

**Expert Discussion on
CHILDREN AND TRANSITIONAL JUSTICE**

Background Paper

**UNICEF Innocenti Research Centre
Florence 12-13 June 2008**

Children and Transitional Justice Background Paper

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Children and Transitional Justice Expert Paper Series

Introduction and Background

The world has witnessed a growing threat of armed conflicts and ‘internal wars’ over the past 15 years. Children are among those most affected and, in many instances, they have been targeted for killings, disappearances, under-age recruitment, sexual violence, torture and other grave violations of their fundamental rights.

There is a growing global consensus on the need for accountability mechanisms to address human rights violations committed during armed conflict, including a specific focus on crimes against children. Accountability in post-conflict situations fulfils a number of important functions. The investigation and documentation of violations committed can help to restore confidence in the rule of law and raise public awareness of the impacts of conflict on children. When accountability is combined with processes of reconciliation, it can help to break the cycle of violence and strengthen the legitimacy and authority of the new government. It may also contribute to the process of healing and provide a foundation and framework for a more stable and just society and democratic institutions.

In recent years, truth, justice and reconciliation processes have begun to focus specifically on crimes committed against children and have involved children proactively, including through testimony that bears witness to their experiences. The reason to involve children in transitional justice processes is two-fold:

- Children are victims and witnesses of crimes committed and therefore have an important role in providing statements and testimony. Recently children and adolescents have demonstrated their unique capacity in providing testimony to international and national courts and truth commissions. But if children are to engage in transitional justice processes their rights must be respected. It is therefore essential that child-friendly procedures are developed and legal safeguards are established to protect children’s rights in the context of their involvement in transitional justice mechanisms.
- Children are family members and citizens of their community and therefore are key actors in accountability and reconciliation processes. The engagement of children and adolescents in transitional justice processes, when properly supported and guided, can help to build the capacity of young people for active citizenship in post-conflict transition, also laying the foundation for a more just and peaceful society.

What is transitional justice?

Transitional justice 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.”¹

Transitional justice processes are based on a human rights approach and rely on international human rights and humanitarian law in demanding that states halt, investigate, punish, repair, and prevent abuses. A consistent focus on the rights and needs of victims and their families is important in all instances.

Transitional justice processes include:

- Domestic, hybrid, and international prosecutions.
- Truth-telling initiatives to determine and document abuses that have occurred.
- Promoting reconciliation within divided communities.
- Reparations to victims, including individual, collective and symbolic reparations
- Constructing monuments and memorials to educate future generations
- Institutional reform, including the vetting of public institutions.²

Historically transitional justice mechanisms have paid limited attention to the experiences and needs of children. Advocacy efforts by child rights organizations have underlined the importance of addressing issues related to children, and some transitional justice processes have begun to examine rights violations against children, involving children proactively as participants through testimony that bears witness to their experiences.

The appropriate form of accountability for alleged child perpetrators is a source of ongoing consideration and debate. 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 children under 18 are not held criminally responsible in international tribunals or courts for grave violations of IHL (war crimes, crimes against humanity, genocide). This is because prosecutions are generally sought for those “bearing greatest responsibility” for systematic violations, and children are not among those bearing greatest responsibility for crimes of war.

In the aftermath of war or brutal human rights abuses, there is no one answer or formula to achieve accountability, justice and reconciliation. Transitional justice processes are likely to be most effective when combined with other accountability processes, including criminal proceedings, reparations programmes and institutional reform.

Children and Transitional Justice Expert Paper Series

The Children and Transitional Justice Expert Paper Series was initiated to encourage further research and analysis on key issues, in order to better understand the potential and the limits of children’s participation in transitional justice processes and to build consensus on the way forward. Topics have been identified in an ongoing dialogue with

¹ See, UN Security Council, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, 23 August 2004 (S/2004/616), para. 8.

² Adapted from ICTJ summary.

legal experts, practitioners, academics and colleagues from civil society, including children and young people.

An overall objective of the Children and Transitional Justice Series is to improve accountability for crimes against children and to protect the rights of children involved in transitional justice processes. A second objective is to promote the involvement of children and adolescents in community development and peace-building. More specifically, it is anticipated that the expert papers will enhance knowledge on issues related to the protection of children's rights in transitional justice mechanisms, document and analyze emerging good practices and lessons learned, evaluate the potential role of children in truth, justice and reconciliation activities, and promote strategies for involving children in future processes, including efforts underway in various country situations.

Discussion Panels and Working Groups

Authors have been requested to prepare a two-page summary of their paper, including key findings, proposed recommendations, and unresolved issues and questions for discussion. The summaries are included in this Background Paper and will serve to inform the peer review, generating interactive dialogue and feedback.

Panels and working groups have been organized around key themes, to allow for the presentation and discussion of current draft expert papers and research underway. The panel discussions will begin with core considerations and the international legal framework (panel one); review how a child rights approach is understood in transitional justice processes (panel two); consider local processes and peacebuilding (panel three); and conclude with specific case studies that demonstrate the success of good practices, as well as limitations and lessons learned (panel four).

Following discussion of the summaries and draft papers, four working groups will be convened to allow more in-depth dialogue and exchange between experts and authors. Each working group will be tasked with identifying key issues and recommendations on respective themes.

The discussion in the panel sessions and working groups will provide the basis for consideration of more effective strategies to promote and protect the participation of children in transitional justice mechanisms and processes. In addition, the discussions will help frame the issues under consideration in the Children and Transitional Justice Series, building consensus, noting gaps, and establishing a network for ongoing peer review.

Key issues and questions for discussion

- Guided by international standards and on the basis of experience and lessons learned, recommend a coherent approach to child and adolescent participation in transitional justice processes at the country level.
- To what extent has the CRC, in promoting the realization of the rights of the child at national and international levels, helped to generate a shift towards greater attention to children in transitional justice processes?

- Further consideration is needed as to how “the best interests of the child” principle (CRC, article 3) might guide the work of truth commissions, and what are the implications of the “evolving capacities of the child” principle (CRC, article 5) on protection procedures, and with regard to agency and responsibility.
- What are the criteria that must be met in order to safeguard children’s rights and support their meaningful participation in transitional justice mechanisms?
- How to establish complementarity in transitional justice processes, specifically in determining the most appropriate mechanisms to achieve accountability for crimes against children?
- Are some transitional justice processes more appropriate for child/adolescent participation than others?
- How does a child rights-based approach inform transitional justice processes, e.g., addressing the full range of economic, social and cultural, civil and political rights, with a specific focus on non-discrimination, gender equality, participation, partnerships?
- How to establish criteria for children’s eligibility for reparations in post-conflict situations and implement a fair, effective and family-based reparations programme for children?
- Ideally, the participation of children in transitional justice processes should strengthen their protection, and protection should enable their participation. Effective participation and protection can help to prevent future conflict and instability. How then to assess the risks to children in politically charged contexts and build a supportive relationship between protection and participation so that child participation is informed, guided and sustainable?
- How to manage children’s expectations of transitional justice mechanisms, to promote realistic and realizable outcomes, acknowledge the limitations and avoid the tendency to ‘romanticize’?
- What strategies are needed to encourage the participation of girls in transitional justice mechanisms and to ensure that gender-related issues include but are not limited to sexual violence and abuse?
- How can international standards and mechanisms of transitional justice inform accountability at the local level while respecting community-based traditional and cultural practices and perceptions (e.g. to what extent are traditional practices and ceremonies of forgiveness able to achieve accountability and reconciliation while upholding international standards)?

Basic Assumptions of Transitional Justice

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No Peace Without Justice

Children and Criminal Responsibility: the International Legal Framework

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Introduction

States in post-conflict situations are faced with extremely difficult choices, trying to find the right balance between judicial and non-judicial means intended to improve accountability for crimes committed during the conflict and to contribute to national reconciliation. These choices are made on the basis of the specific circumstances of each state. Nevertheless, due consideration must be given to the duties that are imposed on states by international law. In this paper, an overview is provided of the duty to prosecute persons accused of the most heinous international crimes: genocide, war crimes, crimes against humanity, torture and enforced disappearances, highlighting how children are affected by these crimes. Against this general background, two specific issues are addressed: *firstly* the rules and practice of prosecuting persons accused of international crimes against children, focusing on their recruitment into armed forces or groups and using them to actively participate in hostilities; and *secondly*, the existing international norms on the accountability of children who may be accused of having participated in the commission of international crimes themselves as child soldiers. The paper concludes with some recommendations for states and child protection agencies.

Main Findings

Children are widely affected by atrocities as victims and they have been specifically targeted for some international crimes. The illegal recruitment of children for participation in an armed conflict is one of the most frequent and egregious violations targeting children in situations of armed conflict. The Special Court for Sierra Leone (SCSL) established in the *Hinga Norman* case that unlawful recruitment below the age of fifteen years is a crime under customary international law, and interpreted the elements of this crime in its 2007 *AFRC* judgment. The Rome Statute for the International Criminal Court firmly establishes criminal responsibility for under-age recruitment. This paper addresses the implications of these developments and reviews the status of the *Lubanga* and *Katanga* cases before the International Criminal Court (ICC). It examines the ICC Pre-Trial Chamber's Decision on the Confirmation of Charges in *Lubanga*, highlighting its positive contribution to refining the definition of the war crime of child recruitment and of their active participation in hostilities. The fact that the very first cases to be tried by the ICC concern the unlawful recruitment of child soldiers and the use of children in hostilities, underscores both the seriousness of this crime and the international priority to try and punish its perpetrators. The emerging synergy in the decisions of the SCSL and the ICC Pre-Trial Chamber demonstrates the important role of international and hybrid courts in the development of international legal norms protecting children from atrocities.

With respect to prosecutions at the national level, the analysis of recent developments, the evolving norms of international law and state practice shows that there is a duty of states to prosecute persons accused of having committed international crimes if these acts occurred within their own territory. The obligations to prosecute alleged authors of

international crimes committed abroad, based on the principles of active or passive nationality or universal jurisdiction, vary from one crime to the other.

In a post-conflict situation, states often consider adopting amnesty laws which preclude criminal prosecution for crimes committed during the conflict. This paper examines the permissibility of amnesties under international law. It concludes that there is no firmly established rule of international law expressly prohibiting states to grant amnesties. However, according to a recent trend in national and international jurisprudence, amnesties for international crimes and serious human rights violations are increasingly being condemned. This paper argues that states should reinforce this trend and refrain from adopting amnesties for international crimes and in particular for crimes against children, specifically including their unlawful recruitment in armed conflict. This will in turn reinforce state practice and may result in improved accountability and respect for the rule of law.

The paper demonstrates that specific international norms have evolved with regard to children, in particular child soldiers, who may be accused of having participated in the commission of international crimes. An international consensus is clearly evolving, according to which these children should be considered primarily as victims, setting a minimum age of eighteen for full criminal responsibility.

In cases where accountability is nevertheless pursued for children who have allegedly participated in the commission of crimes, the existing child-related international rules, in particular the Convention on the Rights of the Child (CRC), determine that in post-conflict situations states must give priority to alternative accountability mechanisms for children. These may include national justice mechanisms or non-judicial means such as restorative justice or truth commissions, focussing on their rehabilitation and social reintegration

Unresolved Issues and Questions for discussion

There is a need for states to ensure both the *implementation of the existing international norms*, and the *further development and consolidation of the emerging international standards*. Some proposals are made in the paper on efforts which should be made by states, and on ways in which CPA's could contribute to this process. Several questions require further discussion, including the following points.

- What is the relationship between national and international jurisdictions regarding the prosecution of persons accused of international crimes against children? What impact can be expected from the first trials before the ICC in this regard?
- How should CPA's contribute to strengthening state's compliance with the international norms on (1) prosecution of those accused of crimes against children: and on (2) alternative accountability mechanisms for children who were involved in the commission of crimes in the context of an armed conflict?
- It has been argued that some ethical ambivalences and legal contradictions exist on how courts and truth commissions balance out the evolving responsibilities of the adolescent between 15 and 18 years, with the right to protection for all

children under the age of 18. Are the standards of the CRC and other instruments related to juvenile justice really appropriate for regulating rights and responsibilities of child soldiers?

- Are the best interest of the child taken sufficiently into account in the existing instruments and rules regarding the (non-) accountability of children in the above mentioned age group, and in general? If not, what changes would be desirable?
- *Amicus Curiae* intervention by NGOs and UN representatives or specialized organizations is an important means to inform international courts on specific norms and practices which may be taken into account in the considerations on crimes committed against children. In this regard, the *amicus* brief presented to the ICC by the Special Representative of the Secretary-General on Children and Armed Conflict concerning the inclusion of sexual violence against girls under the definition of ‘using children to actively participate in hostilities’, is a recent example. Could, and should, *amicus curiae* briefs be systematically presented to international and hybrid courts/tribunals whenever crimes against children are at stake? Would some form of cooperation or consultation among legal experts, interested CPAs and UN agencies be desirable in drafting such briefs, in order to ensure an adequate coverage of the legal issues at stake?

Children and Torture

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According to the International Law, three characteristics distinguish torture from child abuse:

- Torture is, by definition, committed by an agent of the State, or someone acting with the encouragement or acquiescence of the State.
- Torture is, by definition, committed for the purpose of obtaining information or a confession; to intimidate, coerce or punish the immediate victim or a third person; or as part of a policy of discrimination.
- Torture, by definition, causes severe pain or suffering.

Because of these differences torture should be treated differently than child abuse, in particular with regard to law enforcement. Child abuse is often committed by parents, whose motives nearly always differ from those of officials who torture. The fact that torture is committed by a representative of the State or someone acting with the tolerance or acquiescence of the State justifies a stronger response to torture. That torture by definition causes severe pain or suffering is another reason that repressive measures should be more severe.

International law supports this position: suspected torturers *must* be prosecuted and, if a torturer is convicted, the sentence must reflect the gravity of the crime.³ In contrast, prosecution is not always the most appropriate response to child abuse, especially when it takes place in the home. The Committee on the Rights of the Child has stated that “prosecuting parents is in most cases unlikely to be in their children’s best interests”.⁴

In order to prevent impunity for torture, most members of the international community have accepted the obligation to cooperate in investigating and prosecuting this crime and to prosecute any torturer that is found in their territory, regardless of where the crime took place.⁵ No similar obligations exist with regard to child abuse.

A torturer who is not prosecuted before the competent national court may be prosecuted before the International Criminal Court for acts of torture or cruel or degrading treatment that violate humanitarian law during an international or non-international conflict.⁶ The torture or ill-treatment of children during armed conflict violates humanitarian law whether the child victim is part of the civilian population, a captured member of an organized armed force or an “illegal” or “unprotected” combatant.

³ Convention against Torture (“CAT”), Arts.4 and 7

⁴ General Comment No.8, para.41

⁵ CAT, Arts.6 and 9; 145 States are Parties to the CAT

⁶ Art.8.2(a)(ii), (iii) and (xxi) and 8.2(c)(i) and (ii)

Relevant aspects and findings

The torture of children occurs in different contexts. The most common include: police operations against children (usually adolescents) perceived as a threat to public order or safety, in particular offenders and ‘street children’; children (usually adolescents) confined in prisons or facilities for offenders; children linked or thought to be linked to subversive groups or illegal armed groups, including the children of militants.

When committed during an international armed conflict or foreign occupation, torture and inhuman treatment constitute grave breaches of international humanitarian law.⁷ All 194 States Parties to the Geneva Conventions have an obligation “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and [to] bring such persons, regardless of their nationality, before its own courts”, unless they are extradited to another State for prosecution.⁸ Many have adopted laws giving their courts competence to try grave breaches, including torture, committed during non-international armed conflicts.

For the purpose of this summary, the following specific circumstances of torture against children have been identified on the basis of characteristics, context and lack of visibility:

- Torture inside the womb, particularly in countries where there is a history of torture as a policy of the State. Military dictatorships in Latin America and other parts of the world have shown how serious such situations can be.
- Unaccompanied migrant child victims of violent methods applied by border patrols or in detention centres, where they may be exposed to torture and cruel or inhuman treatment, both physically and psychosocially, with consequences of various kinds. Children who are refugees or internally displaced may be victims of torture by various State agents, due to direct actions, neglect or connivance.
- The use of traditional forms of physical torture combined with sophisticated mechanisms, resulting in serious psychological impacts.

Despite the seriousness of the findings mentioned above, the use of torture against children – which constitutes a crime against humanity – has low visibility and recognition among health workers. As a result, administrative and legal mechanisms often support a context of impunity, even to the extent that there is proven and certain participation of health workers in such practices.

International law prohibits both torture and “cruel, inhuman and degrading treatment”, although the distinction between them is not clearly defined. When the victim is a child, his or her greater vulnerability must be taken into account in determining whether the acts inflicted constitute torture or cruel, inhuman or degrading treatment, according to jurisprudence of international courts and other bodies.

Under the CRC, victims of child abuse have the right to physical and psychological recovery and social reintegration. In addition, victims of torture have the right to compensation.⁹ The

⁷ Common Article 50, 51, 130 and 147 of the I, II, III and IV Geneva Convention.

⁸ Common Article 49, 50, 129 and 146 of the I, II, III and IV Geneva Convention.

⁹ CAT Art.14

obligation to bring torturers to justice in order to prevent impunity must be reconciled with the rights of the victims, in particular the right of child victims to psychological recovery and the principle that the best interests of the child must be a primary concern in all decisions and proceedings that affect a child.

Prosecution of those responsible for the practice of torture in general, and for torturing children in particular, is not only a necessary act of justice and a barrier against impunity, but also a valuable component in the process of psychosocial recovery and reparation involving child victims and, consequently, in the restoration of their rights. However, there is an alarming tendency towards impunity in cases involving torture.

The Committee on the Rights of the Child has recognised the value of the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, which are particularly important for proceedings involving child victims of torture or cruel, inhumane or degrading treatment¹⁰. The Guidelines provide *inter alia* that victims should be treated in a caring and sensitive manner which takes into account their personal situation and needs, age, gender, disability and level of maturity and respects their physical, mental and moral integrity; that interviews and examinations should be conducted by trained professionals and that all interactions should be conducted in a child-sensitive manner in a suitable environment.

Unresolved issues

- Despite wide recognition and nearly universal ratification of the Convention on the Rights of the Child and other international human rights instruments throughout the world, a child rights approach does not prevail in reported cases of torture against children, or in their analysis.
- There is insufficient technical and scientific criteria for a medical and psychosocial evaluation of the long-term impacts of torture and cruel, inhuman or degrading treatment against children.
- Currently, some countries have adopted a disturbing discourse which implies that ill-treatment falling short of torture is acceptable, in particular in the struggle against terrorism. The distinction between torture and cruel, inhuman and degrading treatment does have certain legal consequences, but both are absolutely prohibited by international law in all circumstances, and all countries have an obligation to prevent them.¹¹
- The lack of accountability of health workers, both in the prevention of torture and in providing assistance for victims, is a distressing phenomenon. Very often this behaviour leads to an aggravation in the sufferings of child victims.
- In order to analyse the medical and psychosocial impacts of torture on children it is important to outline an epidemiological profile of child victims. Indicators identifying social, ethnic and family origins of child victims, as well as indicators identifying particularly vulnerable social groups that are excluded due to extreme poverty or lack of education, bring us closer to understanding how torture against

¹⁰ ECOSOC Resolution 2005/20, adopted 10 Aug.2005

¹¹ The provisions of the CAT concerning extraterritorial jurisdiction and mutual judicial cooperation apply to torture, but do not expressly apply to cruel, inhuman and degrading treatment. The prohibition of torture is considered *jus cogens*, but it is not certain that the prohibition of cruel, inhuman and degrading has this status.

children is related to the denial or violation of human rights, and the impact of those indicators on post-traumatic stress. Few studies have described these epidemiological, medical and psychosocial factors.

Questions for discussion

When facing the painful and frequent practice of torture, we pose the following:

- How should the low visibility of the crime of torture against children be addressed within a rights-based approach?
- How to overcome the lack of assessment and studies evaluating the long-term medical and psychosocial effects of torture on children?
- To what extent are health-care professionals, through their direct actions or neglect, responsible for the seriousness, frequency and magnitude of torture?
- How can the training of health-care professionals contribute to the creation of full awareness and the promotion of ethical behaviour, which might act as a barrier against the practice of torture?
- Is it possible to talk about physical torture and psychological torture from a clinical and neurological point of view?
- What indicators can be used to evaluate the effects of torture against children on the psychosocial level?
- Can physical injuries be used as evidence and proof of torture only when visible?
- How can epidemiological studies help to develop a new medical and psychosocial conscience?
- What key measures can be taken in the field of prevention and assistance in order to fight and eliminate torture?
- How to independently monitor public policies regarding children and adolescents that effect these issues?

Proposals

- Develop new strategies to prevent torture, giving stronger emphasis to the need for intervention of health-care professionals.
- Re-examine the medical and psychosocial criteria used to assess the effects of torture of children, particularly with regard to assistance and the restitution of rights in the short, medium and long term.
- Raise awareness and promote capacity-building among health workers, especially among those who work in settings affected by the practice of torture.
- Encourage epidemiological studies based on the regional, cultural, ethnic and social diversity of child victims.
- Identify and disseminate good practices in the field of prevention and medical or psychosocial intervention.
- Identify and disseminate good practices in the field of assistance for child victims provided by health-care staff in diverse socio-cultural contexts.

Child Participation and Agency in the Sierra Leone TRC

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Overview

The involvement of children and youth in transitional justice processes affords potential for children and youth to become catalysts for development, peace, reconciliation, and active citizen engagement, yet many questions remain concerning how to best respect and protect the rights of children and facilitate their meaningful participation. Moreover in the aftermath of conflict, what specific measures will support the participation of young people in community reconciliation efforts without putting them at further risk?

Reflecting on the Sierra Leone Truth and Reconciliation Commission as an example of child participation in transitional justice processes this paper documents the role of children in the TRC and formulates recommendations for future efforts. It also focuses specific attention to the broader context (social, cultural, and political) of child involvement in community reconciliation and peace building.

Preliminary Findings

- **Child Protection efforts to ensure the safety and security of children were considered successful.** Efforts to protect the confidentiality and anonymity of child participants in the TRC hearings were considered successful, and post-involvement most children felt safe and protected.¹² Nevertheless, some child protection agencies felt child-agency relationships and trust were compromised through serving as the TRC's conduit to gain access to children.¹³ Furthermore, follow-up activities to monitor psychosocial well-being appear limited.
- **Development of the child-friendly version of the TRC report was considered an innovative approach providing children space to exercise their agency.** The child friendly version of the TRC report was the first of its kind. Children were engaged from inception to dissemination, and were provided opportunities to exercise their agency (individually, collectively and via proxy), and forge effective child-adult partnerships. Despite these successes, dissemination has been limited resulting in few children having access to this information.
- **Children supported during involvement in the TRC appear satisfied, while children who received limited support remain disenchanted.** Children who did not receive ongoing support from NGOs or CPAs during the process of reintegration and reconciliation appear disenchanted by the TRC and feel little has been done to address the factors (e.g. poverty, limited educational and livelihood opportunities) that contribute to child vulnerability and helped perpetuate the conflict. Furthermore, it seems these children would refuse to participate in the TRC on the grounds that

¹² There was one known case of revenge or stigma towards a child post involvement, yet this cannot be attributed solely to participation in the TRC.

¹³ For example information was given to the TRC about the child before consent was sought from the child.

nothing has been done to improve their situation. Conversely, children who were supported felt more positive about the process.

- **Children affected by the conflict had limited knowledge of the TRC and were apprehensive to engage.** Preliminary findings suggest that many children affected by the conflict had limited knowledge of the TRC and its opportunities for engagement. In particular children associated with the fighting forces and child mothers were apprehensive to talk about their experiences for fear of community discrimination or stigmatization.¹⁴ When they participate, they feel support should be granted to help demonstrate their desire to positively contribute to society.
- **Steps are being made to further realize child rights in practice.** Since the TRC, several steps have been taken to respect and protect the rights of children and youth including the adoption of a Child Rights Act, the formulation of a National Youth Commission, and the creation of the family support units.¹⁵ The challenge rests in grounding these initiatives in the broader community context to reflect the lived realities of children, their families and communities.
- **Children are actively shaping and changing cultural interpretations of children and childhood.** Traditionally in Sierra Leone, well-behaved children were ‘seen and not heard’, yet through the active engagement of children in issues that affect their lives this perception is slowly changing. “Even if you wanted to, it is difficult to ignore the voice of children. They are making sure their voices are heard through music, drama, children’s radio and participation in local children’s clubs.” Seemingly perceptions are shifting and the advocacy message for the 2008 Day of the African Child is ‘Children are to be seen and heard.’¹⁶
- **TRC is part of a broader reconciliatory process that builds on community practices.** The TRC was not an isolated event, but rather, part of a larger process contributing to reconciliation. To facilitate healing and reconciliation, children and communities specifically highlighted the importance of religion and tradition and the linking of words of forgiveness and apology to concrete actions.¹⁷ The adaptation of healing ceremonies further helped to reintegrate the child into the family and community, and reconciliation initiatives are best achieved with widespread support from community leaders.

Areas for further consideration

- The TRC provided a forum to begin talking about the concept of children’s role in broad based social reconciliation, yet more needs to be done to provide communities with the opportunity to tell their stories and foster community healing and reconciliation. “It was at the end of the TRC where people really understood what

¹⁴ In particular the girls feared they would be called rebel wives, they would be shunned by the community, or that they may be subject to increased sexual violence.

¹⁵ Clearly the involvement of children and youth in the TRC cannot be proven as a determining factor in these social changes, yet the TRC may have helped provide important momentum to operationalize child rights.

¹⁶ This cannot be attributed solely to children’s involvement in the TRC, and the conflict may be a determining factor. Overall, the perception of children and their involvement in community appears to be positive, yet some adults suggest that children are becoming more wayward.

¹⁷ For instance an apology carries more weight when coupled with a touch to the feet, and acceptance with a touch to the head or shoulder.

was happening, and were ready to engage. At that time it was too late.”¹⁸ **How can the TRC be used as a platform on which to galvanize healing and reconciliation at the community level?**

- The role of child involvement in the TRC was largely pre-determined, and the opportunities for young children to participate were limited. Yet young children were involved in the conflict and should have the opportunity to engage. “I was captured at an early age. How would I have explained my own experience?” **How can the participation of young children be supported whilst also ensuring their protection?**
- In several instances it was indicated that the TRC process undermined the work already completed by child protection agencies during DDR and community reintegration programming, resulting in further traumatization or retraumatization. If true, **what steps can be taken to ensure the TRC works synergistically with existing processes to positively contribute to reconciliation and healing?**
- Religious and traditional practices have the potential to positively contribute to the healing and reconciliation of children, yet little is known about the kind of approaches and methods that best contribute to the long-term reconciliation and recovery of children and their associated impact. **How can localized approaches to healing and reconciliation be harnessed to facilitate the meaningful participation of children while simultaneously protecting children and their rights? Also, how do these practices change in times of severe social stress, and how are children involved in such change?**
- The TRC gave special consideration to children and devised strategies for their protection. In particular all children were treated as victims. According the CRC, a child is defined as someone below 18, yet **what defines a child in Sierra Leone and at what age should children be held responsible for their actions? Should the severity of the crime be given consideration? In addition, some individuals were adults at the time of the TRC, yet were children during the war. Should they be held responsible? Should protective measures also be given to them?**
- To date many of the TRC recommendations have not been addressed, yet many of these issues continue to reverberate within Sierra Leone. **Who bears the responsibility to bring these recommendations to life?**

Preliminary Recommendations

- **The TRC report and its recommendations should be widely disseminated from the top-down and the bottom-up and implementation strategies devised to reflect the lived realities of children, their families and communities.**
- To support meaningful child participation and protection, **children and their families should be fully informed about the overall process, the expectations and the potential repercussions of involvement.** Involvement should be also supported by community structures.
- **All children and their families should be given the opportunity to participate in transitional justice processes. In particular special attention should be given to**

¹⁸ Interview with Bishop Humper, Lead Commissioner TRC, May 2008

vulnerable children (child mothers, amputees, disabled children, young children etc.) to ensure participation reflects their needs, capacities and support structures.¹⁹

- **Participation should be grounded in the lived realities of children and their overall context.** Specifically cultural understandings and interpretations of childhood, child rights, child protection, accountability, and reconciliation should be considered, and **community assets should be mobilized and strengthened** to further support and protect children.
- **Transitional justice mechanisms, such as TRCs, should be considered within the larger framework of peace-building, reconciliation, and community development, and the contributions of children should be given due recognition.** Often children are invariably involved in armed conflict, and should be actively involved in the development of processes and solutions to facilitate sustained peace.
- Strategies to involve children in transitional justice processes should **reflect the evolving capacities of children and build on the variety of ways children currently contribute to society and exercise their agentic capacities** (e.g. child-led radio programs, music and popular culture, drama, artwork, poetry, essay contests, sports, child-led advocacy campaigns, peer-to-peer relationships) to help facilitate widespread change.

¹⁹ For example child mothers suggested drama, songs and peer-to-peer support programs could help to engage.

**Psychosocial Support for Children:
Protecting the Rights of Child Witnesses in Transitional Justice Processes**

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Introduction

This paper will review and analyze psychosocial support as an essential tool for the protection of the rights of children participating in transitional justice mechanisms.

The paper will first look at psychosocial factors impacting on children's participation in transitional justice mechanisms, which determine to a large extent the need for protection and support of children.

Secondly, the existing legal framework guiding psychosocial support and protection of children in justice, truth and reconciliation processes will be summarized.

Thirdly, the paper will make an analysis of past and current policies and procedures for the psychosocial support of children, which identifies good practices, challenges and limitations. Examples from the Special Court for Sierra Leone, the International Criminal Court and the truth commissions in Sierra Leone and Liberia will be used to illustrate findings.

Finally, a number of recommendations to enhance the protection of children in transitional justice mechanisms will be made.

Main findings

In any discussion about children's participation in transitional justice mechanisms, the psychosocial factors impacting on their involvement need to be given particular consideration. These factors determine to a large extent the ability of a child to participate and the specific needs for protection and support of children. At the same time they are a good indicator to measure the impact of children's participation. A distinction has to be made between psychosocial factors related to the children and their experiences during the conflict on the one side and factors determined by the type of transitional mechanism on the other.

The psychosocial impact of participation of children varies greatly, depending on children's history, war-related experiences, age and level of development, the availability of social support as well as their cultural background and belief system. Also the type of transitional justice mechanism, as well as the characteristics of children's involvement, play an important role.

Children who survive armed conflict have to deal with the horrors they have witnessed. All children are affected by armed conflict, but not in the same way and to the same extent. Some groups are particularly vulnerable. The experiences of children who were

direct victims of atrocities, separated from their parents, associated with armed forces or armed groups or victims of sexual violence, has a major bearing on the participation in a transitional justice mechanism. Reactions of distress, fear for rejection or lack of social support can impact on a child victim's capacity to tell his or her story accurately, answer questions, to face the stress of a court session or hearing, and to pick up their life after testimony.

The psychosocial impact of these specific experiences of children during war can be far-reaching, but needs to be looked at in the context of a child's individual development and social context. Children who can rely on internal and external protective factors like their intellectual maturity, positive coping skills, their ability to seek assistance and other personality traits, as well as social support, will recover more easily and cope better with the process of testifying. For them, being a witness can be a very positive and empowering experience.

Secondly, the significant differences between different transitional justice mechanisms also influence the psychosocial impact of children's participation in transitional justice mechanisms. The characteristics of the mechanism determine the role of children in the process: giving a statement, testifying in court, participating in a hearing, making a submission, being cross-examined, etc. They also influence the consequences of the involvement and have an impact on the level of possible threat the child is exposed to.

Throughout the short history of transitional justice mechanisms psychosocial support for witnesses has developed as a response to the increased involvement of victims in such processes. At the same time, the enhanced support and protection systems have become important tools to protect the rights of victims and witnesses and have given them unprecedented access to transitional justice processes. However, many challenges and shortcomings remain.

The paper describes and analyses the benefits and limitations of the following policies and procedures for psychosocial support in transitional justice mechanisms:

- The integration of provisions for protection and support in the regulatory framework of the transitional justice mechanism,
- Selection of specialized staff and adequate training of all staff on issues related to child witnesses,
- Vulnerability assessment of potential child witnesses,
- Individual support and counseling before, during and after testimony,
- Establishment of protective measures before, during and after testimony,
- Long-term support and referral,
- Involving the community in support strategies.

Main outstanding issues and questions for discussion

1. Tensions can arise between the right of children to participate in transitional justice mechanisms and their right to be protected from harm during the process. For instance, situations can occur where it is in the best interest of the child not to

- participate as a witness, as the risk to be harmed may be too big. At the same time tension can also exist between the interest of justice ('the interest of the case') and the best interest of the child.
- How can existing safeguards and tools to make these decisions (guidelines, vulnerability assessments, training, etc.) be improved?
 - Is the use of these tools sufficient to assure that the best interests of the child prevail over the interest of the case, or are other strategies needed?
2. In most judicial mechanisms, victims, including children, are important witnesses. At the same time their involvement is very much shaped by strict rules, often limiting the space to tell their story in the way they would prefer. There is a paradox between the importance of their statements and the limited space given to them. Non-judicial mechanisms, in particular truth commissions, can be much more flexible in their procedures and involve many more children as witnesses or indirectly, through outreach and other initiatives.
- How can it be assured, especially in judicial mechanisms, that rules and procedures are tailored to the needs of child-witnesses, so that more space is given to them so that their testimony is not only relevant for the case but also has a positive impact on the child?
3. At the same time, international and mixed tribunals often have significant resources available to provide individual and long-term support to a small number of vulnerable witnesses. On the other side, non-judicial mechanisms, truth commissions in particular usually have limited resources for individual support, protection and long-term follow up of children. There are in addition different experiences concerning the collaboration between transitional justice mechanisms and child protection agencies and other partners for the support of child witnesses.
- What is the impact of the lack of resources to offer individual support, protection and follow up on the participation of children in truth commissions?
 - If psychosocial support is 'outsourced' through partnerships with other organizations, how can confidentiality and anonymity – two crucial elements to ensure protection – be guaranteed?
 - How to deal with situations where possibilities for partnerships are limited (lack of services, geographical challenges, security risks)?
 - Should psychosocial support only focus on those children who directly participate in proceedings? How to ensure that means are being used to involve and support as many children as possible, for instance by supporting community-based initiatives?

Children and Reparations

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This paper analyzes the experiences, challenges, and possibilities around reparations and children. It does so in the spirit of asking what role reparations may be able to play in *partially* addressing the grave human rights violations that children endure during situations of armed conflict and political violence orchestrated by authoritarian and dictatorial regimes. My approach to reparations draws broadly on an understanding of the concept within international law and reflects on how reparations have been carried out in practice. Throughout the paper I pay close attention to gender, generation/age, ethnicity, and class.

The paper begins with the establishment of the individual's right to reparation within international law and within widely agreed upon protection frameworks. Within the framework of the rights laid out within international law and in protection frameworks, I raise and engage with current critiques that reparations is simply not a priority when so many are suffering, that reparations for only a few of the many injured or violated is in itself unjust, as well as critiques that community reparation measures should be privileged over individual reparations. (*Note to participants:* As I know that reparations for individuals are a controversial topic, I look forward to hear critiques and where appropriate incorporate them into the final paper so that the concerns raised are given a voice and included in the analysis.)

I then move to a brief but concise discussion of reparations programs, which includes those measures designed to distribute direct benefits to the victims themselves—including restitution, compensation, and rehabilitation—as well as other key measures and initiatives within transitional justice that, if crafted with care, could have reparative effects, namely rehabilitation, satisfaction, and guarantee of nonrecurrence.²⁰ Under satisfaction and nonrecurrence, measures include “verification of facts, official apologies and judicial rulings that establish the dignity and reputation of the victim, full public disclosure of the truth, searching for and identifying and turning over the remains of dead and disappeared persons...application of judicial or administrative sanctions for perpetrators, and institutional reform.”²¹ Most often associated with compensatory measures, reparations can be in the form of monetary awards and material goods, access to services, symbolic gestures or remedies through access to justice systems and court services. Reparations should provide a direct benefit to the survivor and can be awarded to individuals or collective groups deemed to have suffered grave violations.²²

²⁰ See de Greiff, “Justice and Reparations.”

²¹ *Ibid.*, 452.

²² Truth and Reconciliation Commission (TRC) of Sierra Leone, *The Final Report of the Truth and Reconciliation Commission Sierra Leone* (Freetown: TRC, 2007), vol. 2, ch. 4, “Reparations.”

I next turn to past and present reparations programs that have explicitly included children among those eligible for reparations. I provide an analysis of the results from truth commissions and reparations programs within eight countries (Argentina, Chile (both commissions), Guatemala, Peru, Sierra Leone, South Africa, Timor Leste and Rwanda) in which children are known to have been victims of grave rights violations due to armed conflict and political violence instigated by authoritarian governments. I highlight what we know from looking at these countries' programs and experience, and I address the gaps in what we still don't know (e.g., how children spend reparation monies, etc.).

Drawing on the information gleaned from the eight countries, the paper then moves to raise and consider key challenges for effective implementation of reparations for children:

- a) Getting peace negotiators, government leaders and truth commissioners to recognize the violence committed against and need for reparations for children;
- b) How to ensure that crimes and violations against both boys and girls are adequately covered;
- c) Effective outreach to children so they are aware of reparation measures;
- d) De-linking participation in truth telling from receiving reparations, especially in the case of children;
- e) The problem of categorization/stigmatizing children in order to qualify for reparations;
- f) Tensions surrounding children who have been both perpetrators and victims receiving reparations;
- g) The age of children and their becoming adults before implementation of programming and hence no longer qualifying;
- h) The need to consider both individual and community reparations and what that might look like for children;
- i) How to link reparations with CRC state duties;
- j) And finally, struggles with what to do about massive atrocities and injustice where reparations can barely begin to address the urgent need of so many children.

The paper also considers the role of the ICC and reparations for children. In particular I will look at what is the potential, what are the limitations, what can we expect, what do we recommend. (*Note to participants:* This is an area I have not yet fully researched so I will appreciate to hear others thoughts and insights into this area)

In conclusion, I argue that reparations programs that are not linked to additional transitional justice measures, including prosecution, truth-telling and full disclosure, and institutional reform, will be significantly flawed. Additionally, in reparations programs, it is not enough to compensate survivors and send them back into societies that discriminate against and are violent to them based on their sex, gender, ethnicity, race, class, or age.

The need for reparations to play a small, but important, role in strengthening societies' abilities to uphold the rights of their citizens is clear. In particular, international standards for girls' and boys' rights within the CRC, most notably the right to inheritance

and property ownership, to decide if and when to marry, to freedom from violence, to freedom of expression and association, and to health care and education, among others, should serve as the benchmark for reparations frameworks and programs and should be adhered to and upheld. Additionally, they should ensure that survivors are able to receive the full benefits of reparations awarded to them without the negative effects of sex, gender, ethnic, class, or age discrimination.

Children and Security Sector Reform

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The paper will examine how security sector reform (SSR) can help to institutionalize respect for child rights and contribute to establishing a post-conflict 'protective environment' for children. It will argue that SSR and transitional justice have the opportunity to be mutually supportive processes, but that there are a number of challenges to be addressed, notably that of sequencing.

Delivering effective security to the population requires multiple actors working together at multiple levels. Equally multi-sectoral approaches are needed to addressing child protection concerns, and a number of security providers will have a role to play from law enforcement agencies to the justice system, alongside local authorities and civil society.

Key elements of the SSR strategy should be aimed at re-establishing rule of law, engendering respect for human rights, preventing the (re)recruitment of children into armed forces or groups, and ensuring that those responsible for serious human rights violations are vetted-out from the newly constituted security structures. Accountability and transparency – in particular civilian oversight - in post-conflict situations is vital to establishing the credibility and legitimacy of the new authority, and restoring trust.

Of the various transitional justice mechanisms available the one likely to be most accessible to children is the truth commission. Truth commissions have the possibility of providing a flexible and informal space through which the experiences of children can be expressed, and the importance of encouraging their active role in reconciliation promoted. Truth commissions have a number of distinguishing qualities that set them apart and provide an opportunity to encourage the appropriate participation of children: they are community-based; they are non-judicial and non-punitive; they build capacity for active citizenship and democratic process; they can inform education and reconciliation activities. Of particular significance to this paper, is that truth commissions also provide a platform through which the effectiveness of security services can be reviewed with a view to guiding the reform process.

SSR is emerging as an area of particular importance for the international community. UN Security Council debate May 2008: 'The Security Council recognizes that security sector reform is a long-term process and reiterates that it is the sovereign right and primary responsibility of the country concerned to determine its national approach and priorities for security sector reform. It should be a nationally owned process that is rooted in the particular needs and conditions of the country in question.'

Security governance must inform SSR to avoid it being too narrowly defined on the institutional reform of structures and resources. Security governance enables us to focus

on security as a public good and provides a framework for incorporating the security needs of children, including their participation. The concept of human security enables a refocusing of security debate to include the security of the individual, as well as the security of the state. It brings together security, human rights and human development, highlighting the security of the individual from pervasive threats to their 'rights, safety or lives', and in particular from the threat of violence.

Outstanding Issues

- Discussing national security is highly sensitive, so in addressing children's security how do we address the international community's reticence in tackling the sovereignty issue?
- How to include transitional justice from the outset of the peacebuilding process so that it is not overshadowed by more immediate SSR and DDR activities?
- Can capacity building activities with democratic institutions and civil society be co-ordinated to develop mutually supportive SSR and transitional justice processes?
- Sequencing issues need to be addressed – the balance between DDR, vetting, police and justice reform, the start-up of transitional justice mechanisms (judicial and non-judicial).
- How are the tensions between children as victims and as perpetrators best be handled, in particular the criminal responsibility of children accused of serious crimes such as murder and rape independent of “conflict” (for example, Haiti)?
- Is there a role for an Ombudsman for Children Affected by Armed Conflict in post-conflict situations?
- Is it possible to recommend a national judicial process in post-conflict situations when the existence of a functioning, transparent, impartial judicial system is uncertain?
- Challenge associated with the fact that “justice claims must sometimes be deferred”. Can SSR and transitional justice be bed-fellows here?
- SSR used to demonstrate progress and a break with the past, giving for the transitional justice process to take its course, and the transitional justice process contributing to SSR by restoring and building confidence.
- Resource challenge for preventive approaches.

Recommendations

- Ensure that SSR is informed by principles of good security governance and underpinned by respect for human rights.
- Bring together justice and SSR language in peace agreements.
- Elements of reform – juvenile justice system, community policing. Building the capacity of the national security structure, including a civilian oversight component.
- Stress the importance of establishing local ownership particularly through civil society mobilisation and capacity building.
- Support democratic institutions.

- Ensure that children and youth are accounted for in the SSR process and that their views and perspectives on security are factored into policy discussion.
- Build national consensus to establish legitimacy for transitional justice activities in relation to children, including media campaigns, information sharing and education.
- Children have the potential to contribute positively to peacebuilding goals generally, and security governance specifically, and must be acknowledged throughout transitional justice strategies.

Children, Education and Reconciliation

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This paper is still very much a work in progress. I think the overall structure for the paper is sound, but need more time to fully develop the content. The paper covers the following:

1. TRCs that make reference to children's issues and/or education (mainly Guatemala, Peru, South Africa, Liberia, Sierra Leone, East Timor)
2. Challenges, issues and questions related to the role of education in the process of post-conflict reconciliation beyond contexts where there have been official TRCs. The paper identifies a number of problematic issues including:
 - **Reasons why education is important for post-conflict reconciliation:** *Raising awareness. Dealing with the past; Promoting understanding; Contributing to reform; Social reintegration; Contributing to protection and prevention; Economic regeneration.* The challenge here is to identify sound educational rationales that reach across the discourses between those with a technical interest in TRCs and educators.
 - **The importance of context.** Two aspects of this. The first is to do with the political, social and economic context that exists post-conflict and how this has come about. This will have a formative influence on what it will be possible (and permissible) to do through education. Second, any educational strategies need to take account of culturally specific practices in terms of what is acceptable in terms of 'truth recovery'. For example, it would be very difficult to introduce a multiple perspectives approach to the investigation of past events within a cultural context that has a fundamentalist view of knowledge as being the description of one objective reality. Similarly in some societies this might involve very public and explicit processes; in others more discreet and 'nuanced' processes might be involved – a good example of this is the contrast between western cultures that readily accept professional counselling approaches and those that prefer more family support based approaches. In all cases it is extremely important to generate a discussion about any tensions between local customs and practices and international human rights standards.
 - **The question of timing.** This refers to judgements about when it is possible to introduce initiatives and needs to be a resolution between three main factors: taking account of the time needed to recover from hurt and damage; avoiding 'avoidance' of issues that need to be addressed; and making best use of opportunities for change that arise in the immediate aftermath of conflict. One of the difficulties here is to be realistic about the timescales involved – there appears to be a very immediate window of opportunity for change (2-3 yrs?),

followed by a longer-term period where some distance has been put between the recent past (10 yrs?)

- **Epistemological issues** and their implications for the role of education in reconciliation. Some of these are universal and philosophical. Three are highlighted:
 - The first is about the nature of 'truth' – to what extent is there an 'objective', verifiable, single version of the truth of historical events; or is truth 'relative' with different versions and perspectives given equal weight; or is truth 'inter-subjective' with multiple versions, interpretations and perspectives that can be judged according to their authenticity or validity. These are not simply abstract debates, because each of these positions will lead to very different formulation of curriculum, use of resources and educational practice.
 - The second concerns the lack of definition around 'reconciliation'. It is difficult to make a persuasive case to teachers and other educators that they have a significant role to play in a process related to the development of a concept for which there is no universal definition; little guidance on what the process might involve in practice; what might be regarded as evidence that the process is achieving positive outcomes; and for which they feel they have had no specific training.
 - The third is to identify a range of concepts related to education that are likely to arise and these need to be considered in advance of the introduction of any educational programme and themselves be the focus for teacher in-service education and training (they cannot be addressed in an ad hoc way). These include problematic concepts such as 'apology', 'amnesty', 'reparations', 'justice', 'revenge', 'forgiveness' – what others do you suggest?
- **Educational strategies.** Despite the difficulties and complexity of the area, it is argued that problematic nature of the concepts makes it an ideal focus for educational enquiry – it is not simply a matter of transmission of accepted knowledge, but the interrogation of concepts and generation of new knowledge and understanding from a variety of sources, including the experiences of learners themselves. It is generally accepted that reconciliation is a process not an event, but there are a number of debates that need to be resolved with educators:
 - Those who think the past should be forgotten v it needs to be addressed
 - Balance between the past, the present and future orientation
 - Those who think schooling has a role vrs family or community-based approaches
 - Three broad approaches: Those who advocate an explicit approach with dedicated resources and time (knowledge-based); those who see the process as the most important (skills-based); and those who advocate a more nuanced approaches based on human rights education, peace education (conceptual and values-based)

- The strengths and limitations of various thematic approaches such as intercultural learning; peace education; citizenship education; human rights education.
3. Entry points for practical developments. A number of potential educational ‘entry points’ are identified. This paper argues for a systemic approach where these are addressed as part of an overall plan. Entry points discussed include:
- The political environment (securing ‘permission’, legitimacy..)
 - Structural constraints and opportunities (segregation, integration..)
 - Policy and administrative frameworks (reform proposals, implementation..)
 - Curriculum (content, skills, values...)
 - Pedagogy (multiple perspectives, narrative approaches, commemoration..)
 - Resources (texts, witnesses, voluntary organizations, museums, media,
 - The role of teachers
 - Involving the community and inter-generational learning

The paper examines the potential for education to address reconciliation at each of these levels, but probably needs more time to ground in specific examples. There are a number of issues particular to the role of teachers / educators:

- Teachers themselves are part of the culture and in that sense are not value free
- Few, if any will have had specific training on how to deal with these issues
- There is an **emotional** issue which often goes beyond the traditional technocratic, pedagogical experience of teachers and no shortcut to the development of such skills
- There are **ethical** issues that educators need to be fully aware of – ground rules, sensitivity to the diverse life experiences that learners may have had, students who may not wish to participate
- There are **protection** issues, for example, related to confidentiality, related to disclosure, related to legal age of responsibility

The curriculum section needs to include something specific on the role History teachers. Specific examples are needed of how intergenerational learning operates in practice. There are separate sections on children’s rights as a basis for reconciliation programmes and how gender sensitivity relates to TRC and post-conflict reconciliation.

4. Recommendations

Tentative recommendations at this stage:

- Establish political legitimacy
- Test whether the timing is right (esp regarding education reform)
- Be sensitive to concerns of victims and survivors
- Secure parental support
- Initiate debate about the nature of truth (epistemology)

- Clarify the concepts and issues that are likely to arise
- Consider what the broad approach will be (content, skills, values based)
- Legitimize the task within schools
- Make sure ethical and child protection issues have been considered
- Provide teachers with intensive training and support
- Involve multiple perspectives and draw on resources of civil society
- Consider how to promote inter-generational learning

Restorative Justice: Opportunities and Risks for Children

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There is growing interest in the role that restorative justice can play in addressing mass atrocities committed during armed conflict, repression or political unrest. This paper examines the meaning, opportunities and limitations of restorative justice in societies emerging from mass violence, particularly in relation to the needs of children and young people – both those who committed serious crimes and those who suffered from crimes against them.

The paper begins by providing an overview of the development and the central tenets of restorative justice as theorized and applied to ‘common’ crimes in peacetime societies, and more particularly of its implementation in cases that involve youth, as offenders and victims. It then focuses on situations where societies are dealing with a legacy of mass violence. After examining the context and challenges faced by these societies, it describes processes and mechanisms designed to deal with mass abuses that have integrated restorative justice principles, and analyzes the potential and limitations of procedural forms of restorative justice. Due to the challenges encountered by procedural forms of restorative justice in such contexts the paper suggests looking at restorative justice as an *approach* to justice.

A restorative justice perspective (ontology) shows us that much can be done to provide justice and healing for young victims and offenders even when trials are not possible. In particular, it suggests that there are multiple justice solutions for victims which can contribute to meeting their healing and reintegrative needs. Restorative justice proposes that we begin the justice process with the question ‘what can be done for victims?’ By asking this question, assumptions on the need for forgiveness and for an encounter between the victim and offender may be rightly put into question. Much more research needs to be done on victims’ desired justice outcomes. The paper suggests that we are underachieving in recognizing and addressing the reintegrative needs of victims, as well as their needs in overcoming loss and trauma, as important aspects of justice.

Restorative justice has also something to offer to young offenders. It offers important insights on how to ensure accountability, namely through the concept of reintegrative shaming, which emphasizes the role of the community in providing coercion for the offender to account for what he/she has done (especially when state coercion is inexistent) but also the importance of connecting shaming to gestures of reacceptance. In very concrete terms, restorative justice processes may not only address the healing and reintegrative needs of offenders, but also offer them opportunities to come to terms with what they did and provide redress to their victims and the community.

This study shows, however, that restorative accountability is more difficult to achieve in the aftermath of *inter*-communal rather than of *intra*-communal conflicts. The reason is that in the former there is generally a lack of incentive for perpetrators to account for what they did. This means that in societies struck by inter-communal conflict restorative justice processes must be developed gradually. Ensuring that individuals participate and regard each other as such, rather than as members of a group is key to the success of these processes. A question that needs further attention is how to induce inter-group acknowledgement, accountability and empathy.

Restorative justice processes may not only contribute to meeting healing and reintegrative needs of victims and offenders individually, but it may also have an important contribution to the process of rebuilding the social relations shattered by violence. Restorative justice offers a framework for a broad, inclusive and dialogical process in which the affected parties as well as the wider community are engaged in re-examining the past events and the ways to move forward.

Community involvement in the justice process is a key tenet of restorative justice. But it presents both valuable opportunities and some dangers. Particularly in the case of traditional forms of justice, an excessively dominant and authoritarian attitude by community leaders may be at odds with the central values of restorative justice, and with the best interests of children and youth. Caution is needed when equating traditional justice and restorative justice. It is important that traditions reflect the aspirations and wishes of *all* segments of the population, or otherwise that a safe dialogue on traditional social norms and how they can be adjusted occurs.

In very concrete terms, the opportunities offered by restorative justice processes can be grouped around the following key issues: participation, dialogue, community engagement, reparation and reintegration. For children and youth affected by mass violence, this may mean:

1. Their inclusion in justice processes and having the opportunity to express their own views on what has happened in a safe and welcoming environment. This allows all involved to hear and understand the harm they have suffered and their specific needs in overcoming its consequences.
2. Engaging and assigning responsibility to members of the child's or youth's 'community of care' and of the wider community in supporting him/her overcoming the effects of the violence and in his/her reintegration.
3. Creating the space where empathy and the rebuilding of trust between young victims and ex-combatants and their communities may develop, by laying bare and addressing preconceptions and distrust towards children who were involved in and victimized by mass violence, as well as their vulnerabilities.

The special resonance that restorative justice principles and values bear in situations where societies are coming to terms with mass violence continues to attract attention

towards restorative justice processes. Procedural forms of restorative justice, however, face considerable difficulties and may lead to undesirable outcomes when implemented in contexts of mass violence. The contribution of a restorative justice ontology to identifying the needs of young victims and young offenders, and to indicating multiple ways in which these needs can be met constitutes the backbone of this paper and should be the subject for further discussion.

***Mato Oput* and Children in Northern Uganda**

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The Acholi people in northern Uganda have for centuries relied on traditional justice methods as a means of dispute resolution and communal reconciliation. In the wake of the two-decade armed conflict in northern Uganda, the Acholi traditional justice mechanism of *mato oput* based on the principles of restorative justice has earned the trust of many as a form of accountability and a tool for generating acknowledgement, repentance and compensation, which are seen as the necessary precursors to reconciliation. It is evident from the research that traditional justice has evolved over time and is shaped by the people and influenced by factors and circumstances around it. In Uganda, traditional justice is now being recognised through formal legislation, which is an opportunity to bring the existing system in line with international human rights norms and ensure that it meets international juvenile justice standards.

Within the IDP camps, cultural leaders and elders perform traditional rituals to welcome formerly abducted children in the community and assist in their reconciliation. Many children attest that the traditional process affords them a level of comfort as they are performed with the support of members of their families and often comprised of people with whom they are familiar and has the further benefit of operating in their mother tongue. The children attest that it gives them the opportunity to show remorse and gain acceptance and reconciliation with their communities.

That said however, the adequacy and appropriateness of *mato oput* as an accountability measure has been questioned and with valid reason. The research found a number of key limitations to the process and the overall recommendation calls for a blend of different justice systems to compliment each other in the transitional justice process in Uganda. Suffice to say that the complex nature of the conflict heightened by 21 years of displacement means that there are no easy answers to questions of justice and reconciliation as this study reveals. Some of the key limitations, grey areas and proposed recommendations for *mato oput* are highlighted below:

1. Children with no known relatives and those born in captivity, whose parents may still be in the ‘bush’ or dead, have not had the benefit of taking part in the traditional rituals that are all performed at the family or clan levels. In addition, many children have not been recognised or accepted by their families or relatives. These children need the acceptance of the family first before they can engage in a broader communal reconciliation. Some children together with their families cannot afford the items traditionally required to take part in some of these processes (such items include, goats, sheep and chicken) because of poverty.

Proposed Recommendation: *Cultural leaders, elders and aid workers with support of the government must increase and give full momentum to sensitization and education work being done to promote reconciliation in northern Uganda.*

The government, donors and aid agencies to support traditional rituals for children who crave them but cannot afford to participate because of financial constraint as participation in such rituals may work in their best interest.

Mass cleansing and justice ceremonies that do not discriminate against anybody should be conducted to cater for these categories of children.

2. Another key finding of the research is that formally abducted children who go through a reception centre ran by some faith based international NGOs, are specifically told not to participate in cultural rituals, as they are satanic and ungodly. The children are ‘born again’ and taught to shun traditional rituals. The research reveals that the children are torn apart by this alleged contradiction between traditional practices and religious belief. This promotes confusion, disorientations and conflicts within and among people.

Proposed recommendation: *The government, elders, members of the community and all stakeholders should provide information of the available justice mechanism to the children and give them room to make decisions on what they believe suits their situation best. They should further try and support children in whatever decision they make to facilitate their successful reconciliation with their families and members of the community.*

3. A key limitation of *mato oput* process is that it is designed and intended to deal with the crimes of murder and manslaughter only. The process was not conceptualised as an accountability mechanism to deal with systematic crimes of forced marriages, other sexual offences, abductions, use of child soldiers, mutilation, pillage, looting, destruction of property and massacres among others that were rampant during the 21 year old conflict in northern Uganda.

In addition, sexual offences such as rape and sexual slavery are new and not defined in the Acholi cosmology. From field interviews, it is apparent that when discussing traditional justice, no particular attention is paid to such offences and it is not clear from the field discussions how traditional justice would be used to address these issues.

Proposed Recommendation: *The government and other stakeholders should conduct a cultural analysis in consultation with cultural leaders and other members of the community, including victims and witnesses, to define and categorise the atrocities committed and to assign proper and acceptable rituals and compensation according to the crimes.*

4. The sheer magnitude of the killings in northern Uganda makes a number of respondents feel that it would not be possible to perform *mato oput* for all the victims, including the many children who died and those who remain uncounted for. A number of

respondents also expressed fear that it would be impossible to compensate for these types of crimes, due to the amount of suffering that has been caused and the duration it has taken.

In addition to the above, central to the success of *mato oput* is that, the perpetrator's clan must reconcile with the victim's clan; this cannot happen unless the perpetrator can identify the victim. The LRA move around several districts in Uganda as well as Southern Sudan, abducting children and committing atrocities. They are often unfamiliar with the persons in the districts and villages that they attack and raid. Some of the atrocities are committed against travellers on the roads, so in most cases origin of the victim and the location of the crime may be unknown to the perpetrators. It is unclear how traditional justice of *mato oput* will deal with such cases.

All in all, there are a number of limitations and grey areas in adapting *mato oput* as an accountability measure for crimes committed for and against children in northern Uganda but it also has potential and offers lots opportunity in dealing with the crimes committed. The government and other stakeholders therefore need to seize upon its strengths and flexibility in the transitional process, if it is done right, this approach may hold valuable lessons for other post conflict states.

Local and National Accountability in Northern Uganda

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The Lord's Resistance Army has attacked and abducted civilians from the Acholi, Lango, Teso, West Nile and other areas of northern Uganda and South Sudan. Female youth have experienced extremely high levels of violence during the region's 22 years of armed conflict. During that time, the LRA has abducted an estimated one in five female youth living within this war-affected region. A quarter of those abductions resulted in forced marriages to LRA commanders and fighters with half of those females giving birth to one or more children while in captivity.

In the Agreement on Accountability and Reconciliation, signed June 2007 by delegations from the Government of Uganda and the LRA, it is emphasized that traditional accountability and reconciliation processes be "promoted to become a central part of accountability and reconciliation" in northern Uganda. While the agreement addresses crimes and rights violations against adult and youth women and children it is important to proceed cautiously with assigning a central role to traditional processes of accountability and reconciliation.

Efforts to establish traditional accountability and reconciliation mechanisms in the north have focused in large part on Acholi systems including *mato oput*, a ceremony intended to restore social harmony between injured and offending parties. While Acholi traditional systems can serve some Acholi needs of reconciliation and accountability between the LRA and the Acholi communities affected, they cannot serve all of them. For example, the Acholi traditional systems cannot adequately address gender- and sexual-based crimes such as rape, forced pregnancy and forced marriage, nor can they address war crimes committed outside the Acholi region; other groups in the war-affected regions of Lango and Teso, for example, practice different traditional ceremonies from the Acholi. Furthermore, local knowledge of traditional ceremonies is second hand, raising doubts that clan elders know how to perform ceremonies such as *mato oput* properly.

Traditional justice systems have not evolved to deal with the kinds of widespread and systematic violence that has come to characterize the actions of the LRA. Additionally, traditional justice systems in Uganda – which mirror general trends throughout Africa – are male dominated, leaving female youth and children to rarely fare well within such systems. Confusion surrounding how traditional systems would address gender and sexual-based crimes is evident when comparing differing attitudes towards these types of crimes among the northern groups involved. For example, regarding the crimes of abduction and forced marriage of Langi females, Langi leaders see the issue as integral to a regional peace dialogue since many of the LRA fighters and commanders who impregnated and raped their abducted female members were from Acholi clans. The

Acholi leaders, on the other hand, have a tendency to internalize the matter and approach instances of forced pregnancy and forced marriage as an Acholi cultural issue to be dealt with exclusively by Acholi clans. In some instances Acholi elders and traditional leaders—including individuals within organizations such as the Ugandan Amnesty Commission—have advocated for girls and women survivors of rape, forced pregnancy and forced marriage to return to their captor husbands as this would be the best way to generate social harmony and reconciliation in northern communities.

Research, including my own, finds that traditional justice measures are inadequate and if let to deal with gender and sexual-based crimes may result in harmful actions to children and female youth. Hence, given the bifurcated scheme outlined in the Agreement of Accountability and Reconciliation and its Annex, it is recommended that crimes not codified within Ugandan substantive law be codified (such as forced marriage) and therefore dealt with within the special division of the Ugandan High Court established to handle war crimes carried out in northern Uganda. Additionally, the special division should prosecute all senior LRA commanders responsible for crimes of rape, forced pregnancy, forced marriage and other gender and sexual-based crimes and these crimes should not be dealt with as lesser crimes within traditional systems.

The importance of the application of Ugandan national law, as well as a broad, regional accountability and reconciliation process that is informed by all war-affected regions cannot be understated. Therefore, the paper stresses that traditional systems alone (including those of the Langi, Iteso and others) cannot sufficiently address the majority of gender- and sexual-based crimes carried out within and by the LRA. Hence, national and international systems must work parallel to, and in some cases take precedence over, traditional mechanisms.

Children and Transitional Justice in the Andean Region

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General Considerations

- The purpose of this paper is to identify some of the main characteristics of transitional processes in the Andean Region. In this context, the role of international organizations and international law is fundamental, particularly regarding the situation of children.
- The main conclusion is that the involvement of children has not been addressed as a specific issue. Despite the fact that there are recommendations that include the situation of children in the Andean Region – for example, in the Peruvian Truth and Reconciliation Commission Final Report – this problematic has not been considered as a major point in the agenda, in comparison to other regions of the world. This has led to generalized policies that address children without dealing with their specific needs. The sole exception would be the situation of child soldiers and the demobilization programs in Colombia. In this sense, the role of international law (CRC and its optional protocols), as well as international organizations, is fundamental to the recommendation of integrated child policies in Colombia and Peru.
- In the Peruvian case, the internal conflict took place during the first part of the 1980s with systematic violations of human rights and international humanitarian law. The Truth and Reconciliation Commission, which published its report in 2003, determined a comprehensive program of communal and personal reparations, judicial prosecution and institutional reforms. The main challenge is that international law, in particular human rights law, was not in force when these alleged crimes took place. Therefore, the main debate at present involves how to apply these laws retroactively without violating constitutional criminal and basic rights law. The judiciary has resolved these issues on a case by case basis.
- In Colombia, there has been a long-time systematic violation of human rights by multiple actors (state, paramilitary and illegal armed groups). Despite the independence of powers that has long existed in Colombia, traditional measures have proved incapable of confronting the challenges stemming from internal armed conflict. Unlike the Peruvian case, international law and recommendations by international organisms (the UN and organizations within the Inter-American system) have played a major role orienting policies and reforms in order to deal with this situation. As of today, the conflict continues but current legal reforms have created a parallel legal, social and judicial structure that can be qualified as transitional justice, though without meeting all of the characteristics of a traditional transitional justice scenario. The Peace and Law system (*Ley de Justicia y Paz*) and the Truth Commission are examples of parallel mechanisms created during an ongoing situation of conflict. The application of this Law has been controversial and human right organizations have questioned the lack of access of victims to the proceedings and to be granted reparation.

Children and Transitional Justice

- The most successful practice of international law regarding children and armed conflict in Colombia and Peru has been the enforcement of the legal prohibition of the use of child soldiers within the Armed Forces. Despite the fact that the law prohibits the recruitment of minors, it has been a long-standing practice in these countries and tacitly tolerated by governments. The application of international law by the judiciary (mainly Constitutional Courts) contributed to the abolition of the practice by both governments. Nevertheless, the problem persists in Colombia with the recruitment of minors by illegal armed groups (the FARC and ELN). Current statistics in Colombia indicate that these groups continue to recruit child soldiers as young as the age of eleven. This situation could amount to a war crime allegation under Article 8 of the Rome Statute of the International Criminal Court.
- The commission established by the government in Colombia as part of the Colombian National Commission of Reparation and Reconciliation ('Comisión Nacional de Reparación y Reconciliación' – CNRR), which is ongoing, and the Comisión de la Verdad y Reconciliación (CVR) in Peru, completed in 2003, have not issued integral recommendations regarding child policies or reparation programs, limiting its scope to very particular circumstances. In the Peruvian case, children participated in general hearings, though in a limited manner. This is reflected in the Peruvian TRC final report, in which children's issues are not substantially addressed. In the case of Colombia, child participation has not been an issue since the process has been dealing with violence that took place in the 1980s (the siege of the Justice Palace in 1985 by the M-19 illegal group), at which time no children were involved.
- The fact that TRCs in Colombia and Peru have not highlighted the situation of children, as opposed to the cases in Sierra Leone and South Africa, does not mean that the legal system and its institutions have not adopted reforms to address this issue. After the TRC final report in 2003, the Peruvian government enacted a National Human Rights Plan (as per the 1993 Vienna Conference) that included an integrated program that contemplates measures to address human rights violations of children internal armed conflicts. Current draft bills regarding criminal law reforms have included specific norms that punish the use of children in armed conflicts.
- In Colombia, the UNCHR office and the OAS, among others, have issued recommendations regarding the involvement of children in armed conflict. Apart from addressing the recruitment of child soldiers, they have proposed specific programs concerning internally displaced and demobilized children. As a result, Children's Welfare Services (ICBF) has developed a program focused on the reintegration and reinsertion of demobilized children without meeting transitional justice standards per se.
- In addition, rulings from the Inter-American Court of Human Rights have contributed to the execution of reparations and other programs that Colombia and Peru should adopt in order to prevent reoccurrence of these situations. In the case of Colombia, the Inter-American Court has recently issued decisions that have been interpreted and developed by the Constitutional Court in order to address human

rights violations, including those of children. As a landmark case, in 2004 the Court ordered the Colombian government to adopt an integrated program for internally displaced persons. This ruling has become government policy that would not have been adopted under any other circumstances. The Peruvian Constitutional Court, on the other hand, has adopted a similar but more limited approach, focusing on the prosecution of human rights perpetrators.

Conclusions

- International law, including soft law, has played a key role in addressing human rights violations in the armed conflicts in Colombia and Peru. The role of international organizations has been seminal in the adoption of transitional justice programs, including institutional reforms and reparation programs.
- State policies in Colombia and Peru, with a few exceptions, have not specifically addressed children in armed conflict. Human rights policies have been pushed by international organizations, and have been incorporated into state policies not as law but as the result of decisions by respective judiciaries. This indicates that the best course of action to address the issue of children in armed conflicts is not necessarily through Congress, state ministries or welfare programs, but through the judiciary, particularly Constitutional Courts.
- As a consequence, this dynamic permits citizens, NGOs and even international organizations to push for the adoption of children's policies regarding transitional justice mechanisms through the judiciary (technically in charge of solving conflicts of law and its temporary application), as well as transitional policy-making bodies. The fulfillment of international standards is therefore a key starting point.

Child and Adolescent Participation in the Liberian TRC

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Background

The Liberian Truth and Reconciliation Commission was one of several transitional institutions and governance bodies that emerged from the negotiations of the Accra Comprehensive Peace Accord in 2003, and was established by legislation of the Liberian government in 2005. Its objectives include establishing the causes, course and outcomes of the civil conflicts that beset Liberia for the 14 years prior to the ACPA; to promote national peace, security, unity and reconciliation, including through the investigation of the events of the civil war and recommendations for relevant responses, potentially ranging from recommendations for criminal prosecutions through to recommendations for reparations; and the compilation of the findings of the TRC for wide distribution within Liberia. The work of the TRC is ongoing, with the investigative elements of the work scheduled to be concluded in late 2008.

Building on the experiences of previous TRCs internationally, but specifically on the recent experience in Sierra Leone, the Liberian TRC made a formal decision, recognised in legislation and policy, to include children in all aspects of its proceedings, analysis and recommendations. As many previous TRCs had either not included children or included them in informal ways, the Liberian TRC has faced a number of challenges to ensure relevant and appropriate children's participation in the face of limited experience that could be called on.

Key Achievements

- Formal (legislative and policy) inclusion of the protection and participation of children in the processes and outcomes of the TRC
- Appointment of TRC Commissioners with special responsibility for children and youth, in addition to wider spread interest from other Commissioners
- Formal MOU with Liberian Child Protection Network on respective roles and responsibilities of agencies, NGOs and the TRC in the protection and participation of children in TRC processes, including protection priorities and guidelines
- Working partnerships with a variety of government organs, UN agencies and national and international NGOs, including UNICEF and UNMIL
- Recognition and support of TRC by Liberian governance structures, including through legislation and (limited) funding from national government
- Completed activities
 - child focused training for statement takers (through international and national partners), including written guidelines for statement taking from children
 - regional TRC awareness raising workshops with children
 - statement taking from children in all regions of the country

- development of child friendly methods for contributions to thematic hearings and other TRC workshops
 - The first of several regional children's hearings held in May
- Ongoing and proposed activities
 - Regional children's hearings
 - National children's debate with TRC Commissioners
 - Child friendly TRC report
 - TRC inclusion in new Liberian primary and secondary school curricula

Key challenges and other issues

The TRC has faced a number of challenges, both in its general work and specifically in its efforts to promote the inclusion of children in its processes. A lack of human and financial resources has often meant the curtailing of ambitions in relation to the scope of inclusion and the effectiveness of the work. For example, the TRC has had to limit the number of awareness raising workshops held for children and young people in the provinces, thus compromising its ambition to educate large numbers of Liberians on the role and procedures of the TRC and undermining its attempts to include the experiences and future visions of as many as possible of Liberia's children. Financial constraints have been exacerbated by the destruction of much of the country's physical infrastructure during the conflict, and the paucity and disarray of former children's consultation mechanisms.

Limited human resources have had other impacts. For example, to avoid the problems encountered in Sierra Leone of the TRC being perceived as an international, not Sierra Leonean process, the Liberian TRC decided to appoint only Liberian commissioners. While emphasising Liberian ownership of the process, this move meant that there were no commissioners appointed with previous experience of other TRC proceedings and a certain level of inexperience was evident in the early establishment and operations of the TRC. In addition, this decision (initially at least) seemed to affect the enthusiasm and support of external donors, evidenced by unhelpful levels of scepticism regarding TRC processes and implementation. Finally, an international lack of experience in the full participation and protection of children in TRC processes, and inadequate dissemination and sharing of the experience that exists, meant the Liberian TRC had often to develop ideas, policies and procedures parallel with implementation. This led at times to unintended consequences in relation to child protection issues, some of which were rectified in the course of further implementation and some which remain unresolved.

One example was the only partial development and utilisation of child focused statement taking forms. Another was the first awareness raising workshops for children, where some techniques were inconsistent with the TRC's protection priorities for children. The partnership with CPN and UNICEF meant that such flaws were identified quickly and in later workshops, the techniques were adapted and appropriate adults were available for any post workshop support needed. Another example relates to the clause within the legislation establishing the TRC that guarantees anonymity and sealed records for twenty years after the conclusion of its work. For an adult, twenty years might be sufficient, but children could find their testimonies coming to light in the prime of their lives. Again,

recognising the protection issues involved, the TRC and partners developed some operational procedures to further protect the identity of children, and are considering the possibility of an adaptation of the existing legislation or an additional clause in alternative government legislation.

Other challenges include the difficulties of trying to integrate the TRC processes, findings and developing recommendations with the fast moving and constantly changing efforts of the general physical, social, economic, political and governance reconstruction of Liberia. For example, both the TRC and the Ministry of Education desire the integration of elements of the TRC in primary and secondary school curricula. However, the findings and recommendations from the TRC are unlikely to be available before the end of 2008, while the Ministry of Education is working to launch its revamped curricula in the near future.

Overall, the financial and human resource restraints for the TRC generally and limited targeted resources for children can fuel a concern that the work with children, rather than being fully integrated into the work of the TRC, can become secondary to its main focus.

Key points/questions arising

Overarching:

- Are TRCs the most effective method of transitional justice for children, particularly when violations such as sexual violence, mutilation and murder are central to their experience of the conflict?
- Is the inclusion of children in the TRC process a positive step or does it endanger or make children more vulnerable? Are there any truly effective protections against this?
- Can the findings from TRCs be effectively included in other reconstruction processes in post conflict countries and if so, how?
- How can TRC findings and processes be given adequate weight to influence other processes, including PRS, educational reconstruction and other long term planning?
- Reparations: are there ways for communal reparations targeted at children to become integral outcomes of the TRC process? Any successful examples?

Liberia focused:

- How can the TRC overcome financial and other resource challenges?
- How can the experience from other TRCs be more effectively channelled?
- How can Liberia's lessons be transferred to others (eg – legislation: longer anonymity period for children; resources: dedicated resources needed for children's work; development of tools: child friendly statements and their format;)
- How can the scepticism that has been attached to the general work of the TRC be set aside when considering its work with children?
- Liberian children seem more interested in the reconciliation process than the truth element – in the sense of linking reconciliation to the rebuilding of their lives and communities, with a particular emphasis on education and livelihoods. How can

this be formalised and financed? Better link to PRS would have been helpful but how feed these expectations and TRS recommendations into work with donors?

- The understanding of the TRC shown by children and their communities has sometimes been limited and sometimes inaccurate. How deal with unrealistic expectations of the process and its outcomes?

Children's Participation in the Commission for Reception, Truth and Reconciliation in Timor-Leste

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Overview

In 2001 the Commission of Reception, Truth and Reconciliation (CAVR) was created in Timor-Leste with the aim to establish the truth and accountability for human rights violations committed during the Indonesian occupation between 1975 and 1999 and to achieve community reconciliation between the Timorese people. The final report “Chega!” found that children were victims of various human rights violations including killings, sexual abuse, arbitrary detention, torture, forced displacement and forced recruitment. The CAVR had a clear focus on violations against children but what was the level of participation of children throughout the process? And were there protection mechanisms in place to enable their participation?

In May 2006, new violence erupted in Timor-Leste and killing, burning and looting escalated to such an extent that 150.000 people had to flee their homes and a UN Peace-keeping force was deployed to secure peace and stability of the young nation. Even though children and adolescents were not the root cause of the problems they still became protagonists either as victims, witnesses or perpetrators. Post-assessments refer to “the lost generation” - youth without education, employment, future or hope – as one of the reasons why the conflict took such large dimensions. Children themselves explain their role as “stepping stones in the river” (so that the leaders can get what they want without getting their feet wet)²³. Is there a link between the limited participation of children in the CAVR process and the involvement of youth in the political violence in 2006? What are the consequences of the limited participation of children in the CAVR for nation building and reconciliation in Timor-Leste?

Key findings regarding children's participation and protection in the CAVR process

- The CAVR focused on children through a dedicated research team and a chapter on violations of children's rights in the final report, specific recommendations regarding children and youth and a special public hearing on children and the conflict.
- Most statements on violations against children were given either by parents and relatives or by adults who were children at the time of the violation. Some children also gave statements but there is no statistic available on the number (in opposite to the statistic on statements given by females).
- It is not clear what psycho-social support children received at the statement taking. In some cases the Victim Support team attended the child but there was no consistency.

²³ PLAN International, “Like stepping stones in the river”, 2007.

- Only one child gave a public testimony in the public hearing children and the conflict. The child got psycho-social support before and during the testimony but not after.
- Children were not involved in the Victim Support activities such as healing and community profile workshops and there was no special focus on children in the out-reach programme in West-Timor (only focus on family).
- Children did not actively participate in the Community Reconciliation Process (CRP) which intended to reintegrate perpetrators of less serious crimes into their communities.
- A drawing competition was organized for primary, pre-secondary and secondary students in all thirteen districts to engage children in discussions around topics such as violence, peace and reconciliation.

Key findings regarding reasons for limited participation in the CAVR

- Timor-Leste was a new-born country without institutions, frameworks, human resources or capacity. Further more civil society was extremely weak, particularly in the area of child rights.
- UN and other Child Protection Agencies were engaged in preparations for Independence, drafting of the Constitution, establishing institutions etc.
- Limited psycho-social support was available for victims due to lack of skilled human resources (only four social workers in the country).
- The CAVR did not have a “focal-point” mainstreaming children’s issues.
- The CAVR did not have a clear policy or procedure for children’s participation and protection.
- Statement taking was not perceived as a mean to heal children from their trauma but rather as information gathering. However, information from children was often considered as unreliable and thus the adults were asked to speak for the children.
- Children were not considered as responsible for crimes committed during the conflict and thus not involved in the Community Reconciliation Process (only focus on the perpetrators).
- Children were not considered important for the national reconciliation process.

Key findings regarding implications of the limited participation in the CAVR

- The generation of children excluded from the CAVR process is now the youth who feels excluded from the benefits of independence and alienated from the decision making and nation building.
- There is a lack of strong national identity which resulted in children and youth taking part of the eastern-western conflict under influence or manipulation of adults.
- Violence and antagonism were perceived as activism during the resistance which leads children and adolescents to join martial arts groups or street gangs.
- Lack of trust in the formal justice system and a perception that revenge is part of the Timorese culture make revenge a popular method to settle disputes.

Recommendations

- Incorporate findings from the CAVR in the primary, pre-secondary and secondary curriculum to provide children with a stronger sense of national identity.
- Include modules on conflict resolution, diversity, citizenship and nation building etc in both formal and non-formal curriculum to foster a culture of peaceful resolution of conflicts.
- Involve children and youth in decisions affecting their lives through implementing the National Youth Policy
- Strengthen social services in order to support children and youth to overcome their trauma.

Questions for discussion

- What lessons can be learned from the Timor-Leste experience?
- Would it have been conducive for children participate more in the CAVR despite the limited protection mechanisms available?
- What are the consequences of the limited participation of children in truth and reconciliation mechanisms for the nation building and reconciliation of a country?
- What can be done to include children in the current national reconciliation process?

Children, Youth and Gender in Rwandan Context

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Rwanda experienced a tragic situation in the 1990s with the war and the genocide. These tragedies displaced thousands of people and led to serious consequences affecting the everyday lives of children.

Child soldiers died on the battlefield, others were killed by stray bullets without necessarily being targeted by the combatants, others were killed during the genocide, other children from escaped *tutsi* families or *hutu* witnesses for the prosecution or for the local authorities were killed with their parents or relations by Congolese infiltrators; children also died of epidemics in the refugee camps. During the war and the genocide, pregnant women and girls aborted as a result of being in grave fear of their lives, detonations of weapons or shellfire by the belligerents, or the stress of seeing their family members killed, tortured or raped.

The survivors include many orphans, children separated from their parents, and child heads of household. Other children have suffered all kinds of violence including rape and other sexual abuse. Girls were the main target of the rapists. Some were forced to live with the executioners as their wives. In general, young adolescents became women and mothers prematurely and took on adult responsibilities too young. Some children conceived by rape were killed by their mothers, others were rejected and are completely unloved because they remind their mothers of bad times. We cannot ignore the categories of children traumatised by having witnessed the rape, torture and massacre of their parents and families; children handicapped as a result of torture during the war and the genocide; those wounded by anti-personnel mines laid by the belligerents.

It is clear that children are twofold victims of conflict. In the first instance as members of the groups targeted by the parties to the conflicts. This means the genocide where children of families of *tutsis* and *hutus* opposed to the divisionist ideology were exterminated with their families without mercy from the smallest among them. Secondly, children were directly involved in the war and the genocide. This is the case of the children enrolled in the armed forces and militia who carried weapons and used them to kill. This category also includes children who were forced by adults to commit acts of genocide. We must speak out about the young girls who were raped and who currently suffer in silence with incurable infections and diseases including HIV/AIDS, the children conceived during these rapes that they are unable to look after and educate and who are themselves exposed to various kinds of violence.

Girls and boys are indeed affected differently by these conflicts. Most of the soldiers are recruited among the boys. If girls too are recruited, they do not take a direct part in the fighting as much as the boys. They look after the soldiers by providing nursing care, cooking and especially by satisfying their sexual appetites. It was even observed that during the genocide the killers targeted the boys more, while the girls were sometimes saved by the executioners not so much out of pity as to serve as sexual hostages.

At the end of these sorry events, hundreds of thousands of children ended up alone, with no adults to look after them, either because their parents and close families had been killed or because they had been separated and went in different directions in the refugee movements. They are orphans or unaccompanied minors. Of course, the greatest challenge is when children are heads of household and responsible for other children. They lack guidance, affection and counselling, which are essential for their intellectual and moral development. On the material front they have nothing; they lack the resources to meet their basic needs such as housing, food, health care and education. Access to property left by their parents is problematic for most orphan children, who end up losing their right to inherit to distant family members or even strangers.

Despite all these difficulties, the children are appealing to adults for peace and tolerance. They have shown exceptional courage and solidarity by taking on the heavy burden of younger brothers and sisters. Children played a significant role in the reconstruction phase. They were the first to raise their voices to say that they had had enough of war and that they wanted peace. They grouped together in youth associations and unity and reconciliation clubs to reject violence, division and ethnic hatred. For their part, the Government of the Republic of Rwanda and the civil-society NGOs are endeavouring to respond to the problems of orphans and other vulnerable children. Policies, laws, measures and strategic action plans have been adopted at national level in order to comply with international and regional instruments protecting the rights of the child. However, they have yet to be fully implemented by all the bodies and parties involved.

It is deplorable that during conflicts no special measures to protect children are put in place as required by the Geneva Conventions. Children generally emerge from the conflicts disgusted with life, with a deep trauma that jeopardises their future prospects. Such situations require a special commitment by everyone on all levels (political, economic and social). This prompts us to recommend to the governments of the various States, United Nations agencies and Unicef in particular, bilateral and multilateral donors, notably the IMF and World Bank, the International Criminal Court and ad hoc tribunals, and civil-society NGOs to join forces and intervene, each in their own field, to:

- Ensure that the rights of the child are observed in all circumstances and step up action in the community to raise and build awareness of those rights;
- Ensure that information is disseminated on national and international instruments on the rights of the child;
- Prevent any other conflict that could affect the effective exercise of the rights of the child;
- Prevent and report the enrolment of children in armed forces and militias;

- Prosecute and punish the perpetrators of war crimes, crimes against humanity and genocide wherever they may be;
- Provide special protection for children in difficult situations such as ex-combatant children, child heads of household, children in foster families, girls who are victims of rape and sexual abuse, children affected or infected by HIV/AIDS; child detainees, street children; displaced/refugee children; traumatised children, etc.;
- Provide for a system to coordinate action in favour of orphans and other vulnerable children in order to avoid dissipating efforts and duplicating assistance;
- Invest more in multi-sectoral assistance (psychological, social, economic and legal) in favour of orphans and other vulnerable children.

Peru CVR-based Curriculum *Recordándonos*

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This paper follows the development and attempted implementation of a primary and secondary national curriculum resource, *Recordándonos*, based on Peru's TRC (Comision de la verdad y reconciliacion – CVR). The paper provides a rationale for the inclusion of TRC-based resources within national curriculum and explores this process in Peru. The resource was developed following the conclusion of Peru's CVR process, building on momentum generated by the CVR and incorporating former CVR staff and organizations involved with the commission. The high-quality resource was produced by educational and human rights experts and makes good use of CVR final report to engage students in careful and appropriate reflection about the country's violent past and about human rights, reconciliation and peacebuilding.

The implementation of the resource - and its approval within national curriculum - has been problematic, largely due to resistance within certain state sectors (the military and Ministry of Defence in particular) to teaching about human rights violations committed by state actors and due to a change in government in Peru. However, the paper finds that the *Recordándonos* resource has opened reconciliatory space and was well received by those teachers and students that it reached. The paper explores opportunity that exists for its implementation in the future before drawing on lessons learned from the Peruvian case and making recommendation for future TRC-based curriculum initiatives.

Key findings

Lessons from the Peruvian case include:

- 1) Encouraging initiatives (such as curriculum projects) during the TRC period provides momentum for them to continue following the conclusion of the TRC.
- 2) Having at least one TRC staff person focused particularly on educational issues and relationship building with the educational sector is extremely beneficial.
- 3) The partnership of human rights experts (with knowledge of the TRC process and its final report) with pedagogical experts is an excellent one for developing an age-appropriate, dynamic resource that captures a TRC's findings and message.
- 4) Teaching about the violent past can be a sensitive process for teachers as well as for students. Teachers should perhaps receive special training and be accompanied in their own processes of reflection about the past before engaging with these topics in the classrooms. They should also be trained to accompany children in this process.
- 5) National curriculum is very meaningful, symbolic and politically contentious. Actors other than those in the Ministry of Education can exert, or attempt to exert, control over it.

- 6) Social dialogue around the appropriateness of the development of a curriculum resource based on a TRC can itself have reconciliatory potential if it is public and engaging.

Unresolved issues and questions

- 1) Should the more theoretical focus on curriculum and reconciliation be expanded in the paper and, if so, are there suggestions for useful cases to which to refer? At moment examples are drawn from Germany and, very briefly, from Guatemala.
- 2) A change in government and resistance from certain sectors within government were largely responsible for the fact that *Recordandonos* has yet to be approved as a resource within the national curriculum; what is the best way to approach these challenges – both within the paper and in terms of the future of *Recordandonos* – and how can opportunities for *Recordandonos*' approval best be pursued?
- 3) What is the best way to fund TRC-based curriculum resource development, associated teacher training and distribution? The Ministry of Education should be involved, but likely cannot fund the whole initiative.
- 4) What are the pros and cons of a TRC-based curriculum initiative undertaken by the TRC itself and of one undertaken independently? Should these be developed further within the paper?
- 5) On a very practical note, should some of the above lessons learned (key findings) be repeated as recommendations or does this make for a dull read?

Recommendations proposed

- 1) Encourage open communication with the Ministry of the Education from the beginning of the initiative and consider ways to involve the Ministry in the process (perhaps in an advisory council).
- 2) Involve the Ministry of Education in the piloting of the resource as this can work as a first step towards its eventual validation as a curriculum resource.
- 3) Consider including the development of a curriculum resource within a broader commemoration initiative if the TRC is undertaking one. This could help build legitimacy and momentum.
- 4) Make public the debate about teaching the violent past as this debate itself may hold reconciliatory potential.
- 5) Involve teachers in the process from the beginning and consider their psychosocial needs.
- 6) Involve children in the process – both in terms of ideas for material development and in terms of giving feedback on materials – and consider their psychosocial needs.