

## 9. Peace for the Future: The Incorporation of Future Generations in Peace Treaties and Reconciliation Institutions

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**Abstract:** *This chapter examines peace agreements and the statutes and findings of truth and reconciliation commissions from the lens of intergenerational justice and inclusion of future generations. The critical lens used for the chapter's analysis of peace agreements is that of the principle of prevention in the sense of agreements that are not only created to cause the cessation of hostilities in each State but rather to prevent these hostilities from occurring again in the future. To do this, the chapter stresses the ways that have been invoked to represent the interests of absent future generations by reducing the potential for renewal of hostilities by current or future societies. The chapter examines the ways in which environmental, economic, and educational provisions are constructed in order to determine how laws having a direct bearing on youth and future generations include these constituencies as rights holders, victims and beneficiaries of justice and peace.*

### 1. Introduction

Armed conflicts, be they relatively short or generational, have lasting – and typically destructive – impacts across all aspects of law and society. This includes impacts upon those who are absent in the discussions for peace, and peace time society, either because they were killed or disappeared as a result of the conflict or because they are members of future generations. Similar truths exist for institutionalised State violence against citizens, itself arguably a source of conflict and certainly a source of instability. Within the context of conflict-based impacts, perhaps the most potentially destructive are those to current youths and future generations who will suffer the immediate and long-term ramifications of violence, distrust, and community rupture, as well as environmental degradation and economic disruption. At the same time, the lack of acknowledgement and inclusion of those past absents who were harmed by the conflict at issue threatens to undermine the effort to move forward with peace by leaving open issues of law, justice and responsibility for these harms. Set against these impacts, the ways in which State and non-State actors involved in conflicts and institutionalised

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violence response structure peace agreements, durable ceasefire agreements and institutions such as truth and reconciliation commissions and tribunals serve vital, and often under-appreciated, roles in ensuring the place of future generations in the immediate post-conflict setting and the long-term.

Indeed, each of these agreements – and the implementation mechanisms they create or operationalise – attempt to offer methods of addressing past traumas in ways that directly impact future generations from the perspective of national unity, identity, and societal understanding of the victims and the perpetrators of institutionalised violence and repression. At the same time, these agreements and mechanisms directly seek to allow individual, familial and community awareness of wrongs, reparations and reconciliation such that future generations will come into existence in their context and within the shadows of their abilities to promote or hinder healing. Even in instances where the mechanism is created to have a relatively short life-span or where the time period of the conflict is short, the durable legacies of trauma and suffering will last for generations. The same is true of the successes and failings of those entities seeking to bring transparency and justice to post-conflict law and life. Understood in this context, the article emphasises that harms committed against past generations and absents extend beyond this group of people and their immediate descendants into the present but instead are harms that translate to future absents as well. This is the result of the deep-seated and fundamental role that conflicts, violence, and absence play on the ability to achieve a holistic and entrenched peace that extends beyond the text of an agreement, or the time taken to draft it.

These are only some of the general ways in which peace treaties and reconciliation institutions incorporate future generations as impacted parties, rights holders, victims, and holders of expectations in post-conflict societies. In conjunction with this, many such agreements and entities expressly include future generations in their motivations as well as provisions such as education and the development of a robust, rule of law-based justice system. This chapter examines peace agreements and the statutes, rules and findings of truth and reconciliation commissions from the lens of intergenerational justice<sup>1</sup> and inclusion of future generations. The critical lens used for the chapter's analysis of peace agreements is that of the principle of

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1 See Lukas Meyer, 'Intergenerational Justice' (2021) Stanford Encyclopedia of Philosophy <<https://perma.cc/A6UC-GAS2>>.

prevention in the sense of agreements that are not only created to cause the cessation of hostilities in each State but rather to prevent these hostilities from occurring again in the future. To do this, the chapter stresses the ways that have been invoked to represent the interests of absent future generations by reducing the potential for renewal of hostilities by current or future societies. The chapter begins with an examination of explicit references to children, young adults, and future generations throughout these instruments.<sup>2</sup> For the purposes of this discussion, the idea of future generations applies to those not yet born but whose existence is foreseeable in the short and long-term, including those born in the next year as well as the next decade and beyond. Following this, the chapter examines the ways in which environmental, economic, and educational provisions are constructed in order to determine how legal and policy areas having a direct bearing on youth and future generations are addressed to include these constituencies and rights holders, victims and beneficiaries of justice and peace.

Following these examinations, the chapter analyses areas of commonality and difference existing across the various instruments, jurisdictions, and types of conflict in order to establish trends for how children, youth, and future generations are included in fashioning a vision and order for peace. Not only is this an important research question, it is also a project with ramifications for how instruments and institutions of peace are created and conceived of moving forward.

## 2. *Peace Agreements, Intergenerational Equity and Intergenerational Justice*

There are numerous peace agreements to be reviewed and analysed, covering a broad range of times and timespans, geography, and underlying issues. Indeed, the agreements analysed include those relating to multi-generational conflicts, such as the more than five-decade long civil war in Colombia, to conflicts lasting a few months and those in between. This broad perspective is critical in assessing the commonalities and differences

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2 For a discussion of the definition of ‘child’ as those from birth to age 18 as well as the differences between children and adolescents, notably in the context of participation in decision-making and civil life, see: Convention on the Rights of the Child (1989).

in how conflicts address intergenerational equity<sup>3</sup> and intergenerational justice<sup>4</sup> because it provides insights into the short and long-term impacts of conflict of future generations regardless the duration of the underlying conflict itself.

A core methodological element in this section and the following section is the decision to include agreements which ultimately did not lead to success in terms of their short and long-term implementation as well as those which have thus far resulted in significant progress toward peace. The rationale for this is that it is as important to analyse and learn from those instances in which efforts for peace have failed as those which have resulted in success, and that in each example there are vital lessons for how the voices of future generations are incorporated. Indeed, the chapter is founded on a belief that the lessons of failures can tell us as much as the lessons of successes in terms of preventing conflict, implementing justice, and incorporating the victims of conflict as more than passive recipients of assistance.

## 2.1. Explicit References to Children, Young Adults and Future Generations

Since it relates to a conflict that spanned over five decades, and thus was intergenerational as well as multigenerational, it is perhaps only appropriate that the Colombian Peace Agreement with the Revolutionary Armed Forces of Colombia/*Fuerzas Armadas Revolucionarias de Colombia* (FARC) includes explicit references to children, young adults and future generations. After all, many within the country have experienced the conflict both as children and as adults, parents, and grandparents. Such persons have a profound understanding of the entrenched nature of the conflict, as well as the devastation it has brought and can continue to bring across the generations.

In the preamble, the Colombian Peace Agreement expressly includes future generations as intended rights holders and beneficiaries under its terms, stating:

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3 For a thorough discussion of the concept of intergenerational equity and the legal obligation to leave the Earth in the same condition as it was inherited, see Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1992) 8(1) *American University International Law Review* 19.

4 For perspectives on intergenerational justice as a moral imperative between two or more generations, see Meyer (n 1).

[e]xtolling and enshrining the justice that is to come inasmuch as it acknowledges essential fundamental rights for new and future generations, such as the right to protected land, the right to the conservation of the human species, the right to be aware of one's origins and identity, the right to know the truth with regard to events occurring before one's birth, the right to exemption from liability for acts committed by earlier generations, the right to the preservation of freedom of choice, and other rights, notwithstanding the rights of victims of any age or generation to truth, justice and reparations.<sup>5</sup>

Although a preambular statement, this text provides significant insights into the ways in which children, youth, and multiple generations have suffered harm during the conflict, as well as the involved parties' shared understanding as to the means through which to address these issues. Thus, issues such as alienation from land – and concomitant recognition of land rights necessary to address this – play important roles beyond the preamble and throughout the Colombian Peace Agreement.<sup>6</sup>

Relatedly, the idea of recognising culpability for actions and activities under the terms of the Colombian Peace Agreement is tempered by the understanding that revelation of, and responsibility for, human rights and other legal abuses should be limited to impacting the individuals and generations directly involved.<sup>7</sup> This allows for a break of culpability such that current and future descendants are not subjected to stigmatisation, legal liability, or violence because of the actions and choices of their families and previous generations.<sup>8</sup> In theory, at least, this should be a method of ensuring the just application of the terms of the Colombian Peace Agreement without creating a reinforcing system of responsibility and retribution for generations to come.

The impacts of a generational conflict on the core aspects of personal life and identity, as well as the potential for their protection to cause conflicts with the rights of others to forget their past suffering, can be seen in these preambular statements as well.<sup>9</sup> These statements make it clear that youth and future generations have what might be called 'identity rights' and 'history

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5 Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (2016) (hereinafter 'Colombia Agreement').

6 *ibid.*

7 *ibid.*

8 *ibid.*

9 *ibid.*

rights' grounded in knowledge of their family backgrounds and circumstances of their families during the conflict as well as the right to know the truths of the conflict throughout its duration. The suggestion of 'identity rights' can be defined as the right to know one's identity, including family history, in both the positive and negative elements. For example, this would include: the ability of a child born of wartime rape to know the circumstances of his identity in terms of the facts of his conception; to know his identity as the child of a soldier, guerrilla or paramilitary member; and to know of his mother and her community. The suggestion of 'history rights' is quite similar, however this chapter argues that it is broader in terms of current and future generations having the right to know about the conflicts in their communities and country. This is, from the viewpoint of youth and future generations, essential for ensuring that the option of knowledge is available regardless of whether an individual makes the conscious decision to use or request it. Indeed, at the most granular level, there is an argument for identity and history rights as the core of effectively building peace because they provide a tool for knowledge and healing. In this context, it must be noted that law can favour healing in terms of fostering a system of rights and obligations to assist those damaged by conflict, provide solutions to bridge the divides caused by conflict, and ensure that there are equitable ways to address future claims through courts and regulatory systems that enfranchise society broadly. However, if these laws do not reflect the will of the people in any national setting, they face the real prospect of failing to advance healing because they cannot be enforced. In this context, and without careful and inclusive drafting, law can become a tool to undermine peace as much as it can be used to advance it.

At the same time, the construction of these rights is highly sensitive in that they are connected to trauma and acts of violence that are often easiest to leave buried in terms of victims and victimised communities. Certainly, the rights of the immediate victims, for example victims of rape or familial disappearance, to keep these facts and experiences hidden and not be forcibly retraumatised through their disclosure to new generations must be respected. Thus, an area of contestation can be observed between the rights and knowledge of the direct victims, families, and communities and those of current and future generations, with the inference being that current and future generations should be the primary beneficiaries of efforts to balance interests. There is, however, a real question regarding the potential for tensions between the interests of current generations and the interests of future generations, especially in terms of reconciliation mechanisms. This remains an open question, however it should be remembered that the

ability of future generations to benefit from this or any peace agreement is necessarily predicated on the ability of current generations to honour and implement the agreement.

One of the most fundamental elements of the Colombian Peace Agreement in relation to children is the provision of protection and reincorporation for minors who were part of the FARC-EP at the time of signing and subsequently demobilised.<sup>10</sup> The Colombian Peace Agreement provides that these minors are to be afforded:

[...]special care and protection measures... to ensure restitution of their rights with an equity-based approach, prioritizing their access to health-care and education. These minors will be accorded all the rights, benefits and allowances established for the victims of the conflict as well as those deriving from their process of reincorporation in the terms contemplated in this Final Agreement and priority will be given to family reunification wherever possible, and to final placement in homes in their original communities or others of a similar nature, whilst at all times taking into account the best interests of the child. Follow-up of these programs shall be conducted by the National Reincorporation Council to coordinate with the competent state bodies, with the support of social or specialist organisations charged with carrying out oversight in the terms of Joint Communiqué No. 70... The programme must guarantee the full reincorporation of the minor and his or her psycho-social accompaniment, with the oversight of social or specialist organisations in the terms set out in Joint Communiqué No. 70, as well as the location of minors at temporary reception sites in municipalities near the TLZNs, guaranteeing the right to information for all participants, particularly children and adolescents.<sup>11</sup>

Thus, the Colombian Peace Agreement provides current generations of youth with access to core services necessary for their survival, future livelihoods, and ability to participate fully and meaningfully in their communities throughout their adult lives. It also recognises the rights and experiences of minors who have been drawn into the conflict and subsequently demo-

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10 See Colombia Agreement (n 5) section 3.2.2.5.

11 *ibid.* Similar, though less comprehensive, terms are contained in the peace agreement for the Republic of Congo, 'The rehabilitation and reintegration into schools and universities of pupils and students, members of armed factions who are now signatories, having renounced violence, laid down their arms, and rejoined their place of education.' Agreement on Ending Hostilities in the Republic of Congo (1999) (i).

bilised as being linked with many of the same protections as those who are expressly classified as being direct victims of the conflict. In this way, the Colombian Peace Agreement recognises that there are child-combatants who will have a different legal and reincorporation situation than those who are victims *per se*, yet at the same time highlights that these children are, in themselves, victims of the conflict in a different way and still require specialised legal protections.

These provisions reflect efforts to balance the needs of child-combatants to be reunited with their families and to return to their communities on one hand, and the reality that such reunification and return might not be tenable for the families and communities involved given the activities of child-combatants during the conflict on the other. Through these balancing efforts, the Colombian Peace Agreement can be seen as furthering the rights of child-combatants and their descendants to participate in all aspects of public life and to return to the places with which they have a direct connection. At the same time, however, the Colombian Peace Agreement can be seen as ensuring that child-combatants are not reintroduced to communities in a way that would reignite former hostilities in the future. In this way, it seeks to protect future generations from the continued threat to new hostilities.

Throughout the Colombian Peace Agreement, there is a realisation of the multifaceted impacts children and young adults have suffered due to the prolonged and entrenched conflict.<sup>12</sup> As a result, children and young adults are included as vital constituencies for protection and inclusion, based on an understanding of their current vulnerabilities in conjunction with their status as paving the way for the next generations of Colombians.<sup>13</sup> As a reflection of this, while the Colombian Peace Agreement provides for a significant amnesty allowance, child abduction, the recruitment of minors, and the forced disappearance of minors were bars for those seeking to avail themselves of this opportunity.<sup>14</sup> Although these provisions cannot, of course, spare the minor victims of these activities or their families from the wrongs they have already suffered, such terms can be seen as validating the specialised nature of intergenerational harms caused by the taking of children and, where applicable, their forced participation in hostilities. This stresses the justice components of intergenerational concerns at the level

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12 See Colombia Agreement (n 5).

13 *ibid.*

14 *ibid.*, appx I, Law on Amnesty, Pardon and Special Criminal Treatment.



of the individuals and families directly impacted, as well as at the level of future generations which have been deprived of members due to acts of those engaged in the conflict.

Further, in articulating the rights of victims of conflict and the role of the Special Jurisdiction for Peace, the Colombian Peace Agreement requires the use of ‘an equity-based and gender-based approach... and in particular to the needs of women and children.’<sup>15</sup> In conjunction with this, the oversight mechanisms for the Colombian Peace Agreement and the institution for peace created under it were tasked with assessing and recognising the:

[...] human and social impact of the conflict on society, including its impact on economic, social, cultural and environmental rights, and the different ways in which the conflict affected women, children, adolescents, youths and the elderly, persons on the basis of their religion, opinions or beliefs, persons with disabilities, indigenous peoples, rural communities, the Afro-Colombian, black, palenquero and raizal communities, the Roma community, the LGBTI community, displaced and exiled persons, human rights advocates, trade unionists, journalists, farmers, ranchers, traders and businessmen and -women, *inter alia*.<sup>16</sup>

Critical to the Colombian Peace Agreement is an emphasis on inclusion and extension of healthcare, education, housing, and general social policies that aim to address the idea of a poverty eradication throughout rural and urban areas.<sup>17</sup> Included in this is a specific recognition that healthcare must be geared toward serving women and children, particularly women before, during, and after pregnancy and young children in rural areas.<sup>18</sup> This can be seen as the result of increased scientific evidence regarding the durable effects of the entrenched conflict in Colombia on women and children.<sup>19</sup> Specific efforts to prevent the use of illicit substances by children, among many groups in society, are also essential elements for the protection of health and the reduction of the number of children becoming part of the criminal justice system.<sup>20</sup> Education is emphasised as essential to addressing the results of the multi-generational conflict throughout the Colombian

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15 *ibid.*, 5.1.

16 *ibid.*, section 5.1.1.1.2.

17 *ibid.*, section 1.3.2.

18 *ibid.*, section 1.3.2.1.

19 *ibid.*

20 *ibid.*, section 4.2.

Peace Agreement, and serves as a tool to ensure greater opportunity for children, young adults and future generations.<sup>21</sup> In the context of rural access to education, the Colombian Peace Agreement notes:

[...] with the aim of providing a comprehensive service for early childhood, guaranteeing the coverage, quality and relevance of education, eradicating illiteracy in rural areas, helping the younger generation to remain part of the production sector in the countryside, and promoting involvement in rural development on the part of regional academic institutions, the National Government is to set up and implement the Special Rural Education Plan.<sup>22</sup>

Also in the rural context, the Agreement stresses the need to ensure labour protections and policies that simultaneously protect children from the negative consequences of child labour and adopt ILO standards on the protection of children legally in the workforce.<sup>23</sup>

Through these measures, there is an understanding that issues stemming from and underlying the conflict in Colombia were related in large part to pre-existing and emerging inequities and inequalities, and that a durable peace must be framed in ways which address these issues. The Colombian Peace Agreement's terms in this regard can be seen as furthering the idea that intergenerational equity and justice is not uniform and that future generations will have to address or find ways to overcome the inequities stemming from the conflict.

The contrast between multigenerational conflicts, such as in Colombia, and durable yet shorter-term conflicts can be quite striking. However, in many ways the instruments which ended these conflicts share many similarities. An example of this comes from the Arusha Accords of 2000, which sought to end the conflict in Burundi that extended for over a decade.<sup>24</sup> The conflict in Burundi was based largely on ethnicity- and identity-oriented persecution and violence connected to political strife and electoral disputes.<sup>25</sup>

Within the Arusha Accords, the newly established Charter of Freedoms for Burundi includes economic and social rights for children, protections

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21 *ibid.*, section 1.3.2.2.

22 *ibid.*, 1.3.2.2.

23 *ibid.*, 1.3.3.5.

24 See Arusha Peace and Reconciliation Agreement for Burundi (2000).

25 *ibid.*

against being used in conflict or as targets of conflict, and rights against detention in all but the most extreme circumstances.<sup>26</sup> Thus, even as it recognises efforts to entrench peace as part of the national practice, the Arusha Accords are aware that the potential for conflict continued to exist and that the need to protect children and future generations was vital to crafting systems which promote peace.

In the context of facilitated return for those who fled during the conflict, the Arusha Accords are clear that these returns must be made volitionally and with the dignity and potential vulnerability of women and children born in mind.<sup>27</sup> As in the context of Colombia, this reflects documented information regarding the impacts of conflict on these populations in Burundi, including the impacts of fleeing the conflict.<sup>28</sup> This is of particular note because the children returning to their mothers' communities include those who may be the product of wartime sexual violence and have suffered stigmatisation and abuse from these communities as a result. Those who returned were guaranteed rights, including educational access as well as housing, food and economic assistance while resettling in communities.<sup>29</sup>

Regardless of where they were located within the State, the Accords require that children be provided with primary and secondary school education access until age of 16 at the very earliest.<sup>30</sup> Additionally, the Accords require that '[t]he Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatised children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.'<sup>31</sup>

Further, the fundamental rights articulated in the Accords included that '[t]he State shall ensure the good management and utilisation of the nation's natural resources on a sustainable basis, conserving such resources for fu-

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26 *ibid.*, art 1.

27 *ibid.*, art 2.

28 Shana Tabak, 'False Dichotomies of Transitional Justice: Gender, Conflicts and Combatants in Colombia' (2011) 44 *NYU Journal of International Law and Policy* 103; Paris A Cabello-Tijerina and Karen Quinones, 'The Relevance of the Territorial and Female Perspective in the Peace-Building in Colombia' (2018) 80 *Revista de Ciencias Sociales*.

29 Arusha Accords (n 24) art 4.

30 *ibid.*, art 15.

31 *ibid.*, art 10.

ture generations.<sup>32</sup> In this way, it can be observed that the Arusha Accords are prospective as well as prescriptive in that they seek to ensure the preservation of resources which can be used for the stability and advancement of future generations in a way that advances intergenerational equity.

Additionally, in the Central African Republic's 2019 peace agreement, the principles for settlement of the conflict expressly include the involvement and incorporation of youth and women as well as their direct protection from violence and abuse.<sup>33</sup> The 2012 Kenyan peace agreement expressly incorporates the need to address unemployment of youth and adolescents as a necessary issue to address in order to create a stable environment for peace.<sup>34</sup>

These are a few of the many examples in which peace agreements expressly acknowledge the impacts of conflict and violence on children as vulnerable populations and as the embodiment of future generations. Often these methods of inclusion are part of the larger discussion of societal harm and also the need to generate thorough and meaningful reparations going forward. Additionally, many peace agreements make explicit reference to the use of education as a tool to address the root causes of conflict as well as to ensure that future generations will not be educated in theories of hatred.<sup>35</sup>

### 2.1.1. Implicit References to Children, Young Adults and Future Generations

In the preamble to the Arusha Accords for Burundi, discussed above, the Parties expressly state that the policies include:

Reaffirming our unwavering determination to put an end to the root causes underlying the recurrent state of violence, bloodshed, insecurity, political instability, genocide and exclusion which is inflicting severe hardships and suffering on the people of Burundi, and seriously hampers the prospects for economic development and the attainment of equality and social justice in our country,

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32 *ibid.*, art 2.

33 Political Agreement for Peace and Reconciliation in the Central African Republic (2019) art I.

34 National Accord and Reconciliation Act (2008) art II (D).

35 *ibid.*; Arusha Accords (n 24); Colombia Agreement (n 5).

Reaffirming our commitment to shape a political order and a system of government inspired by the realities of our country and founded on the values of justice, democracy, good governance, pluralism, respect for the fundamental rights and freedoms of the individual, unity, solidarity, mutual understanding, tolerance and cooperation among the different ethnic groups within our society.<sup>36</sup>

Facially, these terms are very much oriented in the present and seek to address past wrongs which gave rise to the larger tensions underlying the conflict. And, indeed, there is a significant onus placed on present generations of adults, particularly policy-makers, to remedy the conditions which facilitated the conflict. However, reading these provisions carefully, it is clear that the intent of the Arusha Accords is not simply to stop the hostilities between warring sides and ensure peace in the present.<sup>37</sup> Rather, the intent is to ensure that a stable system is created for the present and the future to build upon in peace rather than to allow for cracks which could give rise to renewed hostilities.<sup>38</sup> These are to be considered efforts at achieving intergenerational equity and justice in the most fundamental sense of providing the next generation with a nation that is not based on conflict and has had the chance to heal before passing the nation on to the next generation.

Similarly, the peace agreement used in the Central African Republic stressed the need for reconciliation and healing to occur in order to address past and current violations and to ensure that these issues did not continue on into the future.<sup>39</sup> These elements work in conjunction with the more explicit terms of the preamble providing:

*Recognizing* that the majority of the population of the Central African Republic is made up of children and women who have been deeply affected by the armed conflict, and that the full protection of their rights and the cessation of abuses and hostilities are objectives common to all Parties; and, convinced of the fundamental role of women of the Central African Republic in the prevention and resolution of conflicts and in building sustainable peace, and emphasizing their important con-

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36 Arusha Agreement (n 24) preamble.

37 *ibid.*

38 *ibid.*

39 Political Agreement for Peace and Reconciliation in the Central African Republic (2019).

tribution to the efforts to find a definitive solution to end the crisis in the Central African Republic.<sup>40</sup>

Thus, there is an observed impact of the conflict on those who were most vulnerable to its predations at the same time that they represent those who offer the way for the future of society in the Central African Republic, particularly child and youth members of society. This is in recognition that children and youth might not have been the current generation of decision makers for the purposes of starting the conflict or bringing about the efforts for peace, but that they are the bearers of the scars of the same conflict and will bring them into their lives as future generations of decision makers and parents. Due to this relationship, the preambular text serves as a critical guide to understanding and implementing the terms of the peace agreement. This sentiment reflects the reality that those in past generations who are absent from the negotiation and implementation of the peace agreement who created and perpetuated the conflict should be held accountable in name if not in punishment and that the future generations of citizens, though absent in the present, are still included in the efforts to entrench peace.

In the Cote d'Ivoire, two civil wars occurred between 2002 and the end of 2011, although there are still ongoing tensions surrounding elections and related events.<sup>41</sup> These civil wars stemmed from a population that was – and continues to be – deeply divided over politics and political figures, and saw a number of major mass death events as well as deaths and acts of torture committed on all sides on a smaller yet continued scale. While there were periods of relative calm between the larger-scale events, this was still a conflict which raged for nearly a decade and continues to impact on societal stability.

The peace agreement for the Cote d'Ivoire contains a particularly important and pressing recognition of the impacts of an infrastructurally brutal conflict in terms of the issuance or reissuance of birth certificates and identity papers, as well as other forms of identification associated with them.<sup>42</sup> The importance of birth certificates and identity papers generally is an accepted premise of international human rights law as a right of the

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40 *ibid.*, preamble.

41 See Alexander Shipilov, 'Ten Years after the Ivorian Civil War (2002–2011): Reassessment of the Conflict' (2022) 29(1) *South African Journal of International Affairs* 45.

42 Abidjan Peace Agreement (2002) sect I.

child to be registered and to have a legal identity, and as a right of the parent to ensure that the child has a legal identity and ability to enjoy the rights to which the child is entitled.<sup>43</sup> Thus, by specifically including this provision in the terms of the peace agreement, the parties to the conflict in the Cote d'Ivoire enabled current and future generations of children to have rights regarding establishing their identity and, subsequently, the identities and rights of future generations. This is at the very core of intergenerational equity and justice concerns, which seek to ensure that there is parity between the generations and that the actions of one generation do not harm or prejudice the rights of future generations.

In El Salvador, conflict began in the 1970s and continued until 1992, and was largely centered on political differences between the dictatorial regime existing under a military coup led government and those opposing it.<sup>44</sup> These differences then translated into a long-term campaign of violence and intimidation between governmental authorities and the Farabundo Marti National Liberation Front during which governmental regime mechanisms were implicated in the atrocities committed as were governmentally affiliated groups and those working against the government.<sup>45</sup>

Reflecting the long-term role of the Salvadoran military as a main actor in the conflict and human rights violations stemming from it, the conclusion of the conflict sought to ensure that this would not happen again. Thus, the peace agreement for El Salvador contains significant requirements for changes to military policy and practice, including the immediate cessation of forcible recruitment for military service, which directly protects Salvadoran youth and adolescents.<sup>46</sup> This is certainly a present-focused activity that impacts on the children and youth who lived under constant threat of being drawn into armed hostilities although they were not members of the current generation of adults making these decisions. At the same time, it is impactful for intergenerational equity and justice because it ensures that future generations of adults and decision-makers will have the ability to participate in society as non-combatants and will not have suffered the same traumas as child soldiers face on a daily basis, both during and after the conflict.

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43 See Convention on the Rights of the Child (n 2); International Covenant on Civil and Political Rights (1966).

44 Joaquin M Chavez, 'How Did the Civil War in El Salvador End?' (2015) 120(5) *The American Historical Review* 1784.

45 *ibid.*

46 Chapultepec Peace Accords (1992) art 11.

Through these examples, it becomes apparent that peace agreements, while outwardly seeking to end a current conflict, are inherently tools that incorporate and promote future generations because the termination of a conflict is done in contemplation of ending immediate harms and future harms. From this perspective, efforts at ending conflict – unless temporary in nature, such as a short-duration ceasefire – should be understood as intergenerational at their core because the cessation of conflict and the ways in which this is achieved through law and practice, have a durable impact on societies, their legacies, and histories. Indeed, the underlying motivation for seeking peace in most agreements is not only to end the damage suffered by current generations but also to protect future generations as well, thus bringing concepts of intergenerational equity, from the legal perspective, and intergenerational justice from the moral perspective, into the frame as a consistent element of concern. This can be seen in the texts of many peace agreements which reference aspirations for peace as including the cessation of contemporary conflicts in a way that addresses the causes of these conflicts so as to ensure they are not replicated in the future.<sup>47</sup>

### *3. Truth and Reconciliation Mechanisms, Intergenerational Equity and Intergenerational Justice*

As previously noted, this section and the above section address truth and reconciliation mechanisms that are considered successful – for example through the adoption of their terms into laws and regulations – as well as those considered unsuccessful. Peace agreements are, as a matter of common practice, legally cognisable documents in which the parties commit to peace and to remedying the causes, drivers, and effects of conflict in a given setting. Truth and reconciliation mechanisms, however, occupy a distinct status between legally binding decisions – most commonly in the context of grants of amnesty within the reconciliation context – and findings and recommendations which function as guides for current and future legal activities.

In this section, it must be noted that the entities analysed as of the time of drafting have been truth and reconciliation commissions, however the

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47 See, eg Arusha Accords (n 24); Political Agreement for Peace and Reconciliation in the Central African Republic (n 33).



full analysis of amnesty grants, public trials, and statements and evidence provided for reconciliation purposes has not yet been completed.

### 3.1. References to Children and Young Adults

Throughout the varying contours and legal parameters defining the findings of most truth and reconciliation mechanisms there is an explicit acknowledgment and discussion of violence and harm directed at children and young adults.

Examples of this include Chile, where it is noted that children were the victims of institutionalised violence, and that, overall, certain regions were home to violence and acts of disappearance against those aged 20 and below.<sup>48</sup> This must be framed against the decades of internal strife and by the dictatorial regime led by General Augusto Pinochet, which is well known for carrying out a brutal reign of repression regarding dissenting or potentially dissenting viewpoints and those espousing them.<sup>49</sup> As part of the effort at national healing and unity-building following the end of the Pinochet regime and the reintroduction of democratic government to Chile, the nation undertook a truth and reconciliation system which resulted in the generation of significant and wide-ranging findings relating to actions taken and their impacts.<sup>50</sup>

The Report of the Chilean National Commission on Truth and Reconciliation<sup>51</sup> notes instances in which parents were arrested or otherwise disappeared, in some cases their homes destroyed as well, and their children left to the mercy of neighbours, family members or religious orders for survival.<sup>52</sup> In other instances, pregnant women were arrested or otherwise disappeared and no record of their fate or the fate of their unborn children has been found.<sup>53</sup> Further, the Chilean Report stresses the number of instances in which children and young adults were witnesses to violence against parents, siblings, and extended family members, including the ex-

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48 Report of the Chilean National Commission on Truth and Reconciliation (1990) (hereinafter 'Chilean Report') 178, 422–423, 873.

49 *ibid.*

50 *ibid.*

51 *ibid.*

52 *ibid.*, 193, 395, 811.

53 *ibid.*, 703, 743, 753, 811, 777, 785–786.

trajudicial killings of their family members.<sup>54</sup> In addition to being victims of targeted violence or targeted violence against family members, the Chile Report highlights the ways in which children and their families were collateral victims of violence, notably through indiscriminate or undisciplined discharge of firearms in the course of operations in a neighbourhood or nearby home.<sup>55</sup>

In some instances, it was found that children were arrested as a form of leverage against their parents or family members.<sup>56</sup> At the same time, the findings of many institutions demonstrate that children and young adults were also victims, intentionally or collaterally, of the groups which were fighting against governmental forces, even when these groups were ostensibly seeking to promote human rights and end abuses.<sup>57</sup> Through the use of these findings of fact, the Chilean Report sheds light on the ways in which individuals and society as a whole suffered harms which had a particularly deep and durable impact on the children and youth involved, whether they survived to adulthood or perished as minors.

In the vast majority of reports surveyed, education has been identified as a significant entity in ensuring that similar events do not recur and in the peace process, while at the same it has been seen as a major area where assistance to the family members of those killed, assaulted and disappeared is needed.<sup>58</sup> As stated in the Chilean Report:

Our country needs the contribution of all its youth and particularly these young people who have been excluded from formal education by the facts and circumstances presented in the earlier chapters of this report. There is no need for a lengthy diagnosis. It is obvious that we need a vast creative and perhaps unprecedented effort in our country to find ways to make reparation in the realm of education before it is too late and the situation is irremediable. At the same time, the tasks of making reparation in the realm of education must be coordinated with the efforts to prevent human rights abuses and forge a culture respectful of human rights that we propose below.<sup>59</sup>

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54 *ibid.*, 255, 425, 663.

55 *ibid.*, 197, 198, 728, 934.

56 *ibid.*, 502, 742, 876.

57 *ibid.*, 884, 914, 934, 958.

58 *ibid.*, 1069.

59 *ibid.*, 1069–1070.

While all acts of violence are inherently personal and individual in nature, as previously discussed, these acts also have broader familial and societal impacts. This has been repeatedly cited in the findings regarding decisions of governmental actors and insurgency groups across many States to target and victimise entire groups and communities, including children and young adults. In these contexts, children and young adults, especially young girls, have been victims of sexual violence, and frequently death or serious physical harm.<sup>60</sup> By recognising these harms and the need to address them through dedicated and tailored reparations, the Chilean Report legitimises and validates the harms suffered by minors. This is important in itself and takes on special significance in the context of ensuring that these minors are provided assistance as adults so that they can be active and engaged members of the current generation who raise and train children and youth of today and tomorrow.<sup>61</sup>

It is, perhaps, unnecessary to highlight the many ways in which successive generations of South Africans were impacted by the brutality of the apartheid regime which governed the nation for decades. Indeed, with the end of apartheid in 1994, the nation struggled to understand and heal the wounds of the system and these wounds are still endemic in the laws, rules and societal systems in the country today. Throughout the South African Truth and Reconciliation Commission Report, there are numerous references to violence against children and young adults by governmental forces and by civilian organisations operating at various points in the history of certain areas of the State.<sup>62</sup> This includes the massacres of children and young adults, as well as women who would typically lead families and elders who would serve as the connection between the past, present and future.<sup>63</sup> In so doing, the Report can be seen as a tool for acknowledgment and healing for current and future generations as well as for the ability of future generations to ensure that the spirit and rubrics of justice created in the post-apartheid process are maintained and advanced.

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60 Chavez (n 44)

61 This was stressed in the Chilean Report's recognition and incorporation of 'the need to build the future' for those who suffered under the regime so that they can move on as part of society and family life. Chilean Report (n 48) 1020.

62 Report of the South African Truth and Reconciliation Commission (1998).

63 *ibid.*

### 3.2. Implicit References to Children, Young Adults and Future Generations

Poignantly, in many instances and across various States, the burden of keeping the memory of disappeared youth alive for current and future generations, and searching for them or their remains, has been undertaken by the grandparents, parents, and family members left behind. Highly visible examples of this include the Chilean Relatives of Persons Disappeared after Arrest,<sup>64</sup> and the Argentinian Las Abuelas del Plaza de Mayo.<sup>65</sup> In each example, the efforts of these groups emphasised the loss of the family members who suffered from the disappearance of adult loved ones as well as their inability to connect with the children and unborn relatives who were rendered absent because of their connection to disappeared family members. Thus, the losses here represented two types of absents – those who were integral to families and were removed without further explanation and those who were so young that they represented the future of a family, taking with them the future as well as the past and the present.

Indeed, in *Nunca Mas*, the Argentinian truth and reconciliation report, there are findings and discussions regarding the children and unborn children of those arrested, disappeared or killed, who were then taken by the regime and adopted by families loyal to it.<sup>66</sup> These findings expressly classify the taking of children as an act of terror committed by the State during the time period under review.<sup>67</sup> In many instances, these children were unaware of their real identities and the fate of their birth parents, and grandparents or other family members who sought them were unsuccessful for many years.<sup>68</sup> When these efforts proved successful, they brought with them justice for victims and their families as well as severe emotional and mental trauma for these now-adult children, who found the lives they lead to be based on falsehoods.<sup>69</sup> In other instances, however, children were constantly made aware of their family identities by their adoptive families, who saw their role as re-educating these children so that they would not adopt the political and social beliefs of their birth parents.<sup>70</sup>

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64 See Chilean Report (n 48) 824.

65 CONADEP, *Nunca Mas: Report of the National Commission on the Disappearance of Peoples in Argentina* (1986) 150.

66 *ibid.*, 148ff.

67 *ibid.*, 32.

68 *ibid.*

69 *ibid.*

70 *ibid.*

Again, these experiences were found to have resulted in sustained emotional, mental – and often physical – trauma that carried into adulthood. All these situations, and the damage they have caused, can be seen as explicit references to children and adults, as well as implicit references regarding future generations, who will be indelibly impacted by the experiences of having family members in such situations or simply in a post-conflict society where these issues are still pervasive.<sup>71</sup>

At the same time, there is an intergenerational equity impact in the sense that there have been and continue to be generations who do not know their true identity and heritage, or that of their parents and purported families, and who carry that burden throughout life, transmitting it to the next generation in the process. The requirement in *Nunca Mas* that the Argentinian government assist with the reunification of families impacted by these practices is a significant step toward beginning the healing process and bridging the intergenerational chasm of identity, yet implementing it will not fully overcome the lasting damage caused or allow children to meet family members who are no longer living.<sup>72</sup> Thus, these references serve as a bridge between the absence of adults, arguably the absents of the past and present, and the absence of children and the unborn, arguably absents of the present and future. Each type of absent group carries with it a connection to current society and has a distinct place in the ability of a nation to heal, although part of the healing process must reflect the understanding of differences in loss and suffering due to these two forms of absents.

### 3.3. Implicit References to Intergenerational Equity and Intergenerational Justice

In the Charter establishing the Chilean Commission on Truth and Reconciliation, an essential element is the idea that ‘[t]hat only upon a foundation of truth will it be possible to meet the basic demands of justice and create the necessary conditions for achieving true national reconciliation.’<sup>73</sup> At the same time, the Charter emphasises that ‘only the knowledge of the truth will restore the dignity of the victims in the public mind, allow their

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71 *ibid.*

72 *ibid.*, 23.

73 Chile, Supreme Decree No. 355 (25 April 1990).

relatives and mourners to honour them fittingly, and in some measure make it possible to make amends for the damage done.<sup>74</sup> This is necessarily focused on the past, although at the same time the Chilean Report makes it clear that such a focus is necessary to facilitate the reparations that will allow Chilean society to move into the future with less conflict.<sup>75</sup> In this way, there is an implicit understanding that acknowledging the suffering of the past, particularly those who were disappeared, is an essential element for providing a more just and less contentious future for those generations yet to be born.

In the Chilean Report, there is an extensive discussion of the ways in which institutionalised violence and disappearances disrupted the lives of children themselves as well as the health, economic status and emotional status of their immediate family members.<sup>76</sup> The results are cited as manifesting in many ways, including inherent insecurity and fear, physical and psychological health issues, lack of access to or interest in education, and stigmatisation from multiple sectors.<sup>77</sup> Additionally, survivors' statements have demonstrated fears that the hatred and apathy which resulted from acts of violence against family members could become an intergenerational issue, destabilising individuals, communities and the prospects for a durable peace.<sup>78</sup> At the same time, the Report notes that the ability of victims and those they left behind to have children has been impacted as a result of the harms they suffered.<sup>79</sup> Further, the Chile Report demonstrates the various and multifaceted impacts of violence and disappearances on families, noting that in some instances these events caused the family to become quite close but in other instances it resulted in the breakdown of families and the ways in which they functioned.<sup>80</sup> This, as the Chilean Report notes, in turn, can be seen as creating an intergenerational impact that continues through to the present and can extend out to the future.

The creation of the South African Truth and Reconciliation Commission was premised upon a statute which sought to bring to light, address, and craft methods of reconciliation and reparation for the many forms of viol-

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74 *ibid.*

75 See *ibid.*

76 See Chilean Report (n 48) 1005–1006.

77 *ibid.*

78 *ibid.*, 1008.

79 *ibid.*, 1007.

80 *ibid.*, 1010.

ence and suffering experienced under the apartheid regime.<sup>81</sup> At the same time, it specifically included the actions of civilian groups and associated criminal organisations within its parameters in an effort to generate a robust reckoning for South African society.<sup>82</sup> As the preambular provisions state, 'it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future.'<sup>83</sup> A primary objective for the South African Commission was:

- [...] to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-
- (a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;
  - (b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;
  - (c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them [...].<sup>84</sup>

Additionally, the South African Truth and Reconciliation Commission Report highlights the pattern of denying non-white children and young adults access to education as creating a generational pattern of poverty and inability to engage in the economic life of the State.<sup>85</sup> At the same time, however, the South African Truth and Reconciliation Commission Report itself highlights the issues it faced as a result of a mandate that

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81 Promotion of National Unity and Reconciliation, Act of 1995.

82 *ibid.*

83 *ibid.*

84 *ibid.*, art 3.

85 See South Africa (n 62) v 1, 32, 64.

was largely focused on assessing the human rights violations committed against individuals and crafting methods of reconciliation and reparation for the perpetrators while failing to address the impacts of these actions on families and family members.<sup>86</sup> A unique element in the South African Truth and Reconciliation Commission fact-finding process was the express inclusion of children through methods including storytelling and artwork in order to ensure that they were able to participate without incurring further damage.<sup>87</sup>

In another example, while highly controversial in many ways, the use of the Gacaca justice system in Rwanda, which was identified as critical under the truth and reconciliation report, 'Rapport sur le Sommet National d'Unité et de Reconciliation', served to establish a link between the traditional tribal system and current and future concepts in intergenerational justice.<sup>88</sup> In addition, Rwanda has and continues to highlight the essential role of education across all ages and social groups in order to provide a shared understanding of the genocide as well as those who resisted it and allow society to move forward without carrying these lessons into future generations' consciousness.<sup>89</sup> Given the widespread use of sexual violence against women and girl children in Rwanda, the report further emphasises the need to implement significant mental and physical health provisions to assist the victims while also ensuring that they, and the children resulting from such violence, are protected from victimisation by society.<sup>90</sup> Similar concerns were also emphasised in the truth and reconciliation report and findings for Sierra Leone, where sexual crimes were a pervasive weapon of war and institutionalised violence against children as well as women.<sup>91</sup>

#### 4. Conclusions

From a legal and societal perspective, peace is a commitment to and for future generations that also includes the recognition of past victims, especially those who are absent and can no longer speak for themselves or their

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86 *ibid.*, 367.

87 *ibid.*, 423.

88 See Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front (1993) 27–28.

89 *ibid.*, 35–37.

90 *ibid.*, 37.

91 Truth & Reconciliation Commission, *Witness to the Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (2004) v1 141.



experiences. Although most often the result of an intense conflict in which the fabric of a society is stretched to its limits, and sometimes unravels, peace is the string which can bind the fabric of society together again. It is rare that any society speaks of peace as a luxury for the present generation alone to enjoy. At the end of a conflict, particularly an internal conflict, peace is a hard-fought decision reflecting the decision of multiple parties and a willingness to compromise for a collective good. Part of the collective good embodied in peace is, inevitably, the future and constructs relating to intergenerational equity and justice. Similarly, the commitment to peace is a commitment to truth and to methods of reconciliation that unearth often devastating realities and impacts on current generations of adults and children as well as on future generations of citizens and throughout society.

As this research demonstrates, while future generations and concepts of intergenerational equity and justice are often not discussed in these terms as such, they are the fundamental underpinning of peace mechanisms. Without a commitment to the future in law and policy, efforts to ensure the durability of peace agreements lack a centralised core. In coming to understand this, and in advancing the role of intergenerational equity and justice in peace agreements as well as the work of truth and reconciliation commissions and similar entities, it is critical that there be a balance between the need to move forward with the healing process and the need to ensure that victims have the chance for justice. In this context, justice is not only for the victims, their families and their communities in the present day but also can be seen as intergenerational justice in that it allows individuals and society to understand the past and ensure it is not repeated in the future.

