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Series on Transitional Justice, Volume 22
REPARATIONS FOR CHILD VICTIMS OF ARMED CONFLICT

State of the Field and Current Challenges

Francesca Capone
To my beloved grandmothers, Rosaria and Iole
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 disproportionally 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
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Violations of Human Rights and Professor Emeritus of International Law at the
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From June 2012 to October 2013 Francesca Capone was a Research Fellow at the British Institute of International and Comparative Law, where she worked on a project on reparations for education-related violations of international law. She has been a visiting fellow at several academic institutions, including Tilburg University, Leiden University and the Max Planck Institute for Comparative Public Law and International Law. She is the author of several articles and book chapters and in 2016 she co-edited, with Professor Andrea de Guttry and Dr Christophe Paulussen, a volume entitled Foreign Fighters under International Law and Beyond (Asser Press/Springer).
This book is the final outcome of a Joint Ph.D. degree earned from the Scuola Superiore Sant'Anna and Tilburg University. I was lucky enough to be supervised by two brilliant scholars, Professor Rianne Letschert and Professor Andrea de Guttry, who supported me throughout the whole process, from the selection of the topic to the completion of the thesis and its defence. I am most grateful to both of them for their professionalism and kindness, I could not have hoped for a better combination of personalities and competences.

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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.

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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
AChrPR  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
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
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<td>Extraordinary Chambers in the Courts of Cambodia</td>
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<td>European Convention on Human Rights</td>
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<td>ECOMOG</td>
<td>Economic Community of West African States Military Observer Group</td>
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<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>ECOWAS</td>
<td>Economic Community Of West African States</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<td>EECC</td>
<td>Eritrea-Ethiopia Claims Commission</td>
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<td>FARC-EP</td>
<td>Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo</td>
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<td>Free Syrian Army</td>
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<td>Girls Left Behind</td>
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<td>HRC</td>
<td>United Nations Human Rights Committee</td>
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<td>Human Rights Watch</td>
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<td>IAC</td>
<td>International armed conflict</td>
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<td>International Centre for Transitional Justice</td>
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<td>International Criminal Tribunal for Rwanda</td>
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<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>Internally Displaced Persons</td>
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<td>International Humanitarian Law</td>
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<td>International Human Rights Law</td>
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<td>International Law Association</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IRP</td>
<td>Interim Relief Program</td>
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<td>ISIL</td>
<td>Islamic State of Iraq and the Levant</td>
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<td>JA</td>
<td>Jewish Agency</td>
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<td>Joint Distribution Committee</td>
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<td>Jewish Relief Survivor Organisation</td>
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<td>LRA</td>
<td>Lord's Resistance Army</td>
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<td>MACR</td>
<td>Minimum Age of Criminal Responsibility</td>
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<td>MoPR</td>
<td>Ministry of Peace and Reconstruction</td>
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<td>MRM</td>
<td>Monitoring and Reporting Mechanism</td>
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<td>National Commission for Social Action</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NIAC</td>
<td>Non-international armed conflict</td>
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<td>NSAG</td>
<td>Non-State Armed Group</td>
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<td>OAS</td>
<td>Organisation of American States</td>
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<td>OAU</td>
<td>Organisation of African Unity</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNGA</td>
<td>General Assembly of the United Nations</td>
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<td>United Nations General Assembly Resolution</td>
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