

CHILDREN

Through a New Lens: A Child-Sensitive Approach to Transitional Justice

Cécile Aptel and Virginie Ladisch

August 2011



Cover: Nepali youths light candles in memory of the people who died in the Maoist and government conflict at Thapathali in the capital Kathmandu. Photo by REUTERS/Gopal Chitrakar.

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About ICTJ

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The use of geographical names in this report should not be interpreted as implying an ICTJ position on the political status of the mentioned locations.

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ACRONYMS

AUC	United Self-Defense Forces of Colombia
CAAFAG	Children Associated with Armed Forces and Armed Groups
CDO	Chief District Officer
CNRR	Reparations and Reconciliation Commission (Colombia)
CODA	Comité para la Dejación de las Armas
CPA	Child-Protection Agency
CPN	Child Protection Network
CRC	Convention on the Rights of the Child
CVR	Peruvian Truth and Reconciliation Commission
DDR	Disarmament, Demobilization, and Reintegration
DRC	Democratic Republic of the Congo
FARC	Revolutionary Armed Forces of Colombia
FARDC	National Army of the Democratic Republic of the Congo
FS	Fundación Social
ICBF	Colombian Family Welfare Institute
ICC	International Criminal Court
JPL	Justice and Peace Law (Colombia)
MH	Memoria Histórica
MOU	Memorandum of Understanding
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MoPR	Ministry of Peace and Reconstruction (Nepal)
NR	Nepalese Rupee
NPLF	National Patriotic Front of Liberia (NPFL)
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
TC	Truth Commission
UPC	Union of Congolese Patriots

Executive Summary

This report examines how and to what extent transitional justice approaches have engaged children and considered their needs and perspectives, analyzing the experience of truth-seeking mechanisms, criminal justice, reparations, and institutional reform. It is based on the distilled results of assessments in Colombia, the Ituri District of the Democratic Republic of the Congo (DRC), Liberia, and Nepal.

Children are among the most affected in countries suffering from conflict or massive human rights violations. Children have the right to express their views and be considered in processes concerning them, including transitional justice. Yet, children and youth have not been systematically included as focus of transitional justice mechanisms. As part of a victim-centered approach, an assessment of the role and impact of violations on children and youth should be one of the key lenses used to understand the context, identify the needs, and inform the nature and function of a transitional justice measure. A child-sensitive approach should be included early in the process of developing transitional justice measures, and addressing violations against children should be made an explicit part of their mandates. This involves allocating resources for expertise and administrative support and ensuring that children's issues are considered appropriately where relevant.

Even in cases where children are not among those most directly or severely affected by the violations, children are important stakeholders—especially in countries where they constitute a considerable part of the overall population or even the majority—and must therefore be adequately informed and consulted. The best interests of the child, concerns for their physical protection and psychosocial well-being and for confidentiality and anonymity must be considered when engaging children in transitional justice.

Truth-Seeking Mechanisms (i.e. Truth Commissions):

- When establishing a truth-seeking mechanism, it is critical to analyze the context through a child-sensitive lens to assess how children were affected by violations and to determine their specific needs. If the assessment shows that children were affected, the mandate of the mechanism should make a clear reference to violations suffered by children. This should in turn guide decisions about staffing, methodology, and structure. Truth-seeking mechanisms should gather statements from children and those who were victimized as children, as long as it can be done safely. Children must have access to psychosocial assistance throughout the process, and provisions must be made for their physical safety and long-term community support.

Criminal Justice:

- Children often face significant difficulties regarding their access to justice and treatment by the justice system. These difficulties are exacerbated in transitional and post-conflict contexts.

While there have been positive initial steps, more needs to be done, both at the domestic level and internationally, to foster the prosecution of those responsible for crimes against children. A fuller range of crimes suffered by children should be prosecuted, and procedures should be made child-friendly. The report suggests that the focus on the crime of illegal recruitment and use in hostilities of children associated with armed forces and groups (CAAFAG) may not be fully understood by local communities, in places such as the DRC, and may not necessarily have positively affected the release of the children concerned, both in the DRC and in Colombia.

Reparations Programs:

- The right to reparations extends to all victims of gross human rights violations, including children. Few reparations programs have explicitly recognized children as beneficiaries, however, and others have struggled with effectively designing and administering child-sensitive reparations. Child-specific reparations are crucial because they reaffirm the rights of children in the face of past violations, attempt to remedy lost opportunities and provide for their futures.
- Reparations should aim to help children gather the tools, resources, and support they need to lead a productive life, for example by attempting to compensate for lost years of schooling through accelerated educational programs.

Institutional Reform:

- Security sector reform and other institutional reforms should address the concerns and demands of children and youth. Such reforms have traditionally overlooked the needs of girls, who have circumvented official processes and “self-demobilized.” Programming should include a gender focus that is specific to the needs of children.
- The education sector should be factored into transitional justice measures. Often at the source of violence and discrimination, it also holds significant potential to help build new norms of respect for human rights¹.

Across all contexts, the study found widespread unawareness of transitional justice measures among children. In Colombia, lack of information on deadlines and eligibility requirements meant that many youth never received reparations they were potentially due. Building on the few positive examples that exist, transitional justice mechanisms should invest in creating materials that are easily accessible to a range of audiences, including younger generations. This could mean producing a version of the final report of a truth and reconciliation commission accessible to children and youth or including the main findings of a transitional justice mechanism into school curricula.

There is an especially strong need for increased consultation and coordination between child-protection agencies and transitional justice actors to advocate jointly for child-sensitive transitional justice measures.

Failure to address the concerns of children and youth can undermine the long-term recovery of transitional or post-conflict societies. Children and youth need to understand the past to play a constructive role in building the future.

¹ Elements in the education sector such as curriculum reform might also be viewed as truth and memory initiatives but here we are viewing the issue of curricular reform under a broader umbrella of reform of the education system as a whole

1. Introduction

In contexts where mass atrocity and repression are systematic or widespread, children are among those most negatively affected by the enormous physical, psychological, social, economic, and political consequences.

As of 2010, over 1 billion children worldwide lived in countries or territories affected by armed conflict, and over one-quarter of them were under the age of five.² Many conflict-affected countries have skewed age pyramids, with the result that over 42 percent of people living in countries affected by conflict are children or youth (under 19 years old) and 51 percent are under the age of 25.³ This means that, in these countries, the “average” civilian victim—a person killed, injured, or forced to flee from his or her home—is more likely than not to be a child or youth.⁴

Children can be caught up in violence and are also often specifically targeted, notably by certain crimes such as rape, torture, slavery, or illegal recruitment, precisely because of their vulnerability as children. Injustices against children are found not only in countries in the midst of ongoing conflict or emerging from war, such as Colombia, the Democratic Republic of the Congo (DRC), Liberia, or Nepal; they may also be found in Canada and Australia, for example, where, through a system of residential boarding schools established as government policy, the family and communal bonds of aboriginal children were deliberately strained or broken.

Yet, despite the extent of human rights violations and crimes suffered by children, transitional justice mechanisms, which include truth commissions, criminal justice, reparations, and institutional reform efforts, have frequently overlooked children’s interests and perspectives, and practitioners in the field have only recently begun to acknowledge the significance of children’s participation in these measures. This failure is in part due to the relative disempowerment of children in general, and of child victims in particular, compounded by their lack of representation in and by political entities and civil society organizations.

Since the 1980s, when the term “transitional justice” was first coined, the field has evolved and been adapted to various contexts.⁵ Initially applied to situations of transition from authoritarian rule to democracy in Latin America (especially the Southern Cone), Eastern Europe, and South Africa, it has been progressively

2 Calculations based on the Institute of Heidelberg’s *Conflict Barometer 2010*, listing 28 highly violent conflicts occurring 2010, as well as the UN Population Division’s “World Population Prospects” projections for 2010.

3 UN Population Division, “World Population Prospects.”

4 “Youth” is defined by the United Nations as those between the ages of 15 and 24. (See United Nations Youth Agenda FAQ, Question 1, available at: <http://social.un.org/index/Youth/FAQ.aspx>; and UN Secretary-General, *Implementation of the World Programme of Action*, where the secretary-general consistently refers to youth as ages 15–24.) UNICEF has used the term to refer to people from the ages of 10–19. (Rajani, “Participation Rights of Adolescents,” 8, uses the terms “adolescents,” “youth,” and “young people” interchangeably to refer to the 10–19 age group; for a discussion of the choice in doing so, see “Terms” on p. 8.) UNESCO has distinguished between “youth,” aged between 15 and 24 years, and “young people,” between the ages of 10 and 19 (UNESCO, *Empowering Youth*, 10). There is no legal definition of the term “youth.” For the purposes of this report, the authors would like to emphasize that those who were victimized as children should be carefully considered and engaged in transitional justice processes.

5 For a discussion on the context in which the phrase “transitional justice” first came into use, see Arthur, “How Transitions Reshaped Human Rights.”

applied in contexts where the transition was of a different nature, mainly post-conflict situations (such as in Sierra Leone, Timor Leste, Liberia, Nepal, or Peru) and, more recently, in ongoing conflicts (such as in Colombia, Afghanistan, and the DRC).

Transitional justice focuses on the challenge that societies in transition—be it from war to peace, or from authoritarian rule to democracy—face in seeking accountability for a legacy of mass abuse. It aims to provide recognition to victims and foster civic trust on the path toward the longer-term objectives of facilitating democracy and reconciliation. The underlying assumption is that it is necessary to deal with a traumatic past in order to build a stable future. One of the key principles of transitional justice is that efforts to deal with legacies of human rights violations should be victim-centered and approached through an integrated strategy that incorporates a combination of trials, truth-seeking efforts, reparations, and institutional reform.

As part of this victim-centered approach, transitional justice should review its objectives, methods, and procedures through a child-sensitive lens in order to assess and analyze the specific needs and rights of child victims, bearing in mind that boys and girls may experience conflict differently and be targeted based on their respective vulnerabilities.

Transitional justice can, and should, play a role in raising awareness about the victimization of children and contribute to ending impunity for these crimes. Looking through this lens, transitional justice practitioners should consider children's victimization, their role as bystanders and participants, the impact of the crimes on them, and their potential to carry forward lessons about the past. It is important to use a child-sensitive lens to analyze the context, identify the needs, and inform the mandate and modalities of transitional justice measures. This perspective will help articulate new questions, including: Were children affected by the violations, and if so, how? Were children directly or indirectly victimized? Did they play a role in preventing crimes, protecting others from violations? Were children and youth involved in committing violations?

Children affected by massive human rights violations should be given the opportunity to participate in transitional justice processes. As Graça Machel asserted, “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 the most durable solutions.”⁶

Engaging children is important for the sake of the child victims and their communities, and it may also be helpful in preventing recurring abuses. As they are in their formative years and more impressionable, children affected by crimes may lose points of reference of what is acceptable behavior on an individual and societal level. Some may come to see the logic of violence when confronted with unjust settings; for example, some may recall public burnings or lynching as appropriate solutions to dealing with violence in their community and recommend that these methods be used to deal with criminals in the post-conflict period.⁷ Thus, the cyclical patterns of cross-generational conflict and the potential fault lines of future violence make the concern with children an important component of the transitional justice endeavor. This is reiterated in the Liberian Truth and Reconciliation Commission (TRC) final report, which states: “This generation of young people, many who have borne arms, must be given the opportunity to participate in reforming the social and institutional arrangement that have failed them in the past. If this general condition is not met, there will remain a strong likelihood of a reversion to violence.”⁸

Furthermore, failure to address the experiences of children, including child victims, wastes the capacity and potential of young people to serve as catalysts for reconciliation and peacebuilding within their own

6 Machel, “Foreword,” x–xi.

7 Olson, *Children in the Gray Spaces*, 160–2.

8 Liberian Truth and Reconciliation Commission, *Final Consolidated Report*, 213.

communities. “In the end, real peace is not found in a piece of diplomatic paper. It is found in the secure and healthy lives of girls and boys.”⁹

This report is part of a broader project undertaken by ICTJ since 2008 to examine the scope and modalities of children’s participation and engagement in different transitional justice mechanisms. In parallel to the preparation of this report and to activities on the ground in several countries, the ICTJ Children and Transitional Justice program has co-authored with UNICEF a handbook on children and truth commissions,¹⁰ participated in the development of “Key Principles for Children and Transitional Justice” in conjunction with UNICEF,¹¹ and contributed to a publication entitled *Children and Transitional Justice*.¹² The present report, based on four field assessments carried out in 2010, aims to further contribute to unveiling children’s suffering and to give children a voice and a space for acknowledgement and justice. It proposes improvements to facilitate the participation of children in transitional justice mechanisms.

Studies were undertaken in Colombia, the Ituri District of the DRC,¹³ Liberia, and Nepal.¹⁴ These four countries, each with distinct contexts and at different stages in the process of dealing with international crimes or massive human rights violations, offer a range of perspectives and approaches to transitional justice, encompassing truth commissions, the use of local and international judicial mechanisms, reparations, and institutional reform.¹⁵ Despite significant differences among the contexts in these four locations, all are situations of past or ongoing armed conflict, which involved the association of children with armed forces and armed groups, or so-called child-soldiers. And while several of the examples of the involvement of children in transitional justice issued mentioned in this report concern children associated with armed forces and armed groups (CAAFAG), even in these contexts, CAAFAG make up only one small segment of children affected by conflict. Many children have suffered or continue to suffer from a wide range of massive human rights violations, and they continue to endure the consequences.

Deliberate efforts were made during the study and a methodology designed for the field assessments to ensure sufficient representation in terms of age groups, gender, and geographical coverage, but the situation on the ground, notably in terms of security and access, has been a pervasive concern. A common difficulty in all four countries was to reach children themselves, in particular girls, and to interview them in conditions that would be sufficiently safe and protective. As a result, this report’s findings are preliminary, and will hopefully trigger more research, in particular on the impact of transitional justice on children and their communities.

This report presents the distilled results of these assessments, starting with a discussion of the understanding of childhood. It then examines how and to what extent transitional justice approaches have engaged children, analyzing truth-seeking mechanisms, criminal justice, reparations, and institutional reform, before considering overarching issues, including the importance of reaching out to children and the need for increased collaboration between child protection agencies (CPAs) and transitional justice (TJ) practitioners.

9 UNICEF, “Anthony Lake.”

10 UNICEF Innocenti Research Centre and ICTJ, *Children and Truth Commissions*.

11 These principles are “intended to better inform the protection and participation of children in truth, justice and reconciliation processes and to serve as groundwork for further elaboration and consensus-building on the role of children in transitional justice.” Available at: <http://www.unicef-irc.org/files/documents/d-3727-Key-principles-document-f.pdf>.

12 Parmar et al., *Children and Transitional Justice*, 2010.

13 The Ituri district is situated within the province of Oriental, in the northeastern corner of the DRC.

14 In each country, interviewees were selected from among reputable national and local child-protection agencies, as well as organizations involved in transitional justice in each country. Particular efforts were made to interview children confidentially and anonymously, in a protective and mediated environment. Some 87 persons were interviewed, using a semi-structured or open interviewing format. The interviews were usually conducted in the local language or languages. Due to the volatile situations of the countries where the studies were conducted, several interviews were confidential, and as a result the majority of statements reproduced in this report are not attributed. All notes pertaining to the interviews and information provided in this report are on file at ICTJ’s headquarters.

15 It is beyond the scope of this report to provide full background on the conflict in each country. The table found in the Annex provides limited references for the overall trend of the conflict and status of transitional justice. For further information on those situations, please refer to the relevant country pages at www.ictj.org.

2. Understandings of Childhood

While national and international law define childhood according to an objective chronological limit, usually those under the age of 18, perceptions of who is a child vary across cultures. These perceptions are influenced by several factors, including gender. This section provides an overview of the cultural and legal considerations pertaining to the determination of childhood. It highlights specific considerations relating to gender and points to the difficulties in practice of defining the limits of childhood. Understanding these dynamics is essential in crafting a child-sensitive approach to transitional justice. While this report is about engaging children in transitional justice, it is important to stress that many of the findings and recommendations apply to youth, as well. Those victimized as children may in many cases be youth, or even adults, by the time TJ processes are in place.

Legal and Cultural Definitions of Childhood

The Convention on the Rights of the Child (CRC) defines a child as “any human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” The convention has been very widely ratified, including in all four countries where assessments were carried out for this study.¹⁶ Yet, the legal system of each of these four countries establishes different thresholds to define the age at which an individual can marry, vote, and be held responsible for criminal acts. There are also often discrepancies between the letter of the law and its implementation in practice. As a result the concept of childhood is ambiguous, due to gaps between national laws and local customs.

A closer look at the legal and cultural perceptions of childhood in the DRC highlights this complexity. Though Article 48 of the DRC Child Protection Act outlaws marriage of children younger than 18 years,¹⁷ it contradicts Article 352(1) of the Family Code, which sets the age of marriage at 18 for boys but 15 for girls.¹⁸ In the DRC, early and forced marriage for girls, generally condoned by customary practice, is a serious concern and may have been exacerbated by the conflict.¹⁹

In the Ituri district of the DRC, the notion of childhood was described by some interviewees as a recent introduction and as “foreign”: “The concept of childhood only came to Ituri with MONUSCO and their

16 CRC, art. 1. As of April 2011, there are 193 parties to the CRC, which has been ratified by all but one signatory, the United States of America.

17 DRC, *Child Protection Act*, art. 48.

18 Human Rights Council, “Second Joint Report,” 11.

19 Committee on the Rights of the Child, “Summary Record,” 5.

DDR [disarmament, demobilization, and reintegration].²⁰ Furthermore, the understanding of who is a child varies according to different ethnic traditions. One respondent indicated that, for the Lendu, “a child becomes an adult when he stops respecting his elders” usually deemed to be from around the age of 12, while for the Hema, a child is expected to remain submissive until his father dies.²¹ In Ituri, boys are generally recognized as adults from around the age of 14 or 15; this is the age when it is accepted that they can take a wife. Girls as young as 12 who have reached puberty are sometimes married, whether they consent or not.²² According to customary law, girls are never considered to be responsibility-bearing adults, instead they are always considered dependent either on their fathers or their husbands.

Gender

As highlighted in the above examples, some of the biggest discrepancies between legal provisions and child protection in practice tend to relate to gender differences. Cultural interpretations of gender roles and customs influence local implementation of child rights. Child-protection laws written in gender-neutral language that do not specifically prescribe protections for girls may be interpreted by those responsible for their implementation as pertaining only to boys.²³ This gap between legal protections for girls and the reality in practice exemplifies the particular vulnerability faced by girls; in many traditional patriarchal societies, their needs are often underestimated or overlooked.

For example, in Nepal, Section 5 of the Children Rights Act says, “No discrimination shall be made between a son and daughter and between sons and daughters themselves in matters relating to their upbringing, education and health care.”²⁴ In practice, however, there is discrimination between boys and girls in terms of access to education (girls have the burden of house work) and early marriage for girls. The national code sets the age of marriage for both men and women at 18 if they are marrying with the consent of their guardians and at 20 if they are marrying without the consent of their guardians.²⁵ Yet, early marriage is very common and culturally acceptable, especially for girls. In addition, Nepal’s long-standing caste system continues to affect the options available to children.²⁶ Many of the girls, especially those from a Dalit or indigenous background, who joined the Maoist insurgency and participated in the war did so in part to escape the social or gender discrimination they faced. As a result, 25 percent of registered and verified combatants in Nepal were female,²⁷ and it is estimated that the true percentage of women combatants was in fact higher.²⁸

As another example, in Ituri, the bride price is fixed and strictly observed for all ethnic groups; when a girl is born she is already considered another family’s property. If resources are scarce, a boy’s education will take precedence over that of a girl.²⁹ This also means that girls who leave home due to conflict or political violence may fall outside the social structures that “protect” them and thus become disassociated from society, undermining their ability to successfully reintegrate into their communities.³⁰

As such, girls may need additional support and outreach to facilitate their participation, taking into consider-

20 Interview with district commissioner, Bunia, DRC, April 23, 2010, referring to referring to the UN peacekeeping mission in the country and its program of disarmament, demobilization, and reintegration. Originally, “Le concept d’enfance est venu avec la MONUSCO et leur DCR.”

21 Interview with Association pour la Promotion de l’Education de l’Information (APEI), Bunia, DRC, April 25, 2010.

22 UNICEF reported that the rural population refuses to accept that a girl cannot marry at 13 years of age. Interview with UNICEF, Kinshasa, DRC, April 20, 2010.

23 Leibig, “Girl Child Soldiers.”

24 Nepal, *Children’s Act 1992*, ch. 2, sec. 5.

25 Nepal, *Muluki Ain 2020*, ch. 17, sec. 2.

26 *Thaindian News*, “UN Urges Nepal.”

27 United Nations Mission in Nepal, “Arms Monitoring.”

28 Interview with Anonymous Source C, Nepal, May 26, 2010.

29 Interview with a representative of Ituri Ngiti community, DRC, April 25, 2010.

30 *Ibid.*

ation the cultural background, local customs, and values. Subsuming girls either under the category of children or under the category of women is not sufficient to adequately meet their needs. Engaging girls in transitional justice requires specific attention to their perspectives and needs: they are both children and women, but their needs can only be fully met if they are considered and catered for as girls.

Transitional justice mechanisms provide opportunities to highlight, address, and reform the societal or structural patterns of discrimination that contributed to the violations suffered by girls and boys during the conflict. For instance, as stated in the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, “reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives.”³¹ Programs offering job training, for example, should not restrict the opportunities for girls to traditionally assigned roles, but rather should be designed with an eye toward opening new professional spheres.³² In this way, targeted initiatives for girls offer the potential to address and challenge systemic patterns of discrimination.

Child–Youth Continuum

The ambiguity reflected in several of the legal definitions and cultural perceptions of children reflects the challenge involved in drawing a clear line between children and adults and between children and youth. The term “youth” has no legal demarcation, with definitions ranging from those aged 15–24, or even up to 30 years old. Other definitions focus on defining youth according to the stage of life, between childhood and adulthood.³³ That distinction depends in part on the context, culture, issue at hand, and also on the individual. While from a legal and protection perspective it is crucial to set a clear distinction between children and adults and to mark it chronologically at the age of 18, in practice it is important to adopt a context-specific approach when working with children and youth.

This is particularly critical, because, in the time it takes for a transitional justice mechanism to be instituted and become operational, many of those who were children at the time of the violation will have become youth or adults. This raises a question for transitional justice mechanisms: should those individuals be treated as adults, which they now are, or as children, because of their vulnerability when they were victimized? As a consequence of violations suffered as children, these individuals may have been affected physically or psychologically. They may also have missed out on a range of basic needs, including access to education and job training, which can have long-lasting—if not permanent—negative consequences. It is therefore crucial to emphasize that specific transitional justice programming and activities should extend to all those who were victimized as children and their special needs, focusing on the age at the time the violation occurred rather than only on those under 18 at the time of the TJ measure.

The context of Liberia illustrates some of the challenges stemming from the time that elapses between the commission of crimes and the establishment of transitional justice measures. The specific mandate of the Liberian TRC required it to consider children, but it was not clear how the TRC should deal with those individuals who were children at the time of their experiences in the conflict (in the earlier years of the conflict, 1989–96), but who were older than 18 when the TRC operated. Several members of child-protection agencies interviewed felt that they had “lost track” of those in this category. In the end, the commission made a decision that its work on children would apply only to those who were 18 or

³¹ *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*. This declaration was issued at the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from March 19–21, 2007, by women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict from Africa, Asia, Europe, Central, and North and South America. While it has no legal effect, it illustrates the views of the NGOs concerned as to the direction law and practice should take.

³² See Anderlini and Conaway, “Disarmament, Demobilisation and Reintegration,” 4.

³³ See note 4 above and Sommers, *Youth*, 3.

under at the time of the TRC's activity, rather than at the time of the war. The TRC did develop a "special focus" on "youth," but its engagement was limited and not sustained, and the commission's final report did not include a specific section on this important constituency. In retrospect, many stakeholders felt that far greater attention should have been given to engaging youth who were able to reflect on their conflict experiences as children and more generally to exploring the points of connection between the concerns of children and youth. This age group should not be overlooked, as youth have the potential to be a significant positive driving force for transitional justice.³⁴

One common point across all contexts is that children are not typically organized into strong, representative advocacy groups and do not have the positions, skills, or resources necessary to successfully advocate for their needs to be met. Rather, they usually depend on their parents or other adults for protection and representation. This poses particular challenges in creating space to hear and incorporate their needs and demands into transitional justice. The following sections will each focus on key transitional justice approaches and the ways in which children can and should be considered.

34 This was the case in Peru, for example, where the youth volunteers of the PROVER program ended up playing a key role in supporting the work of the Peruvian Truth and Reconciliation Commission (CVR) as well as promoting and defending its work within society by taking an active role in some of the civil society debates that emerged in response to the work of the CVR. This point was made by Iris Jave Pinedo, who managed the PROVER program, at an ICTJ conference on "Children and Transitional Justice" held in New York, March 22–23, 2011.

“I think we have a right to be heard.”

— *Schoolgirl, Bunia, DRC.*

3. Children and Truth Seeking

Truth-seeking mechanisms take many forms and encompass a broad range of measures—including declassification of archives, specific investigations, local and traditional justice processes, and the establishment of nonjudicial commissions of inquiry, including truth commissions. While this section focuses on particular truth-seeking mechanisms, including the truth commission in Liberia, and a truth-seeking initiative in Colombia, its key findings are applicable to the wider range of truth-seeking approaches.

Broadly speaking, the aim of a truth commission (TC) is to investigate and publicly acknowledge massive abuse that occurred in the past. Across the more than 30 truth commissions that have been established around the world, there have been a variety of aims stated in the mandates, based in large part on the specific nature of past violations as well as the political space at the time. In general, however, a truth commission tends to include a combination of five basic aims: “to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past.”³⁶ In addition, several truth commissions (such as in South Africa and Guatemala) have articulated the goal of prevention of future abuses as an objective of their work.

Despite the formal rights of children to express their views and be considered in processes concerning them, as stated in Article 12 of the CRC, to date, few truth-seeking initiatives have systematically included a focus on children throughout their work.³⁷ In order to both clarify past abuses and help prevent their repetition, it is essential to highlight the victimization of children whenever it takes place and ensure that children are aware of and engaged in the process.

Not only is it their right, but our studies also show that many children have a strong desire to be heard as part of transitional justice processes. In the course of our assessment in Colombia, a psychologist working with child victims asserted that children often identify a need to tell their own stories, to put their voices in the public sphere.³⁸ A Colombian prosecutor related that CAAFAG are often keen to disclose the information they have about mass grave sites where friends and family members were buried by an armed group; children feel responsible for “not leaving them there.”³⁹ To that end, child victims in Colombia have talked about writing books and staging plays. Warning others about the reality of armed conflict and of life within

35 Focus group with school children in Bunia, DRC, April 27, 2010.

36 Hayner, *Unspeakable Truths*, 24.

37 To date, only the truth commissions in Liberia, Sierra Leone, and Canada include specific mention of the rights and violations of children in their mandates. For more information, see UNICEF Innocenti Research Centre and International Center for Transitional Justice, *Children and Truth Commissions*.

38 Stella María Duque, director of Taller de Vida, one of the NGOs working directly with demobilized children, Colombia, April 26, 2010.

39 Interview with Patricia Hernandez, justice and peace prosecutor, Colombia, May 5, 2010.

armed groups is also a way for children to take responsibility for their prior decisions. According to one psychologist working with child victims, bringing one's voice to the public sphere is also a healing exercise.⁴⁰

To implement the rights of children and enable their participation in truth-seeking mechanisms, we recommend that, in all contexts, a preliminary assessment be conducted to evaluate whether children and youth have been impacted by the situation deserving of truth seeking. In cases where the assessment reveals that children and youth should be considered in the work of a truth commission, a child focus should be factored in early in the process and should be incorporated into decisions including the allocation of resources, composition of staff, children's participation, and the final report.

Further research is clearly needed on the impacts—both positive and negative—that their participation in truth-seeking initiatives—as well as other accountability measures—has on children and youth. Concerned about a potentially negative impact, past truth commissions, such as the South African TRC, hesitated to allow children to testify, out of fear that children may not fully be aware of the long-term consequences of testifying publicly. Similarly, the commissioners of the Peruvian truth commission debated whether or not to allow a rape victim and her daughter born of rape to testify publicly. They were concerned that appearing publicly to share this story would be traumatizing for the girl. However, since both the mother and daughter insisted that they wanted to testify together, the commissioners agreed to their request, but made sure to have adequate psychosocial support. Confidential statement-taking sessions are often preferable. To date, most statements gathered from children by TCs so far have not been made public.

Timing: Planning Ahead

The key to achieving a child-sensitive TC lies in considering children's rights and needs early in the process so that their interests can be considered when decisions are being made. An explicit reference to the violations suffered by children in the mandate of a TC is the best way to ensure a focus on children and positively affect decisions concerning staffing, policymaking, and resource allocation to enable this focus. To obtain a clear mandate, child-rights advocates can raise awareness of the specific needs of children through training, publications, and the media, as was the case in Liberia. The TRC in Liberia is one of the few truth commissions mandated to document the experiences of children, acknowledging their experiences during the conflict and their role in the future development of the country.⁴¹ However, the linkage of children's considerations with political and justice issues was still "very new" and something of a struggle in Liberia. A former CPA worker who was involved in the drafting process described that getting these issues addressed was "almost a battle," which reflected a very widespread ignorance of children's rights and the strong influence of traditional values.⁴² Yet, inspired by the work of the Sierra Leone TRC, and, as a result of national lobbying and international support, notably from child protection agencies, the mandate of the Liberian TRC explicitly recognized the rights of children and stipulated protections for their participation, asserting that children needed to be enabled to "provide testimony to the TRC."⁴³ This provided a basis for the TRC Task Force of the National Child Protection Network to develop innovative strategies for children to give statements in regional and national hearings in a way that was safe and appropriate.⁴⁴

Drawing from these lessons, in Nepal there have been concerted efforts by both child-rights advocates and

40 Interview with Stella María Duque, director of Taller de Vida, Colombia, April 26, 2010.

41 Liberian Truth and Reconciliation Commission, *Children*, 8. See, in particular Republic of Liberia, *Act to Establish the Truth and Reconciliation Commission*, preamble; art. 4, sect. 4; art. 4, sect. 24; art. 7, sect. 26 (n); and art. 7, sect. 26 (o).

42 Interview with Toniah Wiles, Oxfam, Liberia, March 22, 2010.

43 Republic of Liberia, *Act to Establish the Truth and Reconciliation Commission*.

44 For greater detail, see Sowa, "Children." The CPN-TRC Task force formalized cooperation between the pre-existing Liberian National Child Protection Network (CPN), which was made up of child-protection agencies working in Liberia, and the TRC. Through this task force, a core group of CPAs focused on children's involvement in the TRC and helped the TRC develop effective ways of engaging children in the process.

transitional justice advocates to consult children on the draft TRC bill. Yet while consultations did take place with children in November 2009, the results of these consultations were not reflected in subsequent versions of the draft TRC bill. The child protection agencies involved did not have much understanding of transitional justice, and the transitional justice actors were not familiar with child-protection concerns, making it hard to coordinate and maximize the value of the consultation. As a result, advocates feel that children's input was ultimately not seriously considered and that the consultations were more a formality than a genuine effort to hear the concerns of children and incorporate them into the TRC bill. The most recent Nepali TRC draft bill only has one mention of children (in Section 18), referring to arrangements to protect the security of "women and children" summoned, but it has no provision pertaining to child-specific violations. However, as a result of targeted advocacy work, two parliamentarians have tabled additional provisions relating to children, calling for a definition of "child soldiers" and of the need to recognize them primarily as victims. (While CAAFAG is the term used by child protection practitioners, "child soldiers" is the language used in the amendment.)

The absence of specific provisions pertaining to children in the mandate of a TC does not preclude adopting a focus on children and youth, but it makes it harder to address the specific violations against children. CPAs and TJ actors should ideally coordinate their efforts to ensure that the violations affecting children are included in the mandate of a TC. If, as in the case of Nepal, child protection agencies have kept detailed records of violations against children, they could share that information—subject to the protection of the children concerned—with the legislators and others responsible for establishing a TC.

In addition to focusing on including children in the mandate of a TC, it is important to maintain a child-sensitive focus when establishing the TC, for instance when elaborating the research questions and database system. In Liberia, together with local CPAs, UNICEF helped prepare a child-sensitive statement-taking form for the TRC. However, since it was only finalized after the TRC database had been completed, the forms were incompatible with its coding system and could not be used. Consequently, much information about children's experiences was not captured in the database, and no statistical information was generated about children by the TRC.⁴⁵ This underscores the need for specialized attention to children and the importance of including a child-sensitive approach as part of the methodology at the start of the TC process.

Resources and Funding

In a context of limited resources, the rights and needs of children in transitional justice may too often not be seen as a priority. For example, in Colombia, the National Reparations and Reconciliation Commission (CNRR)⁴⁶ and its Historical Memory Working Group (Grupo de Memoria Histórica, or MH)⁴⁷ indicated that, while there is a willingness to account for children's perspectives (as highlighted in its Action Plan), without additional support or funding, not all the members of the group have the necessary background or resources to systematically address this issue.⁴⁸ MH is dependent on the

45 The author of the children's chapter made it clear that the statements taken from children were not processed through the database, and statistics were not generated. Interview, Monrovia, March 2010.

46 Republic of Colombia, Law 975/2005, art. 51.2. The CNRR has been tasked to produce a report about "the causes of the emergence and development of the illegal armed groups." The work of the CNRR Historical Memory Working Group contributes to this objective.

47 Memoria Histórica, "Narrativas y Voces del Conflicto," 3, sect. 2. The general objective of MH is to design, elaborate and disseminate an analytical and well-researched investigation into the reasons for the establishment and development of illegal armed groups, with an emphasis on the concerns of the victims and memories that were silenced or suppressed (3). It is an official body, and though it does not define itself as a truth commission, it would fall under the category of a truth-seeking mechanism.

48 The importance of a children's perspective was also recognized in the July 2010 plan of action for research for the last two years of the group's operation, Memoria Histórica, "Ruta del trabajo de investigación." In this document the research into the "memory of urban violence and the involvement of children and adolescents in the conflict" is recognized as one of the proposed lines of investigation given the "importance and public interest, (and) its indispensability in terms of understanding the dynamics of the internal armed conflict, the modalities of the illegal armed groups, the diverse populations affected, and the multiple impacts of violence." These proposed lines of research are explicitly subject to the availability of dedicated financing.

financing, interests, and priorities of donors, and work on children's perspectives has simply not been funded. This is in contrast, for example, to the significant interest in ensuring a systematic and expert incorporation of a gender perspective; there is considerable funding allowing for dedicated research groups and experts in gender. While MH has made efforts to arrange to have an expert in children's issues externally funded and incorporated into the work of the group, to date this has not been possible.

A member of MH recognized that the issue of children and youth "is not a theme that one becomes easily aware of. There are some topics that you know you have to include, such as forced displacement, but that is not the case with children."⁴⁹ None of its members were designated as a focal point for the matter, so children's issues have not been incorporated systematically into their research agendas.⁵⁰ There are internal protocols on methodology, and psychological support has been included in the various research projects. However, MH has no provision for differential treatment of children and adolescents beyond the individual sensibilities of the investigators and the psychologists.⁵¹

In Liberia, while children were explicitly included in the mandate of the TRC, a lack of clear allocation of funds and support for work on children's issues combined with competition for scarce resources posed challenges to the fulfillment of this portion of the mandate. This highlights an obvious but nevertheless crucial point: in contexts where children have been affected, it is necessary to allocate resources for both expertise and administrative support and to clearly include that line in the TC's budget.

Composition

Accepting that the perspective of children and youth is one of the lenses that should be used by the staff to guide their work and maximize its reach, it is important that receptiveness to children's views and understanding of child rights be as widespread and mainstream as possible among members and/or staff of a TC. As indicated above, the experience of MH in Colombia has shown the importance of including persons experienced in child rights. This was done in Liberia, with the mandate of the Liberian TRC explicitly requiring that it "employ specialists in children and women's rights" in order to enable children to "provide testimony to the TRC, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery."⁵² Yet, while specialization is important, there is also a potential drawback in having one or two members deemed "experts," as it risks sidelining efforts to mainstream the engagement of children. There needs to be a balance between specialization and a broader respect for children's perspectives throughout the work of the TC. While it is unrealistic to expect all staff to be experts in this area, the overall methodology of a TC could be developed so that all staff can work with children and youth as one of the several lenses they use to analyze the context and guide their work.

The experience in Liberia demonstrates this point: each of the nine commissioners had oversight responsibilities for special thematic areas, with one given responsibility for oversight of children's issues because of her background in social work. Her brief was to ensure that the TRC's mandate with respect to children was implemented. The extent to which this goal was realized is contested according to several of those interviewed for this study. In retrospect, many child-protection experts who followed the work of the TRC recommend that more commissioners should have been included in the work relating to children's issues—alongside other special concerns.

49 Interview with Tatiana Rincón Covelli, member of the Historical Memory Working Group, Colombia, April 16, 2010.

50 Ibid. Tatiana Rincón's perception fully coincides with that of Paula Gaviria, head of the Peace and Human Rights Division at Fundación Social, or FS, the foundation of the Jesuit Community in Colombia. Despite isolated initiatives undertaken by MH, such as the mapping exercise on children and memory conducted by FS in 2008, "MH needs somebody who undertakes the task, because so far there is nobody who can do that; the research agenda of MH members is full and they give no priority to children"; interview with Gaviria, April 27, 2010.

51 Interview with Tatiana Rincón Covelli, member of the Historical Memory Working Group, Colombia, Jan. 26, 2011.

52 Republic of Liberia, *Act to Establish the Truth and Reconciliation Commission*.

Child and Youth Participation

Through statement taking and public hearings children and youth can be actively engaged in a TC process. Documenting firsthand accounts is often the most effective means of capturing an experience in a way that can raise awareness and sensitize people to the disastrous, long-lasting impact of violations. It is important to gather statements from children and those who were victimized as children, as long as it can be done safely for the children concerned in terms of both their physical protection and their psychosocial well-being. Their statements can help document the magnitude of violations committed against children with an eye to providing some remedies and preventing their recurrence.

For their participation to be safe, children should have access to psychosocial assistance throughout the process (before, during, and after giving a statement or testifying), and provisions should be made for their physical safety and long-term community support. The experience recorded everywhere during our studies demonstrates how crucial—yet difficult—it is to provide psychosocial support to children during and after their testimony. Practitioners may well face the challenge, however, of deciding whether, if psychosocial support cannot be provided, children should be interviewed at all. The answer depends on the overall context, as well as the specific situation of each child concerned (taking into consideration factors such as age, potential security risks, and psychological capacity). Ultimately, the TC should make a determination based on the best interest of the child concerned, on a case-by-case basis, and upon consulting experts.

The Liberian TRC included children in the statement-taking process: around 300 confidential statements by children were collected across the country. They were supported by local CPAs whose social workers regularly intervened with statement takers to stop inappropriate questioning. As noted earlier, a special children's statement-taking form was prepared—it omitted leading questions, emphasized the need for a child-friendly environment and psychosocial support, and encouraged considerations of a wider range of violations including social, economic, cultural, as well as civil and political. However, since its categories did not match the standard form and the data coding system, it was not used. In the end, the adult statement-taking form was used, with a set of guiding principles attached that highlighted child-friendly interview techniques and the need for confidentiality.⁵³ Based on the experience acquired in Sierra Leone and Liberia, a model checklist for taking statements from children was developed.⁵⁴ As a way of making the search for truth part of a national dialogue, TCs often select a few statements to be presented publicly at hearings. Public hearings can provide a forum for testimony by victims, witnesses, and perpetrators. In this setting, violations can be acknowledged and openly discussed. Children can either be invited to give testimony at a general hearing or at a special thematic hearing focusing on the experiences of children. To comply with international child rights principles and best practices, the names of children should not be disclosed, and procedures and protections must be in place to enable children to speak publicly if they wish to do so.⁵⁵ The Liberian TRC decided to hold thematic hearings where children were given a chance to testify, as well as one institutional hearing which focused on the experiences of children from the perspective of organizations and institutions working with them (such as CPAs and relevant ministries).

In order to protect their confidentiality, individual child witnesses gave testimony in camera—they testified from inside a cubical so that commissioners and the audience could hear their voice but not see

⁵³ Sowa, "Children," 214.

⁵⁴ UNICEF Innocenti Research Centre and ICTJ, *Children and Truth Commissions*, 81–3.

⁵⁵ As noted in UNICEF Innocenti Research Centre and ICTJ, *Children and Truth Commissions*, children's testimony should preferably be conducted in camera (that is, in private) and be prerecorded, with their identity protected. If audio recordings are used, the child's voice should be altered so that it cannot be recognized. Children who wish to participate should be carefully screened and given a full explanation in advance to make sure they understand their role and the implications and possible consequences of their testimony. They should be prepared thoroughly and have the opportunity to ask questions.

them. The entrance to the cubical was not visible, and social workers carefully facilitated children's access so that the rest of the group would not notice their absence.⁵⁶ While the Liberian TRC clearly outlined protection measures for children, in practice the CPAs played a crucial role in ensuring their enforcement. Despite the fact that the TRC agreed that no child was to be photographed during the hearings, at the first regional hearing in Gbarnga, staff from the TRC's media unit attempted to access the specially prepared witness box to photograph a child witness. CPA social workers intervened, bringing the proceedings to a halt, as some commissioners argued that the commission retained the rights to secure photos for documentation purposes. The chairman ultimately ruled in favor of the CPAs, prohibiting any pictures being taken of the children, but this dispute highlighted the different perspectives and at times conflicting interests of the TRC and CPAs.⁵⁷

While efforts were made in Liberia to select a range of experiences to highlight in the hearings, in the end, a majority of the children selected to give testimony focused on abduction and forced conscription.⁵⁸ In selecting children for public hearings, a TC should take special care to capture the full scale of violations affecting children, including economic, social, and cultural rights, and to avoid possible bias toward children directly involved in hostilities.

A child-focused thematic hearing has the advantage of providing opportunities for a TC and the communities in which it operates to focus on patterns of violence against children, and on the links between past and current abuses. However, without effective outreach, there is a risk that a hearing dedicated solely to children could be sidelined or made to seem less important. In the case of Liberia, the testimony of adult perpetrators piqued public interest, while the children's hearings received less attention and were attended mostly by children. Despite some media coverage, they did not receive the same attention as other hearings.⁵⁹ A representative from the Children's Parliament specifically raised the lack of adult attention to these issues during the thematic hearing on children, underscoring a broader reflection of the limited attention Liberian society allocates to these issues.⁶⁰ One interviewee pointed out that attitudes toward both children and women in TRC processes are rooted in the approach to reconciliation and peacebuilding efforts in Liberia, where there is a history of failure and timidity, widespread "victim apathy," and a tendency to "normalize victimhood."⁶¹

Final Report

Generally, TCs conclude their work by issuing a final report and recommendations, which form its legacy and the basis for further advocacy on behalf of victims. The inclusion of children throughout the TRC process in Liberia is reflected in its final report. Children and youth are mentioned throughout the *Final Consolidated Report*, highlighting both the way in which children were victimized as well as their potential role going forward. In addition, a dedicated 117-page "children's report" was annexed to the final report. It provides an overview of the TRC's mandate and operational aspects with respect to children, details the various ways children were targeted and affected by the conflict, highlights children's expectations for the TRC and the enduring consequences of the conflict for children. There is also a very detailed set of recommendations that call on the government of Liberia to make investment in children an explicit national priority.

56 Sowa, "Children," 217.

57 Interview with Onike Gooding Freeman, Liberia, June 12, 2010.

58 Sowa, "Children," 219.

59 There is no media-monitoring capacity in Liberia and as such it has not been possible to empirically assess how representative the media coverage of the commission's activities have been.

60 The Liberian Children's Parliament was established in May 2002 through an initiative supported by UNICEF Liberia in collaboration with the Ministry of Youth and Sports as well as the children of Liberia to promote, protect, and advocate for children's rights as well as encouraging their participation in decisions that affect their growth and development in Liberia.

61 Aaron Weah, focus group discussion, Monrovia, Liberia, March 23, 2010.

Public debates around the release of the final report were dominated by controversy over the TRC recommendation for the lustration of key public figures, including President Ellen Johnson Sirleaf, which overshadowed other recommendations, such as those relating to children.⁶² Nevertheless, the focus on children in the Liberian TRC report seems to have influenced subsequent government policy. For example, the Liberian Government's Poverty Reduction Strategy has a five-page annex on children and youth, aspects of which relate to some of the TRC's key recommendations, offering an entry point for post-TRC engagement. Liberia's Gender Based Violence National Action Plan also tangentially mentions children and a commitment to follow up and monitor the implementation of TRC recommendations, but in this context, the issue of children is subsumed under a primary focus on women. It remains that the focus on children in the TRC report provides a useful tool for future advocacy on behalf of children and youth in Liberia.

In Colombia, even though MH had limited resources and did not include a systematic focus on children, as a result of the work of individual researchers, three of its six reports published to date analyze the plight of children and the consequences of the conflict for them.

One report, *El Salado: This Was Not Our War*, includes references to the "differentiated impact" on children and youth, and describes the consequences of the violence on children in terms of fear, anguish, and trauma.⁶³ It describes how, after the massacre, children showed signs of serious trauma. Many children, for example, lived with fear of uniformed men (not distinguishing official troops from paramilitary combatants); had problems sleeping; did not want to take their shoes off to go to bed (anticipating having to run through the bushes in the night to escape a new paramilitary incursion); and were frightened of any noise that reminded them of helicopters. According to testimony of family members, young children's memories are confused about the facts and the perpetrators, making it difficult for them to understand what happened and why. In the aftermath of the massacre they are plagued by fear and a heightened sense of insecurity. Those who were a bit older reported feeling humiliation, impotence, and rage.⁶⁴

A second report, *Bahía Portete: Wayuu Women*, mentions child and youth victims and describes the types of violations they suffered, such as being tortured for information about their parents' locations. It also briefly examines the impact displacement has had on children as they integrate into large cities and lose the connection to their indigenous culture and communal identity.⁶⁵

The third, *Bojayá: The War with No Limits*, with its focus on a massacre in which 45 of the 79 victims were children, and in which three pregnancies were lost, has the most-extensive references to children. Researchers consulted with children and youth through a workshop on historical memory and included the testimonies of individuals who were children at the time of the massacre. The report also includes a brief section dedicated to the role children and youth played in resistance through activities such as theater and music.⁶⁶ The impact that such reports can have for the youth concerned was highlighted when, on its own initiative, a group of youth created a reading group to discuss the El Salado massacre report.⁶⁷

62 For a discussion of post-TRC follow up see, James-Allen, Weah, and Goodfriend, *Beyond the Truth and Reconciliation Commission*.

63 CNRR, Área de Memoria Histórica, *La Masacre de el Salado*, sect. 3.4 (f), 165.

64 Interview with Tatiana Rincón Covelli, member of the Historical Memory Working Group, Colombia, April 16, 2010. One of the few ways children have been specifically accounted for in the course of MH's early work was by inviting them to produce the music of the Salado anthem. César López, a well-known Colombian musician, was invited by MH to collaborate in the dissemination of the report. He decided to compose an anthem for the new Salado, and for that purpose invited some of the children of the village to participate, with the idea that the anthem should represent the future and hope of the village. The lyrics were written by a traditional poet of the community. The experience of incorporating children in the composition of the music of the new anthem was recorded and included in the official MH Salado documentary.

65 CNRR, Área de Memoria Histórica, *Bahía Portete*.

66 CNRR, Área de Memoria Histórica, *Bojaya*.

67 Some young people have become closer to MH in Colombia because they feel accepted and taken in by MH as a result of the attitude and significant commitment of researchers and assistant researchers, some of whom are very young themselves. These researchers may have developed empathy for young members of the communities in the course of several months of in-depth field research.

Building on the positive steps taken by individual members of MH, in the reports due to be released in 2011–12, there is an opportunity to include a children’s perspective, especially in the reports focused on displacement and armed actors. However, unless there is both additional funding allocated to MH to increase expertise in children’s rights and increased priority given to children’s issues, any inclusion of a child’s perspective will continue to be left to the personal initiative of individual members of the group. This limitation underscores the importance of funding and its impact on the priorities given to different groups of victims. It also highlights the potential role TJ and CPA actors can play to lobby for additional funds and greater priority to be allocated to a child-sensitive approach to TJ. Creating opportunities for children and youth to meaningfully and safely engage with a TC process enriches its findings and helps increase the impact of its work by broadening its reach.

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In summary, when establishing a truth-seeking mechanism, it is critical to analyze the context through a children and youth lens so as to understand if and how children were affected by violations and to determine their specific needs. If the assessment shows that children were affected, the first step is to ensure that the mandate of the mechanism includes consideration of violations against children. Then decisions about staffing, methodology, and structure need to be made, striking a balance between expertise and mainstreaming. In any case, whether or not children have been directly affected by the violations, children are important stakeholders in truth-seeking efforts—especially in countries where they constitute a considerable part of the overall population or even the majority—and must therefore be adequately informed and consulted. In reflecting on the Liberia TRC’s engagement with children, a child-protection expert acknowledged, “we were looking at these TRC activities in terms of events (workshops, hearings, etc.), and not adequately in terms of the process (and necessary follow through).” For the work of a TC to be child-sensitive, that perspective needs to be incorporated throughout the process; it cannot be merely a side activity or an add-on to the larger work.

4. Children and Criminal Justice

The victimization of children is both considerable and insufficiently documented. As a direct consequence, those responsible for committing grave crimes against children are rarely prosecuted. Based on the results of the assessments carried out in Colombia and the DRC, in particular concerning the impact of the International Criminal Court (ICC) in those contexts, this section reviews some of the opportunities and challenges in prosecuting and trying those responsible for these crimes, the impact of a prosecution policy focusing on charges of illegal recruitment of children and their use in hostilities, and the dilemma of children in conflict with the law.⁶⁸

In the Ituri district of the DRC, all those we interviewed agreed that children probably represent a significant number, if not a majority, of the victims of massive human rights violations committed from 1999–2005, and that they have been disproportionately affected by conflict.⁶⁹ Massacres and mutilations of unarmed civilians, including children, have been committed over an extended period.⁷⁰ In a predominantly young society,⁷¹ children represent a significant proportion of the victims of displacement, sexual violence, rape, killing, torture, kidnappings, abductions, and exploitation as combatants and other dangerous occupations.⁷²

In Colombia, both paramilitary groups (right-wing groups generally considered to be associated with or supported by the military and government) and the Revolutionary Armed Forces of Colombia (FARC, an insurgent group fighting the government) have illegally recruited children and used them in hostilities. In addition, children have suffered the consequences of violence through displacement, loss of family, and trauma. In 2003 a judge of the eighth specialized criminal court of Colombia convicted, in absentia, members of the Secretariat of the Central High Command of FARC for the recruitment of minors,⁷³ and since then several lower-ranking officials of FARC have also been prosecuted and sentenced for the crime of child recruitment,⁷⁴ however, to date no commanders of paramilitary groups have been so charged.

68 The International Criminal Court is directly involved in the DRC. It also monitors the situation in Colombia, as recently acknowledged by the president of Colombia, Juan Manuel Santos, when he met Judge Sang-Hyun Song, president of the International Criminal Court, on Dec. 6, 2010 (ICC, “President Song”). President Santos reiterated that the ICC is a partner in Colombia’s peace and justice process under the principle of complementarity. See also Begg, “ICC to Monitor.”

69 For further documentation on the conflicts in Ituri, see notably Human Rights Watch, *Ituri*, 1. The Union of Congolese Patriots, for example, committed large-scale massacres and mutilations of children during its campaign to gain control of Ituri in August 2002, which eventually brought Thomas Lubanga to power; *ibid.*, 19. See also Médecins sans Frontières, *Ituri*, 4; Human Rights Council, “Combined Report,” 13, par. 38. For a detailed report regarding other atrocities, including killings, mutilations, and sexual violence, see Human Rights Watch, *Ituri*.

70 *Ibid.*

71 Life expectancy currently runs at 46 years nationwide for males, World Health Organization, “Democratic Republic of Congo.” As of 2010, 57% of the populations was under 20 years old. UN Population Division, “World Populations Prospects.”

72 See Human Rights Watch, *Ituri*.

73 “Condena a Tirofijo por Menores,” *El Tiempo*.

74 “Por reclutar menores,” *El Tiempo*.

Thus, in both Colombia and the DRC, the effective prosecution of those responsible for crimes against children remains problematic, and criminal justice has had a discouragingly small impact in terms of highlighting the plight of children.

Children's Access to Justice

One of the major challenges to furthering the prosecution of those responsible for crimes against children stems from the difficulty children have in accessing criminal justice.

Our study in the DRC shows that the obstacles to access justice are worst for CAAFAG and for children who have been victims of other grave violations, notably those involving sexual violence. Parents may avoid courts because they lack confidence in them, to avoid public scandal, and also because of valid security concerns—particularly since the accused often evade penal sanction.

Child-friendly procedures are key to making justice more accessible to children and to minimize the stress, trauma, and other possible harms associated with testifying during investigations or trials. Indeed, when testifying, children may be asked to recall or describe traumatic experiences and may be directly confronted with those who harmed them. Depending on the child, this experience may either be empowering or traumatizing, potentially exacerbating existing trauma. Child-friendly procedures should conform to all relevant international standards and the overarching guiding principles defined by the CRC, including the best interests of the child; the right to life, survival, and development; non discrimination; and the right to participation.⁷⁵ The participation of children should always be voluntary, giving full meaning to the principle of informed consent,⁷⁶ and children should always testify anonymously and with their identities protected.⁷⁷

Focusing on the Illegal Recruitment and Use of Children in Hostilities

In Colombia, several groups have illegally recruited children and used them in hostilities, acts criminalized under national law.⁷⁸ However, as of 2008, the success rate of prosecutions for illegal recruitment and use of children in hostilities was reportedly less than 2 percent, and the situation has apparently not improved substantially since then.⁷⁹ The Colombian Office of the High Commissioner for Peace reported in February 2010 that there were 737 indictments related to illegal recruitment within the Justice and Peace criminal procedures, but none had resulted in a formal guilty plea.⁸⁰ An example is “El Alemán,”

75 International standards refer in particular to the UN Guidelines for Action on Children in the Criminal Justice System and the UN Model Strategies and Practical Measures on the Elimination of Violence

76 Among many other relevant rules contained in the ICC Rules of Procedure and Evidence, Rule 190, “Instruction on self-incrimination accompanying request for witness” is of particular significance in this regard.

77 Art. 40(2)(b) of the CRC and Rule 8 of the UN Standard Minimum Rules for the Administration of Juvenile Justice.

78 Republic of Colombia, Law 599/2000.

79 According to the UN secretary-general, as of 2008, the prosecutor general’s special unit had conducted investigations in 141 cases involving 634 child victims (485 boys and 149 girls), which resulted in three guilty verdicts (UN Security Council, “Report,” 12). According to the Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia y Comisión Colombiana de Juristas, in *El delito invisible*, as of October 2008, there were 665 cases involving illegal recruitment of children; of those only 292 cases were active and in only two cases had judgments had been issued.

80 Adopted in July 2005, the controversial Justice and Peace Law, or Law 975/2005, offered an exit strategy to members of illegal armed groups, in particular paramilitary groups, who are willing to demobilize. Members can obtain significantly reduced prison sentences of 5–8 years in exchange for their “contribution to the attainment of national peace, collaboration with the justice system, reparation for the victims, and adequate re-socialization.” “Collaboration with the justice system” takes place mainly through depositions containing disclosure of crimes committed. This law was purportedly designed to facilitate the peace process, national reconciliation, and the rights of the victims to reparations, justice, and truth. Children were specifically considered in the drafting of the law, as at least one eligibility criteria for benefitting from reduced sentences is the release of all underage recruits. Human rights advocates, however, criticized the law and the resulting system notably for its failure to sufficiently promote accountability and to protect victims. For more information see Tapias, “Colombian Government’s Formulas,” and Oficina Alto Comisionado para la Paz, *Ley de Justicia y Paz*, 19.

a high-ranking paramilitary leader who reportedly retracted his original confession to forced recruitment charges, fearing negative implications in possible future international prosecutions.⁸¹ In light of these challenges, there has been a recent drive by the Prosecutor General's Office and its Justice and Peace Unit to prioritize the prosecution of illegal recruitment, alongside other crimes.⁸²

Our assessment revealed that, during the 2003–6 demobilization phase, the Office of the High Commissioner for Peace allegedly advised paramilitary commanders to avoid officially releasing children associated with their groups.⁸³ According to corroborated sources obtained through an array of interviews, an advisor to the High Commissioner for Peace recommended that commanders release child combatants discretely and avoid the formal demobilization process so as to not “make things complicated.”⁸⁴ Several interviewees attributed these efforts to avoid formal demobilization of children to fears that releasing child combatants would constitute evidence which could later be used by domestic prosecutors or the ICC to charge them with the war crime of forced recruitment.⁸⁵ In what were apparently efforts to avoid leaving incriminating evidence on display, many children in Colombia were indeed “sent home” before the launch of official demobilization processes by the Colombian Family Welfare Institute (ICBF). A comparison between the number of children estimated to have been associated with armed groups—ranging from 8,000, according to the Ministry of Defense, to 11,000, according to nongovernmental sources⁸⁶—and those actually included in official collective demobilizations—only 307—shows that most children did not go through official demobilization processes.⁸⁷ This has created an obvious obstacle to prosecution efforts for the war crime of illegal recruitment and has had a serious negative impact on the children concerned. Exclusion from official demobilization processes restricts their access to reintegration programs, as well as to reparations.⁸⁸

The fear of prosecution in Colombia may stem in part from the ICC's attention to this issue. The first person to be tried before the ICC, Thomas Lubanga Dyilo, the former leader of the Union of Congolese Patriots (UPC), was exclusively charged with the war crimes of illegally recruiting and using children in hostilities. Many of those we interviewed in Ituri criticized this focus, citing the many other child victims: those murdered, those who were targets of sexual violence, and the many orphaned or deprived of food, shelter, and medical care during the war. Some interviewees referred to the latter crimes as being “far more serious.”⁸⁹

According to many interviewees, the impact of these prosecutions on the ground was initially not very positive: a broad range of child-protection actors observed that the immediate result of Lubanga's arrest on child-recruitment charges was a decrease in the number of children being brought to demobilization centers. Instead, apparently out of fear of recrimination, armed groups abandoned children in the bush. Confidential sources interviewed in the DRC in April 2010 indicated that armed groups had until then completely halted the release of child combatants since the beginning of the Lubanga trial. An ex-commander was reported to have said that, “in the bush, combatants listen to the radio and they now understand that using children is dangerous for them, so recruiting is now carried out in secret and child

81 Anonymous Source G, Colombia, May 5, 2010.

82 Recently, the unit's director issued a memo with instructions for proceeding with illegal-recruitment prosecutions. Prosecutors apparently use three different sources of relevant information to conduct the investigations: the “versions libres” within the Justice and Peace collective paramilitary demobilization process; the official collective-demobilization lists, including some 800 child combatants; and information about the age of adult ex-combatants and the years they have spent in armed groups. Prosecutors are also using official school drop-out lists. Comparing the information from the different sources helps them in building the cases.

83 Confidential interviews conducted in Colombia, May 2010.

84 Confidential interviews conducted in Colombia, April 2010.

85 Confidential interviews conducted in Colombia, April 2010.

86 UN Security Council, “Report,” 4. Nongovernmental sources include Human Rights Watch, *Breaking the Grip?*, 72.

87 Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia, *El delito invisible*, 25.

88 Only 307 CAAFAG actually made it to ICBF's program, according to an interview with an ICBF representative, Colombia, April 27, 2010. As explained by expert Rocío Rubio, the bulk of child ex-combatants who have accessed reintegration benefits are guerrilla deserters; interview with Rocío Rubio, Bogotá, Colombia, April 26, 2010.

89 Confidential interviews, DRC, April 2010.

combatants are kept hidden from view.”⁹⁰ Child-protection actors also observed that the high profile of the ICC case has made their job of extracting children from armed groups more difficult on the ground, as commanders are concealing children, and any demobilization of children now occurs unofficially, particularly in North Kivu.⁹¹

Yet, on the government side, several interviewees indicated that the ICC’s focus on the recruitment and use of children in hostilities has apparently contributed to the reduced presence of child soldiers in military camps of government armed forces. Some child-protection actors explained that child soldiers have been eliminated from government army units in some geographic regions as a direct result of the increased awareness of the criminalization of child-soldier recruitment due to the Lubanga trial.⁹²

Turning to the impact of the ICC prosecution on local norms and understanding, our assessment showed that the criminalization of the use of children as combatants remains poorly understood by most in Ituri, including the Hema and the Lendu.⁹³ In many different sectors of Ituri society, the adults and children interviewed said that communities had “no choice” in using individuals under the age of 18 as combatants. The decision was seen as a matter of that community’s defense and survival. One protection staffer explained, “Children are seen by ethnic communities as in the premier line of defense in times of attack. Children who abscond from armed groups are seen as traitors to the tribe.”⁹⁴

The ICC’s decision to charge Lubanga exclusively with the crime of recruiting and using child soldiers has also had pernicious effects due to the ethnic identity of the victims. Both Lubanga and the children recruited by Lubanga are or were Hema. The Hema community, including CAAFAG, consider Lubanga a hero who defended his community. But for the Lendu victims of attacks carried out by the UPC under Lubanga’s leadership, murder, rape, torture, looting, and destruction of property are seen as the “real crimes” committed by the UPC. The latter group is frustrated that Lubanga has not been charged with these crimes; “The Lendu have never understood the crime of recruitment—these are not the true crimes of Lubanga. He is protected against his true crimes.”⁹⁵ In a context that remains highly polarized along ethnic lines, many Lendu are appalled that the only victims mentioned in the ICC indictment and trial are Hema CAAFAG—members of Lubanga’s own ethnic group—while Lendu victims, children included, are forgotten. One interviewee captured a commonly held sentiment in saying: “If I see a child going to fight, I’m going to discourage him from doing so. I have never heard of the ICC, but concerning Thomas Lubanga, I think that he should be arrested for having killed people and not for recruiting children.”⁹⁶ Indeed, the focus of the ICC prosecution in the case on the recruitment and use of child soldiers has left a vast accountability gap for the many other crimes committed against children.

This early assessment of the impact of the ICC prosecutions in the DRC indicates that they may have promoted the formal release of children associated with government armed forces and prevented further recruitment, while complicating the demobilization of children associated with nonstate armed groups. Similarly, in Colombia, the specter of domestic and international criminal prosecutions for war crimes for

90 Interview with adult ex-combatant, Revolutionary Front for Peace in the Ituri (FPRI), Bunia, DRC, April 24, 2010, referring to a program on Radio Revelation.

91 Interview with MONUSCO Child Protection Unit, Bunia, DRC, April 28, 2010.

92 FARDC—Congolese army—camps are accessible to MONUSCO under its mandate to assist with DDR, allowing child-protection officers to scrutinize troops and remove any children in the ranks. Because of the Lubanga trial, MONUSCO reports that the presence of children in military camps is almost zero.

93 However, according to one Lendu leader, the exception was when children had been abducted by foreigners, such as Ugandans. In that case, the recruitment of children was seen as a serious offence. Interview with a representative of Ituri Lendu community, DRC, April 23, 2010.

94 Interview with protection staff, SAVE UK, Bunia, DRC, April 23, 2010. “Les enfants sont vus par des communautés ethniques comme dans la première ligne de la défense en temps de crise. Les enfants qui s’enfuient des groupes armés sont vus comme des traîtres à la tribu.”

95 Interview with a representative of Ituri Lendu community, DRC April, 23, 2010. “Le Lendu n’ont jamais compris le crime de recrutement—ne sont pas les crimes proprement dits de Lubanga. Il est protégé contre ses crimes vrais.”

96 Interview with ex-child combatant (FPRI), Bunia, DRC, April 25, 2010.

illegally recruiting and using children in hostilities seems to have led commanders there to exclude children from formal demobilization and reparations processes, with serious negative consequences for the children concerned. Paradoxically, recruiting and using child soldiers is criminal, yet the increase in visibility of these crimes has—at least temporarily—undermined their formal release or demobilization, thus reducing the children’s access to benefits and protection in the short term. The hope is that this effect is temporary and will be subsumed over time, if international prosecutions and the condemnation they bring play a positive role in deterring these crimes.

Children in Conflict with the Law

In certain contexts where gross human rights violations are widespread or systematic, the lives of children can be so drastically disrupted that some children themselves participate in grave crimes. This may be the case for CAAFAG, although not all such children commit crimes.⁹⁷ The dilemmas posed by children in conflict with the law, who, if they are CAAFAG are both victims and perpetrators, are many and complex, and there are no easy or clear answers about how to deal with child perpetrators.

Among the studies we conducted, Colombia provides a useful example to reflect on how to address child perpetrators. The Constitutional Court of Colombia has stated that the status of CAAFAG as victims of illegal recruitment does not automatically preclude their criminal responsibility.⁹⁸ The court balanced the rights of these children with the rights of their victims—to truth, justice, and reparations—and stated that being a victim of forced recruitment does not extinguish one’s criminal responsibility for atrocious crimes. The court concluded that CAAFAG could be simultaneously considered as victims of the crime of illegal recruitment and as perpetrators. Despite the affirmation by the Constitutional Court that CAAFAG could be prosecuted within the juvenile justice system, in practice there has not been a single case. In addition, the recognition of their victim status by the Constitutional Court has translated into a lower court determining that there is no criminal jurisdiction under the Justice and Peace law for crimes committed by child combatants.⁹⁹ According to a Colombian prosecutor, a direct and positive effect of this ruling is that prosecutors can now proactively invite CAAFAG to take part in the proceedings as victims, with assurances that they will not be prosecuted.¹⁰⁰

While children are illegally recruited or used by armed groups and forces in many contexts, including the four reviewed for this report, it should not be inferred that they were systematically involved in the commission of crimes. In Nepal, for example, there has been discussion around what to do with children alleged to have committed crimes, and the National Action Plan for Children and Armed Conflict includes a specific clause stating that: “Regarding the juvenile delinquencies that happened while they were in armed forces or armed groups, child-friendly procedures as referred in the Convention on the Rights of Child and other international legal documents shall be adopted.”¹⁰¹ However, numerous sources have indicated that, to date, despite some allegations, no evidence has emerged demonstrating that CAAFAG were involved in the commission of human rights violations in Nepal. This exemplifies the need to be cautious and avoid generalizations about the involvement of CAAFAG in atrocities,

97 See Aptel, “Children and Accountability,” 20 and subsequent pages.

98 Constitutional Court of Colombia, Sentencia C-203 de 2005.

99 Corte Suprema de Justicia, Sala de Casación Penal, Decisión del 24 de febrero de 2010. The court ruled that the Justice and Peace Chamber of the Barranquilla Superior Tribunal does not have jurisdiction over crimes committed by a 32-year-old United Self-Defense Forces of Colombia (AUC) ex-combatant subjected to Justice and Peace criminal proceedings for the crimes he committed when he was underage. The ex-combatant had confessed to 66 series of events constituting serious crimes (mainly executions, as well as participation in a large massacre), some of which were committed when he was under 18. He had joined the AUC Resistencia Tayrona Bloc at the age of 10, along with several family members. The court concluded that the Justice and Peace Tribunal lacked jurisdiction and could not refer this case to the juvenile justice system because the ex-combatant was already over 21, the age limit for the jurisdiction of the system.

100 Interview with Patricia Hernandez, justice and peace prosecutor, Colombia, May 5, 2010.

101 Nepal, “National Plan of Action,” sect. 2.1.3.

which would reinforce the stigma they already face, especially in their reintegration.

Our studies have revealed that, whether in Colombia, the DRC, Liberia, or Nepal, CAAFAG themselves are aware of their ambiguous status and, fearing prosecution, are apprehensive about coming forward to tell their stories. Transitional justice mechanisms, notably TCs, may be a useful tool in dealing with children who have participated in crimes, sometimes under coercive circumstances. Such mechanisms may provide a space for a deeper acknowledgement, covering not only the responsibility of the children concerned, but also of their families and communities, and of the circumstances that led to their association with armed groups in the first place.

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The prosecution of offences where children are victims—including but not limited to children recruited by armed forces or armed groups—happens at best very occasionally. The focus of the ICC in its trial of Thomas Lubanga is significant for shining a light on the issue of child recruitment and use in hostilities and is a welcome development. Yet, the difficulties in prosecuting cases concerning child-victims should not be underestimated. Logistical and security concerns are multiplied in dealing with younger witnesses and victims, usually requiring the participation of parents and guardians in the process. Prosecutors may sometimes be reluctant to take up these cases as they may fear that children may not be as credible as other witnesses. These factors contribute to such cases being deprioritized. It is therefore important that prosecution authorities and court administrations, both nationally and internationally, grant due priorities to cases concerning child victims, rather than neglect these cases because of perceived difficulties.

Nevertheless, criminal trials cannot provide all the answers and serve all the needs of the children victims, their families and communities. Criminal trials will not always present unalloyed victories, as our research into the consequences of the Lubanga case shows.

5. Children and Reparations

Based on the internationally recognized right to reparations for victims of gross human rights violations and war crimes, reparations are steps taken by states in recognition of rights, harms, and responsibility for the direct benefit of victims of serious human rights violations.¹⁰² A combination of material and symbolic measures, offered to the victims of violations in their individual and collective capacities, are a way of simultaneously addressing the needs of victims and acknowledging the state's responsibility for the loss and harms they suffered.¹⁰³ While recognizing that court-ordered reparations play an important role in some contexts, such as in the DRC, this section focuses on the design and implementation of administrative reparations programs to address massive human rights violations.

The 2005 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime specify that child victims have a right to reparation, a right that is also articulated in Article 39 of the CRC, which calls on states parties to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim in an environment that fosters the health, self-respect, and dignity of the child.¹⁰⁴ However, to date reparations programs have been inconsistent in their acknowledgment of violations against children, with some focusing only on violations against parents that have indirect impacts on children, and others focusing on a limited range of the specific violations suffered by children. Most reparations programs consider only a small proportion of the grave violations suffered directly by boys and girls.¹⁰⁵ “Failure to acknowledge crimes directly committed over their own bodies and minds may reflect misperceptions regarding children as political actors and agents and rights holders.”¹⁰⁶ Going forward, it is important that reparations programs acknowledge children as rights holders who suffered specific violations in light of their vulnerability, while also granting them special protections. Building on the result of our assessments, this section examines some of the key elements of a child-sensitive reparations program.

The Importance of Child-Specific Reparations

Reparations are crucial in communicating a message to victims—and to the broader society—that the harms they suffered were egregious violations of their rights—rights the government commits to uphold and respect going forward.¹⁰⁷ In cases where children were targeted as such, reparations are especially important

¹⁰² UN General Assembly, “Basic Principles and Guidelines.” For a more complete discussion of reparations, see Magarrell, “Reparations in Theory and Practice,” and De Greiff, *Handbook of Reparations*.

¹⁰³ Magarrell, “Reparations in Theory and Practice.”

¹⁰⁴ Convention on the Rights of the Child.

¹⁰⁵ See Mazurana and Carlson, “Reparations,” 180 for detailed table of violations considered by truth commissions and reparations programs.

¹⁰⁶ *Ibid.*, 185.

¹⁰⁷ Magarrell, “Reparations in Theory and Practice.” See also De Greiff, *Handbook of Reparations*.

as a way of signaling that the past modes of operation will no longer be tolerated, thus helping children and youth adopt an understanding of their future role and place in a society based on rights, not violence.

In many cases, the conflict or rights violations disrupt a child's education and destroy her or his family support structure, thus creating a situation where children as young as eight years are left to care and provide for their younger siblings. Adults may already have benefited from education and job training before the conflict and may be in a better position to find a sustainable livelihood. In contrast, in many cases children have nothing to go back to; thus one of the serious consequences of massive human rights violations are the lost opportunities. In Ituri, this phenomenon is reflected in the increased numbers of children working in mines since the conflict. Known as "enfants-parents" (child parents) they are struggling to support their families.¹⁰⁸ They work long hours, are exposed to disease and toxic substances and have no time or energy to attend school or receive other training that would open up more possibilities for future work.

Sexual violence is another example of a violation that can have a different and longer-term impact on younger victims. Boys and girls targeted by sexual violence suffer enduring consequences different than older victims. Girls may be particularly affected in patriarchal societies where, for a girl, the loss of her virginity may prevent her from becoming married, thus depriving her of a chance to become a wife or a mother and attaining the status that comes with that, including access to social networks and property.¹⁰⁹

It is therefore necessary to look at both the violation itself and the consequences that ensue in order to craft a reparations package that to the greatest degree possible provides a remedy for the immediate and long-term consequences of violations against children.

Determining Who Should Receive Reparations

In post-conflict and post-authoritarian settings, where those affected by massive human rights violations number in the thousands or hundreds of thousands, one of the challenges of a reparations program is to identify who is eligible to receive benefits. Children and youth are usually among those severely affected in situations of armed conflict or political violence, including—but not limited to—those who take part in hostilities as armed combatants. Transitional justice actors and child-rights advocates can usefully cooperate to ensure that a reparations program covers the range of violations committed against children. This can be achieved by asking the right questions (about the nature and consequences of the violations in relation to children and youth), carefully evaluating the impact of violations on children and youth, providing documentation of violations (for CPAs who have been keeping those records), and suggesting possible forms of reparations.

The same violations may affect children differently than adults. Some violations not considered as triggers for adults by the reparations program should be included in the list of violations against children. For example, detention in itself may not lead to reparations for adults, but the detention of a child held with a parent or caregiver could result in serious trauma and loss of opportunities, such as access to education. The CRC, in complement with other human rights standards, should be used as a guide to determine which rights were violated and, on that basis, what should trigger reparations for children. In referring to children as victims, however, it is important not to generalize or deny the child-victims a sense of agency and to acknowledge their potential, especially as they become young adults, to be social drivers and leaders.

“The problem is, everyone is a victim in Ituri..”

—ICC representative, DRC, April 28, 2010.

¹⁰⁸ Interview with journalist, Forces Vives Mongbwalu, Bunia, DRC, April 27, 2010.

¹⁰⁹ Mazurana and Carlson, "Reparations," 171.

Of the four countries that comprised this assessment, Colombia has the only administrative reparations program that specifically identifies children as primary victims based on violations they suffered due to the “illegal recruitment of minors.”¹¹⁰ This is the result of effective intervention by child-protection actors before the Reparations and Reconciliation Commission (CNRR). Successful lobbying by child-protection and TJ experts can, therefore, have a significant impact on the formulation of a reparations program.

In contrast to Colombia, where advocacy efforts led to the inclusion of children as primary victims, the relief scheme in Nepal does not categorize any specific violence related to children as a trigger of the right to benefits. Children are only eligible to receive benefits to the extent that their parents were victimized.¹¹¹ The current program in Nepal is characterized as relief, not reparations, primarily because it does not include any official acknowledgement of harm done, but rather is presented as humanitarian assistance. Nevertheless there are relevant lessons, such as the need for a streamlined and accessible victim-registration process that can be extracted from this experience and that could inform a reparations program if and when it is implemented in Nepal.

The Liberian TRC recommended a reparations program that has yet to be implemented.¹¹² It called for special provisions for certain groups, such as those that “have been falling through the cracks” of post-conflict programs aimed at children.¹¹³ This includes, for instance, those who did not participate in the DDR process, as well as girls who have been victims of sexual violence, children separated from their parents, children with severe psychological trauma, and children with social-reintegration problems.¹¹⁴

Discussions of reparations are yet to advance far in the DRC, but the needs are enormous. Children born of rape, notably but not exclusively those whose fathers are believed to be from the Ugandan and Rwandan armies, are another category of particularly vulnerable victims. These children, whose mothers are often marginalized, appear to be facing lives of discrimination and poverty.¹¹⁵

In determining which children are eligible to receive reparations, the gap between children and youth poses additional challenges. Research in Colombia found that it took time for children and those working with children to understand that they were eligible for reparations and to mobilize to apply. Application deadlines should be long enough to give child victims time to learn about their right to access benefits and to submit their application.

Furthermore, in order to address the specific and enduring consequences of violations against children, eligibility should be based on the status of the person as a child at the time the violation occurred, not on the age at the time reparations are administered. Those who are older at the time of the violations may sometimes be in the greatest need, yet they are also the ones most at risk of being excluded from the reparations programs. “Studies comparing the effects of grave crimes and rights violations during armed conflict on youth of different ages find that older child survivors tend to be worse off than younger ones in their physical health, mental well-being, ability to recover opportunities to support themselves economically, and ability to recover lost educational opportunities.”¹¹⁶

110 Ministerio del Interior y de Justicia, Decreto Numero 1290.

111 As stated in the following government-issued policy documents: “Measures for Financial Support and Relief for Conflict Victims” under the Cabinet decision on April 25, 2008; “Guidelines for Providing Relief to Beneficiary of Deceased Person” under the Cabinet decision on Oct. 5, 2008; “Guidelines for Providing Relief to the Beneficiary of Disappeared Person” under the Cabinet decision on Jan. 12, 2009.

112 At the time of writing, initial discussions are taking place in Liberia regarding who will qualify as victims for reparations. In her official letter to the speaker of the House of Representatives on the progress of the TRC recommendations, dated Aug. 27, 2010, President Ellen Johnson Sirleaf stated that anyone could be considered a victim and that “it would be virtually impossible to provide reparations for individuals, given the prohibitive cost implication.” She therefore proposes a “community type reparation.”

113 Liberian TRC, *Children*, 108.

114 *Ibid.*

115 Carpenter, *Born of War*.

116 Mazurana and Carlson, “Reparations,” 186.

Determining the Type of Benefit

The range of reparations benefits spans from material—pensions, cash payments, special conditions to access education or health care services, livelihood implements, training, building of community centers—to symbolic—public apologies, memorials—and from individual to collective.¹¹⁷ Practice has shown that the most effective programs are ones that adopt a mix of benefits. Ideally, reparations for children should “address the whole person (mind, body, hand)” through a combination of psychosocial support, health services, and education or job training.¹¹⁸

In both Colombia and Nepal, where state-sponsored assistance or relief programs are currently underway, the benefits are in the form of lump-sum cash payments. In Colombia, the reparations program is designed to distribute lump-sum awards, ranging from \$5,000 to \$9,000, among surviving victims and the family members of the killed and disappeared. The amount for torture, physical, and psychological injury not leading to permanent impairment; crimes against sexual liberty and integrity; and illegal recruitment of minors is approximately \$6,750. The sum for assassination, forced disappearance, and injuries that led to permanent impairment is \$9,000. In the case of a victim of illegal recruitment, the child will be given access to the funds upon turning 18.

Highlighting the complexities of the child perpetrator dilemma, offering lump-sum payments as reparations to children victims of forced recruitment tends to be problematic and confusing for the child and for those who may have been their victims. It transmits a “paradoxical message: you went to war, left war, and now I give you money,” according to a Colombian psychologist and director of an NGO working with demobilized children.¹¹⁹ She illustrated her point with the example of a girl who asked her why she would receive 11 million pesos (\$5,500) for causing harm to others.¹²⁰

While perhaps easiest on an administrative level, financial awards, especially those paid in lump sums, may not be the ideal form of reparations for children and youth. Other forms of reparation benefits, in particular access to accelerated education programs or job training, accompanied with psychosocial support, should be explored as a more restorative alternative. In addition to a lump sum, Nepal’s relief measures include scholarships for the children of the persons killed or disappeared during the conflict. Under this scheme, at most three children of the deceased, disabled, and disappeared are eligible for scholarships ranging from 10,000–14,000 Nepalese rupees per year (\$136–191) until they reach age 18.¹²¹

Some research on reparations programs suggests that lump sum payments have less of a reparative effect than other more lasting forms of benefits such as pensions or access to health care.¹²² Lump-sum payments risk being perceived as the price of suffering and in that sense will always fall short of expectations. In some cases the lump sum can encourage a spending spree or substance abuse, potentially causing problems within families and communities. Especially in poor rural communities where the sudden influx of cash is obvious to all, the effect can be divisive. In Canada, where Common Experience Payments (CEP) were distributed as a form of reparation to those who were enrolled in Indian Residential Schools, an assessment of the impact of the payments highlights potentially negative consequences of lump-sum payments. According to one survivor, the receipt of the CEP resulted in divisions within her family because everyone wanted a share of the money: “When I got my compensation it really had a

117 See Magarell, “Reparations in Theory and Practice.”

118 THINK, “Reparation in the Context of Children.”

119 Interview with Stella María Duque, director of Taller de Vida, Colombia, April 26, 2010.

120 Ibid.

121 The assistance includes NRs 10,000 (\$136) per year for preprimary and primary level, NRs 12,000 (\$136) per year for lower secondary, NRs 14,000 (\$191) per year for secondary, and NRs 16,000 (\$218) per year for higher secondary and further education. Similarly, NRs 2,400 (\$330) per year for educational support is available to the children of internally displaced persons under national guidelines for displaced persons.

122 See for example, *Rule of Law Tools for Post-Conflict States: Reparations Programmes*, 31.

negative effect on my family too; even though I was able to buy things for myself. I got myself out of poverty. I felt like it just really created more disunity and jealousy and bad feelings in my family and the people in the community.”¹²³

In the case of children, the potentially negative effects of lump sum payments are magnified. Often, the money will end up in the hands of the parents, who use it for the family or for the parents themselves, rather than for the child.¹²⁴ In Nepal, when the claimant is the child of a disappeared or deceased person, the chief district officer (CDO) deposits the amount in the child’s name under the legal guardianship of a close relative. The child can access the money once he or she turns 16. However, in an emergency, the child can withdraw the money earlier with approval from the CDO. A problem with this method is that most children lack financial literacy—a sense of how to budget and manage money—and in many places do not have access to bank accounts or safe locations to store money. Studies on the impact of giving cash payments to children in DDR programs suggest that children may face pressure from family or commanders to participate in such programs against their wishes so that adults can use the money.¹²⁵ Conflicts may also arise between a child and his or her parents or guardian about how to use the money. This is particularly problematic for girls returning from combat who have their own ideas of how to use the money and refuse to submit to their parents, as would be traditionally expected. This tension was noted in Liberia, where girls received \$300 as part of the demobilization program, with a typically negative impact on their reintegration into their families.¹²⁶ Some of these problems can be avoided by distributing the payment in smaller quantities over a longer period of time. Alternatively, in case of urgency, one initial sum could be distributed as a concrete gesture to acknowledge the victims, and then the program could continue with a pension or some other measure over the longer term. Reparations should aim to help children affected by conflict gather the tools, resources, and support they need to lead a productive life going forward, attempting, for example, to compensate for lost years of schooling, for instance through accelerated educational programs. In that respect, monetary payments may not be the most effective way of helping a child victim. Ideally a reparations program focusing on child victims should seek to have a long-term impact on that person’s well-being.

Engaging in a process of consultation with child victims and their communities from diverse backgrounds to better understand the consequences of the violations they suffered would help to ensure a more effective program. These consultations could be organized through CPAs and NGOs already working with children on a national and local level, addressing, among others, the type of benefit most appropriate for child victims in the given cultural context.¹²⁷ Another major challenge is identifying the right type of benefit for someone who suffered violations as a child but who is an adult by the time reparations are underway.¹²⁸

Funding and Distributing Reparations Benefits

Funding is another significant challenge for the implementation of reparations programs. Where there are competing demands for funds to build or rebuild essential elements of the state, governments tend

123 Aboriginal Health Foundation, *Indian Residential Schools*, 54.

124 Also look to Goldblatt, “Evaluating the Gender Content of Reparations.”

125 UNICEF, *Disarmament, Demobilization and Reintegration*.

126 McKay et al., “Girls,” 4.

127 Even with consultations, some difficulties induced by the cultural background are not easily addressed, as shown in Colombia, where, despite consultation, the reparations program apparently failed to account for different expectations of some of the country’s indigenous populations. An indigenous child awarded compensation requested that the money be paid to him when he turned 18. His community opposed the paying of compensation to the boy rather than to the community, arguing that child recruitment had offended the community as whole. This shows that, without proper consultation and a design that includes a child-sensitive and culturally appropriate benefit package, a reparations program could risk causing further animosities.

128 For example, it would not be appropriate to give a scholarship to a 25-year-old to attend school with young children. Instead, there should be special accelerated educational programs or other forms of reparative justice that best meet the needs of this population in terms of the content covered as well as the times and location. If the recipients work during the day, night school might be the best option.

to argue that their scarce resources should be applied to forward- rather than backward-looking projects. However, especially in the case of child victims, effective reparations that address lost opportunities (notably education and job training) are crucial to support children and youth's transition into productive and engaged members of society. Yet, the challenge of funding is compounded, since, as discussed above, an effective reparations program for children and youth requires a mix of long-term benefits that are likely to require significant resources and oversight. The key, therefore, lies in raising and allocating sufficient funds (through advocacy efforts) and finding cost effective ways to disburse reparations for children, perhaps through partnerships with child-protection agencies or organizations.

The level and type of proof needed to claim reparations benefits should be sensitive to the particular challenges faced by child victims so as not to overburden them or render the benefits inaccessible. A challenge in this area is that records demonstrating violations may never have existed or may have been lost due to the time lag between the occurrence of a violation and the time a benefit claim is made. In Colombia, in light of the difficulties that CAAFAG may face to prove their association with armed groups or other violations, the process has been simplified. Claimants can attach any form of evidence they have, such as newspaper articles, NGO reports, Ombudsman Office certificates, or criminal records and proceedings. If they lack documentation the Reparation Committee can conduct a personal interview.

The method of distribution also requires careful attention. Victims who were children at the time of the violation may face stigmatization or marginalization if, for example, their status as “child soldier” or “forced wife” is publicized as part of a reparations program. Particularly with former child soldiers, community members may feel jealousy or resentment and may even perceive that such children are being rewarded for having taken part in hostilities. Coordination between DDR and reparations programs can help to ensure that reintegration and reparations benefits meet their aims without further dividing communities.¹²⁹ In Liberia, the TRC recognized this problem, acknowledging that there would be no easy way to provide reparations that would do justice to victims' expectations without distinguishing between categories of children and, as a result, creating new divisions among them.¹³⁰ The TRC recommended that any national reparation endeavors “take the post-conflict needs of all children into account” and that “ideally, any reparation schemes target entire communities and children as a group rather than single out individual children.”¹³¹

129 See Duthie and Specht, “DDR.”

130 Liberian Truth and Reconciliation Commission, *Children*, 107.

131 *Ibid.*

6. Institutional Reform

Institutional reform, another core component of transitional justice, concerns the process of reviewing and restructuring state institutions so that they respect human rights, preserve the rule of law, and are accountable to their constituents. As part of transitional justice, discussions of institutional reform generally focus on public institutions—such as the police, military, and judiciary—involved in the violations of human rights. DDR programs are an important component of security sector reform and of institutional reform more broadly.¹³² In the discussion below, examples are included from DDR experiences. As a first step in reforming the security sector, the DDR process is key to establishing clear lines between civilians and military personnel and in that way laying the foundation for a sustainable peace.

The reform of the security sector directly affects children who have been associated with armed groups or forces—CAAFAG. The experience acquired in terms of DDR programs provides useful lessons on the need for sensitivity when interacting with and programming for those victimized as children.¹³³

A striking example is found in Nepal, where the DDR process resulted in what was called the “disqualification” of those associated with armed groups if they were minors when they joined. Because there was a two-year delay between the time that 2,973 individuals were verified as minors in 2007 and the completion of the official discharge of this group in 2010, 83 percent of them were no longer minors at the time of discharge.¹³⁴ Many of them, of both genders, were hoping to be integrated into the Nepali army and to continue a career in the security sector. Yet, they were deemed disqualified and systematically excluded from service in the army. This is problematic on two levels: First, the choice of the term “disqualified” and its equivalent in Nepali implied a sense of malfunction or inadequacy. Second and more importantly, the systematic and automatic disqualification of the CAAFAG constitutes a “double victimization” of the concerned individuals. As child victims of unlawful recruitment, their rights were violated; and now they are being discriminated against on the ground that they were associated with armed groups as children. As such, their status as victims of an international crime is the very reason for which they are now being rejected and, consequently, unfairly discriminated against. One of the persons closely associated with this process interviewed in Nepal recognized this: “the clear losers in this process are the verified minors. The way we’ve approached it seems to have created more problems than solutions.”¹³⁵

As a result of the recent frustration around the automatic disqualification of those recruited as minors,

¹³² See ICTJ, “Institutional Reform,” for a discussion of different elements of institutional reform, including DDR. For a discussion of the links between DDR and TJ, see Patel, de Greiff, and Waldorf, *Disarming the Past*.

¹³³ In dealing with CAAFAG, it is more appropriate to use the term “release” rather than “demobilization,” since many of them are not always armed and they cannot technically be demobilized, as their recruitment was illegal in the first place.

¹³⁴ Interview with OHCHR and UNICEF, Nepal, February 2011.

¹³⁵ Interview with Anonymous Source E; Nepal, Feb. 9, 2011.

some youth have formed new pressure groups, and in some cases fomented violent attacks (notably on UN offices in rural parts of the country). As highlighted in this example, the reform of the security sector should address the concerns and demands of children and youth in order to ensure as smooth a transition as possible. If left out of the equation, frustrated youth can potentially destabilize the fragile peace.

Significant and well-documented DDR practice also demonstrates the importance of an explicit gender focus that addresses the “intersectional” needs of girls, with particular sensitivity to context and cultural factors. For too long, DDR programs have assumed combatants to be male. This oversight has repeatedly led to a lack of inclusion of female combatants, a lack of sanitary facilities and gender-appropriate health care at DDR camps, discrimination in the distribution of DDR benefits, and even ineligibility for certain programs such as job training, which are frequently geared towards males.¹³⁶ In the DRC, the 2004 DDR program, lacking a specific focus on girls, demobilized over 15,000 combatants, including 4,525 children.¹³⁷ Although interviews with boys released from armed groups revealed that 30–40 percent of children in their units were female, as few as 5 percent of children channeled through the official DDR process were girls.¹³⁸ It was primarily girls who circumvented the official DDR process and “self-demobilized.” As a result, they received no assistance in finding their way home and negotiating their way back into civilian life.¹³⁹ Possible explanations of the self-demobilization of girl combatants include the gender bias of the DDR program, girls’ fear of the stigma of being associated with armed groups, as well as military commanders’ perceptions of girls as “wives” or property belonging to their officer “husbands,” as opposed to children who must be released.¹⁴⁰

Our study in Ituri clearly highlighted that the difficulties faced by all CAAFAG in reintegrating into their communities are exacerbated for girls.¹⁴¹ These problems stem first from the cultural expectations of a girl’s place in society as being dependent on her parents or on her husband’s family. The departure of a girl from these expectations leads to difficulties and accusations of having “belonged” to a foreign entity.¹⁴² When girls were forced to become wives to males in armed groups, they suffered alienation from their natural families as a result. According to an ex-combatant, “There are parents who don’t want others to know that their daughters were soldiers, many of these [girls] were killed, others became involved in prostitution and drink. In the army, they were wives or the concubines of commanders. Some of them came home with babies.”¹⁴³ Local communities held a number of prejudices toward girls associated with armed groups, including the belief that they were inevitably infected with sexually transmitted diseases, that the supposed husbands they left behind might pursue them and commit violence against the community and that they might incite “inappropriate” sexual behavior in other girls in the community. Girls returning home with children of their own were considered unmarriageable and either “worthless” or a burden to their families.¹⁴⁴ In addition, a significant number of girls were abducted by enemy armed groups, rather than those of their own communities, reinforcing the idea of having “served the enemy.”¹⁴⁵ Transitional justice approaches need to pay special attention to girls so that they are sensitive to the particular cultural roles ascribed to women and girls and the consequences of deviation from those norms, but at the same time to ensure that they do not entrench unlawful discrimination. There are lessons to be learned from DDR processes, a core component of institutional reform, which are applicable to the broader range of transitional justice measures. Even when programming includes a gender

136 Anderlini and Conaway, “Disarmament, Demobilisation and Reintegration,” 4.

137 Interview with Anonymous Source F, DRC, April 26, 2010. Local estimates suggest that as many as 15,000 children served with different groups.

138 Verhey, “Reaching the Girls,” 6.

139 Interview with protection staff, Save the Children UK, Bunia, DRC, April 23, 2010.

140 Verhey, “Reaching the Girls,” 12.

141 Interview with protection staff, SAVE UK, Bunia, DRC, April 23, 2010.

142 Interview with a representative of Ituri Ngiti community, DRC, April 25, 2010.

143 Interview with adult ex-combatant (FPRI), Bunia, DRC April 24, 2010.

144 Although statistics are not available, these trends are monitored by SAVE UK.

145 Interview with UNICEF, Kinshasa, DRC, April 20, 2010.

focus, girls should not be subsumed under the category of women, nor should boys be lumped together with men. For example, while the UN-led discharge process in Nepal did have a gender focus, it did not differentiate between women and girls. There were some programs that were designed for women—such as child-care centers in the cantonments and job training in the health sector—that girls could also take advantage of, but some of their specific needs were left unmet.

Beyond the focus on institutions such as the security and justice sectors, including DDR, transitional justice actors should turn their attention to the reform of the education sector and in particular curricular reform.¹⁴⁶ In many contexts, schools have been used as places to spread propaganda.¹⁴⁷ Schools and educational institutions in places such as Cyprus, the former Yugoslav Republic of Macedonia, and South Africa have been used to perpetuate historical narratives contributing to segregation and distrust. Yet, in times of transition, these institutions and their personnel have the potential to be converted into channels for a critical examination of the past and the creation of new sense of civic trust. While to date there are few cases of direct links between TJ measures and the history classroom, “schools offer a way out of two of the main impasses institutions such as truth commissions face, namely how to get their work to reach beyond an intellectual, usually urban elite, and how to give their work life beyond the sitting of the commission. Schools not only offer ways to effect ‘bottom-up’ justice and reconciliation to accompany more common ‘top-down’ processes, but they involve a wide variety of actors, teachers, students, parents, and school officials at the local provincial, and national levels.”¹⁴⁸ Indeed, working with and through schools is a direct and efficient way of sharing information and generating interest in a specific transitional justice process, as has been demonstrated in both Sierra Leone and Cambodia.

Upon the conclusion of a specific transitional justice mechanism, integrating its findings and lessons into a new curriculum and teacher training are effective ways of ensuring a lasting legacy and tangible results of transitional justice. Several truth commissions have recommended reforms of educational institutions, but for the most part these recommendations have not been implemented. Working with the education sector is a complex and long-term process. It is often politicized and resistant to change. While the challenges are many, if successful the impacts can be far reaching. As noted by Elizabeth A. Cole and Karen Murphy, “the education systems in which history education is embedded are crucial to social reconstruction and reconciliation, building democracy and economic recovery.”¹⁴⁹ Transitional justice actors should integrate considerations of education reform into their work from the very beginning; this is arguably the best way to ensure the dissemination of the main findings and to encourage learning from the past—a key in fulfilling the “never again” aim of transitional justice.

¹⁴⁶ Cole has noted that the education sector “while often invoked when the topic of ‘never again’ is raised, has been largely absent from the transitional justice discourse. Neither the larger education system nor the teaching of history – both what is taught and how – has been considered by the institutions transitional justice has aimed to reform.” Cole, “Transitional Justice.”

¹⁴⁷ UNESCO, *Education under Attack* 2010.

¹⁴⁸ Cole and Murphy, “History Education Reform,” 335.

¹⁴⁹ *Ibid.*, 336.

7. Overarching Issues

Reaching Children

An effective outreach program is a key component of a successful transitional justice measure, in terms of both informing and engaging affected communities in the TJ process and in ensuring its legitimacy and enduring impact. On a technical level, outreach refers to the tools used by a transitional justice measure to “build direct channels of communication between the measure and the affected communities in order to raise awareness of the justice process and promote understanding of the measure.”¹⁵⁰ These direct channels of communication should be established between (and within) the key stakeholders of the process, including children and youth. Special consideration should be paid to children and youth because they may have difficulty finding a safe space to express their feelings or views about the past.¹⁵¹ They are stakeholders with a unique view of what happened and through effective consultation they can be well-placed to develop active ways of getting involved and contributing to the goals of the TJ process.¹⁵² Looking to the future, it is essential to engage children and youth, notably through the education sector, in order to help build a new legacy of respect for human rights.

In order to reach children and youth it is important to design programs and activities that are interesting, relevant and age-appropriate, and to provide children and youth with a safe and receptive environment to interact with the TJ measure (according to the best interests of the child). Ideally, outreach approaches targeting children and youth should take place as early as possible in the planning stage of a transitional justice mechanism. Following the completion of the TJ measure, it is important to establish links with organizations that work with children and youth as well as the formal education sector in order for them to learn from the work and findings of the TJ measure.

According to the four studies conducted, children remain largely unaware of the transitional justice mechanisms established in their respective countries and the potential those mechanisms have for them. During the consultations carried out by ICTJ in Ituri, most child respondents were unaware of the existence of any transitional justice mechanisms or debates: including the ICC, the prosecution of Thomas Lubanga, and other arrests and ongoing investigations carried out by the ICC. This limited knowledge should be read in context: it is not unique to children, especially in a context like the DRC, as highlighted by an earlier survey, where such mechanisms were not seen as a priority for people still struggling with daily survival.¹⁵³ Nevertheless, in contexts where children and young adult victims may not perceive themselves—or be perceived—as victims, the lack of information and awareness of their

¹⁵⁰ Ramirez-Barat, *Making an Impact*, 7.

¹⁵¹ Ramirez-Barat, *Making an Impact*, 26.

¹⁵² For guidance on consultation processes refer to Office of the High Commissioner for Human Rights, *Rule-of-Law Tools*.

¹⁵³ Vinck et al., *Living with Fear*, 2008.

right to claim reparations or to access other transitional justice processes is a significant hurdle.¹⁵⁴ It can limit the potential impact and legitimacy of the justice process and can have a detrimental impact on victims' participation and access to benefits.

The age gap also needs to be carefully considered when outreach programs are designed. In light of the confusion that might arise for those who are no longer children at the time reparations are made and for those who may not know that they qualify for reparations, outreach efforts should clearly explain that the age at which the violation occurred is the determining factor for eligibility. In the case of Sierra Leone, the reparations program tried to clear up any confusion about the age cutoff by adding the seven years that had passed since the conflict onto the standard 18-year limit for childhood, thus making all those under 25 at the time of reparations eligible to claim benefits intended for child victims.

Due to a lack of sufficient outreach before the launch of the TRC in Liberia, many children were reluctant to take part in hearings because they felt that “when they are coming to talk they are putting themselves at risk; as such the parents will not allow them to go to the TRC.”¹⁵⁵ In response to this fear and misinformation, the TRC linked up with CPAs to hold awareness-raising workshops throughout the country. In working with CPAs, the TRC was able to build on the trust that those organizations already had within local communities in order to help explain the TRC, dispel myths about its purpose, and highlight potential benefits of engagement. These workshops were a critical component in the process of building trust with children and their families—a key prerequisite of children's engagement with the TRC.

Once a truth commission has completed its work, targeted outreach is crucial to ensuring that the testimony, reflections, and lessons gathered by the commission and summarized in its report are shared more broadly. Most Liberians, including many of those directly engaged in the TRC process, such as CPAs, members of the Children's Parliament, and other institutions, have not had access to the TRC's final report due to a limited print run and poor Internet access. During our assessment, most senior government officials with responsibility for children did not appear to have read or even seen the TRC report. The same was true of CPA members. Indeed, of all the interviews conducted in the Liberia assessment, only one interviewee actually had a copy of the report.¹⁵⁶ Several interviewees emphasized the potential use of the report as a tool for sensitizing the younger generation about past conflicts and the importance of disseminating the report using existing infrastructure, including the District Assemblies of the Children's Parliament, schools, libraries, CPAs, localized child-welfare committees, and children and youth clubs.

Part of the problem in Liberia is the lack of effective outreach following the completion of the TRC's work. But compounding this is the fact that the final report is a very lengthy document (as are most TC reports). TJ mechanisms should invest resources in creating materials that are easily accessible to a range of audiences, including younger generations, both in terms of materials that inform the public about the process, as well as materials that distill the key findings of the TJ measure. For instance, an illustrated version of the TRC final report could be produced, as was done in Timor Leste, or a child-friendly version, as in Sierra Leone.

The exercise of creating child-friendly materials should not be seen as a costly additional burden, but rather as a key aspect of communicating with the population as a whole. Materials that are clear and accessible can serve the needs of multiple audiences. Communication should not be restricted to the written form; rather, they should also explore other media such as theater, films, and art. Care should

154 In Colombia, for example, several former combatants, victims of illegal recruitment as minors, were not aware that they qualified for reparations. By the time the deadline passed, only a small number had claimed the benefit they were due.

155 Concerns and fears regarding the TRC process voiced by children participating at the TRC Children Hearing in Gbargna, Bong County, May 24, 2008. Quoted in Liberian Truth and Reconciliation Commission, *Children*, 13.

156 Interview with government official, Peacebuilding Office, Liberia, March 2010.

be taken to think of ways to adjust materials so that they can reach different audiences with only minor modifications, such as by adding a teacher's guide to an illustrated version, a note to parents, or encouraging youth to discuss a child-friendly report with their younger siblings or friends. In addition to considering the most effective medium to reach this segment of the population, an outreach program also needs to consider the appropriate communication channels—radio, schools, etc. For example, a boy who is now the head of his household and who therefore cannot attend school will not be reached through outreach targeted solely at school children.

The demand for outreach materials targeted to children raises the challenge of reaching this diverse group. In Nepal, where there have been efforts to engage children in consultations about the draft truth commission bill, those interviewed highlighted a lack of child-friendly materials. The category of children spans vast differences in maturity and ability to assimilate complex concepts. As one Nepali CPA representative put it, the materials also need to account for those who were “indoctrinated and matured before their time,” as a result of the conflict.¹⁵⁷ In the past, CPAs have found cases where illustrations were child-friendly but the text was not. This is a key area where collaboration between transitional justice actors and child-protection agencies with specific expertise in child-friendly outreach strategies would help fill the gap.

It is important to involve children and youth in the design of materials and to explore creative mediums such as art, film, and audio to engage with younger populations. Yet, it is also important to consider the context and what is appropriate and effective, as shown by the fact that, when a giant screen was erected by the ICC in Bogoro village in Ituri to broadcast Lubanga's trial, the population was more fascinated by the technology and the images of a well-equipped European court than by the actual hearing.¹⁵⁸

By working closely with CPAs early on—by linking up with their networks, broadcasting messages through their channels of communication, and getting their input on materials—TJ mechanisms can more effectively establish a successful outreach program that promotes public engagement and ownership of the justice process in a way that builds its legitimacy and long-term impact, in particular among those victimized as children.

Cross-Sector Collaboration

The interviews conducted clearly highlighted that, in all contexts, the coordination between child-protection agencies and transitional justice actors could be improved and that such improvement would enable increased participation by and protection of children in transitional justice settings. Very often, far from being an issue of coordination, it is one of interaction: transitional justice actors and child-protection agencies rarely meet, due to a lack of time, resources, or interest. Both groups are heterogeneous, composed of local and international organizations, independent and impartial organizations, and others that are politically motivated. The challenge to collaboration is exacerbated by the perceived differences in the mandates of the two types of entities. Each set of actors has different priorities. For transitional justice actors, there remains too little understanding that children are an important category of stakeholders, with specific rights and needs. For child-protection actors, transitional justice is a mid- to long-term issue, often less pressing than the immediate humanitarian needs of children, such as nutritional needs or access to health.

But the cost of missed dialogue and insufficient coordination is high. A particularly tragic example was

¹⁵⁷ Interview with Anonymous Source B, Nepal, July 7, 2010.

¹⁵⁸ Comments were overheard about Lubanga's apparent good health and his smart clothes. Furthermore, few viewers could follow the complex French-language legal procedures. Interview with MONUSCO, Human Rights Division, DRC, April 28, 2010.

found in Colombia, where, as noted above, our study uncovered that many of the children who could have been awarded reparations simply did not apply in time to benefit. Both transitional justice actors and child-protection agencies in Colombia share responsibility for this failure, but the child victims who have lost important reparative measures are the ones who will suffer.

Fortunately, there are also examples of successful coordination between CPAs and TJ actors. In Liberia about 30 social workers who were employees of existing CPAs worked closely with and as part of the TRC to support its child-sensitive approach. This was an effective way to draw upon local expertise, further build and develop that expertise, and provide sustainability.

In establishing greater coordination, the challenge is to allow CPAs to give input in a way that keeps the lead responsibility within the TRC itself. The involvement of CPAs should not induce TJ actors to disengage, leaving all child-victim-related work in the hands of CPAs. Ideally the TJ mechanism should involve CPAs but not delegate all responsibility on children and youth to them. In Liberia, many of those interviewed explained that the TRC effectively subcontracted children's issues to the CPAs, and thus these issues were sidelined. The goal should be to facilitate collaboration without excessive delegation or abdication of responsibility.

Effective collaboration between the two groups can facilitate a discussion of key TJ issues on the agenda and then help establish optimal recommendations. In a TJ context it is valuable to bring CPAs on board not only to work as service providers, but also to have their knowledge, connections, and expertise influence policy and shape the transition. To accomplish this, it is important to provide TJ training to CPAs so that they can take these issues on and link to their work. Similarly, TJ actors need more information on child rights and guidance on how to document crimes against children and give agency to those most affected by the violations.

8. Concluding Remarks

The range of crimes that are covered by transitional justice always affect children, either directly or indirectly. Yet, the full range of serious violations that affect children, including displacement, illegal recruitment of children, enslavement and sexual violence, is not always considered by transitional justice. As transitional justice strives to adapt to the changing nature of conflict and political violence, as well as the shifting age pyramid throughout many countries, practitioners should include children and youth as one of the key considerations—or lenses—that informs their analysis of the situation and subsequent decisions regarding the modalities of TJ measures. If children have been directly affected, then the TJ measure being established should adopt a mandate and procedures that allow it to examine the nature of violations against children, analyze their enduring consequences, and determine effective remedies.

Even in cases where children have not been among those most directly or severely affected, it is nevertheless essential for the TJ measure to establish links with children and youth to engage them in the process and inform them of its results. In many contexts where transitional justice operates, those under 25 represent over half the population. Such demographic realities highlight the importance of developing targeted outreach efforts to cater for this considerable part of the public. Among the various means available to disseminate the results of TJ mechanisms and implement their recommendations, schools and the education system are a privileged medium.

In the pursuit of these two objectives, addressing the violations suffered by children and ensuring that children and youth are better informed and engaged in transitional justice initiatives, partnerships should be developed between those involved in transitional justice and those involved in child protection. TJ mechanisms can coordinate with CPAs and other NGOs who already have contacts with children to enlist their help in implementing child-specific outreach. In this way, information can be disseminated, and the organizations can also support children in their efforts to access a particular TJ mechanism, be it a truth commission, reparations program, or judicial process. The respective objectives of these two fields, transitional justice and child protection, which have largely operated in separate worlds, can be mutually reinforced by coordinating their efforts and drawing from each other's expertise.

To date, the focus of the work on children and TJ has been on those under 18. However, our research indicates that, given the time lag between when violations occur and TJ mechanisms are established, those who were victimized as children often no longer meet the legal definition of children by the time the process is in place. As a result, a crucial group of youth are falling through the cracks and not receiving the attention they need. A priority going forward should be to address children and youth in transitional justice, including those who were children at the time of the violation. Youth comprise a powerful sector of society that holds the potential to either support and strengthen the establishment of rule of law and durable peace, or be a potential spoiler. Transitional justice aims to catalyze social change away from impunity, toward a culture of democracy and respect for human rights. Key agents of that are children and youth. Not only are they less likely to be set in their ways, they also have the most to gain by helping solidify a durable peace.

The perspective, needs, and rights of children should become a lens through which we analyze TJ and define its objectives, modalities, outputs and results. Ultimately, our key recommendation is that those who are involved in designing and implementing TJ measures ask new questions about the way children and youth were affected and involved in the violations, and find creative ways to enable their participation in the TJ process. In asking those new questions, it is essential to bring into the discussion previously overlooked categories of stakeholders, including children and youth, child-protection agencies, teachers, and the education sector. Children and youth need to understand the past to play a constructive role in building the future.

Annex

CONFLICT AND TRANSITIONAL JUSTICE PROCESSES IN COLOMBIA, THE DRC, LIBERIA, AND NEPAL

	COUNTRY	CONFLICT	TJ PROCESSES
CONFLICT AND TRANSITIONAL JUSTICE PROCESSES IN COLOMBIA, THE DRC, LIBERIA, AND NEPAL	Colombia	<p>1964–present</p> <p>In the 1960s, several guerrilla organizations with leftist agendas formed (including the ELN, EPL, and FARC) to challenge the government. Civilian “defense” groups (paramilitaries) originally organized to combat the guerrillas, with the acquiescence of the government, gradually gained power locally, using it to suppress local protest, displace some 3 million people from their land, and expand the illegal drug trade. In 1997 these paramilitary groups formed an umbrella organization known as the AUC. Over the past 30-plus years these armed forces have been battling over power and resources in Colombia, as well as control of the highly lucrative drug trade. All of the groups, as well as the Colombian state, have committed serious human rights violations.</p>	<ul style="list-style-type: none"> • The Colombian parliament passed the 2005 Justice and Peace Law (JPL), which allows for reduced sentences for paramilitary leaders who demobilize, provide confessions, and return stolen property. • The JPL established the National Commission for Reparation and Reconciliation (CNRR) with an eight-year mandate; however, implementation has been inefficient and the measures do not cover violations that occurred following its adoption or victims of state agents. More comprehensive legislation to provide reparations was passed in 2011. • An investigative section of the CNRR called the Historical Memory commission (HM) is tasked with creating a public report on the causes of the armed groups.
	DRC	<p>1996–present</p> <p>Conflict has ravaged the DRC (formerly Zaire) since 1996. Since 2003, the conflict has been focused in the east of the country. It has been fueled by a complex combination of ethnic tensions, national and regional political power struggles, and control of natural resources. The conflict from 1998-2003, which led to the military involvement of at least seven different countries, has been described as the deadliest since World War II.</p>	<ul style="list-style-type: none"> • The TRC in the DRC, which operated from July 2003 to February 2007, failed to investigate atrocities or hold public hearings. • Currently there are three ongoing ICC prosecutions related to the DRC: <ul style="list-style-type: none"> Thomas Lubanga Germain Katanga Mathieu Ngudjolo Chui • In 2005 the International Court of Justice ordered Uganda to pay reparations to the DRC for human rights abuses committed during the war.

	COUNTRY	CONFLICT	TJ PROCESSES
CONFLICT AND TRANSITIONAL JUSTICE PROCESSES IN COLOMBIA, THE DRC, LIBERIA, AND NEPAL	Liberia	<p>1989–2003 (intermittently)</p> <p>In December 1989, the National Patriotic Front of Liberia (NPFL) led by Charles Taylor entered Liberia from the east. As the NPFL advanced on the capital, the violence incited the formation of new armed groups, as well as the intervention of peacekeeping forces, which did not always remain neutral. By 1995 the civil war had grown to include seven major factions, all of which committed violations of human rights. There was a lull in the fighting between 1997 and 1999. Taylor was elected president in 1997 and ruled until 1999 in a period of relative stability. The fighting resumed in July 1999 and continued until the signing of the Comprehensive Peace Agreement (CPA) in 2003.</p>	<ul style="list-style-type: none"> • Part 6 of the CPA mandated the creation of a TRC, which was established in 2005, launched operations in 2006, and issued its final report in June 2009. • The TRC issued recommendations on reparations, suggesting a wide range of measures such as health support, material assistance, and education. • Charles Taylor is being tried by the Special Court for Sierra Leone for 11 crimes against humanity and war crimes. The trial concluded on March 11, 2011, and is currently awaiting a verdict. • UNMIL developed and implemented a disarmament, demobilization, rehabilitation, and reintegration strategy for ex-combatants in coordination with a National Commission for Disarmament, Demobilization, Rehabilitation and Reintegration. The disarmament phase of the program was completed in November 2004 and was then transitioned into the reintegration and rehabilitation phase until the end of its mandate in April 2009.
	Nepal	<p>1996–2006</p> <p>Based on social and economic claims, Maoists declared a “people’s war” against Nepal’s constitutional monarchy in 1996. Human rights violations committed by both sides escalated over the course of a decade until the signing of a Comprehensive Peace Accord in 2006, which brought the Maoists into the Nepali government. In 2008 Nepal abolished the monarchy and became a federal democratic republic.</p>	<ul style="list-style-type: none"> • In July 2007, the Ministry of Peace and Reconstruction (MoPR) proposed legislation that would establish a TRC in Nepal. The MoPR carried out nationwide consultations on the TRC bill for two years. The bill was tabled in the legislature in February 2010 after cabinet approval. It is now being debated again in Nepal’s Constituent Assembly. • A draft Disappearance Commission Bill submitted in November 2008 would criminalize the practice of enforced disappearance and establish a commission of inquiry to address the enforced disappearances that occurred during the armed conflict. The bill is still under consideration by the legislature. • The Cabinet decided to provide interim relief to families of the deceased and disappeared in February 2008, as stipulated under the CPA and a subsequent 23-point agreement.

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