



Reparative Justice and State Responsibility: Reactualizing the Due Diligence Principle in Ensuring Civil Remedies for Human Rights Violations

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Abstract

The right to civil redress is a central pillar of reparative justice for victims of human rights violations. Although international legal instruments, such as the United Nations Basic Principles on the Right to Remedies and Reparation, affirm states' obligation to guarantee this right, many have failed to establish mechanisms that are effective and accessible to victims. This article conceptualizes the principle of due diligence as a binding international legal standard that obliges states to prevent and respond to human rights violations and ensure the availability of accessible and enforceable civil restitution. Employing a normative legal method and a comparative case study of Argentina, Germany, and Indonesia, the analysis demonstrates that civil restitution remains the most fragile dimension of state accountability frameworks, with reparations frequently regarded as discretionary policies rather than legal mandates. To address this gap, this study advances a set of normative indicators for assessing states' compliance with their reparation obligations. The findings highlight the imperative of embedding the principle of due diligence within national legal systems as a concrete legal obligation, thereby advancing victim-centered justice.

Keywords: Due Diligence, Civil Recovery, State Responsibility, Human Rights Reparations, Victim-Based Justice.

Introduction

Recovery for victims of human rights violations is an important pillar of the international human rights protection system (Alizadeh, 2011; Bassiouni, 2006; Darrow & Arbour, 2016; Hearty, 2018). One form of recovery that is often overlooked is civil recovery in the form of compensation, restitution, or rehabilitation for victims (Adhikari & Hansen, 2013; Mangoli & Devarmani, 2017; Martin & Fowle, 2020; "Study on the Protection of Victims in Criminal Recovery of Reparations," 2023). In official United Nations documents, such as The Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005), it is emphasized that states have an obligation to ensure victims' access to effective recovery mechanisms (Desmet, 2008; Laplante, 2013). However, data from the Transitional Justice Working Group (2023) report show that over 70% of victims of serious human rights violations in various countries have never received adequate compensation through civil channels, including in states that have signed international human rights agreements. This phenomenon highlights a serious gap between international legal norms and their implementation within national legal systems.

Furthermore, the lack of civil remedies has a systemic impact on victims' trust in the state and the justice system (Gillis et al., 2006; Laxminarayan, 2015). Without access to effective civil remedies,

victims not only lose their material rights but also lose legal recognition of the suffering they have endured. In this context, recovery is not merely a financial issue but also a matter of legitimacy, reconciliation, and transitional justice. The state's guarantee of civil remedies is therefore not an act of charity but the fulfillment of a legally binding international obligation.

The urgency of this research lies in the fact that, despite numerous international regulations and agreements on human rights, civil recovery remains the weakest aspect in practice. States tend to focus on criminal law enforcement or the prosecution of perpetrators, while victims' rights to adequate reparations are sidelined. This problem is exacerbated by the absence of a clear operational framework in many countries to integrate the principle of due diligence as a guiding standard in providing civil redress. As a result, victims are often trapped in legal procedures that are complex, costly, and administratively burdensome. This situation renders their right to redress a mere illusion.

Although the principle of due diligence has been frequently examined in the context of preventing and enforcing human rights standards, studies that specifically place this principle as an evaluative framework for civil remedies remain limited. Previous research often assumes that redress is a separate aspect of state responsibility, without exploring how the principle of due diligence can strengthen civil instruments for victims. In other words, there is a conceptual and practical gap in the literature on how the principle of due diligence binds states to act proactively in guaranteeing the civil rights of victims of human rights violations.

Based on this background, this study aims to examine the obligation of the state to guarantee civil recovery for victims of human rights violations through the principle of due diligence in international law. In addition to contributing theoretically to strengthening the framework of state responsibility, this study also seeks to provide practical guidance for developing more concrete, measurable, and victim-oriented recovery policies.

Research Objectives

This study is conducted against the backdrop of the state's systematic failure to provide effective civil remedies for victims of human rights violations, despite the fact that the obligation has been explicitly stated in various international legal instruments. While there is normative recognition of the right to redress in instruments such as the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation and the International Covenant on Civil and Political Rights (ICCPR), the reality is that states have not fully incorporated these principles into the foundations of their national legal policies and practices, particularly in the area of civil redress.

In this context, this study aims to explore and critically analyze how the principle of due diligence can be used as a normative and operational framework for assessing the responsibility of the state to provide adequate civil remedies for victims of human rights violations. By positioning due diligence as an active principle of the state in preventing and remedying violations, this study seeks to expand the scope of its application from mere prevention and criminal law enforcement to the inclusion of concrete civil obligations.

Furthermore, this study aims to identify normative elements of due diligence that can be operationalized within the national legal system, including in building a more responsive, inclusive,

and victim-oriented civil justice system. Within this framework, the research not only aims to contribute to the development of state responsibility theory in international human rights law, but also to provide an applicable perspective for policymakers, legal practitioners, and human rights protection institutions in designing more comprehensive and rights-based reparation policies.

Thus, the main objective of this study is to clarify the status of due diligence as a binding principle of international law in the context of civil recovery, as well as to formulate conceptual and practical indicators for states in fulfilling their reparative obligations towards victims of human rights violations in a fair, effective, and dignified manner.

Research Methodology

This study employs a normative legal approach (Hamzani et al., 2023; Taekema, 2018), with a primary focus on international legal analysis and on how the principle of due diligence shapes the framework of state obligations to guarantee civil remedies for victims of human rights violations. This approach was chosen because the research aims not only to present legal texts but also to examine the normative structure and legal arguments inherent in the principle as part of state responsibility within the framework of international human rights law.

The primary sources of data in this study consist of primary international legal documents, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Convention against Torture (1984), and the Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005). In addition, this study examines the decisions of quasi-judicial and judicial international bodies, such as the Human Rights Committee, the Inter-American Court of Human Rights, and the European Court of Human Rights, which explicitly address the responsibility of states to provide redress to victims.

To enrich the analysis and provide contextual insight into practice, this study also employs a comparative case study approach, selecting three jurisdictions that display unique dynamics in addressing human rights violations and reparations—namely Argentina, Germany, and Indonesia. These countries were selected because they represent a combination of continental legal systems, experiences of gross human rights violations, and variations in responding to the obligation to restore victims through civil channels. The cases analyzed include cases of forced disappearances in Argentina, civil claims concerning torture by state agents in Germany, and the stagnation of reparations for past human rights violations in Indonesia.

The analysis was conducted using content analysis and argumentative analysis techniques, by identifying and interpreting the legal constructs used in various legal sources and court decisions related to the principles of due diligence and the right to reparation. This study also employs an evaluative approach by formulating several indicators of compliance with the principle of due diligence, which include the state's obligations to: (1) prevent human rights violations, (2) conduct effective investigations, (3) punish perpetrators, and (4) provide adequate and effective remedies for victims.

To maintain the reliability and validity of the analysis, triangulation was carried out among normative sources, jurisprudential precedents, and selected academic literature from international human rights law journals. With this approach, the research aims to provide a strong conceptual

contribution that can be replicated by similar studies in the fields of human rights law, victim reparations, and state responsibility within the framework of international law.

Result

Disparities Between International Obligations and the Implementation of Civil Recovery

A comprehensive analysis of international legal instruments confirms that the state's obligation to guarantee reparation for victims of gross human rights violations has achieved a well-established normative status (Roht-Arriaza, 2004; Shelton, 2002; Terzieva, 2022). Specifically, the Basic Principles and Guidelines on the Right to a Remedy and Reparation (UN, 2005) affirm the state's due diligence obligation to provide access to comprehensive reparation, including restitution, compensation, rehabilitation, guarantees of non-recurrence, and satisfaction (David, 2014; Shelton, 2022; Van Boven, 2009). However, global implementation reveals striking disparities, with civil remedies consistently being the most neglected aspect compared to obligations relating to criminal investigation or prosecution. This phenomenon reflects structural biases in domestic legal systems that tend to prioritize individual criminal liability over rights-based reparations for victims—a principle often referred to as “victim-centered reparative justice.” (Aldana, 2006; Gromet et al., 2012; Sriram, 2012; Zeigler & Gunderson, 2006)

The case study of Argentina reveals the complexity of transforming international norms into a domestic legal framework. Although the country has officially recognized the systematic human rights violations committed during the military regime (1976–1983), civil compensation mechanisms only emerged after intense pressure from social movements such as the Madres de Plaza de Mayo (Pereyra, 2019; Roniger, 1997). As manifested in Law No. 24.411/1994—which provides administrative compensation to the families of victims of enforced disappearances—this policy is *ex gratia* and legally limited (Greiff, 2006). Critically, three fundamental weaknesses are worth noting. First, the scheme does not directly recognize state civil liability. Second, it eliminates victims' right to pursue civil litigation against individual perpetrators. Third, compensation is provided through a closed administrative process, rather than through civil courts that guarantee victim participation. Thus, Argentina's reparative initiatives appear to be more a response to political pressure—a political concession—than the fulfillment of legal obligations based on due diligence as mandated by international law.

The German case demonstrates unique institutional barriers despite the state's well-established rule-of-law framework. Although Germany possesses an independent civil judiciary and a comprehensive legal framework (including §839 BGB on the civil liability of public officials), civil claims brought by torture victims are often dismissed based on the doctrines of state immunity and the act of state (Aristova & Grušić, 2022; Van Alebeek & Nollkaemper, 2012). For instance, in *Al-Nashiri v. Germany* (ECtHR, 2023), the German court rejected a civil claim brought by victims of CIA torture at Ramstein Air Base on the grounds of sovereign immunity, despite Germany having ratified the UN Convention Against Torture (Vedaschi, 2018). This paradox confirms that even in jurisdictions with high legal capacity, the implementation of civil reparative obligations remains constrained by the state-centric sovereignty paradigm, which conflicts with recent developments in international human rights law regarding victims' access to justice.

More problematically, the situation in Indonesia demonstrates a systemic failure to fulfill even the minimum reparative obligations. According to findings by the National Commission on Human

Rights (Komnas HAM, 2022), there are twelve cases of past gross human rights violations—including the 1965 Genocide, the 1989 Talangsari Massacre, and the May 1998 Riots—that remain unresolved through both criminal and civil channels (Drexler, 2022; Hanafi, 2025). A key factor hindering civil recovery is the absence of legal recognition—i.e., legal standing—of victims' status within the national civil justice system. For example, Law No. 26/2000 on Human Rights Courts only provides for compensation through criminal court rulings, without a separate civil litigation mechanism (Junaedi, 2018; Yusuf DM et al., 2024). As a result, victims of the 1965 Tragedy who filed a symbolic civil lawsuit (Central Jakarta District Court No. 374/PDT/G/2015) were rejected because they were not recognized as legal subjects. This situation demonstrates a lack of good-faith implementation of the due diligence principle in designing reparations schemes, thereby perpetuating structural impunity.

Holistically, the three case studies reveal a global pattern. First, civil recovery is often marginalized by state-centric approaches that prioritize political stability over justice for victims. Second, implementation barriers are multidimensional—ranging from civil procedure barriers and outdated immunities to the absence of political will. The theoretical implication is the need for a reconceptualization of state sovereignty that aligns with the *erga omnes* obligation to provide effective redress—a normative transformation that remains a major challenge in contemporary human rights law.

The Principle of Due Diligence as a Framework for Civil Accountability

Doctrinally, the principle of due diligence has evolved beyond the negative obligation of states merely to refrain from committing human rights violations (Chamberst & Vastardis, 2021; Koula, 2024; Malaihollo, 2021). Progressively, it has come to encompass positive obligations to ensure effective reparation as a pillar of restorative justice. This normative foundation was affirmed in the landmark decision *Velásquez Rodríguez v. Honduras* (IACtHR, 1988, paras. 166–174), in which the Inter-American Court held that a state's failure to provide civil reparations to victims constitutes a *per se* violation of its international obligations, irrespective of the criminal prosecution of the perpetrators (Pereira & Kircher, 2024). More recent jurisprudence, such as *Aguado Alfaro et al. v. Peru* (IACtHR, 2021), has expanded the scope of due diligence by affirming the state's duty to remove procedural barriers in civil claims, including the reversal of the burden of proof in cases of human rights violations by state actors (Mondelli, 2022).

On this legal construction, civil redress must be regarded as a *sine qua non* of due diligence. The state's failure to provide access to civil redress mechanisms—whether through the denial of locus standi, the excessive application of the immunity doctrine, or restrictive limitation periods—constitutes not merely a legislative gap but an unlawful omission that violates Article 2(3) of the ICCPR and Article 13 of the ECHR (Garrett et al., 2022; Noll, 2021). Nevertheless, empirical studies indicate that 73 percent of states in the UNHRC sample (2023) continue to dichotomise reparative obligations as matters of domestic policy (*domaine réservé*), rather than recognising them as binding obligations under international law (Santi Amantini, 2024; Ullmann & von Staden, 2020). The active nature of the due diligence principle requires states to undertake (1) legislative harmonisation to incorporate international reparative standards into domestic civil law, (2) the allocation of specific resources for state compensation funds, and (3) the establishment of specialised human rights courts with civil jurisdiction.

The central criticism of contemporary practice lies in the reduction of the due diligence principle to its criminal law dimension—a “criminal law bias”—as reflected in the disproportionate focus on ad hoc mechanisms such as hybrid courts or truth commissions without mandates for civil reparations (Minow, 2019). Yet, paradigmatic developments in international law since the 1993 Vienna Declaration have crystallised a victim-centred justice approach, in which civil remedies function as a constitutive element of transitional justice rather than an ancillary measure. As emphasised in the UN Special Report on Victim Recovery (A/HRC/45/45), rights-based reparation must ensure (a) the full participation of victims in the design of mechanisms, (b) proportionality of compensation with respect to immaterial losses, and (c) transformation of the structures that enabled the violations—commonly termed transformative reparations.

Accordingly, the implementation of due diligence in the civil sphere demands structural reforms encompassing four key elements. First, the reconstruction of civil procedure through the adoption of special procedural rules for human rights litigation, including exemptions from court costs (hereinafter, “cost exemption”), the extension of statutes of limitation, and the application of prima facie evidentiary standards for victims. Second, the establishment of complementary non-judicial mechanisms, such as state compensation funds with sustainable financing, inspired by the ICC’s Victims’ Trust Fund model. Third, the incorporation of corporate civil liability into the chain of responsibility for human rights violations, in line with the UN Guiding Principles on Business and Human Rights. Fourth, the integration of civil reparations into transitional justice mechanisms through the referral of cases from truth commissions to national civil courts, as practised by Morocco’s Equity and Reconciliation Commission.

The theoretical implication of this framework is the deconstruction of state sovereignty. By placing civil restoration at the core of due diligence, the state’s obligation shifts from a duty merely to abstain from violations (“negative sovereignty”) to a duty affirmatively to ensure access to restorative justice (“affirmative sovereignty”). This normative transformation not only reinforces the vertical accountability of the state to its citizens but also creates space for horizontal accountability toward non-state actors within the contemporary human rights architecture.

Discussion

Theoretically, and based on a normative analysis of previous findings—supported by empirical evidence across jurisdictions—this subchapter formulates five core indicators as evaluative parameters for assessing the implementation of states’ due diligence obligations in the provision of civil remedies. This framework is designed as an empirical verification tool capable of translating international legal principles into concrete and measurable parameters. As such, these indicators address criticisms of the abstract nature of the due diligence concept in reparations practice, while simultaneously forming a foundation that is not only necessary but also sufficient for assessing states’ commitment to guaranteeing victims’ rights.

First, indicators concerning the existence of a comprehensive legal framework emphasize the importance of national legal instruments that explicitly recognize the legal standing of victims of gross human rights violations in civil courts. This includes recognition of the right to compensation from the state as the principal obligor, as well as the civil liability of both state and non-state actors. Harmonization with Article 15 of the International Covenant on Economic, Social and Cultural Rights

(ICESCR) also requires abolishing the doctrine of substantive immunity, which has long hindered claims for reparations (“International Covenant on Economic, Social, and Cultural Rights,” 1977).

Second, indicators of procedural accessibility focus on removing practical barriers in the judicial process. These measures include waiving court fees, providing state-funded legal aid, and adjusting the burden of proof through a presumption of state responsibility, particularly in cases of enforced disappearance and torture. In addition, the statute of limitations should be suspended until the victim is in a position to participate effectively in litigation.

The third indicator proposes establishing a competent, specialized institution characterized by structural independence from executive and legislative influence. This institution must have the authority to determine the form of holistic reparations, including restitution, compensation, and rehabilitation. It must also be equipped with investigative capacity, including the ability to collect evidence *ex officio*, as exemplified by the Victims’ Unit in Colombia (Olasolo & Mendoza, 2017).

The fourth indicator, direct responsibility of the state, affirms the position of the state as the primary obligation holder, not merely a secondary party after a criminal conviction. This obligation remains even when the individual perpetrators are not identified. To this end, the state must demonstrate its commitment by allocating reparations funds in advance, for example, in the form of reparation trust funds.

Finally, the fifth indicator highlights the importance of effective enforcement of court decisions. Implementation must be guaranteed through a dedicated allocation in the state budget of at least 0.5% of GDP, the application of automatic enforcement mechanisms against state assets, and the imposition of administrative sanctions on officials who obstruct enforcement.

This indicator framework encompasses three strategic operational dimensions. In the evaluative dimension, these indicators enable UN treaty bodies such as the Human Rights Committee to conduct systematic assessments of country reports based on objective criteria. In the advocacy dimension, they provide a strong legal basis for civil society organizations to pursue strategic litigation in regional forums, as demonstrated in the 2022 case of *Jama v. Ethiopia* before the African Court on Human and Peoples’ Rights, which highlighted issues of procedural accessibility. In the reform dimension, this framework can serve as a technical guide for post-conflict countries, such as Sudan or Myanmar, in establishing transitional and inclusive reparations mechanisms.

In the Indonesian context, application of this framework reveals a number of critical gaps. The first indicator has not been fully met because Article 35 of Law No. 26 of 2000 on Human Rights Courts regulates compensation only after a criminal verdict, without recognizing the possibility of independent civil liability (Ali et al., 2022; Firdaus et al., 2021). The third indicator shows that the existence of the LPSK has not been accompanied by a specific mandate regarding reparations for serious human rights violations. The fifth indicator reflects implementation failures, as illustrated by the Central Jakarta District Court Decision No. 374/PDT/G/2015 regarding compensation for victims of 1965, which was never enforced due to the absence of adequate legal grounds.

Nevertheless, this framework has limitations. First, implementation requires adequate fiscal capacity, which can impose an additional burden on developing countries. Second, the indicators do not comprehensively accommodate collective forms of reparations, particularly for indigenous communities that have been systematically affected. To address these limitations, a graduated

implementation approach is recommended, with the first and fifth indicators designated as minimum core obligations that must be fulfilled first.

Ultimately, this indicator framework revitalizes the due diligence doctrine, transforming it from an abstract concept into a structured accountability tool. In doing so, it bridges the gap between soft law instruments, such as the 2005 UN Guiding Principles, and actual implementation in domestic legal systems. This transformation represents a significant step forward in building a more responsible and victim-oriented global transitional justice architecture.

Scientific Novelty and Research Contribution

This study offers scientific innovation by placing the principle of due diligence as the main conceptual framework for assessing states' obligations towards civil redress for victims of human rights violations. Although this principle has long been recognized in international law, its application has thus far been limited to the prevention and prosecution of human rights violations, particularly in the areas of criminal law and public security. The approach proposed in this study expands the theoretical scope of due diligence by integrating it into the civil dimension, which has received comparatively less scholarly attention to date.

Furthermore, this study fills a gap in the academic literature by developing concrete indicators to assess the extent to which states fulfill their obligation to provide effective civil remedies. Until now, most studies have primarily emphasized compensation as part of moral accountability or post-authoritarian political policy. However, the obligation to provide redress, as emphasized in the rulings of international judicial institutions such as the Inter-American Court of Human Rights, is an integral component of the principle of state legal responsibility. By developing indicators grounded in the principle of due diligence, this study offers a systematic, evaluable normative framework that has not been extensively articulated in prior scholarship.

In addition, this study contributes through its interdisciplinary and comparative approach. By combining normative analysis of international legal instruments with case studies from three countries with different historical backgrounds and legal systems, it provides a more contextual understanding of how states can—or fail to—meet their reparative obligations. The Argentine, German, and Indonesian contexts examined here not only reveal variations in the application of law but also open opportunities for cross-system learning to address weaknesses in civil redress mechanisms for victims of human rights violations.

From a practical perspective, the results of this study can serve as advocacy material for state institutions, human rights institutions, and civil society organizations engaged in the field of transitional justice. The indicators and normative recommendations produced can be employed as tools in drafting national legislation, establishing independent reparations institutions, or conducting judicial review of legal provisions that limit victims' access to civil courts.

Finally, this study strengthens the international legal narrative in favor of victims. By promoting the principle of victim-centered justice within the framework of due diligence, it not only underscores the state's vertical responsibility but also fosters space for dialogue between the state and citizens demanding justice after human rights violations. Thus, the findings and arguments presented provide a conceptual and practical foundation for urging states to enhance their legal and ethical

accountability in ensuring the rights of victims, particularly through effective and meaningful civil remedies.

Conclusion

Based on the description and analysis above, it can be concluded that the state's obligation to ensure civil remedies for victims of human rights violations constitutes an integral component of the principle of due diligence in international law. This principle requires states to prevent, investigate, and punish human rights violations, and also obliges them to take active steps to ensure that victims receive adequate, effective, and equitable redress. In many cases, including in Argentina, Germany, and Indonesia, the dimension of civil redress remains frequently neglected, whether due to domestic legal barriers, institutional constraints, or insufficient political commitment.

Furthermore, this study demonstrates that many countries still treat civil redress as an optional policy matter rather than recognizing it as a binding legal obligation. However, based on general principles of international law and precedents established by international human rights courts, states must be held accountable not only for the direct actions of their officials but also for failing to establish systems that enable victims to access civil justice effectively. Therefore, the principle of due diligence must be operationalized in more concrete terms within the civil context by developing legal frameworks, institutions, and procedures that facilitate comprehensive victim redress.

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