

EXECUTIVE SUMMARY

Children and Accountability for Grave Crimes: The experience of the ICC and other International or Hybrid Jurisdictions

Cecile Aptel

This paper reviews the interaction of children with international and hybrid criminal jurisdictions (IHCJ), and identifies emerging standards and practices concerning the relation between children and these courts. It assesses how international and hybrid jurisdictions have focused on crimes against children, and dealt with children as victims, witnesses, and potential offenders.

1. Fostering accountability for grave crimes against children

The paper distinguishes between crimes targeting specifically children and other crimes affecting children among other victims.

Child-specific crimes include genocide for transferring children from one group to another; war crimes for attacking schools and other buildings dedicated to education; and war crimes for conscripting or enlisting children or using them to participate actively in hostilities. The SCSL was the first to charge this crime and convict those responsible. The first cases before the ICC also concern the unlawful recruitment of children or their use in hostilities, demonstrating how seriously these war crimes are now taken.

Children can also fall victim of other grave international crimes: they can be killed, tortured, or raped, among others. Some of these crimes, for instance deliberate starvation, particularly affect children because of their vulnerability. Also, as most international crimes are ‘systemic’, targeting either specific groups or an entire civilian population, including their children, children are at least as affected as other victims. Arguably, the greater the proportion of children in that group or population the greater the number of affected children. The paper demonstrates that grave international crimes may disproportionately affect children in terms notably of their long-term consequences and traumatic impact.

Grave crimes committed against children are receiving increased attention and their prevalence is being recognized. But this trend is recent, and for too long, IHCJ only referred to these crimes as part of other atrocities committed against a civilian population or specific groups. Hence, children are slowly emerging as a previously invisible category of victims, are being increasingly recognized, acknowledged and empowered in the process. Yet, the focus of IHCJ, in particular the ICC, on the crime of unlawfully recruiting or using children to actively participate in hostilities, while laudable, should not be to the detriment of the recognition and sanction of other grave international crimes victimizing children. International criminal jurisprudence should continue to expand to include the whole range of crimes committed against children, sexual and non-sexual, child-specific and non child-specific.

2. Excluding children from international accountability

The paper clearly establishes that, on the basis of combined international criminal law and practice, children should not and have not been tried for grave international crimes by IHCJ. Because they concentrate on those bearing the greatest responsibility for the worst crimes, IHCJ should address the commission of crimes against rather than by children; children should be and are considered primarily as victims of grave international crimes.

3. Specific procedures arising from the rights and needs of children

When interacting with children, IHJC should use child-friendly procedures inspired by the relevant international guidelines, notably the Convention on the Rights of the Child. Specific procedures ensure that the rights of the children are fully respected, and also that all children understand the process in which they are involved and can fully contribute to it. The paper analyses the relevant provisions in the statutes and rules of the IHCJ and their actual procedures. It offers recommendations concerning specific areas where lessons could be learnt, in particular for the ICC. First, child-friendly materials and outreach events are critical to ensure that vulnerable victims and witnesses, in particular children, understand the court, its mandate, procedure, and its objectives, especially when the investigations concern crimes committed against children. Second, investigative teams should not only include child-rights and child-protection experts but also follow country-specific child-friendly procedures. Third, only professional, recognized and impartial organizations, which consider the interest of the children as paramount, should be used by IHCJ as ‘intermediaries’ to liaise with children and identify potential child-witnesses. Fourth, when trials are held far away from the place children-witnesses live, all measures should be taken to provide witnesses with an environment as close as possible to the ones they are familiar with. Fifth, adequately preparing witnesses shortly before their testimony in court builds their understanding of the procedure and their confidence to testify, and contributes to minimizing the risk of re-traumatization.

4. Participation of child victims in the proceedings and reparations

The paper reviews the applicable legal frameworks and re-asserts the importance of the rights of children victims of grave international crimes to participate in the proceedings, and to seek and obtain reparations.

Conclusion:

The paper concludes that the interaction of children with IHCJ can be assessed on the basis of two benchmarks: whether IHCJ have given access to children, and whether the voices of children have been heard and their views considered. Because of the very limited access given to children, and also the inadequate information they have made available to them, it seems that much remains to be done to make international justice more accessible to children and IHCJ more ready to consider the views of children and prosecute the full range of crimes committed against them.

IHCJ are a means to address the crimes experienced by children, and must simultaneously further accountability and the need to adequately protect children who may interact with them in this process, recognizing that one must not preclude the other.