

The right to education in a post-conflict context? Compensation and rehabilitation mechanisms: A legal/educational study

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Abstract---The issue of the right to education in conflict zones, in relation to reparations for past human rights violations, is complex and sensitive, given the scale and severity of these violations. Human rights alone raise national and international concerns because they have become a pretext for humanitarian intervention, on the one hand, and for establishing a future state where perpetrators and victims coexist, on the other. Educational curricula must respond to state-led reforms aimed at prevention and psychological and mental redress. These curricula must be based on teaching and educating about human rights to cultivate a culture and behavior that transforms learners from victims to witnesses to perpetrators. This paper will explore this issue.

Keywords---Compensation, psychological rehabilitation, health rehabilitation, child witness, child victim, child perpetrator.

Introduction: The right to education is a fundamental human right that aims to cultivate a citizen imbued with a culture of human rights, capable of living with dignity and integration through their awareness of their rights. This awareness empowers them to distinguish between their rights and responsibilities, and to acquire the mechanisms to defend these rights within individual or collective frameworks. It also equips them with the responsibilities they strive to fulfill, contributing to a development that allows everyone to enjoy a dignified life.

The learner is central to the formative process of instilling a culture of rights within their personality. The curricula and objectives of this right must address the circumstances they have experienced, including torture, murder, displacement, starvation, and violence that have impacted their physical,

How to Cite:

Berrezoug, C. (2025). The right to education in a post-conflict context? Compensation and rehabilitation mechanisms: A legal/educational study. *The International Tax Journal*, 52(6), 4720–4728. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/450>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

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Submitted: 01 May 2025 | Revised: 01 Aug 2025 | Accepted: 12 Aug 2025

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psychological, and mental health. This is especially true when a child has been recruited, whether voluntarily or by force, as their status can shift from victim to perpetrator to witness.

Children, whether as perpetrators, victims, or witnesses to these criminal acts, experience negative effects from these violations, necessitating treatment to facilitate their reintegration as children or ordinary individuals. Reintegration mechanisms often aim at rehabilitation¹. Psychologically, mentally, educationally, and materially, this enables them to integrate into societal institutions.

The subject of this study attempts to answer a problem that can be summarized as follows: How have different countries in conflict and post-conflict situations dealt with the right to education to rehabilitate children who lived through and experienced conflict as soldiers²? Or victims or witnesses, and ensuring the continuity of this empowering right.

The research problem is never without relevance, as the topic remains largely unexplored. It is a relatively new field, given that transitional experiences are constantly renewed with the resurgence of armed conflicts across the globe. Alongside these conflicts, educational reforms continue to be proposed to cultivate values and behaviors that establish a society of difference, diversity, tolerance, and peace. The right to education is considered a fundamental human right, and today it is advocated for quality education, not just mere instruction.

To address this problem, the scientific method necessitated the use of several interconnected approaches. The descriptive method was employed to identify the human and material impacts of armed conflict, while the analytical method was used in several sections of this research paper. The critical method is clearly present when expressing opinions, offering observations, and drawing conclusions after each descriptive analysis. To address this issue, this research paper has been systematically divided into two sections. The first, entitled "The Right to Education, Post-Conflict States, and the Reality of the Educational Question," begins by defining the right to education and then outlining and enumerating its sources and components in the first subsection. The second subsection then addresses :...The second section, "Post-Conflict States and the Reality of the Educational Issue," explores "compensation and its form as a mechanism for rehabilitation, to establish and instill a culture of tolerance and peace." Section One: The Right to Education, Post-Conflict States, and the Reality of the Educational Issue

Unlike normal circumstances, education in conflict states is affected by the conditions of war, including killing, torture, the infliction of disabilities on children and teachers, and the destruction of educational infrastructure. The psychological and mental well-being of victims is also affected, necessitating exceptional intervention to address the imbalances. Given this, we will define the right to education and refer to its international legal background, which seeks to establish it as an enabling right. We will then examine its components as follows:

Second Requirement: On the Nature of the Right to Education

The right to education is guaranteed to every child who has reached the legal school age in their country. It has been recognized by various international human rights instruments and international agreements. This has given it the status of an obligation for all countries in the international community, which has enshrined a set of legal guarantees within its domestic legal system.

Under this, we will address the definition of the right to education, its sources, and its components as follows:

First Subsection: Defining the Right to Education

"It is a human right in itself, and at the same time, an indispensable means of realizing other rights." Other human beings. Education, as an empowering right, is the primary tool by which economically

and socially marginalized adults and children can lift themselves out of poverty and gain the means to participate fully in their communities. Education plays a vital role in empowering women, protecting children from exploitative and hazardous work, as well as from sexual exploitation, promoting human rights and democracy, protecting the environment, and managing population growth. Education is increasingly recognized as one of the best financial investments countries can make. But the importance of education is not merely practical; a cultured, enlightened, and active mind, capable of exploring freely and to its fullest potential, is a mind that enjoys the joys and rewards of existenceⁱⁱⁱ."

Section Two: Sources of the Right to Education

Article 26 of the Universal Declaration of Human Rights states that "Everyone has the right to education^{iv}". Article 28 of the Convention on the Rights of the Child states: "Every child has the right to education. Primary education shall be free and secondary and higher education shall be made available. Children should be encouraged to attend school to achieve the highest possible level of education. Schools must respect children's rights and refrain from any form of violence"^v..

This right is reinforced and enshrined in the Convention against Discrimination in Education, whereby States Parties to this Convention, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), commit to developing, implementing and promoting a national policy aimed at supporting equal opportunities and equal treatment in education and making primary education free and compulsory^{vi}.

UNESCO develops and monitors standards and rules relating to education to promote the guarantee of the right to education at the national level. This right can only be realized for beneficiaries through its practical and effective implementation, a responsibility that rests with States to ensure its fulfillment^{vii}..” The Education 2030 Agenda and Sustainable Development Goal 4 present a strategic opportunity for Member States to review and reform their national legal frameworks in line with their international commitments and legal obligations under international standards, to ensure the right to education for all. This is being implemented within the framework of UNESCO's Capacity Building Programme in Education^{viii}..

There is an international legal framework that establishes and protects this right, providing sufficient guarantees. Domestic laws of countries then contribute to and reinforce this framework, forming a legal arsenal that ensures the guarantee of this right.

Section Three: Components of the Right to Education

Katarina Tomashevsky identified four (4) components of the right to education:

- Availability: This means free access, adequate infrastructure, and qualified teachers.
- Accessibility: Education must be available to all and impartial, with priority given to the most vulnerable groups.
- Acceptability: Educational content must be of high quality, and schools must be safe.
- Adaptability: The education system must keep pace with developments to meet emerging global and local needs and ensure equality.^{ix}.

These components further strengthen the right to education and are sufficient evidence of a society's efforts to achieve or at least guarantee a minimum level of well-being.

"States, as parties to human rights treaties, have an obligation to respect, protect, and fulfill the right to education, whether or not there is a state of emergency." Furthermore, the right to education is an inherent right for every person, regardless of their legal status, whether they are a refugee, a child soldier, or a displaced person..^x"

Here, the right to education must take into account all ordinary and exceptional circumstances. Second requirement: Post-conflict states and the reality of the educational issue. Armed conflicts often leave no stone unturned, with warring parties failing to distinguish between civilian targets that must be protected and which are prohibited from being targeted, and military objectives. In the quest to weaken the morale of the other side, civilian facilities and individuals become targets of weapons, resulting in loss of life and the destruction of infrastructure, often schools and hospitals. The inevitable result is that the victims are mostly children, including those who are disabled, displaced, forcibly disappeared, and tortured.

Under this requirement, we will examine the impact of violations against children during armed conflicts, as well as their extension to educational curricula and institutions. These axes have been structured according to the following methodological framework :

Section One: The Impact of Violations on Children and Educational Institutions

This section is divided into two parts. The first part addresses crimes committed against children, while the second part addresses attacks on teachers and educational facilities in their physical dimension.

Crimes Against Children: "The world has witnessed, and continues to witness, numerous armed conflicts in which human rights are widely violated, whether those victims are unarmed civilians or combatants who have ceased fighting for any reason. This occurs despite the tireless efforts exerted by the international community ".^{xii} It is a sad reality that in cases of armed conflict, children are the most vulnerable members of society and the most affected by the consequences of war. The six most common violations are the recruitment and use of children in war, killing, sexual violence, abduction, attacks on schools and hospitals, and denial of humanitarian access^{xiii}."

"The Rome Statute included the act, under the description of "enforced disappearance of persons," and considered it a crime against humanity (Article 7)."^{xiii} (These six most common violations against children constitute international crimes prohibited under human rights law and international humanitarian law. International law provides numerous safeguards for this vulnerable group, recognizing their immaturity and susceptibility to manipulation and exploitation in conflict zones. Furthermore, they are easily enticed with financial incentives, given that many come from impoverished backgrounds, and are easily drugged and manipulated.

Of the 72 million children of primary school age worldwide who are out of school, more than half – 39 million – live in countries affected by armed conflict.^{xiv} "Children are caught in conflicts where they are not just bystanders, but targets ".^{xv} .Around 250,000 children were recruited worldwide, but not to serve as soldiers ^{xvi} .Not only for detecting mines, but also as spies, messengers, or as individuals on suicide missions. ^{xvii} ."

We can point to a very serious issue in conflict situations, and this concerns a category of victims: children who are victims of actions and behaviors for which they are not responsible, committed by their parents. They are exposed to all kinds of abuse and assaults. Their rights as children are violated, from sexual assault and detention to torture and deprivation of education..^{xviii}"

"Armed conflict not only causes human casualties and physical destruction, but also forced displacement. Over the past year, an increasing number of people have fled conflict zones in search of refuge in safer places. The UNHCR reports that one in every 122 people worldwide is now either a refugee, internally displaced, or asylum seeker".^{xix}.

1. Thus, children are burdened with multiple responsibilities by armed groups during armed conflicts. They may be involved in the war directly or indirectly. It is natural that the number of victims rises, and it is equally natural that their behavior changes as a result of the war's impact, brainwashing, and financial inducements.

2. Attacks on Educational Institutions and Teachers: Attacks on schools and educational infrastructure, sometimes deliberate, are a major reason why many children are unable to attend school. In Syria, Iraq, Yemen, and Libya, approximately 9,000 schools are unusable due to damage, destruction, or because they are being used as shelters for displaced families or as headquarters for warring parties^{xx}. "

It should be noted that the education sector in Algeria suffered greatly during the Black Decade. The sector lost teachers and students in numerous terrorist attacks, and educational infrastructure was also targeted. This had negative psychological and mental repercussions on all members of the educational community, including the loss of access to education. It is only natural that such devastation would lead to school closures, a significant number of children dropping out, and a decline in the quality of education due to disruptions, the emigration of teaching staff, reduced teaching hours, and a pervasive climate of fear. Consequently, the quality of teaching has deteriorated.

According to the United Nations, more than 22,000 students, teachers, and academics have been injured, killed, or wounded in attacks on educational institutions during armed conflicts or due to insecurity over the past five years. Students and teachers are among the most affected by direct attacks on educational institutions in Afghanistan, Cameroon, and Palestine " ." ^{xxi}. These circumstances are driving thousands of teachers to quit their jobs, or causing parents to refrain from sending their children to school due to fear of what might happen on the way to school or at the school itself^{xxii} .."

"If education is harmed in these ways, its role in supporting sustainable recovery can be lost or greatly diminished, and this harm can also reduce societies' awareness of the need to protect and guarantee human rights."^{xxiii} .

This directly impacts the nature of education in these areas, as new violent behaviors take root, making conflict-affected societies more vulnerable to disintegration and the outbreak of armed conflict at any point in the country's history. This is due to the breakdown of the social fabric and the spread of a culture of revenge, hatred, and resentment. Therefore, the question of moral and material reparations remains crucial for facilitating peacebuilding and coexistence in a unified homeland after years of bloodshed.

Section Two: Reparations and Their Form as a Rehabilitation Mechanism

In times of conflict, violations of the right to education, such as targeted attacks on safe access to schools, threats against children and teachers, and the military use of schools, have a negative impact that extends far beyond the education sector. Furthermore, education is frequently disrupted by the prevailing climate of fear and instability, or by the displacement of schoolchildren, teachers, and school staff. This not only incurs significant financial costs for rebuilding schools, repairing infrastructure, replacing equipment, and training new teachers, but also results in substantial human and societal losses".^{xxiv} .

This is to be expected, given that warring parties often disregard the rules of international humanitarian law. They may deliberately target civilian institutions to weaken the enemy's morale, or educational facilities may be used as military shelters or weapons depots. In armed conflicts, students, teachers, and administrative staff rarely escape attacks and assaults. The result is widespread human rights violations against protected groups in conflicts and costly destruction.

First Requirement: Defining Compensation. Compensation has many diverse definitions due to varying cultural and ideological perspectives and viewpoints. We will limit ourselves to the following definition, as it fulfills the essential elements of the term: "Compensation is a non-judicial guarantee for human rights during the transitional phase. It aims to redress and mitigate the moral and material damages suffered by victims and their families as a result of grave and widespread violations that constitute breaches of human rights law and international humanitarian law, including crimes of sexual violence. It

takes several forms, including collective and individual, direct and indirect material and moral compensation.^{"xxv"}.

"The effects of violations remain deeply rooted in both the victim and society, and no compensation policy can erase all their consequences. There is a category of damage where restoring the situation to its previous state is impossible, or where direct restitution of the right or thing is impossible. Nevertheless, legal texts and international conventions have ensured the alleviation of the suffering and pain endured by victims through fair and comprehensive compensation for them and their families ".^{" xxvi "}.

"Compensation, whether financial or symbolic, plays a crucial role in the process of healing and rehabilitating the victim. This, in turn, encourages national reconciliation, where compensation is a key factor ." ^{xxvii "}.

It follows that reparations, in their various forms, can achieve healing by alleviating past pain and facilitating positive forgetting. Reparations are crucial for calming resentful souls and creating an atmosphere of reconciliation. To be effective in this regard, they must be fair and efficient. Despite their significant role, they require other components to achieve complete redress and healing.

Second Requirement: Specifications of Reparation

Reparation must be fair, efficient, and specific—proportionate to the suffering endured. It must be reasonable, allowing the victim to rebuild their past life and dignity. As a component, compensation must erase all consequences of the wrongful act and rectify the resulting situation, restoring it as if it had never occurred. This is in accordance with the fundamental principles and guidelines relating to appeals and compensation for victims of gross human rights violations. Compensation must be awarded according to the severity of the harm suffered. The Human Rights Committee has emphasized the necessity of compensation that is fair and specific.^{"xxviii"}.

The harm can be physical or mental, emotional suffering, economic loss, or deprivation of civil rights. The victim may also be a dependent or immediate family member of the original victim, or someone who suffered physical, mental, or economic harm as a result of intervening to help a victim or to prevent further abuse ^{xxix}.The quality of services provided to victims, as well as the personnel responsible for overseeing them, has been given high value by the United Nations General Assembly, making it one of the fundamental principles to be observed in assisting and rehabilitating victims. This makes its inclusion in the Court's operational mechanisms essential ." ^{xxx "}.

Compensation in all its forms falls under the framework of restorative justice, as it repairs material and moral damages, mending the wounds of the past to achieve healing and reconciliation. This, in turn, leads to the realization of reconciliation between the perpetrator and the victim, allowing everyone to live together. Compensation is diverse and varied, focusing on the financial aspect, which is crucial for the success of reconciliation and the process of rebuilding the social fabric. This is in addition to providing psychological and mental health support to the victims.

Third Requirement: Functions of Compensation

As a mechanism for alleviating pain and calming grievances, compensation plays a significant role in facilitating healing and reconciliation. This enables the repair of damages caused by violent and repressive acts that violate the law, compensating for the financially quantifiable losses—both material and moral—suffered by individuals as victims and by the state.^{"xxxi"}.

"Furthermore, compensation may lead victims and their families to embrace forgiveness, pardon, and tolerance" .^{"xxxii "}.It contributes to mitigating the effects of repressive policies based on violence and the

exclusion of those who disagree with the prevailing opinion or policy, and facilitates better future prospects " .^{xxxiii} ".It allows victims to benefit from financial compensation that alleviates suffering and reduces social injustice. It also takes the form of official apologies offered to this affected group, and contributes to establishing prevention of recurrence. Compensation helps to heal the wounds of the painful past through disclosure, rehabilitation, and appeasement, in addition to instilling self-acknowledgment in the victim, which makes him feel dignified ."^{xxxiv} .

From this we can conclude the following:

- Compensation is a non-judicial mechanism; that is, it is purely administrative in nature and is determined by committees ^{xxxv} .Assigned according to the severity of the harm. (A non-judicial guarantee of human rights during the transitional phase)
- Compensation can be judicial if legal proceedings are initiated regarding these violations.
- It is paid to the direct or indirect victims.
- It is paid by the Commission's administration or an independent administrative body established for this purpose.
- Compensation may be material or moral, individual or collective.
- It achieves its purpose if it is sufficient, fair, and effective.
- It achieves prevention (prevents the recurrence of past violations)

Fourth Requirement: State and Individual Responsibility for Compensation

The UN Basic Principles hold the responsible state and individuals accountable for reparation and repair" "^{xxxvi} .If the state is responsible for the violations, the source of material and moral compensation shall be the state"^{xxxvii} " .

From this, we conclude that the state bears full responsibility for compensating victims, given that ensuring the security of individuals and their property is a core function of its duties. It offers condolences and apologies, establishes committees to assess damages and investigate the underlying causes, and thus assumes these burdens towards its victimized citizens. This is in addition to its duty to these victims by revising educational curricula to promote tolerance, peace, and the rejection of violence in the behavior of these victims and all citizens, thereby rebuilding the social fabric and forging a new identity. Furthermore, it extends to prosecuting those involved in violations before independent and impartial courts to obtain judgments that mandate fair and effective compensation for the victims.

Compensation may include an assessment of the victim's expenses related to legal costs and the costs of various services, such as healthcare, psychological rehabilitation, and lost opportunities, such as the disruption of their education ^{xxxviii} .To integrate this with development, it is necessary to establish healthcare centers as close as possible to the victims and to provide education and qualified teachers for the victims and their families. This is especially important in cases where conflicts escalate"^{xxxix} .

Compensation may be for lost opportunities, such as the opportunity to complete university or academic education, due to detention, recruitment, exploitation in prostitution, cooking, or espionage. In such cases, compensation can be individual, through the allocation of scholarships, or collective, such as the construction of schools in areas affected by armed conflict and the establishment of mental health facilities.

Conclusion:

In conclusion, the right to education is a fundamental tool for achieving human development and ensuring peace in post-conflict countries. It constitutes a crucial pillar for building societies based on tolerance and coexistence. The study demonstrated that armed conflicts leave devastating effects on children, whether as victims, witnesses, or forced soldiers, necessitating exceptional efforts for their rehabilitation and reintegration into society. The study also emphasized the importance of adopting comprehensive education policies that address the psychological and physical harm inflicted on children

and rebuild educational institutions. Moral and material compensation is a pivotal part of the reconstruction process and the rebuilding of the social fabric. Ensuring the right to education, with its quality and comprehensiveness, is fundamental to a decent life and the sustainability of peace in societies affected by armed conflicts, which are often orchestrated by hostile states targeting other countries as part of a strategy of fragmentation and disintegration.

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ⁱ Rehabilitation aims to help victims continue living as normally as possible by providing a range of services and assistance in various aspects of life. This right of victims is recognized as a form of reparation in the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. (Ben Khadim Nabil, "Fulfilling Victims' Rights in International Criminal Law," Master's thesis in Public Law, University of Biskra, 2011/2012, p. 107).

ⁱⁱ A child soldier is defined as "any person under the age of 18 who is a member of the armed forces of a government or of regular or irregular armed groups, or associated with such forces, whether or not there is a situation of armed conflict." See: Mohamed El-Nady, "Child Soldiers under International Humanitarian Law," available at: <https://www.maacom.org/?p=6095>, accessed: 28/12/2021, 3:40 PM.

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^{xiii} For the purpose of this Statute, any of the following acts constitutes a "crime against humanity" when committed as part of a widespread or systematic attack:

a) Willful killing. b) Extermination. c) Slavery. d) Deportation or forcible transfer of population.

e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. f) Torture. g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity.

h) Persecution of any identifiable group or collectivity on political, customary, national, ethnic, cultural, religious, or gender grounds, as defined in paragraph 3, or on other grounds universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court. i) Enforced disappearance of persons. j) The crime of apartheid. (k) Other inhuman acts of a similar character intentionally causing severe suffering or serious injury to the body or to mental or physical health.

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