005.
B. Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights ["Paris Principles"] 1993.
C. Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security 1991.
D. Basic Principles for the Treatment of Prisoners 1990.
E. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.
F. Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity 1973.
G. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1968.[124]

[122] *Ibid.*
[123] *Ibid.*
[124] United Nations Conventions and Declarations, <https://research.un.org>docs>quick> accessed on March 7, 2024

H. Other UN resolutions and declarations contribute to the legal framework for reparations for victims of serious violations of IHL by affirming victims' rights, calling for compliance with international law, establishing accountability mechanisms, providing guidance for peace building and transitional justice, mandating monitoring and reporting mechanisms, and promoting international cooperation and assistance. Although, not legally binding, these instruments serve as important tools for advancing the protection of victims' rights and promoting accountability for violations of IHL.[125]

3.1.7 Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights serves as an important legal framework for reparations for victims of serious violations of international humanitarian law. Its recognition of the rights of victims, affirmation of the right to remedy and reparation, principles of accountability and justice, guidance for state responsibility, and role in developing international human rights law collectively contribute to advancing the protection of victims' rights and promoting accountability for violations of IHL.[126]

3.1.8 The Rome Statute of the International Criminal Court 1998

The Rome Statute of the International Criminal Court mandates principles concerning reparations for victims, necessitating the establishment of trust funds and ensuring victims' participation throughout legal proceedings. These principles and guidelines aim to address gross violations of international human rights law and serious violations of international

[125] *Ibid.*
[126] Legal Information Institute Cornell Law School, 'International Criminal Law' https://www.law.cornel.edu/wex/international_criminal_law accessed on 17th February, 2024.
[126] *Ibid.*
[20] Javid Rehman, *International Human Rights Law (*Pearson Education Limited, England, (2) 2010).
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*

humanitarian law, safeguarding victims' dignity, and reaffirming accountability, justice, and the rule of law.[127]

3.1.9 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment serves as a robust legal framework for reparations for victims of serious violations of international humanitarian law, particularly those related to torture and ill-treatment.[128] Its clear prohibition of torture, obligations on states to prevent and provide redress for torture, national implementation measures, monitoring mechanisms, and intersections with IHL collectively contribute to advancing the protection of victims' rights and promoting accountability for violations particularly those related to torture and other forms of ill-treatment. Adopted by the United Nations General Assembly in 1984 and entered into force in 1987, the CAT aims to prevent and prohibit torture and other cruel, inhuman, or degrading treatment or punishment worldwide.

3.1.10 Convention on the Rights of the Child 1989

The Convention on the Rights of the Child (CRC) was adopted by the United Nations General Assembly in 1989, the CRC is the most widely ratified human rights treaty in history, with near-universal acceptance. It serves as a robust legal framework for reparations for victims of serious violations of international humanitarian law, particularly children affected by armed

[127] Theodour Meron,Toni Pfanna ed, "Various Mechanisms And Approaches For Implementing International Humanitarian Law And Protecting And Assisting War Victims" *International Review of the Red Cross* [2009] (91) (874) 279 doi:10.1017/S1816383109990300. https://international-review.icrc.org/sites/default/files/irrc-874-4.pdf> accessed on 30th January, 2024

[128] *Ibid*

conflict. Its recognition of children's rights, including the right to remedies and reparations, the best interests of the child principle, state obligations to protect children in armed conflict, and intersections with IHL collectively contribute to advancing the protection of children's rights and promoting accountability for violations[129]. This flows from the fact that conflict can wound children, both physically and mentally, for life. They are often helpless witnesses of atrocities committed against members of their families. Far too many children are still killed, wounded or mutilated by anti-personnel mines, torn from their familiar surroundings, separated from their families, detained or imprisoned, forced to flee and to seek refuge in another area or country, left to fall back on their own resources, deprived of their roots and, sometimes, even of their very identity[130]. Evidence shows that children need even greater care and protection if they have experienced violence, suffering and trauma generated by armed conflict[131].

3.1.11 European Convention on Human Rights ("ECHR") 1953

The ECHR, is a regional instrument, and the first modern human rights instrument creating a court with competence to make legally binding decisions on cases awarding reparations. Article 13 of the ECHR guarantees the right to an "effective remedy" and Article 41 states that the European Court on Human Rights ("ECtHR") shall afford "just satisfaction" if international law in the State Party allows only partial reparation to be made[132]. Earlier in the ECtHR's jurisprudence, the Court largely limited its interpretation of its competence to award

[129] *Ibid.*
[130] ICRC, *Protection of victims of Armed Conflict Through Respect of IHL* (Reference document of the 27th International Conference of the Red Cross and Red Crescent, Geneva October 31 to November 6, 1999 https://www.icrc.org/en/doc/resouces/document/misc/57jpzn.htm
[131] *Ibid.*
[132] Theodour Meron,Toni Pfanna ed, "Various Mechanisms And Approaches For Implementing International Humanitarian Law And Protecting And Assisting War Victims" International Review of the Red Cross (91) (874) (2009) 279 doi:10.1017/S1816383109990300. https://international-review.icrc.org/sites/default/files/irrc-874-4.pdf> accessed on 30th January, 2024

reparations to monetary damages. However, in recent years, the Court has begun to expand its interpretation to include broader injunctive relief[133].

3.1. 12 American Convention on Human Rights ("ACHR") I969

The ACHR was adopted in 1969 and came into force in 1978. It guarantees the right to a legal remedy in its Articles 25, and 63. The ACHR establishes the right to a remedy and fair compensation. The Inter-American Court on Human Rights, also a regional instrument, has interpreted the right to reparations under the American Convention broadly.[134]

3.1.13 African Charter on Human and Peoples' Rights ("ACHPR") 1986

The African continent is not left out in all these. However, the ACHPR is a unique regional instrument, in that it contains no clear provision on individual complaints and it lacks a general reference to the right to remedy for violations.[135] Despite this lack of explicit provision for a right to a remedy, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have found that the ACHPR imposes the obligation on signatories to provide reparations to victims of violations of the Charter.[136]

Other Prominent International Instruments includes:

3.1.14 Draft Articles on State Responsibility

Adopted in 2001, Article 31 establishes the international obligation of a state in breach of an international rule to make reparations for the injury caused as a result of such breach. Although the Draft Articles primarily focus on international responsibility between States, the

[133] *Ibid.*
[134] *Ibid.*
[135] *Ibid.*
[136] *Ibid;* The African Court on Human and Peoples' Rights, in *Mtikila v. Tanzania,* found that it has the power to award reparations to the victims of human rights violations, and subsequently in 2015, in *Zongo and Others v. Burkina Faso*, the Court made its first reparations award.

Commentary to the Draft makes it clear that the principles apply in relation to all obligations of the State and not only to those owed to other States.[137]

3.1.15 Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005

Adopted by the UN General Assembly in 2005, the *Basic Principles* in principles 2(c) and 11(b), affirms the right to adequate, effective, and prompt reparation for harms suffered as the result of violations.[138] The *Basic Principles* applies only to "gross violations" of international human rights law and "serious violations" of international humanitarian law recognizes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as forms of reparations, providing a comprehensive definition of each.[139]

3.1.16 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation 2007

Adopted in 2007 at the International Meeting on Women's and Girls' Right to a Remedy and Reparation, the Nairobi Declaration affirms the right to reparations, particularly in the context of gender-based violations committed during armed conflict.t[140] It innovates by emphasizing the right to be notified of the right to reparations as well as the right to full participation of victims in the stages of the reparation process, including design, implementation, evaluation, and decision-making.[141]

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[137] Commentary to the Draft Articles on State Responsibility on Article 28, 2001, p. 87.
[138] United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', Resolution 60/147, 16 December 2005.< https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed on 18th January, 2024.
[139] Freedom Now, *International Framework on the Right to Reparation* https://www.freedom-now.org/wp-content/uploads/International-Framework-on-the-Right-to-Reparation.pdf
[140] *Ibid*.
[141] *Ibid.*

B. Local/Domestic Framework

Many countries have domesticated laws and procedures for providing reparations to victims of serious violations of international humanitarian law, either through criminal prosecutions or civil actions.[142] However, a lot of African Nation States have failed to do so. National governments owe the primary responsibility to provide reparations to victims of IHL violations that occur within their jurisdiction.[143] They may establish specialized national bodies or mechanisms to handle reparations claims, such as national commissions, ministries of justice, or victims' compensation funds.[144] National governments are responsible for implementing domestic legislation that incorporates international legal standards on reparations, including treaties and customary international law.[145]

Unfortunately, Nigeria is one of those countries that have failed and to domesticate or implement within her legal system the international humanitarian law provisions regarding the subject matter of this research.

3.2 Institutional Framework

The institutional framework for reparations for victims of serious violations of International Humanitarian Law (IHL) involves a variety of actors at the national, regional, and international levels. These institutions play distinct roles in facilitating access to justice, providing redress, and promoting accountability for perpetrators. This section presents an overview of the key components of the institutional framework for reparations.

Judicial Institutions such as domestic courts play a crucial role in adjudicating claims for reparations brought by victims of IHL violations.[146] Courts may award compensation,

[142] *Ibid.*
[143] Liesbeth Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (IRRC (2003) (85) (851)
[144] Medecins Sans Frontieres, *The Practical Guide to Humanitarian Law* https://guide-Humanitarian-Law.org/content/article/3/reparations/compesations> accessed on March 1, 2024.
[145] *Ibid.*
[146] *Ibid.*

restitution, rehabilitation, and other forms of redress to victims as part of civil or criminal proceedings against perpetrators.[147]

3.2.1 International Courts and Tribunals

3.2.1A International Criminal Court: The ICC prosecutes individuals responsible for the most serious international crimes, including war crimes, crimes against humanity, and genocide. As part of its mandate, the ICC can order reparations to victims of these crimes[148] in its judgments in cases involving serious violations of IHL.[149] The International Criminal Court in the case of Lubanga, ordered reparations for the first time in 2012[150]. The Trial Chamber awarded collective reparations to victims of the crimes committed by Thomas Lubanga Dyilo, a Congolese militia leader convicted of recruiting and using child soldiers in the Democratic Republic of the Congo[151]. Also, in the case of Katanga, the ICC Trial Chamber awarded individual and collective reparations to victims of the crimes committed by Germain Katanga, a Congolese militia leader convicted of war crimes and crimes against humanity in the Ituri region of the Democratic Republic of the Congo.[152]

3.2.1B International Court of Justice

The International Court of Justice (ICJ) on its part, settles disputes between states and provides advisory opinions on legal questions referred to it by the UN General Assembly,

[147]Theodour Meron,Toni Pfanna ed, "Various Mechanisms And Approaches For Implementing International Humanitarian Law And Protecting And Assisting War Victims" International Review of the Red Cross (91) (874) (2009) 279 doi:10.1017/S1816383109990300. https://international-review.icrc.org/sites/default/files/irrc-874-4.pdf> accessed on 30th January, 2024

[148]Office of the High Commissioner for Human Rights, *How does the UN Protect and Promote Human Rights?* Official Website <https://www.un.org/en/our-work/protect -human- rights> accessed March 5, 2024.

[149] *Ibid.*

[150] Medecins Sans Frontieres, *The Practical Guide to Humanitarian Law* (Rowman and Littlefield (3) (2013) <https://rowman.com/ISBN/9781442221123/The-Practical-Guide to Humanitarian-Law> accessed on March 7, 2024.

[151] *Ibid.*

[152] *Ibid.*

Security Council, or other authorized bodies. While not primarily focused on reparations, its decisions can have implications for victims' rights to reparations.[153]

3.2.1C. International Criminal Tribunals

International criminal tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), have been established to prosecute individuals responsible for serious violations of IHL, including war crimes, crimes against humanity, and genocide[154]. These tribunals may order reparations to victims as part of their judgments, including compensation for physical or psychological harm, restitution of property, and measures to ensure rehabilitation and reintegration into society. The International Criminal Tribunal for the Former Yugoslavia (ICTY) in various cases before it, the Trial Chambers issued judgments ordering reparations to victims of war crimes, crimes against humanity, and genocide committed during the conflicts in the former Yugoslavia. These reparations orders included compensation for victims' material losses, psychological harm, and other forms of suffering[155]. For example, in the case of Prosecutor v. Blaskic the ICTY Appeals Chamber upheld a Trial Chamber decision ordering the Republic of Croatia to pay compensation to victims of war crimes committed by Croatian forces in the Lasva Valley in Bosnia and Herzegovina[156]. Furthermore, the International Criminal Tribunal for Rwanda (ICTR) issued judgments awarding reparations to victims of the genocide in Rwanda. These reparations orders included compensation for victims' material losses, psychological harm, and other forms of suffering caused by the genocide. For instance, in the case of *Prosecutor v. Karemera et al*., the ICTR Trial Chamber ordered the convicted

[153] *Ibid.*
[154] Emanuela-Chiara Gillard, 'Reparation for Violations of international humanitarian law" (ICRC *International Review of the Red Cross* (85) (851) 529< https://www.icrc.org> accessed on 24/11/23.
[155] *Ibid.*
[156] *Ibid.*

individuals to pay collective reparations to victims, including compensation for damage to property and psychological harm.[157]

More so, Special Court for Sierra Leone (SCSL) in the case of *Prosecutor v. Charles Taylor*, the SCSL Trial Chamber found the former President of Liberia guilty of aiding and abetting war crimes and crimes against humanity committed during the civil war in Sierra Leone[158]. The Trial Chamber issued a judgment ordering collective reparations to victims, including compensation for harm suffered as a result of the crimes[159]. These examples demonstrate how international tribunals and courts have recognized the rights of victims of IHL violations to reparations and have taken steps to ensure that victims receive redress for the harm they have suffered. Reparations orders typically aim to provide victims with compensation, restitution, rehabilitation, and satisfaction for the injuries they have endured as a result of serious international crimes.

3.2.2 Truth and Reconciliation Commissions

Truth and Reconciliation Commissions are bodies established in post-conflict or transitional justice contexts to investigate past human rights abuses, including violations of IHL, and to promote reconciliation and accountability. They may provide mechanisms for victims to share their experiences, receive acknowledgment for their suffering, and seek reparations, including compensation, apologies, and other forms of redress.[160]

3.2.3 International and Regional Human Rights Bodies

International and regional human rights bodies, such as the United Nations Human Rights Council, the Inter-American Commission on Human Rights, and the European Court of

[157] *Ibid.*
[158] *Ibid.*
[159] *Ibid.*
[160] *Ibid.*

Human Rights, play a role in monitoring and adjudicating human rights violations, including violations of IHL.[161] These bodies may issue recommendations or judgments requiring states to provide reparations to victims of IHL violations and may oversee the implementation of such measures.

3.2.4 Civil Society Organisations and Non-Governmental Organisations (NGOs) often play a crucial role in advocating for the rights of victims of IHL violations and providing support and assistance to affected individuals and communities.[162] These organizations may offer legal assistance, psychosocial support, advocacy services, and other forms of assistance to victims seeking reparations. They also contribute to raising awareness of the rights of victims and promoting accountability for perpetrators of IHL violations.[163]

3.2.4A. International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross (ICRC) plays a crucial role in providing assistance to victims of armed conflict and other situations of violence. The ICRC was founded in 1863. It's known first and foremost for its field operations in aid of victims of armed conflict and internal violence all over the world[164].Less well-known is the scope of its role as "guardian" or "custodian" of international humanitarian law, the law applicable in situations of armed conflict[165]. This complex function is closely connected with the founding of the ICRC and was subsequently formally entrusted to it by the international community. The ICRC plays a crucial role in facilitating reparations for victims of serious violations of International Humanitarian Law (IHL).[166] IHL, also known as the law of armed conflict or the law of war, aims to mitigate

[161] *Ibid.*
[162] *Ibid.*
[163] *Ibid.*
[164]Yves Sandoz, *The ICRC as Guardian of International Humanitarian Law* (Geneva 1998) <https://www//.icrc.org/en/doc/resources/documents/misc/about-the-icrc-311298.htm> accessed on March 3, 2024.
[165] *Ibid.*
[166] *Ibid.*

the effects of armed conflict by protecting individuals who are not or are no longer taking part in hostilities and restricting the means and methods of warfare.

The ICRC's involvement in facilitating reparations for victims of IHL violations can be understood through several key functions and activities. The primary mission of the ICRC is to protect the victims of armed conflict and other situations of violence.[167] This includes providing assistance to victims and advocating for their rights under IHL. By monitoring the situation on the ground, conducting visits to places of detention, and engaging with relevant authorities, the ICRC identifies victims of IHL violations and assesses their needs for reparations.[168]

ICRC possesses expertise in IHL and works to ensure that legal frameworks for reparations are in place and adhered to by relevant parties. This involves advocating for the incorporation of reparations provisions in domestic legislation and international agreements, as well as promoting adherence to IHL norms by armed actors. Through dialogue and cooperation with states, non-state armed groups, and other stakeholders, the ICRC encourages the establishment of mechanisms for providing reparations to victims of IHL violations.[169] First of all, States have to be encouraged to ratify the instruments they have drawn up at diplomatic conferences. The reason for the existence of the rules, some of which are admittedly complicated, has to be explained time and time again to members of parliament, ministers, top civil servants, high-ranking military officers and all the other officials who have to adopt the treaty or make recommendations in this respect. That means finding people in the countries concerned who are strongly in favour of the treaty and are prepared to defend it and keep drawing attention to its existence (the diplomats who helped to draft it may be long gone,

[167] *Ibid.*
[168] *Ibid.*
[169] *Ibid.*

abroad or to meet their Maker: accession and ratification can be a long process). But sometimes the question of ratification may have to be purely and simply rescued from oblivion. The international obligations of many countries are so extensive and complex that their overworked and understaffed civil services cannot cope with the paperwork.

The ICRC's job is then not so much to answer complicated legal and political arguments as merely to convince the government and the upper reaches of the civil service, by perseverance and persuasion that the matter is important enough to be exhumed earlier than others. ICRC promotes and encourages legislation and implementation of international humanitarian law on the national level. Treaties of international law are often "forgotten" after they have been drafted and signed, and unfortunately this may also happen even when they are theoretically in force. So, a number of measures have to be taken in peacetime. Accordingly, the ICRC has for many years past systematically sent States that have decided to participate in the Geneva Conventions or the Protocols additional thereto a note reminding them of the immediate obligations this entails, in peacetime.[170] The ICRC has set-up regional delegations, States have been reminded more frequently of this duty, and a certain momentum has been created at regional level, in particular by holding seminars at which officials from various States have been able to compare their experiences.[171]

Also, the ICRC conducts assessments and documentation of IHL violations, including gathering evidence of abuses and violations against individuals and communities. This information is crucial for determining the scope and nature of harm suffered by victims and informing efforts to provide appropriate reparations. By documenting violations, the ICRC also contributes to accountability efforts and the prevention of future violations.[172]

[170]National measures to implement international humanitarian law": Resolution V of the 25th International Conference of the Red Cross, Geneva, 1986 <https://international-review.icrc.orgdefaultfiles> accessed on March 4, 2024.
[171] *Ibid.*
[172] *Ibid.*

Furthermore, the ICRC supports and works alongside governmental and non-governmental entities involved in providing reparations for victims of IHL violations. This may include providing technical assistance in the design and implementation of reparations programs, capacity building for relevant institutions, and facilitating access to resources for reparations efforts.[173] The ICRC's experience and expertise in addressing the needs of victims of armed conflict can enhance the effectiveness and inclusivity of reparations initiatives.[174] Another aspect of the function of the ICRC in promoting compliance with IHL worth mentioning is assistance in disseminating information, and provisions of international humanitarian law and making it known to all concerned, which in practice means nearly everyone.[175] This is a treaty obligation for the States party to the Geneva Conventions, and also figures in the two Additional Protocols of 1977.[176] It is therefore included in the national measures States have to take in peacetime, but deserves special mention because of the great efforts required and the vital importance this task has assumed.[177]

Also, in addition to addressing the material and legal aspects of reparations, the ICRC emphasizes the importance of dialogue, reconciliation, and acknowledgment of the suffering experienced by victims. Through its humanitarian activities and engagement with affected communities, the ICRC seeks to foster understanding and empathy among parties to conflict and promote reconciliation processes that address the root causes of violence and promote lasting peace.[178] Ultimately, the ICRC's role in facilitating reparations for victims of serious violations of IHL encompasses protection, legal advocacy, documentation, support for reparations programs, and promotion of dialogue and reconciliation. By engaging with relevant

[173] *Ibid.*
[174] *Ibid.*
[175] *Ibid.*
[176] *Ibid.*
[177] *Ibid.*
[178] ICRC Database, Customary IHL , Rules - Customary IHL - ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/rules> March 3, 2024

actors and leveraging its expertise and neutrality, the ICRC contributes to efforts to address the harm caused by armed conflict and promote respect for human dignity and rights in situations of violence.[179]

3.2.4B Amnesty International

The Amnesty International is a global NGO that campaigns against human rights abuses often work on issues related to IHL violations, advocating for justice, reparations, and accountability for perpetrators.[180]

3.2.4C Human Rights Watch

The Human Rights Watch (HRW) conducts research and advocacy on human rights issues worldwide. They often document violations of IHL and advocate for reparations for victims.[181]

3.2.4D International Federation for Human Rights

International Federation for Human Rights (FIDH) an international NGO advocates for human rights globally. They work to support victims of human rights abuses, including those arising from IHL violations, and advocate for reparations.[182]

[179] *Ibid.*
[180] *Ibid.*
[181] *Ibid.*
[182] *Ibid.*

In summary, the institutional framework for reparations for victims of serious violations of IHL involves a wide range of actors working together to ensure access to justice, provide redress, and promote accountability. National governments, judicial institutions, truth and reconciliation commissions, international and regional human rights bodies, international criminal tribunals, and civil society organizations all play important roles in facilitating reparations for victims and addressing the consequences of IHL violations. Collaboration and cooperation between these actors are essential for ensuring effective reparations and promoting respect for human rights in situations of armed conflict.

3.2.5 United Nations Office of the High Commissioner for Human Rights

The United Nations Office of the High Commissioner for Human Rights (OHCHR) is tasked with promoting and protecting human rights globally. They work to ensure accountability for human rights violations, including those arising from IHL violations, and advocate for reparations for victims.[183]

3.2.6 United Nations Development Programme

The United Nations Development Programme (UNDP) works in conflict-affected areas to support peace building efforts, including providing assistance to victims of IHL violations. They often engage in programs aimed at promoting justice, rule of law, and human rights.[184]

3.3 Effectiveness of the Existing Mechanisms of Reparations Available to Victims of Serious Violations of IHL

[183] Office of the High Commissioner for Human Rights, *How does the UN Protect and Promote Human Rights?* Official Website <https://www.un.org/en/our-work/protect -human- rights> accessed March 5, 2024.
[184] *Ibid.*

Reparations can be administered individually or collectively and can be material or symbolic. Material reparations are often in the form of service packages, including health care, education, housing, cash, or other material goods with pecuniary value.[185] Symbolic reparations can include official acknowledgment and apologies; naming of public places; proper (re)burials; identification of the dead and missing and the provision of information on those who are still missing; and commemorations and memorials.[186] The two forms of reparation are complementary and will realise their purpose more effectively when linked to other transitional justice measures.[187] The provision of reparation confirms the state's obligation and commitment to victims, their families, and communities to redress the harms that have been suffered and to help establish trust between citizens and the state.

Assessing the effectiveness of existing mechanisms of reparations available to victims of serious violations of IHL involves considering various factors, including accessibility, adequacy, accountability, and the overall impact on victims and affected communities. This section aims to evaluate the effectiveness of the existing mechanisms in the context of this work. Firstly, accessibility is a key issue here. A thorough look at the accessibility of reparations mechanisms at the national level varies depending on factors such as the capacity and independence of domestic legal systems, the availability of legal aid and support services for victims, and the willingness of governments to address past violations. In some cases, victims may face barriers such as bureaucratic hurdles, lack of information, or where the victims are informed, there are no legal structures supporting their claims and intimidation, which hinder their ability to access reparations.[188]

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[185] International Center for Transitional Justice (ICTJ), "Building Blocks for Reparations: Providing Interim Reliefs through Targeted Development Assistance" (Research Report (2020) https://www.ictj.org/publication/building-blocks-reparations-providing-interim-relief-victims-through-targeted accessed on April 16th, 2024.

[186] *Ibid.*

[187] *Ibid.*

[188] L. Malini and B. Emmanuela, *Accessibility and Initiation of Restorative Justive* (Research Project, Lenven Institute of Criminology 2014) https://www.euforumrj.org accessed on March 1, 2024.

Measuring accessibility can largely benefit from examining existing conceptualisations of 'access to justice' more generally.[189] Such a framework may provide a starting point that can later be adjusted to apply strictly to reparative justice. There is an abundance of literature and debate regarding the definition of this concept. A short review suggests that though many aspects factor into the definition, there do seem to be several underlying themes that many scholars or organisations agree upon.[190] The UNDP Justice System Programme[191] asserts that there are three themes that must be given consideration.[192] Firstly, rights need to be guaranteed in the national legal framework (legislation) of a given State. Secondly, sufficient institutions must exist that will uphold these rights (availability). Thirdly, knowledge should be increased and a cultural attitude that provides for a demand of the rights and institutions should be encouraged (awareness and attitudes).[193]

Also, the United States Institute of Peace[194] asserts that one necessary condition to achieve rule of law is access to justice. They define access to justice as, "a condition in which people are able to seek and obtain a remedy for grievances through formal or informal institutions of justice that conform with international human rights standards, and a system exists to ensure equal and effective application of the law, procedural fairness, and transparency." The first part of the definition is applicable to the current study, where the goal is to help individuals seek and obtain a remedy. Access to justice also involves legal awareness and financially accessible procedures.[195]

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[189] *Ibid.*
[190] *Ibid.*
[191] L. Malini and B. Emmanuela, *Accessibility and Initiation of Restorative Justive* (Research Project, Lenven Institute of Criminology 2014) https://www.euforumrj.org accessed on March 1, 2024; United Nations Development Programme *Access to Justice* available at https://www.undp.orgfiles>UNDP> accesses on March 1, 2024.
[192] *Ibid.*
[193] *Ibid.*
[194] L. Malini and B. Emmanuela, *Accessibility and Initiation of Restorative Justice* (Research Project, Lenven Institute of Criminology 2014) https://www.euforumrj.org; United States Institute of Peace accessed on March 1, 2024
[195] *Ibid.*

On the other hand, international mechanisms, such as international criminal tribunals and human rights bodies, may offer alternative avenues for victims to seek reparations when national systems are unable or unwilling to provide redress.[196] In any event, the ICC is now established, through its recent practice, as a global mechanism where victims of serious violations of IHL can exercise their right to reparation. The ICC and hybrid criminal courts, such as the Extraordinary Chambers in the Courts of Cambodia (ECCC), determine individual criminal responsibility for serious violations of IHL which constitute war crimes.[197]

However, these victims may face challenges related to jurisdiction, resource constraints, and limited enforcement powers, which can affect their accessibility to victims.[198] For instance, Nigerians who suffered violations during the Nigerian civil war did not have access to any form of reparations because there is no legal or institutional framework available in the Nigerian legal system. If such persons were to be aware of the existence of international mechanisms to provide redress in international institutions, how possible is it for them to access such international mechanisms?

Another very important challenge is adequacy. Adequacy of reparations often involves assessing the amount of financial compensation provided to victims to address their material and non-material losses, including physical and psychological harm, loss of livelihood, and damage to property. Reparations should be sufficient to enable victims to rebuild their lives, access necessary medical and psychosocial support, and achieve meaningful rehabilitation and

[196] *Ibid.*
[197] Elizabeth Salmon and Juan Perez-Leon-Acevedo, Reparation for victims of serious violations of international humanitarian law: New Developments (ICRC (919) (2022) https://international-review-icrc.org/articles/reparations-for-victims-of-seriuos-violations-of-ihl-new-developments-919 accessed on February 29, 2024.
[198] Liesbeth Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (*IRRC*) [2003] (85) (851) 497.

reintegration into society.[199] In addition to financial compensation, effective reparations may include non-monetary measures such as restitution of property, access to education and vocational training, provision of health care services, and guarantees of non-repetition. These measures aim to address the broader needs of victims and promote their long-term recovery and well-being.[200]

Furthermore, individual accountability is crucial. Reparations mechanisms should be linked to efforts to hold perpetrators of IHL violations accountable for their actions.[201] Ensuring accountability not only provides justice for victims but also helps deter future violations and contribute to the prevention of conflicts.[202] International criminal tribunals and domestic courts play a critical role in holding perpetrators accountable and ordering reparations as part of their judgments. The principle of States has a legal obligation under international law to provide reparations to victims of IHL violations that occur within their jurisdiction. Effective reparations mechanisms should hold states accountable for their failures to prevent, investigate, and remedy violations, and provide victims with meaningful redress for the harm suffered[203]. The effectiveness of reparations mechanisms ultimately depends on their impact on victims and affected communities. Reparations should address the specific needs and priorities of victims, promote their empowerment and dignity, and contribute to their long-term recovery and reconciliation.[204] Effective reparations can also foster social cohesion, strengthen the rule

[199] Isabella De Los Rios Hernandez, "Enough Already": The Challenges of Restorative Justice in War Crimes" [2023] *Harvard International Review* https://hir.harvard.edu/enough-already-the-challenges-of-restorative-justice-in-war.. accessed on August 23, 2023.
[200] *Ibid.*
[201] Emanuela-Chara Gillard, 'Reparation of Violations of International Humanitarian Law' *ICRC* [2003] (85) (851) 530 <https://www.icrc.org/en/doc/assets/files/other/irrc_gillard.pdf accessed on January12, 2024.
[202] *Ibid.*
[203] *Ibid.*
[204] *Ibid.*

of law, and contribute to the prevention of future conflicts by addressing the root causes of violence and addressing grievances.[205]

While existing mechanisms of reparations for victims of serious violations of IHL play a crucial role in providing redress and promoting accountability, there are significant challenges and limitations that need to be addressed to enhance their effectiveness. Improving the accessibility, adequacy, accountability, and impact of reparations mechanisms requires concerted efforts by states, international organizations, civil society actors, and affected communities to ensure that victims receive the justice and support they deserve.

The Human Rights Committee has determined that reparation under the ICCPR can involve compensation, restitution, rehabilitation and measures of satisfaction, including public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.[206] At a regional level, the European Convention on Human Rights authorises the European Court of Human Rights (ECtHR) to afford just satisfaction in cases where it has found a violation of human rights.[207] While the ECtHR retains wide discretionary powers to assess whether compensation or any other measure of satisfaction is necessary, it has awarded pecuniary and

[205] L. Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (IRRC) [2003] (85) (851) 497.
[206] M Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Kluwer Law International the Hague (1992) (2) 44-48.
[207] *Ibid.*
[207] *Ibid.*
[207] *Ibid.*
[207] *Ibid.*
[207] Z. Andreas,'Comment: Responsibility for Violations of International Humanitarian Law, International Criminal Law and Human Rights Law—Synergy and Conflict', in Heintschel von Heinegg Wolff and Epping Volker (eds.) *International Humanitarian Law: Facing New Challenges*, (Springer,2007) 215-223
[207] *Ibid.*
[207] K. Frits, 'Some Comments on the International Responsibility of States', in Heintschel von Heinegg Wolff and Epping Volker (eds.) *International Humanitarian Law Facing New Challenges* (Springer,2007) (207-214)
212. Is this a journal or a book? Please cite it properly. Obviously it's a contribution to an edited book
Javaid Rehman, *International Human Rights Law (*Pearson Education Limited, 2010) 2.

non-pecuniary damages as well as compensation for legal costs.[208] The Inter-American Court of Human Rights, established by the American Convention on Human Rights to interpret and apply the Convention, has adopted a wide interpretation of the concept of reparation and has ordered specific reparation measures in favour of victims, including measures such as remembrance monuments, public apologies and provision of access to education and medical services.[209]

The African Charter on Human and People's Rights contains no specific provision on a right to a remedy. Under the Protocol to the Charter, however, in cases of a violation, the African Court on Human and People's Rights shall make "appropriate orders to remedy the violation, including the payment of fair compensation or reparation".[210] While the ECtHR retains wide discretionary powers to assess whether compensation or any other measure of satisfaction is necessary, it has awarded pecuniary and non-pecuniary damages as well as compensation for legal costs.[211]The Inter-American Court of Human Rights, established by the American Convention on Human Rights to interpret and apply the convention, has adopted a wide interpretation of the concept of reparation and has ordered specific reparation measures in favour of victims, including measures such as remembrance monuments, public apologies and provision of access to education and medical services.[212]

The African Charter on Human and People's Rights contains no specific provision on a right to a remedy. Under the Protocol to the Charter, however, in cases of a violation, the African Court on Human and People's Rights shall make "appropriate orders to judicial or other bodies to monitor the enforcement of their provisions. Article 3 of the 1907 Hague

[208] International Court of Justice, Reparations of Injuries Suffered in Service of the UN, 'Advisory Opinion' 147 [1949] <http://www.worldcourts.com/icj/eng/decisions/1949.04.11 reparations for injuries.html> accessed on January, 2024.
[209] *Ibid.*
[210] ECHR, Article. 41
[211] Evans Christine, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge University Press 2012) 65-66.
[212] *Ibid.*

Convention IV Concerning the Laws and Customs of War on Land and Article 91 of Additional Protocol I[213] provide that a state party to a conflict is liable to pay compensation for international humanitarian law violations committed by its armed forces. Other international humanitarian law treaties confirm a state's obligation to make reparation for international humanitarian law violations committed by its armed forces.[214]

International Committee of the Red Cross (ICRC), a state's responsibility to make full reparation in International Law for Victims of Armed Conflict, the four Geneva Conventions of 1949 exclude the possibility fora state to absolve itself from liability for grave breaches of the conventions[215] , First, Geneva Convention 1949, Art. 51; Second Geneva Convention 1949, Art. 52; Third Geneva Conventions1949, Art.131; Fourth Geneva Convention 1949), Art.148. Article 38 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, concluded in The Hague on 26 March 1999, applicable also to non-international armed conflicts, confirms the responsibility of a state to provide reparation, irrespectively of the provisions relating to individual criminal responsibility.[216] This obligation is confirmed further by the International Law Commission (ICL)'s Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (DARS), particularly Articles 1-3, and 31.[217]

While a state's obligation to make reparation for its international humanitarian law violation is firmly established in international law, the existence of a corresponding right of individual victims of international humanitarian law violations is subject of debate.[19] Under the traditional view, applications for reparation or compensation can be made only via the state.[218] Reparations have been provided to individuals via mechanisms set up by inter-state agreements

[213] *Ibid.*
[214] *Ibid.*
[215] *Ibid.*
[216] *Ibid.*
[217] *Ibid.*
[218] *Ibid.*

or via unilateral state acts.[219] An obvious downside of this approach is that victims would have to rely on their home states exercising diplomatic protection as there are no clear legal mechanisms through which victims would be able to participate in inter-state negotiations or to influence unilateral state acts.[220] As noted by Fleck,[221] the general obligation of states to make reparation to victims is often limited in peace negotiations. Individual victims may also seek reparation directly from the responsible state. Kalshoven[222] notes in this respect that Article 3 of the 1907 Hague Convention IV does not specify who the claimant may be and there is nothing in the text that excludes the possibility for individual claims.[223]

He comments that in fact the records of the Second Hague Peace Conference in1907, at which the text of Article 3 was adopted, provide convincing evidence that this text was intended not so much as a rule relating to international liability of one state vis a-vis another[224] When these records are considered together with the travaux preparatoires of Article 91 of Additional Protocol I, a conclusion could be drawn that the two articles together were intended to cover compensation to both the state and individual victims.[225] Individual claims against a state brought before courts other than those of the state responsible for the alleged violation are nevertheless likely to fail due to the application of the rule on state immunity. Under this rule, developed as a rule of customary international law primarily through judicial practice of municipal courts, a state is immune from the jurisdiction of another state with respect to acts and omissions in the exercise of its sovereign power i.e. *acta jure imperi.*[226]

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[219] *Ibid.*
[220] Z. Andreas,'Comment: Responsibility for Violations of International Humanitarian Law, International Criminal Law and Human Rights Law—Synergy and Conflict', in Heintschel von Heinegg Wolff and Epping Volker (eds.) *International Humanitarian Law: Facing New Challenges*, Springer, (2007) 215-223
[221] *Ibid.*
[222] K. Frits, 'Some Comments on the International Responsibility of States', in Heintschel von Heinegg Wolff and Epping Volker (eds.) *International Humanitarian Law Facing New Challenges* (Springer) (2007) (207-214) 212.
[223] *Ibid.*
[224] *Ibid.*
[225] *Ibid.*
[226] V. Terzieva, Human Rights Remedies for Violations of the Law of Armed Conflict: Reflections on the Right to Reparation in the light of Domestic Court Decisions in the Netherlands and Denmark (ICD Brief 26) (2019)

In the beginning of the 21st century courts in Italy and Greece ruled that jurisdictional immunity is not absolute and cannot be invoked by a state with respect to acts constituting crimes under international law.[227] The International Court of Justice (ICJ) rejected this position in its judgment in the case of *Germany v. Italy.*[228] It ruled that state immunity for does not continue to extend to civil proceedings for acts occasioning death, personal injury or damage to property committed by the armed forces in an armed conflict, even if these acts take place on the territory of the forum state,[229] and even if the alleged wrongful acts consist of serious violations of international human rights law, the international law of armed conflict, or infringe upon *jus cogens* norms.[230]

The ICJ has not yet ruled, however, on whether international law conferred upon the individual victim of a violation of the law of armed conflict a directly enforceable right to claim compensation. Having granted Germany's claim in *Germany v. Italy*, it found it unnecessary to address this issue.[231] Kalshoven, Frits, insists that from Article 3 of the Hague Convention IV of 1907 to Article 91 of Additional Protocol I of 1977 the obstacle of state immunity. This immunity cannot be invoked before national courts of the country of origin.[232] It is inherent in Article 3 of the 1907 Hague Convention IV and Article 91 of Additional Protocol I that violations of international humanitarian law, when committed by individuals whose behaviour may be attributed to a state within the meaning of the International Law Commission (ICL)'s Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (DARS), entail the responsibility of that state[233].

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[227] *Ibid.*
[228] Judgment of 3 February (2012) (ICJ Germany
[229] Vessela Terzieva, Human Rights Remedies for Violations of the Law of Armed Conflict: Reflections on the Right to Reparation in the light of Domestic Court Decisions in the Netherlands and Denmark (ICD Brief 26) (2019)
[230] *Ibid.*
[231] *Ibid.*
[232] *Ibid.*
[233] *Ibid.*

Therefore, claims for reparation for international humanitarian law violations by organs of a state, brought against that state, in its domestic courts would normally have a better chance of success. Commenting on such potential lawsuits Kalshoven made the following remarks in 2007: Issues of violation of the law of armed conflict might belong in the category of tort cases, and an individual victim might find an argument supporting his or her claim under this heading in Article 3 of the 1907 Hague Convention. Obviously, our claimant will encounter a number of obstacles, and the chances of success are slim. The point to be made is, however, that the obstacles are a matter of domestic law and, indeed, politics: there is nothing in Article 3, nor in the position of individuals, that would prevent a domestic court from deciding in favour of the individual claimant.[234]

3.4 Where Can The Right To Reparations Be Enforced?

The right of victims to reparations can be enforced either on the international or national levels. Individuals may claim damages in a national court of the violating state, international or regional courts, or in certain cases before a court of a third state.[235] States may introduce their own reparations programmes. For example, Argentina, after the military dictatorship in the 1980s, set up such programmes, whereby large numbers of individuals received damages, without having to stand the same high threshold for evidence as in a court.[236] Agreements between states also can lead to reparations programmes, such as the one between Germany and Israel for violations of the Nazi regime in the Second World War.[237]

Claims between two states can be brought to the International Court of Justice (ICJ) in The Hague. The Court can also issue an advisory opinion that may recommend reparations be

[234] K. Frits, 'Some Comments on the International Responsibility of States', in Heintschel von Heinegg Wolff and Epping Volker (eds.) *International Humanitarian Law Facing New Challenges* (Springer 2007) 212
[235] Diakonia International Humanitarian Law Centre, *The Responsibilities of States to cease violations of International law and Provide Reparations* <https://www.diakonia.se/ihl/resources/international-law/reparations-international-law> accessed on March 1, 2024,
[236] *Ibid.*
[237] *Ibid.*

provided by the violating state.[238] The International Criminal Court (ICC) can issue reparation orders and ask the Court's Trust Fund for Victims to compensate victims of crimes, following the conviction of individuals.[239] Reparations can also flow from a UN Security Council resolution, which can establish an obligatory reparation mechanism. For example, after the Iraqi invasion of Kuwait, a UN Compensation Committee (UNCC) was established, through which Iraq paid damages to numerous companies, states, and individual victims who suffered damages in Kuwait.[240]

In states with a history of massive violations of human rights and IHL, Truth Commissions can be a way to reconcile a divided country, and make reparations in the form of satisfaction.[241] Truth Commissions are not judicial bodies and cannot impose punishment like a criminal court, but they allow the stories of victims to be told.[242] Truth Commissions were, for example, set up in South Africa after the Apartheid regime, in Sierra Leone after the civil war, and in many South American countries after the end of dictatorships.[243]

3.5 Various Approaches to Reparation of Victims of Serious Violations of IHL

Traditionally, international law provided reparations for States. Individual and groups who suffered harm of whatever magnitude and form did not have any remedies accrue to them unless they were fortunate enough to receive reparations from their various States. At best, these individuals receive collective reparations from the erring State through their States. The traditional approach has often faced criticism for its limitations in adequately addressing the needs and rights of victims.[244] As a result, contemporary times have seen a shift towards a

[238] *Ibid.*
[239] *Ibid*
[240] *Ibid*
[241] *Ibid*
[242] *Ibid*
[243] *Ibid*
[244] S. Niki, *Analysis: Time for a Victim-Centric Approach in Prosecuting Sexual and Gender-Based Violence Committed by Terrorists* (ICCT 2023) https://wwwicct.nl/publications> accessed on March 1, 2024.

victim-centered approach to reparations. The traditional collective approach to reparation often faced challenges such as lack of individual focus.

The victim-centered approach however, addresses these challenges.[245] Under this approach, victims were treated as groups, overlooking individual experiences, needs, and preferences. There is also the problem of inequitable distribution. Reparations distributed collectively may not reach all victims equally, leading to further marginalization of certain groups or individuals within the affected community[246]. Also, decision-making processes in collective approaches can be slow, bureaucratic, and susceptible to power imbalances, hindering effective reparation distribution. Furthermore, collective approaches may lack mechanisms for holding responsible parties or institutions accountable for the harm caused, reducing the likelihood of meaningful restitution. More so, traditional collective approaches may not adequately consider cultural nuances or differences within affected communities, leading to reparation measures that are not culturally appropriate or effective[247].

In contrast, a victim-centric approach is characterised by ensuring the mental, psychological, and physical wellbeing of the victims, respected as well as the Do No Harm principle, and avoiding secondary victimisation. Its main goals include victims' empowerment and restoration of victims' dignity, self-respect and private life. In achieving these goals, a victim-centric approach should respect certain principles. These principles adhere to victims' needs and rights, and are outlined in more detail below. A victim-centric approach can be implemented inside and outside the courtroom; however, the victim-centered approach addresses these challenges by prioritizing the needs, rights, and preferences of individual victims.

[245] *Ibid*
[246] *Ibid*
[247] *Ibid.*

It emphasizes the need to tailor reparation measures to meet the specific needs and preferences of each victim, ensuring a more personalized and effective response.[248] By involving victims in decision-making processes, victim-centered approaches empower them to assert their rights and preferences, promoting a sense of agency and dignity. Also, victim-centered approaches prioritise transparency and accountability in reparation processes, ensuring that responsible parties are held accountable for their actions and those victims have access to information and recourse mechanisms.[249] Victim-centered approaches recognize and respect cultural differences within affected communities, ensuring that reparation measures are culturally appropriate and respectful of victims' identities and values.[250]

The Victim-Centered Approach is endowed with very many advantages. Firstly, it a holistic view of reparations, recognizing the diverse needs and experiences of victims and addressing the broader impact of violations on individuals, families, and communities. It prioritizes measures that restore victims' dignity, promote healing, and support their long-term recovery and rehabilitation. The victim-centered approach emphasizes the active participation and empowerment of victims in all stages of the reparations process which helps to ensures that victims have a voice in decision-making processes, enabling them to shape reparations programs that are responsive to their needs and preferences. Unlike the traditional approach, which focuses primarily on individual victims, the victim-centered approach recognizes the collective harm experienced by communities affected by violations of IHL. It prioritizes group-based reparations measures aimed at rebuilding the social fabric, restoring cultural heritage, and promoting reconciliation within affected communities.[251]

[248] *Ibid.*
[249] *Ibid.*
[250] *Ibid.*
[251] *Ibid.*

The victim-centered approach recognizes that victims' needs and circumstances vary widely and therefore seeks to tailor reparations measures to the specific context and characteristics of affected individuals and communities. By prioritizing the rights and needs of victims, the victim-centered approach contributes to broader transitional justice processes aimed at addressing impunity, promoting accountability, and building sustainable peace and reconciliation in post-conflict societies.[252]

In summary, while the traditional approach to reparations for violations of IHL has faced challenges in adequately addressing the needs and rights of victims, the victim-centered approach offers a more holistic, participatory, and responsive framework for addressing the harm caused by serious violations of IHL. By prioritizing the rights, dignity, and well-being of victims, this approach contributes to the promotion of justice, accountability, and reconciliation in post-conflict societies. This traditional approach to reparations for violations of International Humanitarian Law (IHL) has often faced criticism for its limitations in adequately addressing the needs and rights of victims. As a result, contemporary times have seen a shift towards a victim-centered approach to reparations.[253]

3.6 Implementation of Reparation Approaches and Outcomes in Various Jurisdictions

There are diverse approaches to implementing reparations for victims of serious violations of International Humanitarian Law (IHL) which varies from one nation to another due to differences in legal systems, political contexts, and historical legacies. While the specific mechanisms and programs may vary, the overarching goal is to provide redress, justice, and support to victims of armed conflict and other situations of violence. The practice of States and international organizations, and the case-law of international tribunals, show that the principle

[252] *Ibid.*
[253] *Ibid.*

of reparation has been extensively applied in the fields of IHRL and IHL. Practice reflects that the content and form of reparation has adjusted to the nature of these specific areas of law. The most relevant sources of practice include treaty provisions regarding reparation to individuals, the establishment of permanent or ad hoc procedures open to individuals, and the creation of specific programmes concerning reparation.[254] However, there is so much yet to be done in this area of international humanitarian law. Examples are discussed below.

Colombia has attempted to implement reparations through Law 1448 of 2011, known as the Victims' Law. In 2011, the Colombian government enacted the Victims and Land Restitution Law (Law 1448) to guarantee armed conflict victims' rights to truth, justice, reparation, and non-repetition[255]. In 2022, Colombia reported 9.4 million victims of conflict-related violence, of which over four million were internally displaced. The law was met to facilitate individual and collective measures of humanitarian assistance, restitution of abandoned or stolen land, and integral reparation for victims. It was originally intended to last ten years (2011-2021), but was extended by another decade in 2021.[256]

The Victims and Land Restitution Law recognized armed conflict victims' rights to truth, justice, reparation, and non-repetition.[257] The law establishes a comprehensive framework for reparations for victims of the armed conflict between government forces, paramilitary groups, and guerrilla forces. The Victims' Law includes provisions for financial compensation, land restitution, psychosocial support, and other forms of assistance to victims. Additionally, Colombia has established the Special Jurisdiction for Peace (JEP), which provides for a

[254] Claudio Grossman Guiloff, *Annex B: Reparation to Individuals of Gross Violations of International Humanitarian Law* (A74/10) https://legal.un.org.ilcreports>english>annpdf accessed on January 10, 2024
[255]Laura Maria Rojas Morales, *Reparations to Victims of Armed Conflict: Colombia's Measures for Armed Conflict Victim Reparations and Land Restitution*https://www.sdg16.plus/policies/colombias-measures-for-armed-conflict-victim-reparations-and-land-restitution/> accessed March 8, 2024
[256] *Ibid*
[257] *Ibid*

transitional justice mechanism aimed at providing reparations and accountability for serious violations of IHL committed during the conflict.[258]

The law was considered the most ambitious and respectful of victims' rights in the world.[259] During the first decade of implementation, the mechanism achieved a nationwide registry of victims. By 2022, 9,446,572 victims were registered. The registry is a key stage for the reparation program's implementation, as it identifies the characteristics of victims, their circumstances, and the reparations they are entitled to.[260] The law also recognized that political organizations and communities based on a shared culture, location, or purpose are entitled to collective reparations[261]. In the first decade, 28 communities and groups were repaired by the total implementation of their concerted Comprehensive Collective Reparation Plans.[262] Regarding land restitution, the government set up offices and courts in almost all departments of the country, reaching 950 municipalities (80 percent of the country).[263]Progress was made in the reconstruction of the memory of the armed conflict, its causes, and its dimensions. By 2020, more than 13 published reports of contributions to the clarification of the truth about the paramilitary phenomenon were compiled, consisting of more than 13,000 testimonies, consolidated a historical memory archive; and progress was made in the creation of a National Museum of Memory, although it has not yet been inaugurated.[264] Humanitarian assistance was

[258] Camilo Ramirez-Gutierrez, Daniel R Quiroga-Villamarin, 'Shredded: Colombia's Special Jurisdiction for Peace in an Increasingly Illiberal Context of Misinformation and Backlash', *Journal of International Criminal Justice*, (2022) (20) (1) 139–166, <https://doi.org/10.1093/jicj/mqac002> accessed on March 8, 2024.
[259] *Ibid.*
[260] *Ibid.*
[261] *Ibid.*
[262]Laura Maria Rojas Morales, *Reparations to Victims of Armed Conflict: Colombia's Measures for Armed Conflict Victim Reparations and Land Restitution* <https://www.sdg16.plus/policies/colombias-measures-for-armed-conflict-victim-reparations-and-land-restitution/> accessed March 8, 2024.
[263] *Ibid.*
[264] *Ibid.*

provided to more than 142,000 victims; 1,163,650 individuals received economic compensation; and more than 250,000 people have received psychosocial care.[265]

However, the system still has numerous challenges. Only 9 percent of land restitution claims filed by victims have been resolved by judges. Additionally, according to the state's calculations, it would take another 50 years to compensate all victims, if it continues at the same rate.[266] Also, victims often do not have a full understanding of their rights.[267] The main difficulties are the lack of funding and the ongoing conflict and violence in the country.[268] The state has failed to protect land claimants; land restitution claimants' leader killings and threats have tripled—only two years after the law was passed, in 2013, more than 500 land claimants reported threats. It is reported that a total of 1,466 social leaders in Colombia have been murdered since 2016, with a percentage of these leaders being individuals who defend their territories and lands.[269]

Yet, there are still discrepancies and underreporting of attacks specifically targeting land claimants throughout the past decade. The presence of armed groups seeking to consolidate control over strategic territories and drug trafficking routes, as well as third parties interested in agribusiness and mining activities, impedes the return of victims to their land.[270]However, the recent law extension and the implementation of the signed peace agreement in 2016 provide new opportunities to advance its implementation.[271]

Germany has implemented reparations for victims of the Holocaust and other Nazi atrocities through various mechanisms, including compensation programs, restitution of

[265] *Ibid.*
[266] *Ibid.*
[267] *Ibid.*
[268] *Ibid.*
[269] *Ibid.*
[270] *Ibid.*
[271] *Ibid.*

property, and commemorative initiatives. The German government has provided financial compensation to Holocaust survivors and their families through programs such as the German Foundation "Remembrance, Responsibility and Future" and the Claims Conference.[272] Additionally, Germany has established memorials and educational programs aimed at commemorating the victims of Nazi crimes and promoting reconciliation.[273] According to the U.S Department of State, Germany has taken commendable steps to confront the role it played as the perpetrator of the Holocaust and to ensure that Holocaust victims and their heirs receive restitution and/or compensation.[274]

Germany also honors and remembers the victims of the Holocaust and is working to cultivate a culture of remembrance. Its restitution measures range from efforts to compensate former owners and heirs for the assets which were wrongfully seized during the Holocaust to making substantial financial contributions to victims' funds and survivors' pensions.[275] From 1945 to 2018, the German government has paid approximately $86.8 billion in restitution and compensation to Holocaust victims and their heirs. Germany has also identified Nazi-looted objects – including art works, books, and objects within larger collections – and has returned 16,000 objects to survivors and their heirs over the last 20 years.[276] Thousands more pieces of looted art are still missing worldwide. Rising anti-Semitism throughout Europe including in Germany, and especially in former East Germany, coupled with polls showing the need to increase Holocaust education among Germany's youth, highlight the importance of Germany's continued dedication to fostering a culture of remembrance.[277]

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[272]U.S Department of State, *The Just Act Report: Germany* (Official website of the United States Government) <https://www.state.gov/reports/just-act-report-to-congress/germany> accessed on March 7, 2024.
[273] *Ibid.*
[274] *Ibid.*
[275] *Ibid.*
[276] *Ibid.*
[277] U.S Department of State, *The Just Act Report: Germany* (Official website of the United States Government) https://www.state.gov/reports/just-act-report-to-congress/germany> accessed on March 7, 2024.

In the case of Rwanda, reparations for victims of the genocide perpetrated against the Tutsi tribe are attempted through the National Commission for the Fight against Genocide (CNLG) and other government agencies. Reparations awarded in those programs in Rwanda include financial compensation, support for housing and livelihoods, and psychosocial assistance for survivors.[278] Additionally, Rwanda has established Gacaca courts, community-based justice mechanisms aimed at promoting truth-telling, accountability, and reconciliation for the genocide.[279] However, implementation of the awards and findings of these seemingly beautiful mechanisms is another kettle of fish.

Jean-Paul Mugiraneza[280]*writes about reparations in Rwanda thus:*

> The 1994 Tutsi genocide in Rwanda is a tragedy in human history which remains hard to understand. The astonishing severity and pace at which it unfolded begs many questions, paramount of which being: how does a country begin to recover after experiencing such an event? Yet 20 years on present day Rwanda serves as an ongoing development success story politically, economically and socially, due to the combined efforts of the Rwandan government and wider society.
> The basis for this unexpected development can be traced to both internal and external institutional efforts that focused upon helping Rwanda as a country achieve reconciliation and development whilst also ensuring justice.
>
> At national level, the Rwandan Government created the National Commission for Unity and Reconciliation in addition to special chambers designed to prosecute the most notorious war criminals. Equally, on a community level, traditional Gacaca courts were employed as a tool to provide reconciliation and justice. Upon its completion, it will have been the most thorough process in bringing the rank and file of genocide to justice. Over 100,000 inmates have been indicted for crimes of genocide. Similarly at an international level, the United Nations established the International Tribunal for Rwanda (ICTR).
>
> Rwanda, as a society, has also undertaken many of the non-financial components of reparations in order to assist survivors. These include

[278] *Ibid*

[279] *Ibid*

[280] Jean-Paul Mugiraneza, *The Rwandan Case: Is it Possible to Truly Compensate Victims of Genocide?* [Peace Direct, Official website of Insight on Conflict OCHA (2013)] https://reliefweb.int/report/rwanda/rwandan-case-it-possible-truly-compensate-victims-genocide> accessed on March 8, 2024

an annual public commemoration. Additionally, the Rwandan government has established Fonds d'Assistance aux rescapes du Genocide (FARG) and provide health care and tuition for survivors. But does this go far enough? Financial compensation- An essential component to true justice

Though Rwanda and the international community have valiantly pursued justice, financial compensation for genocide survivors, either individually or as a collective, still hasn't occurred to date. With this is mind, we must ask; can there be genuine reconciliation without financial reparation? The answer, in my opinion, is no. Reparation plays an important role on a number of levels- both in terms of mending the damage done and in educating society on the consequences of their actions.

This isn't to suggest that the exercise of financial reparations isn't challenging, both logistically and morally. To guarantee some degree of fair compensation it requires one to assess the damage caused to both person and property, and subsequently assigning a monetary value to these losses. Some would also argue, quite rightly, that genocide is an irreparable crime due to the sheer scale of psychological and physical suffering.

But irrespective of these logistical and moral challenges- and in light of universal recognition of the horrors of the Rwandan genocide- the silence surrounding the subject of financial reparations is striking.

In the immediate aftermath of the Tutsi genocide, Rwanda was a country in utter disrepair. Genocide had left tens of thousands of orphans and widows, as well as numerous refugees and displaced people, who were forced to flee to various parts of the region. The entire state apparatus was ravaged and the already scant infrastructure which existed previously had vanished.

Initially the issue of financial compensation was understandably placed upon the back burner as resources and attention centered upon formidable task of restoring Rwandan infrastructure. But 20 years on- despite the existence of a strong governing body- dialogue surrounding the issue of financial reparations remains absent from the political arena.

The resistance of the political elite to enforce compensation for victims

In theory, the Rwandan legal framework explicitly provides a framework for genocide survivors to seek and receive compensation. Under this framework prosecutions against genocide suspects have been conducted. According to the Lawyers without Borders, out of the 159 judgments made by the specialised chambers specifically created to prosecute genocide suspects, 50% of them have awarded financial compensation to victims. However, these judgments, though enforced

on a criminal level, have yet to be enforced with regards to financial compensation.

In countries around the world- or more accurately those with legitimate and effective legal systems- a judgment made by its courts is considered legally binding. It guarantees inalienable rights to beneficiaries. Survivors of the Rwandan genocide, therefore, have the right to demand the application of these judgments. But this is not the case in practice. This inaction on behalf of the government highlights their lack of clarity, on the issue of financial reparations. And this is far from an isolated case.

Indeed, in some cases the Rwandan government itself has been mandated to pay indemnities to the victims. But instead of implementing the judgment the Minister of Justice at the time wrote a letter to all justice chambers dealing with genocide, ordering them to "suspend all cases in which the Rwandan government is called upon to intervene." This is clearly in opposition to the process of reparation and the administration of justice. Similarly, in 2001, a bill calling for the creation of a compensation fund was formulated. This, however, never materialised.

If we are to look critically at this general attitude of the Rwandan government, we could interpret this in one of two ways; as simply a demonstration of complete indifference towards the issue of reparations, or, perhaps more sinisterly, a calculated political move.

It has been speculated that at the forefront of government concerns are how financially compensating the survivors of the Tutsi community may affect social cohesion. It could be speculated that to openly provide government financial support to the Tutsi community- a group historically considered to have enjoyed unique privileges in Rwandan society under colonial rule- could risk fostering resentment amongst the Hutu majority community.

Reparations could be detrimental to the already fragile social cohesion in a country where there is still a Hutu majority and in whose name the genocide was committed. The international community failing the victims- prior and post genocide

It is generally agreed that the UN failed the victims of the genocide. Instead of protecting civilians, the UN military contingent fled the country during the peak of the killings. Many assessments of the genocide have also concluded that, among other factors, the enormous death toll was aided by the fact that people held confidence in the UN peacekeeping troops and remained in Rwanda. Because of this, the reputation of the UN amongst the Rwandan people has suffered. And one would hope that after their failures the UN would take a leading role in compensating survivors. But unfortunately, the UN has, so far,

only shown an interest in the criminal proceedings and has completely ignored financial reparations.

The UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) in the aftermath of the genocide on November 8, 1994. But, parallel to this commitment for criminal justice, the ICTR has avoided dealing with matters of financial reparation for victims (none of judgments issued by the ICTR to date have awarded financial damages). How can an institution like the UN not understand the importance of financial reparation in the rehabilitation of victims and administration of justice?

One could conclude that there is a lack of a will from UN authorities to participate in reparation process. Indeed, initiatives have been taken to encourage the UN to amend the statute of the ICTR to include the creation of a compensation fund, but without success.

Notable is former ICTR prosecutor Carla Del Ponte's statement on the matter: "Every judge agrees with the principle that victims should be compensated…(therefore) we thought we should approach the Security Council of the United Nations to amend the statute, to extend our office mandate so that we can compensate victims." This, unsurprisingly, has fallen on death ears. It begs the question, how can the ICTR be considered an effective institution of justice if it fails to offer financial reparations to the victims of genocide?

The UN commission created to compensate Kuwaitis following their 1990 invasion by Iraq- as well as the $1.07 billion subsequently made available to the Government of Kuwait- shows that there doesn't exist at the UN an institutional opposition to participating in the reparation process. So how can we explain their unwillingness to do so in Rwanda?

Perhaps some of the blame for this lay at the feet of the Rwandan government. Their markedly weak stance regarding financial reparations to the Tutsi people is a perhaps an explanation for the international community's hesitance to intervene on the behalf of survivors. The solution to this is concrete measures at a national level to encourage other international partners to participate- a compensation endowment, as was originally intended by the draft law in 2001, for example.

Having said that we should recognize the contribution of FARG to improving the living conditions of survivors- every year 6% of the total state income revenue is spent on it. But assisting survivors, as a vulnerable group, is an obligation for any responsible nation. It does not remove the right for financial reparations.

In the case of Sierra Leone reparations for victims of the civil war through the Special Court for Sierra Leone (SCSL) and the Truth and Reconciliation Commission (TRC). The SCSL's Trust Fund for Victims (TFV) has supported projects aimed at providing reparations to victims, including educational programs, vocational training, and psychosocial support initiatives[281]. Additionally, the TRC has recommended reparations measures, including financial compensation, land restitution, and community development projects, to address the harm caused by serious violations of IHL during the conflict[282]. The question today lies on the sustainability of the processes, policies and mechanisms.

Fin-Jasper Langmack,[283] opines that after the decade long Sierra Leone's civil war which ended in January 2002, the country became the center of the transitional justice world. The Special Court for Sierra Leone (SCSL) was operational for about eleven years with more than 400 staff members. The Sierra Leone Truth and Reconciliation Commission (TRC) had compiled an account of four volumes of the conflict that was sent to press in 2004.[284] He however decry the turn reparations mechanisms had taken; abandoned, dilapidated and neglected. This is not the center of transitional justice anymore; it is the periphery of it, says Fin.[285] Still, one largely forgotten measure continues to operate: Sierra Leone's reparation program. Its story holds important lessons about the sustainability of transitional justice processes and the attention span of international actors – both practitioners and academics – in the field.[286]

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[281] *Ibid*
[282] *Ibid*
[283]Fin-Jasper Langmack, *Reparations in Sierra Leone: News from the Periphery of Transitional Justice* [Opinion for Justiceinfonet, Oxford Partners (2020)] https://www.icc-cpi.int/sites/default/files/courtrecords/CR2> accessed on March 8, 2024.
[284] *Ibid.*
[285] Fin-Jasper Langmack, *Reparations in Sierra Leone: News from the Periphery of Transitional Justice* [Opinion for Justiceinfonet, Oxford Partners (2020)] <https://www.icc-cpi.int/sites/default/files/courtrecords/CR2 accessed on March 8, 2024.
[286] *Ibid.*

Bosnia and Herzegovina is not left in efforts to implement reparations for victims of the war in the 1990s through various mechanisms, including the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Commission on Missing Persons (ICMP), and domestic institutions. The ICTY has prosecuted individuals responsible for serious violations of IHL, providing a form of justice and accountability for victims. Additionally, the ICMP has facilitated the identification of missing persons and attempt in providing closure and reparations to victims and their surviving family members.[287]

According to Rhodri C. Williams,[288] the conflict that raged in Bosnia from 1992 to 1995 which was characterized by a pattern of ethnically motivated attacks on civilian populations came to be known as "ethnic cleansing.[289] The conflict came to an end by the adoption of the Dayton Peace Agreement (DPA), included an entire annex (Annex 7) regulating the return of refugees and displaced persons.[290] While Annex 7 recognized the legal principle that displaced persons enjoyed the right to choose their destination, it also set out a clear policy preference for reversing ethnic cleansing through the facilitation of return.[291] Property restitution was intimately connected with return in the text of Annex 7, beginning with the interlinked guarantees that "all refugees and displaced persons shall have the right freely to return to their homes of origin [and] to have restored to them property of which they were deprived in the course of hostilities…."[292]

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[287] Rhodri C. Williams, Post-Conflict Property Restitution in Bosnia:
Balancing Reparations and Durable Solutions in the Aftermath of Displacement [TESEV Presentations (2006)]
[288] *Ibid.*
[289] *Ibid.*
[290] General Framework Agreement for Peace in Bosnia Herzegovina, Annex 7:
"Agreement on Refugees and Displaced Persons."[1995]
[291] Chapter One, Article I (1) of Annex 7 states that "the early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina." However, Article I (4) of the same Chapter clarifies that "choice of destination shall be up to the individual or family" and forbids the parties from interfering with such choices.
[292] *Ibid.*

The DPA also foresaw an internationally supervised body, the Commission for Real Property Claims (CRPC), with a mandate to receive and decide claims for real property which were not voluntarily sold or otherwise transferred by their owners… and where the claimant does not now enjoy possession….[293] However, despite these powerful mandate tools, the international community in Bosnia rightly saw restitution as an extremely challenging task. The CRPC was overwhelmed early on by the sheer number of applications, with over 200,000 properties claimed in some 130 municipalities; a bottleneck exacerbated by CRPC's lack of a clear enforcement mandate[294]. As a result, although it would be an important early repository of property claims, the CRPC never came to play the central role envisioned for it in Bosnia's restitution process.

Meanwhile, efforts to implement Annex 7 by other means than restitution made little progress. Although a number of agreements to accept mutual quotas of returnees were negotiated among the parties to the DPA, these were hard to monitor and faced stiff resistance from local authority figures invested in maintaining ethnically pure political constituencies. As a result, enforcement of the domestic authorities Annex 7 obligation to facilitate restitution ultimately came to be the central tactic of the international community in facilitating return[295]. The harnessing of restitution to the overarching objective of return was probably the only practical means of achieving either goal in Bosnia.

However, it was also based on conceptual confusions that would have serious practical implications for the implementation of restitution programming. Strictly speaking, restitution is a form of reparations – a legal remedy for victims of violations of international law. From this perspective, refugees and displaced persons are entitled to restitution of the rights they

[293] *Ibid.* Chapter two Article XI

[294] *Ibid.* Chapter Two, Article XII (Annex 7): Although the parties to the DPA are obligated to recognize CRPC decisions as "lawful throughout Bosnia", no consequences are foreseen in cases where they fail to honor this obligation

[295] C. Rhodri Williams, Post-Conflict Property Restitution in Bosnia:
Balancing Reparations and Durable Solutions in the Aftermath of Displacement [TESEV Presentations (2006)]

enjoyed over their homes as a legal remedy corresponding to the human rights violations that previously uprooted them. By extension, once such rights are restored, displaced persons are free to exercise them as they see fit and cannot be forced to return to homes that they no longer wish to live in. Thus, while restitution is an appropriate legal remedy for ethnic cleansing, it is unreliable as an instrument for facilitating return. Moreover, by focusing on return per se, the international community in Bosnia effectively limited the availability of early reparations to those whose suffering involved displacement. This approach appears to have contributed to the failure, to date, to remedy entire categories of human rights violations beyond displacement.[296] In conclusion, it is noteworthy that the various mechanisms had their successes, failures, and challenges in reparation processes in Germany, Rwanda, Sierra Leone, Colombia, and Bosnia and Herzegovina. There are significant strides in acknowledging responsibility to provide reparations, and victims' right to remedy or reparations. There is established, systems of individual and community-based reparations, including initiatives to support survivors, promote reconciliation, and rebuild communities. Unfortunately, the challenges remain in reaching all survivors and ensuring equitable distribution of resources. Limited funding and capacity constraints have hindered the effectiveness of the programs. Also, the unwillingness or inability of States to provide the necessary means to enable the optimum success of the programme is another serious challenge. However, efforts are ongoing to strengthen the reparations processes and address the needs of all affected individuals and communities.

[296] *Ibid*

CHAPTER FOUR
CHALLENGES AND PROSPECTS ON REPARATION ISSUES

4.1 Challenges

The administration of reparations for victims of serious violations of International Humanitarian Law (IHL) faces numerous challenges and gaps, some of which has been discussed above. These challenges and gaps can hinder the effective delivery of justice and redress to those affected. The challenge of access to justice cannot be over emphasized. Many victims, especially in conflict-affected regions or marginalized communities, face significant barriers in accessing justice due to factors such as lack of legal aid, fear of reprisals, or distrust in the legal system.[297] Legal procedures and processes for obtaining reparations can be complex and inaccessible to many victims, particularly those from marginalized communities or with limited education. Legal proceedings may be conducted in languages unfamiliar to victims, and navigating bureaucratic systems can be daunting, especially for individuals who have experienced trauma[298].

[297] Access to justice has been extensively discussed under section 3.3
[298] International Center for Transitional Justice (ICTJ), "Building Blocks for Reparations: Providing Interim Reliefs through Targeted Development Assistance" (Research Report (2020) https://www.ictj.org/publication/building-blocks-reparations-providing-interim-relief-victims-through-targeted accessed on April 16th, 2024

Another major challenge is identification and documentation of Victims. In conflict situations, identifying and documenting victims can be challenging due to the chaos and destruction caused by the conflict. Many victims may also be displaced or living in remote areas, making it difficult to reach them and assess their needs accurately.[299] Also, funding constraints often limit the scope and effectiveness of reparations programs. Governments and international organizations may lack the financial resources needed to provide adequate

reparations to all victims, leading to disparities in access to justice and redress.[300] Furthermore, reparations cases involving serious violations of IHL, such as war crimes or crimes against humanity, are often complex and require specialized expertise to adjudicate. Ensuring fair and impartial decision-making in such cases can be challenging, particularly in post-conflict settings where judicial systems may be weak or corrupt[301].

More so, even when reparations are awarded by courts or tribunals, enforcing these judgments can be difficult, especially if the perpetrators are powerful individuals or entities. Weak rule of law, corruption, and lack of political will can all undermine efforts to enforce reparations orders.[302]

Limited resources and capacity is also a major challenge facing many countries affected by armed conflict. Lacking in resources and institutional capacity due to the effects of the conflict, governments may prioritize other pressing needs, such as security and reconstruction,

[299] L. Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (IRRC) [2003] (85) (851) 497.
[300] *Ibid.*
[301] Emanuela-Chara Gillard, 'Reparation of Violations of International Humanitarian Law' *ICRCIRRC?* [2003] (85) 851 530 <https://www.icrc.org/en/doc/assets/files/other/irrcgillard.pdf accessed on January 12, 24
[302] *Ibid.*

over victim assistance programs. This lack of resources can result in inadequate support for victims seeking reparations of failure to comply with awards of reparations.[303]

Cross-Border Challenges in cases where conflicts involve multiple parties or spill over into neighboring countries is a significant setback faced by victims in their quest to access reparations across borders. Legal jurisdiction issues, differing national laws, and lack of coordination between states can complicate efforts to seek redress for harm suffered[304].

There is no gain saying that victims of conflict-related violence often face stigma and social marginalization within their communities. This stigma can deter victims from coming forward to claim reparations, fearing further discrimination or ostracisation.[305] Reparations programs should address not only immediate needs but also the long-term rehabilitation and reintegration of victims. However, sustaining such programs over time and ensuring they effectively address victims' ongoing needs can be challenging, especially in protracted conflicts or post-conflict environments[306].

Addressing these challenges requires a comprehensive approach that involves improving legal frameworks, strengthening institutional capacity, providing psychosocial support to victims, fostering international cooperation, and ensuring the meaningful participation of affected communities in decision-making processes related to reparations. Despite the obstacles, efforts to enhance access to justice and reparations for victims of violations of IHL are essential for promoting accountability, healing, and rebuilding societies affected by conflict. Another challenge is victims' access to psychosocial support. Many victims of serious violations of IHL suffer from psychological trauma and require

[303] L. Malini and B. Emmanuela, *Accessibility and Initiation of Restorative Justice* (Research Project, Lenven Institute of Criminology 2014) https://www.euforumrj.org; United States Institute of Peace accessed on March 1, 2024
[304] *ibid*
[305] *ibid*
[306] *ibid*

comprehensive psychosocial support in addition to material reparations. However, such support services are often lacking or inadequate, leaving victims without the necessary tools to rebuild their lives.[307]

Reparations efforts may be hindered by lack of international cooperation, particularly in cases where victims are from different countries or where the perpetrators enjoy impunity across borders. Strengthening international cooperation and coordination is essential to ensure that all victims receive the reparations they are entitled to.[308] Reparations programs must be sensitive to the cultural and gender-specific needs of victims, ensuring that they are inclusive and do not inadvertently perpetuate discrimination or inequality. However, many existing programs fail to adequately address these issues, leaving certain groups of victims marginalized or overlooked.[309]

Addressing these challenges and filling the gaps in the mechanisms, policies, and systems of administration of reparations for victims of serious violations of IHL requires concerted efforts by governments, international organizations, civil society, and other stakeholders. This may involve strengthening legal frameworks, increasing funding for reparations programs, building capacity among judicial and administrative authorities, and ensuring the meaningful participation of victims in the reparations process.

4.2 Prospects

There have been significant developments in IHL, relevant to reparation for victims of serious violations of IHL. Reparations is increasingly being incorporated into the body of international

[307] Liesbeth Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (IRRC) [2003] (85) 851 497.
[308] *Ibid.*
[309] Isabella De Los Rios Hernandez, "Enough Already": The Challenges of Restorative Justice in War Crimes" (2023) *Harvard International Review* <https://hir.harvard.edu/enough-already-the-challenges-of-restorative-justice-in-war..>. accessed on 24/11/23.

humanitarian law as one of its key components[310]. It is submitted that new developments are evident of the gradual transformation of IHL in the broad recognition of the right of victims of serious violations of IHL to reparation, extension of the scope of the obligation to provide reparation under IHL to include non-State armed groups and individuals as well as States, the existence of innovative domestic reparation mechanisms complemented or supervised by regional courts, as evidenced by experiences in Latin America; and the reparation system of the International Criminal Court as a global mechanism[311].

It is generally accepted that States are obliged to provide reparation when they are responsible for violations of the rules of international law, as has been consistently held in international case law.[312] The Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission (ILC Draft Articles)[313], seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts and the ensuing legal consequences, in particular, content on reparation for the harm caused by such acts.[314] Article 31 establishes the principle of full reparation according to which a State bearing responsibility for an internationally wrongful act is under an obligation to make full reparation for any material and moral damage caused by that act.[315]There are, however, ongoing debates

[310] Elizabeth Salmon and Juan-Pablo Perez-Leon-Arevedo, *Reparation for Victims of Serious Violations if International Humanitarian Law: New Developments* (ICRC No. 919 2022) <https://international-review.icrc.org/articles/reparation-for-victims-of-serious-violations-of-ihl-new-developmentsaccessed on April 14, 2024.
[311] *ibid*
[312] *Permanent Court of International Justice, Factory at Chorzów (Germany v. Poland), Series A, No. 17, Judgment (Merits), 13 September 1928, p. 29; ICJ, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 19 December 2005, para. 259.*
[313] *Report of the International Law Commission on the work of its fifty-third session, 23 April–1 June and 2 July–10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10, UN Doc. A/5/10, 2001*< https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed on April 14th, 2024.
[314] Report of the International Law Commission on the work of its fifty-third session, 23 April–1 June and 2 July–10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10, UN Doc. A/5/10, 2001 <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed on April 14th, 2024.
[315] *ibid*

about the role of reparation in addressing the consequences of armed conflicts[316]. These debates involve contestation about moral values, different conceptions of justice and approaches to international law[317] Indeed, the evolution of International Humanitarian Law reflects an increasing acknowledgment of the rights of victims of serious violations to seek and obtain reparation. This shift signifies a deeper commitment to addressing the human consequences of armed conflict and holding perpetrators accountable for their actions.[318] Various international legal instruments, such as the Geneva Conventions and their Additional Protocols, as well as the Rome Statute of the International Criminal Court, emphasise the importance of providing reparations to victims of war crimes, genocide, and crimes against humanity[319]. Moreover, the establishment of mechanisms like truth commissions, reparations programs, and international tribunals demonstrates a growing recognition of the need to address the harm inflicted upon individuals and communities during times of conflict[320]. These mechanisms aim not only to provide material compensation but also to acknowledge the suffering endured by victims, promote reconciliation, and prevent future atrocities.

Additionally, the jurisprudence of international and hybrid courts has contributed to clarifying and expanding the scope of reparations available to victims of IHL violations[321]. Courts have increasingly recognized the rights of victims to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Overall, the evolving landscape of IHL reflects a broader understanding of the rights and needs of victims in conflict settings,

[316] *ibid.*
[317] *ibid*
[318] *ibid*
[319] Elizabeth Salmon and Juan-Pablo Perez-Leon-Arevedo, *Reparation for Victims of Serious Violations if International Humanitarian Law: New Developments* ICRC No. 919 2022 accessed on April 14, 2024.
[320] *ibid*
[321] *ibid*

emphasizing the importance of accountability, justice, and redress for those who have suffered the consequences of violations[322].

Expanding the scope of the obligation to provide reparation under International Humanitarian Law to encompass non-State armed groups and individuals, in addition to States, represents a significant development in addressing the complexities of modern armed conflicts. Traditionally, the responsibility for providing reparation has primarily been placed on States, reflecting their role as parties to international treaties and their obligations under customary international law[323]. However, with the proliferation of non-State armed groups and the involvement of individuals in perpetrating violations of IHL, there has been a growing recognition of the need to hold these actors accountable and ensure that victims receive adequate redress.[324] One avenue through which this extension is manifested is through the application of IHL principles to non-State armed groups. While these groups may not be parties to international treaties, they are increasingly held to the standards of customary international law, including the obligation to respect fundamental humanitarian norms. As a result, when non-State armed groups commit serious violations of IHL, they can be held accountable for providing reparation to victims[325].

Individual responsibility for violations of IHL has been reinforced through the establishment of international and hybrid tribunals, such as the International Criminal Court (ICC) and the International Criminal Tribunals for the former Yugoslavia and Rwanda[326]. These institutions prosecute individuals, including members of non-State armed groups, for war crimes, crimes against humanity, and genocide, and may order reparations as part of their

[322] *ibid*
[323] *ibid*
[324] *ibid*
[325] *ibid*
[326] *ibid*

judgments[327]. In addition, mechanisms such as truth commissions and local transitional justice initiatives increasingly seek to address the roles of individuals and non-State armed groups in conflicts, providing avenues for victims to seek acknowledgment, restitution, and rehabilitation[328].Also, the extension of the obligation to provide reparation under IHL to include non-State armed groups and individuals reflects a growing recognition of the diverse actors involved in modern conflicts and the need for comprehensive accountability and redress mechanisms to address the harm caused to victims[329].

CHAPTER FIVE
CONCLUSION

5.1 Summary of Findings

This study carried out an appraisal of the reparation of victims of serious violations of international humanitarian law. In line with the research questions, this study finds that there is a clear legal framework under international law that imposes obligations on states and other parties to provide reparations to victims of IHL violations. These obligations are outlined in various international treaties, conventions, and customary international law. However, the issue of reparations for individual victims of International Humanitarian Law (IHL) was not envisaged by the law in that no provision of international law regarding reparations for victims are self-executory and as such victims face various challenges in their quest for reparations and justice.

[327] Liesbeth Zegeveld, 'Remedies for Victims of Violations of International Humanitarian Law' (*IRRC*) [2003] (85) (851) 497.
[328] *ibid*
[329] *ibid*

Secondly, this study finds that although there exists a legal framework under international law for reparations, the enforcement and implementation of these obligations can vary significantly depending on various factors such as state consent, resources and funds, willingness and information on the part of parties, jurisdictional issues, and political considerations. Despite the existence of a legal framework, there are numerous challenges and limitations in ensuring effective reparations for victims of IHL violations. These challenges include issues related to state sovereignty, resource constraints, political will, and the complexity of determining responsibility and assessing damages. Moreover, in situations of ongoing conflict or political instability, the implementation of reparations programs may be hindered by practical obstacles and security concerns.

This study also finds that addressing the complex issues surrounding reparations requires a comprehensive approach that involves not only legal mechanisms but also political will, international cooperation, and the active engagement of relevant stakeholders. International institutions such as the International Criminal Court (ICC), United Nations (UN), the International Committee of the Red Cross and specialized tribunals play a crucial roles in promoting and facilitating reparations for victims of IHL violations. These institutions provide frameworks for accountability and assistance, but their effectiveness depends on the cooperation of states and other stakeholders.

Also, this research finds well established the fact that national governments have the primary responsibility for providing reparations to victims of IHL violations that occur within their jurisdiction. Some countries have established national reparations programs or compensation funds and domesticated the relevant international instruments while others have neither domesticated relevant instruments nor make genuine efforts towards any form of implementations. This is because there is no international obligation requiring States to ensure domestication and implementation of the international instrument they accent to, hence, most

States never attempt to implement the international instruments they have willingly subscribed to.

This study revealed that the ICRC, Civil society organizations and victim advocacy groups also play important roles in supporting victims of IHL violations and advocating for their rights. These groups provide essential services to victims and contribute to raising awareness about their needs and experiences. Addressing the needs of victims of IHL violations requires a comprehensive approach that encompasses legal, social, economic, and psychological dimensions. Reparations should not only provide financial compensation but also address the broader needs of victims, including access to justice, healthcare, education, and livelihood support.

Taking a cursory look at the reparation mechanisms established in post- conflict Colombia, Germany, Rwanda, Sierra Leone as well as Bosnia and Herzegovina, this study found the victim participation in the design and implementation of reparations programs is essential for ensuring their effectiveness and legitimacy. Victims' education and active involvement is very crucial from the decision-making processes to having access to information and support throughout the reparations process. It is evident from the findings of this study, that States pay lip services to implementation and sustenance of mechanisms and processes of reparations. Overall, while progress has been made in recognizing the rights of victims of IHL violations and providing reparations, there is still much work to be done to overcome the challenges and ensure that victims receive the assistance and justice they deserve.

This study shows the existence of a complimentary relationship between international humanitarian law and human right law. This flows from the fact that there cannot be a comprehensive discussion of international humanitarian law without delving into human rights law even though both are distinct body of laws.

This appraisal highlights the importance of the victim centered approach to reparation as well as the need for continued efforts at the international, national, and grassroots levels to address the clogs in the wheels of reparative justice in order to ensure that the needs of victims are met and perpetrators are held accountable for IHL violations.

5.2 Recommendations

In view of the findings, this study recommends as follows:

1. There is a critical need for an intentional shift from the traditional position of States as the only subjects of international law to making victims' rights to reparation for violations of international humanitarian law self-executory. Making victims' rights under International Humanitarian Law (IHL) self-executory is crucial for ensuring effective protection and redress for those affected by armed conflict and other situations of violence. Currently, victims of serious violations of IHL often face significant barriers in accessing justice and obtaining reparations. By implementing mechanisms that render victims' rights self-executory, states and the international community can strengthen accountability, promote adherence to IHL, and enhance the overall protection of civilians in conflict zones. Also, States can incorporate self-executory provisions into their domestic legal frameworks, ensuring that victims' rights under IHL are directly enforceable in national courts. This may require legislative reforms and capacity-building efforts to strengthen judicial systems and facilitate access to justice.

2 There is need for a legally binding international law provision making it mandatory for States to domesticate and implement international instruments to which they have assented. Having a legally binding provision ensures that states are held accountable for their commitments on the international stage. It creates a framework where states are obliged to fulfill their obligations under treaties and agreements they have ratified. Many international instruments on protection of victims of serious violations of international humanitarian law and protection of human

rights are not domesticated or implemented within States. To ensure that these standards are upheld within a State's jurisdiction and contributing to the broader global welfare an internationally legal binding instrument becomes necessary. Without a mandatory requirement for domestication, states would continue to evade their responsibilities by not incorporating international agreements into their domestic laws.

Domestication of international agreements provides clarity and legal certainty for individuals and entities operating within a state. It ensures that there is alignment between international obligations and domestic laws, reducing ambiguity and promoting compliance. Furthermore, upholding the rule of law requires that states adhere to their international commitments. A legally binding provision reinforces the principle that no state is above the law and fosters a culture of respect for international norms and agreements. While international law sets standards and expectations, domestication allows states to adapt these standards to their unique legal systems and circumstances. A legally binding provision respects state sovereignty while promoting cooperation and compliance at the international level.

In summary, a legally binding provision requiring states to domesticate and implement international instruments they have assented to is crucial for promoting consistency, accountability, and the protection of global interests while respecting state sovereignty and enhancing legal certainty.

3 There is need to facilitate cooperation among states and relevant stakeholders in order to ensure successful reparation for victims of serious violations of international humanitarian law. Cooperation is necessary to establish and uphold the legal framework for reparations. States must cooperate to ratify and implement international treaties and conventions that outline the rights of victims and the obligations of states regarding reparations. Reparations often involve financial compensation, rehabilitation services, and other forms of assistance. Cooperation

among states and stakeholders is essential to mobilize resources effectively and ensure that victims receive adequate support. Also, cooperation facilitates the sharing of information about victims, perpetrators, and the circumstances surrounding the violations. This information is crucial for determining the appropriate forms and extent of reparations. Furthermore, cooperation is necessary to design and implement transitional justice mechanisms, such as truth commissions, tribunals, and reparations programs. These processes require collaboration among multiple actors to address the complex needs of victims and promote reconciliation. Cooperation is vital for holding perpetrators accountable and ensuring that they contribute to reparations efforts. States must cooperate with international tribunals and mechanisms to investigate and prosecute individuals responsible for serious violations of international humanitarian law. Successful reparation programs require long-term commitment and coordination among states and stakeholders. Cooperation is necessary to monitor the implementation of reparations, address any challenges or obstacles that arise, and adapt programs to changing circumstances.

In summary, cooperation among states and relevant stakeholders is essential to ensure that reparation for victims of serious violations of international humanitarian law is successful. This cooperation is needed to establish the legal framework, allocate resources, share information, facilitate transitional justice processes, promote victim participation, hold perpetrators accountable, and sustain efforts over the long term.

4 There should be a framework IGOs, NGOs and victims advocacy groups to be better supported and enhanced to enable them do more in in their roles toward ensuring adequate reparation for victims of serious violations of international humanitarian law. International bodies, such as the International Criminal Court (ICC) and regional human rights courts, play a crucial role in enforcing victims' rights under IHL. Strengthening the mandate and resources

of these institutions can enhance their capacity to investigate and prosecute violations, thereby promoting accountability and reparations for victims.

The framework should ensure:

i. Collaboration and coordination among these actors to leverage their respective strengths and resources. Working together can lead to more comprehensive approaches and better outcomes for victims.

ii. Provide training and capacity-building support to these organizations to enhance their knowledge and skills in advocating for victims' rights and navigating complex legal frameworks related to reparations.

iii. Increase public awareness and understanding of the rights of victims of international humanitarian law violations and the importance of reparations. Education campaigns can help empower victims and communities to advocate for their rights and access available support.

iv. These organisations are better equipped to monitor the implementation of reparations programs and hold governments and other relevant actors accountable for failing to fulfilling their obligations to victims. This includes tracking the disbursement of funds, ensuring transparency and fairness in the distribution of reparations, and advocating for corrective action when necessary.

By focusing on this strategy, the ICRC, civil society organizations, victims advocacy groups and international institutions can play more effective roles in ensuring adequate reparation for victims of serious violations of international humanitarian law.

5 There should be public awareness and education initiatives on the provisions of IHL, rights and remedies available to affected individuals under IHL. This initiative will better empower victims to assert the violations affecting them, their rights and entitlements under the law.

6 Ultimately, the victim-centered approach should be made *de jure* both in the national and international space as regards reparations of victims of serious violations of international humanitarian law. The recommendation to implement a victim-centered approach de jure, becomes necessary based on the need to uphold the dignity and rights of victims as paramount. A victim-centered approach ensures that victims are not only recognized but also empowered in the process of seeking justice and reparations. By placing victims at the center, the legal system ensures that justice is served and perpetrators are held accountable for their actions. It shifts the focus from solely punishing perpetrators to also acknowledging and addressing the harm done to victims. A victim-centered approach emphasizes restorative justice principles, focusing on repairing the harm caused by violations of international humanitarian law.

This can involve providing compensation, restitution, rehabilitation, and other forms of support to victims. By prioritizing the needs and perspectives of victims, therefor, the reparation process becomes more effective and more meaningful, tailored and comprehensively towards measures to address the specific needs and concerns of individual victims and communities affected by serious violations. Furthermore, adopting a victim-centered approach and acknowledging and addressing the suffering of victims, the process contributes to preventing the recurrence of serious violations of international humanitarian law. It sends a clear message that such actions will not be tolerated and that victims will be supported in

seeking redress. More so, prioritizing victims' needs and rights builds trust and confidence in the legal system and institutions responsible for administering justice and reparations. It fosters a sense of inclusivity and fairness, which is essential for the legitimacy and effectiveness of the reparation process. In conclusion, implementing a victim-centered approach de jure, both nationally and internationally, is essential for ensuring justice, accountability, and redress for victims of serious violations of international humanitarian law and contributes to building a more just and peaceful world.

5.3 Contribution to Knowledge

This work contributed to knowledge by examining and evaluating the effectiveness of mechanisms and processes aimed at providing reparations to victims of serious breaches of international humanitarian law. It helps in understanding the challenges, shortcomings, and potential improvements in addressing the needs and rights of victims in the aftermath of such violations, thereby contributing to the development of more robust policies, practices, and legal frameworks for ensuring justice and accountability in conflict situations.

5.4 Suggested Areas of Further Research

Based on the research findings and recommendations, the following areas could be explored for further studies:

1. A comparative studies across different conflict zones or regions to assess the effectiveness of reparations mechanisms and identify best practices.

2. An assessment on the long-term impact of reparations on victims' lives, including their socio-economic well-being, mental health, and community integration.

3. An Examination of the adequacy and gaps in existing legal frameworks governing reparations for victims of international humanitarian law violations, with a focus on international treaties, customary law, and domestic legislation.

4. An investigation into the role of reparations within broader transitional justice processes, including truth commissions, prosecutions, and reconciliation initiatives.

5. An exploration of the intersectionality of gender and victimhood in reparations processes, including the specific needs and challenges faced by women, children in accessing reparations.

5.5 Conclusion

The appraisal of reparation for victims of serious violations of international humanitarian law is a critical and multifaceted area of research that encompasses legal, ethical, social, and political dimensions. This study has explored various aspects of this topic, including the challenges faced by victims, the mechanisms for providing reparations, the role of accountability, and the potential for achieving justice and reconciliation in conflict-affected societies.

It is evident that victims of serious violations of international humanitarian law endure immense suffering and loss, often resulting in long-lasting physical, psychological, and socio-economic consequences. Reparations are essential not only to address the needs of individual victims but also to uphold the principles of justice, dignity, and human rights in the aftermath of conflict. However, implementing effective reparations programs faces numerous obstacles, including limited resources, political obstacles, and institutional weaknesses.

Despite these challenges, there have been significant advancements in the field of reparations, including the establishment of international legal frameworks, the development of

transitional justice mechanisms, and the recognition of victims' rights. Countries and international organizations have made efforts to provide reparations through various means, including compensation, restitution, rehabilitation, and guarantees of non-repetition.

Moreover, there is growing recognition of the importance of a victim-centered approach in designing and implementing reparations programs, which emphasizes the participation, empowerment, and dignity of victims. This approach not only enhances the legitimacy and effectiveness of reparations but also contributes to broader processes of healing, reconciliation, and peace building.

However, there remain numerous areas for further research and improvement in the field of reparations for victims of serious violations of international humanitarian law. These include addressing the needs of marginalized and vulnerable groups, ensuring gender-sensitive approaches, strengthening legal frameworks, enhancing accountability for perpetrators, and evaluating the impact of reparations on victims and societies.

In conclusion, the appraisal of reparation for victims of serious violations of international humanitarian law is a vital area of inquiry that requires ongoing attention, dedication, and collaboration from policymakers, practitioners, scholars, and civil society actors. By advancing our understanding of the challenges and opportunities in providing reparations, we can work towards building a more just, inclusive, and peaceful world for all individuals affected by conflict and violence. The issue of reparations for victims of serious violations international humanitarian law is a complex and multifaceted one that encompasses legal, ethical, and practical considerations. While much progress has been made in recent years in recognizing the rights of victims to reparations, there are still significant challenges that remain in effectively implementing and providing adequate reparations to all victims.

Overall, the research underscores the importance of ensuring that victims of serious violations of international humanitarian law are not forgotten or left behind in the quest for justice and accountability. By addressing the needs and rights of victims through robust reparations programs, we can move closer towards a more just and humane world where victims are truly seen, heard, and supported in their journey towards healing and recovery.

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