

EXECUTIVE SUMMARY

Rethinking Reparation for Children

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Children's and adults' right to remedy for gross violations of international human rights law and serious violations of international humanitarian law is clearly established. Recently, the UN General Assembly adopted the "Principles and Guidelines on the Right to Reparation", which codifies international law regarding the right to reparation. Up until the 1980s, however, the right to reparation was mostly an outcome of legal proceedings, and few child victims benefited. Today, reparation is increasingly discussed and enacted as part of a political process, particularly in societies transitioning from repressive and violent regimes. Moreover, particularly among those working on the ground among the victims themselves, reparation also is understood to be explicitly and implicitly about healing the wounds of and rebuilding relations among individuals and societal groups, although this is debated and contested.

My research focused on the outcome of reparation for children in eight different countries: Argentina, Brazil, Chile (which has seen two separate commissions and reparation processes),¹ Guatemala, Peru, Rwanda, South Africa, Sierra Leone, and Timor-Leste.² These eight countries were selected because during their conflicts children and youth were specifically targeted and violations against them were widespread and systematic. Within the eight countries there were also tribunals and or truth commissions established and reparation guidelines and, in most cases, programs created.

In identifying and acknowledging crimes and harms against children, there are three important facts to keep in mind. First, nearly all past truth commissions I studied in these countries failed to consult with child survivors of grave rights violations or with organizations dedicated to children's rights in constructing reparation frameworks and programs, including the determination of which crimes and rights violations would be addressed and hence who could benefit. With the notable exceptions of Peru and Sierra Leone, in no other reparation program were child survivors of grave or serious violations or child rights organizations systematically consulted to help shape the scope, processes, or outcomes of the policies or programs. As a result, child survivors and their advocates played little to no role in shaping the understanding of the commissions and resulting reparation guidelines or programs.

¹ Chile has experienced two truth commissions, with the most recent currently ongoing. In this paper, I provide information on both the first truth commission and the subsequent reparation law that was signed on January 31, 1992 (see also *Report of the Chilean National Commission on Truth and Reconciliation* (Notre Dame, IN: University of Notre Dame Press, 1993)), and on the second, the Commission on Political Imprisonment and Torture, which began in 2004 and is ongoing.

² To date, truth commissions or similar fact-finding bodies have been active in 24 countries, some of which also included reparation programs: Argentina, Bolivia, Chad, Chile, Ecuador, El Salvador, Germany, Ghana, Guatemala, Haiti, Nepal, Nigeria, Panama, Peru, Philippines, Serbia and Montenegro (formerly Yugoslavia), Sierra Leone, South Africa, South Korea, Sri Lanka, Timor-Leste, Uganda, Uruguay, and Zimbabwe. In addition to those named, Brazil, Malawi, and the United States have initiated reparation programs for select victims of political violence.

Second, in the few cases where there were specific hearings within commissions on the experiences of youth, such as in South Africa, there was little gender analysis or reflection regarding the crimes and harms children suffered. Therefore, most commissions and resulting reparation programs fail to acknowledge and address the gendered dimensions of violations and their gendered outcomes.

Third, the majority of past truth commissions and fact-finding bodies failed to adequately include gender issues within questionnaires and forms used to collect data and testimonies from survivors. The result of such omissions is a weakened ability of the commissions and reparations programs to adequately address gender-based and sexually based violations. In addition, the failure to collect age-sensitive data or include children in interviews results in the exclusion of the voices of children and their own understandings and insights into their experiences, needs, and rights. In light of this poor past record, Sierra Leone stands as an important exception.

Notably, in all these cases, while some commissions made the important step of having special hearings on children³ and resulting specific chapters on their experiences,⁴ with the exception of Sierra Leone, the ways in which girls and boys experienced the violence due to their gender is not addressed in any of the final reports. Some commission reports provide statistics on crimes against children and youth, but none of this data is gender disaggregated, nor is there any break down of the kinds of crimes or violations committed against children and youth.⁵

While the purpose of truth commissions is to reveal and make public what happened during situations of armed conflict and authoritarian regimes, the result is too often is final truth commission reports that obscure the specifics of violence against children and youth and fail to provide a recording and understanding of how girls and boys were differently targeted and effected. A clear understanding of the kinds of crimes and violations committed against boys and girls is needed to help the commission itself, state institutions, citizens groups, and the children's own families, communities and societies to use material and human resources to address the actual realities of the children and youth's experiences, and to help recover their rights. Without question, such an understanding plays a significant role in determining which types of crimes and victims will qualify for reparation through courts and government programming.

In the paper, I provide two tables (Table 1 and 2) to offer a comprehensive listing of all the crimes committed against children that were recognized by the commissions and that qualified those child survivors as beneficiaries within reparation programs in the eight countries under study. I find that most reparation programs cover only a small proportion of the kinds of crimes and subsequent rights violations that may follow that girls and boys experienced. I find that there is little to no consistency among truth commissions

³ As in the cases of Guatemala, Sierra Leone and Timor-Leste.

⁴ Final reports of truth commissions (or similar bodies) that had specific chapters dedicated to children and youth include Argentina, Guatemala, Peru, Sierra Leone and Timor-Leste.

⁵ For example, in the final truth commission reports for South Africa and Peru, there are no sex-disaggregated data for crimes committed against children or youth.

or national legislation establishing which crimes qualify child victims for reparation. In fact, the trend is that the vast majority of crimes committed against children are not recognized and hence did not qualify them for reparation. Where the crimes do qualify, few of those affected as children have benefited in the eight countries.

In reviewing the eight countries and considering which crimes qualify children for reparation and why, we learn several important lessons. First, TRC's that have mandates to address violations against children are much more likely to have a fuller understanding of the range and gravity of crimes committed and in turn recommend reparation for children (such as in Sierra Leone and Timor Leste). Countries in which children are not part of commission mandates, such as in Colombia, often do not consider the ways in which children were violated.

Second, a focus on crimes against children does not always lead to a gendered understanding or recording of how girls and boys were differently targeted, violated, and affected (both in the short and long term). Hence, commissions must have within their mandate explicit reference to paying attention to gendered differences in crimes and their affects. This is necessary for fully understanding what types of reparation for children victims would be most effective and how best to implement them in the post-conflict period.

Third, in the past, once reparation programs have been set up, children face a number of obstacles in actually receiving any benefit. In some cases, children may qualify for reparation but do not see the benefit due to age and time limits that end up expiring before they can receive any or all of their benefits, as in Argentina and South Africa. In other programs, children are required to have experienced multiple harms within the crime or violation, such as being tortured *and* losing property due to torture, as in Timor-Leste. There are also parameters set on the mothers of child victims that can disqualify the child, such as in Sierra Leone where children whose mothers were the victim of sexual violence can qualify for reparations only if the mother remains single. In Timor-Leste, children born out of an act of sexual violence can only access reparation if their mother is single.⁶

Fourth, to date, most reparation for children or adults is distributed either individually or, much less often, collectively, and comes in material (cash benefits, restitution of land, property and home, access to education and health care) and or symbolic forms (memorials, apologies, etc.). Yet most child victims do not receive or benefit from any reparation for a number of reasons. They lack access to adequate information presented in a child-friendly format, often because they are not explicitly considered in the design of outreach campaigns. Children also lack full legal autonomy. Most have no understanding of their rights or how to ensure their rights are upheld, especially when those violating them are authority figures or agents of the state. Children often lack proper documentation to help in presenting their claims, such as deeds to land, housing or property. They do not have bank accounts (for processing financial compensation) and most have little knowledge of how to manage money. Children may be fearful to come forward to reveal they were a victim and that those possibly still wielding power were the perpetrator. Children, especially those now heading their own households or those who have been forcibly married, may have a great fear of

⁶ *Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)*, Part 11, "Recommendations," <http://www.cavr-timorleste.org> or <http://www.etan.org/news/2006/cavr.htm>.

reprisal. Child survivors also face stigma, ostracism, and familial and community violence because of the violations committed against them, such as rape, sexual violence, sexual slavery, forced prostitution, forced marriage, or being part of a fighting force or group, or for being known as a child born of rape.

Reflecting on my analysis and findings presented in the first half of the paper, I then discuss in detail that I believe we need to more thoroughly examine the epistemological assumptions that underlie much of the reparation debate and programs today, particularly those that seem to consistently center on victims waiting for their governments to award them reparations for the harms they have suffered; in most cases the majority of victims never receive any reparation. I suggest that since we have to date almost no examples of widespread reparation programs that have addressed the majority of the victims in a way that even begins to approach the standards set in the Principles and Guidelines of Reparations, perhaps a continued (near exclusive) focus on legal processes and outcomes and state as the sole provider of (and hence controlling) reparation is unwise. Without a doubt we must maintain a strong justice focus and courts and national commissions have a role to play, but these cannot be the only areas of action. I put forward that we need to understand more about what communities are already doing themselves, especially as they work to rebuild their relations, lives and communities—their own processes to remedy what has happened to them, their families and communities because of grave and serious violations of international human rights and humanitarian law. I detail the way in which such an understanding of reparation based on the realities and actions of the victims, their families and communities would necessarily reframe our understanding of what constitutes reparation, the scope of people necessarily involved in reparation, the timeframe of reparation, who carries out reparation, and how reparation can be supported.

In conclusion, girls and boys have an undeniable right to remedy and reparation under international law. They have a right to benefit from reparation programs in material, symbolic, individual, and collective forms. But what that remedy and reparation look like is neither pre-determined nor prescribed. While we need to stay engaged and try to improve on the dominant juridical paradigm for carrying out reparation, we also need to look beyond the way reparation programs for children at the national level have been shaped in the past to think more creatively and holistically about ways we might move forward with the affected communities themselves in the future.