

Children and Transitional Justice Key Principles Document

For the Involvement of Children and Consideration of Children's Rights in Truth, Justice and Reconciliation processes

I. Preamble

Children are among those most affected by violence during periods of civil unrest and situations of armed conflict. Because children and adolescents are victims and witnesses of wartime violence and atrocities, and active members of their families and communities, they have a crucial role as participants in post-conflict peace, justice, truth-seeking, reconciliation and reconstruction.

Accountability for grave international crimes committed against children during armed conflict is required by international law. There is growing consensus that unless perpetrators responsible for serious crimes under international law – including and especially crimes committed against children – are brought to justice there will be negative consequences for future peace and stability. Impunity adversely affects not only the individual child victim, but whole generations of children.

Truth, justice and reconciliation processes have begun to specifically address crimes committed against children and have involved children proactively, including through testimony that bears witness to their experiences.

Children are involved in transitional justice processes because: i) as victims and witnesses of crimes committed, they have an important role in providing testimony to international and national courts and truth commissions and ii) as family members and citizens of their community they are key actors in accountability and reconciliation processes and have a right to participate in decisions affecting them.

Transitional justice processes involve a range of options for involving children as participants and ensuring the protection and promotion of their rights. A child-focused approach to transitional justice should be holistic and human rights-based, and should strengthen the protective environment for children in their families and communities. Complementarity among diverse mechanisms is necessary in order to provide a comprehensive framework for child participation and protection.

Truth, justice and reconciliation processes should reflect local factors and priorities for children. At the same time analysis of national and regional contexts can enable consistency and coherence at the global level.

Drawing on good practices and lessons learned, as well as existing standards and norms, common minimum standards on children and transitional justice should be developed, to protect and promote the rights upheld in the Convention on the Rights of the Child and other international standards.

II. Definitions

- *Child*: A child is a person who is below 18 years of age. According to the World Health Organization adolescence is defined as the period of life between 10-19 years, youth as between 15- 24 years and young people, as those between 10-24 years.
- *Transitional justice*: Transitional justice, as defined by the United Nations, refers to the “full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, service justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” (Report of the Secretary General, “The rule of law and transitional justice in conflict and post-conflict societies,” United Nations, 23 August 2004 (S/2004/616), para 8.)

III. Principles for child protection and participation in transitional justice

- Best interests of the child should guide transitional justice processes.
- Children must be treated with dignity and respect.
- Safety and security of all children is paramount.
- Children have the right to participate in decisions affecting their lives. All participation of children should be voluntary, with the informed consent of the child and parent or guardian. The decision not to participate is also a form of participation.
- The protection of children, including policies and child-friendly procedures, must safeguard their physical, spiritual and psychological well-being.
- All involvement of children should include a specific focus on adolescents and should be consistent with the evolving capacities of the child.
- A gender-sensitive approach should protect the rights of girls, address their specific needs and capacities, and encourage and support their participation in transitional justice processes.
- Confidentiality and protection of the identity of the child must be guaranteed at all times (see UNICEF Media Guidelines).
- Efforts towards reintegration and reconciliation and other transitional justice processes should address the root causes of civil unrest and conflict in order to ensure a holistic long-term approach and realize children’s civil, political, social, economic and cultural rights.

IV. Specific Principles and Programmatic Recommendations

Judicial accountability

- Ensure that accountability mechanisms address crimes against children, through investigation, prosecution of perpetrators and redress for victims.
- There should be no amnesty for perpetrators responsible for grave international crimes against children, in particular, genocide, war crimes and crimes against humanity.
- Children are primarily victims of war. Based on the Rome Statute of the ICC, the Special Court for Sierra Leone and the practice of the *ad hoc* tribunals, there is an emerging standard that persons under 18 should not be held criminally responsible for grave violations of international law.
- Children should become witnesses in legal prosecution for international crimes only when necessary. If evidence can be provided by an adult then child witnesses should not be exposed to courtroom procedures.
- Children have the right to participate in judicial proceedings affecting them (CRC art.12). Legal procedures should be adapted to the child and not the other way around.
- When child victims and witnesses give testimony in judicial processes special measures should be put in place to protect their rights, including the provision of psychosocial support, the use of trained investigators and the protection of the child's identity. Measures must ensure that child victims understand the trial process, its aims and objectives and possible consequences, consistent with their evolving capacities and in accordance with the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.
- The prohibition of torture is a peremptory norm of international law, in particular for children. The severe effects of torture on children have lifelong impacts on a child's process of growth and maturation, and their ability to form relationships and reintegrate in society. Psychosocial support and reparation is needed to help recovery.

Truth-seeking mechanisms

- Truth-seeking mechanisms should take into consideration the full spectrum of rights, as guaranteed in the CRC, and should therefore investigate and document civil, political, social, economic and cultural rights violations against children.
- Child and adolescent participation in truth-seeking mechanisms should highlight their role as active citizens contributing to community-based reconciliation efforts. Failure to address concerns of children and youth wastes their capacity

and potential to contribute to reconciliation and peace-building within their own communities.

- Children's contributions to truth, justice and reconciliation processes should represent the range of their experiences and the violations committed against them, including a balance of gender, ethnic, religious and geographic groups and/or identities.
- Children's participation in transitional justice processes should strengthen their protection, and protection should enable their participation. Effective participation and protection of children can help to break the cycle of violence and prevent future conflict and instability. The mutual link between protection and participation needs careful consideration so that participation is informed, guided and sustainable, and in the best interests of the child.
- Child and adolescent participation in a truth commission should not be viewed as an isolated event to provide information to the commission, but instead should be understood as part of a process of engagement with young people as family and community members. By bringing their unique views and experiences forward children can contribute to reconciliation and build their capacity for active citizenship.
- If children participate in statement-taking or in thematic or closed hearings then protection policies and procedures must be in place. Strict confidentiality must be maintained with regard to the identity of child victims and witnesses. Participation of children and young people should promote psychosocial healing and the strengthening of self-esteem. Local and traditional activities that dignify victims and build a culture of respect for human rights should also be encouraged.
- Psychosocial and other appropriate support services should be provided before, during and in follow-up to children's involvement in truth and reconciliation processes. The provision of a network of supportive adults and peers is crucial in the aftermath of civil unrest or armed conflict to encourage children's recovery and rehabilitation. Special attention should be given to girls and boys who have been victims of sexual violence. In settings where formal networks for psychosocial support are not functional or are difficult to access, alternatives should be offered.

Local, traditional and restorative justice processes

- Local or traditional methods for reconciliation, such as forgiveness ceremonies and other opportunities for perpetrators to acknowledge and apologize for crimes committed, can contribute to accountability. More work is needed to better understand local processes and their potential, as well as their limitations.
- The support of community and traditional leaders, teachers, parents and others involved with children on a daily basis, together form a most effective safety net.

It is through the guidance of parents and adult mentors that children's involvement is integrated with the community. For example, any of these adult mentors might facilitate the participation of children in healing or forgiveness ceremonies.

- Restorative justice can be used in complementarity with other transitional justice processes to encourage social engagement and to address the impunity gap at the community level.
- Local mechanisms need to be respected and empowered, and are useful in addressing the broad range of crimes committed during armed conflict. However, it is essential that local mechanisms meet international standards, in particular with regard to protection of the rights of children. Local mechanisms should work together in complementarity with the formal justice system or truth-seeking mechanisms.

Outreach and consultations

- Consultation with children on transitional justice processes should: i) make use of existing local structures such as schools, clubs, child welfare committees, ii) involve child protection agencies and local leaders in identifying and supporting child participants while recognizing possible risks, iii) ensure girls voices are encouraged and heard with separate consultations for girls, as needed, iv) identify and build on existing capacities; v) give feedback directly to the communities on consultation outcomes, vi) explain limitations, whether in the case of a court, truth commission or reparations program or any other form of accountability process, to avoid unrealistic expectations.
- Outreach targeting children is critical for successful participation in transitional justice processes. Children's views should also be considered when determining what forms of outreach are most effective. Attention
- Meaningful child and adolescent participation should include parents, teachers, religious and community leaders, and other adults throughout the process, keeping them informed and engaged.
- The engagement of children in transitional justice processes, including economic development, when properly supported and guided, can build the capacity of children and young people, laying the foundation for a more just and peaceful society.

Institutional Reform

- Transitional justice processes should be integrated with post-conflict reconstruction efforts, putting in place measures to address children's economic and social rights, and helping build a stronger, more stable post-conflict society and economy. If socio-economic factors are not addressed they can undermine the

recovery of children and young people in the post-conflict situations and lead to exploitative practices as well as triggering social instability.

- In designing fair and effective reparations programmes for children it is necessary to assess what actually happened to girls and the boys and to understand their individual and collective needs. It is important to work with child protection agencies and other child rights experts, and to link reparations for children with social and economic reform.
- Emphasis is needed on the role of education in post-conflict institutional reform, including the potential for curriculum reform to establish a link with a truth commission in order to address the history of the conflict, human rights and citizenship. The link between education and transitional justice can help to build the capacity of children and adolescents to act as catalysts for social change and also encourage their active citizenship.
- Educational reform should be a centerpiece in national reconstruction, reform and reconciliation. Curriculum reform is crucial for post-conflict reconciliation because education is often implicated in national or civil conflicts, reflecting ethnic or cultural discrimination or injustice that can lead to societal intolerance and violence.
- The reform of educational systems can remove prejudice that may have provoked discriminatory practices, as well as introduce civic and human rights education, conflict resolution, objective history and social studies, gender studies and related disciplines.
- Judicial and security sector reform should be coordinated with transitional justice processes. For example, the reform of the police structures should give priority attention to child rights and child protection, with particular attention to gender-based violence. The reform of the national justice system should strengthen and improve juvenile justice. These reforms should take place at both national and community levels and should be participatory and transparent. Engaging local level security forces, as well as police chiefs, judicial officers and prison staff, is crucial in creating a focus on children.
- The development of improved systems of social welfare, care and protection should be informed by transitional justice processes in order to help children better succeed in the post conflict environment.
- Transitional justice processes should include the consideration of improving access to basic health care, a crucial social service for children and youth. Directing reparations to measures such as vaccinations, malaria prevention, and easily accessible local clinics will lead to stronger and healthier future generations.

- Transitional justice processes should include economic reform in order to rebuild society in the best interests of the child, creating opportunities for vocational training and livelihoods, and providing for a more stable and secure future.

V. Supporting International Instruments

The following international treaties, resolutions, declarations and reports establish and affirm existing standards and practices and therefore serve instruments, reports and Security Council resolutions serve as reference to this document:

- Convention on the Rights of the Child (CRC)
- Report on the Impact of Armed Conflict on Children (A/51/306 and Add.1) by Graça Machel, the independent expert named by the Secretary General and presented to the General Assembly (1996)
- African Charter on the Rights and Welfare of the Child (1999)
- Optional Protocol to the CRC on the participation of children in armed conflict
- Rome Statute of the International Criminal Court
- UNICEF Amicus Curiae Brief for the Special Court for Sierra Leone (2004)
- Paris principles and guidelines on children associated with armed forces or armed groups and Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups.
- UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime
- Security Council resolutions on Children and Armed Conflict 1261, 1314, 1379, 1460, 1539, 1612.