

LLM/MA IN: LLM International Human Rights Law

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DISSERTATION TITLE Conflict in Ukraine: Rights of conflict affected persons for remedies and reparations

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UNIVERSITY OF ESSEX

SCHOOL OF LAW

LLM/MA in International Human Rights Law  
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Supervisor: Clara Sandoval

DISSERTATION

**Conflict in Ukraine: Rights of conflict affected persons for remedies and reparations**

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*“How can I evaluate the amount of compensation due to me? What is the value of my son’s childhood in the village? What is of cost of my family’s separation for three years and the rented flats I paid for? What is the cost of my father’s early death because he couldn’t obtain proper medical assistance during the armed conflict? How can I evaluate all this? The compensation that I might eventually receive is not worth the time and nerves I would need to spend going from one governmental office to another and hearing from them ‘could you come tomorrow?’ And how can I prove that I had this and that if it is all gone now?”*

- Civilian who has not received compensation for the use of his house in military purposes<sup>1</sup>

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<sup>1</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the human rights situation in Ukraine 16 February to 15 May 2019*, 13 June 2019, available at: <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx> [accessed 5 July 2019], p. 10. (OHCHR Report)

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## Introduction

Since the outbreak of the conflict, reparations and remedies to the victims – especially to hundreds of persons whose injury resulted in disability, and families of those deceased remains lacking. Poor State mechanisms and policies on remedies and reparations in accordance with international standards, remains a concern. <sup>2</sup>

The legal framework in Ukraine is fragile and the domestic courts are not able to investigate the violations of human rights and humanitarian law and order the provision of reparations to the conflict-affected persons. The reparation policies have not been established and the victims and their families need an urgent rehabilitation assistance and access to social services.

This thesis will discuss the rights of conflict affected persons in Ukraine for remedies and reparations. It will suggest designing and implementing a domestic reparation program while the conflict is on-going without concentrating on establishment of transitional justice process and establishing post-conflict reparation and remedy policies

The first chapter will briefly summarize the human rights situation and human rights abuses in Ukraine since the beginning of the conflict in 2014 to allow the reader to understand the context of the conflict in Ukraine and serve as a basis for further discussions on provision of reparations and remedies to the conflict-affected persons.

The second chapter will look at the international legal definitions of remedies and reparations including forms of reparations. It will also provide the information about the international treaties ratified by Ukraine and Russia as the parties to the conflict who are responsible for violations of international human rights law and international humanitarian law in Ukraine. It will then discuss practices of investigating human rights violations and remedying the victims and the beneficiaries, and slightly touch upon the post conflict justice although this is not the main focus of the thesis. Furthermore, it will analyse

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<sup>2</sup> Ibid., para. 32.

the role and the responsibilities of the non-state actors in provision of reparations and remedies to the victims and the families of the armed conflict in Ukraine.

Ukraine's experience dealing with reparation cases, whereby mainly, the payment of compensation for damaged and destroyed property claims will be discussed in the third chapter. It will also look at the other avenues from where the conflict-affected persons can access justice and submit their claims for reparation and remedies regarding violations of international human rights law and international humanitarian law. In doing so, the practices of international mechanisms and courts such as European Court of Human Rights to the larger extent, Inter-American Court of Human Rights, the African Court and the Commission on Human and Peoples' Rights, International Criminal Court and International Court of Justice to the lesser extent, will be discussed to understand to what extent the victims and conflict-affected persons in Ukraine can obtain reparations and remedies through the rulings of such entities.

The last chapter will recommend designing and implementing a domestic reparation programme specific to the Ukrainian context. It will analyse the architecture, elements and components to be included into a potential programme to ensure its adequacy and a sustainability. Particularly, it will suggest that the programme be free of stigma and discrimination, focused on dignified treatment of victims, be comprehensive, inclusive and have complementarity nature, ensure different forms of reparations, including prioritizing reparation provision for victims in vulnerable situations, developing proper registries to make sure all or majority of the victims are included, employing lower standards of registration eligibility criteria, ensuring consultation with and participation of victims, considering provision of collective reparations, be institutionally secure and include rehabilitation and education as the forms of reparation which are not often seen as urgently require by the victims and their families.

This chapter will give examples from the practices of other countries in realizing domestic reparation programmes that have been successful or have failed/partially failed to succeed. This will provide an opportunity to understand what works best and which practices must be avoided while designing and implementing the domestic reparation programmes.

It will suggest involvement of the non-state actors, particularly, armed groups in case of Ukraine and Russia in development and implementation of the domestic reparation programmes as well as their contribution in providing material and financial reparation to the victims of abuses for which these parties are responsible.

## 1. Human rights situation in Ukraine

Over the whole conflict period, from 14 April 2014 to 15 August 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded in total 3,339 civilian deaths.<sup>3</sup> The number of injured civilians is estimated to exceed 7,000.<sup>4</sup>

Despite ceasefire agreement called Minsk Agreement between Russian Federation, Ukraine and rebel groups in eastern Ukraine was signed in 2014 and renewed in 2016<sup>5</sup>, hostilities continued to impact the 3.9 million civilians living in the conflict areas of Donbas region in Ukraine. Systematic exchanges of fire alongside the “contact line”<sup>6</sup> in eastern Ukraine continued to expose civilians residing there to a continuous threat of death or injury. In most case, their property and infrastructure continued to be damaged against the principles of proportionality, distinction, and precaution. Besides the threat of shelling, people have been at risk from explosive remnants of war.<sup>7</sup>

The civilian property was used in military purposes without provision of alternative accommodation or compensation to the owners. The cases of pillage of civilian homes along both sides of contact line were also documented by the OHCHR.<sup>8</sup>

The cases of arbitrary detention, torture, threats to physical integrity, ill-treatment were committed on both sides of contact line.<sup>9</sup> Violations of rights to a fair trial in war-related criminal cases, use of detention

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<sup>3</sup> OHCHR Report, 17 September 2019, para. 3.

<sup>4</sup> OHCHR Report, *supra note* 1, para. 25.

<sup>5</sup> Regional Treaties, Agreements, Declarations and Related, *Package of Measures for the Implementation of the Minsk Agreements*, 12 February 2015, available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/UA\\_150212\\_MinskAgreement\\_en.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf) [accessed 7 October 2019]. As of end of 2018, not a single provision of the Minsk Agreement has been fully implemented. See, <https://www.unian.info/war/10391709-almost-entire-grey-zone-in-donbas-liberated-by-ukraine-without-minsk-deal-breach-adviser.html>.

<sup>6</sup> Contact line is the 500 km line of separation between Russian-backed separatist districts of Donetsk and Luhansk regions and the rest of Ukraine.

<sup>7</sup> OHCHR Report, *supra note* 1, para. 23.

<sup>8</sup> *Ibid.*, paras. 34-36.

<sup>9</sup> *Ibid.*, para.43.



pending trial and prolonged trials as means to pressurise the defendants continued to take place throughout the conflict.<sup>10</sup>

Since the bloodiest Maidan protests<sup>11</sup> and the violent events in Odesa in 2014<sup>12</sup>, no individuals responsible for violent deaths and acts of killing have been brought to justice in these cases, which raises concerns about the genuine intention of authorities to ensure accountability and justice for the suffered.<sup>13</sup>

#### *Violation of rights of persons residing in occupied Crimea<sup>14</sup>*

Russian Federation occupied Crimea since 2014 and continued to commit grave human rights violations against persons in Crimea that express pro-Ukrainian views. This includes but not limited to targeting and arresting number of Crimean Tatars<sup>15</sup> on fraudulent criminal incitement, terrorism and separatism charges.<sup>16</sup> Another most often voiced human rights concerns in the territories occupied by Russian Federation is related to the Ukrainian political prisoners who are illegally held in Russia.<sup>17</sup>

The same is the situation in Ukraine with targeting people holding pro-Russian views. There were instances when the authorities used the conflict as a pretext for limiting freedoms of journalists perceived as pro-Russian.<sup>18</sup> For instance, on 15 May 2017, restrictive measures against persons linked to the occupation of Crimea was extended by President Poroshenko. Ukraine has also blocked numerous Russian information technology companies, which effected social networks and search engines.<sup>19</sup>

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<sup>10</sup> Ibid., para. 56. The crimes under the Articles 109-114-1, 258-258-5, 260 and 261 of the Criminal Code of Ukraine constitute "conflict-related crimes".

<sup>11</sup> OHCHR Report, 15 April 2014, paras. 2 and 4.

<sup>12</sup> OHCHR Report, 15 May 2014, para. 34.

<sup>13</sup> Ibid., para. 66.

<sup>14</sup> UN resolution condemns the temporary occupation of Crimea by Russia. Most of the States do not recognize the Russian Federation's annexation of Crimea. See, the UN General Assembly, *Territorial Integrity of Ukraine : resolution / adopted by the General Assembly*, 1 April 2014, A/RES/68/262; and Seventy-Third Session, 56<sup>th</sup> Meeting, available at: <HTTPS://WWW.UN.ORG/PRESS/EN/2018/GA12108.DOC.HTM> [accessed 29 September 2019].

<sup>15</sup> Crimean Tatars are indigenous inhabitants of Crimea- the territory annexed by Russian Federation during the Ukrainian conflict in 2014. See, <https://ctrcenter.org/en/o-krymskih-tatarah> [accessed 15 September 2019].

<sup>16</sup> Human Rights Watch, *'Ukraine Events of 2018 : Crimea'*, available at: <https://www.hrw.org/world-report/2019/country-chapters/ukraine> [accessed 29 September 2019].

<sup>17</sup> European Parliament, *'Human rights in Ukraine and the EU response, including relevant activities of the European Parliament'*, January 2018- PE 603.834, p. 7.

<sup>18</sup> HRW Report, *supra* note (16).

<sup>19</sup> European Parliament Report, *supra* note (17), p. 12.

Ukrainian government authorities and Russia-backed separatists (armed groups) in eastern Ukraine detained dozens of civilians for collaborating with the other side and held them in prolonged, arbitrary detention, depriving them of contact with the lawyers and their families.<sup>20</sup>

The number of pupils in Crimea with Ukrainian as the language of instruction decreased from 13,589 in 2013 to 371 in 2016.<sup>21</sup> Use of minority languages including Russian at the educational institutions has been also restricted in Ukraine.<sup>22</sup>

Government actions to guarantee the pension payments to Ukrainian citizens without regards to their places of residence and registration continued to lack. Particularly, internally displaced persons (IDPs) faced issues with arbitrary suspension of their pensions. Thus, hundreds of thousands of persons have not received their pensions payments.<sup>23</sup>

Government of Ukraine continued to hold discriminatory policy on payment of pensions, which obliges pensioners residing in areas controlled by 'Luhansk people's republic' and 'Donetsk people's republic' to have an IDP registration to be eligible for the payments. Consequently, hundreds of thousands of persons have not received their pensions payments.<sup>24</sup>

## **2. Right to reparations and remedies**

Remedies for serious violations of international humanitarian law and gross violations of international human rights law include the right of victims to the following: "(a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered;(c) Access to relevant information concerning violations and reparation mechanisms".<sup>25</sup>

The Updated Set of principles for the protection and promotion of human rights through action to combat impunity provides that victims shall have access to a "readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings". It also states that the reparation

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<sup>20</sup> Human Rights Watch Report, *supra* note (16).

<sup>21</sup> Cooper and Gorbunova, *Crimea: 'Not Our Home Anymore'*, HRW, May 3, 2017, available at: <https://www.hrw.org/news/2017/05/03/crimea-not-our-home-anymore> [accessed 3 August 2019]; and OHCHR Report, 19 March 2018, paras. 126-128.

<sup>22</sup> OHCHR Report, 13 June 2019, paras. 14, 80-81.

<sup>23</sup> OHCHR Report, 17 September 2019, para. 40.

<sup>24</sup> *Ibid.*

<sup>25</sup> UN 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 / adopted by the General Assembly*, 21 March 2006, A/RES/60/147, para. 11.

can be provided through national reparation programmes that can be financed by national or international sources.<sup>26</sup>

The right to reparation is also crucial as a guarantee of non-recurrence, because it allows the abusers to realize that what they did was immoral and that societies should dignify the victims. It will also help victims to regain trust in the State, to be recognized as rights holders, and to be empowered in the future.<sup>27</sup>

#### *Persons eligible for remedies and reparations*

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 states that:

“...victims are 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. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.

Under the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power “a person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.”<sup>28</sup>

#### *Forms of reparations*

According to domestic and international law, victims of serious violations of international humanitarian law and gross violations of international human rights law should, considering the circumstances of

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<sup>26</sup> UN Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1, principle 32.

<sup>27</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 11 July 2019, A/HRC/42/45, para. 29.

<sup>28</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34, Principle 2.

each case and gravity of the violation, be provided with effective and full reparation in following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>29</sup>

#### Restitution

To the extent possible, restitution should restore the victim's original situation that existed before his/her rights under international law were violated. This includes 'restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'.<sup>30</sup>

#### Compensation

Victims should receive compensation for any assessable damage, including but not limited to: '(a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.'<sup>31</sup>

#### Rehabilitation

Besides medical and psychological support, rehabilitation includes social and legal services.<sup>32</sup>

Satisfaction should incorporate either one, several or all of the following measures: cessation of violations; facts verification; public disclosure of the facts/truth as long as such revelation does not provoke further harm or cause the risks to the interest and safety of the victim, the victim's family, witnesses, or persons who, directly or indirectly assisted the victim to prevent his/her further sufferings; searching the whereabouts and the fate of the disappeared; the identities of kidnapped kids, the bodies of persons killed, and assisting in the identification, recovery and reburial of the bodies as per the wishes expressed by the victims and their families' traditional practices; tributes and commemorations to the victims; imposition of administrative and judicial sanctions against those responsible for the abuses; declaring officially the court's decision on restoring the reputation, dignity, and the rights of the victims and of others closely linked to the victim, public apology, acknowledging of the facts and accepting of

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<sup>29</sup> A/RES/60/147, *supra* note (25), para. 18.

<sup>30</sup> A/RES/60/147, *supra* note (25), para. 19.

<sup>31</sup> A/RES/60/147, *supra* note (25), para. 20.

<sup>32</sup> A/RES/60/147, *supra* note (25), para. 21.

responsibility; incorporation of the accurate number of violations that took place in international humanitarian law and international human rights law; training and provision of educational materials.<sup>33</sup>

#### Guarantees of non-repetition

Where possible, the guarantees of non-repetition should include the following prevention measures, among others: ensuring that there is sufficient civilian control of security and military forces, that all civilian and military actions follow the international standards, impartiality and fairness, providing independence to the judiciary, protecting legal, and health-care specialists, the media workers, and human rights advocates, providing human rights and international humanitarian law trainings to relevant institutions, including, law enforcement, military, media, medical professionals, establishing policies on prevention of conflicts arising in the society and on their resolution, assessing and reforming laws to prevent violations of international law from happening.<sup>34</sup>

#### *Related international treaties ratified by Ukraine and Russian Federation*

Right to reparations and remedies for victims of international human rights law violations is found in various international instruments which Ukraine and Russian Federation have ratified<sup>35</sup>, particularly, in Article 8 of the Universal Declaration of Human Rights<sup>36</sup>, Article 2 of the International Covenant on Civil and Political Rights<sup>37</sup>, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination<sup>38</sup>, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>39</sup>, and Article 39 of the Convention on the Rights of the Child<sup>40</sup>, and of international humanitarian law as found in Article 3 of the Hague Convention respecting the Laws and

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<sup>33</sup> A/RES/60/147, *supra* note (25), para. 22.

<sup>34</sup> A/RES/60/147, *supra* note (25), para, 23.

<sup>35</sup> International Committee of the Red Cross, “*Treaties, States Parties and Commentaries: Ukraine*”, available at: [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=UA](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=UA) [accessed 2 August 2019]. Russia is a party to Rome statute but has not ratified it. See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>.

<sup>36</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art. 8.

<sup>37</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, Art. 2.

<sup>38</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Art. 6.

<sup>39</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art.14.

<sup>40</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Art. 39.

Customs of War on Land of 18 October 1907 (Convention IV)<sup>41</sup>, Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977<sup>42</sup>, and Articles 68 and 75 of the Rome Statute of the International Criminal Court<sup>43</sup>, Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance<sup>44</sup>, as well as Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>45</sup>.

However, it should be noted that Ukraine has derogated from its obligations under Articles 5, 6, 8 and 13 of European Convention of Human Rights and Fundamental Freedoms (ECHR) and Article 2, paragraph 3, and Articles 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights in some areas of Luhansk and Donets regions.<sup>46</sup>

### **3. Investigating human rights violations and remedying the victims and the beneficiaries**

In-depth investigations into human rights violations must be carried out by an independent and impartial parties that should be granted the required authority and resources to perform their tasks. The outcomes of the work must be made public to deliver detailed facts to the victims, their families and the society.<sup>47</sup> 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 urges the States to “investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law”. It also requires that the States provide effective and equal access to justice to the

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<sup>41</sup> International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, Art 3.

<sup>42</sup> International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, Art. 91.

<sup>43</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, art.68 and 75. Although Ukraine has not yet ratified the ICC Statute, it has accepted its jurisdiction that allows the ICC Prosecutor to conduct preliminary examinations of the situation in Ukraine since 21 November 2014. See Coalition for the International Criminal Court, “Role of International Community in Ratification of the Rome Statute by Ukraine”, 19 July 2019, available at:

[http://www.coalitionfortheicc.org/sites/default/files/cicc\\_documents/Infographic\\_Role%20of%20int%20community%20ICC%20RS%20Ratification%20Ukraine\\_Nov2018%20-%20Copie.pdf](http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/Infographic_Role%20of%20int%20community%20ICC%20RS%20Ratification%20Ukraine_Nov2018%20-%20Copie.pdf) accessed 7 August 2019.

<sup>44</sup> UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearances*, 20 December 2006, Art. 24. Only Ukraine has ratified the Convention. See, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4)

<sup>45</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, art. 13.

<sup>46</sup> Notification - JJ7979C Tr./005-185 - Ukraine - Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Strasbourg, 10 June 2015, paras. 5, 6 and 9.

<sup>47</sup> Amnesty International, *Truth, Justice and Reparation: Establishing an Effective Truth Commission*, 11 June 2007, POL 30/009/2007, p.4.

victims of human rights or humanitarian law violations, irrespective of who may be responsible for the abuses. Furthermore, according to it, the States are obliged to investigate and prosecute the individuals responsible for the violations and punish such individuals once found guilty. In so doing, the States should cooperate with each other as per the international law, and assist the authorized international courts to investigate and prosecute these violations.<sup>48</sup>

In Ukraine, there are other actors namely Russia and the armed groups of self-proclaimed republics of Donetsk and Luhansk who are involved in the conflict. The Basic Principles provide that “In cases where a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim”.<sup>49</sup>

#### *Post-conflict justice*

Serious challenges presented by the post-conflict justice in Ukraine calls for the creation of an independent and impartial court which will regulate them. The court should be able to make complex legal and factual decisions in sensitive cases that involve serious crimes of international nature against high-level authorities who are sometimes considered “national heroes”. In case of Ukraine, there should be a proper mechanism to administer the post-conflict justice which might not be possible to establish unless Russia consents to it at the United Nations Security Council. Therefore, one of the available solutions for Ukraine could be setting up a similar mechanism to the Specialist Chambers of Kosovo. The Chambers are a domestic court that are supported by the European Union and receive donations from some of the states such as United States of America, Canada, Norway, Switzerland and Turkey. They operate in The Hague and are authorized to arrest and detain as per domestic law. The international support provides financial stability and security of the Court, as well as individuals involved, the witness and the victims.<sup>50</sup>

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<sup>48</sup> A/RES/60/147, *supra* note (25), paras. 3 (b) (c) and 4.

<sup>49</sup> *Ibid.*, para. 15.

<sup>50</sup> The Specialist Chambers and Specialist Prosecutor's Office, available at: <https://www.scp-ks.org/en/background> [accessed 7 October 2019].

### *Non-state actors' role in providing reparations*

Clarification of customary rules of International Humanitarian Law – ‘the 161 rules’ that govern armed conflicts identified by the International Committee of the Red Cross (ICRC) are binding on armed groups and are applicable in non-international armed conflict.<sup>51</sup> The Special Court for Sierra Leone, for instance, asserted that: ‘...it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties’.<sup>52</sup>

It was confirmed by the Rome Statute of the International Criminal Court that members of armed groups can be held responsible for crimes against humanity, war crimes<sup>53</sup> and genocide.<sup>54</sup>

The Special Court for Sierra Leone and the International Criminal Tribunal for the former Yugoslavia have prosecuted leaders and members of armed groups.<sup>55</sup> The first indictment of ICC’s was against an armed group’s member and not against a state official. Such individuals remain a majority of the members of armed groups that were indicted by the ICC.<sup>56</sup>

While it is true that obtaining reparations from armed groups is not feasible in all the cases, it is not to be ignored that they will never be feasible. It would indeed be feasible in some cases involving of provision of some forms of reparations such as symbolic reparations.<sup>57</sup> The Office of the High Commissioner for Human Rights has observed that “symbolic measures derive their great potential from the fact that they are carriers of meaning, and therefore can help victims in particular and society in general to make sense of the painful events of the past [and] allow [victims] to move on”.<sup>58</sup>

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<sup>51</sup> International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules. Although today it is commonly accepted that IHL is binding on organized armed groups, it is not very clear why it is binding and how is to be construed on the organized armed groups.

<sup>52</sup> *Prosecutor v. Sam Hinga Norman - Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)*, Case No.SCSL-2004-14-AR72(E), Special Court for Sierra Leone, 31 May 2004, para. 22.

<sup>53</sup> ICC Statute, supra note (53 ), Art. 7 (2)(a).

<sup>54</sup> Ibid., Art. 6, it does not mention if the perpetrators must be state authorities or other agents.

<sup>55</sup> *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused) (Trial judgment)*, Case No. SCSL-04-15-T, Special Court for Sierra Leone, 2 March 2009; and *Prosecutor v. Haradinaj et al. (Trial Judgment)*, IT-04-84-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 April 2008.

<sup>56</sup> See ICC, ‘cases’, available at: <https://www.icc-cpi.int/cases> [accessed 5 October 2019].

<sup>57</sup> Jann K. Kleffner, “The applicability of international humanitarian law to organized armed groups”, 93/882, 443 *International Review of the Red Cross*, p.288.

<sup>58</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Rule of Law Tools for Post-Conflict States: Reparations Programmes*, 2008, HR/PUB/08/1, pp. 22-23.



#### 4. International and Domestic mechanisms

##### *Ukraine's' experience dealing with reparation cases*

2015 National Human Rights Strategy of Ukraine requires the state to develop policies for investigation of violations related to right to life and provide remedy and rehabilitation to victims who experienced torture, cruel, inhuman or degrading treatment or punishment, in accordance with the international standards.<sup>59</sup>

Although various types of violations of human rights and humanitarian law have occurred in Ukraine during the whole conflict period, the courts of Ukraine have mainly tried to deal with the compensation payment claims for the damages caused to their houses.<sup>60</sup>

More than 17, 000 buildings were damaged or destroyed from the beginning of conflict to 2016 in eastern Ukraine and no adequate mechanisms were adopted to address these issues.<sup>61</sup>

The action plan on the implementation of the National Human Rights Strategy until 2020 was adopted according to which the working group was created to develop the compensation procedure for the property destroyed or damaged as a result of the conflict.<sup>62</sup> Even though the draft laws were then proposed by the Working Group, the assessment of property damages in Donetsk and Luhansk regions will be challenging as the Assessment Commission will not have access to the territories under the control of the armed groups.<sup>63</sup> However, Ukraine has a positive obligation under Article 1, Protocol 1 of ECHR<sup>64</sup> in these territories to which the derogations are not applicable<sup>65</sup>.

Draft Law 'On amendments to the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' concerning compensation for damaged property' and Draft Law 'On amendments

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<sup>59</sup> "National Human Rights Strategy", approved by the Decree of the President of Ukraine No. 501/2015, available at: <https://www.coe.int/t/commissioner/source/NAP/Ukraine-National-Action-Plan-on-Human-Rights.pdf> [accessed 10 September 2019].

<sup>60</sup> Norwegian Refugee Council, Report: "Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in eastern Ukraine: Gaps and opportunities", March-October 2018.

<sup>61</sup> Norwegian Refugee Council, "People in eastern Ukraine: without housing and compensation", Briefing Note, July 2019, available at: <https://www.nrc.no/globalassets/pdf/briefing-notes/ukraine/briefing-note-compensation-for-damaged-housing.pdf> [accessed 5 September 2019].

<sup>62</sup> "The Action Plan on the Implementation of the National Strategy on Human Rights for the Period until 2020," Annex to the Order No. 1393-r of the Cabinet of Ministers of Ukraine of November 23, 2015; and Tetyana Antsupova, "Post-Conflict Reparation: Ukrainian Restitution Remedies for Property and Restitution Complaints before the European Court of Human Rights" *Kyiv-Mohyla Law and Politics Journal* 2 (2016): 217–226, p. 218.

<sup>63</sup> People in eastern Ukraine: without housing and compensation, *supra* note (61).

<sup>64</sup> Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETS 9. Art.1.

<sup>65</sup> Notification - JJ7979C Tr./005-185 - Ukraine - Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Strasbourg, 10 June 2015, paras. 5, 6 and 9.

to the Law of Ukraine 'On combating terrorism' concerning compensation for damage to property inflicted in the course of Anti-terrorist Operations' are not sufficient policies to regulate provision of reparation and remedies.<sup>66</sup>

From 110 compensation claims brought before the Ukrainian courts until June 2017, the following inconsistent court practices can be ascertained:

- To start the court proceeding, the claimant should receive a certificate of loss caused by terrorist act from the law enforcement agencies.<sup>67</sup>
- A state expert or expert from an accredited agency must provide an evidence of destruction caused to the house due to extraordinary reasons.<sup>68</sup>
- According to Article 19 of the Law "On Combatting Terrorism", the court issues a judgement in favour of the claimant.<sup>69</sup> However, statutory order to implement provisions of the Article 19 does not exist, therefore, the compensation amount is decided under the Article 86 of the Code of Civil Protection of Ukraine "Provision of Housing for Emergency Victims"<sup>70</sup>.

During the same period, the Ukrainian authorities challenged all the court ruling in favour of plaintiffs because of the following reasons; offenders of the terrorist act have not been identified which means that there is no conviction; there is no statutory order on compensation for damaged and destroyed housing as noted in Article 19 of the Law "On Combatting Terrorism"; there is no transfer of ownership of such buildings from owners to state authorities being the basis for the compensation payment as per the Article 86 of the Code of Civil Defense of Ukraine<sup>71</sup>; there are no financial resources in the State budget of Ukraine to pay the compensation.<sup>72</sup>

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<sup>66</sup> Draft Law 'On amendments to the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' concerning compensation for damaged property', No. 2167, of 18 February 2015; and Draft Law 'On amendments to the Law of Ukraine 'On combating terrorism' concerning compensation for damage to property inflicted in the course of ATO', No. 3434, of 9 November 2015; and OHCHR Report, 3 March 2016, para. 163.

<sup>67</sup> Ukraine: Law No. 2341-III, *Criminal Code of Ukraine*, 1 September 2001, available at: <https://www.legislationline.org/documents/action/popup/id/16257/preview> [accessed 7 October 2019], Art. 258

<sup>68</sup> People in eastern Ukraine: without housing and compensation, *supra* note (61).

<sup>69</sup> Ukraine: Law on combatting terrorism, (VVR (VVR), 2003, N 25, st.180). Art. 19.

<sup>70</sup> Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in eastern Ukraine: Gaps and opportunities, *supra* note (60).

<sup>71</sup> Ukraine: *Code of Civil Defence of Ukraine*, 21 November 2012, № 34-35, cr.458, Art. 86 (9).

<sup>72</sup> Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in eastern Ukraine: Gaps and opportunities, *supra* note (60).

In addition to these uncertainties, the plaintiff has to incur the court fees of 1 percent from the value of the property which prevents the victims to claim the damages through the domestic courts.<sup>73</sup> Also, the compensation claims for damages incurred during the conflict in 2014 could be barred in 2017 because of the three year instructed period that is prescribed by the Civil Code of Ukraine, would be expire.<sup>74</sup>

### *International Mechanisms and Courts*

The European Court of Human Rights has a significant experience in dealing with guarantees of non-recurrence, which is called general measures. This can be seen in cases of *Broniowski v. Poland* and *Aslakhanova*<sup>75</sup>, where the Court found a violation of the right to property under Article 1 of Protocol No. 1<sup>76</sup>.

The European Court of Human Rights' armed conflict related reparation jurisprudence is also rich. The Court has applied the *restitutio in integrum* principle for the first time in unlawful expropriation case *Papamichalopoulos and Others v Greese*:

"...the Court considers that the return of the land in issue [...] would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1[...]"<sup>77</sup>

In this case the Court was inspired by the judgment in the *Chorzów Factory* case, where the Permanent Court of International Justice held that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability have existed if that act had not been committed."<sup>78</sup>

The general rule in Chorzow Factory Case has been cited a number of time in International Court of Justice' several judgments, including in the *Case Concerning Armed Activities on the Territory of the*

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<sup>73</sup> *Ibid.*

<sup>74</sup> Verkhovna Rada of Ukraine (Parliament), "The Civil Code of Ukraine", 1 January 2004, Art. 256-257, available at: <https://zakon.rada.gov.ua/laws/anot/en/435-15> [accessed 7 October 2019].

<sup>75</sup> *Aslakhanova and others v. Russia*, Applications No. 2944/06, 8300/07, 50184/07, 332/08, 42509/10), judgment of 18 December 2012, European Court of Human Rights, [212– 240]; and *Broniowski v. Poland*, Application No. 31443/96), judgment of 22 June 2004, para. 193.

<sup>76</sup> Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9, Art. 1.

<sup>77</sup> *The case of Papamichalopoulos and Others v. Greece*, [14556/89](#), Council of Europe: European Court of Human Rights, 31 October 1995, para. 38.

<sup>78</sup> *Case Concerning the Factory at Chorzów* (Germany v. Poland) (Merits), PCIJ, Series A No. 17. Para. 125.

Congo. This judgment concerned violations of IHL and IHRL where the Court stressed that the harm caused to the persons was relevant to assess the scope of reparation that Uganda owed.<sup>79</sup>

In *Case of Georgia v. Russia (I)*, the following was stated by the European Court of human Rights:

“...[t]hat the just-satisfaction rule [under the European Convention on Human Rights] is directly derived from the principles of public international law relating to State liability ... Those principles include both the obligation on the State responsible for the internationally wrongful act ‘to cease that act, if it is continuing’ and the obligation to ‘make full reparation for the injury caused by the internationally wrongful act’, as laid down in Articles 30 and 31 respectively of the Articles on Responsibility of States for Internationally Wrongful Acts.”<sup>80</sup>

If the European Court of Human Rights was mainly making declaratory judgments and ordering monetary compensations, after 1990<sup>th</sup> it started to specify the most appropriate forms of reparation to be assigned to the victims. Even though it kept stressing that states can choose how to implement the judgments, it has followed the general principle of providing *restitutio in integrum* whenever possible.<sup>81</sup>

In *Chiragov and Others v. Armenia*, the Court has noted that the Governments should be guided by the United Nations Pinheiro Principles and Resolution 1708 on “Solving Property Issues of Refugees and Displaced Persons”. It further noted the importance of setting up an easily accessible property claim mechanism in the absence of a comprehensive peace agreement.<sup>82</sup>

Despite its favourable rulings in the above and many other reparation cases the Court’ proceedings are adversarial in nature. In *Lisnyy and Others v. Ukraine and Russia*, the Court declared inadmissible applications of three Ukrainian nationals about the shelling of their houses during the conflict in Eastern

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<sup>79</sup> *Case Concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Rwanda), International Court of Justice (ICJ), 18 September 2002, para. 259.

<sup>80</sup> *Case of Georgia v. Russia (I)*, Grand Chamber, (Application no. 13255/07) (just satisfaction), Judgment, Council of Europe: European Court of Human Rights, 31 January 2019, para. 54.

<sup>81</sup> Antoine Buyse, “Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law,” Heidelberg Journal of International Law 2008, p. 20.

<sup>82</sup> *Chiragov and Others v. Armenia*, Application no. 13216/05, Council of Europe: European Court of Human Rights, 16 June 2015, para. 199; and UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17; Council of Europe, “Solving property issues of refugees and displaced persons”, Parliamentary Assembly (PA) Resolution 1708 (2010) Persons.”

Ukraine. The applicants in this case had submitted only copies of their passports. Mr. Lisnyy had presented the pictures of a destroyed home but not a proof of him owning the house or any right to stay at the house. Applicants have failed to support their claims by providing any other *prima facie* evidence such as documents from the municipal administration, maintenance receipts or witness statements. Moreover, they have not made any attempt to obtain even minimum fragmentary evidence to support the allegations.<sup>83</sup>

In *Kerimova and Others v. Russia*, the applicants submitted extracts of housing inventory that was issued by the local administration after the damage of the house caused by the attack.<sup>84</sup> However, in *Lisnyy and Others v. Ukraine and Russia*, the Court had to consider exceptional situation beyond the applicants' control which may have caused difficulties for the applicants to submit a documentary evidence.

In *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, the Court held that the adopted law by the illegal "Turkish republic of northern Cyprus" ("TRNC") "provides an accessible and effective framework of redress in respect of complaints about interfered to be exhausted"<sup>85</sup>. However, in case of *Ilascu and Others v. Moldova and Russia*, the Court considered the internal procedure of the "Moldovan Republic of Transnistria" ("MRT") as "a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention"<sup>86</sup>. This is because the law of the "MRT" inherited the Soviet Union laws, whereas the "TRNC" laws followed the common law of the island. Therefore, the Court did not require TRNC domestic redress mechanisms to be exhausted by the claimants before lodging an application with the Court.<sup>87</sup>

In the case of the territories of Ukraine outside of its control, two distinctive legal systems operate: firstly, Russian law functions in Crimea<sup>88</sup>, which means exhaustion of domestic remedies are required by the Court the same way it would be required in the territories of Russian Federation. Secondly, in the self-

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<sup>83</sup> *Lisnyy and Others v. Ukraine and Russia*, Application Nos. 5355/15, 44913/15 and 50853/15, European Court of Human Rights, July 28, 2016.

<sup>84</sup> *Kerimova and Others v. Russia*, Application Nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, European Court of Human Rights, May 3, 2011, para. 293.

<sup>85</sup> *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, Application. no. 16163/90, 22 April 2008, para 127.

<sup>86</sup> *Ilascu and Others v. Moldova and Russia* [GC], Appl. no. 48787/99, judgment of 8 July 2004 [Ilascu], para. 436.

<sup>87</sup> Antal Berkes, "International legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities", International Conference on post-Conflict Justice, Kiev, Ukraine 26–27 May 2017, p. 31.

<sup>88</sup> OHCHR, "UN report details grave human rights violations in Russian-occupied Crimea", 25 September 2017, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22140> [accessed 6 October 2019].

proclaimed territories, soviet-time model laws are introduced<sup>89</sup> and therefore, can be considered by the Court as in Transnistria, as “a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention”, and thus, exhaustion of domestic remedies would not be required for it.

Although the cases related to Ukraine fall under the European Court of Human Rights, the jurisprudence of other courts can be applied in the conflict contexts such as the one in Ukraine.

International courts such as the Inter-American Court of Human Rights have developed a comprehensive jurisprudence through resolution of individual cases on reparation for victims of mass atrocities. The Court has stated that victims should receive a full reparation for the harm incurred, which includes “the need to grant different measures of reparation, in order to redress the damage fully; thus in addition to pecuniary compensation, measures of satisfaction, restitution and rehabilitation, and guarantees of non-repetition have special relevance owing to the severity of the effects and the collective nature of the damage suffered”.<sup>90</sup> The Court has also determined some criteria that domestic reparation programmes must work in accordance with its own jurisprudence. The other criteria include participation of victims in consultations, proportional and reasonable compensation awards, distribution criteria among members of the family, reasons for providing reparations to a whole family but not individually<sup>91</sup>.

The African Court has contentious and advisory jurisdiction and can make orders and issue judgments that are binding, thus has mandate to award reparation:

“If the Court finds that there has been a violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”<sup>92</sup>

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<sup>89</sup> OHCHR Report, 1 June 2015 (footnote), p. 27.

<sup>90</sup> *The Massacres of El Mozote and nearby places v. El Salvador*, Inter-American Court of Human Rights (IACrtHR), 25 October 2012, para. 305.

<sup>91</sup> Clara Sandoval, “Two steps forward, one step back: reflections on the jurisprudential turn of the Inter-American Court of Human Rights on domestic reparation programmes”, Research Repository, School of Law/Human Rights Centre, University of Essex, UK, p. 14; and Inter-American Court of Human Rights, *Case of the Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, judgment of 20 November 2013 (preliminary objections, merits, reparations and costs), para. 470.

<sup>92</sup> Organization of African Unity (OAU), *Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights*, 10 June 1998, Art. 27.

The African Commission has put up a practice that can be beneficial in Ukrainian context whereby the other parties carry out communications with the Commission if the victims are unable to file a claim. The Commission's *actio popularis* approach does not require the claimant to have any relationship with the victim. It enables the victims in the region to receive support from the Non-Governmental Organizations and persons far away from their locality.<sup>93</sup>

### Ukraine's' reparation related cases before European Court of Human Rights since the start of the conflict

#### Inter-state cases

Ukraine has lodged six inter-state applications with the Court against Russia, one of which was struck out after Ukraine decided not to pursue the case. Out of these applications, the two cases concern events in Crimea and Eastern Ukraine and are related to alleged violations of the ECHR by Russian Federation and armed groups allegedly controlled by Russia. Here Articles in question are: Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 (right to a fair trial) of the ECHR.<sup>94</sup> The third case concerns the abduction of Ukrainian orphan children and a few adults who were accompanying them.<sup>95</sup> The fourth case is related to detaining and prosecuting Ukrainian citizens on various criminal charges. <sup>96</sup> The last case concerns the naval incident that happened in the Kerch Strait, whereby three Ukrainian vessels and their crews were captured.<sup>97</sup>

#### Individual cases brought before the European Court of Human Rights

Because of ineffectiveness of the national remedies in Ukraine, Crimea and in regions of Donetsk and Luhansk<sup>98</sup>, international mechanisms have increasingly become the venues for obtaining the effective

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<sup>93</sup> REDRESS, *Reaching for Justice: The Right to Reparation in the African Human Rights System*, October 2013, p. 21; and Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Articles 47-48.

<sup>94</sup> *Ukraine v. Russia (re Crimea)*, Application No. 20958/14, 13 March 2014, European Court of Human Rights; and *Ukraine v. Russia (re Eastern Ukraine)*, Application No. 8019/16, European Court of Human Rights.

<sup>95</sup> *Ukraine v. Russia (II)*, Application No. 43800/14, 13 June 2014, European Court of Human Rights.

<sup>96</sup> *Ukraine v. Russia (VII)*, Application No 38334/18, 11 August 2018, European Court of Human Rights.

<sup>97</sup> *Ukraine v. Russia (VIII)*, Application No 55855/18, 29 November 2018, European Court of Human Rights.

<sup>98</sup> Parliamentary Assembly, Council of Europe, Resolution 2133, "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities", 12 October 2016, para. 7; and OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, para. 92.

remedies for victims and their families. Although European Court of Human Rights is dealing with a huge number of pending individual and inter-state applications<sup>99</sup>, the Court may take into account its northern-Cyprus<sup>100</sup> case law in considering the 'exhaustion of domestic remedies' principle.

Since the start of the conflict over 5,000 individual and three inter-state applications related to the events in Crimea and in eastern Ukraine are pending before the European Court of Human Rights.<sup>101</sup> Many applications pertain property loss complaints against Ukraine and Russia.

### **5. Designing a reparation mechanism for Ukraine: Lessons learned for effective domestic reparation programmes.**

Given a considerable amount of pending applications before the European Court of Human Rights, as well as domestic courts, and uncertainties as to when the Courts issue the judgements to be implemented by concerned parties, the other venues should be available for the victims in Ukraine to receive prompt and adequate reparations and remedies. Therefore, it appears to be important for the State of Ukraine to design and implement a domestic reparation programme, specific to the context and needs of Ukraine and persons affected by the conflict there.

Domestic reparations are meant to recognize the obligation of a state, or persons and groups, to repair the effect of violations because it directly perpetrated them, or it did not prevent them. They also convey the message to the victims and society that the state undertakes to address the root causes of committed violations and ensure they do not take place again. Reparations can be executed as a result of litigation or performed through administrative programs. Revealing the truth about the abuses and providing guarantees of non-recurrence is also possible through reparations.<sup>102</sup>

#### *A Programme free of stigma and discrimination*

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<sup>99</sup> European Court of Human Rights, "Ukraine: Press Country Profile", available at: [https://echr.coe.int/documents/CP\\_Ukraine\\_Eng.pdf](https://echr.coe.int/documents/CP_Ukraine_Eng.pdf) [accessed 5 October 2019].

<sup>100</sup> *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, Application. no. 16163/90, 22 April 2008.

<sup>101</sup> Ukraine: Press Country Profile, *supra* note (97).

<sup>102</sup> ICTJ, 'Reparations', available at: <https://www.ictj.org/our-work/transitional-justice-issues/reparations> [accessed 28 September 2019].



The program should be designed in such a way that those directly dealing with the reparation policy ensure that victims do not carry a stigma and seen as “taking advantage” of the conflict, rather perceived as persons who are entitled to reparation due to enduring the harm.<sup>103</sup>

#### *Dignified treatment of victims*

According to 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 and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, victims should be treated with humanity, compassion and respect for their dignity.<sup>104</sup>

#### *Comprehensiveness, inclusivity and complementarity of the Programme*

International law has not fully set out the scope and the extent of the right to domestic reparation for victims of mass atrocities. The Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabián Salvioli notes minimum requirements for domestic programs to fulfil. According to him the Domestic reparation programmes must be adequate, prompt and effective; designed, implemented and assessed through consultation with and the participation of victims, in particular, vulnerable persons, such as women, victims of sexual violence, members of minority groups, persons with disabilities and displaced persons; provide not only with compensation but various forms of reparation; be related to other components of transitional justice, including truth, justice and guarantees of non-recurrence; compensation should be reasonable and proportional, including the criteria of distribution to victims, families and vulnerable persons.<sup>105</sup>

Under these requirements, domestic reparation must be comprehensive, whereby “every victim actually receives the benefits, although not necessarily at the same level or of the same kind”.<sup>106</sup> They should also be complete based on the types of abuses that are chosen for reparation,<sup>107</sup> and composite, in

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<sup>103</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, *supra* note (27), para. 27.

<sup>104</sup> A/RES/60/147, *supra* note (25), para. 10; UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34*, para. 4.

<sup>105</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, *supra* note (27), para. 44; and United Nations publication, ‘Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice,’ (Sales No. 09.XIV.2).

<sup>106</sup> Rule-of-Law Tools for Post-Conflict States: Reparation Programmes, *supra* note (103).

<sup>107</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 14 October 2014, A/69/518, para. 26; and Rule-of-Law Tools for Post-Conflict States: Reparation Programmes, *supra* note (103) p. 19.

terms of the reparation forms.<sup>108</sup> A reparation programme should also be consistent externally, in terms of the relationship between reparation programmes and various transitional justice policies.<sup>109</sup> Potential coexistence and complementarity of domestic reparation and judicial reparation programmes should be taken into account when designing and implementing the programmes.<sup>110</sup> Last but not least important component of the program is munificence that determines how dignifying the benefits are.<sup>111</sup>

### *Ensuring different forms of reparations*

It is to be remembered that providing financial compensation is only one of numerous types of material reparations which victims can benefit from. Other different types comprise of restoring civil and political rights, physical rehabilitation, annulling unfair criminal convictions, and granting access to health care, to land, or education. At times, these benefits are granted to victims' family members, usually to children, recognizing that providing them with a better future is a good way to end the enduring consequences of the violations.<sup>112</sup>

Reparations in the form of symbolic benefits are important to victims as they can be healing, meaningful and the most direct way of ensuring justice. Reparations, however, often the least-finnaced and last-implemented policy of transitional justice.<sup>113</sup>

Not all the victims will have the same needs and the needs can alter as time passes. For example, while relatives of forcibly disappeared may require the same types of material reparations as the other victims do, personal and legal measures specifically designed to repair the consequences of enforced disappearance may be equally beneficial.<sup>114</sup>

The form of reparation required can also differ according to the victim's, gender, identity, age, and economic or social status. Female victims, for instance, experience abuses in notably different ways than male victims, and these experiences are not limited to the various forms of sexual and gender-based violence. Most of the women victims of human rights violations already bear the social and economic burdens of providing for their families except their political roles in societies and being

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<sup>108</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, *supra* note (105), para. 30

<sup>109</sup> Pablo De Greiff (ed.), *The Handbook of Reparations* (Oxford, Oxford University Press, 2006), pp. 10–11.

<sup>110</sup> *Ibid.*, p. 12; and Rule-of-Law Tools for Post-Conflict States: Reparation Programmes, *supra* note (103), p. 35.

<sup>111</sup> *The Handbook of Reparations*, *supra* note (107), p. 12.

<sup>112</sup> International Center for Transitional Justice, '*Reparations*', available at: <https://www.ictj.org/our-work/transitional-justice-issues/reparations> [accessed 27 September 2019].

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

mothers, wives and the widows of the victims. Therefore, reparations mechanisms must take gender aspects into account.<sup>115</sup>

### *The architecture of domestic reparation programmes and registries*

The architecture of domestic reparation programmes is important along with the legal framework that could ease their design and implementation.<sup>116</sup> Although in practice, some programmes have proven to be better than the others, there is no an only determined way to design them.<sup>117</sup>

It is crucial that individual and collective registries of victims are created in order to realistically estimate the victimhood level in States going through transitions. Proper registries also help to project the cost of remedying the beneficiaries of the programme and plan resource allocation. Registries can facilitate the reparation process for victims in urgent need of assistance, through urgent programmes. They are also considered a key measure of satisfaction, acknowledgment, and memory.<sup>118</sup>

Because under-registration is a common challenge and registries cannot cover a whole number of victims in the universe, it is crucial that registration processes allow flexible time frames aiming to reach out to all victims.<sup>119</sup> The process should allow making adjustments over time, such as extending the registration period to ensure all or most victims are registered, as has happened in Chile and Argentina.<sup>120</sup>

There are experiences of Guatemala and Iraq, where notwithstanding clear recommendations by civil society, the government has failed to establish registries.<sup>121</sup> In Peru, for instance, registries were created as part of the Comprehensive Reparations Plan after the design and establishment of domestic reparation programmes.<sup>122</sup>

Counting the number of beneficiaries for reparation is challenging during the conflict with great numbers of internally displaced persons (IDPs) or refugees. In Colombia, for instance, the projected number of

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<sup>115</sup> *Ibid.*

<sup>116</sup> Alexander Segovia, "The reparations proposals of the truth commissions in El Salvador and Haiti: a history of noncompliance", in Pablo De Greiff (ed.), *The Handbook of Reparations*, pp. 154–176, at p. 157.

<sup>117</sup> A/HRC/42/45, *supra* note (27), para. 46.

<sup>118</sup> A/HRC/42/45, *supra* note (27), para. 47.

<sup>119</sup> A/HRC/42/45, *supra* note (27), para. 48.

<sup>120</sup> A/HRC/42/45, *supra* note (27), para. 59.

<sup>121</sup> Procurador de los Derechos Humanos (Guatemala), *Informe de monitoreo realizado a las sedes regionales del Programa Nacional de Resarcimiento*, May 2018, p. 3; and Minority Rights Group International, "Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice", November 2017, p. 26.

<sup>122</sup> *supra* note (27), para. 49.

victims was around 4.5 million in 2012 following the adoption of the Law on Victims and Land Restitution, but the actual number was two times more than the estimate in view of the country's growing IDPs.<sup>123</sup>

Civil society organizations play an important role in creating strong registries. They have relevant information about victimhood and violations, as well as vital links to victims' communities that could help States to establish trust with victims and encourage them to come forward.<sup>124</sup>

In order to have an effective registration process, it is required that the victims are informed about their right to reparation, about registration processes and available programs. Insufficient dissemination of information in El Salvador led to a very small number of registrations.<sup>125</sup>

It is to be ensured, through special measures that those in special vulnerability, such as children, victims of sexual violence, and persons with disabilities, come forward. While undergoing registration, they should not face stigma or further victimization. Illiterate victims are to be provided additional attention.<sup>126</sup>

Special security measures should be deployed for victims to register, especially in countries that still experience conflict or where insecurity and violence is taking place.<sup>127</sup>

In order to ease the registration processes, only essential information on victimhood should be required to fill in the forms. The information should include basic personal information, the facts, violations suffered, confidentiality issues, and supporting documents.<sup>128</sup> Special forms can be developed for collective victims to provide them with collective reparation. These forms would have the facts, name of the community, and the violations suffered.<sup>129</sup> The forms can be accompanied by interviews undertaken by government officers.<sup>130</sup>

### *Eligibility for registration*

Although the purpose of registries is to determine who is eligible for reparation, the object of registering is not to challenge the truthfulness of the victims' claims or the facts they have provided. It is rather to believe in a good faith that the statements they made are true. Therefore, it is important that Ukraine

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<sup>123</sup> Registro Único de Víctimas, available at: [www.unidadvictimas.gov.co](http://www.unidadvictimas.gov.co) [accessed 18 September 2019]; and A/HRC/42/45, *supra* note (27), para. 51.

<sup>124</sup> A/HRC/42/45, *supra* note (27), para. 52.

<sup>125</sup> A/HRC/42/45, *supra* note (27), para. 53.

<sup>126</sup> A/HRC/42/45, *supra* note (27), para. 54.

<sup>127</sup> A/HRC/42/45, *supra* note (27), para. 55.

<sup>128</sup> Ruben Carranza, Cristián Correa and Elena Naughton, "Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations", International Center for Transitional Justice, December 2017, p. 22.

<sup>129</sup> Ruben Carranza, *supra* note (126), p. 33-36.

<sup>130</sup> A/HRC/42/45, *supra* note (27), para. 56.

employs lower standards of evidence and that the burden of proof for the damage is placed on State agencies in Ukraine rather than on victims. In Morocco, for instance, the testimonies of victims were accepted as evidence by the Equity and Reconciliation Commission.<sup>131</sup> Likewise, in Peru, it was not required to provide official papers lost during victims' displacement or documents from registries destroyed in the course of the armed conflict.<sup>132</sup> In Colombia, the law states that authorities should always assume the victims' statements in good faith and that the authorities should confirm harm by any legally acceptable means and outlines the requirements in detail.<sup>133</sup>

However, other governments still place a heavy burden of proof on the victims. In the Philippines, for instance, the requirements to receive reparation included sworn testimonies by two co-detainees or those who personally knew the abuses endured by the victim. As many victims had passed away, it was almost impossible to provide such an evidence. As expected, out of 75,000 reparation claims, only around 11,100 were entitled for compensation.<sup>134</sup>

Thus, the information collected through registration process allows to adjust the content of the programme according to new relevant information that comes to light. This was evident in case of Nepal, where the registration process allowed widows and orphans of the disappeared to obtain benefits.<sup>135</sup>

### *Consultation with and participation of victims*

Updated Set of Principles stipulate that "victims and other sectors of civil society should play a meaningful role in the design and implementation of such programmes", and that victims, especially women and minorities, should participate in consultations on those processes.<sup>136</sup>

To reduce the implementation gap, participation of victims is important and provide legitimacy to domestic reparation programmes.<sup>137</sup> It is crucial to provide respectful and secure environment whereby the victims and other participants are given an opportunity to freely express themselves in relation to design and implementation of reparation programmes.<sup>138</sup> This is particularly important when it comes

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<sup>131</sup> Rule-of-Law Tools for Post-Conflict States: Reparation Programmes, *supra* note (103), p. 18.

<sup>132</sup> Inscripción en el Registro Único de Víctimas, available at: [www.gob.pe/790-inscripcion-en-el-registro-unico-de-victimas](http://www.gob.pe/790-inscripcion-en-el-registro-unico-de-victimas) [accessed 1 October 2019].

<sup>133</sup> Victims and Land Restitution Law of Columbia, 1448/2011, A Mohamad Suma rt. 5.

<sup>134</sup> Commission on Human Rights, 'Statement of the Commission on Human Rights on the End of Operations of the Human Rights Victims' Claims Board', 18 May 2018.

<sup>135</sup> Ruben Carranza, *supra* note (126), p. 59, available at: [https://www.ictj.org/sites/default/files/ICTJ\\_Guide\\_ReparationsForms\\_2017\\_Full.pdf](https://www.ictj.org/sites/default/files/ICTJ_Guide_ReparationsForms_2017_Full.pdf) [accessed 19 September 2019]

<sup>136</sup> UN Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1, principle 32

<sup>137</sup> A/69/518, *supra* note (105), para. 80; and A/HRC/42/45, *supra* note (27), para. 61.

<sup>138</sup> Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice, p. 3

to collective reparation, satisfaction and symbolic reparation.<sup>139</sup> Participation allows victims take part in decision-making process that could affect them.<sup>140</sup> Argentinian reparation program, for example, did not entail consistent participation of victims or consultation with them.<sup>141</sup> In Chile, for example, only the next of kin of disappeared and detained persons were consulted about their preferences to receive a lump sum or a pension.<sup>142</sup>

In Peru, for instance, participation and consultation with victims on the design of national reparation programmes allowed the Truth and Reconciliation Commission to develop recommendations on reparation which were agreed by majority of victims.<sup>143</sup> At the same time, a Working Group on Reparations was created, permitting to hold consultations on collective reparations and coordination work of civil society organizations on reparation issues.<sup>144</sup> However, communities faced difficulties to obtain technical support in order to make decisions about which project to carry out with allocated funding and how to realize implementation requirements.<sup>145</sup>

In some States, consultations did not include all the victims concerned. In Sierra Leone, for instance, because of stigma and discrimination issues, victims of sexual violence did not take part in design of the national reparation programme.<sup>146</sup> Women in Peru were not always invited in consultations on collective reparation.<sup>147</sup>

The process of consultation should not pressurize victims to renounce from, or to select from reparations they are eligible for in accordance to the principle of full reparation.<sup>148</sup>

#### *Institutional security for the domestic reparation programmes in Ukraine*

Despite the importance the domestic reparation programmes should receive, they are usually fragile, depend on political will and are not given a due priority. Victims are perceived as “weak agents”, that makes “their plight largely invisible to decision makers”.<sup>149</sup> For that reason, it is important to support the

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<sup>139</sup> A/69/518, *supra* note (105), para. 34.

<sup>140</sup> A/HRC/42/45, *supra* note (27), para. 62.

<sup>141</sup> A/HRC/42/45, *supra* note (27), para. 64.

<sup>142</sup> Elizabeth Lira, 'Reflections on rehabilitation as a form of reparation in Chile after Pinochet's dictatorship', (International Human Rights Law Review, vol. 5/2016) pp. 194–216.

<sup>143</sup> Julie Guillerot and Lisa Magarrell, *Memorias de un Proceso Inacabado: Reparaciones en la Transición Peruana* (Lima, Asociación Pro Derechos Humanos, International Center for Transitional Justice and Oxfam, 2006), pp. 102–106. <https://www.ictj.org/sites/default/files/ICTJ-Peru-Memory-Process-year-2006-Spanish.pdf>

<sup>144</sup> A/HRC/42/45, *supra* note (27), para. 65.

<sup>145</sup> Cristián Correa, *Reparations in Peru: From Recommendations to Implementation*, (New York, International Center for Transitional Justice, 2013), pp. 12–14.

<sup>146</sup> Kelli Muddell, 'Limitations and opportunities of reparations for women's empowerment', (International Center for Transitional Justice briefing, 2009), 6 July 2011, p. 1.

<sup>147</sup> K. Muddell, 'Limitations and Opportunities of Reparations for Women's Empowerment', ICTJ Briefing, 1 January 2009, p. 2.

<sup>148</sup> A/HRC/42/45, *supra* note (27), para. 72.

<sup>149</sup> A/69/518, *supra* note (105), para. 49.

domestic reparation programs by various laws as, for example, was done by Iraq, Philippines, Peru, Colombia, Guatemala and El Salvador.<sup>150</sup>

Ukraine's domestic laws on reparations should show that the State is committed to provide reparation, acknowledge the responsibility, indicate the abuses eligible for reparation and the time frame when they must have taken place, a definition of victim, the forms and types of reparation, the allocation of funds, the timeline for reparation, the duration of the programme, how to apply for reparation, and manage issues regarding consultation with and participation of victims.<sup>151</sup>

The reparation programme of Ukraine should be coordinated by an institution responsible for its implementation that has necessary political power and economic resources to coordinate activities across the different government agencies that are parties to the reparation system. Chile for example, established the National Corporation for Reparations and Reconciliation responsible for implementation of various laws on reparation adopted over time. Argentina, for instance, has not established specific entity to implement reparation programmes. However, the secretary on human rights in the state is tasked for implementing the legislations that regulate reparations in Argentina. Unfortunately, the Victims' Unit in Columbia is placed below the ministries and therefore, lacks political authority to coordinate the reparation program effectively.<sup>152</sup>

It is crucial that such institutions are present in the territories where victims live, and where the conflict happened, to facilitate the participation of the victims in the process of reparation and help them access the benefits. Victims who live in exile as well as refugees should also have access to such Institutions with the help of, for example, diplomatic missions.<sup>153</sup>

### *Financial resources*

In order to fulfil the right to reparation, it is important that the States allocate financial resources and provide benefits as per the realistic estimates and number of victims. In practice, some States choose to establish a reparation fund which can take a form of a one-time contribution or could be divided into several instalments as required. In Colombia, the fund was to comprise of assets provided by paramilitary groups, resource allocations from the State budget and any domestic or international

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<sup>150</sup> A/HRC/42/45, *supra* note (27), paras. 74-77.

<sup>151</sup> A/HRC/42/45, *supra* note (27), para. 78.

<sup>152</sup> A/HRC/42/45, *supra* note (27), para. 79-82; Law No. 19.123 of 8 February 1992.

<sup>153</sup> A/HRC/42/45, *supra* note (27), para. 83.

donations including by individuals at supermarkets and cash machines, fines acquired by the State from the individuals or members of armed groups obtained during administrative or judicial processes.<sup>154</sup> Likewise, in Ukraine, the funds can be allocated out of state budget, contributions from armed groups, donations from international community and organization<sup>155</sup>, individuals as well business actors. Russian government is to provide its share to the reparation program. The other potential donors can be United Nations Peacebuilding Fund<sup>156</sup>, the United Nations multi-partner trust fund<sup>157</sup> and the United Nations Entity for Gender Equality and the Empowerment of Women<sup>158</sup>, the International Organization for Migration<sup>159</sup> and some of the western Governments who have been active in providing financial support in the past.<sup>160</sup> As noted in Guidance note of the Secretary-General: 'where political will exists but capacity is lacking, external actors have a role to play including through assistance for the design of reparations programmes and their implementation based on best practices from other contexts'.<sup>161</sup> However, due to the high risk for obtaining enough external funding, Ukrainian government should not depend on them and instead, try to find internal sources of financing.

In the Philippines, as per decision of the Human Rights Victims' Claims Board, reparation to victims of the Ferdinand Marcos's regime was funded from Marcos's wealth.<sup>162</sup> Revolutionary Armed Forces of Colombia-People's Army (FARC) in Colombia agreed to make contribution towards reparation which was documented in the peace agreement of 2016 signed between FARC and Government of Colombia.<sup>163</sup>

Although received fixed amounts may not allow the funds allocated for reparation be adjusted to unforeseen situations, they provide independence to the agencies that manage the finances and accrue interest as time passes.<sup>164</sup>

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<sup>154</sup> A/HRC/42/45, *supra* note (27), paras. 84-86.

<sup>155</sup> Luke Moffett, *Beyond attribution: responsibility of armed non-State actors for reparations in Northern Ireland, Colombia and Uganda*, N. Gal-Or, C. Ryngaert and M. Noortmann, *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings*, Brill, 2015, pp. 323–346.

<sup>156</sup> United Nations Peacebuilding Fund, available at: <http://www.unpbf.org/> [accessed 19 September 2019].

<sup>157</sup> United Nations multi-partner trust fund, available at: <http://mptf.undp.org/> [accessed 19 September 2019].

<sup>158</sup> UN Women, available at: <https://www.unwomen.org/en> [accessed 19 September 2019]

<sup>159</sup> International Organization for Migration, available at: <https://www.iom.int/> [accessed 19 September 2019]

<sup>160</sup> A/HRC/42/45, *supra* note (27), para. 94.

<sup>161</sup> Guidance note of the Secretary-General, *Reparations for conflict-related sexual violence*, United Nations, June 2014, point 5.

<sup>162</sup> A/HRC/42/45, *supra* note (27), para. 95.

<sup>163</sup> Final Agreement to end the Armed Conflict and build stable and lasting Peace, points 5.1.3– 5.1.4., available at: <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [accessed 19 September 2019].

<sup>164</sup> A/HRC/42/45, *supra* note (27), para. 88; and Susanne Sehlbach, *Funding of the programme*, Günter Saathoff et al. (eds.), *The German Compensation Programme for Forced Labour: Practice and Experiences* (Stiftung Erinnerung Verantwortung und Zukunft, 2017), pp. 27–39.



In Sierra Leone, allocations from the Government to the reparation fund were minimal and most of the contributions came from the United Nations Peacebuilding Fund and to some extent, from international cooperation.<sup>165</sup>

The reparation program can also be included into national budget. However, it should be ensured that the budget is received in full and in time by the program as per the established regulations.<sup>166</sup>

Government can also compensate in bonds which can be exchanged at a later stage as it was done in Argentina. However, payment of bonds in Argentina was ceased during economic crisis and was later changed to a depreciated currency.<sup>167</sup>

The Experience shows that national reparation policies were severely underfunded which negatively effects reparations provision. In Colombia, out of total number of registered victims only 10% obtained compensation. Similar was the case in Guatemala and Sierra Leone.<sup>168</sup>

#### *Rehabilitation and education as the forms of reparation which are not to be ignored*

It is important that the reparation programs provide comprehensive reparation packages instead of only some reparation form which cannot be considered 'adequate, effective, prompt'<sup>169</sup>.

For example, States face challenges when it comes to providing rehabilitation, especially in times when the conflict is ongoing and needed resources are not available to provide rehabilitation services. However, it should be noted that rehabilitation is a crucial component of reparation because it provides psychological and medical care as well as social and legal services<sup>170</sup> to victims and communities, enables victims to rebuild their lives, obtain new opportunities, contributes to non-recurrence and to realization of their rights to truth and justice.<sup>171</sup> Rehabilitation can be included into domestic reparation policies as a form of reparation as was the case in Colombia, Chile, Guatemala and El Salvador.<sup>172</sup>

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<sup>165</sup> Mohamad Suma and Cristián Correa, Report and Proposals for the Implementation of Reparations in Sierra Leone, ICTJ 2009, pp. 1 and 14.

<sup>166</sup> Guatemalan National Compensation Programme has never received the full amount and its funds have decreased over time. See A/HRC/42/45, *supra* note (27), para. 90; and Informe del Procurador de los Derechos Humanos de Guatemala Al Comité de Naciones Unidas para la eliminación de la Discriminación Racial, (session 98/2019), p. 21. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT\\_CERD\\_IFN\\_GTM\\_34504\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_IFN_GTM_34504_S.pdf)

<sup>167</sup> Guembe, José María. "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience." In *The Handbook of Reparations*, by Greiff, Pablo de, ed., pp. 13 and 21; and A/HRC/42/45, para. 91. Available at: <https://0-www-oxfordscholarship-com.serlib0.essex.ac.uk/view/10.1093/0199291926.001.0001/acprof-9780199291922-chapter-2?print=pdf> [accessed 1 October 2019].

<sup>168</sup> A/HRC/42/45, *supra* note (27), paras. 92-94.

<sup>169</sup> A/RES/60/147, *supra* note (25), para. 2 (c).

<sup>170</sup> A/RES/60/147, *supra* note (27), para. 21; and J Bueno de Mesquita, G Sander and P Hunt, 'Rehabilitation and the right to health in times of transition', *International Human Rights Law Review*, 5/2016, pp. 169–193.

<sup>171</sup> REDRESS, *Rehabilitation As A Form of Reparation Under International Law*, December 2009.

<sup>172</sup> A/HRC/42/45, *supra* note (27), para. 99.

Chilean Programme for Reparation and Comprehensive Health Care has a good practice that provides psychosocial and medical services to children, parents, partners and grandchildren of victims of torture and execution, enforced disappearance, persons who lost their jobs for political reasons, and individuals who have provided assistance for more than ten years to victims of the dictatorship. Yet, the Chilean Reparation Programme fails to adequately cover victims in exile or those who reside abroad because of the harm suffered.<sup>173</sup>

Although there are considerable limitations in Colombian Programme of Psychosocial Assistance and Comprehensive Health Care for Victims, different forms of rehabilitation such as collective rehabilitation called “interweaving” has been somewhat successfully used. It works towards reconciliation by empowering victims and helps to reconstruct social fabric. Here, community leaders play the role of interweavers and are recognized across the community for contributing to collective health, re-establishing emotional bonds and trust between community members. Being trained by the Victims’ Unit, they are tasked for collective mourning, respecting the differences within communities, group reflections, preserving old social traditions of victims, and transforming localities where the abuses happened.<sup>174</sup>

It should be noted that restoring the dignity of the victim includes acknowledging the violations to be addressed through justice and truth seeking and as well as satisfying the victims’ social, physical and psychological needs via various services and measures.<sup>175</sup>

Education is another form of reparation that can provide recognition, inclusion and empowerment.<sup>176</sup>

The Chilean rehabilitation policy provided full scholarships for schooling and technical training for the children of disappeared or killed. Because many torture survivors were older, the State Law 19.992 allowed to use benefits for pursuing undergraduate studies for one child or a grandchild.<sup>177</sup>

As the conflict demolishes education infrastructure, Ukraine should consider constructing schools in areas devastated by it, ensure free access to quality primary education and provide other education

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<sup>173</sup> *García Lucero and others v. Chile*, Inter-American Court of Human Rights, judgment of 28 August. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_267\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_267_ing.pdf)

<sup>174</sup> A/HRC/42/45, *supra* note (27), para. 101; and Informe Del Sistema Nacional De Atención Y Reparación Integral A Las Víctimas A Las Comisiones Primeras De Senado Y Cámara, p. 76 available at: [https://www.unidadvictimas.gov.co/sites/default/files/documentos\\_biblioteca/Informe%20al%20Congreso%20Final.pdf](https://www.unidadvictimas.gov.co/sites/default/files/documentos_biblioteca/Informe%20al%20Congreso%20Final.pdf) [accessed 20 September 2019]

<sup>175</sup> REDRESS, *What is reparation? Challenges and avenues to reparation for survivors of sexual violence*, February 2013, p. 1.

<sup>176</sup> R. Duthie and C. Ramírez-Barat, ‘Education as rehabilitation for human rights violations’, *International Human Rights Law Review*, 5/ 2 (2016), pp. 241–273.

<sup>177</sup> A/HRC/42/45, *supra* note (27), para. 104.

benefits such as monthly stipend and cover home expenditures so that kids can concentrate on studies.<sup>178</sup>

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence notes that ‘the lack of effective provision of rehabilitation measures for vulnerable victims constitutes inhuman treatment and generates new victimization’.<sup>179</sup>

#### *Reparation for victims in vulnerable situations*

Reparation programmes in Ukraine should recognize that the harm caused by the conflict and its consequences are not same for all the victims. Although such programmes are not able to provide reparation as per the damage experienced by each victim, the measures to be taken to adequately cover persons most in need, including children, victims of sexual violence and children born out of rape<sup>180</sup>, refugees and migrants<sup>181</sup>, internally displaced persons<sup>182</sup>, persons with disabilities, the elderly, and members lesbian, gay, transgender and intersex people’s community.<sup>183</sup>

As part of interim measures in East Timor, the Commission for Reception, Truth and Reconciliation distributed \$200 to approximately 700 victims.<sup>184</sup> Nepal’s Interim Relief and Rehabilitation Programme provided a prompt assistance that included medical treatment or one-time cash payments, or scholarships for victims.<sup>185</sup> However, victims of sexual violence and torture were excluded from the Programme and the State did not establish a specific reparation programme.<sup>186</sup>

Ukraine can also employ collective reparation for vulnerable victims. There are experiences of countries such as Moroccan program that included the most deprived regions where victims who had experienced serious human rights violations had gotten access to income-generating activities, basic social services and assisted with memorialization. However, it should be noted that ‘collective reparation cannot be a substitute for individual reparation’.<sup>187</sup>

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<sup>178</sup> A/HRC/42/45, *supra* note (27), para. 106.

<sup>179</sup> A/HRC/42/45, *supra* note (27), para. 107.

<sup>180</sup> A/HRC/42/45, *supra* note (27), para. 114.

<sup>181</sup> A/HRC/42/45, *supra* note (27), para. 111.

<sup>182</sup> A/HRC/42/45, *supra* note (27), para. 112.

<sup>183</sup> A/HRC/42/45, *supra* note (27), para.108.

<sup>184</sup> Ruben Carranza, ‘*The right to reparations in situations of poverty*’, International Center for Transitional Justice briefing, September 2009, p. 1.

<sup>185</sup> International Organization for Migration, ‘*Report on mapping exercise and preliminary gap analysis of the interim relief and rehabilitation programme*’, December 2010, p. iii.

<sup>186</sup> A/HRC/42/45, *supra* note (27), para.109.

<sup>187</sup> A/HRC/42/45, *supra* note (27), para. 110.

To the extent possible, domestic reparation programmes in Ukraine must involve non-state actors/armed groups and Russian Federation in the process of design and implementation of the programmes. Although such an involvement is almost impossible in the midst of the conflict when there is no a final peace agreement between the conflicting parties, this may serve one step forward to the commencement of the peace process and negotiations. As it is important to obtain the reparations from all the parties, the State must try to do everything possible including ensuring participation of the parties because of an urgent need to remedy the victims and the persons most in need.

## **6. Conclusion and recommendations**

The present thesis has discussed human rights abuses committed allegedly by the armed groups and state actors, particularly in eastern part of Ukraine from 2014 onwards. It has mentioned the violations of international human rights law and international humanitarian law committed by the parties and the consequences of such violations for the country.

It has analysed the right to reparations and remedies in accordance with international human rights law and the international humanitarian law, which the State of Ukraine and the non-state actors including Russian Federation have to be guided by when developing domestic reparation programmes. The forms of reparation indicated in this thesis have to be taken into account in order to provide a reparation package according to the needs of conflict-affected individuals in Ukraine.

Ukraine as well as Russia are bound by the international treaties and have the obligations to ensure a right to remedies and reparations to the affected individuals. Despite its derogations under European Convention of Human Rights and International Covenant on Civil and Political Rights, Ukraine has a positive obligation to protect the human rights of persons from the conduct of the state and the third parties, and provide remedies and reparations to the persons residing in the territories controlled by armed groups.

In-depth investigation of human rights abuses is required and be carried out by domestic as well as international courts in Ukraine. Because the conflict related applications are pending before national

courts in Ukraine, as well as at the European Court of Human Rights, the other venues such as creation of a temporary judicial bodies such as the Specialist Chambers of Kosovo which does not require approval of Russia at the UN Security Council, can be established in Ukraine to investigate heinous international crimes.

Another venue is International Criminal Court, the jurisdiction of which over alleged crimes committed in its territory, was accepted by the State of Ukraine. However, this mechanism does not seem to be promising as the preliminary examinations into the serious crimes have been ongoing since 2014 and the results have not been produced until today.<sup>188</sup>

Non-state actors (armed groups) are responsible for human rights violations in Ukraine and are bound by international humanitarian law. They have to be brought to justice before domestic and international courts and at least some forms of reparations, have to be obtained from them.

The Ukraine' domestic courts need to reconsider their processes of reviewing the cases in order to provide the victims and the conflict-affected individuals with prompt access to justice and remedies.

It is important that the European Court of Human Rights accelerate reviewing the cases and issuing the decisions in order to recommend the States of Ukraine and Russia to provide reparations to conflict affected persons without further delay. Such long processes can further traumatize the victims. From one hand, the Court should use its rich jurisprudence to effectively process the Ukraine reparation related applications, from another, consider the specificities of the political and social situation in Ukraine. It can also take into account the jurisprudence of other regional Courts that have developed meaningful and valuable practices of processing such applications.

Ukraine together with all parties to the conflict have to design and implement a domestic reparation program whereby the needs of victims are communicated through holding consultations with them. The experiences of the other countries need to be considered in order to learn from those experiences and apply the most successful ones while designing and realizing such policies.

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<sup>188</sup> Human Rights Watch Report, *supra* note (16).

The following elements of the domestic reparation program need to be included to ensure the provision of comprehensive, effective and adequate reparations to the conflict-affected persons:

The programme need to be free of stigma and discrimination, focused on dignified treatment of victims, be comprehensive, inclusive and have complementarity nature, ensure different forms of reparations, ensure reparation for victims in vulnerable situations are prioritized, develop registries to keep the records of the victims, employ lower standards of eligibility criteria, ensure consultation with and participation of victims, consider providing collective reparations, be institutionally secure and include rehabilitation and education as the forms of reparation which are not often seen as urgent needs of the victims and their families.

Furthermore, participation of the armed groups and Russia in designing and implementing domestic reparation program may ensure that the concerned parties contribute to provision of reparations and remedies to the victims of international human rights law and international humanitarian law.

## **7. Bibliography**

### Domestic Laws:

- *Ukraine: Law No. 2341-III, Criminal Code of Ukraine*, 1 September 2001.
- Ukraine: Law on combatting terrorism, (VVR (VVR), 2003, N 25, st.180).
- *Ukraine: Code of Civil Defence of Ukraine*, 21 November 2012, № 34-35, ст.458.
- Verkhovna Rada of Ukraine (Parliament), "The Civil Code of Ukraine", 1 January 2004.
- "The Action Plan on the Implementation of the National Strategy on Human Rights for the Period until 2020," Annex to the Order No. 1393-r of the Cabinet of Ministers of Ukraine of November 23, 2015.
- "National Human Rights Strategy", approved by the Decree of the President of Ukraine No. 501/2015.
- Notification - JJ7979C Tr./005-185 - Ukraine - Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Strasbourg, 10 June 2015.

- Draft Law 'On amendments to the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' concerning compensation for damaged property', No. 2167, of 18 February 2015.
- Draft Law 'On amendments to the Law of Ukraine 'On combating terrorism' concerning compensation for damage to property inflicted in the course of ATO', No. 3434, of 9 November 2015; and OHCHR Report, 3 March 2016.
- Victims and Land Restitution Law of Columbia, 1448/2011.

Case law:

- *Aslakhanova and others v. Russia*, Applications No. 2944/06, 8300/07, 50184/07, 332/08, 42509/10), judgment of 18 December 2012, European Court of Human Rights.
- *Broniowski v. Poland*, Application No. 31443/96), judgment of 22 June 2004.
- *Case Concerning the Factory at Chorzów* (Germany v. Poland) (Merits), PCIJ, Series A No. 17.
- *Case Concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Rwanda), International Court of Justice (ICJ), 18 September 2002. *Prosecutor v. Sam Hinga Norman - Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)*, Case No.SCSL-2004-14-AR72(E), Special Court for Sierra Leone, 31 May 2004.
- *Case of Georgia v Russia (I)*, Grand Chamber, (Application no. 13255/07) (just satisfaction), Judgment, Council of Europe: European Court of Human Rights, 31 January 2019.
- *Chiragov and Others v. Armenia*, Application no. 13216/05, Council of Europe: European Court of Human Rights, 16 June 2015.
- *Case of the Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Inter-American Court of Human Rights, judgment of 20 November 2013 (preliminary objections, merits, reparations and costs).
- *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* , Application. no. 16163/90, 22 April 2008.
- *García Lucero and others v. Chile*, Inter-American Court of Human Rights, judgment of 28 August.

- *Ilascu and Others v. Moldova and Russia* [GC], Appl. no. 48787/99, judgment of 8 July 2004 [Ilascu].
- *Kerimova and Others v. Russia*, Application Nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, European Court of Human Rights, May 3, 2011.
- *Lisnyy and Others v. Ukraine and Russia*, Application Nos. 5355/15, 44913/15 and 50853/15, European Court of Human Rights, July 28, 2016.
- *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused) (Trial judgment)*, Case No. SCSL-04-15-T, Special Court for Sierra Leone, 2 March 2009
- *Prosecutor v. Haradinaj et al. (Trial Judgment)*, IT-04-84-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 April 2008.
- *Ukraine v. Russia (re Crimea)*, Application No. 20958/14, 13 March 2014, European Court of Human Rights.
- *Ukraine v. Russia (re Eastern Ukraine)*, Application No. 8019/16, European Court of Human Rights.
- *Ukraine v. Russia (II)*, Application No. 43800/14, 13 June 2014, European Court of Human Rights.
- *Ukraine v. Russia (VII)*, Application No 38334/18, 11 August 2018, European Court of Human Rights.
- *Ukraine v. Russia (VIII)*, Application No 55855/18, 29 November 2018, European Court of Human Rights.
- *The Massacres of El Mozote and nearby places v. El Salvador*, Inter-American Court of Human Rights (IACrHR), 25 October 2012.
- *The case of Papamichalopoulos and Others v. Greece*, [14556/89](#), Council of Europe: European Court of Human Rights, 31 October 1995.

International and regional legal framework and documents:

- UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).
- UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999.



- UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660.
- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465.
- UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.
- International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907.
- International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3.
- UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6.
- UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearances*, 20 December 2006.
- Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.
- International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules.
- UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34.
- UN 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 / adopted by the General Assembly*, 21 March 2006, A/RES/60/147.
- UN Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1.

- Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
- Parliamentary Assembly, Council of Europe, Resolution 2133, "*Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities*", 12 October 2016.
- Organization of African Unity (OAU), *Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights*, 10 June 1998.
- Parliamentary Assembly, Council of Europe, Resolution 2133, "*Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities*", 12 October 2016.
- Notification - JJ7979C Tr./005-185 - Ukraine - Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Strasbourg, 10 June 2015.
- Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9.
- UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17.
- Guidance note of the Secretary-General, "*Reparations for conflict-related sexual violence*", United Nations, June 2014.
- UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34.
- Pablo De Greiff (ed.), *The Handbook of Reparations* (Oxford, Oxford University Press, 2006).

Reports and statements:

- OHCHR Reports on Human Rights Situation in Ukraine, available at: <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAREports.aspx> [accessed 8 October 2019].

- Human Rights Watch, *'Ukraine Events of 2018 : Crimea'*, available at: <https://www.hrw.org/world-report/2019/country-chapters/ukraine> [accessed 29 September 2019].
- European Parliament, *'Human rights in Ukraine and the EU response, including relevant activities of the European Parliament'*, January 2018- PE 603.834.
- UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 11 July 2019, A/HRC/42/45.
- UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 14 October 2014, A/69/518.
- UN Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity*, 8 February 2005, E/CN.4/2005/102/Add.1.
- Commission on Human Rights, *'Statement of the Commission on Human Rights on the End of Operations of the Human Rights Victims' Claims Board'*, 18 May 2018.

Articles:

- Antsupova Tetyana, *"Post-Conflict Reparation: Ukrainian Restitution Remedies for Property and Restitution Complaints before the European Court of Human Rights"* Kyiv-Mohyla Law and Politics Journal 2 (2016): 217–226.
- Berkes Antal, *"International legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities"*, International Conference on post-Conflict Justice, Kiev, Ukraine 26–27 May 2017.
- Buyse Antoine, *"Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law,"* Heidelberg Journal of International Law 2008.
- Cooper and Gorbunova, *Crimea: 'Not Our Home Anymore'*, HRW, May 3, 2017.
- Correa Cristián, *'Reparations in Peru: From Recommendations to Implementation'*, (New York, International Center for Transitional Justice, 2013).
- Carranza Ruben, *'The right to reparations in situations of poverty'*, International Center for Transitional Justice briefing, September 2009.

- De Mesquita J. Bueno, Sander G. and Hunt P., '*Rehabilitation and the right to health in times of transition*', International Human Rights Law Review, 5/2016.
- Duthie R. and Ramírez-Barat C., '*Education as rehabilitation for human rights violations*', International Human Rights Law Review, 5/ 2 (2016).
- Guillerot Julie and Magarrell Lisa, *Memorias de un Proceso Inacabado: Reparaciones en la Transición Peruana* (Lima, Asociación Pro Derechos Humanos, International Center for Transitional Justice and Oxfam, 2006).
- José María Guembe, "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience." In *The Handbook of Reparations*, by Greiff, Pablo de, ed., pp. 13 and 21; and A/HRC/42/45.
- Kleffner Jann K., "The applicability of international humanitarian law to organized armed groups", 93/882, 443 International Review of the Red Cross.
- Lira Elizabeth, 'Reflections on rehabilitation as a form of reparation in Chile after Pinochet's dictatorship', (International Human Rights Law Review, vol. 5/2016).
- Moffett Luke, "*Beyond attribution: responsibility of armed non-State actors for reparations in Northern Ireland, Colombia and Uganda*", N. Gal-Or, C. Ryngaert and M. Noortmann, "*Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings*", Brill, 2015, pp. 323–346.
- Muddell Kelli, 'Limitations and opportunities of reparations for women's empowerment', (International Center for Transitional Justice briefing, 2009), 6 July 2011.
- Ruben Carranza, Cristián Correa and Elena Naughton, "*Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations*", International Center for Transitional Justice, December 2017.
- Sandoval Clara, "*Two steps forward, one step back: reflections on the jurisprudential turn of the Inter-American Court of Human Rights on domestic reparation programmes*", Research Repository, School of Law/Human Rights Centre, University of Essex, UK.
- Sehlbach Susanne, "*Funding of the programme*", Günter Saathoff et al. (eds.), *The German Compensation Programme for Forced Labour: Practice and Experiences* (Stiftung Erinnerung Verantwortung und Zukunft, 2017).

- Suma Mohamad and Correa Cristián, Report and Proposals for the Implementation of Reparations in Sierra Leone, ICTJ 2009, pp. 1 and 14.
- Amnesty International, *Truth, Justice and Reparation: Establishing an Effective Truth Commission*, 11 June 2007, POL 30/009/2007.
- Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETS 9.
- Council of Europe, “Solving property issues of refugees and displaced persons”, Parliamentary Assembly (PA) Resolution 1708 (2010) Persons.”
- Minority Rights Group International, “*Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice*”, November 2017.
- Norwegian Refugee Council, Report: “*Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in eastern Ukraine: Gaps and opportunities*”, March-October 2018.
- Norwegian Refugee Council, “*People in eastern Ukraine: without housing and compensation*”, Briefing Note, July 2019.
- REDRESS, “*Rehabilitation As A Form of Reparation Under International Law*”, December 2009.
- REDRESS, “*What is reparation? Challenges and avenues to reparation for survivors of sexual violence*”, February 2013.
- REDRESS, *Reaching for Justice: The Right to Reparation in the African Human Rights System*, October 2013.
- Procurador de los Derechos Humanos (Guatemala), *Informe de monitoreo realizado a las sedes regionales del Programa Nacional de Resarcimiento*, May 2018.
- UN Office of the High Commissioner for Human Rights (OHCHR), *Rule of Law Tools for Post-Conflict States: Reparations Programmes*, 2008, HR/PUB/08/1.
- United Nations publication, ‘Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice;’ (Sales No. 09.XIV.2).

Websites and press:

- European Court of Human Rights, "Ukraine: Press Country Profile", available at: [https://echr.coe.int/documents/CP\\_Ukraine\\_Eng.pdf](https://echr.coe.int/documents/CP_Ukraine_Eng.pdf) [accessed 5 October 2019].
- The Specialist Chambers and Specialist Prosecutor's Office, available at: <https://www.scp-ks.org/en/background> [accessed 7 October 2019]
- OHCHR, "UN report details grave human rights violations in Russian-occupied Crimea", 25 September 2017, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22140> [accessed 6 October 2019].
- United Nations Peacebuilding Fund, available at: <http://www.unpbf.org/> [accessed 19 September 2019].
- United Nations multi-partner trust fund, available at: <http://mptf.undp.org/> [accessed 19 September 2019].
- UN Women, available at: <https://www.unwomen.org/en> [accessed 19 September 2019].
- International Organization for Migration, available at: <https://www.iom.int/> [accessed 19 September 2019]
- Final Agreement to end the Armed Conflict and build stable and lasting Peace, points 5.1.3–5.1.4., available at: <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [accessed 19 September 2019].
- Informe Del Sistema Nacional De Atención Y Reparación Integral A Las Víctimas A Las Comisiones Primeras De Senado Y Cámara, p. 76 available at: [https://www.unidadvictimas.gov.co/sites/default/files/documentos\\_biblioteca/Informe%20al%20Congreso%20Final.pdf](https://www.unidadvictimas.gov.co/sites/default/files/documentos_biblioteca/Informe%20al%20Congreso%20Final.pdf) [accessed 20 September 2019].
- International Criminal Court, 'cases', available at: <https://www.icc-cpi.int/cases> [accessed 8 October 2019].
- International Committee of the Red Cross, "Treaties, States Parties and Commentaries: Ukraine", available at: [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=U](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=U)
- Registro Único de Víctimas, available at: [www.unidadvictimas.gov.co](http://www.unidadvictimas.gov.co) [accessed 18 September 2019].

- Inscripción en el Registro Único de Víctimas, available at: [www.gob.pe/790-inscripcion-en-el-registro-unico-de-victimas](http://www.gob.pe/790-inscripcion-en-el-registro-unico-de-victimas) [accessed 1 October 2019].