PRACTICE NOTE 6

WORKING WITH CHILD VICTIMS OF TRAUMA

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TRAUMA TREATMENT INTERNATIONAL

REDRESS

Ending torture, seeking justice for survivors

This practice note provides an overview of the psychological aspects of working with child victims of trauma in strategic litigation. It is designed to help inform civil society organisations and legal practitioners that work on human rights litigation and other forms of public interest litigation involving child victims of torture, sexual abuse or other forms of trauma.

Lawyers should only act in such cases with advice from a qualified expert. The note seeks to provide a starting point for lawyers in ensuring they have a basic understanding of the key psychological considerations in such cases, to assist them in instructing and working alongside such experts. It gives an overview of the psychological effects of torture, sexual abuse and other forms of trauma as they particularly relate to children, and their impact on children's memories. It also outlines important considerations when evidence is being taken from child victims of trauma and on obtaining medico-legal reports.

This guide is part of a series of **Practice Notes** designed to support holistic strategic litigation on behalf of torture survivors. It is aimed at lawyers, researchers, activists, and health professionals who assist torture survivors in the litigation process.

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INTRODUCTION

Working with child victims is an often necessary but complex part of strategic litigation. It requires an especially precautionary approach, with various checks and safeguards in place to ensure the best possible results from the process both in terms of the wellbeing of the child and the quality of the evidence to be obtained in interviewing them. All child witnesses are vulnerable witnesses; a child who has experienced a traumatic event or series of events should be considered additionally so and appropriate measures should be taken in all of their interactions pertaining to the case.

Lawyers should only act in such instances with advice from a qualified expert. This practice note seeks to provide a starting point for lawyers in ensuring they have a basic understanding of the key psychological considerations in such cases, to assist them in instructing and working alongside such experts.

It gives an overview of the psychological effects of torture, sexual abuse, and other forms of trauma as they particularly relate to children, including their effects on brain development, stress response, and memory. In doing so, it will clarify the necessity of certain protocols surrounding interactions with child victims of trauma.

Correspondingly, the note provides a guide on the aforementioned mitigative measures to be taken with child victims of trauma throughout legal proceedings, including during the preparation of the case, taking witness statements, and in court. Best practice for the questioning of child witnesses is briefly outlined in order to provide an idea of how an expert should conduct an interview.

Also covered is the role of an expert as it concerns the obtaining and presentation of evidence from a child witness. A section on how to provide instructions to them in an effective way and why it is important to do so is included, as well as what to expect from a medico-legal report.

TRAUMA IN CHILDHOOD

Childhood trauma, such as torture or sexual violence, has lifelong consequences. Adverse childhood experiences (ACEs) are traumatic events that include direct experiences of emotional, physical and sexual abuse, as well as neglect.

A 'one-off' experience of a traumatic event, such as being subjected to or witnessing an act of torture or sexual violence, in an otherwise stable and loving environment is usually less impactful in the long-term compared with prolonged exposure to multiple ACEs, termed *developmental trauma*. This can exert lasting negative effects on child development, as well as on future health and life opportunities.

Trauma and Brain Development

There are parts of our brain which relate to basic survival *('instinctive brain'*), emotions and attachment needs (*'emotional brain'*), as well as more highly evolved functions of the uniquely human brain (*'thinking brain'*). Brains evolve hierarchically, starting with the simplest life-support systems, before progressing to sensory pathways and then more complex skills. Brain pathways are strengthened through use, and those which do not get used do not develop as well. A traumatised childhood causes one's threat system to become overactive, provoking mental and physical health problems.

The Human Stress Response

The brain of a traumatised child is wired to expect danger and to be able to survive threats. Their 'emotional brain' is under-activated, making it more difficult to manage intense emotions. Their 'thinking brain' is also under-activated, so they may struggle with concentration, attention, and be more impulsive.

The threat system, AKA the Defence Cascade,[1] is comprised of freeze, flight, fright, flag, and faint responses. Children under threat will cycle through these responses, instinctively selecting the reaction that most ensures survival. Traumatic experiences such as torture or sexual abuse are more likely to elicit a freeze response because the child is unable to run away or fight back. Freezing stops them even calling for help. There is no conscious selection or control over this response.

Post-Traumatic Stress Disorder (PTSD)

The World Health Organisation (WHO) defines PTSD as a syndrome that:

> "may develop following exposure to an extremely threatening or horrific event or series of events. It is characterised by all of the following: 1) re-experiencing the traumatic event or events in the present in the form of vivid intrusive memories, flashbacks, or nightmares. Re-experiencing may occur via one or multiple sensory modalities and is typically accompanied by strong or overwhelming emotions, particularly fear or horror, and strong physical sensations; 2) avoidance of thoughts and memories of the event or events, or avoidance of activities, situations, or people reminiscent of the event(s); and 3) persistent perceptions of heightened current threat, for example as indicated by hypervigilance or an enhanced startle reaction to stimuli such as unexpected noises. The symptoms persist for at least several weeks and cause significant impairment in personal, family, social, educational, occupational or other important areas of functioning."[2]

The WHO also has a diagnostic category called Complex PTSD. This can develop following developmental trauma. Complex PTSD has all of the symptoms of PTSD, with the additional symptoms of victims having difficulties in regulating their emotions, feeling diminished, worthless, or defeated, and having problems forming and maintaining relationships.

1 Schauer, M. and Elbert, T. (2010) 'Dissociation following traumatic stress: etiology and treatment', Journal of Psychology 218(2): 109–127.

2 World Health Organisation, International Classification of Diseases Version 11 (2019): 6B40.

The risk of developing PTSD varies according to the type of trauma and vulnerabilities experienced. Reactions are influenced by age and experience. Children who experience sexual abuse have the highest risk: 30-70% will develop PTSD.[3]

PTSD can be considered as being a memory disorder. People recall traumatic events in a manner that feels current rather than in the past, like most memories. The memories are sensory (i.e. they are seen, heard or felt and are difficult to put into words). These memories trigger the threat system, so efforts are made to avoid recalling them.

The Impact of Trauma on Memory

Memory is not an accurate recording of events and is prone to change over time. Details that are extraneous to survival at the time of a traumatic event are more prone to change.[4] Memories of traumatic events contain gaps and inaccuracies.

Traumatic events are represented differently in people with PTSD compared with those without PTSD.[5] PTSD memories are hard to describe verbally. Trauma memories are more vague, jumbled, and contain gaps and inconsistencies. People with PTSD are much more likely to avoid disclosure of memories, and if they do disclose the account is more likely to lack detail.

The implications in justice settings include:

- Victims literally cannot describe what happened;
- Fragmented accounts which jump around in time and place;
- Memories lack contextual details;
- Avoidance of details leading people to appear deceptive;

3 Lewis, S. J., Arseneault, L., Caspi, A., Fisher, H. L., Matthews, T., Moffitt, T. E., et al. (2019) 'The epidemiology of trauma and post-traumatic stress disorder in a representative cohort of young people in England and Wales' *The Lancet Psychiatry*, 6(3): 247-256; McLaughlin, K. A., Koenen, K. C., Hill, E. D., Petukhova, M., Sampson, N. A., Zaslavsky, A. M., & Kessler, R. C. (2013) 'Trauma exposure and posttraumatic stress disorder in a national sample of adolescents', *Journal of the American Academy of Child & Adolescent Psychiatry* 52(8): 815-830.

4 Herlihy, J., Scragg, P., Turner, S. (2002) 'Discrepancies in autobiographical memories – implications for the assessment of asylum seekers: repeated interviews study' *British Medical Journal:* 324-327.

5 Brewin, C. R., Gregory, J. D., Lipton, M., & Burgess, N. (2010) 'Intrusive images in psychological disorders: characteristics, neural mechanisms, and treatment implications *Psychological review* 117(1): 210.

- Repeated contact and interviews not adjusted to children's needs increases risk of re-traumatisation;
- Numb, zoned out appearance leading judges to believe that children are unaffected, don't care or are lying.

TAKING WITNESS STATEMENTS FROM CHILD VICTIMS OF TRAUMA

Children as Vulnerable Witnesses

All children are considered to be vulnerable witnesses. In the context of sexual abuse, children and adolescents who have experienced sexual behaviours from an adult are considered to have been forced or tricked, never consenting. This includes direct sexual contact and non-contact abuse where the child has not been physically touched by the abuser.

The term *'re-traumatising'* refers to causing or worsening psychological injury rather than only being painful at the time of recall. Re-traumatised witnesses provide poor quality, inaccurate evidence. Whilst describing traumatic events in a justice setting can be emotionally painful, it need not be psychologically harmful and can be beneficial if the recommendations below are adhered to. Victims that are enabled to bear witness and are believed can be healed by that process.

The manner in which the child is asked to recall the events should not mimic the conditions in which the event initially occurred. This is achieved by giving the child more control, being non-threatening, and preparing the child for what is to come.

Court conditions can be unpredictable and intimidating for adults, and even more so for children. A large-scale UK study found that approximately 65% of children giving evidence in court experienced problems of comprehension.[6] Questions can be unpredictable, children may be accused of lying and the question style can be hostile, all in relation to a traumatic event around which they may feel shame in the formal 'adult world' of the courtroom.

6 Plotnikoff, J. & Woolfson, R. (2009) 'Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings', available at: https://www.nspcc.org.uk/globalassets/documents/research-reports/measuring-up-report.pdf

Safeguards During Legal Proceedings to Achieve Best Evidence and Mitigate Harm

The following section draws upon Plotnikoff & Woolfson (2009)[7] and Achieving Best Evidence in Criminal Proceedings, UK Ministry of Justice (2011).[8]

Throughout the process of legal proceedings the child should have access to a specially trained child advocate who can help the child's voice, needs, views and wishes be heard.

When preparing a case:

- It is critical that children are supported to provide properly informed consent for giving evidence. For younger children this can involve consultation with their caregivers.
- Judges, legal representatives and any interpreters from both sides should meet with the child and their advocate beforehand to brief them on the process.
- The child should be familiarised with the hearing room or video conference site.
- There should be a clear explanation of the 'rules' of communication in court.
- There should be a pre-agreed plan around how to identify and manage what to do if the child stops being able to meaningfully engage with the process due to issues with concentration, attention and/or flashbacks.
- The names of body parts and sexual terms should be rehearsed in front of judges and lawyers.
- Where intimate touching is reported, the child should never be asked to point to their own body. A drawing (body map) should be used.

In court:

- Measures that should be considered include the child being able to stand behind a screen to give evidence; the child giving evidence via live video link; the child

7 Plotnikoff, J. & Woolfson, R. (2009) 'Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings', available at: https://www.nspcc.org.uk/globalassets/documents/research-reports/measuring-up-report.pdf

8 UK Government Ministry of Justice. (2011) 'Achieving Best Evidence in Criminal Proceedings', available at: https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf

giving evidence in private; public and press excluded from court; the removal of formal dress such as wigs and gowns; the use of a specially trained intermediary; communication aids; and providing a pre-recorded video interview as their evidence-in chief.

- Being cross-examined on pre-recorded video evidence is preferable to a child having to repeat their whole account.
- Children should have the opportunity to review their previously recorded evidence and have as much prior warning as possible about questions that will be posed.

Sexual violence by peacekeepers in Haiti

Facts. In July 2011, five marines from Uruguay stationed in Port Salut (Haiti) who were part of the United Nations Stabilization Mission in Haiti (MINUSTAH), sexually assaulted a local teenage boy. The victim was abducted on his way home from a football match and taken to the barracks of MINUSTAH, where he was beaten and gang raped. The assault was recorded on a mobile phone by the peacekeepers, and the footage was leaked a month later, resulting in massive protest, in and outside Haiti. The victim and his mother reported the crime to the Haitian police.

Action for justice. Several investigations were opened by the UN Mission in Haiti, the Uruguayan Defence Ministry, and the Haitian authorities. In September 2011, the five peacekeepers were charged by a military court with "crimes of disobedience and omissions in the services" and were required to serve pre-trial detention. However, they were released in December 2011, and the result of the proceedings is unclear.

A criminal investigation was also initiated. In May 2012, the victim travelled to Uruguay to testify against the five peacekeepers. He was required to complete medical exams upon arrival in Uruguay. During his testimony, the victim was required to identify his abusers from a line-up of fourteen uniformed men. The victim faced multiple obstacles during the proceedings, including the fact that the court-appointed translator could not speak Haitian Creole fluently. Additionally, the quality of his appointed lawyer was called into question.

Status of the case. In 2013, four of the five peacekeepers were convicted of "private violence" charges as opposed to sexual assault or rape. They were sentenced to two years in prison, but the sentences were suspended and they did not spend time in jail. After the conviction, the lawyer of the defendants claimed the victim had lied and requested an appeal and an investigation against the victim. The outcome of the appeal is unknown.

See REDRESS and CRIN, Litigating Peacekeeper Child Sexual Abuse (2019)

Questioning Children and Taking Witness Statements: The Barnahus Model

The Barnahus (or *'Child House'*) Model was first developed in Iceland in 1998 and is considered to be international best practice. It encapsulates a holistic approach, addressing both justice and welfare, for children who have experienced sexual abuse.

In practice this means:

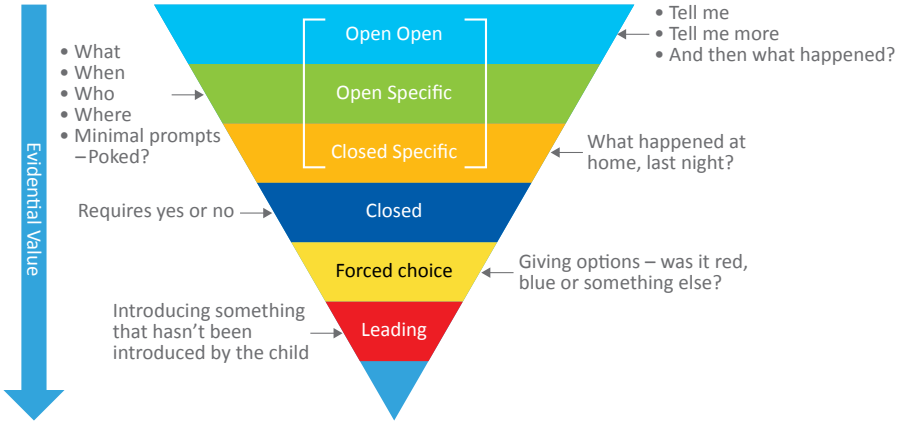
- A home-like setting with all services (medical, psychological, advocacy, police/justice and social care) delivered under one roof.
- Helping victims disclose abuse through exploratory interviewing, conducted by child psychologists.
- Use the least possible number of interviews conducted by child-expert staff.
- Improved evidence through the reduced need for children to testify in court.
- Guaranteed and rapid access to therapy for abused children.

The Icelandic use of Barnahus trebled the number of perpetrators charged and doubled the number of convictions.[9]

9 UK Government Children's Commissioner (2016) 'Barnahus: Improving the response to child sexual abuse in England', available at: https://www.childrenscommissioner.gov.uk/publication/barnahus-improving-the-response-to-child-sexual-abuse-in-england/

Conducting a meaningful interview with a child requires planning and preparation with the child's existing support network. The most common and critical error is to assume that children use, process and understand language in the same way as adults. In the Barnahus Model, the psychologist undertakes a 'pre-interview assessment' to build rapport with the child; socialise them to the 'rules' of communication; assess their developmental capacities and communication needs, and allow them to practise talking freely about a neutral topic. This means that the interview can be suitably adapted.

This diagram demonstrates the principles of questioning when taking a witness statement from a child (diagram provided by Sam Tarling Consultancy Ltd). The evidential value is highest when open questions are used, and lowest when leading questions are used:



From Specialist Child Witness Interview Course, December 2018, Sam Tarling Consultancy Ltd.

The interviewer should be curious and non-expert in relation to the child's experience, to demonstrate that the child themselves is 'the expert' on what happened.

Good practice also means that the interviewer should:

- Use simple, common words and phrases.
- Repeat names and phrases often, 'what did Jim say?' (not 'what did he say?'); use of the child's own name with younger children can help keep focus.

- Ask one short question (one idea) at a time.
- Follow a structured approach, signpost the child, 'Now I'm going to ask you about X'.
- Speak slowly and give children time to answer; younger children (5-7 year-olds) need nearly twice as long as adults.
- Check directly on the child's understanding. Problem words include before/after; in front of/below/ahead of/behind; always/never; different/same; and more/less.
- Find ways to clarify meaning and reduce inconsistencies, for example, 'tell me more about that' and 'what do you mean when you say…'

For the avoidance of doubt, these are guiding principles to be borne in mind by lawyers when instructing and working with experts in interviewing vulnerable child witnesses. They do not take the place of formal specialist training.

Criminal investigation in France for sexual violence against children in CAR

Facts. Allegations of sexual abuse against children in internal displacement camps by members of a French military contingent in CAR. From 2013-2016 the French military contingent had been sent to CAR to support the efforts of the African Union to prevent religious cleansing and potential genocide in the country.

Action for justice. In July 2014, the Paris Prosecutor's office opened a preliminary criminal investigation. In May 2015 a formal investigation was initiated and a panel of three judges appointed. French investigators were sent to CAR in 2015 and 2016 to question approximately 41 potential child victims. Issues of reliability arose with some of the claims in the testimonies gathered by the investigators in CAR.

There were multiple doubts about the quality of the investigations. Some children were interviewed many times, including shortly after the abuse, while others were only interviewed almost two years after the events. The children involved did not receive any adequate medical care, which could potentially have helped prove the sexual abuse in the absence of other evidence. Additionally, the victims did not receive other forms of support to deal with trauma.

Some of the investigations were reportedly conducted without the presence of specialists in crimes involving minors, including mental health professionals. A specialist in interviewing children was only included in one of the French investigative missions. As a result, too little regard was given to the young age of, and the trauma suffered by, the victims.

Status of the case. In March 2017, the prosecutors recommended that no charges be issued in the case due to the inability to "materially corroborate" the allegations. Some of the civil parties representing the child victims have appealed this decision and the case is pending before the Court of Cassation.

See REDRESS and CRIN, Litigating Peacekeeper Child Sexual Abuse (2019)

MEDICO-LEGAL REPORTS

The Role of the Expert

A medico-legal report is a report written by an expert in the role of an expert witness in a legal case. Their specific expertise means that others can have confidence that their opinion is informed and reliable and is likely to be outside the experience and knowledge of the judge or jury. The expert's role is to assist the court, not only the defence or prosecution. Their evidence should be independent and uninfluenced by the pressures of either side or act as an advocate for the witness. The expert advises but the court decides.

An opinion on mental health can be requested from a clinical psychologist or a psychiatrist. In most countries, clinical psychologists have had a core training in psychological development and mental health across the lifespan, and can diagnose, as well as comment on severity and cause of presenting difficulties. Some are more familiar with diagnosis than others. They are more likely to be an expert in mental health problems where medication is not the main approach such as PTSD and can also comment on other aspects such as memory and recall. Psychiatrists have had core medical training, are familiar with diagnoses, and can comment on medication.

Expert witnesses have a primary obligation to assist the court on matters falling within their expertise. To do this, they need to understand the reasoning for the instructions they were given. Expert witnesses should consider alternative possibilities, draw on evidence from a range of sources, state when they are unsure and comment on the possibility of malingering. The expert should provide specific details of why an opinion was reached and work with the instructor if clarification or expansion is required.

Providing Instructions to an Expert Witness

The person providing instructions to the expert witness should be clear about report deadlines, court hearing dates, and costs, and provide clear written instructions and communicate the legal reasons for these. The instructor should establish what the expert can and cannot comment on. Some questions may not be answered if these are outside the expert's expertise.

Areas where an expert may be asked to give their opinion include:

- The impact of trauma on memory.
- Whether the client has capacity to make decisions.
- The presence, severity and impact of PTSD on the client's life.

Undertaking a Mental Health Assessment of a Child

A clinical psychologist expert's mental health assessment of a child will draw on a range of sources, which may include:

- Assessment of the child's cognitive functioning using a standard test battery, as well as disorder-specific measures (e.g. for PTSD);
- Direct interviews with the child's caregivers and/or school/nursery, including a detailed history of the child's early development;
- Collateral information such as school and medical records;
- Structured or unstructured observation of the child at home or school.

Children may be unwilling to speak about their experiences of abuse – out of loyalty, fear of the consequences and/or shame. Observations of play can therefore sometimes allow access to memories and experiences that the child is unwilling or unable to put into words.

The Structure of the Medico-Legal Report

The report should contain information on the expert's qualifications and experience; the information accessed and reviewed; any tests or interviews relied upon; answers to the questions in the instructions; and reasons for any opinion expressed, including setting out clearly the kinds of factors that support or undermine the opinion.

FURTHER READING

UK Government Children's Commissioner (2016) 'Barnahus: Improving the response to child sexual abuse in England', available at: https://www.childrenscommissioner.gov.uk/publication/barnahus-improving-the-response-to-child-sexual-abuse-in-england/

Plotnikoff, J. & Woolfson, R. (2009) 'Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings', available at: https://www.nspcc.org.uk/globalassets/documents/research-reports/measuring-up-report.pdf

REDRESS and CRIN, Litigating Peacekeeper Child Sexual Abuse, 2019, available at https://redress.org/wp-content/uploads/2020/01/LitigatingPeacekeeperChildSexualAbuseReport.pdf

REDRESS is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture.

Trauma Treatment International (TTI) provides psychological support for victims of trauma and are experts in effectively dealing with and mitigating additional trauma for torture victims who are seeking justice through strategic litigations.

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