

# **Toward a Child-Oriented Approach to Reparations: Reflecting on the Rights and Needs of Child Victims of Armed Conflict**

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## **Abstract**

**R**ecently, several national and international courts and truth commissions have drawn attention to targeted crimes committed against children in situations of armed conflict. While these mechanisms have recognized victims' right to reparation, they also admit a distinct lack of legal or policy guidance for design and implementation of reparations programs for children. This paper explores the impact of armed conflict on child victims, analyzing how age, gender, and cultural context shape experiences and consequences of violations. It then considers the forms of reparation and how children's rights principles, particularly those regarding the best interests and evolving capacities of the child, can help guide program design. Ultimately, this analysis shows that child-oriented reparations should be tailored to children's particular vulnerabilities, needs, and circumstances, while clearly signaling an end to abuses and violence.

## **Introduction**

Although the right to reparation is widely recognized in international law, in practice it is often overshadowed by competing political priorities in post-conflict environments. Concerns such as bringing security to war-affected regions, enhancing governance, and rebuilding economies are typically placed above victims' rights. Even where transitional justice mechanisms are implemented, negligible attention and resources are given to reparations programs, least of all for children. Fully repairing victims from the atrocities of war is impossible, but acknowledging suffering, restoring victims' lives, and strengthening respect for rights are crucial tasks in transitional societies. As citizens and future leaders, children deserve recognition for harms suffered, protection of their rights, and access to reparative resources.

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Fortunately, efforts to overcome the long-standing lack of political will and recognize child victims' rights are increasing. Recent attention to young victims of war in international and national courts and truth commissions<sup>1</sup> highlights the urgent need for legal and policy guidance in designing and implementing appropriate reparative measures for children. Shaping a child-sensitive approach to reparations merits an exploration of children's broader rights as well as specific needs.

The foundation for this analysis is laid by an examination of the international legal framework, which defines the rights of child victims and the role reparative measures can play after conflict. It is important to understand the nature and impact of armed conflict on children in order to help such measures respond directly to needs. Paying particular attention to age, gender, and cultural context helps ground responses in children's post-conflict reality. Throughout this section, examples including Democratic Republic of Congo (DRC), Sierra Leone, Colombia and Liberia illustrate various ways in which armed conflict impacts this reality. Finally, children's rights principles are invoked to guide the process and design of reparation initiatives. In particular, the principles regarding best interests and the evolving capacities of the child, which reflect the need for varying levels of protection and participation based on age and maturity, can inform approaches to restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition. Ultimately, a thorough analysis of the experiences of child victims in armed conflict demonstrates how reparations can best respond to violations and their long-term impact, in accordance with children's rights principles.

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## **Part 1: The Legal Framework**

### **The Child**

The Convention on the Rights of the Child (CRC) is the guiding document regarding the protections and rights afforded to children. As established in this convention, as well as by the Geneva Conventions and Additional Protocols, the Optional Protocols to the CRC, the Rome Statute, and other relevant treaties, children enjoy both general and child-specific protections afforded to civilians during armed conflict.

Article 1 of the CRC 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."<sup>2</sup> In reality, the line between childhood and adulthood is not always clear. As noted in the definition, protections of childhood may end earlier than 18 under domestic law.<sup>3</sup> Further, other international instruments do not necessarily define a child as an individual under 18.<sup>4</sup> The CRC itself presents a major exception in Article 38, which

permits states to recruit individuals into the armed forces at age 15.<sup>5</sup> Notwithstanding the nebulous legal questions regarding chronological age, protections and rights under human rights law, humanitarian law, and criminal law apply to children in situations of armed conflict.

In addition to codifying existing international laws and norms, the CRC introduces two new children's rights principles: the best interests of the child and the evolving capacities of the child.<sup>6</sup> Working 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, children remain

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

#### **The Child as a Victim**

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 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."<sup>7</sup> In addition to these "direct" victims, family members, dependents, and those who were injured by intervening on the victim's behalf may also be considered victims.<sup>8</sup>

Child victims of armed conflict are individuals under 18, or otherwise defined, who have suffered gross violations under human rights law or humanitarian law in connection with armed conflict. Children can be victims of both generic and child-specific crimes. Generic violations include any harm from which all individuals are protected, such as torture, maiming, and sexual violence, as well as those against which civilians are protected such as murder and hostage-taking. Child-specific crimes are those against which children are protected due to their particular vulnerabilities. According to Cecile Aptel, the three child-specific violations in international criminal law are: "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."<sup>9</sup> Regardless of the category of offense, children are protected against gross violations of human rights, war crimes, and other international crimes.

## Reparations for Victims

Reparations are measures taken by the state or liable entity to recognize the suffering of victims, provide remedy, and signal a renewed respect for their rights.<sup>10</sup> 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.”<sup>11</sup> Measures may range from symbolic to material in nature, though effective reparations should incorporate both aspects. Distinct from relief or development assistance, reparations “must have some symbolic accompaniment to give them meaning.”<sup>12</sup>

Individual reparations identify and respond to each person who suffered harm, while collective reparations address violations suffered as a group.<sup>13</sup> Although individual-based approaches allow for more tailored responses, collective reparations simplify delivery and can reach more people. Overall, a combination of measures can work to provide concrete benefits and to communicate the intention to repair.<sup>14</sup>

Reparations generally 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.<sup>15</sup> Collectively, these forms are meant to relieve past suffering, remedy the lingering impact of harms, and prevent future violations.

The right to reparation for victims of serious violations under human rights or humanitarian protections is widely recognized within international law.<sup>16</sup> As protected persons, children share this right. With specific reference to child victims, Article 39 of the CRC 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.<sup>17</sup>

While it must be acknowledged, that, “it is not possible to fully repair children who have suffered such abuses to their condition before the violation occurred,” states and liable entities have an obligation to recognize the right to reparation under international law.<sup>18</sup> Taking into account their best interests and evolving capacities, reparations should “acknowledge children as rights holders who suffered specific violations in light of their vulnerability, while also granting them special protection.”<sup>19</sup> Based on the legal framework for child victims and reparations, the next step for establishing principles of child-sensitive reparations is to understand the experience and impact of war on children.

## Part 2: The Impact of Armed Conflict on Child Victims

In her groundbreaking report, *The Impact of War on Children*, Graça Machel revealed how the brutality of modern warfare disproportionately affects children caught in the midst of complex and persistent conflict.<sup>20</sup> Harm against young people, however, is not merely an unfortunate byproduct of war. Rather, perpetrators frequently target children, including in violations of killing, sexual violence, recruitment and use in armed forces or groups, maiming, torture, and denial of basic services.<sup>21</sup>

The physical and psychological consequences of these violations 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.<sup>22</sup>

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. Given all this, a thorough understanding of immediate and long-term consequences of armed conflict on children can inform reparations and enable them to respond effectively to victims' needs and realities.

### Long-term Impact: Trauma and Lost Opportunities

Wartime violations often leave children with three overarching long-term consequences: trauma, lost opportunities, and stigma. In its "Observations on issues concerning reparations," the Office of Public Council for Victims (OPCV) within the International Criminal Court (ICC) highlights long-term damage to children formerly associated with armed groups in the Democratic Republic of Congo (DRC). Though their findings focus specifically on child soldiers, boys and girls who suffer other violations in the context of armed conflict may experience similar repercussions.

The OPCV describes how children who participate in armed groups and 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 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...<sup>23</sup>

The Office points to scientific evidence 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.<sup>24</sup> Further, these young people may turn to drugs or crime in environments where they lack adult mentorship and support.<sup>25</sup>

Likewise, armed conflict disrupts young people's education and training when it halts daily life or removes children from their communities, such as through abduction or displacement. Normal life may not resume for years, meaning children grow into adulthood without developing necessary knowledge or skills. In other cases, the loss of parents means some children must care for their younger siblings and cannot attend school.<sup>26</sup> For example, "child parents" in the DRC become primary caregivers responsible for supporting their families and often end up in dangerous or exploitative work, such as mining or prostitution.<sup>27</sup>

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Furthermore, child victims may face stigmatization within their families and communities precisely because of the violations suffered during war. As a prime example, many girls in the DRC have been abducted, recruited into armed forces or groups, used in hostilities, raped, forcibly impregnated, forced into 'marriage,' infected with HIV/AIDS and other sexually transmitted diseases, and suffered other serious violations of protections and rights. These young females have subsequently experienced psychological trauma and physical health problems. 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 to family and communities because they are considered immoral, impure, and burdensome.<sup>28</sup> As a result, stigmatization worsens wartime violations, creating even more long-term physical, financial, social, and psychological hardships.

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."<sup>29</sup> Bearing this in mind, 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 programs.

### **Specific Impact: Understanding Violations through Age, Gender, and Cultural Context**

By law, reparations should respond directly to harms suffered, so that victims can

benefit. Symbolic dimensions of reparation, such as public apologies, should explicitly address their intended audience of victims by communicating regret for specific violations. In this way, recognizing the type of harm is critical for distinguishing reparations from other forms of assistance. Additionally, victims have varying needs, often based on harms suffered. For instance, child victims of sexual abuse may require specialized medical care, while victims of abduction may need accelerated educational opportunities. Factors like age, gender, and cultural context play critical roles in determining the experiences and impact of war on all victims.

### **Age**

Young people have different needs and rights depending on their phase of life, and 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 impact. For instance, children under the age of five are particularly vulnerable to war tactics of starvation or denial of humanitarian aid.<sup>30</sup> Research conducted in Burundi after the war indicates that malnutrition inhibits physical and mental development more severely when experienced in early childhood. Moreover, one-third of children under five died during the conflict in Sierra Leone.<sup>31</sup>

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 recruitment is between 12 and 14 years, though in cases such as the DRC, Sierra Leone, and Colombia, children as young as seven have been recruited.<sup>32</sup>

Notably, research in 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.<sup>33</sup> Many victims of abduction return home in critical need of education and livelihoods assistance, but are frequently denied such help due to lack of funding, administrative restrictions, and marginalization.<sup>34</sup> In this way, by failing to consider the age of victims, reparations programs risk excluding those most in need of reparative benefits.<sup>35</sup>

In order 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 status of the person as a child at the time the violation occurred, not on the age at the time reparations are administered,” programs must also consider how to assist those who were victimized as children but are now adults.<sup>36</sup> For example, programs in Argentina and Chile offered technical training or tertiary education to beneficiaries, rather than ending provisions after secondary school.<sup>37</sup> Together, these considerations can help determine how best to respond to the needs of the victims, ranging from the provision of education and skills to psychological support.

### **Gender**

Girls and boys can experience armed conflict in vastly different ways. On one hand,

perpetrators may target male and female children through different violations. In many cases of armed conflict, including the DRC and Sierra Leone, girls are disproportionately victims of sexual violence. In the same contexts, boys are more heavily recruited to participate in direct hostilities, meaning they are also more likely to be killed.

On the other hand, even 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 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 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.”<sup>38</sup> Girls are also at higher risk of sexually transmitted diseases such as HIV/AIDS, especially when rape is used as a weapon of war.<sup>39</sup> In contrast, boy victims of sexual violence may not face the same livelihoods dilemmas, though little research has been conducted. At the same time, males may be less likely to report violations or receive medical and psychological attention due to extreme social taboos in many contexts, including Afghanistan, the DRC, and Guatemala.<sup>40</sup> Therefore, the differing norms and distinctive roles into which girls and boys are socialized shape their experience of violations and should inform reparations.

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Both differentiated targeting and distinctive impacts of the same violation indicate the importance of thorough 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.<sup>41</sup> 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.

### **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. Their communities, however, may see child soldiers as dangerous criminals. In Sierra Leone, Liberia, and Cote d’Ivoire, armed groups have often forced children to commit atrocities against their own family or community members, in part to prevent their young recruits from escaping and returning home. Likewise, as previously mentioned, many girl victims of sexual crimes



or forced marriage, such as in Sierra Leone and the DRC, have faced major 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 culturally prescribed rites of passage. Out of shame that their young daughters were mothers, families often denied these girls much-needed protection and support.

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In cases where child victims face the possibility of community rejection, public acknowledgment of violations may leave them in an even more vulnerable position. Although reparations are meant to recognize harms suffered, they should never enable continued victimization. Rather, reparations should communicate symbolic recognition and facilitate healing in ways that are consistent with children’s best interests.

Analysis of local culture also helps reveal the values and priorities of communities. In certain contexts, groups place greater emphasis on communal identity than on individual rights. In Colombia, for instance, some indigenous groups opposed individual reparations awarded to children, believing that the community as a whole suffered the harm.<sup>42</sup> Even when the child is the primary victim, his or her needs are irrevocably entwined with those of the group. In such instances, consultation with local leaders to better understand the needs and concerns of the community can support the rehabilitation of children.<sup>43</sup> Further, incorporating community interests into reparations initiatives can help reduce potential stigma against child victims. Finally, community-based approaches may offer opportunities for more holistic rehabilitation: “Moving beyond a focus on individuals using clinically or medically based models, community healing models offer precedents in which a diverse segment of the community, including young people, helps to diagnose and determine the most suitable ways to help children and adults heal from the harms...”<sup>44</sup> While reparations should always seek to restore direct victims, cultural determinations of victimization should inform reparative responses.

Another important aspect of cultural sensitivity is the 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, 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.<sup>45</sup> 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, for which the perpetrators were not accountable. 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 also necessary to repair societies as a whole.

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

### **Part 3: Forms of Reparation for Children**

Having examined the immediate and long-term consequences of conflict on children, consideration for their best interests and evolving capacities can further help guide approaches to child-oriented reparations. Specifically, these principles can inform determinations regarding the five forms of reparation.

#### **Restitution<sup>46</sup>**

Restitution consists of measures to “restore the victim to the original situation before” the occurrence of human rights or humanitarian violations.<sup>47</sup> For children, one prime example of restitution is return and reintegration into their home communities for victims of abduction, conscription, or forced displacement. In these situations, the best interests and views of the child should guide the process. As mentioned, girl-mothers and former child soldiers in Sierra Leone and Liberia may experience stigma and struggle to survive when they return home. Likewise, in situations of ongoing hostilities, as in Colombia and the DRC, children may be at risk of re-recruitment or other forms of victimization in their places of origin. In other cases, older children may prefer to resettle elsewhere in order to have greater access to work. When returning home causes harm or contradicts children's preferences, doing so may not be in their best interest and may not facilitate authentic restitution. Whether young people decide to reintegrate into their places of origins or to resettle elsewhere, measures of support, such as transitional homes, should be provided in order to help restore them to their original situation.

#### **Compensation<sup>48</sup>**

Compensation provides repayment for economically-measurable damage or costs incurred due to wartime violations. Although direct financial reimbursement appears to be the most straightforward method, cash compensation may not be in the best interests of the child. First, if victims are still children at the time of receiving reparation, they may not enjoy any benefit. For instance, in Nepal, parents or guardians receive

monetary compensation, with little accountability for how it is used.<sup>49</sup> Second, cash compensation may cause confusion or incite resentment. This has been witnessed in Colombia, where some former child soldiers and their communities perceived financial reparation as a reward for crimes committed.<sup>50</sup> Third, gender norms may limit potential benefits of cash awards. In Liberia, parents expected their daughters to hand money over to them without any say about how it would be used.<sup>51</sup> Tensions arose in families where girls refused to surrender their compensation.

These issues demonstrate that compensation for long-term consequences may be in the child victim's best interests, as compared to direct financial transfers. Examples of this kind of compensation include education or vocational training for lost opportunities, and health services for physical or mental damages. Not only can these measures help compensate children for losses, but they also enhance community well-being and mitigate the risk of stigmatization. At the same time, financial reparation may provide greater benefit to older children, allowing them to decide their own best interests. Ultimately, consultation with children, caretakers, and communities, along with assessments of needs and best interests, should guide decisions regarding compensation for young victims of war. When these decisions are made, care must be taken that all material benefits – whether cash, job training, or health provisions – are sensitive to gendered impacts and consider how best to compensate both boys and girls.

### **Rehabilitation**

Rehabilitation is a particularly important form of reparation for children. From one perspective, rehabilitation is “defined around the aspirational notion of a functional life,” meaning measures should support children and their communities in building healthy and whole lives after conflict.<sup>52</sup> From another standpoint, “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.”<sup>53</sup> While reparations cannot undo the impact of war, rehabilitation measures can help victims cope with their experiences and move forward as contributing members of society.

Whether through medical, mental health, legal, or social services, rehabilitation can be especially appropriate as a collective form of reparation, while simultaneously providing benefits on an individual level.<sup>54</sup> As previously mentioned, models of “community healing” may effectively facilitate a child's healing by helping reestablish healthy community life.<sup>55</sup>

Little information exists regarding children's preferences for reparative measures, but Mazurana and Carlson conclude from their research in Africa, the Balkans, and Afghanistan that children generally prioritize access to education, healthcare, and shelter.<sup>56</sup> Providing such goods and services to children, while compensatory in nature, can also serve to rehabilitate young victims by facilitating their physical, mental, and emotional recovery. As with the other forms, proper analysis and consultation with

victims should determine the rehabilitative needs of individuals and communities. Overall, measures of rehabilitation tailored to their best interests and greatest needs hold enormous potential for healing children after conflict.

### **Satisfaction**<sup>57</sup>

Satisfaction is an important form of symbolic repair for victims and society. Satisfaction includes measures that establish historical accounts of violations, express apology and commitment to respect rights, and memorialize victims, as well as provide judicial or administrative punishment of perpetrators. While necessary for direct victims, 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.<sup>58</sup>

This form of reparation shares connections with other transitional justice mechanisms. Court proceedings and truth-seeking processes can help satisfy and repair victims and in some cases children’s participation in these mechanisms may help facilitate healing. In other cases, security threats and the risk of re-traumatization make them dangerously vulnerable. 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.<sup>59</sup>

At the same time, establishing accountability is not necessarily a victim-centered measure of reparation, but a general component of justice in post-conflict societies. In this way, measures of satisfaction should often be tied to more material forms, like compensation or rehabilitation.

### **Guarantee of non-repetition**<sup>60</sup>

Like satisfaction, measures signaling guarantees of non-repetition are important components of transitional justice in general. Legal and security reform, establishment of conflict resolution mechanisms, and increased access to justice are all ways to prevent reoccurrence of violations. Child-sensitive institutional reform is particularly important for communicating guarantees of non-repetition to young victims. Among other steps, this includes child-sensitivity training for judges and police, establishment of child protection structures, and reform of juvenile justice systems to ensure best interests of boys and girls in conflict with the law.

Together, satisfaction and guarantees of non-

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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.”<sup>61</sup> 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.

### **Designing Reparations Programs**

Along with considering the various forms, procedural dimensions of reparations are equally important for effectively delivering justice to children. Beyond the inadequate

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attention paid to young victims, program implementation faces several practical challenges. First, identifying direct and indirect child victims is particularly difficult due to their widespread and disproportionate victimization, as well as their lack of visibility. Second, determining which violations qualify young victims for reparation is especially challenging. While reparations should be directed in a way that communicates their symbolic dimension, limiting eligibility may exclude many children in desperate need of post-war support. Third, along with eligibility, securing child-sensitive reparations relies greatly on well-designed administrative details, such as application processes, deadlines, and outreach. Yet, children’s limited access, lack of awareness about eligibility, and reliance on adults can severely hinder effective delivery.

Taking these procedural issues into account further illuminates possible good practices. For instance, in contexts where children face potential stigmatization, where conflict has had community-wide effects, or where cultural norms emphasize communal rights, collective reparations may be in children’s best interests. Allowing for community-based access to reparative resources also simplifies administrative concerns regarding application, eligibility, and deadlines. At the same time, collective delivery does not guarantee justice for young victims; programs should consider how to integrate this concern, communicate symbolic repair and ensure victims receive benefits. Where violations have been targeted, victims are older boys and girls, or victims require tailored benefits, individual reparations may be more conducive to supporting children’s rights. Overall, these questions indicate the need for context-specific programs designed in consultation with communities and child victims.

## Conclusion

Currently, the greatest challenge to implementation of child-specific reparations is lack of political will. Providing remedy and assistance to child victims is rarely a high priority for those responsible or in power. Fortunately, recent international attention directed towards this issue may help build momentum for a reparative process focused on the long-term wellbeing of children after conflict.

By reflecting on children's unique wartime experiences, it emerges that the guiding principles behind a framework for child-sensitive reparations must be the best interests and evolving capacities of boys and girls, within their particular circumstances. As seen in this analysis, the many dimensions of children's reality intersect to determine how human rights and humanitarian violations during conflict impact their lives. Age, gender, and cultural context are particularly significant, as they influence both the specific harms to which a child is vulnerable as well as the ways in which children and their communities cope with these harms. Rather than forming a blueprint, however, this analysis shows that approaches to child-oriented reparations must be flexible and carefully tailored to the needs of victims.

Finally a few important considerations should guide the process of program design. First, reparative benefits should never increase children's vulnerability, and should be sensitive to their need for protection and provision. Second, insofar as participation supports victims' best interests, children and their communities should be actively engaged in the design and implementation of reparations programs. Third, the symbolic dimension of reparations is especially important for signaling that violence will not be the future norm. This signaling, along with the provision of protection and rights for young people, is essential for facilitating transitions to more peaceful societies.

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## Endnotes

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- 1 See *Prosecutor v. Thomas Lubanga Dyilo*, International Criminal Court; *Prosecutor v. Charles Taylor*, *Prosecutor v. Sesay, Kallon and Gbao*, and *Prosecutor v. Brima, Kamara and Kanu*, Special Court for Sierra Leone; Truth and Reconciliation Commission for Sierra Leone; Truth and Reconciliation Commission of Liberia; and Victim's Law in Colombia.
- 2 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 1.
- 3 Examples include domestic law concerning compulsory education and marriageable age.
- 4 For instance, the Geneva Conventions and Additional Protocols do not define who is a child.
- 5 CRC Article 38(3). See also Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000) and Rome Statute for the International Criminal Court (1998), Article 8.

- 6 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.
- 7 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution adopted by the General Assembly*, 21 March 2006, A/RES/60/147, Article V, Paragraph 8.
- 8 *Basic Principles*, Article V.
- 9 Cecile Aptel, "Children and Accountability: The Contribution of International Criminal Court," *Innocenti Working Paper 2010-20*, UNICEF Innocenti Research Centre (2010): 4.
- 10 Questions regarding responsibility for crimes committed and for providing reparations are critical, though outside of the scope of this paper.
- 11 *Basic Principles*, Article IX, Paragraph 15.
- 12 Lisa Magarrell, "Reparations in theory and practice," *Reparative Justice Series*, International Center for Transitional Justice (2007): 5.
- 13 *Ibid.*
- 14 *Ibid.*, 6.
- 15 *Basic Principles*, Article IX, Paragraphs 18-23.
- 16 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."
- 17 CRC, Article 39.
- 18 Dyan Mazurana and Khristopher Carlson, "Children and Reparation: Past Lessons and New Directions," *Innocenti Working Paper 2010-08*, UNICEF Innocenti Research Centre (2010): 8.
- 19 Cecile Aptel and Virginie Ladisch, "Through a New Lens: A Child-Sensitive Approach to Transitional Justice," International Center for Transitional Justice (2011): 26.
- 20 Graça Machel, "UN study on the impact of armed conflict on children," New York: United Nations (1996).
- 21 Mazurana and Carlson, "Children and Reparation," 7.
- 22 Jenny Kuper, "Building Peace in Post-Conflict Situations: Reparations for Children," in *Building Peace in Post-Conflict Situations*, ed. Faria Medjoubia (London: British Institute of International and Comparative Law, 2012), 125.
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- 24 *Ibid.*

- 25 Ibid.
- 26 Aptel and Ladisch, "Through a New Lens," 27.
- 27 Ibid.
- 28 "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.
- 29 Aptel and Ladisch, "Through a New Lens," 27.
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- 31 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; Machal, *The Impact of Conflict on Children*, 67.
- 32 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), 8.
- 33 Dyan Mazurana and Khristopher 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-Marin (New York: Cambridge University, 2009) 186.
- 34 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).
- 35 Aptel and Ladisch, "Through a New Lens," 28.
- 36 Ibid., 28-30.
- 37 Mazurana and Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations," 186.
- 38 Aptel and Ladisch, "Through a New Lens," 27.
- 39 Ibid.
- 40 "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](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? Gender and Reparations for Human Rights Violations*, eds. Ruth Rubio-Marin (New York: Social Science Research Council, 2006), 98.
- 41 Dyan Mazurana quoted in Mazurana and Carlson, "Children and Reparations," 10.
- 42 Aptel and Ladisch, "Through a New Lens," 30.
- 43 Ibid.
- 44 Mazurana and Carlson, "Children and Reparations," 19.
- 45 See, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01-01/01-06.
- 46 According to the Basic Principles, Article IX, paragraph 19, restitution can include: "resto-



- ration 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."
- 47 Basic Principles, Article IX, Paragraph 19.
- 48 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."
- 49 Aptel and Ladisch, "Through a New Lens," 29.
- 50 Ibid.
- 51 Ibid, 30.
- 52 Ruth Rubio-Marin quoted in "Observations on issues concerning reparations," paragraph 85.
- 53 Irina Kyulanova quoted in "Observations on issues concerning reparations," paragraph 85.
- 54 "Observations on issues concerning reparations," paragraph 85, 91.
- 55 Mazurana and Carlson, "Children and Reparations," 19.
- 56 Mazurana and Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations," 196.
- 57 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."
- 58 Paz Bailey, "Guatemala," 104.
- 59 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.
- 60 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.”

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