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**CHILDREN AND REPARATION:
PAST LESSONS AND NEW
DIRECTIONS**

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and Khristopher Carlson**

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Children and Transitional Justice Working Paper Series

The Children and Transitional Justice Working Paper Series is intended to generate dialogue and consensus, and to better inform children's protection and participation in ongoing or planned transitional justice processes in diverse country situations. Based on experience, the papers document and identify challenges, dilemmas and questions for further debate and formulate recommendations to better protect the rights of children involved in transitional justice processes.

The research conducted has created broad interest and visibility, helping establish a child rights-based approach to transitional justice that addresses advocacy, policy and programme concerns within UNICEF and among partners. Key areas of focus include:

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The identification of topics and authors in this Working Paper Series was undertaken in the context of strategic partnerships with the Human Rights Program at Harvard Law School, and the International Center for Transitional Justice (ICTJ). The review of the Series was guided by a peer review oversight panel, chaired by Jaap Doek. A network of practitioners, academics, legal experts and child rights advocates participated in the peer review. The Series was initiated and overseen by Saudamini Siegrist, with the support of Ann Linnarsson.

An Expert Discussion on Children and Transitional Justice was convened by UNICEF Innocenti Research Centre (IRC) in June 2008 to provide comments to individual authors and to assess the range and coverage of the Series. A subsequent conference on Children and Transitional Justice was jointly convened by the Human Rights Program at Harvard Law School and IRC in April 2009 in Cambridge, MA USA.

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- No. 7: Children and the Commission for Reception, Truth and Reconciliation in Timor Leste. Megan Hirst, International Criminal Court, Victims' Participation and Reparation Section; Ann Linnarsson, UNICEF, IRC.
- No. 8: Children and Reparation: Past Lessons and New Directions. Khristopher Carlson and Dyan Mazurana, Feinstein International Center, Tufts University.
- No. 9: Children and Security Sector Reform. David Nosworthy, Independent Consultant.
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- No. 17: Transitional Justice and Youth Formerly Associated with Armed Forces and Armed Groups. Theresa Betancourt and A'Nova Ettien, François-Xavier Bagnoud Center for Health and Human Rights.

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- Chapter 1: *Child Rights and Transitional Justice*. Saudamini Siegrist, UNICEF IRC.
- Chapter 2: Basic Assumptions of Transitional Justice and Children. Alison Smith, No Peace Without Justice.
- Chapter 3: International Criminal Justice and Child Protection. Cecile Aptel, ICTJ.
- Chapter 4: Children and the South African Truth and Reconciliation Commission. Piers Pigou, South African Archives.
- Chapter 5: Child Participation in the Sierra Leonean Truth and Reconciliation Commission. Philip Cook and Cheryl Heykoop, International Institute for Child Rights and Development, University of Victoria.
- Chapter 6: Children and the Liberian Truth and Reconciliation Commission. Theo Sowa, Independent Consultant.
- Chapter 7: Accountability and Reconciliation in Northern Uganda.
- Part I: Accountability for Sexual and Gender-Based Crimes by the Lord's Resistance Army. Khristopher Carlson and Dyan Mazurana, Feinstein International Center, Tufts University.
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Children and Reparation: Past Lessons and New Directions

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Summary: This paper is among the first to analyse children's experiences of reparations programmes, taking into consideration programmes from Africa, Asia and Latin America. The violence, abuse and hardship that girls and boys suffer during armed conflict and political violence under authoritarian and dictatorial regimes continues to severely affect their development long after the end of war or demise of the violent regime. They experience violations of their civil, political, social, economic and cultural rights, including the rights to life, freedom of movement and association, education, health and family, which embraces the right to knowing and being cared for by their parents. Their rights to development and to a safe and healthy environment are also violated.

It is not possible to fully repair children who have experienced such harms. Nonetheless, girls and boys have a right to remedy and reparation under international law – to benefit from reparation in material, symbolic, individual and collective forms. This working paper draws from reparation as conceived in the United Nations 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 (2005). It offers a concise overview of trends in reparation programmes set up to address situations of armed conflict and under authoritarian and dictatorial regimes where children are subjected to systematic forms of grave violence. The authors demonstrate the failure to name and address grave rights violations against children in www.unicef-irc.org.past reparations programmes and efforts, much to the detriment of surviving children. The authors argue that at the heart of much of the violence against children in situations of armed conflict is the terrible damage done to relationships and social fabric among individuals, communities, societies and cultures. Recognizing the need to address the healing of relationships and reweaving of social fabric, in part through reparation, the paper offers suggestions for reparation approaches that could lead to better informing and shaping reparation responses for child victims.

Keywords: children, reparations, reparation programmes, truth commission

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1. INTRODUCTION

We couldn't go to school; we grew up with a machete, in fear, frightened, worried, poor, instead of growing up with education and tranquility. We spent our whole lives suffering because we were children. How can we recover from that?

– Child survivor of the genocide in Guatemala

We live in a world increasingly aware of the horrors and pain inflicted on children during armed conflict and under authoritarian regimes. Children and adults have a clearly established right to remedy for gross violations of international human rights law and serious violations of international humanitarian law. In 2006 the United Nations General Assembly adopted the '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' (referred to here as the Basic Principles),¹ which codifies international law regarding the right to reparation. Up until the 1980s, however, reparation was enacted mostly as an outcome of legal proceedings and resulting programmes, and compared to the numbers of children who were victims, few children benefited. Today, reparation is increasingly discussed and enacted as part of a political process, particularly in societies transitioning from repressive and violent regimes. There is a growing understanding that reparation is about seeking justice and accountability and that such processes involve more than the outcomes of judicially based proceedings. And while there is growing scholarship on reparation from the perspective of a number of victims,² the subject of

¹ UN General Assembly A/Res/60/147, 21 March 2006.

² Important contributions from a variety of perspectives including a Special Issue (conference proceedings) of *American University Law Review*, "Reparations in the Inter-American System: A Comparative Approach," Volume 56: 6 (2006-2007), 1375-1468; Guido Acquaviva, "Human Rights Violations before International Tribunals: Reflections on Responsibility of International Organizations," *Leiden Journal of International Law*, 20 (2007), 613-636; Anne-Marie de Brouwer, "Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families," *Leiden Journal of International Law*, 20 (2007), 207-237; Allan Cooper, "Reparations for the Herero Genocide: Defining the Limits of International Litigation," *African Affairs*, 106/422 (2006), 113-126; Thomas Craemer, "Framing Reparations," *The Policy Studies Journal*, 37: 2 (2009), 275-298; Stanley Engerman, "Apologies, Regrets, and Reparations," *European Review*, 17: 3&4 (2009), 593-610; Lorie Graham, "Reparations, Self-Determination, and Reparations," *Harvard Human Rights Journal*, 47 (2008), 47-103; Pablo de Greiff, (ed.) *The Handbook of Reparations* (Oxford: Oxford University Press, 2006); Lisa Laplante, "The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition," *American University International Law Review*, 23: 51 (2008), 51-90; Lisa J. Laplante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development," *Yale Human Rights & Development Law Journal*, 10 (2007), 141-177; Lisa J. Laplante and Miryam Rivera Holguin, "The Peruvian Truth Commission's Mental Health Reparations: Empowering Survivors of Political Violence to Impact Public Health Policy," *Health and Human Rights*, 9:2 (2006), 136-163; Ruth Rubio-Marín, (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (Cambridge University Press, 2009); Ruth Rubio-Marín, (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (New York: Social Science Research Council, 2006); Conor McCarthy, "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory," *The International Journal of Transitional Justice*, 3 (2009), 250-271; Eric Yamamoto, Sandra Hye Yun Kim, Abigail Holden, "American Reparations Theory and Practice at the Crossroads," *California Western Law Review* 44: 1 (2007-2008), 1-85.

children and reparation has, to our knowledge, rarely been the primary focus of any published scholarly work.³

This working paper offers our understanding of reparation and explores some of the experiences, challenges and possibilities around reparation and children. It asks what role reparation may be able to play in addressing the grave human rights violations and crimes that children experienced during situations of armed conflict and political violence orchestrated by authoritarian and dictatorial regimes. We define reparation programmes as both those designed to distribute direct benefits to the victims themselves – including restitution, compensation and rehabilitation – and other key measures and initiatives within transitional justice that, if crafted with forethought and care, could have reparative effects, namely rehabilitation, satisfaction and guarantee of non-recurrence.⁴ We agree with Pablo De Greiff that, given the gravity of violence experienced by survivors, all reparation measures are essentially symbolic.⁵

The working paper then looks at eight countries in which segments of the population experienced high levels of armed conflict or political violence and in which the state sought, in part, to address the resulting harms through reparation programmes. The point of studying those countries is to determine how reparation has been conceived regarding the harms committed against children.

Finding the past reparation approaches lacking in their ability to address the realities of child victims, in the latter part of this working paper we offer ideas for reframing or enhancing a reparation approach which can address the harms suffered by child victims. Some scholars and activists working among victims themselves propose that reparation should also be understood to be explicitly and implicitly about healing wounds and rebuilding relations among individuals and societal groups.⁶ Although such a view is quite contested within the broader reparation debate, it advocates a focus on understanding individual and social healing and relationships as central to reparation, an idea we develop in the latter part of this paper.

Within this perspective we propose a framework that focuses on family, community, culture and social and historical realities to understand children's experiences of violence and its aftermath. Our suggested approach identifies the structures of violence and oppression that enabled and upheld the violence that was carried out. The framework urges those thinking about children and reparation to take into comprehensive account the types of violence

³ An earlier study from which this work in part draws is among the first, to our knowledge, to focus specifically on children and reparation; see Dyan Mazurana and Khristopher Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations Committed Against Children during Situations of Armed Conflict and Under Authoritarian Regimes," in Rubio-Marín (ed.), 2009.

⁴ See Pablo de Greiff, "Justice and Reparations," in *The Handbook of Reparations*, (ed.) Pablo de Greiff (Oxford: Oxford University Press, 2006), 451-477.

⁵ Ibid.

⁶ For proponents of this position see especially Special Issue (conference proceedings) of *American University Law Review*, 56: 6 (2006-2007) op. cit.; Lorie Graham, op. cit. in *Harvard Human Rights Journal*, 47 (2008); Lisa J. Laplante and Miryam Rivera Holguin op. cit. in *Health and Human Rights* (2006); Lykes and Marcie Mersky, "Reparations and Mental Health: Psychosocial Interventions Towards Healing, Human Agency, and Rethreading Social Realities," in de Greiff (ed.), op. cit. 2006; Rubio-Marín, (ed.), op. cit. 2006; Eric Yamamoto, Sandra Hye Yun Kim, Abigail Holden, op. cit. in *California Western Law Review*, 2007-2008.

carried out against children and adults (e.g., since children are often victims of the harms inflicted on their caregivers) and to consider the complexities of victims, perpetrators and observers of the violence. Finally, we stress the importance of developing reparation responses shaped by a deep understanding of what children and their families and communities are already doing for themselves to repair and remedy the harms they have suffered.

1.1 Methods

Research for this paper was carried out from 2007 to 2009 and drew upon previous research the authors conducted between 2006 and 2007. It focused on reparation scholarship that sought to document and analyse attempts to recognize and understand collective harms and consider appropriate forms of collective reparation. We also reviewed the final reports of truth commissions and a limited number of studies of the resulting reparation programmes; particularly helpful to our understanding were those that used a gender analysis.⁷ We also conducted interviews with commission members, advisors and human rights activists and lawyers who were involved in reparation programmes in the relevant countries.

⁷ In particular see Anne-Marie de Brouwer op. cit. 2007; Valérie Couillard, “The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence,” *The International Journal of Transitional Justice*, 1 (2007), 444-453; Rubio-Marin op. cit. 2006; Rubio-Marin op. cit, 2009.

2. INTERNATIONAL STANDARDS ON THE RIGHTS OF THE CHILD

Reparation is only part of larger struggles for realizing the protection and rights of children. The Convention on the Rights of the Child (CRC) defines the child as “below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”⁸ Unlike human rights law, international humanitarian law contains no definition of children; consequently, it is necessary to determine the particular age limitation from the provision in question. Girls and boys receive protection from the general provisions of international humanitarian law applicable to all civilians and the indirect benefit of special provisions protecting pregnant women and mothers of young children. Girls and boys benefit from the provisions of international humanitarian law that deal with child protection during armed conflict. Another area of law affording rights for children in armed conflict is state and non-state responsibilities to protect children’s rights as called for in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁹ The Rome Statute establishing the International Criminal Court lays out acts against children that can constitute grave violations, crimes against humanity and war crimes.¹⁰

Among children’s most fundamental civil and political rights are the right to life and the right to freedom from torture and inhuman and degrading treatment.¹¹ Children have a right not be subject to unlawful or arbitrary arrest and detention and, when held lawfully in detention, to be treated with dignity and with all due access to procedures noted in the CRC.¹² Children also have the right to freedom of movement and association,¹³ particularly relevant for children forcibly recruited into fighting forces and groups and those illegally detained. They have the right to freedom from discrimination of any kind, irrespective of race; colour; sex; language; religion; political or other opinion; national, ethnic or social origin; property;

⁸ CRC, Article 1. However, most international agencies operating in settings where children are experiencing systematic grave violations of their rights – such as UNICEF, Save the Children, International Rescue Committee, Christian Children’s Fund and World Vision – recognize this dual reality and make their programmes available to a broader category of youth, including both children and people aged into their early 30s.

⁹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).

¹⁰ The following are the Elements of Crimes of crimes against humanity and/or war crimes (PCNICC/2000/1/Add.2) within the Rome Statute for the International Criminal Court (1998): Killing of children, Arts. 7(1)(a), 7(1)(b), 8(a)(i), 8(2)(b)(xi), 8(2)(c)(i)-1, 8(2)(e)(ix), or maiming of children, Arts. 8(2)(b)(x)-1, 8(2)(b)(xi), 8(2)(c)(i)-2, 8(2)(e)(ix), 8(2)(e)(xi)-1; Using, recruiting, conscripting or enlisting children in armed forces and groups, Arts. 8(2)(b)(xxvi), 8(2)(e)(vii); Attacks against schools or hospitals, Arts. 8(2)(b)(ii), 8(2)(b)(iii), 8(2)(b)(ix), 8(2)(e)(iii), 8(2)(e)(iv); Rape, Arts. 7(1)(g)-1, 8(2)(b)(xxii)-1, 8(2)(e)(vi)-1, or other grave sexual violence against children, Arts. 7(1)(g)-6, 8(2)(b)(xxii)-6, 8(2)(e)(vi)-6, including sexual slavery, Arts. 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2, enforced prostitution, Arts. 7(1)(g)-3, 8(2)(b)(xxii)-3, 8(2)(e)(vi)-3, and forced pregnancy, Arts. 7(1)(g)-4, 8(2)(b)(xxii)-4, 8(2)(e)(vi)-4; Abduction of children, Arts. 7(1)(i), 7(1)(k); Forced marriage, Arts. 7(1)(g)-6, 8(2)(b)(xxii)-6, 8(2)(e)(vi)-6; Imprisonment or other severe deprivation of liberty, Art. 7(1)(e), or unlawful confinement, Art. 8(2)(a)(vii)-2; Torture, Arts. 7(1)(f), 8(2)(a)(ii)-1, 8(2)(c)(i)-4.

¹¹ International Covenant on Civil and Political Rights, A/RES/2200A (XXI), December 16, 1966; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46, December 10, 1984; CRC, Article 37.

¹² CRC, Articles 37 and 40.

¹³ CRC, Article 15.

disability; birth; or other status.¹⁴ The latter right furthermore includes freedom from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.¹⁵

Children have the right to enjoy the highest attainable standard of health and the right to facilities for the treatment of illness and rehabilitation of their health.¹⁶ They have a right to education on the basis of equal opportunity, which is often violated during armed conflict due to the harms inflicted.¹⁷ Children's right to their cultural identity, language and values is also guaranteed, yet it is under threat in many situations of armed conflict and political repression.¹⁸ They have a right to remain free from sexual abuse and exploitation¹⁹ and from abduction, sale or trafficking²⁰ and other forms of exploitation.²¹ Children have the right not to participate in armed hostilities. They have the right to know and be cared for by their parents;²² to preserve their identity, name and family relations;²³ to not be separated from their parents against their will;²⁴ and to have privacy, a family and a home.²⁵ However, the stark reality is that children's rights have been repeatedly undermined in most of the armed conflicts witnessed to date.²⁶ When parents are targeted, killed, disappeared²⁷ or unlawfully or arbitrarily detained, children suffer additional violations of their rights.

¹⁴ CRC, Article 2.

¹⁵ CRC, Article 3.

¹⁶ CRC, Article 24.

¹⁷ CRC, Articles 28 and 29.

¹⁸ CRC, Articles 8 and 30.

¹⁹ CRC, Article 34.

²⁰ CRC, Article 35.

²¹ CRC, Article 36.

²² CRC, Articles 7 and 19.

²³ CRC, Article 8.

²⁴ CRC, Article 9.

²⁵ CRC, Article 16.

²⁶ CRC, Article 39; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000).

²⁷ Persons are said to 'have been disappeared' when force is used, often by authorities or state officials, to abduct, detain, frequently torture and then kill the victims, without leaving evidence or any trace of the murder. In international human rights law, disappearance at the hands of the state has been codified as enforced or forced disappearance.

3. REPARATION AND CHILDREN

Our approach to reparation draws broadly on an understanding of the concept within international human rights and humanitarian law, which includes prevention and investigation of violations, prosecution of perpetrators, access to justice and effective remedy, and it is shaped by practical efforts to date. Effective reparation constitutes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Basic Principles represent the most comprehensive international guidelines and principles on reparation and is foundationally a juridical document. It does not create new legal obligations but draws on existing legal obligations under international human rights law and international humanitarian law. Reparation has both considerable breadth and depth in this document. It lays out four main forms of reparation: 1) restitution, 2) compensation, 3) rehabilitation and 4) satisfaction and guarantees of non-repetition.

Restitution should seek as much as possible to restore victims to their original state prior to the violations. It includes, as appropriate, “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.”²⁸ Compensation should be given for any economically assessable damage in a manner that is appropriate and proportional to the violations, which can include physical, mental, material, opportunistic and moral harms and costs incurred in pursuit of addressing the resulting harms.²⁹

Rehabilitation encompasses medical and psychological care and access to legal and social services.³⁰ Satisfaction is broadly understood to include, where applicable, measures that help cease violations; verification and full public disclosure of the facts (while ensuring disclosure does not harm victims or witnesses); search and identification of those disappeared, abducted and killed; proper reburial; official declarations, apologies and sanctions against those liable for the violations; and tributes to the victims.³¹ Guarantees of non-repetition include civilian control of armed security forces; application of international standards of due process; independence of the judiciary; upholding of protections for protected persons³² under international law; human rights and humanitarian law training for relevant sectors and adherence to these laws within codes of conduct; and reform of laws that contribute to violations of international humanitarian and human rights law.³³

The Nairobi Declaration on Women’s and Girls’ Right to Reparation³⁴ complements and strengthens the Basic Principles. The key objective of the Nairobi Declaration is to ensure

²⁸ A/RES/60/147, article 9, para. 19.

²⁹ Ibid., article 9, para. 20.

³⁰ Ibid., article 9, para. 21.

³¹ Ibid., article 9, para. 22.

³² Article 4 of the General Provisions of the Fourth Geneva Convention defines protected persons. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals.

³³ Ibid., article 9, para. 23.

³⁴ The Nairobi Declaration on Women’s and Girls’ Right to Remedy and Reparation, May 15, 2007, www.womensrightscoalition.org/site/reparation/signature_en.php.

effective and meaningful participation of girls and women in determining reparation measures and policies intended to benefit them. It is founded on the understanding that the girls and women whose human rights were violated are best positioned to know what is needed, particularly in the cases of sexual crimes, to restore their dignity, humanity and rights and assist in the healing of their bodies, minds and spirits.³⁵

Within the Basic Principles, victims who should qualify for reparation include persons who have individually or collectively suffered harm, including physical and mental injury, emotional harm, economic loss or significant impairment of their fundamental rights that are found to constitute grave or serious violations of international human rights and humanitarian law. Where appropriate, and in accord with domestic law, victims may also include the immediate family members or dependents of the direct victim who suffered the harm.³⁶ The Nairobi Declaration goes further in calling for women's and girls' own perspectives of their experiences in determining who is a victim for reparation purposes.³⁷

It is widely recognized that reparation should provide a direct benefit to the victim and can be awarded to individuals or collective groups deemed to have suffered grave or serious violations.³⁸ However, reparation cannot exist in a vacuum. Reparation efforts will be significantly flawed if they are not linked to additional transitional justice measures, including prosecution, truth-telling and full disclosure; institutional reform; and rebuilding the relationships between citizen and state and among citizens themselves.³⁹ To illustrate, Lykes and Mersky note that in terms of the healing potential of reparation:

“Continued impunity and the absence of justice greatly limit, or may even annul, the potential for healing in reparatory measures, including material compensation or even well-intended psychological attention...Reparation without justice is not reparatory and the wider social-political struggles for justice and against impunity and specific psychosocial interventions need to be increasingly consonant and integrated in a unified strategy.”⁴⁰

Regardless of the right to reparation, most victims of violence during armed conflict and under authoritarian regimes “suffer their losses – emotional, material, social, moral, and spiritual – without significant attention, much less redress.”⁴¹ This is perhaps especially true when the victims are children, as detailed below. Children are not only innocent bystanders and casualties of war; they are explicitly targeted and violated, sometimes by all parties to the conflict. The South African Truth and Reconciliation Commission recognized this, and its final report noted that children and youth were the primary victims in all categories of grave rights violations that it considered.⁴² In nearly all armed conflicts, those who are most

³⁵ Couillard op. cit. 2007.

³⁶ A/RES/60/147, article 4, para. 8.

³⁷ Couillard op. cit. 2007.

³⁸ See for example, Truth and Reconciliation Commission (TRC) of Sierra Leone, *The Final Report of the Truth and Reconciliation Commission Sierra Leone* (Freetown: TRC, 2007), vol. 2, ch. 4, “Reparations.”

³⁹ See de Greiff (ed.), op. cit. 2006.

⁴⁰ Lykes and Mersky op. cit. in de Greiff (ed.) 2006.

⁴¹ Margaret Urban Walker, “Gender and Violence in Focus” in Rubio-Marin, op. cit. 2009, 18-62.

⁴² Truth and Reconciliation Commission, *Report of the Truth and Reconciliation Commission of South Africa* (Cape Town: Juta, 1998), vols. IV and V.

targeted and bear the brunt of the violence are the ethnic or political minorities and the poor, particularly those living in rural locations and, in Latin America, indigenous populations.

In such situations, many children endure violations of civil, political, social, economic and cultural rights, including the right to life, freedom of movement and association, education, health and family, including knowing and being cared for by their parents.⁴³ Additionally, their rights to development⁴⁴ and to a safe and healthy environment⁴⁵ are violated.⁴⁶ It is not possible to fully repair children who have suffered such abuses to their condition before the violation occurred.

4. REPARATION PROGRAMMES AND CHILDREN: LESSONS FROM THE PAST

International standards on the rights of the child have not consistently (or even usually) served as a basis for guiding policy and the establishment of reparation guidelines, nor for informing reparation programmes or awards for children (as detailed below). It is notable that only violations of some civil and political rights of children have triggered reparation measures for child victims in the past, and only for some children; in our research we did not encounter evidence of children receiving benefits in reparation programmes due solely or even primarily to violations of their economic, social or cultural rights.⁴⁷

4.1 Findings on Reparation from Previous Truth and Fact-finding Commissions

The study involved a review of past final reports of truth or fact-finding commissions and their recommendations regarding reparation and the reparation programmes in eight countries: Argentina, Brazil, Chile (which has seen two separate commissions and reparation processes),⁴⁸ Guatemala, Peru, Rwanda, Sierra Leone, South Africa and Timor-Leste.⁴⁹ The purpose was to inform the present with lessons from the past and to determine which crimes and violations were considered for benefits and which forms of reparation were most often recommended for or offered to child victims, and why. It is important to note that in some of

⁴³ Convention on the Rights of the Child (CRC), CRC/C/113, November 7, 2001.

⁴⁴ Declaration on the Right to Development, adopted by the United Nations General Assembly resolution 41/128 of 4 December 1986.

⁴⁵ The right to safe and healthy environment is found in a number of documents, including the [Universal Declaration of Human Rights](#), the [International Covenant on Economic, Social and Cultural Rights](#), the [Convention on the Elimination of All Forms of Discrimination Against Women](#), the [Convention on the Elimination of All Forms of Racial Discrimination](#), the [Convention on the Rights of the Child](#), and the [ILO Indigenous and Tribal Peoples Convention \(No. 169\)](#).

⁴⁶ See Laplante op. cit.2007, for a convincing argument of the indivisibility of civil, political, social, economic and culture rights along with the problems reparations programmes encounter when trying to address social, economic and cultural rights from the perspectives of victims and those implementing reparation.

⁴⁷ Ibid. Here Laplante discusses how some measures in Peru's reparation programme did serve to address social, economic or cultural rights, yet she notes that in awarding the reparation it was not explicitly mentioned that the measures were to address the violations of those rights.

⁴⁸ Chile has experienced two truth commissions; the most recent one is ongoing. In this working paper, we 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.

⁴⁹ See Mazurana and Carlson in Rubio-Marin op. cit. 2009. ”

these countries reparation has been recommended but not awarded; in such cases, we reviewed those recommendations.

Several important trends emerged. First, with the notable exceptions of Peru and Sierra Leone, the truth or fact-finding commissions did not consult with child survivors of grave rights violations or with organizations dedicated to children's rights to help shape the scope, processes or outcomes, including determination of which crimes and rights violations would be addressed and hence who could benefit. As a result, child survivors and their advocates played little or no role in shaping the understanding of the commissions and the resulting reparation guidelines or programmes.

Second, the majority of the commissions have an uneven and poor record of recognizing or addressing the range of grave violations suffered by children (as discussed below).

Third, the majority of past truth commissions and fact-finding bodies did not adequately include gender issues in questionnaires and forms used to collect data and testimonies from survivors. Such omissions weakened the ability of the commissions and reparations programmes to address gender-based and sexual violations, and this particularly disadvantaged those who were girls when they were victimized.⁵⁰ In addition, the failure to collect age data or interview children resulted in the exclusion of their voices and their own understandings and insights into their experiences, needs and rights.⁵¹ In light of this poor record, Sierra Leone stands as an important exception.

Fourth, in the few cases where commissions held hearings on the experiences of children and youth, such as in South Africa, there was little gender analysis or gendered reflection regarding the crimes and harms children suffered.⁵² Therefore, most commissions and resulting reparation programmes failed to acknowledge and address the gendered dimensions of violations and their gendered outcomes on the lives of girls and boys. Many examples of these impacts spring to mind, ranging from inability to marry and the impoverishment that often results, social ostracism and frequent resulting lack of social capital, blocks to inheritance of property and the burdens of caring for children born of rape.

Fifth, it is often impossible to identify from the truth commission reports if the person testifying is a child or an adult recounting events experienced as a child. While some commissions took the important step of having special hearings on children⁵³ and writing chapters on their experiences,⁵⁴ with the exception of Sierra Leone, none of the final reports

⁵⁰ See Rubio-Marin op. cit. 2006, in particular the chapters by Paz Bailey on Guatemala and Goldblatt on South Africa. See also UNICEF and ICTJ, *Children and Truth Commissions*, UNICEF Innocenti Research Centre and ICTJ, forthcoming 2010.

⁵¹ See Elizabeth Gibbons, Christian Salazar, Guenay Sari, *Guatemala: Der Krieg und Die Kinder* (German Committee for UNICEF, 2003) (English version: *Between War and Peace: Young Generations on Wings of the Phoenix*, unpublished).

⁵² Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa," in Rubio Marin, op. cit. 2006.

⁵³ As in the cases of Guatemala, Sierra Leone and Timor-Leste.

⁵⁴ 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. See also, UNICEF and ICTJ, *Children and Truth Commissions*, forthcoming.

address the ways in which girls and boys experienced the violence due to their gender. Some commission reports provide statistics on crimes against children and youth, but none of these data are disaggregated by gender, nor is there any breakdown of the kinds of crimes or violations committed against children and youth.⁵⁵ As a result, “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” by most truth and fact-finding commissions.⁵⁶

While the purpose of truth commissions is to reveal and make public what happened during armed conflict and authoritarian regimes, too often the final reports obscure a real understanding and recording of the violence against children and youth and fail to provide an accurate record or real appreciation of how girls and boys were differently targeted and affected. Feminist theorist Margaret Urban Walker makes clear in her development of the concept of gender-multiplied violence and harm that, “some forms of violent harm or loss precipitate further losses that enlarge the impact of, and may in the end be worse or less manageable than, the original violation or loss itself.”⁵⁷ Thus, a gendered analysis is needed to enable a clear understanding of the kinds of crimes and violations committed against boys and girls. This in turn can help the commission, state institutions, citizens’ groups and the children’s own families, communities and societies to determine how best to address the realities of the children’s experiences and help recover their rights.

Without question, such recognition and the resulting understanding play a significant role in determining which types of crimes and victims qualify for reparation through courts and government programming. Based on our findings, it is questionable to assume that the crimes and violations under discussion for adults or the ‘population at large’ would automatically reflect those experienced by children (as further demonstrated below). Instead, it appears that children necessitate specific consideration, and this should be reflected in the mandates of truth and fact-finding commissions.

4.2 Deciding which Crimes Qualify Children for Reparation

In all eight countries in our study, reparation programmes were called for or established by truth commissions or presidential decrees. In Argentina, Chile (both commissions), Guatemala,⁵⁸ Peru,⁵⁹ South Africa and Rwanda,⁶⁰ reparation programmes were established

⁵⁵ For example, the final truth commission reports for South Africa and Peru have no gender-disaggregated data for crimes committed against children or youth.

⁵⁶ Mazurana and Carlson in Rubio-Marin op. cit. 2009.

⁵⁷ Urban Walker in Rubio-Marin, op. cit. 2009.

⁵⁸ In Guatemala, individual economic reparations in the form of cash have been received by a number of victims, and reparations to help re-establish the dignity of the survivors, such as exhumation and burial of their dead, have been carried out.

⁵⁹ In Peru, no individual reparations have been awarded, and to date collective reparations have occurred only in select regions. Notably, in the authors’ discussions for this manuscript, while advisors to the Peruvian commission staunchly defend the gains made there for children, Peruvian human rights lawyers dismiss the entire outcome in terms of reparation as insignificant and having achieved almost nothing.

⁶⁰ While several reparation funds have been conceived of, only one national reparation programme currently exists in Rwanda, *Fonds d’Assistance aux Rescapés du Génocide* (FARG) (Assistance Fund for Genocide Survivors). For a detailed discussion of the numerous reparation funds that have yet to be enacted see Heidi Rombouts, “Women and Reparations in Rwanda: A Long Path to Travel,” in Rubio-Marin op. cit 2006.

and some reparations were awarded to victims. In Timor-Leste and Sierra Leone, reparation programmes have been recommended by the truth commission but have yet to be adopted by the government.

Tables 1 and 2 show how the eight countries have handled reparation for children who have suffered qualifying crimes. Table 1 is a comprehensive list of all the crimes in which a child was the primary victim that were recognized by the truth commissions and that qualified those child survivors as beneficiaries (Guatemala, Sierra Leone, Timor-Leste). Table 2 lists the crimes that qualified children to benefit from reparation programmes in countries with reparation legislation (Argentina, Chile, Peru, Rwanda, South Africa).

Table 1 illustrates that most reparation programmes cover only a small portion of the crimes and subsequent rights violations that girls and boys directly experienced. It also shows the lack of consistency among truth commissions 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 did not qualify them for reparation because the crime was not recognized or was not seen as being sufficiently grave to trigger reparation. Where the crimes do qualify, a small percentage of the affected children have benefited in the eight countries (discussed below).

Table 1. Crimes that qualify children to benefit from reparation programmes, where children are the primary victim recognized by the truth commission or national legislation⁶¹

Crime or Harm	Argentina	Chile 1990⁶²	Chile 2003⁶³	Guatemala	Peru	Rwanda	Sierra Leone	South Africa	Timor-Leste
Children absent due to forced disappearance	X			X	X				
Children abducted					X			X	
Children born due to rape			X ⁶⁴		X		X ⁶⁵		
Children born in detention or detained with mother	X		X						
Children forced into prostitution				X					
Children forced into sexual slavery							X		X
Children forced into servility				X					
Children forcibly married							X		X
Children illegally removed from their parents				X					
Children killed by individual acts of political violence				X	X			X	
Children who escaped genocidal acts and persecution intended to kill them and who are in need						X			
Children who experienced sexual mutilation of their genitals or breasts				X			X		
Children who were raped				X	X		X	X	X
Children recruited into fighting forces				X	X		X		

⁶¹ This table is reproduced from Mazurana and Carlson in Rubio-Marin op. cit. 2009.

⁶² This column represents only the first truth commission and subsequent reparation law that was signed on January 31, 1992. See also *Report of the Chilean National Commission on Truth and Reconciliation*. The Truth and Reconciliation Commission (1990-1991) identified the disappeared, executed and victims of political violence and proposed pensions and other benefits for living relatives of these victims. These reparations were implemented through law No. 19.123, 1992.

⁶³ The Political Imprisonment and Torture Commission (2003-2005) identified political prisoners, and 94% of them claimed to have been tortured. The Commission proposed several measures of reparations.

⁶⁴ Only if the mother was a political prisoner and as part of her torture and abuse was raped during this time and conceived as a result.

⁶⁵ Mothers have to be single in order for children to qualify as beneficiaries.

Crime or Harm	Argentina	Chile 1990⁶²	Chile 2003⁶³	Guatemala	Peru	Rwanda	Sierra Leone	South Africa	Timor-Leste
Children who suffered psychological damage					X		X		X
Children who suffered sexual violence				X			X	X	X
Children who were tortured			X ⁶⁶	X	X			X	
Children with physical injuries, such as amputees and those who were victims of sexual violence					X		X		X
Fraudulently adopted children				X					

It presents a comprehensive listing of crimes in the eight countries that were primarily committed against close relations of children, most often their father or mother, but that also constitute crimes and/or violations against the children themselves and therefore may qualify them for reparation.

Table 2. Crimes qualifying for reparation in which children are victims because the crime was committed against a relative or dependent⁶⁷

Crime or Harm	Argentina	Chile 1990	Chile 2003	Guatemala	Peru	Rwanda	Sierra Leone	South Africa	Timor-Leste
Children of amputees							X		
Children whose mothers were victims of sexual violence									X ⁶⁸
Children of victims of sexual violence, including rape, sexual slavery, mutilation of breast or genitals, and forced marriage							X		
Children of war-wounded victims							X		
Children of war widows							X ⁶⁹		X
Children who were orphaned by war									X

⁶⁶ This includes children who were detained as political prisoners with a parent and were subjected to torture.

⁶⁷ This table is reproduced from Mazurana and Carlson in Rubio-Marin op. cit. 2009.

⁶⁸ Mother must be single in order for child to qualify as beneficiary.

⁶⁹ Mother must be breadwinner of house in order for child to qualify as beneficiary.

Crime or Harm	Argentina	Chile 1990	Chile 2003	Guatemala	Peru	Rwanda	Sierra Leone	South Africa	Timor-Leste
Children whose parent(s) were forcibly disappeared	X	X	X	X ⁷⁰	X ⁷¹				
Children whose parent(s) were killed by wartime violations or as an act of political violence, including executions, killing, torture, severe ill-treatment, undue force and abuse of power resulting in death		X ⁷²	X	X	X ⁷³		X	X ⁷⁴	X ⁷⁵
Children whose parent(s) were killed in massacres deemed to constitute genocide				X					
Children whose parent(s) were raped and who died as a result of the crime or other crimes carried out in conjunction with the violation				X	X				

Table 2 shows similar trends as table 1. There is more consistency in children qualifying for reparation if their parents were victims of crimes and violations against their civil and political rights, most notably for those who were forcibly disappeared or killed by wartime violations or as an act of political violence, including executions and torture, undue force and abuse of power resulting in death. In Peru and South Africa, the child did not qualify for any reparation listed in table 2 unless the parent had died due to the crime or been ‘disappeared’.

In two of the countries where the greatest number of crimes qualified children as possible beneficiaries of reparation (Sierra Leone and Timor-Leste) to date no individual reparation has been awarded.⁷⁶ Peru, which also had a relatively larger number of crimes triggering reparation, has awarded some scholarships and health benefits, which are considered individual awards; no child victims have received monetary compensation.

⁷⁰ The parent(s) must have died as a result of the crime in order for child to qualify as beneficiary.

⁷¹ The parent(s) must have died as a result of the crime in order for child to qualify as beneficiary. However, if the body is still missing but the disappearance is proved, the family should receive reparations.

⁷² In Chile, five crimes are included here: execution, in any of its forms; use of undue force leading to death; abuse of power resulting in death, if the government has condoned the action or permitted it to go unpunished; torture resulting in death; murder attempts leading to death, committed by private citizens, including acts of terrorism, whether indiscriminate or selective, as well as other kinds of attacks on life. *Report of the Chilean National Commission on Truth and Reconciliation*.

⁷³ In Peru, four crimes are listed: extrajudicial execution, murder, arbitrary detention, and torture that results in death.

⁷⁴ In South Africa, four crimes are noted, including killing, abduction, and torture or severe ill-treatment that results in death.

⁷⁵ In Timor-Leste, only children whose parent(s) have been killed will qualify in this category of crime.

⁷⁶ Elizabeth Lira, personal correspondence, March 13, 2008.

Several important lessons emerge from this review. First, truth telling or fact-finding commissions 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 Colombia, often do not consider how children were violated. In fact, Colombia included children's violations only after adults came forward claiming that crimes were committed against them as children.⁷⁷

Second, a focus on crimes against children does not always lead to a gendered documentation or understanding of how girls and boys were differently targeted, violated and affected, in both the short and long term. For example, in South Africa and Peru none of the statistics on crimes against children are broken down by sex. In contrast, the truth and reconciliation commission in Sierra Leone paid close attention to sex and gender differences to establish the reality of what girls and boys suffered. Hence, commission mandates should explicitly require attention to gendered differences in crimes and their effects. Learning from other cases, such as Peru's truth-telling commission, internal advocacy appears necessary to ensure a focus on certain areas, such as crimes against children and gender-based crimes.⁷⁸ Such mandates and advocacy seem essential for understanding more fully the crimes and violations committed against children, the effectiveness of certain types of reparation for child victims and how best to implement them in the post-conflict period.

Third, it appears that truth and fact-finding commissions do not always fully consider developments in international jurisprudence or rulings by in-country tribunals that might expand the understanding of the types of crimes and violations committed against girls and boys. For example, the ruling by the Special Court for Sierra Leone that forced marriage is a crime against humanity could be important for informing future commissions.

4.3 Awarding Reparation Benefits to Child Victims

Once reparation programmes have been set up, children face a number of obstacles in actually receiving benefits.⁷⁹ As demonstrated in tables 1 and 2, children are denied reparation primarily because the crimes and violations against them either are not identified or do not qualify for reparation. For example, the reparation programme established in Timor-Leste defines violations against children as "illegal removal of children and infants from their parents, enforced prostitution of male and female children and adolescents, fraudulent adoptions, as well as submission to servility; all of these produced within the context of the internal armed conflict."⁸⁰ There is no consideration of rape or other forms of sexual enslavement, apart from enforced prostitution.

Some commissions did not adequately consider the fact that children were victims at all. For example, the Chilean Commission on Political Imprisonment and Torture (2003-2005) was unaware of children who may have been victims. As people spoke out at the Commission, it

⁷⁷ Personal communication with Colombian commissioner, March 14, 2008.

⁷⁸ Lisa Laplante, personal correspondence, April 20, 2009.

⁷⁹ Specific examples of these obstacles are detailed in Mazurana and Carlson in Rubio-Marin op. cit. 2009.

⁸⁰ Article 17 of Governmental Agreement Num. 43-2005, as cited in Paz Bailey, Rubio-Marin op. cit. 2006.

became clear that some of the victims had been children at the time of the violation, including those who had been imprisoned and tortured for their social and political activism; kidnapped with their parents; born in prison; been in utero at the time their pregnant mothers were tortured; or were born of rape as a form of torture in prison.⁸¹

In other cases, children may qualify for reparation but do not see the benefit due to age and time limits that expire before they can receive any or all of their benefits, as in Argentina and South Africa. In other programmes, 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.

In some cases disqualifying limitations are imposed on the mothers of child victims, such as in Sierra Leone, where children whose mothers were victims of sexual violence can qualify for reparations only if the mother remains single. Likewise, in Timor-Leste, children born out of an act of sexual violence can only access reparation if their mother is single.⁸²

Girls and boys encounter significant challenges in asserting their right to reparation as it occurs at the national level. 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.⁸³ Children also lack full legal autonomy. Most have little if any 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 the documentation needed to present their claims, such as deeds to land, housing or property. Children 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 the violation if it was perpetrated by those possibly still wielding power. Children who are perceived as perpetrators; those who were part of fighting forces and groups; those forcibly married, enslaved or prostituted during the conflict; those who were sexually violated; children born of rape; or children now heading households may rightly fear stigma and possible reprisals for coming forward to voice the harms committed against them and try to claim reparation.⁸⁴

However, some child victims do surmount these hurdles and have benefited from reparation programmes.⁸⁵ Briefly, benefits awarded to individuals in past reparation programmes have included cash, access to education and health services, restitution of property, shelter and services that help offer closure.

⁸¹ As these cases came to light, the Commission ensured that such persons could qualify as victims, Elizabeth Lira, personal correspondence with author, March 13, 2008.

⁸² *Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)*, Part 11, "Recommendations," www.cavr-timorleste.org or www.etan.org/news/2006/cavr.htm.

⁸³ UNICEF and ICTJ, *Children and Truth Commissions*, forthcoming.

⁸⁴ Mazurana and Carlson in Rubio-Marin op. cit. 2009.

⁸⁵ These topics are beyond the scope of this paper, but more information can be found in Mazurana and Carlson, *ibid.*

There is much interest in collective reparations for children. Our earlier publication discussed how collective reparation could take the form of public acknowledgement of wrongs and offer redress through material, financial, legal, symbolic and psychological means. However, we found very few examples of collective reparation awards. Furthermore, the collective reparation programmes that have been attempted often seem to be complicated by the blurring of lines between reparation and development. We believe that broader, collective community development or post-conflict reconstruction initiatives in and of themselves do not represent reparation. Even if the government intends such undertakings to be a form of reparation, they may not be perceived as such by the victims.⁸⁶

Finally, the main criticism of collective reparations is that both victims and perpetrators can access them, and hence they lose their recognition potential and reparative value for victims. Regardless, collective reparations for children should not attempt to define so-called child perpetrators and exclude them from accessing important services for their education, health and well-being. Additionally, children of perpetrators should not be blocked from accessing public goods due to the activities of their parents.

5. NEW DIRECTIONS FOR REPARATION FOR CHILDREN

Coulter tells the story of one of her key informants, a young Sierra Leonean woman, who as a girl was abducted, repeatedly raped, narrowly escaped death several times and eventually was forcibly ‘married’ to a rebel commander, by whom she had two children. She was separated from her family during and after the war.

“One day at the end of the war she met an old neighbor from her hometown. At the sight of him she became happy and thought he might have news of her family’s whereabouts, but when she greeted him she noticed he was afraid of her. “Don’t be afraid,” she told him, “we are all human beings.” When she asked after her family the neighbor told her that they had returned home but that he had heard them say she was not alive, and even if she were, they would not accept her back...because she had been with the rebels a long time. Saddened, [she] went back to her bush husband to tell him the distressing news.”⁸⁷

We repeat this story because it illustrates that child victims have suffered more than violence against their bodies and minds. At the heart of much of the violence against children in situations of armed conflict is the terrible damage done to relationships among individuals, communities, societies and cultures. Recognizing the need to address the healing of relationships, in part through reparation, is at the foundation of the ideas presented in the remainder of this paper.

While reparation is both broad and deep conceptually and within international standards, in practice national reparation programmes that try to implement these standards have been relatively narrow and limited. National programmes to bring reparation to children have been inexact, partial and inadequate for the majority of children who have suffered extreme

⁸⁶ See Laplante op. cit. 2007.

⁸⁷ See Chris Coulter, *Bush Wives and Girl Soldiers: Women’s Lives Through War and Peace in Sierra Leone* (Ithaca, Cornell University Press, 2009), 1.

violence due to armed conflict and political violence. Given past results, we believe reparation programmes largely modeled on those of the past should be reconsidered. This is in part because these approaches are fundamentally flawed by focusing largely on symbolic compensation (official apologies and recognition) and material compensation for an individual who meets a relatively narrow category of harm and whose ability to claim reparation is usually only open for a short window of time. Furthermore, very few national reparation programmes that we reviewed have tried to grapple with the structural inequalities that continue to marginalize children who were victims, especially girls.

Given the levels of debt and corruption in most countries recovering from conflict or authoritarian regimes, it may be unrealistic to imagine that many such states could reach even a slight majority of victims, particularly those who may be the most affected: indigenous populations and rural, ethnic and linguistic minorities – and especially the child victims within these groups. Given these significant limitations and the large number of unreached victims under both past and current practices, we offer suggestions for reparation approaches that could lead to better informing and shaping reparation responses for child victims.⁸⁸

5.1 Individual and Social Healing

Legal scholars Lisa Laplante and Miryam Rivera Holguin note that, “successful post-conflict recovery requires that citizens trust themselves, their neighbours and their government, since a country’s social and political stability depends on the mental health recovery of its war-affected population.”⁸⁹ Their observations about the political violence and need for healing in Peru are worth quoting:

“Thus, post-conflict recovery in Peru required healing at all levels: people had to deal on a personal level with painful repercussions of the war, but they also had to come to terms with feelings of betrayal and mistrust toward members of their community and those within the government. Indeed, a recent study conducted by the public Specialized Institute of Mental Health in Peru found that approximately 80% of Peruvians still lacked trust in all forms of authority, including politicians and police; approximately 65% of them did not trust their own neighbors. Rebuilding social solidarity, community well-being and citizen protagonism entails overcoming these mental health barriers that threaten sustainable social reconstruction.”⁹⁰

Lykes’ and Mersky’s groundbreaking work on the psychosocial dimensions of reparation, informed by years of work with indigenous populations who suffered genocide in Guatemala, can help deepen understanding of reparation both from theoretical and programmatic perspectives. Although their focus is on psychosocial aspects of reparation, their insights on the healing aspects of reparation is important for a deeper understanding of reparation as a whole. They contend that the orientation for reparation “must be articulated within and shaped by individuals, families and groups in their neighborhoods, their communities, their

⁸⁸ The work of Lykes and Mersky and of Laplante and Holguin has contributed most to developing our thinking here.

⁸⁹ Laplante and Holguin op. cit. 2006.

⁹⁰ Ibid., 141.

towns and cities, their societies.”⁹¹ Lykes and Mersky propose an opening of reparation that understands:

“...each person as fundamentally active in the world and as acting on/with others in producing and reproducing themselves and their communities, in nexuses of social relations. This person lives in a particular social context and is culturally rooted in processes that constrain, facilitate, and give meaning to her or his social subjectivity. In addition, working within an alternative framework implies not only seeking means to address individual suffering, but also understanding that individual and social healing depend in a fundamental way on regenerating, under new terms, the social relations and moral boundaries that were destroyed.”⁹²

Within this new more holistic orientation, there is a need for a strong focus on understanding the role of gender, age and status in shaping and determining the positioning and options of children victims. 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 caused by political violence.⁹³

5.2 The Role of Family, Community and Culture

Reparation programmes at times have made symbolic and material awards to individual victims and their families and to a lesser extent to entire communities. Yet it is important to recognize that armed conflict and political violence are not attacks on individuals; rather they represent dehumanizing and violent social relations of exploitation and the hardening of structural oppression and violence that existed prior to the armed conflict or political violence.⁹⁴ Such violence is experienced by individuals, but they are part of families, communities, cultures and societies. Much political violence is aimed at destroying the individual – perhaps primarily because of her/his membership in a particular group – as well as his/her place in society, aimed at breaking apart all social relations.⁹⁵

Children in particular often experience harm and suffering within their understanding and experiences of their family and what is happening to it. Their families are deeply affected by the rupturing of social and cultural institutions that may have been used to shape their understanding of themselves in the world and also provided protection. Hence, understanding the place of the child within such a web of social and cultural relations is paramount for more adequate theories of and approaches to reparation. Only then can the reparation response take into account the individual child – but it still should not be limited to him or her.

⁹¹ Lykes and Mersky, in de Greiff (ed.) op. cit. 2006.

⁹² Ibid., 600-601. See also David Becker, Elizabeth Lira, Maria Isabel Castillo, Elena Gomez, and Juana Kovllskeys, “Therapy with Victims of Political Repression in Chile: The Challenge of Social Reparation,” *Journal of Social Issues* 46, no. 3 (1990): 133-150; M. Brinton Lykes, “Gender and Individualistic vs. Collectivist Bases for Notions About the Self,” *Journal of Personality* 53, no. 3 (1996): 356-383.

⁹³ Ibid., see also Laplante and Holguin, “The Peruvian Truth Commission's Mental Health Reparations.”

⁹⁴ Ignacio Martín-Baró, “Reparations: Attention Must Be Paid: Healing the Body Politics in Latin America,” *Commonweal* 117: 6 (1990), 184-186.

⁹⁵ David Becker, “Dealing with the Consequences of Organized Violence in Trauma Work,” in *Berghof Handbook for Conflict Transformation*, Martina Fischer, Alex Austin and Norbert Ropers, eds. (Berlin: Berghof Research Center for Constructive Conflict Management, 2003).

It is also important to take a multi-generational view. Research in Chile found that the collective effects of severe political violence on individuals and societies has an “extremely long duration [that exceeds] the capacity of the individual and of social structures to respond adequately to this process.”⁹⁶ Hence, once we broaden our view of the violence and its effects, the child, family and community are brought to the fore, and from there the wider cultural, economic, political and social dimensions, all of which combine and unfold over generations.

Culture also must be considered, in particular cultural practices and perspectives and their shifts over time. This requires serious and lengthy efforts to explore and revalue traditional understandings and practices, particularly those surrounding the regeneration of social relations and moral boundaries, which are essential to the protection and well-being of a community’s children. The conflict and violence will have strained and altered a number of these practices. For example, Lykes and Mersky find in their work with Guatemala genocide survivors that it is the collective body of the Mayan people that has been attacked and wounded. This collective body includes insects, trees, corn, domestic animals and human beings from across many generations. The Maya are the people of the corn; hence, the burning of cornfields and scorched earth warfare were explicit attacks on their collective essence. What has been injured is broader in scope than an individual.⁹⁷

It is also important to acknowledge the multi-dimensional, multi-generational, cultural and spiritual aspects of children’s experiences of extreme violence and responses to them. In conceptualizing reparation and reparation programmes in many cultures there is a pressing need to recognize the importance and intimate connection with the dead (in spirit form). This requires understanding and respecting that in many cultures the influence of the dead is on par with or even exceeds the influence of the living in the daily lives of children and adults.⁹⁸

Culture and community, including personal and community relations, form the core dimensions for exploring and enhancing an understanding of what has happened to children during the violence and the spirals and echoes that move from there. For example, it is important to consider how families, communities and cultures reshape notions of healing the family and clan when they are faced with a threat to their traditions. An example is a girl from northern Uganda who was abducted and forcibly ‘married’ to a rebel commander from another ethnic group and who later returns home with a child born from that forced relationship. What will these shifting notions mean in the life of this young mother and her child as the child grows up in the mother’s clan? Does it mean the same thing for this young mother as it does for her Congolese neighbour across the border who is also experiencing forced marriage and child-bearing by rebel forces?

⁹⁶ Ibid.

⁹⁷ Lykes and Mersky in de Grief (ed.) op. cit. 2006.

⁹⁸ There is a large body of literature on this subject, see also *ibid.*

Research into how different cultures and communities respond finds striking differences,⁹⁹ with implications for concepts of reparative responses in both cases. It is crucial to understand how a child's place within his or her family, community, culture and society is shaped and reshaped by violence and resistance to the violence that has occurred. Doing so raises awareness of the realities occurring on the ground in the victims' communities and the possibilities for creative responses to reparation that have not yet been widely considered.

5.3 Historical Perspective on the Child Victim and the Violence

For social healing to occur, victims need to be historically situated. This includes the importance for the victim, their children, parents, grandparents and relations of reconstructing their identities. It also includes recognizing and locating child victims, their families and the larger community's agency within the broader historical, social, political processes. The importance of explaining what happened to children and young people and their families, at multiple levels, is also paramount. Research with Holocaust survivors provides rich testimony about the importance of historicizing the victim and the violence for intergenerational understanding and healing. Testimony, narrative, storytelling, rituals and at times silence – not speaking about past events and social forgetting – are all important means to help facilitate the process.¹⁰⁰

To illustrate, in earlier research in Mozambique, Mazurana and McKay saw numerous strategies through which a heavily war-affected rural community sought to heal from the violence. Community leaders referred to their community as having been split into those who lived in the sugar factory (an abandoned warehouse/factory where villagers fled during attacks by armed belligerents) and those who had been forced into the fighting forces. They spoke at length about how their community now had to come back together to regain balance and harmony, terms they used repeatedly. Without this collective reuniting and healing, no one would achieve balance and harmony, and consequently much thought and effort were focused on this re-harmonization.

We set up interviews with girls who had been abducted into the fighting forces, and on the morning of the interviews nearly all the girls in the village turned up. At first this confused us and we were not sure how to proceed, so we repeated our request to speak only with those girls who had not gone to the sugar factory, since we knew that the majority of the village girls had managed to live out the war there with their families. When no girls moved to leave, we began our interviews and waited to see what would happen. We found that essentially all the girls could answer all our questions, making it impossible to identify (to outsiders) which

⁹⁹ See Annan, Jeannie, Chris Blattman, Khristopher Carlson and Dyan Mazurana, *The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth: Survey for War Affected Youth*, (Kitgum Uganda, and Feinstein International Center, Tufts University, 2008); An Michaels, 'Psychosocial Support for Children: Protecting the Rights of Child Victims and Witnesses in Transitional Justice Processes', Innocenti Working Paper 2010- #, UNICEF Innocenti Research Centre, Florence.

¹⁰⁰ See Tamara Hareven, "The Search for Generational Memory," *Public History Readings*, Phyllis K. Leffler and Joseph Brent (editors) (Malabar: Krieger 1992), 207-283; C Robert Lifton, *The Nazi Doctors: Medical Curing and the Psychology of Genocide* (New York: Basic Books, 1986); Lykes and Mersky in de Grieff (ed.) op. cit. 2006; Susan McKay, "The Courage Our Stories Tell: The Daily Lives and Maternal Child Health Care of Japanese American Women at Heart Mountain" (Powell, WY: Western History Publications, 2002); Rosalind Shaw, "Rethinking Truth and Reconciliation Commissions: Lessons for Sierra Leone," USIP Special Report 130, February 2005.

girls had been abducted and which had not. Thus, the experience of abduction became not the experience of a few stigmatized girls but instead a part of the collective experience and suffering.¹⁰¹ Together the girls and the community moved into a collective future that stressed the balance and harmony of all.

In her book on girls in fighting forces in Sierra Leone, Coulter stresses that individual reactions to violence and trauma are strongly influenced by how their family and community responds to their suffering.¹⁰² Wessells and Monteiro, working in Angola, speak about the collective ownership of suffering throughout the war. They stress that a deep understanding of the complexities of such processes and collective embodiment must inform an understanding of the community's post-war dynamics.¹⁰³

5.4 Recognizing and Understanding the Violence against Children

It is important to understand the forms of violence – how it was experienced by different ages, genders, ethnicities, classes/castes; how it affected them; how people sought to shield themselves and others from it; and who was responsible for it. Taking the time to learn how girls and boys in specific conflicts were targeted and affected by the violence helps to avoid negating experiences of violence (due to ignorance or stigma) or, at the other extreme, equating all forms of violence, or creating a hierarchy of horror in which some violence, such as forced prostitution, ‘counts’ while others, such as rape (as seen in the reparation programmes in Timor-Leste) do not. This process clarifies that much violence is experienced at the hands of one's own community, and at times even one's own neighbours or children. This process also reveals that in some countries the majority of the direct violence is perpetrated by armed opposition groups; government abuse may be significantly less or may result from inaction or inability to protect civilian populations.

As anthropologists Rosalind Shaw and Chris Coulter have shown, it is important to be aware of how different cultures discuss violence and to use this information to understand how communities experience, remember and live with it.¹⁰⁴ Shaw in particular has advanced important contributions regarding culturally and socially based aversions to talking about memories of violence; she encourages looking deeply to understand when people choose silence and social forgetting.¹⁰⁵

Based on the framework of current reparation programmes, redress and reparation come primarily from the state for acts of both commission and omission. With a clear understanding of the forms of violence and the victims, survivors and perpetrators, it becomes apparent that a state-centred juridical approach is unlikely to produce the reparation

¹⁰¹ See Susan McKay and Dyan Mazurana, *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone, and Mozambique: Their Lives During and After War*, (Montreal: Rights & Democracy, 2004). While boys formerly associated with fighting forces were not interviewed, Mazurana hypothesizes a similar response.

¹⁰² See Coulter, op. cit. 2009.

¹⁰³ Michael Wessells and Carlinda Monteiro, “Healing the Wounds Following Protracted Conflict in Angola: A Community-based Approach to Assisting War-affected Children,” in *Addressing Childhood Adversity*, David Donald, Andrew Dawes, and Johann Louw, eds. (Claremont, South Africa: David Philip, 2000), pp. 176-201.

¹⁰⁴ Shaw, op. cit. 2009; Coulter op. cit. 2009.

¹⁰⁵ Shaw, op. cit. 2005.

responses necessary even to begin to address the suffering that children, adults and communities have experienced and, more importantly, to assist in rebuilding social relations and moral boundaries.

5.5 Identifying the Victims, Perpetrators and Observers of Violence against Children

We need to draw our attention to the complexity of those involved in the violence: victims, perpetrators and observers.¹⁰⁶ To date, most reparation programmes have focused on victims, and when benefits have been awarded, only some of the victims have received them. While monetary awards and health, housing, education and other benefits may help ease the suffering of the victim and their immediate family, studies find that survivors view most awards as significantly inadequate.¹⁰⁷ At times such awards are seen as ‘blood money’, and acceptance of rewards has split survivor communities.¹⁰⁸ This type of award has done little to enhance the overall reparative effect within the larger survivor communities, particularly in cases where those receiving awards are stigmatized (such as abducted children, survivors of rape and other forms of sexual violence, and children born of rape) or where the state or other perpetrators deny responsibility for the actions or justify them.¹⁰⁹

In most civil conflicts, perpetrators and victims often return to live side by side. Where people are forced to commit atrocities against others there is a blurring of the line between perpetrator and victim, which is clearly the case with child soldiers. Thus, tension is likely between local reparation processes that focus on rebuilding social relations and moral boundaries and national reparation programmes that specify what forms of violence trigger reparation benefits, which individuals qualify and the form of their compensation. It is therefore imperative that those designing reparation programmes keep in mind the complexities presented by the intersection of reparation processes at local, regional, national and international¹¹⁰ levels.

Identifying who committed the violence allows the victims to receive acknowledgement of the violations and helps to provide closure. Key reparative measures here include issuing death certificates to families, exhumation and reburial ceremonies, and provision of funds for

¹⁰⁶ See for example, Lykes and Mersky in de Grieff (ed.,) op. cit. 2006; on perpetrators and observers of violence, excellent studies include Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: HarperCollins, 1998); Ximena Bunster, “Surviving Beyond Fear: Women and Torture in Latin America”, *Surviving Beyond Fear: Women, Children & Human Rights in Latin America*, Marjorie Agosin (ed.) (New York: White Pine Press, 1993), 98-125; Cynthia Enloe, “All the Men are in the Militias, All the Women are Victims: The Politics of Masculinity and Femininity in Nationalist Wars,” *The Curious Feminist* (Berkeley: University of California Press: Berkeley 2004), 99-108; Hugo Slim, “Doing the Killing,” in *Killing Civilians: Method, Madness and Morality in War* (Columbia University Press: New York, 2008), 213-250; Alexandra Stiglmeier, (ed.), *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, University of Nebraska Press, 1994).

¹⁰⁷ See for example, Goldblatt, “Evaluating the Gender Content of Reparations.”

¹⁰⁸ As seen in Argentina and Peru.

¹⁰⁹ See Lykes and Mersky, in de Grieff (ed.) op. cit. 2006; Rubio-Marin, op. cit. 2006; William A. Schabas, “The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone,” *Human Rights Quarterly*, 25 (2003), 1035-1066. Furthermore, Sierra Leone’s truth commission reported that less than 1% of narratives collected came from perpetrators; see *Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission*, Appendix I, 2004.

¹¹⁰ In cases involving the International Criminal Court Trust Fund for Victims.

funerals and tombstones.¹¹¹ Such benefits can be particularly important when family members could not be buried according to local custom. This includes children, siblings or parents buried in mass graves or in camps for internally displaced people, as well as those killed in the bush and buried in unmarked graves in unknown locations.

Most of the reports by truth telling or fact-finding commissions and most of the transitional justice literature focus on revealing the facts around human rights violations; only rarely do they document or analyse the truth surrounding the conditions that made such violations possible. (Important exceptions to this limitation are found in the truth-telling reports produced in Peru and Guatemala.)¹¹² Yet if efforts for reparation are to be truly informed, it is of utmost importance to identify the underlying factors (historical, social, political, economic, cultural, etc.) that enabled the violations to occur, at whose hands, and while which institutions stood by.

5.6 Reparative Actions by Children, Families and Communities

The epistemological assumptions that underlie much of the reparation debate and programmes today need more thorough examination, particularly those that consistently centre on victims waiting for their governments to award them reparation for harms suffered; in most cases the majority of victims, particularly children, never receive any reparation. This is the case despite the Basic Principles, which clearly require the state to provide reparation for acts or omissions attributed to it that constitute grave or serious violations of international human rights or humanitarian law. The Basic Principles also specify that persons or entities found liable for reparation should provide it to the victim¹¹³ or reimburse the state if the state has already provided reparation to the victim.¹¹⁴

Yet the majority of victims have not received reparation, and to date there are almost no examples of widespread programmes that have addressed reparation in a way that even begins to approach the standards set in the Basic Principles. Hence, perhaps it is unwise to continue with a near-exclusive focus on programmes involving truth and fact-finding commissions, prosecutions and reparation that determine and shape outcomes with the state or the International Criminal Court through the Victims Trust Fund as the sole provider of (and hence controller of) reparation.

Framed within the broader conceptualizations of reparation discussed earlier, we believe more understanding is needed about what communities are already doing themselves. This should focus particularly on understanding their efforts to rebuild their relationships, lives and communities – their own processes to remedy what has happened to them, their families and communities because of grave violations of international human rights and humanitarian law (although they will likely not frame their understanding of the crimes and violations

¹¹¹ South Africa's reparations programme has called these measures symbolic reparations, see Goldblatt, whereas under Guatemala's reparations programme they are identified as measures to dignify victims, see Paz Bailey, both in Rubio-Marin, 2006.

¹¹² Laplante, op. cit. 2009.

¹¹³ The State should put into place measures and take actions to help insure that persons or entities found liable for reparation do provide the required reparation, UN General Assembly, A/RES/60/147.

¹¹⁴ Ibid., article 9, para. 15.

within these legal paradigms). Such a framework requires paying careful attention to how individual victims within communities that have also been victimized seek to heal, recover and move forward. It is important not to presume that child victims will have the same priorities as adult victims, or that even child victims experience a uniformity of needs or priorities.¹¹⁵ In working with transitional justice systems in Peru, Laplante finds that through reparation victims will often seek assets they previously did not have in an attempt to improve their lives beyond their pre-conflict capacity. She finds the victims prioritize reparations that allow “them to live a dignified life, and not one of poverty.”¹¹⁶

A deep understanding of the actions prioritized, undertaken and underway by victims and their communities would help the state better identify areas where its assistance could support these priorities, thereby strengthening community actions to rebuild their lives. Such an approach would necessarily reframe our understanding of what constitutes reparation as well as of the people involved, the timeframe, the individuals responsible for deciding on the appropriate form of reparation for specific victims, who carries it out, and how it can be supported.

During the Mozambique fieldwork mentioned previously, Mazurana and McKay sought to understand methods developed by war-affected communities to heal and reintegrate children who had been abducted and forced to serve with fighting forces during the war. Village elders and local healers (*curandeiros*) explained how they adapted traditional rituals to deal with previously unknown levels of violence against children. Where the child had both experienced and participated in such violence, a ritual for the dead was adapted, in which the ‘old’ child was declared dead and a ‘new’ balanced and harmonious child was reborn. While the child retained his or her place in the family, he or she received a new name, which everyone used from that point on, emphasizing the new identity.¹¹⁷ With state understanding of this culturally grounded process to reintegrate these children, a state-supported reparation process could bolster (not undermine) initiatives developed by the community but which alone the community could not fully carry out.

6. CONCLUSIONS

Girls and boys who are victims of gross crimes and grave violations have an undeniable right to remedy and reparation under international law. They have a right to benefit from reparation programmes in material, symbolic, individual and collective forms. But the form of that remedy and reparation is neither pre-determined nor prescribed. It is important to look beyond the structure of past national reparation programmes and think more creatively and holistically about how to support community initiatives.

In the aftermath of armed conflict and political violence, full restoration is impossible. At any level, reparation processes must not violate international law. In particular, international

¹¹⁵ Indeed, in earlier work with colleagues Jeannie Annan and Christopher Blattman we argue that assistance based on victim status (e.g., abducted child, forced wife, and so on) is a very poor indicator of actual need, and we call for moving away from such blanket categories and uniform responses based on victim status. See Jeannie Annan et al. op. cit. 2008.

¹¹⁶ Laplante, op. cit. 2009.

¹¹⁷ Dyan Mazurana, field notes, Mozambique, August 2001.

human rights standards should serve as the benchmark for reparation frameworks, programmes and efforts, and they should be upheld. This includes the rights of women, girls and boys to inheritance and property ownership, to decide if and when to marry, to be free from violence, to have freedom of expression and association, and to health care and education, among others,

Where countries have obligated themselves to international laws regarding the rights of women and children, national laws that violate children's and women's rights should be brought into compliance to ensure that individual and community reparation does not replicate discrimination and violations or block access to rights. Additionally, the state should act to ensure that survivors can receive the full benefits of reparation awarded to them without discrimination based on gender, ethnicity, class or age. More explicitly, this means that discrimination of this sort in national and customary laws and practices cannot be tolerated, should in no way be replicated in the reparation programmes and should be actively identified and countered. Addressing these forms of discrimination is even more urgent given that girls are often at risk of violence in so-called post-conflict, peaceful societies.¹¹⁸

Reparation without justice is not reparative, at any level of government. Judicial processes have and must maintain their strong place at the heart of reparation, particularly at the national level. Yet most victims will never experience justice that is handed down from the state, and few will see state-allocated individual economic or service benefits. Thus, we need to think harder and smarter about what multiple and parallel reparation processes, such as those we discussed above, might look like operating at national, regional and local levels. It is also important to think about how those processes complement and strengthen one another. This requires knowing more about and respecting the indigenous healing techniques being used by violence-affected communities.

In reparation programmes at all levels, child victims should be recognized as important contributors, rights holders and citizens. At the national level, they should be actively consulted during the planning and implementation of truth commissions and reparation programmes, and their needs and priorities should be given equal weight as those of other survivors/victims. Mandates must call for attention to violence and remedy for children and women (many girl victims will be women by the time these responses come into being). Commissioners with expertise on child rights and women's rights must be appointed. At the local level, strategies are needed to ensure that boys, girls and women can participate in forums where they can voice their experiences, needs and ideas so they can be heard by each other and by the larger community and society as a whole. Such forums also need truth-telling structures in which children can safely listen and contribute. There need to be ways in which girls and boys are consulted and partake meaningfully in all aspects of state-driven or local reparation processes.

Reparation and transitional justice efforts need to explicitly recognize that the violence resulted from inequalities based on gender, ethnicity, race, class/caste or age that predated the

¹¹⁸ Emily Bruno, "When Do We Get to Peace? Patterns in Gender-based Violence in Post-Conflict Liberia," thesis prepared for Master of Arts in International Law and Diplomacy, Fletcher School, Tufts University; Urban Walker in Rubio-Marin, op. cit. 2009; Rubio-Marin, op. cit. 2006.

conflict and political violence. There must be clear and overt efforts to transform socio-cultural injustices and political and structural inequalities, from the local level to the national level.¹¹⁹

National level reparation can play a small but important role in strengthening societies' abilities to uphold the rights of their children. At the same time, locally generated reparation processes, which could be carefully supported by the state, might more effectively heal the wounds of children, families and communities and help them rebuild, under new terms, the social relations and moral boundaries that were destroyed.

¹¹⁹ Nairobi Declaration, para. 3.

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