



Physicians for
Human Rights



Submission from Physicians for Human Rights and the Cardozo Law Institute in Holocaust and Human Rights following the call for comments by the Prosecutor for the International Criminal Court regarding the 2016 Office of the Prosecutor’s Policy on Children

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Physicians for Human Rights (PHR)¹ and the Cardozo Law Institute in Holocaust and Human Rights (CLIHHR)² are pleased to provide this submission in response to the International Criminal Court (ICC) Office of the Prosecutor’s (OTP) call for suggested changes to build upon, and renew, the 2016 OTP Policy on Children. As organizations committed to addressing sexual and gender based crimes (SGBC) faced by children, PHR and CLIHHR offer this submission to suggest how the Policy on Children can be further developed to articulate key principles in addressing crimes occurring at the intersection of age and gender, and to incorporate practical tools, international standards, and reference materials to implement these principles in practice at all stages of accountability, including in investigations and victim and witness support.

Building on the explicit jurisdiction granted for child-specific crimes in the Rome Statute of the ICC, the Policy on Children was a groundbreaking step forward in articulating the commitment of the OTP to prioritize redress for crimes against children and address barriers to achievement of this vision. In addition, two other policies—the 2014 Policy Paper on Sexual and Gender-based Crimes (SGBC) and the 2022 Policy on the Crime of Gender Persecution—establish the commitment of the OTP to adopt a gender-competent perspective and to prioritize accountability for SGBC.

The revision of the Policy on Children, which is occurring alongside the review of the 2014 Policy Paper on SGBC, is a critical opportunity to further promote commitment and action to address the gender and age dimensions of SGBC against and affecting children. These parallel processes create the opportunity for robust articulation of the intersectional barriers that arise to accountability for SGBC faced by children and allow for reference to practical tools, convenings of global experts, and good practices that have been developed at the national and international levels—particularly in the years since the 2016 policy was published—to address these specific challenges.

As this submission will highlight, child victims and survivors of SGBC face unique challenges to participation in justice processes despite recognition in international human rights law of the rights of all survivors of gender-based violence, including children, to be heard and to have access to justice.³ Ensuring child survivors of SGBCs can meaningfully access and participate in justice

¹ PHR is an international advocacy organization with offices in New York, Nairobi, and Washington D.C. that uses science and medicine to prevent mass atrocities and severe human rights violations. PHR has worked since 2011 to increase capacity to forensically document and prosecute sexual violence cases by forging coalitions among medical, law enforcement, and legal experts to end conflict-related sexual violence in Central and East Africa, the Middle East, Southeast Asia, and Europe. Our work has helped achieve landmark victories in the fight against impunity for sexual violence.

² Through innovative clinical law practice, groundbreaking scholarship, and close collaboration with local partners, CLIHHR works to protect human rights, prevent identity-based violence, and secure justice for survivors and communities in the wake of atrocity crimes.

³ The Committee on the Rights of the Child has held that the right to an effective remedy is an implicit requirement of the Convention. The Committee stated that “States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their

processes—particularly in a manner that promotes remedy and healing rather than revictimization and harm—requires knowledge and implementation of trauma-informed principles and practices that incorporate gender, age, and developmentally sensitive approaches. The adoption of policy guidance that reflects these trauma-informed and intersectional perspectives is critical to allow for charges to be shaped that reflect the full criminality of the accused and the gravity of crimes while ensuring that rehabilitation and redress measures respond to the distinct gendered crimes and harms that children experience.⁴ Such approaches further contribute to the Court’s ability to fulfil its obligations under Article 21(3) to apply the law (1) consistent with international human rights norms⁵ and (2) to all children equally and without discrimination.⁶

Drawing on CLIHHR’s and PHR’s experience working to promote accountability for SGBC crimes, this submission will highlight opportunities for the Policy on Children to promote nuanced understandings of how children, including those affected by SGBC, experience and are affected by trauma and to raise awareness about evidence-based and good practices to pursue accountability in a trauma-informed manner.

I. Principles for a Trauma-Informed Approach: The Policy on Children should recognize the overall impact of harm and its unique manifestation in children.

International crimes perpetrated against children, whether as members of the civilian population or as directly targeted victims of violence, require responses that recognize both the distinct harms that children experience resulting from perpetration and the ways that crimes against children distinctly impact families and communities.⁷ Further, effectively integrating children into response to international crimes also requires understanding that all international crimes perpetrated against civilian populations affect children as part of that population, but often in distinct and disproportionate ways from adults.

A trauma-informed approach is founded on the principles of safety, trust, transparency, peer-support, collaboration, and mutuality of all engaged actors, with a focus on the empowerment, elevation of the voice and choice of the survivor or victim.⁸ It is also based on a foundational recognition of the importance of cultural, historical and gender issues. In the context of legal accountability, all stakeholders (e.g., interviewers, investigators, prosecutors, judges, defense counsel, etc.) should expect the presence of trauma in all affected individuals; should be trained to avoid replicating or compounding trauma (re-traumatization); should understand that trauma may affect survivors and witnesses feelings, behaviors, ability to recall and engage meaningfully with the proceedings, as well as impact rehabilitation after legal proceedings end. A trauma-informed lens must be applied throughout the policy.⁹

representatives. These should include the provision of child-sensitive information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.” Convention on the Rights of the Child, General Comment No. 5, para. 24. See also Committee on the Elimination of Discrimination against Women, General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19, paras. 28, 29(b), UN Doc. CEDAW/C/GC/35 (2017).

⁴ Gloria Atiba-Davies and Leo C Nwoye, Children, Gender, and Intersectional Criminal Justice, *in* Rosenthal, Indira, Valerie Oosterveld, and Susana SáCouto (eds), *Gender and International Criminal Law* (Oxford, 2022).

⁵ Rome Statue Of The International Criminal Court, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (last visited May 23, 2023), Article 21(3).

⁶ Rome Statue, Art. 21(3).

⁷ Sexualized and other forms of violence can compel compliance within a civilian community or population to facilitate the capture of resources or territory. Such violence can drive communities from their homeland or paralyze or constrain communities to submit to military occupation or can act as a form of reprisal against individuals, families, and communities. Hence, patterns of violence against children offer a mechanism to control, terrorize, and punish the communities to which they belong. The use of sexualized violence against children, even when conceived as opportunistic, can destabilize and collectively terrorize communities. See, e.g., Human Security Report Project, Chapter 3: Children and Wartime Sexual Violence, in *Human Security Report 2012: Sexual Violence, Education, And War: Beyond The Mainstream Narrative* 60 (2012).

⁸ Christopher Menschner & Alexandra Maul, *Key Ingredients for Successful Trauma-Informed Care Implementation* (Center For Health Care Strategies) (2016); SAMHSA’s Trauma and Justice Strategic Initiative, Substance Abuse and Mental Health Services Administration (SAMHSA)’s Concept of Trauma And Guidance for a Trauma-Informed Approach (US Department Of Health And Human Services) (2014)

⁹ Essential Components Of Trauma-Informed Judicial Practice, https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf (last visited May 24, 2023)

- a. **A trauma-informed approach recognizes that children are a distinct and diverse group and may experience trauma in different ways due to their age, gender, and other statuses.**

- i. **Children experience violence, crimes, and mass atrocities in distinct ways from adults.**

A revised policy on children would benefit from emphasizing the need to account for the varied and distinct ways that children experience and respond to violence. Children experience violence in the context of international crimes, especially in and around armed conflict and protracted crisis situations, due to overlapping factors, including poverty, social disharmony, insecurity, increased vulnerability, weakened social and legal structures and deep-seated stereotypes and cultural attitudes toward sex, gender, and age.¹⁰ While not a monolith, children are exposed to sexualized violence in part because physically and mentally they are vulnerable.¹¹ Sexualized violence against children during armed conflict, crisis, or other situations of mass violence is exacerbated when children are displaced and living outside the home or in camps where roles and traditional power dynamics have changed, and where conditions are more conducive for violence to occur.¹² Violence, especially sexualized violence, against children of all genders often is used as an exercise of power and control to inflict pain and fear on individuals as well as to humiliate enemy groups.¹³ Moreover, perpetrators may manipulate children, including by using various guilt mechanisms and exploiting societal stereotypes.¹⁴

Additionally, in situations of violence and displacement, essential family and community support systems regularly are lacking or altogether absent, leaving children more vulnerable to violence in and around armed conflict or other forms of mass violence.¹⁵ Oftentimes, family and community protection mechanisms have collapsed.¹⁶ Parents and caregivers are victims themselves, killed, disappeared, detained or displaced, resulting in their inability to care for their children, or *inter alia* single-parent-headed households, child-headed households, children living on the street, and/or children orphaned.¹⁷ Even when families remain intact, parents or other caregivers may not be able to protect children.¹⁸ Thus, a policy reflecting a trauma-informed approach accounts for these varied experiences and unique circumstances in which children experience and respond to harm.

- ii. **Children experience trauma in diverse ways based on chronological age and developmental stages.**

Developmental and age-related vulnerability evolve throughout one's lifespan. Children as a group are resilient, but they are extremely vulnerable to sexual violence given their age, size, dependency on adults and their limited participation and exclusion in decision-making processes.¹⁹ Children have fewer life experiences; consequently, they can be more easily coerced, tricked, or exploited and may not even comprehend the sexual nature of certain

¹⁰ 2021 UNSG Annual Report on Children and Armed Conflict; War Child, *An Unwanted Truth, Focusing The G8: Shining A Spotlight On Sexual Violence Against Children In Conflict* 13 (2013).

¹¹ See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Keynote Statement at the Global Summit on Sexual Violence, London* (June 10, 2014), available at <https://childrenandarmedconflict.un.org/statement/10-june-keynote-statement-at-the-global-summit-on-sexual-violence-london/>.

¹² Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Keynote Statement at the Global Summit on Sexual Violence, London* (June 10, 2014), available at <https://childrenandarmedconflict.un.org/statement/10-june-keynote-statement-at-the-global-summit-on-sexual-violence-london/>; SAVE THE CHILDREN, at 10.

¹³ Joshua S. Goldstein, *War and Gender: How Gender Shapes The War System And Vice Versa* 356–60 (2001); Anjali Manivannan, *Seeking Justice for Male Victims of Violence in Armed Conflict*, 46 INT'L L. & POL. 635, 640 (2010).

¹⁴ Save the Children, *supra*, at 10. For instance, attitudes that girls are themselves to blame for rape or that they want to be raped are common, which in turn can fuel further sexual abuse. *Id.*

¹⁵ See Dyan Mazurana & Khristopher Carlson, *The Girl Child and Armed Conflict: Recognizing and Addressing Grave Violations of Girls' Human Rights* 3 (2006), <http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ExpertPapers/EP.12%20Mazurana.pdf>.

¹⁶ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Keynote Statement at the Global Summit on Sexual Violence, London* (June 10, 2014), available at <https://childrenandarmedconflict.un.org/statement/10-june-keynote-statement-at-the-global-summit-on-sexual-violence-london/>.

¹⁷ Mazurana & Carlson, at 3.

¹⁸ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Keynote Statement at the Global Summit on Sexual Violence, London* (June 10, 2014), available at <https://childrenandarmedconflict.un.org/statement/10-june-keynote-statement-at-the-global-summit-on-sexual-violence-london/>.

¹⁹ Inter-Agency Standing Committee Task Force on Gender in Humanitarian Assistance, *supra* note 183.

behaviors.²⁰ Child survivors of wartime sexualized violence are the clearest example of exacerbated harm based on age. While vulnerability to sexual violence exists due to the external power dynamics of dependence and protection experienced by children, there are other internal, intersectional factors contributing to vulnerability, including age and development. The intersectionality of specific age ranges, cognitive, developmental, and pubertal stages²¹ affects not only vulnerability to sexual violence, but also a child's reaction to—and understanding of—abuse, which can impact on reporting.

It is critical to recognize that children's trauma responses depend on developmental neurobiology that regulates appraisals of dangerous situations, emotional and physical reactions.²² Traumatic experiences impact neurobiological pathways differently depending in part on developmental stages at the time of trauma.²³ Having multiple traumatic experiences increases risk for memory impairments, and emotional or behavioral regulation issues. At the same time, children's continued development, maturation and neural plasticity also create positive opportunities for recovery and resilience.²⁴

Young children (ages 0–5) tend to show regressive behaviors in cases of sexual violence, such as loss of bladder control when previously trained, or reverting to thumb sucking.²⁵ Others cling to familiar adults, fear leaving familiar settings, or exhibit new fears, behaviors, sleep patterns, or aches and pains.²⁶ Young children (ages 6–9) may also exhibit regressive behaviors or may report unexplainable physical symptoms.²⁷ Their more advanced cognitive abilities and development, however, may result in emotional reactions that can include sadness, fear, anxiety, anger, shame, and guilt.²⁸ Child-victims at this age may withdraw from friends, lose concentration, and refuse to go to school, or may even behave aggressively.²⁹

Early adolescents (ages 10–14), while physically exhibiting more adult characteristics, are still closer emotionally and cognitively to children and remain dependent upon adults.³⁰ As early adolescents experience puberty, they become more aware of their sexuality and may experiment with or may be targeted for sexual activity.³¹ Late adolescents (ages 15–18) are still developing physically, but have not yet reached cognitive, behavioral, or emotional maturity.³² Peer groups become important and influential, thereby giving enhanced importance to stigma and shame related to sexual abuse.³³ Older adolescents may exhibit traumatic responses, such as flashbacks, nightmares, emotional numbing, avoidance behaviors, depression, suicidal ideation, delinquent behavior, or self-destructive behaviors, including drops in grades, abandonment of friends, or acts of self-harm.³⁴

²⁰ *Id.*; United Nations High Commission for Refugees (UNHCR), Sexual and Gender-based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response 69 (May 2003).

²¹ Boys and girls react differently to sexual abuse based on several factors, including their ages, developmental stages and cultural contexts. International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 31.

²² National Child Traumatic Stress Network, NCTSN Core Curriculum on Childhood Trauma – The 12 Core Concepts, at 4.

²³ National Child Traumatic Stress Network, NCTSN Core Curriculum on Childhood Trauma – The 12 Core Concepts, at 4.

²⁴ National Child Traumatic Stress Network, NCTSN Core Curriculum on Childhood Trauma – The 12 Core Concepts, at 4.

²⁵ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

²⁶ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

²⁷ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

²⁸ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

²⁹ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

³⁰ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

³¹ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 32.

³² International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 33.

³³ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 33.

³⁴ International Rescue Committee (IRC) & United Nations Children Fund (UNICEF), Caring for Child Survivors of Sexual Abuse (2012), [IRC-CSS-Guide-2012.pdf.pdf \(unicef.org\)](#), at 33.

Finally, sexual and reproductive health impacts, including pregnancy and childbirth at or just before menses, or sexually transmissible infections and physical injury at all ages, can occur, compounding trauma and harm.

While trauma can have acute and immediate manifestations on children's physical and mental health and coping behaviors, it can also have long-lasting effects. Violence, including sexual violence, abuse, and neglect can be elements of Adverse Childhood Experiences (ACEs): trauma exposures that occur during childhood, that have been linked to a multitude of long-term physiological, psychological, behavioral, cognitive, and educational effects.³⁵

The literature describing the long-term impact of ACEs on children's health, development, and behaviors is expanding. However, there is evidence that exposure to trauma in childhood (i.e., having a high ACEs score) is associated with poorer health outcomes for affected children, including the development of chronic disease later in life, psychological and mental health challenges, difficulty with social functioning, and even premature death.³⁶ Poor outcomes related to one's trauma exposure in childhood can also have intergenerational effects, for example through impact on parenting behaviors, and thus the well-being and development of the next generation.

The OTP's updated policy might consider tailored recommendations incorporating the varied trauma responses in children based on chronological age and developmental stage, including the interventions outlined in Part II of this submission. Furthermore, by actualizing children's participation in justice processes, the policy could contribute to reducing the long-term impact of trauma on children, as children's participation in these processes can promote agency, healing, hasten legal remedy and be important for transitional justice.

iii. Gender and age, as well as other group characteristics, can intersect to manifest in unique forms of trauma and discrimination.

Understanding and responding to direct and indirect violence against children requires intersectional and intergenerational lenses.³⁷ For some children with identities at the intersections of multiple forms of oppressions—i.e., children of minoritized groups, including girls, children of color and specific ethnic groups, and Indigenous children—the violence can be structural, institutionalized, and state-sponsored. For instance, sexualized violence against Dalit and lower caste girls as well as the perpetrator impunity for those harms must be recognized as age-based, gender-based, and caste-based violence.³⁸ Relatedly, the crisis of missing and murdered Indigenous girls, women, and two-spirit persons with impunity must be understood and addressed as involving multiple and intersecting forms of discrimination based on age, gender, race, and indigeneity.³⁹ Furthermore, children who face other, non-age-related intersectional identities are especially vulnerable to sexual abuse, such as those who have physical, mental, or developmental disabilities; are internally displaced or refugees; are unaccompanied or separated from their families and caregivers; are orphans; or live on the streets, in a residential care center, or in abusive households.⁴⁰ A revised Policy on Children that is trauma informed should focus on interrogating intersectional forms of discrimination against children based on group characteristics

³⁵ ACES and Their Health Impacts. Emerging Minds, <https://emergingminds.com.au/resources/background-to-aces-and-impacts/> (last visited May 25, 2023); Centers for Disease Control And Prevention (CDC), Adverse Childhood Experiences (ACEs): Preventing Early Trauma To Improve Adult Health (CDC) (2019), <https://www.cdc.gov/vitalsigns/aces/index.html> (last visited May 25, 2023)

³⁶ Melissa T. Merrick et al., Prevalence of Adverse Childhood Experiences From the 2011-2014 Behavioral Risk Factor Surveillance System in 23 States, 172 *Jama Pediatrics* 1038–1044 (2018); Karen Hughes et al., The effect of multiple adverse childhood experiences on health: a systematic review and meta-analysis, 2 *The Lancet Public Health* e356–e366 (2017); David W. Brown et al., Adverse Childhood Experiences and the Risk of Premature Mortality, 37 *American Journal Of Preventive Medicine* 389–396 (2009); Karen A. Kalmakis & Genevieve E. Chandler, Health consequences of adverse childhood experiences: A systematic review, 27 *Journal Of The American Association Of Nurse Practitioners* 457 (2015); Erica M. Webster, The Impact of Adverse Childhood Experiences on Health and Development in Young Children, 9 *Global Pediatric Health* 2333794X221078708 (2022); Jack P. Shonkoff et al., The Lifelong Effects of Early Childhood Adversity and Toxic Stress, 129 *Pediatrics* e232–e246 (2012)

³⁷ UNICEF, Gender Dimensions of Violence against Children and Adults 7 (2020).

³⁸ Patil, P., 'Understanding sexual violence as a form of caste violence', *Journal of Social Inclusion*, vol. 7, 2016.

³⁹ Palmater, P., 'Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry', *Canadian Journal of Women and the Law*, vol. 28, no. 2, 2016, pp. 253–284.

⁴⁰ See [25 Years Children in Armed Conflict.pdf \(unicef.org\)](#), at 15; Inter-Agency Standing Committee Task Force on Gender in Humanitarian Assistance, at 8, 31.

toward adequately understanding and addressing unique harms often rendered invisible. This approach will allow investigations and charges to make fully visible the different types of suffering different sub-groups of children experience and ensure that justice processes can fully contribute to healing and reparations.

b. Incorporating a gendered, intersectional approach can increase the visibility of the kinds of harms children suffer and may mitigate negative consequences of age and gender stereotypes that children face in accessing redress for SGBC.

Existing power inequalities related to *inter alia* age and gender discrimination in societies lead to targeted and exacerbated international crimes perpetrated against children, especially during periods in and around armed conflict.⁴¹ Perpetrators of crimes against children understand the importance of gender in context and instrumentalize gender norms and stereotypes in addition to age to gain power and commit abuses.⁴² Using a gendered, intersectional analysis can lead to more accurate conclusions about the perpetration of criminal acts because when investigators and prosecutors pay attention to gender dynamics, they gain new insights about power, identities, and relationships.⁴³

Further, barriers based on age, gender, and other forms of identity may also serve to impede participation in investigations and accountability processes or contribute to such processes being re-traumatizing.⁴⁴ Discriminatory stereotypes around age and gender, for example, may lead to girl survivors being seen as uncredible due to the improper belief that children tend to lie, and the gendered stereotype of females as irrational or lacking in mental capacity to provide consent for legal processes.⁴⁵ These stereotypes can lead to SGBC not being investigated or prosecuted.

Such barriers violate children's rights to be heard and to participate in processes that impact them, as well as the right to remedy for survivors of gender-based violence. Under human rights law, children have the right to be heard in judicial or administrative processes, either directly or via a representative. Fulfilling this right means children, including survivors of SGBC, must receive adequate information about justice or administrative processes, that they can access child-friendly interviewing processes that are tailored to their individual needs, and to participate in transitional justice processes in conflict or post-conflict situations.⁴⁶ The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has clarified in its general recommendation on gender-based violence that legal proceedings, support measures, and services concerning survivors must strengthen children's autonomy and be accessible by individuals facing intersecting forms of discrimination.⁴⁷ A revised Policy on Children should incorporate a gendered, intersectional approach to ask questions about the varied experiences of children of all genders, tracing power dynamics, recognizing intersectional identities, and challenging existing stereotypes regarding *inter alia* gender and age. Further, such an approach should be applied to ensure that all children's right to be heard is respected and realized.

⁴¹ See Save the Children, *Unspeakable Crimes Against Children: Sexual Violence in Conflict* 10 (2013).

⁴² [RSVE_RVE Series_Donnely January 2021.pdf \(resolvenet.org\)](#), at 2-3; Phoebe Donnelly, *How to Do a Gender Analysis: Practical Guidance for the UN Community*, INT'L PEACE INST. (Feb. 12, 2021).

⁴³ [RSVE_RVE Series_Donnely January 2021.pdf \(resolvenet.org\)](#), at 2-3; Phoebe Donnelly, *How to Do a Gender Analysis: Practical Guidance for the UN Community*, INT'L PEACE INST. (Feb. 12, 2021).

⁴⁴ Guidance Note Of The Secretary-General: Approach To Justice For Children, https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf (last visited May 23, 2023)

⁴⁵ Simone Cusack, *Eliminating Judicial Stereotyping: Equal Access to Justice for Survivors of Gender-Based Violence* (2014), available at [StudyGenderStereotyping.doc \(live.com\)](#); Office of the High Commissioner on Human Rights, *Gender stereotyping and stereotyping and women's rights* (2014), available at [Gender_stereotyping.pdf \(ohchr.org\)](#); Committee on the Elimination of Discrimination against Women, *General Recommendation 33 on women's access to justice*, para. 8, UN Doc. CEDAW/C/GC/33 (2015).

⁴⁶ United Nations Guidance Note Of The Secretary-General: UN Approach to Justice for Children (2008), available at https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf.

⁴⁷ Committee on the Elimination of Discrimination against Women, *General Recommendation 25 on gender-based violence against women, updating general recommendation 19*, para. 31(b), UN Doc. CEDAW/C/GC/35 (2017), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement>.

II. Trauma-Informed Practices: The ICC OTP should utilize the Policy on Children to raise awareness of existing evidence-based standards, norms, and good practices for trauma-informed engagement with children

Existing evidence-based international standards and practices should be cited and referenced whenever possible within the Policy on Children, as well as explicitly promoted in the policy's implementation. The Policy on Children will be further improved through incorporating good practices from international standards and national legal contexts. Below we highlight critical standards and practices drawn from national, regional, and international contexts that are important to incorporate in order to center trauma-informed practices.

a. Promote utilization of evidence-based practices and international standards

In recent years, much work has been done to identify the challenges that hinder accountability for child survivors of CRSV and to conceptualize trauma-informed, child-centered principles and practices that can provide a pathway to justice. Importantly, several jurisdictions have adopted successful practices drawing on both the medical and legal sectors that offer models for how to navigate these challenges and implement evidence-informed principles for engaging with children that further the goals of survivor-centered care and accountability.⁴⁸ A number of international standards and protocols have been recently developed or updated with specific attention to the needs of child survivors and centered on trauma-informed practices that can be applied throughout the justice process.⁴⁹ These standards and protocols include the updated version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (the Murad Code).⁵⁰ Additional sources for guidance and standards related to documentation/investigations, medical/forensic examinations, and legal/judicial processes regarding children include guidance published by the World Health Organization (WHO),⁵¹ the Preventing Sexual Violence in Conflict Initiative (PSVI),⁵² and the National Institute for Child Health and Development (NICHD) protocol.⁵³

b. Emphasize the need for standardized documentation

Use of standardized documentation tools and procedures, including standardized medico-legal certificates for forensic examinations, is critical to ensure that evidence collected from child survivors of sexual violence crimes is collected in a manner that can be used for justice processes. Use of standardized documentation of sexual violence has been shown to lead to better

⁴⁸ Daniele Perissi & Karen Naimer, *Achieving Justice for Child Survivors of Conflict-related Sexual Violence in the Democratic Republic of the Congo*, 18 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 293–306 (2020); Jelia Sane et al., *Advancing justice for children: innovations to strengthen accountability for violations and crimes affecting children in conflict*, <https://www.bsg.ox.ac.uk/research/publications/advancing-justice-children-innovations-strengthen-accountability-violations> (last visited Mar 7, 2022)

⁴⁹ Debra Komar et al., *A comparison of the international protocols for the forensic assessment of conflict-related sexual violence victims*, 66 JOURNAL OF FORENSIC SCIENCES 1520–1523 (2021); Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition), <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0> (last visited Mar 15, 2023); Murad Code, Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (2022), https://static1.squarespace.com/static/5eba1018487928493de323e7/t/6255fdf29113fa3f4be3add5/1649802738451/220413_Murad_Code_EN.pdf (last visited Mar 15, 2023)

⁵⁰ OHCHR; MURAD CODE

⁵¹ Guidelines For Medico-Legal Care For Victims Of Sexual Violence, <https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf?sequence=1&isAllowed=y> (last visited Mar 17, 2023); WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR RESEARCHING, DOCUMENTING AND MONITORING SEXUAL VIOLENCE IN EMERGENCIES, <https://www.who.int/publications-detail-redirect/9789241595681> (last visited Mar 17, 2023)

⁵² International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law (Second Edition), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf (last visited Mar 17, 2023)

⁵³ Michael E. Lamb et al., *A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: a review of research using the NICHD Investigative Interview Protocol*, 31 Child Abuse & Neglect 1201–1231 (2007)

adjudication outcomes for survivors.⁵⁴ For crimes involving children, as reporting is already limited, it is even more critical that evidence is collected in a way that is usable and easily understood by legal and judicial professionals. Use of standardized protocols for interviewing and examining children (such as the Istanbul Protocol and NICHHD Protocol) should be key tools to enhance the quality, comprehensiveness and accuracy of evidence collected on crimes against children.⁵⁵ Use of standardized documentation tools and collection procedures are crucially important to ground practices in trauma-informed and developmentally appropriate principles for engagement with children and to ensure the quality of evidence collected.

c. Use of trauma-informed principles in documenting and interviewing to allow children to name the causes of trauma and harm

Re-traumatization is a key concern when interviewing child survivors and documenting violence. This concern can have a chilling effect on documentation efforts for crimes against and affecting children. However, evidence shows that interviewing children once or multiple times is not inherently retraumatizing if it is done using trauma-informed principles and practices that are adapted for the context as well as the child's developmental stage.⁵⁶ Utilizing child-sensitive approaches that incorporate trauma-informed, intersectional frameworks will require explicitly interrogating and countering stereotypes about children's abilities to participate actively and meaningfully in investigations, prosecutions, and other aspects of accountability and justice processes.

A stakeholder using trauma-informed practices would communicate effectively and emphatically with affected individuals and would consider eliminating or modifying court procedures that could be perceived as threatening and would adjust the physical environment to create a more welcoming setting that enhances a survivor's sense of safety.⁵⁷

Trauma-informed practices should be implemented in all stages and phases of the justice process, including investigation, interviewing, physical examination, communication, courtroom procedures, witness testimonies, perpetrator questioning, safety assessment, and post-sentencing follow ups and referrals. Notably, children's participation in justice processes can be positive to promote healing, process trauma and build resilience if conducted in survivor-centered and trauma-informed ways.⁵⁸

Good practices using trauma-informed principles would include:

⁵⁴ Rachel Jewkes et al., *Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review*, 6 PLOS Medicine e1000164 (2009); Margaret J. McGregor et al., *Sexual assault forensic medical examination: is evidence related to successful prosecution?*, 39 Annals Of Emergency Medicine 639–647 (2002); Kelly Gray-Eurom et al., *The prosecution of sexual assault cases: correlation with forensic evidence*, 39 Annals of Emergency Medicine 39–46 (2002); Mette Louise B. G. Kjærulff et al., *The significance of the forensic clinical examination on the judicial assessment of rape complaints - developments and trends*, 297 Forensic Science International 90–99 (2019)

⁵⁵ Michael E. Lamb et al., *A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: A review of research using the NICHHD Investigative Interview Protocol*, 31 Child Abuse & Neglect 1201–1231 (2007); Yael Orbach et al., *Assessing the value of structured protocols for forensic interviews of alleged child abuse victims*, 24 Child Abuse & Neglect 733–752 (2000); Luis Roberto Benia et al., *The NICHHD Investigative Interview Protocol: A Meta-Analytic Review*, 24 Journal of Child Sexual Abuse 259–279 (2015)

⁵⁶ Yael Karni-Visel et al., *Facilitating the Expression of Emotions by Alleged Victims of Child Abuse During Investigative Interviews Using the Revised NICHHD Protocol*, 24 Child Maltreatment 310–318 (2019); Jacquelynn F. Duron & Fiona S. Remko, *Considerations for Pursuing Multiple Session Forensic Interviews in Child Sexual Abuse Investigations*, 29 Journal of Child Sexual Abuse 138–157 (2020); Irit Hershkowitz & Anat Terner, *The Effects of repeated interviewing on children's forensic statements of sexual abuse*, 21 Applied Cognitive Psychology 1131–1143 (2007); Stephanie D. Block et al., *Multiple Forensic Interviews During Investigations of Child Sexual Abuse: A Cost-Effectiveness Analysis*, 17 Applied Developmental Science 174–183 (2013)

⁵⁷ Gene Griffin et al., *Using a Trauma-Informed Approach in Juvenile Justice Institutions*, 5 Journal Of Child & Adolescent Trauma 271–283 (2012); State Court Leadership Brief: Trauma And Trauma-Informed Responses, https://www.ncsc.org/__data/assets/pdf_file/0034/77677/Trauma-and-Trauma-Informed-Responses.pdf (last visited May 24, 2023)

⁵⁸ Robert H. Pantell et al., *The Child Witness in the Courtroom*, 139 Pediatrics e20164008 (2017); Child witnesses in criminal court, in *Children As Victims, Witnesses, And Offenders: Psychological Science And The Law* 150–166; Child Witnesses' Experiences of Distress in Criminal Court: Sources, Consequences, and Solutions, in *Stress, Trauma, And Wellbeing In The Legal System* 0, <https://doi.org/10.1093/acprof:oso/9780199829996.003.0005> (last visited May 24, 2023)

- (a) using a comprehensive vulnerability assessment that would serve as the basis for an individualized management plan for each survivor or witness,⁵⁹
- (b) ensuring referral pathways are available for survivors to access mental health services before, during, and after participating in an interview,⁶⁰
- (c) utilizing a multidisciplinary team to support child survivors with disclosure, documentation, and support,⁶¹
- (d) embedding a child psychologist within an investigation team to ensure continual assessment and adjustment of the trauma informed approach,⁶²
- (e) utilizing developmentally appropriate and evidence-based tools for engaging with child survivors,⁶³
- (f) creating a glossary of cultural appropriate terms and idioms that can be used by investigators and judges to support victim and witness testimony,⁶⁴ and
- (g) considering the vicarious trauma of staff and experts working on cases.

The features of a trauma-informed approach are critically important when it comes to judicial processes that involve children as victims, survivors, or witnesses. International human rights law also affirms many of these interventions as being part of a rights-based approach. The Policy on Children should actively promote trauma-informed practices and procedures, and the ICC, in general, should commit to a comprehensive transformation into a trauma-informed institution.

d. Promote standards and technical innovations for engaging children in the legal process in a survivor-centered manner

All standards and practices for engaging with children should be grounded in a rights-based approach which should include giving due weight to children’s right to be heard and not excluded from justice processes that concern them.⁶⁵ Children can give credible testimony that can be used as evidence.⁶⁶ Reframing how to interview and interact with children, in addition to incorporating flexible approaches that encourage children’s participation by giving them choices regarding their engagement, is essential.

The quality of children’s engagement and testimony is enhanced by using special measures geared to increasing their ability to meaningfully provide testimony and participate in justice processes and tailored to each survivor’s particular needs and vulnerabilities.⁶⁷ Special measures may include:

- (a) recording children’s testimony in advance of a hearing and entering this recording in place of their live testimony,⁶⁸

⁵⁹ International Criminal Court, Registrar, Annex 1 To The Victims And Witnesses Unit’s Submission Of The Protocol On The Vulnerability Assessment And Support Procedure Used To Facilitate The Testimony Of Vulnerable Witnesses Pursuant To Order N° Icc-01/04-02/06-416 Case: The Prosecutor V. Bosco Ntaganda Situation: Situation In The Democratic Republic Of The Congo (2015), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2015_00699.PDF (last visited May 19, 2023); Murad Code; Committee On The Rights Of The Child, General Comment No. 24 (2019) On Children’s Rights In The Child Justice System (2019), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child> (last visited May 23, 2023)

⁶⁰ van der Straten Ponthoz & Ferro Ribeiro; OHCHR Istanbul Protocol; World Health Organization

⁶¹ Theodore P. Cross et al., *Child forensic interviewing in Children’s Advocacy Centers: Empirical data on a practice model*, 31 Child Abuse & Neglect 1031–1052 (2007)

⁶² Daryn Reicherter et al., *Implementation of Trauma-informed Best Practices for International Criminal Investigations Conducted by the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD)*, 15 Psychological Injury and Law 319–329 (2022)

⁶³ Center For Justice Innovation, Stages of Child Development And Implications For Communicating With Children (2022),

https://www.innovatingjustice.org/sites/default/files/media/document/2023/Guide_CJI_CWMP_StagesImplications_05042023.pdf (last visited May 23, 2023); van der Straten Ponthoz & Ferro Ribeiro

⁶⁴ OHCHR Istanbul Protocol

⁶⁵ Committee On The Rights Of The Child; United Nations Committee On The Rights Of The Child (CRC), General Comment No. 12 (2009): The Right Of The Child To Be Heard (2009), <https://www.refworld.org/docid/4ae562c52.html> (last visited May 19, 2023)

⁶⁶ Deirdre A. Brown & Michael E. Lamb, *Forks in the road, routes chosen, and journeys that beckon: A selective review of scholarship on children’s testimony*, 33 APPLIED COGNITIVE PSYCHOLOGY 480–488 (2019); Martine B. Powell, *Improving the reliability of child witness testimony in court: The importance of focusing on questioning techniques*, 17 CURRENT ISSUES IN CRIMINAL JUSTICE 137–143 (2005)

⁶⁷ PILON SGBV Special Measures Series: Webinar 1: Lessons Learned (2022), <https://www.youtube.com/watch?v=6pjclITYHLxl> (last visited May 19, 2023)

⁶⁸ 27 EUROPARAT, Guidelines of The Committee Of Ministers Of The Council Of Europe On Child-Friendly Justice: Adopted By The Committee Of Ministers Of The Council Of Europe On 17 November 2010 And Explanatory Memorandum (Council of Europe Publ) (2011); UNDOC & UNICEF, Justice In

- (b) allowing children to testify behind a screen to shield them from needing to face their accuser,
- (c) having a child psychologist conduct the testimony rather than a lawyer or judge,
- (d) ensuring questions are tailored to children’s language and developmental abilities and ways of consolidating memories,⁶⁹
- (e) using play therapy as an alternative approach to gather children’s histories in a way that is geared to their form of meaning making,⁷⁰
- (f) creating child-centered materials to explain justice processes,⁷¹
- (g) conducting interviews in child-friendly spaces with the ability for others to listen to the interview from another room,⁷² and
- (h) having lawyers and judges sit at the same level as a child when questioning them or removing wigs or other judicial costumes.⁷³

Additionally, technology should be further leveraged to facilitate children’s survivor-centered engagement with justice processes. Leveraging technology can include both solutions, such as closed-circuit interviews and recorded interviews that can be safely stored and transmitted via secure web platform and using voice modification technology to distort survivors’ voices alongside testimony behind a screen or while wearing head to toe covering.⁷⁴ Each of these adjustments are meaningful measures which represent an opportunity for the justice process to adapt to children rather than asking children to adapt to justice processes.

e. Create an annex to the Policy on Children pertaining to evidence-based practices

The ICC OTP should work with experts and civil society partners to create an annex to the Policy on Children and associated dissemination materials that contains practical toolkits and evidence-based, practice guidance. These materials should target various stakeholders involved in the justice process, including clinicians, witness protection experts, law enforcement personnel, judicial staff, and NGO documenters. PHR has developed tools focused on practical implementation of survivor-centered and trauma informed principles for forensic documentation and support for child survivors along the access to justice pathway and would be happy to contribute to these efforts.

f. Support the implementation of recommended practices including allocating resources for training and prioritizing competence specifically on SGBC and children across all ages, developmental stages, and genders.

For the principles laid out in the Policy on Children to be successful, adequate financial, staffing and technical support must be provided to those who work with child survivors of violence to document their experience and pursue justice. Successful application of the principles outlined above is incumbent on robust investment in staffing and skill development to ensure those

Matters Involving Child Victims And Witnesses Of Crime: Model Law And Related Commentary (United Nations) (2009)

⁶⁹ Department Of Justice - The Interaction Between Children’s Developmental Capabilities And The Courtroom Environment: The Impact On Testimonial Competency, https://www.justice.gc.ca/eng/rp-pr/csjsjc/ccs-ajc/rr02_6/p0.html (last visited May 24, 2023); Cognition and the Child Witness: Understanding the Impact of Cognitive Development in Forensic Contexts, in *Current Topics In Children’s Learning And Cognition*, <https://www.intechopen.com/chapters/40980> (last visited May 24, 2023); John Philippe Schuman et al., *Developmentally Appropriate Questions for Child Witnesses*, (2000), <https://papers.ssrn.com/abstract=198969> (last visited May 24, 2023)

⁷⁰ Philip Moses Nyasinga & Dr. Florence K’Okul, *Influence Of Play Therapy On The Psychological Well-Being Of Sexually Abused Children In Ainamoi Sub-County, Kericho County Kenya*, (2022), <https://zenodo.org/record/7082277> (last visited May 24, 2023); Marilyn S. Snow et al., *Play Therapy as Court Testimony: A Case Study*, 13 *International Journal Of Play Therapy* 75–97 (2004)

⁷¹ *Empowering Child Witnesses And Victims Center For Justice Innovation*, <https://www.innovatingjustice.org/articles/empowering-child-witnesses-and-victims-part-i> (last visited May 24, 2023); *Child Witness Materials Project Center For Justice Innovation*, <https://www.innovatingjustice.org/child-witness-support> (last visited May 24, 2023)

⁷² *How A Small Room In A Kenya Hospital Can Make A World Of Difference For Young Survivors Of Sexual Violence: Physicians For Human Rights*, <https://phr.org/our-work/resources/how-a-small-room-in-a-kenya-hospital-can-make-a-world-of-difference-for-young-sexual-and-gender-based-violence-survivors/> (last visited May 24, 2023); Cross et al.

⁷³ Julinda Beqiraj & Lawrence Mnamara, *Children And Access To Justice: National Practices, International Challenges* (Bingham Centre for the Rule of Law) (2016), <https://www.ibanet.org/document?id=children-and-access-to-justice-national-report> (last visited May 19, 2023)

⁷⁴ Kyra Sanin & Anna Stirnemann, *Child Witnesses at The Special Court For Sierra Leone* (War Crimes Studies Center University of California, Berkeley) (2006); Pantell et al.; Perissi & Naimer

working with children have the necessary skills and competencies to use them in day-to-day practice and promote their implementation on an institutional level. Resources should not only be allocated to extensive, in-depth training, but also to ongoing mentorship and oversight to ensure that those engaging with children as part of the justice process have the adequate skills and support to appropriately use these approaches. Whenever possible, opportunities should be identified to align and integrate these efforts with local organizations to ensure sustainable systems to support survivors after the legal process has ended. Moreover, priority should be given to hiring staff in key positions with expertise in child development, trauma-informed approaches, and implementation of child protective measures as outlined above. Furthermore, revisions to the Policy on Children should endeavor to include the perspectives and experiences of those affected by the crimes the policy aims to address, including children affected by CRSV and SGBC.

III. Conclusion

Building on the OTP's commitment in the 2016 Policy on Children to prioritize the investigation and prosecution of crimes against and affecting children, the revision of the policy in line with the recommendations above will further strengthen the OTP's mandate to prioritize children by paying particular attention to both the inclusiveness of its framing and the linkage to existing practice guidance grounded in evidence. To do so, the revised Policy on Children should articulate and map steps for implementation of a trauma-informed approach, one that considers the intersection of age and gender, along with other statuses, in the perpetration of crimes against children, and that sets forth practical, evidence-based solutions for the realization of these goals. Further, there is a need for consultative processes with a range of stakeholders, including children themselves, at policy development and implementation phases toward a Policy on Children that reflects trauma-informed approaches.

PHR and CLIHHR look forward to continuing to engage in this process and are eager to support the development of tools and materials to support practical implementation of the revised Policy on Children. This is an important effort that we are eager to reinforce.