

Innocenti Working Paper

**PSYCHOSOCIAL SUPPORT FOR
CHILDREN: PROTECTING THE
RIGHTS OF CHILD VICTIMS AND
WITNESSES IN TRANSITIONAL
JUSTICE PROCESSES**

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Children and Transitional Justice Working Paper Series

The Children and Transitional Justice Working Paper Series is intended to generate dialogue and consensus, and to better inform children's protection and participation in ongoing or planned transitional justice processes in diverse country situations. Based on experience, the papers document and identify challenges, dilemmas and questions for further debate and formulate recommendations to better protect the rights of children involved in transitional justice processes.

The research conducted has created broad interest and visibility, helping establish a child rights-based approach to transitional justice that addresses advocacy, policy and programme concerns within UNICEF and among partners. Key areas of focus include:

- International legal framework and child rights
- Children and truth commissions
- Local processes of accountability and reconciliation
- Transitional justice and institutional reform.

The identification of topics and authors in this Working Paper Series was undertaken in the context of strategic partnerships with the Human Rights Program at Harvard Law School, and the International Center for Transitional Justice (ICTJ). The review of the Series was guided by a peer review oversight panel, chaired by Jaap Doek. A network of practitioners, academics, legal experts and child rights advocates participated in the peer review. The Series was initiated and overseen by Saudamini Siegrist, with the support of Ann Linnarsson.

An Expert Discussion on Children and Transitional Justice was convened by UNICEF Innocenti Research Centre (IRC) in June 2008 to provide comments to individual authors and to assess the range and coverage of the Series. A subsequent conference on Children and Transitional Justice was jointly convened by the Human Rights Program at Harvard Law School and IRC in April 2009 in Cambridge, MA USA.

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Titles in this series, with authors' affiliations, are:

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- No. 7: Children and the Commission for Reception, Truth and Reconciliation in Timor Leste. Megan Hirst, International Criminal Court, Victims' Participation and Reparation Section; Ann Linnarsson, UNICEF, IRC.
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- No. 13: Prosecuting International Crimes against Children: The Legal Framework. Christine Bakker, European University Institute, Florence.
- No. 14: Psychosocial Support for Children: Protecting the Rights of Child Victims and Witnesses in Transitional Justice Processes. An Michels, Independent Consultant.
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Psychosocial support for children: protecting the rights of child victims and witnesses in transitional justice processes

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Summary: This paper reviews and analyses psychosocial support as an essential tool for protection of the rights of children participating in transitional justice mechanisms.

Strategies for offering psychosocial support to children involved in transitional justice mechanisms can cover a wide range of interventions. Experiences show that the availability of psychosocial support in combination with effective protection strategies allow children to participate safely, improve the quality of their testimony and protect them against potential harm caused by their participation.

The paper first looks at psychosocial factors that affect children's participation in transitional justice mechanisms. These factors largely determine children's need for protection and support and can reflect children's responses to their involvement in transitional justice processes. A distinction has to be made between psychosocial factors related to the child and his or her experiences during the conflict on the one side, and factors determined by the type of transitional mechanism on the other. Children's participation in transitional justice processes is influenced significantly by their personal experiences during the conflict; cognitive, social and emotional development; coping skills and social support. These factors influence children's capacity to give an accurate statement, cope with the stress of testifying, be confronted with the accused and deal with cross-examination. These have important implications for the choice of support strategies.

While all children are affected by armed conflict, some are particularly vulnerable, including children who were direct victims of violence, children associated with armed forces or groups, victims of sexual violence or those who have very limited support in the current situation.

The nature of the transitional justice mechanism determines children's role in the process, in terms of whether they give a statement, testify in court, participate in a hearing, make a submission or are cross-examined. These characteristics also influence the consequences of children's involvement, including possible threats to which they will be exposed.

In judicial mechanisms such as international or hybrid tribunals, witnesses are mainly considered providers of evidence, and their involvement is very much shaped by strict rules of procedure and evidence. The adversarial system, common in many of these mechanisms, also puts a heavy burden on witnesses, particularly children. At the same time, international or hybrid tribunals usually have significantly more resources to set up support mechanisms and to establish protective measures for witnesses.

Non-judicial mechanisms, in particular truth commissions, can tailor their procedures more easily to meet the needs and capacities of children. Children's participation can also take different forms and include innovative forms such as special hearings or submissions by children's groups. In addition, the absence of punitive elements and an adversarial process reduces the burden on witnesses and the potential threat against them. However, these mechanisms often lack the resources and mandate to ensure support and protection for children who participate.

Second, this paper summarizes the legal framework guiding psychosocial support and protection of children in justice, truth and reconciliation processes. The Convention on the Rights of the Child forms the backbone of the legal framework for the protection and support of children in transitional justice mechanisms. Other instruments relevant for child victims and witnesses include the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines benchmarks for the protection of victims of crime, and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses.

Further, this paper analyses the strengths and weaknesses of past and current policies and procedures regulating the psychosocial support of children. Throughout the short history of transitional justice mechanisms psychosocial support for witnesses has developed in response to the growing involvement of child victims.

The Special Court for Sierra Leone, the International Criminal Court and the truth commissions in Sierra Leone and in Liberia have put in place a variety of measures to protect the rights of child victims and witnesses participating in procedures. The following measures are discussed in the article:

- Integration of provisions for protection and support into the regulatory framework of transitional justice mechanisms;
- Selection of specialized staff and adequate training of all staff on issues related to dealing with child witnesses;
- Vulnerability assessment of potential child witnesses;
- Individual support and counselling before, during and after testimony;
- Establishment of protective measures before, during and after testimony;
- Long-term support and referral;
- Involvement of the community in support strategies and the use of local approaches to healing.

Based on these experiences, a number of challenges are presented related to the involvement of children in transitional justice mechanisms, including the need to balance the right to participation and the right to protection. The paper looks as well at the discrepancy between the resources made available for different justice mechanisms and the possibilities for child participation that they can offer. Also discussed is the necessity to manage expectations of victims and witnesses involved in transitional justice mechanisms. The paper concludes with a number of recommendations for enhancing the protection of children in transitional justice mechanisms.

Keywords: Children, transitional justice, psycho-social support

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1. INTRODUCTION

This paper reviews and analyses psychosocial support as an essential tool for the protection of the rights of children participating in transitional justice mechanisms. It first looks at psychosocial factors that affect children's participation in transitional justice mechanisms. These factors largely determine children's need for protection and support and can reflect children's responses to their involvement in transitional justice processes. It then summarizes the legal framework guiding psychosocial support and protection of children in truth, justice and reconciliation processes. The paper analyses the strengths and weaknesses of past and current policies and procedures affecting the psychosocial support of children. It concludes with recommendations for enhancing the protection of children in transitional justice mechanisms.

While there are many forms of transitional justice mechanisms, this article focuses on children's participation in international or hybrid tribunals and in truth commissions. This area is emphasized because more information has been gathered about child participation in this realm.

1.1 Scope and importance of psychosocial support

Mental health interventions and psychosocial support can be described as “any type of local or outside support that aims to protect or promote psychosocial well-being and/or prevent or treat mental disorder”.¹ Although the terms are closely related and overlap, they reflect different, yet complementary approaches. Consequently, this paper mainly uses the term psychosocial support to emphasize the support strategies developed in the context of transitional justice mechanisms that focus on interventions outside the health sector. Nevertheless, mental health interventions are also necessary in some circumstances, especially for children suffering from severe distress.

A wide range of strategies is available for offering psychosocial support to children involved in transitional justice mechanisms. The choice depends on the type of process, the context, the number of children participating and – not insignificantly – how seriously transitional justice processes view the issue and the resources made available for it. The appropriate psychosocial strategy is also determined by individual characteristics of the children, how they have been affected by injustices and the extent and nature of other supports, such as family and community, available to them.

In the context of transitional justice processes psychosocial interventions can consist of establishing specific rules, guidelines and measures to protect and support child witnesses; screening potential child witnesses; offering direct support and/or counselling before, during and after statement-taking and testimony; setting up long-term support mechanisms and creating a protective environment for children; establishing partnerships with non-governmental organizations (NGOs) and child protection agencies that offer psychosocial

¹ Inter-Agency Standing Committee, ‘IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings’, 2007, pp. 1-2.

support; referring children to mental health services; training investigators and other relevant staff on how to deal ethically with vulnerable witnesses; and setting up community-based forums for children and their families to express themselves freely about their experiences during the conflict and about the transitional justice process. Support at family level can also be crucial. Parents need to understand how children may be affected by their experiences in giving testimony and how to support them. Psychosocial interventions can also include socioeconomic interventions, such as assistance with housing, education or vocational training.

Having children participate in transitional justice mechanisms is of great importance to address crimes against them, in particular the crimes of recruitment and use of child soldiers and gender-based violence. Children's involvement is not only necessary to provide crucial evidence of these crimes; it also constitutes an important opportunity to have their voices heard. Due to their age, however, child witnesses are particularly vulnerable to violation of their rights and to be psychological harm by the process.² To ensure that children's participation in transitional justice mechanisms is safe and protected and has a positive impact on their lives, criteria governing their participation must be established.

Psychosocial support is a crucial tool for facilitating children's meaningful participation in transitional justice mechanisms while also protecting their rights. Without such support and protection, children's meaningful participation is impossible. Experiences also show that the availability of psychosocial support helps children to feel safe, which improves the quality of their testimony and makes them more confident witnesses. There can be no successful prosecution of crimes against children without functioning support and protection mechanisms for witnesses. At the same time, effective participation, support and protection in transitional justice mechanisms can help to break the cycle of violence and prevent future conflicts and instability.³

However, tensions can arise between children's right to participate in transitional justice processes and their right to be protected from harm. In some situations the best interest of the child requires them not to participate as a witness to avoid the risk of harm. An assessment of child witnesses' vulnerabilities is an essential part of a support and protection strategy.

Many interventions function simultaneously as support and protection mechanisms. For example, screening potential child witnesses helps to identify their support needs while facilitating their protection. This assessment can also lead to the conclusion that not participating would be in their best interest. Establishing protective measures in court supports children in their testimony and protects them against physical or psychological harm caused by the process of testifying. Follow-up support after testimony can also be used to monitor the risks or protection issues facing child witness.

² UNICEF Innocenti Research Centre and International Center for Transitional Justice, *Children and Truth Commissions*, UNICEF Innocenti Research Centre, forthcoming 2010.

³ UNICEF/ICTJ. Ibid.

2. THE EFFECT OF PSYCHOSOCIAL FACTORS ON CHILDREN'S PARTICIPATION IN TRANSITIONAL JUSTICE MECHANISMS

Psychosocial factors are a necessary component of any discussion about children's participation in transitional justice mechanisms. These factors affect children's ability to participate and their specific needs for protection and support. Psychosocial factors are also useful in assessing to what degree children's participation reduces their distress, fear or loss of control.

A distinction has to be made between psychosocial factors related to the specific children and their experiences during the conflict, on the one hand, and factors determined by the type of transitional mechanism on the other.

Children's participation in transitional justice processes is influenced significantly by their personal experiences, their cognitive, social and emotional development, their coping skills, their social support and the context. These factors influence children's capacity to give an accurate statement, deal with the stress of testifying, be confronted with the accused and cope with cross-examination. As such, developing appropriate psychosocial support and protection strategies for children is crucial for ensuring that their participation is meaningful and fair.

2.1 Factors related to children, their communities and their experiences during conflict

As Graça Machel wrote in the landmark study *The Impact of War on Children*, "War undermines the very foundations of children's lives, destroying their homes, splintering their communities and shattering their trust in adults."⁴ Children's experiences during conflict affect their recovery and their capacity to participate in transitional justice mechanisms. Children who survive armed conflict have to deal with the horrors they have witnessed. Exposure to extreme violence, displacement and/or separation from parents and the loss of family and friends can all hinder children's well-being and development. The lack of access to education and health care, as a direct result of the war, also influence the capacity of children to cope and to develop fully.

All children are affected by armed conflict, but not in the same way and to the same extent.⁵ Particularly vulnerable, for example, are children who were direct victims of violence, associated with armed forces or groups,⁶ victims of sexual violence or who have very few supports. In general, it is important not to single out these groups for special attention, which could lead to further stigma and discrimination. For this analysis, however, it is justified and useful to look at each of these groups separately to understand their particular vulnerabilities and the risks related to their participation as witnesses.

⁴ Machel, G., *The Impact of War on Children*, UNICEF, 2001, p. 80.

⁵ Machel, *Ibid.* p. 80.

⁶ The term 'child soldiers' is deliberately avoided, as it is often perceived as stigmatizing and does not reflect the wide range of roles – porters, spies or forced 'wives' – that boys and girls are forced to perform within the armed forces or group.

2.1.1 Impact of children's experiences

Even children who do not show clinical signs of mental suffering may encounter difficulties testifying about their experiences if they are fearful or believe that what they say might have a negative impact on themselves or their families. Feelings of hopelessness and normal grieving can create difficulties, even if these reactions do not reach clinical proportions.

However, some children who were direct victims of atrocities or who witnessed atrocities, especially against their parents or siblings, may show signs of severe stress. Young children may show signs of regression, anxiety and disturbed attachment. Older children may suffer from depression and anxiety, intrusion of stressful memories, withdrawal, isolation and poor concentration, sometimes leading to problems in school. In addition, some children develop psychosomatic complaints such as headaches or stomach pains.⁷ These reactions can affect a child victim's capacity to participate in a transitional justice process. They can also make it difficult for a child witness to tell his or her story accurately, answer questions, face the stress of a court session or hearing, and pick up normal life after testimony.

Children who were separated from their parents have to deal with the loss of their social support system and/or the loss of parents and other caregivers. The events surrounding the loss of a close relationship are among the most significant in the development of life-long issues for children.⁸ The loss of attachment figures and of a stable social environment make separated and unaccompanied children, especially if they are heads of a household, much more vulnerable, particularly for subsequent abuse and exploitation. Their often limited access to basic necessities such as shelter, education and health care also has important implications for their physical and psychosocial development. The absence of a social support system can make it more difficult for children to participate safely in transitional justice systems.

Children who have been associated with armed groups very often carry a double burden: they are victims but often they also committed atrocities. They have to deal with the complex mental and moral consequences of that fact. Many children, forced to be combatants, cooks, porters or sex-slaves, suffer from deep-seated feelings of shame, guilt and worthlessness. Common behavioural disturbances among children associated with armed groups include poor control of aggression; inappropriate risk-taking; affect-deregulation such as mood swings or emotional numbness; nightmares and flashbacks; poor concentration and memory; anxiety; and substance abuse.⁹ Many children find it difficult to disengage from the idea that violence is a legitimate means of achieving their aims, particularly when confronted with frustration or a feeling of injustice.¹⁰ While signs of distress and the behavioural and

⁷ Macsoud, M., 'Helping children cope with the stresses of war', New York, UNICEF, 1993; and Michels, A., 'Expert Witness Report: The psychosocial impact of war-related crimes on victims of the Sierra Leonean conflict', Freetown, Special Court for Sierra Leone, 2007, p. 3.

⁸ Rafman, S., 'Where the Political and the Psychological Meet: Moral disruption and children's understanding of war', *International Relations*, 2004, 18; pp. 467-479.

⁹ Wessels, M., *Child Soldiers: From violence to protection*. Cambridge: Harvard University Press, 2006, and Michels, A. 2006. 'As If It was Happening Again: Supporting vulnerable witnesses, in particular women and children, at the Special Court for Sierra Leone', in: *International criminal accountability and the rights of children*, K. Arts and V. Popovski, The Hague: Hague Academic Press. 2006.

¹⁰ Machel, G., 2001, op. cit., p. 20.

emotional consequences may disappear over time, these symptoms might create obstacles for children's sustainable reintegration in their communities.

The process of emotional attachment to parents and other relatives is crucial in a child's psychological development, but during armed conflicts it is often severely disturbed. In many circumstances, children have been forced to commit atrocities against their families, with the purpose of breaking bonds and preventing them from returning to their communities. Commanders sometimes become attachment figures for these children. In spite of suffering and abuse, children develop ambiguous loyalty as 'insiders'. Being stigmatized as a "rebel" by the community can also hinder children from developing normal social contacts and reintegrating into civilian society.¹¹

In addition, it has been observed that children who spent a large part of their formative years with armed groups experience a physical and psychological developmental gap, caused by lack of education and social support, chronic malnutrition, harsh living conditions, drug abuse and exposure to a climate of violence and distorted moral values. For some children, this gap can be hard to fill, and it increases the psychosocial impact of their experiences during conflict. However, research increasingly shows that many of these children develop more harmoniously than expected and do show moral sensitivity despite their time in armed groups.¹² Children also develop coping strategies that protect them during their time as combatants and help reintegration. For instance, some separate or 'compartmentalize' their life with an armed group from their normal 'civilian' life.¹³

Children's association with armed groups can make them very important witnesses. Not only can they bring forward crucial evidence about the alleged recruitment and use of child soldiers, but they might also be able to provide facts to prove command responsibility. But all the factors identified above clearly influence their response to participation in a transitional justice mechanism. For instance, their loyalty as 'insiders' leads some of these children to experience confusion or difficulty in testifying against their former leaders. Some children fear further rejection and threat by the community if it becomes known that they were part of an armed group and are participating in a transitional justice mechanism. Children who use an avoidance strategy as a coping mechanism may find it difficult to recall the events and talk about them in front of an audience. Other children simply lack the social support network necessary to cope with the potential impact of testifying.

On the other hand, if authorities handle the experience well, being a witness may also help a child face and deal with the past. Indeed, the process of being heard by a court or truth commission is an important recognition of children's suffering and their right to be heard. In addition, it also may help these children to fully understand the impact of the crimes they

¹¹ Michels, A., 'Expert declaration in the 'Prosecution motion for modification of protective measures for witnesses'', *Prosecution v Norman, Fofanah, Kondewa*, case no. SCSL-2004-14-PT, 2004, and in *Prosecution v Sesay, Kallon, Gbao*, case no. SCSL-04-PT.

¹² Boyden, 2003. 'The moral development of child soldiers', *Peace and Conflict: Journal of Peace Psychology* 9, pp. 343-362.

¹³ Wessels, M., 2006, op. cit., pp. 145-146.

were forced to commit. Both elements can contribute significantly to the process of integrating these experiences into their life story and building a new life.

Another vulnerable group is girls who have been victims of sexual violence during conflict and have to live with the consequences of brutal and humiliating acts. The psychosocial impact of sexual violence is far-reaching and often underestimated. Victims of sexual violence very often show signs of severe distress and report strong feelings of hopelessness and worthlessness, shame and guilt. Some of the psychological effects can radically change the course of a victim's life, especially for young girls. Physical injuries and chronic health conditions resulting from the sexual violence increase the impact of the events and make reintegration more difficult. For girls, sometimes targeted for their virginity, having become less 'eligible' for marriage reinforces their feelings of hopelessness and increases stigmatization by their communities. In some societies not to be married is tantamount to a form of social death.

Girls who were abducted or forced to serve as sex slaves and/or to 'marry' one of their abductors may struggle with the complex psychosocial consequences of long-lasting sexual abuse. They suffer both physically, from the sexual violence, and psychologically, from their relationship with their aggressors and the power they had over them, including over their fate and life. These girls have to deal with feelings of shame and guilt, but sometimes also with the emotional attachment to the 'husband'. They might show an ambiguous loyalty towards the husband/perpetrator, who in many cases is also the father of their children. In some cases, being forced to be a rebel's 'wife' also brought protection and status during the conflict. Often such a position saved the girl's life and granted her special benefits such as access to food. The complexity of the relationship with the abductor, the economic security and the fear of rejection by the community can make it difficult for some girls to cut loose from bonds with their perpetrator, to find peace and to cope with the past.¹⁴

Recalling events of sexual violence, even in a safe counselling setting, often provokes intense emotions. For many women and girls the idea of testifying about their experiences of sexual violence is very difficult and causes fear. Testifying publicly and/or directly against their perpetrator can be extremely stressful. In addition, the fear of rejection by the community after testimony is often legitimate. With appropriate support and protection mechanisms, however, testifying in court can be a rewarding experience that helps girls to regain control over their lives. Being a witness is also an important recognition of their suffering and of their right to be heard. Having justice served often brings closure to victims. For some girls, overcoming their fear and shame by talking about their experiences in a court-like setting is a crucial step in their recovery.

2.1.2 Impact of child development, social context and protective factors

The psychosocial impact of children's specific experiences during war can be far-reaching, but these aspects need to be addressed in the context of a child's individual development, personality and social context.

¹⁴ Michels, A. 2006, p. 137. Physicians for Human Rights, War-related sexual violence in Sierra Leone. A population-based assessment. Boston: Physicians for Human Rights, p. 76. Carlson, K., Mazurana, D. 2008.

Many child witnesses and victims show strong resilience in coping with their fears and losses and adapting themselves to new circumstances. Children who can rely on internal and external protective factors – such as intellectual maturity, positive coping skills and ability to seek assistance, as well as social support – will recover more easily and cope better with the process of testifying.

A child's age and stage of development are important factors to consider because they affect the way a child understands an event, reacts to it and responds to support that is offered. The developmental achievements specific to each age group, in the areas of cognition, emotions and social relationships, all influence the child's reaction to a very stressful experience such as testifying.¹⁵

However, each child is unique. Factors such as social environment, education, culture and local expectations of childhood have an important influence on a child's capacities and development.¹⁶ The social context in which the child grows up and his or her social support system are particularly important in mitigating the impact of very difficult experiences and can influence the child's capacity to participate safely in a transitional justice mechanism.

2.2 Factors Related to the Nature of Transitional Justice Mechanisms

The nature of different transitional justice mechanisms influences a child's psychosocial responses to participation. First, the characteristics of the mechanism determine the role of children in the process and the influence it has on them. For example, how children react might vary according to whether they are giving a statement, testifying in court, participating in a hearing, making a submission or being cross-examined. The nature of the mechanism also influences the consequences of the child's involvement, including possible threats to which the child will be exposed.

2.2.1 Judicial mechanisms

In judicial mechanisms, such as international and hybrid tribunals, victims and witnesses, including children, are mainly considered providers of evidence. Their testimony is crucial to build a case and to judge the accused. Children's involvement is shaped by strict rules of procedure and evidence, which often limits their ability to tell their story in the way they would prefer. Although victim witnesses generally value their important role in a trial, they may perceive this limitation as a burden, leading to frustration and disappointment. At the Special Court for Sierra Leone, for instance, several witnesses, including some of the children, expressed distress after they had been told to answer only the questions asked by the legal parties.

¹⁵ Macsoud, M. 1993, p. 38.

¹⁶ UNODC/UNICEF. 2008. Training module: Interviewing techniques for professionals interviewing child victims and witnesses of crime. Draft. Conventional theories about the stages of child development can give an indication of which capacities a child normally achieves at certain age, but do not always reflect all the differences mentioned above.

At the International Criminal Court (ICC), the victims who testified so far have been given more opportunity to tell their story in their own way. This practice is partly a result of Court decisions prohibiting preparation or ‘proofing’ of witnesses by the parties prior to their testimony.¹⁷ Although it is too early to evaluate fully the impact this practice, witnesses have performed well in this framework and their feedback immediately after testimony has been positive.

The adversarial nature of common law legal systems, upon which some international and hybrid tribunals have been partly based, can put a large burden on witnesses, including children. Cross-examination can be very challenging, in particular for children, especially if they have to testify about difficult events or if they do not fully understand the procedures. Again, in the case of the Special Court for Sierra Leone, the more children felt that cross-examination was a personal attack, the more they were disturbed by feelings of shame and guilt after their testimony.¹⁸ Other characteristics of judicial mechanisms shape the experiences of child witnesses, such as the goal for retribution, direct confrontation with the accused and the slowness of procedures.

Nevertheless, international or hybrid judicial mechanisms may have more significant resources than truth commissions to establish support mechanisms and appropriate protective measures. In addition, they usually deal with a very limited number of child witnesses.¹⁹ Therefore they can offer more intensive support and protection to child witnesses, thus preventing harm and enhancing the positive impact of children’s participation.

2.2.2 Non-judicial mechanisms, particularly truth commissions

Non-judicial, restorative mechanisms like truth commissions can be much more flexible in how they involve children. Procedures can be tailored more easily to meet the needs, wishes and capacities of child witnesses.

Children have participated in truth commissions held in South Africa, Timor-Leste, Sierra Leone, Liberia and elsewhere. They have contributed both as victims and as active citizens, through giving statements, participating in hearings, making submissions, contributing to a children’s report and participating in outreach activities. Future truth commissions can also involve children in other innovative ways, as long as they remain within the boundaries of criteria that ensure the independence and impartiality of the commission and maintain compliance with international human rights standards.²⁰

In theory, truth commissions’ flexibility and restorative character, and the fact that they are ideally part of a comprehensive reconciliation process, create the conditions for making the transitional justice process more victim-centred. This enhances children’s participation. In addition, the absence of punitive elements and of an adversarial process reduces the

¹⁷ See Trial Chamber I Decisions ICC-01/04-01/06-1049 (30.11.2007), ICC-01/04-01/06-1140 (29.01.2008), ICC-01/04-01/06-1351 (23.05.2008), available at: www.icc-cpi.int

¹⁸ Michels, A. 2006. p. 142.

¹⁹ At the time of writing, the SCSL has been the only international (hybrid) tribunal to call children as witnesses. The ICC is also expected to call children as witnesses.

²⁰ UNICEF/ICTJ. 2007.

psychological burden on witnesses and the potential threat against them. However, despite these advantages, truth commissions often lack the resources to set up comprehensive support mechanisms and to implement the protective measures necessary for children. This fact may undermine the benefit of testifying for witnesses.

3. LEGAL FRAMEWORK TO PROTECT AND SUPPORT CHILDREN PARTICIPATING IN TRANSITIONAL JUSTICE MECHANISMS

The Convention on the Rights of the Child (CRC) and several other international human rights instruments provide the legal framework for the protection and support of children involved in transitional justice mechanisms. These laws, treaties and conventions affirm that all children are entitled to protection, support and care and to participation, depending on the best interests of the child. Legal instruments also explicitly address the psychosocial support of children, providing guidance to aid children involved in transitional justice mechanisms.²¹

The legal framework governing children's rights in transitional justice mechanisms is particularly relevant for the adoption of a rights-based approach to psychosocial support and protection. Indeed, especially in conflict settings, a close relationship exists between psychosocial needs and rights, and thus between the promotion of mental health and psychosocial well-being and the promotion and protection of human rights. Advocating for the implementation of human rights standards, such as the right to health, education or freedom from discrimination, helps create a protective environment and supports social protection. At the same time, psychosocial support helps people to realize numerous rights and can reduce the risk for human rights violations.²² The provisions of the Convention on the Rights of the Child and its Optional Protocols – taking into account the important work of the Committee on the Rights of the Child through its Concluding Observations and General Comments – are at the core of the legal framework.

The guiding principles of the CRC are of particular importance for the involvement of children in transitional justice mechanisms and the support and protection that needs to be provided. Article 3 stresses the right of every child involved to have his or her best interests given primary consideration, a principle that should inform all decisions concerning the involvement of children throughout the entire process. This includes the right to protection from physical, psychological, mental and emotional abuse and neglect, as well as the right to harmonious development, in particular of children who have been exposed to extremely stressful events.

The Convention also affirms the right to participation of child victims and witnesses. Article 12 stresses the right of children to be heard in any judicial or administrative proceedings affecting them and to have their views taken into consideration in all decisions affecting their lives, in accordance with the age and maturity of the child. Also of particular importance for psychosocial support is the obligation to take all appropriate measures to promote the

²¹ UNICEF. et al., Introduction to Child Protection in Emergencies: an inter-agency modular training package, 2007.

²² IASC. 2007. IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings. pp. 50-51.

physical and psychological recovery and reintegration of child victims of any form of neglect, exploitation, abuse, torture or armed conflict (art. 39).

Another instrument relevant for child victims and witnesses is the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides benchmarks concerning the protection of crime victims.²³ Based on these provisions and a repertoire of practice, the United Nations developed and adopted comprehensive Guidelines on Justice in Matters involving Child Victims and Witnesses.²⁴ These guidelines recognize that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in criminal justice processes. The guidelines contain good practice on the basis of relevant international norms, standards and principles as a framework for the protection of child victims and witnesses in criminal justice processes. Thus, they give important guidance to different types of transitional justice mechanisms, including those of a non-judicial nature.

Based on the CRC, the guidelines address the best interests of the child, child protection and participation, as well as other cross-cutting principles that are fundamentally important for child victims and witnesses of a crime. In addition, the guidelines are framed around a set of rights that are particularly important for child victims and witnesses. Founded on the assumption that the protection of rights is closely related to the promotion of psychosocial well-being, the guidelines have direct relevance for the psychosocial support of children participating in transitional justice mechanisms:

- The right to be treated with dignity and compassion: child witnesses should be treated in a caring and sensitive manner, including through child-sensitive procedures.
- The right to be protected from discrimination: the support services available should be sensitive to the specific situation and needs of the child.
- The right to be informed: child witnesses should always be promptly and adequately informed about the process, as well as about the availability of support services and protective measures.
- The right to effective assistance: child witnesses should receive the assistance and support needed to enable them to participate effectively in the process.
- The right to privacy: the protection of the privacy of child witnesses is considered a matter of primary importance.
- The right to be protected from hardship during the process: all necessary measures should be taken so that at every stage of the process the best interests and dignity of the child are ensured.
- The right to safety: child witnesses must be protected from safety risks before, during and after their involvement in transitional justice processes.
- The right to special preventive measures: special measures and strategies should be developed for child witnesses who are particularly vulnerable.

²³ UN General Assembly resolution 40/34 of 29 November 1985.

²⁴ UN Economic and Social Council resolution 2005/20, of 22 July 2005.

The guidelines also emphasize the right to reparation, namely that child victims should receive reparations aimed at achieving full redress, reintegration and recovery. While this right is of great importance and can partly be addressed by provision of psychosocial support, it also goes beyond the scope of what psychosocial support and protection can provide. Reparations therefore deserve to be addressed independently.

Transitional justice mechanisms increasingly incorporate the key principles and rights of children from these United Nations documents into their statutes or mandates.

4. POLICIES AND PROCEDURES PROTECTING THE RIGHTS OF CHILD PARTICIPANTS IN TRUTH, JUSTICE AND RECONCILIATION PROCESSES

4.1 The Evolution of Psychosocial Support in Transitional Justice Mechanisms

Over the past few decades, the dominant form of conflict has shifted from conflicts between states to conflicts within states. This has led to increasing attacks on civilians, in which women and children are most vulnerable. Transitional justice mechanisms responded to this change by paying greater attention to crimes against women and children.

The ad hoc international criminal tribunals for the former Yugoslavia and Rwanda were the first international tribunals to recognize rape and sexual violence as crimes against humanity, war crimes and acts of genocide. As a direct consequence, victims of war-related sexual violence were put on the stand to testify about their ordeals. The more attention given to crimes of sexual violence, the more need there was for specialized interventions to help the victims go through the very difficult task of testifying.

Throughout the short history of transitional justice mechanisms, psychosocial support for witnesses has developed in response to the increased involvement of victims in processes. During the first trials involving vulnerable witnesses, human rights advocates and women's groups denounced the lack of support and protection of the witnesses' rights and dignity.²⁵ The criticism triggered reinforcement of support mechanisms within the court structures.²⁶

The attention to crimes against children²⁷ was reflected increasingly in transitional justice mechanisms, initially in reports of truth commissions. Slowly, children's involvement in these mechanisms also increased. Whereas the South African Truth and Reconciliation

²⁵ The 'laughing judges incident' at the ICTR became a notorious example of lack of respect for and protection of rights of victim-witnesses in the ad hoc tribunal. Trial judges burst out in laughter during an endless and inappropriate cross-examination of a survivor of rape. They never apologized.

See: Nowrojee, B. 2005. Your justice is too slow – Will ICTR fail Rwanda's rape victims? Occasional paper for the UN research institute for social development, pp. 23- 24.

²⁶ Pursuant to Art. 14 and 21 of the Statute of the ICTR and art. 34 of the Rules of Procedure and Evidence, a Witness and Victims Support Section was established early on by the Registry.

²⁷ The adoption of the Convention on the Rights of the Child in 1989 and the 2002 Optional Protocol on the Involvement of Children in Armed Conflict, the 1996 Machel Report and six Security Council Resolutions on children in armed conflict have created a framework for international action.

See the 2007 Machel Study Ten Year Strategic Review: United Nations, General Assembly, A/62/228 'Report of the Special Representative of the Secretary-General for Children and Armed Conflict'.

Commission, which began its work in 1995, hesitated to involve children as witnesses because of the uncertain physical and emotional risks,²⁸ the Truth and Reconciliation Commission (TRC) of Sierra Leone, initiated five years later, allowed children to participate in statement-taking and hearings. In addition, in collaboration with UNICEF and child protection agencies, the TRC developed a system for selection of child witnesses that included a focus on psychosocial well-being. However, support and protection during testimony and especially afterward was limited.²⁹

Around the same time, international tribunals also started to focus on prosecution of crimes against children. This was reflected in the Statute of the International Criminal Court and was first implemented by the Special Court for Sierra Leone (SCSL), the first international tribunal ever to prosecute the crime of child recruitment and to put children on the witness stand. Learning from the challenges confronted by the international tribunals covering Rwanda and the former Yugoslavia, the Witnesses and Victims Section (WVS) of the SCSL developed a comprehensive support and protection strategy for children and other vulnerable witnesses. With UNICEF support, this unit created a system to check the vulnerability of potential child witnesses as a way to assist the Office of the Prosecutor (OTP) in their witness selection process.³⁰

With the entry into force of the Rome Statute establishing the ICC in 2002, important steps were taken to make international tribunals more victim-centred and to further improve support and protection strategies for children. The Office of the Prosecutor in the ICC established a Gender and Children's Unit to strengthen the link between the investigation of crimes against women and children and support and protection strategies. This unit helps ensure systematic screening of potential child witnesses and facilitates their subsequent protection and support. In addition, the provisions for victim participation³¹ in the Rome Statute allow a unique opportunity to involve victims, including children – even without serving as witnesses. More recently, the truth commission in Liberia has further advanced this field by developing a framework – including memorandums of understanding with NGOs and agencies – to protect and support child witnesses.

4.2 Policies and Procedures Protecting the Rights of Child Participants

To safeguard the rights of children involved in such mechanisms as witnesses and victims, it is crucial to establish appropriate support and protection policies. Following is an analysis of a number of policies and procedures implemented in criminal tribunals and truth commissions, as well as a few potential new procedures.

²⁸ Ibid.

²⁹ Children testified in closed sessions and a counsellor/support person was present during their testimony. Long-term follow-up was limited.

³⁰ UNICEF Innocenti Research Centre. Transitional Justice and Children. Outcome document. 11-13 November 2005. www.unicef-irc.org/research/pdf/TJC_Outcome_Document_FINAL.pdf.

³¹ Rules 89 and 94 of the RPE of the ICC provide that the Registry of the Court must facilitate the participation and request for reparations by victims of crimes falling within the jurisdiction of the Court.

4.2.1 Integration of provisions for protection and support into the regulatory framework of transitional justice mechanisms

First and foremost, provisions for protection and support need to be reflected in the statutory framework of any new transitional mechanism. This statutory basis is necessary to assure that support and protection guidelines are developed, interventions are implemented and adequate human and financial resources are supplied.

The Rome Statute contains several articles referring directly to the protection of children who interact with the ICC. It requires, for instance, that the Court “shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including, age, gender, (...) in particular, (...) where the crime involves (...) violence against children.”³² It further foresees that “the Court may, to protect victims and witnesses or an accused, conduct any of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness (...).”³³

The Rome statute also provides for establishment of a Victims and Witnesses Unit, with a mandate to offer “protective measures and security arrangements, counselling and other appropriate assistance for witnesses (...). The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.”³⁴ The statute further calls for the prosecutor to “take appropriate measures to (...) respect the interests and personal circumstances of victims and witnesses, including age, gender, (...) and health, and take into account the nature of the crime, in particular where it involves (...) violence against children.”³⁵

Similarly, the Statute of the Special Court for Sierra Leone contained provisions for the protection and support of victims and witnesses, including children, and mandated the establishment of a Witness and Victims Section to provide witnesses and potential witnesses with adequate protective measures and security arrangements. Such measures were to include short-term and long-term plans for children’s protection and support, including medical assistance and physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.³⁶

The provisions of the Rome Statute on reparations for victims and on participation of victims in proceedings before the ICC³⁷ give victims³⁸ the right to participate independently in the proceedings; the right to legal representation; the possibility to present observations, views or concerns where their personal interests are affected; and the possibility of requesting

³² Rome Statute, Art. 68 (1).

³³ Rome Statute Art 68 (2).

³⁴ Rome Statute, Art. 43 (6).

³⁵ Rome Statute, Art. 54 (b).

³⁶ SCSL, Rules of Procedure and Evidence, Rule 34 (A) and (B).

³⁷ Rome Statute Art. 15 (3), 19 (3), 68 (3), 75; Rules of Procedure and Evidence: Rule 94 to 99.

³⁸ A victim can be a person who has suffered harm as a result of the commission of a crime within the jurisdiction of the Court, but can also be an institution or organization if it has sustained harm to property dedicated to religion, education etc. or to hospitals, historic monuments etc.

reparations for damage, loss or harm suffered as a result of a crime under ICC jurisdiction. The Victims Participation and Reparations Section is mandated to implement these provisions. It is expected that victims participating in proceedings will receive appropriate support from the Witness and Victims Section.

Concerning truth commissions, the Liberian TRC Act contains several provisions for the protection of children's rights and the establishment of protection and support strategies. For instance, the Act requires that "special mechanisms be employed to handle women and children victims and perpetrators, not only to protect their dignity and safety but also to avoid retraumatization."³⁹ Further, "the TRC shall take into account the security and other interest of victims and witnesses when appearing for hearing, design witness protection mechanisms on a case by case basis as well as special programs for children and women both as perpetrators and victims under burdens of trauma, stigmatization, neglect, shame, ostracization, threats, etc. (.)."⁴⁰ As a consequence, formal memorandums of understanding were made with the Liberian Child Protection Network, outlining roles and responsibilities of NGO and agency partners in the protection and participation of children in the TRC process.⁴¹ These provisions build upon the experiences of the TRC in Sierra Leone, whose statute also contained specific provisions on the protection and support of witnesses, in particular, children.⁴²

4.2.2 Selection and training of staff dealing with child witnesses

Setting up comprehensive psychosocial support for child witnesses requires knowledge, experience and full access to potential witnesses as early as possible in the process of developing a transitional justice mechanism. To set up effective support services, staff members must have expertise in psychosocial support and child protection. This facilitates organizing individual, confidential support for potential witnesses and allows staff to coordinate the protection and support interventions.

In international and hybrid tribunals psychosocial support is usually integrated into the work of the victims and witnesses unit. The SCSL, for example, established a team of local psychosocial assistants coordinated by a psychologist.⁴³ This team reports to the chief of the WVS and collaborates closely with the protection team of the section. The mandate of the WVS, as part of the Registry, should ensure neutrality and confidentiality of the assistance provided.

At the ICC, a team including a psychologist, a support officer and support assistants from the Victims and Witnesses Unit (VWU) provide support and specialized assistance to witnesses,

³⁹ An Act to establish the Truth and Reconciliation Commission (TRC) for Liberia, Ministry of Foreign Affairs, Monrovia, Liberia, 22 June 2005; Article VI, sec. 24.

⁴⁰ Ibid. Article VII, sec. 26(n).

⁴¹ UNICEF/ICTY. 2007.

⁴² Sierra Leone: Truth and Reconciliation Commission Act 2000.

⁴³ Since the start of the Charles Taylor trial in The Hague, the WVS has an additional team of around six psychosocial assistants based there to ensure support of witnesses during their stay. There is no longer a psychologist on staff. Instead, the team collaborates with an outside consultant psychologist. (Interview with Chief of the WVS of the SCSL, 6 June 2008).

in particular to those who are vulnerable. A Gender and Children's Unit has been established in the Office of the Prosecutor to ensure the implementation of child-friendly measures during the investigative phase. Psychologists (associate victims' experts) of the unit are closely involved in investigations and interviews with potential child witnesses.

In contrast, truth commissions do not have elaborate witness protection and support services in place. This is partly because the risk from involvement in a truth telling and reconciliation process is generally considered to be lower than in a legal justice process. In addition, funds are often more limited. In the TRCs of Sierra Leone and Liberia, support activities are/were largely outsourced through partnerships with NGOs and child protection services and agencies.⁴⁴

Training on issues related to children and their rights is crucial for all staff members dealing with witnesses, such as statement-takers, investigators, prosecution and defense lawyers, and protection and support staff. Only with trained staff is it possible to ensure a comprehensive support strategy and a child-friendly atmosphere throughout the process.

Training should improve staff knowledge about child rights and protection principles and increase their awareness of the psychosocial impact of participation in justice processes. Training should further enhance communication and interviewing techniques, which help children understand and fully contribute to the process while also minimizing potential harm to them. In addition, judges and commissioners should be provided with essential information about the psychosocial impact of participation and support and protection methodologies. However, quality training can be undermined by high staff turnover and insufficient follow-up.

Trainings aimed at helping truth commission staff work with child witnesses have been implemented in Sierra Leone and Liberia and at the ICC. The truth commissions for Sierra Leone and Liberia carried out training for statement-takers. At the SCSL, investigators and lawyers from the prosecution and defence were taught how to be more sensitive in dealing with vulnerable witnesses. Members of the WVU, investigators and prosecution lawyers at the ICC also received training on interviewing techniques and child rights. In most of these cases, UNICEF operated as a partner, offering expertise to conduct the trainings.

4.2.3 Vulnerability assessment of potential child witnesses

A thorough selection of child witnesses is an essential aspect of a comprehensive strategy for the involvement of children in transitional justice. From the first interview with a potential child witness it should be possible to identify capabilities and potential vulnerabilities. Such a screening helps to ensure that the children who participate are empowered by the experience rather than harmed.

⁴⁴ In Sierra Leone, support was set up in collaboration with child protection services and UNICEF. See UNICEF Innocenti Research Centre. 2005. Outcome document of the 'Expert Discussion on Transitional Justice and Children', www.unicef-irc.org/research/pdf/TJC_Outcome_Document_FINAL.pdf.

The vulnerability assessment carried out before the first interview with a child, can be an essential tool in screening to determine whether a child has the capacity to deal with the process. This assessment should focus on factors such as the child's social support, coping strategies and the presence or absence of signs indicating acute stress. This process should be combined with a threat assessment to make sure that children are not overly exposed to risks for retaliation, social exclusion or other forms of physical or psychological harm from their involvement.

A vulnerability assessment can be designed as a checklist to be completed by specialized staff of the court, truth commission, child protection agency or NGO. Ideally the staff member should be a psychosocial expert. Regardless of who carries out the assessment, the checklist must probe for tangible, concrete information and avoid excessive inferences about a child's condition. More importantly, analysis must focus on the child in relation to his or her environment, not just look solely at individual symptoms or signs of distress. Local indicators of children's well-being should be included. The vulnerability assessment should also be used to inform the child and his or her guardian about the process of testifying, offer the option of having a support person during the interview and ask for informed consent.

Most vulnerability assessments should be carried out in close collaboration with investigators or statement-takers since they are often the first to interview a potential child witness. However, it is important to carry out the assessment solely with the best interest of the child in mind; other factors, such as the importance of the statement for the case, should not influence the process.

At the TRC in Sierra Leone, vulnerability assessments were designed to be performed by social workers from the child protection agencies, which participated in identifying potential child witnesses. Assessments to be completed by investigators were also put in place at the SCSL, in collaboration with UNICEF. At both the TRC and the SCSL, however, the vulnerability assessment system was not systematically implemented. In contrast, the WWS at the Special Court was closely involved in supporting, preparing and selecting child witnesses.

At the ICC, the Children and Gender Unit has set up a roster of psychologists to participate in investigative missions to assess victims of sexual violence and children to be interviewed. The innovative system empowers the psychologist to decide whether or not a child can be interviewed. The Victims and Witnesses Unit of the ICC conducts psychosocial assessments of vulnerable witnesses prior to testimony to decide on appropriate support strategies and as a basis for requesting special measures to facilitate the witness's testimony in court.⁴⁵

Assessments bring challenges, particularly when the framework emphasizes the presence of individual symptoms of distress and clinical signs of post-traumatic stress disorder. The presence of trauma-related symptoms is obviously relevant in assessing the vulnerability of a child in testifying before a court. Yet by over-emphasizing trauma, such a framework can risk overlooking other elements in the complex mosaic of psychosocial impacts.⁴⁶ In addition, an assessment focused on pathology may paint a picture of victims as dysfunctional and

⁴⁵ As set forth in Rule 88 of the Rules of Procedure and Evidence of the ICC.

⁴⁶ Wessels, M., 2006. *Child soldiers: from violence to protection*. Cambridge: Harvard University Press. p. 128.

powerless, while in most cases their reactions are normal responses to very abnormal circumstances. Emphasizing witness capacities may also strengthen the empowerment discourse, which is so important to ensure children's meaningful participation in transitional justice mechanisms. Therefore, the assessments should ideally be called Vulnerability and Resources (or Capacities) Assessment to emphasize the focus on protective factors as well as risks.

4.2.4 Support and counseling before, during and after testimony

Individual support or counselling before, during and after testimony is a common form of focused psychosocial support in a transitional justice setting. Individual counselling offered before a child testifies allows staff to identify a child's needs, wishes and capacities; to build up a relationship of trust; and to prepare the child for the process of testifying. This preparation raises the child's feeling of control over the process, thus alleviating the risk of harm.

In some cases the counsellor also serves as the in-court assistant or support person, accompanying the child during the court session or hearing. While interaction between the witness and the support person is kept to a strict minimum, the physical presence of a sympathetic person can reassure a child and help create a feeling of safety during of the testimony.

An accompanying support person can also be a trusted adult close to the child, such as a parent, neighbour, teacher or friend. The advantage of a non-professional support person chosen by the child is that a relationship of trust has already been established. The disadvantage might be the person's lack of familiarity with the proceedings; if the support person is overwhelmed by the process, the child's stress could be exacerbated. In such cases the child should have both a personal support person chosen by the child and professional help throughout the process. Support after testimony can be important to help a child express emotions and thoughts related to the testimony and to give a child the chance to ask questions. It can also be used to evaluate the child's mental state and to plan follow-up.

Individual counselling is effective only if it is carried out by a professional,⁴⁷ preferably someone with the same cultural background as the child. The conversation should take place in the child's first language. The counsellor should be sensitive to local and traditional perceptions and assumptions about individual counselling, especially since in some societies such counselling by a person from outside the community is considered inappropriate. A child should never be forced to participate in a counselling session.

This last point is linked to another pitfall of counselling in transitional justice processes: counsellors should be very careful to avoid influencing or tainting the content of a child's testimony. The child should not be told what to say or do, and specifics of the testimony's content should not be discussed. To avoid any confusion, the goal of the conversation should be discussed with the child beforehand, and any questions should be framed carefully.

⁴⁷ A social worker, psychologist, counsellor or other professional with training in psychosocial care and/or psychotherapy.

At the SCSL, child witnesses received counselling before testimony by Sierra Leonean psychosocial assistants and an international psychologist. In some circumstances, a member of the support team sat with the child while the child testified through closed-circuit television. At least one counselling session took place immediately after the testimony, and follow-up support, including counselling if necessary, was provided by the WVS (see below). At the TRC in Sierra Leone, counsellors were present to offer support during and after the testimony. Long-term support was provided in some cases by child protection agencies.

At the ICC, the VWU foresees the presence of an accompanying support person during interviews, travel and hearings, and support is offered during the witness's stay in The Hague. The psychologist, a support assistant or an outside expert can offer in-court assistance and/or monitor the testimony of vulnerable witnesses.⁴⁸

4.2.5 Protective and special measures before, during and after testimony

Establishing protective measures is essential for the physical protection of witnesses, and it minimizes the psychological harm of testifying, which is risky for vulnerable children. In addition, protective measures facilitate psychosocial support, as described above.

Based on the conviction that anonymity and confidentiality are the most effective witness protection mechanisms, strategies for protecting witness identities include the use of a pseudonym, delayed disclosure of the witness's identity to the other party, the use of a protective shield and voice distortion. A vulnerability and threat assessment prior to participation in a transitional justice mechanism can help staff to identify risks early on and put the appropriate measures in place. In cases of serious threat, surveillance or temporary relocation of a witness can be organized.

Special measures can also be put in place for vulnerable groups of witnesses. The SCSL, for instance, provided extra measures for certain groups, such as victims of sexual violence and children, to prevent their testimony from causing further psychological harm or suffering. In addition to the general protective measures in place,⁴⁹ children were allowed to testify through the use of closed-circuit television, a measure common in national courts.⁵⁰ While the procedure is the same, including cross-examination, using closed-circuit television reduces children's stress significantly since it avoids a direct confrontation with the accused and with defence lawyers. In addition, children can be accompanied by a support person.

⁴⁸ ICC-WVU. 2005, 'Discussion paper on Child Witnesses and the ICC'. In: UNICEF, 2005. Transitional Justice and Children. Outcome document.

http://www.unicef-irc.org/research/pdf/TJC_Annex_2007_FINAL.pdf.

⁴⁹ Prosecutor v Sam Hinga Norman, Moinana Fofanh, Allieu Kondewa, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004; and Prosecutor v Issa Hassan Sesay, Augustine Gbao and Morris Kallon, SCSL-2004-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004, Disposition para. 3-6.

⁵⁰ At the SCSL, the child sits in a separate room in front of the camera and sees himself/herself and the person asking questions on a split screen. Persons in the courtroom can see the face of the child while the audience in the gallery can only hear the child's voice.

Rule 88 of the ICC's Rules of Procedure and Evidence foresees a large spectrum of special measures to facilitate testimony of vulnerable witnesses, including children.

Finally, judges play a crucial role in ensuring the full participation of child victims and witnesses. Judges should therefore encourage a child-friendly atmosphere in the courtroom, use child-friendly language, control the questioning of child victims and witnesses, and avoid intimidation by prosecution, defence counsel or the accused.

4.2.6 Long-term support and referral

Plans for possible long-term follow-up of child witnesses and/or referral to specialized mental health services should be an essential part of any support strategy, but this has proved challenging. A sustainable health and psychosocial referral system is often lacking in transition contexts since structures have often been destroyed during the conflict. It has also been difficult to respect witness confidentiality and anonymity. A child can be at risk as soon as it becomes known that he or she has been referred by the transitional justice mechanism. Such a situation can be imagined easily in the context of well-known organizations in closely knit societies.

Finally, the question remains how much and what type of long-term support should be provided. For international tribunals such as the international tribunals for the former Yugoslavia and Rwanda, the Special Court of Sierra Leone and the International Criminal Court, rules oblige the Court to develop short-term and long-term plans for protection and support and to provide support, counselling and other assistance as necessary. Where there is great need for medical, psychosocial and socioeconomic support, this obligation forms an important and challenging responsibility. Finding the proper balance between providing appropriate assistance and creating inappropriate dependency on the Court is often difficult.

To deal with the problems of confidential referrals and lack of services, several transitional justice mechanisms have set up their own services. For instance, the ICTR and the SCSL have invested heavily in creating clinics and recruiting medical and psychosocial staff to offer health services for witnesses. While this system ensures easy accessibility of quality health care for vulnerable witnesses, it also raises a number of questions, such as the disparity between the resources invested and the number of beneficiaries, and the possibility that free health care may be seen as inducement of witnesses. However, proper establishment of the services and clear rules, including equal access for prosecution and defense witnesses, should minimize this risk.

Ensuring the sustainability of support is another challenge. While psychosocial support before and after testimony is relatively easy to organize, long-term support is another matter. Follow-up visits – the minimum support that should be available to witnesses – require human and financial resources that may continue beyond the term of the transitional justice mechanism. Short-term mechanisms with limited resources, such as truth commissions, may find this difficult to implement.

4.2.7 Community involvement in support strategies and local approaches to healing

Interventions to support families and communities are an essential aspect of psychosocial support strategies in post-conflict settings.⁵¹ Strengthening existing structures within communities can help reactivate local resources for self-help and enhance local control, which promotes the mental health and psychosocial well-being of parents and children. Parents who feel supported in their role can assist children in dealing with experiences of war and help them to participate in transitional justice mechanisms in a meaningful way.

Support to community structures, promotion of peer support and support in educational settings are important tools to help communities and their children deal with the impact of conflict. In addition, restoring the ability to perform cultural, spiritual and religious healing practices, such as cleansing or burial rituals, can contribute to recovery after conflict in important ways. Despite the reconciliation benefits of interventions focusing on restoring community and family cohesiveness, peer support and the use of traditional healing rituals,⁵² so far they have been little used as a tool for psychosocial support of witnesses of transitional justice mechanisms.

While good practices exist, most are linked indirectly to the work of transitional justice mechanisms. In Sierra Leone, for example, some child protection agencies used traditional cleansing rituals to facilitate the return of children associated with armed forces or groups to their community, in the context of disarmament, demobilization and reintegration programmes.⁵³ Also in Sierra Leone, the Children's Forum Network participated in drafting a submission for the TRC.⁵⁴

Thus far, however, psychosocial support for witnesses has been focused primarily on individual support. This is because, firstly, support is mostly focused on helping individual children participate in a safe way in the transitional justice process, by giving a statement or testimony, and secondly, issues of confidentiality make it difficult to involve other community members in the support. Nevertheless, community-based and family-based initiatives to support children's participation in transitional justice mechanisms should be developed further.

⁵¹ Inter-Agency Standing Committee. 2007. IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings. Geneva: Inter-Agency Standing Committee.

⁵² International Institute for Democracy and Electoral Assistance. 2008. Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences. Stockholm: IDEA.

⁵³ For example, in a project of Christian Children's Fund traditional healers conducted cleansing rituals to relieve girls of the spiritual impurity that accompanies rape. These rituals involved the whole community, making the spiritual cleansing of the girls 'official' and thereby helping their reintegration into their communities.

⁵⁴ *Truth and Reconciliation Commission Report for the Children of Sierra Leone, Child-Friendly Version*, 2004, Accra.

5. CHALLENGES

5.1 Balancing the Rights to Participation and Protection

The delicate balance between the right to participate in transitional justice mechanisms and the right to protection remains one of the main challenges related to psychosocial support for child witnesses.

It has been argued that sometimes there is tension between the best interests of the child and the best interests of a case. The value of the evidence a child can bring forward is a key factor in deciding whether or not a child should testify, especially in judicial mechanisms. However, given understanding of the needs and vulnerabilities of child witnesses and a good working relationship between the prosecutor and the support staff, it should be possible to reconcile the interests of the case with the interest of the child. A good prosecutor knows that justice benefits when the child on the stand is sufficiently supported and feels comfortable.

The bigger challenge might be in cases when the right to protection might ‘override’ the right to participation. Sometimes it is in the best interest of the child not to participate as a witness, given the risk of harm. The question remains how and when to make this judgement, and who should make it.

Currently several transitional justice mechanisms use vulnerability checklists and assessments to make a first selection, before the first interview. Experiences in the field, however, show that very often such assessments are not implemented fully (as the Sierra Leone TRC and Special Court) or they focus on an overly narrow analysis of the mental condition of the child (ICC).

While the use of these checklists is useful in clarifying the vulnerabilities of potential witnesses, the question remains how best to use them. There are plenty of examples from criminal cases in national courts in which very vulnerable victims of child abuse and neglect gave very strong testimonies. However, they often did so in a court setting that was fully adapted to their needs and capacities. Experiences from the SCSL show that witnesses who were vulnerable and who received psychosocial support ‘grew’ during testimony and became strong and reliable witnesses who benefited from their participation.⁵⁵

The important question is whether the tools are too narrow to assess the child’s capability to participate as a witness. Ideally, the child should not have to adapt to the strict procedures of a court; the procedures should be adapted to the child. How can it be assured, especially in judicial mechanisms, that rules and procedures are tailored to the needs of child witnesses so their testimony is not only relevant for the case but also benefits them?

These questions may seem hypothetical, given the limited number of children participating in transitional justice mechanisms. While a very thorough selection of child witnesses will always be needed, procedures and policies must be made more victim-centred. Also important is thorough training of prosecutors, defence lawyers and others dealing with child

⁵⁵ Michels, 2006.

victims and witnesses in a courtroom and awareness-raising among judges. This will assure maximum flexibility, taking into consideration procedural restrictions.

5.2 Maximizing the Impact of Psychosocial Support

Another dilemma that arises from the analysis of psychosocial support strategies in transitional justice mechanisms is the significant discrepancy between the resources available to them and the possibilities they offer for child participation. While it is impossible to fully compare judicial and non-judicial mechanisms, as their mandates and methodologies are different, it is worthwhile to assess the different approaches side by side and draw conclusions relevant for development of future psychosocial support strategies.

As discussed earlier, judicial mechanisms such as international tribunals often have substantive resources available to provide support and protection to its witnesses. At the same time, a limited number of witnesses are available who can participate in a transitional justice process, and those who can participate are given very limited opportunity to do so. And although the provisions for victim participation in the ICC statute may allow broader victim participation, it is too early to evaluate the impact of new forms of participation.

Courts may also struggle with how to involve outside actors in psychosocial support, such as child protection agencies and other organizations working in communities, because of the difficulty in maintaining confidentiality and anonymity. This limits the scope of possible psychosocial interventions.

On the other hand, non-judicial mechanisms such as truth commissions have – at least in theory – more leeway to involve larger groups of victims and to experiment with different forms of child participation. However, these mechanisms often struggle with a lack of funding, human resources and time to fully exploit these opportunities and support the children who participate. Truth commissions can make more use of the option of ‘outsourcing’ support, but the commission itself must still provide long-term follow-up.

5.3 Managing Expectations: Determining what is ‘appropriate support’

Finally, there is the aspect of managing expectations, which influences the discussion of participation and psychosocial support.

International courts are mandated to make short-term and long-term plans to support witnesses. As discussed earlier, this has proven to be very challenging, due to the issues of sustainability and the risk of creating dependency. Witnesses who suddenly have access to services they never had before might start to count on the Court for all kinds of supports and to develop unrealistic expectations about the impact of their involvement and the Court’s support for them.

The key question is: What is appropriate support and how are unrealistic expectations avoided? It is important to have clear rules about support that still allow sufficient opportunities to respond to the needs of witnesses and victims. At the same time witnesses

and victims, including children, should be properly informed about their rights and the limitations of the support.

6. RECOMMENDATIONS

On the basis of the findings and discussion points presented in this paper, the following recommendations can be made for how psychosocial support can better protect the rights of child victims and witnesses in transitional justice processes:

1. Raise awareness about the impact of psychosocial factors on the participation of child victims and witnesses in transitional justice mechanisms.
2. Identify the psychosocial factors that relate specifically to children, their communities and their experiences during conflict, as well as to the nature of the transitional justice mechanism, in order to determine the best strategies for providing psychosocial support.
3. Recognize how identifying and addressing the psychosocial factors that influence children's participation in transitional justice mechanisms not only improves their psychosocial well-being but facilitates their participation and contributes to the quality of their testimony.
4. Incorporate the rights of child witnesses and victims, and the provision of psychosocial support as a tool for their protection, into the legal or statutory framework and/or rules of procedure and evidence of transitional justice mechanisms. Within this framework, include a mandate for specialists responsible for offering psychosocial support to child victims and witnesses, as well as a set of minimum standards for the support and protection of children participating in the procedures. These standards should include:
 - Minimum measures for selection of child witnesses and identification of appropriate support, including the use of vulnerability checklists or other measures to screen potential child witnesses;
 - Minimum measures to protect child victims and witnesses, such as closed sessions, the use of pseudonyms and other measures to protect identity before, during and after proceedings;
 - Measures to support child witnesses, including psychosocial support before trial, and special measures to facilitate children's testimony, such as the use of video-link or other measures, availability of a support person during testimony, access to post-trial support and follow-up mechanisms, and adaptation to the local cultural framework;
 - Training requirements for all staff dealing with children.
5. Ensure that transitional justice mechanisms are guided by the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, to assure that children's rights are protected throughout the transitional justice process.
6. Design procedures to allow maximum flexibility for the adaptation of proceedings to the psychosocial needs of child witnesses.

7. Explore how transitional justice mechanisms can best cooperate with community-based initiatives focusing on restoring community and family cohesiveness and make use of peer support and traditional healing mechanisms as part of wider efforts to facilitate reconciliation.
8. Seek collaboration between transitional justice mechanisms and organizations that facilitate community-based psychosocial interventions as well as child protection agencies. Such collaboration should ensure that children participating in the justice mechanism can obtain community-based support. At the same time more community members, especially children, should participate in some way in the transitional justice process.