



Universiteit
Leiden
The Netherlands

Children and the International Criminal Court : analysis of the Rome Statute through a children's rights perspective

Chamberlain Bolaños, C.

Citation

Chamberlain Bolaños, C. (2014, March 25). *Children and the International Criminal Court : analysis of the Rome Statute through a children's rights perspective*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/24891>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/24891>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/24891> holds various files of this Leiden University dissertation

Author: Chamberlain Bolaños, Cynthia

Title: Children and the International Criminal Court : analysis of the Rome Statute through a children's rights perspective

Issue Date: 2014-03-25

Guidelines on children and the International Criminal Court

These guidelines are a proposal based on the Guidelines and Model Law on Justice Matters involving Child Victims and Witnesses of Crime, which were adopted by the United Nations Economic and Social Council in order to assist, among others, international organisations in “designing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime”.⁴⁹ The proposed guidelines also take into consideration the applicable law under the Rome Statute, the Rules of Procedure and Evidence and other applicable instruments under Article 21(3) of the Rome Statute, which could be considered as “internationally recognised” children’s rights.

PREAMBLE

Taking into consideration Article 21 of the Rome Statute (“Statute”), particularly paragraph 3, which states that the application and interpretation of law “must be consistent with internationally recognised human rights”,

Taking into consideration the Convention on the Rights of the Child (“CRC”),

Taking into consideration the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes (“UN Guidelines”),

Taking into consideration that only if the rights enshrined in the above-mentioned instruments are guaranteed and safeguarded, will children participate in ICC judicial proceedings in a manner that is empowering for the children concerned, their families and their communities,

The following Guidelines on Children and the ICC (“Guidelines”) are adopted.

⁴⁹ UN Guidelines and Model Law on Justice Matters involving Child Victims and Witnesses of Crime, 2009.

DEFINITIONS

For the purpose of these Guidelines, the following definitions shall apply:

- *Child victim*: person under the age of 18 who is a victim of a crime within the jurisdiction of the Court pursuant to Rule 85 of the Rules of Procedure and Evidence, regardless of his or her role in the commission of the crime or in the prosecution of the alleged person(s) responsible. A child victim includes a person under the age of 18 at the time of the commission of the crime, regardless of his/her age at the time of the proceedings before the ICC.
- *Child witness*: person under the age of 18 who is a witness of a crime within the jurisdiction of the crime, regardless of his or her role in the commission of the crime or in the prosecution of the alleged person(s) responsible. A child witness includes a person under the age of 18 at the time of the commission of the crime, regardless of his/her age at the time of the proceedings before the ICC.
- *Dual status child*: person under the age of 18 who has the dual status of victim with participatory status and witness in pre-trial or trial proceedings.
- *ICC proceedings*: includes the early stages where the ICC's jurisdiction is triggered, including Article 15 proceedings, and encompasses the investigation, pre-trial and trial stages (including sentencing and reparations procedures), together with any appeals proceedings resulting thereof.
- *Child-sensitive*: means an approach that gives primary consideration to a child's right perspective, to the child's protection and that takes into account a child's individual needs and views.

GUIDELINES

1. *Best interests of the child*

Every child victim and witness has the right to have his or her best interests given primary consideration, while safeguarding the rights of the accused.

2. *Confidentiality*

All persons working with a child victim or witness shall maintain confidentiality of all information that they may have acquired in the performance of their duty.

3. *Training*

Judges, prosecutors and staff members of the ICC, as well as counsel and any intermediaries working in the field, should undergo appropriate training on issues related to child victims and witnesses.

4. *Right to be informed*

A child victim or witness, and, whenever possible, his/her parents or guardian, legal representative or other appropriate person designated to provide assistance to the child, shall, from their first contact with the Court, and throughout the entirety of his or her interaction with the Court, be promptly informed about the following:

- a. Procedures of ICC proceedings, including the role of child victims or witnesses, the importance, timing and manner of testimony, and the ways in which interviews will be conducted during the investigation and trial;
- b. Existing support mechanisms for a child victim or witnesses, including available protective and special measures provided for in Rules 87 and 88 of the Rules of Procedure and Evidence, including the possibility to have video-conference or *in situ* hearings, as well as the possibility to have a legal representative or any other person assigned to them to provide assistance;
- c. Existing mechanisms for the review of decisions affecting the child victim or witness;
- d. Relevant rights of child victims and witnesses pursuant to the Rome Statute and other applicable law;
- e. Possibilities for child victims to obtain reparations pursuant to Article 75 of the Rome Statute;
- f. The progress and disposition of the specific case, including any arrest, or relevant judicial decisions that impact the interests of the victim or witness or the outcome of the case.

The Court shall ensure that proceedings relevant to the testimony of a child victim or witness are conducted in a language that is simple and comprehensible to the child.

5. *Child victims*

- a. Pursuant to Article 68(3) of the Rome Statute, the Court should consider the views and concerns of child victims in accordance with their age and maturity.
- b. Whenever the Chamber requests that a common legal representative is chosen to represent a group of victims pursuant to Rule 90 of the Rules of Procedure and Evidence, the Registry shall take into consideration the distinct interests and needs of child victims. Child victims shall be presumed indigent for the purposes of legal aid.

6. *Investigation of cases involving child victims or witnesses*

- a. The Office of the Prosecutor should have specially trained staff able to guide any interview of a child victim or witness so that it is carried out with a child-sensitive approach.

- b. Repetition of interviews should be avoided to prevent re-victimisation of the child.
- c. Medical examination of child victims or witnesses should only be carried out if deemed necessary by the Prosecutor or the competent Chamber.
- d. If at any time during the investigation phase, any doubt exists as to the physical or mental health of the child, the ICC shall ensure that a comprehensive medical examination is carried out on the child as soon as possible so that the child receives proper treatment immediately.

7. *Support person*

- a. Pursuant to Rule 17 of the Rules of Procedure and Evidence, from the beginning of the investigation phase and during the entirety of the child's interaction with the Court, child victims and witnesses shall be supported by a person with training and professional skills to communicate with and assist children of different ages and backgrounds in order to prevent the risk of duress or re-victimisation.
- b. Continuity of the relationship between the child and the support person shall be ensured to the greatest extent possible throughout the justice process.
- c. If the support person fails to carry out his or her duties and functions, the competent Chamber shall designate a replacement support person, after having taken into consideration the views of the child concerned.

8. *Reliability of child witnesses*

- a. A child is deemed to be a capable witness and his or her testimony shall not be presumed invalid and untrustworthy by reason of his or her age alone.
- b. A child witness may be allowed to give testimony assisted by an expert specialised in understanding and communicating with children.
- c. The weight given to the testimony of a child witness shall be in accordance with his or her age and maturity.
- d. A child witness shall not be compelled to swear under oath, for instance, if the child is unable to understand the consequences of taking oath. In such cases, the competent judge or Chamber may offer the child the opportunity to promise to tell the truth. This should not, in any case, affect the reliability or trustworthiness of the child's testimony.

9. *Competency examination*

A competency examination shall only be conducted if the relevant Chamber, at the request of a party or *proprio motu*, determines there are compelling reasons to do so.

10. *Child-friendly measures*

- a. A child witness or victim shall have the opportunity to express his or her views and concerns on matters related to the case, his or her involvement in the proceedings, in particular his or her safety, his or her preference to testify or not and the manner in which the testimony is to be given, as well as any other relevant matter affecting him or her. In every case, the child should receive a clear explanation as to any decision taken in this regard.
- b. Waiting rooms used by child victims and witnesses shall be equipped in a child-friendly manner and should be separate from those provided for adult witnesses and victims and the accused person.
- c. Testimony of a child witness shall be given priority in order to minimise the waiting time during the court appearance.
- d. The competent judge or Chamber shall allow the support person to accompany the child throughout his or her participation in court.
- e. The competent judge or Chamber shall inform the support person and the child of the possibility to ask for a recess whenever the child needs one.

11. *Protective measures for child witnesses and victims*

Pursuant to Rule 87 of the Rules of Procedure and Evidence, the competent Chamber or judge may order protective measures, taking into account the views of the child concerned and his or her best interests.

12. *Reparations for child victims*

- a. The Court shall inform a child victim, his or her parents or guardian and his or her legal representative about the reparations procedures.
- b. When granting reparations, the Court shall take into consideration age and gender-specific harms suffered by child victims, as well as any particular condition of the child pursuant to Rule 86 of the Rules of Procedure and Evidence.
- c. The views and concerns of children should be given due consideration in accordance with their age and maturity when designing and implementing reparations.

