As the recognition of the right to reparation grows, so do the legal issues pertaining to its practical application. Certainly, in the realm of international human rights law, new cases offer opportunities to continue defining the parameters of this right, as noted in an ever-growing jurisprudence with respect to remedies law. Some issues, due to their potential to generate new forms of harm and even new rights violations, beg further discussion and clarification. Such is the case with the equity doctrine of “clean hands” (the “Clean Hands Doctrine”) which dictates that an injured party’s wrongdoing may limit his or her claim to reparations. However, this doctrine, when applied in cases where victims of human rights violations seek relief, conflicts directly with the well-established legal principle of non-discrimination.

[...]

Here, the discussion must refer to the issue of “clean hands.” A general principle of equity recognizes that a person “who asks for redress must present himself with clean hands.” The Clean Hands Doctrine arises out of the concept of in pari delicto (of equal fault), which looks at the different levels of culpability of the parties to a dispute in order to determine fault and liability, such as in contract law, where an illegal or immoral agreement may serve as a defense to bar restitution. Metaphorically speaking, this protection assures that “no polluted hand shall touch the pure fountains of justice.” Thus, this common law principle seeks to balance blame in determining causation of injury and harm.

2 See BLACK’S LAW DICTIONARY 268 (8th ed. 2004) (defining the doctrine as the “principle that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle”).

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36 See Steven L. Good & Celeste M. Hammond, Real Estate Auctions: Legal Concerns for an Increasingly Preferred Method of Selling Real Property, 40 REAL PROPERTY, PROBATE AND TRUST J. 765, 793 (2006) (discussing the Michigan Supreme Court’s refusal to find a breach of a duty of care when it would have been created by a fraudulent contract).

Referring Principles:

I.1.5 - No advantage in case of own unlawful acts