

# **Submission in response to OHCHR call for inputs on the promotion and protection of the human rights of women and children in conflict and post-conflict situations**

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**Zoé Bertrand**, Global Survivors Fund

**Zama Neff**, Human Rights Watch

**Laura Perez**, School of International and Public Affairs (SIPA), Columbia University

**Rachel Walters**, Human Rights Defenders Network Sierra Leone

## **1. Introduction**

We welcome the opportunity to provide input to inform the report of the United Nations High Commissioner for Human Rights on the promotion and protection of the human rights of women and children in conflict and post-conflict situations.

This submission focuses specifically on children and accountability processes for gross violations of international human rights law and serious violations of international humanitarian law.

## **2. Children's experiences of gross violations of international human rights law and serious violations of international humanitarian law**

Children are victims of gross violations of international human rights law and serious violations of international humanitarian law across the world, in both conflict and post-conflict settings. More than one in six children globally live in areas affected by armed conflict, where they are increasingly killed, abducted, recruited and used by armed forces and armed groups, subjected to sexual and gender-based violence, deprived of healthcare and education through attacks on schools and hospitals, or denied access to life-saving humanitarian assistance, among other violations. In post-conflict settings, the consequences of these abuses persist, including disrupted education, prolonged displacement, separation from caregivers, psychosocial harm, disability, and exclusion from basic services.

Children are often directly targeted for violations due to their age and perceived vulnerability, and on intersecting grounds such as disability, race, ethnicity, nationality, religion, or gender. Children may also be profoundly affected by violations committed against others, including witnessing violence against family and community members, becoming orphaned or separated from their caregivers, or experiencing stigma and exclusion, including where they were born of conflict-related sexual violence.

There is extensive evidence that such violations can have distinct and particularly severe impacts on children due to their age, dependency, and ongoing cognitive, psychological and social development. Trauma experienced during childhood may fundamentally affect identity formation, emotional regulation, mental health, relationships, educational attainment, and future life opportunities, often with consequences extending throughout the life course and into future generations.

## **3. Relevant international legal developments**

International law has increasingly recognised the need for child-specific protections and responses in relation to armed conflict. Since the adoption of the *Rome Statute*, a robust institutional framework has developed, including the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*; the UN Security Council's Children and Armed Conflict (CAAC) mandate, including the Monitoring and Reporting Mechanism on the 'Six Grave Violations' against children; the *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles)*; the *Safe Schools Declaration*; and regional instruments including the *African Charter on the Rights and Welfare of the Child*.

## **4. Child victims and witnesses in accountability processes**

Despite developments in international law, many accountability processes continue to insufficiently recognise children as independent victims and rights-holders. Violations against children are

frequently subsumed within broader categories of harm affecting civilian populations, families or communities, without adequate consideration of their distinct nature and impact on children. This occurs even where there is evidence that children were directly targeted or disproportionately affected. As a result, child-specific harms are often under-documented, inadequately reflected in charging decisions and judicial analysis, or overlooked in reparations frameworks.

Many accountability processes engage only limited numbers of children as victims and witnesses. This reflects a range of factors, including misconceptions regarding children's credibility, memory and capacity; fear of re-traumatisation; inability to adapt proceedings to children's needs; inadequate psychosocial and legal support; and broader problems with viewing children as fully fledged rights-holders. Failure to adequately recognise and address children's experiences in accountability processes denies children their right to an effective remedy and undermines broader transitional justice objectives. Where violations against children are overlooked or inadequately remedied, cycles of trauma, exclusion and social fragmentation may persist across generations.

Every investigation and prosecution of gross violations of international human rights law and serious violations of international humanitarian law should begin with the presumption that children may have been victims, witnesses, or otherwise affected. Accountability processes should expressly consider the distinct impacts of violations on children, including the long-term developmental consequences of harm experienced during childhood.

International law recognises children's right to be heard in judicial and administrative proceedings affecting them, in accordance with their age and maturity. It also recognises their entitlement to special protection measures and to support for their physical and psychological recovery and social reintegration. Accountability processes should therefore provide adequate support to facilitate children's participation, ensure their safety, and minimise the risk of re-traumatisation.

Reparation measures and programmes must be child-responsive and include provisions tailored to children's specific situations, including financial and symbolic measures, access to physical and psychosocial care, educational support, and measures to facilitate community acceptance and inclusion.

## **5. Children accused of gross violations of international human rights law and serious violations of international humanitarian law**

Where children are accused of gross violations of international human rights law and serious violations of international humanitarian law that may constitute criminal offences under national or international law, they should be treated in accordance with child rights and juvenile justice standards and should not be prosecuted within adult criminal justice systems.

Children accused of crimes are entitled under international law to distinct protections reflecting their ongoing physical and psychological development. These protections include prioritising diversion wherever appropriate; using detention only as a measure of last resort and for the shortest appropriate period of time; and ensuring that any response takes into account not only the gravity of the offence, but also the child's circumstances, development and needs, and the broader interests of society.

Criminal accountability mechanisms must ensure these standards are implemented in practice. This does not mean that serious violations will go unpunished. Rather, it ensures that these crimes will be prosecuted through child justice systems, balancing the need for accountability with the protection of children's rights.

## **6. The proposed crimes against humanity treaty**

We welcome ongoing efforts to strengthen the international accountability framework, including through the development of a convention on crimes against humanity. However, as currently drafted, the proposed convention largely reproduces provisions of the *Rome Statute* and does not adequately reflect developments in international law, standards and practice relating to children in the nearly 28 years since the *Rome Statute* was adopted.

Future accountability frameworks should strengthen, or at minimum preserve, the protections and recognition afforded to children under contemporary international human rights law, international humanitarian law and international criminal law. We hope States will engage constructively on these issues during the negotiation process.

## **7. Recommendations**

We recommend that the High Commissioner encourage States and accountability mechanisms to:

- A. Recognise children as independent rights-holders and direct victims of gross violations of international human rights law and serious violations of international humanitarian law.
- B. Adopt child-sensitive and trauma-informed approaches to documenting, investigating and prosecuting violations against children, including specialised training for investigators, prosecutors, and judges.
- C. Ensure the safe, voluntary and meaningful participation of child victims and witnesses through child-sensitive procedures, legal assistance, psychosocial support, and appropriate protection measures.
- D. Develop child-responsive reparations programmes that recognise children as direct beneficiaries and address educational, psychological, developmental, social, and community harms.
- E. Ensure that children accused of committing gross violations of international human rights law and serious violations of international humanitarian law that may amount to international or domestic crimes are treated in accordance with agreed child rights and juvenile justice standards and are not prosecuted or sentenced as adults.
- F. Ensure that ongoing developments in accountability frameworks, including the proposed convention on crimes against humanity, strengthen protections relating to children and do not regress from existing international standards and practice.