

CHILD RIGHTS IN TRANSITIONAL JUSTICE DURING PEACE OPERATIONS AND POST-CONFLICT SCENARIOS



The best interests of the child and truth and reconciliation commissions

Adults can act on behalf of children and in the best interests of children, but unless children themselves are consulted and engaged, the process will fall short and undermine the potential to pursue the most relevant and most durable solutions.

By Claudio Lema Pose

The term “transitional justice” comprises the “full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include judicial and non-judicial mechanisms, with differing levels of international involvement, and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”¹ The objective of transitional justice is to enable societies that have been torn apart by armed conflicts to recover and to place individuals (victims, witnesses and perpetrators) into a justice system in the context of a post-conflict agenda aiming to set a better future.

Transitional justice represents some of the most difficult aspects in modern peace operations. Justice systems, where they exist prior to conflict situations, emerge in a dysfunctional manner that endangers children’s rights in the post-conflict era. Given their very complex mission, peacekeeping operations now include the monitoring of the impact of reform efforts while promoting initiatives to strengthen the rule of law. In this context, for example, the UN Security Council Resolution on Haiti incorporates a lesson learned from many post-conflict experiences in the 1990s. As such, there is an intimate connection between monitoring and institution-building/reform.² Efforts to reform the justice system will fail unless the peacekeeping operation knows the strengths and weakness of the courts, police, prosecution and prison service, the influence wielded by the minister of justice over the appointment of judges, the root causes of corruption or the simple dysfunction of court administration. This knowledge results from intense, on-going observation and interaction by civilian peacekeepers whose job is to know and follow the key actors in the justice sector closely.

Another important question is what kind of transitional justice process may be most appropriate for children’s involvement in diverse cultural contexts. Over the last decade children’s participation in truth commissions has been promoted

in part because such commissions can provide a non-judicial and non-punitive approach to accountability. When truth commissions are in compliance with international human rights standards, they may create opportunities for children to express their views, building capacity for active citizenship and democratic processes. Truth commissions may also be linked to community reconciliation and educational activities. But, at the same time, truth commissions are political processes; if they are not objective and human-rights based, they can lead to

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risks and manipulation of children, or to disillusionment.

Children have an important and unique role in processes that seek truth, justice and reconciliation. Adults can act on behalf of children and in the best interests of children, but unless children themselves are consulted and engaged, the process will fall short and undermine the potential to pursue the most relevant and most durable solutions. The objective of this paper is to address Article 3 of the Convention on the Rights of the Child (CRC), Best Interests of the Children, when a specific type of Transitional Justice (a truth and reconciliation commission) is applied taking as object of study the experience in Sierra Leone. We will review a piece of legislation that emerged in a peace operation and a

post-conflict scenario (the Sierra Leone Truth and Reconciliation Commission Act of the year 2000) *vis-à-vis* the participation of children and children’s best interests in transitional justice. The methodology of this paper involved various forms of data collection that were intended to assess the lessons learned from the process applied to support child participation in the TRC. The methods employed included a desk review of relevant literature; contact with UN staff/personnel and a visit to Sierra Leone.

Best interests of the Child

The principle of the best interests of the child is one of the most cited and significant principles underpinning the Convention on the Rights of the Child. Article 3(1) states “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Although its meaning in different national, local and cultural contexts is open to discussion and debate, and applications of the “best interests” principle are wide ranging,³ it has been accepted as a guiding principle by the TRC.

Child Protection in Peace Operations and Child-Based Justice in Post-Conflict Situations

In the early days of peacekeeping, the United Nations Organisation stood between warring States and monitored peace agreements, including cease-fires. However, as conflicts changed, the UN mission has also evolved. New aspects such as peace-building, human rights monitoring, demobilisation and disarmament, and child protection were introduced into peacekeeping. As such, peace operations have become multidimensional and juvenile justice is part of them. Modern peace-making processes set out the basic framework for transition and the peacetime agenda for recovery, often specifying the material resources, technical assistance, institutional priorities, and international aid and funding commitments for the post-conflict period and beyond. Peace operations

even serve at times as constitutional fora where key stakeholders hammer out the political, social, legal, and economic foundations for a new national order. These processes may offer a unique opportunity to raise national standards – including the ratification of and the domestic legislative compatibility to human rights instruments – and to ensure monitoring and compliance. They also present a critical moment to ensure that the rights and special post-conflict needs of children – including children in conflict with the law – are addressed adequately.

Unfortunately, recent experiences demonstrate that without specific and detailed references to children in peacemaking processes, post-conflict programmes and resources are not allocated to meet children's special needs or to ensure the protection of their rights. For example, the Guatemala Comprehensive Agreement on Human Rights (the Agreement) reflected the lesson learned in neighbouring El Salvador that justice system reform is critical for the transition to rule of law.⁴ The Agreement's strong and active focus on justice reform meant that parties were obliged to support reforms and promote human rights, and the United Nations Verification Mission in Guatemala (MINUGUA)⁵ was empowered to provide relevant technical assistance and support. However, peacemakers ignored children's issues, and juvenile justice administration was never considered in the peacemaking process. One of the consequences was the formation of the *maras* or gangs phenomenon one decade later.⁶ At the same time that international agencies, resources, funding, and experts focused on the segments of the justice system that were provided for in the Agreement, juvenile justice continued to function under the antiquated "situation irregular" that led directly to systematic and chronic violations of children's rights. As such, MINUGA did not succeed in curbing regular violence against children by police and private security forces, or in reversing the general inability of state institutions to protect the rights of children in conflict with the law.

Experience shows that post-conflict agenda has not included necessary

considerations for children's rights, often for the following reasons:⁷

- Peace negotiators are unaware of the nature and extent of the impact of conflict on children
- Lobbying efforts for children's issues are not effective
- Decision-makers lack easy access to information on child policies and programmes that should be adopted, or avoided, in light of other post-conflict experiences
- Stakeholders assume that general peace provisions would automatically and eventually benefit children and meet their needs.

In order to tackle these problems, child protection was specifically introduced through the UN Security Council Resolution 1261 in the year

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1999. Conflicts disproportionately affect children as many are subject to abduction, rape, military recruitment, killing, maiming, and other forms of exploitation, and are deprived of their basic rights to education, especially when schools are targeted. Peacekeeping personnel, through their Child Protection Advisers (CPA), are able to cover issues such as the release of child soldiers, juvenile justice and the reform of relevant legislation. In terms of juvenile justice, the CPAs on the ground may encounter the following situations: (a) debilitation of institutions and legal bases for the formal juvenile justice system, if one existed prior to the conflict situation; (b) effects on traditional and religious law systems which are not in line with children's

rights; (c) acts of vigilante justice against children; (d) ad-hoc criminal procedures against children in standard juvenile or adult courts, in military tribunals or within the structures of armed groups (e.g. warlords).

West Side Boys and Bloods Diamonds: The Sierra Leone experience

This country endured a brutal conflict from 1991 to 2002 and one of its characteristics was its extreme savagery toward children. Atrocities committed included amputation and rape, as well as systematic child recruitment into fighting forces. The conflict has since become an important milestone informing the innovative steps taken to involve children in truth and reconciliation processes, both as victims of the conflict and as change agents in social reconstruction efforts. This conflict was brought to the general public through the 2006 film, *Blood Diamond*, with Leonardo DiCaprio, Jennifer Connelly and Djimon Hounsou, set during the Sierra Leone civil war.⁸ Another dramatic (and also widely reported by the media) involvement of children in the Sierra Leonean conflict was the West Side Boys⁹ case. This was an armed group in Sierra Leone, sometimes described as a splinter faction of the Armed Forces Revolutionary Council. It attracted world-wide attention by capturing members of a mostly West African peacekeeping force (including members of the Royal Irish Rangers) in the year 2000. Many members of the group were children abducted after their parents had been killed by the "recruiters". The West Side Boys were heavy users of homemade palm wine, locally grown marijuana, and heroin bought with conflict diamonds that were also used to purchase many of their weapons.

On 7 July 1999, the Government of Sierra Leone and the Revolutionary United Front (RUF) signed a peace agreement known as the Lomé Peace Accord (after Lomé, the capital of Togo, where the agreement was signed). This document included commitment to end hostilities, re-establish the Commission for the Consolidation of Peace, provided for demobilisation, disarmament and

aid in the reintegration of combatants into civil society. It also proposed granting amnesty to all rebel combatants and allowed for the RUF to become a political party. In order to achieve these goals, it called for a UN observer Mission in Sierra Leone (UNAMSIL) and to form a neutral peacekeeping force, and all mercenaries to leave the country, as well as a creation of a new Sierra Leone army.¹⁰ The Lomé Peace Agreement also provided for the creation of a truth and reconciliation commission “to break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, and get a clear picture of the past in order to facilitate genuine healing and reconciliation”.¹¹ The following year, in 2000, through the passage of the Truth and Reconciliation Commission Act (the Act), the Parliament created the Truth and Reconciliation Commission for Sierra Leone specifying a process for selecting commissioners, including public nominations, a selection panel and a coordinating role for the United Nations.¹²

The Sierra Leone TRC was the first to call for a focus on children and to specify the need for procedures to protect the rights of children involved. A role for children in the Commission was anticipated because they had been targeted during the conflict and had suffered devastating impacts.¹³ The efforts to involve children and to adopt child-friendly procedures for their participation and protection established a precedent for child participation in truth commissions, both acknowledging and involving children in the process for the first time.

Following a subsequent analysis of the Act’s provisions, we can see the Best Interest of the Child principle present in different sections of the overall mechanism of the TRC.

Equal treatment of all children before the TRC

“The key task of the TRC in relation to children is to create an impartial and official historical record of what happened to children during the armed conflict in Sierra Leone. In relation to reconciliation, the TRC should build upon existing mechanisms for promoting the reintegration and

reconciliation of children, particularly the work of child protection agencies and traditional leaders and structures. The TRC is thus expected to contribute to the on-going re-integration of children back into their communities or host communities.”¹⁴

This was implemented through special procedures for the involvement of children in the TRC that should apply to all children without differentiation as to whether or not they were considered primarily as witnesses, victims or perpetrators. Child perpetrators must be seen and treated primarily as victims. Indeed, the Sierra Leone TRC, operating at the same time as the Special Court, included among its guiding principles a decision to treat all children equally as victims and witness of the war, including children

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associated with fighting forces. Instead the adults who recruited and armed children would be held responsible. This position was reaffirmed in the final report of the TRC, which discussed children’s role in the wartime violations, noting that “Thousands of children and youth were forced to take drugs as a means to control and teach them to kill, maim and rape without (conscience); making them virtual killing machines.” However, with regard to children’s criminal responsibility for those acts, the TRC recommended that “all children be excluded from any form of criminal prosecution” and further noted that amnesty for children would not apply, as it would imply criminal responsibility for international crimes. While there is emerging consensus that children should not be prosecuted for grave violations by international courts, accountability

- including judicial prosecution - at national levels is less clear.

Special attention to the experiences of girls

Section 6.2(b) of the Act provides that “Without prejudice to the generality of subsection(1), it shall be the function of the Commission to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to related their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict”.

Whilst children of both sexes have been subject to violations, many violations have been carried out specifically against the girl child, such as rape and forced marriages. It was then recommended that the TRC give special attention to the experiences of girls and specifically address gender-based violence against girls during the conflict. This includes the keeping of disaggregated data on gender based violence when recording violations, in addition to disaggregated data according to the child’s age, appointing staff with expertise on sexual violence, and working with local agencies to ensure victims of sexual violence are not rejected by their communities.

Relationship between the TRC and the Special Court for Sierra Leone

According to the Key Principles for Children and Transitional Justice: “Accountability measures for alleged child perpetrators should be in the best interests of the child and should be conducted in a manner that takes into account their age at the time of the alleged commission of the crime, promotes their sense of dignity and worth, and supports their reintegration and potential to assume a constructive role in society. In determining which process of accountability is in the best interest of the child, alternatives to judicial proceedings should be considered wherever appropriate. Concerning the jurisdiction of the

Special Court for Sierra Leone over persons who were between the age of 15 and 18 at the time of the alleged commission of the crime, the UN Security Council expressed the view that it is “extremely unlikely” that juvenile offenders will come before the Special Court and that other institutions, such as the TRC, are better suited to address cases involving juveniles. The expert group emphasised that children should not be prosecuted by the Special Court. In order to preserve the confidentiality of the involvement of children before the TRC, to encourage them to participate in its proceedings and to preserve the non-judicial character of the TRC, it is recommended that the TRC makes use of its powers not to disclose information and does not share information concerning children with the Special Court. The work of the TRC and its report can make an important contribution to the work of the Special Court for Sierra Leone, in particular by establishing accountability for the crimes committed against children.

In considering the criminal responsibility of children below the age of eighteen, the civil conflicts in Sierra Leone and Liberia are particularly relevant.¹⁵ In Sierra Leone nearly 7,000 (seven thousand) children were formally demobilised from fighting forces. In this regard, the Special Court of Sierra Leone adopted a policy not to pursue prosecution of anyone who was under age eighteen at the time the offense was committed. The policy was based on a decision by the chief prosecutor that “no child could bear the greatest responsibility for the crimes that have taken place”.¹⁶

The findings of the TRC report made a significant contribution to the fight against impunity for crimes committed against children, as requested in UN Security Council Resolution 1314 (2000) and recommended by the UN Secretary General.

Conclusions

As seen throughout this article, peace operations present numerous opportunities for ensuring an effective transition from the conflict to the post-conflict juvenile justice as part of the peace agenda. However, the

global trend is not unanimous. An examination of the decisions taken by the TRC in Sierra Leone and the TRC in South Africa post-Apartheid regarding child testimony and statement-taking demonstrates how the assessment of the best interest principle can lead to different outcomes. In South Africa, “a debate arose during preparation of the special hearings on children and youth as to whether or not children under the age of eighteen should appear and testify.”¹⁷ At the time there was no precedent for children’s participation in a process that was considered both risky and politicised. In particular, the possibility of re-traumatising children was an area of concern. A decision was made to exclude children from statement-taking

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and from the hearings. The argument was that exposure to the public and political glare of the hearings would not be in children’s best interests. This decision was made in 1996. It should be noted that South Africa became a party of the CRC in 1995. Years later, in 2001, the Sierra Leone TRC used the same argument (the best interests of the child) to arrive at a complete different conclusion. The technical meeting of the Sierra Leone TRC, in Freetown in June 2001, determined that because children are among the primary victims of the civil war in Sierra Leone, their

involvement in the TRC is essential. We believe we have presented in this paper how, if correct measures are taken, the involvement of children (who are the future of the country) should be taken into consideration in any transitional justice system.

The Sierra Leone TRC was the first truth commission to involve children in statement-taking and in close and thematic hearings, as well as in the preparation of a child-friendly version of the Commission report. The role of children in the Sierra Leone TRC was also ground-breaking in setting precedent and developing policies and procedures to protect the rights of children in truth commissions processes. This has had a significant impact on the emerging understanding of children’s evolving capacities to contribute to the legal and social aspects of the TRC activities.

The investigation and documentation of civil, political, economic, social and cultural rights violations by truth commissions should include a specific focus on crimes and violations against children, and should take into consideration the full spectrum of rights guaranteed under the CRC and other international norms and treaties.

When children are accused of committing crimes under international law, truth commissions should recognise that children are primarily victims of armed conflict or political violence.

Truth commissions should take into account children’s agency and their role as active citizens contributing to justice and reconciliation in their communities. The involvement of children in truth commissions should thus include participation in diverse activities, such as outreach, statement-taking, thematic and closed hearings, creative expressions, community-based reconciliation efforts, contribution to the formulation of recommendations, and the preparation of a child-friendly report.

Statements and testimony to truth commissions should capture children’s distinct experiences and their diverse role as victims and witnesses and, when appropriate, as participants in hostilities and political violence.

Truth commissions should establish policies and procedures to ensure the safe and meaningful participation and protection of children.

Truth commissions should include CPA and experts on child rights among commissioners and staff, and should ensure that all commissioners and staff receive appropriate training in child rights and child protection procedures.

The participation of children in truth commissions should be in their best interests and should promote their physical and psychological recovery and social reintegration (particularly in terms of child soldiers). ■

References:

- 1 Report of the United Nations Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, United Nations, New York, 23 August 2004 (S/2004/616).
- 2 UN Security Council Resolution 1542 (2004) establishing the UN Stabilization Mission in Haiti specifies that the Mission will monitor and report on the human rights situation, re-establish the prison system and investigate violations of human rights and humanitarian law, help rebuild, reform and restructure Haitian National Police, including vetting and certifying that its personnel have not committed grave human rights violations, develop a strategy for reform and institutional strengthening of the judiciary and assist with the restoration and maintenance of the rule of law, public safety and public order.
- 3 Alston, Philip 1994 *The Best Interests Principle: Towards a Reconciliation of Cultural and Human*

Rights, in The Best Interests of the Child: Reconciling Culture and Human Rights, Oxford University Press.

- 4 Cohn, Ilene 1999 *The Protection of Children in Peacemaking and Peacekeeping Processes*, 12 Harvard Rights Journal 129
- 5 Following the signing of the Agreement between the government and the Guatemalan National Revolutionary Unity (URNG) on 29 December 1996, the UN Security Council authorised, by means of UN Security Council Resolution 1094, the deployment of a peacekeeping force to support the MINUGUA personnel already in place and to verify the ceasefire, the demobilisation of the URNG, and the surrender of their materials. Under the Department of Peacekeeping Operations, the UN peacekeepers handed over the weapons and ammunition to officials from the Guatemala Interior Ministry, thereby completing the task of the military verification group. The final members of MINUGUA human rights verification team left Guatemala in November 2004. Following its departure, the UN and the Guatemalan government agreed to establish a field office of the High Commissioner for Human Rights in Guatemala City for a period of three years at the government's request.
- 6 Lema Pose, Claudio, "The Real Face of La Vida Loca, The Maras in El Salvador," *The Thinker*, January, 2013, volume 47
- 7 Cohn, Ilene, *ibid*(8) The film's ending, in which a conference is held concerning blood diamonds, is in reference to an actual meeting that took place in Kimberley, South Africa, in the year 2000 and led to the Kimberley Process Certification Scheme, which seeks to certify the origin of rough diamonds in order to curb its illicit trade (conflict diamonds).
- 8 The "West Side Boys" name refers to the rapper from the United States, Tupac Shakur, whose deadly dispute with Biggie Smalls (aka Notorious B.I.G.) was constructed in the media as United States West Coast vs. United States East Coast rivalry. Tupac Shakur was named after Tupac Amaru, the leader of an indigenous uprising in Peru against the Spanish during the colony days, and the namesake of a more recent rebel group in Peru. So in an odd series of connections between pop culture, civil wars and child soldiers, a rebel group in Sierra Leone was named for a US musician, whose namesake in turn was a rebel group in Peru (Pagne

Fortna, Virginia 2003 *Does Peacekeeping Work?* Princeton University Press).

- 10 The United Nations Mission in Sierra Leone (UNAMSIL) was (technically) a peace enforcement mission, authorised under Chapter VII of the UN Charter, but it did not deploy a robust force posture and therefore did not present a credible deterrence on the ground. In April and May 2000, as UNAMSIL attempted to deploy to diamond-mining areas (a key economic activity which was fuelling the conflict as portrayed by the movie *Blood Diamond*), the Revolutionary United Front (RUF) attacked UNAMSIL positions in Magburaka and Makeni, taking over 500 of them as hostages. The RUF then used the captured UN equipment to advance to Freetown. This action triggered a British military intervention which led to Operation Barras.
- 11 It should be noted that the Lomé Agreement also granted amnesty to the rebel combatants and this was objected by the UN who would not recognize amnesty for acts of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.
- 12 Peace Agreement between Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 7 July 1999, Lomé, Togo.
- 13 The Truth and Reconciliation Commission Act 2000, Supplement to the Sierra Leone Gazette CXXXI (9) 10th February 2000. Section 6(2b) provides that special attention should be given to children; Section 7(4) calls for the implementation of special procedures to address the needs of children and individuals who have suffered sexual abuse so as to facilitate their participation.
- 14 Children and the Truth and Reconciliation for Sierra Leone, Recommendations for policies, procedures for addressing and involving children in the Truth and Reconciliation Commission (UNICEF/UNAMSIL/ National Forum for Human Rights).
- 15 Republic of Liberia, Truth and Reconciliation Commission, Final Report, Volume Two.
- 16 Office of the Prosecutor, Special Court for Sierra Leone, Press Release, 2 November 2002.
- 17 Piers, Pigou, Children and the South African Truth and Reconciliation Human Rights Programme at Harvard Law School.

ANNEX A: Checklist for Child Protection Advisors in Transitional Justice

1. Places of Detention: Where are children deprived of their liberty?

Police station lock-ups or arrest cells
Pre-trial detention facilities (for children or adults)

Post-sentencing prison facilities (for children or adults)

Child welfare and protection institutions
Barracks and custodial settings under the authority of military, militia, paramilitary, warlords, mercenary groups, etc.

Other public and private closed custodial settings or institutions, including the following:

- Rehabilitation centres
- Borstal institutions
- Approved schools
- Education and re-education centres
- Reformatories
- Remand homes
- Training centres
- Observation centres
- Diagnostic and placement centres

- Correctional schools
- Medical, psychological, and psychiatric institutions

2. Access: Who has immediate access to inspect each place of detention?

UNICEF
International Committee of the Red Cross

Other international NGOs

National NGOs

Other UN Agencies

National counterparts and/or officials

3. Children: Which groups of children are detained in each facility?

What is the minimum age of criminal responsibility?

Children alleged as, accused of, or recognised as having infringed the penal law, including the following groups:

- Children held by police or other authorities without formal charges
- Children held awaiting trial
- Sentenced children

- Child soldiers
- Children under the minimum age of criminal responsibility

Children detained on the grounds of welfare and/or protection, including the following groups:

- Children with disabilities
- Child prostitutes and child victims

of sexual abuse and/or exploitation
Children detained since before the onset of the conflict, since the conflict period itself, or for an otherwise prolonged period, due to the conflict and post-conflict situation

Internally displaced children
Unaccompanied children

Child and adolescent asylum seekers, including those fleeing from armed groups

Refugee and/or immigrant children
Children detained with their parents

Refugee and/or immigrant children
Children detained with their parents

4. Conditions: What are the conditions in each place of detention?

Practices of violence, torture, or other ill-treatment, including sexual violence, abuse, exploitation, and

psychological abuse, including by the following:

- by centre personnel or authorities
- by adult detainees/prisoners
- by other/older children in the same facility

Separation, including the following:

- Complete separation of children from adults (both boys from men and girls from women), except

where it is demonstrated that non-separation is in an individual child's best interests

- Separation of children alleged as or accused of having infringed penal law, from those legally recognised as having infringed penal law, from those detained for non-penal motivations
- Separation of boys from girls

- Separation by ages of children

Overcrowding

General standards for hygiene, nutrition, facility safety, adequacy of living space, etc.

Access to medical care

Contact with families, accessibility of families to facilities

Educational and recreational opportunities

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ANNEX B: Operational Table for Transitional Justice in Peace Operations

Due to the environment in which they operate, most peacekeeping operations will focus overwhelmingly on the criminal justice sector of the judicial system. In post-conflict situations, basic law and order is absent and there is a compelling need to provide security to traumatised and war-torn populations. Thus the role and responsibility of the criminal justice system will be central in any post-conflict scenario. The areas of criminal law most relevant to a peacekeeping operations' mandate will be arrest and detention, treatment of prisoners and detainees, access to lawyers to their clients, access to medical professionals and family members to the detainees, fair trial standards, sentencing practices, rights of the victims to participate in the proceedings, reparations programmes and any laws on amnesties or pardons. The question then would be how to implement the normative instruments in post-conflict scenarios. The table below provides a short conceptual framework for the design of juvenile justice reform programmes which are focused on criminal justice and a general approach for evaluating the impact on the ground.

Objective	Desired results and measurable indicators	Impact
Ensuring that rights of children are protected throughout the criminal justice process, including the guarantees of a fair trial.	<p>Desired results:</p> <ul style="list-style-type: none"> • Prohibiting the retroactive criminalisation of a conduct. <p>Measurable indicators:</p> <ul style="list-style-type: none"> • The law is changed. • Appropriate amendments to the law come into force and are effectively implemented. 	<p>The law is applied consistently.</p> <p>Public attitudes/opinions about the juvenile justice system are changed.</p>
Making sure that the child's right are respected in any judicial proceedings.	<p>Desired results:</p> <ul style="list-style-type: none"> • Children are heard effectively in all judicial proceedings that concern them (and also in non-judicial decision-making processes that affect them, their safety, their freedom or their rights). <p>Measurable indicators:</p> <ul style="list-style-type: none"> • Percentage of children in conflict with the law who are satisfied that they were heard in proceedings concerning them. Percentage of children in detention who are aware of the exact nature of the charges against them. 	Transformation of the criminal justice process as it affects children.
Ensuring that accused children are never compelled to give testimony or to confess or acknowledge guilt (through law reform, guidelines for police and prosecutors, training of officials, right to appeal, presence of legal counsel)	<p>Desired results:</p> <ul style="list-style-type: none"> • Children are not compelled to admit guilt or incriminate themselves. • Children are represented by legal counsel or advocate. • Improving funding for public legal defenders and legal aid. <p>Measurable indicators:</p> <ul style="list-style-type: none"> • Number of appeals. • Incidents of children being compelled or threatened. Reports to public complaints commission, office of ombudsman or human rights organisations. Number of trials in which a judge has used information obtained under torture or other ill treatment. 	Children's rights may receive greater protection as a result of the legal assistance that children receive.
Ensuring that children in conflict with the law are offered adequate legal and other appropriate assistance (e.g. interpretation of proceedings).	<p>Desired results:</p> <ul style="list-style-type: none"> • Children receive legal assistance as required without any form of discrimination. <p>Measurable indicators:</p> <ul style="list-style-type: none"> • Number of lawyers available to represent and defend children in conflict with the law. • Number of children who are (and not) represented in court. • Number of children who have access to legal counsel during criminal proceedings (categorised by type of offence, age, gender and geographical location). 	Children's legal representation is improved.
Ensuring that appropriate measures are taken respect the privacy of the child during all stages of the proceeding.	<p>Desired results:</p> <ul style="list-style-type: none"> • The identity of juvenile offenders is protected. • The private character of juvenile justice proceedings is respected. • Law enforcement and justice officials understand how to protect the privacy of children in conflict with the law. <p>Measurable indicators:</p> <p>Number of cases reported in the media where the identity of the child in conflict with the law is revealed.</p>	Change in public perception of the justice system and its credibility.

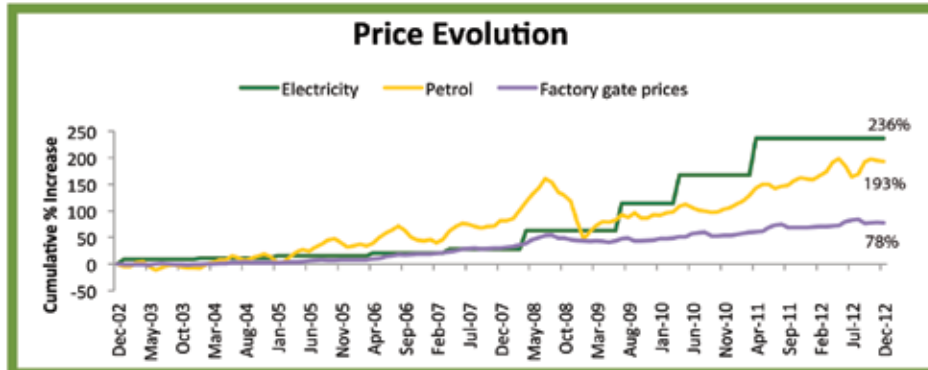
Competitiveness & Growth

South Africa requires a pragmatic social compact if we are to reverse the trends of increasing costs and declining competitiveness.

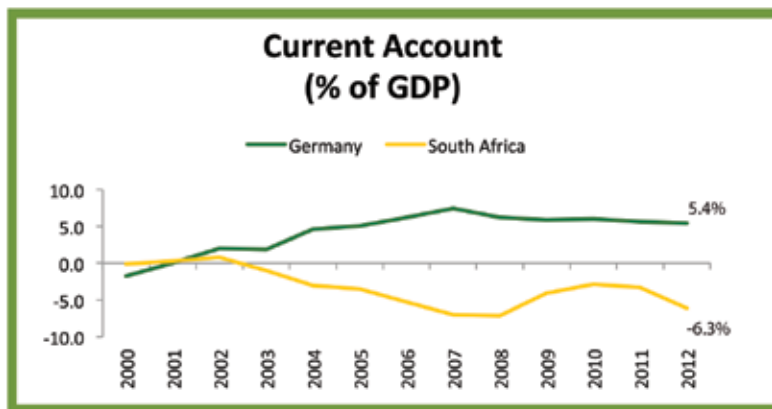
It has become increasingly expensive to live and do business in South Africa during recent times. Since the end of 2002 Eskom tariffs have risen by a striking 236%, and following the National Energy Regulator's decision will continue to rise by 8% per year for the next five years. According to Statistics SA, electricity, petrol and other fuels make up just more than one tenth of the average South African consumer's spending "basket". Clearly then, the rising cost of these items are affecting a vast number of our country's citizens.

Perhaps more importantly for our economy, rising costs are placing a particularly significant amount of pressure on South Africa's industries. Unit labour costs – the costs of labour associated with one unit of output – have risen by about 120% over the preceding 10 years. Contrastingly, the factory gate Producer Price Index (PPI) – an approximate measure of what manufacturers are receiving for final goods – has increased by only 78% over the same period. The inevitable result is that our industrial companies are (on aggregate) becoming less competitive, are facing lower profit margins, and consequently are less and less able to employ new workers.

Considering South Africa's chronic and abnormally high degree of unemployment relative to our global peers, it



is time to reverse the pattern of declining competitiveness and rising costs. On several fronts this will be an extremely difficult task. However, history has shown us that it is possible. A mere decade ago, Germany faced a double-digit and rapidly increasing unemployment rate, with great pressure building on the government budget through an overly generous welfare system. In response, the country was forced to take significant cut backs in social spending and a liberalisation of the job market – a measure which the labour force tolerated in exchange for greater job opportunities. Today, Germany has one of the most robust developed economies in the world. Since the extensive structural reforms of the early 2000s, wage increases and therefore unit labour costs have remained well controlled (Germany's unit labour costs have increased at less than a quarter of the rate of those in South Africa, in dollar terms). In 2012, Germany's exports exceeded its imports by \$240 billion, a clear indication of its superior competitive position. The German economy therefore continues to be a shining light of growth within the recessionary Euro area.



By contrast, South Africa's international trade position remains under significant pressure. The current account deficit for 2012 has been estimated at -6.3% of GDP, and is expected to stay close to this level in 2013. Evidently, the South African economy is in need of a shake-up.

Active citizenry will be required for meaningful progress to be made in this regard.

Governments the world over are less able to stimulate economic activity than five years ago, and South Africa is no exception. Going forward, the private sector will need to step in where governments leave a spending growth void. This requires recognition by private investors that greater investment in physical and human capital is necessary for economic growth sustainability, and that long term sustainability of this sort is ultimately in the interests of everyone. While the electricity blackouts of 2008 should be avoided as far as possible, South Africans need to strike an appropriate balance between maintaining a reliable power supply and controlling consumer and industry expenses. In a similar way, government will have to carefully consider the effect of higher fuel levies and energy costs on South Africa's macroeconomic performance, while at the same time addressing the dangerous trend of rising public debt levels. The relationship between management and labour is another area in which our nation clearly needs to improve. South African employers must accept their unique position in the world and consequently be more sensitive to rising living expenses and high levels of

dependence, especially amongst low-income workers. However, South African employees need to fully internalize the possible long term effects of negotiation victories on the very existence of their employers. Germany's success can become a lesson in cooperation and discipline to us all.

Every social, political, business and administrative group has an obligation to communicate clearly and honestly, in order to engender the trust necessary for real and sustainable progress to be made in these matters. We require, as a country, a pragmatic social compact from which each economic participant can draw guidance. While the National Development Plan appears to have received the necessary buy-in for such a compact to begin developing, it is only a start. It will take a full change of mindset by a great number of South Africans, from every walk of life, for us to convincingly take the needed steps to reduce costs and improve our global competitiveness. In this way, it will become possible for South Africa to leverage our abundant mineral resources into a material and sustainable positive growth pattern. ■



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