

Contents

<i>Acknowledgements</i>	page ix
<i>Table of cases</i>	xi
<i>Table of treaties</i>	xvii
<i>List of abbreviations</i>	xix
1 Introduction	1
1.1 Introduction and context	1
1.2 Aim and objectives of the study	7
1.3 Structure and outline	10
1.4 Definition of key concepts	13
Part I Responsibility and legal standards	15
2 State responsibility, the legal order and the development of legal norms for victims	17
2.1 Introduction	17
2.2 Recognition of human rights in customary law	18
2.3 Recognition in general international law of individuals as beneficiaries of reparations	28
2.4 Reparation in international humanitarian law	31
2.5 Reparation in international human rights law	33
2.6 Reparation provisions in regional human rights instruments	35
2.7 Basic principles on the right to reparation for victims	36
2.8 A customary right to reparation?	39
2.9 Conclusions	42

3	Human rights jurisprudence on reparations, international and regional	44
3.1	Introduction	44
3.2	The international human rights treaty body system	45
3.3	The European system for human rights protection	57
3.4	The Inter-American system for human rights protection	66
3.5	The African system for human rights protection	76
3.6	Conclusions	82
4	Reparations in international criminal law	86
4.1	Introduction	86
4.2	Origins of reparation provisions in international criminal law	87
4.3	Reparations and the ad hoc international tribunals	89
4.4	Reparations in the Rome Statute of the International Criminal Court	99
4.5	International Criminal Court Trust Fund for Victims	105
4.6	Steps backwards? The Special Panels for Serious Crimes in East Timor, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia	110
4.7	Contributing factors to the shift in the focus on victims' rights within international criminal law	117
4.8	Conclusions	122
5	Conclusions Part I – legal state of play: convergence of international law and reparation as an individual legal right with customary recognition	125
	Part II Transferring standards into reality	129
6	The role of the UN and the promotion of victims' rights and reparations in practice	131
6.1	Introduction to transitional justice mechanisms and truth commissions	131
6.2	The United Nations Compensation Commission	139
6.3	Compensation in Darfur?	144

7	Case study: reparations in Guatemala	146
7.1	Introduction	146
7.2	Brief historical background	147
7.3	Peace negotiations	148
7.4	Establishment and mandate of the Truth Commission	149
7.5	Operational aspects of the Historical Clarification Commission	151
7.6	The Final Report of the Historical Clarification Commission	152
7.7	Follow-up and implementation of the recommendations regarding reparations	155
7.8	Conclusions	161
8	Case study: reparations in Sierra Leone	164
8.1	Introduction	164
8.2	Brief historical background	165
8.3	Lomé Peace Agreement	166
8.4	The Truth and Reconciliation Commission Act of 2000	169
8.5	Operational aspects of the Truth and Reconciliation Commission	172
8.6	The relationship between the Truth Commission and the Special Court	174
8.7	The Final Report of the Truth Commission and its Recommendations	176
8.8	Follow-up and implementation of the recommendations regarding reparations	180
8.9	Conclusions	183
9	Case study: reparations in East Timor	185
9.1	Introduction	185
9.2	Brief historical background	186
9.3	Prosecutions and the Truth Commission	188
9.4	Establishment of the Commission for Reception, Truth and Reconciliation	189
9.5	Operational aspects of the Commission for Reception, Truth and Reconciliation	191
9.6	The Final Report of the Truth Commission and its Recommendations	195

9.7	Follow-up and implementation of the recommendations regarding reparations	198
9.8	Conclusions	201
10	Case study: reparations in Colombia	203
10.1	Introduction	203
10.2	Brief historical background	204
10.3	Negotiations with the paramilitaries	207
10.4	The 'Alternative Justice' bill	210
10.5	Law 975 of 2005: La Ley de Justicia y Paz	211
10.6	Reparations in Law 975 of 2005	213
10.7	National Commission on Reparations and Reconciliation	215
10.8	Administrative reparations programme	217
10.9	The Law on Victims' Right to Comprehensive Reparation and Land Restitution: Law 1448	219
10.10	Conclusions	220
11	Conclusions Part II – reparations in practice: comparative analysis of practice, lessons learnt and future challenges	223
12	Final remarks: the right to reparation and implementation of the legal norm: emerging convergence of law and practice?	231
	<i>Bibliography</i>	239
	<i>Index</i>	265