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United Nations Office on Drugs and Crime

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# **Justice in Matters involving Child Victims and Witnesses of Crime**

**Model Law and Related Commentary**

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UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

# **Justice in Matters involving Child Victims and Witnesses of Crime**

Model Law and Related Commentary



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## Preface\*

1. In its resolution 2005/20 of 22 July 2005, the Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. The Guidelines form part of the body of United Nations standards and norms in crime prevention and criminal justice, which are internationally recognized normative principles in that area as developed by the international community since 1950.\*\*
2. The Guidelines represent good practice based on the consensus reflected in contemporary knowledge and relevant international and regional norms, standards and principles and are meant to provide a practical framework for achieving the following objectives:
  - (a) To assist in the design and review of national laws, procedures and practices with a view to ensuring full respect for the rights of child victims and witnesses of crime and to furthering the implementation of the Convention on the Rights of the Child\*\*\* by the parties to that Convention;
  - (b) To assist Governments, international organizations providing legal assistance to requesting States, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
  - (c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);
  - (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

3. To assist States in adapting their national legislation to the provisions contained in the Guidelines and in other relevant international instruments, the present Model Law on Justice in Matters involving Child Victims and Witnesses of Crime is intended as a tool for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process. The Model Law, developed by the United Nations Office on Drugs and Crime in cooperation with

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\*The introduction is intended as an explanatory note on the genesis, nature and scope of the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime; it is not part of the text of the Model Law.

\*\*For a compilation of existing United Nations standards and norms in crime prevention and criminal justice, see <http://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html>.

\*\*\*United Nations, *Treaty Series*, vol. 1577, No. 27531.

the United Nations Children’s Fund (UNICEF) and the International Bureau for Children’s Rights, was reviewed at a meeting of experts representing different legal traditions.

4. Designed to be adaptable to the needs of each State, the Model Law was drafted paying special attention to the provisions of the Guidelines whose implementation requires legislation and to key issues related to child victims and witnesses of crime, in particular the role of child victims and witnesses within the justice process.
5. In drafting the Model Law, care was taken to reflect the need to accommodate the specificities of national legislation and judicial procedures, the legal, social, economic, cultural and geographical conditions of each country and the various main legal traditions.
6. The scope of application of the Model Law relates mainly to the criminal justice system. However, States are invited to draw inspiration from the principles and provisions contained in the Model Law when designing legislation dealing with other areas in which children need protection, such as custody, divorce, adoption, immigration and refugee law.
7. The Model Law was drafted as well with a view to allowing informal and customary justice systems to use and implement its principles and provisions.
8. The concept of protection of child victims as used in the Model Law includes the protection of children not willing or not able to testify or provide information and child suspects or perpetrators who have been victimized, intimidated or forced to act illegally or who have done so under duress.
9. To further assist States in interpreting and implementing its provisions, the Model Law is accompanied by a commentary that is intended to serve as guidelines for interpretation and implementation.

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*Part one*

**Model Law on Justice in Matters involving  
Child Victims and Witnesses of Crime**



## Preamble

### [*Option 1. Civil law countries*

Considering the obligations under the Convention on the Rights of the Child,<sup>1</sup> which was adopted by the General Assembly in its resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, and the Optional Protocols thereto,<sup>2</sup> as well as other relevant international legal instruments,

Considering in particular Economic and Social Council resolution 2005/20 of 22 July 2005, which includes as an annex the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (the “Guidelines”),

Considering also that every child victim or witness of crime has the right to have his or her best interests given primary consideration, while safeguarding the rights of accused persons and convicted offenders,

Bearing in mind the following rights of child victims and witnesses of crime, in particular those contained in the Convention on the Rights of the Child and in the Guidelines:

- (a) The right to be treated with dignity and compassion;
- (b) The right to be protected from discrimination;
- (c) The right to be informed;
- (d) The right to be heard and to express views and concerns;
- (e) The right to effective assistance;
- (f) The right to privacy;
- (g) The right to be protected from hardship during the justice process;
- (h) The right to safety;
- (i) The right to special preventive measures;
- (j) The right to reparation,

Considering that improved responses for child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process.

The Law has been adopted on ... (day) ... (month) ... (year).]

### [*Option 2. Common law countries*

An Act to provide for assistance to and the protection of child victims and witnesses of crime, particularly within the justice process, in accordance with existing

international instruments, especially the Convention on the Rights of the Child, adopted by the General Assembly in its resolution 44/25 of 20 November 1989, and other related international instruments, including the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in its resolution 2005/20 of 22 July 2005 (the “Guidelines”);

1. This Act may be cited as the “Justice in Matters involving Child Victims and Witnesses of Crime Act”.
2. It shall extend throughout [name of State].
3. It shall come into force [on day, month and year] [upon publication in the Official Gazette].]

# **Chapter I. Definitions**

For the purposes of the present [Law] [Act], the following definitions shall apply:

(a) “Child victim or witness” means a person under the age of 18 who is a victim of or witness to a crime, regardless of his or her role in the offence or in the prosecution of the alleged offender or groups of offenders. Unless otherwise specified, “child” denotes both child victims and child witnesses;

(b) “Professionals” means persons who, in the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and to whom the [Law] [Act] is applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and defence lawyers; diplomatic and consular staff; domestic violence programme staff; magistrates and judges; court staff; law enforcement officials; probation officers; medical and mental health professionals; and social workers;

(c) “Justice process” encompasses detection of the crime, the making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles or in customary or informal justice systems;

(d) “Child-sensitive” means an approach that gives primary consideration to a child’s right to protection and that takes into account a child’s individual needs and views;

(e) “Support person” means a specially trained person designated to assist a child throughout the justice process in order to prevent the risk of duress, revictimization or secondary victimization;

(f) “Child’s guardian” means a person who has been formally recognized under national law as responsible for looking after a child’s interests when the parents of the child do not have parental responsibility over him or her or have died;

(g) “Guardian ad litem” means a person appointed by the court to protect a child’s interests in proceedings affecting his or her interests;

(h) “Secondary victimization” means victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim;

(i) “Revictimization” means a situation in which a person suffers more than one criminal incident over a specific period of time.



## **Chapter II. General provisions on assistance to child victims and witnesses**

### *Article 1. Best interests of the child*

Every child, especially child victims and witnesses, in the context of the [Law] [Act], has the right to have his or her best interests given primary consideration, while safeguarding the rights of an accused or convicted offender.

### *Article 2. General principles*

1. A child victim or witness shall be treated without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, religion, beliefs, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinions, disabilities if any or status of birth, property or other condition.
2. A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.
3. Interference in the child's private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.
4. The privacy of a child victim or witness shall be protected.
5. Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.
6. A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.

### *Article 3. Duty to report offences involving a child victim or witness*

1. Teachers, doctors, social workers and other professional categories, as deemed appropriate, shall have a duty to notify [name of competent authority] if they have reasonable cause to suspect that a child is a victim of or a witness to a crime.

2. The persons referred to in paragraph 1 of this article shall assist the child to the best of their abilities until the child is provided with appropriate professional assistance.
3. The duty to report established in paragraph 1 of this article supersedes any obligation of confidentiality, except in the case of lawyer-client confidentiality.

*Article 4. Protection of children from contact with offenders*

1. Any person who has been convicted in a final verdict of a qualifying criminal offence against a child shall not be eligible to work in a service, institution or association providing services to children.
2. Services, institutions or associations providing services to children shall take appropriate measures to ensure that persons who have been charged with a qualifying criminal offence against a child shall not come into contact with children.
3. For the purposes of paragraphs 1 and 2 of this article, [name of competent body] shall promulgate regulations that contain the following:
  - (a) A definition of a qualifying criminal offence with respect to the severity of the sentence that may be imposed by the court;
  - (b) A list of mandatory qualifying criminal offences;
  - (c) The mandate of the court to issue an order preventing an individual convicted of such criminal offences from working in services, institutions or associations providing services to children;
  - (d) A definition of services, institutions and associations providing services to children;
  - (e) Measures to be taken by services, institutions and associations providing services to children to ensure that persons charged with a qualifying criminal offence do not come into contact with children.
4. Any person who knowingly violates paragraph 1 or 2 of this article shall be guilty of an offence and shall be subject to the punishment specified in the regulations to be established pursuant to paragraph 3 of this article.

*Article 5. National [authority] [office] for the protection of child victims and witnesses*

[Option for States establishing a national authority:

1. A national authority for the protection of child victims and witnesses (the “Authority”) is hereby established.
2. The Authority shall comprise:
  - (a) One judge of [name of competent court];
  - (b) One representative of the prosecutor’s office, specialized in cases involving children;

- (c) One representative of law enforcement agencies;
- (d) One representative of the child protection services or of any other relevant service within the ministry responsible for social affairs;
- (e) One representative of the ministry responsible for health;
- (f) One representative of the bar association, if possible, specialized in cases involving children;
- (g) One representative of each recognized victim support organization providing services to children;
- (h) One representative of the ministry responsible for education;

[Optional: (i) Any other representative in accordance with local requirements].

3. The members of the Authority shall be appointed by [name of competent minister] within [...] months of the entry into force of this [Law] [Act].]

[Option for States preferring not to establish a national authority but to rely on an existing body or ministry:

1. An office for the protection of child victims and witnesses (the “Office”) shall be established within [name of competent body or ministry].
2. The Office shall comprise:
  - (a) One judge of [name of competent court];
  - (b) One representative of the prosecutor’s office, specialized in cases involving children;
  - (c) One representative of law enforcement agencies;
  - (d) One representative of the child protection services or of any other relevant service within the ministry responsible for social affairs;
  - (e) One representative of the ministry responsible for health;
  - (f) One representative of the bar association, if possible, specialized in cases involving children;
  - (g) One representative of each recognized victim support organization providing services to children;
  - (h) One representative of the ministry responsible for education;

[Optional: (i) Any other representative in accordance with local requirements].

3. The Office shall perform the functions set forth in article 6 of the present [Law] [Act].]

*Article 6. Functions of the [national authority] [office] for the protection of child victims and witnesses*

The [Authority] [Office] shall perform the following functions:

(a) It shall adopt general national policies related to child victims and witnesses;

(b) On the basis of national policies, it shall develop recommendations on relevant prevention and protection programmes and submit them to the relevant public authorities;

(c) It shall promote and ensure national-level coordination of services and institutions that provide assistance or treatment to child victims and witnesses by:

(i) Monitoring the implementation of existing procedures related to the reporting of criminal acts and to providing assistance to child victims and witnesses, including legal representation and placement, and establishing such procedures where they do not exist;

(ii) Making recommendations to the competent ministry or ministries on the issuance of regulations and protocols;

(d) It shall establish guidelines for the establishment of mechanisms such as hotlines for child protection, to be regulated by [name of competent body];

(e) It shall establish guidelines for the training of professionals working with child victims and witnesses;

(f) It shall initiate research on matters relating to child victims and witnesses;

(g) It shall disseminate information concerning assistance to child victims and witnesses among persons and institutions responsible for children, including schools, public organizations, institutions and centres accessible to children;

(h) It shall publish annual reports on the performance of the bodies subject to the provisions of this [Law] [Act] and on its own activities.

*Article 7. Confidentiality*

1. In addition to any existing legal protection of the privacy of child victims and witnesses in accordance with article 3, paragraph 3, of this [Law] [Act], all persons working with a child victim or witness as well as all members of the [Authority] [Office] established under article 5 of the present [Law] [Act] shall maintain the confidentiality of all information on child victims and witnesses that they may have acquired in the performance of their duty.

2. Any person violating paragraph 1 of this article shall be guilty of an offence and shall be subject to a term of imprisonment of [...] or a fine of [...] or both.

## *Article 8. Training*

1. Professionals working with child victims and witnesses shall undergo appropriate training on issues related to child victims and witnesses.
2. Where appropriate, the [Authority] [Office] established under article 5 of the present [Law] [Act] shall develop and publish training curricula for professionals working with child victims and witnesses of crime. The training should cover the following:
  - (a) Relevant human rights norms, standards and principles, including the rights of the child;
  - (b) Principles and ethical duties related to the performance of their functions;
  - (c) Signs and symptoms that are indicative of crimes against children;
  - (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
  - (e) The dynamics and nature of violence against children and the impact and consequences, including negative physical and psychological effects, of crimes against children;
  - (f) Special measures and techniques to assist child victims and witnesses in the justice process;
  - (g) Information on children's developmental stages as well as cross-cultural and age-related linguistic, ethnic, religious, social and gender issues, with particular attention to children from disadvantaged groups;
  - (h) Appropriate adult-child communication skills, including a child-sensitive approach;
    - (i) Interview and assessment techniques that minimize distress or trauma to children while maximizing the quality of information received from them, including skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;
    - (j) Methods to protect and present evidence and to question child witnesses;
    - (k) Roles of, and methods used by, professionals working with child victims and witnesses.



## **Chapter III. Assistance to child victims and witnesses during the justice process**

### **A. General provisions**

#### *Article 9. Right to be informed*

A child victim or witness, his or her parents or guardian, his or her lawyer, the support person, if designated, or other appropriate person designated to provide assistance shall, from their first contact with the justice process and throughout that process, be promptly informed by [name of competent authority] about the stage of the process and, to the extent feasible and appropriate, about the following:

- (a) Procedures of the adult and juvenile criminal justice process, 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 witness when making a complaint and participating in investigations and court proceedings, including making available a victim's lawyer or other appropriate person designated to provide assistance;
- (c) Specific places and times of hearings and other relevant events;
- (d) Availability of protective measures;
- (e) Existing mechanisms for the review of decisions affecting the child victim or witness;
- (f) Relevant rights of child victims and witnesses pursuant to applicable national legislation, the Convention on the Rights of the Child and other international legal instruments, including the Guidelines and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985;
- (g) Existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes;
- (h) Availability and functioning of restorative justice schemes;
- (i) Availability of health, psychological, social and other relevant services and the means of accessing such services, as well as the availability of legal or other advice or representation and emergency financial support, where applicable;
- (j) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case.

### *Article 10. Legal assistance*

A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:

- (a) At his or her request;
- (b) At the request of his or her parents or guardian;
- (c) At the request of the support person, if one has been designated;
- (d) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.

### *Article 11. Protective measures*

At any stage in the justice process where the safety of a child victim or witness is deemed to be at risk, [name of competent authority] shall arrange to have protective measures put in place for the child. Those measures may include the following:

- (a) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;
- (b) Requesting restraining orders from a competent court, supported by a registry system;
- (c) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions;
- (d) Requesting an order from a competent court to place the accused under house arrest;
- (e) Requesting protection for a child victim or witness by the police or other relevant agencies and safeguarding the whereabouts of the child from disclosure;
- (f) Making or requesting from competent authorities other protective measures that may be deemed appropriate.

### *Article 12. Language, interpreter and other special assistance measures*

1. The court shall ensure that proceedings relevant to the testimony of a child victim or witness are conducted in language that is simple and comprehensible to a child.
2. If a child needs the assistance of interpretation into a language that the child understands, an interpreter shall be provided free of charge.
3. If, in view of the child’s age, level of maturity or special individual needs, which may include but are not limited to disabilities if any, ethnicity, poverty or risk of revictimization, the child requires special assistance measures in order to testify or participate in the justice process, such measures shall be provided free of charge.

## B. During the investigation phase

The provisions contained in the present section (“B. During the investigation phase”) of this [Law] [Act] shall apply to all national competent authorities involved in the investigation of cases involving a child victim or witness.

### *Article 13. Specially trained investigator*

1. An investigator specially trained in dealing with children shall be appointed by [name of competent authority] to guide the interview of the child, using a child-sensitive approach.
2. The investigator shall, to the extent possible, avoid repetition of the interview during the justice process in order to prevent secondary victimization of the child.

### *Article 14. Medical examinations and the taking of bodily samples*

1. A child victim or witness shall be subjected to medical examination or to the taking of a bodily sample only if the following two conditions are met:
  - (a) His or her parents or guardian or the support person is present, unless the child decides otherwise;
  - (b) Written authorization for a medical examination or the taking of a bodily sample has been provided by the court, a senior police officer or the prosecutor.
2. The court, a senior police officer or the prosecutor shall provide written authorization for a medical examination or the taking of a bodily sample only if there are reasonable grounds for believing that such an examination or taking of a bodily sample is necessary.
3. If at any time during the investigation phase, there is any doubt as to the health of a child victim or witness, including the child’s mental health, the competent authority conducting the proceedings shall ensure that a comprehensive medical examination is carried out on the child by a physician as soon as possible.
4. Following such a medical examination, the competent authority conducting the proceedings shall use its best endeavours to ensure that the child receives such treatment as recommended by the physician, including, where necessary, admission to hospital.

### *Article 15. Support person*

As from the beginning of the investigation phase and during the entire justice process, 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, revictimization and secondary victimization.

#### *Article 16. Designation of a support person*

1. The investigator shall inform [name of competent authority] of his or her intention to invite a child victim or witness for an interview and shall ask for the designation of a support person.
2. The support person shall be designated by [*name of competent body*]. Prior to the designation, [*name of competent authority*] shall consult with the child and his or her parents or guardian, including with respect to the gender of the support person to be designated.
3. The support person shall be given sufficient time to make acquaintance with the child before the first interview takes place.
4. When inviting the child to an interview, the investigator shall inform the child's support person of the time and place of the interview to take place.
5. Any interview of a child victim or witness conducted as part of the justice process shall take place in the presence of the support person.
6. The continuity of the relationship between the child and the support person shall be ensured to the greatest extent possible throughout the justice process.
7. [*Name of competent body*], which designated the support person, shall monitor the work of the support person and assist him or her, if necessary. If the support person fails to perform his or her duties and functions in accordance with this [Law] [Act], [*name of competent body*] shall designate a replacement support person after consultation with the child.

#### *Article 17. Functions of the support person*

The support person shall, inter alia:

- (a) Provide general emotional support to the child;
- (b) Provide assistance, in a child-sensitive manner, to the child during the entire justice process. Such assistance may include measures to alleviate the negative effects of the criminal offence on the child, measures to assist the child in carrying out his or her daily life and measures to assist the child in dealing with administrative matters arising from the circumstances of the case;
- (c) Advise whether therapy or counselling is necessary;

- (d) Liaise and communicate with the child's parents or guardian, family, friends and lawyer, as appropriate;
- (e) Inform the child about the composition of the investigation team or court and all other issues as stated in article 9 of this [Law] [Act];
- (f) In coordination with the lawyer representing the child or in the absence of a lawyer representing the child, discuss with the court, the child and his or her parents or guardian the different options for giving evidence, such as, where available, video recording and other means to safeguard the best interests of the child;
- (g) In coordination with the lawyer representing the child or in the absence of a lawyer representing the child, discuss with the law enforcement agencies, the prosecutor and the court the advisability of ordering protective measures;
- (h) Request that protective measures be ordered, if necessary;
- (i) Request special assistance measures if the child's circumstances warrant them.

#### *Article 18. Information to be provided to the support person*

In addition to the information to be provided pursuant to article 9 of this [Law] [Act], at all stages of the justice process the support person shall be kept informed of:

- (a) The charges against the accused;
- (b) The relationship between the accused and the child;
- (c) The custodial status of the accused.

#### *Article 19. Functions of the support person in case of the release of the accused*

The support person, having been informed by the competent authority of the release of the accused from custody or pretrial detention, shall inform the child and his or her parents or guardian and lawyer accordingly and shall assist him or her in requesting appropriate protection measures, if necessary.

### **C. During the trial phase**

#### *Article 20. Reliability of child evidence*

1. A child is deemed to be a capable witness unless proved otherwise through a competency examination administered by the court in accordance with article 21 of this [Law] [Act], and his or her testimony shall not be presumed invalid or untrustworthy by reason of his or her age alone provided that his or her age and maturity allow the giving of intelligible and credible testimony.

2. For the purposes of this section (“C. During the trial phase”), a child’s testimony includes testimony given with technical communication aids or through the assistance of an expert specialized in understanding and communicating with children.
3. The weight given to the testimony of a child shall be in accordance with his or her age and maturity.
4. A child, irrespective of whether he or she will provide testimony, shall have the opportunity to express his or her personal views and concerns on matters related to the case, his or her involvement in the justice process in particular his or her safety with respect to the accused, 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 cases where his or her views have not been accommodated, the child should receive a clear explanation of the reasons for not taking them into account.
5. A child shall not be required to testify in the justice process against his or her will or without the knowledge of his or her parents or guardian. His or her parents or guardian shall be invited to accompany the child except in the following circumstances:
  - (a) The parents or the guardian are the alleged perpetrator of the offence committed against the child;
  - (b) The child expresses a concern about being accompanied by his or her parents or guardian;
  - (c) The court deems it not to be in the best interest of the child to be accompanied by his or her parents or guardian.

#### *Article 21. Competency examination*

1. A competency examination of a child may be conducted only if the court determines that there are compelling reasons to do so. The reasons for such a decision shall be recorded by the court. In deciding whether or not to carry out a competency examination, the best interest of the child shall be a primary consideration.
2. The competency examination is aimed at determining whether or not the child is able to understand questions that are put to him or her in a language that a child understands as well as the importance of telling the truth. The child’s age alone is not a compelling reason for requesting a competency examination.
3. The court may appoint an expert for the purpose of examining the child’s competency. Aside from the expert, the only other persons who may be present at a competency examination are:
  - (a) The magistrate or judge;
  - (b) The public prosecutor;
  - (c) The defence lawyer;

- (d) The child's lawyer;
  - (e) The support person;
  - (f) A court reporter or clerk;
  - (g) Any other person, including the child's parents or guardian or a guardian *ad litem*, whose presence, in the opinion of the court, is necessary for the welfare of the child.
4. If the court does not appoint an expert, the competency examination of a child shall be conducted by the court on the basis of questions submitted by the public prosecutor and the defence lawyer.
  5. The questions shall be asked in a child-sensitive manner appropriate to the age and developmental level of the child and shall not be related to the issues involved in the trial. They shall focus on determining the child's ability to understand simple questions and answer them truthfully.
  6. Psychological or psychiatric examinations to assess the competency of a child shall not be ordered unless compelling reasons to do so are demonstrated.
  7. A competency examination shall not be repeated.

### *Article 22. Oath*

1. At the discretion of the presiding magistrate or judge, a child witness shall not be required to swear an oath, for instance, if the child is unable to understand the consequences of taking an oath. In such cases, the presiding magistrate or judge may offer the child the opportunity to promise to tell the truth. In either event, the court shall nevertheless hear the child's testimony.
2. A child witness shall not be prosecuted for giving false testimony.

### *Article 23. Designation of a support person during the trial*

1. Before inviting a child victim or witness to court, the competent magistrate or judge shall verify that the child is already receiving the assistance of a support person.
2. If a support person has not already been designated, the competent magistrate or judge shall appoint one in consultation with the child and his or her parents or guardian, and shall provide the support person with adequate time to familiarize him or herself with the case and liaise with the child.
3. The competent magistrate or judge shall inform the support person of the date and venue of the trial or court session.

*Article 24. Waiting areas*

1. The competent magistrate or judge shall ensure that child victims and witnesses can wait in appropriate waiting areas equipped in a child-friendly manner.
2. Waiting areas used by child victims and witnesses shall not be visible to or accessible to persons accused of having committed a criminal offence.
3. Where possible, the waiting areas used by child victims and witnesses should be separate from the waiting area provided for adult witnesses.
4. The competent magistrate or judge may, if appropriate, order a child victim or witness to wait in a location away from the courtroom and invite the child to appear when required.
5. The magistrate or judge shall give priority to hearing the testimony of a child victims and witnesses in order to minimize their waiting time during the court appearance.

*Article 25 Emotional support for child victims and witnesses*

1. In addition to the child's parents or guardian and his or her lawyer or other appropriate person designated to provide assistance, the competent magistrate or judge shall allow the support person to accompany a child victim or witness throughout his or her participation in the court proceedings in order to reduce anxiety or stress.
2. The competent magistrate or judge shall inform the support person that he or she, as well as the child himself or herself, may ask the court for a recess whenever the child needs one.
3. The court may order a child's parents or guardian to be removed from a hearing only when it is in the best interests of the child.

*Article 26. Courtroom facilities*

1. The competent magistrate or judge shall ensure that appropriate arrangements for child victims or witnesses are made in the courtroom, such as, but not limited to, providing elevated seats and assistance for children with disabilities.
2. The courtroom layout shall ensure that, in so far as possible, the child shall be able to sit close to his or her parents or guardian, support person or lawyer during all proceedings.

*[Article 27. Cross-examination (option for common law countries)]*

Where applicable, and with due regard for the rights of the accused, the competent magistrate or judge shall not allow cross-examination of a child victim or witness by

the accused. Such cross-examination may be undertaken by the defence lawyer under the supervision of the competent magistrate or judge, who will have the duty to prevent the asking of any question that may expose the child to intimidation, hardship or undue distress.]

### *Article 28. Measures to protect the privacy and well-being of child victims and witnesses*

At the request of a child victim or witness, his or her parents or guardian, his or her lawyer, the support person, other appropriate person designated to provide assistance or on its own motion, the court, taking into account the best interests of the child, may order one or more of the following measures to protect the privacy and physical and mental well-being of the child and to prevent undue distress and secondary victimization:

- (a) Expunging from the public record any names, addresses, workplaces, professions or any other information that could be used to identify the child;
- (b) Forbidding the defence lawyer from revealing the identity of the child or disclosing any material or information that would tend to identify the child;
- (c) Ordering the non-disclosure of any records that identify the child, until such time as the court may find appropriate;
- (d) Assigning a pseudonym or a number to a child, in which case the full name and date of birth of the child shall be revealed to the accused within a reasonable period for the preparation of his or her defence;
- (e) Efforts to conceal the features or physical description of the child giving testimony or to prevent distress or harm to the child, including testifying:
  - (i) Behind an opaque shield;
  - (ii) Using image- or voice-altering devices;
  - (iii) Through examination in another place, transmitted simultaneously to the courtroom by means of closed-circuit television;
  - (iv) By way of videotaped examination of the child witness prior to the hearing, in which case the counsel for the accused shall attend the examination and be given the opportunity to examine the child witness or victim;
  - (v) Through a qualified and suitable intermediary, such as, but not limited to, an interpreter for children with hearing, sight, speech or other disabilities;
- (f) Holding closed sessions;
- (g) Giving orders to temporarily remove the accused from the courtroom if the child refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking the truth in that person's presence. In such cases, the defence lawyer shall remain in the courtroom and question the child, and the accused's right of confrontation shall thus be guaranteed;

- (h) Allowing recesses during the child's testimony;
- (i) Scheduling hearings at times of day appropriate to the age and maturity of the child;
- (j) Taking any other measure that the court may deem necessary, including, where applicable, anonymity, taking into account the best interests of the child and the rights of the accused.

## **D. In the post-trial period**

### *Article 29. Right to restitution and compensation*

*[Option if a State victims fund exists:*

1. The court shall inform a child victim, his or her parents or guardian and his or her lawyer about the procedures for claiming compensation.
2. A child victim who is not a national shall have to right to claim compensation.]

*[Option 1. Common law countries*

3. Upon conviction of the accused and in addition to any other measure imposed on him or her, the court may, at the request of the prosecutor, the victim, his or her parents or guardian or the victim's lawyer, or on its own motion, order that the offender make restitution or compensation to a child as follows:

(a) In cases of damage to or loss or destruction of property of a child victim as a result of the commission of the offence or the arrest or attempted arrest of the offender, the court may order the offender to pay to the child or to his or her legal representative the replacement value in the event that the property cannot be returned in full;

(b) In cases of bodily or psychological harm to a child as a result of the commission of the offence or the arrest or attempted arrest of the offender, the court may order the offender to financially compensate the child for all damages incurred as a result of the harm, including expenses related to social and education reintegration, medical treatment, mental health care and legal services;

(c) In cases of bodily harm or threat of bodily harm to a child who was a member of the offender's household at the relevant time, the court may order the offender to pay the child compensation for the expenses incurred as a result of moving from the offender's household.]

*[Option 2. Countries where criminal courts have no jurisdiction in civil claims*

3. After delivering the verdict, the court shall inform the child, his or her parents or guardian and the child's lawyer of the right to restitution and compensation in accordance with national law.]

*[Option 3. Countries where criminal courts have jurisdiction in civil claims]*

3. The court shall order full restitution or compensation to the child, where appropriate, and inform the child of the possibility of seeking assistance for enforcement of the restitution or compensation order.]

*Article 30. Restorative justice measures*

If restorative justice measures are considered, [name of competent body] shall inform the child, his or her parents or guardian and the child's lawyer of available restorative justice programmes and how to access such programmes, as well as the possibility of seeking restitution and compensation in court if the restorative justice programme fails to achieve an agreement between the child victim and the offender.

*Article 31. Information on the outcome of the trial*

1. The competent magistrate or judge shall inform the child, his or her parents or guardian and the support person of the outcome of the trial.
2. The competent magistrate or judge shall invite the support person to provide emotional support to the child to help him or her to come to terms with the outcome of the trial, if necessary.

*[Option for common law countries:*

3. The court shall inform the child, his or her parents or guardian and the child's lawyer of existing procedures for the granting of parole to the offender and of the child's right to express his or her views in that regard.]

*Article 32. Role of the support person after the conclusion of the proceedings*

1. Immediately after the conclusion of the proceedings, the support person shall liaise with appropriate agencies or professionals to ensure that further counselling or treatment for the child victim or witness is provided if necessary.
2. In the event that a child victim or witness needs to be repatriated, the support person shall liaise with the competent authorities, including consulates, in order to ensure correct implementation of the relevant national and international provisions governing the repatriation of children and to assist the child in the preparations for repatriation.

*Article 33. Information on the release of convicted persons*

1. In the event that a convicted person is to be released from detention, [name of competent authority], through the support person, if applicable, or through the child's lawyer, shall inform the child and his or her parents or guardians of that release. The information shall be provided by [name of competent authority] as early as possible after such a decision has been taken, at the latest one day prior to the release.
2. The court shall inform a child victim or witness of the release of a convicted person at least up to a period of [...] years after the child has reached the age of 18.

**E. Other proceedings***Article 34. Extended application to other proceedings*

The provisions of this [Law] [Act] shall apply, mutatis mutandis, to all matters pertaining to a child victim or witness, including civil matters.

## **[Chapter IV. Final provisions]**

*[Article 35. Final provisions (option for civil law countries)]*

The present [Law] [Act] shall enter into force in accordance with existing national procedures under the national legislation of [name of country].]



*Part two*

**Commentary on the Model Law on  
Justice in Matters involving  
Child Victims and Witnesses of Crime**



## **Introduction**

In its resolution 2005/20 of 22 July 2005, the Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (the “Guidelines”), contained in the annex to that resolution. The Guidelines form part of the body of the United Nations standards and norms in crime prevention and criminal justice, which are internationally recognized normative principles in that area as developed by the international community since 1950.

In order to assist countries, international organizations providing legal assistance to requesting States, public agencies and non-governmental and community-based organizations, as well as practitioners, in implementing the Guidelines, the United Nations Office on Drugs and Crime, in cooperation with UNICEF, has developed a series of technical tools, including the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime.

The purpose of the Model Law is to assist Governments in drafting relevant national legislation in conformity with the principles contained in the Guidelines and other relevant international legal instruments such as the Convention on the Rights of the Child.

The present commentary on the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime has been designed to provide a better understanding of the provisions of the Model Law. Furthermore, the commentary contains references to laws, jurisprudence and international norms as well as explanations and examples related to the various articles of the Model Law.

First, it is important to stress that the Model Law establishes the principle that there are several categories of professionals that can and should provide assistance to child victims and witnesses of crime throughout the justice process. It has often been argued that it is a primary right, as well as a duty, of the parents to provide such assistance and that the intervention of the State in this regard could infringe that right and duty. However, it was also recognized that multi-disciplinary expertise of professionals can support parents, who are often unfamiliar with the justice process, on how to best assist their children.

With respect to its scope, the Model Law is intended to cover all persons under the age of 18 giving testimony in the justice process, who are victims or witnesses of crime. However, the Model Law is also intended to protect and assist children who may be both victim and perpetrator, as well as those child victims who do not wish to testify. In accordance with the Convention on the Rights of the Child, which provides the same basic rights for all children, this Model Law does not differentiate between victims who are also witnesses and victims who are not witnesses, or between victims and witnesses in conflict with the law and those who are not.

Unless indicated otherwise, the provisions of the Model Law are intended to cover both child victims and witnesses.

In view of the fact that there are different legal systems, with different drafting traditions, the Model Law contains some optional articles and provisions in order to accommodate such differences.

The Model Law is intended to be applicable either as a whole or in part, based on the needs and the unique circumstances of each country.

## **Preamble**

In its preamble, the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime provides two options: one for civil law countries and one for common law countries.

The fourth paragraph of the option for civil law countries contains a list of rights of child victims and witnesses of crime. The rights listed in the paragraph derive from different legal sources, namely the Convention on the Rights of the Child, which was adopted by the General Assembly in its resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex), which have different legal implications. Whereas the rights mentioned in the Convention are of a binding nature for those countries which have ratified the Convention, the rights specified in the Guidelines do not have the same legal force. Nevertheless, the rights contained in the two instruments are interrelated, and it is their combination and interconnectedness that provide the framework for a full and comprehensive system of protection for child victims and witnesses of crime.



## **Chapter I. Definitions**

1. The definitions of “child victim or witness”, “professionals”, “justice process” and “child-sensitive” contained in the Model Law are drawn from paragraph 9 of the Guidelines.

### *Support person*

2. The concept of “support person” has been incorporated into the legislation of several countries under different names and at different stages of the justice process. The common denominator of this institution is the provision of support and assistance to child victims and witnesses, from the earliest possible stage of the justice process, by a person specialized and trained in assisting children in a way that a child understands and accepts. The main purpose of the presence of a support person is to protect the child victim or witness from the risks of duress, revictimization and secondary victimization.

### *Child’s guardian*

3. To provide a definition of a “child’s guardian”, the Model Law has opted to refer to the relevant legal provisions of each Member State.

### *Secondary victimization*

4. The definition of “secondary victimization” contained in the Model Law has been drawn from the *Handbook on Justice for Victims: on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*<sup>3</sup> developed by the Office for Drug Control and Crime Prevention in 1999.

### *Revictimization*

5. The definition of “revictimization” contained in the Model Law draws on the definition contained in Council of Europe recommendation Rec (2006) 8 of the Committee of Ministers to member States on assistance to crime victims of 14 June 2006.<sup>4</sup>



## **Chapter II. General provisions on assistance to child victims and witnesses**

### *Article 1. Best interests of the child*

1. Subparagraph 8 (c) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime states that while the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. Article 3, paragraph 1, of the Convention on the Rights of the Child provides that, in all actions concerning children, the best interests of the child shall be a primary consideration.
2. The concept of the “best interests of the child” is also present in several regional treaties, in particular the African Charter on the Rights and Welfare of the Child,<sup>5</sup> the American Convention on Human Rights,<sup>6</sup> the Inter-American Convention on International Traffic in Minors,<sup>7</sup> the European Convention on the Exercise of Children’s Rights<sup>8</sup> and other legal instruments.<sup>9</sup>
3. The concept of the “best interests of the child” is considered self-explanatory in the legislation of several States, for example Australia,<sup>10</sup> while other States, such as South Africa,<sup>11</sup> have opted for providing a definition in their domestic law. An interesting approach is that contained in the legislation of Venezuela (Bolivarian Republic of), according to which the “best interests of the child” are considered a principle of interpretation and application of the law.<sup>12</sup>
4. It was therefore decided not to include a definition of the principle in the Model Law but to leave it to national legislators to decide on the best approach.
5. However, it should be stressed that in the context of criminal justice proceedings, the principle of the “best interests of a child”, while it should be a primary consideration, cannot jeopardize or undermine the rights of an accused or convicted person. A balance has to be struck between the protection of the child victim or witness of crime and the safeguarding of the rights of the accused. Therefore, the language of article 1 reflects that balance and mirrors the language of subparagraph 8 (c) of the Guidelines.

### *Article 2. General principles*

Article 2 provides general guiding principles that apply to the implementation of the law.

*Article 3. Duty to report offences involving a child victim or witness*

1. Several countries make it a general legal obligation to report offences against children to the competent authorities immediately upon their discovery.<sup>13</sup> In those countries, failure to report such a crime may constitute a criminal offence (by omission).
2. According to the national legislation of some countries, that duty is even more stringent for certain categories of professionals working in contact with children, including civil servants in the ministry responsible for education,<sup>14</sup> social workers,<sup>15</sup> doctors<sup>16</sup> and nurses.<sup>17</sup>
3. The approach chosen in the Model Law is to explicitly establish a duty to report such offences, with legal consequences for not complying with that duty, for specific professional categories that are in close contact with children, such as teachers, doctors and social workers. The Model Law also leaves to national legislators the option of extending the duty to report to other professional categories as is deemed appropriate and in accordance with other national laws.

*Article 4. Protection of children from contact with offenders*

1. Several States have created special lists of persons convicted of specific offences such as sexual crimes.<sup>18</sup> The lists can be used by the police to track criminals, but they are also sometimes made available to potential employers, which make use of them to gather information on the applicant's criminal record.
2. The Terre des Hommes International Federation, an international non-governmental organization, has issued a guidebook, for internal use, to prevent the recruitment of persons having been in conflict with the law in connection with offences against children. The guidebook provides important information and input in this regard.<sup>19</sup>
3. Under the Model Law, any person convicted of a qualifying offence against a child shall not be eligible to work in a service, institution or association providing services to children. That provision protects children from the risk of becoming victims of recidivist offenders. Failure by an employer to comply with article 4, paragraph 2, of the Model Law is considered an offence.

*Article 5. National [authority] [office] for the protection of child victims and witnesses*

1. Establishing a centralized government body or authority to coordinate the various activities related to victims' assistance is often an appropriate first step towards achieving effective coordination among the main actors involved in providing assistance to victims.<sup>20</sup> The Model Law includes this provision reflecting best practices.

2. Several States have established specific authorities in charge of coordinating activities to promote and protect children's rights.<sup>21</sup> However, in some countries, usually due to a lack of resources, the protection of and assistance to children is carried out mainly by non-governmental organizations, whose operations are supervised by government authorities.<sup>22</sup>
3. In some countries, the task of coordinating child protection is undertaken at the local or regional level. In the United Kingdom of Great Britain and Northern Ireland, for example, the Area Child Protection Committees bring together representatives of the main agencies and professionals involved in child protection to coordinate different activities to be undertaken in the local area to safeguard children. The Committees, *inter alia*, develop local policies for inter-agency work within the national framework, assist in improving the quality of child protection through training and raise awareness within the community on the necessity of safeguarding children's rights.<sup>23</sup> Similar initiatives can be found in countries such as Bolivia, India and Tunisia.<sup>24</sup>
4. In Belgium, a coordination commission for child victims of maltreatment has been established in every French-speaking judiciary district. The purpose of the commissions is to inform local entities and coordinate their efforts to assist child victims of maltreatment in order to improve the effectiveness of such entities. The membership of the commissions comprises representatives of political parties, magistrates, law enforcement officials and social workers.<sup>25</sup>
5. Legislation for the establishment of specific coordination mechanisms to assist victims of specific types of crime can be found in countries such as Bulgaria (for victims of trafficking in human beings), Estonia (for victims of negligence, mistreatment and physical, mental or sexual abuse), Indonesia (for victims of child trafficking) and the Philippines (for victims of child prostitution or other sexual abuse and child trafficking).<sup>26</sup>
6. The coordinating authority should include representatives of all relevant authorities. Thus, subparagraph 2 (i) of article 5 has been included as an option to facilitate the appointment of any other representative in accordance with local requirements and legislation.
7. In order to ensure the implementation of the provision, which may be delayed owing to budgetary considerations, it is also suggested that Governments set a limited period of time for the appointment of members.

*Article 6. Functions of the [national authority] [office] for the protection of child victims and witnesses*

Article 6 sets out the functions that the national authority or office for the protection of child victims and witnesses should perform.

## *Article 7. Confidentiality*

1. The intention of article 7 is to protect the privacy and safety of child victims and witnesses by providing that members of the authority established under article 5 shall maintain confidentiality of information related to child victims and witnesses.
2. A good example of domestic legislation guaranteeing confidentiality of information related to child victims and witnesses is that of the United States of America relating to the rights of child victims and witnesses,<sup>27</sup> which provides the following:

“(D) Privacy Protection.

“(1) Confidentiality of Information

“(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall:

“(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

“(ii) disclose documents described in clause (i) or the information in them that concerns a child only to person who, by reason of their participation in the proceeding, have reason to know such information.

“(B) Subparagraph (A) applies to:

“(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

“(ii) employees of the Court;

“(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

“(iv) members of the jury.”

3. In several States, usually on the basis of provisions contained in existing laws on the media or in the youth codes or laws on child protection, the prohibition of the dissemination of child-related information to the public is strengthened by provisions that ensure the prohibition of the publication or broadcasting of such information, including pictures of children, by the media, to the extent that, even when such information leaks out despite the restrictions, the media are prohibited from making use of it.<sup>28</sup> Broadcasting such protected information may constitute a criminal offence.<sup>29</sup>

4. As most national laws already contain such prohibitions, the Model Law does not include a specific provision on the media’s publication of such information.

### Article 8. Training

1. In line with paragraph 40 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the Model Law provides that those professionals who in their work come in contact with child victims or witnesses of crime, in particular those responsible for providing assistance to such children, shall receive appropriate training.
2. In Bolivia (*Código del Niño, Niña y Adolescente*, art. 12) and Bulgaria (Child Protection Act (2004), art. 3, para. 6), for example, training of law enforcement officials who come in contact with child victims and witnesses of crimes is a requirement.
3. Ideally, the training for those dealing with child victims and witnesses of crime should contain a common, multidisciplinary component intended for all professionals, combined with more specific modules addressing the specific needs of each profession. For example, while training for judges and prosecutors may essentially focus on legislation and specific procedures, law enforcement officials may require training on broader issues, including psychological and behavioural issues. The training of social workers, meanwhile, may focus more on assistance, while training for medical personnel should focus on forensic examination techniques to assemble a solid evidentiary basis.
4. In many countries, law enforcement officials, because they are responsible for receiving reports of criminal offences and for investigating those offences, are the first professionals with whom victims and witnesses of crime come in contact. Therefore, law enforcement officials should receive specific and appropriate training on assisting child victims and witnesses and their families. It is important to stress that adequate training of law enforcement officials can contribute to conducting a proper investigation while minimizing potential harm.
5. Such training should, *inter alia*: (a) enable law enforcement officials to understand and apply the main provisions of legislative and departmental policies concerning the treatment of child victims and witnesses of crime; (b) raise awareness of the issues covered in the Guidelines and relevant regional and international instruments; and (c) familiarize law enforcement officials with specific protocols for intervention, in particular with respect to the initial contact between a child victim and the law enforcement agency, the initial interview of a child victim or witness, the investigation of an offence and victim's support.
6. In addition, a law enforcement official specialized in child-related issues should also receive training on how to put victims and witnesses in contact with available support groups, on providing information and helping victims to deal with the effects of victimization and on eliminating the risk of secondary victimization. A good example of legislation providing for specific training targeting police units is that of India (Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56 of 2000), art. 63). Similar initiatives can be found in other countries, such as Morocco (Code of Criminal Procedure, art. 19) and Peru (*Código de los Niños y Adolescentes* (Law No. 27.337,

2000), arts. 151-153). The development and dissemination of domestic guidelines addressing the issue of child victims and witnesses from the police's viewpoint should also be encouraged.

7. In common law countries, the training of prosecutors on child-friendly procedures may ensure that prosecutors, when preparing a case and in presenting it to the court, truly and fully take into account the specific requirements related to the situation of child victims and witnesses of crimes. When leading the investigation and preparing a case for trial, prosecutors have an opportunity to ensure that the rights of child victims and witnesses are respected. They can keep the child informed of the court's procedures and proceedings, ensure that the pretrial and court settings are appropriate and follow up with referrals. Training of prosecutors may ensure that they provide a basic level of assistance and information to child victims and witnesses, including notification regarding the status of the case and the use of special measures such as waiting areas for child victims and witnesses and their families.

8. Prosecutors may also be encouraged to develop agreements with non-governmental organizations in order to provide key services to children, including after the completion of the case and the conviction of the offender. In the United Kingdom, the Judicial Studies Board has developed a child witness training programme for barristers and magistrates, focusing on the Human Rights Act of 1998. It is a self-taught course followed by a one-day training programme. In addition, a victim and witness training pack published by the Magistrates' Courts Committees provides detailed information on the process of identifying potentially vulnerable and intimidated witnesses. The participants are shown a video portraying a victim's experience and then given the opportunity to explore their own experiences of vulnerability. Finally, the Crown Prosecution Service of the United Kingdom has developed a four-level programme of victim and witness training that focuses on the following: (a) raising awareness among the Crown Prosecution Service staff of issues relating to victims and witnesses and their role and responsibilities; (b) ensuring effective identification of vulnerable or intimidated witnesses and their eligibility for access to special measures; (c) ensuring effective support of witnesses and case management; and (d) ensuring effective communication, including dealing with prosecution decisions.

9. Another example is that of Mexico, where prosecution services have developed a programme of awareness and support for victims of crime, which includes, *inter alia*, training and workshops on the protection of victims (*Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 22 (VIII)).

10. Development of domestic guidelines addressing the issue of child victims and witnesses from the prosecutor's viewpoint, such as the Guidelines for Crown Prosecutors<sup>30</sup> of Canada, should also be encouraged. The National Prosecuting Authority of South Africa developed the *Child Law Manual for Prosecutors* (Pretoria, 2001), which has been used as a basis for the training of prosecutors throughout the country.

11. In civil law countries where legislation provides that victims be assisted by an appointed lawyer for victims, training similar to that described above should be provided

for lawyers representing victims. Because of a child victim's special relationship with his or her lawyer, who is appointed expressly to protect his or her rights, that lawyer is in the best position to ensure that the child victim receives all appropriate available assistance and care. In France, several bar associations have taken the initiative of creating groups of specialized lawyers who are provided with continuing education on child-related issues, including through legal updates and the expertise of other relevant professionals, such as psychologists, social workers and judges.<sup>31</sup>

12. Similarly, it is of crucial importance that all judges be trained in, or are at least well informed, on child-related issues. The institution of specialized juvenile judges does not exist in all countries, and even in those countries where it does exist, judges very often have to shift within the justice system from penal to civil matters, from specialized to general matters and vice versa. But in many countries, child-related issues are reserved for a special category of magistrates who have received proper training, making them specialists in these matters. These magistrates often work exclusively on these issues, which may include, in addition to family law and juvenile justice, granting judicial orders for the protection of children and measures for dealing with children requiring special care and protection (for example, Brazil, *Estatuto da Criança e do Adolescente*, Law No 8.069 (1990), art. 145).

13. Health-care professionals may also provide first-line assistance to child victims and witnesses of crime, as they may be the first to come into contact with them or may even be the ones who discover that a child has been a victim of a crime. Training programmes and protocols for relevant hospital personnel on the rights and needs of child victims and witnesses, including medical and psychological support, as well as a victim-sensitive code of ethics for medical staff, should be developed. A good example of this kind of training programmes for health-care professionals is the certificate programme on the protection of child victims of abuse and maltreatment created by the Social Workers Training School of Saint Joseph University in Beirut.<sup>32</sup> In Belgium, legislation provides that at least one person in each centre for social-medical assistance shall receive specific training on child victims issues (*Décret relatif à l'aide aux enfants victimes de maltraitances*, 1998, art. 11).

14. Social workers also play an important role in providing proper assistance and care to child victims and witnesses since, because of their functions, they are in a unique position to intervene in the best interests of children. Awareness of social workers on these issues could be enhanced through specific training and workshops, such as those reported by the Islamic Republic of Iran, where one expert on child affairs from each province was selected and trained on child-related issues, and workshops on the rights of the child were organized for social workers.<sup>33</sup> A comprehensive programme of training and coordination for social workers is also undertaken in Ukraine (Law on Social Work with Children and Youth, 2001). Brochures and leaflets to raise awareness among this category of professionals have been disseminated in several countries.<sup>34</sup>

15. In conclusion, an efficient way to ensure effective awareness of all professionals who share the responsibility of protecting child victims and witnesses of crime is to

centralize the training in a single institution that can monitor whether all categories of professionals are reached and how they can be reached. A good example of such an institution is found in Egypt, where the General Administration for the Legal Protection of Children of the Ministry of Justice is responsible for designing training and qualification programmes for members of legal institutions, sociologists and psychologists concerned with matters related to minors (Decree on legal protection of children, No. 2235, 1997, para. 14 (e)). Other States have undertaken similar initiatives, such as Bulgaria (Child Protection Act (2004), art. 1, paras. 3-4) and Malaysia (Child Act 2001, Act No. 611, sect. 3, subsect. (2) (g)).

16. The Model Law assigns responsibility for training to the national coordinating authority and includes a non-exhaustive list of topics for training, which legislators should adapt to the specific needs of their country.

## **Chapter III. Assistance to child victims and witnesses during the justice process**

### **A. General provisions**

#### *Article 9. Right to be informed*

1. In line with the main international instruments on assistance for victims and paragraphs 19 and 20 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, as well as with the national legislation of several States, the Model Law advocates the importance of giving child victims and witnesses of crime access to information relevant to their case and information relevant for the protection and exercise of their rights. An effective way of making information available to victims of crime is to disseminate brochures or leaflets in police stations, hospitals, waiting rooms, schools, social services and other public offices and on the Internet.
2. Guidance can also be taken from legislation requiring that victims be given appropriate, relevant information in a timely manner.<sup>35</sup> That could be achieved, for example, by putting the burden of informing victims on the police upon its first contact with them.<sup>36</sup> The legislation of some States provides that such information shall be given to the victim only if he or she expressly requests it, following what is referred to as an “opt-in” policy. However, although such an “opt-in” option aims to protect the victims from feeling harassed due to receiving unsolicited information, it may result in the victim not receiving useful information that he or she would have wished to receive. The same respect for a victim’s wish not to know about the proceedings can be fulfilled by replacing the “opt-in” system with an “opt-out” option, by which the victim would automatically receive all relevant information unless he or she expressly requests not to receive it.
3. In many countries with limited resources, access to information about the case can be hampered for various reasons, such as an underresourced justice system, illiteracy of victims and the lack of transport facilities or means of communication for victims. Practical solutions can be found by assigning social workers and community organizations to assist the victims in their participation in the justice process.
4. Some States, going beyond the right of victims to be informed of the proceedings, recognize the right of child victims to receive from judges explanations concerning the proceedings and the decisions rendered, as in Bulgaria, (Child Protection Act (2004), art. 15, para. 3), Costa Rica (*Código de la Niñez y la Adolescencia*, Law No.7739 (1998), art. 107 (d)) and New Zealand (Children, Young Persons and Their Families Act 1989, sect. 10). Such an approach should be encouraged.
5. In countries where victims are represented by a lawyer, the victim should receive information related to the proceedings from his or her lawyer. However, the client-lawyer

relationship is not always balanced, and this system may prove insufficient. Coupling the information conveyed by lawyers with other sources of information better protects the victim's right to be informed. In most cases, the assistance of a support person (see articles 15-19 of the Model Law) constitutes the best practice in ensuring that the victim receives full information in a timely manner.

6. In all legal systems, identifying the persons responsible for conveying the information to victims is a necessary step towards ensuring that the victim's right to be informed is upheld. The details of sharing responsibilities in that regard should be regulated, as it is, for example, by the legislation of the United States (United States Code collection, Title 42, chap. 112, sect. 10607, Services to victims, subsect. (a) and (c)).

7. As relates to the content and type of information that the child victims and witnesses of crime should receive, the Model Law reflects the provisions of the existing relevant legislation of several countries.<sup>37</sup>

8. The Model Law indicates that the information should be provided by a competent authority that is to be designated by the Government. The Model Law does not include opt-in or opt-out clauses, but national legislators may consider whether to adopt such provisions.

## *Article 10. Legal assistance*

1. As stated in paragraph 22 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, effective assistance for child victims and witnesses during the proceedings may require access to legal assistance. States should consider providing legal assistance, free of charge, to child victims in those cases in which it is required during the criminal justice process. The main consideration is the principle of the best interests of the child.

2. In common law countries, because victims are not a party to the proceedings, they are usually not provided with legal assistance throughout the proceedings as a right. This is why, with some notable exceptions, most countries recognizing the right of victims to legal assistance belong to the civil law tradition. Most civil law countries recognize the right of child victims to legal assistance, for example, Armenia (Criminal Procedure Code, 1999, art. 10 (3)-(4)), Bulgaria (Child Protection Act, 2004, art. 15 (8)) and the Philippines (Anti-Violence against Women and their Children Act of 2004, No. 9262 (2004), sect. 35 (b)). Such assistance is provided free of charge for those who cannot afford to pay their counsel, for example, in France (*Code de procédure pénale*, art. 706-50); Iceland (Child Protection Act, No. 80/2002 (2002), article 60) and Peru (*Código de los Niños y Adolescentes* (Law No. 27.337, 2000), article 146). Original solutions have sometimes been found to reduce the cost to the State of legal assistance. In Colombia (in accordance with the *Código de Procedimiento Penal*, Law No. 906, 2004, art. 137, Intervención de las víctimas en la actuación penal), victims who cannot afford counsel can be assisted by other legal professionals or law students, and, if there are multiple victims, the number of lawyers representing them in the case can be limited to two.

3. A few common law countries recognize the right of child victims to legal assistance in criminal proceedings. In such circumstances, the cost is paid by the State, as is the case in Pakistan, under the Juvenile Justice System Ordinance, 2000. In countries where such provisions do not exist, recognizing that child victims of crime have a right to legal assistance in criminal proceedings promotes the protection of child victims and witnesses during their involvement in the justice process.

4. In that context, it should be noted that the International Criminal Court has recognized a long list of rights of victims, in particular with respect to access to a lawyer.<sup>38</sup>

### *Article 11. Protective measures*

Article 11 describes measures to be taken, at all stages of the justice process, to protect the safety of a child victim or witness who is deemed to be at risk.

### *Article 12. Language, interpreter and other special assistance measures*

1. Paragraph 25 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recognizes the need to develop and implement measures to assist children in testifying and giving evidence.
2. The provisions and requirements contained in article 12 of the Model Law are based on national legislation of several countries, including Colombia, Costa Rica, France, Kazakhstan, Mexico, South Africa and Thailand.<sup>39</sup>

## **B. During the investigation phase**

### *Article 13. Specially trained investigator*

1. According to paragraph 29 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, professionals should take measures to prevent hardship during the investigation. According to paragraph 41 of the Guidelines, professionals should be trained to effectively protect child victims and witnesses and meet their needs.
2. Depending on the domestic legal system of the State, professionals such as police officers, prosecutors, lawyers and other criminal justice professionals may be working in the investigation of a case involving a child victim or witness of crime. It is essential for such professionals to receive specific training on child-related issues as a prerequisite for working with child victims and witnesses.
3. In the area of investigation, some significant progress has been made through the establishment of the so-called “child advocacy model”, which adopts a multidisciplinary

approach during the investigation. The most important component of this model is the fact that law enforcement officials are accompanied by child specialists and mental-health-care providers when they conduct interviews of children. This model offers greater potential for protecting not only the child but also the accused, because it ensures that interviews are conducted in a more thorough and accurate way.

#### *Article 14. Medical examinations and the taking of bodily samples*

1. Article 14 deals with the child's right to be treated with dignity and to be protected from hardship during the justice process. Medical examinations, especially in case of sexual abuse, can be a highly stressful experience for children. It is preferable that such examinations be ordered only when absolutely necessary and that they be as less intrusive and as limited as possible.
2. When a medical examination reveals health problems, the child is entitled to receive medical care.
3. The provisions of article 14 are based on best practices of several Member States.

#### *Article 15. Support person*

1. The functions of a support person are described in paragraph 24 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. However, the term is not defined in the Guidelines.
2. According to the domestic legislation of several countries, the purpose of a support person is to provide emotional support to child victims and witnesses and to reduce the harmful impact of a court appearance by ensuring that the child is accompanied at all times by an adult whose presence will be helpful if the child feels unduly stressed.<sup>40</sup>
3. Thus, the presence of a support person can help the child to express his or her views and contribute to the child's right to participation. It is a measure that judges may favour in order to make a child's appearance before the court go smoothly. It is also a measure that a prosecutor or, where applicable, the child's lawyer may request.
4. Another important element related to the functions and role played by the support person is continuity. In order to be of real support, there needs to be a relationship of trust between the support person and the child. That can be achieved by appointing a support person at the beginning of the justice process (i.e. the reporting of the criminal offence) and ensuring that the same person accompanies the child throughout the whole process.
5. Finally, the guiding principle for the functions and activity of the support person is that his or her main concern in the justice process is the protection of the child against any form of hardship.

### Article 16. Designation of a support person

1. The Model Law calls for the designation of a support person by the competent authority, which has been designated by the State, as soon as the officials in charge of the investigation decide to summon the child victim or witnesses for the first interview. The underlying principle is that the support person should accompany the child from the moment of his or her first contact with the justice process.
2. State practice shows that the criteria for designating a support person vary from jurisdiction to jurisdiction. In Italy, article 609 *decies* of the Criminal Code specifies that a child victim of sexual exploitation shall be assisted at every step of the proceedings. In some States, such as Switzerland,<sup>41</sup> it is specified that the support person shall be of the same gender as the victim. In some common law countries, the decision of designating a support person for a child victim is taken by a judge, who takes that decision *proprio motu* or at the request of the prosecution or the defence. In other countries, the power to assign a support person is specifically provided in the law, for example, in Canada (Criminal Code (R.S.C. 1985, c. C-46, sect. 486.1, subsect. 1). The assistance of a support person may also be requested by the victim or witness, as in Austria (article 162 (2) of the Criminal code of procedure).
3. The way that the support person is defined varies in different domestic legal systems, with definitions such as a “person of the child’s choice”,<sup>42</sup> a “person of confidence”,<sup>43</sup> an “adult”,<sup>44</sup> a “child’s parent or legal guardian”,<sup>45</sup> a “friend or a member of his or her family”,<sup>46</sup> a “specially qualified person”,<sup>47</sup> “other person close to the child”<sup>48</sup> or any other “person approved by the court”.<sup>49</sup> In that regard, the Model Law states that the support person should be someone with training and professional skills to communicate with and assist the child in order to prevent the risk of duress, revictimization and secondary victimization. In general, in assessing who should be designated as the support person, it is important to respect the child’s choice. However, care must be taken to prevent the manipulation of the child’s choice. The Model Law also states that before the support person is designated, the child should be consulted about his or her preference with respect to the gender of the support person.
4. The support person should fulfil two other important requirements: (a) they should offer full and concrete support to the child; and (b) they should not hamper the justice process. Child victim support groups or victim service units may offer specially qualified persons for that purpose.

### Article 17. Functions of the support person

1. The Model Law has amplified the functions of the support person on the basis of best practices. Examples of domestic legislation show that the purpose of the presence of such a support person next to the child victim or witness is to provide emotional support and reduce the harmful impact of a court appearance by ensuring that the child is accompanied at all times by an adult whose presence will be helpful if the child feels unduly stressed.

2. The functions of the support person, as defined in article 17, flow from this purpose and reflect national best practices.

3. For example, subsection (i) of the Child Victims' and Child Witnesses' Rights (United States Code collection, Title 18, chap. 223, sect. 3509) provides the following:

“The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child’s hand or allow the child to sit on the adult attendant’s lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child’s testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.”

4. The state legislation of Arizona, United States, gives the support person a more active role, especially in the preparation and assistance of the child victim by providing the following:

“[The minor’s representative] shall accompany the minor through all proceedings [...] and, before the minor’s courtroom appearance, shall explain to the minor the nature of the proceedings and what the minor will be asked to do, including telling the minor that the minor is expected to tell the truth. The representative shall be available to observe the minor in all aspects of the case in order to consult with the court as to any special needs of the minor. Those consultations shall take place before the minor testifies. [The minor’s representative] shall not discuss the facts and circumstances of the case with the minor witness [...] unless the court orders otherwise upon a showing that it is in the best interests of the minor.”<sup>50</sup>

#### *Article 18. Information to be provided to the support person*

Article 18 provides that a support person shall be informed of the charges against the accused, the relationship between the accused and the child and the custodial status of the accused. That is the minimum necessary for the support person to fulfil his or her functions. It is possible to include in the article additional types of information that should be provided.

#### *Article 19. Functions of the support person in case of the release of the accused*

The release of the accused from custody is a situation that may cause hardship for the child victim or witness. In such cases, the support person is responsible for receiving the information from the authorities and communicating it to the child in a child-sensitive manner.

## C. During the trial phase

### *Article 20. Reliability of child evidence*

1. In accordance with article 12, paragraph 2, of the Convention on the Rights of the Child, the starting point for evidence given in court by a child is that the child shall be provided with the opportunity to be heard. However, this right is not absolute: article 12, paragraph 2, of the Convention envisages that this right be exercised “in a manner consistent with the procedural rules of national law”.
2. Such procedural rules usually exist in national law in order to ensure that the court is able to trust any testimony given by a child in judicial or administrative proceedings. Two legal hurdles typically exist. According to the legal system in question, either or both may be applied by the court. The first is the question of the admissibility of a child’s evidence. The second is the question of the reliability of a child’s evidence.
3. The question of admissibility relates to whether the court is able to take any evidence given by the child into account at all in determination of the case. The question of reliability relates to the weight that the court should subsequently attach to admissible evidence given by a child.
4. In most legal systems, it is the role of the court to take such decisions on admissibility and reliability on a case-by-case basis. If necessary, that may be done with the expert assistance of a qualified child psychologist or a specialist in child development. However, international standards specify one key restriction. In deciding upon the admissibility and/or reliability of a child’s evidence, the court may not do so merely upon the basis of the child’s age alone. This restriction is set out in paragraph 18 of the Guidelines on Justice involving Child Victims and Witnesses of Crime: “[the child’s] testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone”.
5. Nonetheless, the court can pose the question of whether the child’s age and maturity allow the giving of intelligible and credible testimony. The court may, for example, take such factors into account when considering evidence given by a child in the context of the case as a whole. If compelling reasons exist, it may also carry out tests in order to establish the extent to which the child is able to give valid testimony. Such tests may seek to establish competencies, such as whether the child is able to understand questions and whether he or she also understands the importance of telling the truth.
6. In the United Kingdom (Youth Justice and Criminal Evidence Act, 1999, sect. 53), for example, the criteria of witness competency are independent of the age of the witness. Instead, the question of competency relates to the capacity of the witness to understand questions put to him or her as a witness and to give answers that can be understood. If a witness is not able to understand questions or provide intelligible answers, his or her evidence is likely to be inadmissible for the purposes of court proceedings.

7. In the case of child victims and witnesses, however, international standards suggest that testimony given by a child should not be declared inadmissible lightly. Paragraph 18 of the Guidelines on Justice involving Child Victims and Witnesses of Crime, for instance, is based on the presumption that “every child should be treated as a capable witness”. Indeed, a survey of national laws demonstrates that it is good practice to presume the *prima facie* competence of a child to testify, irrespective of his or her age.<sup>51</sup>

8. Article 20 of the Model Law follows that good practice by providing that a child is to be deemed a capable witness (and his or her evidence is admissible) unless proven otherwise by means of a competency examination. Article 21 of the Model Law explains that this assumption may be departed from—and a competency examination subsequently administered—only if the court believes that compelling reasons exist. Such reasons may not, of course, include the child’s age alone.

9. If the child does not pass the competency examination, his or her evidence must be declared inadmissible for the purposes of the court proceedings. Naturally, if the child passes the examination, his or her evidence is admissible. The important point is that the competency examination not be used routinely for child victims and witnesses. Rather, there must be compelling reasons for the court to order the examination. Such an approach is supported by national practice. Under the New Zealand Evidence Act 1908, for example, the judge may not instruct the jury with respect to any general need to scrutinize the evidence of young children with special care or suggest to the jury that children generally have tendencies to invention or distortion.<sup>52</sup> Where a child gives evidence at a jury trial, the trial judge should inform the jury that a child is not disqualified from giving evidence simply by reason of age alone and that there is no precise age that determines competency.<sup>53</sup> The jury should be instructed that a child’s competency depends on the child’s capacity to understand the difference between truth and falsehood and to appreciate the duty to tell the truth.<sup>54</sup>

10. When a child gives admissible evidence, the Model Law anticipates one further legal hurdle. Under article 20, paragraph 3, of the Model Law, the court may give a particular weight to the testimony of the child in accordance with his or her age, maturity and ability to give an intelligible account. Again, the court may not base this decision on the child’s age alone. Rather, the court must form an overall assessment of the validity and trustworthiness of the child’s testimony, as it would with any other witness. If a competency examination has previously been carried out, the results of that examination may also be a relevant factor in this assessment. Evidence from national laws indicates that it is appropriate to take factors such as age and maturity into account when assessing the reliability of testimony.<sup>55</sup>

11. Finally, paragraphs 4 and 5 of article 20 of the Model Law contain two important safeguards. Paragraph 4 provides that irrespective of whether the child will provide testimony or whether such testimony is found to be inadmissible, the child shall have the opportunity to express his or her views concerning his or her involvement in the justice process. Paragraph 5 states that a child shall not be required to testify in court proceedings against his or her will or without the knowledge of his or her parents or guardian. It also ensures that the parents or guardian of a child giving testimony in

court are invited to be present. The Model Law makes logical exceptions, however, for situations in which the parents or guardian are alleged to be the perpetrator of the offence, the child expresses concern about being accompanied by his or her parents or guardian or the court deems it not to be in the best interests of the child.

### *Article 21. Competency examination*

1. Article 21 of the Model Law provides procedural details for the competency examination referred to in article 20. It makes clear that a competency examination shall be conducted only if the court determines that there are compelling reasons to do so. As set out in article 20, that a child's testimony may be declared inadmissible only if he or she fails to pass a competency examination. Article 21 states clearly that the purpose of the competency examination is to determine whether the child is able to understand questions put to him or her as well as the importance of telling the truth.
2. The United States Child Victims' and Child Witnesses' Rights (United States Code Collection, sect. 3509, subsect. (c)) establishes that upon a party's motion showing compelling reasons for doing so, the judge may order the child to be submitted to a competency examination. The examination is conducted by the court, out of the sight of the jury, on the basis of questions submitted by the parties. The questions shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial and shall focus on determining the child's ability to understand and answer simple questions.
3. It is important to stress that the provision, contained in article 21, paragraph 7, stating that a competency examination shall not be repeated does not invalidate the right to appeal of the accused. In fact, the court can, without repeating the competency examination, evaluate the results in accordance with the circumstances of the case. Thus, the danger that a defence lawyer might try to undermine the credibility of the child by re-examining him or her and thus creating hardship for the child is avoided.

### *Article 22. Oath*

1. Most countries require witnesses in criminal proceedings to testify under oath, which is a solemn undertaking to tell the truth. A failure to tell the truth when testifying under oath is a criminal offence in almost all jurisdictions.
2. Some national legal systems exempt children under a certain age from giving evidence under oath.<sup>56</sup> The primary result of giving unsworn evidence (evidence given when not under oath) is that the child may be protected in certain respects from the consequences of proceedings for giving false testimony. Article 22 of the Model Law provides that child witnesses be given complete immunity from criminal prosecution for giving false testimony, irrespective of whether the court allows child witnesses to give sworn or unsworn evidence.

3. It is important to note that the fact that a child gives unsworn evidence, as opposed to evidence on oath, should have no effect, in and of itself, on the way in which that evidence is received by the court. National legislation, for example the United Kingdom Youth Justice and Criminal Evidence Act 1999 treats the question of whether sworn or unsworn evidence is given as separate from the question of the competency of a witness. Both sworn and unsworn evidence is received by the court in the same way.<sup>57</sup> However, the fact that a child may not have sufficient appreciation of the particular responsibility to tell the truth inherent in taking an oath, may, in some jurisdictions be used by parties to the proceedings as an indicator of the child's maturity and, hence, of the weight to be given to his or her evidence. In the United States, for example, such motion may lead, if compelling reasons are given by the applicant, to a competency examination being ordered by the court.<sup>58</sup>

4. A good example of an alternative to testimony under oath is found in New Zealand, where a child is permitted to make an informal promise to tell the truth, once it is been determined that the child has an appreciation of the solemnity of the occasion.<sup>59</sup> That applies, in particular, in cases of adults charged with sexual misconduct against children. That specific option has been included in the Model Law.

#### *Article 23. Designation of a support person during the trial*

Article 23 complements article 15 by ensuring that the judge, at the beginning of the trial, verifies whether a support person has been appointed for the child victim or witness and orders the appointment of such a person if no support person was appointed during the investigation phase.

#### *Article 24. Waiting areas*

1. One way of protecting the child from hardship during the justice process and protecting the child's privacy is to designate special child-friendly waiting areas for children.

2. Waiting areas for children may be equipped with toys or other things such as drawing utensils, cartoons and books to occupy the child. Depending on the climate, such waiting areas may not need to be inside a building but may be located in a garden or another safe place. Waiting areas may also be furnished with toilets, beds, drinks and food so that the child always feels at ease. Most important, children shall always be kept in a separate room, away from the accused, defence counsels and other witnesses.

3. Although expeditiousness of the proceedings is an important requirement in handling cases involving children, the capacity of children to endure lengthy hearings scheduled without consideration for their difficult situation is another element to be considered in the context of the timeframe of proceedings. Those responsible for the scheduling of the judicial process are invited to find ways to reduce the time that

children spend on the premises of the court and ensure that those periods fit with the child's private life and needs. Ultimately, any reduction of the child's stress will help to make his or her evidence of the best quality possible.

4. Other child-sensitive procedures may be considered by the courts, such as scheduling the hearings on days when the child does not have to go to school. The Model Law does not include such procedures, but they may be provided for in regulations or guidelines.

#### *Article 25. Emotional support for child victims and witnesses*

Article 25 ensures the presence of the support person in the courtroom, to provide the child with emotional support.

#### *Article 26. Courtroom facilities*

1. According to subparagraph 30 (d) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, professionals shall make use of modified court environments that take the situation of child victims and witnesses into consideration.

2. Formalities of court proceedings and court surroundings can be intimidating for children. Although there is an argument that the observance of such formalities engenders respect for the legal system, it may cause children fear or make them reluctant to talk. The shortage of child-friendly facilities such as appropriate seating or the lack of a properly placed microphone at the witness's position in the courtroom to ensure that a child's testimony is audible in key positions in the courtroom, in particular the bench, the bar table, the jury box and the dock, may impede children from giving the best possible evidence, as may the impression caused by the formal dress of members of the judiciary and legal personnel.

3. Some domestic legislation requires the hearing of victims under the age of 18 years to be conducted in an informal and friendly atmosphere.<sup>60</sup> The solemnity of court dress, which may have a frightening effect on young children, is also taken into account in the Supplementary Pre-Trial Checklist for Cases Involving Young Witnesses of the United Kingdom, which provides that child witnesses may express their views about court dress,<sup>61</sup> which may be removed if found necessary.<sup>62</sup>

4. With respect to the environment of the child interview, some domestic legislation makes the attendance of a female police officer, or a police officer of the same gender as the child, a requirement in specific cases, in particular those involving rape or other sexual assaults.<sup>63</sup> Article 26 of the Model Law gives the judge the authority to order such modifications, as appropriate.

*Article 27. Cross-examination (option for common law countries)*

1. Subparagraph 31 (b) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime stresses the necessity of protecting a child from being cross-examined by the accused if that protection is compatible with the legal system and the rights of the accused. In the common law procedural system, the right to cross-examine prosecution witnesses constitutes an essential element of the right of the accused to challenge the testimony of his or her accuser. Cross-examination is usually carried out by the legal representative of the accused. However, when the accused refuses to engage a legal representative and wishes to defend him or herself, direct cross-examination of vulnerable witnesses, such as children, becomes an issue.
2. Some domestic legislation prohibits unrepresented accused from cross-examining child witnesses, especially in the case of sexual offences, for example in Canada (Criminal Code, R.S.C. 1985, c. C-46, sect. 486.3, subsect. 1), New Zealand (Evidence Act 1908, sect. 23F(1) and Evidence Act 2006, sect. 95) and the United Kingdom (Criminal Justice Act 1988, sect. 34A). In those States, judges must deny requests made by unrepresented accused to cross-examine child witnesses. In some countries, it is provided, alternatively, that the judge may appoint a representative for the accused for the specific purpose of such cross-examination; the representative relays the questions of the accused to the child, thereby avoiding direct contact and potential intimidation, as is done in Australia (Western Australia Evidence of Children and Others (Amendment) Act 1992, sect. 8).
3. Presiding judges should exercise close scrutiny and strict supervision of the cross-examination of children. Domestic practice in common law countries in particular prohibits any intimidating, harassing or disrespectful questions (see, for example, the National Policy Guidelines for Victims of Sexual Offences of the Department of Justice and Constitutional Development of South Africa and the National Guidelines for Prosecutors in Sexual Offence Cases of the Department of Justice of South Africa (Pretoria, 1998), chap. 10, para. 1 and the Criminal Procedure (Scotland) Act 1995, sect. 274 of the United Kingdom). More generally, as with other types of questioning, cross-examination shall be conducted keeping in mind that vulnerable witnesses, including children, shall be addressed in a simple, careful and respectful way. Where necessary, it is up to the judges to remind the parties of that important requirement.
4. The Model Law provides that the child victim or witness shall not be cross-examined by the accused. Cross-examination by the defence lawyer shall be closely supervised by the judge.

*Article 28. Measures to protect the privacy and well-being of a child victim and witness*

1. In accordance with article 28 of the Model Law, protective measures may be ordered to protect the privacy and the physical and mental well-being of a child and to prevent undue distress and secondary victimization of a child.

2. Often when a child testifies, he or she will have to be in direct eye contact with the accused. In cases in which it is alleged that the accused abused the child, such contact can be a traumatic event for the child. The provision contained in subparagraph 31 (b) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime is aimed at reducing as much as possible the feeling of intimidation that child victims and witnesses may have while appearing before the court, in particular when confronting the alleged offender.

3. A variety of measures can be taken to assist in the giving of evidence by children and the receipt of evidence from children. Those measures concern the admissibility of evidence, such as videotaped recordings of their pretrial statement and the use of facilities allowing the child to give evidence, without having to see the accused, from a special interview room on the premises of the court by means of closed-circuit television or with a removable screen or curtain to break the line of sight between the witness and the accused. Another way of avoiding such confrontation is to order the removal of the accused from the courtroom.

4. The use of screens between the child and the accused is often seen as a less expensive alternative to the use of closed-circuit television. They are far easier to install and move. Various types of screens are used in different jurisdictions, for example, a removable opaque partition preventing the child and the accused from seeing each other, a one-way mirror allowing the accused to see the child but not vice versa or a removable opaque partition with a video camera transmitting the image of the child to a television monitor visible to the accused. The use of such devices is provided for in the domestic legislation of several countries, such as Canada (Criminal Code, R.S.C. 1985, c. C-46, sect. 486.2, subsect. 1) and Spain (*Ley de Enjuiciamiento Criminal*, art. 448, para. 3, and art. 707).

5. Such measures shall be ordered by the judge and may be automatic or discretionary. Judges may order such a measure *proprio motu* or at the request of a party, including the child or his or her parents or legal guardian. In Fiji, for example, a parent or a guardian may ask the prosecutor for a screen to be put around the child, and the prosecutor then relays this request to the court.<sup>64</sup> The removal of the accused from the courtroom while the child testifies is another measure provided in some domestic systems, for example, in Brazil, (*Código de Processo Penal*, art. 217), Kazakhstan (Criminal Procedural Code, art. 352 (3)) and Switzerland (*Loi fédérale sur l'aide aux victimes d'infractions*, art. 5 (4) and 10 (b)). The accused is usually allowed to follow the child's testimony on a monitor from a separate room.

6. Another aspect of protecting victims and witnesses, including children, is limiting the disclosure of information about their identity and whereabouts. The degree of restriction may vary, depending on the circumstances and risks. A first degree of restriction on disclosure of information on the victim's or witness' whereabouts can easily be implemented by authorizing the victim or witness not to reveal the address of his or her residence and workplace. Sometimes, for purpose of communication, the victim or witness can give a police office as his or her contact address (France, *Code de procédure pénale*, art. 706-57) or, as in Honduras (*Código Procesal Penal*,

Decreto No. 9-99-E, art. 237, Protección de los testigos), the court itself can be given as an address for such purposes.

7. More prejudicial to the rights of the defence is the complete restriction on disclosure of information related to the identity of the victim or witness, who can then be authorized to testify anonymously. This always constitutes an exceptional measure, as in France (*Code de procédure pénale*, art. 706-58) and the Netherlands (Code of Criminal Procedure, 1994, art. 226a). In countries where such a measure is permitted, it can be achieved by authorizing victims or witnesses to testify or be confronted by the defendant by way of videoconference with voice- or image-distortion mechanisms (France, *Code de procédure pénale*, art. 706-61). Even more exceptional, and usually limited to organized crime-related cases, is the step of giving anonymous witnesses authorization to change their identity (France, *Code de procédure pénale*, art. 706-63-1) or the facilitation of their relocation (United States, United States Code collection, Title 18, chap. 224, Protection of witnesses, sect. 3521, Witness relocation and protection, subsect. (a), para. 1).

8. The law of New Zealand provides an interesting set of protective measures for child victims and witnesses of crime. In addition to a general ban on publishing the name of any person under the age of 17 years who is called as a witness, child complainants may be authorized to give written evidence and may be exempted from examination or cross-examination on their statement. When the child gives oral evidence, only specified persons accepted by the presiding judge or requested by the child may be present. The court may issue orders prohibiting publication of certain matters, such as reports or accounts with respect to acts that the victim is alleged to have been compelled or induced to perform, or any acts that the victim is alleged to have been compelled or induced to consent to or acquiesce in. The victim's evidence may also be adduced by way of videotaped statement recorded during the pretrial phase.

9. In the case of an offence of a sexual nature involving a child complainant, a judge may, on application by the prosecutor before the trial, give any of the following directions with respect to the mode in which the complainant's evidence is to be given. First, where a videotape of the complainant's evidence was shown at the preliminary hearing, the judge may direct that the evidence be admitted in that form, with such excisions, if any, as the judge may order. Secondly, if the judge is satisfied that the necessary facilities and equipment are available, a direction may be given for the complainant to give evidence outside the courtroom but within the court precincts, the evidence being transmitted to the courtroom by means of closed-circuit television. Thirdly, the judge may direct that, while the complainant is giving evidence or is being examined in respect of that evidence, a screen or one-way mirror be so placed that the complainant cannot see the accused but the judge, jury and counsel for the accused can see the complainant. Fourthly, in cases in which the judge is satisfied that the necessary facilities and equipment are available, he or she may give a direction that, while the complainant is giving evidence or is being examined in respect of that evidence, the complainant be placed behind a specially constructed wall or partition, enabling those in the courtroom to see the complainant while preventing the complainant from seeing them, the evidence being given through an appropriate audio link.

Fifthly, in cases in which the judge is satisfied that the necessary facilities and equipment are available, a direction may be given that the complainant give evidence at a location outside the court precincts. In such a case, the evidence is to be admitted on videotape, with such excisions, if any, as the judge may order. Where a videotape of the complainant's evidence is to be shown at the trial, the judge is to give directions as considered appropriate as to the manner in which any cross-examination or re-examination of the complainant is to be conducted.

## D. In the post-trial period

### *Article 29. Right to restitution and compensation*

1. Article 29 of the Model Law implements paragraph 35 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, on the right to remedies for child victims. Paragraph 37 of the Guidelines provides a non-exhaustive list of what such reparation may include. Article 29 of the Model Law attempts to provide more specific guidance on this matter.

2. Paragraph 8 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) states the following:

“Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.”

3. Paragraph 12 of the Declaration states the following:

“When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

“(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

“(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.”

4. In paragraph 8 of its recommendation Rec (2006) 8, the Committee of Ministers to member States of the Council of Europe on assistance to crime victims recommends the following:

“Compensation should be provided for treatment and rehabilitation for physical and psychological injuries;

“States should consider compensation for loss of income, funeral expenses and loss of maintenance for dependants; States may also consider compensation for pain and suffering;

“States may consider means to compensate damage resulting from crimes against property.”

5. The Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex) might not apply in most common cases in which children are victims, but the definitions provided in that international instrument are of great assistance in defining the scope of remedies necessary in a given case.
6. In cases of human trafficking, the Basic Principles and Guidelines might apply to a large extent and should be taken into consideration, as very often the basic rights of victims of trafficking are violated in judicial proceedings due to the fact that too often the victim is considered to have violated domestic laws, for example, laws relating to the victim's immigration status, instead of being considered a victim.<sup>65</sup>
7. The Basic Principles and Guidelines describe forms of remedies that must be considered and addressed, as appropriate, in a given case. They include the following:
  - (a) Restitution. This form of remedy would be more applicable in cases of trafficking in human beings but may also apply partially in cases of child victims of domestic violence;
    - (i) Enjoyment of human rights (family life);
    - (ii) Return to the place of residence;
    - (iii) Restoration of employment (including the possibility of continuing education) and return of property;
  - (b) Compensation (monetary compensation for assessable damages for);
    - (i) Physical or mental harm;
    - (ii) Lost opportunities (employment, education and social benefits);
    - (iii) Material damages and loss of earnings (including loss of earning potential);
    - (iv) Costs of legal or expert assistance, medical services and other assistance;
  - (c) Rehabilitation (medical and psychological care and required legal and social services).

#### *Option 1. Common law countries*

8. This option is intended for common law countries where the criminal proceedings may be followed by an order for compensation by the same court. This model legislative provision is drawn from legislation of Canada (Criminal Code, R.S.C. 1985, c. C-46, sect. 738, subsect. 1). That legislation contains more details with respect to the correct definition of replacement value, the definition of pecuniary damages and the problem of compensation when the child had to leave a household shared with the perpetrator.

*Option 2. Countries where criminal courts have no jurisdiction in civil claims*

9. Paragraph 36 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime states that, provided that the criminal proceedings are child-sensitive and respect the Guidelines, combined criminal and reparations proceedings should be encouraged. However, that may not be the case in some jurisdictions. Option 2 ensures that at the end of the criminal proceedings, the child shall be informed of the procedures for claiming compensation.

*Option 3. Countries where criminal courts have jurisdiction in civil claims*

10. In many civil law countries, the civil claim can be decided as part of the criminal proceedings. Option 3 is intended for such jurisdictions.

*Article 30. Restorative justice measures*

1. Paragraph 36 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime states that reparations proceedings can be combined with restorative justice measures. Article 30 of the Model Law provides for this option, subject to the availability of formal proceedings, if restorative justice measures fail.

2. A restorative justice process is any process in which the victim and the offender and, where appropriate, other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative justice implies a process for resolving crime by focusing on redressing the harm done to victims, holding offenders accountable for their actions and, often, engaging the community in the resolution of that conflict.

3. Restorative justice programmes have the following characteristics: (a) a flexible response to circumstances of the crime, the offender and the victim that allows each case to be considered individually; (b) a response to the crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities; (c) an approach that can be used in conjunction with traditional justice processes and sanctions; (d) an approach that incorporates problem-solving and addresses the underlying causes of conflict; (e) an approach that addresses the harms and needs of victims; and (f) a response that recognizes the role of the community as of the primary forum for preventing and responding to crime and social disorder.<sup>66</sup>

4. As such processes are based on the agreement of the parties, they are not always successful and may result in the return of the case to the courts for judicial determination.

5. However, it should be pointed out that the restorative justice process may involve some risks for the victim, in particular in cases involving child victims. Therefore, the use of such processes should be carefully studied before they are used in cases involving child victims.

6. Additional information on the use of restorative justice programmes in criminal matters can be found in the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex). Additional information on the features of such programmes can be found in the *Handbook on Restorative Justice Programmes*<sup>67</sup> of the United Nations Office on Drugs and Crime. Also of use is Council of Europe recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters.

#### *Article 31. Information on the outcome of the trial*

The right of victims to receive information on the outcome of the trial, as well as other decisions affecting their interests, is provided for in several States.<sup>68</sup> The Model Law adopts this provision as a best practice.

#### *Article 32. Role of the support person after the conclusion of the proceedings*

The support person should provide assistance to the child as long as assistance is needed. That may include, at the conclusion of the proceedings, referring the child for further treatment and care or repatriating the child to his or her home country.

#### *Article 33. Information on the release of convicted persons*

The right of victims to receive information on the status of a convicted person, including his or her potential release, is provided for in several States.<sup>69</sup> The Model Law adopts this provision as best practice.

### **E. Other proceedings**

#### *Article 34. Extended application to other proceedings*

The provisions of the Model Law should apply in administrative proceedings involving child victims and witnesses, in order to provide children the same protection to which they are entitled under the law and ensure they do not suffer undue hardship.

## Chapter IV. Final provisions

### *Article 35. Final dispositions (option for civil law countries)*

This article is an option for civil law countries.

#### *Notes*

1. United Nations, *Treaty Series*, vol. 1577, No. 27531.
2. Ibid., vols. 2171 and 2173, No. 27531.
3. United Nations, Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims: on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (New York, 1999).
4. Point 1.2. of the appendix to recommendation (2006) 8.
5. African Charter on the Rights and Welfare of the Child, July 1990, article 4, and article 9, paragraph 2.
6. American Convention on Human Rights: Pact of San José, (United Nations, *Treaty Series*, vol. 1144, No. 17955), article 17, paragraph 4.
7. Inter-American Convention on International Traffic in Minors, adopted at Mexico City on 18 March 1994, article 1 (a) and (c) and articles 11 and 18.
8. European Convention on the Exercise of Children's Rights (United Nations, *Treaty Series*, vol. 2135, No. 37249), article 1, paragraph 2; article 6, subparagraph (a); and article 10, paragraph 1.
9. International Bureau for Children's Rights, *The Rights of Child Victims and Witnesses of Crime: a Compilation of Selected Provisions Drawn from International and Regional Instruments* (Montreal, Canada, 2005).
10. Australia, High Court, *Secretary, Department of Health and Community Services (NT) v JWB and SMB (Marion's Case)* (1992), 175 CLR 218 F.C. 92/010.
11. South Africa, Children's Act, 2005, *Government Gazette*, vol. 492, 19 June 2006, sect. 7, para. 1.
12. Venezuela (Bolivarian Republic of), *Ley Organica para la Protección del Niño y del Adolescente*, (1998), *Gaceta Oficial*, No. 5.266, art. 8. The content of the principle is detailed in article 8, paragraph 1, of the law.
13. For example, Belarus, Law on Child's Rights, No. 2570-XII, 1993 (as amended in 2004), art. 9, al. 3; Morocco, Penal Code, art. 40 (as referred to in the report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography on the issue of commercial sexual exploitation of children to Morocco (E/CN.4/2001/78/Add.1, para. 75); Portugal, *Lei de proteção de crianças e jovens em perigo*, Law No. 147/99 (1999), art. 4, para. 3; Russian Federation, third periodic report to the Committee on the Rights of the Child (CRC/C/125/Add.5), para. 170 (child abuse).
14. France, *Code de procédure pénale*, art. 40; *Code de l'éducation*, art. L.542-1.
15. France, *Code de la santé publique*, art. L.2112-6 and *Code de l'action sociale et des familles*, art. L.221 6.
16. France, *Code de déontologie médicale*, arts. 43-44.
17. France, *Décret No. 93-221 du 16 février 1993 relatif aux règles professionnelles des infirmiers et infirmières*, art. 7.

18. Canada, Sex Offender Information Registration Act, S.C. 2004, C-16; United Kingdom of Great Britain and Northern Ireland (England), Safeguarding Vulnerable Groups Bill, House of Lords (HL) Bill 79 (2006), explanatory notes, para. 4; United Kingdom (Scotland), Protection of Children (Scotland) Bill, (Scottish Parliament (SP)) SP Bill 61, 2002, sect. 1.
19. See website: <http://www.terredeshommes.org>.
20. For example, Canada (Québec), *Loi sur l'aide aux victimes d'actes criminels* (L.R.Q. chap. A-13.2) (1988), art. 8 (Bureau d'aide aux victimes d'actes criminels); Iceland, Child Protection Act, No. 80/2002 (2002), arts. 5-9 (Ministry of Social Affairs); Italy, Institution of the Parliamentary Commission for Childhood and of the National Observatory on Childhood, No. 451 (1997) arts. 1-2; Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), arts. 4-6.
21. For example, Belgium, *Décret instituant un délégué général de la Communauté française aux droits de l'enfant* (2002), art. 2; Costa Rica, *Decreto por el que se Crea la Figura del Defensor de la Infancia*, No. 17.733-J (1987) (Defensor de la Infancia); Denmark, Notification Respecting a Children's Council, No. 2, 1998; Dominican Republic, *Decreto por el que se Crea la Dirección General de Promoción de la Juventud*, No. 2981 (1985) (Dirección General de Promoción de la Juventud); Egypt, Decree No. 2235 (1997) (General Administration for the Legal Protection of Children); Iceland, Act on the Ombudsman for Children, No. 83 (1994); Iceland, Regulation on the Child Welfare Council, No. 49 (1994); Indonesia, second periodic report to the Committee on the Rights of the Child (CRC/C/65/Add.23), para. 32; Kenya, Children and Young Persons Act (cap. 141) (Children's Department of the Ministry for Home Affairs and National Heritage); Luxembourg, *Loi du 25 juillet 2002 portant institution d'un comité luxembourgeois des droits de l'enfant appelé "Ombuds-Comité fir d'Rechter vum Kand"* ("ORK"), No. A-N.85 (2002), arts. 2-3; Malaysia, Child Act 2001, Act No. 611, sect. 3 (Coordinating Council for the Protection of Children); Malta, Children and Young Persons (Care Orders) Act, chap. 285, 1980, art. 11, para. 1 (Children and Young Persons Advisory Board); Mauritania, report to the Committee on the Rights of the Child (CRC/C/8/Add.42), paras. 6-7 (National Council for Children); Pakistan, second periodic report to the Committee on the Rights of the Child (CRC/C/65/Add.21), para. 5 (National Commission for Child Welfare and Development); Peru, *Código de los Niños y Adolescentes* (Law No. 27.337, 2000), arts. 27 and 29; Qatar, Initial report to the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSA/QAT/1), para. 102 (Child's Friend Office); Sweden, Children's Ombudsman Act, No. 335 (1993); Uganda, second periodic report to the Committee on the Rights of the Child (CRC/C/65/Add.33), p. 3 (Uganda National Programme of Action for Children); United Kingdom, Children Act 2004, chap. 31 (Children's Commissioner); United States of America, United States Code collection, title 42, chap. 112, sect. 10605, Establishment of Office for Victims of Crime, subsects. (a)-(c) (Office for Victims of Crime).
22. For example, Myanmar, The Child Law, No. 9/93 (1993), art. 63.
23. <http://www.everychildmatters.gov.uk/lscb>.
24. For example, Bolivia, *Código del Niño, Niña y Adolescente*, art. 176 (Comisión de la Niñez y Adolescencia); India, Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56 of 2000), arts. 29, 37 and 39 (Child Welfare Committee); Tunisia, *Code de la protection de l'enfant*, 1995, arts. 3-6 (Délégué à la protection de l'enfance).
25. Belgium, *Décret relatif à l'aide aux enfants victimes de maltraitances*, 1998, arts. 3-6 (Commission de coordination de l'aide aux enfants victimes de maltraitance).
26. For example, Bulgaria, National Programme for Prevention and Counteraction to Trafficking in Human Beings and Protection of the Victims for 2006; Estonia, Victim Support Act, 2003 (RT I 2004, 2, 3) (entered into force in 2004), arts. 3-4 (negligence, mistreatment, physical, mental or sexual abuse); Indonesia, *Report on Laws and Legal Procedures Concerning the Commercial Sexual Exploitation of Children in Indonesia* (ECPAT International, Bangkok, 2004), pp. 45-46 (anti-trafficking unit); Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act, No. 7610 (1992), art. II, sect. 4 (child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows).

27. United States, United States Code collection, title 18, chap. 223, sect. 3509, Child Victims' and Child Witnesses' Rights, sect. (d) (Privacy protection), paras. 1-2 and 4.
28. For example, Bangladesh, Children's Act, sect. 17 (as referred to in *Report on Laws and Legal Procedures Concerning the Commercial Sexual Exploitation of Children in Bangladesh* (ECPAT International, Bangkok, 2004), p. 37); Bolivia, *Código del Niño, Niña y Adolescente*, art. 10 (Reserva y resguardo de identidad) al. 2; Canada (Québec), *Loi sur la protection de la jeunesse*, L.R.Q., chap. P-34.1, 1977, art. 83; Canada, Criminal Code, R.S.C. 1985, c. C-46, subsects. 276.2-276.3, 486.3-4) and 486.4.1; Iceland, Child Protection Act, No. 80/2002 (2002), art. 58; Ireland, Children Act, 2001, sect. 252; Italy, Code of Criminal Procedure, art. 114; Japan, Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children, 1999 (as updated in 2004), art. 13; Kenya, The Children Act, (Chap. 586 of the Laws of Kenya, 2002) (as referred to in the second periodic report of Kenya to the Committee on the Rights of the Child, CRC/C/KEN/2), para. 212), sect. 76 (5); Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act, No. 7610 (1992), art. XI, sect. 29, para. 2; Russian Federation, draft federal law on countering trafficking in persons, 2003, art. 28(3), (5)-(6); South Africa, Children's Act, 2005, *Government Gazette*, vol. 492, 19 June 2006, sect. 74; Syrian Arab Republic, Juvenile Delinquents Act, 1974, art. 54 (as referred to in the initial report to the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/SYR/1), para. 230); Thailand, Act Instituting Juvenile and Family Courts and Juvenile and Family Procedures, art. 98 (as referred to in the second periodic report to the Committee on the Rights of the Child (CRC/C/83/Add.15), para. 516); Tunisia, Child Protection Code (1995), art. 120 (as referred to in the initial report to the Committee on the Rights of the Child (CRC/C/83/Add.1), para. 242); Turkey, Law on Juvenile Courts, 1979, art. 40 (as referred to in the initial report to the Committee on the Rights of the Child (CRC/C/51/Add.4), para. 511); United Kingdom (Scotland), Children (Scotland) Act 1995 (chap. 36), sect. 44, subsect. 1; Zambia, initial report to the Committee on the Rights of the Child, 2002 (CRC/C/11/Add.25), para. 527.
29. For example, Italy, Penal Code, art. 734 (a); Sri Lanka, second periodic report to the Committee on the Rights of the Child (CRC/C/70/Add.17), para. 65; United Kingdom (Scotland), Children (Scotland) Act 1995 (chap. 36), sect. 44, subsect. 2; Zambia, initial report to the Committee on the Rights of the Child (CRC/C/11/Add.25) para. 527.
30. Canada, Department of Justice, *A Handbook for Police and Crown Prosecutors on Criminal Harassment* (Ottawa, 2004), part. IV.
31. See for instance in France: <http://www.barreau-marseille.avocat.fr/textes.cgi?rubrique=9>.
32. United Nations Office on Drugs and Crime, *Independent Evaluation Report: Juvenile Justice Reform in Lebanon* (Vienna, July 2005), para. 38.
33. Iran (Islamic Republic of), second periodic report to the Committee on the Rights of the Child (CRC/C/104/Add.3), para. 36.
34. France, Ministry of Justice, Direction des affaires criminelles et des grâces, "Enfants victimes d'infractions pénales: guide de bonnes pratiques; du signalement au procès pénal" (Paris, 2003).
35. For example, United States (Alabama), Code of Alabama 1975, Title 15, art. 3, sect. 15-23-62.
36. For example, Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 6 (1).
37. With respect to article 9 (a) of the Model Law, on procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony and ways in which "questioning" will be conducted during the investigation and trial, see Iceland, Child Protection Act, No. 80/2002, art. 55, para. 1; Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 215 (3); New Zealand, Victims' Rights Act 2002, sect. 12, subsect. 1; and United States (Alabama), Code of Alabama 1975, Title 15, art. 3, sect. 15-23-72; with respect to article 9 (b) of the Model Law, on existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings, including the availability of a victim's lawyer, see Canada (Québec), *Loi sur la protection de la jeunesse* (L.R.Q., chap. P-34.1), 1977, art. 5;

- Canada (Québec), *Loi sur l'aide aux victimes d'actes criminels* (L.R.Q., chap. A-13.2), 1988, art. 4; Canada, Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, principle 7; Colombia, *Código de Procedimiento Penal*, Law No. 906, 2004, art. 136, paras. 1-2 and 6; Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 20; Netherlands, "De Beaufort Guidelines", 1989, para. 6; New Zealand, Victims' Rights Act, 2002, sect. 11(1), 12; Nicaragua, *Código Procesal Penal*, Law No. 406, 2001, art. 110 (1); United Kingdom (Scotland), Children (Scotland) Act 1995 (chap. 36), sect. 20, subsect. 1; and United States (Alabama), Code of Alabama 1975, Title 15, art. 3, sect. 15-23-62 (1), (7); with respect to article 9 (c) of the Model Law, on specific places and times of hearings and other relevant events, see Canada, Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, principle 6; Colombia, *Código de Procedimiento Penal*, Law No. 906, 2004, art. 136, paras. 12 and 14; New Zealand, Victims' Rights Act 2002, sect. 12, subsect. 1 (d); Spain, *Ley 35/1995, de 11 de diciembre, de Ayudas y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual*, art. 15 (4); United States, United States Code collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, subsect. (a), (2); United States (Alabama), Code of Alabama 1975, Title 15, art. 3, sect. 15-23-72 (2).
38. International Criminal Court, Rule 90(5) of the Rules of Procedure and Evidence and regulation 83.2 of the regulations of the Court.
  39. Colombia, *Código de Procedimiento Penal*, Law No. 906, 2004, art. 11 (j); Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 107 (b); France, *Code de procédure pénale*, art. 102; Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 75 (6); Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11, sect. V; El Salvador, *Código Procesal Penal*, Law No. 904, 1997 (as updated in 2006), art. 13, sect. 3; Thailand, Criminal Procedure Code, art. 13 (as referred to in the second periodic report to the Committee on the Rights of the Child (CRC/C/83/Add.15), 2005, para. 515).
  40. For example, Australia (Western Australia), Evidence Act 1906, sect. 106E; United States, United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (i).
  41. Switzerland (*Loi fédérale sur l'aide aux victimes d'infractions*, 1991, art. 6 (3)).
  42. For example, Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486.1, subsect. 1.
  43. For example, Argentina, *Código Procesal Penal*, art. 80 (c); Austria, Criminal code of procedure, art. 162 (2); Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 107 (c); Peru, *Código Procesal Penal*, Law No. 957 (2004), art. 95, sect. 3; Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, RS 312.5, 1991, art. 7 (1).
  44. For example, United States, United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (i).
  45. For example, Bulgaria, Child Protection Act, 2004, art. 15 (5); Dominican Republic, *Código Procesal Penal*, Law No. 76-02, 2002, art. 202; Honduras, *Código Procesal Penal*, Decreto No. 9-99-E, 2000, art. 331; Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 215 and art. 352 (1); Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11, sect. XVI; Norway, Criminal Procedure Act, No. 25, 1981 (as amended on 30 June 2006), sect. 128; Oman, Code of Criminal Procedure, art. 14 (as referred to in Oman, second periodic report to the Committee on the Rights of the Child (CRC/C/OMN/2), paras. 29-30); Peru, *Código Procesal Penal*, Law No. 957 (2004), art. 378, sect. 3; El Salvador, *Código Procesal Penal*, Law No. 904, 1997 (as amended in 2006), art. 349.
  46. For example, France, *Code de procédure pénale* (as amended by *loi No. 98-468 du 17 juin 1998 relative à la prévention et à la répression des infractions sexuelles ainsi qu'à la protection des mineurs*), art. 706-53; South Africa, Department of Justice and Constitutional Development, "National Policy Guidelines for Victims of Sexual Offences; Department of Justice – National Guidelines for Prosecutors in Sexual Offence Cases" (Pretoria 1998), chap. 7, para. 1; United States (Delaware), Del. Code Ann. Iti.11, §5134 (1995).
  47. For example, Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 107 (c); Czech Republic, Criminal Procedure Rules, No. 141, 1961, sect. 102 (1); Dominican Republic, *Código Procesal Penal* (Ley No. 76-02 of 2002), art. 202; France, *Code de procédure*

pénale (as amended by *loi No. 98-468 du 17 juin 1998 relative à la prévention et à la repression des infractions sexuelles ainsi qu'à la protection des mineurs*), art. 706-53; Indonesia, *Report on Laws and Legal Procedures, Concerning the Commercial Sexual Exploitation of Children in Indonesia* (ECPAT International, Bangkok, 2004), p. 52; Kyrgyzstan, Criminal Procedure Code, No. 156, 1999, arts. 193 and 293; the former Yugoslav Republic of Macedonia, Code of Criminal Procedures, art. 223 (4); Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11, sect. XVI; Norway, Criminal Procedure Act, No. 25, 1981 (as amended on 30 June 2006), sect. 239; Peru, *Código Procesal Penal*, Law No. 957 (2004), art. 378, sect. 3; El Salvador, *Código Procesal Penal*, Law No. 904, 1997 (as amended in 2006), art. 349; Thailand, second periodic report to the Committee on the Rights of the Child (CRC/C/83/Add.15), 2005, paras. 148 and 511.

48. For example, Bulgaria, Child Protection Act, 2004, art. 15 (5).
49. For example, Australia (Queensland), Evidence Act 1977, sect. 21A (2) (d); Austria, Criminal code of procedure, art. 162 (2); France, *Code de procédure pénale* (as amended by *loi No. 98-468 du 17 juin 1998 relative à la prévention et à la repression des infractions sexuelles ainsi qu'à la protection des mineurs*), art. 706-53; United Kingdom, Home Office and others, *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children* (London, 2006), sect. 4.28; United Kingdom (Scotland), Vulnerable Witnesses (Scotland) Act 2004, sect. 271H, subsect. 1 (d).
50. United States (Arizona), Arizona Revised Statutes (Ariz.Rev.Stat.) §13-4403 (E).
51. For example, Australia (Queensland), Evidence Act 1977, sect. 9; Thailand, Civil and Commercial Procedure Code, sect. 95 (as referred to in the second periodic report to the Committee on the Rights of the Child, (CRC/C/83/Add.15), 2005 para. 105); United Kingdom, Youth Justice and Criminal Evidence Act 1999, sect. 53 (1); United States, United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (c), para. 2.
52. New Zealand, Evidence Act 1908, sect. 23H, para. (c).
53. New Zealand, *R. v. Accused* (CA 245/90) (1990) 6 CRNZ 354 at 359.
54. Ibid.
55. For example, Honduras, *Código Procesal Penal, Decreto No. 9-99-E*, 2000, art. 331, al. 3.
56. For example, Algeria, *Code de procédure pénale*, 1966, art. 228; Republic of the Congo, *Loi No. I-63 du 13 janvier 1963 portant code de procédure pénale*, arts. 91 and 382; Egypt, Code of Criminal Procedure, art. 283 (as referred to in the report of Egypt to the Human Rights Committee under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/EGY/2001/3), 2002, para. 570); France, *Code de procédure pénale*, art. 108; Haiti, *Code d'instruction criminelle* (as amended in 1985), art. 66; Indonesia, *Report on Laws and Legal Procedures Concerning the Commercial Sexual Exploitation of Children in Indonesia* (ECPAT International, Bangkok, 2004), p. 50; Oman, Code of Criminal Procedure, art. 196 (as referred to in Oman, second periodic report to the Committee on the Rights of the Child (CRC/C/OMN/2), para. 107); Thailand, Civil and Commercial Procedure Code, sect. 112 (as referred to in the second period report to the Committee on the Rights of the Child (CRC/C/83/Add.15), 2005 para. 105).
57. See Youth Justice and Criminal Evidence Act 1999 (c.23), sects. 55-57.
58. For example, United States, United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (c), para. 3.
59. New Zealand, *R. v Accused* (CA 245/90) (1990) 6 CRNZ 354.
60. For example, El Salvador, *Código Procesal Penal*, Law No. 904, 1997 (as amended in 2006), art. 13, sect. 13; United States (Colorado), Children's Code, Title 19, sect. 19-1-106(2).
61. United Kingdom, Crown Prosecution Service, *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children* (London, 2006), sect. 4.28.
62. United Kingdom, Crown Prosecution Service, *Children's Charter*, 2005, sect. 4.19.
63. For example, Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, RS 312.5, 1991, art. 6 (3).

64. <http://www.fijiwomen.com/>.
65. Sometimes victims of trafficking are threatened with prosecution for having entered a country illegally; no special assistance has been provided to them while they are in police custody, not even when the victims are of a very young age and no protection measures have been granted. The whole issue of traumatization through trafficking and repeated rape has not been evaluated to its full extent, if any.
66. United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (United Nations publication, Sales No. E.06.V.15), pp. 5-8.
67. United Nations publication, Sales No. E.06.V.15.
68. For example, Armenia, Criminal Procedure Code, 1999, art. 59, sect. 1, para. 11; Colombia, *Código de Procedimiento Penal*, Law No. 906, 2004, art. 11 (g); Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 75 (6); Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11, sect. XIX; Netherlands, "De Beaufort Guidelines", 1989, para. 6.1; New Zealand, Victims' Rights Act 2002, sect. 12, subsect. 1 (e); United Kingdom, Crown Prosecution Service, "Code for Crown Prosecutors" (London, 2004), sect. 5.13; United States (Alabama), Code of Alabama, 1975, Title 15, art. 3, sect. 15-23-63 (a), 15-23-72 (1) and 15-23-75 (1); United States (Alaska), Constitution of the State of Alaska, Rights of crime victims, art. I, sect. 24; United States (Connecticut), Connecticut Joint Resolution No. 13, para. 2; United States (Idaho), Constitution of the State of Idaho, Rights of crime victims, art. 1, sect. 22, para. (3); United States (Illinois), Constitution of the State of Illinois, Crime victim's rights, art. I, sect. 8.1 (Crime victim's rights), subsect. (a) (5); United States (Michigan), Constitution of the State of Michigan, art. I, sect. 24 (1) 9; United States (Oregon), Constitution of the State or Oregon, art. 1, sect. 42 (1) (b); United States (South Carolina), Constitution of the State of South Carolina, art. 1, sect. 24 (3); United States (Tennessee), Constitution of the State of Tennessee, Amendment for victims' rights, 1998, para. 5; United States (Texas), Constitution of the State of Texas, art. 1, sect. 30, Rights of crime victims, para. (b) (5); United States (Virginia), Constitution of Virginia, art. 1, sect. 8-A, para. 6; United States (Wisconsin), Constitution of the State of Wisconsin, art. 1, sect. 9m (9).
69. For example, Australia, Victims of Crime Act, A1994-83, 1994 (as amended on 13 April 2004), No. 83 of 1994, sect. 4 (I); Canada, Corrections and Conditional Release Act, S.C. 1992, c. 20, sect. 26, subsect. 1; United Kingdom (Scotland), Criminal Justice (Scotland) Bill, SP Bill 50, 2003, sect. 16; United Kingdom, Domestic Violence, Crime and Victims Act 2004 (chap. 28), chap. 2, sect. 35, subsects. (4)-(5); United States, United States Code collection, Title 42, chap. 112, sect. 10606, Victims' rights, 2004, subsect. (b), para. 7; United States (Alabama), Code of Alabama, 1975, Title 15, art. 3, sect. 15-23-75 (5), 15-23-78; United States (Alaska), Constitution of the State of Alaska, Rights of crime victims, art. I, sect. 24; United States (Arizona), Arizona Constitution, sect. 2.1 (A), para. 2; United States (Idaho), Constitution of the State of Idaho, Rights of crime victims, art. 1, sect. 22, para. (3); United States (Illinois), Constitution of the State of Illinois, Crime victim's rights, art. I, sect. 8.1 (Crime victim's rights), subsect. (a) (5); United States (Louisiana), Constitutional Amendment for Victims' Rights, art. I, sect. 25; United States (Michigan), Constitution of the State of Michigan, art. I, sect. 24 (1) 9; United States (Oregon), Constitution of the State or Oregon, art. 1, sect. 42 (1) (b); United States (South Carolina), Constitution of the State of South Carolina, art. 1, sect. 24 (2) and (10); United States (Tennessee), Constitution of the State of Tennessee, Amendment for victims' rights, 1998, para. 5; United States (Texas), Constitution of the State of Texas, art. 1, sect. 30, Rights of crime victims, para. (b) (5); United States (Virginia), Constitution of Virginia, art. 1, sect. 8-A, para. 6; United States (Wisconsin), Constitution of the State of Wisconsin, art. 1, sect. 9m (9).





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