



**Cour
Pénale
Internationale**

**International
Criminal
Court**



**LE BUREAU DU
PROVOCURER
THE OFFICE OF
THE PROSECUTOR**

OFFICE OF THE PROSECUTOR

POLICY ON CHILDREN

December 2023

COUR PÉNALE INTERNATIONALE

LE BUREAU
DU PROCUREUR



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PREFACE

Children suffer from the same Rome Statute crimes as adults. They are also vulnerable to, targeted for and impacted by atrocity crimes in specific ways, due to their age, developmental stage or other circumstances related to their status in society. If seen at all, they have far too often been considered as a homogeneous group that does not reflect the distinct needs, capacities and experiences of each child. And yet, historically, they have remained largely invisible in the halls of international criminal justice. This includes at the International Criminal Court.

Since my election as Prosecutor in 2021, I have pledged to further elevate the voices and experiences of children, who have their own rights to justice and to participation in processes affecting them. In 2022, we undertook a full review of our original Policy to ensure it reflects our evolved understanding of a child's rights approach, our recent learning from national systems, civil society partners, and academic experts and our new commitment to hearing from children in each of our cases.

The Policy you now hold in your hands is the articulation of my vision for our work on crimes against and affecting children. With its issuance, I commit my Office to ensuring that children's voices and experiences are considered in each of our cases and at every step, from preliminary examination to investigations and trial.

I am indebted to Deputy Prosecutor Nazhat Shameem Khan and my Special Adviser on Crimes Against and Affecting Children, Véronique Aubert, for leading this intensive Policy development process. With them, I thank the many experts from my own Office and around the globe who shared their time and wisdom. It is my hope that this Policy enhances the work of all who seek justice for children affected by atrocity crimes worldwide.

KARIM A. A. KHAN KC

Prosecutor, International Criminal Court

December 2023

This Policy will reach you at a time when the number of children affected by armed conflict, both directly and indirectly, has never been higher. Millions of children continue to be among the principal victims of serious violations of human rights and crimes under international law, including war crimes, crimes against humanity and genocide. Their rights are routinely violated. Despite the impact of armed conflict on children, crimes against and affecting children are underreported, under-investigated and under-prosecuted.

Conflicts affect children in a variety of ways depending on personal characteristics, including age, gender, disability, ethnicity, religion, where they live and their level of education. Children suffer differently than adults, partly because they are at different points in their physical, mental, and psychosocial development. But international criminal justice mechanisms, including the International Criminal Court, have not listened enough to their voices or their experiences.

This Policy will enhance the Office's attention, capacity and competence to address and prioritise crimes against and affecting children. The Policy also emphasises the importance of increased engagement with all actors and efficient exchange of knowledge with external actors.

This Policy aims to increase children's access to justice. It represents a critical step towards acknowledging the wrongs they have suffered, breaking cycles of violence, and rebuilding peaceful societies based on the rule of law. The implementation of this Policy by the Office will bring child victims one step closer to the effective remedies, reparations, and accountability they deserve.

VÉRONIQUE AUBERT

Special Adviser to the Prosecutor
on Crimes Against and Affecting Children

December 2023

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I. EXECUTIVE SUMMARY

Nearly one third of the world population is under eighteen. In some regions, children comprise nearly half the population. By some reports, in the last two decades, approximately one in six of the world's children have lived in situations of armed conflict.

Like adults, children are impacted by violations of the rules of war and the conduct of hostilities. Children suffer from attacks on civilian populations or infrastructure. They can be detained, tortured, sexually assaulted, enslaved, displaced or killed. In these contexts, children are often harmed due to their age, their development and social norms as to their roles and rights. They suffer, even when they are not the specific targets of violence.

Justice mechanisms have traditionally taken an adult-centric approach to the investigation and prosecution of international crimes. Tribunals rarely engage children as victims, survivors and witnesses. This happens for several reasons, including assumptions about children's credibility, memory or capacity to understand what is being asked of them or simply fears of re-traumatising them. As a result, children are treated as a homogeneous group and largely excluded from the justice process.

Article 54 of the Rome Statute mandates the Office of the Prosecutor ("the Office") to give particular consideration to sexual violence, gender violence and violence against children in its investigations and prosecutions. These crimes are thus a strategic priority for the Office. For this reason, the Office issued its first Children's Policy in 2016.

In light of developments in jurisprudence, research and best practices since 2016, the Office now issues this revised Policy with the following objectives:

- a. To help remedy the historic under-representation and lack of engagement of children in international criminal justice processes;
- b. To emphasise its view that all crimes under the Rome Statute may be committed against children or otherwise affect them in myriad ways;
- c. To ensure that in all dealings related to children, the Office takes a child rights, child-sensitive and child-competent approach guided by the best interests of the child;

- d. To actively reflect and adapt to issues related to intersectionality, children’s different developmental stages and their evolving capacities and abilities;
- e. To emphasise the Prosecutor’s commitment to establish an institutional environment that facilitates effective investigation and prosecution of crimes against and affecting children—including through recruitment, training, external collaboration, and meaningful implementation, monitoring, and evaluation measures;
- f. To promote the exchange of lessons learned and best practices stemming from local and international accountability efforts.

The Policy was developed through a rich consultative process, with multiple rounds of written input and direct discussion with internal Office staff as well as external experts from across the globe. It is organised to maximise its utility and implementation by the Office staff while also optimising relevance and accessibility to colleagues working in other parts of the justice ecosystem. It consists of a general introduction, an articulation of fundamental principles grounding the Office’s approach to crimes against and affecting children, and a discussion of the Office’s work related both to children generally and to specific operational phases.

This Policy opens with a discussion of key terms and concepts. Specifically, this section introduces the Office’s understanding of crimes against children and crimes affecting children. It also details the ways in which children typically come into contact with the Office and a brief discussion of how children’s experiences may be reflected in crimes under the Rome Statute.

The Policy then presents seven principles underlying the Office’s work on crimes against and affecting children. These principles relate to a) taking a child rights approach while also being child-sensitive and child-competent operationally; b) distinguishing between diverse children and their experiences; c) taking an intersectional approach to understanding the complexity of children’s experiences and risks of harm; d) taking a survivor-centred and trauma-informed approach; e) proactively considering crimes against and affecting children; f) obtaining appropriate consent and assent to children’s participation; and g) valuing global collaboration and complementarity.

The Policy also lays out how these principles are enacted in the Office’s work. First, several cross-cutting issues are presented, including a) engagement with parents, caregivers, and appropriate adults in matters of consent and support; b)

considering children during analysis; c) child-related considerations for protection and support; d) use of technology to assist in the safe engagement of children; e) outreach and collaboration; and f) measures for institutional development related to crimes against and affecting children. Following this, the Policy demonstrates how the Office approaches children through specific stages of its work.

Ultimately, this Policy articulates the Prosecutor’s vision that children’s voices be heard and reflected in all the Office’s cases. This means that the Office will proactively and explicitly consider children’s experiences in every situation analysis, while also ensuring its capacity to safely engage child witnesses where appropriate and in their best interests. The Office further commits to communicate with children in appropriate and accessible ways, so that, regardless of whether they directly participate in proceedings, they are aware of the Office’s work and the ways their experiences are addressed by the Court. Through the implementation of this Policy, the Office will more fully account for crimes against and affecting children in all their diversity.



Children have the right to participate in justice processes that involve them. It is the position of this Office that children’s voices will be heard in every case, every situation. Interaction with an individual child will of course depend on that child’s abilities, consent, and best interests. But at the case level, my Office will actively and affirmatively seek to engage with children so that we can better understand the ways they are targeted for and impacted by crimes under the Rome Statute.

PROSECUTOR KARIM A.A. KHAN KC

II. INTRODUCTION

a. The Challenge

1. Nearly one third of the world population is under eighteen.¹ In some regions, children comprise nearly half the population.² By some reports, approximately one in six of the world’s children were living in situations of armed conflict in 2021.³ Of these, 149 million were living in “high intensity” conflict zones, or zones with more than 1,000 battle-related deaths per year.⁴

2. Like adults, children in situations of armed conflict, attacks on civilian populations, and genocide are detained, tortured, raped, enslaved, displaced or killed.⁵ Children are often harmed due to their age, development and social norms as to their roles and rights. They are deprived of education or even killed when their schools are attacked. They are used as suicide bombers. They are forced to serve with and even “marry” armed actors. Even when children are not the specific targets of violence, they suffer from it. Children are orphaned when their parents are killed. They watch their loved ones being beaten and raped. They starve when their communities are displaced or under siege. They are physically and mentally affected when their natural environment is damaged. These experiences in childhood can have severe and long-lasting physical, psychological, and even social impacts. Unfortunately, children also face specific challenges accessing essential healthcare to support their recovery.

3. Historically, justice mechanisms have taken an adult-centric approach to the investigation and prosecution of international crimes.⁶ Tribunals rarely

¹ See [UN Population Data](#).

² *Ibid.*

³ [Peace Research Institute Oslo Report](#), p. 2.

⁴ [Advancing Justice for Children](#), p. 31. Further, in 2020 and 2021, the Global Coalition to Protect Education from Attack identified over 5000 reported attacks on education and incidents of military use, harming or killing at least 9000 students and educators. [Education Under Attack](#), p. 11.

⁵ [Children Under Attack](#); See also [Humanitarian Action for Children](#), p. 5; [Grave Violations Against Children](#), p. 10; [Bangladesh article 15 Decision](#), paras. 29, 81, 85-89; [Ongwen SD](#), paras. 358-363.

⁶ [Advancing Justice for Children](#), p. 34.

engage children as victims, survivors and witnesses.⁷ Children's atrocity-related experiences and their role as key stakeholders in the accountability process is largely overlooked or ignored.

4. This exclusion is in part due to a general invisibility of children in the international criminal justice field. For instance, children's experiences of atrocity crimes are often addressed only as part of broader crimes committed against a civilian population, with limited age-disaggregated analyses of how children *are* specifically impacted by the violence – much less how children of different ages may themselves have diverse experiences. Where children are explicitly considered to be victims of crimes, their experiences have typically been treated in a reductionist, often gendered way: for example, boys are considered primarily as victims of recruitment and use as soldiers in hostilities, whereas girls only come into view in the context of sexual violence. While these experiences must certainly be accounted for, the Office is committed to looking more broadly at crimes against and affecting children. Put simply, children must be seen and heard by the Office.

5. Similarly, stereotypes and assumptions about children can impede the extent to which justice actors engage them. In addition to myths that already exist about survivors of crime (*e.g.*, “real victims cry”, “victims never want to talk about their experiences”, or “if someone cannot provide detail, they must be lying”), children are often subjected to additional misconceptions (*e.g.*, “children always make up stories”, “children cannot understand what they are asked”, or “children are not able to remember detail”). Because of assumptions like these, investigators, trial lawyers and judges often see children as inherently less reliable, less competent or less valuable witnesses than adults. Even those inclined to believe children may hesitate to engage them, fearing that interviewing will inevitably lead to re-traumatisation.

6. However, as with any other witnesses, children may safely provide reliable evidence if they are properly questioned by competent, trained and experienced interviewers, using evidence-based and trauma-informed methods appropriate to the particular child. The Office thus considers and seeks to engage children in all situations analysed, taking a case-by-case approach to the need for interviews with specific children. Where relevant and in a child's best interest,

⁷ The Court uses the word “victim” when referencing the language of its legal framework. However, consistent with the survivor-centred approach, the Office takes the position that it is for an individual to decide if they prefer to be identified as a “victim”, “survivor”, or both. This Policy uses both terms with some flexibility, generally using “victim” (at times with “witness”) when referring to the Rome Statute or ICC jurisprudence or procedures, and “survivor” when focusing more on the experience or needs of the individual.

interviews with children should be safely conducted. Where safe interviews of children or a specific child are not possible, investigation and prosecution of the crimes affecting them will still be undertaken using alternative sources of evidence.

7. The Office has been mindful of crimes against and affecting children since its earliest work. For instance, the first case brought by the Office, *Prosecutor v. Thomas Lubanga*, involved the conscription, enlistment and use of children.⁸ Later, in *Prosecutor v. Ntaganda*, Mr Ntaganda was convicted of crimes against members of the same armed group, which involved charges of rape and sexual slavery of child soldiers.⁹ In *Prosecutor v. Ongwen*, the Office brought its first ever charges of forced pregnancy and forced marriage (other inhumane acts) (alongside other charges such as enslavement, recruitment and use of child soldiers). Mr Ongwen was convicted of these crimes, which included children as victims and survivors.¹⁰ More recently, arrest warrants issued against Mr Putin and Ms Lvova Belova include charges of unlawful deportation and unlawful transfer of children from Ukraine to the Russian Federation.¹¹

8. However, despite some progress, understanding children's experiences and engaging them safely and effectively remain areas where improvement is clearly possible and is absolutely necessary. The Office strives to understand and capture the full breadth of children's experiences in different case contexts, and, when engaging children, to systematically assess their best interests and account for their diverse and evolving capacities. The Office commits to deepening its understanding of how Rome Statute crimes involve and affect children, and to strengthen the way it works with them.

b. Policy history and objectives

9. The Office issued its first Children's Policy in 2016. The original policy helped to raise Office-wide awareness of the need to consider crimes against and affecting children in all stages of work. Since then, there have been several developments and lessons learned with respect to crimes against and affecting

⁸ [Lubanga TJ](#).

⁹ [Ntaganda TJ](#), para. 857 ("The Chamber also concludes that Mr Ntaganda exercised control over the crimes committed by the UPC/FPLC against children under the age of 15 who were enrolled, raped, subjected to sexual slavery, and/or used to participate in hostilities by the UPC/FPLC during the course of this military campaign against the RCD-K/ML and the Lendu.").

¹⁰ [Ongwen TJ](#), paras. 3062 (forced pregnancy), 3100 (forced marriage).

¹¹ [Putin and Lvova Belova Warrants](#).

children at the Court, at other tribunals and at the domestic level. Evidence-based practice has also evolved in light of recent research about children’s development, memory, and abilities to engage in judicial processes, as well as the emergence of new technologies to support their safe participation. In addition, the Prosecutor has found it imperative to ensure a more complete and effective approach to investigating crimes against and affecting children. For these reasons, the Prosecutor announced the review and revision of the Children’s Policy in 2023.¹²

10. The Office issues this Policy with the following objectives:
 - a. To help remedy the historic under-representation and lack of engagement with children in international criminal justice processes;
 - b. To emphasise its view that all crimes under the Rome Statute may be committed against children or otherwise affect them in myriad ways;
 - c. To ensure that in all dealings related to children, the Office takes a child rights, child-sensitive, and child-competent approach guided by the best interests of the child;
 - d. To actively reflect and adapt to issues related to intersectionality, children’s different developmental stages and their evolving capacities and capabilities;
 - e. To emphasise the Prosecutor’s commitment to establish an institutional environment that facilitates effective investigation and prosecution of crimes against and affecting children—including through recruitment, training, external collaboration, and meaningful implementation, monitoring, and evaluation measures;
 - f. To promote the exchange of lessons learned and best practices arising from local and international accountability efforts.

11. The Policy is addressed in the first instance to the Office of the Prosecutor and is structured to optimise its implementation. After presenting the Office’s interpretation of the Rome Statute in view of relevant Court jurisprudence with respect to crimes against and affecting children, the Policy articulates fundamental principles underlying the Office’s approach to investigation and prosecution

¹² The [2016 Children’s Policy](#) was developed under the leadership of Professor Dianne Amann, who from 2012-2021 served then-Prosecutor of the International Criminal Court, Fatou Bensouda, as Special Adviser on Children in and affected by Armed Conflict.

of these crimes. Finally, it provides guidance as to how these principles inform Office practice.

12. The Office has produced other guidance at both the policy and operational level relevant to the investigation and prosecution of crimes against and affecting children, including the Guidelines for Civil Society Organisations (2022), the Policy on the Crime of Gender Persecution (2022) and the revised Policy on Gender-based Crimes (2023).¹³ Additional thematic guidance on slavery crimes and crimes related to the natural environment are anticipated in the coming years. This Policy integrates and references the Office's other policy and operational documents to support the proper contextualisation of crimes and to ensure a coherent and holistic approach to the Office's work generally. Likewise, this Policy should be integrated in the implementation of the Office's existing and future policies and operational guidance. Staff¹⁴ are expected to follow this internal operational guidance in their work. This 2023 Children's Policy supersedes the original 2016 version, which ceases to have effect. Any references to the prior document should be read in alignment with this revision.

13. Finally, the Policy reflects the Office's awareness that the Court is part of a global ecosystem of accountability. It has thus been revised to maximise its utility to national actors, civil society, and other investigative mechanisms pursuing accountability for crimes against and affecting children alongside the Court. The Policy summarises key procedural or analytical approaches where possible, so that others may adapt these general approaches to local or institutional contexts.

14. The Office's 2016 Policy on Children contained many key commitments and contributions to enhance its understanding of and improve its work related to children.¹⁵ In particular, the 2016 Policy articulated a "child-sensitive approach" to accountability for international crimes during all stages of proceedings.¹⁶

15. Since 2016, there have been several developments in terms of research, best practices, and jurisprudence with respect to crimes against and affecting children. The Office has also taken on a more dynamic approach to exchange with national actors, including with respect to crimes involving children. For this

¹³ [CSO Guidelines](#); [Gender Persecution Policy](#); GBC Policy.

¹⁴ For the purposes of this Policy, references to "staff" include staff members, consultants and individual contractors.

¹⁵ [2016 Children's Policy](#).

¹⁶ [2016 Children's Policy](#), para. 22.

reason, and in line with the Office's Strategic Goals for 2023-2025, the Prosecutor announced plans to review and update the Office's 2016 Policy on Children.¹⁷

16. The Office of the Prosecutor undertook a series of review activities starting in early 2023 and ending with a launch of the Policy in December 2023. The process was led by the Special Adviser on Crimes Against and Affecting Children, Véronique Aubert, with guidance from Deputy Prosecutor Nazhat Shameem Khan. Refinement of the Policy was supported by Kim Thuy Seelinger, then-Special Adviser for Sexual Violence in Conflict and current Senior Coordinator for Gender-based Crimes and Crimes Against and Affecting Children. In addition, the Gender and Children Unit ("GCU") and an Advisory Group consisting of internal and external colleagues provided substantial expertise.

17. The review process began with individual consultations with Office staff in late 2022 and two expert roundtables (November 2022 and March 2023). From April through June 2023, the review team gathered additional feedback regarding Policy content and implementation from within the Office.

18. In mid-2023, 72 external experts and organisations from over 20 countries and territories submitted comments in response to the Prosecutor's March 2023 Call for Submissions. The Office further held joint consultations with 81 experts from 25 countries in July 2023 on issues relating to children and gender-based crimes. To ensure deeper engagement with experts working in national legal systems throughout Latin America, Central and West Africa, and the Middle East in particular, the Office held three additional joint consultations in Spanish, French, and Arabic, respectively: Thirty-three experts from 13 countries attended these consultations. In total, the Policy review process benefited from inputs from 186 external experts from more than 30 countries and territories. The Office also consulted with colleagues at the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 ("IIM") and the Independent Investigative Mechanism for Myanmar ("IIMM") to gather their valuable insights.

19. A core writing team from within the Office analysed all internal and external inputs to identify recurrent themes, key lessons learned, and revision priorities. The team also consulted with relevant Special Advisers, Advisory Group members, and GCU colleagues to ensure harmonisation with other relevant Office Policies and guidance documents. The core team produced drafts

¹⁷ [2016 Children's Policy](#).

for review from September through October 2023.¹⁸ The Prosecutor and Deputy Prosecutors reviewed and approved the final draft in October 2023. The Policy was launched in English and French at the Assembly of States Parties in New York City, December 2023. Translation into other languages was anticipated in due course.

¹⁸ This Policy was written by a core group of drafters from within the Office, guided by Special Adviser for Crimes Against and Affecting Children, Véronique Aubert, and Deputy Prosecutor Nazhat Shameem Khan. The Prosecutor wishes to thank his Special Adviser on Sexual Violence in Conflict, Kim Thuy Seelinger, and other staff for their editorial support, as well as Special Adviser on Slavery Crimes Patricia Viseur Sellers and Special Adviser on Gender Persecution Lisa Davis for their invaluable inputs. The Office also thanks a core group of internal and external advisors for their generosity of time and expertise. The Center for Human Rights, Gender and Migration at Washington University's Institute for Public Health ("CHRGM") and Ashley Jordana (Justice Rapid Response) also contributed critical support.

III. KEY TERMS AND CONCEPTS

The Impact of Armed Conflict on Children

War violates the rights of every child: the right to life, the right to be with family and community, the right to health, the right to development of personality and the right to be nurtured and protected. Many of today's conflicts last the length of a "childhood", meaning that from birth to early adulthood, children will experience multiple and accumulative assaults. Disrupting the social networks and primary relationships that support children's physical, emotional, moral, cognitive and social development in this way, and for this duration, can have profound physical and psychological implications.

Machel Report, para. 30.

a. Crimes against and affecting children

20. Every crime under the Rome Statute can be committed against, or directly affect, children. While there are some crimes that explicitly reference children as victims, children can be harmed by essentially any international crime – either as direct targets or through suffering immediate or longer-term consequences of those acts. Every investigation and prosecution of acts of genocide, crimes against humanity and war crimes should include the assumption that children have been victims, witnesses or otherwise affected.

i. Crimes against children

21. Any crime committed against children violates their rights. Depending on the crime, this can include a child's right to life, bodily integrity and liberty; the right of protection from violence, abuse, exploitation or neglect; the right to protection in armed conflict; the right to health; the right to education and the right to a healthy environment. Children also have rights to freedom from torture and slavery. Downstream impacts of some crimes can further violate other rights, such as the rights to life, survival and development, the right not to be separated from parents or families, the right to a name and nationality and the right to an

identity.¹⁹ The crime of persecution, in particular, involves the deprivation of fundamental rights on discriminatory grounds, which can include gender or age.

22. Children may also be victims of crimes simply because they are members of a group targeted for collective harm. Or, like adults, children may be harmed by witnessing crimes committed against others. They may experience a sense of powerlessness to protect their loved ones, distress about death or injuries, and fear that it may happen again. Where children are *forced* to witness violence against others, they may be also considered direct victims of the crime.

23. Children may be subjected to international crimes over an extended period – as in contexts of detention, enslavement, persecution, forced displacement and recruitment and use by armed groups. They may experience compounded trauma, which can impact their physical, mental and psychosocial health and development. These experiences may negatively impact children’s longer-term sense of security, agency and trust. They may also affect children’s future relationships or leave them vulnerable to future harm.

24. Crimes committed against children frequently have a gendered dimension, both in the types of crimes they experience and their impacts. For instance, teenagers or young children may be specifically targeted for sexual violence if prized for their presumed virginity or thought to pose a lower risk for sexually transmitted infections. Girls with diverse or non-conforming gender identities or expressions may be subjected to so-called “corrective” rape. Children’s schools are bombed to disrupt girls’ education. Children are also often used for gender-related purposes. For example, boys may be seized as human shields in contexts where they are more likely than girls to be in public. At the same time, girls may be used as suicide bombers due to strategic exploitation of stereotypes about them being gentle and harmless, or because they are deemed less valuable than boys. Gender discrimination also drives crimes against children and can reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivation experienced by girls. For example, justice for crimes more frequently targeting men and boys (such as killing and forced recruitment into armed groups) has historically been prioritised over those disproportionately affecting women and girls (such as forced marriage and forced pregnancy). Similarly, the gravity and impact of crimes against girls are often overlooked.

¹⁹ Article 6 (rights to life, survival and development), article 9 (right not to be separated), article 7 (right to a name and nationality), article 8 (right to identity), [CRC](#). The CRC was unanimously adopted by the UN General Assembly in 1989 and has since been ratified or accepted by 196 States. Many of its provisions are deemed to reflect customary international law.

ii. Crimes affecting children

25. Even where children are not the intended or direct targets of a crime, they may be severely impacted by it. For example, children are neglected or orphaned when their parents are forcibly disappeared or killed. Where a parent is detained, a child's access to protection and resources may be diminished. In addition, children who are born as a result of rape are often stigmatised or rejected by their families or communities. Further, depending on circumstances surrounding their conception, children may suffer harm as a result of being born into contexts of enslavement or detention.

26. In this way, international crimes can *affect* children – as witnesses, forcible perpetrators (who may also be viewed as victims), members of a targeted group or family members of direct victims. Evidence of a crime's impact on children may help demonstrate the gravity of a crime for admissibility purposes, be crucial in obtaining a conviction, or be an aggravating factor in sentencing. All international crimes should be considered as potentially affecting children.

iii. Impacts of crimes on children

27. Like adults, children may experience serious physical harm as a result of crime. They may die or be gravely injured from beatings, from deprivation of food, water or medical care, or from being recruited and used by armed actors. Where children suffer sexual, reproductive, or other gender-based violence, they may face varying degrees of reproductive injury. Girls who have reached puberty may become pregnant and be denied access to reproductive healthcare or forced to undergo abortions. Even prepubescent children may contract sexually transmitted infections or sustain long-term damage to their reproductive organs. The nature, extent and long-term consequences of physical harm to children may be influenced by their age, gender, developmental stage and underlying health conditions. Further, they often rely on adults for care: children often lack the information, resources and autonomy to independently access medical treatment for their injuries.

28. Children can also experience serious psychological harm from their experience of, or exposure to, violence, including violence related to international crimes. They may feel terror, pain, grief, distress and powerlessness as a result of international crimes, many of which include traumatic events. In some cases, the psychological, developmental and emotional impact of these experiences can be managed with proper psychosocial support but can still have profound long-lasting impacts. As with other healthcare, children may lack the information,

resources and autonomy to independently secure the psychosocial support they need. Often, support services for children are simply unavailable.

29. In addition, children suffer social harm as a result of these crimes. Disruption of education, for example, is one of the most damaging effects of armed conflict on children. They often lose months or even years of schooling during displacement, which can negatively affect their future access to employment, resources and safety. In other cases, armed conflict can destroy families' livelihoods and reduce all members to poverty. Children may be forced to work or beg at very young ages, exposing them to injury and cycles of exploitation. Finally, Rome Statute crimes committed by means of destroying, degrading or otherwise altering the natural environment not only cause immediate harm to children, but may affect their future. This applies in particular where environmental destruction is a driver of climate change.²⁰

²⁰ The Office is developing a policy on crimes involving the natural environment, which will, in part, consider impacts relevant to children. This policy is tentatively scheduled for December 2024.

CHILDREN

For the purpose of this Policy, a “child” is considered to be any person from birth to the age of 18. This is consistent with the definition adopted in the UN Convention on the Rights of the Child (“CRC”)²¹ and the provisions of the Rome Statute.²²

Children may come into contact with the Court in different ways. For example, children may be:

- i. Victims/survivors of crimes
- ii. Eyewitnesses to crimes
- iii. Insider witnesses
- iv. Witnesses called by other parties to a case
- v. Alleged perpetrators (who may also be considered victims/survivors)
- vi. Victim participants (approved or in application)
- vii. Family members of victims/survivors, witnesses, or suspects.

This Policy addresses crimes under the Rome Statute committed against or affecting persons below the age of 18 at the time of relevant conduct. This Policy also describes the Office’s position as to procedures applicable to persons under the age of 18 engaged by the Office.²³

²¹ Article 1, [CRC](#).

²² For example, the definition of “genocide by forcibly transferring children” in article 6(e) requires that the person(s) transferred were under the age of 18 years. Article 26 excludes the exercise of criminal jurisdiction over any person who was under the age of 18 at the time of the alleged crime’s commission.

²³ The Office will adapt to the needs and developmental phase of the child. The Office notes it will ensure that appropriate procedures are adopted even if the child may have reached the age of majority in their domestic jurisdiction, where it is lower than age of 18, and/or the child does not consider themselves to be a child.

b. Concepts and definitions

Child

A person who is below 18 years of age.

Youth

A person between 18 and 24 years of age.²⁴

Appropriate adult

A person nominated by the child and/or the competent authority to act in the interests of the child when the child interacts with the Office. This could, for example, be a parent, other adult relative or caregiver or a relevant professional, such as a psychologist working with the child.

Best interests of the child

A perspective focused on securing the child's holistic physical, psychological, moral and spiritual integrity and promoting their human dignity. It varies with and depends on each individual child's personal context, situation and needs.²⁵

Child's evolving capacities/abilities

As a *developmental* concept, this refers to a child's competence and emerging personal autonomy. As a child grows older, they develop in communication and speech, physical, social and emotional, and cognitive abilities. As a *participatory or emancipatory* concept, it refers to a child's right to respect for their capacities and for the shifting of responsibility for the exercise of rights from adults to children in accordance with their levels of competence. As a *protective* concept, it acknowledges that throughout childhood, children's capacities are still evolving and that they have rights to protection from harm.²⁶

²⁴ The Office acknowledges that certain entities consider "youth" to be persons between the ages of 15 and 24 years of age. See e.g., [UN Definition of Youth](#). However, per article 1, [CRC](#), and extensive consultation with relevant experts, the Office considers persons up to 18 years of age to be "children" and persons between 18-25 years of age to be youth. See [CRC General Comment 24](#), para. 7.

²⁵ Article 3, [CRC](#); [CRC General Comment 14](#), paras. 1, 5, 32-35. The concept encompasses a substantive right, a fundamental interpretative legal principle and a rule of procedure.

²⁶ In no circumstances should a child's evolving capacities or abilities, including for the purposes of assessing their ability to give evidence, be confused with issues regarding consent or capacities in the context of crimes under the Statute. A child can never be considered as having consented to or waived their rights in relation to any crime(s) under the Statute, such as rape, forcible deportation and forcible transfer. See [Evolving Capacities of the Child](#).

Context of society

Under article 7(3) of the Rome Statute, “context of society” refers to social constructs and criteria used to define gender. These include, for example, constructs about sexual orientation, gender identity and gender expression, e.g., “woman”, “man”, “girl” and “boy”. Just as social constructs and criteria are used to define the understanding of race, ethnicity or culture,²⁷ so too are social constructs and criteria used to define the understanding of “gender”.²⁸

Developmental stages

Children gain skills in, *inter alia*, four key spheres: a) communication and speech, b) physical, c) social and emotional, and d) cognitive. Development usually occurs in a series of regular and predictable stages. However, children develop at different paces and may reach developmental milestones at different times. What is considered normal child development varies across cultures and environments.²⁹

Gender

Under article 7(3) of the Rome Statute, “gender refers to the two sexes, male and female, within the context of society”. This includes sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes.³⁰ As a social construct, gender varies within societies and from society to society and can change over time. This understanding of gender is in accordance with article 21 of the Statute.

Intersectionality

Intersectionality is a concept and theoretical framework that facilitates recognition of the complex ways in which social identities and systems of discrimination overlap, creating compounding experiences of discrimination and concurrent forms of oppression.³¹

²⁷ [Ntaganda TJ](#), para. 1010; [Rutaganda TJ](#), para. 56; [Jelisić TJ](#), para. 70.

²⁸ GBC Policy.

²⁹ [UNICEF: Development Status](#).

³⁰ GBC Policy; [WHO: Gender and Health](#).

³¹ [UN Intersectionality Toolkit](#), pp. 8-9. See also [CEDAW General Recommendation 28](#), para. 18.

Intersex

“Intersex” is an umbrella term used to describe a wide range of natural variations in sex characteristics.³²

LGBTQI+

Lesbian, gay, bisexual, transgender, queer and intersex identified persons. The plus sign represents people who identify with the broader LGBTQI community but use other terms for self-identification.³³

³² Individuals identifying as intersex may suffer discrimination due to the imposition of binary notions of male and female bodies. See [UN Fact Sheet: Intersex](#).

³³ Whilst the acronym LGBTQI+ is inclusive of a broad range of persons, it is not exhaustive, nor is it a universally used acronym.

IV. CHILDREN AND ROME STATUTE CRIMES

30. Certain Rome Statute crimes explicitly reference children in their definition or elements. For example, article 6(e) criminalises forcibly transferring children from one national, ethnic, racial or religious group to another group as an act of genocide. Similarly, the enlistment, conscription or use of children under the age of 15 to participate in hostilities is a war crime in both international and non-international armed conflicts.³⁴

31. Children can also be victims of or disproportionately affected by many other crimes under the Rome Statute. These include, but are by no means limited to, the following examples.

a. Genocide (article 6, Statute)

32. Genocide can take the form of a number of proscribed acts³⁵ carried out with the intent of destroying a national, ethnic, racial or religious group in whole or in part.³⁶ Children are particularly impacted by, and frequently specifically targeted for, acts of genocide since they essentially embody the future of the targeted group. Child members of the group may be intentionally targeted for killings or die as a result of injuries, sexual violence or the deprivation of food or medical care. The imposition of conditions of life calculated to destroy the group, by denying them basic necessities for survival, is likely to lead to the death of infants, young children or others under the age of 18.³⁷ Measures intended to prevent births within the group may be carried out by means of sexual or reproductive violence to prevent women from having children. Alternately, rape

³⁴ Article 8(2)(b)(xxvi), article 8(2)(e)(vii), [Statute](#).

³⁵ These acts, as defined in article 6, are (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.

³⁶ The Elements of Crimes do not define a specific meaning for this phrase, but it has been interpreted and understood as requiring evidence of the intent to destroy a “significant” or “substantial” portion of the group. See e.g., [Jelisić TJ](#), para. 82, [Krstić AJ](#), para. 12. Given their increased vulnerability to acts of physical violence, and their symbolic and factual significance to the continuation of the existence of the group, genocidal acts targeting children can be important evidence to establish the specific intent element of the crime of genocide, as they can represent both an ideologically significant and/or numerically substantial part of the group.

³⁷ This conduct may also be relevant to the crime against humanity of extermination under article 7(1)(b).

may be used to change the ethnic composition of a group in which ethnic identity passes through the paternal line. Forcibly transferring children from their own national, ethnic, racial or religious group to another group deprives them of their family, identity and cultural heritage. Their displacement can result in the destruction of a significant part of the group by removing future generations from that group.

b. Crimes against humanity (article 7, Statute)

33. Children can be direct victims of any crime against humanity, such as murder,³⁸ enslavement,³⁹ imprisonment,⁴⁰ crimes involving sexual and/or reproductive violence such as rape, sexual slavery, enforced prostitution or other forms of sexual violence, enforced sterilisation or forced pregnancy.⁴¹ Children may themselves be victims of enforced disappearance or be affected by the denial of information about a parent or loved one who has been abducted, detained or killed.⁴² The crimes against humanity of torture⁴³ and other inhumane acts⁴⁴ involve the infliction of severe physical or mental suffering. This can arise both from acts of violence or cruelty against them and from the impact of witnessing crimes against others, particularly parents, family and loved ones. Children who are forced or coerced to enter into a conjugal relationship with another person, with the attendant stigma, sexual violence and denial of autonomy that it entails, may be victims of forced marriage, which has been recognised as a distinct category of other inhumane acts.⁴⁵

34. The contextual elements of crimes against humanity require the existence of a widespread or systematic attack against a civilian population. As such, instances of crimes against children can be valuable evidence to establish this legal element for any crime against humanity. Children are likely to be targeted as part of a civilian population. For example, the crime against humanity of deportation or forcible transfer involves the displacement of persons within their own state

³⁸ Article 7(1)(a), [Statute](#).

³⁹ Article 7(1)(c), [Statute](#).

⁴⁰ Article 7(1)(e), [Statute](#).

⁴¹ Article 7(1)(g), [Statute](#).

⁴² Article 7(1)(i), [Statute](#).

⁴³ Article 7(1)(f), [Statute](#).

⁴⁴ Article 7(1)(k), [Statute](#).

⁴⁵ See [Ongwen AJ](#), paras. 1025-1028.

or across a national border by means of expulsion or coercive acts.⁴⁶ Like adults, child victims of deportation or forcible transfer are impacted by the physical force and coercive acts used to drive their community from their homes. Children may also suffer unique harms related to separation from their parents or denial of education.

35. Likewise, the crime against humanity of persecution involves the severe deprivation of fundamental human rights against members of a group or collectivity on discriminatory grounds, such as nationality, ethnicity, religion, race, gender or other grounds (including age) in connection with any other crime under the Statute.⁴⁷ Children are affected by the discriminatory targeting of their wider group or community. However, they may also suffer the deprivation of their own fundamental, child-specific human rights or be subjected to multiple intersecting forms of discrimination, including on account of their young age.

c. War crimes (article 8, Statute)

36. Children are disproportionately impacted by all forms of armed conflict, from the massive destruction and insecurity caused by international armed conflicts between states to the lawlessness and sectarian cruelty of non-international armed conflicts. Children can be victims/survivors, relevant witnesses of or affected by any war crime under article 8. In some cases, children may be compelled to carry out war crimes themselves, particularly children under the age of 15 who have been conscripted or enlisted as child soldiers, or otherwise co-opted and used to actively participate in hostilities.⁴⁸ Some war crimes have unique impacts on children, for example, the war crime of intentionally directing attacks against protected objects (which includes buildings dedicated to religion, education, art, science or charitable purposes and hospitals)⁴⁹ and civilian objects (which can include the natural environment).⁵⁰ Children's rights to protection, health and education are severely affected by attacks against schools and medical facilities, or organisations providing humanitarian assistance. The war crime of

⁴⁶ Articles 7(1)(d) and 7(2)(d), [Statute](#). This conduct may also be relevant for the war crime of unlawful deportation and transfer under article 8(2)(a)(vii).

⁴⁷ Article 7(1)(h) criminalises persecution on "political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognised as impermissible under international law". Read in conjunction with article 21(3) of the [Statute](#), the residual category of "other grounds" could include the targeting of children due to their age. See [Gender Persecution Policy](#), paras. 8, 33.

⁴⁸ Article 26 of the [Statute](#) affirms that the Court will not exercise jurisdiction over a person who was under the age of 18 at the time the alleged crime was committed.

⁴⁹ Articles 8(2)(b)(ix) and 8(2)(e)(iv), [Statute](#).

⁵⁰ Article 8(2)(b)(ii), [Statute](#).

intentionally using starvation of the civilian population as a method of warfare will likely have a more damaging impact on the health and wellbeing of children. Similarly, the war crime of passing of sentences or executions without due process may also manifest differently for children, who would ordinarily be entitled to specific protections under domestic criminal law.⁵¹

⁵¹ Article 8(2)(c)(iv), [Statute](#).

V. PRINCIPLES

37. This section of the Policy outlines the fundamental principles guiding the Office’s strategic and operational work with respect to crimes against and affecting children.

a. Taking a child rights, child-sensitive, and child-competent approach



I have often said that children can all too often be the forgotten victims of international crimes. The effects they feel and the trauma they suffer as a result of the commission of atrocities need to be recognised as unique. They demand a tailored, child-competent approach from those working towards accountability. It is thus incumbent upon us to ensure our investigators and prosecutors have the sensitivity and skill to speak with children safely and effectively.

PROSECUTOR KARIM A.A. KHAN KC

38. Central to this Policy are three related concepts – a child rights approach, a child-sensitive approach, and a child-competent approach.

39. First, children have their own rights, including to justice. Thus, the Office takes a *child rights approach* to its work, acknowledging that:

- a. Children are rights holders with a distinct set of rights requiring special consideration, independent of their parents or guardians;⁵²
- b. Children are experts in their own lives and their meaningful and safe participation is necessary to advance adequate and efficient justice and accountability processes;

⁵² Article 1, [CRC](#).

- c. Children face specific obstacles in exercising and claiming their rights because of their status as children;
- d. Children's rights are relevant to all advocacy, policies and activities of the Court; and,
- e. External and internal Court advocacy, policies and activities can affect children differently than adults.⁵³

40. Many of the crimes in the Statute protect children's rights as articulated under international law, including their rights to be free from torture, or other cruel, inhuman or degrading treatment or punishment; to be free from violence, abuse, trafficking and other exploitation; and to recovery and social reintegration. Children also enjoy rights to non-discrimination; to life, survival and development, as well as an adequate standard of living; to identity, nationality, family or home life, and privacy; to expression, conscience, education, religion, culture and language; to mental and physical health, with special protection for children with disabilities.⁵⁴

41. Critically, the Office recognises the rights of the child to be heard in legal proceedings that affect them, as set out in article 12 of the CRC.⁵⁵ Children are also entitled to special care and protection,⁵⁶ and their interests, rights and personal circumstances should be given due consideration.⁵⁷ Understanding this, the Office is committed to making child rights an explicit, systematic and sustained consideration in the design and implementation of the Office's engagement with children. Far from passive beneficiaries, children are stakeholders in justice and should be seen and engaged as such. Hearing and considering the experiences of children is also an essential part of the Court's truth-seeking function.

42. As part of its child rights approach, the Office will undertake an assessment of a child's best interests prior to engaging with them.⁵⁸ This includes employing best practices to assess each child as an individual, in terms of their views; their developmental stage; their rights to be heard and protected; their needs; and the

⁵³ [Guidance on Mainstreaming of Child's Rights](#), p. 3.

⁵⁴ Articles 2, 6-11, 13, 14, 16, 19, 23-25, 27-30, 32, 34-37 and 39, [CRC](#); articles 3, 5, 6-16, 18, 19, 21, 27 and 29, [ACRWC](#); article 1, [CRC-OPSC](#).

⁵⁵ See e.g., [CRC General Comment 12](#).

⁵⁶ Article 25, [UDHR](#); principle 2, [Declaration of the Rights of the Child](#); article 10(3), [ICESCR](#); article 24, [ICCPR](#); articles 14, 17, 23, 24, 38, 50, 51, 68, 76, 82, 89, 94 and 132, [Geneva Convention IV](#); articles 8, 70(1), 77 and 78, [API](#); articles 4(3) and 6(4), [APII](#); article 3(2), [CRC](#).

⁵⁷ Article 3(1), [CRC](#).

⁵⁸ Article 3, [CRC](#); [CRC General Comment 14](#).

potential impact of their engagement with the Office. Any child engaged by the Office will receive appropriate specialised support and protection.

43. Second, the Office takes a *child-sensitive* approach. Being “child-sensitive” refers to *awareness* of children’s experiences and needs. It means that the Office and staff must consider not only the factual experiences of children relevant to a situation but also be alert to the best interests, relevant rights and welfare of children as it engages them. This involves ensuring that the justice system is safe and comfortable for those who enter it. Children’s perspectives and feedback are critical here. A child-sensitive approach further appreciates the child as an individual person and recognises that, in a given context, a child may be vulnerable, capable or both. The Office must also understand how stigma is associated with crimes against and affecting children, which may impact a child’s development and well-being, as well as inform the way in which they may wish to engage, or not engage, with the court process. The Office follows best practices with respect to child safeguarding. It takes a broad view of harms suffered by children when considering current and longer-term impacts of Rome Statute crimes. This may include consideration of harms to future generations.

44. Third, the Office takes a *child-competent* approach to its work. For the purpose of this Policy, a child-competent approach requires both the institutional capacity as well as the individual skill to engage children effectively and safely. It means that the Office must be adequately staffed and structured in such a way that allows for consistently safe, effective engagement with children. This includes ensuring a sufficient corps of trained investigators, interpreters, psychosocial experts, analysts and lawyers as well as access to protective and support measures appropriate for children both in and out of the courtroom. At the individual level, this means that Office staff engaging with children must know and understand:

- a. The relevant legal and regulatory framework and relevant safeguards, protocols, guidelines and templates related to children; and
- b. How to properly engage with children based on internationally recognised best practices. This includes the ability to adapt one’s approach to a child’s individual background,⁵⁹ lived experience, needs,⁶⁰ abilities and vulnerabilities.

⁵⁹ For instance, a child’s relevant background includes their age and gender identity; physical and/or mental disabilities; educational, socio-economic, ethnic-racial, national, religious and cultural background; and security situation.

⁶⁰ This includes, for instance, different types of support needs including psychosocial, medical, and security.

45. These approaches remain relevant in cases where children exposed to atrocity crimes become adults before, or during the course of, their engagement with the Office. This is not uncommon, given the nature of cases before the Court and the fact that suspects are often arrested years after events. In its investigation and prosecution of crimes against and affecting children, the Office will stay up to date regarding recent research and best practices regarding retrieval of childhood memories from adults and will take an evidence-based approach to working with these specific witnesses.

b. Acknowledging diversity among children

46. Children are not a homogeneous group. On one level, there are notable differences among age groups, or between the experiences of young children, older children, pre-teens, and teenagers. In addition to these in-group distinctions, there are also differences between the experiences of children generally and most adults in the same crisis context. Age-disaggregation of information about a given context is thus crucial. Not only does it allow the Office to detect any broad trends or differences in how adults and children may be targeted or affected by crimes, but it also allows for distinction among the experiences of diverse children themselves.

47. In addition, the Office recognises that the children it may encounter come from diverse national and cultural contexts. Their roles, responsibilities and freedoms may vary dramatically depending on the social and cultural norms that have influenced their development since birth. To refine its interactions with and understanding of each child, the Office must constantly deepen its understanding of these social and cultural factors. This can be enhanced through a variety of measures, including consulting with contextual experts, recruiting staff from situation countries and maintaining the Office's field presence so that staff can learn from members of relevant communities. The Office also appreciates that, even where strong cultural norms may exist, displacement can disrupt the normal roles and responsibilities of children. Many children cross borders unaccompanied by their parents. Others are suddenly forced to work in order to support family members. The Office is cognisant of these potential disruptions and will consider them as part of its assessment of each child.

48. Further, in terms of engaging children in investigation and prosecution efforts, it should be noted that children may provide different degrees of recollection or detail, depending on various factors affecting their memory at the time of exposure to harm as well as their present memory when asked to retrieve and recall that information. It is critical to take an evidence-based approach to

working with children or adults who were children at the time of the incidents in question. This sets appropriate expectations as to the scope and level of detail an individual might reasonably provide. Understanding how memory and exposure to past traumatic events can affect children of different ages and developmental stages can also enhance the Office's ability to adjust interview techniques and properly assess any information received.

c. Taking an intersectional approach

49. Working with children requires an intersectional approach. In general, taking an intersectional approach can reveal differences in status, power, roles, and needs between persons, including children, that result from social and political hierarchies and inequalities between persons and collectivities on intersecting grounds including race, ethnicity, socio-economic status, religion, age, gender, including gender identity and sex, sexual orientation, caste, indigenous status and disability. An intersectional perspective considers such factors and their relationships to structural drivers of violence in a given context as well as the impact on people's opportunities and interactions. This perspective enables the Office to gain a better understanding of crimes, as well as the experiences of individuals and communities in a particular society.

50. A child's identity is multidimensional, reflecting not only their specific age but also aspects such as their gender, religion, ethnicity and socioeconomic status. While often thought of in terms of their age and gender, children are otherwise often "un-situated"⁶¹ and viewed simply as a collectivity of non-adults. Their complex, intersecting identities go unarticulated.

51. An intersectional approach helps surface how different aspects of a child's identity can combine to render them more likely to suffer specific types of harm or impact. Gender discrimination may intersect with other forms of discrimination such as race or ethnicity, compounding the effects on girls from marginalised or vulnerable communities. For example, a child who is young, female and a member of a particular ethnicity or religion may be more targeted for enslavement or sexual violence due to discriminatory assumptions about her age, gender and ethnic or religious identity. A child whose gender identity or sexual orientation does not conform to social norms may be subjected to violence and discrimination

⁶¹ When "un-situated", children are not placed in the context of other identifiers (for instance, urban/ rural; gender; ability; class; age within the range of what is considered to be a minor). This impedes analysis and understanding of the experience of children in the context being documented. [Advancing Justice for Children](#), p. 35.

from within their own family or community as well as from external perpetrators. A child who is unaccompanied, displaced and living in a refugee camp may be unable to access support services because of their immigration status, poverty and lack of caregivers. They may also be more vulnerable to abduction or enslavement.

d. Taking a survivor-centred, trauma-informed approach

52. A *survivor-centred approach* prioritises a survivor's rights. It orients all policy, actions, and decision-making towards treating every survivor with dignity and respect. As a general principle, this approach acknowledges that every survivor has equal rights to care and support; is different and unique; will react differently to their experiences of violence; has different strengths, capacities, coping skills, resources and needs; has the right, appropriate to their age and circumstances, to decide who should know about what has happened to them and what should happen next; should be believed and should be treated with respect, kindness, compassion and empathy.⁶²

53. For the purposes of this Policy, a *trauma-informed approach* is one that is aware of, and responsive to, the impacts of traumatic events on children, their families, and their communities. "Trauma" has been defined in many ways. The Office recognises that, at the individual level, trauma can result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional or spiritual well-being.⁶³ A trauma-informed approach recognises that every person has different degrees of resilience and responds to past traumatic events differently, requiring adaptation to individual needs. This approach promotes safety, healing and recovery from traumatic experiences. It may require integration of culturally-sensitive knowledge about how different people respond to traumatic experiences into policies, procedures and practices. Ultimately, a trauma-informed approach actively seeks to avoid doing further harm or causing re-traumatisation.⁶⁴ In the context of this Policy, a trauma-informed approach recognises that children may have experienced traumatic events related to crimes and acknowledges that this can impact their physical, emotional and mental health as well as their well-being and behaviours. Developing trauma-informed practices is a critical aspect of a survivor-centred approach generally and should be taken at all stages and phases of investigation and prosecution.

⁶² [GBVIMS](#).

⁶³ [SAMHSA Guidance](#).

⁶⁴ [Trauma Informed Care Guidance](#).

54. The Office commits to taking a survivor-centred, trauma-informed approach to its work with children.

55. The Office is also cognisant of the risks of vicarious trauma. It supports the well-being of its staff and the quality and longevity of its work through the development of internal guidelines and support systems.

e. Proactive consideration of and engagement with children



Children themselves can teach us how they are affected by atrocity crimes. Further, if treated with understanding and competence, children may find that sharing their perspectives promotes their post-conflict recovery and resilience. In line with the Prosecutor's vision, our Office should move away from longstanding paternalism that assumes that parents, lawyers and judges can speak for a child or fully understand their experiences. Many children do in fact have the courage, ability and desire to speak with us and provide evidence. They deserve that opportunity."

DEPUTY PROSECUTOR NAZHAT SHAMEEM KHAN

56. It should be presumed that crimes against or affecting children are present in every situation before the Office. Thus, in line with a child rights approach, children's experiences must be proactively and consistently ascertained and considered alongside adults' experiences in every case. Through assessment of age-disaggregated data and an intersectional analysis of evidence collected, the Office surfaces the experiences of children as related to, or as distinct from, the experiences of adults in a given situation.

57. It is imperative to seek out the voices of children in every case. While they may be subject to the same crimes as adults in many instances, their specific experiences and needs may still be distinct. These nuances must be surfaced. The Office takes the position that, generally speaking, children can and should be

witnesses. When approached competently, children can provide reliable, relevant evidence not only about their own victimisation, but also about crimes committed against others. In some instances, they may also provide evidence linking alleged perpetrators to the commission of crimes. Most importantly, children are stakeholders in justice. Participating in these processes can be empowering and even healing for some children, provided they receive appropriate treatment and support. For these reasons, the voices of children should be represented in every investigation and prosecution undertaken by this Office. Every case should involve the participation of children in some way.

58. Decisions as to whether to interview a specific child are made on a case-by-case basis. The Office will assess the nature of the individual child's victimisation, as well as their developmental stage, background, needs, abilities, vulnerabilities and security situation. Prior to interviewing a child, the Office will conduct a psychological assessment to determine whether the child is fit to be interviewed and to identify any immediate psychosocial support needs or other issues that may require support. The assessment also allows for an evaluation of the child's ability to understand the nature of the interview process and to adjust the approach to the child's level of comprehension and cognitive development. The Office must be fully equipped and prepared to engage with the child in a child-sensitive, child-competent manner. Ultimately, the decision to actually move forward and speak with a child depends on whether this is in that child's best interests—the "do no harm" principle is paramount.

f. Consent and assent

59. Children hold many rights. However, they generally cannot legally consent to engaging with the Office on their own. Instead, children can indicate their *assent*, or expressed willingness. For this reason, when approaching a child, the Office must secure both:

- a. Written, informed consent from a parent, caregiver, or other appropriate adult (such as a chosen family member, guardian or other adult with a duty of care towards the child), and
- b. Verbal and informed assent of the child, indicating the child's willingness to participate.

60. The Regulations of the Office of the Prosecutor provide that before questioning a person under the age of 18, the Office “shall obtain consent from [their] parents, guardians or other relevant adult”.⁶⁵ This protection extends beyond questioning. The informed consent of parents or another appropriate adult should also be sought before audio or video recording of interviews with children, medical or DNA testing, sharing of medical records, requests for protective measures or other investigative activities affecting the best interests of the child. As always, these decisions should take into account the evolving capacities and abilities of the child in question.

61. In exceptional cases and in line with widespread domestic practice, an older child may be assessed to be of sufficient maturity and cognitive development to consent independently and without need for consent of a parent, caregiver or other appropriate adult.⁶⁶ This determination will be made on a case-by-case basis, according to internal Office guidance and in line with relevant jurisprudence. Ultimately, admissibility of evidence provided by a child under these exceptional circumstances is a judicial determination. In any event, whether technically understood as consent or assent, the wishes of the child are the primary consideration here. A child may only be interviewed if, when fully informed, they willingly agree to participate.⁶⁷

g. Cooperation and complementarity

62. In line with the Prosecutor’s vision for the Office to serve as a hub for international justice, the Office takes a dynamic approach to complementarity and cooperation with other international justice institutions. It will engage with and provide support to States to ensure that crimes against and affecting children are included, where relevant, in national accountability processes, including transitional justice mechanisms. This may include sharing of case information

⁶⁵ Regulation 38, [OTP Regulations](#); [Katanga CD](#), paras. 145-46, 150, 152.

⁶⁶ The 2017 edition of the [PSVI Protocol](#) provides helpful guidance about older children and consent to participate in certain proceedings. Drawing from findings from UNICEF and the International Rescue Committee, the Protocol notes that, depending on individual assessments of maturity, cognition, etc., children may reasonably provide degrees of consent as follows: for children aged 16-18, a child can provide informed consent with consent sought from a parent or adult with a duty of care only if deemed necessary in the circumstances; for children aged 12-15, informed consent should be given by the parent or adult with a duty of care unless deemed not appropriate in the circumstances, with informed assent from the child; for children below the age of 12, informed consent should be given from the parent or adult with a duty of care, with assent from the child. It should be noted that under no circumstances does the Office find children capable of consenting to crimes committed against them.

⁶⁷ Research with Children and Young People.

and general best practices with respect to crimes against and affecting children. In general, and unless required by a Chamber, the Office will not share any incriminating information or evidence with States that might expose a child to the risk of prosecution in a national jurisdiction.⁶⁸

⁶⁸ See *e.g.*, article 93(1) of the [Statute](#) and rule 194 of the [Rules](#).

VI. PRACTICE



We owe children the strongest possible cases that reflect their experiences. This means we include them in our thinking from the very start, to open our eyes to the ways these armed conflicts and periods of violence affect them and what they need from us. We should think about ways to work with children at every stage of our process— How can we detect crimes affecting children during our preliminary examination work? How do we seek their consent when we first meet? How do we support and protect them in the courtroom? How do we ensure they are not harmed in any way because they came to seek justice?

DEPUTY PROSECUTOR MAME MANDIAYE NIANG

a. Cross-cutting issues

i. Engaging parents, caregivers and appropriate adults

63. The Office recognises that not all children may have living parents, a legal guardian or other adult caregivers. Some children may not have a functioning relationship with their surviving parent(s) or adult relatives. Other children may have “chosen families” without a biological or formal legal relationship.

64. The Office will take reasonable measures to identify and seek informed consent from a child’s parent(s), caregiver(s) or other appropriate adult(s). Where this is not possible, the Office will consider other measures to safeguard the interests of the child, including seeking authorisation from the relevant Chamber to appoint an appropriate adult to represent the interests of the child.

65. In addition to seeking informed consent from a parent, caregiver or appropriate adult, the Office shall seek verbal informed assent from the child.

66. The Office should take steps to ensure that all consent and assent sought is informed and voluntary. This includes ensuring that the capacity and personal circumstances of both the relevant adults and children are taken into

consideration. It also requires that information is provided in a language and manner that is comprehensive and accessible. Finally, each person must be fully informed about the process, their rights and the possible risks or implications for the interests of the child in question.

67. The Office also recognises that there may be situations where the wishes or interests of a parent, caregiver or appropriate adult may conflict with the interests of the child. This could include, for example, situations where the adult is concerned about potential incrimination of their own conduct or where the adult and child disagree about whether to cooperate. In other instances, the adult may lack capacity to give informed consent. In such circumstances, the Office will prioritise the best interest of the child and seek another appropriate adult, including through application to the relevant Chamber, if necessary, for the purposes of consultation regarding consent.

68. In no circumstances should any person under 18 years of age be considered to have sufficient capacity to consent to crimes perpetrated against them under the Statute, or to waive their rights in relation to such crimes.

69. Beyond the issue of consent, parents and caregivers should be seen as essential sources of support for children engaged by the Office. To the extent possible, the Office should seek their presence and assistance in support of the best interests of the child.

ii. Analysis

70. The Office will work from the starting point that every situation potentially involves crimes against and affecting children, and that identification of these potential crimes is an essential component of the intersectional analysis performed in every situation. As such, the analysis plan developed and regularly updated for each situation and case will be required to address crimes against and affecting children. Age and gender disaggregation will be a component of all crime pattern analysis to proactively identify any relevant patterns regarding the targeting of or impact on children.

71. The Office has developed an internal tool for use from the earliest phase of every situation to provide a framework for intersectional analysis. The tool can be used to identify patterns regarding the targeting of particular victims or victim groups, to understand the background context underpinning the crimes and the relevant situation and to recognise any specific vulnerabilities affecting particular victims, victim groups or other persons that could have an impact on the Office's operational activities.

72. The Office will include targeting and experiences of children as part of its overall pattern analysis, beginning in the preliminary examination stage and continuing as the situation progresses. The Office will keep the evidence under regular review so that potential gaps are identified as early as possible and are addressed or prioritised within investigative activities.

iii. Protection and Support

73. The Office recognises the ethical obligations inherent in engaging with children and in the Court-wide statutory duty in article 68(1) to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, particularly where the crime involves violence against children.

74. Before interviewing any child, the Office will deploy a psychosocial expert to conduct a psychosocial assessment. This assessment determines whether the child is fit to be interviewed at that time; it also allows for a preliminary assessment of the child’s capacities (including communication skills and cognitive, social, and emotional development) and potential vulnerabilities. The psychosocial expert will make recommendations to the interview team regarding the conduct of the interview, risks of re-traumatisation and any particular accommodations needed during the interview process. The assessment also helps to identify any potential psychosocial support needs which may require referral to local support pathways or the Victim and Witness Section (“VWS”) of the Registry. The Office recognises the importance of considering diversity, local knowledge and relevant experience when referring children to support.

75. Each child witness is also subject to an individual risk assessment to determine any potential threats or risks arising from their cooperation with the Office. The assessment should take an intersectional and child-competent approach in assessing the risks to child witnesses and the suitability of potential mitigation measures. Where necessary, the Office may make a protection referral to the VWS.

76. In assessing the protection or psychosocial support needs of adult witnesses, the Office should consider the potential impact of those measures on any dependent children for whom the witness is a parent or caregiver.

iv. Use of Technology

77. The Office will use technology to improve how it engages with children and how it collects relevant evidence concerning crimes against and affecting children.

78. For example, in designing its outreach strategies, the Office will consider how to best utilise innovative technology to safely reach and engage children. In some contexts, child-appropriate outreach might include use of digital content and social media. The Office will consider accessibility to children when developing communication and public submission strategies. Outreach strategies should also consider how children with disabilities might face particular challenges accessing information.

79. The Office will also explore innovative uses of technology to allow for child-friendly introductions to the court and witness familiarisation prior to testimony. Depending on the individual child, this may take the form of a guided virtual reality platform, the use of audio-visual imagery (including on a laptop or phone) to explain the role of the Office, investigation or testimony process in an engaging and age- and disability-appropriate way.

v. Outreach and collaboration

80. The Office recognises that direct engagement helps ensure that victims and survivors and their communities feel heard, respected, and included in the work of the Office. Together with the Registry, the Office strives to keep affected groups and communities informed at all stages of the proceedings.

81. Children should understand what the Office does and how they can become involved. When developing a cooperation and outreach strategy in a particular situation, the Office will consider how to communicate and disseminate information in child-accessible ways. Such methods may include increased field presence, effective use of diverse media and innovative approaches to technology. When interacting with affected communities, the Office will seek to speak with children. Outreach materials should be child-sensitive in both their content and dissemination.

82. The Office recognises the wealth of knowledge and experience possessed by various actors working on children's issues, including civil society organisations, UN-mandated investigative mechanisms, other international tribunals and judicial organs and networks led by children and youth. It will proactively seek to collaborate with these actors for appropriate exchange.

83. The Office acknowledges the valuable work many civil society organisations do to document international crimes. It seeks to engage civil society organisations in such a way that preserves the integrity of accountability efforts while also doing no harm to individual witnesses.

84. In line with its 2022 guidance for civil society organisations documenting international crimes for accountability purposes⁶⁹ and the general “do no harm” principle, the Office seeks a coordinated approach to child witnesses. To protect children’s safety and well-being, children should be questioned as few times as possible about their specific exposure to these events. Ideally, this means a child is asked for an in-depth account only once. Questioning about international crimes against and affecting children should thus be conducted by investigators with specialised training and experience working for competent investigative authorities. For this reason, the Office recommends that civil society organisations collect a child’s biographical and contact data and instead secure information from adults around the child, such as parents, caregivers, teachers, and service providers. If an organisation must take direct information from children, it is recommended that they take only a general account of what might have happened to the child or what the child might have witnessed. This information should be passed to the competent investigative authorities at the earliest opportunity to facilitate a more detailed interview where feasible and appropriate.⁷⁰

vi. Institutional development

85. The Code of Conduct of the Office requires staff, in the exercise of their duties and powers, to at all times act honourably—which means in a dignified, courteous and sensitive conduct towards all victims and witnesses. This includes children.⁷¹

86. It is also the responsibility of every staff member, in their own work, to contribute to the goal of achieving the effective investigation and prosecution of crimes against and affecting children, and in ensuring that the best interests of children with whom the Office engages are protected.

87. The Office recognises that the full implementation of this Policy requires the Office to have a robust institutional framework in terms of policy and implementation guidance as well as child-competent structures and processes. This requires a range of measures.

88. In terms of policy and implementation guidance, this Policy will be operationalised according to internal resources that outline implementation measures in concrete detail. Senior management within the Office is responsible for the development of internal tools to ensure the effective and regular monitoring

⁶⁹ See [CSO Guidelines](#).

⁷⁰ [CSO Guidelines](#), pp. 25-27.

⁷¹ [Code of Conduct of the Office of the Prosecutor](#), paras. 25-26.

and evaluation of Office performance, including with respect to crimes against and affecting children. It will also ensure regular review and update of the Office's internal operational guidance, including the sections relevant to children's issues.

89. In terms of ensuring child-competent structures and processes, the Office is committed to strengthening the baseline understanding of crimes against and affecting children across its entire staff and deepening its specialised expertise.

90. Senior management will develop processes through which the Office can identify staff with specialised knowledge and skills relevant to crimes against and affecting children. To deepen their competence, these staff will receive regular specialist training to maintain and update their technical expertise. In addition, the Office will provide regular and iterative training for all staff and team members to ensure baseline knowledge across the Office and create opportunities for deepening expertise. Only staff members with relevant qualifications, experience and up-to-date training will engage directly with children on behalf of the Office. This includes persons who interview child witnesses and/or examine/cross-examine them in the courtroom, interpreters, psychosocial experts and witness protection staff.

91. The Office will also increase its recruitment of staff with relevant qualifications and experience in relation to children.⁷² This includes expertise not only in investigating and prosecuting crimes against and affecting children (including interacting directly with child witnesses and victims), but also situation-specific expertise to ensure that appropriate and diverse approaches are adopted by the Office. It will hire country experts for specific situations, engage local psychosocial expertise through field offices, and harness geographic diversity through its pool of seconded personnel. The Office will include relevant selection criteria in vacancy announcements, as appropriate.

92. The Office recognises the importance of drawing upon a broad network of experts with inter-disciplinary skills relating to children's issues. This includes engagement of relevant academics, practitioners and experts, as

⁷² Article 44(2) of the [Statute](#) requires the Prosecutor, in the employment of staff, to have regard to the criteria set out in article 36(8), which includes equitable geographical and gender representation, and the need for legal expertise on specific issues, including violence against children. As a general principle, the Office recognises that geographical and gender diversity fosters better team performance and decision-making.

well as appointment of and consultation with relevant Special Advisers to the Prosecutor.⁷³

93. With the above human resources and institutional measures, the Office will ensure that all teams possess sufficient, relevant expertise in relation to children's issues. Allocation of child-specific expertise to the Office's teams will be overseen by senior management, in conjunction with the GCU. Senior management will be responsible for monitoring and facilitating implementation of this policy.⁷⁴

94. The Office recognises that effective implementation of this Policy requires the coordinated efforts of all organs and sections of the Court. To this end, the Office will engage with the Registrar and Presidency, Judicial Divisions, Office of Public Counsel for the Defence and Office of Public Counsel for Victims to ensure that there is an appropriate exchange on best practices and consistent institutional approaches on issues affecting children. There must also be appropriate exchange amongst the relevant experts from the VWS and the Victim Participation and Reparations Section. In each case, the Office will engage with Counsel for the Defence and the Legal Representatives for Victims regarding child sensitive and child friendly interactions with child witnesses and victims.

b. Specific phases of OTP work

95. The Office's work extends across several different phases: preliminary examination, investigations, confirmation of charges, pre-trial, trial, sentencing, appeal and reparations. While every phase is distinct, the successful implementation of this Policy depends on applying the key principles consistently at each phase. This requires precise planning ahead of time, deliberate execution, the ability to course correct where necessary and adopting a learning mindset and culture. Senior management will exercise oversight over the different phases to ensure that the key principles of this Policy are being implemented. The section

⁷³ Article 42(9) provides that the Prosecutor shall appoint advisers with legal expertise on specific issues, including violence against children. From 2012 to 2021, Professor Diane Amann served then-Prosecutor Fatou Bensouda as Special Adviser on Children in and affected by Armed Conflict. In September 2021, Prosecutor Karim Khan KC, appointed Véronique Aubert as Special Adviser on Crimes Against and Affecting Children.

⁷⁴ GCU assists the Office in ensuring the effective investigation and prosecution of gender-based crimes and crimes against and affecting children. GCU's main function is to provide support to all unified teams, including legal, investigative, strategic, and operational advice. GCU also provides capacity-building support to relevant staff. Moreover, GCU monitors best practices related to engaging children and acting in their best interests. GCU shall further support the Office in the general implementation of this Policy.

below sets out additional aspects on appropriate engagement with children and/or appropriate steps to be taken when addressing crimes against and affecting children in each specific phase of the proceedings.

i. Preliminary Examination

96. During a preliminary examination, the Prosecutor determines whether there is a reasonable basis to proceed to an investigation within a situation.⁷⁵ In making this determination, the Office considers a wide range of information from varied sources to assess the following factors: jurisdiction (temporal, subject-matter and territorial or personal jurisdiction), admissibility (complementarity and gravity) and the interests of justice.⁷⁶ Information on the commission of crimes against and affecting children is relevant to these assessments. Additionally, in exercising discretion with respect to preliminary examinations of non-referred situations, the Office will pay close attention to these crimes. In general, the Office considers crimes against and affecting children to be among the gravest under the Statute. In assessing their gravity, the Office considers their multifaceted character, resulting harm and impact. While investigations are usually in the interests of justice,⁷⁷ this is even more the case when crimes against and affecting children are being investigated.

97. While the Prosecutor has relatively limited investigative powers during a preliminary examination, the Office recognises that assessment at this stage will support any investigation if opened at a later stage. It will therefore carefully analyse the available information to assess if crimes against and affecting children have been committed, consulting a range of local, regional, national and international actors and expertise, including survivors' groups, as relevant. In this respect, the Office may make requests for information and/or undertake field missions, as relevant. Further, where appropriate, the Office will also rely on its country experts at this early stage, to better understand relevant cultural, social and linguistic factors, the larger context of the crimes and the patterns/trends of under-reporting and bias. In addition, the Office will identify patterns of targeting of particular victims or victim groups to understand the background context of the relevant situation and alleged crimes and to recognise specific vulnerabilities affecting specific victims, victim groups or others relevant to the Office's operational activities. This should be done at this earliest phase and updated as the situation progresses to investigation.

⁷⁵ Articles 15(3) and 53(1), [Statute](#); Rule 48, [Rules](#).

⁷⁶ Article 53(1), [Statute](#).

⁷⁷ [Afghanistan AD](#), para. 49.

98. Prior to investigations, the Office should conduct a mapping of appropriate referral pathways to support any future child witnesses. Situation-specific expertise will take account of intersectional factors affecting the ability of child witnesses to participate safely and effectively in the investigative process or to access sources of support (e.g., medical, psychosocial and/or security).

99. When crimes including those against and affecting children within the Court's jurisdiction have been identified, the Office determines admissibility by considering factors of gravity and complementarity. In this context, the Office will give particular consideration to crimes against and affecting children when it assesses gravity. The Office also considers whether there are relevant and genuine national proceedings and, where such proceedings exist, whether they relate to potential cases being examined by the Office (defined by reference to the relevant criminality and same groups or categories of individuals).⁷⁸ While there is no requirement that the crimes charged in national proceedings must be identically characterised as those before the Court, the domestic proceedings must cover substantially the same underlying conduct as those before the Court.⁷⁹ While complementarity assessments are factually driven, legal qualifications used in national cases may be additionally relevant to determine whether the domestic proceedings encompass substantially the same conduct as the case before the Court.⁸⁰ This is a case-specific assessment. Finally, the Office will also consider whether the State is sufficiently willing or able to engage with child witnesses in an appropriate manner.

ii. Investigation

Planning and preparation

100. The Office will assume that investigations in *all* situations may yield evidence of crimes against and affecting children.⁸¹ The planning and preparation of investigations will reflect this approach.

101. Accordingly, it is mandatory to both a) include crimes against and affecting children in investigation and analysis plans for every situation and b) proactively

⁷⁸ Article 17(1), [Statute](#). See [Burundi article 15 Decision](#), para. 143; [Georgia article 15 Decision](#), para. 37; [Kenya article 15 Decision](#), paras. 50, 59; [Côte d'Ivoire article 15 Decision](#), para. 191. This is also relevant to proceedings under articles 18 and 19 of the [Statute](#). With respect to article 18, see [Philippines article 18\(2\) AD](#), paras 106, 110.

⁷⁹ [Venezuela article 18\(2\) Decision](#), para. 67; [Al-Senussi Admissibility AD](#), para. 119.

⁸⁰ [Simone Gbagbo Admissibility AD](#), para. 100; [Simone Gbagbo Admissibility Decision](#), paras. 48-49, fn. 87; [Venezuela article 18\(2\) Decision](#), para. 124.

⁸¹ This is done in a manner consistent with article 54 of the [Statute](#).

investigate these crimes. The situation-specific analysis performed during the preliminary examination should also be updated. The intersectional analysis at this stage ensures that the case theory is accurate and complete and that harms are properly identified. Internal tools and templates used during investigation should also include child-related considerations. The investigation and analysis plans should also be used to effectively predict support for victims and witnesses. For instance, refugees from a conflict may not be allowed to access public health facilities in the host country, requiring planning for proper referral pathways. The Office will strive also to map and update existing support pathways for any child witnesses, ideally including resources close to the child's location.

102. To ensure that the situation and case planning is based on a sound understanding of history, culture and context, the Office will consult experts with multidisciplinary skills. It will also compile glossaries of culturally-appropriate and age-appropriate terms, idioms and euphemisms for investigators, prosecutors and judges to communicate effectively with children. To the extent possible, guidance regarding child-friendly terminology and definitions should be secured from local experts and interpreters with experience working with children, or possibly from children themselves. All team members will receive context briefings and must proactively familiarise themselves with local conditions and norms relevant to children.

103. The teams should include individuals with professional experience in investigating and prosecuting crimes against and affecting children. In addition, all team members must at least have been trained on fundamental skills and possess a basic level of competence on crimes against and affecting children.

Case hypothesis

104. Building on its work during the preliminary examination, the Office develops the case hypothesis once specific cases within the situations are selected and prioritised for investigation. Teams must actively include crimes against and affecting children in this hypothesis and fully consider crimes against and affecting children in its selection of priority incidents for investigation, identification of potential suspects and framing of possible charges. To do this, the teams must diversify their sources of information and recognise any factual indicators or red flags that may signal the commission of these crimes. The Office will also conduct a child-sensitive analysis, proactively seek information relating to children, disaggregate the data by age and fully consider the diverse range of harms that may be suffered by children in the situation at hand.

105. The identification of potential cases within a situation, including the range of possible crimes which may have been committed, begins in the preliminary examination phase. Considering issues relating to children from the earliest stage and throughout the process is the best means to ensure that the Office is ultimately able to select charges that fully and faithfully characterise facts related to crimes against and affecting children.

Sources of evidence

106. The Office will obtain and introduce evidence that establishes the multiple, diverse and multifaceted impacts of the relevant crimes on children, as well as their families and communities. The investigation will consider and proactively collect a wide range of relevant sources of evidence. The Office will seek relevant documentation to demonstrate and corroborate individual accounts and the wider pattern of victimisation suffered by children within a certain community. Such documents can include administrative records and statistics regarding school attendance or records from medical entities, education institutions, civil society organisations or religious and other local leaders, etc.

107. In addition to the accounts of the children themselves, the Office will also strive to obtain accounts about children's experiences from other relevant witnesses. This may include teachers, doctors, family members and caregivers and civil society organisations either documenting these crimes or providing humanitarian support.

108. While there is no legal requirement to corroborate evidence⁸² and testimonies need not be identical to be considered corroborated,⁸³ the Office will seek relevant evidence to strengthen the case. This general rule remains true with respect to crimes against and affecting children. The Office will constantly review child-related evidence collected, identify gaps in collection and proactively take steps to fill those gaps.

109. The Office recognises the value of forensic evidence at all stages of its work to, among other things: a) independently assist in determining whether the requisite elements of the crimes are established; b) corroborate witness evidence;

⁸² Rule 63(1), [Rules](#).

⁸³ [Ntaganda AJ](#), para. 672 (“[D]ifferent testimonies do not need to ‘be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others’”); [Gbagbo AJ](#), paras. 356-357.

c) assist judges and others to contextualise, understand and assess witness evidence; and d) identify the diverse impacts of the crimes in a specific case.

110. As necessary and appropriate, the Office will obtain and introduce medical, psychological and/or other expert evidence regarding children's issues, including:

- a. Possible features of evidence offered by children and/or of adults who were children at the time of the relevant events;
- b. The nature of memory and effects of trauma on memory, particularly for children;
- c. Social, cultural, political, economic and historical evidence regarding the relevant region, particularly with respect to children;
- d. The prevalence of crimes against or affecting children;
- e. Physical and psychological examinations, even conducted after the relevant events, to document any injuries and assess their consistency with the child's testimony and/or other evidence;
- f. Social science research, including population-based studies or other epidemiological data focused on violence affecting children;
- g. DNA testing, where relevant and appropriate; and
- h. Expert insights regarding multifaceted and transgenerational impacts of these crimes at individual and community levels.

111. When appropriate, the Office may explore the possibility of calling joint Prosecution-Defence experts on certain topics, such as the effects of trauma.

112. When it is necessary to assess a child's age, the Office will first attempt to obtain relevant documentary and/or testimonial evidence.⁸⁴ Only if these

⁸⁴ Examples may include birth certificates/extracts from birth registries and other identification documents, school records, baptismal or other equivalent records, reports of UN and NGOs involved in demobilisation programmes, photographs, testimonials of parents, teachers, religious or other community leaders.

measures are unsuccessful will the Office resort to a physical or psychological assessment of the child. The Office will ensure that such forensic assessments are carried out by qualified professionals, applying the least invasive methods possible to uphold the dignity and physical and psychological integrity of the child.⁸⁵ Similarly, the Office may in certain cases seek medical procedures, imaging (such as x-rays or CT scans) or records. In these cases, a child's health information will be stored and protected in full compliance with medical confidentiality standards. The Office will only proceed with these measures to ascertain a child's age or mental or physical status where necessary and in the best interest of the child, and with appropriate consent and assent.

Interviewing child witnesses

113. If a child is assessed as able and willing to be an Office witness, and where appropriate consent and/or assent is secured, it is crucial that children's well-being and interests are safeguarded during all phases of proceedings. This is in the best interests of both the child and the Office. It supports the child's overall safety, while also helping to produce the best, most reliable evidence. The Office will also consider ways to support children's parents and caregivers throughout the process, as appropriate.

114. In this context, Office staff who are required to interview a child during investigations, or question a child during trial, assist with interviews or testimony or provide psychosocial or security support must be specialised professionals. Office staff must have the necessary skills, especially the ability to establish good rapport with the child. Such staff must also have the necessary understanding of children's developmental phases and how memory can be influenced by age, circumstances and past traumatic events. Staff must also have competence in forensic interviewing skills, including child-appropriate memory retrieval techniques, use of suitable language and identifying factors that may promote or impede children's disclosure of victimisation.

115. Office staff must interview children based on the evidence-based child investigative interview techniques, internationally recognised standards and the latest child safeguarding standards and policies. These standards and practices will be reflected and regularly updated in the Office's internal operational guidelines.

⁸⁵ [CRC General Comment 24.](#)

116. In general, Office practice with respect to interviewing children is guided by the following:

- a. A child forensic interview will take a phased approach with adequate time to build rapport and provide all necessary explanations about the child's engagement with the Office in a child-friendly manner.
- b. To enhance the opportunities to establish a good rapport and to further prevent undue pressure over the child, the interview will be led by one interviewer with the support of a multidisciplinary team.
- c. Interviewers will adapt to the individual child, maintain an open mind and avoid any interviewer bias.
- d. Interviewers will apply evidence-based child interview techniques and approaches, eliciting memories in a non-leading and non-suggestive manner, using open-ended questions and adapting to the individual child.
- e. Interviewers will ensure proper closure to the interview, supporting the child in managing the emotions that might have surfaced during the interview.
- f. Typically, there will be one interview with multiple sessions due to the complexity of the crimes involved. Interview stages must thus be well-planned to avoid logistical and security complications for the child and any adults facilitating their engagement as well as to prevent duplication and risks of suggestibility.
- g. Unless there are exceptional circumstances, interviews with children shall be audio-video recorded.⁸⁶ This is to ensure that their evidence may be preserved for use in Court proceedings and to protect the child from the stressful experience of testifying in Court, including under cross-examination. In appropriate circumstances, including with respect to consent and a child's best interests, a child may offer testimony in Court.

117. The Office will ask the child and/or their parent or appropriate adult whether the child has been interviewed before. If this is the case, the Office will make all reasonable efforts to obtain a copy of the interview.

⁸⁶ See Rule 112(4) of the [Rules](#). If consent/assent for audio-visual recording is declined, the Office can proceed with a written statement. However, any waiver/request to decline audio-video recording should itself be audio-recorded.

118. The Office will generally refrain from conducting screenings⁸⁷ unless there are compelling reasons to do so and sufficient safeguards can be put in place. When screening children, the Office will discuss the relevant events with them only to determine whether the child has relevant information to provide in the context of a comprehensive interview.

119. Recognising that long-distance travel, especially international travel, may be stressful for children, the Office will seek to interview children reasonably close to their place of residence. The Office will generally refrain from conducting remote interviews with children, unless there are compelling reasons to do so and sufficient safeguards are in place.

120. When providing a child-friendly introduction to the Court, the Office shall use tools appropriate to the individual child, such as augmented reality or other digital technology to provide a visual presentation of the Court. Analogue and pictorial aids may also be used. Selection and use of tools will be determined based on the cognitive and developmental stage of the child in question.

121. To minimise the risk of re-traumatisation, the Office will fully utilise the procedural legal framework of the Court to maximise the possibility that a child will be interviewed or give testimony as few times as possible and without unnecessary delay.

122. As an alternative to in-Court testimony, the Office will seek to introduce a child's prior recorded testimony, as appropriate:

- a. Entirely in documentary form under article 69 of the Statute for evidence taken under article 56 of the Statute or rule 68(2)(b) of the Rules,⁸⁸ or
- b. Under rule 68(3) of the Rules, such that they are not required to repeat their full account during their live testimony.⁸⁹

⁸⁷ A screening is a conversation with the potential witness to assess whether they might possess relevant information and would be willing to cooperate with the Office.

⁸⁸ Evidence of the acts and conduct of the accused cannot be introduced under rule 68(2)(b) of the [Rules](#). The Office considers that the evidence of children should not, as a rule, be confined to evidence that does not go to the acts and conduct of the accused. It will therefore take this into account when determining whether it is appropriate to seek to introduce a child's evidence under this rule.

⁸⁹ Rule 68(3) allows the introduction of prior recorded testimony if the witness who gave the testimony does not object to its submission and the Prosecutor, Defence and the Chamber have the opportunity to examine the witness during the proceedings.

123. The Office considers that unique investigative opportunities under article 56 of the Statute can effectively preserve a child's evidence and maximise the chance that they will not be required to testify in any subsequent proceedings. Whenever possible, the Office will seek measures under article 56 before the child is interviewed for the first time.

124. If a child testifies in Court, the Office will ensure that post-testimony follow-up is carried out to make sure that any issues that may arise concerning the safety and physical and psychological well-being of the child are properly identified and addressed. This will be done in coordination with the VWS.

iii. Confirmation and Pre-trial

125. Building on the earlier phases and the substantive investigations, the Office will ensure that charges for crimes against and affecting children are brought as early as possible when there is sufficient evidence. This requires teams to plan sufficiently ahead, to actively consult relevant expertise and to keep the evidence collected under constant review.

Selection of charges

126. In assessing what charges to bring with respect to crimes against and affecting children, the teams will actively consult internal experts and relevant Special Advisers to the Prosecutor. This will help ensure that the approaches set out in this Policy are consistently implemented.

127. The Office will make full use of the regulatory framework to investigate and prosecute crimes against and affecting children. To ensure full and faithful characterisation, the Office will charge cumulatively, request cumulative convictions and, where possible, follow thematic prosecutions of crimes against and affecting children.⁹⁰ Charging cumulatively allows the Office to reflect the full range of diverse harms suffered by children in a specific case. For example, where a child is forced to watch the killing of a family member, depending on the specific facts and circumstances, the Office will consider charging not only the crime of murder, but also crimes such as torture, other inhumane acts and/or outrages upon personal dignity to reflect the specific harms that may be suffered by the child in this example. When appropriate, the Office may consider charging in the alternative.

⁹⁰ "Thematic prosecutions" refers to prosecution strategies that orient cases around particular themes of criminality, in this case, various aspects of crimes against and affecting children.

128. In selecting charges, the Office will also pay careful attention to other key legal elements required for successful prosecutions, including modes of liability, mental elements of the crimes and contextual elements. To achieve full and faithful characterisation, the Office will also be alert to opportunities to amend the charges before the start of trial⁹¹ and/or, where appropriate, to request modification of its legal characterisation, as long as the Pre-Trial Chamber has confirmed the relevant facts and circumstances.⁹²

129. To ensure accountability in diverse scenarios, the Office will consider the full range of modes of liability and mental elements under articles 25, 28 and 30 of the Statute and will decide based on the evidence. Article 25 of the Statute allows individuals, including military commanders and civilian superiors, to be held responsible when they commit (either as individuals or jointly with and/or through another person), or if they order, solicit, induce, aid, abet, otherwise assist in or in any way contribute to the commission or attempted commission of those crimes.⁹³ Military commanders may be held accountable where a) they knew, or should have known, that their forces were committing or about to commit crimes and when b) they, as commanders, failed to take all necessary and reasonable measures within their power to prevent or repress such commission, or to submit the matter to the competent authorities for investigation and prosecution. Similarly, civilian superiors may be held accountable where a) they knew or consciously disregarded information clearly indicating that their subordinates were committing or about to commit crimes and when b) they, as superiors, failed to take all necessary and reasonable measures within their power to prevent or repress such commission, or to submit the matter to the competent authorities for investigation and prosecution.

130. Crimes against and affecting children may be committed, *inter alia*, as a result of explicit or implicit orders or instructions to commit such crimes, or even as a result of legitimate orders to attack. For instance, the perpetrator may be aware that these crimes will—in the ordinary course of events—be committed as a consequence of military operations directed against civilian populations. Crimes against and affecting children may also be committed because of an omission (e.g., a failure to order subordinates to protect civilians or failure to punish similar crimes committed in earlier operations). These crimes may also be

⁹¹ Articles 61(8) and (9), [Statute](#).

⁹² Regulation 55, [Regulations of the Court](#).

⁹³ Articles 25(3)(a), (b), (c) and (d). Article 25(3)(d) requires a person to contribute, in any other way, to the commission or attempted commission of a crime by a group of persons acting with a common purpose.

caused by a combination of other relevant discriminatory factors at all levels of an organisation.

131. To prove the mental elements of a crime against and affecting children, the Office must establish that the suspect or accused committed the crime with intent and knowledge as set out in article 30 of the Statute, unless the Statute or Elements specify differently.⁹⁴ If the suspect/accused is not the physical perpetrator, they must meet the mental requirements for the relevant form of responsibility.

132. Regarding the crime against humanity of persecution, the Office will assess whether children were targeted based on one or more grounds, including age, gender (including sexual orientation, identity, and expression), political, racial, national, ethnic, cultural or religious grounds. Whenever there is sufficient evidence, the Office will charge the crime of persecution based on multiple intersecting grounds, and/or in combination with other crimes against and affecting children, in order to properly characterise the facts and fully reflect the harms suffered by children in a specific case.

133. Consistent with its policy, the Office will bring charges for gender persecution whenever there is sufficient evidence.⁹⁵ For example, in a case involving the war crime of using, conscripting or enlisting children, the Office will consider whether it is appropriate, based on the specific facts and circumstances, to also charge the crime of gender persecution.

134. Where appropriate, the Office will include charges for crimes allegedly committed by the suspect against members of the same armed group, including children.⁹⁶

135. In accordance with the legal framework of the Court, the Office will not prosecute any person who was under the age of 18 at the time of the alleged commission of the crime.⁹⁷

⁹⁴ For example, article 25(3)(c).

⁹⁵ See [Gender Persecution Policy](#), para. 82.

⁹⁶ [Ntaganda CD](#), para. 80 (“the Chamber finds that UPC/FPLC child soldiers under the age of 15 years continue to enjoy protection under IHL from acts of rape and sexual slavery, as reflected in article 8(2)(e)(vi) of the [Statute](#).”); see generally [Ntaganda TJ](#).

⁹⁷ Article 26 provides that the Court shall not have jurisdiction over any child (persons under 18 years of age).

Procedural steps

136. The Office will seek to interpret and apply the procedural legal framework of the Court to fully implement the principles in this policy, according to the most up-to-date national and international best practice. This may include, for example, advocating for the use of article 56 whenever possible to preserve the evidence of children while safeguarding their rights and interests.

137. Further, when entering into an agreement on an admission of guilt by a suspect/accused, the Office will carefully consider any relevant aspects of crimes against and affecting children, including its gravity, before entering into an agreement. If necessary, the Office may present evidence and submissions on the matter.⁹⁸

Measures to protect identities

138. When necessary to protect the witness or members of their family, the Office will apply for protective measures to protect the identity of the child witness and/or family members, including delayed disclosure pre-trial of the child's identity, the non-disclosure to the parties and participants of the identity of family members, and/or use of agreed facts. The Office will also apply redactions to the names of children in disclosed material when this is not prejudicial to or inconsistent with the rights of the Defence and is authorised by the relevant Chamber.

iv. Trial

Submissions to the Chamber

139. Whenever appropriate, the Office will ensure that it proactively identifies and emphasises issues relating to children in its written⁹⁹ and oral¹⁰⁰ submissions to the relevant Chambers of the Court. While this will depend on the specific case and stage of proceedings, it may include, for example:

- a. Whenever the gravity of the crimes is relevant, underscoring the nature and extent of the targeting and/or victimisation of children in

⁹⁸ Article 65, [Statute](#).

⁹⁹ For example, requests for authorisation of an investigation, applications for an arrest warrant or summons, confirmation briefs, trial briefs, closing briefs, submissions on sentence, appeal and response briefs.

¹⁰⁰ For example, submissions at confirmation hearing, status conferences, opening and closing statements at trial, sentencing hearings and in appeal hearings.

- the specific case, and the diverse and multilayered harms suffered by children as a result of the relevant crimes;
- b. Before trial, for example, in a status conference, informing the judges that the Office intends to call one or more child witnesses, or adults who were children at the time of the relevant events, and discussing the protective and special measures that may be required, including the appropriate manner of questioning them;
 - c. During the opening statement at trial, highlighting the evidence of any child witnesses that are intended to be called during trial, or whose evidence the Office will seek to introduce in documentary form;
 - d. In the trial brief and closing brief, making submissions on how the Chamber should properly assess the evidence of children in accordance with established jurisprudence, in particular, that it should not require special corroboration for their evidence;
 - e. At sentencing, making submissions that fully explore the harms experienced by child victims and the gravity of those crimes; and
 - f. In appeal briefs and oral arguments in appeal hearings, making submissions which most effectively present the Office's positions in relation to crimes against and affecting children, and which best represent the facts showcasing the full range of these crimes.

Selection of child witnesses

140. Certain children should be considered for in-court testimony. These are children who are assessed as sufficiently able and resilient to testify, who provide informed consent and/or assent and for whom testifying is deemed to be in their best interests. Where children testify in-court, appropriate safeguards must be adopted to protect their rights and welfare and to secure the best evidence. For other children who may be able to offer evidence but for whom in-court testimony is not recommended, prior audio-video evidence and/or witness statement may be submitted as evidence under article 56 of the Statute and/or rule 68(2) of the Rules.

Witness preparation

141. Witness preparation is conducted by the party calling the witness before testimony to assist the witness and clarify the witness's evidence in order to facilitate focused, efficient and effective questioning during the proceedings.¹⁰¹ While the statutory framework does not expressly provide for witness preparation, some Chambers allow the practice.¹⁰² It is strictly regulated. The Office's ethical code and the Court's jurisprudence disallow certain conduct, such as coaching the witness on their testimony or practising it with them. Depending on the circumstances of the case, the Office will request authorisation from the Chamber to conduct witness preparation. Where the Chamber does not permit witness preparation as a general rule, the Office will seek the Chamber's permission for exceptions or special allowances for vulnerable witnesses. All counsel questioning vulnerable witnesses will undergo bespoke training on questioning and will also participate in mock sessions with the team.

142. The Office underlines that, considering the inherent vulnerability of children, witness preparation should be undertaken before children's testimony in all cases. This will enhance the confidence of the child witness and improve their well-being, allowing them to testify in the best possible conditions.

143. Witness preparation is normally conducted by the trial lawyer who will be questioning the witness in the courtroom. Where possible, the trial lawyer will be introduced to the child by a person who has previously engaged with the child participating as required to provide a sense of continuity to the child and support the establishment of good rapport. The Office will ensure that witness preparation for a child witness is adapted to the specific needs of the child and conducted by persons with the required and appropriate training and experience.

144. The Office recognises that there should be the shortest possible time between preparing the child and their testimony, and that delays to their testimony which would result in them having to prepare a second time should be avoided.

145. As part of its own witness preparation and/or witness familiarisation (where witness preparation is not allowed), the Office may use Augmented Reality Technology to assist in demonstrating the courtroom and explain proceedings. This may be supplemented with or replaced by analogue or pictorial tools, depending on the cognitive and developmental stage of the child, as well as consideration of their best interests.

¹⁰¹ [Al Hassan Witness Preparation Decision](#) para. 11.

¹⁰² *Ibid*, para. 10.

Witness familiarisation

146. Witness familiarisation is a process conducted by the VWS to orient witnesses before their testimony. It consists of showing the witness the courtroom or the remote witness room, explaining the proceedings, assessing the need for in-court protective and special measures, and meeting with the persons who will examine the witness in the courtroom.

147. The Office supports the continued use of witness familiarisation as an essential tool for safeguarding the well-being of witnesses, especially child witnesses, called to testify at trial. The Office cooperates with the VWS to ensure that the witness familiarisation process is adapted to the special needs of the child and conducted by persons with the necessary training and experience.

Protective and special measures

148. Depending on the needs of the individual child, and after consideration of the views expressed by the child and their parent/other appropriate adult, in coordination with the VWS, the Office will request the Chamber to authorise protective and/or special measures for their testimony.¹⁰³ The Office recognises that some children may have multiple, intersecting needs and will take this into account when assessing which measures to request. For example, a child who identifies as LGBTQI+ may require additional and specialised protection. Likewise, the Office will be careful not to make assumptions about the kind of protection that child witnesses may need.

149. Protective measures may include, but are not limited to:

- a. Giving testimony partly or entirely in closed session;¹⁰⁴
- b. Testifying by audio-visual link from a remote witness room or other remote location;
- c. Using voice and/or image distortion;
- d. Using pseudonyms; and

¹⁰³ See articles 68(1), (2), [Statute](#) and rules 86-88 of the [Rules](#). Article 68(1) requires the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, having regard to all relevant factors, including age, gender, health and the nature of the crime, in particular, where the crime involves violence against children.

¹⁰⁴ Article 68(2) of the [Statute](#) provides that, in the case of a child who is a victim or witness, proceedings shall be conducted in camera or by electronic or other special means, unless otherwise ordered by the Court, having regard to all of the circumstances, particularly the views of the victim or witness.

- e. Redacting the name and other identifying information of the child from public records and prohibiting the Parties and Participants to the proceedings from disclosing such information to a third party.

150. In addition to the above, special measures may include, but are not limited to:

- a. Using a screen to prevent direct contact, confrontation or interaction between the child and the accused, or the absence of the accused from the courtroom during the child's testimony;
- b. Ensuring presence of an accompanying support person, such as a psychologist, family member or other trusted person;
- c. Adapting the manner of questioning to the needs of the specific child;
- d. Adapting the layout of the courtroom, or holding the hearing in an alternative venue;
- e. Arranging for the judges to meet the child during the pre-testimony familiarisation process;
- f. Adapting courtroom attire, for example, by not dressing in robes; and
- g. Taking regular and/or additional breaks, and/or shorter sessions.

151. The Office will consult with the child and their parent/caregiver and take their views into account in determining which measures to request. The Office will inform the child and their parent/caregiver that the judges will ultimately decide which measures will be implemented.

152. Although witnesses are normally required to give a solemn undertaking, where a child does not understand the nature of such an undertaking, the Chamber may allow them to testify without it so long as the Chamber considers that the person is able to describe matters of which they have knowledge and that they understand the meaning of the duty to tell the truth.¹⁰⁵ The Office will support the Chamber to make such a determination by appropriate methods in the exercise of its discretion.

¹⁰⁵ Rule 66(2), [Rules](#).

153. The Office will proactively communicate with counsel for the Defence when a child witness is due to testify with a view to reaching a common understanding on the issues materially in dispute and the appropriate manner of questioning. The Office will carefully monitor the questioning of child victims and witnesses in the courtroom, and will object to questioning that is repetitive, harassing, intimidating or could otherwise risk re-traumatising the child. As with any adult witness, a child may withdraw from testifying at any point.

v. Sentencing

154. When recommending an appropriate sentence for a convicted person, the Office will consider factors such as the gravity of the crimes, the impact of the crime on the victims (including their particular vulnerability such as their age and their defencelessness), any continuing and transgenerational harm and the individual circumstances of the convicted person.¹⁰⁶ The Office will ensure that it obtains and introduces evidence that establishes the multiple, diverse and multifaceted impacts of the relevant crimes on children, as well as their families and communities. When appropriate, and mindful of the role of the Legal Representative for Victims, the Office will ask questions to elicit such evidence from witnesses during the trial phase. The Office will also consider calling children or other witnesses who can speak to these issues, including expert witnesses, to testify during the sentencing phase.

155. The Office will highlight the impact of crimes against and affecting children in its submissions on sentence and will request sentences that appropriately reflect the gravity of such crimes. The Office takes the general position that crimes against and affecting children are particularly grave, given the specific rights and protection that children enjoy under international law.

156. When identifying aggravating circumstances related to children, the Office will consider, in particular, whether the crimes were committed

¹⁰⁶ Article 78(1), [Statute](#); rule 145(1) and (2) of the [Rules](#) also list several factors to be considered in determining the sentence, including aggravating and mitigating circumstances.

against victims who were particularly defenceless and any motive involving discrimination, especially on the basis of age.¹⁰⁷

vi. Appeals

157. The Office will consider the particular gravity of crimes against and affecting children, their families and communities in its decisions regarding appeals and strategic litigation.¹⁰⁸ In the interests of transparency, where appropriate, the Office will also communicate clearly with the relevant legal representatives of victims should it decide not to appeal issues relevant to crimes against and affecting children for legal and strategic reasons. The Office will consider strategic litigation on relevant substantive and procedural issues, where appropriate. To the extent necessary and appropriate, the Office will also actively pursue opportunities during the appeal to add value to the submissions made at trial.

vii. Victim Participation

158. Where appropriate, the Office will inform a child and their parent/caregiver of their right to apply to be formally recognised as victims and authorised to participate in proceedings before the Court. The Office considers that victim participation is an important means for children to exercise their right to express their views in matters affecting them and have them given due weight, and also to exercise their right to an effective remedy for acts violating their fundamental rights, for example, through obtaining reparations.

¹⁰⁷ See rule 145(2)(b)(iii) and (v) of the [Rules](#). See e.g., [Ongwen SD](#), paras. 287, 290, 332, 369; [Ntaganda SD](#), paras. 82, 121, 126, 195. The *Ongwen* Trial Chamber found that several victims of sexual and other gender-based crimes were children and particularly defenceless; it took into account a range of harms to children caused by the relevant crimes, including “the complex emotional and psychological effect” on both mother and child when a child is born from a forced marriage; the *Ntaganda* Trial Chamber found that that some of the victims of murder and sexual violence were babies and very young children meant that they were particularly defenceless. The *Ntaganda* and *Ongwen* Trial Chambers determined that, although the crime of conscription of children under the age of 15 and their use to participate actively in hostilities is, by definition, committed against children, the fact that some of the victims were particularly young meant that they were particularly defenceless; ICC-01/05-01/08-T-368-ENG, [Bemba Sentencing Transcript](#), pp. 70-116 (In the *Bemba* sentencing hearing, the Office called an expert to give evidence on the “longitudinal and intergenerational impact of mass sexual violence”); see also [Katanga SD](#), para. 47 (in relation to the murder of 13 children, including 11 under the age of 6 years).

¹⁰⁸ See e.g., [Ntaganda Jurisdiction AD](#).

viii. Reparations

159. The Prosecutor is not a party to reparations proceedings. However, the Chamber may invite observations from the Office.

160. The Office supports an intersectional approach to reparations, considering the complex impact of these crimes. To allow for transformative reparations that contribute to non-discrimination and equality, the Office supports consultation with victims to determine the most effective and appropriate forms of reparation within a particular community.

161. The Office recognises that the foundation for suitable reparations in a given situation or case rests on: a) expansively identifying the harms suffered by children in the situation; b) selecting and prioritising cases that reflect those harms; c) selecting charges that fully and faithfully characterise the facts of the specific case and d) collecting and introducing evidence during the trial and/or sentencing phase that establishes the relevant harms. Specifically, with respect to charged crimes, the Office will seek to identify, to the extent possible, the number and identity of child victims and to otherwise quantify specific harms to children.

162. Since the nature and extent of harms suffered by children may depend on multiple intersecting factors, including but not limited to their age, gender, sexual identity and any disability, the Office will present these factors considered when assessing reparations, where it is invited to make submissions under article 75(3).

163. The Office will also support the meaningful participation of children in any reparations programmes. Appropriate reparations may include collective reparations with an individual component, including non-monetary awards such as apologies, education grants, child support for children born from rape, and collective reparations, such as the building of commemorations, schools or health care facilities.

VII. THE WAY FORWARD

164. With this Policy, the Office recommits itself to ensuring that crimes against and affecting children are a strategic priority at the heart of its investigations and prosecutions. The Office will continue to strengthen its understanding of and approach to these crimes, in order to surface the voices and experiences of children.

165. Ultimately, the test of this Policy lies in its rigorous and consistent implementation. To this end, the Office will ensure that the key principles articulated above are reflected across every layer of the Office's internal operational guidance and throughout its hiring, training, and evaluation efforts.

166. This Policy and the operational guidance that underpins it are living documents. As the Office absorbs relevant expertise and developments, these documents will evolve as necessary.

167. The Prosecutor is deeply grateful for the robust support the Office received as it renewed this Policy. Together, staff and external colleagues from all regions of the world have generously given their time and expertise to enrich this process. It is the Prosecutor's hope that this marks a new chapter in this essential partnership, to ensure accountability for crimes against and affecting children.

VIII. REFERENCES

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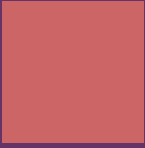
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Short-title	Full citation
<u>OTP Regulations</u>	Regulations of the Office of the Prosecutor, 23 April 2009
<u>Regulations of the Court</u>	ICC Regulations of the Court
<u>Rules or RPE</u>	Rules of Procedure and Evidence
<u>Statute</u>	Rome Statute of the International Criminal Court



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