

PRINCIPLES and PROCEDURES FOR THE PROTECTION OF CHILDREN IN THE SPECIAL COURT

I. Introduction

The Special Court for Sierra Leone has been established to try those who bear the greatest responsibility for crimes committed in Sierra Leone since November 30, 1996. The Special Court is thus directed towards those who planned and implemented the war that caused atrocities directed against civilians, including children. While the statute gives the Court jurisdiction over persons aged 15 or above at the time of the alleged commission of the crime, the Prosecutor has categorically stated that he will not prosecute anybody for crimes allegedly committed while below the age of 18, i.e. being a child.

The Statute of the Special Court includes a number of child-specific crimes, including the crime of recruitment of child soldiers under 15 or their use in hostilities, sexual slavery and enforced prostitution and abduction of children. It will be the first time in history that specific crimes against children will be prosecuted. The Prosecutor will give particular attention to such crimes against children. For the Court to fulfill its mandate in relation to crimes against children, it is necessary to gather evidence for the commission of such crimes, including through interviews with children and the involvement of child witnesses in the proceedings of the Special Court.

While the importance of prosecuting crimes against children and the right of children to participate in the work of the Special Court are being recognized, the protection of children involved in any aspect of the work of the Special Court is considered paramount. Any participation of children shall thus be guided by the best interest of the child. Their security and well-being must not be compromised. As far as possible, it shall be voluntary on the basis of informed consent and ensure the confidentiality and anonymity of the child. It is expected that the participation of children as witnesses would be limited in number, both at the stage of investigations and in particular during trials.

Child protection agencies are prepared to support children involved in the Special Court, in particular in the provision of psycho-social support to children during all stages of the Court and in the training of the staff of the Court in working with children. In addition, child protection agencies are prepared to support the process of identifying and supporting child witnesses during the investigations.

A set of principles was agreed upon which shall guide the involvement of all children in the Special Court (see chapter II below). Detailed procedures for the identification of child witnesses and their involvement in the investigations of the Court have been developed (chapter III). These procedures seek to ensure confidentiality and the privacy of the child as well as the integrity of child protection agencies, so that their work and mandate are not compromised. These principles and procedures shall apply to all children who come in contact with the Special Court, irrespective of whether they are currently in the care of a child protection agency.

In addition, the Office of the Prosecutor (OTP) supports the development of rules for the involvement of children in the pre-trial and trial phase of the Court, including child-specific provisions in the Rules of Procedures and Evidence of the Court and in the witness and victims protection program. Further discussions will also be held on the question of child protection agencies serving as overview/expert witnesses.

A joint monitoring committee consisting of representatives of the Special Court and of the Child Protection Network shall oversee the implementation of these principles and procedures and guide the further collaboration between the Court and Child Protection Agencies (CPA's). It is proposed that it meets on a monthly basis.

II. Guiding Principles

The following principles shall guide the involvement of children in the work of the Special Court:

- No prosecution of children: no prosecution of crimes allegedly committed by a person while below the age of 18, i.e. being a child.
- Children are victims of the conflict. The Court shall therefore give particular attention to crimes committed against children.
- The participation of children in the proceedings shall be guided by the principle of the best interest of the child. Because of their age, level of maturity and individual special needs, child witnesses need special protection. They shall be treated with respect and dignity.
- Any child has the right to be accompanied by a support person, if he/she wishes
- It is the firm intention of the OTP that any participation of children shall be voluntary, on the basis of informed consent.
- The confidentiality and anonymity of the child – as essential tools of protection – shall be ensured as far as possible. Steps shall be taken to ensure the privacy and confidentiality of a child witness through all stages of the work of the Special Court and thereafter.
- The security of the child and of the child protection worker is paramount and must not be compromised. Therefore, the risks of child witnesses and others involved must be carefully assessed at every step of the process. The child's safety must not be exposed.
- Children involved in the work of the Special Court have the right to be heard and to express their views. Child witnesses and their guardians shall be kept informed about all aspects of their involvement in the Special Court.
- It is the firm intention of OTP that 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 retraumatization. In cases of sexual violence and/or when requested by the child, the investigator and interpreter shall be of the same gender as the child.
- Psycho-social and other appropriate support services must be available for child witnesses involved with the Special Court.
- All investigators and attorneys shall receive special training in child rights and child protection and interviewing children.

III. Procedures for the identification of child witnesses

The following procedures for the identification of child witnesses and their involvement in the investigations of the Court shall apply to all children who come in contact with the Special Court, irrespective of whether they are currently in the care of a child protection agency. It is recommended that only children in the care of their families or legal guardians are considered, i.e. reunified children, but not separated children (including many 'street children').

1. The Child Crimes Investigator of OTP will approach CPA's on the question of potential witnesses. CPA manager and child's social worker will review their case files and will assess each child and apply the vulnerability criteria. Child must pass the vulnerability test.

2. The cases are selected by OTP (no names mentioned; no identification of identity possible).
 3. The CPA contacts children identified by OTP and assesses the situation / vulnerability of the child and his parent(s) / guardian(s) and asks for their consent for a first meeting with the investigator of OTP.
- If consent is given, CPA facilitates an initial meeting of the child and parent / guardian with the representative of OTP. The investigator informs the child and his/her parent/guardian of the Court's procedures, the child's personal risks and special court protection measures. The objective of the first meeting is to confirm informed consent and to familiarize the child and guardian with the Court. The OTP assesses a first overview of the information the child might be able to give as basis of decision to continue the interview(s).
 - There will be follow up meetings in which the Special Court investigator collects information from the child and, when considered necessary, takes a formal statement. Only the child, the investigator and, when requested by the child, a support person are present in such meetings (and an interpreter, if necessary). As far as possible, such meetings and overall involvement of children shall take into account the educational needs of the child (after schools, during school holiday breaks). The location of such meetings depends on the specific circumstances, in particular safety and security considerations (in/outside community, school, religious building, library, skills training center).
 - Child witnesses and their parents / guardians are advised that the occurrence of the meeting/s is a confidential matter which they will not discuss with anyone.
 - CP agencies (CPA Manager) will be available to provide psychosocial support to the child. The investigator who led the interviews will keep the CPA informed.
 - Security / safety measures are taken and decided upon step by step by the investigator and the Witness Support and Protection Unit of the OTP and the Special Court respectively.

Roster for the meetings (subject to change if situation requires):

1st Meeting

Investigator of OTP

- Familiarizes him/herself with child and parent/guardian– Getting to know each other
- Informs Child and parent / guardian about the Court and implications of becoming a witness
- Affirms consent of family
- Assesses a first overview of the information the child might have in the absence of the parent / guardian
- Arranges logistics for the next meeting if necessary
- An interpreter will also be present if needed

CPA

- Introduces child and guardian
- CPA will be present only at the beginning and will **not** act as translator

Child

- Asks any questions that might arise
- Gives consent
- Identifies a support person, if wanted

Guardian

- Asks any questions that might arise
- Gives consent

2nd Meeting

Purpose: Evidence Collection

Special Court Investigator

- Carries out formal interview
- The child, investigator and interpreter would be present.
- The investigator takes down the statement of the child, which is to be signed by the child.
- Safety issues are discussed when such concerns arise.

Child

- Is formally interviewed

Guardian

- Present, if requested as a support person
- Joins at the end, may asks questions

CPA

- Psycho-social support
- Present, if requested as support person

Possible 3rd Meeting

Purpose: communication of the Prosecutors decision to use the child as a witness in Court

SC Investigator, possibly Prosecutor

- Relays message about the use of child's statement
- May re-interview child for clarification/additional questions
- Inform CPA about any security concerns brought up by the child

Child

- Receives notification about whether statement will be used or not
- May be questioned by investigator or prosecutor
- Safety plan

Guardian

- Present, if requested as a support person
- Joins at the end, may asks questions

CPA

- Provides psycho-social support
- Informs SC about any security concerns brought up by the child or guardian
- Present, if requested as support person

Decision

The child will be told whether or not the Prosecutor will proceed with using the statement. If the child's statement is going to be used, the investigator will remain in contact with the child and his/her guardian for further action. The investigator will also arrange logistics for any further meetings. The Witness and Victims Protection Program of the OTP and the Court respectively will support any child being called as a witness before the Court, which will take the appropriate protection measures. Even if child's statement is not going to be used, the Court will be open to further contact by the child or his/her family for any reason.

Security Measures

- From the start, the child and guardian will be told not to disclose involvement with Court to anybody.
- Investigator will develop step by step clearly understood safety plans for child and guardian.
- CPA will be carrying out continuous psychosocial and monitoring.
- The Witness and Victim Protection Unit of the OTP and the Court respectively will provide the necessary protection, including, if necessary the provision of a safe house; the exact role of CPA in witness protection program will be determined.
- It is the intention of OTP to ensure the confidentiality and anonymity of the child as far as possible and approved by the Court

Joint Monitoring Committee

A joint monitoring committee consisting of representatives of the Special Court and of the Child Protection Network shall oversee the implementation of these principles and procedures and guide the further collaboration between the Court and child protection agencies (during investigations; pre-trial and trial phase). The Committee shall meet on a monthly basis. CPAs shall nominate focal points for their interaction with the Special Court.

Specific steps to be taken:

- The SCSL will provide overall guidance on the type of information/evidence sought.
- CPAs and OTP agree upon vulnerability criteria prior to SC involvement.
- All investigators and attorneys shall receive special training in child rights and child protection and interviewing children. On request by the OTP, CPA's may assist.
- Training on the Special Court shall be organized for CP Managers and social workers.

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