

**REPARATIONS FOR CHILD VICTIMS OF ARMED CONFLICT
RESPONDING TO THE RIGHTS AND NEEDS OF CHILDREN IN
TRANSITIONAL JUSTICE**

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INTRODUCTION

Modern warfare disproportionately affects children caught in the midst of complex and persistent conflict.¹ Harm against young people, however, is not merely an unfortunate byproduct of war. Rather, children are frequently targeted in serious crimes under human rights and humanitarian law, including killing, sexual violence, recruitment and use in armed forces or groups, maiming, torture, and denial of basic services, to name a few.² Unfortunately, children's roles as political, economic, and social actors are often undervalued, and their experiences during war are consequently deprioritized on post-conflict agendas. Yet, children are rights-holders and agents of social transformation, and processes seeking justice for victims of armed conflict are remiss to ignore this significant group.

This paper explores the potentially meaningful role reparations processes and outcomes can play in facilitating justice for children victimized through serious crimes during armed conflict. Part 1 reviews the transitional justice framework, focusing on existing legal and normative guidance on reparations. This section also introduces children's rights principles, including non-discrimination, best interests, and evolving capacities of the child, which are applied throughout the analysis to ensure children's needs, rights, and protection are prioritized. Part 2 looks at children's experiences of war and the long-term and immediate impact of crimes on their lives, focusing on attributes of age, gender, and cultural context of the child. Parts 3 and 4 utilize the lenses of children's rights principles and attributes to examine the potential for child-sensitive and child-just

¹ Graça Machel, "UN study on the impact of armed conflict on children," *New York: United Nations* (1996).

² Dyan Mazurana and Khristopher Carlson, "Children and Reparation: Past Lessons and New Directions," *Innocenti Working Paper* 2010-08, UNICEF Innocenti Research Centre (2010): 7.

processes and outcomes of reparation. Ultimately, this paper seeks to fill a gap in literature for approaching reparations for child victims of armed conflict rooted in their experience of war and the impact of harms on their lives.

PART 1: TRANSITIONAL JUSTICE FRAMEWORK

In the aftermath of armed conflict, individuals, communities, and societies as a whole must deal with the long-lasting impact of violence. Transitional justice aims to facilitate this process through measures of accountability for crimes committed, recovery of individuals and groups, and initial rebuilding of social structures. The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”³ A society may deal with past violence through enhancing existing or establishing new justice mechanisms, such as courts, truth-seeking forums, local methods of justice, and reparations programs. Comprehensive transitional justice strategies include a variety of measures that complement each other and seek to bring justice to society as a whole.

As transitional justice develops into an international endeavor, however, it risks becoming mainstreamed into a standardized set of predefined processes and mechanisms, rather than maintaining its broad purpose of enabling the pursuit of justice and healing specific to the context. It is vital that initiatives not be imposed on a society, but that they

³ Report of the Secretary General on Rule of Law and Transitional Justice, UN document S/2004/616, New York, 23 August, 2004.

grow from the realities and priorities of the people who experienced violence in order to be relevant to their lives.⁴

Unfortunately, transitional justice initiatives often attempt to accomplish too much in too little time and with too few resources. As a result, processes focusing on perpetrators tend to take priority, leaving “victims empty-handed, without redress.”⁵ Yet, victim-centered efforts are “an integral part of processes that assist society’s recovery from armed conflict and that ensure history will not repeat itself.”⁶

Reparations are measures taken to recognize the suffering of victims, provide remedy, and signal a renewed respect for their rights. The right to reparation for victims of the most serious violations and abuses under human rights or humanitarian protections is widely recognized within international law.⁷ In the context of armed conflict, the provision of reparations is both complex and vitally important to the healing of victims and societies.

⁴ See Rosalind Shaw, Lars Waldorf, and Pierre Hazan, eds., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford: Stanford University Press, 2010).

⁵ Saudamini Siegrist, “Child Rights and Transitional Justice,” in *Children and Transitional Justice*, ed. Parmar et al. (Harvard University Press: Cambridge, 2010): 15.

⁶ *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation*, issued at the International Meeting on Women’s and Girls’ Right to a Remedy and Reparation, Nairobi, Kenya, March 19–21, 2007, Article 2.

⁷ According to the Preamble of the Basic Principles: “a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), 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, and articles 68 and 75 of the Rome Statute of the International Criminal Court.” See 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* [hereinafter *Basic Principle and Guidelines*], 21 March 2006, A/RES/60/147.

Children in International Law

Children experience conflict as victims, witness, and sometimes perpetrators. Yet, “it is important not to generalize or deny the child-victims a sense of agency and to acknowledge their potential, especially as they become young adults, to be social drivers and leaders.”⁸ Children can and should be active participants in society-wide efforts to acknowledge and grapple with the atrocities of conflict in order to make it relevant to their lives and to help build peaceful and just futures.

Children who are victims of the most serious crimes during conflict are fully entitled to reparation. International law affords many rights and special protections to young people, both during times of peace and times of war. These rights and protections serve as the foundation for approaching reparation for young victims of armed conflict.

Defining ‘Child’

The definition of a ‘child’ varies among different legal and cultural standards, meaning the line between childhood and adulthood is not always clear. International human rights law defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁹ Other international instruments, however, do not necessarily afford the same rights and protections to all individuals under 18.¹⁰ Additionally, as noted in the definition,

⁸ Cécile Aptel and Virginie Ladisch, “Through a New Lens: A Child-Sensitive Approach to Transitional Justice,” *International Center for Transitional Justice* (2011): 27.

⁹ UN General Assembly, *Convention on the Rights of the Child* [hereinafter CRC], 20 November 1989, Article 1.

¹⁰ For instance, there is no standard definition of a child within international humanitarian law. The CRC itself presents a major exception in Article 38, which permits States to recruit individuals into armed forces at age 15.

protections of childhood may end earlier than 18 under domestic law.¹¹ Moreover, within their cultural contexts, young people may be regarded as children or adults based on physical or social markers other than chronological age.

Notably, ‘adolescents’ and ‘youth’ remain undefined within international law. International organizations often develop their own criteria, which range between ages 10 to 35.¹² In practice, organizations dedicated to children may support young people well beyond age 18.¹³

Though children are indisputably protected persons, questions regarding definitions and chronological age present practical challenges in determining eligibility for reparations. For the purpose of this paper, the term ‘child’ is primarily used, with recognition that practice may not reflect legal definitions and often requires context-specific reference when approaching reparations.

Legal Protections and Rights of Children

Children enjoy both general and child-specific protections and rights under international human rights, humanitarian, and criminal law. The Convention on the Rights of the Child (CRC) is the most comprehensive document regarding specific protections and rights for children, as it compiles existing international laws and norms and incorporates both human rights and humanitarian law. The CRC is applicable in most places and in all times, given that it is nearly universally ratified and contains no

¹¹ Examples include domestic law concerning compulsory education and marriageable age.

¹² See World Health Organization and UNICEF for more information.

¹³ Mazurana and Carlson, “Children and Reparation,” 4.

derogation clause, meaning every article applies whether in times of peace, armed conflict, or declared emergency.¹⁴

Under international human rights law, children, like all persons, have a right to life, to freedom from torture and arbitrary detention, and to family life.¹⁵ Additionally, states must take special measures to protect children from economic or social exploitation and to ensure protection, assistance, and care for children separated from their families. Regarding children in armed conflict specifically, the Optional Protocol to the CRC on the involvement of children in armed conflict prohibits state parties from voluntary recruitment of children under 15 and compulsory conscription of children under 18 into armed forces, and requires states to take measures to prevent members under 18 from directly participating in hostilities. Non-state armed groups are prohibited from recruiting and using any person under age 18.

Whereas other human rights treaties distinguish between two sets of rights, the CRC approaches children's rights as indivisible, integrating civil and political rights with economic, social, and cultural rights. Giving equal weight to economic, social, and cultural rights supports "the right of every child to a standard of living adequate for her or his physical, mental, spiritual, moral and social development," a core principle on which the CRC is founded.¹⁶

Under humanitarian law, children share the protections afforded to all civilians, including protection from inhumane treatment, acts or threats of violence, and discrimination based on race, religion, and political opinion. Additionally, children are

¹⁴ The United States, Somalia, and South Sudan are the only states that have not ratified the CRC.

¹⁵ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Article 10.

¹⁶ CRC, Articles 3, 13.

specially protected persons, and parties to the conflict have an obligation to “provide them with the care and aid they require.”¹⁷ Notably, the Geneva Conventions and Additional Protocols do not contain a standard definition of ‘child,’ though several articles explicitly state the age of protected persons. For instance, parties to the conflict are obligated to permit free passage of food and clothing and ensure assistance, including the maintenance of religious practice and education for children under 15, while individuals under 18 are protected from the death penalty.¹⁸

Under international criminal law, individuals can be held criminally accountable for war crimes, crimes against humanity, and crimes of genocide.¹⁹ Cecile Aptel cites three child-specific crimes within international criminal law: “the war crime of conscripting or enlisting children or using them to participate actively in hostilities; the crime of genocide for transferring children from one group to another; and the war crime of attacking schools and other buildings dedicated to education.”²⁰

Within international law, actors found liable for grave crimes may be obligated to provide reparation to victims. States alone are bound to human rights law, while international humanitarian law applies to both state and non-state actors. States have primary responsibility to protect and repair citizens, and are liable not only for committing violations, but also for failing to prevent abuses when they had the means to

¹⁷ 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 [hereinafter Additional Protocol I]*, 8 June 1977, Article 77 (1).

¹⁸ Additional Protocol I, Article 77 (5); International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter Geneva Convention IV)*, 12 August 1949, Articles 23 and 24.

¹⁹ The Rome Statute of the International Criminal Court, though not universally ratified, serves as the guiding document on international criminal law. Like the CRC, the Rome Statute compiles aspects of human rights and humanitarian law. Rule 97(1) of the Rules of Procedure and Evidence indicates that the ICC: “Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.”

²⁰ Cécile Aptel, “Children and Accountability: The Contribution of International Criminal Court,” *Innocenti Working Paper* 2010-20, UNICEF Innocenti Research Centre (2010): 4.

do so. As a result, in cases where a non-state duty bearer cannot or will not provide reparation, the state should attempt to provide reparative benefits to victims.²¹

The Right to Reparation

Eligibility

The UN Resolution on *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* compiles existing legal principles and guidelines regarding reparations. It defines victims as “persons who individually or collectively suffered harm... through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.”²² Additionally, family members, dependents and those who were injured by intervening on the victim’s behalf may also be considered victims.²³

Children are widely and profoundly affected during armed conflict, and those who are victims of the most serious violations and harms have a right to reparation.²⁴ Pointing to some of the most atrocious acts committed against children, Mazurana and Carlson assert that “*at a minimum*” the following serious crimes should qualify child victims for reparation: killing or maiming; torture, inhumane, degrading treatment; recruitment and use in armed forces or groups; abduction; rape and sexual violence; and forced

²¹ *Basic Principles and Guidelines*, Article 14.

²² *Basic Principles and Guidelines*, Article 8.

²³ *Ibid.*

²⁴ Although the CRC does not contain specific reference to the right to reparation for children, Article 39 states: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

marriage.²⁵ The UN Security Council additionally includes attacks against schools or hospitals and denial of humanitarian assistance as among the worst abuses against children during armed conflict.²⁶ While far from a comprehensive listing, the widespread and grievous nature of these crimes and their long-term consequences necessitate victims' access to reparative measures.²⁷

As mentioned, the CRC presents a holistic framework for children's rights and protections, both through its indivisibility of rights and its lack of a derogation clause. This has important implication for reparations, which have tended to prioritize civil and political rights when assessing damage and eligibility. "Indeed, 'the interdependence of children's political, civil, economic, and social rights [under the CRC] suggests that a child-friendly reparations policy' must consider how children have experienced violations of this broader set of rights."²⁸ For instance, child victims of abduction or forced displacement may return home in critical need of education or livelihoods assistance, sometimes due to loss of land or destruction of property. Unfortunately, young people are frequently denied such help, in part due to prioritization of other harms and oversight of the serious economic and social consequences of crimes.²⁹

²⁵ Mazurana and Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and Dictatorial Regimes," in *The Gender of Reparations*, eds. Ruth Rubio-Marín (New York: Cambridge University, 2009), 169-170.

²⁶ See Jonathan Kolieb, "The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation," Office of the Special Representative of the Secretary-General for Children and Armed Conflict (2009), http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf.

²⁷ Mazurana and Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations," 169.

²⁸ Sharanjeet Parmar, "Realizing Economic Justice for Children: The Role of Transitional Justice in Post-Conflict Societies," in *Children and Transitional Justice*, 391.

²⁹ Jennie Annan, Christopher Blattman, Kristopher Carlson, and Dyan Mazurana, "Making reintegration work for youth in northern Uganda: Findings from two phases of the Survey of War Affected Youth," *The Survey of War Affected Youth* 11, AVSI, UNICEF, Feinstein International Center (2007).

Additionally, violations and abuses against parents and family members deeply impact children's lives. For instance, killing, disappearance, or maiming of a mother or father may infringe on a child's right to know and be raised by their parents.³⁰ Further, such violations and abuses leave dependents vulnerable to other harms, including loss of livelihoods and abduction. Therefore, children whose parents or family members have suffered grave crimes may also have a right to reparation.³¹

Principles and Guidelines

Reparations must acknowledge and respond directly to serious crimes committed against protected persons. According to the *Basic Principles and Guidelines*, reparations should be “adequate, effective and prompt” and “proportional to the gravity of the violations and the harm suffered.”³² Reparations can take various forms and modes of delivery, and may have multiple dimensions of meaning.

First, reparations take five major forms: 1) *Restitution*, or steps aimed at restoring victims to their original circumstances prior to violations; 2) *Compensation*, or recompense for “economically assessable damage”; 3) *Rehabilitation*, or provision of health, social, or legal services; 4) *Satisfaction*, or measures aimed at acknowledging responsibility for past abuses and the suffering of victims; and 5) *Guarantees of non-repetition*, or efforts to prevent future violations.³³ Together, these forms are meant to acknowledge past suffering, relieve the lingering impact of harms, and prevent future violations.

³⁰ CRC, Article 7.

³¹ Mazurana and Carlson, “Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations,” 185.

³² *Basic Principles*, Article 15.

³³ *Ibid.*, Articles 18-23.

Second, reparative measures may range from symbolic to material in nature, though effective reparations incorporate both aspects. Symbolic dimensions of reparations explicitly address their intended audience of victims by communicating regret for specific violations and abuses. In fact, it is precisely this acknowledgement that gives reparations “meaning, coherence, and historical significance for the individual,” not least because the denial of responsibility for suffering may enable the perpetuation of injustice and violence against victims.³⁴ Further, the symbolic meaning of reparations distinguishes them from other forms of assistance, such as humanitarian relief or development aid.³⁵ At the same time, material benefits targeting victims’ specific needs cannot be underestimated for improving victims’ wellbeing as well as for communicating respect and protection.³⁶ As a result, a combination of measures may help communicate reparations intention, which is first and foremost to acknowledge the harm suffered.

Third, reparative measures can target individuals or communities depending on the nature of the crime. Individual reparations identify and respond to each person who suffered harm, thereby “[underscoring] the value of each human being and their place as rights-holders.”³⁷ Collective reparations, on the other hand, address harms suffered as a group, such as identity-based or geographically targeted crimes.³⁸ In such cases, collective reparations allow the group as a whole to benefit, while also simplifying delivery and widely reaching people.³⁹

³⁴ Brandon Hamber and Ingrid Palmay, “Gender, Memorialization, and Symbolic Reparations,” in *The Gender of Reparations*, 346.

³⁵ Lisa Magarrell, “Reparations in theory and practice,” *Reparative Justice Series*, International Center for Transitional Justice (2007): 5.

³⁶ *Ibid.*, 4.

³⁷ Lisa Magarrell, “Reparations in theory and practice,” 5.

³⁸ *Ibid.*

³⁹ *Ibid.*, 6.

Access to collective reparations, however, does not substitute one's individual right to benefits. Indeed, provision of collective reparations alone risks devaluing the impact of harm, obscuring the symbolic meaning, and excluding victims most in need of reparative benefits.⁴⁰ For instance, a girl victim of sexual violence, who may be targeted based on her gender, ethnicity, and age, has a right to individual reparation, even if her ethnic group receives collective reparation for suffering widespread atrocities.

Yet, the reality of the immense scale of violence and systematic atrocities during armed conflict creates practical and philosophical challenges to delivering reparations on an individualized level. Pablo de Greiff notes that in the context of widespread victimization, allowing only the most grievous crimes to qualify individuals for reparation potentially creates a hierarchy of harm and division among survivors.⁴¹ The Truth and Reconciliation Commission (TRC) of Liberia "recognized this problem, acknowledging that there would be no easy way to provide reparations that would do justice to victims' expectations without distinguishing between categories of children and, as a result, creating new divisions among them."⁴² As a result, the TRC recommended reparations programs should "target entire communities and children as a group rather than single out individual children."⁴³ While these decisions may be inevitable, it is nonetheless imperative that programs find ways to acknowledge victims of the most serious crimes and target them for reparations benefits.

Finally, reparations may be corrective or transformative in nature. Corrective reparations respond to and provide benefit for specific harms, whereas transformative

⁴⁰ Ibid., 5.

⁴¹ Pablo De Greiff, "Justice and Reparations," in *The Handbook of Reparations*, ed. Pablo de Greiff (New York: Oxford University Press, 2006), 458.

⁴² Aptel and Ladisch, "Through a New Lens," 31.

⁴³ Ibid., 31.

reparations seek to change the system that enabled the harm. Given that individual victims hold the right to reparation, corrective reparations are the legal imperative. Yet, de Greiff points out that reparations have generally addressed isolated incidences of abuse, and legal standards assume existence of a functioning system. “In the case of massive abuse, however, an interest in justice calls for more than the attempt to redress the particular harms suffered by particular individuals” because the system itself has enabled such abuses. As a result, justice for victims also necessitates that the system itself be repaired. In such cases, Ruth Rubio-Marín writes, reparations must include both corrective and transformative aspects, though she cautions that the system are “unlikely to change fast enough and in ways that are concrete enough to allow victims to make sense of their past and future lives.”⁴⁴ Thus, for children, corrective reparations are most important on an individual level, while transformative efforts play a critical role in ensuring wider justice for young people.

Along with the *Basic Principles and Guidelines*, the *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation* elaborates on legal principles and guidance, emphasizing the need for inclusive approaches to reparation to ensure justice for victims. Importantly, the Nairobi Declaration focuses on women and girls, who tend to be excluded or discriminated against. Given its emphasis on the need for inclusive processes and for social transformation after conflict, the *Nairobi Declaration’s* principles can be expanded to apply to all people affected by conflict, including both girls and boys. Nevertheless, a gender-just perspective is critical, especially because many

⁴⁴ Ruth Rubio-Marín, “Gender and Collective Reparations in the Aftermath of Conflict and Political Repression,” in *The Gender of Reparations*, 398-399.

contexts of armed conflict have deeply ingrained structures that may inhibit girls from fully realizing justice even as they grow into adult women.

Non-discrimination is also a core principle of the CRC.⁴⁵ All children enjoy the same rights and protections, regardless of their physical, political, or social status, or that of their parents, including sex, race, ethnicity, religion, political opinions, and disability. Reparations initiatives should apply this principle through inclusive policies and outreach. Further, programs should be sensitive to the cultural implications of these characteristics to avoid harm and enhance protection. The application of the non-discrimination principles for children, especially regarding gender and cultural sensitivity, will be explored throughout this paper.

Finally, the CRC introduces two new principles: the best interests of the child and the evolving capacities of the child.⁴⁶ Among other considerations, the best interest principle prioritizes a child's needs and protects them from the risk of harm, allowing for children and those working on their behalf to make appropriate individual and context-specific decisions. The principle of evolving capacities, on the other hand, accounts for the "growing ability to take on responsibility and agency, both developmentally and legally" depending on "a child's own experience and life skills."⁴⁷ Together, these principles recognize the continued need for protection as well as the increasing ability to make personal decisions as children grow in age and maturity. Indeed, as individuals approach adulthood, their roles in society change, they incur new responsibilities, and they are increasingly capable of understanding their own best interests. At the same time,

⁴⁵ CRC, Article 2.

⁴⁶ CRC Articles 3(1) and 12(1). See also Geraldine Van Bueren, *The International Law on the Rights of the Child* (the Netherlands: Kluwer Academic Publishers, 1995) 45.

⁴⁷ Siegrist, "Child Rights and Transitional Justice," 19-20, 26.

children remain vulnerable to exploitation and threats and require enhanced protection. Although tensions may arise between these two principles, together best interests and evolving capacities should guide any decision concerning children.

In the context of armed conflict, one salient challenge arising from these principles concerns child perpetrators, who may participate in atrocities such as killing, sexual violence, and torture. On one hand, children are protected from recruitment into armed forces and groups, and may themselves be victims of abduction, forced conscription, and use in hostilities, as well as other violations.⁴⁸ On the other hand, depending on age, maturity, and social role, children have some level of responsibility for their actions. Moreover, victimized individuals and communities may perceive only the harm done at the hands of child combatants. Although these young people may have a legal right to reparation, cultural tensions create practical dilemmas, especially regarding public acknowledgement and material compensation, which can cause stigmatization. As in all cases, duty bearers must find a way to acknowledge child victims who are also perpetrators, while avoiding additional harm. This dilemma also points to the need for complementarity between transitional justice mechanisms in dealing with the complexity of post-conflict justice.

Principles and guidance regarding child victims and reparations, especially non-discrimination, best interests, and evolving capacities of the child, can help ensure that reparations “acknowledge children as rights holders who suffered specific violations in light of their vulnerability, while also granting them special protection.”⁴⁹ Taking these principles into account, a deeper understanding of the experiences and impact of war on

⁴⁸ As mentioned, states are prohibited from recruiting children under 15, while non-state armed groups can have no members under age 18.

⁴⁹ Cecile Aptel and Virginie Ladisch, “Through a New Lens,” 26.

children will help ground processes and outcomes in children's needs and realities after conflict.

PART 2: THE IMPACT OF ARMED CONFLICT ON CHILDREN

The physical and psychological consequences of serious crimes on children are profound, enduring, and sometimes irreversible. Jenny Kuper notes that, while many of these acts also victimize adults,

the impact on children is often greater given their particular vulnerabilities as regards injury, disability and malnutrition; separation from family, friends, community and even country; disruption of education and health care, as well as vulnerability to sexual violence; forced labor; susceptibility to land mines, and the impact of small arms and light weapons.⁵⁰

Further, children's dependency on others, lack of knowledge and accessibility regarding their rights, and lack of visibility and political weight exacerbate long-term impacts and diminish opportunities for restoration and rehabilitation.

At the same time, child victims are not a homogenous group. They experience war in diverse ways and its impact on their lives is unique, especially depending on age, gender, and cultural context. Given this, a thorough understanding of immediate and long-term consequences of armed conflict on boys and girls can inform reparations and enable them to respond effectively to victims' needs and realities.

Long-term Impact: Trauma, Lost Opportunities, and Stigmatization

Regional and international courts have developed a useful framework for understanding the long-term consequences of serious violations under human rights and

⁵⁰ Jenny Kuper, "Building Peace in Post-Conflict Situations: Reparations for Children," in *Building Peace in Post-Conflict Situations*, ed. Faria Medjoub (London: British Institute of International and Comparative Law, 2012), 125.

humanitarian law on victims' *life plans*. The Inter-American Court of Human Rights (IACHR) first established the notion of life plan as “akin to the concept of personal fulfillment,” including an individual’s desire and ability to achieve life goals based on his or her capacities and environment.⁵¹ The IACHR found that grave violations such as arbitrary detention and torture caused deep physical and psychological harm that interrupted and prevented victims from accomplishing their life’s ambitions. Similarly, the European Court of Human Rights (ECHR) recognized that serious human rights violations that result in loss of opportunity inhibit one’s ability to achieve life plans.

The Office of Public Council for Victims (OPCV) within the International Criminal Court (ICC) applied this framework when assessing damage to children formerly associated with armed groups in the Democratic Republic of Congo (DRC). In its assessment, the OPCV built on the precedents of the IACHR and the ECHR by highlighting trauma and loss of opportunities as two major long-term consequences, and expanded the concept to encompass the impact of stigmatization. Though the ICC focused on the experiences of child soldiers, including girl soldiers who faced sexual violence, boys and girls who suffer other violations and abuses in the context of armed conflict may experience similar repercussions.

In its “Observations on issues concerning reparations,” the OPCV describes how children who are part of armed groups and participate in hostilities are vulnerable to trauma given their stage of maturity and development:

The active involvement of children in military activities creates significant psychological trauma that is very likely to continue long after their demobilization from the armed group. The stress of childhood maltreatment is associated with alterations of biological stress systems, which in turn, leads to adverse effects on brain development and delays in

⁵¹ Loayza Tamayo v. Peru, (Reparations, 1998) Inter-American Court of Human Rights quoted in Jo M. Pasqualucci, “The Practice and Procedure of the Inter-American Court of Human Rights” (Cambridge: Cambridge University Press, 2003), 270-271.

cognitive, language, and academic skills. The negative impact of their experience as a child soldier can be lifelong and may in turn cause further suffering....⁵²

According to the OPCV empirical evidence suggests that severe fear and anxiety can lead to impulsive and risk-taking tendencies, poor performance in subsequent life activities like school and work, and delayed social and mental development.⁵³ Further, these young people, especially boys, may turn to drugs or crime in environments where they lack mentorship and support.⁵⁴ In these ways, such violations and abuses against children continue to cause harm by derailing their life plans far after they have demobilized, grown into adults, and seen the end of armed conflict.

Likewise, armed conflict disrupts young people's education and training when it halts daily life or removes children from their families, such as through displacement or abduction. Oftentimes, normal life does not resume for years, meaning many children transition into adulthood without acquiring necessary knowledge or skills. In other cases, the loss of parents means some children, usually girls, must care for their younger siblings and cannot attend school.⁵⁵ For instance, "child parents" in the DRC become primary caregivers responsible for supporting their families. Rather than completing their education, they stay at home to take care of younger children or end up in dangerous or exploitative work, such as mining or prostitution.⁵⁶ Their adult counterparts, on the other hand, have completed education or training and are "in a better position to find a sustainable livelihood" after conflict.⁵⁷ As such, loss of opportunities during conflict not

⁵² "Observations on issues concerning reparations," *Prosecutor v. Thomas Lubanga Dyilo*, International Criminal Court, Office for the Public Council for Victims, ICC-01-01/01-06, 18 April 2012, 53.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Aptel and Ladisch, "Through a New Lens," 27.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

only prevents young people from fulfilling their life plans, but also forces them into survival strategies that further jeopardize their rights and dignity.

Furthermore, child victims may face stigmatization within their families and communities precisely because of the violations suffered during war. As a prime example, many former girl soldiers in the DRC have experienced multiple serious crimes. To begin with, many girls were abducted, recruited into armed forces or groups, used in hostilities, raped, forcibly impregnated, forced in ‘marriage,’ infected with HIV/AIDS and other sexually transmitted diseases, and suffered other serious violations and abuses of protections and rights. From these initial harms, girls have experienced psychological trauma and physical health problems, including lifelong diseases. Additionally, having little education and few skills, supporting themselves and their children after conflict is exceptionally challenging. Perhaps worst of all, many of these girls and young women are rejected when returning home because they are considered immoral, impure, and burdensome.⁵⁸ As a result, stigmatization exacerbates wartime violations, creating even more long-term physical, financial, social, and psychological hardships, preventing them from even hoping to accomplish their life plans.

The post-conflict reality of former child soldiers in Liberia is another example of how long-term consequences can disrupt individuals’ life plans. In this case, many demobilized male youth did not return home after war, either because their families had been killed, they had no livelihoods opportunities, or they faced marginalization in their communities. Instead, they remained in urban areas living with other ex-combatants and relying on illegal activities to sustain themselves, including drug dealing (and using) and

⁵⁸ “Observations on issues concerning reparations,” *Prosecutor v. Thomas Lubanga Dyilo*, International Criminal Court, Office for the Public Council for Victims, ICC-01-01/01-06, 18 April 2012, 55.

nighttime robberies.⁵⁹ Additionally, some former girl soldiers also lived in these ex-combatant communities, primarily supporting themselves through prostitution.⁶⁰ As such, the wartime violations against these young people continued well after conflict through trauma, negative survival strategies, and rejection from society.

The severe and long-term impact of armed conflict on children signals the imperative nature of addressing young victims' needs and restoring their rights after conflict. Aptel and Ladisch note, "It is necessary . . . to look at both the violation itself and the consequences that ensue in order to craft a reparations package that to the greatest degree possible provides a remedy for the immediate and long-term consequences of violations against children."⁶¹ Bearing in mind the potential long-term impact, a greater understanding of the specific experiences of children in conflict, with particular attention to age, gender, and cultural context, can further help inform how best to tailor reparations to child victims.

Attributes Shaping Impact: Age, Gender, and Cultural Context

Age

As previously mentioned, young people have different needs and rights depending on their age and phase of life. Likewise, conflict affects children of different ages in diverse ways. To begin with, reparations should consider the age of the victim *at the time of violation* in order to understand its immediate and long-term consequences. For

⁵⁹ Mats Utas, "Fluid Research Fields: Studying Excombatant Youth in the Aftermath of the Liberian War," in *Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement*, eds. Jo Boyden and Joanna de Berry (New York: Berghahn, 2004), 215-222.

⁶⁰ Mats Utas, "Fluid Research Fields," 223. See also Irma Specht, "Red Shoes: Experiences of Girl Combatants in Liberia," ILO Program on Crisis and Response, 2006, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_crisis/documents/publication/wcms_116435.pdf, 80.

⁶¹ Mats Utas, "Fluid Research Fields," 223.

instance, children under the age of five are particularly vulnerable to war tactics of starvation or denial of humanitarian aid.⁶² To illustrate, research conducted in Burundi after the war indicates that malnutrition inhibits physical and mental development more severely when experienced in early childhood. Moreover, during the conflict in Sierra Leone, one-third of children under five died.⁶³

On the other hand, forced recruitment tends to target slightly older children who are able to simultaneously perform rigorous physical tasks and be easily indoctrinated or scared into submission. Globally, the average age of child recruitment is between 12 and 14 years, with girls tending to be slightly older than boys, though in cases such as the DRC, Sierra Leone, and Colombia children as young as seven have been recruited.⁶⁴

When considering post-war recovery, the tendency may be to focus on younger children. Yet, research in northern Uganda indicates that older child victims often suffer harsher long-term physical and mental health consequences and have greater difficulty recovering lost opportunities and finding sustainable livelihoods after conflict.⁶⁵ When reparation programs cut off assistance for children once they reach 18 or 21, these programs fail to consider the actual impact of the serious crimes on victims and risk excluding those most in need of reparative benefits.⁶⁶

Likewise, to maximize impact, programs should also account for the age of the victim *at the time of receiving reparation*. Although “eligibility should be based on the

⁶² Graça Machel, *The Impact of War on Children* (London: Hurst & Company, 2001), 66.

⁶³ Tom Bundervoet, “War, Health, and Educational Attainment: A Panel of Children during Burundi’s Civil War,” (HiCN Working Paper 114, Households in Conflict Network, The Institute of Development Studies, University of Sussex, Brighton, 2012), 19; Machel, *The Impact of Conflict on Children*, 67.

⁶⁴ P.W. Singer, “Child Soldiers: The New Faces of War,” excerpted from *Children at War* (New York: Pantheon, 2005), <http://www.brookings.edu/views/articles/fellows/singer20051215.pdf>; Michael Wessels, *Child Soldiers: From Violence to Protection* (Cambridge: Harvard University Press, 2006), p. 8.

⁶⁵ Mazurana and Carlson, “Reparations,” 186.

⁶⁶ Aptel and Ladisch, “Through a New Lens,” 28.

status of the person as a child at the time the violation occurred, not on the age at the time reparations are administered,” processes must consider how to assist those who were victimized as children but are now adults.⁶⁷ Recognizing this need, programs in Argentina and Chile offered technical training or tertiary education to beneficiaries, rather than ending provisions after secondary school.⁶⁸

Keeping the age of the victim – both at the time of violation and at the time of reparation – in mind is imperative to child-sensitive reparations. Together, these considerations help determine eligibility, consequences of violations, and needs of victims, ranging from education to skills to health and psychosocial support.

Gender

Girls and boys often experience armed conflict in vastly different ways. On one hand, perpetrators may target male and female children through different violations. For instance, in most cases of armed conflict, including the DRC, Sierra Leone, and Uganda, girls are disproportionately victims of sexual violence. Likewise, in these same contexts boys are more heavily recruited to participate in direct hostilities, meaning they are also more likely to be killed and suffer combat-related injuries.⁶⁹

On the other hand, when children are victimized by the same violation, the impact is gendered. Both girls and boys can be victims of sexual violence and forced recruitment, and both must deal with severe emotional and physical consequences. Yet, in cases of rape, for instance, “Girls may be particularly affected in patriarchal societies where, for a girl, the loss of her virginity may prevent her from becoming married, thus

⁶⁷ Ibid., 28-30.

⁶⁸ Mazurana and Carlson, “Reparations,” 186.

⁶⁹ Mazurana and Carlson, “Reparations,” 167.

depriving her of a chance to become a wife or a mother and attaining the status that comes with that, including access to social services and property.”⁷⁰ In the DRC, girls who have children through rape often face a myriad of problems, including rejection by her family and community, inability to support herself and her child, and denial of access to school or work.⁷¹ Girls are also at higher risk of sexually transmitted diseases such as HIV/AIDS, especially during conflict when widespread rape is common.⁷²

In contrast, given the differing social norms and physical consequences for girls and boys, young male victims of sexual violence will face distinct consequences. Unfortunately, little is known about the impact of sexual violence on boys and men, in part because males may be even less likely to report incidents or receive medical attention due to the extreme social taboo in most contexts around the world.⁷³ Nevertheless, sexual crimes against boys target their masculinity, and the personal, social, and economic impact will reflect local gender norms.

The consequences of serious crimes on boys’ and girls’ life plans are, therefore, rooted in their distinctive gender roles, both in terms of society’s responses and options available to young people after conflict. For instance, male youth may be more able to move to new locations to look for work and rebuild their lives, where females may have

⁷⁰ Aptel and Ladisch, “Through a New Lens,” 27.

⁷¹ “Observations on issues concerning reparations,” 55.

⁷² Ibid.

⁷³ For examples including Afghanistan, Guatemala, and DRC see “Hidden Survivors: Sexual Violence against Children in Conflict,” Save the Children (November 2012) http://reliefweb.int/sites/reliefweb.int/files/resources/Hidden_Survivors_1.pdf; Sandesh Sivakumaran, “Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict,” *International Review of the Red Cross* 92, no. 877 (2010): 269, doi:10.1017/S1816383110000020; Claudia Paz and Paz Bailey, “Guatemala: Gender and Reparations for Human Rights Violations,” in *What Happened to the Women?* 98.

less mobility and more family responsibilities.⁷⁴ Further, as girls and boys grow into women and men, the long-term impact of violations and abuses will continue to influence their life plans, especially where societal structures are inherently unjust and discriminatory.

In these ways, differentiated targeting, distinctive impacts, and broader social realities indicate the importance of proper gender analysis in determining and responding to the needs of children. Unfortunately, “the gendered aspect of their experiences – the different ways in which boys and girls were affected by the violence and in the aftermath of violence – has been poorly addressed and largely neglected” within transitional justice initiatives.⁷⁵ Ignoring this critical dimension not only sets reparation initiatives up for failure, but actually leaves both boys and girls vulnerable to continued exploitation and harm, both while they are still children and as they grow into adulthood.

Cultural Context

In addition to age and gender of the victim, the impact of violations committed during armed conflict cannot be understood outside of a child’s cultural context. Applying the lens of culture shows how both violations and measures of remedy are interpreted. For instance, children who have been abducted and recruited into armed groups are legally considered victims of a war crime, at the least. Their communities, however, may view them as dangerous criminals. In Sierra Leone, Liberia, and Cote d’Ivoire, armed groups often forced children to commit atrocities against their own

⁷⁴ Dyan Mazurana, Teddy Atim, Ariane Brunet, and Helen Kezie-Nwoha, “Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda,” Isis Women’s International Cross Cultural Exchange and Feinstein International Center (2013): 26.

⁷⁵ Dyan Mazurana quoted in Mazurana and Carlson, “Children and Reparations,” 10.

family or community members, in part to prevent their young recruits from escaping and returning home. Likewise, as previously mentioned, girl victims of sexual crimes or forced marriage, such as in Sierra Leone and the DRC, often face stigma from their communities, who may view them as impure, burdensome, or treacherous.

Stigmatization may be especially harsh for older boys and girls who are not treated as children based on their responsibilities or other cultural markers. In Sierra Leone, communities considered girls returning home with children of their own, usually as a result of rape or forced marriage, to be adult women, though they had not undergone the appropriate rites of passage.⁷⁶ Out of shame that their young daughters were mothers, some families have denied these girls much needed protection and support.⁷⁷

In cases where child victims face the possibility of community rejection, public acknowledgment of violations may leave them in an even more vulnerable position. Reparations are meant to recognize and address harms so as to facilitate healing and signal renewed respect of rights, and thus should never enable continued victimization. Such considerations should influence the process and forms of reparations, especially with regard to public recognition and benefits.

Analysis of local culture also helps reveal the values and priorities of victims' communities. In certain contexts, groups place greater emphasis on communal identity than on individual rights. In Colombia, some indigenous groups opposed individual reparations awarded to children, believing that the community as a whole suffered the harm.⁷⁸ Although the individual child holds the right to reparation, his or her needs may

⁷⁶ Megan MacKenzie, "Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone," *Security Studies* 18(2), 2009, 254.

⁷⁷ *Ibid.*

⁷⁸ Aptel and Ladisch, "Through a New Lens," 30.

be irrevocably entwined with those of the group. In such instances, consultation with local leaders to better understand the needs and concerns of the community may support rehabilitation of children, and incorporating community interests when developing reparations initiatives may help reduce potential stigma against child victims.⁷⁹ Nevertheless, benefits to the community should not override the child's individual right to reparation. Rather, community-based initiatives must find ways to target victims, ensuring harms are acknowledged and they enjoy benefits.

Another important aspect of cultural sensitivity is consideration of tensions between groups. Many wars are rooted in ethnic or religious conflict and failure to account for such tensions can exacerbate grievances and resentment. For instance, in 2012, the ICC convicted rebel commander Thomas Lubanga for recruiting and using child soldiers in the DRC. Lubanga primarily recruited children from his own ethnic group, the Hema, and used them to commit atrocities against the Lendu ethnic group.⁸⁰ As these children are now eligible for benefits, Lendu victims of massacre, torture, and other grave crimes may perceive reparations as legitimization of the harm committed against them. Such tensions indicate that not only should cultural contexts be examined on a local level, but a wider appreciation of cultural dynamics and effective strategies to deal with them is necessary to repair societies as a whole. Processes and outcomes should be sensitive to reparations' cultural significance, and other complementary measures of transitional justice should seek to address broader social tensions.

In light of these observations about age, gender, and culture, as well as the long-term consequences of violations, it becomes increasingly clear that a child victim's

⁷⁹ Ibid.

⁸⁰ See, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01-01/01-06.

wartime experience is complex and its impact extensive. When carefully assessed, these dimensions, in collaboration with children's rights principles, can help shape reparations processes and forms to ensure they effectively communicate their intention and work to restore the lives of victims.

PART 3: REPARATIONS FOR CHILDREN: PROCESS

In approaching post-conflict reparations, procedural dimensions, such as outreach, registration, and distribution, are as important for effectively delivering justice as actual outcomes. Unfortunately, the inadequate attention paid to child victims, their low visibility and inaccessibility, and their widespread victimization mean that inclusion of and sensitivity to children's issues are rarely prioritized. Failure to incorporate the experience of children may result in oversight in determining eligibility, insufficient communication regarding access to resources, and may even worsen a child's situation. Children's rights, needs, and experiences, then, must guide processes to help ensure reparations acknowledge harm, provide appropriate benefits, and lay the groundwork for a just future.

Outreach and Participation

If reparations are to help facilitate healing and justice, victims and their advocates, including children and organizations working on their behalf, must have opportunities to actively contribute and guide decisions. The *Nairobi Declaration* affirms the need for participation "in every stage of the reparation process, i.e. design, implementation,

evaluation, and decision-making.”⁸¹ While children may take on different roles than adults, their perspectives and contributions are no less valuable.

Clara Ramírez-Barat notes that outreach to children is a process that spans from the outset to the conclusion of any transitional justice initiative.⁸² From the beginning, outreach can help facilitate young people’s inclusion in consultation, which allows their experiences and opinions to shape decisions on eligibility, appropriate forms, and distribution of reparations.⁸³ When such efforts are sustained through implementation and distribution, they help ensure that “information is well disseminated, especially to victim communities who should participate in and benefit from the process.”⁸⁴ Simultaneously, consistent contact with child victims and their communities creates opportunities to inform them of their rights even beyond the end of transitional justice activities.

Unfortunately, initiatives rarely prioritize children’s involvement. For instance, Mazurana and Carlson found that “nearly all past truth commissions have failed to consult with child survivors of grave rights violations or with organizations dedicated to children’s rights in constructing reparations frameworks and programs, including the determination of which rights violations would be addressed and hence who could benefit.”⁸⁵ Neglecting to include children in a process that deeply impacts their wellbeing and future stems from a failure to recognize children’s political, economic, and social agency. Additionally, children’s own lack of awareness, documentation, and full legal status hinders their ability to access and contribute to processes in meaningful ways.⁸⁶

⁸¹ *Nairobi Declaration*, Principle 2(B).

⁸² Clara Ramírez-Barat, “Engaging Children and Youth in Transitional Justice Processes: Guidance for Outreach Programs,” International Center for Transitional Justice (2012):10.

⁸³ Mazurana and Carlson, “Reparations,” 189

⁸⁴ Ramírez-Barat, “Engaging Children and Youth in Transitional Justice Processes,” 10

⁸⁵ Mazurana and Carlson, “Reparations,” 176.

⁸⁶ *Ibid.*, 207-208.

Taking these challenges into account, children’s rights principles can help guide approaches to child-sensitive consultation.

First, children’s best interests and evolving capacities should determine their manner of involvement. Among other things, this means ensuring safe and supportive activities and environments that give young people opportunities to contribute.⁸⁷ In particular, “physical and emotional security is always a central component when working with children and adolescents, especially when dealing with challenging topics such as transitional justice and human rights abuses.”⁸⁸ Accounting for best interests and capacities requires programs to be creative and flexible in the form and level of participation so as to fit individual children’s needs and wishes.⁸⁹

Second, non-discrimination standards should help ensure that certain groups of children are not excluded. Here, both child-specific and context-specific hindrances and dimensions must be considered, including literacy and education, dependency on adults, geographical remoteness, and ethnic, gender, or language discrimination. Moreover, highly vulnerable or invisible groups, such as orphans, street children, displaced and unaccompanied children, or children with disabilities, should have equal opportunities to get involved.⁹⁰

Third, opportunities to participate should empower young people as right-holders and agents of change. At its most basic level, this means listening to children’s voices and allowing their opinions to shape decisions about reparations processes and

⁸⁷ Ramírez-Barat, “Engaging Children and Youth,” 5.

⁸⁸ *Ibid.*, 6.

⁸⁹ *Ibid.*, 5.

⁹⁰ *Ibid.*, 8.

outcomes.⁹¹ Even more, empowering young people means helping them overcome barriers that may prevent them from acting with agency, making good decisions for their futures, and transforming their communities.⁹² This is especially important for those who will likely face discrimination as adults, such as girls in many contexts.

Given these standards, processes to ensure children’s involvement face practical consequences. First, activities that involve direct engagement with children require child-friendly methods and resources. Personnel should be sufficiently trained to communicate with children and to detect trauma or abuse.⁹³ Additionally, child-friendly spaces and environments can assist in facilitating activities and discussions where children feel safe and empowered to express their opinions.⁹⁴ Likewise, child-friendly materials can help explain complex topics in a way that is consistent with children’s best interests and evolving capacities, while also considering their experiences and perspectives.⁹⁵ Child-sensitivity is especially critical in post-conflict settings where discussions and activities must simultaneously communicate the reality of war and violence, encourage a sense of agency rather than victimization, prepare for a variety of reactions, and promote critical thinking and prevention.⁹⁶

The child-friendly standards established for participation in Sierra Leone’s Truth and Reconciliation Commission serve as a prime example. Child protection specialists assisted statement takers in reaching out to victims, developing questions, and supporting

⁹¹ *Nairobi Declaration*, Principle 1(D).

⁹² *Nairobi Declaration*, Principle 1(D).

⁹³ Ramírez-Barat, “Engaging Children and Youth,” 6.

⁹⁴ *Ibid.*, 7.

⁹⁵ *Ibid.*, 11.

⁹⁶ *Ibid.*

children throughout the interview process.⁹⁷ The TRC considered gender-sensitivity as well and assigned women to work with victims of sexual violence. At its conclusion, the TRC in collaboration with UNICEF produced two child-friendly versions of the final report, one for younger children and one for older children.⁹⁸ Through steps such as these, transitional justice initiatives can indeed help facilitate children's involvement in safe and meaningful ways.

A second practical implication for ensuring that children's needs and rights are respected is the involvement of child protection and advocacy organizations. These groups, in collaboration with transitional justice actors, can help facilitate child participation in a meaningful and safe manner. Moreover, when necessary, advocates can act on behalf of child victims to communicate their experiences and needs to national or international level actors who drive reparations processes. By understanding and representing children and their interests, these organizations can help shape "both individual and community benefits and development programs for awarding those benefits."⁹⁹ A notable example emerged in Colombia, where child protection organizations' advocacy efforts helped secure the inclusion of child victims of illegal recruitment as eligible for reparations.¹⁰⁰ Indeed, child-oriented organizations play an indispensable role in getting young people's issues on reparations agendas.

⁹⁷ Philip Cook and Cheryl Heycoop, "Child Participation in the Sierra Leonean Truth and Reconciliation Commission," in *Children and Transitional Justice*, 172.

⁹⁸ Ramírez-Barat, "Engaging Children and Youth," 10.

⁹⁹ Mazurana and Carlson, "Reparations," 208.

¹⁰⁰ Aptel and Ladisch, "Through a New Lens," 28.

Registration and Distribution

Like outreach and consultation, sensitivity to children’s experiences and vulnerabilities is critical to registration and distribution of reparations. One of the most salient lessons of past reparations programs has been the need for flexible deadlines. In their research, Mazurana and Carlson found that eligible child victims were “denied access to benefits because deadlines expired.”¹⁰¹ Children may have many reasons for failing to apply within a given timeline. They may not be aware of programs and qualifications, or may have difficulty accessing them. For instance, “research in Colombia found that it took time for children and those working with children to understand that they were eligible for reparations and to mobilize to apply.”¹⁰² Such hindrances may be especially true for those living in remote areas where communication and transportation are limited. Given this, “application deadlines should be long enough to give child victims time to learn about their right to access benefits and to submit their application.”¹⁰³

Additionally, stigma, shame, or fear may prevent young victims from applying for benefits. The *Nairobi Declaration* asserts, “Reparation processes must allow women and girls to come forward when they are ready. They should not be excluded if they fail to do so within a prescribed time period. Support structures are needed to assist women and girls in the process of speaking out and claiming reparation.”¹⁰⁴ Indeed, flexibility and sensitivity in the application process are critical for both girls and boys to enjoy benefits, and even to be empowered in claiming their rights.

¹⁰¹ Mazurana and Carlson, “Reparations,” 186.

¹⁰² Aptel and Ladisch, “Through a New Lens,” 28.

¹⁰³ Ibid.

¹⁰⁴ *Nairobi Declaration*, Principle 3(G).

Similarly, Aptel and Ladisch note, “the level and type of proof needed to claim reparations benefits should be sensitive to the particular challenges faced by child victims so as not to overburden them or render benefits inaccessible.”¹⁰⁵ Victims without official documentation of violations and abuses or who have lost records over time should not be disqualified.¹⁰⁶ Additionally, data collection procedures should account for cultural norms and avoid re-traumatizing children. In particular, victims of sexual violence should not be burdened to provide physical evidence of harm.

In a similar vein, risks of stigmatization and marginalization should inform distribution processes. When a person’s “status as ‘child soldier’ or ‘forced wife’ is publicized as part of a reparations program,” the negative social and economic consequences on their lives may far outweigh any advantage provided by reparations.¹⁰⁷ In such cases, even when the material benefits are appropriate, reparations can fail to bring justice to child victims.

PART 4: REPARATIONS FOR CHILDREN: FORMS

While eligibility for reparations is based on the grave violation or abuse suffered, victims’ needs, rights, and opinions can help determine forms of reparation. Unfortunately, no known dedicated research has been conducted regarding children’s preferences for reparative measures. Mazurana and Carlson conclude from their research in Africa, the Balkans, and Afghanistan, however, that children tend to prioritize improved access to education, healthcare, and shelter after conflict.¹⁰⁸

¹⁰⁵ Aptel and Ladisch, “Through a New Lens,” 31.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Mazurana and Carlson, “Reparations,” 196.

Furthermore, it is essential to remember that reparations can never fully compensate or heal victims from the deep physical and psychological consequences of grave crimes. De Greiff argues that rather than attempting to repair victims in proportion to harms, reparative measures should be considered “a contribution to the quality of life of survivors.”¹⁰⁹

Restitution¹¹⁰

Restitution consists of measures to “restore the victim to the original situation before” he or she experienced grave violation or abuse under human rights or humanitarian law.¹¹¹ As noted above, in the context of massive violence and atrocities, “it is not possible to fully repair children who have suffered such abuses to their condition before the violation occurred.”¹¹² Nevertheless, tailored reparations that respond to abuses suffered and resulting needs can help restore, or at least improve, aspects of victims’ lives.

Measures of restitution are particularly able to respond to violations or abuses with significant economic and social consequences. For instance, child victims of abduction, conscription, or forced displacement can be supported as they return to their places of residence, such as through provision of transitional housing or measures to promote healthy family relationships.¹¹³

¹⁰⁹ De Greiff, “Justice and Reparations,” 466.

¹¹⁰ According to the *Basic Principles*, Article IX, paragraph 19, restitution can include: “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.”

¹¹¹ *Basic Principles and Guidelines*, Article IX, Paragraph 19.

¹¹² Mazurana and Carlson, “Children and Reparations,” 8.

¹¹³ Mazurana, et al, “Making Gender-Just Remedy and Reparation Possible,” 41.

At the same time, consideration of non-discrimination, best interests, and views of the child may show the need for alternatives to returning home. As mentioned, girl-mothers and former child soldiers in the DRC, Sierra Leone, and Liberia may experience stigma and struggle to survive when they return home. Likewise, in situations of on-going hostilities, as in Colombia and the DRC, children may be at risk of re-recruitment or other forms of victimization within their places of origin. In other cases, older boys and girls may prefer to resettle elsewhere in order to have greater access to work and opportunities to build new lives. In instances where the process causes additional harm or goes against the child's preferences, returning home will not facilitate authentic restitution and other forms of assistance should be provided to help young people build new, healthy lives.

Another example of restitution relevant for children is the return of property. Children who have lost parents may experience particularly harsh economic consequences and may need assistance in accessing ownership of their parents' property. Yet, restitution may not be possible, as when property is destroyed or when legal and cultural structures hinder young people, especially girls, from realizing their rights. At a minimum, these children should be compensated in proportion to the property lost.¹¹⁴ Moreover, collaboration with other transitional justice initiatives can help victims and their advocates work toward structural and social transformation so that their rights are more fully respected.¹¹⁵

¹¹⁴ Mazurana and Carlson, "Reparations," 195.

¹¹⁵ Ibid.

Compensation¹¹⁶

Compensation provides repayment for economically measurable damage or costs incurred due to wartime harms, including physical and mental damages, lost education and employment opportunities, and costs incurred for legal, medical, and social services.

While direct financial reimbursement may be a straightforward and simple form of reparation, attention to age, gender, and culture demonstrates that lump sum cash awards are not always sensitive to children's situations. First, if victims are still children at the time of receiving reparation, there is no guarantee they will enjoy any benefit. For example, in Nepal, guardians, rather than the children, received the money, and there was little accountability for how it was used.¹¹⁷ Second, gender norms may limit potential benefits of lump-sum awards. In Liberia, parents expected to control the money their daughters received, and family tensions rose when girls refused to surrender their compensation.¹¹⁸ Finally, cash compensation may incite resentment from others who are not eligible to receive any assistance or may cause confusion about its meaning. Such cases have been noted in Colombia, where former child soldiers and their communities perceived financial reparation as a reward for crimes committed.¹¹⁹

Given these considerations, alternatives to lump sum awards may be better suited as reparation for children. Examples of other compensation include: cash pensions and trust funds; scholarships for secondary and tertiary education; special programs for accelerated education or vocational training; housing assistance; and special provisions

¹¹⁶ According to the *Basic Principles*, Article IX, paragraph 20, harm can include: "physical and mental harm; lost opportunities, including employment, education, and social benefits; material damages and loss of earnings, including loss of potential earnings; legal, medical, psychological, social services, moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

¹¹⁷ Aptel and Ladisch, "Through a New Lens," 29

¹¹⁸ Ibid, 30.

¹¹⁹ Ibid.

for physical and mental health care. Nevertheless, in some cases, older boys and girls may prefer direct financial reparation to give them more autonomy in making decisions about their futures. In assessing the most suitable form of compensation, consultation with children and those working on their behalf is essential in order to know their preferences as well as the potential gender and cultural implications of benefits.

Additionally, some measures of compensation can complement development initiatives, thereby also enhancing community wellbeing and mitigating the risk of stigmatization. For instance, schools can receive extra resources for every former child soldier who enrolls and attends. Not only would this benefit the individual and the school, but it would also encourage the community to take the lead in reincorporating these young people who may otherwise feel marginalized. In this way, measures of compensation can also facilitate restitution and rehabilitation of young victims.

Rehabilitation¹²⁰

Rehabilitation is an important form of reparation to help children reorient their life plans. From one perspective, rehabilitation is “defined around the aspirational notion of a functional life,” meaning measures should support children in building healthy and whole lives after conflict.¹²¹ From another view, “rehabilitation is envisaged as a sort of ‘antidote rite’ which is expected to have... transformative potential... so as to make its subjects not only capable of living in a peaceful society but capable of resuming their roles as children....”¹²² While it is important to recognize that reparations cannot undo

¹²⁰ According to the *Basic Principles*, Article IX, paragraph 21, “Rehabilitation should include medical and psychological care as well as legal and social services.”

¹²¹ Ruth Rubio-Marín quoted in “Observations on issues concerning reparations,” paragraph 85.

¹²² Irina Kyulanova quoted in “Observations on issues concerning reparations,” paragraph 85.

the impact of war, rehabilitation measures can help victims cope with their experiences and move forward with their lives as contributing members of society.

Rehabilitative measures acknowledge the complex and lasting impact of violations, and seek healing for victims long after conflict ends.¹²³ Providing goods and services such as housing, education, and medical care to children can serve to rehabilitate young victims by facilitating their physical, mental, and emotional recovery. Moreover, availability of medical, psychological, legal, or social services can support whole communities, while providing targeted benefits to individual child victims.¹²⁴ For example, amputee victims can be given reconstructive surgery, while other community members can have access to hospitals with specialized care. Once again, creative approaches to rehabilitation can help children repair their lives individually and within the broader context of their communities.

Satisfaction¹²⁵

Satisfaction is an important form of symbolic repair for victims and society. Satisfaction includes measures that establish historical accounts of violations and abuses, express apology and commitment to respect rights, and memorialize victims. Satisfaction can also include judicial or administrative punishment of perpetrators.

¹²³ “Observations on issues concerning reparations,” paragraph 85.

¹²⁴ “Observations on issues concerning reparations,” paragraph 85, 91.

¹²⁵ According to the *Basic Principles*, Article IX, paragraph 22, satisfaction includes: “Effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth...; search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.”

Satisfaction may be especially significant for family members and for communities as a whole. For instance, in Guatemala, the Historical Clarification Commission responded to “important demands of victims organizations” in their recommendation for a policy of exhumations and searches for disappeared victims, including children, to help bring closure to parents and families and to restore dignity to communities.¹²⁶ The process of exhumation allowed communities and family members to have public reburial ceremonies that included religious rituals, prayers, food, and physical markers.¹²⁷

This form of reparation shares connections with other transitional justice mechanisms. In particular, court proceedings and truth-seeking processes can themselves help satisfy and repair victims. In some cases, children’s participation in these mechanisms may help facilitate healing, though measures should be put in place to prevent security threats and risk of re-traumatization. In Sierra Leone, the Special Court promoted children’s participation and protection, allowing them to testify anonymously and confidentially, and providing psychosocial support before and after testifying.¹²⁸ Ultimately, the child’s best interests and evolving capacities should guide decisions about their involvement in these processes.

At the same time, establishing accountability is not necessarily a victim-centered measure of reparation, but is a general component of justice in post-conflict societies. In

¹²⁶ Paz and Bailey, “Guatemala,” 104.

¹²⁷ Laura J. Arriaza and Naomi Roht-Arriaza, “Weaving a Braid of Histories: Local Post-Armed Conflict Initiatives in Guatemala,” in *Localizing Transitional Justice*, 223.

¹²⁸ An Michels, “‘As If It Was Happening Again’: Supporting Especially Vulnerable Witnesses, in Particular Women and Children, at the Special Court for Sierra Leone,” in *International Criminal Accountability and the Rights of Children*, eds. K. Arts and V. Popovski (Hague: Hague Academic Coalition, 2006), 142.

this way, measures of satisfaction can be tied to more material forms of reparation, like compensation or rehabilitation.

Guarantee of non-repetition¹²⁹

Measures signaling guarantees of non-repetition are oriented toward the transformative aspect of reparations and of transitional justice in general. Child-sensitive reforms are important for communicating guarantees of non-repetition to young victims. Among other steps, this may include child-sensitivity training for judges and security personnel, establishment of child protection systems, and reform of juvenile justice systems to ensure protection of boys and girls in conflict with the law. Additionally, reforms in domestic law can ensure that states are aligned with international standards, such as through criminalizing the recruitment and use of children in armed forces at least under age 15.

Reform of the education system is especially relevant to the lives of young people. In the context of armed conflict, education can play a dual role of promoting violence or promoting peace: “unequal and discriminatory access to education, divisive educational content and violent or authoritarian pedagogy can contribute to conflict, whereas equality of educational opportunity, creative and democratic educational content

¹²⁹ According to the *Basic Principles*, Article IX, paragraph 23, guarantees of non-repetition include: “Ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; promoting mechanisms for preventing and monitoring social conflicts and their resolution; reviewing and reforming law contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.”

and progressive pedagogy can contribute to social transformation.”¹³⁰ For example, schools in Peru developed into bases of ideological support, and when war erupted they became symbols and actual catalysts for violence.¹³¹ In such cases, “linking education and curriculum reform to transitional justice has the potential to strengthen the protective environment and to establish a broader understanding of human rights principles.”¹³² Additionally, the education system is uniquely placed to involve and affect all levels of society, from grassroots groups to the government, and from children to leaders.

Together, satisfaction and guarantees of non-repetition are particularly meaningful for child victims of armed conflict “as a way of signaling that the past modes of operation will no longer be tolerated, thus helping children and youth adopt an understanding of their future role and place in a society based on rights, not violence.”¹³³ Indeed, assurances of protection and respect for rights, including through other forms of reparations, are meaningless if not enacted in conjunction with broader systematic and institutional change. In this way, individual and corrective reparations will have the most significant impact when accompanied by transformative reparations helping guarantee that violations and abuses will not occur again.

Beyond Reparations: Connections with Post-Conflict Initiatives

Reparations are increasingly being recognized for their transformative role after armed conflict. Rubio-Marín writes that when both the corrective and transformative potential are understood, “reparations become measures that promote... both

¹³⁰ Ibid., 329.

¹³¹ Julia Paulson, “Truth Commissions and National Curricula: The Case of *Recordandonos* in Peru,” in *Children and Transitional Justice*, 340.

¹³² Siegrist, “Child Rights and Transitional Justice,” 8.

¹³³ Aptel and Ladisch, “Through a New Lens,” 26-27.

interpersonal trust and trust in the institutions of the ‘new state’ as well as in its overall legitimacy and efficacy.”¹³⁴ The *Nairobi Declaration* also emphasizes the need to transform institutions and structures in order to address imbedded political, social, and cultural injustice, especially injustice against females.¹³⁵ Even when individuals receive reparations, systems must be changed so that rights are respected, especially in contexts where the environment enabled mass violence and grave crimes.¹³⁶

Not forgetting the critical need to distinguish reparations from other forms of assistance in order to communicate directly to victims, the powerful role of social transformation demonstrates how other initiatives, including transitional justice and development, can support or complement reparations. In fact, Sharanjeet Parmar writes, “Individual compensation mechanisms alone are not likely to result in the most appropriate and comprehensive responses to gross human rights; instead, some combination of individual compensation and broad policy measures to benefit victims is needed to accomplish reparation.”¹³⁷

In places where widespread social and economic injustice remains, even when some victims have received acknowledgment and benefits, a broader perspective on reparative measures can help create space for development initiatives. For example, some victims in Guatemala have received reparations, but most people continue to live in desperate poverty with insufficient access to basic resources.¹³⁸ Though this may not be tantamount to grave violations of human rights, people need support in repairing and

¹³⁴ Ruth Rubio-Marín, “Introduction: The Gender of Reparations: Setting the Agenda,” in *What Happened to the Women?* 25.

¹³⁵ Nairobi Declaration, Article 3.

¹³⁶ See De Greiff, “Reparations and Justice.”

¹³⁷ Parmar, “Realizing Economic Justice for Children,” 398.

¹³⁸ Arriaza and Roht-Arriaza, “Weaving a Braid of Histories,” 206.

rebuilding their lives as well as repairing and rebuilding society. In particular, “children and young people can be agents of change when given access to education and opportunities for reasonable livelihoods. Thus, it is critical to consider how to complement and reinforce development initiatives in order to realize the rights of children in post-conflict societies.”¹³⁹

Funding

Notwithstanding the legal imperative and urgent need of reparative benefits to victims, problems of funding persistently hinder the implementation of reparations initiatives. In general, funding for reparations can come from specially established trust funds or from dedicated lines in national budgets.¹⁴⁰ Creative ways to collect funds are also possible, such as taxing those who benefited from conflict or through recovering illegal assets. As the duty bearer should finance reparations, it makes sense that a line in the national budget be dedicated to such efforts when the state is the liable entity. Additionally, when non-state perpetrators cannot pay, the state should take on this duty. Financing reparations plays a significant role in signaling protection and respect to victims, as ensuring dedicated funds is a first step acknowledging their right to reparation.¹⁴¹

¹³⁹ Parmar, “Realizing Economic Justice for Children,” 367.

¹⁴⁰ “Rule-of-Law Tools for Post-Conflict States: Reparations Programmes,” Office of the United National High Commissioner for Human Rights (2008): 32.

¹⁴¹ “Rule-of-Law Tools for Post-Conflict States,” 33.

CONCLUSION

Child victims of serious crimes during armed conflict have the right to receive acknowledgment for harms suffered and reparative benefits to facilitate healing. Serious crimes have distinctive immediate and long-term impacts on boys and girls, and age, gender, and cultural context influence both the harms to which a child is vulnerable and the ways in which children and their communities cope. As such, the process and outcomes of reparations must also be shaped by these attributes, as well as by principles of non-discrimination, best interests, and evolving capacities of the child. Given this, a few points of guidance emerge for approaching reparations for children. First, the symbolic dimension of reparations is essential for acknowledging victims and for signaling that violence will not be the future norm. Second, reparative benefits should never increase children's vulnerability, and should be sensitive to their need for protection and provision. Third, insofar as participation supports victims' wellbeing, children should be actively engaged in the design and implementation of reparations programs. Finally, if well done, reparations can enable broader social transformation that can help empower boys and girls to recreate their futures and build societies where their rights are respected.

Undeniably, children are among the most vulnerable and victimized groups during armed conflict. Yet, children are also agents of transformation, and given opportunities for healing and empowerment, they can help ensure the building of more just and peaceful societies for generations after conflict.

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