Children and Transitional Justice

Truth-Telling, Accountability and Reconciliation

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Introduction

During ten years of civil war, from 1991 to 2002, the children of Sierra Leone were deliberately and routinely targeted, and witnessed widespread and systematic acts of violence and abuse. The Sierra Leone Truth and Reconciliation Commission estimated that more than ten thousand children were abducted as child soldiers. Thousands more were victims of rape, mutilation, forced prostitution and sexual exploitation.\(^1\)

Among the thirty thousand people who were disappeared in Argentina between 1976 and 1983 were an estimated five hundred pregnant women and young children. The military kept pregnant women captive and subjected them to torture until the birth of their babies. The infants were then taken from their mothers, and many were placed in the homes of military or police officers. The mothers were never seen again.\(^2\)

The Lord’s Resistance Army (LRA), a rebel force fighting the Government of Uganda, has abducted over sixty thousand Ugandan children and youth over the past two decades. Among the war-affected population of northern Uganda, one in six female adolescents has been abducted by the LRA. They have been forced to perform domestic labor and subjected to slavery-like conditions, used for fighting and for sexual purposes.\(^3\)

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2. See Michele Harvey-Blankenship and Rachel Shigekane, Chapter 8 of this volume, “Disappeared Children, Genetic Tracing and Justice.”

3. See Khristopher Carlson and Dyan Mazurana, Chapter 7 of this volume, “Accountability for Sexual and Gender-based crimes by the LRA.”
Children were among the primary victims of South Africa’s apartheid regime. In just the two years between 1984 and 1986, three hundred children were killed by the police, one thousand wounded, eleven thousand detained without trial, eighteen thousand arrested on charges arising out of protest and 173,000 held awaiting trial in police cells. Children constituted between 25 percent and 46 percent of detainees at any one time during this period.4

During the armed conflict in El Salvador from 1980 to 1992, the military raided villages suspected of being rebel support bases. Families were separated; the parents were often killed and the children taken to orphanages. Some of these children were adopted by military or police households and others were put up for international adoption. It is believed that the military were responsible for the disappearance of hundreds of infants and children.5

In today’s world the very idea of a front line or battleground has broken down, replaced by violence involving states, non-state actors, armed groups, security forces, private contractors, gangs, perpetrators of terrorism and diverse militant cells or factions. The result of this breakdown is an increased threat to civilians, especially children.

The 1996 Graça Machel report, Impact of Armed Conflict on Children, together with a growing body of academic work,6 calls

4 See Piers Pigou, Chapter 4 of this volume, “Children and the South African Truth and Reconciliation Commission.”

5 See Michele Harvey-Blankenship and Rachel Shigekane, Chapter 8 of this volume “Disappeared Children, Genetic Tracing and Justice.”

attention to the many conflicts in which children are singled out for killings, disappearances, unlawful recruitment, torture and other grave violations.\(^7\) Truth commissions, international courts and other accountability processes have documented how children have been forced or coerced to participate in hostilities, in some cases replicating the very crimes committed against them. Children, especially girls, have been targeted for sexual violence and rape.

These acts not only violate international human rights and humanitarian law; they are among the most reprehensible international crimes. There is considerable momentum to end impunity, especially for genocide, crimes against humanity and war crimes. A comprehensive regime of international law has been established, but implementation of these standards is lagging. For children the implications are urgent and far-reaching. Failure to improve accountability, provide reparation and enable reconciliation can hamper their recovery and limit their future opportunities. Transitional justice mechanisms and processes are attempting to better enable the promotion and protection of the rights of children affected by armed conflict.

This book is a contribution toward documenting and encouraging these emerging efforts. It explores the questions raised when children’s issues are prioritized in transitional justice

\(^7\) United Nations Security Council resolution 1612 of 2005 (S/RES/1612 of 26 July 2005) called for the implementation of a monitoring and reporting mechanism for six grave violations against children during armed conflict. The six grave violations are killing or maiming; recruitment or use of child soldiers; rape and other forms of sexual violence; abduction; attacks against schools or hospitals; and denial of humanitarian access.
processes. It analyzes practical experiences to determine how the range of transitional justice mechanisms can be applied, both to improve accountability for crimes perpetrated against children and to protect the rights of children involved, primarily as victims and witnesses, but also at times as members of armed forces and groups that perpetrate violations.

The United Nations Secretary-General has defined transitional justice as:

...the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.8

The vision and ambition of transitional justice is to enable societies that have been torn apart by violence to recover and to empower individuals – victims, witnesses and perpetrators – to recount their experiences and agree on a measure of justice to inform their future. The impact of armed conflict on children makes it imperative for transitional justice processes to include children’s experiences, to enable their full and protected participation and to improve children’s access to justice, accountability and reconciliation.

While a definitive measure of the impact of transitional justice processes on the lives of children is not yet available, the importance and potential of transitional justice for children and young people is clear. Not only do children have the right to participate in decisions and in administrative and judicial procedures that affect them, but

8 Report of the Secretary-General on The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616.
also their views and experience provide unique and critical contributions to those processes and to national reconstruction efforts. To attempt transitional justice without involving children not only fails to comply with the Convention on the Rights of the Child (CRC)9 – the most universally ratified international instrument – but it also compromises the outcome of those processes.

In 2002, the UNICEF Innocenti Research Centre (IRC), together with the international non-profit organization No Peace Without Justice, published International Criminal Justice and Children, which presented an analysis of the international legal framework as it relates to children. Further academic and legal work on transitional justice and children was undertaken by UNICEF IRC in 2005. A network was initiated to generate debate and dialogue from diverse perspectives among academics and practitioners, legal experts and child rights advocates, representing specialists from both the South and the North. This led to the development of a series of expert papers by UNICEF IRC that explored new and emerging issues concerning children and international law10 and an April 2009 conference on Children and Transitional Justice convened by UNICEF IRC and the Human Rights Program at Harvard Law School. An outcome of the conference was the Key Principles for Children and Transitional Justice, which are intended to inform efforts to involve children in transitional justice activities (see Annex 1 and discussion below).

The following pages demonstrate that transitional justice processes can make a positive difference in children’s lives. The evidence and discussions point to mutually reinforcing linkages between accountability, truth-seeking and reconciliation. These linkages underline the importance of a comprehensive and


10 The UNICEF Innocenti Expert Paper Series on Children and Transitional Justice was initiated in 2007 to encourage further research and analysis on emerging issues and to better understand the potential and limits of children’s participation in transitional justice processes. The Peer Review Oversight Panel for the Series was chaired by Jaap Doek, emeritus professor of Law at the Vrije Universiteit in Amsterdam.
complementary approach to transitional justice that actively engages children in recovery and benefits from their views.

**CHAPTER REVIEW**

The chapters in this volume analyze key issues from the transitional justice agenda through a child rights lens. On the basis of research, the authors begin to formulate responses to a number of crucial questions and debates: how to end impunity for crimes against children; what policies and procedures can better protect children and enable them to contribute to reconciliation and reconstruction efforts; what strategies are most effective in supporting children’s roles and ensuring their voices are heard in peace-building efforts; how to enable children to reunite and reconcile with their families, peers and communities; how to build children’s skills to become part of a stable economy; and how to reaffirm children’s self-esteem and agency in the aftermath of armed conflict that has violated their childhood.

A number of cross-cutting issues and themes are introduced. Chapters 1 through 3 outline the human rights-based approach for children and transitional justice and examine the basic assumptions and international legal framework that provide a foundation for further analysis of accountability and reconciliation in different country contexts. This is followed, in Chapters 4 through 6, by case studies of children’s involvement in the truth commissions of South Africa, Sierra Leone, and Liberia. Chapters 7 through 10 address thematic issues and institutional reform. This includes efforts to use traditional processes and judicial prosecutions to achieve accountability for crimes committed by the LRA in Uganda, and new techniques employing genetic tracing for judicial accountability and family reunification of disappeared children in Argentina and El Salvador. A case study on curriculum development, education and reconciliation linked to the Peruvian truth commission is followed by a study on the role of transitional justice in helping to realize social and economic rights for children living in post-conflict societies. The book covers a wide range of
transitional justice processes: international prosecutions, truth commissions, traditional and local practices, reparation efforts and institutional reform.

In Chapter 1, Saudamini Siegrist introduces a child rights approach to transitional justice, outlining recent efforts that have led to a focus on children and their involvement in justice and truth-seeking. A number of the principles of the CRC are analyzed in relation to transitional justice. The author also raises questions concerning children’s best interests and their participation and protection in situations – in the aftermath of armed conflict and atrocity – that are complex and politically charged.

In Chapter 2, Alison Smith identifies basic assumptions concerning children and transitional justice. The question is raised of how the “laws of war” operate – and on whose terms. Acknowledging that until recently the participation of children in transitional justice has been something of an add-on, the author asks why and how children’s perspectives should be woven into the design and operation of transitional justice mechanisms. If each post-conflict situation is subject to local factors and if no “one size fits all,” how can a range of mechanisms coherently protect the best interests of children? Ms. Smith considers the role of child witnesses in international courts and weighs the importance of their testimony against risks to their well-being.

Chapter 3, by Cécile Aptel, assesses the contribution of international and hybrid criminal courts in improving accountability for grave crimes against children. This discussion recognizes the contribution of international courts in giving visibility to the victimization of children, while noting that much remains to be done. The chapter examines the international criminal justice system and the appropriateness of international jurisdictions to address accountability for crimes committed against children, as well as for children who have participated in crimes under international law. The author contends that many questions remain as to what is in the best interests of children who have participated in grave international crimes and proposes that more attention be given to supporting their reintegration with their families and communities.
In Chapter 4, Piers Pigou reconsiders the findings of the South African Truth and Reconciliation Commission (TRC) with respect to children. While the South African TRC did not take statements from children (below age eighteen), it did focus on violations against children and young people and also held unofficial children’s hearings. The chapter documents that children and young people were among the primary targets of the apartheid regime and also played a role as active participants in the anti-apartheid movement.

Chapter 5, by Philip Cook and Cheryl Heykoop, reviews children’s involvement in the Sierra Leone TRC. The authors analyze the guiding principles of child participation and the precedent set, as well as the impact on children and the potential for children to become catalysts for social mobilization and community development, increasing their own awareness and building capacity for citizenship.

Chapter 6, by Theo Sowa, continues to chart the course of children’s participation in truth commissions by considering the range of children’s contributions to the Liberian TRC. The chapter addresses in particular their role in statement-taking and thematic and national TRC hearings, noting good practices and lessons learned. Questions are raised regarding how to best protect the rights of children and facilitate their meaningful participation. Based on concrete experience, the chapter proposes strategies for child protection and makes recommendations for involving children in future transitional justice processes without putting them at risk.

Chapter 7, authored in two parts — Part One by Khristopher Carlson and Dyan Mazurana, and Part Two by Prudence Acirokiop — describes the brutal targeting of children by the LRA in northern Uganda. Considering judicial prosecution of LRA commanders on one hand and the use of traditional processes on the other, the authors question how to adequately account for these crimes. What does reconciliation mean to the victims? When children who have committed crimes against their families and communities return, what processes of truth-seeking and justice can enable them to re-establish meaningful relationships as members of the community? Two complementary and at times opposing positions are presented.
In Part One, the authors argue that international law — and the victims — demand criminal prosecution. In Part Two, the author posits that when former LRA members return to their communities, traditional mechanisms can provide a measure of accountability and help restore normalcy.

In Chapter 8, Michele Harvey-Blankenship and Rachel Shigekane review the application of genetic tracing to identify disappeared children in Argentina and El Salvador. Recent efforts are documented and analyzed, highlighting how DNA analysis is used both as a tool in family reunification and as evidence in judicial proceedings. The impact of genetic tracing in enabling the objectives of transitional justice is considered, specifically in facilitating truth-seeking and prosecutions and also as a means of restoring the dignity of victims. The link between disappearances and reparation is noted, in particular regarding the Inter-American Court of Human Rights decisions on disappearances, which paved the way for the establishment of the right to a remedy.

In Chapter 9, Julia Paulson documents and analyzes the *Recordándonos* educational resource, based on the truth commission in Peru. A clear case is made for linking education and reconciliation and for including truth commission findings and recommendations in primary and secondary school curricula. The chapter considers the potential of education as a vehicle to bring transitional justice into the lives of children and young people, enabling them to make informed decisions and to engage as responsible citizens in their communities. According to the author, educational resources can inform national history, giving children the space to wrestle with their own memories and to look to the future.

In Chapter 10, Sharanjeet Parmar addresses the role of transitional justice in relation to the violation of children’s economic rights in conflict and post-conflict situations, an area that has been rarely considered. She analyzes economic justice from a child rights perspective, specifically in the context of post-conflict West Africa. Using as an example the labor of children in the diamond mines of Sierra Leone, the chapter demonstrates how war-related rights violations of children can leave them vulnerable to further
exploitation and abuse. The findings show that when children do not have the opportunity to acquire skills and learn a vocation — when their abilities are squandered or left to waste — the result is serious limitations on their future and the future of their society.

These chapters demonstrate that, in a range of country situations, children have contributed to rebuilding their communities and have proved that they are often the best informed about their needs and the actions that can help rebuild their lives. Children have made it clear that they want to be taken seriously as partners in post-conflict transition. However, they must not be viewed as a token solution or quick fix. Rather, collaborative efforts are needed over the long term to enable children’s involvement in all elements of transitional justice within their own communities.

**KEY PRINCIPLES FOR CHILDREN AND TRANSITIONAL JUSTICE**

The conference on Children and Transitional Justice convened by UNICEF IRC and the Human Rights Program of Harvard Law School in April 2009 aimed to consolidate ongoing research and to further the debate on emerging issues and best practices in the field. During the conference, key principles to protect the rights of children participating in transitional justice mechanisms and processes were identified. The Key Principles for Children and Transitional Justice (see Annex) seek to build agreement on issues identified in panel discussions and working groups and in the expert paper series. Discussions took place in working groups, as well as over a subsequent review process that included additional specialists and partners, resulting in policy and program guidance based on the knowledge and experience of a wide range of experts and partners. The Key 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.
It is a point of agreement that transitional justice does not favor one model. Justice, accountability, reconciliation and reparation can involve different elements in diverse contexts. Accountability in northern Uganda is different from accountability in Canada, the Democratic Republic of the Congo, El Salvador, or South Africa; there is not only one solution or only one way forward. Instead there are specific priorities and principles that need to be adapted to local factors and situations. At the same time, there must be consistency and coherence when applying the CRC and other international standards at the national level.

In addition to outlining the basic policies and procedures to protect the rights of child victims and witnesses in transitional justice processes, the Key Principles consider a number of emerging issues. The duty to prosecute for crimes under international law is clearly stated in the Preamble, and both national and international courts are given consideration. Also included is the duty to provide effective remedies to victims, including reparation. The right of children to express their views is noted, as well as the importance of consulting with children so that transitional justice processes maximize their potential. Children’s engagement with local, traditional and restorative justice processes is introduced and explained in some detail. The need for child-focused reparations is also outlined. The section on institutional reform introduces a number of new issues: the importance of working with educational experts and officials, the need to undertake legal reform and the urgency of creating economic opportunities for children and young people. The Key Principles also call for the development of common minimum standards on children and transitional justice.

One ongoing debate concerns the appropriate form of accountability for alleged child perpetrators. While the CRC states that accountability is in the best interests of children, it recommends the application of alternatives to judicial proceedings for children where appropriate. The Key Principles note that children may simultaneously be victims, witnesses and alleged perpetrators of violations. They also state that children accused of international crimes in situations of armed conflict are primarily victims. Based on the Statute of the International Criminal Court,
the Special Court for Sierra Leone and the practice of the ad hoc tribunals, there is an emerging standard that children under eighteen should not be prosecuted by international courts and tribunals. The Key Principles specify that a gender-sensitive approach to child participation in transitional justice processes should include a focus on the protection of the rights of girls and should address their specific needs and experiences.

Despite the many points still under discussion, there is consensus that transitional justice mechanisms can help steer societies emerging from a period of violence toward greater accountability and recovery. That is perhaps the most basic assumption of transitional justice. Experience demonstrates that while transitional justice is not sufficient in and of itself to guarantee lasting change, it can take a significant step in providing redress for the wrongs of the past and preventing their recurrence.