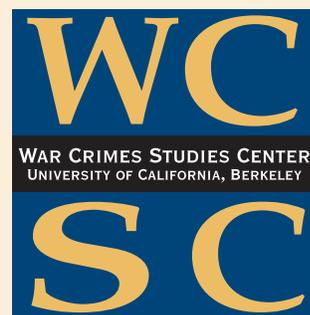


CHILD WITNESSES AT THE SPECIAL COURT FOR SIERRA LEONE



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¹ Both authors worked as full-time Court Monitors for the Berkeley War Crimes Studies Center from September to December 2005. The Center maintains an on-going presence at the Special Court for Sierra Leone, monitoring trials on a daily basis. This report is the product of those trial observations, as well as numerous interviews with participants in the trial process.

EXECUTIVE SUMMARY

Children who engaged in combat during the conflict in Sierra Leone are uniquely situated to provide crucial evidence in the war crimes proceedings unfolding before the Special Court. This report explores the role of former child combatants as witnesses at the Special Court and the Court's program to protect and support them. It begins with a discussion of general issues regarding child witnesses, such as the accuracy of their testimony, concerns about their developmental stage, and the risks of re-traumatization. It then turns to the specific challenges of working with child witnesses in an impoverished post-conflict zone, including difficulties in determining age. The report traces a child witness's experience in the trial process from the initial investigation stage, through the preparation of testimony, actual testimony in the court room, and post-testimony follow-up.

The information in this report is culled from interviews with former child combatants, witness support staff, and prosecution and defense attorneys, as well as representatives of non-government organizations and UNICEF. At the time of completion of the report, the prosecution had closed its case in both the CDF and AFRC cases, but was continuing to bring evidence in the RUF case. The scope of the report is therefore limited to the Special Court's relationship with prosecution child witnesses in all three proceedings, but nonetheless includes a brief discussion of the possibility of child testimony in the defense cases.

While the Special Court has successfully met most of its objectives in protecting child witnesses from re-traumatization, there is still some room for improvement. Importantly, prosecution teams have occasionally breached the Special Court guidelines by using child witnesses who may have been too vulnerable to testify. Seemingly excessive compensation of child witness testimony is also a concern. The guidelines themselves fall short in that they do not provide for developmentally appropriate questioning. And despite explicit guidance on this issue, the Special Court has failed to provide adequate child-specific training/sensitization for judges and attorneys. This report details these and other problems, while also commenting on the numerous successes and innovations that make the Special Court's program to protect child witnesses particularly notable.

I. INTRODUCTION

[The rebels] started pointing their guns in front of our mouth and they said, "... you're going to move with us and you're going stay with us..."
(TF1 199 testimony)

...my commander captured a young girl ... and he said, ..."you too should use this girl [for sex]." ... I was so small for this...I said, "Please sir." He said, "If you don't do this I will shoot you."
(TF1 199 testimony)

[The rebels] cut me ... and they put the cocaine, and after which they cover that with a plaster... I valued nothing and my head started turning...
(TF1 180 testimony)

...that was the time that the commander passed an order that my mother should be shot. So the fellow, a small boy, shot at my mother twice, and my mother started calling my name and she died finally.
(TF1 180 testimony)

The rebels burnt my family's house and killed my family. I was 14 years old when they took me for one year. I am angry with the rebels and that's why I wanted to testify ... I feel guilty for the things I did, but now I've told the court about it and it's better.
(child witness interview)

One of the most shocking aspects of the Sierra Leonean civil war was the brutal violence and killing perpetrated both by and against Sierra Leonean children. Mandated to try and convict those who bear the "greatest responsibility" for war crimes and crimes against humanity, the Special Court for Sierra Leone is the first international tribunal to explicitly proclaim jurisdiction over juveniles between the ages of 15 and 18,² and it is the first international tribunal to prosecute individuals for the novel crime of recruiting and using child soldiers during the conflict. Child witnesses at the Special Court are therefore of unique and unprecedented importance.

Some of the worst atrocities committed during the war were committed by children, causing many Sierra Leoneans to call for the prosecution of juveniles at the Special Court. However, most child combatants were themselves brutalized and forced to commit these acts against their will. The Special Court found itself in a moral quandary: can an international tribunal fairly prosecute children for war crimes and crimes against humanity, when they are both the victims and the perpetrators of those crimes?

² Article 26 of the International Criminal Court's Rome Statute states, "The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime." The respective statutes for the International Criminal Tribunals for Rwanda and Yugoslavia both proclaim personal jurisdiction over "natural persons", with no reference to age. (ICTY Statute, Article 6 and ICTR Statute Article 5). Rome Statute available at <http://www.icc-cpi.int/about.html>. ICTY Statute available at <http://www.un.org/icty/legaldoc-e/index.htm>. ICTR statute available at <http://65.18.216.88/ENGLISH/basicdocs/statute.html>.

Keenly aware of the difficulties and conflicts that the prosecution of children would present, the drafters of the Special Court Statute dedicated special attention to the role of children in the Sierra Leonean civil war. The Statute includes specific provisions for any indictees who would have been between 15 and 18 years old at the time of the alleged commission of the crime, requiring that the Court account for the indictee's "young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society".³ Moreover, the Statute limits juvenile sentencing to measures like "care, guidance and supervision orders, community service orders, counseling, foster care, correctional, educational and vocational training programs", among others.⁴

It is important to note that many former child combatants began fighting at age ten or eleven, and they were well into their teens by the time they demobilized. Due to the time lapse between the end of the war and the beginning of Special Court proceedings, many of the individuals which the Court considers to be "child witnesses" are now in their late teens. As this report will explain, there is sometimes no formal inquiry into a witness's age. Instead, the mere allegation that a witness participated in combat as a child is often sufficient for the Special Court to classify him/her as a child witness. Following the Court's lead, this report will therefore use the term "child" or "children" for these individuals, even where it may seem more appropriate to call them adolescents or young adults. Moreover, because all of the child witnesses appearing at the Special Court have been boys, this report will use the male pronoun rather than s/he.

The report focuses on former child combatants in their role as witnesses at the Special Court, commenting on the benefits and hindrances that their wartime experiences bring to their testimony and examining the Special Court's child-specific support and protection program. The authors interviewed 14 former child combatants about their experiences before, during and after testimony.⁵ These interviews were not conducted in a uniform manner and the resulting information should not be construed as scientific data. Rather the comments and observations of these former child combatants are intended to provide an anecdotal illustration of the experience of former child combatants as witnesses at the Special Court.

The report begins with a discussion of general issues relating to child witnesses, such as the accuracy of their testimony, concerns about their cognitive and emotional development, and the risks of re-traumatization. Recognizing the Special Court's unusual *in situ* status, it examines the specific challenges of working with former child combatants as witnesses in an impoverished post-conflict zone. It also explores the difficulties in determining age amongst this population of witnesses, and the reasons why the Court characterizes them as children. The report then turns to a critical analysis of the Special Court's program for dealing with child witnesses, tracing the process from the

³ Special Court Statute, Article 7(1). Court documents and transcripts available at: <http://www.sc-sl.org>.

⁴ *Ibid.*, Article 7(2).

⁵ The following former child combatants were interviewed for this report: TF1-199, TF2-080, TF1-141, TF1-180, TF1-157, TF1-158, TF2-021, TF1-131, TF1-263, TF2-064, TF1-143, TF1-323, TF1-314 and one additional child witness whose pseudonym is unknown to the authors. In the interest of confidentiality, particular statements are not attributed to individual witnesses.

initial investigation stage, through the preparation of testimony, experience in the court room, and post-testimony follow-up.

At the time of completion of this report, the prosecution has closed its case in both the CDF and AFRC cases, but it continues to bring evidence – including child testimony – in the RUF case. This report explores the Special Court’s existing relationship with prosecution child witnesses in all three proceedings, and looks toward the possibility of child testimony in the defense cases as well.

II. VARIOUS ROLES OF CHILDREN AT THE SPECIAL COURT

The Special Court must recognize the complex ways in which children and adolescents participated in and were affected by the civil war in Sierra Leone. Just like adults, children could come before the Special Court as victims or perpetrators, as witnesses or indictees. This section will examine the various roles that children have played at the Special Court to date.

*Children as Victims*⁶

Sierra Leonean children fell victim to many of the crimes set out in the Special Court Statute, including looting and burning, killing, mutilation, crimes of sexual violence, forced labor and others. Additionally, the Statute specifically sets out two crimes for which the victimization of a child is a material element. These are “conscripting and enlisting children younger than 15 into armed forces or using them to participate actively in hostilities” (Special Court Statute, Article 4(c)) and “abuse of girls under the Prevention of Cruelty to Children Act, 1926”, including abuse of girls younger than 14 and abduction of girls for immoral purposes (Special Court Statute, Article 5(a)). The crime of conscripting and enlisting children for combat draws on various international instruments designed to protect children’s rights.⁷ Abuse of girls under age 14 is a domestic crime under Sierra Leonean law. The prosecution has not brought any charges under this latter provision, and it therefore falls beyond the scope of this report.⁸

The conscription and enlistment charge is relatively new under international law, and many critics have questioned the Special Court’s authority and jurisdiction to prosecute the accused for this crime. They primarily contend that this crime did not exist as such at

⁶ The Special Court only assists victims who are involved in the judicial process. Article 16(4) of the Special Court Statute provides that appropriate assistance be afforded to “victims who appear before the Court”. The Witnesses and Victims Services unit does not offer support or protection to victims, whether adult or children, who are not *also* witnesses or potential witnesses. There are some exceptions for family members or close relatives of witnesses, especially concerning assistance for health care and schooling. Interview with Saleem Vahidy, Chief of Witnesses and Victims Services, Freetown, 26 Nov. 2005.

⁷ See e.g. Article 38(3) of United Nations Convention on the Rights of the Child (CRC) available at <http://www.unicef.org/nz/advocacy/publications/CRC.pdf>. Also see Article 8(2)(b)(xxvi), Rome Statute. The Rome Statute for the International Criminal Court was the first international instrument to explicitly criminalize the conscription and enlistment of child combatants.

⁸ In general, the prosecution has refrained from prosecuting any crimes under Sierra Leonean law. See “Interim Report on the Special Court for Sierra Leone”, Sara Kendall and Michelle Staggs, Berkeley War Crimes Studies Center, Apr. 2005, p. 7. Available at: <http://warcrimescenter.berkeley.edu>.

any time relevant to the charges in the indictments,⁹ and that the child recruitment counts of the indictments therefore violate the principle of legality *nullum crimen sine lege* (non-retroactivity).¹⁰ Moreover, defense teams argued that there was insufficient state practice indicating an intent to criminalize child recruitment prior to the period covered in the indictment, and that there was only limited practice amongst international courts or military tribunals in punishing violations of this alleged prohibition.¹¹ In other words, the defense argued that while international instruments prior to the Rome Statute may have created an obligation to refrain from recruiting children into combat, they did not make it a crime.¹²

Just prior to the commencement of the first trial in June 2004, the Appeals Chamber answered these defense arguments in its “Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)”. The Special Court Appeals Chamber held that conscripting and enlisting child combatants was already a crime under customary international law prior to the Rome Statute’s adoption in 1998. The Appeals Chamber reasoned that the Geneva Conventions and the UN Convention on the Rights of the Child illustrated widespread recognition and acceptance of the norm prohibiting child recruitment prior to 30 November 1996, and that the African Charter on the Rights and Welfare of the Child reiterated this prohibition. Concluding that the authors of the Rome Statute had merely codified an already existing customary norm, the Appeals Chamber found adequate international recognition of individual criminal responsibility for conscripting and recruiting child combatants prior to the period covered by the indictments.¹³ Thus, the indictees in all three cases must defend against this charge and former child combatants may be called by both the prosecution and the defense to support or contest allegations of victimization under this count.

Children as Perpetrators

UNICEF estimates that 15,000 to 30,000 children were involved in combat activities during the conflict in Sierra Leone.¹⁴ While some of these children may have been used as spies, laborers or sex slaves, many of them played a key role in combat as well. Armed actors may prefer child combatants over adults because they are believed to have more stamina, they complain less frequently, and they are more impressionable and can be “programmed” to feel no fear or remorse.¹⁵ Children may also possess certain

⁹ Special Court Statute, Article 1(1) limits the Court’s authority to prosecute only those crimes “committed in the territory of Sierra Leone since 30 Nov.1996”.

¹⁰ *Sam Hinga Norman’s Preliminary Motion Based on Lack of Jurisdiction: Child Recruitment*, 26 June 2003, p. 2, para. 4.

¹¹ *Motion on Behalf of Moinina Fofana for Leave to Intervene as an Interested Party in the Preliminary Motions Filed by Mr. Norman Based on a Lack of Jurisdiction: Judicial Independence and Child Recruitment*, 21 Oct. 2003, pp.1025-26, para. 11.

¹² *Sam Hinga Norman’s Preliminary Motion Based on Lack of Jurisdiction: Child Recruitment*, 26 June 2003, p. 2, para. 4.

¹³ *Summary of Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)*, para. 5 (noting that a “norm need not be expressly stated in an international convention for it to crystallize as a crime under customary international law.”)

¹⁴ Interview with Donald Robertshaw, UNICEF Child Protection Officer, Freetown, 15 Nov. 2005.

¹⁵ Guy Goodwin-Gill and Ilene Cohn, *Child Soldiers: The Role of Children in Armed Conflicts* (study for Henry Dunant Institute in Geneva), Clarendon Press, Oxford, 1994, p. 26. *See also*, Sarah L. Wells,

characteristics of immaturity or uncontrolled emotion that can be manipulated by an armed force for purposes of violence.¹⁶ Indeed, young combatants often served as security or body guards for commanders, and they are reported to have committed some of the worst atrocities during the war in Sierra Leone.¹⁷

In its duty to represent the victims of the war in Sierra Leone, the Office of the Prosecutor was cognizant of the importance of holding young offenders responsible for their actions during the conflict, but also recognized that most child combatants were themselves victimized. Considering the general international consensus that children be treated differently than adults in a court of law, the Prosecutor focused on the statutory mandate to prosecute only those “who bear the greatest responsibility”.¹⁸ Since children generally had no command responsibility during the war, this interpretation of the statute constituted a *de facto* decision not to prosecute any former child combatants at the Special Court.¹⁹ Thus any former child combatant appearing before the Special Court does so in the capacity of a witness, and not an indictee.

Children as Witnesses

Sierra Leonean children witnessed the commission of war crimes and crimes against humanity, whether as victims, perpetrators, or bystanders. Many of these children are in a position to provide valuable testimony on a range of issues. But child witness testimony at the Special Court has mostly focused on the charges of conscripting and enlisting child combatants. The prosecution has called child witnesses to support charges of conscripting and enlisting child combatants in the RUF, AFRC and CDF cases. The Principal Defender predicts that there may be some possibility of child witness testimony in the CDF defense case.²⁰

Generally, former child combatants provide a blend of crime-based and insider testimony²¹, describing their abduction and experience as victims as well as their

“Crimes Against Child Soldiers in Armed Conflict Situations: Application and Limits of International Humanitarian Law”, 12 Tul. J. Int’l & Comp. L. 287, 290 (2004).

¹⁶ Stephanie Bald, “Searching for a Lost Childhood: Will the Special Court of [*sic*] Sierra Leone Find Justice for its Children?” 18 Am. U. Int’l L. Rev. 537, 553 (2002).

¹⁷ Most child witnesses who have testified at the Special Court state that they were used as “securities” for a commanding officer. *See generally* Transcripts of testimony of TF1-199, RUF trial, Trial Chamber I, 20 July 2004, and AFRC trial, Trial Chamber II, 6 Oct. 2004; TF1-180, AFRC trial, Trial Chamber II, 8 July 2005. *Also see* George Johnson, a.k.a. Junior Lion, AFRC trial, Trial Chamber II, 15 Sept. 2005, pp. 74-75, describing a young AFRC combatant (an SBU or “small boy unit”) who impaled seven civilian women accused of being witches.

¹⁸ Article 1(1) of the Special Court Statute states: “The Special Court shall [...] have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 Nov.1996 [...]”

¹⁹ Interview with Luc Cote, Chief of Prosecutions, Freetown, 12 Oct. 2005. *See also*: “Interim Report on the Special Court for Sierra Leone”, *supra* note 8 at p. 7.

²⁰ Interview with Vincent Nmehielle, Principal Defender, Freetown, 18 Nov. 2005.

²¹ Insider witnesses are usually classified under Group 1, Category C because they provide “irreplaceable” testimony; insider information is unique to that person and could not be provided by an alternate witness. Insider witnesses at the Special Court are typically high-ranking adult ex-combatants. Interview with WVS Chief, 26 Nov. 2005. For more information on insider witnesses, *see* “Interim Report on the Special Court for Sierra Leone” *supra* note 8. *Also see*: Special Court Monitoring Report #58, “Insider Witnesses and ‘Dancing with the Devil’” at the same site.

knowledge of the overall role of children in combat. Some former child combatants also assert knowledge of command structure and operations which allows them to testify to other counts of the indictments.²² While there is a relatively large body of potential adult witnesses who may testify about other crimes under the statute, former child combatants are uniquely situated to describe the details of their conscription and participation in combat. For the most part, their testimony cannot be replaced with testimony from adults.

III. CHALLENGES TO WORKING WITH CHILD WITNESSES

Like any court of law, the Special Court is principally concerned with finding the truth and bringing justice for crimes committed, and it is largely reliant on witness testimony to accomplish these tasks. Not only does the Special Court then have an obligation to protect its child witnesses against re-traumatization, it also has an interest in preserving the integrity of the evidence before it. Children may be more inclined to give the answers that they think an adult wants to hear,²³ and there is a risk that child witnesses may learn their testimony as they go, taking their cue from the adults who interview or assist them. The Special Court thus faces the double challenge of protecting its child witnesses against renewed psychological harm and ensuring that they provide trustworthy and reliable evidence.

Challenges Relating to Testimony of Former Child Combatants

The typical concerns about a child's ability to testify in a court of law relate to his/her linguistic, cognitive, moral and emotional development.²⁴ Since all of the child witnesses at the Special Court have been adolescents, their relative maturity tends to alleviate concerns that linguistic or cognitive under-development could affect their ability to testify.²⁵ However, delays in their moral and emotional development may still have negative effects on both the child witness and the quality of his testimony. Moreover, the experience of trauma itself can affect a witness's ability to understand or remember time frames, dates and physical dimensions.²⁶

It may appear that the risk of re-traumatization among these witnesses is lessened because they are in fact almost adults. However, all of the child witnesses appearing at

²² CDF prosecutors called a former child combatant who testified about his role as bodyguard for the alleged CDF National Coordinator, Chief Sam Hinga Norman. This witness provided information relevant to the child recruitment count of the indictment, but prosecutors viewed his testimony as key to numerous other counts as well. Interview with James Johnson, Chief of Prosecutions, Freetown, 3 Feb. 2006. Mr. Johnson replaced Mr. Cote as Chief of Prosecutions in Jan. 2006.

²³ Phone interview with Former Court Psychologist, 4 Nov. 2005.

²⁴ "Developmentally Appropriate Questions for Child Witnesses", John Philippe Schuman, Prof. Nicholas Bala & Prof. Kang Lee, 25 Queen's L. J. 251, 251 (1999).

²⁵ Interview with Court Psychologist, 23 Nov. 2005, noting that most 17 to 18 year olds are as cognitively developed as adults. However, Dr. Stepakoff also commented that former child combatant witnesses may be cognitively delayed due to educational interruptions during the war, rather than any direct effect on their brain function. Former Court Psychologist, An Michels, adds that other relevant factors such as malnutrition and trauma may have a negative impact on cognitive development. Email from Former Court Psychologist, 7 Feb. 2006.

²⁶ Schuman, *supra* note 25.

the Special Court are former combatants, and many of them continue to struggle with the trauma of their experiences during the war. Most former child combatants endured whippings and beatings, threats, forced labor, lack of food or shelter, and separation from family. Many also witnessed the brutal killing of loved ones, including parents and siblings.²⁷ Moreover, former child combatants are frequently traumatized by the acts that they themselves committed.²⁸ Importantly, while the child witnesses appearing before the Special Court are already in their teens, these traumatic events often occurred when they were young children. The earlier a child's age when he is torn from a stable environment, the more damaging the experience of trauma will be to his emotional development.²⁹ Delays in their emotional development can render these witnesses more vulnerable to re-traumatization and inhibit their ability to deal with frustrating or stressful situations, such as cross-examination.³⁰

For many former child combatants, much of their moral development occurred while they were fighting in the bush. Perhaps because these war-time morals replace the morals that would have been engendered by their families and communities, some former child combatants appear to exhibit a tendency to lie, to disrespect authority figures, and to break rules.³¹

Even where development is not affected, the trauma itself can cause memory problems that affect a child's testimony. For example, victims of trauma commonly "dissociate", (separate themselves from their surroundings) during traumatic events or when recalling traumatic events.³² This mental detachment can impede a witness's temporal or spatial perception, thereby affecting his ability to recall specific dates, times or locations. In other words, he may not remember what happened because, although his body was present, his mind was not. Moreover, some former child combatants may have difficulties remembering specific details because their commanders forced them to take battle-enhancing drugs during the war.³³

Additionally, other factors that may influence the performance of children as witnesses include exposure to the court process which may seem confusing or overwhelming, intimidation by the courtroom environment, fantasies about the consequences of testimony, and general anxiety about testifying.³⁴

²⁷ Sierra Leone Truth and Reconciliation Report, Chapter 4: Children and Armed Conflict in Sierra Leone, available at <http://trcsierraleone.org/drwebsite/publish/v3b-c4.shtml>.

²⁸ One child witness who claims he was forced to rape two young girls suffers from repeated traumatic nightmares and feelings of guilt. Another suffered a number of intrusive memories. Interview with Miatta Abu, WVS Witness Coordinator, Freetown, 17 Nov. 2005 and phone interview with Former Court Psychologist, 4 Nov. 2005.

²⁹ Interview with Court Psychologist, 23 Nov. 2005.

³⁰ Schuman, *supra* note 25.

³¹ Interviews with Court Psychologist, 23 Nov. 2005 and WVS Chief, 26 Nov. 2005. The authors also interviewed a former child combatant who had been recently arrested for selling drugs. He stated that this was the fastest and easiest way to make money, and that this was how he supported himself when he was fighting for the rebels.

³² Interview with Court Psychologist, 23 Nov. 2005.

³³ *Ibid.* Also see Transcripts of testimony of Witness TF1-199, Trial Chamber II, AFRC Trial, 6 Oct. 2005, pp. 91-92 and testimony of Witness TF1-180, Trial Chamber II, AFRC Trial, 8 July 2005, pp. 10-12.

³⁴ Email from Former Court Psychologist, 7 Feb. 2006.

The following are examples of testimony where one or many of the above-described problems may have affected the clarity or reliability of a child witness's testimony.

Testimony of Witness TF1-157³⁵

Q. At the time you were taken from Bo-Ngieha were you at school?

A. Yes.

Q. What class were you in?

A. Class two.

Q. And at class two you would be able to tell the days of the week; not so? At that time you could tell the days of the week; you could read them or name them?

A. At that time I was not going to school.

Q. When they took you from Bo-Ngieha you weren't going to school at all?

A. No.

Testimony of Witness TF1-157³⁶

Q. And how long did you stay there?

A. How long?

Q. Yes, how long did you stay there?

A. I am confused.

Q. Have you forgotten?

A. If you say a week, maybe I can remember. But when you talk about time, I cannot understand; I am confused.

Q. Did you stay there for one week, two weeks, three weeks? How many weeks did you stay there for?

A. Three weeks.

Testimony of Witness TF2-080³⁷

Q. So when did you join the CDF?

A. I joined the CDF between '97 and '98. I do not know the right month that I joined the CDF. At that time I was a small boy.

Additional Challenges in the Sierra Leonean Context

Situated in the country where the conflict occurred, the Special Court faces increased security, logistical, financial, medical and cultural concerns relating to child witness testimony. Many child witnesses are still displaced from their families. Others are orphaned or rejected by their communities for their participation in the war. The Special Court must consider whether such children, who have little or no social support, may be too vulnerable to testify. On the other hand, some children have successfully reintegrated into their families and communities. In such circumstances, the Special Court must be careful to avoid re-stigmatizing these children by involving them in the judicial process as former child combatants.

These issues exist against the backdrop of a chronically poor post-conflict nation. UNICEF declares that “a child in Sierra Leone is one of the most vulnerable of all children

³⁵ AFRC Trial Transcript, Trial Chamber II, 26 Sept. 2005, p. 25.

³⁶ *Ibid.* at 27.

³⁷ CDF Trial Transcript, Trial Chamber I, 6 June 2005, p. 24.

in the world.”³⁸ Sierra Leone continues to rank first in the world for under age five mortality. According to UNICEF figures, 82% of the population is considered to be living in poverty. Malnutrition, Malaria, Diarrhea, Acute Respiratory Infection, Measles, and other childhood diseases are serious, life-threatening concerns.³⁹

Finally, because of the Special Court’s unique *in situ* status, many child witnesses live side by side with relatives or supporters of the accused, and they express fear of retaliation from these individuals. Security issues are compounded by the lack of infrastructure, including the lack of a reliable telephone and postal service, making it especially difficult to keep track of witnesses who reside outside the capital.

IV. DETERMINING WHO IS A “CHILD” AT THE SPECIAL COURT

There is ample rhetoric surrounding the issue of “child witnesses” at the Special Court, particularly as concerns the guidelines for their special protection. In general, it seems that the Special Court considers all individuals under age 18 to be children.⁴⁰ Yet nowhere in the Special Court Statute or the Rules of Procedure and Evidence is there any definition of the word “child”.⁴¹ In fact, the prosecution’s principal criteria for determining whom it considers a “child witness” is whether or not the witness was a child combatant: the individual’s actual age does not figure into the calculus.

The determination of age at the Special Court is of both jurisdictional and evidentiary importance. Were the prosecution to charge a juvenile with offenses under the statute, it would need to establish the Special Court’s jurisdiction over the individual by proving that he/she was over age 15 at the time that the alleged crime occurred. Moreover, age is an element of the crime of conscripting and enlisting. Thus the prosecution bears the burden of proving that its former child combatant witnesses were under age 15 at the time of their abduction into the fighting forces.

³⁸ UNICEF’s *Child Protection Program in Sierra Leone*, Feb. 2003, p. 1. On file with the authors.

³⁹ UNICEF “At a glance” statistics for Sierra Leone, available at: http://www.unicef.org/infobycountry/sierraleone_statistics.html#19, last updated Jan. 2006.

⁴⁰ Former Court Psychologist, An Michels, notes that the term “child” was always understood to mean persons under age 18, in accordance with the CRC. Email 7 Feb. 2006.

⁴¹ Trial Chamber I recognizes children as Category B witnesses meriting special protective measures, but offers no definition of the word child. *See Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, Prosecutor v. Issa Hassan Sesay, Morris Kallon & Augustine Gbao, 5 July 2004, SCSL-04-15-PT-180. Similarly, Article 7 of the Special Court Statute establishes jurisdiction over persons under 18 but older than 15 years of age, Article 4(c) of the Statute refers to “children under 15”, and Article 5(a) refers to “girls younger than 14”, but none of these articles provides a definition of “child” or “children”. There is also conflicting guidance in international and domestic instruments as to the definition of a “child”. The CRC, Article 1 and African Charter on the Rights and Welfare of the Child, Article 2, both define a child as “every human being below the age of 18”, but the CRC defines child combatants as individuals under age 15. The Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces defines children as boys and girls under age 18. The Constitution of Sierra Leone affords the right to vote to every citizen over age 18, but the Criminal Procedure Act, Section 2 defines a child as “a person under the age of 14 years”. African Charter available at www.africanunion.org. Capetown Principles available at: http://www.unicef.org/emerg/index_childsoldiers.html. Sierra Leone Constitution available at <http://scsl-server/sc-sl/new/sierraleoneconstitution.pdf>. Sierra Leone Criminal Procedure Act available at <http://scsl-server/sc-sl/new/criminalprocedureact.html>.

The determination of a witness's age poses numerous practical difficulties in Sierra Leone. Few people possess birth certificates or even know their own age, and the distinction between an adult and a child is traditionally marked by an initiation ceremony or a notable achievement in the young person's life, rather than a particular age delineation.⁴²

The prosecution must submit a list of all child witnesses it intends to call to the Trial Chamber. Child witnesses are listed under witness category B. Prosecution teams typically declare a witness to be a child if they believe that he/she is under 18 years old for any of the following reasons: (1) the witness claims to know his/her own age,⁴³ (2) a child protection agency independently determined the witness's age during demobilization, (3) the witness's parent or guardian knows his/her age, or (4) there is no indication of the witness's age, but he/she was a child combatant.⁴⁴ The prosecution will rely on this information, unless there is some apparent doubt about its veracity or accuracy, in which case it will make efforts to gather further information.⁴⁵ In short, the prosecution requires no verification of and places little weight on an individual's actual age when determining whether to consider him/her a child witness, but instead focuses on the witnesses individual history and vulnerability.

Moreover, these age determination practices have varied slightly amongst the three trials, and the two trial chambers have required different evidence before instating protective measures for child witnesses, such as testimony via video link. In the AFRC case, Trial Chamber II automatically granted all witnesses listed under Category B the right to testify via video link, even if the witness was in fact over 18 years of age. The trial chamber did not require any further proof of age or particular witness vulnerability, and therefore seemed to assume or accept that all witnesses listed on the prosecution's Category B list were indeed 18 or under.⁴⁶

On the other hand, age has proven to be an important criteria for child protection measures in Trial Chamber I. For example, there were two witnesses in the RUF case who appeared to be over age 18, and the Trial Chamber required an additional showing of witness vulnerability before it would authorize testimony via video link. In both instances, the prosecution elected to have the witness testify directly in the court room.⁴⁷

Prosecution attorneys in the CDF case handled the question slightly differently. If it became apparent that an ex-combatant witness was in fact over 18 at the time he was called to testify, the prosecution discussed the possibility of direct testimony in the courtroom with the witness and the Court Psychologist, rather than bringing the issue before the Trial Chamber. CDF prosecution attorneys felt that it benefited their case to

⁴² Interview with Rebekka Ehret, Ethnologist and Chief of Translation, Freetown, 22 Nov. 2005.

⁴³ Typically, witnesses claim to know their age because a parent or relative told them.

⁴⁴ Interview with James Johnson, CDF Senior Trial Attorney (Prosecution), Freetown, 22 Nov. 2005. Note that Mr. Johnson was promoted to Chief of Prosecutions in Jan. 2006.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* Former Court Psychologist, An Michels, recalls that Trial Chamber I judges allowed an 18 year-old to testify via video link on one occasion. Email 7 Feb. 2007.

have former child combatants testify in the courtroom, rather than via video link.⁴⁸ Hence, when it came to older child witnesses, they did not advocate as vehemently for these special protections. However, there is one example in the CDF case where prosecution attorneys pushed for child status, insisting their witness was 17 years old. The Trial Chamber required further proof of the witness's age, and the prosecution agreed to provide the results of a dental examination and psycho-social evaluation. The dental examination showed the witness's age to be 22-23 years old, whereas the psycho-social evaluation determined him to be over 17 years old.⁴⁹

Notably, while defense attorneys regularly contest prosecution assertions that a given witness was under age 15 at the time of his alleged conscription, none of the defense teams have objected to the categorization of a witness as a child witness. With rare exception, defense teams also readily accept child witness testimony via video link.⁵⁰

V. PROFILE OF CHILD WITNESSES AT THE SPECIAL COURT

By the close of the December 2005 trial session, 191 witnesses had testified for the prosecution in all three cases. Of these, only 13 were child witnesses.⁵¹ All 13 of these child witnesses were former child combatants whose testimony was intended to support allegations of conscripting and enlisting children under age 15 into the armed forces. The following chart provides a breakdown of the number of prosecution child witnesses who have testified in each case thus far and the number of child witnesses who have testified with child-specific protective measures in place.

⁴⁸ Interview with CDF Senior Trial Attorney, 22 Nov. 2005. Former Court Psychologist, An Michels, asserts that WVS collaborates closely with the Trial Chamber and the Prosecution in all decisions regarding access to the video link, thereby limiting the possible influence of prosecutorial strategy in these decisions.

⁴⁹ *Ibid.* According to Mr. Johnson, the dentist who performed the age examination was not specially trained for this task, and he maintains that there are virtually no such experts in Sierra Leone. A demobilization social worker evaluated the witness's age based on information about his family, his level of schooling, and the age of his siblings.

⁵⁰ On one occasion, RUF Defense teams replied to a *Prosecution Motion on Protective Measures* arguing that the presentation of testimony via video link unfairly restricted the rights of the accused, and that the witness must demonstrate sufficient fear lest the measure be disproportionate. See *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, *supra* note 42, at p. 6763.

⁵¹ Both prosecution and WVS personnel have some difficulty estimating the number of child witnesses at the Special Court, in part because some individuals were initially thought to be children but then proved older or they simply aged out of child witness status over the course of the proceedings. Phone interview with WVS Chief, 8 Jan. 2006.

Child Witness Testimony at the Special Court⁵²

	CDF	AFRC	RUF
Case Status	Prosecution case closed. Defense case commenced 01/2006.	Prosecution case closed. Defense case to commence 03/2006.	Prosecution case pending. Seventh Trial Session to commence 02/2006.
Number of witnesses called (adults and children combined)	75	59	57
Number of child witnesses included in initial witness list	12	29 (combined RUF/AFRC)	29 (combined RUF/AFRC)
Number of child witnesses who actually testified	5	5	3 (+1 still set to testify)
Number of child witnesses who testified via video link	2	4	2
Number of child witnesses who testified in the courtroom	3	1	1
Number of “dropped” child witnesses	7	22 (combined RUF/AFRC)	22 (combined RUF/AFRC)

Three RUF child witnesses have already testified, and one is scheduled to testify in the next trial session, for a total of four child witnesses “who actually testify” in the RUF case. Two child witnesses testified in *both* the RUF and AFRC trials. Thus, while four child witnesses testified in the RUF case and five testified in the AFRC case, the total number of individual child witnesses in both cases combined is seven. Of the 29 child witnesses listed to testify in the RUF and AFRC trials, seven actually did or will testify, and the other 22 child witnesses were “dropped” from the witness list.

Special Court guidelines encourage prosecutors to keep the number of child witnesses to a minimum. Adult witnesses are generally preferable to child witnesses because there is a lower risk of re-traumatization,⁵³ and they may not be as easily confused or influenced.⁵⁴ The prosecution therefore has opted to use adult witnesses whenever possible. While most adults cannot provide first-hand testimony about the experience of being a child soldier, CDF attorneys eventually came to rely on expert testimony from workers involved in the Demobilization, Disarmament and Reintegration effort.⁵⁵ RUF and AFRC prosecutors also called expert witnesses to testify about child recruitment, so it would appear that, like CDF prosecutors, attorneys in the RUF and AFRC trials are interested in keeping the number of child witnesses low.

⁵² Information provided by Maja Dimitrova, Prosecution Case File Manager, 5 Dec. 2005 and confirmed by James Johnson, Chief of Prosecutions, 3 Feb. 2006.

⁵³ Interview with Dr. Shanee Stepakoff, Court Psychologist, Freetown, 23 Nov. 2005 and An Michels, Former Court Psychologist, 4 Nov. 2005. *Also see:* Schuman, *supra* note 25.

⁵⁴ Interview with CDF Senior Trial Attorney, 24 Oct. 2005.

⁵⁵ *Ibid.*

Girl Combatants

All of the child witnesses who have testified at the Special Court thus far have been boys. But according to UNICEF, roughly 8% of the 7,000 child combatants that were officially registered in Sierra Leone were girls. It is estimated that the actual percentage of girls in the fighting forces was probably closer to 25%. Girls nonetheless still represent a significantly smaller portion of the child combatant population. Some experts believe that the reason for the disparity between the number of girl and boy combatants is due to the relative value of girls over boys in the fighting forces. Girl combatants usually fulfilled multiple roles at once, serving simultaneously as fighters, bush wives, sex slaves, launderers, child care providers, food finders, spies and laborers. They may have been viewed as less expendable than boy combatants and thus were sent to the front lines less frequently.⁵⁶

Former girl combatants also face a different set of challenges to reintegration than their male counterparts, which could make them more reluctant to testify. Most former girl combatants return to their villages as rape survivors and/or unmarried mothers. Others return as “bush wives” and remain with their “bush husbands” even after the fighting has ceased. Many are overwhelmed by the stigmatization of being a “bush wife” or former combatant, and go into hiding rather than attempting to reintegrate into their communities.⁵⁷ Those who do successfully reintegrate are unlikely to jeopardize their situation by openly identifying with these stigmatizing characteristics.⁵⁸

As of December 2005, Aisha⁵⁹ is the only female former child combatant to testify as such before the Special Court. Other female witnesses have testified about crimes that they were forced to commit after abduction into the fighting forces, but generally the prosecution has not treated these witnesses as former combatants.

Aisha was 21 years old at the time of her testimony, and although the prosecution listed her as a child witness, she testified in the courtroom rather than through the video link.⁶⁰ In an interview with the authors, Aisha stated that there were plenty of other former girl combatants enrolled in her demobilization skills training program, but most of them “did not have the mind to testify”. She said most of the girls would leave when they saw court personnel arriving at the training center. Aisha was 17 years old at the time of the demobilization, and she already had three children with her bush husband. She said that she chose to testify because her guardian (who was also a child protection agency counselor) strongly encouraged her to tell her story.

⁵⁶ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

⁵⁷ Expert Testimony of Zainab Hawa Bangura on the “Bush Wife Phenomenon”, Trial Chamber II, AFRC Trial, 3 and 4 Oct. 2005. Mrs. Bangura uses the term “bush wife” in reference to forced marriage during the Sierra Leonean conflict which involved the physical abduction of a girl or woman by a rebel soldier, usually during an attack.

⁵⁸ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

⁵⁹ Not her real name.

⁶⁰ Interview with James Johnson, CDF Senior Trial Attorney, 24 Oct. 2005. Mr. Johnson explained that the witness’s vulnerable status might have qualified her to testify via video link, despite her age. Prosecution attorneys discussed this possibility with the witness and they decided together that she would testify in court. The witness told the authors that it was her choice to testify in the courtroom.

Aisha is still married to her bush husband and is raising her children with him, but he does not know that she testified before the Special Court. As a former RUF combatant himself, she believes that her husband would not support the prosecution of the alleged RUF leaders. She has worked closely with Witnesses and Victims Services and the prosecution to devise explanations for her frequent travel to Freetown and prolonged absences from her family. In this regard, she faces greater personal security concerns than many other witnesses for the prosecution.

VI. FRAMEWORK FOR PROTECTING CHILD WITNESS RIGHTS AT THE SPECIAL COURT

*Children's Rights Rooted in International Instruments*⁶¹

The need for special consideration for children in judicial proceedings is widely recognized under international law, and it is here that the Special Court ruling to specially protect child witnesses finds its root.⁶² International instruments consider the following factors to affect a child's experience in the courtroom: age, dependence on adults and the environment, compromised decision-making ability, inability to recognize his/her own best interest or plan for the future, generally uncritical attitude toward adults, and susceptibility to influence.

Both the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child provide specific protections for children appearing in a court of law, including a requirement that courts always act in the child's best interest. These instruments also preserve the child's right to communicate his/her views "explicitly in court proceedings".⁶³ Other international protections which bear on the Special Court framework include respect for the rights and duties of parents and family with regard to children,⁶⁴ the right to education,⁶⁵ the protection of privacy and family,⁶⁶ and the right to psychological recovery and social reintegration for child victims of armed conflict.⁶⁷

Sources of Witness Protection at the Special Court

Article 16(4) of the Special Court Statute creates a Witnesses and Victims Services unit (WVS) within the Registry to "provide protective measures and security arrangements,

⁶¹ For a good discussion on the international framework for the protection of children in courts, see "Child Witnesses and the International Criminal Justice System", Stuart Beresford, 3 *Journal of International Criminal Justice*, 721, 726-732 (2005).

⁶² *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, *supra* note 42, citing *Prosecutor v. Tadic*, IT-94-1-T, *Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses*, 10 Aug. 1995, para. 47.

⁶³ CRC Art. 3 and African Charter Art. 4, requiring courts to act in child's best interest; CRC Art. 12 and African Charter Art. 7, requiring that all children "be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative..."

⁶⁴ CRC Art. 5

⁶⁵ CRC Art. 28 and African Charter Art. 11.

⁶⁶ CRC Art. 16 and African Charter Art. 10.

⁶⁷ CRC Art. 39.

counseling and other appropriate assistance” for all witnesses at the Special Court, including child witnesses.⁶⁸ WVS is mandated to advocate for the witness’s best interest and ensure that he/she does not suffer any harm from testifying.⁶⁹ The Special Court Rules of Procedure and Evidence dictate that the WVS will recommend protective and security measures for witnesses, develop long-term and short-term plans for witness protection and support, and ensure that all witnesses receive relevant support, including counseling or medical assistance, especially in cases of crimes against children.⁷⁰

According to Rule 69(B), the Trial Chamber shall consult WVS concerning protective measures for victims and witnesses. WVS may recommend the non-disclosure of the witness’s identity (Rule 69) and other measures to safeguard his/her privacy and security (Rule 75). WVS may also recommend support measures for particularly vulnerable witnesses, such as testimony via video link from a separate room. In accordance with international standards, child witnesses are considered inherently vulnerable and are afforded the opportunity to testify via video link.⁷¹ Due to this inherent vulnerability, the Special Court has developed a series of guidelines for the protection of child witnesses. These guidelines are treated at length in the section that follows.

VII. CHILD-SPECIFIC PROTECTION AT THE SPECIAL COURT

This section of the report will examine the mechanisms designed to protect child witnesses at the Special Court, including guidance on treatment during investigation and trial preparation, and a specific court order for child protection during testimony. In the rhetoric of the Special Court, the child protection framework is usually referred to as “the guidelines”. We begin by assessing the extent to which the guidelines have been followed throughout the proceedings and conclude by commenting on the overall effectiveness of the protections program.

Prior to beginning investigations, representatives of the Special Court approached the UNICEF office in Freetown for specific guidance on the needs of Sierra Leonean children in international judicial proceedings.⁷² While the Prosecutor had exercised his discretion not to prosecute any children under the greatest responsibility standard, it was clear that child testimony would be essential to the prosecution’s case given the active role that children played as victims, witnesses and combatants during the war.⁷³ Representatives of the Office of the Prosecution (OTP) and Witnesses and Victims Services (WVS) developed a framework of principles and best practices for identifying child witnesses in accordance with international standards. These early guidelines urged that the participation of children in the proceedings “be guided by the principle of the best interest of the child”, insisting on special protection for child witnesses due to “their

⁶⁸ Special Court Statute, Article 16(4).

⁶⁹ Interviews with Court Psychologist, 23 Nov. 2005 and WVS Chief, 26 Nov. 2005.

⁷⁰ See generally Rule 34, Special Court Rules of Procedure and Evidence.

⁷¹ For a discussion of the sources of this internationally recognized practice, see Beresford, *supra* note 60.

⁷² The Child Protection Officer for the United Nations Mission in Sierra Leone (UNAMSIL) also contributed to this effort.

⁷³ Interview with UNICEF Child Protection Officer, 15 Nov. 2005 and Former Court Psychologist, 4 Nov. 2005.

age, level of maturity and individual special needs”.⁷⁴ This initial framework of principles was designed to meet the need for child protection during the early stages of investigation. Once the WVS witness support team became fully operational, it created a new set of guidelines which outlined the specific procedures to be followed by attorneys and investigators dealing with children, requiring close collaboration with WVS staff at all stages of the proceedings.

The Special Court established the following guiding principles for working with child witnesses:⁷⁵

- Consent: The prosecution should only call child witnesses who have given their full informed consent, and whose parent or guardian has also fully consented to the child’s participation as a witness.
- Privacy: Prosecution investigators should conduct all interviews with children in private; confidentiality and anonymity of the child are paramount.
- Security: Prosecution investigators should be discreet in their attempts to locate potential child witnesses in order to avoid exposing them to security risks. All child witnesses should be afforded identity protection measures.
- Avoiding Re-traumatization: Only investigators and attorneys with experience in working with children and specialized training in interviewing children shall be involved in the work with children, in order to prevent/minimize their re-traumatization. All investigators and attorneys shall receive special training in child rights and child protection and interviewing children.
- Witness Selection: The prosecution should only approach the most resilient child witnesses, and only those who are already resettled with their families or communities. In identifying potential child witnesses, “only children in the care of their families or legal guardians” should be considered.
- Expression: All child witnesses shall be afforded the right to be heard and express their views.
- Psychological Support: Psycho-social and other appropriate support services must be available for child witnesses involved with the Special Court.

UNICEF and WVS has provided training on these guidelines to both prosecution and defense investigators,⁷⁶ but despite the provision that all “attorneys shall receive special training in child rights and child protection and interviewing children”, there is no established training program for attorneys, nor is there training for judges. However, judges from both Trial Chambers were “briefed” on issues relating to vulnerable witnesses, including child witnesses. The Court Psychologist also provided “extensive briefing” on these issues to Prosecution attorneys in late 2004.⁷⁷

⁷⁴ “Principles and Procedures for the Protection of Children in the Special Court” (internal document).

⁷⁵ This list is compiled from information gathered through interviews with court staff and UNICEF representatives and from various written sources including “Principles and Procedures for the Protection of Children in the Special Court” (internal document) and “Guidelines for the Protection of Children in the Special Court for Sierra Leone” (produced by UNICEF in Feb. 2005 explicitly for Investigators of the Defense Teams). WVS and UNICEF produced a virtually identical set of guidelines for the OTP during its investigations stage.

⁷⁶ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

⁷⁷ Email from Former Court Psychologist, 7 Feb. 2006.

A joint monitoring committee consisting of representatives of the Special Court and of the Sierra Leonean Child Protection Network was empanelled to oversee the implementation of these principles and procedures, and to guide the further collaboration between the Court and Child Protection Agencies (CPAs). While the guidelines suggested that the monitoring committee convene on a monthly or bi-monthly basis, in actuality the members only met once or twice and the effort ultimately disintegrated.⁷⁸ Nonetheless, the Court Psychologist and other WVS staff maintained a close relationship with UNICEF and the CPAs prior to the commencement of trials.⁷⁹

The following sections examine the application of the Special Court child protection guidelines at each stage of the trial process. The specific court order for the protection of child witnesses is addressed in “Phase III: Testimony and Trial Experience”.

Phase I: Investigation and Witness Identification

UNICEF was particularly concerned about the risk of re-traumatization during the investigation stage of the prosecution’s case.⁸⁰ This concern stemmed from the fact that WVS staff is not involved in the selection of witnesses for either party. Indeed, most witness protection mechanisms only come into effect after a witness is confirmed.⁸¹

In the early stages of prosecution investigation, the demobilization process was still under way. UNICEF and other child protection agencies expressed concern that investigators’ questions could re-traumatize children by forcing them to remember specific details about difficult aspects of the war. Many war traumas were still fresh and most children did not have proper ways of expressing or understanding their feelings. UNICEF was therefore eager to work with prosecution investigators in order to ensure that a child’s rights and well-being were prioritized over the value of any evidence he might provide.⁸²

Although prosecution investigators found many witnesses through word of mouth, UNICEF helped facilitate this process by putting the Office of the Prosecutor in contact with the specific child protection agencies that were managing the demobilization and resettlement efforts. Some of these agencies became actively involved in the prosecution’s witness selection program, applying the prosecution’s criteria themselves to identify the most resilient children and those best-suited for testimony. This approach allowed child protection authorities to control which children came into contact with court personnel. Other agencies felt this approach could compromise their impartiality;

⁷⁸ Phone interview with WVS Chief, 12 Jan. 2006.

⁷⁹ Email from Former Court Psychologist, 7 Feb. 2006.

⁸⁰ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

⁸¹ Generally speaking, WVS’s neutral position under the Registry demands that it assist in the care and protection of both prosecution and defense witnesses. While WVS plays no role in witness recruitment, Rule 39 of the Special Court Rules of Procedure and Evidence allows certain support services (i.e. medical treatment) to potential prosecution witnesses during the investigation stage. There is no comparable provision for defense witnesses.

⁸² Interview with UNICEF Child Protection Officer, 15 Nov. 2005. According to Mr. Robertshaw, to the extent that UNICEF collaborated with the Special Court to identify potential child witnesses, the agency was acting as an advocate for the protection of children involved in these proceedings, and it did not intend to assist in the prosecution of the defendants.

rather than identifying potential child witnesses themselves, these agencies allowed investigators broad access to numerous children and left it to the prosecution to determine which ones were most resilient.⁸³ This approach raises some concern, given that most prosecution investigators and attorneys were not trained to assess vulnerability.

Manner of Questioning

The Special Court's child protection guidelines recognize the need for sensitivity during investigation interviews with a view toward avoiding re-traumatization. Although the manner of questioning can also affect the integrity of a child's evidence, the guidelines do not address this point and the UNICEF investigator training did not address techniques for interviewing child witnesses.

Rather than train all of its investigators on specific techniques for interviewing children, the prosecution hired an international expert investigator who was specially trained in working with children and child witnesses in criminal proceedings in Switzerland. This child expert accompanied investigators who were not specially trained in interviewing children, providing advice and supervision and often conducting the interviews herself. Due to linguistic and cultural barriers, she typically had to work through an interpreter, which may have compromised the expert's efforts to form sensitive questions.⁸⁴

Determining Resiliency/Vulnerability

The child protection guidelines included a resiliency requirement which intended to prevent investigators from interviewing particularly vulnerable or special risk children, such as street children or children without a family or community support structure. Vulnerable children are particularly susceptible to re-traumatization, and it becomes much harder to provide prolonged protection and support to children who were more vulnerable at the outset.⁸⁵

Since WVS is not involved in witness identification or selection, WVS staff did not assist the prosecution in determining a child's resiliency. However, members of the unit did conduct vulnerability assessments during the process of witness reconfirmation.⁸⁶ In one instance, the prosecution approached a ten year-old boy who had allegedly been captured by CDF combatants at the age of three and held for one year. WVS psychological support staff met with the boy and his father during a vulnerability assessment. The support staff identified signs of severe trauma and agreed to check on the boy periodically, even before he was confirmed as a witness. WVS staff maintained that the risk of re-traumatizing the boy in court was too high and that it was in his best interest not

⁸³ Interviews with Former Court Psychologist, 4 Nov. 2005, Former Child Crimes Investigator (Prosecution), 3 Nov. 2005, and UNICEF Child Protection Officer, 15 Nov. 2005.

⁸⁴ Interviews with CDF Senior Trial Attorney and Former Child Crimes Investigator (Prosecution), 3 Nov. 2005. While court interpreters and WVS interpreters are trained on the specific tactics for questioning children, the interpreters that the prosecution used during investigation were not necessarily specially trained in this area. Prosecution "interpreters" were frequently local investigators or other bilingual prosecution staff.

⁸⁵ Interviews with UNICEF Child Protection Officer, 15 Nov. 2005 and Former Court Psychologist, 4 Nov. 2005.

⁸⁶ Email from Former Court Psychologist, 7 Feb. 2006.

to testify. Ultimately, due to his mental state, his young age and lack of parental support for his testimony, the CDF prosecutor did not call this witness.⁸⁷

By and large, it appears that attorneys and investigators for the prosecution adhered to the child protection guidelines, seeking only the most resilient witnesses. It is, after all, in a party's interest to call only the most stable, well-adjusted witnesses to appear in court. Nonetheless, there are instances where the investigators' quest for compelling or dramatic evidence seems to have trumped concerns about the witness's psychological resiliency. A number of the child witnesses approached by the prosecution were homeless and had no family structure when they came under the Special Court's care. While most of these children had ties to child protection agencies, some of those ties were tenuous at best.

There are varying results amongst this sub-set of child witnesses. The lack of a familial structure and their constant transience makes it difficult to keep track of them. A number of these child witnesses were never called to testify: instead, the prosecution "dropped" them from its list of confirmed witnesses because they were too difficult to locate.⁸⁸

One such witness was homeless and living in the streets of Freetown when investigators found him. He passed through numerous demobilization programs, but settled nowhere. He claims to be a former RUF combatant, and all of his family is either missing or dead. The prosecution included him in its list of confirmed witnesses, despite the recommendation against approaching street children. This witness quickly proved to be unreliable, and ultimately the prosecution was forced to drop him. Shortly thereafter, he sold the flat and the furniture that WVS had rented for him and used the money to buy drugs. He was arrested in Guinea for possession and sale of drugs in November 2005. This boy returned to Freetown as a homeless drug addict, with no family or community to support him, but he continues to receive assistance from WVS.⁸⁹

On the other hand, child witnesses with no support structure may actually receive more material benefits than those who return to their families. When a child witness has no family to which he can return, WVS continues to look after him long after his testimony is complete, providing him with funds for housing and education or skills training.⁹⁰

Overall, while these boys were not "resilient" under the standard of the child protection guidelines, and they did not have an adequate support system when they came under the Special Court's care, it is difficult to say whether they are *worse* off after their interactions with court personnel. Some believe that the influence of a child expert on the investigation teams seems to have largely mitigated any endangerment to the well-being of the more vulnerable child witnesses.⁹¹

Consent Issues

⁸⁷ Interview with Neneh Barrie, WVS Psycho-Social Counselor, Freetown, 14 Nov. 2005.

⁸⁸ Interviews with CDF Senior Trial Attorney, 24 Oct. 2005 and WVS Chief, 26 Nov. 2005.

⁸⁹ Interviews with child witness and WVS Chief, 26 Nov. 2005.

⁹⁰ Interview with WVS Chief, 26 Nov. 2005.

⁹¹ Phone interview with Former Court Psychologist, 4 Nov. 2005.

In accordance with the child protection guidelines, prosecution investigators required that the child and his/her parents consent to participation as a witness at the Special Court. They developed and used specific consent forms for this purpose. However, given that many former child combatants were still displaced in 2002 and 2003, parental consent was often unavailable. Many former child combatants were under the care of a child protection agency, and the agency itself would give “parental” consent for the child’s participation as a witness.

For the most part, the consent requirements were respected and effective. But some child witnesses have stated that they did not know what the Special Court was or what it meant to be a witness when they consented to participate.⁹² The requirement for agency consent was probably helpful in limiting the pool of witnesses to the most resilient children, but it is not a substitute for parental or family consent.

At least one child witness is now facing familial difficulties because he testified at the Special Court. This former child combatant explained that he was reunited with his two surviving family members more than a year after he consented to be a witness at the Special Court. His child protection agency had given consent in lieu of his parents. He now finds that his family members do not support the Special Court or its work in Sierra Leone, and – in addition to the stigma of being a former combatant – he is newly ostracized for his role as witness at the Special Court.

On the other hand, the parental consent requirement seems to have worked well for children that were already resettled with their families. None of the child witnesses who have been called thus far testified against the will of their parents, though some of them say they have not disclosed their involvement with the Special Court to any other family members.

Phase II: Preparation of Witness Testimony

Orientation and Initial Support

Generally, witnesses do not come to the Special Court facility until investigations are complete and they are confirmed to testify. For WVS purposes, a witness is confirmed when the calling party has definitively decided to call him/her as a witness and submitted the individual’s name to the Trial Chamber. A witness may eventually be dropped, or the opposing party may object to his/her inclusion in the witness list, but this does not change the witness’s status as “confirmed”.⁹³

From the time a witness is confirmed, he/she comes under the care of WVS. Once a child witness is confirmed and brought to Freetown, he is taken to a “safe-house”. Child witnesses are generally housed separately from adult insider witnesses. Importantly,

⁹² Interviews with child witnesses.

⁹³ Interview with WVS Chief, 26 Nov. 2005. Note that the Office of the Prosecutor deems a witness “confirmed” from the point that the witness confirms his/her statement. Thus while the prosecution may have “confirmed” the evidence that a witness would give, this does not necessarily imply a decision to call that witness to testify. Interview with Chief of Prosecutions, 3 Feb. 2006.

former child combatant witnesses are treated as victim witnesses for accommodation purposes.⁹⁴

Upon their arrival in Freetown, the WVS psycho-social support staff check them in and orient them to the facility. This is usually the child witness's first contact with a psycho-social support person. WVS counselors make sure the witnesses know why they have been brought to Freetown and brief them about court process and what is expected of them.⁹⁵

WVS personnel then conduct a pre-trial assessment which entails a full medical exam by the WVS in-house nurse and a psycho-social assessment conducted by certified WVS staff.⁹⁶ During the psycho-social assessment WVS counselors inquire about the witness's home life and try to ensure that he is not worrying about sick family members or other personal problems while preparing his testimony.

Witness Allowances

It is at this point that child witnesses begin accruing a witness allowance for their service at the Special Court. While they may have received nominal reimbursements for transportation during the investigation stage, witnesses should not have received or been promised any benefit from any Special Court staff prior to their confirmation and arrival in Freetown.

The Special Court witness allowance scheme is uniform for all witnesses residing in Sierra Leone, whether child or adult. According to the Practice Directive prepared by the Registrar and adopted by the Council of Judges on 16 July 2004, WVS is charged with paying all allowances to witnesses residing in Sierra Leone. The attendance allowance is 16,000 Leones per day (roughly \$5.25USD), and it is intended as compensation for "wages, earnings and time lost as a result of testifying." This is the equivalent of the daily salary of a United Nations General Services 1, Step 1 level employee in Sierra Leone. The Special Court also provides food, accommodation, transportation, and clothing for its witnesses, and witnesses may be granted the right to one support person in Freetown, (who separately receives reimbursement for food, lodging and transportation). In addition to general witness compensation, child witnesses receive educational or vocational support. The latter is intended to ensure "psychosocial stability related to testifying."⁹⁷

The issue of witness allowances is a sensitive one and has been the subject of extensive cross-examination for both adult and child witnesses. Defense witnesses are entitled to the same allowance and benefits as prosecution witnesses. The witness allowance

⁹⁴ On occasion WVS has housed former child combatant witnesses at the general victim witness housing complex. In these situations, WVS staff take care to ensure that they do not mix with other victim witnesses who might feel threatened by the presence of a former child combatant. Interview with Court Psychologist, 3 Feb. 2006.

⁹⁵ Interview with Miatta Abu, WVS Witness Support Coordinator, Freetown, 17 Nov. 2005.

⁹⁶ This initial assessment is usually carried out by a Sierra Leonean psycho-social support person in the witness's native language.

⁹⁷ Special Court Practice Direction on Allowances for Witnesses and Expert Witnesses, adopted 16 July 2004. Articles 4, 5, 6, 9, 10, and 14.

accrues for each day the witness is in service of the court, including days spent in transport. For many witnesses (including many child witnesses), this amounts to weeks or months at a time, and by far the most lucrative form of employment they have experienced. In a chronically poor country like Sierra Leone, a GS-1 UN salary can seem like a virtual windfall, especially for a child or young adult who may never have had any prior income.

Although it is identical to witness compensation schemes at the ICTY and ICTR and strictly follows UN policy, the Special Court's witness allowance policy has spawned much criticism. Some suggest that by making such hefty witness payments the Special Court "is acting like an NGO" rather than a judicial institution.⁹⁸ While WVS efforts to provide comprehensive support and encouragement to all child witnesses are commendable, this critique reflects concerns that the witness compensation scheme generates an unsustainable dependence on the Special Court that is detrimental to the witness him/herself.

UNICEF generally disfavors the Special Court's individualistic approach and would prefer to see a program that aids the reintegration of former child combatants by strengthening schools and communities, rather than paying benefits to individual children. Community perception is also important because the receipt of significant benefits can be stigmatizing to the child and betray his identity as a former child combatant. According to UNICEF Child Protection Officer, Donald Robertshaw, when a poor child suddenly appears at school with new books, clothes and supplies, his classmates usually assume that he is a former child combatant cashing in on the demobilization efforts. Moreover, especially as concerns former child combatants who are both victims and perpetrators, the community could perceive these benefits as a reward for their actions during the war.⁹⁹

Mr. Robertshaw also expressed concern that by offering "Cadillac services" the Special Court produces children who are ill-equipped for the reality of life in Sierra Leone. Instead, he says, the child support programs should be designed to give children the confidence they need to integrate back into the community.¹⁰⁰

In fact, WVS staff claim to be highly aware of the dangers of dependence and encourage child witnesses to take responsibility for their own lives. For example, WVS counselors engage child witnesses in extensive discussion about future goals and family and career plans. Moreover, WVS will often pay for a child witness's schooling or skills training program for two to three years into the future to ensure continuity.¹⁰¹

Another substantial critique of the Special Court's witness allowance scheme suggests that the benefits afforded witnesses are so excessive that they serve as an inducement to testify. Defense counsel have proposed that the witness allowance be restricted to an amount that corresponds more closely to the witness's actual income, charging that

⁹⁸ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Interviews with WVS Chief, 26 Nov. 2005 and WVS Witness Support Coordinator, 17 Nov. 2005.

disproportionate benefits improperly influence and encourage witness testimony.¹⁰² Trial Chamber I refuted this assertion, ruling that counsel cannot “raise any innuendo or imputation relating to the order of this Court in respect of protective measures and witness allowances.” The bench clarified that counsel may question a witness’s motivations for testifying, but that questions that strive to impeach the order of the Special Court or any of its statutes or practice direction are impermissible.¹⁰³ The issue of witness compensation is therefore precluded from discussion on the record.

The suggestion that the witness allowance influences testimony is by no means exclusive to child witnesses, but some individuals who are experienced in working with this population note a ‘take what you can get’ attitude amongst former child combatants.¹⁰⁴ It is possible that these young adults are eager to testify because they are hopeful that some of the Special Court’s apparent wealth might flow their way. Amongst the child witnesses interviewed for this report, none said that they were offered any particular benefit before they agreed to testify. However, most of them report that investigators told them that the Special Court would “take care of” them. In a country like Sierra Leone, the prospect of being taken care of could be very enticing indeed.

The WVS Chief, Saleem Vahidy, finds these problems unavoidable in the context of a chronically poor country. He argues that WVS is bound by its mandate, the Special Court rules, and international standards to provide health care, food and shelter to witnesses under its care. He recognizes the relative significance of these benefits when thousands of Sierra Leoneans go unfed or die of malaria, but he insists that it is within the Special Court and WVS mandate to ensure that no witness suffers harm from testifying. He claims that the education benefits to child witnesses are necessary because their schooling is usually interrupted by their participation in the trials, but more importantly because it falls within the Special Court mandate to promote reintegration of former child combatants and develop long-term plans for their support.¹⁰⁵

Meetings with Attorneys

WVS psycho-social support staff meet with child witnesses to help them understand the process and manage any symptoms of distress, even before they begin meeting with their attorney. This psychological support is intended to ensure that the witness is in the best possible mental state when he testifies. This counseling is not the equivalent of psychotherapy and is not intended to improve the quality of a witness’s testimony.¹⁰⁶ WVS is mandated to ensure that witnesses do not suffer any harm from testifying; the

¹⁰² Defense counsel asserted that the witness was receiving roughly ten times the amount she regularly earned when employed. Counsel raised this argument on cross-examination of an adult witness in closed session. Trial Chamber I, RUF Trial, 2 Dec. 2005, transcript p. 23.

¹⁰³ Ruling in Trial Chamber I, RUF Trial, 11 Apr. 2005, transcript p. 23.

¹⁰⁴ Interviews with Court Psychologist, 23 Nov. 2005 and WVS Chief, 26 Nov. 2005.

¹⁰⁵ Interview with WVS Chief, 26 Nov. 2005.

¹⁰⁶ Interview with Court Psychologist, 23 Nov. 2005. Dr. Stepakoff noted that, while it is not the purpose of psychological support to improve the quality of a witness’s testimony, the opportunity to discuss his/her traumatic experiences with a counselor may have the side effect of making the witness’s story-telling more narrative and easier to follow.

psychological support is focused on reducing or eliminating any negative impact that the process of giving testimony may have on the witness.¹⁰⁷

Most child witnesses meet with only one attorney. As mentioned earlier, neither prosecution nor defense attorneys receive special training about working with child witnesses. However, the prosecution designated an attorney with child witness experience to work with children in court. This expert attorney also worked closely with the Court Psychologist on child-related issues.¹⁰⁸ By all accounts, all prosecution attorneys have been intuitively sensitive to the particular needs of child witnesses.

WVS interpreters are trained in psycho-social support and are present in all attorney/witness meetings.¹⁰⁹ While the child witness will generally check in with WVS staff after each testimony prep session, the interpreter is ideally situated to mitigate or avoid potential re-traumatization: if a child witness is having difficulty preparing with his attorney, the interpreter is expected to inform WVS so that the Court Psychologist can intervene.¹¹⁰ English-speaking witnesses do not use interpreters, and in these circumstances, WVS is largely removed from the testimony preparation process. However, Dr. Stepakoff finds that prosecution attorneys have been sufficiently sensitive to alert WVS staff whenever they feel that a witness is having difficulty preparing his/her testimony.¹¹¹

Dropped Witnesses

A witness can be officially “dropped” at any stage. Anne-Catherine Hatt, former prosecution Expert Investigator for child witnesses, stated that no harm is done to a child who is appropriately interviewed in the field, but not taken as a witness.¹¹² The authors were not able to confirm or contest this assertion. At the time of prosecution investigations, child protection agencies continued to provide their usual support to children who were interviewed by Special Court investigators, but not chosen to testify.¹¹³

The consequences to confirmed child witnesses who are subsequently dropped are more severe. Since child witnesses who are brought to Freetown are exposed to security concerns and their lives are disrupted, WVS affords them the same financial follow-up support as child witnesses who testify.¹¹⁴ While some child witnesses were dropped because they were hard to work with or because court staff lost track of them, others were

¹⁰⁷ Phone interview with Former Court Psychologist, 4 Nov. 2005.

¹⁰⁸ Email from Former Court Psychologist, 7 Feb. 2006.

¹⁰⁹ Interview with WVS Witness Support Coordinator, 17 Nov. 2005.

¹¹⁰ Interview with Court Psychologist, 23 Nov. 2005. Dr. Stepakoff stated that no such occasion has arisen. She also commented that most child witnesses have not manifested significant emotional distress while preparing their testimony, though some of them were grappling with nightmares and intrusive memories prior to meeting with an attorney.

¹¹¹ *Ibid.*

¹¹² Phone interview with Former Child Crimes Investigator (Prosecution), 3 Nov. 2005.

¹¹³ Interview with UNICEF Child Protection Officer, 15 Nov. 2005. Since very few child protection agencies continue to operate, such support may not be available to children who are currently being interviewed by defense investigators.

¹¹⁴ This includes a reintegration allowance which is discussed in the section on post-testimony follow-up.

dropped because the prosecution concluded that their testimony would be unnecessary or duplicative.¹¹⁵

The emotional fall-out of being “dropped” merits acknowledgment. The authors interviewed four child witnesses who ultimately were not called to testify, although they had begun preparing their testimony in Freetown. One of them only learned that he had been “dropped” on the day he was interviewed for this report. He said he had no problem being let go; he accepted the prosecution’s explanation that he had done his job adequately and was no longer needed. However, the other three witnesses all expressed frustration and disappointment. One of them assumed that the prosecution lawyers dropped him because they thought he was lying. Another said he felt angry because he simply received a brief phone call from the WVS Chief informing him that he was no longer needed. And one of these dropped child witnesses became involved with drugs and crime (though his proclivity for these activities seems to be more the reason for his dismissal than a consequence of it).

It is not within the Special Court mandate to provide a forum for self-expression (indeed, this was more the purpose of the Truth and Reconciliation Commission), and every child who wants to tell his story cannot be afforded the chance to speak in court. But the experience of preparing to testify and then being dropped from the witness list can have serious consequences for the emotional well-being of vulnerable witnesses, such as former child combatants. It would seem that the best policy is to approach fewer witnesses and then confirm them only when it is fairly certain that their testimony will be needed. Of course, some flexibility is necessary and prosecution investigators and attorneys probably had these ideals in mind. There is room for improvement, however, and certainly defense investigators and attorneys could learn from the prosecution’s experiences.

Phase III: Testimony and Trial Experience

The following measures are available upon application to the Trial Chamber to protect the identity and ensure the safety and security of any witness: identity protection, including pseudonym and voice distortion, use of protective witness screen, and expungement of identifying data from public court records, or testimony in closed session where deemed necessary by the bench. WVS also provides all witnesses emotional or psychological support in the waiting room immediately before testimony and in the court room throughout testimony.

In addition to these general mechanisms which may be implemented for any witness, certain measures are available to accommodate the specific needs of child witnesses. Both Trial Chambers have modified protection measures for children, affording them the opportunity to testify via video link from a separate room.¹¹⁶ Rule 90 of the Rules of Procedure and Evidence also allows for adjustment to the oath requirement for children. The court provides the protective witness screen and pseudonym for all child witnesses

¹¹⁵ Interview with CDF Senior Trial Attorney, 24 Oct. 2005.

¹¹⁶ *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, *supra* note 42.

who testify directly in the court room rather than via video link. While UNICEF urged the Special Court only to hear child testimony in closed session, this recommendation was not universally implemented and some child witnesses testify in open session, but always with identity protection measures in place.

Testimony via Video Link

The option to testify *in camera* or via video link is available to vulnerable witnesses under Rules 75 and 85.¹¹⁷ Neither the Special Court Statute nor the Rules of Procedure and Evidence explicitly declare child witnesses to be inherently vulnerable, nor do they specify that children under age 18 testify via video link. However, the Trial Chambers have ruled that child witnesses under age 18 always have this opportunity.¹¹⁸

The purpose of the video link is to shield the child witness from the intimidation of courtroom formality, to minimize stress related to testifying, and to avoid confrontation with the accused, all of which can have a negative effect on a child's ability to recall and reveal events properly. The video link system is used in courts around the world to stabilize the balance of power between the accused and the child witness, especially in situations where the accused has had authority over the child. It is intended to protect the child, while preserving the right of the accused to confront his accuser. By shielding the child's identity, the video link may also lessen the need for closed session hearings and helps protect the right of the accused to a fair and public trial.

Rather than entering the trial chamber itself, WVS staff lead the child witness into a small private room in the court building. The child witness sits in a chair in front of a video camera and television monitor. He is able to see the judges, attorneys and sometimes the accused on the monitor.¹¹⁹ The judges, attorneys, accused and others in the court room can view the child witness through the video link on small monitors in the court room. If the child witness is giving testimony in open session, the public can hear his voice (which may be distorted if necessary), but they do not see any image. A WVS support person sits with the child witness in the video link room.¹²⁰

The Court's ruling that all witnesses under 18 years of age can testify via video link seems to have created a presumption that no child witness will testify in the courtroom. This presumption raises a number of competing principles of child protection; courts must insulate the child against re-traumatization, but young witnesses are entitled to speak their mind inside the courtroom. There are also competing considerations for best evidence and case strategy. For example, in the CDF trial, attorneys regularly asked

¹¹⁷ The Trial Chambers have permitted vulnerable adults to testify via video link upon an affirmative showing of special need.

¹¹⁸ See *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, *supra* note 42. The Chief of Prosecutions, Mr. James Johnson, notes that while protective measures have always been granted upon application by a party, it is not clear whether a child witness would *automatically* receive protective measures without an explicit application to the bench. Interview, 3 Feb. 2006.

¹¹⁹ Some child witnesses stated that they could see the accused through the video link, whereas others said they never saw them.

¹²⁰ In some cases, the presence of a witness support person during testimony was subject to approval by the bench. Email from Former Court Psychologist, 7 Feb. 2006.

child witnesses if they preferred to testify from inside the courtroom because the prosecution believed their presence had a greater impact on the public.¹²¹

A number of child witnesses stated that they would have preferred to testify from inside the courtroom. They said that seeing the defendants on the monitor was not enough; they wanted to “say it to their faces”. Some child witnesses explicitly asked to testify in the courtroom, but WVS staff determined the risk of re-traumatization was too great and required them to use the video link.¹²² Due to the apparent presumption that all child witnesses testify via video link, it may be hard for WVS personnel to adequately weigh the importance of child witness empowerment. Giving testimony inside the courtroom is not necessarily a negative experience; it can also be empowering to a child witness to tell his/her story publicly or to see his/her former perpetrator in a position of relative weakness.¹²³ Especially amongst older child witnesses such as those at the Special Court, it may be incorrect to assume that confrontation with the accused is inherently upsetting or traumatizing.

Roughly half of the child witnesses interviewed for this report stated that they knew the accused personally and could recognize them; the other half had never seen these men before, but recognized their names. Even amongst those who know the indictees personally, only a few testified that they were responsible for their direct harm or persecution. While it may be traumatic for a child witness to confront his own commander or abductor, it seems less likely that he would be re-traumatized upon seeing a complete stranger in the courtroom.

Moreover, some child witnesses might actually feel less vulnerable when they see their alleged former commanders or persecutors detained and accountable to a panel of judges. The indictees are usually present in the courtroom wearing civilian clothes. They sit behind their attorneys, restrained by armed guards and unable to get up or speak without permission. Extrapolating from her experiences with women in sexual slavery, Dr. Shanee Stepakoff says victims often find it empowering to see their perpetrator in a powerless situation. As a victim advocate, Dr. Stepakoff believes that the child witnesses at the Special Court are old enough to choose to testify in the courtroom.¹²⁴

But some experts caution against leaving this decision to the child alone, maintaining that children, even adolescents, do not always fully understand the implications of testifying in open court.¹²⁵ Former Court Psychologist, An Michels, believes that no witness can really imagine the pressure s/he will face while testifying. She asserts that adolescents are prone to risk behavior, and while they may express a desire to testify in the courtroom, she feels that the decision must ultimately rest with WVS staff and the

¹²¹ Interview with CDF Senior Trial Attorney, 22 Nov. 2005.

¹²² Interview with Neneh Barrie, WVS Psycho-Social Counselor, Freetown, 14 Nov. 2005.

¹²³ Some child witnesses stated that they particularly enjoyed cross-examination, because they saw it as their chance to prove they were telling the truth. This information contradicts the common hypothesis that cross-examination is a traumatic experience for child witnesses.

¹²⁴ Interview with Court Psychologist, 23 Nov. 2005. Dr. Stepakoff notes that child witnesses who choose to testify in the courtroom must be made to understand the implications of their decision, and they must have the option of switching to video link testimony if necessary.

¹²⁵ Interview with Former Court Psychologist, 4 Nov. 2005 and UNICEF Child Protection Officer, 15 Nov. 2005.

attorney who will lead the witness's testimony.¹²⁶ Defense Witness Coordinator, Marrah Bockarie, has years of experience working with former child combatants in Sierra Leone. He feels that child witnesses should *never* be allowed to testify in court. He notes that former child combatants often feel they are very strong and can handle anything, but in reality they are emotionally vulnerable and capable of doing harm to themselves.¹²⁷

Adjusted Oath Requirement

While all adult witnesses must take an oath to tell "the whole truth and nothing but the truth", child witnesses are not held to this requirement.¹²⁸ A child is permitted to testify if the bench determines that he is sufficiently mature, understands the duty to tell the truth, and is not subject to undue influence.¹²⁹ Even in cases where the child witness has agreed to swear an oath, the bench sometimes poses a number of questions to confirm the child's truth-telling capacity. Typically, these questions are answerable by a simple "yes" or "no", and may not be entirely effective in determining a child witness's grasp of the oath.¹³⁰

Manner of Questioning

As noted earlier, the cognitive abilities of these adolescent witnesses are generally comparable to those of an adult. The need for sensitive questioning corresponds more to delays in their emotional development and the possibility of re-traumatization than to their ability to understand the questions. While attorneys and judges do not receive any specialized training on treatment of child witnesses during testimony, there are no reported incidents of unreasonable or insensitive questioning. By and large, both prosecution and defense attorneys have treated former child combatant witnesses as victims rather than insiders, taking care in their manner of questioning not to be overly demanding or combative. Perhaps because of the high number of adult victim witnesses that appear before the Special Court, it seems that most attorneys and judges are well-acquainted with the need for clear and gentle questions.

Still, additional sensitization to the particular developmental needs of child witnesses could assist attorneys and judges to fully understand the impact of trauma on memory and could help avoid misinterpretation of a child's confusion or reaction to a stressful situation.

Phase IV: Post-Trial and Follow-Up

¹²⁶ Phone interview with Former Court Psychologist, 4 Nov. 2005 and email from Former Court Psychologist, 7 Feb. 2006.

¹²⁷ Interview with Marrah Bockarie, Defense Witness Coordinator, Freetown, 7 Nov. 2005.

¹²⁸ Rules of Procedure and Evidence, Rule 90.

¹²⁹ *Ibid.*

¹³⁰ *See e.g.* Testimony of Witness TF1-199, RUF Trial, Trial Chamber I, 20 July 2004. Judge Thompson posed the following questions to the witness: "...And you clearly understand the duty of telling the truth? And also you understand the difference between telling the truth and telling a lie? ..."

Immediately following a child witness's testimony, WVS staff check in with him to assess his experience, explain that his responsibilities have terminated and begin making arrangements for his return home. Often prosecution attorneys also thank the child witness for his testimony.

Witness support at this stage is the same for adult and child witnesses, with the exception of specific reintegration support for former child combatants. This typically includes funding for schooling or skills training programs and housing assistance if the child witness has no family. Once a child witness is transported back to his town or village, the witness allowance stops and reintegration support begins.¹³¹

Rule 34(B) requires that WVS cooperate with non-governmental and intergovernmental organizations to provide support and assistance. While it would seem that this cooperation would be particularly useful during the reintegration process, the Special Court generally does not work closely with NGOs at this stage. WVS is better funded than most NGOs in Sierra Leone and therefore better positioned to provide the financial support necessary to facilitate reintegration. The majority of the child protection agencies have also significantly scaled down their operations after demobilization. Moreover, WVS efforts to work with NGOs are often hampered by the necessity to protect the child witness's identity.¹³²

WVS conducts at least one follow-up field visit three months after the witness completes his testimony. These follow-up visits are designed to monitor the effect of testimony and include an assessment of the witness's security situation and psychological state. Concrete implementation of this follow-up plan has been difficult. The Special Court received funding from the European Commission to support witnesses in trial and post-trial phases, but the provision of post-trial support has been slowed by logistical problems such as staffing coordination and difficulty locating witnesses. Sometimes WVS cannot complete the follow-up field assessment until closer to six months after the witness testifies. Moreover, because these follow-up visits are designed to assess the effects of testimony, WVS staff normally do not visit witnesses who were "dropped", although there have been exceptions for particularly vulnerable individuals.¹³³

WVS staff encourage all witnesses to contact the Special Court if they have any kind of problem at any time after their testimony. Indeed, the child witnesses without family who continue to live in Freetown maintain very close relations with WVS. Most of them seem to feel very comfortable calling the WVS Chief, the Court Psychologist, or their counselor with problems related to their health, education, finances, family or housing. While it is more difficult for WVS staff to maintain close ties with child witnesses who live in the provinces, these children have all returned to their families or communities and presumably enjoy traditional support mechanisms that the boys in Freetown are lacking.

The Court Psychologist has used these follow-up assessments as a means of analyzing the overall impact of testimony on child witnesses. Aside from this information and the

¹³¹ Interview with WVS Chief, 26 Nov. 2005.

¹³² *Ibid.* and interview with WVS Witness Support Coordinator, 17 Nov. 2005.

¹³³ Phone interview with Former Court Psychologist, 4 Nov. 2005 and interview with Court Psychologist, 23 Nov. 2005.

responses from the child witnesses interviewed for this report, there is no comprehensive analysis of the effect of testimony on child witnesses in Sierra Leone. Some child protection agencies have provided anecdotal information which indicates that the experience of testifying was generally beneficial to child witnesses; they found it helpful to talk about difficult issues in a supportive environment, and it enhanced their overall reintegration.¹³⁴ Apart from the information gathered from the four “dropped” child witnesses interviewed for this report, there appears to be no assessment of the effects of investigation or testimony preparation on this sub-group.

Of the 14 child witnesses interviewed for this report, all those who testified said they were glad to have had a chance to tell their stories in public. Many of them stated that they feel proud, or they feel they have done something to serve their country and establish peace. In some cases, the authors attempted to ask the child witnesses whether they felt a sense of atonement after having testified. This concept proved difficult to communicate, especially through translation. Nonetheless, a number of child witnesses said that, while they found it hard to talk about the bad things they had done, they felt less guilty after testifying. Some said that they felt a sense of relief because they came to understand they were not to blame for their actions during the war.

The main lingering concern amongst child witnesses seems to be security. No child witness has ever come under any threat at the Special Court – before, during or after his participation.¹³⁵ Nonetheless, most child witnesses say that they worry about what could happen to them after the court closes its doors. In particular they express fear of reprisal by family members of the accused, especially child witnesses in the CDF case. While this concern is not unique to child witnesses, it is an enormously important issue with which WVS must grapple in planning its legacy.

Distinctions for Child Witnesses for the Defense?

The initial Special Court child protection guidelines were designed to apply in the prosecution’s case against the accused. UNICEF has separately collaborated with the Defense Office to create similar guidelines for child witness protection during defense investigations. At the time of publication of this report, the prosecution has closed its case against the CDF and AFRC accused and was continuing to call witnesses for the prosecution of the RUF accused. While the defense case has commenced in the CDF trial as of 19 January 2006, it is as yet too soon to assess the application of the child witness protection guidelines in this context.

While the Principal Defender anticipates that defense teams are unlikely to call many child witnesses,¹³⁶ the Defense Office and WVS did present a one-day training session for defense investigators, which included a segment on guidelines for the treatment of potential child witnesses during defense investigation. Like the prosecution’s child

¹³⁴ Interview with UNICEF Child Protection Officer, on 15 Nov. 2005. Mr. Robertshaw commented on the need for an independent third party investigation into this particular issue, and the need for objective comparison of the state of their lives before and after testimony.

¹³⁵ Interview with WVS Chief, 26 Nov. 2005.

¹³⁶ Interview with Principal Defender, 18 Nov. 2005.

protection guidelines, the defense guidelines focus on the witness selection process and interactions between investigators and potential child witnesses. There is no specific guidance for defense attorneys dealing with child witnesses.

WVS provides the same support and protection to defense witnesses and prosecution witnesses. Moreover, the same court room protections such as testimony via video link and oath adjustment are available to child witnesses for the defense. The Defense Office hired a Witness Coordinator with an extensive background in child protection issues, and it continues to work with UNICEF to ensure that child witnesses for the defense are afforded the same international protections as prosecution witnesses. However, there are some important distinctions between prosecution and defense child witnesses.

Defense teams are operating in a significantly different context, given that their witness identification efforts are beginning roughly two years after the end of demobilization.¹³⁷ By now most former combatants have been reintegrated or resettled, and the child protection agencies cannot offer the same elaborate network of potential witnesses. While this situation may provide for more stable child witnesses and clearer opportunities for parental consent, defense teams are already finding that many families are reluctant to remove children from their schools or communities.¹³⁸

Moreover, to the extent that child protection agencies would still be able to furnish information on former child combatants, they may be less willing to assist the defense by facilitating connections with potential witnesses. Whereas the prosecution enjoyed significant support in this regard, some believe that these same agencies would be unwilling to support defense cases because they are in favor of the prosecution of crimes against children.¹³⁹

VIII. CONCLUSION

Through its recognition of the complexity of the victim/perpetrator duality, the Special Court is setting international legal and procedural precedent for the treatment of former child combatants in proceedings. The Special Court's effort to establish a comprehensive program for the protection of child witnesses is commendable, and its development of guidelines for child witness support has been largely successful. Child witnesses at the Special Court are generally treated with dignity and respect, and of the child witnesses interviewed for this report, none expressed any regret about his decision to testify.

Still, some critics claim that the Special Court has only come half way in implementing its child protection guidelines.¹⁴⁰ Moreover, there are some areas in which the guidelines

¹³⁷ According to WVS staff, most demobilization programs began to wind down their operations toward the end of 2004. The prosecution closed its case against the CDF and AFRC accused in June and Nov. 2005, respectively. The majority of CDF and AFRC defense witness recruitment is underway currently. The CDF defense teams are scheduled to begin presentation of their cases in late Jan. 2005 and the AFRC defense teams are scheduled to commence in Feb. 2005.

¹³⁸ Interview with Defense Witness Coordinator, 7 Nov. 2005.

¹³⁹ Phone interview with Former Court Psychologist, 4 Nov. 2005.

¹⁴⁰ Interview with UNICEF Child Protection Officer, 15 Nov. 2005.

themselves may have fallen short. The following is a summary of observations and conclusions relating to the Special Court's program for protecting and supporting child witnesses:

- **Codification of Guidelines:** The system of child witness protection at the Special Court consists of guidelines, court orders, and a general unwritten framework of internationally recognized protections. Codification of the child protection measures in the Rules of Procedure and Evidence would formalize these principles and help ensure their implementation. As a weaker alternative, the Special Court could post the child protection guidelines to some centrally accessible location, such as its website.
- **Monitoring Implementation:** The guidelines recommended the establishment of a monitoring committee, staffed jointly by representatives of the Special Court and local child protection agencies. While the guidelines suggested that this committee convene on a monthly basis, in actuality the members only met once or twice and the effort ultimately disintegrated. Not only would the child protection program potentially benefit from internal monitoring, but this collaborative effort could facilitate a closer working relationship between the Special Court and existing child protection agencies.
- **Cooperation with Local Child Protection Agencies:** Recognizing the reduction in child protection agency services following the period of demobilization, WVS should make increased efforts at cooperation with those groups that do continue to function. Increased collaboration with child protection agencies would provide a more sustainable program of child witness support.
- **Limiting the Number of Child Witnesses:** The prosecution has taken care to limit the number of child witnesses called to testify, but ideally the number of child witnesses contacted by investigators would be limited even further. Since being "dropped" can have significant emotional consequences, it would seem that the best policy is to approach fewer child witnesses and then confirm them only when it is fairly certain that their testimony will be needed. Notably, the prosecution has learned from its experience and has come to rely more on the testimony of adult experts on child soldiers, rather than on the testimony of former child combatants themselves.
- **Training for Judges and Attorneys:** Thus far, all of the judges and attorneys working at the Special Court seem to treat child witnesses appropriately. These individuals are the principal authority figures for child witnesses, and they thus exercise the most influence over the child witness and his testimony. The onus is therefore on the Special Court to provide adequate training to ensure that anyone filling this position is fully aware of the unique set of problems and circumstances that accompany child witness testimony. Moreover, additional sensitization to the particular developmental needs of child witnesses could assist attorneys and judges to fully understand the impact of trauma on testimony and could help avoid misinterpretation of a child's confusion or reaction to a stressful situation.

- **Resiliency Determinations:** By and large, it appears that attorneys and investigators for the prosecution only considered children with adequate family and social support to serve as witnesses. But some “street children” were in fact approached. To the extent that they left the determination of a child’s vulnerability to prosecution investigators, some child protection agencies may have failed to protect this population.
- **Consent:** None of the child witnesses who have been called thus far testified against their will or the will of their parents, but some did not necessarily understand what they were agreeing to.
- **Witness Compensation:** While there is a risk that child witnesses may become dependent on the Special Court for long-term financial support, WVS staff take precautions to minimize this risk and engender a sense of responsibility and self-sufficiency amongst the child witnesses. Regardless, in the Sierra Leonean context, even the most moderate witness compensation scheme may serve as an inducement to testify, especially where child witnesses are concerned.
- **Video Link and Empowerment:** Due to the presumption that all child witnesses testify via video link, it may be hard for WVS personnel to adequately weigh the importance of child witness empowerment. Many of the child witnesses interviewed expressed a desire to testify inside the court room, and it may be incorrect to assume that confrontation with the accused is inherently upsetting or traumatizing.
- **Manner of Questioning:** The Special Court guidelines encourage sensitive questioning to minimize re-traumatization, but they do not include a provision for developmentally appropriate questioning that would help ensure the integrity of child witness evidence. Moreover, the guidelines exclusively focus on sensitive questioning in the investigation stage, whereas this practice could apply in the pre-trial and trial phases as well.
- **Need for Scientific Assessment:** Some child protection agencies have provided anecdotal information which indicates that the experience of testifying was generally beneficial to child witnesses, but there is no scientific data to support this conclusion. Moreover, there is very little information as to the effects of investigation or testimony preparation on child witnesses who are ultimately “dropped” before they testify. It is important to understand the comprehensive effect of testimony and trial preparation on former child combatants in order to better meet their needs as witnesses.

Finally, some additional positive side-effects of the Special Court’s existing child protection program also merit recognition. Since WVS often houses child witnesses together during their preparation and testimony, many former child combatants come to know and support one another, despite having fought for opposing sides during the war. Toward the end of the last trial period a number of young witnesses (some of whom testified as child witnesses) created and performed an informal play for WVS staff. The play was about half an hour long and included a detailed re-enactment of war scenes, as

well as songs about fighting and peace that the witnesses wrote themselves. Notably, each of the witnesses played the same role that he/she had played during the war (e.g. former child combatants were fighters, rape survivors were bush wives, etc.). In no way did WVS or the Special Court suggest that the witnesses undertake this production, rather the witnesses came up with the idea themselves and executed it entirely on their own.

The camaraderie, friendship and mutual support amongst these child witnesses is another indication that their encounter with the Special Court is primarily positive. The Special Court's awareness of the particular needs of child witnesses and its concerted effort to work with UNICEF and child protection agencies from the outset of trial proceedings was a first step in the right direction. Hopefully the Special Court will sustain its support for former child combatants and, drawing from its year and a half of trial experience, deepen its commitment to meeting the needs of this unique population of witnesses.