

CHILDREN AND TRANSITIONAL JUSTICE

*Truth-Telling, Accountability
and Reconciliation*

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**Key Principles for Children and
Transitional Justice:
Involvement of Children and Consideration
of Children's Rights in Truth, Justice and
Reconciliation Processes**

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I. Preamble

Children have an important role to play in transitional justice processes because they are victims and witnesses of crimes committed, and may also be recruited and used in hostilities. In addition, as family members and citizens of their communities, children are key partners in reconciliation and peace-building processes. In all cases, children have a right to express their views in matters and proceedings affecting them.

States have a duty to prevent, investigate and prosecute crimes under international law, and to provide effective remedies to victims, including reparations. Unless perpetrators responsible for such crimes – including crimes committed against children – are brought to justice, there are likely to be negative consequences for future peace and stability.

Truth, justice, reparation and reconciliation processes have begun to specifically address crimes committed against children in situations of armed conflict or political violence, and have involved children proactively. A range of options exists for engaging children as participants, including through testimony that bears witness to

their experiences. In some cases children may be simultaneously victims, survivors and alleged perpetrators of violations.

Truth, justice, reparation and reconciliation processes should reflect local conditions and priorities for children. At the same time, consistency and coherence are needed across national and regional contexts. Complementarity among diverse transitional justice mechanisms is crucial to provide a comprehensive framework for child protection and participation. Whatever combination of transitional justice mechanisms is chosen, it must be in conformity with international legal standards and obligations, and respect, protect and promote the rights of children.

Common minimum standards on children and transitional justice should be developed, drawing on good practices and lessons learned, and based on the Convention on the Rights of the Child (CRC) and other international and regional standards and treaties.

Children's participation in transitional justice processes should strengthen their protection, and protection should enable their participation. Effective participation and protection of children in transitional justice processes, when properly supported and guided, can build the capacity of children as active citizens and help break the cycle of violence and conflict.

II. Definitions

Child: A child is a person who is below 18 years of age (CRC, article 1). Adolescence is defined as the period of life between 10 and 19 years of age (World Health Organization).

Transitional justice: The term 'transitional justice' comprises "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, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or

none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” (Report of the United Nations Secretary-General, “The rule of law and transitional justice in conflict and post-conflict societies,” United Nations, New York, 23 August 2004 (S/2004/616), para 8.)

III. Principles for Child Protection and Participation in Transitional Justice

- The best interests of the child should guide transitional justice processes.
- Children must be treated with dignity and respect.
- Transitional justice mechanisms – including when designing and implementing policies and child-friendly procedures – should ensure the protection of children against violence and promote their physical and psychological well-being.
- Protection of the identity of the child and the child’s privacy must be guaranteed at all times.
- Children have the right to participate in decisions affecting their lives. The participation of children should be voluntary, with the informed consent of the child and parent or guardian. The decision not to participate can also be a form of participation.
- Policies and procedures to protect the rights of children involved in transitional justice processes should include a specific focus on adolescents and should be consistent with the evolving capacities of the child.
- A gender-sensitive approach to participation in transitional justice processes should include a focus on the protection of the rights of girls and should address their specific needs and experiences.
- Participation should be non-discriminatory and should include, as appropriate, diverse ethnic, racial, religious and other groups, and take into consideration the specific needs of children with disabilities.

- Transitional justice processes should facilitate the realization of children's civil, political, economic, social and cultural rights. A human rights-based approach to transitional justice processes should be holistic and sustainable, addressing the root causes of armed conflict and political violence, and strengthening the protective environment for children in their families and communities.

IV. Specific Principles and Programmatic Recommendations

Judicial mechanisms

Judicial mechanisms include national judicial systems, the International Criminal Court (ICC), ad hoc tribunals established by the United Nations, and other special courts and tribunals that investigate and prosecute persons allegedly responsible for the commission of serious crimes under international law. States have the primary duty to investigate and prosecute those responsible for serious crimes under international law. Where the national justice system is unable or unwilling to conduct effective investigations or prosecutions, international or hybrid criminal courts may exercise complementary jurisdiction.

- Justice mechanisms should address serious crimes under international law, including those committed against children, through investigation, prosecution of perpetrators and redress for victims. These crimes encompass genocide, crimes against humanity and war crimes, including the conscription, enlistment or use of children to participate actively in hostilities, enforced disappearances, extra-judicial killings, torture, sexual violence and slavery. Where children are victims of crimes under international law this should be considered as an aggravating factor during sentencing. International cooperation and extraterritorial jurisdiction to pursue accountability for crimes committed against children should be encouraged and supported.

- There should be no amnesty for perpetrators responsible for the commission of crimes under international law, specifically genocide, crimes against humanity, war crimes and gross violations of human rights, including those against children.
- There is emerging consensus that children associated with armed forces or armed groups who may have been involved in the commission of crimes under international law shall be considered primarily as victims, not only as perpetrators.
- In principle, children should not be held criminally responsible under an international jurisdiction.
- Children accused of crimes under international law must be treated in accordance with the CRC, the Beijing Rules and related international juvenile justice and fair trial standards. Accountability measures for alleged child perpetrators should be in the best interests of the child and should be conducted in a manner that takes into account their age at the time of the alleged commission of the crime, promotes their sense of dignity and worth, and supports their reintegration and potential to assume a constructive role in society. In determining which process of accountability is in the best interests of the child, alternatives to judicial proceedings should be considered wherever appropriate. In addition, no child should be tried in a military justice system. Neither the death penalty nor life imprisonment should ever be imposed against children.
- Detention of children should be used only as a last resort and for the shortest appropriate period of time. Children who are detained should be separated from adults, unless it is not in their best interests to do so. Children should never be detained solely due to their alleged association with an armed force or group.

- Children's participation as victims and witnesses in investigations and court proceedings for crimes under international law should be voluntary, with the informed consent of the child and a parent or guardian. Before interviewing or obtaining testimony, a careful assessment should be undertaken of the child witness to determine that the interview or appearance in court is in the best interests of the child, and what special protective measures are required to facilitate the testimony. All investigators and prosecutors involved with child witnesses should be trained in child rights and child-friendly interviewing techniques.
- When a child is participating in judicial proceedings, legal procedures should be adapted to the needs and evolving capacities of the child, in accordance with the provisions of the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (UN Guidelines).
- Protection measures should include shielding the child from viewing the accused, provision of culturally appropriate psychosocial support, use of specially trained judges and court staff, and protection of the child's identity and privacy. Processes must be conducted in the child's language, and measures should be taken to ensure that the child understands the aims and objectives of the trial process, as well as the potential consequences of participation. Every effort should be made to minimize disruption to the life and well-being of the child.

Truth commissions and truth-seeking mechanisms

Truth commissions are official, temporary, non-judicial or quasi-judicial fact-finding bodies that investigate abuses of international human rights and humanitarian law. They constitute an important mechanism to examine the impact of armed conflict and political violence on children. Truth-seeking processes that address past

human rights abuses, including human rights archives, commissions of inquiry and consultative bodies, should also protect and promote the rights of children and encourage children's participation, as appropriate.

- The investigation and documentation of civil, political, economic, social and cultural rights violations by truth commissions should include a specific focus on crimes and violations against children, and should take into consideration the full spectrum of rights guaranteed under the CRC and other international norms and treaties.
- When children are accused of committing crimes under international law, truth commissions should recognize that children are primarily victims of armed conflict or political violence. Truth commissions should consider the age of the child at the time of the alleged violation in establishing the extent of his or her responsibility.
- Truth commissions should take into account children's agency and their role as active citizens contributing to justice and reconciliation in their communities. The involvement of children in truth commissions should thus include participation in diverse activities, such as outreach, statement-taking, thematic and closed hearings, creative expressions, community-based reconciliation efforts, contribution to the formulation of recommendations, and the preparation of a child-friendly report.
- Statements and testimony to truth commissions should capture children's distinct experiences and their diverse roles as victims and witnesses and, when appropriate, as participants in hostilities or political violence. Truth commissions should establish policies and procedures to ensure the safe and meaningful participation and protection of children. They should specifically encourage participation by girls and children from diverse ethnic, racial, religious and other groups, as appropriate.

- Truth commissions should include experts on child rights among commissioners and staff, and should ensure that all commissioners and staff receive appropriate training in child rights and child protection procedures.
- Truth commissions should partner with national and international child protection agencies to support their engagement with children, including in the provision of psychosocial support.
- The participation of children in truth commissions should be in their best interests and should promote their physical and psychological recovery and social reintegration. Culturally appropriate and holistic psychosocial support services should be provided before, during and as a follow-up to children's involvement in truth and reconciliation processes. Where possible, they should be community-based and should involve the family. Specific consideration and follow-up measures are needed for survivors of sexual violence.
- A children's version of the truth commission's final report should be disseminated in local languages. Children should have the opportunity to participate in efforts to ensure implementation of truth commission recommendations, particularly those affecting children.

Outreach and consultations

National and community outreach to inform and engage children is critical for their successful participation in transitional justice processes. Children should be consulted on the most effective forms of outreach, helping to ensure that transitional justice processes reflect their experiences and needs and maximize their participation.

- Consultation with children on transitional justice processes should: i) make use of existing structures such as schools, clubs, child welfare committees, religious and faith-based groups; ii) involve child protection agencies and local leaders in identifying and supporting child participants while recognizing possible risks; iii) ensure girls voices are encouraged and heard through separate consultations for girls, as needed; iv) include children from ethnic, racial, religious and other groups, as well as children with disabilities; v) give feedback directly to the communities on consultation outcomes; and vi) explain limitations, whether in the case of a court, truth commission or reparations program or any other form of accountability process, so that expectations are realistic and realizable.
- Meaningful child and adolescent participation should also inform and engage parents, caregivers, teachers, religious and community leaders, and other adults in transitional justice processes.

Local, traditional and restorative justice processes

Local, traditional and restorative justice processes can contribute to accountability for the broad range of crimes committed during armed conflict and support transformation to a more peaceful and stable society, when the state has entrusted such process to carry out certain legal tasks in its legal order. However, such processes must conform to international human rights standards, in particular with regard to judicial guarantees, gender equality and the protection of children's identity and well-being.

- Local, traditional and restorative justice processes that have been entrusted by the legal order of a state to carry out judicial tasks may be used to decide minor criminal and civil matters, provided human rights standards are recognized and respected. Such mechanisms can help to address the impunity gap at the community level. The

judgments of local, traditional and restorative justice proceedings must be able to be challenged in a way that conforms with international human rights law. These mechanisms, however, cannot be used to try serious crimes as defined in national law, and are never to be used to try or otherwise address crimes under international law.

- Where local, traditional and restorative justice processes have not been entrusted by the state as part of its legal order to decide minor criminal or civil matters, such alternative fora may nevertheless play a significant informal role in dispute resolution. However, such processes are not to be used to try any type of crime but rather to find an outcome between parties when a wrongful act has been committed. Provided these processes respect human rights standards, and in particular the principle of gender equality, they can contribute to resolving disputes. When such processes are not recognized in the legal order, there can be no solution to a dispute that would be similar to a judgment rendered by a criminal court, including in particular the deprivation of liberty.
- Local, traditional and restorative justice processes should respect, protect and promote the rights of children and all other participants, whether as victims, witnesses or perpetrators. They should support the reintegration of children formerly associated with fighting forces, and assist in rebuilding trust within communities. The participation of children in those processes should be based on the voluntary and informed consent of the child and the parent or guardian, and must be in full compliance with international child rights standards and must follow the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime. Practices used in local, traditional and restorative justice processes must not re-victimize children who have been recruited or used in hostilities.

- Local, traditional and restorative justice processes can include opportunities for alleged perpetrators to acknowledge and apologize for acts committed. When such processes involve children as alleged perpetrators, they must ensure respect for children's legal guarantees as outlined in the CRC and the UN Guidelines. The focus of children's participation should be their reintegration and psychosocial recovery. Under no condition should children be subjected to public shaming.
- Where such mechanisms are in conformity with human rights standards, support from the international community, including United Nations agencies, international non-governmental organizations and donor countries, has the potential to strengthen the work of local, traditional and restorative justice mechanisms in the reintegration of children and protection of their rights. Such support, when appropriate, may be directed to and co-ordinated with community and traditional leaders, teachers, parents and others who are involved with children on a daily basis and together can form an effective safety net.
- Local, traditional and restorative justice processes possess both strengths and shortcomings concerning the protection and promotion of children's rights and their role in relation to transitional processes. Further review, analysis, monitoring and evaluation of these processes are needed to better understand their potential in diverse situations.

Reparations for children

Through a range of measures, reparations programmes attempt to repair the impact of violations suffered by victims during armed conflict and political violence. Reparations can contribute to children's recovery and their reintegration within their families and communities.

- Reparations programmes should be based on a careful assessment of the harms suffered by girls and boys during armed conflict and political violence to determine their individual and collective needs. Eligibility for reparations should consider the multiple ways in which children have been affected. Safeguards should be put in place to ensure that eligibility for reparations does not categorize or stigmatize groups of children identified and that children's rights to protection of identity and privacy are fully respected.
- The design and implementation of reparations programmes should be coordinated with child protection agencies, child rights experts and representatives from key sectors, including education and health care, as well as with a broad range of civil society groups, community leaders, and children and youth groups.
- In determining reparations for children, due account should be taken of the relevant provisions and principles of the CRC, such as the right to health care and education and the rights of children with disabilities to special care.

Institutional reform

Child-focused institutional reform in transitional contexts should build a protective environment for children by strengthening health care and education systems, social services and public institutions to protect and promote children's rights. Early engagement and coordination is needed among sectors undertaking institutional reform and transitional justice processes to enable children's protection and participation. The genuine and meaningful participation of children in institutional reform can strengthen the protective environment and assist in preventing the recurrence of violence and conflict.

- States should sign and ratify international and regional treaties that protect and promote the rights of children, and should establish national institutions to ensure the implementation of child rights at the national and local levels, including children's ombudspersons offices.
- National laws should explicitly define and criminalize acts prohibited under international law, specifically those against children, including the conscription or enlistment or use of children to participate actively in hostilities, enforced disappearances, extra-judicial killings, torture, sexual violence and slavery. Specific measures should be implemented to define, criminalize and combat gender-based violence.
- Security sector reform should prioritize the prevention of violence against children and other child rights violations. Measures to improve accountability and legal oversight mechanisms, including vetting, complaints procedures and training on child rights, should be adopted for all components of the security and justice sectors, as well as private security actors.
- Legal reform and the reform of national justice systems should prioritize justice for children and the adoption of child-friendly legal procedures. Reform should include training in child rights for judges, prosecutors, judicial officers, police and staff in correctional facilities. Where suitable given the nature of the particular offence, alternatives to deprivation of liberty should be promoted for children, without resorting to judicial proceedings, as appropriate and in line with international standards and the best interests of the child.
- Reforms to health-care delivery should include measures specific to children, such as vaccinations, malaria prevention, health education and easily accessible local

clinics that will lead to stronger and healthier future generations.

- Institutional reform should prioritize the education system, addressing inequalities or discrimination that may have inhibited the provision of quality education or contributed to societal intolerance and violence. Training for teachers and school officials should be given priority, addressing issues such as child rights, citizenship and civic responsibility, and the abolition of corporal punishment. When appropriate, transitional justice institutions, in particular truth commissions, should directly engage with the education sector to support curriculum reform, helping to ensure that human rights, citizenship, life skills and the history of the conflict are included in the primary and secondary public school curricula.
- Measures to improve systems of child protection and social and psychosocial welfare should be included in national development plans and strategies, with psychosocial support integrated into education systems in areas affected by conflict. These services should target children's needs, in particular children orphaned by war and child-headed households. Specific attention should be given to educational and vocational training to enable children to realize their rights in post-transition societies and to decrease disparities in future economic development. Special attention should be given to measures to promote physical and psychological recovery and social reintegration of child victims of armed conflict and political violence.

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