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REPARATIONS FOR CHILD VICTIMS OF ARMED CONFLICT

State of the Field and Current Challenges

Francesca Capone



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Reparations for Child Victims of Armed Conflict

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To my beloved grandmothers, Rosaria and Iole

FOREWORD

As properly noted in this scholarly work, in situations of armed conflict, children are not merely bystanders but targets and direct victims. In fact, children are disproportionately affected by war. It is against this background that Francesca Capone applied her research capacity by exploring a broad range of issues relating to reparations for child victims of armed conflict. This book follows the perception, already asserted in the Universal Declaration of Human Rights and affirmed in the United Nations Convention on the Rights of the Child, that childhood is entitled to special care and assistance, including legal protection. A special feature requiring full attention and also covered in this book is the intricate question of recruitment of children into armed forces and armed groups, raising issues of the victim-perpetrator dichotomy and the reintegration of child soldiers into national and local society.

A core element obvious from the title is the victim's right to remedies which includes – as spelled out in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law – equal and effective access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms. The Basic Principles and Guidelines have been playing, in the ten years since their adoption by the UN General Assembly, an important role in setting into motion a better understanding of the right to reparation and in providing guidance in this area, as evident in the increasing reference made to this document in the jurisprudence of judicial and quasi-judicial bodies such as those functioning in the Inter-American human rights protection system, the International Criminal Court and its Trust Fund for Victims. At the same time the law and practice of reparations faces intricate challenges requiring new and innovative responses. This applies in particular to means and methods of repairing harm suffered by juvenile victims in terms of their past, present and future life situations in their communities. One such issue discussed in depth in this book relates to the transformative potential of reparations so as to broaden the effective reach of reparations to encounter not only the consequences of violations but also their structural causes. In this perspective as correctly analyzed in this book, reparations should not necessarily aim at serving traditional patterns of restoration or return to the *status quo ante* but rather other reparational designs which fall in the categories of rehabilitation, satisfaction or guarantee of non-repetition. For instance, education and training

may have a welcome transformative impact on the lives of child victims. Another important issue brought to the fore by Francesca Capone is the question of the relationship between reparation compared with assistance or development. It may be expeditious to make a shift from reparation to development because such an approach avoids complex issues of accountability as well as troublesome classifications of people into victims and perpetrators. But as argued in this book a distinction has to be made between the entitlement to reparation for harm suffered by victims and more generally the entitlement to basic rights and relief of citizens. Assistance and development measures should not serve as a substitute for reparations.

Civilian populations, notably women and children as particularly vulnerable people in situations of armed conflict, are to a greater extent affected in intra-state or non-international armed conflicts than in traditional inter-state conflicts. In the latter type state dimensions and interests tend to prevail. For long international law was not victim-oriented anyway. A leading motive of this study carried out with precision and persuasion is the design of transitional justice processes in law and practice. In many situations the plight of victims and for that matter the plight of child victims in armed conflicts happens to be ignored as inopportune and inconvenient. While relevant international legal framework and applicable mechanisms are developing as part of the process of an assumed humanization of international law, major complexities and shortcomings still abound. One such complex issue of a legal nature concerns the status of non-state actors, in particular armed non-state entities. Recent and current monitoring and reporting mechanisms progressively work on the assumption that fundamental human rights and humanitarian law standards apply to all actors in all circumstances. Reports of the UN Independent International Commission of Inquiry on the Syrian Arab Republic follow this line and confirm this principle in keeping with various other monitoring mechanisms on armed conflict situations.

This book with its focus on reparations for child victims of armed conflict is timely and pertinent. Building on innovative jurisprudence and conclusions of international judicial and quasi-judicial organs and monitoring bodies, but also clearly indicating major shortcomings in law and practice, this study presents challenges and offers perspectives and ouvertures for the rehabilitation and social reintegration of child victims of armed conflict. This work is highly commended as a valid source of reference and an effective tool of orientation, inspiration and guidance.

Theo van Boven

Former UN Special Rapporteur on the Right to Reparation for Victims of Gross Violations of Human Rights and Professor Emeritus of International Law at the University of Maastricht.

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My passion for international law started back in 2006 at the University of Naples Federico II and I am profoundly indebted to Professor Massimo Iovane, Professor Fulvio Palombino and Professor Daniele Amoroso for their friendship and guidance throughout all these years.

I wish to thank my mom, my dad and my two incredibly talented brothers for their support and endless care. I was raised in the most amazing family and my love for all of them continues to grow with each passing day. Finally, my utmost gratitude goes to Filippo for his patience, love and encouragement when I was tired, sad and incapable of concentrating; thank you for always standing by my side and for pushing me to follow my dreams wherever they may lead.

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACtHPR	African Court on Human and Peoples' Rights
ANSA	Armed Non-State Actor
AOG	Armed Organised Group
AP ACHR	Additional Protocol to American Convention
AU	African Union
AUC	Autodefensas Unidas de Colombia
CABAC	Children Affected by Armed Conflict
CAFF	Children Associated with Fighting Forces
CAP	Conflict-Affected Person
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAVR	Commission for Reception, Truth and Reconciliation in Timor-Leste
CDF	Civil Defence Force
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CEJIL	Centre for Justice and International Law
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on International Economic, Social and Cultural Rights
CoID	Commission of Inquiry on the Disappearances
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CRC-OP3	Convention on the Rights of the Child-Optional Protocol 3
CRPD	Convention on the Rights of Persons with Disabilities
CVR	Comisión de la Verdad y Reconciliación
DDR	Disarmament Demobilization and Reintegration
DDRR	Disarmament Demobilization Reintegration and Rehabilitation
DRC	Democratic Republic of the Congo
EAC	East Africa Community

ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
ECOMOG	Economic Community of West African States Military Observer Group
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community Of West African States
ECtHR	European Court of Human Rights
EECC	Eritrea-Ethiopia Claims Commission
EU	European Union
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo
FSA	Free Syrian Army
GLB	Girls Left Behind
HRC	United Nations Human Rights Committee
HRW	Human Rights Watch
IAC	International armed conflict
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCs	Interim Care Centres
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IRP	Interim Relief Program
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
JA	Jewish Agency
JDC	Joint Distribution Committee
JPL	Justice and Peace Law
JRSO	Jewish Relief Survivor Organisation
LRA	Lord's Resistance Army

MACR	Minimum Age of Criminal Responsibility
MoPR	Ministry of Peace and Reconstruction
MRM	Monitoring and Reporting Mechanism
NaCSA	National Commission for Social Action
NGO	Non-Governmental Organisation
NIAC	Non-international armed conflict
NSAG	Non-State Armed Group
OAS	Organisation of American States
OAU	Organisation of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCV	Office of Public Council for Victims
OSRSG-CAAC	Office of the Special Representative of the Secretary-General on Children and Armed Conflict
PCIJ	Permanent Court of International Justice
PIR	Plan Integral de Reparaciones
POW	Prisoner of War
ROP	Reintegration Opportunity Programme
RPE	Rules of Procedure and Evidence
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
SBU	Small Boys Unit
SGBV	Sexual and gender-based violence
SGU	Small Girls Unit
STL	Special Tribunal for Lebanon
TC	Truth Commission
TFV	Trust Fund for Victims
TJRC	Truth, Justice and Reconciliation Commission
TRC	Truth and Reconciliation Commission
TSA	Transition Support Allowance
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNAMSIL	United Nations Mission in Sierra Leone
UNBPG	United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law
UNCC	United Nations Compensation Commission
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	General Assembly of the United Nations
UNGA Res	United Nations General Assembly Resolution

UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations International Children's Economic Foundation
UNMIL	United Nations Mission in Liberia
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
VPRS	Victims Participation and Reparation Section
VWU	Victims and Witnesses Unit
WHO	World Health Organization
WVSU	Witnesses and Victims Services Unit