

Outcome Document

**Expert Discussion on Children and Transitional Justice
12-13 June 2008**

UNICEF Innocenti Research Centre

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Table of Contents

INTRODUCTION

Background and methodology
Objectives
Participants

SUMMARY OF CONCLUSIONS AND NEXT STEPS

Plenary Discussion and Working Group Recommendations for the Series
Working Group I: Core Considerations and Legal Framework
Working Group II: Child Rights and Transitional Justice Processes
Working Group III: Education, Restorative Justice and Peace-building
Working Group IV: Case Studies
Additional Papers Recommended for Consideration

PANEL PRESENTATIONS AND FEED-BACK TO AUTHORS

Panel I: Core Considerations and Legal Framework

Basic assumptions of transitional justice
Children and criminal responsibility, the international legal framework
Children and torture

Panel II: Child Rights and Transitional Justice Processes

Child participation and agency in the Sierra Leone TRC
Psycho-social support for children
Children and reparations
Children and security sector reform

Panel III: Education, Restorative Justice and Peace-building

Children, education and reconciliation
Restorative justice, opportunities and risks for children
Mato oput and children in Northern Uganda
Local and national accountability in Northern Uganda

Panel IV: Case Studies

Children and transitional justice in the Andean Region
Children, youth and gender in the Rwandan context
Child and adolescent participation in the Liberian TRC
Children's participation in CAVR Timor Leste

ANNEXES

Agenda
List of Participants

INTRODUCTION

UNICEF Innocenti Research Centre (IRC) convened an expert discussion on 12-13 June 2008 to review draft papers in the Children and Transitional Justice Expert Paper Series. The Series was initiated by UNICEF IRC in 2007, in the context of an ongoing collaboration with the International Center for Transitional Justice (ICTJ), to explore emerging topics and outline steps in further supporting the participation of children and adolescents in post-conflict truth, reconciliation and justice-seeking.

The meeting brought together authors participating in the Children and Transitional Justice Series and members of the Peer Review Oversight Panel, together with other experts, in order to give feedback and guidance to individual authors and to generate an underlying structure for the Series. A Background Document was circulated prior to the meeting with summaries of each of the research papers to inform panel and working group discussions.

Panel discussions and working groups were organized around the following themes:

- *Core considerations and legal framework* – Basic assumptions of transitional justice; Children and criminal responsibility; Children and torture.
- *Child rights and transitional justice processes* – Child participation and agency in the Sierra Leone TRC; Psychosocial support, protecting the rights of child witnesses; Children and reparations; Children and security sector reform.
- *Local processes and peace-building* – Education and reconciliation; Restorative justice, opportunities and risks for children; *Mato oput* and children in northern Uganda; Local and national accountability in northern Uganda.
- *Case studies and elements of success/limitation* – Children and transitional justice in the Andean region; Children, youth and gender in Rwandan context; Child and adolescent participation in the Liberian TRC; Children's participation in CAVR Timor Leste.

The outcome and follow up to the meeting will further inform research underway by individual authors and provide an overall framework for the Children and Transitional Justice Series.

Background and Methodology

There is a growing global consensus on the need for accountability mechanisms to address human rights violations committed during armed conflict, including a specific focus on crimes against children. As a result, truth, justice and reconciliation processes have begun to focus specifically on crimes against children and have involved children proactively, including through testimony that bears witness to their experiences. The recent involvement of children and adolescents in providing testimony to international and national courts and truth commissions has demonstrated their unique role as witnesses and, more broadly, as members of their families and communities.

Despite the increasing focus on children in transitional contexts, there are numerous questions and challenges to be considered. The Children and Transitional Justice Series is intended to address these challenges and to document country experience, mapping good practices and strategies that can be adapted to other country contexts. Valuable lessons have been learned, for example, in South Africa, Peru, Timor-Leste and Sierra Leone. The documentation of those experiences will serve as the basis for recommendations and guidance for other countries involved in transitional justice processes.

Research on specific case studies and thematic issues in the Series will also help evaluate the potential role of children in truth, justice and reconciliation activities. While each country situation requires adaptation according to local factors, there is a need for a consistent and coherent approach. This could then serve as the basis for developing minimum standards to support children's participation in transitional justice processes, allowing UNICEF, legal experts and other partners to move from an ad-hoc approach to a more comprehensive transitional justice agenda for children.

Objectives

The UNICEF IRC Series on Children and Transitional Justice is intended to provide a substantive and evidence-based knowledge and to recommend more effective strategies for addressing key issues of importance for children and transitional justice at national and international levels.

Specific objectives of the 12-13 June Expert Discussion on the Children and Transitional Justice include:

- Provide guidance to individual authors on research underway and initiate peer review of draft papers.
- Generate debate and dialogue on key issues in the Series from the perspective of practitioners and academics; legal experts and child rights advocates; and south and north-based specialists.
- Develop an overall framework for the Series, building consensus on key topics and recommendations, noting gaps, and strengthening links among participants for ongoing peer review.
- Establish a network of practitioners, academics, child rights advocates and legal experts to increase knowledge-sharing of experiences, good practices and lessons learned.

Ultimately the Children and Transitional Justice Series is intended to improve accountability for crimes against children, and promote the protection and participation of children and adolescents in truth, justice and reconciliation processes in post-conflict situations.

Participants

The Expert Discussion brought together, for the first time, authors currently preparing research papers for the Children and Transitional Justice Series and members of the Peer Review Oversight Panel. This created an opportunity for direct feedback to the authors on research substance and methodology. The authors include south and north-based practitioners, legal experts, child rights advocates and academics.

The following organizations and research institutions were represented: Action Aid International, Kigali; Andean Commission for Jurists Centre for the Study on Violence and Reconciliation (CSVR); CODESEDH; Democratic Control of Armed Forces (DCAF); European University Institute, Fiesole; Federal Ministry European and International Affairs, Vienna; Feinstein International Center, Tufts University; Foundation for Human Rights, Johannesburg; International Center for Transitional Justice (ICTJ); International Institute for Child Rights and Development, University of Victoria; Intrahealth International Capacity Project, Kigali; Leuven Institute of Criminology, University of Leuven; No Peace Without Justice (NPWJ); University of Pretoria; University of Ulster; Vrije University Amsterdam; Department of Global Studies, Wilfred Laurier University; UNHCHR; and UNICEF Dili, UNICEF Khartoum and UNICEF Innocenti Research Centre.

SUMMARY OF CONCLUSIONS AND NEXT STEPS

Plenary Discussions and Working Group Recommendations for the Series

Transitional justice processes should reflect on the past and use the lessons learned to inform the future. This can help children better understand their wartime experiences and find a place in society, and is especially important for prevention strategies.

Children's participation is still often considered an 'add-on' in transitional justice contexts. There should be greater integration of children's issues and children's participation from the start. In some cases, additional processes for children may be needed, for example to enable children's reintegration or support their educational and vocational training.

Additional human and financial resources are needed for children's meaningful participation. The investment in additional resources is necessary because, in the long term, transitional justice processes cannot succeed without engaging young people.

- In order to be effective transitional justice mechanisms should be linked to economic and social reconstruction, helping to provide future opportunities for children. It is important to remember that children are often more than 50 per cent of the population, they are the present, as well as the future.
- An assessment of the added value of children's participation in truth commissions and other transitional justice processes is needed. What about a child seeking reintegration or reconciliation in a post-conflict community? There should be evidence that participation in a truth commission actually improves children's lives and future.
- Regional access to justice differs, for example, in Africa and in Latin America. The needs of victims and witnesses are not different but the transitions and political systems are different. More analysis is needed to understand the impact of regional differences and the specific measures required to protect the rights of children in diverse contexts. While relativism is appropriate, the importance of consistency and common standards cannot be underestimated.
- Youth and young people are not only forced into violence, but may join armed groups or gangs for various reasons. In some cases they join because of poverty, or they may be motivated by family loyalty or a lack of identity or because they are seeking their own ideas of justice. Further research is needed on risk-taking and the reasons given by young people for their involvement in armed groups and gangs.
- National identities are founded not only on historical memory but also on historical forgetting. Who decides what becomes part of the national history? Historical memory can be created through establishing memorials and the use of storytelling and oral history, and children's voices should be included in those efforts.
- The Series should include a rationale and critique of principles for children's participation in transitional justice processes, helping to generate broader consensus among both child rights advocates and legal experts.
- There is a need for programmatic guidelines on children and transitional justice. While this is beyond the scope of the current Children and Transitional Justice Series, it may be an overall recommendation of the Series for UNICEF and partners.

Working Group I: Core Considerations and Legal Framework

Transitional justice is not an isolated mechanism, but rather a process of accountability and reconciliation where the past is used to inform the future. A child-focused approach to transitional justice should be holistic and human rights-based, and should strengthen the protective environment for children in their families and communities.

- Transitional justice mechanisms should focus on children from the start – children cannot wait! Children’s issues can also be an entry point to advocate for transitional justice processes.
- International support for transitional justice needs to be integrated with and owned by national and local structures in order to have a long-term effect.
- Children should be used as witnesses in legal prosecution for international crimes only when necessary. If evidence can be provided by an adult then child witnesses should not be exposed to courtroom procedures. In fact, most prosecutors prefer witnesses who are over 18. However, children have the right to participate in judicial proceedings affecting them (CRC art.12). The point is that legal procedures should be adapted to the child and not the other way around.
- Amnesty has been used differently in different regions. In Latin America amnesty has been a strategy of some governments to protect government officials from judicial proceedings (e.g. Argentina, Chile, Uruguay), while in Africa amnesty has been used in peace agreements as a strategy to end conflict (e.g. DRC, Sierra Leone, South Africa). In both cases, amnesty results in impunity.¹ It is important that impunity is not granted for crimes under international law, especially for serious violations against children.
- There is an emerging standard, based on the Rome Statute of the ICC, and the practice of the Special Court for Sierra Leone and *ad hoc* tribunals, that children under 18 should not be prosecuted in international tribunals or courts for crimes under international law (war crimes, crimes against humanity, genocide). The reason is that children are not among those “bearing greatest responsibility” for these crimes and should be considered primarily as victims of violations of international law.
- When considering accountability for children at the national level alternative methods to judicial proceedings should be sought (CRC, art. 40(3)(b); Beijing Rules, no 11). The appropriate form of accountability for alleged child perpetrators continues to be a source of ongoing consideration and debate. Further research is needed at country level on diversion and alternative accountability processes to inform and generate consensus among legal experts and child rights advocates.
- The use of the term “forced marriage” for abduction and rape misrepresents the violence committed against girls and women and may undermine the importance of accountability for acts of sexual violence. In Sierra Leone the definition “inhuman act” was used when “forced marriage” was accompanied by rape and slavery. It is important to note that, according to the working definition of the Special Court for Sierra Leone, forced marriage does not always include sexual intercourse.
- A remaining challenge is how to implement transitional justice mechanisms and processes in a context of ongoing violence, whether in active armed conflict or unstable post-conflict situations. In order to be effective, the timing of transitional justice mechanisms needs careful consideration.

Working Group II: Child Rights and Transitional Justice Processes

Children’s involvement in transitional justice has been largely ad hoc. In many cases, children do not receive adequate information about transitional justice processes and so do not know what to expect, nor do they understand their potential role. As a result, children’s views have not been taken fully into account.

¹ It is important to note that amnesty extinguishes the crime. In some cases, a pardon may be given, which acknowledges that a violation has occurred. Immunity from prosecution, which can be revoked if certain conditions are not met, may be another option.

Children are central to the transitional justice agenda, as victims and witnesses, and as active citizens contributing their views and voices in matters of concern to them. But meaningful involvement of children in transitional justice processes requires a paradigm shift. The focus on child participation should consider what is important for children, according to their best interests and their evolving capacities (CRC, art. 3 and 5). Furthermore, child participation and protection need to be integrated in all stages of the process, beginning with the negotiation of peace agreements and mandates for transitional justice mechanisms, and continuing through implementation and follow up.

- Transitional justice offers a range of options for involving children. Complementarity among diverse mechanisms is crucial in order to provide a comprehensive framework for child participation and protection.
- Relevant international instruments – such as, CRC art. 4 and General Comment 5 – should be applied in transitional justice contexts, giving priority and providing resources to ensure children’s full participation. The importance of involving children in transitional justice should be supported by the donor community, in particular support for young people in rebuilding societies.
- Special attention is needed to ensure non-discrimination of girls and children from ethnic, religious and religious minorities.
- Consultation with children on transitional justice processes should: i) make use of existing local structures such as schools, clubs, child welfare committees, ii) involve CPAs and local leaders in identifying and supporting child participants while recognizing possible risks, ii) ensure girls voices are encouraged and heard with separate consultations for girls, as needed, iii) identify and build on existing capacities; iv) give feedback directly to the communities on consultation outcomes, v) explain limitations, whether in the case of a court, truth commission or reparations program or any other form of accountability process, to avoid unrealistic expectations.
- Outreach targeting children is critical for successful participation in transitional justice processes. Children’s views should also be considered when determining what forms of outreach are most effective.
- At the time transitional justice mechanisms are implemented many child victims may be over 18 and therefore no longer eligible for special protections, benefits and reparations. Specific efforts may be needed to consider their views and perspectives.
- Meaningful child and adolescent participation should include parents, teachers, religious and community leaders, and other adults throughout the process, keeping them informed and engaged.

Working Group III: Education, Restorative Justice and Peace-building

Education and the study of history can be a tool for reconciliation and peace-building. For example, in Rwanda *Ingando* or discussion groups were used in solidarity camps to introduce a historical perspective into the process of community rehabilitation following the genocide. As a result, the *Ingando* approach has contributed to building a common national identity. However, *Ingando* has been criticized as a method of political indoctrination. The risk is that whoever writes history, owns history.

Education is also crucial in establishing long-term impact for transitional justice processes. A key challenge is how to make an educational approach relevant for young people. In South Africa, youth were given training on peace and justice but it was focused on the past and many youth lost interest. There is a need to engage young people in understanding how the present is shaped by the past, and not to burden the new generation with blame for the past.

Restorative justice can be used in complementarity with other transitional justice processes to encourage social engagement and to address the impunity gap at the community level, but it is better understood as an approach or continuum, rather than as a mechanism. There is a need to articulate the principles of restorative justice in transitional contexts. Some mechanisms may already include restorative justice elements, for example, truth commissions enable dialogue and therefore contribute to a restorative approach. Further clarification of the relationship between restorative justice and transitional justice is called for.

- Educational priorities within the context of transitional justice require careful consideration, as to whether post-conflict curricula should focus primarily on academic goals or on citizenship, peace-building and life skills.
- Educational reform can introduce a transitional justice agenda into school curricula but it needs to be coordinated and given priority from the beginning. Teachers unions can help bring teachers on board and convince them of the importance of linking education to justice, reconciliation and peace-building.
- TRC research departments are typically underfunded and understaffed and therefore would benefit from close collaboration with historians. Proactive linkage with the educational system can help ensure that TRC recommendations are in synch with educational reform.
- A TRC can become a site of education through community-based outreach and public hearings. The overall impact of outreach and media will depend, in part, on the literacy level in the country. For example, in Sierra Leone radio jingles were an effective outreach strategy because of the tradition of oral history. It is important that a TRC is advised by educational experts to make the most of opportunities presented.
- Children can learn most effectively from other children's voices but how to enable a peer-to-peer approach while maintaining confidentiality? In Sierra Leone, the confidentiality of children's statements was fully ensured by the TRC, whereas the TRC mandate in Liberia guarantees confidentiality for only 20 years.
- Restorative justice directly engages victims and perpetrators and may be used following inter-ethnic conflicts to help re-establish trust within communities. However, in the aftermath of forced recruitment of children, the identity of victims and perpetrators may become blurred.
- Specific strategies are needed to engage girls and women in restorative justice processes. This includes allowing them to identify themselves – as victim, perpetrator, survivor, mother – and to find their place in post-conflict social environments.
- Traditional justice is uncritical of patriarchal, community-based power structures. Is it possible, in that case, to envision an egalitarian approach to traditional justice? Can traditional justice systems be reformed to meet international standards with regard to gender parity, nondiscrimination and child rights?
- Further study is needed to document and analyze best practices on restorative justice in relation to children. In addition, analysis is needed on how restorative justice and juvenile justice principles and practices are mutually reinforcing.

Working Group IV: Case Studies

Case studies included in the Children and Transitional Justice Series provide valuable documentation and analysis of country-based practices. By formulating recommendations, based on lessons learned and good practices, the case studies can help inform transitional justice processes in other countries facing similar challenges.

There is no 'one size fits all' approach to post-conflict transition. Rather it is necessary to consider specific factors and priorities for children and to adapt processes to address local

challenges related to justice, accountability, reconciliation and recovery. At the same time there is a need for consistency and coherence, in particular when applying the Convention on the Rights of the Child and other international standards in national contexts.

- Common minimum standards would serve to guide and inform children’s participation in transitional justice processes, taking into consideration country-based and region-to-region differences. Analysis of national and regional factors can help determine what is consistent across countries and regions, and what should be adapted on a case-by-case basis.
- Case study analysis can provide a basis for consensus and coherence in an overall transitional justice agenda for children. This would be helpful, for example, in determining what the “big words” – justice, rule of law, accountability, reconciliation, reparation – actually mean for children.
- Identification of thematic linkages across papers in the Series should be encouraged to inform individual papers and generate synergies. Strengthening linkages between papers can also help address gaps and formulate recommendations that are more relevant for the Series as a whole. Country cases studies should be informed by the thematic papers, and vice versa. The Peer Review Oversight Panel could help facilitate the exchange of shared findings across papers.
- Data collection and documentation is lacking at country level in relation to children and transitional justice. Case studies can help fill this gap, to some extent, by providing valuable information on children’s issues. However, improved data collection on the impacts of conflict on children is needed when transitional justice mechanisms are being established and their mandates defined. The monitoring and reporting mechanisms being established in response to SC res. 1612 can help serve this purpose.
- Case studies can help provide guidance on how best to achieve justice and accountability for crimes against children at local and national levels, as well as recommending an approach to accountability for children, based on country experience.
- There is a need for clarification on policies and procedures to protect the rights of children who become witnesses in judicial proceedings, including with regard to psychosocial support before, during and after testimony is given. What are the lessons learned from national jurisprudence and courtroom procedures and practices?

Additional Papers Recommended for Consideration by the Peer Review Oversight Panel

- A general paper on child and adolescent participation in transitional justice processes was recommended, with a specific focus on the evolving capacities of the child and the importance of adapting policies, procedures and protections to the needs of younger and older children.
- An additional paper on the use of children as witnesses in post-conflict prosecution was proposed, specifically addressing the strengths and weaknesses of current practice.
- A paper was recommended more broadly addressing community-based psychosocial support for children affected by violations during armed conflict, to promote recovery and reconciliation in transitional contexts.
- A paper on adolescents and economic opportunities during post-conflict was recommended to assess how the destruction of family and social structures, the disruption of education, and the resulting insecurity can impose serious limitations on young people’s future. This would include recommendations on how transitional

- justice processes can address children's economic and social rights, and help build a stronger, more stable post-conflict economy.
- Further research was proposed on accountability processes for children accused of participation in crimes during armed conflict. One possibility would be a paper documenting and analyzing domestic juvenile justice practices with regard to both protection and alternative accountability processes for children. Another possibility would be to focus on DDR and links between demobilization of former child soldiers and accountability processes.
 - A compilation was called for of all relevant international instruments and standards applicable for children in transitional justice processes, e.g. General Comments from the Committee on Rights of the Child, references to the Special Representative for Children in Armed Conflict, relevant national laws and other references.
 - An additional paper was suggested on indicators to measure the impact of transitional justice processes on children, both in the short and long term. This would result in the development of tools and a method of data collection in transitional contexts.
 - Ongoing research currently underway on genetic tracing for the identification of children abducted during armed conflict and emergencies was recommended for inclusion in the Series, linking legal and medical professions in transitional contexts.
 - A paper was recommended to review definitions and how they are used by practitioners, legal experts and academics when referring to children and transitional justice. There is a need to build consensus on the use of terms, e.g. child soldiers, forced marriage, reconciliation, reparation, terrorism.
 - A case study was recommended on children and transitional justice in a developed country, such as Canada or Australia, demonstrating that transitional justice is not just a problem of developing countries.

PANEL PRESENTATIONS AND FEED-BACK TO AUTHORS

PANEL I: Core Considerations and Legal Framework

1. Basic assumptions of transitional justice: Alison Smith, NPWJ

Presentation summary

The objectives of transitional justice – to promote peace, reconciliation, the rule of law and respect for human rights - and its legal have not changed dramatically in recent years. Methods vary and are complementary, including justice, truth-seeking, reconciliation, vetting, prevention, strengthening rule of law; whether doing things or being seen to do things. Currently the legal framework for children and international criminal law is well articulated and is comprised of the CRC, the ICCPR, the ICC Statute and other treaties. The challenge now is implementation. Questions remain as to what extent transitional justice mechanisms are in synch with the international legal framework.

The proposed paper on basic assumptions of transitional justice will examine six questions – the 6 “Ws” – who, what, when, where, why and how:

- WHO benefits?
- WHAT mechanisms to be used?
- WHEN should transitional justice be implemented, when the conflict is over, earlier, later?
- WHERE to locate transitional justice mechanisms, in communities, in-country or internationally?
- WHY is transitional justice pursued, what purposes are sought?

- HOW can transitional justice mechanisms meet intended goals, specifically related to children?

The application of transitional justice needs to be adapted to country contexts, recognizing that the choice of mechanisms will send a signal regarding justice and fairness, in particular to children and youth. In Kenya, for example, the recent emphasis on amnesty in the wake of elections sends a signal that political goals can be achieved through violence.

Feedback from Panels and Working Groups

- Transitional justice is not simply the application of diverse mechanisms but is rather a process to achieve accountability, reconciliation, institutional reform, economic development, etc, and the criminal justice system is also part of the process. Therefore an integrated approach is needed. The 6 W's can help demonstrate the importance of an integrated approach, showing both the strengths and weaknesses of transitional justice mechanisms.
- Elaboration is needed on when transitional justice should be implemented. Only 13 out of 177 peace-agreements have called for transitional justice mechanisms. It is important to note that DDR processes are often already in place before transitional justice kicks in. Transitional justice cannot wait until the conflict is over. For example, in Sudan there is pre-conflict, conflict and post-conflict at the same time and transitional justice mechanisms need to address the complexity.
- The paper should include well established principles, for example, as mentioned in SG's Report to the Security Council (S/2004/616). Also, the importance of local actors and their role in transitional justice processes should be emphasized. Children's participation needs to be taken into account at an early stage.
- Begin with principles and conceptual points, and then integrate country experience. Transitional justice models will vary from one country situation to another, depending on local factors and conditions and this needs to be reflected.

2. Children and criminal responsibility, the international legal framework: Christine Bakker, EUI

Presentation summary

States are obligated by international law to prosecute crimes against children committed during armed conflict, specifically genocide, war crimes and crimes against humanity.² The recent focus has been on underage recruitment ('conscriptment or enlistment') into armed forces or groups and the use of children in hostilities. In addition, there is a State obligation, derived from international and regional Conventions, to prosecute serious crimes under international law or extradite alleged perpetrators to States who are willing to prosecute. Depending on the crime, States also have the right or obligation to prosecute based on universal jurisdiction.

The duty to prosecute raises questions regarding the criminal responsibility of children who have allegedly committed crimes under international law. The CRC encourages States, as far as possible, to use alternatives to judicial proceedings for accountability of children and to set a minimal age of criminal responsibility. Moreover, the Paris Principles, endorsed by 58 States, as well as by numerous NGOs and international organizations, sets out specific standards for accountability of children associated with armed forces and groups, including

² These crimes are most often committed during armed conflict. However, genocide and crimes against humanity can also occur in peace time and must then equally be prosecuted under international law.

recommending States to consider children below 18 accused of crimes under international law primarily as victims of violations against them.

There is a trend based on *opinio juris* and the ratification of the Optional Protocol on the Involvement of Children in Armed Conflict for States to raise the minimum age to 18 for recruitment into armed forces or groups and for use in active participation in hostilities. This raises the question as to how States can support evolving standards that have not yet become law, and what CPAs can do to enhance their implementation. Regarding accountability for children, there is a need for States to further determine the scope of the duty to prosecute. In particular, States should ‘upgrade’ the Paris Principles and the Paris Commitments to UN Guidelines in order to make them legally binding.³

Feedback from Panels and Working Groups

- It was agreed that the paper should present a general analysis of the international legal framework, including conventions and customary law, and of the duty to prosecute or extradite those responsible for crimes against children. Child recruitment is a key consideration, but the whole spectrum of violations against children needs to be covered, e.g. sexual violence, abduction, torture, forced displacement, etc. In addition, the section on child recruitment should highlight recent developments on the normative front.
- Whether children can or should be prosecuted or not is often a matter of domestic legislation and prosecutorial discretion (Uganda/Colombia). The paper should emphasize the need for States to implement the relevant international conventions at national level, including the incorporation of international definitions of crimes in domestic legislation and other domestic law reform.
- In post-conflict situations national courts are often unable to maintain protection and human rights standards during judicial proceedings, therefore judicial accountability of children at the national level is not likely to be in the best interests of children. There is an urgent need for national juvenile justice reform.
- The paper would benefit from a more in-depth analysis of amnesties, noting where amnesties are still being applied and highlighting the crimes for which amnesties are not allowed. While there is not a consensus, in general, to prohibit amnesties, there is an emerging consensus not to apply amnesties to international crimes, particularly in light of the developments in Latin American case law.⁴
- The weakness of the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) was also brought to light. While the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) has provisions on criminalization of those crimes in national legislation and extradition for prosecution, the OPAC lacks similar provisions. There is a need for crimes addressed in the OPAC to be criminalized in domestic law, to allow for prosecution.
- The preparation of an Amicus Curie brief can have impact on judicial proceedings but further consideration is needed as to whether submission should be systematic and routine or undertaken only in cases where specific substantive inputs are requested to contribute to legal arguments.

³ See the Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups; and the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007. The Paris Commitments reaffirm international standards, and the Paris Principles provide an operational guide for the demobilization and reintegration of children recruited by fighting forces.

⁴ Another example of this emerging consensus is a ruling by the Appeals Chamber of the Special Court for Sierra Leone that one State cannot extinguish the right and obligation of other States and the international community to investigate and, where appropriate, to prosecute serious crimes under international law.

3. Children and torture: Norberto Liwski, Universidad Nacional de San Martín and Universidad de Buenos Aires and Daniel O'Donnell, Independent Consultant

Presentation summary

International law differentiates between child abuse and torture, and it is important to recognize three main distinctions in the legal definitions. The first is that child abuse is committed by parents, caregivers or persons who have analogous responsibilities for the victim, while torture is carried out by a public official or person acting in an official capacity. The second distinction is that ill-treatment is not defined as torture unless it causes severe mental or physical pain or suffering, whereas ill-treatment may be considered child abuse regardless of the degree of pain or injury caused. The third distinction is that torture is carried out for a particular purpose, such as punishment, intimidation, coercion or discrimination, while child abuse may not have any specific motive. There are also legal obligations that apply to torture but not to child abuse. Torture must be prosecuted, whereas prosecution is not always the most appropriate way to deal with child abuse. In addition, extra-territorial jurisdiction should apply in cases of torture.

The psycho-social and medical assessment of torture on children should take into account the particular vulnerability of children and the life long impacts of torture on the development of the child. The severe and sometimes invisible effects of torture on children are particularly important in a child's process of growth and maturation, and their ability to form relationships and reintegrate in society. Psychosocial support and reparation is needed to help recovery. While it is understood that vulnerable groups of children, such as separated, unaccompanied and migrant children are at greater risk of torture, there is insufficient documentation and a lack of analysis of these risks.

There is a need for carefully stated policy to prevent the torture of children, including specifically from a medical point of view. Medical personnel, psychologists and other health professionals – despite their special responsibility to protect the vulnerable – have been complicit in acts of torture. Therefore clear guidelines are needed on ethical commitments for this group of professionals.

Feedback from Panels and Working Groups

- With regard to the legal definition, more specific examples are needed to illustrate when and under what conditions the torture of children takes place, e.g. state and non-state perpetrators, conflict and non-conflict situations, and torture that is ethnically, racially or religiously motivated.
- Further clarification is needed in the paper on the definition of torture as a 'crime against humanity' and as a 'war crime'. Also more elaboration is needed on state and non-state actors as perpetrators of torture. Reference can be made to Latin American jurisprudence. It is important to consider international humanitarian law and its application in situations of non-international armed conflict, e.g. note that the ICTY considered torture as *jus cogens*.
- Analysis of the respective advantages and disadvantages of national and international judicial prosecution of perpetrators is needed. International courts may be better suited to pursue cases of torture against children, in particular because torture may not be criminalized in national jurisdictions. However, the ability to pursue cases before international courts is limited due to jurisdictional requirements (personal, geographical, temporal, etc.) and therefore it is important to ensure that national legislation criminalizes torture, especially against children.
- More scholarship is needed to investigate how torture affects children differently from adults. This includes both the psycho-social impacts and medical impacts, to better

understand what assistance can help child survivors of torture recover and how to repair the damage done to their lives.

- The paper should include practical measures on how to prevent the torture of children and should outline provisions for psycho-social support for child victims, especially in the absence of local practitioners. The commitments and obligations of international actors to provide funds and technical assistance for support to child victims of torture should be specified, e.g. the UN Fund for victims of torture, the EU, etc.
- Prosecution for torture of children should always be accompanied by increased sentencing recommendations for aggravating circumstances.

PANEL II: Child Rights

4. Child participation and agency in the Sierra Leone TRC: Cheryl Heykoop, IICRD

Presentation summary

Children's participation in the Truth and Reconciliation Commission in Sierra Leone was groundbreaking and remains a good example on how children can participate in transitional justice processes in a meaningful way and without putting them at further risk. However, the short and long term impacts of their participation are still to be assessed. Among the positive aspects of children's participation are the structures that were used to provide confidentiality and anonymity to children who took part in hearings and statement taking. The active participation of children in the preparation of a child friendly version of the TRC Report was another positive outcome.

A number of challenges were encountered throughout the process. For example, children were sometimes afraid to speak to the TCR or were misinformed, children's consent was not always sought, and there was limited follow-up to monitor the psychosocial wellbeing of children who gave statements in the TRC. While child statement-taking was an overall success, the formality of the process limited the benefits, especially for young children. More review is needed to better understand what is the appropriate role for children for young children.

Furthermore, the TRC was able to reach only a small number of children and many of those who did not participate have remained skeptical towards the TRC. This raises questions as to how more children might have been included, especially among the most vulnerable, and how children and their families could have been better informed about opportunities for participation, avoiding unrealistic expectations. In addition, the dissemination of the child friendly version has been limited and, as a result, few children are aware of the TRC Report.

Since the release of the TRC Report there has been a shift in attitude towards appreciation of children's engagement in society and, due to reforms such as the Child Rights Act and the National Youth Commission, children have a more active role.

According to some, the TRC focussed more on finding out what happened during the conflict and less on much needed reconciliation. In the search for healing and reconciliation there is a need for justice and reparations. Many children who participated in the TRC expected reparations and some children did not participate because nothing had been done to improve their situation. Is it possible then to look at reconciliation from a broader perspective, including, for example, assistance to livelihood?

Finally, there is a need to ground participation in the realities of children's lives and take specific cultural understandings into account. It is important to include existing religious and community reconciliation processes within a broader framework of reconciliation and to help children reintegrate back into society and achieve a sustainable peace.

Feedback from Panels and Working Groups

- Specific experiences and lessons learned from the Sierra Leone TRC experience include: i) a framework for collaboration between the TRC and CPAs was developed but hampered due to limited capacity of CPAs, ii) a policy was put in place for child statement-taking but not always implemented, iii) there was a need for greater quantitative impact, and iv) existing structures for child participation such as the Children's Forum Network and Voice of Children Radio were a great asset.
- CPAs were concerned that testimony to the TRC might compromise their neutrality and so many gave generic statements. Some information was kept within the UNICEF office and, as a result, the full picture did not emerge and this contributed to a lack of accountability. In addition, funding problems within TRC created setbacks.
- There were 12 statement takers per district but only one child protection officer, which led to unfulfilled expectations and an ad hoc approach. The security was also compromised as statement takers made direct contact with children. TRC Commissioners were trained in child rights and child protection but they needed ongoing support and monitoring.
- What about the quantitative impact? Although participation was limited in number, it is important to assess the impact. There is a need to also look at prevention, root causes and social and economic factors.
- How can the TRC experience continue to make an impact on the lives of children and their families in Sierra Leone?

5. Psycho-social support for children: protecting the rights of child witnesses in transitional justice processes: An Michels, Independent Consultant

Presentation summary

Children have a right to participate in transitional justice mechanisms but meaningful participation is impossible without protection. This includes being treated with dignity and provided with adequate support. Psychosocial support is not a luxury to be added on but a prerequisite for meaningful participation. Psychosocial support also improves the quality of children's testimony.

The psychosocial impact of children's participation varies depending on factors specific to the child, such as age, maturity and individual experience during the war. The impact will also vary based on factors related to the transitional justice mechanism, such as interviewing procedures, the level of confidentiality and availability of psychosocial support. For many children the experience of giving a statement can be traumatizing or cause fear of reprisal. Girls who have been victims of sexual violence often experience a feeling of guilt. On the other hand, if there is adequate support available, giving a statement or testimony can have a positive impact.

The strategies of the Victims Support Unit in the ICC evolved, following initial criticism by human rights organizations. These strategies are currently being used but there is a need for a statutory framework and vulnerability check-lists on how to access victims and how to empower child witnesses throughout the process. The Gender and Children's unit at the ICC

includes a roster of international psychologists but within other transitional justice mechanisms support to families and children is not well developed and tends to be ad hoc.

The challenge is maintaining balance in ensuring the right to participation and the right to protection. At times it may be in the best interests of the child not to participate. But how to decide, and who should make the decision? There is a need to consider the focus on mental health as one priority in developing tools to support participation. Most importantly, the child should not be adapted to the procedures but, instead, the procedures should be adapted to protect the child.

Feedback from Panels and Working Groups

- It is important to see how protection in the courtroom translates into actual protection in the communities. Protection may be provided by using pseudonyms, *in camera* testimony, voice distortion and other procedures but if everybody in the community knows who is testifying then the protective procedures will fail. No system of victim protection is waterproof.
- Protection of child witnesses needs to be holistic, taking into consideration the best interests and wellbeing of the child. This can include, for example, making sure that the temperature inside the courtroom is not too cold, and the child is physically comfortable.
- Protection is not only the procedures for protection but also the feeling of being protected.
- Judges need training on how to make children feel comfortable and to tell their stories without causing further trauma. However, judges don't always appreciate being told what they don't know so training techniques are needed to develop receptivity on the part of judges, for example, a training workshop could be presented as forum for discussion and debate.
- Victim protection may be weak within the national jurisdiction because domestic courts are often lacking in resources to provide safety and security. More resources and more capacity are needed at the national level.
- More analysis is needed to determine whether or to what extent psychosocial policies and procedures should be adapted for different crimes. Does the creation of categories of crimes and victims create stigma?

6. Children and reparations: Dyan Mazurana, Tufts University

Presentation summary

There is a growing consensus on the right to reparation. However, there are different approaches to reparation, such as restitution, compensation and social or medical rehabilitation. What is fair, just, proper, possible? Should reparations always benefit the victim directly? There is no formula to indicate what reparations are appropriate for which crimes, and there is little consistency with regard to reparations in different country situations.

Children are often not recognized as victims. Sometimes there may be age limits or a difference in perspective as to who receives compensation when a child qualifies for reparations. Should the child be entitled to receive monetary compensation directly or should the mother, family or community receive compensation on behalf of the child? How to distinguish individual and/or collective reparations for children from the fulfillment of rights as stated in the CRC, e.g. education, health and shelter for all children are state obligations.

It is important not to lose sight of the individual because an individual case-by-case approach is the legal basis for reparations. But how to compensate individual children in the aftermath of massive war crimes or the destruction of an entire community or country? What then is appropriate as compensation for specific crimes against individual children and how to design a fair and effective reparation programme?

Should former child soldiers who are both victims and alleged perpetrators receive reparations, and how might that affect reconciliation in communities where survivors and perpetrators live side-by-side?

Before formulating recommendations for reparations to children it is necessary to assess what actually happened to girls and the boys and to understand their individual and collective needs. It is important to work with CPAs and others who work with children, and to link reparations for children with social and economic reform.

Feedback from Panels and Working Groups

- According to international law and especially court cases in Latin America victims are entitled to reparations that include both financial compensation and restitution. But does the definition of restitution include criminal justice? Does judicial prosecution become a form of reparation?
- What happens to victims in countries that have been demolished and are completely dependent on the international community for development? Is it necessary to choose between individual reparations and post-conflict reconstruction/development? What is the role of the international community and who pays for what? What about regional differences, e.g. Latin America and Africa.
- Children want help with their education and with their future, but how does that translate into fair and effective individual reparations, or does it? There is a need to link reparation to social and economical reform.
- Is there a dilemma between individual and collective reparations or can individual reparations be distributed collectively through community-based approaches? An individual approach to reparations creates expectations that cannot be met, e.g. in Rwanda an attempt was made to create a national fund for reparation to victims of genocide but more than 10 years later the fund is still under discussion.

7. Children and security sector reform: David Nosworthy, GCDCAF

Presentation summary

Security sector reform is recognized as a crucial element in post-conflict transition justice, in particular in relation to institutional reform. Currently security sector reform is being addressed by the Security Council, the European Union and the OECD, however, children are rarely mentioned, unless in relation to demobilization of child soldiers or in the context of youth populations.

The definition of security sector reform is broad, including government ministries, legislative bodies, civil society and other actors responsible for security, but what is the function of security sector reform in the aftermath of armed conflict? Security sector reform needs to focus on security as a public good, incorporating the security needs of children and including children's participation in civil society and community-based activities. What constitutes meaningful participation of children in security sector reform? The concept of human security obligates us to look at the security of the child, in particular as children are vulnerable

members of society. Children should be free from fear, in particular from the threat of violence, as stated in article 19 of the Convention on the Rights of the Child.

By focusing on how transitional justice and security sector reform can be mutually supportive it is possible to create a ‘mind shift’ and begin to establish a society where positive change is possible.

Security sector reform should take place at both national and community levels and it needs to be efficient and transparent. Engagement at the local level is crucial in creating a focus on children.

Feedback from Panels and Working Groups

- What are the implications for children in the framework of the Security Council’s report on Rule of Law? A more integrated approach to transitional justice mechanisms and security sector reform is needed.
- Security sector reform needs a child-friendly lens, for example, through special units within government, police or peacekeeping forces responsible for child protection. Justice is a key part of prevention, in order to break the cycle of violence.
- The current political situation – post 9/11 – needs to be taken into consideration, e.g. the war on terror and the militarization of security and humanitarian assistance. Also the privatization of security forces, how they are held accountable and to whom.
- An example of meaningful participation of children in security sector reform was a consultation on children’s perspective of safety and security in Kabul. Children gave priority to traffic safety and the need for more safety on the streets.
- Security sector reform should be coordinated with transitional justice processes. For example, the reform of police or military structures needs to be synchronized with transitional justice processes and should include priority attention to child rights and child protection.
- Security sector reform contributes to the success of transitional justice processes by building confidence at community and national levels.

PANEL III: Local Processes and Peace-building

8. Children, education and reconciliation: Alan Smith, University of Ulster

Presentation summary

The role of education and academic achievement in transitional justice need to be clarified. Truth is not objective or relative, but must be a combination that takes multiple views into consideration. What is meant by reconciliation: truth, apology or revenge?

It is important to recognize that academic achievement is not transitional justice. A strategy to link education and reconciliation should provide educators with a rationale for dealing with the past.

The need for psychosocial support is not a convincing reason for introducing reconciliation into an educational curriculum. Depending on the approach to truth and reconciliation, educational strategies might be knowledge-based, skills-based or value-based. A knowledge-based approach might focus on history and a child-friendly account of the past. Whereas a skills-based approach is forward-driven, looking ahead to the future. A value-based or concepts approach would include citizenship and civic education, both recalling the past and looking forward, to prevent future conflict and to prepare for vocational and professional life.

There is a strong need for professional development among teachers and educators. Few, if any, have specific training on how to deal with topics such as truth, justice and reconciliation, especially as they include issues of emotions, ethics and protection. Entry points in the educational system vary according to factors such as political environment and legitimacy; timing of the peace-process and peace agreement; structural constraints and opportunities related to educational and other institutional reforms.

Feedback from Panels and Working Groups

- Integrating education with transitional justice is innovative and may be untested but it is also essential to move forward, especially with respect to children.
- The role of education is to repair and restore, but also to prevent future violations. For example, in South Africa, economic injustice was considered ‘normal’ because there was little understanding of historical context or knowledge of human rights.
- The Peru CVR *Recordandonos* curriculum project in Peru is promising but caution is needed because implementation is still underway and there has been no monitoring or evaluation to determine impact.
- In the classroom children who are both victims and alleged perpetrators – or from families on opposite sides of the conflict – are likely to interact. Teachers also may come from one or another faction. How to get beyond emotions to achieve a sense of reconciliation in the schools and communities.
- What indicators could be used to measure the impact and effectiveness of education in transitional justice contexts? What general or global lessons can be learned, given the vast contextual differences at country level? More analysis is needed on a range of issues, including an analysis of a gendered approach to educational strategies.
- Recommendations should clearly state what the international community can do to support educational links to transitional justice and should identify the gaps.

9. Restorative justice: Opportunities and risks for children: Laura Stovels, Simon Fraser University and Marta Valinas, Leuven Institute of Criminology

Presentation summary

Restorative justice has been used within a criminal justice system as a strategy to reconcile victims and perpetrators. Since the South Africa TRC it has also been used in transitional justice contexts.

After mass atrocity a restorative justice approach can be used to reconcile perpetrators who have lost the trust of the community and in order to promote healing. Restorative justice can also help victims recover and reintegrate, and feel secure within their communities. In cases where victims may be stigmatized, in particular survivors of sexual violence, engagement with the community can begin to restore the moral and ethical fabric of the society. In Sierra Leone a ‘theatrical approach’ was sometimes used with offenders ‘acting out’ an apology in order to seek mediation or offer redress.

In instances of inter-community violence the offender may be considered a local hero so a restorative justice model is not appropriate or needs to be adapted or used in complementarity with other processes and mechanisms. Restorative justice should be considered as a principle that can be applied in multiple ways, and not as a single or set formula to achieve accountability.

Between amnesty and impunity there are many possibilities and contexts for accountability. Restorative justice is a two way concept that establishes a relationship, linking reconciliation and reparation. It is not in opposition to accountability but rather is complementary, informing retributive mechanisms. A restorative justice approach can be integrated to a greater or lesser extent in various mechanisms and present a range of options.

Caution is needed so as to not confuse restorative justice with traditional mechanisms. Although traditional justice may include elements of restorative justice and mediation a traditional approach often does not maintain international standards with respect to the rights and best interests of victims, in particular for children and women.

Principles that underpin traditional justice include: participation, dialogue, community engagement, reparation and reintegration. This can allow children an opportunity for meaningful participation, both to express themselves and to be held accountable for what they have done.

Feedback from Panels and Working Groups

- It is important to distinguish between situations when a restorative justice approach can be adopted and when it is not appropriate. For example, there is consensus that the worst human rights abuses cannot be dealt with through restorative justice but should be addressed by a formal justice system. However, in some cases the damage to society cannot be fully addressed by judicial prosecution and a complementary approach, using restorative justice, is needed. Prosecution by the ICC or by a national court does not preclude the use of restorative processes. Rather a restorative justice approach opens up creative and complementary opportunities.
- In Latin America the fight against impunity has pursued legal prosecution as the recommended way to achieve accountability for crimes against humanity and to foster a culture of human rights, also informing the young generation. This can be contrasted to the African region where victims have less power and have been forced to accept less both in terms of accountability and reparation. The result is a different expectation but should victims receive less because they expect less?
- Practitioners can use restorative justice to address both victims and offenders but it is important to determine what programme strategies are most effective and practical when a restorative justice approach is used.
- Restorative justice originates with from the victim's need for recovery and should be voluntary. The offender is engaged in order to seek forgiveness and facilitate redress. Restorative justice is limited because it depends on the willingness of the perpetrator to repair the damage.
- More analysis of risks and opportunities for children involved in restorative justice is called for, factoring in elements such as the perpetrator, the type of conflict and the gravity of crime.

10. Mato oput and children in Northern Uganda: Prudence Acirokop, University of Pretoria

Presentation summary

Accountability and reconciliation is crucial for the stability and the future of Northern Uganda, in particular because violations have been committed within communities. Mato oput is one approach that provides a local and traditional process of accountability and reconciliation. The process of mato oput is well recognized within Acholi culture but it raises questions as to relevance outside of Acholi communities, and the appropriateness of the process for children.

In mato oput the family of the perpetrator and the family of the victim are brought together to discuss the crime until agreement is reached. Traditionally children do not take part because they are not seen as responsible for the crimes committed or for negotiating a settlement. However, once children reach puberty (age 13-18) they do participate in mato oput as adults. This raises the question of the definition of a child. In Northern Uganda adulthood begins at puberty. It is then crucial to consider mato oput in the context of the CRC and international standards, i.e. the Beijing Rules and General Comment 10 on juvenile justice.

While mato oput is in line with the international standards of diversion and rehabilitation, a number of discrepancies have been identified:

- i. Children without families or those not recognized or rejected by their families or clans cannot participate in performing the traditional rituals. In one case a girl who was forced by the LRA to kill her sister was then rejected by her family and so is not eligible to participate in mato oput. Children who are too poor to purchase the required items for the traditional rituals are also excluded.
- ii. There is a risk of contradiction between the position of some NGOs that have a missionary agenda and tell children to forgive and forget what happened, and to reject their traditional beliefs. These contradictory messages have left some children torn and confused.
- iii. Mato Oput was designed for crimes of murder and manslaughter but not for systematic abduction, massacre, recruitment of child soldiers, sexual offences, looting and other crimes. If mato oput is to be effective then a further definition of crimes is required in order to assign proper and acceptable compensation for specific crimes.
- iv. Because of the magnitude of violations committed in Uganda, mato oput may not be adequate to achieve accountability and reconciliation. Additionally, in order for mato oput to take place there is a need to identify both the perpetrator and the victim, which is not always possible, especially given the thousands of missing children. In conclusion, mato oput is not the only approach to accountability in Uganda but can complement other mechanisms.

Feedback from Panels and Working Groups

- Local mechanisms need to be respected and empowered, and are useful in addressing the broad range of crimes in Northern Uganda. However, it is essential that local mechanisms meet international standards, in particular with regard to protection of the rights of children. The question is how mato oput and other local mechanisms can work together in complementarity with the formal justice system.
- The methodologies used to conduct research need to be described in order to ensure an ethical, objective and human rights approach.
- Family relations are fundamental in communities, in particular in Africa, and so families need to be engaged and taken into account during reconciliation processes.
- Other forms of traditional justice, beyond the Acholi community, may be relevant for further consideration.
- Further clarity is needed to determine whether and under what conditions mato oput is appropriate for children. This would include consideration of how victims and perpetrators are identified and the role of families or clans in children's participation, also the limited relevance of mato oput within Acholi communities.
- Traditional justice processes such as mato oput should consider the principles of restorative justice in order to determine whether there are inconsistencies or areas of mutual support.

11. Local and national accountability in Northern Uganda: Khristopher Carlson, Tufts University

Presentation summary

There is no consensus on how to proceed with accountability and reconciliation for the former members of the LRA, however, there is a strong desire for accountability for perpetrators who have abducted children, in particular the commanders. Evidence from surveys conducted suggests that the more violence people are exposed to the more they have the need for formal accountability mechanisms.

The peace agreement gives importance to the role of local and traditional justice processes in achieving accountability and reconciliation but there is no agreement on how those processes can work effectively. Research undertaken on girls abducted and used as for sexual puposes by the LRA shows that among the 100 girls interviewed, the majority are not satisfied with the traditional cleansing process. This was in part because the significance was not explained to them and they did not get follow-up support. Therefore the traditional cleansing ceremonies proved to be inappropriate and unsatisfactory for children released by the LRA.

A further challenge of traditional mechanisms is that they are patriarchal and therefore may not be suitable for crimes of sexual and gender-based violence. In the case of “forced marriage” the former “wives” very often do not want to be reconciled with the commanders who abducted them.⁵ In addition, there are problems in using traditional mechanisms because some elders are unpracticed in cleansing ceremonies, and in some cases the clan ties are weakened and no longer have sufficient influence and authority.

Feedback from Panels and Working Groups

- In situations where traditional justice is considered not adequate to achieve accountability, then what judicial and/or complementary mechanisms are recommended to address widespread atrocities?
- There is need for local and regional understanding of accountability, taking into consideration the cultural implications.
- The use of the terminology “forced marriage” to describe crimes including abduction, rape, torture and slavery minimizes the violence done. In addition, girls who survive abduction and “forced marriage” may feel a sense of guilt over having been “selected” to be used “wives”, and they may also suffer stigma within their communities for what may appear to be “collaboration” with the commanders.
- Regarding children born of sexual violence, consideration is needed as to whether or how these children might seek justice. The legal implications are controversial because there is no consensus as to whether children born of sexual violence are direct or indirect victims. It is important to include these children in initiatives of education and land property. Further consideration is also needed as to whether it is in the best interests for children born of forced relationships with LRA commanders to have contact with the commander as a father.
- An analysis of gender in the context of conflict is needed in order to better address and prevent crimes of sexual violence. According to some critiques, a gender focus may dilute more specific attention to women’s rights. But there is growing consensus that preventative measures also must focus on boys and men and issues of masculinity. How can traditional and restorative justice contribute to rehabilitation in the aftermath of sexual and gender-based violence?

⁵ With regard to the use of the term “forced marriage” and references to girls abducted by the LRA as “former wives” of the commanders, see feedback from Panels and Working Groups.

- The proposed use of the national justice system to prosecute crimes committed by the LRA raises the question of government responsibility for crimes committed during the conflict, further complicating the peace agreement and the process of reconciliation.⁶
- If and when accountability mechanisms are implemented in Northern Uganda it is anticipated that many local processes will be considered, in complementarity to judicial mechanisms. The key question is how the formal judicial system – national or international – can work together with mato oput and other traditional processes.

PANEL IV: Case Studies

12. Children and transitional justice in the Andean Region: Salvador Herencia-Carrasco, Comision Andina de Juristas

Presentation summary

Transitional justice mechanisms in Peru and Colombia need to address very different situations and stages of conflict. In post-conflict Peru the main challenge is how to apply international laws and standards to human rights violations that were committed before those laws were in force. In Colombia transitional justice mechanisms are addressing a turbulent present rather than the past. In both Peru and Colombia issues of truth, justice and reconciliation have divided the society and created an ongoing tension. But a remaining question throughout the region is whether there is a right to truth and, if so, who's truth is it? Is it the truth of the formal judiciary or the truth of the victims?

Constitutional and national courts are fundamental to the process of accountability and policy development. In Colombia the Constitutional Court has played an important role by ordering the Government to provide support for internally displaced persons. Government agencies have to report annually to the Court on progress in implementation. Similarly, in Peru, the Constitutional Court has played a key role, specifically in calling for prosecutions.

Presently children's rights have not been systematically addressed by transitional justice mechanisms in Peru and Colombia. However, in the Andean region international standards have become regional customary law, e.g. regarding amnesties, non-statutory limitations, chain of command and immunities. Therefore the judiciary, in particular the constitutional courts, could be instrumental in developing policies on child rights and transitional justice.

Feedback from Panels and Working Groups

- The role of children in transitional justice in the Andean Region should be expanded and more participatory. Important areas for further research on children's issues include the recruitment of children in hostilities and their involvement in DDR, as well as the situation of displaced children, in particular in Colombia.
- The success of transitional justice mechanisms and legal action in the Andean region is well recognized, but what is the impact on children?
- The CRC Committee concluding observations regarding children and armed conflict create a window of opportunity for governments, internationals and national civil society to work together in implementing the recommendations.
- The Andean Region has focused on judicial accountability. More information is needed on the equilibrium between judicial and non-judicial measures, as well as a more specific child-focus in transitional justice processes and mechanisms.

⁶ The Government of Uganda has initiated some prosecutions of UPDF, the question is to what extent prosecutions will be pursued.

13. Children, youth and gender in the Rwandan context: Rose Mukantabana, Action Aid International Rwanda; Jeanne d'Arc Kanakuze, InterHealth International

Presentation summary

Children were twofold victims of the Rwandan conflict. They were targeted by the parties in the conflict and thus victims of grave violations, including sexual abuse and rape, and they were recruited and used in wartime hostilities by the armed forces and militias, and also forced by adults to commit crimes of genocide.

The child survivors include children orphaned, children separated from their parents, children heads-of-household and young adolescents who have become women and mothers prematurely or having taken on adult responsibilities at too young an age. Among the children affected are girls who suffer incurable infections and diseases, including HIV/AIDS, and children born as a result of rape who are often unwanted or neglected and in some cases have been victims of infanticide.

Despite multiple hardships children have tried to find ways to recover. Many children have taken on the responsibility of caring for younger siblings and children have also joined youth associations and reconciliation clubs.

The government and civil society have undertaken efforts to assist in the care of vulnerable children, especially those without caregivers and children living on the street. Although many policies, laws and other measures in support of child rights have been adopted to comply with international standards, they have not been implemented.

Feedback from Panels and Working Groups

- More information on specific elements of transitional justice and their impact on children in Rwanda is needed. For example, it would be helpful review the impact of processes that occurred and recommend steps to follow up on ICTR, gacaca and the national justice system. ICTR is closing in the near future, but how has it addressed crimes against children? What about reparations, did children benefit?
- Transitional justice is not only about looking back, more emphasis is needed on transition towards the future and the development of sustainable child protection over the next 25 years.
- What reforms have taken place in the Rwandan justice system, specifically what is being done to address crimes against children and to uphold child rights?
- Analysis of the role of the Rwandan National Unity and Reconciliation Commission and its impact in relation to children would be useful, for example, whether the commission was it nationally, locally or internationally driven.
- What is the impact of “thousands of NGOs” in post-genocide Rwanda? To what extent have their efforts helped children cope and return to school?

14. Child and adolescent participation in the Liberian TRC: Theo Sowa, Independent Consultant

Presentation summary

The TRC in Liberia made a formal decision to include children in all aspects of its proceedings. An initial orientation for Commissioners was conducted on child rights and child protection, and trainings sessions on child interview techniques were held for statement takers. At the onset of the TRC one Commissioner was designated to oversee children's activities. A formal MoU was signed between the TRC and UNICEF, and between the TRC

and the National Child Protection Network, on respective roles and responsibilities. This has provided a formal structure for their collaboration.

More guidance is needed on how to involve children. Efforts by the child protection agencies at the county level have been pivotal in determining children's involvement and also building momentum and capacity for child participation, including through the newly founded Liberian Children's Parliament. Some new and innovative strategies have been implemented, for example, the children's hearings included confidential testimony using identity protection. However, many activities were adapted late in the process which may have resulted in lost opportunities.

Limited funding has resulted in particular challenges in TRC infrastructure and human resources. It remains to be seen how the TRC will follow up to ensure that child participants are protected and supported at the county level in reconciliation efforts. The focus of the TRC has been to look back at what happened during the conflict, but it also needs to look ahead. Children want to see the future and find their way forward.

The Liberian TRC has made significant progress with regard to children but risks being overwhelmed by overall scepticism. Scepticism among the international community has contributed to a funding gap that delayed activities for children.

Feedback from Panels and Working Groups

- The TRC can be considered as a fulcrum from which to look backward and forward. How has the TRC enabled children to learn about the past and envision the future, and what is the actual impact on their lives?
- The Liberian TRC is still in progress which makes it difficult for the case study to assess overall impact. On one hand, recommendations can be advanced but, on the other hand, it is still too early to tell what will be the final outcome.
- More detail is needed as to the range of creative expression and consultative processes involving children.
- A thorough review and assessment of the effectiveness of the MOU is needed, showing how well it functioned, its strengths and weaknesses.
- The analysis of lessons learned should be linked with thematic issues, such as, accountability, psychosocial support, education links, economic and social strategies such as the Poverty Reduction Strategy, and reparations.

15. Children's participation in CAVR Timor Leste: Ann Linnarsson, UNICEF Timor Leste

Presentation summary

The three key components of the Timor Leste CAVR process were truth seeking, community reconciliation focusing on reintegration of former militia, and victim support, including reparations. Although the CAVR had a strong focus on children, the Commission did not succeed in creating a clear role for child participation.

A number of challenges were encountered, including the weak capacity of civil society, competing priorities among the UN agencies, and the cultural norm of children being "seen but not heard". At the time of the CAVR there were only four social workers in the country which limited psychosocial capacity and support.

Another challenge was the need to make the CAVR relevant for Timorese children, especially as more than 50 per cent of the population is under 18. A failure to engage young people risks a “lost generation” that lacks a sense of national identity. If young people are uninformed they are more susceptible to manipulation and more likely to engage in political violence.

It is important to note that the recommendations called for in the CAVR final report are being implemented as part of post-conflict reconstruction and development, but not as a direct outcome of the Commission.

The documentation and analysis of the role of children in the CAVR gives visibility to the positive outcomes but also the gaps in children’s participation and protection. This is not intended to point fingers, but to assess the role of children in the process, to understand what happened and why.

Feedback from Panels and Working Groups

- An overview of other transitional justice processes would be helpful to assess complementarity, in particular with regard to the Serious Crimes Panel/Unit, and the Child and Friendship Commission.
- The CAVR did not address serious crimes and grave violations such as abduction, killing, torture and rape. Further information on accountability for serious crimes against children is needed, also the extent to which children involved in the militia have been held accountable.
- Further explanation would be helpful as to why children were not more involved as victims in the local Community Reconciliation Process.
- It would be important to note the procedures used and the overall impact of testimony given by adults (over 18) about violations committed against them as children.
- What were the expectations of children who participated in CAVR activities?
- The descriptive analysis of children’s role in the CAVR process should include recommendations and conclusions that would be relevant both nationally and internationally.
- It is important to emphasize how education can help fulfill the aspirations of children with regard to the CAVR, and the potential role of education in helping children understand what happened during the conflict.