

## Summary of Recommendations and relevant definitions

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### A. Definitions

#### Accountability mechanisms

In the context of this study accountability mechanisms include investigations and trials at international and national levels, including universal jurisdiction cases, but also processes to formally document atrocities in the context of the work by investigative mechanisms, Commissions of Inquiry or Fact-Finding Missions, and other processes collecting detailed victim and witness statements and formally documenting crimes committed to achieve accountability. Also, more recently developed, innovative, mixed processes that combine restorative and retributive goals, such as the Colombian Comprehensive System of Truth, Justice, Reparation, and Non-Repetition Mechanism (CS), are included.

#### Atrocity crimes

Atrocity crimes include war crimes, crimes against humanity, and genocide, and are considered “the most serious crimes of concern to the international community as a whole”.<sup>1</sup> They are often systematic and large-scale crimes, committed within specific political, ideological, and societal contexts. These crimes are typically mass crimes, committed by multiple actors against a large number of victims who suffer far-reaching consequences.<sup>2</sup> The crimes can consist of diverse acts of violence, some are focused on particular groups, some aim the destruction of a group, others are not. They can include, for example, different forms of sexual and gender-based violence, murder, torture, deportation, persecution, ethnic cleansing, apartheid, conscripting and enlisting children, and other crimes of a similar gravity.<sup>3</sup>

#### Investigative interview

The investigative interviewing model consists of a number of elements that are key to the prevention of mistreatment and coercion and help to guarantee effectiveness. Objectivity, impartiality and fairness are critical components. “Interviewers must, in particular, seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee’s account and

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<sup>1</sup> ICC Rome Statute, Preamble.

<sup>2</sup> Hola, B., Nzitatira, H., Weerdesteijn, M. (2022) Introduction: Atrocity Crimes and Atrocity Studies. In: Hola, B. (ed.) et al. The Oxford Handbook of Atrocity Crimes. 2022 online edn., Oxford Academic. <https://doi.org/10.1093/oxfordhb/9780190915629.013.38><https://doi.org/10.1093/oxfordhb/9780190915629.013.3>

<sup>3</sup> UN Framework of Analysis for Atrocity Crimes. (2014.). Doc.1\_Framework of Analysis for Atrocity Crimes\_EN.pdf (un. org)

analyse the information obtained against previously available information or evidence; and evaluate each interview with a view to learning and developing additional skills.”<sup>4</sup>

### **Mental health and psychosocial support (MHPSS)**

Following the agreed definition among humanitarian actors, “the composite term mental health and psychosocial support is used to describe any type of local or outside support that aims to protect or promote psychosocial well-being and prevent or treat mental disorder. Although the terms mental health and psychosocial support are closely related and overlap, for many [...] they reflect different, yet complementary, approaches.”<sup>5</sup> In the context of this study, MHPSS approaches describe a wide range of activities which mainly address the nexus between psychological and psychosocial problems caused or exacerbated by atrocity crimes and the impact of involvement with an accountability mechanism for atrocity crimes. They are further explained in the text.

### **Testimony timeline**

This study uses the term ‘testimony timeline’ to refer to different phases of involvement of victims and witnesses in an accountability process. The phases, which may differ depending on the type of process, are determined by each stage of the legal process. Within these phases of the testimony timeline different steps are identified when considering the process with a psychosocial lens. These moments are particularly important as they shape the experience of victims’ and witnesses’ involvement and are critical moments in establishing trust and agency in the process.

### **Vulnerability**

In line with the Rome Statute’s legal framework, this study uses the following broad definition of vulnerability: “Vulnerable witnesses and victims are those persons at an increased risk of psychological harm by appearing before the Court, or who experience psychosocial or physical difficulties which affect their ability to appear before the Court”.<sup>6</sup> A witness’ or victim’s vulnerability may be assessed by examining different factors, inter alia, related to the person, such as age (for example, children or elderly persons), personality, disability (including cognitive impairments), mental illness or psychosocial problems (such as trauma-related challenges or lack of social support), the nature of the crime, in particular sexual or gender-based violence, violence against children, torture or other crimes involving grave violence, or related to particular circumstances such as significantly increased stress or anxiety due to relocation or resettlement, fear of retaliation or adaptation difficulties related to cultural differences or other factors.<sup>7</sup>

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<sup>4</sup> UN General Assembly. (2016). Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/71/298, para. 48-51.; Mendez Principles: Principles on effective interviewing for investigations and information gathering. Mendez Principles

<sup>5</sup> IASC. (2007) Inter-Agency Guidelines on Mental Health and Psychosocial Support in Emergency Settings. p. 1. IASC MHPSS Guidelines.

<sup>6</sup> ICC Regulations of the Registry, Reg. 94bis.

<sup>7</sup> ICC Regulations of the Registry, Reg. 94bis; Michels, A. (2020). The Psychologist-Client Relationship at the ICC: A Road Map for the Development of the Counsel-Victim Relationship. In: Jasini, R. and Townsend G. (eds.) Advancing the Impact of Victim Participation at the International Criminal Court: Bridging the Gap between Research and Practice, ICCBA-Oxford. Oxford Law In-house publication). (pp. 114-124), p. 116. ICCBA/Oxford Victim Participation

## **1. Principal Recommendations**

### *1.1 Structural integration of MHPSS approaches in accountability mechanisms and the role of psychosocial experts.*

- a) Anchor MHPSS approaches and trauma-informed methodologies into the legal and operational framework of the accountability mechanism and in all stages of the victim and witness-centred testimony timeline, based on a Do No Harm approach.
- b) Include the necessary human and financial resources in the core funding of the accountability mechanism to adequately support the delivery of MHPSS approaches and trauma-informed methodologies.
- c) Develop an interdisciplinary senior leadership team, including a psychosocial expert, to ensure the incorporation of MHPSS approaches and a trauma-informed lens in strategic decision-making, planning and implementation of mental health and psychosocial services.
- d) Ensure a multidisciplinary staffing composition at the operational level that includes psychologists and, where relevant, other psychosocial experts with expertise in trauma and MHPSS in conflict-affected settings.
- e) Create a psychosocial support team to operationally coordinate MHPSS activities and engage with support networks of local psychosocial services and civil society.
- f) Prioritise recruitment of psychosocial experts with a shared language and similar cultural background as the witnesses and victims.
- g) Integrate victim and witness-centred and trauma-informed approaches throughout all processes, policies, and operational procedures.
- h) Ensure provision of culturally appropriate support which protects the dignity and privacy of victims and witnesses and facilitates their involvement in the process.
- i) Strengthen multidisciplinary and multisectoral collaboration within national justice processes.
- j) Provide ongoing training on interacting with victims and witnesses to relevant staff.
- k) Integrate MHPSS approaches in the design of the prosecutorial strategy for each case to include the short and long-term psychological harm suffered by victims and their communities resulting from atrocity crimes.

### *1.2 Address vicarious trauma, other mental health risks, and the need for staff support*

- a) Formulate a comprehensive strategy to identify and address risks for vicarious trauma, and other mental health risks as a result of working in a justice context.
- b) Train all staff and managers on mental health risks and coping skills.
- c) Design interview protocols, field missions and other procedures which ensure protection of staff and provide access to support.

- d) Embed one or more staff counsellors inside the accountability mechanisms and make available staff support to everyone interacting with victims and witnesses of atrocity crimes, regardless of their contractual status.

## 2. **Investigations**

### 2.1 *Reduce hurdles for victims and witnesses to report, give a statement, or otherwise engage with accountability mechanism*

- a) Create and support initiatives to tackle institutionalised stigma and victim-blaming.
- b) Amend legal frameworks to align them with initiatives eradicating institutionalised stigma and victim-blaming.
- c) Address institutional culture change necessary to fulfil the aims of eradicating institutionalised stigma and victim-blaming.
- d) Provide relevant training of magistrates, law enforcement staff, and others.
- e) Prioritize active engagement of community-based organisations (CBOs) and victims' rights groups to build trust in the accountability mechanism.
- f) Create an environment in which victims and witnesses feel motivated and safe to engage with the accountability mechanism.
- g) Facilitate awareness and grassroots support of victims by CBOs and victims' rights groups.
- h) Inform victims about the judicial process.
- i) Manage expectations of victims about possible outcomes of the judicial process.
- j) In communicating with victims, contextualize the role of criminal prosecutions within the broader pursuit of transitional justice.
- k) Clarify the roles and responsibilities of the different entities inside the accountability mechanism regarding interaction with witnesses and victims.
- l) Clarify the roles of CSOs and victims' groups in investigative processes.
- m) Ensure the effective coordination of CSOs' services throughout the investigative process.
- n) Advocate for the establishment of integrated, comprehensive support centres for victims.
- o) Facilitate access for victims to culturally appropriate, community-driven psychosocial support initiatives.
- p) Implement initiatives designed to offer prompt assistance to victims and witnesses.
- q) Construct an environment that supports ongoing investigative efforts with trauma-informed interview techniques.
- r) Identify other existing barriers to active participation in accountability processes and take measures to reduce them.

## *2.2 Establish rapport and create safety*

- a) Establish a protocol for assessing threats and risks, specifically designed for victims and witnesses, to be implemented before conducting investigative interviews.
- b) Anticipate and implement necessary protection measures for victims and witnesses who actively participate in the accountability process.
- c) Perform pre-interview screenings and psychosocial vulnerability assessments for victims and witnesses at high risk of psychological harm or facing challenges during investigative interviews.
- d) Prior to investigative interviews, equip victims and witnesses with culturally sensitive psychoeducation.
- e) Provide a comfortable, quiet, peaceful, and safe meeting and interview setting.
- f) Create a referral system to provide victims and witnesses engaged with the accountability process access to essential support services.
- g) Integrate psychosocial interventions with investigative processes of atrocity crimes.
- h) Enhance efforts to improve referral systems and build local capacities which serve all victims.
- i) Allocate resources to training programs aimed at enhancing the ability to build rapport with witnesses and victims.
- j) Evaluate how operational processes and practices impact rapport building.

## *2.3 Ask for informed consent and ensure confidentiality*

- a) Establish mandatory and standardised procedures to obtain informed, contemporaneous, and voluntary consent.
- b) Allocate ample time for witnesses and victims to give their consent.
- c) Implement consent as an ongoing, evolving process during the entire duration of victims' and witnesses' engagement with the accountability mechanism.
- d) Utilise psychosocial support and, where possible, legal representation to assist victims and witnesses in making informed choices regarding their participation in the accountability mechanism.
- e) Secure informed consent from parents or guardians and obtain assent from children for their participation in processes related to the accountability mechanism.
- f) Include a focus on confidentiality in all witness and victim-related processes.
- g) Clearly articulate the boundaries and limitations of confidentiality within the framework of the accountability mechanism.
- h) Ensure the utmost confidentiality of victims' and witnesses' medical and psychological records.
- i) Develop standardised tools and processes for the collection of forensic medical and mental health evidence.

- j) Gather only the necessary medical or psychological information that is required for accountability mechanism processes.
- k) Establish an independent Victim and Witnesses Section tasked with supporting and safeguarding witnesses and victims.

#### *2.4 Provide support during the witness and victim-centred investigative interview*

- a) Use a trauma-informed interview model to interview witnesses and victims.
- b) Use specific interview models to interview children.
- c) Require the presence of a psychologist or child development expert in interviews of children.
- d) Require advanced training in trauma-informed interviewing and culturally sensitive approaches for all interviewers.
- e) Assure the presence of a support person, psychologist, or other psychosocial expert during the interview with victims or witnesses when needed.
- f) Ensure that support is guided by a pre-interview psychosocial assessment.
- g) Provide victims and witnesses with psychosocial debriefings immediately after the investigative interview to facilitate closure.
- h) Develop a follow-up plan and refer individuals to specialized services as needed.
- i) Credibility evaluation of victims or witnesses should be made by persons other than psychosocial experts providing support.
- j) Invest in capacity building for psychologists outside the accountability mechanism.
- k) In restorative or mixed retributive-restorative processes, provide psychosocial support to perpetrators to aid them in making truthful and detailed confessions and acknowledging responsibility.
- l) Maintain a strict separation between the content of psychosocial support sessions and the confession process.
- m) Provide guidance and support to interpreters to ensure their familiarity with the emotional reactions of victims and witnesses during interviews.
- n) When suitable, empower interpreters to sensitise interviewers about the vocabulary used by victims and witnesses to express distress within their cultural context.

### **3. Pre-Trial stage**

#### *3.1 Offer pre-testimony witness familiarisation, protection, and support*

- a) Ensure impartial familiarisation, protection, and support for witnesses and victims before testimony.
- b) Maintain ongoing communication with witnesses and victims to regularly reassess their consent and monitor their condition and circumstances.
- c) Conduct regular protection risk assessments on an ongoing basis.

- d) Provide necessary and tailored medical or psychosocial support as needed to facilitate testimony.
- e) Prior to testimony, familiarise witnesses and victims with the nature of legal proceedings and the courtroom setting.
- f) Ensure that targeted MHPSS interventions by accountability mechanisms are complemented by broader initiatives aimed at enhancing access to community-based, long-term mental health and psychosocial support for all victims and witnesses.
- g) Ensure the provision of effective legal representation to victims participating in the judicial process.

#### **4. Trial Stage (Testimony, Post-Testimony and Judgment)**

##### *4.1 Determination of special measures and procedural protective measures*

- a) Implement special measures in the courtroom for vulnerable witnesses and victims, tailored to their individual needs and capabilities, and based on individual psychosocial vulnerability assessments.
- b) Anticipate the presence of a supportive companion and provide in-court assistance by a trusted support person or psychosocial expert.
- c) Implement special measures tailored to the specific vulnerability and protection needs of children.
- d) Implement procedural protective measures in the courtroom to safeguard witnesses and victims against physical harm and stigmatisation.

##### *4.2 Offer psychological support during testimony*

- a) Provide psychosocial support immediately before, during, and after testimony, when needed.
- b) When needed, when suitable and with consent of the witness, communicate about the psychological condition of the witness or victim with the Judge(s) to facilitate a safe continuation of the testimony.

##### *4.3 Offer post-testimony support, protection, and follow up*

- a) Provide information to victims and witnesses about the progress and outcome of the accountability process.
- b) Assure post-testimony follow up of witnesses and victims.
- c) Assure assistance for any other needs that arise as a consequence of participation in the accountability mechanism.

- d) Offer post-testimony support and protection in case of risk for physical or psychological harm.
- e) Ensure referral of witnesses and victims to specialised services when needed.
- f) Ensure community outreach activities regarding judgment and sentencing hearings.
- g) Facilitate the presence of victims' groups at judgment delivery and sentencing hearings.
- h) Broadcast the hearings in the affected communities.
- i) Translate and explain the ruling and judicial rationale to victim groups.

## **5. *Appeals stage***

### **5.1 *Order and implement reparations***

- a) Provide access to meaningful reparations.
- b) Ensure that victims receive accurate information about their entitlement to reparations.
- c) Victims should be consulted by the mechanism in the decision on the type of reparations granted.
- d) Processes to evaluate victims' and witnesses' eligibility for reparations should be based on reasonable criteria and should not require the disclosure of detailed medical or psychological records.



