

CHILDREN AND TRANSITIONAL JUSTICE

*Truth-Telling, Accountability
and Reconciliation*

Edited by:
Sharanjeet Parmar
Mindy Jane Roseman
Saudamini Siegrist
Theo Sowa

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Human Rights Program
Harvard Law School
1563 Massachusetts Avenue
Pound Hall 401
Cambridge, MA 02138
United States of America

617-495-9362
hrp@law.harvard.edu
<http://www.law.harvard.edu/programs/hrp>

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Foreword

By Graça Machel

“It’s only by reviewing the past will we know the present. Only by knowing the present will we make a perspective for the future.”¹

– Samora Machel, late president of Mozambique

In the aftermath of our struggle for liberation in Mozambique, this statement gave voice to millions who had fought for an end to oppression and injustice, and dared to hope for peace. We had achieved the aim of our struggle – liberation from colonialism – but we knew that our country had paid a high price. For children it was devastating. Their schools and health clinics had been destroyed, and the years of education they had lost could not be recovered. They lived their childhood under the burden of economic deprivations caused by the war. Most importantly, they lived through the injuries and deaths of their parents, families and friends and the destruction of their communities. As a people – as a country – we truly appreciated the need to understand why and how the struggle could help us come to terms with our past, to promote reconciliation and to build a Mozambique of equity, justice and freedom, and of social and economic prosperity.

Thirty years later, the need for justice, reconciliation and economic development in the aftermath of war is evident on every continent. Devastating wars have been waged in all parts of the world, with terrible impacts on the physical, emotional, social and psychological well-being of children. Deliberate violation of children’s rights has become the norm. We have witnessed the targeting of children for killing, torture, underage recruitment, sexual violence and exploitation, and we have failed to counteract those atrocities. We can no longer plead for accountability – we must demand it.

¹ Inaugural speech for the Reunião dos Comprometidos (the Meeting of the Compromised), Maputo, 2 July 1982.

To prevent the perpetration of these crimes on another generation of children, we must put accountability, truth-seeking, justice and reconciliation at the center of post-conflict recovery and development. Transitional justice mechanisms and processes are designed to come to terms with large-scale and systematic violations, and to support recovery in countries emerging from armed conflict or political violence. They offer a range of possibilities to achieve accountability, justice and reconciliation as part of recovery, specifically in situations where gross violations of children's rights have taken place.

Transitional justice has been the focus of growing attention in recent years, including through the work of international and hybrid criminal jurisdictions, truth commissions, national courts and local reconciliation efforts. These processes enable individuals, communities and nations to respond to the atrocities and abuse arising from war. Transitional justice processes attempt to deal with the legacy of war but also help prevent future violations by establishing a way forward, from conflict to a more just and stable society.

The potential success of such processes depends on the extent to which they prioritize children. We know from experience that if children are excluded from a country's agenda, if their rights are not addressed, a fault line will run through the heart of the nation. The measure of a country's strength and vision is not its military might but its investment in children's capacities, in their development.

Prioritizing children's issues is not all that is needed. Children's voices and their experiences must also be taken into consideration. Having been witnesses and victims of the crimes of war, children have a key role in addressing those crimes and in reconciliation and peace-building processes in their communities. Children and adolescents contribute a tremendous pool of capacity, energy, ideas and creativity, and as countries emerge from societal or political violence, that vital human resource is urgently needed.

Evidence clearly demonstrates that children have an important and unique role in processes that seek truth, justice and reconciliation. Adults can act on behalf of children and in the best interests of children, but unless children themselves are consulted

and engaged, we will fall short and undermine the potential to pursue the most relevant and most durable solutions.

Yes, we must be certain that involving children protects their rights, builds their confidence and strengthens their bodies, minds and hearts. We must bear in mind that children – especially those emerging from horrifying experiences in conflict – will need long-term support and protection to counteract the violations they have suffered. We know, for example, that girls who have been targeted for sexual crimes can suffer further pain and stigma when they return to their families and communities. We cannot turn a blind eye. Rather, we must listen carefully, and on their terms, and take decisive action to support them and bring about changes that will improve their lives.

To enable children's participation while ensuring their protection and allowing them to feel safe, secure and at ease, we need child-friendly policies, procedures and practices in all transitional justice activities. This includes supporting children's right to choose whether or not to participate and to decide how they wish to be involved, with whom they wish to engage and when.

The chapters in this book review efforts to involve children in transitional justice processes and consider the implications, relevance and impact on the lives of children.

Strengthening international legal frameworks and standards provides a basis for eliminating impunity and improving accountability for crimes committed against children in times of conflict and political violence. Recent indictments and prosecutions for crimes against children by the International Criminal Court and the Special Court for Sierra Leone demonstrate that accountability is not beyond our reach. Yet we must admit that progress has been uneven, and the involvement of children in these processes is still new and largely untested. This book seeks to evaluate a number of recent efforts and from them recommend next steps.

One issue that is the subject of ongoing debate is the age of criminal responsibility for international crimes and what it means in relation to children who have been both the victims and the perpetrators of such crimes. The deliberate abduction, forced recruitment and use of children in hostilities during armed conflict

are crimes under international law. Yet in prosecuting such crimes against children, it must be recognized that an intergenerational cycle of violence has turned the very children who were victims of these crimes into perpetrators of similar offenses.

Children who have been abducted and forced by adults to participate in war crimes are victims. Indeed, they are victims because they are forced to become perpetrators of the violence and abuse they themselves have suffered. Therefore, the participation of these children in transitional justice mechanisms must be primarily as victims and witnesses. This does not minimize the importance of accountability for children who become perpetrators. However, it does mean finding ways, within the context of child and human rights instruments, to redress the wrongs these children have suffered while they also make their redress to their communities. Transitional justice processes should promote accountability while fostering learning, self-respect and dignity and maximizing opportunities for rehabilitation and reintegration in their families and communities.

Another issue raised in the chapters that follow is the protection and participation of girls in transitional justice processes. Until recently, children have been overlooked in these processes, and girls have been even more marginalized. A senior officer in the United Nations peacekeeping mission in the Democratic Republic of the Congo recently stated “it has probably become more dangerous to be a woman than a soldier in an armed conflict.”² This statement is more true for girls. They are targeted in armed conflict because of their vulnerability and their gender. They have been subjected to rape, mutilation, forced prostitution, forced pregnancy, forced combat and death. Girls have been systematically abducted and used for forced labor and sexual slavery. This is not limited to a particular context; it reflects a global phenomenon.

Recently, these crimes have been prosecuted by international courts as war crimes, crimes against humanity and genocide. Yet

² Retired Major General Patrick Cammaert, former Division Commander of the United Nations Organization Mission in the Democratic Republic of the Congo, speaking before the United Nations Security Council upon its adoption of Resolution 1820 (2008), 19 June 2008.

prosecution has only taken place in a few instances and does not begin to address the magnitude of crimes committed.

Additionally, when crimes against girls and women have been addressed by transitional justice processes, the focus has been almost exclusively on sexual crimes, limiting attention to the multitude of other grave violations against girls and women, such as loss of education, livelihood and land, as well as forced labor, slavery, exploitation and trafficking. Focusing on sexual violence against girls can limit the understanding of the totality of their experiences in conflict and leave them marginalized in recovery efforts, in reparation processes and in the structure and relevance of post-conflict institutional reform.

Experience shows that judicial mechanisms alone are insufficient in the aftermath of massive and systematic violations. Despite attempts to strengthen and adapt them, traditional processes have also been inadequate to deal with the results of the most serious violations and the sheer number of victims of atrocities. How then can we come to terms – reconcile and rebuild – following war and large-scale political violence? How do we assure accountability?

There is no one answer. The damage to the lives of children caused by the worst impacts of armed conflict cannot be fully repaired, but much has been done to protect children and enable them to better protect themselves. The chapters in this book look at examples of the mechanisms and processes that have been engaged to this end, undertake analysis and make recommendations to strengthen both the protection and the participation of children, and to promote child-friendly and relevant outcomes.

It is clear, for example, that safe and meaningful child participation in truth commissions leads to articulation of a more complete story of a conflict. Yet, for a truth commission to have lasting impact, people need to see tangible differences in their lives after it has finished its work. Suggestions for such advances put forward by children include access to education and vocational skills, accelerated rebuilding of schools, the inclusion of lessons from the truth commission in school curricula, help for children on the streets and compensation for youth to make up

for lost years of education through the provision of economic and livelihoods opportunities. All of this has major implications for governments and donors who fund truth commissions and other transitional justice mechanisms. Sufficient funding to support children's participation and provide resources to implement recommendations is crucial.

Several chapters highlight the practical outcomes that children hope will result from their involvement in transitional justice processes. The call for accountability for the most serious of crimes under international law is echoed by children emerging from conflict in diverse countries. At the same time, children want reconciliation, and they want their own communities to be rebuilt – they want better homes, schools, streets and areas for play.

The case studies in this book reflect a number of countries and contexts. I am encouraged to note the number of examples demonstrating innovative responses by African countries and institutions to the call to engage with children in transitional justice contexts.

The preventable deaths and suffering of children, in situations of conflict and political instability, highlight the extent to which we have failed to prioritize the rights and well-being of children. Transitional justice processes are an opportunity to set things right. However, they cannot alone address the brutal inequalities, the poverty and the discrimination that have locked children behind the bars of deep and far-reaching structural injustice. Children in all countries – including developing countries and nations afflicted by war – are increasingly aware of the world they live in. They want to contribute. But they need the knowledge and the tools to realize their potential. The world cannot pretend that it lacks the resources these children need.

We live in a world where injustice and impunity are too often taken for granted. Unless we tackle the root causes of specific conflicts and general political violence, transitional justice mechanisms will prove to be short-term measures. We have the opportunity to build again and to build better. Keeping children in the forefront of reconstruction strengthens the capacity for both justice and peace.