

NOTE

ABDUCTION AND ADOPTION: RIGHTS TO REPARATION FOR FORCIBLY DISPLACED CHILDREN DURING ARMED CONFLICT

SONIA GEBA*

ABSTRACT

Since the beginning of hostilities between Russia and Ukraine in February of 2022, reports have identified close to 20,000 children who have been relocated from occupied Ukrainian territory to camps deep within Belarus and the Russian Federation—even to Siberia. On March 17, 2023, the International Criminal Court (ICC) issued arrest warrants for Russian President Vladimir Putin and Russian Commissioner for Children’s Rights Maria Lvova-Belova. Pursuant to these warrants, the ICC charged President Putin and Commissioner Lvova-Belova with war crimes, focusing on child victims’ unlawful deportation and transfer. In light of the United Nations Convention on the Rights of the Child, which both parties have ratified, these unlawful acts demand immediate international action to restore children to their homes and provide them with just reparations for their collective abduction and, in many cases, forced adoption. While international law recognizes a right to compensation for these wrongful acts, child victims of forced transfer in Ukraine are entitled to more than just monetary compensation under a combination of international law instruments.

This Note examines the challenges in establishing rights to reparation for children who are forcibly displaced during conflict, with a focus on child victims of forced transfer. It begins by laying the groundwork of foundational principles found in international law, the child welfare field, and transitional justice, such as the “best interests of the child,” in addition to “child-sensitive” and “transformative” approaches to reparations. It then articulates international legal norms governing reparations and compensation for violations of international human rights law and international humanitarian law (IHL).

* Sonia Geba. Georgetown University Law Center, J.D. 2024; Fulbright U.S. Student to Ukraine, 2019-2020; Brown University, B.A. 2017. The author would like to sincerely thank her advisor on this paper, Professor David Tolbert, for reviewing first drafts and providing feedback on the proposed topic and paper organization in its early stages. She would also like to thank attorney advocates, Kateryna Shunevych and Daria Roskhata, at the Ukrainian Women Lawyer’s Association (JurFem) for welcoming her onto their team as a legal intern in the summer of 2023 and providing feedback on this Note. Lastly, she would like to thank all GJIL staff who helped improve this Note at every stage of the editing process. Слава Україні! (Glory to Ukraine!) All mistakes remain the author’s. © 2024, Sonia Geba.

Next, it outlines different reparations mechanisms that have emerged to address, separately, displacement and child victims in different contexts. It then makes the case that forcibly transferred Ukrainian children are entitled to a wide variety of potentially high-impact reparations, not limited to traditional monetary compensation schemes. It proposes a combination of measures that may be instituted even before the end of hostilities to support children's rights to return to their home country and receive compensation for their harms, including land restitution, educational and psychosocial programs, and standardized citizenship and documentation procedures, among others. While these are high-impact measures that have the potential to address violations of international law on the state level, recognize and vindicate the rights of victims, and support the reconstruction of Ukraine in the long term, this Note also discusses challenges that may arise in implementing such a mechanism in Ukraine.

I.	INTRODUCTION	123
II.	FOUNDATIONAL PRINCIPLES	127
	A. <i>The Best Interests of the Child</i>	127
	B. <i>Child-Sensitive Approaches to Reparations</i>	129
	C. <i>Transformative Reparations</i>	131
III.	THE CASE FOR REPARATIONS IN INTERNATIONAL LAW	134
	A. <i>Reparations for Victims of Human Rights Violations</i>	135
	B. <i>Reparations for Victims of Armed Conflict</i>	138
	C. <i>Individual vs. Collective Reparations</i>	139
IV.	REPARATIONS MECHANISMS FOR CHILDREN IN THE CONTEXT OF DISPLACEMENT AND WAR	141
	A. <i>Reparations for Victims of Displacement: A Focus on Land Restitution</i>	142
	B. <i>Reparations for Child Victims of War: A Focus on Social Services and Education</i>	145
V.	RIGHTS TO REPARATION FOR FORCIBLY DISPLACED CHILDREN IN UKRAINE	148
	A. <i>Proposed Measures</i>	149
	1. <i>Return to Ukrainian Territory</i>	150
	2. <i>Clarification and Stabilization of Citizenship Status</i>	151
	3. <i>Land and Property Restitution</i>	152
	4. <i>Compensation</i>	154
	5. <i>Public Education</i>	154
	6. <i>Integration of Child Reparations into a Larger Transitional Justice Framework</i>	155
	B. <i>Challenges</i>	156
	1. <i>Implementation Problems and Lack of Resources</i>	156

ABDUCTION AND ADOPTION

2. Political Challenges, Consultations, and Victim Participation	157
3. Links to Transformation, Social Justice, and Root Causes of Inequality	158
VI. CONCLUSION	158

I. INTRODUCTION

On February 24, 2022, the Russian Federation launched a full-scale invasion of Ukraine, which has forever changed civilian life in the country. Throughout occupied territories, human rights reports have repeatedly documented civilian experiences of mass killings,¹ torture,² deportation, filtration,³ and life-threatening humanitarian conditions,⁴ which will remain imprinted on civilians' bodies and memories for years to come. Many of these experiences attracted close international attention during the first year of the war. But perhaps none received as much public condemnation as the infamous forced transfer of children. Indeed, over a year after the start of the war, the strongest expression of outrage against Russian state leadership came on March 17, 2023, when Pre-Trial Chamber II of the ICC issued arrest warrants for Russian President Vladimir Putin and Russian Commissioner for Children's Rights Maria Lvova-Belova.⁵ Pursuant to the warrants, the ICC charged President Putin and Commissioner Lvova-Belova with war crimes.⁶ Specifically, they were charged with the crimes of unlawful

1. *Ukraine: Russian Forces' Trail of Death in Bucha*, HUMAN RIGHTS WATCH (Apr. 21, 2022), <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>.

2. Anthony Deutsch, *Torture Chambers in Ukraine's Kherson Financed by Russian State*—Investigators, REUTERS (Mar. 2, 2023), <https://www.reuters.com/world/europe/torture-chambers-ukraines-kherson-financed-by-russian-state-investigators-2023-03-02/>.

3. See Press Release, Anthony J. Blinken, Secretary of State, Dep't of State, Russia's "Filtration" Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens (July 13, 2022), <https://www.state.gov/russias-filtration-operations-forced-disappearances-and-mass-deportations-of-ukrainian-citizens/>; see also Volodymyr Honcharov, *Forced Displacement, Abductions and Deportations in the Occupied Territories: Gender and Legal Analysis*, in GENDER DIMENSIONS OF WAR: FINDINGS OF ANALYTICAL RESEARCH 19, 21–22 (JurFem & USAID eds., 2023).

4. See Press Release, UNICEF, 1.4 Million People Without Running Water Across War-Affected Eastern Ukraine (Apr. 15, 2022), <https://www.unicef.org/press-releases/14-million-people-without-running-water-across-war-affected-eastern-ukraine>.

5. The warrants have not been made public to preserve the privacy of the victims. *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, INTERNATIONAL CRIMINAL COURT (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

6. *Id.*

deportation and unlawful transfer of population from occupied areas of Ukraine to the Russian Federation.⁷ Both charges narrowly focused on children.⁸ This singular emphasis on child victims of armed conflict creates a crucial pathway for Ukraine to make a strong claim against Russia for war crimes, in addition to other international crimes like genocide,⁹ and demand state compensation in accordance with the gravity of these crimes.¹⁰ It also represents a vital inflection point for affected individual children, their families, and their communities to demand reparations in full view of the international community, giving them considerable leverage to exercise their right to return home, to ensure repair for people and possessions lost, and to reform their societies in transformative and multi-generational ways.

During the war, children in Russian-occupied territories have been particularly vulnerable to disruptions in their education,¹¹ conflict-related sexual violence,¹² and forced transfer under the guise of “evacuation to

7. *Id.*

8. *Id.*

9. One of the acts that traditionally amounts to genocide is the forcible transfer of children. Preparatory Comm’n for the Int’l Crim. Ct., Rep. of the Preparatory Comm’n for the Int’l Crim. Ct. Part II Finalized Draft Text of the Elements of Crimes, art. 6(e), U.N. Doc. PCNICC/2000/1/Add.2, addendum (Nov. 2, 2000), <https://www.refworld.org/docid/46a5fd2e2.html>. A discussion of this claim in Ukraine’s case is beyond the scope of this Note, but the fact that Ukraine has invoked the crime of genocide in this case speaks to the gravity of these acts and the greater potential that the international community may yet set a strong precedent for accountability, including reparations. In fact, just after the ICC issued its arrest warrants in this case, the Council of Europe recognized that the forcible transfer of Ukrainian children to Russia meets the international definition of genocide. *The Forcible Transfer and ‘Russification’ of Ukrainian Children Shows Evidence of Genocide, Says PACE*, COUNCIL OF EUR. (Apr. 28, 2023), <https://www.coe.int/en/web/portal/-/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace>.

10. See Diane Marie Amann, *Child-Taking*, 45 MICH. J. INT’L L. (forthcoming 2024) (“Such comprehension of child-taking’s nature and gravity will have multiple effects. It may influence both sentencing and reparations, not to mention the degree to which its survivors receive humanitarian assistance from actors outside the courthouse. It has the further benefit of reinforcing popular articulations of why child-taking is wrong . . . the purpose is not just to take children, but to make them forget, or come to hate, the family, culture, and country into which they were born. Embrace of this conceptualization also may serve reparative goals; that is, it may vindicate more fully the harms experienced by children and their communities.”), <https://ssrn.com/abstract=4610553>.

11. See *Ukraine: Attacks on Schools Endangering Children’s Lives and Futures*, SAVE THE CHILDREN (Feb. 27, 2022), <https://www.savethechildren.net/news/ukraine-attacks-schools-endangering-children-s-lives-and-futures>.

12. See Press Release, Security Council, Mounting Reports of Crimes against Women, Children in Ukraine Raising ‘Red Flags’ over Potential Protection Crisis, Executive Director Tells Security

safe areas[.]”¹³ which at times has resulted in forced adoptions on Russian territory.¹⁴ As of 2023, Ukrainian authorities and international investigators have identified nearly 19,500 children who have been removed from occupied Ukrainian territories and sent to Russia, Belarus, or Russian-occupied Crimea.¹⁵ The U.S. State Department estimates the number to be much higher at over 260,000.¹⁶ Even Russian officials admit that over 700,000 children have “found refuge” in Russia through a state-run relocation program.¹⁷ The abduction of children is one of the gravest violations of international human rights law and IHL,¹⁸ so much so that it features among the unique wrongs that characterize genocide.¹⁹ Because this act is attributable to Russia and constitutes a breach of its international obligations, it constitutes an internationally

Council, U.N. Meeting Coverage, SC/14857 (Apr. 11, 2022), <https://press.un.org/en/2022/sc14857.doc.htm>.

13. KAVEH KHOSHNOOD ET AL., HUMANITARIAN RSCH. LAB AT YALE SCH. OF PUB. HEALTH, RUSSIA’S SYSTEMATIC PROGRAM FOR THE RE-EDUCATION & ADOPTION OF UKRAINE’S CHILDREN 11 (2023), <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data>; see also Anna Dabrowska & Anna Voitenko, ‘It Was Heartbreaking’: Ukraine Children Back Home After Alleged Deportation, REUTERS (Apr. 11, 2023), <https://www.reuters.com/world/europe/ukraine-returns-31-children-russia-after-alleged-deportation-2023-04-08/>.

14. KHOSHNOOD ET AL., *supra* note 13, at 4.

15. Dabrowska & Voitenko, *supra* note 13. As of November 2023, the Yale Humanitarian Research Lab additionally reported that Russian occupation authorities have also been transporting children to Belarus since the beginning of the war, expanding the web of forced transfer and re-education programming and demonstrating Belarus’ complicity in Russia’s larger child deportation scheme. According to the Lab, “at least 2,442 children from Ukraine between the ages of six and 17 have been taken to Belarus between the start of Russia’s full-scale invasion of Ukraine on 24 February 2022 and 30 October 2023.” KAVEH KHOSHNOOD ET AL., HUMANITARIAN RSCH. LAB AT YALE SCH. OF PUB. HEALTH, BELARUS’ COLLABORATION WITH RUSSIA IN THE SYSTEMATIC DEPORTATION OF UKRAINE’S CHILDREN 1 (2023), <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/b024b68ca6e54ecdadec2e79fa779f2d/data>.

16. See Blinken, *supra* note 3; see also Mariia Zheltukha, *Transfer of Children to the Territory of the Aggressor During the Full-Scale Armed Aggression of the Russian Federation Against Ukraine: Legal Assessment and Consequences*, in GENDER DIMENSIONS OF WAR: FINDINGS OF ANALYTICAL RESEARCH 27, 28 (JurFem & USAID eds., 2023).

17. *Moscow Says 700,000 Children from Ukraine Conflict Zones Now in Russia*, REUTERS (July 3, 2023), <https://www.reuters.com/world/europe/moscow-says-700000-children-ukraine-conflict-zones-now-russia-2023-07-03/>.

18. Office of the Special Rep. of the Secretary-General for Children and Armed Conflict, *The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation* 9 (Oct. 2009), https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf (last updated Nov. 2013) [hereinafter *The Six Grave Violations*].

19. Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948, S. EXEC. DOC. O., 81-1 (1949), 78 U.N.T.S. 277.

wrongful act for which reparations are due to its victims under customary international law (CIL).²⁰

This Note examines the challenges to establishing rights to reparation for children who are forcibly displaced during conflict, with a special focus on child victims of forced transfer—in this case: abduction and adoption. Beyond Ukraine, in an era of intensifying state and non-state conflicts, children are increasingly at risk of mass violations of human rights and IHL. With the escalation of conflict between Israel and Palestine in October 2023, as an example, children, who notably comprise half the population of Gaza and almost 40% of its casualties so far in the war,²¹ are undoubtedly bearing the brunt of international atrocity crimes.

This Note begins in Part II by discussing foundational principles that should inform an analysis of the present case study and other conflicts where children are victimized. These include the “best interests of the child,” in addition to “child-sensitive” and “transformative” approaches to reparations. Part III then articulates international legal norms governing reparations and compensation for violations of international human rights law and IHL. Part IV outlines different reparations mechanisms that have emerged to address, separately, displacement and child victims in different contexts. It then turns to the intersection of these remedies in Part V by analyzing the case study of forcibly transferred Ukrainian children during Russia’s war against Ukraine. It examines specific issues that can be addressed through reparations, proposes recommended measures not limited to monetary compensation, and discusses the challenges that could arise in implementing a mechanism that aims to repair the victimization of children through forced abduction and adoption. Part VI concludes by arguing that although the international law of reparations is still evolving as a canon of legal rights, there is growing international consensus that child victims are entitled to more than just monetary compensation. They are also entitled to reparations that transform social and economic inequities for future generations. The Note closes by alluding to a broader array of contexts that could benefit from these considerations.

20. See generally International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, ILC YB 2001, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [hereinafter ARSIWA].

21. Catherine Russell, *Gaza and Israel: The Cost of War Will be Counted in Children’s Lives*, UNICEF (Oct. 26, 2023), <https://www.unicef.org/gaza-israel-cost-of-war-counted-children-lives>; John Yang et al., *‘This year is a nightmare’: Gaza’s Children Face Starvation Amid Dire Conditions*, PBS NEWS (Jan. 7, 2024), <https://www.pbs.org/newshour/show/this-year-is-a-nightmare-gazas-children-face-starvation-amid-dire-conditions>.

II. FOUNDATIONAL PRINCIPLES

Before laying out the case for a legal right to reparation for children or exploring specific child-sensitive approaches to reparations, it is important to define and discuss three foundational principles that are common to international law, the child welfare field, and transitional justice: (A) the “best interests of the child,” (B) how “child-sensitive” approaches to reparations build from these “best interests,” and (C) the “transformative” character of reparations that distinguishes them from standard economic development projects.

A. *The Best Interests of the Child*

The “best interests of the child” must be a priority in designing any reparations policy or mechanism. Though this picture of harms against Ukrainian children by the Russian Federation can appear particularly perverse at first glance, it is worth complicating this narrative before illustrating how the “best interests of the child” apply in this case. Ukraine and Russia are both parties to the U.N. Convention on the Rights of the Child (CRC), which upholds the “best interests of the child” as the primary consideration in all actions concerning children,²² including in-state actions to separate a child from their parents against their will,²³ adoption processes,²⁴ and situations of armed conflict.²⁵ According to the U.N. Committee on the Rights of the Child, the “best interests of the child” is a dynamic concept that encompasses evolving, multifaceted issues open to more than one interpretation, which must, as a rule of procedure, include an evaluation of the possible impact of a given decision on the child concerned.²⁶

Under this principle, evacuating children from high-risk, heavily militarized areas with significant humanitarian needs to temporary settlements far from the fighting at first appears to align with each country’s obligations to evaluate the impact of war on children and attempt to ensure their welfare. In addition, a significant proportion of the

22. Convention on the Rights of the Child art. 3(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

23. *See id.* art. 9(1).

24. *Id.* art. 21.

25. *Id.* art. 38. The term “best interests of the child” is not used when referencing situations of armed conflict, but States Parties are required to “ensure protection and care of children who are affected by an armed conflict.” *Id.* art. 38(4).

26. *See* U.N. Convention Rts. Child, Comm. Rts. Children, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1), 62nd Sess., U.N. Doc. CRC/C/GC/14 (May 29, 2013).

evacuated children previously targeted for adoption or foster care in Russia were determined to be “orphans” or to have “[un]clear guardianship” in the occupied territory.²⁷ Assuming these assessments of guardianship were properly conducted—though there is evidence to suggest that they were not—the welfare of these children fell into the hands of Russia, the occupying administrative state.²⁸ It appears unconscionable to leave children unsupported when, across the border in Russia, there are state child welfare agencies that could provide them with urgent care and psychosocial support. In cases where children lack guardians or have abusive or neglectful parents, evacuation and adoption by a new, perhaps even loving, family in a lower-risk environment might seem like a necessary measure that is certainly in the best interests of the child.

However, these idealized justifications, which do not apply to most child victims in this case, fail to vindicate the Russian Federation for its actions, which also include basic violations of IHL, such as the targeting of schools²⁹ and hospitals³⁰ and the obstruction of humanitarian corridors.³¹ These actions have affected the lives of children in catastrophic ways. The Russian Federation has violated a range of international instruments prohibiting child abduction and military recruitment of children,³² including the CRC itself, which explicitly obligates parties to prevent the abduction of children in any form.³³ On a local level, even if parents consented to send their children to Russia, reports indicate that even when consent was provided, it was often accompanied by duress, whether implicit or explicit.³⁴

27. KHOSHNOOD ET AL., *supra* note 13, at 4.

28. Prior to the war, Ukraine informed the United Nations that the majority of children in Ukrainian orphanages “are not orphans, have no serious illness or disease and are in an institution because their families are in difficult circumstances.” *Id.* at 10.

29. *Ukraine: Attacks on Schools Endangering Children’s Lives and Futures*, *supra* note 11; see also *The Six Grave Violations*, *supra* note 18, at 18. Deliberately or indiscriminately targeting schools or hospitals in the absence of military necessity is prohibited under CIL. In addition, the CRC recognizes the importance of children’s rights to education and health. CRC, *supra* note 22, art. 28.

30. Mstyslav Chernov, *Pregnant Woman, Baby Die After Russian Bombing in Mariupol*, AP NEWS (Mar. 15, 2022), <https://apnews.com/article/russia-ukraine-war-maternity-hospital-pregnant-woman-dead-c0f2f859296f9f02be24fc9edfca1085>.

31. Pavel Polityuk & Natalia Zinets, *Ukraine Says Russian Forces Kill Seven Civilians in Evacuation Convoy*, REUTERS (Mar. 13, 2022), <https://www.reuters.com/world/europe/fighting-rages-outside-kyiv-ukraine-says-it-hopes-humanitarian-corridors-can-2022-03-12/>.

32. *The Six Grave Violations*, *supra* note 18, at 11, 21.

33. CRC, *supra* note 22, art. 35.

34. KHOSHNOOD ET AL., *supra* note 13, at 13 (“Russia’s forces, occupation authorities, and teachers have all been mobilized to recruit children for camps. For some parents, these

What further drives home the nefarious character of these abductions is the policy of “re-education” programs that predominate in Russian state camps. Even as far as away as the eastern reaches of Siberia, children from occupied Ukrainian territory are provided “education” intended to indoctrinate them with pro-Russian state views.³⁵ The cumulative harm of the Russian Federation’s actions toward Ukrainian children represents not only a gross violation of their best interests and human rights but also a flagrant violation of Ukraine’s territorial, community, and generational integrity. Reparations for child victims of these harms must prioritize their “best interests” and must not elevate the rights of the state above the rights of the child by returning them to a warzone. Instead, a robust “best interests” evaluation should inform every aspect of reparations mechanisms, no matter the context, to provide children with individualized remedies that account for the harms they have suffered.

B. *Child-Sensitive Approaches to Reparations*

An outgrowth from the “best interests of the child,” child-sensitive approaches to reparations also aim to give affected children an active voice in exercising their right to legal remedies. The U.N. Committee on the Rights of the Child identifies a “child-sensitive” approach as one that balances children’s uniquely limited capacity to participate in the legal process with their equal right to self-advocacy by providing child-friendly information, advice, and procedures.³⁶

In the last few decades, reparations, regardless of the age of the recipient, have come to be seen as an especially hopeful, though under-explored, transitional justice tool to establish rights to restitution of lost

recruitment efforts may be implicitly threatening. Many parents also centered their decision to send their children to camps around conditions created by Russia’s invasion: parents reported that they sent their children to camp to remove them from the danger of fighting, to stay somewhere with intact sanitation, or to get nutritious food of the sort unavailable where they live. These reasons, which are the direct results of Russia’s invasion, represent an indirect form of coercion that call into question the validity of any consent.”).

35. *See id.* at 14 (“The widespread re-education of Ukraine’s children has occurred in 32 (78%) of camps ranging from Russia-occupied Crimea to Magadan in the Russian Federation’s Far East. The systematic pro-Russia education of Ukraine’s children takes many forms, including school curriculum, field trips to cultural or patriotic sites throughout the country, lectures from Russia’s veterans and historians, and military activities.”).

36. These can include “the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and [effective] access to independent complaints procedures and to the courts with necessary legal and other assistance.” U.N. Convention Rts. Child, Comm. Rts. Child, General Comment No. 5 (2003), General Measure of Implementation of the Convention on the Rights of the Child, ¶ 24, UN Doc. CRC/GC/2003/5 (Nov. 27, 2003).

property or conditions, compensation for harms suffered, and other types of reparative measures to supplement prosecutions and truth-seeking mechanisms.³⁷ In that time, child-sensitive approaches to reparations have been given some attention, but transitional justice mechanisms have not, by and large, systematically integrated children and youth.³⁸ This is especially the case in transitional justice responses to armed conflict, even though children can be some of the most impacted. Their already vulnerable status, in terms of their level of cognitive development compared to adults, is compounded by their susceptibility to loss of schooling and dependency on caregiver income sources, both of which may be severely interrupted during times of conflict.³⁹ Because of these strong areas of disruption,⁴⁰ reparations in the wake of armed conflict can leave significant impacts on children and have the unique power to facilitate multi-generational rehabilitation, reconstruction, and reconciliation processes.

Though there are substantial benefits to integrating children into reparations programs, there are also challenges. For example, efforts to compensate children, families, and communities harmed by such actions may cause tensions if there are political or ideological differences within communities. These could be exacerbated by offering more compensation to some child victims over others, partly based on how their political association harmed them, as in the case of child soldiers. Because children are an impressionable group, parents or relatives can also take reparative awards from children and end up leaving a child unrepaired—even harmed by the exploitative actions of relatives.

Moreover, even absent these challenges, reparations for mass victimizations may seem grossly insufficient given the harm experienced. They are necessarily only symbolic and must be understood as such. As Clinical Psychologist Yael Danieli puts it,

37. See, e.g., CÉCILE APTEL & VIRGINIE LADISCH, INT'L CTR. FOR TRANSITIONAL JUST., *THROUGH A NEW LENS: A CHILD-SENSITIVE APPROACH TO TRANSITIONAL JUSTICE* 3 (2011), <https://www.ictj.org/sites/default/files/ICTJ-Children-Through-New-Lens-Aptel-Ladisch-2011-English.pdf>.

38. *Id.*

39. FRANCESCA CAPONE, *REPARATIONS FOR CHILD VICTIMS OF ARMED CONFLICT: STATE OF THE FIELD AND CURRENT CHALLENGES* 42 (2017) (noting that in addition to all the victimizations that adults suffer, “children also suffer from offen[s]es that are particular to their status[.]” due to “[their] condition of dependency, which is a function, at least in part, of social and psychological immaturity.”) (emphasis omitted).

40. There is also a concept discussed in the literature on child victims of war called “polyvictimiz[ation].” This concept refers to that fact that child war survivors have to uniquely cope with repeated traumatic life events and exposure to the risks of war like shelling, combat, abuse, torture, the deaths of parents and friends, among others, in addition to separation from family and insufficient adult care. *Id.* at 43.

How does one compensate for three and a half years in concentration camps? For the loss of a child? It is impossible. How do you pay for a dead person? For a Korean woman sexually abused by the Japanese in WWII? It's not the money but what the money signifies—vindication. It signifies the governments' own admission of guilt, and an apology. The actual value, especially in cases of loss of life, is, of course, merely symbolic . . .⁴¹

For children, their circumstances are even more delicate, and the stakes are high. How can a state compensate any child for an irreplaceable period of human development and an era of innocence unlike any other in life?

Still, reparations are a necessary remedy to help restore victims' sense of continuity and belonging after the devastation of mass harm, mass displacement, and mass plunder of property and people.⁴² Though reparations programs have inconsistently acknowledged violations that uniquely affect children, they can do much more. Child victims are at a much higher risk of sustaining life-altering emotional and psychological injury during armed conflict.⁴³ But reparations can also disrupt cycles of trauma and violence and offer hope for transformation in societies experiencing protracted conflict.

C. *Transformative Reparations*

Although the traditional aim of reparations is to restore a victim to his or her state before the harm occurred, transitional justice advocates have begun to go beyond this expectation and consider the transformative potential of reparations on a systemic level.⁴⁴ The notion of transformative reparations targets not just the consequences of violations but also aims at prevention, especially in societies where social inequalities

41. Yael Danieli, *Massive Trauma and the Healing Role of Reparative Justice*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 41, 59 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009).

42. See *id.* at 56.

43. These injuries can include and be compounded by experiences of high child mortality, high incidence of diseases, low access to health and education services, susceptibility to forced military recruitment, susceptibility to statelessness, neglect, and economic and sexual exploitation, likely due to lack of care and protection. See U.N. Secretary-General, *Impact of Armed Conflict on Children: Note by the Secretary-General*, U.N. Doc. A/51/306 (Aug. 26, 1996), ¶¶ 69, 79-84.

44. For the discussion of the *Chorzow Factory* case first articulating the goal of reparations, see *infra* Part III; see Rodrigo Uprimny Yepes, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, 27 NETH. Q. HUM. RTS. 625, 637-38 (2009).

play a role in acute victimization events.⁴⁵ It is especially difficult for children to return to a pre-reparation state through compensation alone. However, children are also uniquely adaptable due to their age and psychological characteristics, so a transformative approach may be the best way to overcome the limits of more traditional reparations. When reparations begin to resemble social services, however, a distinction needs to be made between the purposes of each so that reparations do not lose their recognitional quality—that is, their explicit acknowledgment that a violation has occurred and that victims are entitled to remedies. This differs from typical social services or development projects, which focus on the future and may only ambiguously aim to alleviate structural injustices in the absence of recognition of a violation or a violator.

When states have successfully established reparations mechanisms, they usually do so in line with traditional reparations paradigms. Under these existing mechanisms, victims are typically able to restore some lost property and receive compensation through lump sums or pension programs. Some states have targeted more transformative ends by mobilizing public apologies with social programs that expand marginalized victims' access to services like healthcare, education, and employment. For example, Colombia's Victims' Law uses the notion of *comprehensive reparations*, which combines reparations with humanitarian assistance and social policies aimed at expanding access to social and economic benefits.⁴⁶ This domestic approach contrasts markedly with the U.N. Compensation Commission (UNCC), which harnessed international political will to compensate over 1.5 million claimants for Iraq's illegal invasion of Kuwait in 1990 by distributing lump sums derived from a levy of Iraq's oil exports.⁴⁷ Even though this approach was not explicitly "transformative," it resembles large cash transfers that occur routinely in the development context, if not for the implicit recognition that the invasion was wrongful and caused human harm.

45. See Yepes, *supra* note 44.

46. CRISTIÁN CORREA, INT'L CTR. FOR TRANSITIONAL JUST., FROM PRINCIPLES TO PRACTICE: CHALLENGES OF IMPLEMENTING REPARATIONS FOR MASSIVE VIOLATIONS IN COLOMBIA 7 (2015), https://www.ictj.org/sites/default/files/ICTJ_Report_ColombiaReparationsChallenges_2015.pdf.

47. S.C. Res. 687, ¶¶ 16-19 (Apr. 3, 1991); Sean D. Murphy, *The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201, 236-39 (1994); Rep. of the S.C., Iraq: Briefing and Vote on Draft Resolution on the UN Compensation Commission (UNCC) (Feb. 21, 2022), <https://www.securitycouncilreport.org/whatsinblue/2022/02/iraq-briefing-and-vote-on-draft-resolution-on-the-un-compensation-commission-uncc.php> (noting that the UNCC ultimately paid a total of approximately \$52.4 billion USD to more than 1.5 million individuals).

There is a fine line between seeking reparation with social goals in mind and confusing this process with development, which lacks the intent to repair as recompense for a violation. As scholars Anne Saris and Katherine Lofts point out,

Merging development and reparation risks negating the conciliatory effects of reparation by failing to acknowledge violations as such. It is therefore crucial to differentiate between kinds of harm—for example, to distinguish between being poor, and being poor *and* violated or raped—if reparation is to fully serve its transitional purpose.⁴⁸

Any reparations model that incorporates remedial aims must diligently center those aims around the recognition of harms, including socially constructed harms that predate the atrocities giving rise to the reparation.

In certain situations, restoring a victim to their position before the harm occurred would effectively return that victim to a state of marginalization and inequality, which may have given rise to the harm in the first place.⁴⁹ In this case, reparations must do more than just repair. This is especially relevant to forcibly displaced children, many of whom may be susceptible to displacement or abduction because of their already vulnerable status as wards in the Ukrainian child welfare system or due to the socioeconomic status of their parents. Reports indicate that many Ukrainian parents who gave consent to evacuate their children from conflict areas in the current war between Russia and Ukraine were low-income and allegedly gave consent to give an otherwise unaffordable vacation to their children and keep them safer in wartime.⁵⁰

Likewise, children in other contexts who experience multidimensional poverty, racial discrimination, or disability—markers of social marginalization—are usually unable to leave high-risk areas and are, in turn, more susceptible to victimization because of their original state of inequality. For example, prior to the current war between Israel and Palestine, almost 75% of children living in Palestine suffered from some form of existing deprivation, partly exacerbated by restrictions in

48. Anne Saris & Katherine Lofts, *Reparation Programmes: A Gendered Perspective*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 79, 90 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009).

49. *Id.* at 89-90.

50. KHOSHNOOD ET AL., *supra* note 13, at 11.

their caregivers' work mobility.⁵¹ This context has undoubtedly made them more vulnerable to war-related abuses and humanitarian catch-22s.

As another example, in El Salvador, although violence against children manifests more often as recurring cycles of gang warfare than interstate war, children living in poverty are disproportionately recruited to gangs, fueling displacement.⁵² Yazidi children, too, were at much higher risk of forced abduction, conscription as child soldiers, and conflict-related sexual violence—due to their status as children of an often discriminated ethnic minority group—when ISIS committed atrocities against them in 2014.⁵³ In each of these cases, transformative reparations have some power to chisel away at underlying inequalities if formulated to target system-level marginalization and if the state and international community uphold child victims' legal rights.

III. THE CASE FOR REPARATIONS IN INTERNATIONAL LAW

Rights to reparation have been codified in various instruments of international law over the last century, and they are now crystallized as CIL. The standard for reparations was first rooted in restitution as a remedy for illegal damage to or seizure of property. In the *Factory at Chorzow* case, the Permanent Court of International Justice recognized an obligation to “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act ha[d] not been committed”—in other words, it laid down a right to restitution.⁵⁴ The United States developed its own standard shortly thereafter that built on and added to this initial formulation. The U.S. standard entitled an owner of seized property to “prompt, adequate[,] and effective” compensation.⁵⁵ This formula advocated for

51. UNICEF, SITUATION ANALYSIS OF CHILDREN'S RIGHTS AND WELLBEING IN THE STATE OF PALESTINE 7 (2023), <https://www.unicef.org/sop/media/2471/file/Situation%20Analysis%20of%20Children's%20Rights%20and%20Wellbeing%20in%20the%20UNICEF%20State%20of%20Palestine.pdf>.

52. See INT'L CRISIS GRP., LIFE UNDER GANG RULE IN EL SALVADOR 10 (2018), <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/life-under-gang-rule-el-salvador>.

53. SAVE THE CHILDREN, A CHILDHOOD OF FEAR: THE IMPACT OF GENOCIDE ON YAZIDI CHILDREN IN SINJAR 1-2 (2022), <https://www.savethechildren.org/content/dam/usa/reports/a-childhood-of-fear.pdf>.

54. *Factory at Chorzów*, Judgment, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13) (defining the proper compensation in lawful expropriation cases as “the value of the undertaking at the moment of the dispossession, plus interest to the day of payment.”).

55. GEORGE H. ALDRICH, THE JURISPRUDENCE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL: AN ANALYSIS OF THE DECISIONS OF THE TRIBUNAL 220 (1996) (discussing the meaning of “prompt”

full compensation of the lost property at or with a reasonable relationship to the market value just before a seizure (“adequate”), in usable currency (“effective”), without delay (“prompt”), with interest in cases of unlawful taking.⁵⁶ This prominent international standard added to the *Chorzow* obligation and ultimately became the primary means of seeking reparations of any kind on the international stage, defining compensation for violations of international human rights law and IHL up through the present day.

A. *Reparations for Victims of Human Rights Violations*

Rooted in the *Chorzow* principles for private property seizures, reparations for human rights violations are defined under various international and regional instruments. The International Covenant on Civil and Political Rights (ICCPR), for example, guarantees “an enforceable right to compensation” for victims of unlawful arrest or detention.⁵⁷ Similarly, under the U.N.’s *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* (*Basic Principles on Reparations*), victims’ rights to reparation are measured under the “[a]dequate, effective and prompt” standard.⁵⁸ The *Basic Principles on Reparations* enumerate five areas of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁵⁹ The latter three areas were added to acknowledge the

compensation); see also DAVID COLLINS, AN INTRODUCTION TO INTERNATIONAL INVESTMENT LAW 190 (1st ed. 2017) (discussing the meanings of “adequate” and “effective” compensation).

56. See COLLINS, *supra* note 55, at 190; see also U.N. CONF. ON TRADE & DEV. (UNCTAD), EXPROPRIATION: UNCTAD SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS II 40 (2012), https://unctad.org/system/files/official-document/unctaddiaecia2011d7_en.pdf.

57. International Covenant on Civil and Political Rights (ICCPR) art. 9(5), Dec. 16, 1966, 999 U.N.T.S. 171.

58. G.A. Res. 60/147, 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, ¶ 11 (Dec. 16, 2005) [hereinafter *Basic Principles on Reparations*].

59. *Id.* ¶¶ 18-23. Restitution can include, as appropriate: “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.” *Id.* ¶ 19. Compensation refers to monetary reimbursement, whether in a lump-sum or periodic payments over time. See CAPONE, *supra* note 39, at 114-15. Rehabilitation can include medical and psychological care, legal and social services, education, housing, restoration of passports, etc. *Id.* at 115. Satisfaction can include “measures aimed at the cessation of continuing violations[, v]erification of the facts and full and public disclosure of the truth[.]” *Basic Principles on Reparations*, *supra* note 58, ¶ 22(a)-(b). Guarantees of non-repetition can encompass a range of measures dealing with enhanced protection of human rights, judicial reform, human rights training, and legal reform. CAPONE, *supra* note 39, at 118-19.

limitations of restitution in cases of severe loss of human life and irreplaceable personal property.⁶⁰ The “prompt, adequate, and effective” standard for reparations has also entrenched itself in more recent instruments like the International Convention for the Protection of All Persons Against Enforced Disappearances.⁶¹ In addition, regional courts have consistently recognized a right to reparation for victims of serious human rights violations.⁶²

Rights to reparation are further supported under CIL and developing international standards through the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).⁶³ ARSIWA articulates established CIL in addition to developing legal standards governing state actions or omissions that “constitute[] a breach of an international obligation[.]”⁶⁴ Article 31 of ARSIWA recognizes the responsibility of states to make “full reparation” for injuries, which include “any damage” caused by the responsible state.⁶⁵ Forms of reparation under ARSIWA include restitution,⁶⁶ compensation,⁶⁷

60. See CAPONE, *supra* note 39, at 117 (noting that satisfaction, for example, is required “insofar as it cannot be made good by restitution or compensation”).

61. International Convention for the Protection of All Persons from Enforced Disappearance (Convention on Enforced Disappearance) art. 24(4), Dec. 20, 2006, 2716 U.N.T.S. 3.

62. See, e.g., Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) art. 13, Nov. 4, 1950, 213 U.N.T.S. 221; see also *Bubbins v. United Kingdom*, App. No. 50196/99, ¶ 171 (Mar. 17, 2005) (“[I]n the case of a breach of Articles 2 and 3 of the [European Convention on Human Rights], which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress.”); see also *Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213 ¶ 139 (May 26, 2010) (recognizing an obligation to make “integral reparation[s] for any rights violated” when assessing the effectiveness of remedies filed by any domestic administrative jurisdiction); see also General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), African Commission on Human and Peoples’ Rights [Afr. Comm’n H.P.R.], ¶ 9 (Mar. 4, 2017) (“State Parties are required to ensure that victims of torture and other ill-treatment are able in law and in practice to claim redress by providing victims with access to effective remedies.”), https://policehumanrightsresources.org/content/uploads/2021/07/achpr_general_comment_no._4_english.pdf?x49094.

63. See ARSIWA, *supra* note 20, art. 1.

64. *Id.* art. 2.

65. *Id.* art. 31.

66. *Id.* art. 34. With respect to restitution, ARSIWA limits its extent, upholding an obligation as long as restitution is not impossible, and does not involve a burden “out of all proportion” to the benefit conferred by restitution as opposed to compensation. *Id.* art. 35.

67. *Id.* art. 36. Compensation under ARSIWA includes any “financially assessable damage” and includes lost profits. *Id.*

satisfaction,⁶⁸ and guarantees of non-repetition.⁶⁹ Since the drafting of ARSIWA, these rights have solidified into CIL through cases before the International Court of Justice, which has formed an “equitable” approach to compensation that allows it to weigh a variety of factors in assessing compensatory awards.⁷⁰ However, ARSIWA excludes moral harms (i.e., non-pecuniary losses like mental distress or non-tangible injuries), unlike the U.N.’s *Basic Principles on Reparations*.⁷¹

There is also a range of additional instruments that reflect the crystallization of reparations into international law and a widely recognized right to a remedy among states. Article 75 of the Rome Statute requires judges to establish principles on reparations.⁷² Other widely accepted international instruments that establish the right to an effective remedy include: the Universal Declaration of Human Rights (Article 8), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), and the CRC (Article 39).⁷³ Regional human rights treaties also recognize this right.⁷⁴

Thus, the existing international law framework lays out a strong foundation for a general right to reparation. However, there is no binding

68. *Id.* art. 37. Satisfaction under ARSIWA may consist of “an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.” *Id.*

69. *Id.* art. 48(2).

70. Yang Liu, *Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach*, J. INT’L DISP. SETTLEMENT 1, 1 (2023); see e.g., Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), Compensation, Judgment, 2012 I.C.J. 324 (June 19); Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Compensation, Judgment, 2018 I.C.J. 15 (Feb. 2); Armed Activities on the Territory of Congo (Dem. Rep. Congo v. Uganda), Reparations, Judgment, 2022 I.C.J. 13 (Feb. 9).

71. Pursuant to ¶ 20 of the Basic Principles on Reparations, “[c]ompensation [shall] be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: . . . (d) [m]oral damage[.]” Basic Principles on Reparations, *supra* note 58, ¶ 20 (internal emphasis omitted). In contrast, Art. 36(2) of ARSIWA only requires compensation for “any financially assessable damage including loss of profits insofar as it is established.” ARSIWA, *supra* note 20, art. 36(2).

72. Elizabeth Odio-Benito, Foreword, REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 2 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009).

73. Theo van Boven, *Victims’ Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 19, 22 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009).

74. *Id.*

instrument that expressly states the right to reparation for child victims. Even the CRC does not explicitly establish such a right. The CRC does, however, include a provision requiring States Parties to take appropriate measures to advocate for children's "physical and psychological recovery and social reintegration" in an environment that promotes the health and dignity of the child.⁷⁵ This obligation to reintegrate a child and facilitate or repair social bonds after a violation has taken place seems to suggest an opening for reparations of an equitable and expansive character to address systemic social injustices. IHL provides further support for a general right to reparations, though it is much more limited compared to international human rights law.⁷⁶

B. *Reparations for Victims of Armed Conflict*

ARSIWA provides a strong legal basis for state obligations to provide reparations for human rights violations; however, it is limited when it comes to the rights of victims of war. Like many international law instruments, ARSIWA creates an "obligation" but does not enforce state responsibility or codify individual rights to reparation.⁷⁷ Likewise, only two provisions in the entire collection of IHL instruments deal with reparations, and none of them refer to children,⁷⁸ leaving significant gaps in establishing a right to remedy for child victims of armed conflict. However, the fact that states, regional courts, and international instruments almost universally acknowledge the obligation to provide reparations underscores the validity of an individual right to reparation under CIL.⁷⁹ Furthermore, though sources of IHL that govern the rights of victims of armed conflict do not unequivocally establish an individual right to reparation,⁸⁰ the development of human rights law and the ICC's international criminal law precedents acknowledging such a right

75. CRC, *supra* note 22, art. 39.

76. See CAPONE, *supra* note 39, at 108.

77. See, e.g., ARSIWA, *supra* note 20, art. 35 ("A State responsible for an internationally wrongful act is under an *obligation* to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed." (emphasis added)). ARSIWA, as a collection of CIL norms, only governs the obligations of states to other states. There is no mention of individuals and there is no mechanism created by the text to enforce compensation.

78. See CAPONE, *supra* note 39, at 108.

79. Cristián Correa et al., *Operationalising the Right of Victims of War to Reparation*, in REPARATION FOR VICTIMS OF ARMED CONFLICT 92, 102 (Cambridge Univ. Press 2020).

80. See 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 3, Oct. 18, 1907, 36 Stat. 2277 [hereinafter 1907 Hague Convention]; see also Correa et al., *supra* note 79, at 103-104 (citing Jean Pictet, I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Commentary (Geneva: ICRC, 1952), 373).

has eroded that paradigm.⁸¹ As a result, international courts have recognized a right to reparation for victims of armed conflict based on a state's responsibility for breaching IHL.⁸²

C. *Individual vs. Collective Reparations*

States generally recognize a legal right to reparations for individual victims and states under treaty law, but collective reparations are not yet as solidly enshrined in international law.⁸³ In practice, individual-level restitution and compensation are the most common forms of reparation, but they are limited in scope by their individual nature.⁸⁴ These private remedies are usually insufficient to address the persistent social injustices that may have led to mass victimizations in the first place.⁸⁵ That said, individual entitlements can be of critical importance for an individual victim's well-being and financial rehabilitation after conflict, especially if the victim was at a structural economic disadvantage prior to the conflict. However, compensation is, by its monetary nature, inevitably disproportionate to the harm where there is loss of life, which can reduce the reparation to mere "blood money" in the eyes of victims.⁸⁶ In response to this, collective reparation has become more common as a distribution mechanism for community-level harms affecting groups of victims, like Indigenous communities.⁸⁷ This approach has proven effective at addressing the root causes of victimization in some contexts where collective reparations have a social service element. It may be useful in providing reparations to children when harm is experienced collectively, and community reintegration is at issue.

81. See Correa et al., *supra* note 79, at 107-110.

82. *E.g.*, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, ¶¶ 109, 152-53 (July 9) (affirming that a state's violations of international humanitarian law give rise to an obligation of the state to provide reparation to victims).

83. *E.g.*, 1907 Hague Convention, *supra* note 80, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 91, June 8, 1977, 1125 U.N.T.S. 3; see Friedrich Rosenfeld, *Collective Reparation for Victims of Armed Conflict*, 92 INT'L REV. RED CROSS 731, 738 (2010).

84. Rosenfeld, *supra* note 83, at 732-33.

85. See Saris & Lofts, *supra* note 48, at 90 ("[R]estoring a victim to her position before the conflict began would be tantamount to returning her to a state of marginali[z]ation and inequality that to some extent facilitated the harms experienced in the first place.").

86. See *id.* at 89.

87. See generally *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001); see also *Moiwana v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 145 (June 15, 2005).

Collective reparations are indivisible, and as such, they must be shared between victims. They are typically reparative measures that go beyond traditional restitution and compensation (e.g., constructing schools or hospitals, establishing memorials, or renaming streets).⁸⁸ In terms of their legal basis, the U.N.'s *Basic Principles on Reparations* cite collective harm as a basis for reparations.⁸⁹ In addition, the ICC's Rules of Procedures and Evidence also refer to collective reparation, though they do not define a right.⁹⁰

There is a corpus of case law dealing with collective reparations as well, especially in regional and international courts. For example, in the *Lubanga Dyilo* case, the ICC found that collective reparations were appropriate to address the harms of children who had been conscripted, enlisted, and used in hostilities.⁹¹ This was deemed appropriate in light of the large, albeit uncertain, number of victims clearly involved, despite few victims formally applying for reparations.⁹² Similarly, the Inter-American Court of Human Rights (IACtHR) granted collective reparations to the Mayagna and Moiwana Indigenous communities in light of Indigenous notions of the community as the holder of a collective right to property.⁹³

However, distributing reparations in a collective manner is not always considered appropriate. In the *El Aleman* case in the Superior Court for the District of Bogota, the Court deemed collective reparations inappropriate for former child soldiers recruited into paramilitary groups because the group of children did not have enough of a unique and common history or shared values and traditions to constitute a "collectivity."⁹⁴ The Court considered that the children did not share much

88. Rosenfeld, *supra* note 83, at 733.

89. Basic Principles on Reparations, *supra* note 58, ¶ 8 ("persons who individually or collectively suffered harm, including physical or mental injury . . . through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.").

90. Rules of Procedure and Evidence, Assembly of States Parties, ICC-ASP/1/3 (Sept. 3-10, 2002) (Under Rule 97, the Court may award reparations on an individual or collective basis, and Rule 98 acknowledges the possibility of a collective award).

91. Prosecutor v. Dyilo, ICC-01/04-01/06-2904, Decision Establishing the Principles and Procedures to be Applied to Reparations, ¶¶ 46, 219-23 (Aug. 7, 2012).

92. *Id.* at ¶ 219.

93. Rosenfeld, *supra* note 83, at 739-40 (first discussing Mayagna (Sumo) Awas Tingni Community v. Nicaragua, *supra* note 87, ¶ 167, then discussing Moiwana v. Suriname, *supra* note 87, ¶ 131).

94. Tribunal Superior Del Distrito Judicial De Bogotá, [T. Sup.] [Superior Court of the Judicial District of Bogotá DC], SALA DE JUSTICIA Y PAZ, 16 Dec. 2011, Magistrada Ponente: ULDI TERESA JIMÉNEZ LÓPEZ, Proceso 2007 82701, ¶¶ 880-81, Rama Judicial (Colom.).

apart from age and would likely prefer individual reparations.⁹⁵ Thus, especially for child victims, collective reparations can have advantages and disadvantages that take into consideration the unique event that led to the victimization. They can also weigh the specific community ties that make collective awards preferable in some cases. When coming forward is difficult or stigmatized, these mechanisms can also consider the practicalities of granting reparations to as many affected children as possible. Reparations programs that have factored in child victims of armed conflict and forced displacement have weighed these considerations in a variety of ways.

IV. REPARATIONS MECHANISMS FOR CHILDREN IN THE CONTEXT OF DISPLACEMENT AND WAR

Some of the most well-developed reparations programs to date have addressed either mass displacement or specific groups of victims in conflict settings. These provide useful precedents for the case of child victims of forced transfer, who are intersectional victims of both displacement and war. When designing reparations mechanisms with child victims of displacement and war in mind, it is useful to review the remedies that states have already made available to such victims.

In the context of mass displacement, a variety of domestic reparations mechanisms emphasize upholding refugees' and internally displaced persons' rights to return to their homes and contend with legal complexities that arise when land and property are disputed.⁹⁶ In most cases, reparations mechanisms resort to compensation schemes in the immediate term, as land restitution can involve lengthy processes that do not address the immediate needs of victims.⁹⁷ Nonetheless, states have upheld victims' rights to return when it is possible through legislation or short-term national programs.⁹⁸

In the context of child victims of war, however, restitution and compensation can be tricky avenues for repair. In these contexts, rehabilitation, satisfaction, and guarantees of non-recurrence have been more

95. *Id.* ¶ 881.

96. *See, e.g.*, BARBARA MCCALLIN, INT'L CTR. FOR TRANSITIONAL JUST., *RESTITUTION AND LEGAL PLURALISM IN CONTEXTS OF DISPLACEMENT* 4-5 (2012), https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Restitution-Legal-Pluralism-CaseStudy-2012-English_0.pdf.

97. *See id.* at 4-5, 21.

98. *See e.g.*, Nicole Summers, *Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 227-29 (2012); PETER VAN DER AUWERAERT, INT'L CTR. FOR TRANSITIONAL JUST., *DEALING WITH THE 2006 INTERNAL DISPLACEMENT CRISIS IN TIMOR-LESTE* 7 (2012), <https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Timor-Leste-CaseStudy-2012-English.pdf>.

successful.⁹⁹ Combining the reparations approaches to displacement and war through a child-sensitive lens, the remedies available to child victims of forced transfer are considerable in number, offering a variety of options for similarly situated child victims in different contexts.

A. Reparations for Victims of Displacement: A Focus on Land Restitution

When it comes to distributing reparations to displaced children, the level of compensation or type of reparation that children will be eligible for depends on the gravity of the harm. Under several models, forced displacement on its own is a sufficient ground for reparation.¹⁰⁰ However, it may be regarded as a lesser form of harm compared to killings, enforced disappearances, or other severe harms like torture or rape.¹⁰¹ The IACtHR has distinguished between the treatment of victims of human rights violations and victims of forced displacement. For example, in a case involving the mass displacement of whole communities in Colombia due to armed conflict, the IACtHR recognized that the reparations provided under Colombia's Victims' Law were sufficient for those who had suffered displacement.¹⁰² However, the Court ordered further reparations for the relatives of a murder victim,¹⁰³ signifying differential treatment between displacement, a presumably lower gravity violation, and murder, a presumably higher gravity violation.

Although displacement may be treated as a lower-gravity violation, the right to housing, land, and property restitution is consolidated under the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (also called the Pinheiro Principles) and the *Basic Principles on Reparations*, in addition to numerous peace agreements.¹⁰⁴ These principles and agreements express established international law

99. See e.g., APTEL & LADISCH, *supra* note 37, at 29.

100. Inigo Salvador-Crespo, *Making Good for Forced Exodus: Compensation for Departure from Iraq or Kuwait—Claims of Individuals: “A” Claims*, in WAR REPARATIONS AND THE UN COMPENSATION COMMISSION: DESIGNING COMPENSATION AFTER CONFLICT 221, 222 (Timothy J. Feghery et al. eds., Oxford University Press 2015).

101. CORREA, *supra* note 46, at 9.

102. Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270 ¶¶ 472-76 (Nov. 20, 2013).

103. See *id.* ¶ 476.

104. See, e.g., INTERNAL DISPLACEMENT MONITORING CENTRE, INTERNAL DISPLACEMENT: GLOBAL OVERVIEW OF TRENDS AND DEVELOPMENTS IN 2006, 80 (2007), <https://www.internal-displacement.org/sites/default/files/publications/documents/2007-global-overview2006-global-en.pdf> (noting that in 2006, “provisions for the resolution of property and land problems . . . currently exist in 17 countries affected by internal displacement[.]”); MCCALLIN, *supra* note 96, at 4-5.

on restitution rights while augmenting the existing normative framework around different possessory rights.¹⁰⁵ Restitution programs have also featured in post-conflict transitional justice processes in Bosnia and Herzegovina, Timor-Leste, Kosovo, Iraq, and Turkey, among other states.¹⁰⁶ In contrast with the *Basic Principles on Reparations*, the Pinheiro Principles express a preference for restitution over compensation and widen the scope of restitution to other possessory rights like tenancy rights, informal land rights, and the rights of other non-owners.¹⁰⁷ This widened scope also greatly expands entitlement to reparations in contexts where few title deeds exist and probably for non-traditional beneficiaries like children.¹⁰⁸ The Pinheiro Principles also affirm the right to restitution regardless of whether displaced persons return to their homes or land.¹⁰⁹

Consistent with the Pinheiro Principles, many reparations programs arising from mass displacement events aim to provide land restitution to victims. In Bosnia, for example, warring parties decided to uphold the right of the displaced to return to their communities and have their properties restituted to them under the Dayton Peace Agreement.¹¹⁰ In Colombia, too, protecting property for future restitution was a key feature of reparations, though it had previously been difficult due to a lack of title deeds and delays in asset registration under Colombia's Law on Justice and Peace, passed in 2005.¹¹¹ When Colombia later passed the Victims' Law in 2011, the country was better able to address mass displacement by formalizing land tenure and solidifying property rights for victims, as well as establishing special courts to resolve land disputes when fierce competition over land led to violence in rural areas.¹¹²

Other states have targeted resettlement through reconstruction initiatives and cash-based programs. In 2007, a restitution-centered program with transformative features emerged in Timor-Leste as a part of

105. CTR. ON HOUS. RTS. & EVICTIONS, THE PINHEIRO PRINCIPLES 4, <https://2001-2009.state.gov/documents/organization/99774.pdf>.

106. MCCALLIN, *supra* note 96, at 5.

107. *Id.* at 6.

108. *See id.*

109. THE PINHEIRO PRINCIPLES, *supra* note 105, at 9; *see* MCCALLIN, *supra* note 96, at 10-11.

110. General Framework Agreement for Peace in Bosnia and Herzegovina art. 7, Dec. 14, 1995, 35 I.L.M. 75.

111. Julián Guerrero Orozco & Mariana Goetz, *Reparations for Victims in Colombia: Colombia's Law on Justice and Peace*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 435, 455-56 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009).

112. *See* Summers, *supra* note 98, at 228.

its National Recovery Strategy (NRS) aimed at addressing internal displacement after conflict erupted in 2006.¹¹³ The goal of the NRS was to build new homes in response to mass displacement from the conflict while remedying the pre-conflict structural housing shortage and the poor quality of housing in the area.¹¹⁴ Building homes would be accompanied by small cash grants to enable displaced persons to restart their lives.¹¹⁵ However, the government eventually abandoned its plans to build houses in favor of a completely cash-based system, citing the extensive time commitment and the expected humanitarian costs the program would incur.¹¹⁶ Despite these challenges, the cash-based program managed to resettle tens of thousands of people in just one year by setting up dialogue teams to simplify the return of internally displaced persons.¹¹⁷ This was done through community-level verifications that the displaced families were, in fact, returning to the houses or land they had occupied prior to the mass displacement event rather than verifying legal title in each case.¹¹⁸ The latter would take place in the future after relevant property legislation was adopted.¹¹⁹

In other contexts, reparations for displaced persons are more limited, but compensation is still offered. In Türkiye, for example, its 2004 Compensation Law targeted displaced Kurds to reimburse them after conflict, though it fell short of acknowledging the government's role in the displacement by restoring lost property to the displaced and eliminating physical obstacles (e.g., land mines, a village guard system, and the presence of armed Kurdish civilians) to promote the return of the displaced to their homes.¹²⁰ Iraq and Peru have also developed compensation programs for displaced populations under similar, though more comprehensive and recognitional, schemes.¹²¹

113. VAN DER AUWERAERT, *supra* note 98, at 7.

114. *Id.*

115. *Id.*

116. *Id.* at 7-8.

117. *Id.* at 9-10.

118. *Id.* at 11.

119. *Id.*

120. See generally DILEK KURBAN, INT'L CTR. FOR TRANSITIONAL JUST., REPARATIONS AND DISPLACEMENT IN TURKEY: LESSONS LEARNED FROM THE COMPENSATION LAW (2012), <https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Reparations-Turkey-CaseStudy-2012-English.pdf>.

121. For a discussion of the Iranian reparation program, see Peter Van der Auweraert, *Policy Challenges for Property Restitution in Transition – the Example of Iraq*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 459, 469 (Carla Ferstman et al. eds., Martinus Nijhoff Publishers 2009). For a discussion of the Peruvian reparation program, see RAFAEL BARRANTES SEGURA, INT'L CTR. FOR TRANSITIONAL

Land restitution and compensation offered to displaced persons may not seem practicable for children at first glance, as they usually lack the legal ability to own property. However, pursuant to the CRC, which obligates states to safeguard children's home lives and family environments,¹²² reparations programs aimed at restitution for forcibly displaced children should be linked to a restoration of their home life, if possible. In past programs, children have received pensions for harms experienced by their relatives,¹²³ so they are at least entitled to receive compensation. Children also likely have a right to land or other property restitution, despite their inability to own, under the Pinheiro Principles.¹²⁴ At a bare minimum, states are increasingly recognizing that compensation and restitution are owed to children to safeguard their rights to safe living environments. Beyond these, rights to reparation with educational and rehabilitative ends offer additional opportunities to repair for losses and further transform child victims' social position.

B. *Reparations for Child Victims of War: A Focus on Social Services and Education*

Though the right to reparation for child victims of war is not articulated in any binding international instruments,¹²⁵ there is a legal basis for transformative reparations for children that aim beyond financial compensation, especially through education. While these rights are recognized through non-binding instruments, guidelines, and some state practice and have value in their current state, they should be refined and strengthened on the path to greater formalization in international law. The *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, which has been adopted by the U.N. Economic and Social Council, offers some guidance on this point. According to the

JUST., REPARATIONS AND DISPLACEMENT IN PERU 9 (2012), <https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Reparations-Peru-CaseStudy-2012-English.pdf>.

122. See CRC, *supra* note 22, art. 16(1) ("No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence"); *Id.* art. 20(1) ("A child temporarily or permanently deprived of his or her family environment . . . shall be entitled to special protection"); *Id.* art. 27(1) ("States parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development").

123. See, e.g., *National Decree 1.228/87 Regulation of Law 23.466 on Pensions for Minors Whose Parents Have Been Disappeared*, in THE HANDBOOK OF REPARATIONS 704, 704–06 (Pablo de Greiff ed., 2006) [hereinafter *Law on Pensions for Minors*].

124. See McCALLIN, *supra* note 96, at 6.

125. The CRC only provides a general rule on the right to reintegration and social recovery of children. See CRC, *supra* note 22, art. 39.

guidelines, child victims have a right to reparation, which may include restitution and compensation, and where possible, reparations may address “costs of social and educational reintegration, medical treatment, mental health care and legal services[.]”¹²⁶ While these guidelines provide a helpful, though non-binding, framework for the rights of children to reparations in situations of regular crime, they may not take into consideration the full gamut of protections and repairs needed in the context of mass victimizations during armed conflicts. Modern warfare increasingly puts civilian life at risk by bringing battle “more immediately, more systematically, and more massively” into civilian spaces, bringing children ever closer to the effects of war.¹²⁷

For these reasons, child-sensitive approaches to war-related reparations are critical. Approaches should be holistic and employ the right mix of psychosocial, educational, vocational, and health services.¹²⁸ Reparations targeting children can span a number of traditional material benefits, including pension plans and lump-sum cash payments, in addition to symbolic benefits, like public apologies and memorials, but they should also encompass more child-specific reparations, such as scholarships, job training, and accelerated educational programs.¹²⁹ Ultimately, the more traditional pathways for reparations, like restitution and compensation, have proven to be quite problematic. Restoring a child’s situation to what it was prior to the violation may not be in the best interests of the child if they were in a precarious social position *ex ante*, like living in an unstable or abusive family setting or susceptible to child recruitment or sexual violence due to displacement.

Compensation is uniquely problematic for children, who lack financial literacy, may not have access to safe locations to keep their money, and may be susceptible to family pressures to distribute their compensation.¹³⁰ Further complexities arise when the decision to award compensation triggers resentment in local communities. For example, in a Liberian reparations program, ex-child-soldiers were entitled to a Transition Support Allowance, which some community members wrongly interpreted as an award for participating in hostilities.¹³¹ In other settings, like Colombia, where reparations programs have identified children as primary victims due to illegal recruitment in hostilities, consultations between child-

126. Economic and Social Council Res. 2005/20, ¶ 37 (July 22, 2005).

127. CAPONE, *supra* note 39, at 21.

128. APTEL & LADISCH, *supra* note 37, at 29.

129. *Id.*

130. *Id.* at 30.

131. CAPONE, *supra* note 39, at 115.

protection agencies and transitional justice bodies have been more successful in reflecting the desires of local communities.¹³² However, in reparations programs like those in Colombia and Nepal, where lump-sum cash payments were major features, there is cause for caution. Lump sums have a greater risk of being exploited for substance abuse or spending sprees that leave communities divided, as they did in Canadian Indigenous communities after the state compensated victims of Indian Residential Schools.¹³³ Though financial awards are not the ideal form of reparations, they are easier to administer and are likely the first forms of reparations victims will see. For that reason, they still have value for child victims, but they should be implemented cautiously and integrated into a multi-pronged, child-sensitive reparations mechanism that perhaps even directs compensation back into educational programs.

Other forms of reparations, like rehabilitation, satisfaction, and guarantees of non-repetition, have been relatively successful in their capacity to repair harms suffered by children. Rehabilitation, for example, can include medical and psychological care, legal and social services, education, housing, and restoration of passports or other documentation.¹³⁴ The latter reparations can be particularly helpful in combating statelessness among child victims. The former reparations have been realized in many ways. For example, Guatemala created a free mental health treatment program for victims as a form of reparations.¹³⁵ Similarly, the South African Truth and Reconciliation Commission advocated for local treatment centers and rehabilitation services, including specialized trauma counseling and family-based therapy, to affected communities.¹³⁶ These approaches can have a particularly strong effect on children dealing with family separation and trauma. Another form of reparation—satisfaction—can encompass verification of historical facts, public apologies, and public disclosure of

132. See APTEL & LADISCH, *supra* note 37, at 28.

133. *Id.* at 29-30 (“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 want[s] a share of the money: ‘When I got my compensation it really had a 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.’”).

134. TRANSITIONAL JUST. NETWORK & REDRESS, REHABILITATION AS A FORM OF REPARATION: OPPORTUNITIES AND CHALLENGES 9 (2010), <https://redress.org/wp-content/uploads/2018/01/Sep-10-Rehabilitation-as-a-Form-of-Reparation.pdf>.

135. CAPONE, *supra* note 39, at 116.

136. *Id.*

tributes to victims.¹³⁷ To implement satisfaction, the IACtHR has ordered at least one state to memorialize an educational center with the name of one young victim and to create an accompanying plaque with the names of the other victims.¹³⁸ Satisfaction may encounter challenges to children's right to privacy, but this concern has not been a primary one in reparations discussions.

Finally, guarantees of non-repetition can include unique efforts to educate all sectors of society; enforce training for law enforcement, military, and security officials; promote mechanisms for preventing and monitoring conflicts; and reform laws.¹³⁹ These can all have far-reaching implications for society at large, especially for children when it comes to designing education that aims at non-recurrence, where children are the primary recipients. Discrimination against women can be addressed through gender-sensitive law enforcement training and can support guarantees of non-recurrence for children, as the two populations are uniquely entwined in domestic, educational, and health-related settings. All these forms of reparations offer transformative benefits aimed at exploring avenues for the prevention of further conflict and the promotion of reconciliation processes on a multi-generational level. These are all central to genuinely child-sensitive reparations programs and will be useful for communities in Ukraine to consider as they prepare to support child victims of forced transfer in formerly occupied territories.

V. RIGHTS TO REPARATION FOR FORCIBLY DISPLACED CHILDREN IN UKRAINE

In summary, several rights to reparation exist for child victims—restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence. Child victims are entitled to, at a bare minimum, compensation, which nearly all programs involving displacement and children have employed. They are also entitled to property restitution—when applicable—and this should emphasize the right to restoration of home life, which can have ripple effects on parents, extended family, and community members. Children can also claim a right to context-specific measures of rehabilitation, satisfaction, and guarantees of non-recurrence within the realm of education, psychosocial support, and health that aim at transformative and reparative ends. These latter rights are still forming in international law but are receiving greater

137. *Id.* at 117.

138. *Id.*

139. *Id.* at 119.

state recognition. It will be crucial to implement a reparations program with a child-sensitive approach that is tailored to Ukraine's unique social, cultural, and economic context. The following proposed measures aim to operationalize these rights and principles while acknowledging the significant challenges Ukraine faces and will likely continue to face for some time.

A. Proposed Measures

In designing a reparations program for child victims of war, Ukrainian authorities and civil society groups must consider the impacts of armed conflict on children that date back to 2014, when hostilities began in Eastern Ukraine, in addition to longer-term systemic inequalities. The eastern regions of Ukraine from which children have been forcibly evacuated are largely industrial economies dependent on factory labor,¹⁴⁰ but these conditions are changing as enterprises leave war-affected areas, limiting the work available to those who remain and likely resulting in higher levels of poverty.¹⁴¹ In addition, these historically Russian-speaking regions, where Russian media have proliferated for years, are battlegrounds for disinformation campaigns,¹⁴² which can have major effects on truth-seeking efforts, especially as they play out in schools and educational curricula. Some areas have been occupied for almost a decade,¹⁴³ undoubtedly transforming children's educational landscapes, not only in terms of content but also in terms of certification procedures that create pathways for higher education. An entire generation of children has grown up under occupation in these territories, subject to Russian state policies that determine their education, language, guardianship, and citizenship status. The following proposed measures aim to repair harms in Ukraine in order of urgency and how quickly such measures could be rolled out.

140. These regions are primarily located in Eastern Ukraine, where, prior to the full-scale invasion in 2022, mining enterprises continued to operate despite the presence of conflict since 2014. See U.S. DEP'T OF STATE, UKRAINE HUMAN RIGHTS REPORT 70, 72 (2021), https://www.state.gov/wp-content/uploads/2022/04/313615_UKRAINE-2021-HUMAN-RIGHTS-REPORT.pdf.

141. See David L. Stern, *War Narrows the Many Divides Between East and West in Ukraine*, WASH. POST (July 22, 2022, 2:00 AM), <https://www.washingtonpost.com/world/2022/07/22/ukraine-east-west-war-narrows-divide/>.

142. See generally *Disinformation and Russia's War of Aggression Against Ukraine: Threats and Governance Responses*, OECD (Nov. 3, 2022), <https://www.oecd-ilibrary.org/docserver/37186bde-en.pdf?expires=1703743394&id=id&accname=guest&checksum=D5B30244EDF5F74D38394CFBEB349E1C>.

143. See *Ukraine in Maps: Tracking the War with Russia*, BBC (Dec. 20, 2023), <https://www.bbc.com/news/world-europe-60506682>.

1. Return to Ukrainian Territory

First, child victims of forced transfer should be returned to the national territory from which they originated, and communication should be restored at once with family members of their choosing. Due to safety considerations, this process should be accompanied by an independent child-protection agency that works with the child, the child's family, and local members of their community of origin, like schoolteachers and other personnel, to evaluate the best interests of the child in returning to their home environment transparently and collectively. Many cities and towns have been destroyed or littered with landmines during the war,¹⁴⁴ and these regions may be unsafe for children.

The Russian Federation should create a registry of all Ukrainian children in its custody or in the custody of families that have adopted children and should disclose any documentation that may help identify children and restore family links.¹⁴⁵ This process should be done with special consideration for the privacy of Ukrainian parents when disclosing the nature of their consent to send their children abroad. In many cases, families may fear publicly disclosing their involvement in their child's transfer or reporting mistreatment for fear of being labeled as Russian collaborators or due to fear of reprisals by Russian state officials.¹⁴⁶

In the case of children who were deemed to be orphans or of unknown guardianship status, they should be returned to unoccupied Ukraine for screening and an independently monitored decision-making process regarding their custody arrangement. For children who would enter foster care or adoption, the child may be enabled to decide between entering foster care or entering other custodial, educational environments that may become available through other reparative programs. Ukrainian government authorities, civil society, and, especially, local communities and child welfare advocates should engage in public consultations on these matters to integrate the best interests of the child into such determinations.

All child victims of forced transfer that are returned to Ukraine or who remain in camps while their re-transfer is being arranged or adjudicated must have access to urgent interim reparations, in the form of urgent assistance, to prevent further harm caused by rape or other abuse. These may include emergency contraception, safe abortion

144. *Landmine Use in Ukraine*, HUM. RTS. WATCH (June 13, 2023), <https://www.hrw.org/news/2023/06/13/landmine-use-ukraine>.

145. This is a recommendation originally proposed by Yale University's Humanitarian Research Lab. See KHOSHNOOD ET AL., *supra* note 13, at 8.

146. *Id.* at 7.

services, and testing for sexually transmitted infections,¹⁴⁷ in addition to immediate medical and psychological care in cases of other forms of abuse like torture.

2. Clarification and Stabilization of Citizenship Status

Second, child victims of forced transfer and the broader population of children from formerly occupied regions are entitled to a clarification of their citizenship status immediately upon return to Ukrainian-held territory to avoid any possibility of children falling into statelessness. Children have a fundamental right to birth registration under the CRC,¹⁴⁸ and some reparations plans identify those who become undocumented as a result of conflict as eligible.¹⁴⁹ Since 2014, a growing number of people living in Russian-occupied territory have acquired Russian citizenship through channels that are not clearly legal under international or domestic laws,¹⁵⁰ and, in some cases, they have had their Ukrainian passports confiscated from them.¹⁵¹ Because of this, newborn children during periods of occupation may, in fact, be stateless. Undocumented persons in Ukraine may not access healthcare, voting, bank accounts, marriage registrations, or, in some cases, are unable to advance to secondary education.¹⁵² In some parts of Russian-occupied territory prior to Russia's 2022 invasion, there were reports of undocumented children subject to mandatory military service and forced labor as well.¹⁵³ Prior to the invasion, over 69,400 children were unregistered for a passport, a number which has likely risen considerably since the

147. See Kateryna Busol, *Russian Aggression and Individual Reparations: Victims' Needs and Ways to Address Them Under International Law*, in GENDER DIMENSIONS OF WAR: FINDINGS OF ANALYTICAL RESEARCH 97, 102 (JurFem & USAID eds., 2023).

148. CRC, *supra* note 22, art. 7.

149. Peruvian Comprehensive Reparations Plan, Supreme Decree No. 015-2006-JUS art. 14 (2005); see Busol, *supra* note 147, at 103.

150. See Evan Harary, *Obstacles to Registration and Citizenship Confirmation Threaten to Create a New Wave of Statelessness in Ukraine: A Preliminary Legal Analysis*, KHARKIV HUM. RTS. PROT. GRP. (May 1, 2022), <https://khp.org/en/1608809945>.

151. Oleksandra Matviichuk et al., *Russia's Forcible Transfers of Ukrainian Civilians: How Civil Society Aids Accountability and Justice*, JUST SECURITY (Mar. 3, 2023), <https://www.justsecurity.org/85324/russias-forcible-transfers-of-ukrainian-civilians-how-civil-society-aids-accountability-and-justice/> (describing how a 21-year-old student relocated to a Russian filtration camp was commanded to surrender his Ukrainian passport and how civilians in general are forced to turn over their Ukrainian documentation and are assigned Russian passports instead). See KHOSHNOOD ET AL., *supra* note 13, at 13 (noting that "parents ha[d] to submit copies of the passports along with original copies of the child's birth certificate[.]").

152. Harary, *supra* note 150.

153. *Id.*

war began.¹⁵⁴ The Ukrainian government considers passports issued under an expedited procedure in the occupied territories to be unlawful, and these passports bear differences that make them suspicious and faulty outside of Russian territory, introducing problems with seeking legal status in other countries as well.¹⁵⁵

In cases of unclear documentation, child victims of forced transfer who were forcibly passportized¹⁵⁶ or who have been left undocumented due to the war should be able to access simplified redocumentation procedures without experiencing discrimination on the basis of their or their relatives' supposed political affiliation or "collaborator" status. Especially in re-establishing national documentation for a large group, it is crucial to encourage flexible evidentiary standards to facilitate faster results and lower costs while relaxing adversarial procedures in accordance with good practices in administrative reparations.¹⁵⁷

3. Land and Property Restitution

Third, in cases of children forcibly transferred from an occupied territory, where land or place of residence has been destroyed, the child should have a full right to accommodation in non-occupied territories, subject to the state's provision. When Ukraine begins its post-war reconstruction, the CRC provides that children have a right to restitution of a physical home for family life purposes, but only if such a property right does not create a situation where the child is living in conditions unfit for them to fulfill their right to life, health, and quality education.¹⁵⁸

In September 2022, the Ukrainian government, in partnership with the World Bank, estimated that direct war-related property damage amounted to USD 326 billion, including a total of 149,300 destroyed

154. *See id.*

155. *Id.* ("Indeed, passports issued under the expedited procedure bear certain distinctions—most glaringly, they lack a place of registration—that render them ineffective as national identification.").

156. Passportization refers to conferring a new nationality on nationals of an occupied region. Russia has employed this policy in occupied regions of Ukraine since its annexation of Crimea in 2014. *See* Anne Peters, *Passportisation: Risks for International Law and Stability – Part I*, BLOG EUR. J. INT'L L. (May 9, 2019), <https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-part-one/>.

157. *See* Salvador-Crespo, *supra* note 101, at 223 ("Only 'simple documentation of the fact and date of departure from Kuwait or Iraq' was thus asked from claimants, and 'documentation of the actual amount of the loss [was] not required.'" (modification in original); *see also* Pablo de Greiff, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS 451, 459 (Pablo de Greiff ed., 2006).

158. *See, e.g.*, CRC, *supra* note 22, arts. 8, 9, 16, 20, 24, 32.

residential buildings.¹⁵⁹ As of 2023, the cost of reconstruction is now estimated at USD 411 billion.¹⁶⁰ In this context, the separation of families has likely been exacerbated by the loss of housing and the destruction of social infrastructure, like schools, hospitals, utilities, and roads, in addition to business centers, government agencies, and places of employment.¹⁶¹ This is especially true in the regions most affected by hostilities, where the main source of income for residents was employment at large enterprises that are now destroyed or damaged.¹⁶² It is no wonder that parents of child victims of forced transfer cited poor access to sanitation, safety, and regular nutritious food sources—likely made worse by lack of housing and income—as some of the reasons they consented to send their children to Russia.¹⁶³

Formerly occupied areas are likely unsafe for children for all these reasons. Consequently, part of a reparations program would need to provide the means to rebuild residential buildings and social infrastructure and bring businesses into these territories once it is safe for them to operate, facilitating caregivers' access to income. If a child is not old enough to legally own personal property, it could be held in a trust for the child until such a time as the child can access it legally or unless the child willingly and affirmatively transfers that title right to a primary guardian or caregiver. Like in Timor-Leste, restitution schemes could focus less on providing a legal title to land or residences in the short term but seek to resolve these in the long term.¹⁶⁴ In this context, however, there is not as much of a concern with disputes over property. After all, if whole buildings are destroyed, there is little to dispute. In other cases, simplified procedures involving community mapping of former residences and utilizing reverse burden of proof procedures to establish legal titles for victims will be helpful tools to facilitate resettlement.¹⁶⁵ A focus on restitution in this context will be helpful to support

159. Khrystyna Dumych, *Destruction of Civilian Facilities During the Armed Conflict in the Territory of Ukraine: The Problem of Reparations from a Gender Perspective*, in GENDER DIMENSIONS OF WAR: FINDINGS OF ANALYTICAL RESEARCH 40, 41–42 (JurFem & USAID eds., 2023).

160. Press Release, WBG, Updated Ukraine Recovery and Reconstruction Needs Assessment, WBG Press Release No: 2023/ECA/82 (Mar. 23, 2023), <https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment>.

161. See Dumych, *supra* note 159, at 41.

162. *Id.* at 44.

163. KHOSHNOOD ET AL., *supra* note 13, at 13.

164. See VAN DER AUWERAERT, *supra* note 98, at 11.

165. This reversed burden of proof, which effectively presumed illegitimate dispossession of property by requiring the present owner of contested land to have the initial burden of proof, was a key feature of Colombia's Victims' Law. See Summers, *supra* note 98, at 229.

the continued growth of children and to reintegrate them into their communities while encouraging the development of generational wealth and re-assimilation.

4. Compensation

Fourth, child victims of forced transfer have a right to compensation in the form of financial reimbursement. In this case, one lump sum would likely be unsustainable for the state to provide in one fell swoop, in addition to introducing other risks like spending sprees, substance abuse, and community divisions discussed earlier. In fact, Ukraine enacted its own compensation program for victims of illegal detention by Russian armed actors in 2019, granting a lump sum of UAH 100,000.¹⁶⁶ It compensated only 200 people over the course of two years, proving insufficient due to both the limited nature of the assistance and the narrow group it benefited, which included only those persons detained for their proactive civic positions.¹⁶⁷ In terms of the current conflict, it also may take a long time for the Russian Federation to compensate Ukraine as a state, so the financial reimbursement in the short term might be better allocated as a smaller, periodic payment like the pension programs implemented in Colombia.¹⁶⁸ These could be held in trust for children, and additional lump sums or periodic payments could be made to guardians as forms of compensation for their losses because of family separation.

5. Public Education

Fifth, child victims of forced transfer have a right to benefit from free, quality, and accelerated educational programs, including vocational training and scholarship programs. Educational reform and provision of officially recognized educational programming will be particularly important for any reparations program carried out in Ukraine after the war. Various camps where child victims of forced transfer were sent formed part of university-affiliated efforts to recruit children to Russian universities for future enrollment.¹⁶⁹ In addition, military training was part of a few camp programs, which targeted at-risk boys, including those with criminal records, for training on how to handle military equipment, drive trucks, and study firearms.¹⁷⁰

166. Busol, *supra* note 147, at 105.

167. *See id.*

168. *See Law on Pensions for Minors, supra* note 123.

169. KHOSHNOOD ET AL., *supra* note 13, at 14.

170. *Id.* at 15.

Not only have forcibly transferred children received education that embraces values that seem contrary to peace and reconciliation efforts, but their potential for pursuing higher education in Ukraine is at risk due to incompatible certification procedures between Ukraine and Russian-occupied zones. In occupied territories, where instruction is conducted in Russian rather than in Ukrainian, educational certifications for primary and secondary school are incompatible with the Ukrainian government's language, subject, and discipline requirements.¹⁷¹ One of the risks, beyond failure to reintegrate students into the Ukrainian higher educational system, is that the lack of mechanisms to validate qualifications in the territories will lead to difficulties in employing young people, which could lead to further economic decline and heightened inequalities between eastern and western regions of the country.¹⁷²

In a post-war Ukraine, reparations can address these challenges by loosening qualification and certification requirements for young people who desire to enroll in higher education or wish to enter the workforce in other parts of the country. For younger children, school enrollment should be encouraged in the community to which a child is returned with access to appropriate programs suited to the child's individualized needs. Reparations in this area could provide special education in cases where child victims of forced transfer have developed a disability caused by the war, or that predated the war. In fact, at least one home for children with disabilities in Kherson Oblast was transferred to Russian-occupied Crimea during the war, and children were later admitted into psychiatric hospitals, allegedly for treatment.¹⁷³ This sub-group of children may have unique needs among affected child victims. Across the board, reparations-centered educational programs, designed with active consultation from civil society and local communities, must integrate other transitional justice mechanisms into school curricula to best support reintegration and reconciliation aims for affected children.

6. Integration of Child Reparations into a Larger Transitional Justice Framework

While implementing these proposed reparative measures, it is of the utmost importance that child-centered reparations are integrated

171. *Analysis of the Draft Law "On the Principles of the State Policy of Transition Period,"* RIGHT TO PROT. (Sept. 20, 2021), <https://r2p.org.ua/transition-period-policy-analysis/?lang=en>.

172. *Id.*

173. KHOSHNOOD ET AL., *supra* note 13, at 11.

across a larger transitional justice legal framework at the national level. Since 2019, Ukrainian President Volodymyr Zelensky has initiated the development of a roadmap for transitional justice in Ukraine, and the Ukrainian government has, in turn, proposed a Draft Law “On State Policy of the Transitional Period.”¹⁷⁴ Despite these efforts at a comprehensive approach to transitional justice, international stakeholders have criticized the law for not being sufficiently victim-centered and pointed out that there is not an adequate amount of detail on integrating reparations into broader transitional justice in Ukraine.¹⁷⁵ When it comes to reparations, Ukraine’s current approach seems to prioritize financial compensation among the different types of reparations, but civil society and local stakeholders have pushed back on this emphasis.¹⁷⁶ As other contexts have shown, leaving reparations mechanisms out of a larger overall framework introduces the risk of diminishing external coherence between a government’s reparations policies and broader transitional justice.¹⁷⁷

B. Challenges

The proposed measures are varied and substantial in nature. There is much to do and many competing, immediate needs at stake in the broader conversation around reparations for harms committed by Russia against Ukraine. There are the usual challenges ahead, including implementation burdens and lack of resources, but with some support from the international community, reparations will likely be financed. The more profound challenges ahead may deal more with domestic truth-seeking and the need for the Ukrainian government to demilitarize and demobilize even if some territories remain unliberated. This may be a protracted conflict, and as a result, there may be challenges unique to its protracted nature.

1. Implementation Problems and Lack of Resources

Implementation of prompt, adequate, and effective reparation for child victims of forced transfer is not possible unless children are specifically included in the legal framework governing transitional justice in Ukraine from the outset. However, Russia’s aggression against Ukraine has displaced over 11 million people and sustained unprecedented

174. Busol, *supra* note 147, at 104.

175. *See id.*

176. *See id.* at 105-06.

177. Van der Auweraert, *supra* note 121, at 470-71.

infrastructural damage within the country.¹⁷⁸ Child victims of forced transfer, though they are a substantial and special group, may not have the numbers to command a sustained priority. There is political will to prioritize them, but this may wane with time.

In addition, implementation could suffer if there is not enough previous experience in implementing a major social services program of this magnitude. The only other precedent is the 2019 compensation plan that benefited very few recipients over a relatively long period of time.¹⁷⁹ Planning and creating social infrastructure will be paramount in designing an effective program. However, there are a few other problems that may arise as well; for example, a reparations program for child victims in occupied territories could be implemented in such a way that far fewer children are repaired due to discrimination based on language use or passport status. It will also be a major challenge to mobilize massive numbers of psychological and mental health personnel, educators, and other professionals to service these children while rebuilding their towns and cities. There will likely be a burden on the state to achieve this, and workers may need to be outsourced from other countries, given the high number of displaced persons.

2. Political Challenges, Consultations, and Victim Participation

There are likely to be significant challenges originating from political sentiments and gaps in victim participation, given the current risk of community members labeling others in communities as “collaborators” in de-occupied zones. Recognizing a right to reparation for all victims also acknowledges that even complex victims, like parents who collaborated with Russian forces or consented to send their children abroad, are entitled to a remedy.

However, in this case, indoctrination is a weapon of war, and the beneficiaries of reparations could promote a variety of views, some useful to the project of Ukrainian nationhood and others not. Considering this dynamic, it will be even more important to bring social benefits in the form of free education and platforms for dialogue to families who have experienced harm, even if they hold unpopular or even problematic views. This may not be politically advantageous in the short term, but it is necessary. On the other hand, due to possible cultural stigma, families who have experienced occupation may not want to participate in truth-seeking or applications for reparations that involve claiming

178. *Ukraine Emergency*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unrefugees.org/emergencies/ukraine/> (last visited Jan. 2, 2024).

179. See Busol, *supra* note 147, at 105.

harm. Especially in eastern regions, where Soviet nostalgia coupled with pro-Russian political labeling from the West are active dynamics, local communities may not have much confidence in the state and may not wish to claim reparations.

3. Links to Transformation, Social Justice, and Root Causes of Inequality

For reparations to achieve the reintegration of affected children and reconciliation between community members, they must be transformative. They must aim to elevate affected children so that they are equipped to rehabilitate themselves and contribute to their communities in healthy and productive ways moving into the future. However, this also involves reviewing the state of these children and their communities prior to the war and considering how structural inequalities can be diminished. This could be difficult for the state to acknowledge, as it involves recognizing the ways in which the state may have failed these children before the war even began. Especially in the context of a nation in anguish amid a brutal war, any preexisting failure may be quite difficult to recognize. However, this may not be as big of a leap as the current political climate might suggest, especially because Ukraine's recent history has fluctuated so profoundly between political platforms, and it has consistently acknowledged room for improvement in its system in other areas like anti-corruption reform and the rule of law.

VI. CONCLUSION

Child victims of forced transfer during armed conflict are entitled to reparations in the form of restoration to their country of origin, restitution of their homes, transformation of their social and educational infrastructure, compensation, and other measures of rehabilitation, satisfaction, and guarantees of non-recurrence. The international law of reparations is starting to be established, but it is ever-expanding in scope. Though some areas of the legal canon are still developing, especially in IHL and in relation to the unique rights of child victims, the instruments that are available establish a clear general right, which creates value for victims seeking remedies. It is imperative that children's rights to transformative reparations in education, social services, and legal title play a much more prominent role in state reparations mechanisms and in international law. There is a growing international consensus that children are entitled not just to monetary compensation but much more—in the form of specialized reparations that aim to transform social and economic inequities at their core.

ABDUCTION AND ADOPTION

In Ukraine, child victims of forced transfer to Russia should receive reparations through targeted programs and initiatives aimed at clarifying citizenship status and bolstering public education that is individualized and restorative in nature. Though Ukrainian child victims of forced transfer are a unique group with specific needs, the reparations they are entitled to may be a useful model for children in other states. For children around the world who have suffered displacement, abduction, forced adoption, indoctrination, and other harms, the reparations explored in this Note and in the broader literature have the potential to impact children on a much larger scale in many country contexts. While transitional justice mechanisms have not integrated child-sensitive reparations into their schemes in general, international attention has now turned to children, advocating for their return and repair in Ukraine. If the international community sustains this attention, children everywhere have the chance to benefit—not only to return and repair but also to reform, reconcile, and retake ownership over their futures.