

UNICEF Innocenti Research Centre

Expert Discussion on Transitional Justice and Children

10-12 November 2005

Outcome Document

An Michels, Consultant
Saudamini Siegrist, Child Protection Officer, UNICEF IRC

Table of Contents

<i>Table of Contents</i>	2
<i>List of Background Documents</i>	3
<i>I INTRODUCTION</i>	5
Executive Summary	5
Purpose of the Expert Discussion	7
Participants	7
Methodology	8
Conclusions and next steps	8
<i>II REPORT OF THE EXPERT DISCUSSION</i>	8
Transitional Justice and Children: Trends and Developments	8
Experiences from the Special Court for Sierra Leone	10
Involvement of children in the International Criminal Court	11
Involvement of children in Truth and Reconciliation Commissions	14
National Juvenile Justice Systems in Post-Conflict Situations	15
<i>III WORKING GROUP RECOMMENDATIONS</i>	18
On the involvement of children in the ICC and international tribunals	18
I GENERAL PRINCIPLES	18
II CHILDREN AS WITNESSES	19
III CHILDREN AS VICTIMS	20
On the involvement of children in Truth and Reconciliation Commissions	21
I. CRITERIA FOR ENGAGEMENT	21
II. PROCESS	22
III. INTER-RELATIONSHIP WITH OTHER STRUCTURES	24
On the involvement of children in national juvenile justice mechanisms	24
<i>Agenda</i>	28
<i>List of Participants</i>	30

List of Background Documents

- I Transitional Justice and Children: Concept Paper
- II Expert Papers and Presentations
 - Crimes against Children – current trends and developments
Alison Smith, NPWJ
 - Prosecuting child related crimes at the SCSL
Luc Côté, OTP, SCSL
 - Protecting and supporting child witnesses before the SCSL
An Michels, VWU, SCSL
 - The Role of child protection agencies in supporting children’s involvement in transitional justice mechanisms in Sierra Leone
Keith Wright, UNICEF Liberia
 - Children’s participation in the TRC for Sierra Leone
Saudamini Siegrist, UNICEF IRC
 - TRC in Guatemala and Peru: the children’s perspective
Christine Bakker, EUI
 - Recommended strategies for children’s involvement in the International Criminal Court: Office of the Prosecutor
Gloria Atiba-Davies, OTP, ICC
Vedrana Mladina-Damjanovic, OTP, ICC
 - Recommended strategies for children’s involvement in the International Criminal Court: the Victims and Witnesses Unit
Simo Väätäinen, VWU, ICC
 - Recommended strategies for children’s involvement in the International Criminal Court: Division of Victims and Counsel
Didier Preira, Division of Victims and Counsel, ICC
 - Involvement of children in the *Gacaca* trials in Rwanda
Constance Morrill, Independent Researcher
 - Reform of juvenile justice in DRC
Trish Hiddleston, UNICEF MENA

Executive Summary

The Expert Discussion on Transitional Justice and Children was convened from 10 to 12 November 2005, by the UNICEF Innocenti Research Center, in collaboration with UNICEF New York and with the support of the Canadian Human Securities Programme. The meeting brought together a unique group of 35 experts from the International Criminal Court and other international tribunals, truth commissions, national juvenile justice systems, UNICEF Headquarters, Regional and Country Offices, international NGOs and academia, initiating a dialogue between legal experts, child rights advocates and practitioners of diverse transitional justice mechanisms.

The meeting succeeded in accomplishing its principal goals, namely: identifying recommended methods and approaches for the involvement of children in transitional justice processes and mechanisms. This, in turn, will improve accountability for crimes against children and support the development of child-friendly policies and procedures to protect the rights of children who become involved in truth, reconciliation and justice-seeking mechanisms.

In addition, the meeting created momentum for exchange and a new ground for dialogue, consensus and alliance among participants, working in these complementary areas. Direct experience involving children in international tribunals, in truth and reconciliation commissions and in national juvenile justice systems in post-conflict situations, was reviewed in five panel discussions. Also, current trends and developments in the field of children's participation in transitional justice mechanisms were analysed. During in-depth discussion in working groups, lessons learned were translated into concrete recommendations, addressing the respective transitional justice mechanisms and child protection agencies involved in transitional justice processes. Thus the Expert Discussion resulted in the elaboration of specific recommendations on the involvement of children in i) the International Criminal Court (ICC) and international tribunals; ii) truth commissions; and iii) national juvenile justice mechanisms.

Current developments in international law have placed increasing importance on the prosecution of crimes against children. A number of questions emerge from this evolution, for example, what transitional justice mechanisms are most appropriate in a given situation, and how best to encourage the participation of children and protect their involvement as victims and witnesses? Another key question concerns accountability for crimes allegedly committed by children during armed conflict and how such crimes might be addressed by transitional truth and justice seeking mechanisms. In discussions, the importance of reintegration and restoration as an objective of justice was strongly brought to the forefront, as well as the need for an integrated approach, focusing on truth, justice and reconciliation at a variety of levels, involving international but also national and traditional mechanisms.

Experiences from the Special Court for Sierra Leone have shown that involving children as witnesses in an international tribunal is feasible on the condition that measures for protection and support are specifically adapted to children and that the best interest of the child is respected throughout the process. The right to participation and the right to protection are both priorities and the two can be at odds. It is therefore essential that support and protection procedures are in place throughout the process, in the preparatory stage and in follow up. Collaboration with child protection agencies (CPAs) in the selection and support of child witnesses is essential but may be difficult to establish, due to concerns on the part of CPAs

regarding the possible compromise of their independence and the need to maintain confidentiality in all activities involving children in judicial processes.

Policies and procedures regulating the involvement of children in the proceedings of the ICC were presented and discussed. The Investigation Division of the Office of the Prosecutor (OTP) has developed a number of child-friendly and protective measures for children. Also the Victims and Witnesses Unit has put in place a number of concrete procedures, facilitating a safe involvement of child-witnesses in Court proceedings. The Victims Participation and Reparations Section has developed an application procedure for victims, including children requesting reparations. A number of challenges were discussed concerning the feasibility of this approach with regard to the participation of child-victims, both as witnesses and within the reparations programme.

Recommendations focused on:

- Ongoing training for ICC staff on child related issues;
- Role of CPAs as a source of information for the ICC;
- Safeguards to keep collaboration confidential;
- Importance to avoid, whenever possible, building cases that rely on child witnesses;
- Minimal exposure of children to court processes;
- Need for reparations to distinguish between child witnesses and child victims;
- Not to raise unrealistic expectations of victims concerning reparations;
- Development of a clear policy to provide reparations only on a community basis.

Lessons learned from the involvement of children in Truth and Reconciliation Commissions (TRCs) in Timor Leste, Sierra Leone, Guatemala and Peru showed a range of different forms and levels of participation of children in these non-judicial transitional mechanisms. The implementation of official recommendations of truth commissions, or the lack thereof, has been identified as a key concern, often determining the impact of TRCs on the lives and futures of children. It was generally recognised that civil society has an important role to play in lobbying for the implementation of recommendations. Children also should have the opportunity to engage in all steps of the process. In order to ensure their safe and genuine participation, children need to be sufficiently protected and supported. CPAs can play a mediating role, assisting the TRC in the development and implementation of child-friendly measures and facilitating children's involvement.

Recommendations focused on:

- Defining the criteria for engagement of CPAs in the work of a TRC;
- The mediating role of CPAs;
- Responsibility of a TRC to specifically focus on crimes against children;
- Need for TRC training and support mechanisms;
- Importance of engaging children in a TRC process, based on their evolving capacities for participation;
- Involving children throughout all phases of the TRC process, including in drafting final recommendations;
- Distinguishing between need-based assistance and reparations, which are linked to the harm suffered;
- Ensuring that recommendations are as specific as possible and indicate accountability for implementation.

The challenges of reforming national juvenile justice systems in post-conflict situations are numerous. During and after conflict, the national justice system is very often weakened or

incapacitated, making the fair administration of justice difficult to accomplish. Examples from DRC, the Philippines, Rwanda, Sierra Leone and Sri Lanka showed that basic international standards for juvenile justice are often lacking. Problems concerning the age of criminal responsibility and detention are likely to arise. The possibility of developing diversion mechanisms and alternatives to detention can be particularly difficult in emergency or post-conflict situations. When children are associated with fighting forces they should be considered primarily as victims and not among those most responsible for wartime atrocities. This reality should be fully reflected in any response intended to address their accountability, including in national juvenile justice mechanisms. The question arises as to whether national courts are the best venues to address children's accountability during a transition and how best to ensure a focus on restorative justice approaches, including in traditional justice mechanisms.

Recommendations focused on:

- Importance of capacity-building within national judiciary and the need to focus on the national judiciary as the first resort in post-conflict situations, despite the challenges and risks;
- High priority given to empowering and rebuilding national judicial systems in a post-conflict environment;
- Detention as the last resort, with alternatives to detention given first consideration;
- Ensuring complementarity and promoting mutual objectives and linkages between national and international justice mechanisms.

Purpose of the Expert Discussion

The main objective of the Expert Discussion on Transitional Justice and Children was to identify recommended methods and strategies to protect the rights of children involved in transitional justice mechanisms. This objective serves a dual purpose: to improve accountability for crimes against children; and to support and facilitate children's participation in truth, reconciliation and justice-seeking mechanisms.

In recent years, a number of transitional justice mechanisms have been established, several of which have explicitly addressed child-related issues. In light of these recent efforts, there is an urgent need to review experience and to analyse emerging good practices and lessons learned on the protection of the rights of child victims and witnesses. Such a review and analysis can inform the ongoing and future efforts of legal experts and child protection advocates and agencies in achieving accountability for crimes against children, while upholding the best interests of children involved in such processes.

Participants

A group of 35 international legal experts and child rights advocates participated in the Expert Discussion, bringing together a range of field experience and representing numerous partners, including transitional justice mechanisms, UN agencies, international NGOs and academic institutions. This generated rich discussion based on diverse experience and perspectives, helping to reinforce efforts to address child-related issues and to involve children in post-conflict transitional justice.

Participants included colleagues from the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL) and the Commission for Reception, Truth and Reconciliation of Timor Leste (CAVR), from the UNICEF Innocenti Research Centre, UNICEF-HQ, UNICEF MENARO and the Country Offices Liberia, Uganda and Sri Lanka; as well as UNODC, MONUC, the

International Centre for Transitional Justice (ICTJ), No Peace Without Justice (NPWJ), Amnesty International, Redress, The World Organisation against Torture and the University of Western Ontario.

Methodology

Five panel discussions were convened to identify key findings, good practices and lessons learned based on a wide range of transitional justice processes. Discussions were informed on the basis of a preparatory concept paper and presentations of panellists, highlighting programme experience. Following the presentations and discussions, three Working Groups focused specifically on the involvement of children in the following transitional justice mechanisms:

- ICC and international tribunals,
- Truth and reconciliation commissions,
- National post-conflict justice mechanisms.

The Working Groups formulated recommendations addressed to the respective accountability mechanism, as well as to legal experts and child protection agencies involved in the process.

This report presents a summary of the main topics discussed in the different panels, together with the recommendations formulated during the discussion, the meeting agenda, and the list of participants. The annex contains the background concept paper, expert papers and panel presentations, for more detailed review and follow up.

Conclusions and next steps

The concrete outcomes of the Expert Discussion on Transitional Justice and Children are the three sets of detailed recommendations formulated by the Working Groups on the involvement of children in processes of post-conflict accountability. The recommendations were formulated and agreed upon by members of the Working Groups, including child rights experts and practitioners from key transitional justice mechanisms and child protection agencies who provided concrete guidance.

Expert papers, as well as a concept paper on issues and questions to be addressed, highlight good practises, lessons learned and emerging issues concerning the involvement of children in transitional justice mechanisms (see annex).

It is anticipated that the dialogue between legal experts and child protection advocates and agencies will continue as a basis for consolidating shared experience and lessons learned and in order to further facilitate efforts to improve accountability for crimes against children in war torn countries.

II REPORT OF THE EXPERT DISCUSSION

Transitional Justice and Children: Trends and Developments

Presenters/panellists: Marieke Wierda, ICTJ; Alison Smith, NPWJ

In recent decades, children have been increasingly affected and targeted by warfare. The call for greater national and international accountability has led to developments in international law that have placed more importance on the prosecution of crimes against children. This is evidenced by the specific provisions in the Rome Statute of the ICC. Another important example is the Special Court for Sierra Leone, which ruled that the recruitment or use of

children under 15 in hostilities is a war crime under customary international law, marking the first judicial ruling on this issue.

The presenters highlighted some of the most important questions emerging from these recent trends. What are the advantages and risks of including children as witnesses in transitional justice mechanisms? What kinds of mechanisms are appropriate and to what extent should children participate? What can be done to protect the rights of children who do become involved in processes of international and national accountability?

In order to address these questions it is useful to recall the basic premise that justice and accountability are essential in re-establishing the rule of law. Not only is justice in the best interest of society, but also in the best interests of children. Many complex legal questions remain: How to concretely define and determine the elements of serious crimes against children that occur during armed conflict? How to ensure that accountability mechanisms address crimes against children, through investigation, prosecution of perpetrators and redress for victims? What can be done to better enforce the international law that prohibits recruitment of child soldiers? What are the distinctions between compulsory and voluntary recruitment, as stated by the Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict. What safeguards are in place to ensure that voluntary recruitment is genuinely voluntary? What level of activity is required to meet the threshold of children's 'active participation in hostilities'?

Even more complex and challenging is the question of accountability of children who commit atrocities during hostilities. While accountability for alleged child perpetrators is understood to be in the best interests of the child, based on the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), alternatives to judicial processes are recommended,¹ in particular, the concept of restorative justice, such as promoting reintegration and return to a 'constructive role' in society (article 40, CRC), rehabilitation (article 14(4), ICCPR; article 39, CRC), and reinforcing the child's respect for the rights of others (article 40, CRC). In addition, there is growing consensus that 18 should be the minimum age for prosecutions under international law.²

What could be an alternative to prosecuting children in the international arena? The development of transitional justice in the past ten years has made it clear that an integrated approach is needed in any given environment. The way children are involved and consulted in the transitional justice process should take into consideration the way children were affected, the way they were forced or coerced to take part in the conflict, their reintegration and their capacities to engage in reconciliation and peacebuilding. Participants agreed that international mechanisms should work in complementarity with national justice mechanisms, as well as with non-judicial processes and traditional initiatives, to identify the best way to achieve justice. And it should be kept in mind that transitional justice is not only a legal process, but a social one as well, and that children often see justice in terms of what they need, that is, protection, education, health, housing, and a vocation and vision for the future.

¹ See CRC article 40(3)(b) and Beijing Rule no. 11.

² This is based on the practice of the *ad hoc* tribunals – ICTY and ICTR – not pursuing prosecution for those under 18; the stated policy of the Special Court for Sierra Leone, which was mandated to prosecute those above the age of 15 but declined to do so, stating that children did not "bear greatest responsibility" for crimes committed during the war; and the Rome Statute of the International Criminal Court which does not have jurisdiction to prosecute below age 18 for grave breaches of IHL, i.e. war crimes, crimes against humanity and genocide. Therefore, while there is no minimum age for prosecutions under IHL, there is growing consensus that children (below age 18) should not be prosecuted for crimes committed under international law.

In discussion, the importance of reintegration and restoration as an objective of justice was strongly brought to the forefront. Issues related to women and children and to rebuilding families and community structures that are often displaced during war by ‘army structures’, as was the case in Liberia, should be addressed. A Truth and Reconciliation Commission, similar to the TRC in Sierra Leone, can help in providing an appropriate framework.

The challenges are enormous. But with the challenges come unprecedented opportunities. For example, the possibility of implementing reparations, as enshrined in the Rome Statute, is an exceptional opportunity that raises important questions: what criteria should be applied for eligibility and how to avoid a hierarchy of victims? What about the issue of amnesty, regulated in national laws, as in Uganda, or in the context of ICC investigations?

One emerging issue that was raised in discussion concerns the rights of children born as a result of wartime rape. Should children born of sexual violence in conflict zones be considered as direct victims of a conflict and therefore granted the right to claim reparations? Does the child have a legal status that is different from other children? Would it benefit a child to be categorised as a victim simply as a consequence of being born? What if the community accepts the child, does he or she still suffer harm and claim the status of a victim? More questions than answers were raised, illustrating the complexity of the issue and the need for a very careful approach.

Experiences from the Special Court for Sierra Leone

Presenters/panellists: Luc Côté, SCSL; An Michels, formerly SCSL, Keith Wright, UNICEF Liberia (formerly Sierra Leone).

Presentations highlighted that, in the aftermath of a conflict characterized by the use of child combatants, the Special Court for Sierra Leone needed to address three crucial issues in regard to the involvement of children in its proceedings. First, whether children would be indicted before the SCSL. Second, how to prosecute crimes against children and whether the conscription or enlistment of children under 15 would be included among the indictments. Third, whether children would be called to testify and, if so, how to ensure the protection and support of potential child witnesses, taking into consideration the best interests of the child. In addition, how Child Protection Agencies (CPAs) should be involved in this process.

The ‘moral dilemma’ of whether children who committed atrocities during the war should be called to justice before the Court was reflected in the SCSL Statute that provided personal jurisdiction over children above the age of 15. The dilemma was solved when the Prosecutor declared that children were not among those who ‘bear the greatest responsibility’ for the war. Guided by this limitation in the Statute he exercised his prosecutorial discretion and decided that children would not be indicted.

A key issue in terms of programme experience was the question of how the Office of the Prosecutor (OTP) would deal with the crime of conscripting or enlisting children under the age of 15 as combatants. This new count was accepted as part of the indictment by a groundbreaking decision of the Appeals Chamber of the SCSL, which ruled on the basis of international customary law that the recruitment or use of children under age 15 is a war crime from 1996 onwards. The ruling will definitely have an impact on future transitional justice processes.

Evidence of the use of child soldiers during the armed conflict in Sierra Leone came from a number of sources and the OTP did not rely solely on children’s testimony in pursuing its

aim. However the OTP did consider children to be competent and capable to provide essential evidence on numerous crimes committed during the conflict. This marked the first instance when children, despite their particularly vulnerability as witnesses, were called to testify before an international tribunal. It was stressed that, while a larger number of children were interviewed by the OTP, only a few would be called as witnesses (to date fewer than 15 children have testified). In addition, precise age determination is difficult for many of the child witnesses.

Panellists agreed that, although there were clear differences with regard to the reactions and experiences of children, as well as between the cases, they have performed well as witnesses at the SCSL. Individual differences are due to factors such as personal history and personality of the child, the social support available and their comprehension of the process. Disparities in performance in particular cases are also related to structural and contextual factors, including the way the defence approaches the cross-examination.

It was generally recognised that a qualifying factor in the experiences of children is the support and protection provided before, during and after testimony. The design of appropriate protective measures, child-friendly procedures and the establishment of collaboration with child protection agencies can help in making the best interest of the case also serve the best interests of the child. It was felt that the implementation of these supportive structures was by and large successful and important lessons were learned.

The early involvement of a psycho-social support team, for example, can ensure a better selection of child witnesses, avoid or minimise retraumatisation of potential witnesses, including those who are not called to testify, and can help to guarantee that the right to participation is balanced with the right to protection. Making judicial procedures more child-friendly also helps to facilitate children's participation in the judicial process. Minimising interruptions of the daily life of child witnesses, avoiding temporary relocations and rethinking the modalities of material support to child witnesses, can reduce the risk of dependency and vulnerability.

The role of Child Protection Agencies (CPAs), in particular UNICEF, in supporting children's involvement in the proceedings at the SCSL was analysed. It was felt that there were important obstacles in establishing collaboration between the Court and CPAs. The need for confidentiality with regard to the investigations and working procedures of the Court, and the fear that collaboration would compromise the work of CPAs, as well as the lack of a clear policy in the relationship between transitional justice mechanisms and child protection agencies, were noted as important hindering factors. It was further noted that, despite structural limitations, it was possible to establish an ad-hoc working relationship which benefited the potential and selected child witnesses.

Finally it was stressed that data on wartime violations against children was not systematically collected and that the lack of data was a weakness in Court proceedings. The hope was expressed that, with the adoption of Security Council Resolution 1612, processes for monitoring and reporting on crimes against children will be launched that can better inform transitional justice mechanisms in their role to achieve accountability.

Involvement of children in the International Criminal Court

Presenters/panellists: Gloria Atiba-Davis, Vedrana Mladina-Damjanovic, *Children and Gender Unit, OTP ICC*; Simo Vätääinen, *Victims and Witnesses Unit, ICC*; Didier Preira, *Division of Victims and Counsel, ICC*; Clémentine Olivier, *Redress*.

Policies and procedures regulating the involvement of children in the proceedings of the International Criminal Court (ICC) were presented by a delegation of the ICC. This included issues around the role of children as victims and witnesses and the role of CPAs in support of children's involvement.

The Statute of the ICC clearly excludes personal jurisdiction over persons under 18. At the same time the Rome Statute, as well as the Rules of Procedure and Evidence, include provisions and procedures to protect the rights of children in their interaction with the Court and a number of mechanisms are in place to encourage children's involvement as witnesses and victims.

The Investigation Division of the Office of the Prosecutor (OTP), guided by the Gender and Children's Unit, has developed child-friendly measures in order to meet special needs of child victims and witnesses during investigations. A focused investigation, minimising the number of witnesses and avoiding children's participation as witnesses – except in cases where evidence cannot be obtained from an alternative source – are some of the investigative strategies proposed. Guidelines for investigators have been developed to support questioning in a safe and child-friendly manner. Obtaining the consent of parents or guardians, undertaking a security assessment and conducting a psycho-social pre-interview of the child's well-being, as well as a child-friendly introduction of the Court, are measures preceding every interview with a child by the OTP. During the interview, the assistance of an Associate Victims Expert (a psychologist), the presence of an accompanying person – if requested by the child – and respect for the preference of the child concerning the gender of investigators and interpreters should further enhance a child-friendly environment.

During trial phase, the Victims and Witnesses Unit (VWU) facilitates the interaction of victims with the Court and provides access to psycho-social, medical and other support. Protection services are designed to minimise the risk associated in cooperating with the Court.

A number of considerations were made by the presenters relating to procedures respecting children in the pre-trial and trial phase, such as providing accurate and understandable information to children; limiting the number of staff involved, as well as the number of meetings, interviews and court sessions with children; recommending to the Court that children should not be put in the same room as the accused and encouraging Judges and Counsel to develop an approach that takes into account the specific needs of children. Moreover it was stressed that any needs assessment of a child witness carried out by the Court should focus on a thorough understanding of the cultural context, an assessment of risks and the management of expectations of the child and his or her family. The VWU stated that, in the development of practises and procedures, it endeavours to act in accordance with the best international practice and actively seeks to cooperate with IGOs, NGOs and other agencies in the field.

A number of potential hurdles for the work of the OTP and the VWU were pointed out in the discussion. Establishing an informed consent, for example, can be complex in the contexts in which the Court operates. Community outreach and the distribution of correct information about the work of the Court are crucial and active steps need to be taken to involve young people throughout the legal process. The question was raised as to what degree the Court should take into account local or traditional practises granting authority for an adult with regard to the consent of a child. Translation during interviews needs to be approached in a very sensitive manner, taking into consideration important cultural and political factors. A system for the careful selection of interpreters, regular performance evaluations and training established by the translation unit of the Court, are needed. In addition, a culturally sensitive

approach was emphasised in the context of psycho-social pre-interview assessments and support. The OTP stressed in this context the importance of references to psychological and medical problems in conformity with international standards because of the international visibility of its work. Both approaches should be reconciled to achieve cross-cultural applicability of methods used. Finally, the need for investigators who are skilled in dealing with children was underscored, in order to avoid additional elements of distress.

The provisions of the Rome Statute on reparations for and participation of victims in proceedings before the ICC afford unprecedented access for victims. Victims have the right to participate independently in the proceedings, as well as the possibility to present observations and views or concerns where their personal interests are affected (Article 68). For this purpose they are entitled to legal representation. Victims also have the right to request reparations (Art. 75). The Court may proceed to make determinations regarding the scope and extent of damage, loss or injury, and may make an order for reparations directly against a convicted person.

As required in the Rome Statute, the Registry of the ICC is actively working to institute strategies that will allow child victims to participate in Court proceedings in a positive and meaningful way, while mitigating security risks or retraumatisation and preserving the well-being and best interests of the child. The Victims Participation and Reparation Section (VPRS), under the Division of Victims and Counsel, is mandated to implement the provisions concerning reparations and faces a number of serious challenges, in particular with respect to child victims.

Although the intention of the Court, as clarified by the Vice-President, would not be necessarily to grant individual reparations, it was explained that the Statute requires requests for reparations to be made individually in writing to the Registrar. The Registry is charged with developing and disseminating a standard application form for this purpose. This form includes questions related to whether the applicant is a child and, if so, requests information about the legal guardian of that child. The Registry recognised the need to rely from an early stage on international agencies and local actors, particularly those organisations with a presence on the ground, including those who already know and have gained the trust and confidence of victims. This should also include legal experts and others, in order for victims to effectively exercise their rights before the ICC. In this light the establishment of networks of potential “intermediaries”, who may inform and assist victims in relation to their possible role before the Court, was discussed. Also training sessions, conducted with local groups in the DRC and Uganda, were mentioned. Finally, the need for counsel with experience in working with children to represent child victims was pointed out.

Discussion highlighted the many questions that have arisen around the concrete implementation of the procedures for reparations. Concerns were raised over the feasibility of such an approach in many countries. How to deal with the many (financial) limitations of the reparations programme and how to avoid unrealistic expectations of victims? In addition, will the work of the VWU and the VPRS, both seeking to identify victims, not create the risk of a double exposure for victims? The lack of access to information about procedures for victims to apply for reparations is another concern. The need for extensive and coordinated outreach activities was therefore stressed.

Experiences from NGOs operating in the DRC confirmed that, within the framework of the current procedures, it could be very difficult for child victims, and child ex-combatants in particular, to participate in the proceedings of the ICC or to apply for reparations. Not only are the forms complicated and not child-friendly, but children associated with the fighting

forces risk exclusion. They may be regarded as perpetrators by their communities and might therefore be unable to obtain assistance in submitting an application. How can these children be legally represented? Will they benefit from the same representation as their – often still hostile – communities? The question arises whether and how DDR programmes could help these children to participate. And what would be the most appropriate form of reparation for children who were associated with the fighting forces? How would the fact of granting reparations affect the image of the ICC in the eyes of the victimised population?

Involvement of children in Truth and Reconciliation Commissions

Presenters/panellists: Jovito Rego de Jesus Araujo, CAVR; Saudamini Siegrist, UNICEF IRC; Keith Wright, UNICEF Liberia (formerly Sierra Leone), Christine Bakker, European University Institute.

Lessons learned from the involvement of children in Truth and Reconciliation Commissions (TRCs) in Timor Leste, Sierra Leone, Guatemala and Peru showed a range of different forms and levels of participation of children in these non-judicial transitional mechanisms. The impact of the work of TRCs on children, the challenges related to children's involvement and issues around implementation of TRC recommendations were discussed.

The Commission for Reception, Truth and Reconciliation (CAVR) was the one of four transitional justice mechanisms established in East Timor to actively involve children in its work. Children – one from each district – were invited to speak in public hearings about the abuses suffered during the conflict and to directly address their accused perpetrators. The official CAVR report was pending release and so it was deemed too early to evaluate the impact of the Commission's work on the life of the children in Timor Leste – referred to by the Commission as 'a lost generation' – but many questions concerning follow-up were raised. How might efforts to 'come to terms with the past' be continued in the future? How can the dramatic problem of the missing or disappeared children be solved? How can the Commission's recommendations contribute to the establishment of a culture that enhances child protection and ensures the right to education, bringing hope to the future of the children in Timor Leste?

In Sierra Leone, the participation of children in the truth and reconciliation process was anticipated from the beginning of the Commission's work. The TRC Act, upon which the work of the Commission was based, called explicitly for special procedures to address the needs of particular victims, including children. The challenge was to develop child-friendly procedures to protect the rights of children participating. A number of steps were taken, such as special hearings and closed sessions for children, taking statements from children in a safe environment, protecting the identity of child witnesses, and training staff in psychosocial support for children. UNICEF, the CPAs and UNAMSIL worked alongside the TRC to assist in the development and implementation of child-friendly measures, in particular through the establishment of a Framework for Cooperation between the Truth and Reconciliation Commission and the CPAs. The Framework Agreement improved collaboration on the ground, despite initial concerns over safety and loss of neutrality among the CPAs. Children were further involved in the Truth and Reconciliation process through the preparation of a child-friendly version of the final TRC report, in close collaboration with national children's networks. Although the role of children was to a large extent pre-determined, children were able to play an effective and even essential role in the process.

A comparison between the Guatemalan TRC and the Peruvian TRC showed two different approaches to child participation in truth and reconciliation processes. While there was no

direct involvement of children in the Guatemalan Truth Commission (CEH), children's interests and rights were promoted by local NGOs during the consultation process. Young people were actively involved in the Peruvian TRC (CVR), including through a volunteer programme set up to support the work of the TRC and engage the local population through cultural, educational and communication activities. The majority of volunteers were young people who were children at the time the atrocities occurred, and they were thus able to contribute to the collection of information and evidence. While the overall evaluation of the programme was positive, there was a general feeling that few, if any, opportunities existed for children or young people to provide suggestions that would directly influence the process, again illustrating the need for a full and genuine participation of children from the outset.

It was also noted that, within a broader structural framework, the experiences of the two TRCs were quite different. The most critical difference was the degree of government commitment in taking on the task of promoting national reconciliation. In the case of Peru, the commitment was strong and the report of the CVR has become a guide for government policies. In Guatemala, on the other hand, the recommendations made by CEH have not been integrated into government policies. One factor explaining these differences are the political environments in which the Commissions were created. These differences are also reflected in the implementation of the recommendations which specifically concern children. Both Commissions formulated proposals for the development of a peace component to be integrated into the national education curriculum. Whereas in Peru, the government commitment to the TRC process is visible within the field of education, in Guatemala no action has been taken to implement the child-related recommendations of the CEH.

During the discussion participants identified the implementation of recommendations, and the lack thereof, generally as a weak point; limiting the impact of the work of TRCs on the lives and future of children. Different explanations were put forward for the failure to pursue implementation of official recommendations. Participants pointed out that often the mandate of a TRC is too broad and its objectives too vague or unachievable. Lack of resources to implement recommendations is a common problem in post-conflict situations. Lack of political will by governments to prioritize recommendations is another factor that can limit the final impact of TRCs. This tendency may become worse in cases where a government is perceived to be more closely aligned with perpetrators than with the victims.

It was generally recognised that civil society has an important role to play in lobbying for the implementation of recommendations and that children need to be engaged in the process, taking into account their evolving capacities, so that they can have ownership over the implementation. In most instances the genuine participation of children is missing, opening the door for unfulfilled expectations. Children also need a support system and framework in which they can develop their participation. At the same time, the burden of reconciliation and peace-building should never be put on their shoulders. Rather they should be guided and supported in meaningful engagement with TRC activities. Facilitating children's involvement in the work of truth commissions is crucial, since young people in post-conflict situations are a key to reconciliation and contribute to future stability.

National Juvenile Justice Systems in Post-Conflict Situations

Presenters/panellists: Daniel O'Donnell, UNICEF IRC, Trish Hiddleston, UNICEF MENA, Bo Viktor Nylund, UNICEF Sri Lanka, Constance Morrill, Independent Researcher.

Experiences from four conflict and post-conflict situations in the DRC, Rwanda, Sri Lanka and the Philippines illustrated a number of the specific issues arising around juvenile justice in a conflict or transition phase.

During and after conflicts, the national justice systems are very often weakened or incapacitated, making a fair administration of justice difficult to accomplish. As with the case in the DRC, Justice Officers are often un- or under-paid, being one of the obstacles impeding the restoration or reform of the justice system. Independence and impartiality of the judiciary and the larger rehabilitation system is often in question in conflict and post-conflict situations. The judicial infrastructure may be debilitated or destroyed and structures dismantled. Such a breakdown of the judicial system has major repercussions on the juvenile justice system, in particular the accountability of children who are alleged to have committed crimes under international law.

Examples illustrated that in post-conflict situations, basic standards of Juvenile Justice are often lacking. Many problems arise for instance with regard to detention. The possibility of developing diversion mechanisms and alternatives to detention can be particularly difficult in these situations. A lack of attention to alternatives for incarceration at the onset of post-conflict transition can result in long-term use of detention, as in the case of Rwanda. In addition, children may not be separated from adults and age determination is a problem. Experiences in DRC, Rwanda and Sri Lanka show that handling children directly involved in the conflict together with children who are in conflict with the law for other reasons can create a range of difficulties. Children involved in armed conflict are primarily victims and not likely to commit crimes in non-coercive situations. This reality should be fully reflected in any response meant to address their accountability. The question also arises as to whether national courts are the best place to address their potential accountability during a phase of transition.

There was agreement that any national accountability mechanism mandated to address juvenile justice in a post-conflict situation must maintain international child rights standards. There should be a focus on restorative justice approaches, including within traditional justice mechanisms. Traditional mechanisms can provide an opportunity for alternative justice but also involve a risk that basic human rights standards may not be respected. This potential both for benefit and for risk was illustrated by the example of the *Gacaca* Courts in Rwanda. While traditional justice mechanisms might be a useful alternative in achieving justice and reconciliation in post-conflict situations, they are not necessarily the most appropriate approach to provide accountability for crimes under international law.

It is crucial to consider the principle of diversion when dealing with child ex-combatants. In the Philippines, for example, children associated with the guerrilla movement are not accused of crimes if they surrender or are captured. Nor are they prosecuted for membership or participation in the ordinary activities of the guerrilla movement. The policy is to release them from detention as soon as alternative arrangements can be made, to reunite them with their families and their communities, and to promote their return to school at the earliest opportunity. This policy is a direct result of the implementation of an Act on the Special Protection of Children against abuse, exploitation and discrimination. The example of the diversion policy in the Philippines illustrates the need for a national approach based on international standards, both to ensure the protection of children and to promote the reform of national justice systems in the context of a low-level conflict.

Lessons learned from programme experience show that in situations where there is not yet space for or willingness to engage in transitional justice, such as in Sri Lanka, monitoring and

reporting projects could be another first step towards accountability. At the same time, a comprehensive focus on juvenile justice can be initiated at the programme level, e.g. through innovative strategies involving social workers, police and lawyers.

In spite of challenges and risks, the national judiciary should be the first resort for judicial proceedings. This makes empowering and rebuilding the national judicial systems the highest legal priority in a post-conflict environment.

On the involvement of children in the ICC and international tribunals

We, the participants of Working Session I on the Involvement of Children in the ICC and other international judicial transitional justice mechanisms, agree on the following overarching principles to be considered:

Children require special measures to allow their involvement with international judicial transitional justice mechanisms, including the International Criminal Court, due to the fact that they belong to a particularly vulnerable group and the best interests of the individual child should always prevail;

There is a general desire to cooperate while also recognising that the modalities of such cooperation will depend on the context of a specific country or situation;

The basis of cooperation between international judicial transitional justice mechanisms and child protection agencies is a common goal to address impunity and facilitate access of victims to justice, as an important part of restoration of the rule of law and protection of the best interests of the child and, in this context, it is in the best interests of the child that there be peace and stability in the country.

We further address the following considerations and recommendations both to international judicial transitional justice mechanisms, including the ICC, and to child protection agencies (CPAs):

I GENERAL PRINCIPLES

Considerations:

- Ongoing training is important for all people working for and in the context of an international judicial transitional justice mechanism who are likely to be involved with children at any stage of their work, including investigators; lawyers, including prosecution and defence lawyers as well as legal representatives of victims; interpreters; the judiciary; and staff working in all relevant organs of the Court.
- Such training needs to be continuous, relevant to and flexible to adjust to different situations in which an international judicial transitional justice mechanism is working.
- Public information and education campaigns, in particular outreach, that is designed specifically to address the needs of children and such that it is readily accessible to children is an important tool in engaging children and promoting understanding of the mandate and operations of an international judicial transitional justice mechanism.
- CPAs can be an important source of information for international judicial transitional justice mechanisms in a variety of ways, by providing information on context, political processes, issues faced by children and, according to the situation in a particular country, confidential information used solely for the purpose of generating investigation leads. CPAs require safeguards that such information and collaboration will remain confidential.

To CPAs:

- Cooperate in devising suitable training for all staff of international judicial transitional justice mechanisms likely to come into contact with children, incorporating aspects such as culture, gender, child protection and structural issues.

- Cooperate in identifying suitable partners to conduct training on children for international judicial transitional justice mechanisms.
- Cooperate in the development of general procedures and policies related to children that can apply on a court-wide basis, as well as to specific organs for specific purposes.
- Confidentially assist judicial transitional justice mechanisms to identify credible partners in the country of operation, particularly CPAs, where appropriate and bearing in mind that such identification does not amount to a guarantee of reliability or suitability.
- Through existing or informal networks of CPAs in countries where judicial transitional justice mechanisms are operating, facilitate discussions on the principles and purposes of judicial transitional justice mechanisms, including the considerations and recommendations contained in this document.

To international judicial transitional justice mechanisms:

- Ensure appropriate and regular training of all staff likely to come into contact with children to ensure a child-friendly and child-sensitive environment.
- Recognising that international judicial transitional justice mechanisms are solely responsible for their own internal management, incorporate avenues for follow-up into the training, including procedures for managing the implementation of the guidelines.
- Consider incorporation of general policies and principles in relation to children into the mechanism's general strategy, including court-wide implementation and outreach and communications targeting children and CPAs, which are important channels for reaching children.

II CHILDREN AS WITNESSES

Considerations:

- The best interests of the child should be the determining factor in deciding whether to call children as witnesses; as such, cases should be built without child witnesses, wherever possible.
- In determining whether children should be called as witnesses, thought should be given to subsequent steps in the process, including how children would be reintegrated following a trial.
- At every step, priority should be given to minimising the risk of exposure, child protection and the best interests of the child.
- Informed consent is critical for the involvement of children as witnesses. As such, all possible steps should be taken to ensure the provision of accurate information to children and their parents or guardians on what is involved and what the international judicial transitional justice mechanism can and cannot provide, including in particular through appropriate outreach and public information programmes.
- When considering whether to provide specific cooperation with international judicial transitional justice mechanisms, CPAs should distinguish between situations that have a serious impact on their ability to fulfil their mandate and those that do not. Such cooperation will depend on the context that may change over a time period.

To CPAs:

- Provide information related to children or children's issues that do not have a serious impact on their ability to fulfil their mandate where the context permits—bearing in mind that the context may change over time—such as:
 - A broader assessment of the security situation of children;
 - Assistance in the identification of potential witnesses;
 - Suggestions for relocation of child witnesses; and

- The cultural context of the situation and the location of child witnesses who have already indicated a willingness to be interviewed.
- Assist in developing procedures for protecting child witnesses that are in the best interests of the child, including meeting with the judiciary to ensure appropriate understanding of when such measures may be necessary and why.

To international judicial transitional justice mechanisms:

- The best interests of the child should be the determining factor in deciding whether to call children as witnesses; as such, cases should be built without child witnesses, wherever possible. All efforts should be taken to minimise exposure at all phases of the process.
- Ensure that there is clear and informed consent from the child or their parent or guardian prior to involving the child in any step of the international judicial transitional justice mechanism.
- Devise and implement procedures for protecting child witnesses that are in the best interests of the child, including protecting their identity at all phases of the process and appropriate procedures for follow-up during the post-trial phase.
- Limit the overall exposure of the child in collaboration with international judicial transitional justice mechanisms during all phases: pre-trial, trial and post trial.
- Where a CPA or other agency has assisted in the location of a child witness, ensure the child is returned to that CPA or agency following trial to facilitate reintegration of the child and to assist with post-trial follow-up.
- During the trial phase, every measure to protect the child and their identity and to ensure a child-friendly environment should be used.

III CHILDREN AS VICTIMS

Considerations:

- CPAs recognise that an international judicial transitional justice mechanism such as the ICC views children as victims and in that respect can provide an important opportunity for children to have their voices heard.
- There needs to be a clear understanding and division between children as witnesses and children as victims, to enable a clear message to be given to communities and to manage expectations that could arise in relation to what international judicial transitional justice mechanisms can and cannot do, particularly in the area of reparations.
- Recognising the desirability of providing justice for victims and recognising the role reparations can play in this respect, there is a need to prevent raising unrealistic expectations that can have a negative impact on the process, on the community and on individual children.

To CPAs:

- Collaborate with international judicial transitional justice mechanisms in the development of clear messages for children and their families in the area of victims' participation and reparations and provide advice on strategies for dissemination of those messages, bearing in mind that the messages and strategies remain the responsibility of international judicial transitional justice mechanisms.
- Consider working with judicial transitional justice mechanisms on outreach specifically aimed at children, where the context permits, bearing in mind that the context may change over time.
- Assist in assessing needs in the community, including through facilitating contact between all relevant actors, in particular local actors, to help ensure that any reparations that may

be under consideration feed into and do not underline existing efforts of reconstruction and rehabilitation.

To international judicial transitional justice mechanisms:

- Develop clear messages and communications strategies that include a clear distinction between children as witnesses and children as victims, the role of victims in the judicial process and precise information about what can and cannot be done through any reparations process.
- Cooperate with CPAs to ensure the messages can be understood in the context and are child-friendly.
- Develop a clear policy that individual reparations will not be awarded, given the potential for disharmony, but that reparations will be given on a community basis, where possible.
- Coordinate with CPAs on how to set up processes to assess needs and appropriate approaches to reparations and participation at the country level.
- Appropriate measures for the protection of child victims should be established and implemented.

On the involvement of children in Truth and Reconciliation Commissions

Experience with past truth and reconciliation commissions (TRCs) has shown that the involvement of children is vital but that certain measures need to be put in place in order to ensure their protection. The following points are directed to both truth commissions and child protection agencies in order to facilitate the involvement of children and foster constructive collaboration among the relevant actors.

I. CRITERIA FOR ENGAGEMENT

- An assessment must be carried out early on in a TRC process to evaluate whether or not child protection agencies should engage with the process. This must be informed by a human rights based approach. In particular, the consultation process prior to the establishment of the TRC, the selection process, including the transparency of the process and experience of the proposed commissioners, are key criteria for the legitimacy of TRCs. A TRC should have a broad public basis of support from the very outset, rather than be based solely on a top-down approach. At least one commissioner should have expertise on children's issues.
- Child Protection Agencies need to think proactively even prior to peace processes in order to influence and shape the establishment of the truth commission. CPAs should also proactively aim to influence the mandate of a TRC during the process of its establishment. For example, CPAs should consider the types of violations that a TRC would consider and how children are affected by them.
- If certain criteria are not met, the likelihood that final recommendations will be implemented is jeopardized.
- A lessons learned study should be conducted on the role of children in past truth commissions for dissemination to child protection agencies. The study should also include best practices on the role that CPAs can play vis-à-vis TRCs, including in supporting the statement taking process and facilitating other ways for children to engage with the process, in making submissions and in related follow-up work once the TRC finalises its report, including ways of making the TRC report relevant to children.

II. PROCESS

Relationship-building:

- TRCs need to be proactive in establishing a relationship with child protection agencies and potentially formalizing it in a framework agreement as well as in the TRC's Statute. Consultations should be held on children's issues from the beginning and realistic expectations spelled out on both sides.
- Where possible, the engagement of child protection networks should be encouraged although their role in a TRC process will depend on the views and capacity of individual members.

Role of child protection agencies:

- A tension exists between the protection of children and their participation in TRCs.
- The role of child protection agencies as an intermediary between a TRC and children should be developed on a country by country basis. This may include involvement in sensitisation, statement-taking, making submissions, medical and psycho-social support, reintegration and follow-up work after the TRC process ends.
- If a TRC requests CPAs to make a submission, it needs to provide sufficient guidance as to the focus for the submission to ensure that the appropriate information is provided.
- TRCs should develop guidelines on statement-taking, including on how to ensure that it is conducted in a child-friendly and protective manner. Such guidelines could even be appended to a TRC's Statute.
- Whether a TRC approaches CPAs directly or through an intermediary (e.g. UNICEF), participation in a TRC process and its follow-up will depend on the particular circumstances of the country and the TRC. If a direct approach is adopted, the TRC should evaluate the nature and capacities of the CPAs in question.
- Where there is a UN peacekeeping mission with a child protection section, consideration should be given to the role of child protection advisers and UNICEF as intermediaries between child protection agencies and a TRC.

Uncovering crimes against children:

- TRCs should always explore the patterns of violations against children and the system failures that allow such violations to happen.
- TRCs should consider whether and how identification of perpetrators and naming of names will contribute to accountability.
- Under no circumstances should a person be identified publicly for a crime committed while they were under the age of 18.

Support mechanisms/training:

- Training should be conducted with the commissioners and TRC staff, particularly statement takers, on child protection aspects.
- Child protection agencies should be sensitized on the TRC process early on, including how they may contribute to it, for example, by sensitizing children and their families to the process, how children may participate and the safeguards in place to protect children during the process.
- TRCs should have a (child) psychologist on staff.
- TRCs need to include child-specific messaging in their outreach programmes.

Children's participation:

- Children of all ages should have the opportunity to engage in the TRC process through various forms of expression, e.g. songs, drawings, statements.

- The evolving capacities of children should be the basis for children's participation and not necessarily their age.
- If thematic hearings are organized, a children's hearing should be proposed, with child participation throughout, including in its design.
- In principle, children should not participate in public hearings; however, if they do, it should be done in a very controlled environment that protects the identity of the child.
- Children should also be engaged in the planning of other phases of the TRC process, including in developing the final recommendations.
- It will be important to foster children's capacities to contribute to a TRC process and potentially submit their views formally. This may require local capacity-building to establish structures through which children can contribute. Alternatively, one could build on existing structures, such as in schools or municipal councils. For example, in Peru university students were actively engaged in voluntary sensitisation campaigns and statement taking.
- Information provided by children should be confined to the TRC process and should not be shared with other transitional justice processes.

Reintegration programmes:

- TRC efforts on reintegration need to be discussed and harmonized with existing processes for reintegration of children by child protection agencies (e.g. programmes for reintegrating children formerly associated with an armed force or group).

Reparations:

- Truth commissioners need to distinguish between needs based assistance and reparations, which are linked to the actual harm suffered.
- Needs based assistance should be recommended in certain circumstances (in addition to reparations).
- Consideration may be given to recommending community-based reparations as an alternative to individual reparations.
- TRCs should not request governments to provide basic social services under the rubric of reparations, in particular for children (i.e. schooling, basic health care).
- The establishment of reparations programmes should be guided by an examination of specific vulnerable groups (e.g. child victims of rape, orphans, amputees, children associated with armed forces or groups, children born out of rape) but avoiding stigmatisation.

Follow-up on recommendations contained in a TRC's report:

- Recommendations need to be as specific as possible in identifying actions to be followed up on, actors to implement them and the timeframe for implementation (i.e. short-term vs. long-term/ aspirational)
- TRCs should recommend the incorporation of aspects of its report (e.g. the history of the conflict) and peace education materials in school curricula. These could also be included in child protection programming on education.
- A TRC report and its final recommendations can be an important advocacy tool for CPAs, and CPAs should strategically promote their implementation.
- Child protection agencies should seek the development of effective follow-up mechanisms for the TRC process, particularly the implementation of child-specific recommendations.
- Where a State has received recommendations from a TRC and is being reviewed by the Committee on the Rights of the Child, UNICEF has a role to play in ensuring that the Committee monitors the implementation of child-specific recommendations.

III. INTER-RELATIONSHIP WITH OTHER STRUCTURES

- TRCs should be mindful of the impact that their work (e.g. statement-taking) may have on other processes (e.g. criminal prosecutions).
- Where prosecutorial and TRC structures co-exist, a framework of cooperation should be developed at the outset to ensure greater clarity and complementarity in their working methodologies and outreach programmes.
- Thought should be given to establishing a ‘firewall’ between legal and TRC processes, in particular, to prevent the sharing of information and the transfer of staff between mechanisms (e.g. interpreters, investigators) as this may expose children to unnecessary risks.
- Where possible, TRC findings should be linked to vetting processes.

On the involvement of children in national juvenile justice mechanisms

What are the specific issues for juvenile justice arising in a post-conflict situation? What have we learned from previous experience in this area?

RECOMMENDATIONS:

For Governments

- Avoid lowering the maximum age of criminal responsibility in the aftermath of conflict.
- Juvenile Justice provisions/courts existing prior to conflict should not be suspended in the post-conflict environment – even in the interests of judicial efficiency (processing large numbers of accused).
- Implementation of alternatives to detention should be a high priority.
- Group trials for alleged perpetrators should be avoided but when used, juveniles should not be tried in groups with adults and juvenile justice norms should continue to be observed.
- Recognise that juvenile justice and justice for child victims are an integral part of rule of law and should be fully addressed from the outset of efforts to re-establish rule of law.
- Prevention of terrorism acts and other forms of administrative detention should exclude children. At a minimum, they should ensure that all norms of juvenile justice will apply to children detained under these provisions.

For international community/partners:

- Support the maintenance of pre-conflict juvenile justice norms, provisions, systems and early (re) establishment of alternatives to detention in the aftermath of conflict

What kinds of accountability mechanisms are appropriate for child perpetrators in conflict contexts? Who should handle accountability? Is prosecution before national courts ever acceptable? Is loss of civil liberties ever acceptable?

RECOMMENDATIONS:

Mechanisms for accountability for child perpetrators should take into account the following criteria:

- Independence and impartiality of the mechanism recognized by the population this is vital for the purposes of reintegration.
- International standards of principles of Juvenile Justice are maintained.
- Easy access for all parties, both in geographic and legal terms, meeting accepted standards of effective access to justice.
 - i. Availability of information
 - ii. Physical location
 - iii. Known, trusted
 - iv. Operational
 - v. Use of appropriate language

National courts have rarely proved to be an effective venue.³ However, if they could meet the above criteria, they may be appropriate in some situations.

Children involved in armed conflict who are alleged perpetrators are not the same as children committing crimes in a non-coercive situation⁴. Children in situations of armed conflict are victims as well as perpetrators and this reality should be fully reflected in all responses intended to address their accountability. Some of the ways in which this might be done are:

- Using restorative justice approaches, including traditional approaches, ensuring they maintain Human Rights and Juvenile Justice standards.
- Emphasizing diversion.
- Avoiding detention in all cases where children are not considered a risk to others.
- Children who are a risk to themselves should be protected by the social welfare system.
- The focus of any sanction should be children's reintegration into their community; as such it is in principle best dealt with as close as possible to the child's community of origin.

What are the specific ways in which children (as opposed to adults) are affected as victims in conflict/post-conflict situations which may be handled by national courts? What are some of the specific issues which arise in addressing these via the national courts?

Violations where children are the main victims or disproportionately affected:

- Women & girls disproportionately affected by violence/sexual violence in conflict situations
- Child recruitment & re-recruitment (by govt forces)
- Loss of educational opportunities / compensation
- Forced separation and false adoption
- Kidnapping and disappearances
- Hostage taking (specific development in Sri Lanka)
- Trafficking
- Forced labour
- Arbitrary detention and torture, which are not limited to children, but have an even more adverse effect on children.

³ In Colombia they have sometimes proven to be effective, but only because judges have been willing to risk (and indeed have lost) their lives in the cause of justice.

⁴ It is recognized that children not involved in conflict may also be coerced (trafficking victims, children who are instrumentally used by adults, etc).

RECOMMENDATIONS:

Policies and positions which could be promoted from an advocacy perspective:

- Cases involving child rights violations are sometimes heard through national human rights commissions, but these are often ineffective. With proper support, national commissions could be appropriate and effective in seeking justice.
- Group claims/class action could be appropriate for some types of violations.
- Ombudspersons could also be appropriate mechanism.

These actions can help establish legal processes which lead to more comprehensive changes, such as policy, attitudes in the population, and awareness of the impact of conflict.

Given the limited role of international accountability mechanisms (IAMs) in dealing with children's issues, what would be an appropriate role for national Juvenile Justice Systems? Can/should IAMs have a role in restoring the national justice systems? Which actors within the international community should play a role?

- All other things being equal, national judiciary should be the court of first resort for all issues (as opposed to IAMs). This makes empowering/reactivating national judicial systems the highest judicial priority in a post conflict environment
- Possible links between national and international justice mechanisms:
 1. International courts can help build capacity of those responsible for dispensing justice by training, sharing of guidelines.
 2. International courts can share information related to evidence that has been collected during their investigations to enable prosecution of lower level offenders.
 3. IAMs should help national jurisdictions to revise legislation based on international norms used by IAMs.
- International and regional human rights bodies (including treaty bodies) should be fully utilized to secure the implementation of juvenile justice and justice for child victims at the national level:
 1. Further integrate children's issues into the work of human rights bodies, additional to the CRC.
 2. Challenge elements of national legislation not in line with international standards.
 3. Formulate recommendations on practice relevant to juvenile justice/justice for children.
 4. Secure follow-up on the implementation of recommendations directed at states.
 5. NGOs & ombudspersons/national Human Rights commissions to facilitate individual complaints brought by children.
 6. UNICEF and OHCHR to inform about the possibility of individual complaints.

How to avoid discrepancy between resources, law and practice with regard to children between these two systems?

- Donors/UN/International Financial Institutions should:
 - i. Undertake a comprehensive appraisal of reconstruction needs,⁵ taking into account the fundamental importance of rule of law, including functioning independent and impartial justice systems.
 - ii. Recognise the early need to strengthen social protection, including services for the protection of children.
 - iii. Prioritise resources for reestablishment of rule of law as described above, ensuring juvenile justice standards and access to justice for children are inbuilt from the outset.
 - iv. UN Country Teams, including peacekeeping missions, can play a catalytic role by early investment in re-establishing rule of law.
 - v. All efforts towards re-establishing rule of law and the justice system should include a focus on children.

⁵ We understand reconstruction to include all efforts to re-establish normal functioning of State institutions, including rebuilding infrastructure, training, supplies, and technical support, etc.

Agenda

Expert Discussion on Transitional Justice and Children 10-12 November 2005, UNICEF Innocenti Research Centre

Agenda

Thursday, 10 November 2005

9.00 – 9.30	Registration of participants
9.30 – 10.00	Opening Session Welcome and introduction: objectives and expected outcome <i>Marta Santos Pais</i>
10.00 – 11.00	Panel One: Transitional Justice and children: Trends and Developments <ul style="list-style-type: none"> • Crimes against children – current trends and developments <i>Alison Smith, NPWJ</i> • Implications of children’s involvement in transitional justice processes <i>Marieke Wierda, ICTJ</i> • Discussion
11.00 – 11.20	Break
11.20 – 13.00	Panel Two: Experiences from the Special Court for Sierra Leone (SCSL) <ul style="list-style-type: none"> • Prosecuting child related crimes at the Special Court for Sierra Leone: a midterm assessment <i>Luc Côté, SCSL</i> • Protecting and supporting children as witnesses before the Special Court for Sierra Leone: lessons learned <i>An Michels, formerly SCSL</i> • Role of Child Protection Agencies in supporting children’s involvement in transitional justice mechanisms, in particular, the SCSL <i>Keith Wright, UNICEF Liberia</i> • Discussion
13.00 – 14.30	Lunch
14.30 – 16.00	Panel Three: Involvement of children in Truth and Reconciliation Commissions <ul style="list-style-type: none"> • Role of Child Protection Agencies in supporting children’s involvement in transitional justice mechanisms, in particular, the TRC for Sierra Leone <i>Keith Wright, UNICEF Liberia</i> • Children’s participation in the Truth and Reconciliation Commission for Sierra Leone <i>Saudamini Siegrist, UNICEF IRC</i> • Children’s involvement in the Commission for Reception, Truth and Reconciliation in East Timor (CAVR) <i>Jovito Rego de Jesus Araujo, Deputy Chairperson CAVR</i> • Truth and Reconciliation Commissions in Guatemala and Peru: the children’s perspective <i>Christine Bakker, European University Institute</i> • Discussion
16.00 – 16.30	Break
16.30 – 17.30	Discussion continued; conclusion of the first day

Friday, 11 November 2005	
9.00 – 10.30	<p>Panel Four: Involvement of children in the International Criminal Court (ICC)</p> <ul style="list-style-type: none"> • Recommended strategies for children’s involvement in the International Criminal Court Office of the Prosecutor <i>Gloria Atiba-Davies, OTP, ICC</i> <i>Vedrana Mladina-Damjanovic</i> • The Victims and Witnesses Unit <i>Simo Väättäinen, VWU, ICC</i> • Victims Participation and Reparations Section <i>Didier Preira, Division of Victims and Counsel</i> • Children’s rights as victims and witnesses in the proceedings of the ICC <i>Clémentine Olivier, REDRESS</i> • Discussion
10.30 – 11.00	Break
11.00 – 12.30	<p>Panel Five: National Juvenile Justice Systems in Post-Conflict Situations</p> <ul style="list-style-type: none"> • Juvenile Justice in conflict situations, with a focus on the Philippines <i>Daniel O’Donnell, UNICEF IRC</i> • Involvement of children in the <i>Gacaca</i> trials in Rwanda <i>Constance Morrill, Independent researcher</i> • Reform of juvenile justice in DRC <i>Trish Hiddleston, UNICEF MENA</i> • Juvenile Justice in LTTE controlled areas <i>Bo Viktor Nylund, UNICEF Sri Lanka</i> • Discussion
12.30 – 14.00	Lunch
14.00 – 16.00	<p>Working Groups</p> <ol style="list-style-type: none"> 1. Involvement of children in the ICC and international tribunals: recommendations for tribunals and child protection agencies 2. Involvement of children in truth commissions: recommendations for truth commissions and child protection agencies 3. Involvement of children in national juvenile justice mechanisms: recommendations
16.00 – 16.30	Break
16.30 – 17.30	Continuation of Working Groups

Saturday, 12 November 2005	
9.00 – 9.30	Short update and exchange on preliminary findings in Working Groups
9.30 – 10.45	Continuation of Working Groups: formulation of recommendations and conclusions
10.45 – 11.00	Break
11.00 – 12:30	Plenary: presentations of recommendations and conclusions Conclusion of Expert Discussion

List of Participants

Transitional Justice and Children, Expert Discussion

UNICEF Innocenti Research Centre, Florence

10-12 November 2005

LIST OF PARTICIPANTS

Jovito Rego de Jesus Araujo
Deputy Chairman
Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste

Christine Bakker
Independent Researcher
European University Institute

Sylvie Becky
Deputy Chief
International Criminal Tribunal for Rwanda (ICTR)

Nigel Cantwell
UNICEF Consultant, Child Protection

Luc Côté
Chief of Prosecutions
Special Court for Sierra Leone (SCSL)

Nicola Dahrendorf
Director, Office for Sexual Exploitation
United Nations Mission in the Democratic Republic of Congo (MONUC)

Gloria Atiba Davies
Head, Gender and Children Unit
Office of the Prosecutor
International Criminal Court (ICC)

Hazel de Wet
Office of Emergency Programmes
UNICEF New York

Caroline Ford
Africa Division
Amnesty International

Anne Giudice
United Nations Office on Drugs and Crime
Vienna International Centre

Trish Hiddleston
Chief, Child Protection
UNICEF Democratic Republic of Congo

Pernille Ironside
Child Protection Advisor
United Nations Mission in the Democratic Republic of Congo (MONUC)

Afshan Khan
Deputy, Office of Emergency Programmes
UNICEF New York

Judge Akua Kuenyehia
First Vice-President
International Criminal Court (ICC)

Katie Liao
Office of Emergency Programmes
UNICEF New York

Andrew Mawson
Chief, Child Protection
UNICEF Uganda

An Michels
UNICEF Consultant
previously, Special Court for Sierra Leone (SCSL)

Vedrana Mladina-Damjanovic
Associate Victims Expert
International Criminal Court (ICC)

Constance Morrill
Independent Researcher
New York

Bo Viktor Nylund
Chief, Child Protection
UNICEF Sri Lanka

Daniel O'Donnell
UNICEF Consultant

Clémentine Olivier
Outreach and Advocacy Officer
REDRESS, Seeking Reparation for Torture Survivors

Valerie Oosterveld
School of Law
University of Western Ontario

Didier Preira
Head, Division of Victims and Counsel
International Criminal Court (ICC)

Marta Santos Pais
Director
UNICEF Innocenti Research Centre (IRC)

Alison Smith
Senior Legal Adviser
No Peace Without Justice (NPWJ)

Eric Sottas
Director
World Organization Against Torture (OMCT)

Saudamini Siegrist
Child Protection Officer
UNICEF Innocenti Research Centre (IRC)

Bert Theuermann
Director for Human Rights
Ministry of Foreign Affairs
Government of Austria

Simo Väätäinen
Chief Victims and Witnesses Unit
International Criminal Court (ICC)

Andras Vamos-Goldman
Legal and Political Adviser
New York

Marieke Wierda
Senior Associate
International Center for Transitional Justice (ICTJ)

Keith Wright
Senior Programme Officer
UNICEF Liberia

Alexandra Yuster
Senior Adviser, Child Protection
UNICEF New York