

Children, Gross Violations and Reparation

Dyan Mazurana, Ph.D.

Feinstein International Center
Tufts University, USA

I. What is Reparation?

- What constitutes reparation?
- Does it have grounding in international law? Protection frameworks?
- What is fair/just, proper, and possible in resolution of massive and systematic cases of abuse?

Reparation

- Restitution – full restitution (*status quo ante*)
- Compensation
- Rehabilitation – social, medical, psychological, legal
- Satisfaction and guarantees of nonrecurrence
 - NOTE: Truth-telling, criminal justice, institutional reform complement reparations

Right to Reparation

- Growing consensus that victims of human rights abuses entitled to compensation
 - Article 8 Univ. Dec. of Human Rights
 - Article 10 American Convention
 - Article 9 CCPR
 - Article 14 Convention against Torture
 - Article 50 European Convention
- Both Inter-American and European HR systems deal extensively with issues of reparations for HR violations

Protection Frameworks

- **Concept of protection:**

“... all activities aimed at ensuring full respect for the rights of individuals in accordance with the letter and spirit of the relevant bodies of law [IHL, HR, RL]”

- **Protection activity:**

“...restores people’s dignity and ensures adequate living conditions through reparations, restitution and rehabilitation...”

Reparation

- In essence, reparations directly provide benefits to victims.
- In contrast, measures that have reparative effects, e.g., punishment or institutional reform, are not reparations as they don't provide a direct benefit to the victim.
- In limited individual cases “restitution,” but in widespread “adequate compensation.”

II. State of Children and Reparation

- **What is the state of children and reparation?**
- **What do we learn from past mandates and approaches?**
- **What do we learn from comparing past reparation programs?**

What crimes or harms against children enable children to qualify as beneficiaries of past reparation programs?

Crimes and violations --

- against political and civil rights
- where child is primary victim
- where child's status as relation or dependent of victim is determining factor

Crimes Where Children are the Primary Victim

	Argentina	Chile (2003)	Guatemala	Peru	Rwanda	Sierra Leone	South Africa	Timor
Children absent due to forced disappearance	X		X	X				
Children abducted				X			X	
Children born due to rape ^[1]		X		X		X		
Children born in detention, or children 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 Are Victims Due to Their Status as a Relative or Dependent of Those Against Whom Crimes Were Committed

Crime or Harm	Argentina	Chile	Guatemala	Peru	Rwanda	Sierra Leone	S Africa	Timor
Children of amputees						X		
Children whose mothers were victims of sexual violence								X
Children of victims of sexual violence (rape, sexual slavery, breast genital mutilation, and forced marriage)						X		
Children of war-wounded victims						X		
Children of war widows						X		X
Orphaned by war								X
Parent(s) were forcibly disappeared	X	X	X	X				
Parent(s) were killed by act of political violence or wartime violation		X	X	X		X	X	
Parent(s) killed in genocidal massacre						X		
Parent(s) were raped and died as a result of the crime			X			X		

III. What do we learn?

- How children qualify to receive reparation
 - Little consistency in determining harms
 - Exceptions are child raped, sexual violence, torture and parent murdered
 - Sometimes children are not imagined as victims
 - Age and time limits (older children)
 - Some have to suffer multiple harms (not enough `just' to be raped, tortured, or mutilated)
 - Some link child's access to marriage or labor status of mother (e.g., sexual violence with single mother, replicates patriarchal notions of deserving family)

Compensation

- **Pensions and lump sum awards**
 - How do you get it, in what proportion
- **Who gets money, mother, father, or child?**
 - South Africa example
- **What do we know about lump sum payments to children**
 - DDR example, girls and boys
- **Problems faced by minors in opening bank accounts, financial management, etc.**
 - Girls and boys, rural and urban, linguistic minorities

Education Services

- State obligation and child's right to education
- First thing most children say they want
- Lucky if primary (hidden costs), rare secondary, only one case university
- Accelerated education lacking
- Technical training (gendered and usually useless)
- Seriously need to address quality of schools for both girls and boys

Health Services

- **State obligation and child's right to health**
- **Access to health care for children who are reparations beneficiaries**
- **Access to care without stigma**
 - Esp. regarding girl mothers
- **Access to specialized care, including long term care**

Shelter Services

- **State obligation and child's right to shelter**
- **Access for shelter options for children and their families**
 - Recognize that older children may chose to leave families and need shelter access
 - Recognize girls may want to leave families to escape abuse

Individual and Collective Benefits

- Cannot lose sight of individual (this is shift by donors now with CAACs)
- Tensions when those who are stigmatized are `rewarded' (esp. boys)
- Tensions of ID those raped or forced marriage, with children born of rape
- Example of how to do individual AND collective in education, that avoids reparation/development right tension

Non repetition

- Absolutely KEY area to inform
- Police
- Military and Militias
- Justice Systems
 - Girls access is often blocked due to
 - Customary laws (clan structures)
 - Patriarchy in clans and national laws
 - Gender bias in courts
 - Lack of resources
 - No support to take cases forward

The Way Forward ...

1. Recognizing and acknowledging GRV against boys and girls and how gendered and the gendered affects
2. Getting mandates laid out in peace accords and in TRCs to explicitly address grave HR violations against children, attn: gender harms and rights violations, and reparations
3. Recognizing that children are not women
4. Getting information to children for participation, attn: gender, age, location

The Way Forward (cont.)

5. Working with victims groups that prioritize child survivors of GRV, not turning them all into development and reconstruction groups
6. Having reparations for children actually implemented and be meaningful and gender-just
 1. This must include deliberate linking with (and informing and transforming) other actions within transitional justice