



**UNODC**

United Nations Office on Drugs and Crime



Handbook for Professionals  
and Policymakers on  
**Justice in matters  
involving child victims  
and witnesses of crime**



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DES DROITS DES ENFANTS

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CRIMINAL JUSTICE HANDBOOK SERIES



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Handbook for Professionals and  
Policymakers on Justice Matters  
involving Child Victims and Witnesses of Crime

CRIMINAL JUSTICE HANDBOOK SERIES



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## Acknowledgements

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## Introduction

In criminal justice systems, victims of crime are often forgotten. A fair, effective and humane criminal justice system is one that respects the fundamental rights of suspects and offenders, as well as those of victims, and that is based on the principle that victims should be adequately recognized and treated with respect for their dignity. Those categories of victim, including children, who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, should benefit from measures tailored to their situation.

The United Nations Office on Drugs and Crime (UNODC) is the custodian of a growing body of United Nations standards and norms in crime prevention and criminal justice. These cover most areas of criminal justice reform and treatment of offenders and provide an evolving body of guidelines for Member States when reforming their criminal justice systems. In the area of treatment of children by the criminal justice system, they encompass the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>1</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),<sup>2</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,<sup>3</sup> and the Guidelines for Action on Children in the Criminal Justice System.<sup>4</sup>

In the area of protection of victims, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>5</sup> Economic and Social Council resolution 1989/57 on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>6</sup> did not provide detailed and specific guidance on the treatment of children as victims or witnesses of crime.

The Convention on the Rights of the Child,<sup>7</sup> which has achieved almost universal adherence, contains general provisions relating to child victims of abuse and

juvenile justice.<sup>8</sup> Relevant provisions for the protection of victims are also contained in various legally binding international instruments, such as the Rome Statute of the International Criminal Court,<sup>9</sup> the United Nations Convention against Transnational Organized Crime and the Protocols thereto,<sup>10</sup> as well as the United Nations Convention against Corruption.<sup>11</sup>

In its resolution 2005/20, the Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (hereinafter referred to as the “Guidelines”). The Guidelines filled an important gap in international standards in the area of the treatment of children as victims or witnesses of crime.

The Guidelines, which represent good practice based on the consensus of contemporary knowledge and relevant regional and international norms, standards and principles, were adopted with a view to providing a practical framework to achieve the following objectives:

- To assist in the review of national laws, procedures and practices so that they ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child by parties to that Convention.
- To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policies, programmes and practices that address key issues related to child victims and witnesses of crime.
- 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.
- To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

In order to assist countries in implementing, at the national level, the provisions contained in the Guidelines and in other relevant international instruments, UNODC, in cooperation with the United Nations Children Fund (UNICEF) and the International Bureau for Children’s Rights, has developed the present *Handbook for Professionals and Policymakers on the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.

The *Handbook* is based on international best practices in the treatment of child victims and witnesses of crime by the criminal justice system. It is intended to serve as guidance for policymakers and professionals dealing with child victims and witnesses of crime, such as judges, medical and support staff, law enforcement officials, prosecutors, social workers, staff of non-governmental organizations and teachers.

The *Handbook* was developed with the recognition that legal, social, economic and cultural realities differ from country to country. The measures proposed in

the *Handbook* are therefore not intended to be prescriptive, but to offer a map or compass to countries willing to address the specific needs of child victims and witnesses of crime.

In line with the structure and content of the Guidelines, the *Handbook* contains 12 chapters, dealing respectively with the best interests of the child, the right to be treated with dignity and compassion, the right to be protected from discrimination, the right to be informed, the right to be heard and to express views and concerns, the right to effective assistance, the right to privacy, the right to be protected from hardship during the justice process, the right to safety, the right to reparation, the right to special preventive measures, and implementation of the Guidelines.

With the exception of the last chapter on implementation, each chapter follows the same structure. In addition to providing an overview of how the right dealt with in the chapter is applied at the national and international levels, each chapter contains an “implementation checklist” that indicates the main measures that the various professionals involved need to undertake in order to implement the Guidelines.





## I. The best interests of the child

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles, paragraph 8

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(c) *Best interests of the child.* 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. This includes the right to protection and to a chance for harmonious development:

(i) *Protection.* Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;

(ii) *Harmonious development.* Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

The “best interests of the child” is one of the guiding principles of the Convention on the Rights of the Child. The concept has a very wide scope.<sup>12</sup> Article 3, paragraph 1, of the Convention has been identified as a guiding principle of relevance to the implementation of the whole Convention (see box). While recalling the responsibilities, rights and duties of parents or, where applicable,

members of the extended family or community as provided for by local custom (art. 5), the Convention provides States with a general obligation to ensure necessary protection and care for the child's well-being (art. 3, para. 2).

This means that any decision taken by adults for the child needs to be based on his or her best interests. Other interests might be at stake, but in all cases the child's best interests must be a primary consideration.

The "best interests of the child" is also one of the key principles underlying the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. It is affirmed, among other principles, in paragraph 8 (c) of the Guidelines, which states that "every child has the right to have his or her best interests given primary consideration". Paragraph 8 (c) further provides that the best interests of the child also include the right to protection and to a chance for harmonious development, yet these are only examples and should not be understood as limiting the scope of that principle. Paragraph 8 (c) also affirms that, while there is a need to safeguard the rights of accused and convicted offenders, the best interests of the child should be given primary consideration.

The principle of the best interests of the child is enshrined in the domestic legislation of numerous States and some have incorporated the principle in their constitution.

The way the concept of the best interests of the child is understood, interpreted and applied varies in the different jurisdictions across the world. Below is an overview of how the concept has been interpreted in different countries, illustrating the differences among States in the scope and methods of application of that principle.

## A. Domestic acknowledgement of the principle of the best interests of the child

Some States consider the notion of "best interests of the child" self-explanatory. The High Court of Australia, while conceding that the notion was imprecise, acknowledged its self-explanatory character (see sidebar). The Bolivarian Republic of Venezuela makes the best interests of the child a general principle of interpretation and application of the law.<sup>13</sup> Finland refers to the two elements of the best interests of the child defined in the Guidelines, namely protection and harmonious development, without further defining the notion.<sup>14</sup>

Other States prefer to define these elements or at least clarify their content. South Africa does so in its Children's Act, 2005 (see box). The Bolivarian Republic of Venezuela makes the best interests of the child a general principle of interpretation and application of the law. Finland refers to the two elements of the best interests of the child defined in the Guidelines, namely protection and harmonious development, without further defining the notion.

Other States prefer to define these elements or at least clarify their content. South Africa does so in its Children's Act, 2005 (see box).

**International law. Convention on the Rights of the Child, 1989, article 3, paragraph 1:**

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

**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:**

"It is true that the phrase 'best interests of the child' is imprecise, but no more so than the 'welfare of the child' and many other concepts with which courts must grapple."

**South Africa, Children's Act, 2005, Act No. 38 of 2005, Government Gazette, vol. 492, 19 June 2006, section 7, paragraph 1:**

"Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely—

- (a) the nature of the personal relationship between—
  - (i) the child and the parents, or any specific parent; and
  - (ii) the child and any other care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards—
  - (i) the child; and
  - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from—
  - (i) both or either of the parents; or
  - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child—
  - (i) to remain in the care of his or her parent, family and extended family; and
  - (ii) to maintain a connection with his or her family, extended family, culture or tradition;
- (g) the child's—
  - (i) age, maturity and stage of development;
  - (ii) gender;
  - (iii) background; and
  - (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
- (i) any disability that a child may have;

- (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by—
  - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
  - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (m) any family violence involving the child or a family member of the child; and
- (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.”

Notwithstanding the approach chosen by each State, the main concern is that the best interests of the child, whether considered self-explanatory or defined in legislation, be applicable before domestic courts and that judges give them primary consideration when making a decision directly or indirectly affecting a child, in particular with respect to child victims and witnesses of crime.

## B. Domestic implementation of the principle of the best interests of the child

The principle of the best interests of the child is not limited to criminal justice; it is often proclaimed in a generic way, embracing all aspects of the child’s life. Civil matters, including family law, are often considered the main field of application of this principle. Although it is important to apply the principle to those matters, it is crucial that domestic judges, as well as other criminal justice officials and every adult in a decision-making position, give it primary consideration when determining issues related to the involvement of child victims and witnesses in criminal proceedings.

In particular, the best interests of the child should be considered and balanced with other competing interests, such as the rights of the accused, as provided for in paragraph 8 (c) of the Guidelines. The same balance between competing interests, in which the best interests of the child should be given primary consideration, is struck in the domestic legislation of several States.<sup>15,16</sup> A good example of domestic legislation giving primary consideration to the best interests of the child in criminal matters can be found in the Bolivarian Republic of Venezuela (see sidebar).

Reinforcing the priority of the best interests of the child by giving them a primary consideration over other competing interests is an obligation under the Convention on the Rights of the Child.

**Bolivarian Republic of Venezuela, Child and Adolescent Protection Act, 1998, Official Gazette, No. 5.266, article 8, paragraph 2:**

“In order to serve the best interests of the child, in the event of a conflict between the rights and interests of a child or adolescent and other equally legitimate rights and interests, the former shall prevail.”

“Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim”

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), p.9.

Protecting the child’s best interests means not only protecting the child from secondary victimization (see sidebar) and hardship while involved in the justice process as victim or witness, but also enhancing the child’s capacity to contribute to that process. Giving the best interests of the child primary consideration is therefore consistent with safeguarding the interest of justice and in conformity with the Convention on the Rights of the Child.

Beyond legislation, jurisprudence can provide guidance on balancing child victims’ and witnesses’ interests against other interests, in particular the rights of the accused. Such a balancing exercise was, in particular, undertaken by the United States of America Supreme Court in *Maryland v. Craig* (see box).

**United States, Supreme Court, *Maryland v. Craig* (89-478), 497 U.S. 836 (1990):**

“We have of course recognized that a State’s interest in ‘the protection of minor victims of sex crimes from further trauma and embarrassment’ is a ‘compelling’ one. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982); see also *New York v. Ferber*, 458 U.S. 747, 756-757 (1982); *FCC v. Pacifica Foundation*, 438 U.S. 726, 749-750 (1978); *Ginsberg v. New York*, 390 U.S. 629, 640 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944). ‘[W]e have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.’ *Ferber*, supra, at 757. In *Globe Newspaper*, for example, we held that a State’s interest in the physical and psychological well-being of a minor victim was sufficiently weighty to justify depriving the press and public of their constitutional right to attend criminal trials, where the trial court makes a case-specific finding that closure of the trial is necessary to protect the welfare of the minor. See 457 U.S., at 608-609. This Term, in *Osborne v. Ohio*, 495 U.S. (1990), we upheld a state statute that proscribed the possession and viewing of child pornography, reaffirming that “[i]t is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is ‘compelling.’” *Id.*, at [slip op. at 4] (quoting *Ferber*, supra, at 756-757).

We likewise conclude today that a State’s interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court. That a significant majority of States has enacted statutes to protect child witnesses from the trauma of giving testimony in child abuse cases attests to the widespread belief in the importance of such a public policy.

In sum, we conclude that where necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child’s ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation. Because there is no dispute that the child witnesses in this case testified under oath, were subject to full cross-examination, and were able to be observed by the judge,

jury, and defendant as they testified, we conclude that, to the extent that a proper finding of necessity has been made, the admission of such testimony would be consonant with the Confrontation Clause.”

When considering the best interests of the child, particular attention also needs to be given to balancing the right to be protected with the right to express views and the right to participate. Children have the right to be protected from hardship and secondary victimization caused by their involvement in the justice process. However, they also have the right to express their views, to be heard in proceedings and thus, to participate in the justice process (Convention on the Rights of the Child, art. 12). Each case requires a careful assessment of the situation of the child in order to decide which intervention is in the best interests of the child. In some cases, the need for protection will lead to a decision not to involve a child in judicial proceedings. These exceptions are provided for in the domestic legislation of some States, such as the following:

(a) The law may authorize judges to order that a specific matter be disposed of separately and in the absence of the child where his or her best interests so require (see box);<sup>17,18,19</sup>

**South Africa, Children’s Act, 2005, Act No. 38 of 2005, *Government Gazette*, vol. 492, 19 June 2006, section 61, Participation of children:**

“(3) The court—

(a) may, at the outset or at any time during the proceedings, order that the matter, or any issue in the matter, be disposed of separately and in the absence of the child, if it is in the best interests of the child; and

(b) must record the reasons for any order in terms of paragraph (a).”

(b) Child victims or witnesses may be exempted from testifying where judges find that doing so may cause prejudice to their mental or emotional development;<sup>20</sup>

(c) In some cases, the best interests of the child victim may ultimately lead to abandoning the proceedings against his or her aggressor, as provided for in the United Kingdom of Great Britain and Northern Ireland (see box).

**United Kingdom, Crown Prosecution Service, *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance*, sections 4.4 and 4.5:**

“4.4 The best interests of the child are the paramount consideration in decisions about the provision of therapy before the criminal trial. In determining what is in the best interests of the child, due consideration should be given to

ascertaining the wishes and feelings of the child, in a manner which is appropriate to the child's age and understanding. When working with the child either for assessment or therapeutic purposes, account should be taken of the child's gender, race, culture, religion, language and (if appropriate) disability.

4.5 If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the child's wellbeing. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor."

### Implementation checklist 1: the best interests of the child

In order to implement the Guidelines, primary consideration should always be given to the best interests of the child when:

- (a) Judges decide on issues related to the involvement of child victims and witnesses in criminal proceedings and, in particular, when they deal with competing interests such as the rights of the defence;
- (b) Law enforcement officials handle cases involving child victims or witnesses. For instance, when interviewing a child, a law enforcement official should endeavour to find out which law enforcement official the child is most comfortable with and assign that official to follow the child throughout the proceedings;
- (c) Legislators or policymakers ensure that the principle of the "best interests of the child" is applicable before domestic courts, either as a direct application of international norms such as the Convention on the Rights of the Child, or by application of specific legislative provisions; and when legislators or policymakers assess issues related to the involvement of child victims or witnesses in criminal proceedings;
- (d) Prosecutors handle cases involving child victims or witnesses, including pursuing the case without the involvement of the child if that is in the best interests of the child;
- (e) Social workers, health professionals, staff of non-governmental organizations or other community members decide how to report and follow up on a case.





## II. The right to be treated with dignity and compassion

**Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles, paragraph 8, and chapter V, The right to be treated with dignity and compassion, paragraphs 10-14**

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(a) *Dignity.* Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected; ...

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child's private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

Child dignity is another overarching principle in the Guidelines. This principle is articulated in chapter V of the Guidelines, in conjunction with its necessary complement, compassion.

The victim's right to be treated with dignity and compassion lays the foundation for the sensitive treatment of all victims and witnesses, particularly children. This would imply that a child is given a meaningful role throughout the justice process, in accordance with his or her evolving capacities (see sidebar). It may in turn contribute to the child's willingness to assist in the investigation and judicial process, while diminishing the risk of their experiencing secondary victimization.

Many jurisdictions have integrated this right into their legislation and made it a general obligation. Although it is further developed in other articles of the Guidelines (see, in particular, chapters VI, VII and VIII of the present *Handbook* on the right to effective assistance, the right to privacy and the right to be protected from hardship during the justice process respectively), the right to be treated with dignity and compassion requires different practical measures to ensure its implementation by judicial authorities and other involved institutions, such as social services.

The concept of evolving capacities is central to the balance between recognizing children as active agents in their own lives, entitled to be listened to, respected and granted autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth. It provides the framework for ensuring an appropriate respect for children's agency, without exposing them prematurely to the full responsibilities normally associated with adulthood; and takes into consideration children's needs, age, gender, disability and level of maturity.

(Gerison Lansdown, *The Evolving Capacities of the Child*, Innocenti Insight Series No. 11 (Florence, UNICEF Innocenti Research Centre, 2005), pp. 3-4.)

## A. Domestic acknowledgement of the right to be treated with dignity and compassion

One way of ensuring the application of the right of child victims and witnesses of crime to be treated with dignity and compassion is to enshrine such a right in domestic legislation. State practices vary in terms of the ways and implications of doing so. The protection of child dignity is most often upheld by law, but sometimes enshrined in the constitution itself; however, although this has an important bearing on the whole domestic system of the State, it does not address the specific situation of child victims and witnesses and therefore needs to be complemented by other, more specific, provisions of law. In numerous States, such a right is recognized for victims, regardless of their age. Such recognition has two limitations: first, by not differentiating between adults and children, it fails to emphasize the particular needs and evolving capacities of the latter; second, the law remains silent with regard to witnesses. Other domestic regulations provide the same right for all those who happen to intervene in criminal or civil proceedings, thereby correcting the second flaw, but not the first. Another approach is to define child dignity in law, regardless of its involvement in the judicial process; although a welcome step, such a provision still misses the required specificity in order to ensure that the vulnerable position of child victims and witnesses of

crime is duly taken into account by law enforcement officials, judicial authorities and other concerned institutions. Respect for child dignity is also sometimes found in relation to children in conflict with the law, which, although it should be encouraged, is not directly relevant to the situation of child victims and witnesses of crime and should be complemented by other provisions.

Recognition of the dignity of child victims and witnesses should be promoted as the only way to ensure with a sufficient level of certainty that this principle is respected. The best approach is to provide specific regulations addressing the situation of child victims and witnesses of crime and ensuring their right to be treated with dignity and compassion.<sup>21</sup>

**Brazil, Law on Statute of the Child and Adolescent, 1990, articles 17 and 18:**

“The right to respect consists of the inviolability of the physical, psychic and moral integrity of the child and adolescent, encompassing the preservation of the image, identity, autonomy, values, ideas and beliefs, personal spaces and objects. ... It is the duty of all to watch over the dignity of the child and adolescent, preserving them from any inhuman, violent, terrorizing, vexing or coercive treatment.”

The domestic legislation of some States goes beyond the mere recognition of the right to be treated with dignity by providing a definition of the right to respect and dignity. Such a definition is especially relevant when it is designed for children, as in Brazil’s Law on Statute of the Child and Adolescent, 1990 (see sidebar).

## B. Domestic implementation of the right to be treated with dignity and compassion

The right to be treated with dignity implies that the child shall be treated as a human being with full rights and not as a passive recipient of adult care and protection (see chap. III on the right to be protected from discrimination). This may be achieved by treating the child according to his or her individual needs and evolving capacities. Children should be treated according to their age and level of maturity, for their understanding of the situation may differ from that of an adult, while still having the potential to be accurate. Children also have the right to be treated with compassion, which implies understanding and being sensitive to their feelings, needs, beliefs, communicative style and individual experiences. Anyone dealing with child victims and witnesses of crime should recognize that the child may not be in a position at a given time to fully understand and recount events that happened or to comprehend the full impact of the crime. Appropriate support should be provided to the child in this respect. Having an understanding of the evolving capacity of the child and its impact on the justice process may help to anticipate what services children require in their particular situation in order to preserve or gain integrity.

Justice professionals, be they law enforcement officials, prosecutors or judges, will require, beyond their professional training, special multidisciplinary training on how to deal with children in a child-friendly manner. Another practical measure that can enhance child victims’ right to be treated with dignity and compassion is to make sure that only specially trained law enforcement officials can interview children. This guarantee may be applied at every stage of the proceedings.

The recognition of the need for a multidisciplinary approach towards child victims and witnesses (see chap. VIII on the right to be protected from hardship during the justice process) in several countries led to the establishment of what are called “multidisciplinary child abuse teams” (see box).

### Multidisciplinary child abuse teams

(a) *Definition.* A multidisciplinary child abuse team (MCAT) is a professional unit composed of representatives drawn from health, social services, law enforcement and legal service agencies brought together to coordinate the assistance needed to handle cases of child abuse.

(b) *Form.* MCATs can take several different forms, such as those that emphasize joint investigations by a Child Protection Service caseworker and a law enforcement official, and those in which CPS caseworkers, law enforcement officials, prosecutors and other concerned professionals meet periodically to discuss child abuse cases or policy issues. The multidisciplinary approach can also include the creation of a Child Advocacy Centre to provide a central, child-friendly location for conducting interviews with child abuse victims.

(c) *Purpose.* The purpose of an MCAT is to monitor the child's safety and well-being throughout the case, thereby maintaining the reliability of the child's testimony. The goals of the MCAT are (i) to minimize the number of interviews to which the child is subjected, thereby reducing the risk of suggestibility in the interviewing process; (ii) to provide services needed by the child; and (iii) to monitor the child's safety and well-being.

(d) *Role.* Services provided by MCATs include (i) case service coordination and assistance; (ii) medical diagnoses and evaluation services; (iii) telephone consultations in emergencies; (iv) medical evaluations in relation to abuse or neglect; (v) psychological and psychiatric diagnoses and evaluations; (vi) expert medical, psychological and related professional testimony; (vii) training for judges, litigators, court officers and others.

(e) *Setting up.* One way to set up an MCAT is to convene a pre-investigative conference. The purpose of the pre-investigative conference is to discuss information obtained in the initial report or at the time of referral to determine whether a joint investigation is required. If so, the conference participants plan an investigative strategy and follow-up with prosecution services. The pre-investigative conference is also used to acquire and disseminate among members of the MCAT information about the victim and his or her case history and surrounding circumstances. This system of pre-investigative conferences is used, in particular, in the United States.

(f) *Modalities of joint investigation.* Modalities of joint investigations can vary. The following are some solutions implemented in different States:

- (i) In Belgium, law enforcement officials can require the attendance of social workers during an interview. Their role is to make the child comfortable and to help him or her tell his or her story.
- (ii) In Mauritius, a Child Development Unit has been created by the police. In the course of the investigation and assessment of the risk of maltreatment of the child, the Unit receives input from other professionals, such as psychologists, legal advisers and police officers and from non-professionals, such as parents, neighbours and relatives.

- (iii) In the United Kingdom (England), the London Metropolitan Police has established child protection teams staffed by police officers, who cooperate with social service agencies in investigating child abuse cases. These teams are available 24 hours a day, seven days a week and receive cases in a number of ways, including directly from social services, hospitals, schools and the police patrol force. They also have direct access, through their computer systems, to the “at-risk” register maintained by the Social Services Department.
- (iv) In the United States (Suffolk County, Massachusetts), the Prosecutor’s Office Victim Witness Programme takes the lead in coordinating the jurisdiction’s multi-disciplinary approach to child abuse cases. A forensic interviewer in the programme conducts an interview, while other members of the team watch through a two-way mirror.
- (v) Also in the United States, many native American tribes have multi-disciplinary teams, often called Child Protection Teams or Suspected Child Abuse and Neglect teams. The National Indian Justice Centre has developed an extensive *Child Sexual Abuse Protocol Development Guide* outlining each agency’s specific role and responsibility in the investigation and prosecution of child sexual abuse.

Portugal, Law for the protection of children and young people in danger, No. 147/99 (1999), article 87:

1. Medical examinations capable of offending the child or young person’s modesty shall only be ordered when judged to be absolutely necessary and in the child’s interests, and shall be carried out in the presence of at least one of his or her parents or of a person trusted by him or her, unless he or she does not so wish, or his or her interests do not so require.

2. The medical examinations referred to in the previous number shall be carried out by properly qualified medical staff, and the child or young person shall be guaranteed the necessary psychological support.

Medical examination, especially in the case of sexual abuse, can also be a highly stressful experience for children: such an examination should be ordered only where it is absolutely necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive. In such cases, a single examination should be made. A good practice in ensuring child-sensitive medical examinations can be found in Portugal (see sidebar). The law requires that the examination be ordered only where indispensable or in the interests of the child and be carried out by a duly qualified medical professional. Access to psychological support, including the presence of one of the child’s parents or a support person (see chap. VIII on the right to be protected from hardship during the justice process, sect. A), should be guaranteed. The consent of the child or, where the child is deemed unfit to understand his right to decline such an examination, the consent of his or her legal guardian is required in Germany.<sup>22</sup> The legislation should allow the child to choose the gender of the medical staff and to refuse any examinations after being informed of the consequences of his or her refusal. The parents’ involvement should be denied where the best interests of the child so require and when the child so decides.

Another concern is to ensure that all procedures involving child victims and witnesses, such as interviews and forensic examinations, are conducted in a child-friendly environment. It is crucial that the child does not feel responsible for the crime or the events surrounding it and is not made to feel accountable for what he or she has suffered. Indeed, experts find that such propensity towards self-blame is a usual reaction for any victim.<sup>23</sup> Child victims and witnesses need to be assured by those they identify as the representatives of authority that the criminal behaviours inflicted upon them or their loved ones are in violation of the law, that they are not, and should not, feel responsible for their commission and

that the law is designed to punish those who commit crimes. Professionals should reassure children about these issues every time they have the opportunity to do so. Proper training and awareness-raising of justice professionals and medical staff is again required, especially on communication and interview techniques.

Finally, particular social and political situations have a particular impact on children and should therefore be taken into account. In situations of armed conflict, for example, children are often the first victims of violence and human rights abuses. In many conflicts, children are forcibly associated with armed groups.<sup>24</sup> The particular impact of conflict-related violence on every aspect of a child's physical, emotional, intellectual, social and spiritual development calls for special efforts to be made to protect children involved in transitional and traditional justice mechanisms. The Sierra Leone transitional justice process is an interesting example of child-friendly mechanisms. For example, the Truth and Reconciliation Commission Act 2000 duly takes into account the impact that the armed conflict has had on children and thus requires, *inter alia*, tailored attention for them. A child-friendly version of the Truth and Reconciliation Report was prepared in 2004 by the Truth and Reconciliation Commission, the Children's Forum Network, UNICEF and the United Nations Mission in Sierra Leone.<sup>25</sup> Over 100 children were involved in drafting the document, using their compiled stories to create a report made by children for children. This unique process increased children's participation in the transitional justice process in Sierra Leone.

### Implementation checklist 2: the right to be treated with dignity and compassion

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and, in particular, the child's right to be treated with dignity and compassion, the following actors may consider:

- (a) Judges:
  - (i) Promoting a child-sensitive approach to child victims and witnesses by respecting their right to be treated with dignity, compassion and extra care;
  - (ii) Ordering a forensic examination of a child victim only when it is indispensable or in the interests of the child and avoiding, wherever possible, further examinations;
  - (iii) Ensuring the establishment of protective measures that also enhance the dignity of child witnesses.
- (b) Law enforcement officials:
  - (i) Promoting a child-sensitive approach towards child victims and witnesses by their right to be treated with dignity, compassion and extra care;

**Sierra Leone, Truth and Reconciliation Commission Act 2000, articles 6 (2) (b) and 7 (4):**

6 (2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission—...

(b) to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict; ...

7 (4) The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may not wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations.

- (ii) Promoting a multidisciplinary approach to child-related cases by creating specific law enforcement units specially trained for the purpose and/or participation in multidisciplinary child abuse teams;
  - (iii) Making sure that specifically trained law enforcement officials of both sexes are made available for the purpose of interviewing child victims.
- (c) Legislators/policymakers:
- (i) Providing specific regulations addressing the situation of child victims and witnesses of crime and ensuring their right to be treated with dignity and compassion during their involvement in the justice process;
  - (ii) Making training mandatory for all staff dealing with children in justice processes (support staff, medical staff and prosecutors, etc.) to ensure a child-friendly approach;
  - (iii) Encouraging the creation and use of multidisciplinary child abuse teams, including children's houses or similar;
  - (iv) Where applicable, promoting restorative justice mechanisms in which child victims, as well as offenders, are treated with dignity and respect.
- (d) Medical and support staff:
- (i) Promoting a multidisciplinary approach in child-related cases by joining specific units specially trained for that purpose and/or getting involved in multidisciplinary child abuse teams;
  - (ii) Ensuring that medical examinations are carried out by specifically trained personnel in a child-sensitive way and in a way respectful of the cultural and religious background of the child and with the necessary psychological support;
  - (iii) Before proceeding, obtaining consent from the child and the caregiver or the necessary authorities as prescribed by local consent guidelines;
  - (iv) Never forcing a child to undergo a medical examination;
  - (v) Always ensuring privacy, being sensitive to a child's feelings of embarrassment and vulnerability and stopping the examination if the child indicates discomfort or withdraws permission to continue;
  - (vi) Establishing, with the child, ground rules for the interview and examination, including giving explicit permission for the child to say he or she does not know and permission to correct the interviewer;

- (vii) Always preparing the child by explaining and showing equipment, and encouraging the child to ask questions about the examination;
  - (viii) If the child is old enough and it is deemed appropriate, asking whom he or she would like in the room for support during the examination.
- (e) Prosecutors:
- (i) Promoting a child-sensitive approach to child victims and witnesses by respecting their dignity and their right to be treated with compassion and extra care;
  - (ii) Encouraging the creation and use of multidisciplinary child abuse teams, including children's houses or similar centres;
  - (iii) Making sure that specifically trained prosecutors of both sexes are made available for the purpose of interviewing child victims;
- (f) Social workers, religious and cultural leaders, staff of non-governmental organizations and other community members:
- (i) Explaining the importance of treating child victims and witnesses, especially those involved in sexual crimes, with dignity and compassion, including with respect to their involvement in the justice proceedings, and, where applicable, medical examinations carried out on them;
  - (ii) Involving social and community workers (for example, those of community-based organizations) in the multidisciplinary support of children involved in justice processes;
  - (iii) Ensuring, for all staff working with children, training on the psychosocial aspects of the involvement of children as witnesses and victims.



### III. The right to be protected from discrimination

**Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles, paragraph 8 (b), and chapter VI, The right to be protected from discrimination, paragraphs 15-18**

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles: ...

*(b) Non-discrimination.* Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status; ...

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

The second principle enshrined in paragraph 8 (*b*) of the Guidelines, non-discrimination, has three aspects. First, the general protection from discrimination means that children shall be protected from all forms of discrimination. Second, a frequent corollary of non-discrimination is the principle that distinctions between children should only be based on their best interests and specific needs, so that extra efforts are made to ensure that all children have their rights equally met: this principle of positive distinction is set out in paragraphs 16 and 17 of the Guidelines, which provide that the justice process and support services should be sensitive to the child's specific situation and needs, including gender issues, and the nature of the crime. Finally, the third aspect of the protection from discrimination is contained in paragraph 18 of the Guidelines: a child's young age alone cannot be an adequate ground to disregard his or her testimony.

## A. General protection of children from all forms of discrimination

The prohibition of all forms of discrimination is affirmed in several regional and universal instruments of international law, in particular article 2 of the Convention on the Rights of the Child. Most of these instruments, however, do not relate specifically to the issue of child victims and witnesses of crime, but address broadly the protection of human rights, protection in situations of armed conflict, children's rights or the eradication of some specific forms of criminality. The list of prohibited discriminatory grounds, such as race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth, may vary from one instrument to the other, but most of these remain open to prohibiting discrimination by reason of any "other status".

The general principle of protection from discrimination is enshrined, though in different terms, in the constitution of most countries with respect to every human being or citizen irrespective of his or her age (see sidebar). A few constitutions specifically address the protection of children from discrimination.

The protection of children from discrimination, as a specific aspect of the general protection of citizens, is provided for, inter alia, by child protection laws.

### International practice

Article 21, paragraph 3 of the Rome Statute of the International Criminal Court provides that the application and interpretation of law "must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status."

Indonesia, Constitution, 1945,  
article 28B, (2)

Every child shall have the right to live,  
to grow and to develop, and shall  
have the right to protection from  
violence and discrimination.

Focusing on the specific condition of children in the prevention of discrimination is highly relevant because it gives an opportunity to address specifically child-related grounds of discrimination that are usually ignored in generic constitutional dispositions. Child protection laws include factors related to the child's parents, legal representatives or tutors;<sup>26</sup> the fact that the child was born in or out of wedlock;<sup>27</sup> whether the child lives in a two-parent or single-parent family;<sup>28</sup> is adopted<sup>29</sup> or with a guardian.<sup>30</sup> Such laws can also affirm the applicability to children of the general protection provided by the constitution.<sup>31,32</sup> Attention should also be drawn to the fact that the list of discriminatory grounds in paragraph 15 of the Guidelines is non-exhaustive, as shown by the final reference to "other status", and may include, in particular, unaccompanied children or children in conflict with the law. Such a broad approach is desirable, since it gives this provision of the Guidelines the necessary flexibility to be adapted to each specific situation by giving the judges the discretion to include in the protection from discrimination specific grounds that may have been forgotten by the legislator. However, enumerating prohibited grounds of discrimination is also more protective than the mere prohibition of discrimination on "any" ground. The perfect balance in that regard is struck by a non-exhaustive list of the most obvious prohibited grounds. The adoption of such legislation addressing the issue of discrimination in a child-oriented way should be encouraged.

United Kingdom, Code for Crown  
Prosecutors (London, 2004),  
section 2.2:

"Crown Prosecutors must be fair,  
independent and objective. They  
must not let any personal views about  
ethnic or national origin, disability,  
sex, religious beliefs, political views or  
the sexual orientation of the suspect,  
victim or witness influence their  
decisions. They must not be affected  
by improper or undue pressure from  
any source."

Beyond affirming the principle of protection from discrimination, positive steps should be taken to combat discriminative behaviours exhibited by justice professionals, in particular judges, law enforcement officers and prosecutors. The provision according to which professionals should be trained and educated about the rights of child victims and witnesses is illustrated in the United Kingdom Code for Crown Prosecutors (see sidebar). Efforts should be directed to widening the range of targeted professionals, by including judges, lawyers, law enforcement officials and social workers. This can be achieved through capacity-building in monitoring and supervision, and in addressing and preventing discrimination. The implementation of such programmes relies on action by policymakers, with the support of international and non-governmental organizations.

## B. Positive distinction

Prohibiting discrimination does not mean that child victims and witnesses should be treated on an equal basis with adults, irrespective of their specific situation and needs. On the contrary, international law often emphasizes the need to distinguish children from adults and ensure better protection for those children who are more vulnerable.

Distinction has to be made to respect diversity and to acknowledge the personal circumstances of victims and witnesses of crime, such as age, gender, health and the special nature of the crime. Children need special protection because of their relative immaturity and evolving capacities. In addition, some children, such as children without parental care or victims of certain crimes, are particularly vulnerable and need additional protection (see box).

### International practice.

The Rome Statute of the International Criminal Court incorporates the principle of positive distinction by requiring respect for the interests and personal circumstances of victims and witnesses, including their age, gender, health and the specific nature of the crime (arts. 36, para. 8 (b), 42, para. 9, 54, para. 1 (b), and 68, para. 1). Rule 17, sub-rule 3 of the Rules of Procedure and Evidence of the International Criminal Court provides that the Victims and Witnesses Unit created within the Registry of the Court shall “give due regard to the particular needs of children, elderly persons and persons with disabilities”.

Article 15, paragraph 4 of the Statute of the Special Court for Sierra Leone provides that “[g]iven the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice”.\*

\*The jurisprudence of the Special Court for Sierra Leone recognized the specific vulnerability of children as witnesses and emphasized “the need for special consideration to victims of sexual violence or children during their testimonials in court” (Prosecutor v. Sesay, Kallon, Gbao (“RUF Case”), SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under Rule 92 bis to Admit Transcripts of Testimony of TF1-023, TF1-104 and TF1-169 (TC), 9 November 2005. An equivalent finding had been made earlier by the International Criminal Tribunal for the Former Yugoslavia (Prosecutor v. Dusko Tadić (“Prijedor”), Case No. IT-94-1-T, Judgment (AC), 15 July 1999, para. 305.

Positive distinction underlies the whole body of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime: it is precisely because child victims and witnesses of crime are more vulnerable than adult victims and witnesses that they require specific protection. Paragraphs 16 and 17 of the Guidelines are related to child victims and witnesses who, in addition to vulnerabilities arising from their status as children, are made even more vulnerable by other factors.

A factor related to increased vulnerability is the state of health, illness or disability of the child. Health is specifically mentioned in paragraph 16 of the Guidelines. A second factor is related to the child’s or his or her family’s wealth. Socio-economic factors are included in the protection from discrimination and provided for in some domestic legislation. Ideally, positive distinction on socio-economic grounds should imply that every child victim or witness of a crime be guaranteed free access to the justice system when he or she could not otherwise afford to pay for that access. Related to this factor is the child’s immigration or refugee status, which may also call for specific protection. Other factors that increase vulnerability may result from the social environment. Paragraph 16 of the Guidelines enumerates these factors, mentioning the child’s age; wishes; understanding; gender; sexual orientation; ethnic, cultural, religious, linguistic and social background; and caste.

In some countries, other factors have been included in the domestic legislation, such as the child’s sexual orientation.<sup>33, 34</sup>

**International practice**

International courts find admissible the testimony of children who may, if they are not able to understand the nature of a solemn undertaking to tell the truth, be authorized to testify without making such an undertaking (for example, the Rules of Procedure and Evidence of the International Criminal Court, rule 66, sub-rule 2). Most relevantly, Rule 90 (C) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone states that “[a] child shall be permitted to testify if the Chamber is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, that he understands the duty to tell the truth, and is not subject to undue influence. However, he shall not be compelled to testify by solemn declaration.” As regards the assessment of the testimony of such child witnesses, however, the Special Court for Sierra Leone stresses that “the testimonies of this category of witnesses [child witnesses] should, either as a matter of law or practice, be examined with some degree of judicial vigilance in view of their particular susceptibilities” (Prosecutor v. Norman, Fofana, Kondewa (“CDF Case”), No. SCSL-04-14-PT (2004), Ruling on defence oral application to call OTP investigators who took down in writing statements of prosecution witness TF2-021 (TC), 7 December 2004, para. 23).

**United Kingdom, Youth Justice and Criminal Evidence Act, 1999, section 53, Competence of witnesses to give evidence:**

- (1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence. ...
- (3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to—
  - (a) understand questions put to him as a witness, and
  - (b) give answers to them which can be understood.

## C. Irrelevance of the child’s age as a barrier to participation in the justice process

The principle that every child, irrespective of his or her age, should be treated as just as much of a capable witness as an adult and that his or her testimony should not be deemed invalid or untrustworthy by reason of his or her age alone is the last aspect of the protection from discrimination afforded by paragraph 18 of the Guidelines.

Depending on each State’s legislation, the issue of children’s sufficient maturity to testify in Court is addressed as a question of admissibility or as a question of reliability of child evidence. Admissibility relates to whether a judge can accept the presentation of evidence and take it into account in the determination of the case; reliability relates to the weight the judge will attach to previously admitted evidence. In paragraph 18, the Guidelines clearly specify that age should not be a barrier to a child’s right to participate fully in the justice process. The same paragraph indicates that “[e]very child should be treated as a capable witness, subject to examination and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony”.

The implementation of the Guidelines implies that the child’s competency to testify be considered a criterion of the reliability of his or her testimony, which should always be found admissible. Such an evolution may require the amendment of some States’ legislation. Jurisprudence may also play a role: for example, in the Syrian Arab Republic, the Court of Cassation held that, despite a general bar on persons under the age of 18 testifying, a victim who is a minor can testify in cases of alleged rape or offence against morality.<sup>35</sup> But such progress made in jurisprudence often needs to be backed by legal dispositions.

A good practice in this respect is to presume the child’s competency to testify, irrespective of his or her age and to keep his or her age and maturity as factors to be taken into account in the assessment of his or her testimony. In the United Kingdom, the criteria set out for the competency of witnesses to give evidence are independent of the age of the witness; they relate to the person’s capacity to understand questions put to him or her as a witness and to give answers to them that can be understood (see sidebar).

Domestic systems vary in terms of the practical solutions adopted for assessing a child’s testimony. The following are examples of different systems:

- (a) *Exemption from testifying under oath.* Most countries require witnesses in criminal proceedings to testify under oath, which is a solemn undertaking to tell the truth. Common exceptions to this requirement are provided where the witness is a relative of the accused. The legislation of some States exempts children under a certain age from taking an oath.<sup>36</sup> Even if he or she is exempted from taking an oath, the trial judge may nevertheless remind the child that he or she has a duty to speak the truth.<sup>37</sup> The exemption from taking an oath protects the child from possible contempt proceedings in case of false testimony. As an alternative to the oath, a child’s evidence may be admitted after the child makes an informal promise to tell the truth, on the condition that the judge is convinced that the child is able to understand the solemnity of the promise.<sup>38</sup>

(b) *Corroboration of child evidence* (see sidebar). With regard to corroboration, the same rule as for adult evidence applies to child evidence. If the State's law permits conviction on uncorroborated adult evidence, then it should permit it as well on uncorroborated child evidence. Once this procedural framework is admitted, assessment of evidence becomes a case-by-case issue in which the age and maturity of the victim or witness shall be taken into account for the assessment of the probative value of his or her evidence.

(c) *Competency examination*. In the United States, upon a party's motion showing compelling reasons for doing so, the judge may order the child to be submitted to a competency examination. This examination is conducted out of sight of the jury by the court 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.

**Competency examination. United States Code collection, Title 18, chap. 223, section 3509, Child victims' and child witnesses' rights, subsection (c):**

- (2) *Presumption*. A child is presumed to be competent.
- (3) *Requirement of written motion*. A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.
- (4) *Requirement of compelling reasons*. A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.
- (5) *Persons permitted to be present*. The only persons who may be permitted to be present at a competency examination are—
  - (a) the judge;
  - (b) the attorney for the Government;
  - (c) the attorney for the defendant;
  - (d) a court reporter; and
  - (e) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.
- (6) *Not before jury*. A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.
- (7) *Direct examination of child*. Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the

#### International practice

Rule 96(i) of Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda provides that, in cases of sexual assault, "no corroboration of the victim's testimony shall be required". This rule has been interpreted by the jurisprudence as reflecting the general rule on evidence regardless of the nature of the crime: "It may be that a Trial Chamber would require the testimony of a witness to be corroborated, but according to the established practice of this Tribunal and of the ICTY that is clearly not a requirement." (International Criminal Tribunal for Rwanda, Prosecutor v. Musema, ICTR-96-13-A, Appeal Judgement (AC), 16 November 2001, para. 36; International Tribunal for the Former Yugoslavia, Prosecutor v. Aleksovski, IT-95-14/1-A, Appeal Judgement (AC), 24 March 2000, para. 62). The same extended principle applies before the International Criminal Court, rule 63 (4) of the Rules of Procedure and Evidence of which provides that: "Without prejudice to article 66, paragraph 3, a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence."

attorney for the Government and the attorney for the defendant including a party acting as an attorney *pro se*. The court may permit an attorney but not a party acting as an attorney *pro se* to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) *Appropriate questions.* The questions asked at the competency examination of a child 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.

(9) *Psychological and psychiatric examinations.* Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) Expert evidence about the ability of a witness to give evidence. Where an issue is raised by a party to the proceeding about the competency of a person, not specifically a child, called as a witness to give evidence, sworn or unsworn, and in every case where evidence of a child under 12 years of age is admitted, an expert may be appointed to testify about the person's or child's intellectual and emotional maturity, whether or not on oath.<sup>39,40</sup> Experts may be given different tasks: assessing the ability of the child to testify or assessing the reliability of his or her testimony. In sexual abuse cases, the expert may testify whether or not the child's behaviour or emotional state is consistent with the alleged abuse. He or she can be called to assess the child's intellectual attainment, mental capacity and emotional maturity, the general developmental level of children of the same age, the consistency of the child's behaviour with the behaviour of sexually abused children of the same age group, child sexual abuse symptomatology, the reliability of allegations of abuse, patterns of disclosure and recantation, the competency of children to testify in court and the suggestibility or memory of abusive incidents.

**Nepal, Evidence Act 1974,  
section 38:**

"Except any person who is deemed to be unable by the court to understand the question asked to him or to give a sensible reply thereof due to very young age, extremely old age or due to any physical or mental disease or the like reason, everybody ... may become a witness."

Whatever the practical solutions adopted in each domestic system, the best approach remains to regard the child as being exactly like any adult witness, whose competency and reliability needs to be verified according to relevant criteria that take the person's mental development, understanding and communication skills into consideration before a conviction is rendered on the basis of his or her testimony. This approach is seen, in particular, in Nepal's Evidence Act (see sidebar).

Where the expert is appointed by one party to the proceedings, there is a risk that another expert is appointed by the other party, thereby multiplying the number of interviews of the child. The appointment of court-appointed experts is recommended in order to avoid such a risk.

With respect to communication aids and other assistance mentioned in paragraph 18 of the guidelines, see chapter V on the right to express views and concerns.

### Implementation checklist 3: the right to be protected from discrimination

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In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child's right to be protected from discrimination, the following actors may consider:

(a) Judges:

- (i) Combating discriminative behaviours and, in particular, not letting personal views about ethnic or national origin, age, disability, sex, religious beliefs, political view, sexual orientation, age or any other consideration influence behaviour or decisions;
- (ii) Being sensitive to and following a proper training with respect to children who are most vulnerable because of their state of health, illness, disability, age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic or social background, or caste;
- (iii) Considering child evidence admissible in court on the same conditions as adult evidence and developing jurisprudential criteria on the assessment of its reliability.

(b) Law enforcement officials:

- (i) Combating discriminatory behaviours and, in particular, not letting personal views about ethnic or national origin, age, disability, sex, religious beliefs, political views, sexual orientation or any other consideration influence behaviour or decisions;
- (ii) Being sensitive to and obtaining proper training with respect to children who are most vulnerable because of their state of health, illness, disability, age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic or social background, or caste.

(c) Legislators/policymakers:

- (i) Providing specific regulations prohibiting discrimination against children: these regulations may in particular address a non-exhaustive list of child-related grounds of possible discrimination, such as factors related to the child's parents, legal representatives or tutors, the fact that they were born in or out of wedlock, whether the child lives in a two-parent or single-parent family, is adopted or under guardianship, or any other status;
- (ii) Developing anti-discrimination policies targeting law enforcement professionals;

- (iii) Establishing mechanisms to monitor and respond to cases of discrimination against child victims and witnesses;
  - (iv) Where necessary, amending legislation by creating a presumption of children's capacity to testify in court, whatever their age: children's capacity should become a criterion of reliability, and not admissibility, of their evidence;
  - (v) Providing necessary legislative arrangements in order to assist judges in assessing a child's evidence, such as expertise, competency examinations, and so forth.
- (d) Prosecutors:
- (i) Combating discriminative behaviours and, in particular, not letting personal views about ethnic or national origin, age, disability, sex, religious beliefs, political views, sexual orientation or any other consideration influence behaviour or decisions;
  - (ii) Being sensitive to and obtaining proper training with respect to children who are most vulnerable because of their state of health, illness, disability, age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic or social background, or caste.
- (e) Social workers and staff of non-governmental organizations:
- (i) Developing anti-discrimination programmes and assisting authorities in implementing anti-discrimination policies;
  - (ii) Monitoring the implementation of anti-discrimination policies.





## IV. The right to be informed

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter VII, The right to be informed

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia:

- (a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;
- (b) The 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;
- (c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- (d) The specific places and times of hearings and other relevant events;
- (e) The availability of protective measures;
- (f) The existing mechanisms for review of decisions affecting child victims and witnesses;
- (g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

- (a) 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;
- (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

There are two aspects of child victims' and witnesses' right to be informed as provided for in paragraphs 19 and 20 of the Guidelines. The first aspect is the most general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. This first aspect is closely linked and often constitutes a prerequisite of the right to receive proper assistance (see chap. VI on the right to effective assistance). The second aspect is more specific and relates to information on the particular case in which the child is involved: it implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decisions rendered, about the status of the offender, and so forth.

It is also important to stress that information needs to be provided to a child in language that he or she understands. An identifiable good practice in this regard is found in section 9 (2) of the Children, Young Persons and Their Families Act 1989 of New Zealand (see box).

**New Zealand, Children, Young Persons and Their Families Act 1989, article 9 (2), Interpreters**

(2) The requirements of this section are as follows:

- (a) That where—
  - (i) The first or preferred language of the child or young person is Maori or any other language other than English; or
  - (ii) The child or young person is unable, by reason of a physical disability, to understand English,—

the services of an interpreter are provided for the child or young person:

- (b) That where—
  - (i) The first or preferred language of any parent or guardian or other person having the care of the child or young person is Maori or any other language other than English; or

(ii) That parent or guardian or that other person is unable, by reason of a physical disability, to understand English,—  
the services of an interpreter are provided for that parent or guardian or that other person.

## A. The right to be informed of available assistance and of the role of the child victim and witness in the justice process

This first aspect of the right to be informed relates to information that the child should receive regardless of his or her involvement in the justice process and starts to apply immediately after the reporting of the offence. This aspect is also closely linked to the right to be protected from hardship during the justice process (see chap. VIII). It is important that children and their families are informed about risks related to their involvement in the justice process and the protective measures in place so that they are able to make an informed decision about their involvement or request that the necessary steps are taken for their protection, or both. In addition, they should be properly informed about the potential outcomes of the case and the consequences of their involvement so that their expectations are realistic. Where applicable, such communication should include information on the victims' right to restitution or compensation, or both.

The right of victims of crime to be informed about available assistance, procedures, the role the child may play in the judicial process and potential outcomes is usually recognized whether they are minors or not. Child-specific dispositions to that effect are in particular provided for in Canada (Québec),<sup>41</sup> Costa Rica<sup>42</sup> and the Philippines.<sup>43</sup>

An efficient way of making this information available is to disseminate brochures or leaflets in local languages in police stations, hospitals, waiting rooms, schools, public offices, on the Internet and through social services. In some countries, legal provisions have placed the burden on law enforcement officials of conveying information to victims upon first contact.<sup>44</sup> A good example of such legislation creating an obligation to convey comprehensive information in a timely manner can be found in the United States Code of Alabama with respect to law enforcement agencies (see box).

United States (Alabama), Code of Alabama 1975, Title 15, art. 3, sect. 15-23-62: Law enforcement agency required to provide victim with information concerning services, compensation benefits, and so forth: "Within 72 hours, unless the victim is unavailable or incapacitated as a result of the crime, after the initial contact between a victim of a reported crime and the law enforcement agency either responding to the report of the crime of the victim or another person, or having responsibility for investigating

the crime, the law enforcement agency shall provide to the victim in a manner and form designed and produced for the appropriate governmental agency or office, the following information:

- (1) The availability of emergency and crisis services.
- (2) The availability of victims' compensation benefits and the name, address, and telephone number of the Alabama Crime Victims Compensation Commission.
- (3) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: "If within 60 days you are not notified of an arrest in your case, you may call the telephone number of the law enforcement agency for the status of the case."
- (4) The procedural steps involved in a criminal prosecution.
- (5) The rights authorized by the Alabama Constitution on rights of victims, including a form to invoke these rights.
- (6) The existence and eligibility requirements of restitution and compensation pursuant to Section 15-18-65 et seq. and Section 15-23-1 et seq.
- (7) A recommended procedure if the victim is subjected to threats or intimidation.
- (8) The name and telephone number of the office of the prosecuting attorney to contact for further information.

The right of witnesses to be given this type of information should also not be disregarded. Child witnesses, especially of crimes such as domestic violence committed in their direct surroundings, may also suffer from the impact these crimes have on their daily life and relationships with caregivers. They require the same kind of social or psychological assistance as victims. Extending the provisions pertaining to assistance for victims to the situation of child witnesses is therefore recommended.

## B. The right to be informed about the status of the case

The right to be informed about the progress of a case begins once the child gets involved in the justice process and continues in the post-trial phase with respect to information on the enforcement of sentences. To be informed of the progress of the case, including at the stages of pretrial or investigation and post-trial or enforcement-of-sentence is a crucial prerequisite to the participation of child victims in the proceedings and to their right to express views and concerns (see sidebar).

Most domestic legislation provides for the rights of victims, including child victims, to be informed of the outcome of criminal proceedings against their offender.<sup>45,46</sup> It is nevertheless important to go beyond this minimal threshold

### International practice

The Rules of Procedure and Evidence of the International Criminal Court broadly recognize the right of victims to be informed at every stage of the proceedings before the Court. This right runs from the commencement of investigations on a situation or case (rule 50, paras. 1 and 5) to the post-trial phase (rule 224, para. 1). The right of victims to be informed about the proceedings before the Court has been further affirmed with respect to the scheduling of hearings and decisions, motions, submissions and other documents relevant to the case by the Pretrial Chamber (*Situation in the Democratic Republic of Congo*, No. ICC-01/04, Decision on the applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6 (PT), 17 January 2006, para. 76).

and, as numerous States do, provide victims with information throughout the judicial process, in particular with regard to:

- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;<sup>47, 48</sup>
- (b) The progress and results of the investigation;<sup>49, 50</sup>
- (c) The progress of the case;<sup>51, 52</sup>
- (d) The status of the accused, including his bail, temporary release, parole or pardon, escape, absconding from justice or death;<sup>53</sup>
- (e) The available evidence;<sup>54, 55</sup>
- (f) Their role in the proceedings;<sup>56</sup>
- (g) Their right to express their views and concerns in relation to the proceedings;<sup>57, 58</sup>
- (h) The scheduling of the case;<sup>59, 60</sup>
- (i) All decisions, including interlocutory decisions, or, at least, those decisions affecting their interests;<sup>61, 62</sup>
- (j) Plea agreement, if any;<sup>63, 64</sup>
- (k) Their right to challenge or appeal decisions and the modalities of such an appeal;<sup>65</sup>
- (l) The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death.<sup>66, 67</sup>

Sometimes States provide 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 “opt-in” options aim to protect the victims from feeling harassed by undesired information, it may result in the victim missing useful information that he or she would actually have wished to receive. The same respect for the desire of a victim not to know about the proceedings may be achieved by replacing the “opt-in” system with an “opt-out” option, according to which the victim would automatically receive all relevant information unless he or she expressly requested not to receive it. Researched-based evidence in some countries, such as the United Kingdom, has indicated that this latter “opt-out” option has proved useful.

Attention should also be paid to the fact that, in many low-resource countries, access to information about the case can be hampered for various reasons, such as an under-resourced justice system, the illiteracy of victims or a lack of transport facilities for or means of communication with victims. Practical solutions should include ensuring that social workers and key members of the community provide assistance to the victims and facilitate their participation in the justice process.

Some States go further by granting children the right to receive from the judges explanations concerning the proceedings and the decisions that are rendered.<sup>68, 69, 70</sup>

In countries where victims are represented by counsel (see chap. VI on the right to effective assistance), the victims should receive the most appropriate information on the proceedings from all their representatives. However, coupling the information conveyed by lawyers with other sources of information is more protective of the victim's right to be informed. The assistance of a support person most often constitutes the best practice in ensuring that full information is conveyed to the victim (see chap. VIII on the right to be protected from hardship during the justice process, sect. A).

Whatever the legal system, identifying the persons responsible for conveying the information to victims is a necessary step towards ensuring that the right of victims to be informed is respected. The sharing of responsibilities should be provided for in detail, as in United States legislation (see box)

**United States, United States Code collection, section 10607, Services to victims, subsections (a) and (c):**

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(c) Description of services

(1) A responsible official shall—

- (A) inform a victim of the place where the victim may receive emergency medical and social services;
- (B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;
- (C) inform a victim of public and private programs that are available to provide counselling, treatment, and other support to the victim; and
- (D) Assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

- (A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (B) the arrest of a suspected offender;
- (C) the filing of charges against a suspected offender;
- (D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606 (b)(4) of this title, is entitled to attend;

- (E) the release or detention status of an offender or suspected offender;
  - (F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and
  - (G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole. ...
- (5) After trial, a responsible official shall provide a victim the earliest possible notice of–
- (A) the scheduling of a parole hearing for the offender;
  - (B) the escape, work release, furlough, or any other form of release from custody of the offender; and
  - (C) the death of the offender, if the offender dies while in custody.
- (8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

Child witnesses also have a right to receive information on the proceedings, in particular on the scheduling of hearings and what is expected from them (see chap. VIII on the right to be protected from hardship during the justice process). It is therefore desirable to extend to the situation of child witnesses the provisions relating to information-sharing with victims.

#### Implementation checklist 4: the right to be informed

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and, in particular, the child's right to be informed, the following actors may consider:

- (a) Judges:
  - (i) Providing child victims and witnesses with information about the justice process, their involvement in it and ensuring that decisions are rendered in a way that they can understand;
  - (ii) Monitoring to ascertain whether child victims and witnesses have received proper information and assistance from persons in charge in a child-friendly manner and adapted to the age and evolving capacities of the child.
- (b) Law enforcement officials:
  - (i) Identifying and conveying relevant information on available assistance and access to justice to child victims and witnesses or

their legal representatives, starting from their first contact with law enforcement officials. This is especially important since it is usually law enforcement officials that have the first contact with the victim or witness;

(ii) Ensuring that information is provided systematically to child victims and witnesses in a child-friendly manner and adapted to their age and evolving capacities.

(c) Lawyers:

(i) In countries where victims are provided with the legal assistance of a lawyer, providing child victims and witnesses or their legal representatives with relevant information on available assistance, their access to justice, the progress of the case, the status of the offender, the scheduling of hearings, the decisions rendered, and so forth, in a child-friendly manner and adapted to the age and evolving capacities of the child.

(d) Legislators/policymakers:

(i) Ensuring that instruments such as support persons and their participation in conveying information to child victims and witnesses are provided for in legislation;

(ii) Preparing appropriate communication materials containing information relevant for child victims and witnesses and disseminating them through police stations, hospitals, waiting rooms, schools, social services, public offices and on the Internet;

(iii) Clearly identifying the information to be conveyed to child victims and witnesses about the assistance they may receive and their access to justice, and the persons to be responsible for conveying such information.

(e) Non-governmental organizations:

(i) Preparing appropriate communication materials containing information relevant for child victims and witnesses and disseminating them through police stations, hospitals, waiting rooms, schools, social services, public offices and on the Internet;

(ii) Where relevant, following up individual cases where children are involved as witnesses or victims and ensuring that the children have access to child-friendly information;

(iii) Integrating the promotion of access to justice into programme objectives and organizing the sensitization of children and their communities on issues related to various justice mechanisms.

(f) Prosecutors: providing child victims and witnesses or their legal representatives with relevant information on available assistance, their access to justice, the progress of the case, the status of the offender, the scheduling of hearings and the decisions rendered in a child-friendly manner and adapted to the age and evolving capacities of the child.

(g) Support persons: in countries where victims are provided with assistance by a support person, providing child victims and witnesses or their legal representatives with relevant information on available assistance, their access to justice, the progress of the case, the status of the offender, the scheduling of hearings, the decisions rendered, and so forth, in a child-friendly manner and adapted to the age and evolving capacities of the child.

(h) Teachers, community leaders, religious leaders, parents: informing children about the justice process, how they can access justice in case of need, the implications of a decision by the child to participate in the justice process and the relevant assistance he or she may receive should he or she be victimized.





## V. The right to be heard and to express views and concerns

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapters III, Principles, paragraph 8, and VIII, The right to be heard and to express views and concerns

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(d) *Right to participation.* Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

(a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;

(b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;

(c) Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

Participation is one of the guiding principles of the Convention on the Rights of the Child, as well as one of its basic challenges. The principle affirms that children are full-fledged persons who have the right to express their views in all matters affecting them and requires that those views be heard and given due weight in accordance with the age and maturity of the child. The Convention envisages a changed relationship between adults and children. Parents, teachers, caregivers and others interacting with children are seen no longer as mere providers, protectors or advocates, but also as negotiators and facilitators. Adults are therefore expected to create spaces and promote processes designed to enable and empower children to express views, to be consulted and to influence decisions.<sup>71</sup>

### International Practice

The International Criminal Court system also recognizes broadly the right of victims, irrespective of their minor or adult status, to participate at every stage of the proceedings and to express their views and concerns on every issue affecting their interests, such as the prosecutor's decision to open an investigation or not, the admissibility of a case, charges, States' cooperation, conditional release, joinder and severance of cases, guilty plea, sentencing, reparation, post-trial reductions of sentence, and so forth. This right is achieved through article 68, paragraph 3 of the Rome Statute of the International Criminal Court, which provides: "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence." The victims' interests requirement regarding their participation has been clarified by the jurisprudence, which makes the victims' guaranteed right of access to the Court a "positive obligation for the Court to enable them to exercise that right concretely and effectively [, namely] on the one hand, to present their views and concerns, and, on the other, to examine them." (International Criminal Court, *Situation in the Democratic Republic of Congo*, No. ICC-01/04, Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6 (PT), 17 January 2006, para.71-72).

The challenge associated with the realization of children's right to participation as victims and witnesses is particularly acute in the context of the criminal justice system. Victims and witnesses in general, and child victims and witnesses in

particular, have traditionally been considered by the criminal justice system as “tools” and often expendable ones, in the quest for a successful prosecution. Recent advances in the field of victimology, particularly since the adoption by the United Nations of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, have highlighted the importance of making room for the full participation of victims in a criminal justice process. The Convention on the Rights of the Child and the recognition of children as bearers of rights are reminders that this is also true for children.

The right to be heard goes well beyond giving evidence or being present at a trial as a party or witness. It includes the right to express, beyond a formal statement of the facts that occurred, views and concerns on the impact of the offence, on the way the proceedings are conducted and on the child’s needs and expectations. This right is closely linked with other issues in the Guidelines, in particular the right to be protected from discrimination, the right to be informed, the right to effective assistance and the right to be protected from hardship during the justice process (see box).

Participation has different levels: being informed, expressing an informed view, having that view taken into account and being the main or joint decision maker. As mentioned earlier, article 12 of the Convention on the Rights of the Child asserts the child’s right to be involved in all matters affecting him or her. In situations such as judicial proceedings, however, the outcome will be decided by adults, but informed and influenced by the views of the child. In addition, article 12 states that the views of the child are to be given due weight in accordance with his or her age and maturity. As emphasized in paragraph 21 (c) of the Guidelines, this does not create an obligation to satisfy the requirements and expectations expressed by the child. The right to be heard and to express views and concerns only implies that authorities in charge and other interlocutors give child victims and witnesses an opportunity to fully express themselves, that they listen to them and give due regard to their views.

This right also implies that when, for any good reason, the requirements and expectations of the child cannot be met, this is explained to him or her. A child victim or witness often has his or her own perception of the importance of certain aspects of the crime and of his or her testimony. It needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in court and why certain views are not taken into consideration. It is important to show respect for elements that a child finds important in his or her story, but which are not necessarily relevant as evidence.

### A. Domestic acknowledgement of the right of child victims to express views and concerns in criminal proceedings

As explained in chapter III on the right to be protected from discrimination, children should be presumed capable, irrespective of their age, to express their views and concerns and appear as witnesses before a court. However, this

presumption of a child's capacity to participate in court proceedings is not recognized everywhere and several States still maintain an age limit under which children cannot express their opinions or can do so only where authorized by judges. Sometimes, domestic jurisprudence tries to go further than the letter of the law and recognizes the right of the child to express himself or herself in proceedings before courts.<sup>72</sup> However, these precedents need to be supported by legislative changes in order to consolidate the right of the child to present and express his or her views in criminal proceedings.

Numerous States do recognize in generic terms the principle of a child's right to express his or her views and concerns before domestic courts.<sup>73,74,75,76,77</sup> However, the scope and concrete modalities of that right need to be specified, since such participation may sometimes be limited to civil proceedings or to the specific situation of children in conflict with the law. Although other States do guarantee the right to express views and concerns to all victims, irrespective of their age, if these provisions are not supplemented by child-specific dispositions there is a risk that the specific situation and needs of children will be disregarded. It is therefore recommended that regulations be adopted specifically providing the right of child victims and witnesses to express their views and concerns in criminal proceedings against their offenders.

A common constraint on the child's right to express views and concerns is the requirement that his or her parent give prior authorization. Such a constraint is not compatible with the recognition of children's full right to express their views and concerns and may, on the contrary, be highly prejudicial to them in situations where the parents have an interest in the offenders not being prosecuted. A full implementation of the Guidelines would therefore imply the removal of this condition from the legislation of the States concerned. However, it may still be advisable to allow and encourage the parents' presence where the best interests of the child do not dictate otherwise.

With respect to common law countries, the principle is that victims are not parties to criminal proceedings. This principle is sometimes balanced with a progressive recognition of victims' right to be heard, even if they are not recognized as claimants. Good examples of such developments of common law procedure can be found, for example, in Canada (see sidebar). Other common law countries, while maintaining the principle that victims cannot participate in criminal proceedings, provide an exception with respect to child victims and authorize them to express their views and concerns.<sup>78</sup> In Israel, the Rights of Victims of an Offence Law (2001) allows victims of specific crimes (such as sexual abuse and domestic violence), including children, an opportunity to be heard at several stages of proceedings, including, for example, before reaching a plea bargain.

Civil law countries regard victims, including child victims, as parties to the criminal proceedings, where they are entitled to appear as civil claimants and sometimes have the power of initiating public action against the offender. The scope of their participation is also wider.

**Canada, Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, principle 8:**

"The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures."

## B. Issues on which child victims and witnesses may express their views and concerns

The legislation of most States specifies the exact scope of the participation of victims and witnesses in the proceedings and the issues on which their views may be sought. Beyond their general involvement in trial proceedings, these regulations provide that the views and concerns of victims and witnesses, including children, shall be considered with regard to more specific aspects of the proceedings, such as (a) expressing their views on the initiation of the proceedings;<sup>79</sup> (b) expressing views before a stay of proceedings or any other measure favourable to the accused, such as bail, is decided;<sup>80, 81</sup> (c) expressing their views on the opportunity of using expedited proceedings, such as the entering of a guilty plea;<sup>82, 83</sup> (d) requesting and expressing their views on protecting measures for themselves or their family;<sup>84, 85</sup> (e) constituting themselves as private prosecutors or as a civil party;<sup>86, 87</sup> (f) filing motions;<sup>88</sup> (g) participating in the presentation of and/or themselves adducing evidence;<sup>89, 90</sup> (h) commenting on the investigation and evidence adduced by the parties;<sup>91, 92</sup> (i) questioning the accused, witnesses and experts;<sup>93, 94</sup> (j) requesting measures of reparation;<sup>95, 96, 97</sup> (k) expressing views on sentencing;<sup>98, 99</sup> (l) appealing decisions and judgments;<sup>100, 101</sup> (m) expressing views on the issue of the early release of sentenced persons.<sup>102, 103</sup>

Particular attention is paid to obtaining the views of child victims and, where applicable, their family, with respect to the impact of the offence. In the United States, these views are collected by means of a form called a “Victim Impact Statement”, which is annexed to the pre-sentence report prepared by the probation officer: for that purpose, the officer requests information from a multidisciplinary child abuse team and other appropriate sources, such as the child’s guardian ad litem, to determine the impact of the offence on the child victim and any other children who may have been affected.<sup>104</sup> These forms inform the court of how the crime has affected the victim’s life. They are to be read at the time of sentencing and may even be used for the purpose of determining restitution from the offender. It is intended to give a voice to victims of crime during criminal justice proceedings. Child versions of victim impact statements include pictures of various facial expressions so that a younger person may indicate how he or she feels. Younger children may also be invited to draw pictures of how they feel about the crime, themselves or the offender, whereas some adolescent victims may express their feelings and thoughts through journals, poetry or artwork.<sup>105</sup> Victim impact statements are also found in the legislation of other States.<sup>106</sup> In the United Kingdom, victim statements can only be referred to in the criminal justice process if a guilty plea has been entered or once a guilty verdict has been returned at trial, in order to respect the offender’s right to due process.<sup>107</sup> The formalization of victim impact statements can be considered a good practice insofar as it enables victims to convey their views to the court in a more appropriate, more comfortable and more flexible way than live testimony and ensures that the impact of victimization on their life is not minimized or ignored.

Finally, child victims and witnesses may also be consulted on their participation in the proceedings, after having received proper information on the procedure, on any potential risk in participating and on the assistance available. In Germany, children are allowed to refuse to testify; they must be informed of this right and can even decide not to testify while appearing before the court.<sup>108</sup>

### Implementation checklist 5: the right to be heard and to express views and concerns

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and, in particular, to ensure the child's right to be heard and to express views and concerns, the following actors may consider:

- (a) Judges: closely monitoring the way parties address child victims and witnesses and ensuring that the language used is appropriate;
- (b) Law enforcement officials:
  - (i) Being attentive to views, concerns and needs that may be expressed by child victims and witnesses during their contacts with law enforcement officials by answering positively each time it is possible and explaining, in language the child understands, why certain views, requests or expectations are or are not being taken into consideration;
  - (ii) Making training on communicating with children mandatory for law enforcement officials dealing with children.
- (c) Lawyers: in countries where child victims are assisted by a lawyer, ascertaining the views, concerns, expectations and needs of the child, conveying these to the relevant authorities and explaining to the child what can be reasonably expected from the child's involvement in the justice process;
- (d) Legislators/policymakers:
  - (i) Affirming in legislation the right of every child, irrespective of his or her age, to express, without the need for prior authorization, his or her views and concerns in proceedings in which he or she becomes involved as a victim or witness;
  - (ii) Developing the practice of compiling victim impact statements or equivalent procedures to ascertain the views of the child and his or her family;
  - (iii) Where applicable, promoting restorative justice processes in which child victims and their communities can express their views and be heard about the harm they suffered;
  - (iv) In countries where victims cannot participate in criminal and civil proceedings against their offenders, providing that the views and concerns of child victims are nevertheless recorded and taken into account;
  - (v) Making training on communication with children mandatory for all professional groups dealing with children in justice processes.

- (e) Non-governmental and community-based organizations:
  - (i) Promoting activities that give children opportunities to express their views on issues related to justice processes and that facilitate the participation of children in justice processes;
  - (ii) Informing children and their communities about their rights to express their views in justice processes.
- (f) Prosecutors:
  - (i) Developing the practice of acquiring and presenting victim impact statements or equivalent procedures to hear the views of children and their families;
  - (ii) Where applicable, promoting and participating in restorative justice processes in which child victims and their communities can express their views and can be heard about the harm they suffered.





## VI. The right to effective assistance

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles, paragraph 8, and chapter IX, The right to effective assistance, paragraphs 22-24

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles: ...

(c) *Best interests of the child.* ...

(ii) *Harmonious development.* Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development ... .

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40 to 42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable him or her to participate effectively at all stages of the justice process.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

- (a) Child victims and witness specialists to address the child's special needs;
- (b) Support persons, including specialists and appropriate family members to accompany the child during testimony;
- (c) Where appropriate, to appoint guardians to protect the child's legal interests.

Victimization has harmful effects on adults. In the case of children, it can have far-reaching effects on their psychological development, on relationships with caregivers, siblings and peers, on their ability to learn, and so forth. Experiencing or witnessing domestic violence or sexual abuse may have long-term consequences on the development of the child. Abuse can destroy children's childhood and often has an incapacitating effect on their life as adults. Consequences such as trauma, destroyed relationships and lack of trust can cause serious suffering. Often children who have suffered from serious abuse are more vulnerable to becoming victims of abuse and exploitation at a later stage of their life.

In order to prevent or mitigate these consequences as much as possible and favour the harmonious development of the child, proper assistance to child victims and witnesses is required as early as possible after the offence. In the case of a child who is distressed or traumatized, every step should be taken to enable the child to enjoy healthy development. Depending on the child's specific needs, this assistance may consist of financial, legal, counselling, health, social or educational services, physical and psychological recovery services or other services necessary for the child's rehabilitation and reintegration. Assistance can take different forms depending on the context and culture in which the child lives. Whereas in developed societies the usual way to offer assistance is through public services, in many developing contexts, family, community and other forms of social support may be more culturally accepted and appropriate. In many countries, specialized services for victims, including child victims, may simply not exist. In such settings, psychosocial support can be offered by community-based and non-governmental organizations and by teachers or other community members who play a supportive and educational role with children. This support should continue throughout the justice process in order to mitigate the secondary victimization of the child and reactivation of the distressing experience. It should be maintained after the conclusion of the proceedings and as long as the child may require it.

The implementation of the right of child victims and witnesses to assistance implies both measures of general assistance aimed at favouring the harmonious development of the child and measures of specific assistance in relation to his or her involvement in the justice process.

## A. Assistance for the harmonious development of the child

Domestic legislation often provides, at least in generic terms, that victims of crimes, irrespective of their age or of the forms of criminality they endured, should receive assistance in the form of medical, psychological or social assistance.<sup>109,110</sup> Such assistance remains, however, subject to the availability of appropriate and, in particular, financial, means.<sup>111</sup> These victim-related dispositions can be achieved by generic child protection regulations providing assistance regardless of whether the child was a victim or witness. However, providing proper and effective assistance to child victims and witnesses requires more detailed regulations and the establishment of concrete schemes of assistance.

There are numerous examples of domestic legislation that provides for victims, including child victims of crime, to receive necessary assistance, which would usually include medical, psychological and social aspects. Financial assistance is rarely provided directly, in particular for victims of armed conflict or internal disturbance.<sup>112, 113</sup> A good example of legislation providing assistance to victims and designating prosecution services as the authorities in charge of coordinating assistance can be found in Mexico (see box). In the legislation of some States, the assistance is not always limited to victims and can also benefit witnesses.<sup>114, 115</sup>

### Mexico, Law on Care and Support for Victims of Crime in the Federal District, 2003:

Article 3 – The Office of the Attorney-General shall be the body responsible for ensuring, through the Office of the Deputy Attorney-General, that any victim or injured party in a case to be heard by a court of the Federal District shall receive legal advice, medical and psychological care and social counselling, as required.

Article 11 – Any victim or injured party shall have the right, at any stage of the proceedings, as appropriate: ...

V. To receive legal advice free of charge from the Office of the Deputy Attorney-General concerning his or her charge or complaint and, if applicable, to be assisted by an interpreter and/or translator if he or she belongs to an ethnic or indigenous group, does not speak Spanish or does not understand that language well, or suffers from a disability that impairs his or her ability to hear or speak; ...

X. To receive urgent medical or psychological care if required; ...

XII. To receive psychological assistance where necessary and, in the case of offences against normal psychosexual development and freedom, to receive such assistance from a person of the same sex; ...

XVI. To be accompanied during proceedings by a parent, teacher or guardian or, in the absence thereof, a court-appointed psychologist, if the victim is a minor or incapacitated and is called to appear before the Prosecution Service;

Various schemes have been established for the purpose of providing this assistance. Numerous States place the burden of providing victims with proper assistance on the prosecution service.<sup>116, 117, 118</sup>

In order to offer assistance as early as possible, some States have created specific child protection units in police stations, to which child victims can be referred immediately upon the discovery of the crime.<sup>119, 120</sup> Victim support services have also been created in several States to centralize assistance to victims and coordinate the activities of the different actors involved in the process. These services can be governmental or non-governmental. For instance, Algeria has opened 67 regional counselling centres in areas affected by terrorism in order to provide child victims of terrorist violence with medical care, psychological counselling and social reintegration; three national centres have also been opened to take care of child victims who have lost their parents. In Ethiopia, child protection units have been created in police stations in Addis Ababa, which serve as focal points where assistance and counselling are delivered by the non-governmental organization African Network for the Prevention and Protection against Child Abuse and Neglect. Making law enforcement officials responsible for referring victims, with their consent, to existing victim support services may be an efficient way to ensure that victims are taken care of at the earliest stage. In relation to victim support services, a good practice is to make law enforcement officials responsible for forwarding the identity and contact details of victims, with their consent, to these services. This system has been implemented successfully in many countries, including Switzerland (see sidebar).

Innovative assistance schemes have been set up in certain countries: for example, in Latvia, special institutions or sections in general medical institutions have been established for the medical treatment and rehabilitation of child victims of violence and the treatment of sexually transmitted diseases. Compulsory psychological treatment expenditures are covered by the State and collected from the offender by subrogation procedures (see box).

**Latvia, Protection of the Rights of the Child Law, 2003, section 52—Child Victims of Violence or Other Illegal Acts**

- (1) Special institutions or sections in general medical institutions shall be established and special resources allocated in the State budget for the medical treatment and rehabilitation of a child who has suffered as a result of violence. Expenditures for the medical treatment and rehabilitation of the child shall be covered by the State and shall be collected from the persons at fault by subrogation procedures.
- (2) Special medical treatment shall be provided for a child who has become ill with a sexually transmitted disease. The adults at fault for the illness of the child shall be held liable as prescribed by law and the costs of the medical treatment shall be collected from them.
- (3) It is prohibited for a child who has been a victim of violence (illegal act):
  - 1) to be left alone, except in cases when the child himself or herself so wishes and this choice is considered appropriate by a psychologist who has undergone special preparation for work with children who have suffered from violence;

**Switzerland, Federal Law on Assistance to Victims of Offences, No. RS 312.5, 1991, article 6, "Responsibilities of police and inquiry agencies":**

- (1) The police shall inform the victim, during his or her first hearing, of the existence of consultation centres;
- (2) The police shall give the name and address of the victim to a consultation centre, having first informed the victim that he or she has the right to refuse consent to such disclosure.

- 2) to be left without psychological or other form of care;
- 3) to be confronted by the possible perpetrator of the violence (illegal act) while the child is not sufficiently psychologically prepared for such a confrontation; or
- 4) to be subjected to the use of any compulsory measures in order to obtain information or for any other purpose.

(4) Extra-familial care shall be provided without delay for a child who has suffered from violence (illegal act) in his or her family or for whom a real threat of violence exists, if it is not possible to isolate the persons at fault from the child.

In the United Kingdom, needs assessments of all victims and witnesses are carried out by Witness Care Units: the assessment documents identify the assistance required by victims or witnesses and put them in contact with organizations providing it (Crown Prosecution Service, Children's Charter, 2005, sect. 3.14). Elaborate practices have also been developed by the Crown Prosecution Service in relation to medical and psychological assistance to children.<sup>121</sup>

## B. Assistance during the participation of child victims and witnesses in the justice process

Adapted measures taking into account the evolving capacity of a child, such as the appointment of a support person, are more widely discussed in chapter VIII on the right to be protected from hardship during the justice process. However, child victims' and witnesses' right to effective assistance goes further than the presence of such support persons. It may imply the appointment of a legal guardian, as mentioned in paragraph 25 (c) of the Guidelines, in replacement of the usual guardians (parents) of the child when his or her best interests require it.<sup>122, 123</sup> The precise definition, function and manner of appointment of a legal guardian vary from jurisdiction to jurisdiction. However, in essence, the term refers to the designation of an adult or organization responsible for ensuring that a child's best interests are fully represented.<sup>124</sup>

The draft United Nations guidelines for the appropriate use and conditions of alternative care for children\* state that:

States should ensure that a mechanism is in place for designating an individual vested with both the legal right and responsibility to make day-to-day decisions in the best interests of the child, in consultation with him or her, in situations where the child's parents are absent or are incapable of making such decisions.

...

The role and specific responsibilities of the designated person should include:

- (a) Ensuring that the child has appropriate care, accommodation, health care provision, psychosocial support, education and language support.
- (b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his or her rights.
- (c) Contributing to the identification of a stable solution in the child's best interest.
- (d) Providing a link between the child and various organizations that may provide services to the child.
- (e) Assisting the child in family tracing.
- (f) Ensuring that if repatriation or family reunification is carried out, it is done in the best interests of the child, and
- (g) Helping the child to keep in touch with his or her family, when appropriate.

\* Draft United Nations guidelines for the appropriate use and conditions of alternative care for children ([www.crin.org/docs/Draft\\_UN\\_guidelines.pdf](http://www.crin.org/docs/Draft_UN_guidelines.pdf)).

Assistance for child victims and witnesses during the proceedings should include access to legal assistance. As victims are not parties to the proceedings in common law countries, they are usually not provided with legal assistance. That is why, with some noticeable exceptions, most countries providing a right to legal assistance for victims belong to the civil law world. Most civil law countries recognize the right of child victims to legal assistance.<sup>125, 126, 127</sup> The assistance is free of charge for beneficiaries who cannot afford to pay their counsel.<sup>128, 129, 130</sup> Creative solutions are sometimes found in order to reduce the cost to the State of legal assistance: in Colombia, for example, victims who cannot afford counsel can be assisted by other legal professionals or law students and, in the case of multiple victims, the number of lawyers representing them may be limited to two.

A few common law countries recognize as an exception the right of child victims to legal assistance in criminal proceedings. In such circumstances, the cost is supported by the State.<sup>131</sup> Extending this exception with respect to child victims to all common law countries would contribute substantially to their protection while involved in the justice process.

Child victims or witnesses who require legal assistance can be assisted by an interpreter provided free of charge during their participation in the proceedings.<sup>132,133</sup> Other assistance measures should also be planned for in order to enable the participation in the justice process of children, taking into account their age, level of maturity and individual special needs, which may include, but are not limited to, disability, ethnicity, poverty or the risk of re-victimization, or a combination of these.

Colombia, Code of Criminal Procedure, Law No. 906, 2004, article 137, "Participation of victims in criminal proceedings": "In guarantee of the rights to truth, justice and reparation, victims of an offence shall have the right to participate in all stages of criminal proceedings, in accordance with the following rules: ...

3. It is not compulsory for victims, in order to exercise their rights, to be represented by a lawyer; however, during the pretrial hearing and from that point onwards, in order to take part in proceedings, they must be accompanied by a legal practitioner or trainee legal adviser from a duly approved faculty of law.

Original text of Law No. 906 of 2004:

4. <NON-ENFORCEABLE PARAGRAPH> Where there is more than one victim, the prosecutor, during the investigation, shall request the victims to designate up to two lawyers as their representatives. If no agreement is reached, the prosecutor shall designate such person as he or she deems most appropriate and competent.

5. If the victim does not have sufficient means to hire a lawyer in order to take part in proceedings, subject to a request and brief verification of need, the Office of the Attorney-General of Colombia shall designate a lawyer ex officio. ...

Finally, criminal procedure in some civil law countries provides that associations for the defence of victims may assist and represent victims in the proceedings under certain conditions: this system is provided with respect to certain offences in Cambodia (see box), France and Venezuela (Bolivarian Republic of) and may constitute an efficient tool for assisting victims in their access to justice.

**Cambodia, Draft Code of Criminal Procedure, 2006, article L.131-5, Associations for Eliminating All Acts of Sexual Violence, Domestic Violence or Violence against Children:**

Any association that has made a valid declaration within three years before the date of occurrence of an offence that a subject of its governing statutes is a struggle against sexual violence or domestic violence or violence against children has a recognized right to be a plaintiff in a civil action for the following offences:

- Intentional threat against life;
- Harassment against the person; or
- Sexual harassment.

### Implementation checklist 6: the right to effective assistance

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and, in particular, to ensure the child's right to effective assistance, the following actors may consider:

(a) Judges:

- (i) Where necessary, ordering the appointment of a guardian for the child or the enforcement of other assistance measures;
- (ii) In countries where such an institution exists, designating a support person in case this has not been requested by law enforcement officials (see chap. VIII for more information on the role and functions of the support person).

(b) Law enforcement officials:

- (i) Keeping information on assistance for child victims and witnesses of crime available in police stations;
- (ii) Upon first contact with law enforcement officials, immediately referring child victims and witnesses, if they consent, to existing support services;
- (iii) In countries where such an institution exists, requesting the designation of a support person (see chap. VIII for more information on the role and functions of the support person).

(c) Lawyers: in countries where victims can be assisted by lawyers, informing victims of the availability of assistance services and liaising with those services and the authorities in order to ensure that victims of crime obtain the best access to assistance;

(d) Legislators/policymakers:

- (i) Enshrining in legislation the right of all child victims and witnesses to receive proper assistance, including, where necessary, medical, psychological, social or other assistance, at the earliest stage after the discovery of the offence and defining the modalities for its delivery; for instance, the police or prosecution services may be in charge of coordinating this assistance, which may be delivered by governmental or non-governmental services;
- (ii) Providing or promoting services for the assistance and support of child victims;

- (iii) Promoting the establishment of non-governmental, community-based services that respect confidentiality and do not induce stigmatization of victims who consult the services;
  - (iv) Providing legal assistance, in the form of the appointment and assistance of counsel to child victims involved in the justice process (where necessary, counsel should be appointed by the court and provide services for the victim free of charge);
  - (v) Developing the action of associations of defence of victims, by, for instance, allowing them to represent child victims in the justice process;
  - (vi) Developing initiatives that strengthen the supportive role of caregiver of child victims and children involved in justice processes by, for example, promoting access to information about the importance of support of family and community.
- (e) Non-governmental organizations and community-based organizations:
- (i) Assisting States in providing appropriate assistance to child victims and witnesses by developing, for example, child protection centres with close connections to the police and prosecution services;
  - (ii) Promoting community-based protection and support mechanisms for children that can serve children involved in justice processes;
  - (iii) Developing activities that strengthen the supportive roles of caretakers of child victims.
- (f) Prosecutors:
- (i) Referring child victims and witnesses to existing support services, in case such referral has not be made by law enforcement officials;
  - (ii) Monitoring child victims' and witnesses' access to existing support services and taking, where necessary, measures to ensure that they receive appropriate assistance;
  - (iii) Where necessary, requesting the appointment of a guardian for the child or the enforcement of other assistance measures.





## VII. The right to privacy

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter X, The right to privacy

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.
27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.
28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

The release of information about a child victim or witness, in particular in the media, may have dramatic effects for the child. First, it may endanger the child's safety (see chap. IX on the right to safety). It may also cause the child intense shame and humiliation, discourage him or her from telling what happened and cause him or her severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. Article 8 (e) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography provides that appropriate measures should be implemented to protect the privacy and identity of child victims and to avoid the inappropriate dissemination of information.

### International practice

The Rome Statute of the International Criminal Court specifically addresses in its article 57, paragraph 3 (c) and article 68, paragraph 1 the concern of ensuring the privacy of witnesses and victims. The jurisprudence of the International Criminal Court identifies the right to privacy of victims and witnesses as a competing interest that shall be put in balance with the right of the accused to be tried in public.\*

\* Situation in the Democratic Republic of Congo, No. ICC-01/04, The Prosecutor v. Thomas Lubanga Dyilo, Case No. 01/04-01/06, Decision Establishing General Principles Governing Applications to Restrict Disclosure Pursuant to Rule 81 (2) and (4) of the Statute (PT), 19 May 2006, para. 32.

It is generally recognized that all victims have a right to privacy; child victims, in particular, have that right, which is sometimes enshrined in the constitution of States.<sup>134,135</sup> The Guidelines provide two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.

## A. Restricted disclosure

The first measure for protecting the privacy of child victims and witnesses contemplated in paragraph 27 of the Guidelines is restricting the disclosure of information that may lead to the identification of a child who is a victim or witness in the justice process. In several States, judicial authorities are responsible for guaranteeing the confidentiality of information regarding the identity and whereabouts of the child.<sup>136, 137, 138</sup> This rule is applicable to child victims and witnesses, as well as to children in conflict with the law. In fact, confidentiality should be provided for all victims irrespective of their age, or in relation to certain forms of criminality, such as sexual crimes. Restriction on disclosure of information protects the parties involved irrespective of the medium of potential disclosure, whether oral, written or audiovisual.

An example of domestic regulation guaranteeing the confidentiality of information relating to child victims and witnesses can be found in United States federal legislation on child victims' and witnesses' rights (see box).

United States, United States Code collection, Title 18, chapter 223, section 3509, Child victims' and witnesses' rights, subsection (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 persons 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.
- (2) Filing under Seal.— All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court—
- (A) the complete paper to be kept under seal; and
  - (B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record....
- (4) Disclosure of information.— This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

The prevention of the dissemination of child-related information to the public is further guaranteed in numerous States by provisions that prohibit the publication or broadcasting of such information. This includes the dissemination of pictures or photographs of the child by the media, to the extent that, even where the information leaks out despite the restriction regarding disclosure, the media is prohibited from making use of it. Such prohibition is usually automatic.<sup>139, 40, 141, 142, 143</sup> It may also result from a specific order of the court to that effect,<sup>144</sup> which makes it mandatory upon application for a judge to order a publication ban prohibiting the publication of any information that could identify a victim or witness under the age of 18 in cases involving listed sexual and violent offences. The first option, the automatic ban, is more protective. Several States make the broadcasting of such protected information a criminal offence.<sup>145, 146</sup>

## B. Restricted attendance

Restricting the attendance at courtroom proceedings involving a child victim or witness is the second measure for protecting privacy, set out in paragraph 28 of the Guidelines. Restrictions on attendance are usually ordered by the court and may vary in their range. Sometimes, the court may order the withdrawal of certain categories of person only. However, full exclusion of the public by the court leading to proceedings to be held in closed sessions (that is, in camera proceedings) in order to safeguard the privacy of child victims or witnesses is provided for in the domestic legislation of most States.<sup>147, 148, 149</sup> Such an order can be issued by the Court *proprio motu* or on specific request by a party. General rules providing the ordering of in camera proceedings for the appearance of child victims or witnesses are sometimes complemented by dispositions making closed sessions automatic for proceedings in relation to certain forms of crime, such as sexual offences or trafficking in persons.<sup>150, 151</sup>

### Implementation checklist 7: the right to privacy

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child's right to privacy, the following actors may consider:

- (a) Judges: respecting the confidentiality of information on child victims and witnesses of crime; where necessary to safeguard the privacy of child victims or witnesses, ordering the full exclusion of the public and in camera proceedings;
- (b) Law enforcement officials: respecting the confidentiality of information on child victims and witnesses of crime; in particular, refraining from disclosing such information to anyone without prior authorization;
- (c) Lawyers: respecting the confidentiality of information on child victims and witnesses of crime; in particular, refraining from disclosing such information to anyone without prior authorization; requesting measures for the protection of the identity of the child victim or witness, in case these measures do not automatically apply;
- (d) Legislators/policymakers: making judicial authorities responsible for guaranteeing the confidentiality of information on the identity and whereabouts of child victims and witnesses; prohibiting the dissemination of such information in the media and making such dissemination a criminal offence; making closed sessions automatic for proceedings in relation to certain forms of crime, such as sexual offences or trafficking in persons;
- (e) Media: adopting and respecting self-regulation measures to protect the privacy and personal data of a victim;

(f) Non-governmental organizations in collaboration with all stakeholders: raising awareness about the role and responsibilities of the media with regard to the rights of child victims and witnesses of crimes; encouraging the implementation of codes of conduct;

(g) Prosecutors: respecting the confidentiality of information on child victims and witnesses of crime; requesting measures for the protection of the identity of the child victim or witness, in case these measures do not automatically apply; prosecuting the media should the child's right to privacy or confidentiality be violated.





## VIII. The right to be protected from hardship during the justice process

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XI, The right to be protected from hardship during the justice process

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

(a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;

(b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

(c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

(d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.

31. Professionals should also implement measures:

(a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

(b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

As set out in paragraph 29 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, preventing hardship from the initiation to the conclusion of the justice process is a condition for ensuring that the best interests and dignity of child victims and witnesses are respected. By preventing unnecessary stress to the child during the justice process, professionals are responsible for making the child's participation in the proceedings easier and less harmful. Ultimately, protecting child victims and witnesses from hardship increases their capacity to participate in justice processes.

Throughout the justice process, child victims or witnesses are exposed to hardship, also referred to as secondary victimization: this can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court.

Firstly, children who have witnessed or have been victims of crime, especially in the event of sexual abuse, may be particularly reluctant to disclose or report the facts and make their own statement of what has happened. Deciding whether or not to report a crime, especially one committed by a child's relative, and the manner by which the information is elicited from the child may cause him or her psychological stress. The causes and nature of the stress may include the fear of harm by the perpetrator, possible fear of rejection or blame by the child, fear of not being believed, fear of a negative parental reaction, feelings of self-blame, and so forth. Such stress has consequences and is observable in different realms of

the child's life, such as his or her schooling, peer relationships, family life, ability to communicate, violent behaviour including self-mutilation, and so forth.<sup>152</sup> The hardship can be made worse in situations where the child's best interests and dignity are not fully taken into account.

Secondly, the waiting period before trial can be a very difficult experience for many children, especially the youngest ones. When the delay is combined with factors such as adjournments or, worse, harassment from alleged perpetrators, the toll on a child is considerable and is likely to seriously impede his or her harmonious development. In situations where children have been victimized by a family member or family members, the disclosure of abuse has inter-familial repercussions that continue to affect them during the entire pretrial period: they may continue to have direct or indirect contact with the alleged perpetrator(s) and experience pressure to amend or not deliver their testimony.

Thirdly, the experience of testifying in court is very stressful for children. Fears and frustrations they may have regarding testifying in court include facing the accused and/or the public, describing intimate, shameful, details in a case of sexual abuse, not being able to understand the questions put to them, looking ludicrous, and so forth. Giving evidence in court does not always have to be harmful; it can become a validating experience. It is therefore appropriate to encourage the child to testify if he or she seems able and willing to do so. In that respect, a well-prepared and child-friendly trial may, in fact, prove beneficial, as it offers the child an opportunity to assert that a violation of his or her rights has been committed, to formally denounce that injustice and to defend himself or herself. It is therefore the shared responsibility of all actors in the judicial process to protect child victims and witnesses from hardship. The following professionals would be involved:

- (a) Teachers, medical and social workers, who are often in the best position to first detect signs that a crime has been or is being committed and to observe the impact of the proceedings on the child's life;
- (b) Law enforcement officials, who first collect the child's statement of the events;
- (c) Prosecutors, who decide whether or not to pursue the case, as well as the level of involvement in the proceedings the child is able to withstand;
- (d) Judges, in ensuring that cases involving child victims or witnesses are handled without delay and by controlling the debates and questioning in court so that the proceedings are conducted in a child-friendly manner;
- (e) Lawyers, especially, where applicable, lawyers of child victims, whose first task should be to make sure that the child's best interests are respected.

The right to be protected from hardship during the justice process is articulated in paragraphs 30 and 31 of the Guidelines in terms of six principles, which can be summarized as follows:

- (a) The assistance of a support person should be provided during the child's involvement in the judicial process;
- (b) Certainty about the judicial process should be provided;

- (c) Investigations, trials and cases involving child victims and witnesses should be expedited;
- (d) Child-friendly procedures should be adopted;
- (e) Unnecessary contacts with the justice process should be avoided;
- (f) Intimidation should be prevented.

## A. Assistance of a support person during the justice process

The presence of a support person during the appearance of a child victim or witness before the court is provided for in numerous countries, irrespective of the inquisitorial, adversarial or other nature of the country's criminal procedure (see sidebar).

A few international instruments specifically address the issue of victim support during their involvement in the judicial process, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (principle 6 (c)).

Domestic legislation should clearly identify the purpose of the presence of such a support person to the victim or witness, which is to provide emotional support and to reduce the harmful impact of a court appearance. The child should be accompanied at all times by an adult, whose presence will be helpful if the child feels unduly stressed. A support person should preferably be appointed at the beginning of the judicial process, when law enforcement officials start collecting information about the event, and should remain available right through to the court proceedings. The presence of a support person can also help the child to express his or her views and contribute to the child's right to participation. It is therefore a measure that judges may favour in order to have a child appear before the court and in order to ensure respect for the child's rights. The measure could also be applied by prosecutors or, where applicable, by the child's counsel.

Criteria for assignment of a support person may vary depending on the age and vulnerability of the child. The domestic legislation of some States provides that, depending on the nature of the crime, the assignment of a support person to the child may become automatic (for example, 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>153</sup> and Nepal, it is specified that this support person shall be of the same gender as the victim. Although these examples show that the issue of the support person's gender has been taken into account by legislators, affording child victims the opportunity to choose the gender of their support person would be even more protective and should be encouraged. In some common law countries, the assignment of a support person to child victims forms part of the inherent jurisdiction of judges, who may decide this *proprio motu* or at the request of the prosecution or the defence. In other common law countries, the power to assign a support person is specifically provided for in the law.<sup>154</sup> The assistance of a support person may also be requested by the victim or witness himself or herself.<sup>155</sup>

### International practice

The Victims and Witnesses Unit of the International Criminal Court is in charge of assistance and protection of victims and witnesses, including "[a]ssisting them in participating in the different phases of the proceedings" (rule 16, para. 1 (c) of the Rules of Procedure and Evidence of the International Criminal Court) and "[a]ssisting them when they are called to testify before the Court" (rule 17, para. 2 (b) (ii)). Before other international criminal jurisdictions, the mandate of the witness and victim support section includes giving relevant support to them, especially in cases of rape and sexual assault.

The status of the support person varies in the domestic legislation of different States, being defined variously as a “person of the child’s choice”, a “person of confidence”, “an adult”, a “child’s parent or legal guardian”, a “friend or a member of his or her family”, a “specially qualified person”, an “other person close to the child” or any other “person approved by the court”. The most important aspect, however, is that the support person should fulfil the requirements of (a) being properly, and possibly professionally, trained in communicating with and assisting children of different ages and backgrounds to prevent the risks of duress, re-victimization and secondary victimization; (b) offering a concrete support to the child and facilitating his or her active participation; (c) not disturbing the proceedings by his or her presence; and (d) being selected via a process involving the child. Child victim support groups (see box) or victim service units may offer specially qualified persons for this purpose. An independent authority should supervise the way the support person is chosen. In the assessment, it may be important to respect the choice of the child about who should be the support person. However, in some cases, it might be in the best interests of the child not to take into consideration the choice of the child, for example, in cases where manipulation by the support person is suspected, and/or where the child cannot express his or her views freely.

The exact role of the support person is described in detail in United States legislation (see box).

**United States Code collection, Title 18, chapter 223, section 3509, Child victims’ and child witnesses’ rights, subsection (i):**

“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.”

**Child victim support group.** In several countries, organizations that render assistance to child victims, such as Protect All Children Today, in Queensland, Australia, employ trained volunteers to assist children before and during their appearance in court, by familiarizing them with the court environment, explaining their role as witnesses, entertaining them during the waiting period before their appearance in court and serving as support persons, sitting near them during their testimony.

**Victim Service Unit.** These usually consist of at least one staff member and volunteers: one example is the Institut national d’aide aux victimes et de médiation (in France). Some of the services that victim service units may provide, depending on the State’s legislation, are the following: making initial contact with victims through phone calls; providing information on the status of the case; sitting with victims during and/or before and after the hearing to explain procedures; answering technical questions and defining terms that may be new to victims; listening to victims; helping victims fill out restitution or compensation forms; and informing them of other available resources, such as counselling, security measures, and so forth.

## B. Providing certainty about the justice process

In order to reduce additional hardship, it is especially desirable for a child witness and his or her support person to know in advance if and when the child will be required to testify, whether or not arrangements facilitating his or her testimony can be made and who will attend the hearing. The right of persons involved in the justice process to receive relevant information about the proceedings is provided for by certain instruments of international law with regard to victims and witnesses and, in particular, child victims and witnesses.<sup>156, 157</sup>

### 1. *Assigning a single professional to follow the case with the child until its conclusion*

Continuity and predictability throughout the justice process allow the child to feel more confident. In general, giving the child a feeling of control throughout the justice process is important to protect the child from hardship. Especially in a case of abuse, often characterized by manipulation and abuse of power, it is important for the child to regain control. Feeling powerless and out of control during the justice process can be experienced by the child as re-victimization.

It is advisable to appoint a support person at an early stage and to have the same person accompany the child throughout the whole proceedings. The more the child feels familiar with his or her support person, the more he or she will feel at ease. Assigning a relevant professional at the earliest opportunity and having him or her retain responsibility for the case until its conclusion may provide such stability. Such a professional may be, depending on the domestic system of each State, a law enforcement official, a prosecutor, a lawyer or another professional. Providing specific training on child-related issues to such professionals should be a requirement. In some jurisdictions, the lodging of a complaint is followed up by the same professional in charge of the informative discussion with the child about the consequences of the complaint. It would be desirable to have the same professional as a focal point for the child in every contact he or she has with the judicial institution.

### 2. *Witness' familiarization*

#### (a) *Witness' familiarization: common law countries*

Another efficient way admitted in most common law countries to avoid child victims and witnesses being disorientated and destabilized by the proceedings is known as "witness' familiarization". Witness' familiarization with the court proceedings before the appearance constitutes a usual step in common law countries where the parties are entitled to prepare their witnesses. This preparation is crucial to avoid witnesses being destabilized or unnerved once they appear before the court and, especially, during the challenging experience of their cross-examination. The party calling the witness, be it the prosecution or the defence, has a clear interest in explaining what the witness can expect during his or her appearance, double-checking the witness' self-confidence and

his or her memory of his or her statements. It also serves to prepare him or her to face and answer cross-examination and attempts made by the other parties to undermine the value of the evidence. Such a step is even more crucial in the case of vulnerable witnesses such as children and victims of sexual assault. In some States, child witness' familiarization may also be undertaken by the child's support person, who should have received prior training.

The various aspects of such preparation of victims are detailed in the National Policy Guidelines for Victims of Sexual Offences of South Africa (see box).

**South Africa, Department of Justice and Constitutional Development, National Policy Guidelines for Victims of Sexual Offences, and Department of Justice, National Guidelines for Prosecutors in Sexual Offence Cases (Pretoria, 1998), chapter 3, section 10:**

"The following steps should be followed to ensure that the court process is as untraumatic as possible for the victim:

"1. Take the victim to the court where the case will be heard prior to the day of the trial. Arrange a suitable time with the prosecutor. A pretrial consultation with the prosecutor is imperative. Arrange for a specific prosecutor to be allocated. Take the docket to court before the proceedings to allow enough time for preparations.

"2. Explain the meaning of 'in camera' to the victim, as the prosecutor may ask the magistrate to hear the evidence in camera.

"3. Give the victim his or her statement to read once again. Small details can become important in the statement, particularly in court proceedings, and this will help to prepare the victim.

"4. The victim will see reporters in court, which may distress him or her. Reassure the victim that his or her particulars will not be published unless authorized by the magistrate (see Section 335A of the Criminal Procedure Act). A child is always protected in this regard.

"5. It is the duty of the police to inform the victim about the possibility of delays in the court proceedings and to encourage them to persist in the case."

Another approach has been adopted in the United States, with the creation of a "kids' court", operated by the District Attorney's Office of Tulare County, California, in collaboration with several agencies and interested persons, to assist children through the judicial process by familiarizing them with the court environment, personnel and process. This educational process is accomplished by meetings with the various individuals who are part of the court system, who explain what they do and respond to questions from both children and parents. Professional therapists and trained volunteers interact with the children and their caregivers to help them understand and express their own feelings and deal with the stress associated with a court appearance. Rather than being prepared for the experience of testifying in court on an individual basis, children get ready for court by participating in a supportive

group experience. Parents and caregivers are also included in a “kids’ court” and attend separate sessions that address their special needs. An equivalent programme is undertaken in South Africa by organizations such as Resources Aimed at the Prevention of Child Abuse and Neglect and the Teddy Bear Clinic.

Other initiatives exist in order to provide child victims and witnesses with a proper familiarization with the court proceedings before their appearance: in Hong Kong, China, the Witness Support Programme published a “Child Witness Pack” in 1997 to help children to reduce anxiety related to their participation in judicial processes. In the United Kingdom, the National Society for the Prevention of Cruelty to Children and ChildLine, in consultation with other non-governmental organizations and criminal justice agencies, have published a range of materials under the title “Young Witness Pack” to inform and assist child witnesses and young witnesses in preparation for attending court as witnesses: these materials include a range of age-specific booklets for child witnesses and young witnesses, a booklet for parents, a handbook for people involved in preparing young witnesses to attend court and a video intended for older children, entitled “Giving evidence: what’s it like?”.

*(b) Witness’ familiarization: civil law countries*

Civil law countries often refuse to ensure such preparation for victims and witnesses before their appearance in court, the rationale being that spontaneity is often considered a key factor in the assessment of their testimony. Such an approach may prove harmful for children: even if the most stressful test of cross-examination does not exist in their procedure, victims and witnesses nevertheless appear in court to make an oral statement on the facts and answer questions. Even under the control of the presiding judge, this can prove a demanding and intimidating experience meriting proper preparation. Nevertheless, such preparation and support is usually not provided, apart from the following exceptions:

*(a)* In countries where victims are represented by a lawyer (see chap. VI on the right to effective assistance), familiarization can be provided by the child’s lawyer;

*(b)* Prior to their interrogation, victims and witnesses are usually reminded by the presiding judge of the importance of their testimony and the significance for the case of giving full and truthful testimony. In countries where witnesses are warned against refusal to answer questions and false testimony, an exception is sometimes made for child victims and witnesses in order to avoid intimidating them with such a threat.

These solutions, however, do not fully address the problem of child victims’ and witnesses’ right to be protected from hardship during the justice process.

A distinction has been made by the International Criminal Court between, on the one hand, child victims’ and witnesses’ familiarization with the way court proceedings are organized and the concrete modalities of their appearance that constitute, according to the Court, “a mandatory requirement” and, on the other

hand, what is referred to in common law countries as “witness’ proofing”, namely a rehearsal of the witness’s testimony and preparation for cross-examination prior to the court appearance, which the Court found “inadmissible as unethical and unlawful”. Civil law judges and legislators may consider applying the same distinction to the proceedings before their domestic courts and making the familiarization of child victims and witnesses, as opposed to their rehearsing, a requirement. Guidance may be found in group preparations such as Tulare’s kids’ courts or the distribution of child-friendly preparation packs, such as the ones existing in Hong Kong, China, or in the United Kingdom. Such programmes may be developed in civil law countries by schools, social workers and/or non-governmental organizations, in collaboration with therapists.

### C. Guaranteeing the expeditiousness of the proceedings

Delays and protracted proceedings may have a negative impact on the healing process of the child and contribute to long-term mental suffering. Cases should be treated as quickly as possible in order to reduce the time the child is exposed to a potentially harmful procedure and to allow the child to move beyond the experience of being a victim. Lengthy investigations may even cause children to withdraw their statement. It is also difficult for the child to deal with the process when he or she may be unaware or misinformed of the sequence of events, the timing of hearings and, in particular, what to expect from the justice process.

The right to an expeditious trial is usually considered a fundamental right of the defence. However, some international instruments also address expeditiousness from the perspective of protecting victims from further stress that may result from a lengthy procedure. Expeditiousness in the interest of the victims is especially guaranteed in relation to certain kinds of crime and when the victims are children (see box).

Principle of expeditiousness in international norms. With respect to specific kinds of crime, e.g. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, *Treaty Series*, vol. 1465, No. 24841), art. 13; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, art. 7 (f).

With respect to children, e.g. Organization of African Union, African Charter on the Rights and Welfare of the Child, (*Human Rights: A Compilation of International Instruments, vol. II: Regional Instruments* (United Nations publication, Sales No. E.97.XIV.1), sect. C, No. 39), art. 17 (2) (c) (iv); Organization of American States, Inter-American Convention on International Traffic in Minors, art. 14; Council of Europe, European Convention on the Exercise of Children’s Rights (United Nations, *Treaty Series*, vol. 2135, No. 37249), art. 7; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (United Nations, *Treaty Series*, vol. 2171, No. 27531), art. 8 (g).

Standards in relation to the reasonable length of criminal proceedings are impossible to draw and all domestic courts should rather adopt a case-by-case approach, taking into account the specific nature and complexity of each case. The legislation of some States, such as Australia, specifies the need for a speedy process with respect to the interests of victims and witnesses, especially the most vulnerable ones, such as children (see sidebar).

The burden is on the parties, in particular the prosecutor, to act so as to avoid any delay in the proceedings and to justify any adjournment in the light of the best interests of the child. Avoiding pointless delays must be of prime concern at every stage of the proceedings.

There is a duty to report cases of suspicion of abuse or neglect. Depending on the legislation, this duty applies to everyone or to certain categories of professional working with children. For example, the Child Act 2001 of Malaysia (sect. 27) provides for such mandatory reporting by doctors and medical practitioners. Once the criminal behaviour has been reported to the authorities, specific time frames may be set out in order to ensure that proceedings advance without delay; and in the Philippines, as soon as a possible case of child abuse is reported to the police, they have a time limit of 48 hours to react.

When a case investigated by domestic authorities has occurred in another country, bilateral cooperation agreements may provide direct communication between criminal prosecution authorities rather than, or in addition to, diplomatic channels: for example, a 1995 agreement between Germany and Thailand allows prosecutors to request their domestic ministry of justice to inform the other party's ministry directly. The use of modern communication systems means that a Thai public prosecutor can react to a German petition on the same day it is received. Similar procedures are provided for in agreements between Canada and Thailand<sup>158</sup> and between the Philippines and the United Kingdom.

In the pre-trial phase, expedited procedures may allow stages deemed not crucial to the fairness of the proceedings to be bypassed if it is in the best interests of child victims and witnesses. For example, in the United Kingdom, the Criminal Justice Act 2003 introduced a procedure whereby the Director of Public Prosecutions may refer a matter involving a child witness directly to the Crown Court without a prior formal committal stage. This procedure can be used when the Director of Public Prosecutions finds that the evidence is sufficient to commit the accused for trial and that the case should be taken over and proceeded with without delay by the Crown Court "for the purpose of avoiding any prejudice to the welfare of the child".

At trial, practical solutions to hasten the proceedings without jeopardizing the interests of the defence include, for example, giving priority to the case over other pending cases on the roll of the court that do not involve child victims and witnesses. Legal reasons should also be a requirement with respect to decisions ordering a continuance or remand in such cases. These practical solutions are explored in the United States regulations governing the rights of child victims and child witnesses: in cases involving child victims or witnesses, United States courts may shift to expedited proceedings specifically designed for such cases (see sidebar).

**Australia (Queensland), Evidence Act 1977, sect. 9E (2):**

"The following general principles apply when dealing with a child witness in a proceeding: ... (d) the proceeding should be resolved as quickly as possible".

**United States Code collection, Title 18, chapter 223, section 3509, Child victims' and child witnesses' rights, subsection (j), Speedy Trial:**

"In cases so designated, the court shall ... expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child."

Alternatively, special children's courts with specific jurisdiction for cases involving child victims may be created; the mandate of such children's courts, which are often only dedicated to children in conflict with the law, can therefore be extended to child victims. The limited jurisdiction of these courts reduces the delays in proceedings and renders possible the application of specific procedures to meet the needs of child victims. Such an initiative has been taken in Brazil, with the creation of three children's courts in Recife, Salvador and Fortaleza. In the same spirit, South Africa created, in 1993, a sexual offences court, referred to as the "G Court" located within the Wynberg Court: although this court is not child-specific, it provides special rules and procedures for victims of sexual assault and, in particular, child victims.<sup>159</sup>

## D. Developing child-friendly procedures

Developing child-friendly procedures in line with the Guidelines includes devising practical solutions to demystify the proceedings. For example, in order to avoid the child being unnecessarily intimidated by the process, a child interview may take place in an environment that looks familiar to him or her rather than at the police station. Paragraph 30 (*d*) of the Guidelines details a non-exhaustive set of measures aimed at reducing the risk of a child's secondary victimization. Most of these solutions are simple and inexpensive, so that every domestic system can apply them or find "other appropriate measures to facilitate the child's testimony".

### 1. *Special interview rooms*

Choosing the location of the interview with the child is an important aspect of the interviewing process. It is generally recommended that the interview occurs in a neutral environment.<sup>160</sup> For example, investigation teams can conduct interviews at the child's school, where he or she may feel more comfortable and where the alleged offender may have minimal control. The interview can also be held at the police station, in a specific room that may, for example, be decorated and furnished with toys, small chairs and child-friendly colours on the wall.<sup>161</sup> In Indonesia, "RPK Units" have been created through a police circular: these are designated rooms in provincial and district-level police stations where women and child victims of violence, including sexual violence, are interviewed. Child advocacy centres can also offer ideal places for interviewing children (see sect. 2 below).

Specifically adapted locations may also be used at trial: in Norway, section 239 of the Criminal Procedure Act provides that the examination of a witness under 14 years of age or whose interests so indicate shall take place separately from a sitting of the court when the judge finds it desirable in the interests of the witness. Another solution involving new technologies is the use of closed-circuit television (CCTV) to allow the child to testify by videoconference from another place within the court building. This option is employed in several countries, such as Bosnia and Herzegovina, the Dominican Republic, South Africa, the

United Kingdom and the United States. Testimony by way of CCTV is even made mandatory upon application by the child victim or witness<sup>162</sup> or in cases of sexual abuse against children.<sup>163</sup> Where no such adapted location is available, numerous States provide that the appearance of child victims may be held in camera, thereby avoiding the intimidating attendance of the public.<sup>164</sup>

## *2. Interdisciplinary services for child victims integrated in a single location*

To establish whether a child has suffered from, or witnessed, the commission of an offence, an initial interview or discussion with the child is required. Since several professionals and agencies may need to participate in the investigation, a child could be subjected to repeat questioning by many different officials. Moreover, if these officials have not received proper training on issues relating to child victims or witnesses, the way they conduct the interviews may reveal harmful and/or elicit tainted evidence, and, in both cases, this can have important repercussions for the child and/or the prosecution of the case. As a result, several States have created multidisciplinary teams, enabling joint investigation in a child-sensitive way. However, other models consider the interview of the child alone by one skilled interviewer as preferable.

A first step in promoting a multidisciplinary approach to child-related investigations is the creation of specific police units specially trained for the purpose: for example, in the Binga District of Zimbabwe, mobile police units composed of two specially trained police officers, one female and one male, have been set up to investigate child sexual abuse.<sup>165</sup> Child protection police units have also been created in States and territories such as Australia (Tasmania)<sup>166</sup> and Hong Kong, China. Nepal has also created so-called women and children service centres within the police departments of 17 districts (from a total of 75 districts), with personnel specifically trained in handling offences related to women and children in a sensitive manner.

Multidisciplinary teams involve professionals who work in the area of child protection, criminal investigation, victim support and prevention of child abuse (see chap. II on the right to be treated with dignity and compassion, multi disciplinary child abuse teams). The establishment of such inter-agency teams reduces the number of child interviews and can reinforce the child's trust and confidence. Other advantages include improved communication among professionals through the combination of skills and experience and greater access to information. Rather than holding law enforcement, social and medical and/or psychological data in different files held by different agencies, multidisciplinary teams favour the sharing of information among the different actors by the creation of a single file.

Finally, the most elaborate way to promote a multidisciplinary approach to investigations is the creation of child advocacy centres. These are permanent structures created to host the multidisciplinary child abuse teams. These centres facilitate the merging of expertise, with law enforcement officials joining on a regular basis with child specialists and mental health providers to conduct interviews. Ongoing training prevents burnout among professionals and limits staff

turnover, while providing staff with the most recent techniques and advances in the field. These centres also provide a safe, non-threatening place for child victims and their families to benefit from educational processes such as those offered by kids' courts (see sect. B, subsect. 2 (a) above), to receive a comprehensive array of services that include the initial interview, referral for therapy and medical services, assistance in filing compensation forms, and support and guidance throughout their involvement in the judicial process. Examples of such child advocacy centres can be found in the United States and Canada.<sup>167</sup> Although these centres offer many advantages, there are also risks: if it becomes known in the community that the centres deal with child victims of abuse and neglect, this may have a stigmatizing effect on children and their families visiting the centres. Therefore strict confidentiality (including giving the centre a neutral name) is important. In general, support to child victims should be organized as much as possible in a community-based structure, without singling out certain groups and labelling them as "vulnerable".

### 3. *Modified court environments*

#### Examples of child-friendly facilities

- Separate interview rooms are the best option, but failing that, elevated seats or cushions permitting the child to see the court and to enable to child to be seen while in the witness box
- Waiting areas with toys, animals, cartoons, books or other things to occupy the child. Depending on the climate, these waiting areas do not need to be inside a building, but may be in a garden or another safe place. Waiting areas may also be furnished with toilets, beds, drinks and food so that the child can always feel at ease. Most important, children should always be kept in a separate room, away from the accused, defence counsels and other witnesses
- Encouraging general stress reduction techniques, such as breathing exercises, muscle relaxation, games and emotional support
- Allowing children to hold a teddy bear or a doll while testifying

Formalities in court proceedings and court surroundings can be intimidating for children. Although there is an argument that maintaining such formalities creates respect for the legal system, they may induce fear and a reluctance to talk on the part of children. Child-friendly facilities such as seating appropriate to the physical development of the child, microphones at the witness position in courtrooms to ensure that a child's testimony is audible to key positions in the courtroom, and access to toys in waiting areas to entertain the child during breaks can improve the experience of the child during these procedures (see sidebar).

The domestic legislation of some States requires that the hearing of victims under 18 years of age be conducted in an informal and friendly atmosphere.<sup>168</sup> The excessive solemnity of court dress, which may have an intimidating effect on children, is also taken into account in the United Kingdom "Supplementary pre-trial checklist for cases involving young witnesses", which provides that child witnesses may express their views about court outfit, and that wigs and gowns may be removed, where necessary, by judges and counsels.<sup>169</sup> Similar rules apply in Victoria, Australia.<sup>170</sup>

### 4. *Special recesses, scheduling and notification of hearings*

Although expeditiousness is important in handling cases involving children, the child's capacity to endure lengthy hearings scheduled without consideration for their special situation is another element to take into account. Stakeholders should find ways of reducing the time spent by the child on the court's premises and make these periods fit with the child's private life and needs.

Given that the attention span of children is limited, lengthy questioning sessions should be avoided. Judges presiding over courts may issue directions about the duration of a child's appearance: time limits may be set or limits set on the number of questions that may be put to the child. A child's appearance may also

be interrupted by breaks: judges may grant requests for breaks made by the child or by his or her support person and may even order such a break of his or her own accord *proprio motu* when he or she sees that the child needs it.

In order to minimize disturbances in a child's life caused by his or her involvement in the judicial process, courts may try to schedule the appearance of child victims or witnesses on days when they are not supposed to go to school (holidays or days off). This would, in particular, exempt them from having to find delicate explanations for their absence from school. It is also desirable that hearing schedules avoid, as far as possible, sessions late at night, in order to fit the child's own rhythm. This may be achieved by making sure, while preparing a session's schedule, to give priority to cases involving children so that they are heard first, at the beginning of the session. These scheduling and standby arrangements form part of the "Supplementary pre-trial checklist for cases involving young witnesses" used in the United Kingdom.

A proper scheduling of cases involving children at the beginning of sessions will also facilitate an accurate notification of the time of hearings and avoid useless waiting hours spent in the precinct of the court and last-minute postponements due to overloaded schedules, causing unnecessary trips to the court.

### 5. *Other appropriate measures to facilitate the child's testimony*

Testifying can be problematic for children, especially the very young. Some solutions have been sought to enhance communication in order to facilitate the testimony. When a child gives evidence, he or she is not likely to be familiar with the kind of legal language used in the courtroom.

In some States, communication with child victims and witnesses is facilitated through the use of intermediaries or communicators. Such intermediaries shall be distinguished from support persons who may also accompany the child. The intermediary can be a parent,<sup>171</sup> a specially appointed public counsel,<sup>172</sup> a guardian *ad litem*,<sup>173</sup> an expert<sup>174</sup> or any other person designated by the court.<sup>175</sup> Where the judge considers that the child could not understand a question put to him or her, the intermediary "translates" the question into language the child understands. The intermediary may also comment on the child's answer, if it is expressed in a language that requires further explanation. The decision to appoint such an intermediary is at the discretion of the court and the onus is usually on the party requesting it to show that it would be in the interests of justice for the intermediary to be appointed. A good example of a law providing for the appointment of such an intermediary can be found in Ireland (see sidebar).<sup>176</sup> However, the use of such intermediaries would not be acceptable in every legal system: civil law judges especially would usually be highly resistant to the use of such intermediaries because their "intimate conviction"<sup>177</sup> needs to rely on a direct assessment of the statement of the witness.

The Guidelines suggest the use of "testimonial aids" (para. 31 (c)). The definition of testimonial aids differs from country to country: in Canada, the term refers to measures such as screens, CCTV and the appointment of a support

Ireland, Criminal Evidence Act, 1992, section 14, Evidence through intermediary:

(1) Where—

(a) a person is accused of an offence to which this Part applies, and

(b) a person under 17 years of age is giving, or is to give, evidence through a live television link,

the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such questions be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked.

(3) An intermediary referred to in subsection (1) shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such.

person. In other countries, it refers to gadgets or devices that enable questions to be communicated effectively to the child and the child's answers to be heard, thereby accommodating factors such as the child's age, level of maturity, development and any disability, disorder or other impairment from which the child may suffer. Such testimonial aids may include microphones, maps, plans, photographs, communication boards, computers and anatomically correct dolls. In South Africa, a set of adult and child anatomically correct dolls of each gender may be used to demonstrate activity when the child's verbal skills are limited.<sup>178</sup> However, in some countries, including Sweden, the use of anatomically correct dolls has been abandoned because it was considered that such dolls could affect the reliability of the child's testimony.

Another example of such testimonial aids, which requires more advanced technological means, is the use of videoconferencing, which enables a child to testify from a remote place, even from another country, without attending the court. Such a measure is in particular provided for in the United Kingdom for witnesses under the age of 14 in cases of assault or injury, cruelty to persons under 16 or sexual offences against children.<sup>179</sup> Similar measures are provided for interrogation and confrontation at the investigation stage in France.<sup>180</sup>

The above-mentioned measures are examples of solutions identified in the Guidelines and designed to make the child's involvement in the justice process as easy as possible and minimize stress to the child. During the drafting of the Guidelines, this list of measures was deliberately left open, in order to invite the different actors to implement other solutions that they might find appropriate to achieve that goal. The diversity of domestic legal systems, cultural backgrounds and available means gives full opportunity to devise, develop and implement original measures that may fit and be useful in some contexts, but which may not be transposable to others.

Although different from *stricto sensu* criminal justice, experiences of transitional or restorative justice as implemented in different countries, such as Sierra Leone, may inspire other methods for ensuring that the child can participate in the proceedings while not suffering secondary victimization, such as by involving the whole community in the process (see box).<sup>181</sup>

## E. Limiting the child's contacts with the justice process

Limiting the contacts of vulnerable victims and witnesses with the justice process constitutes another way of minimizing the inconvenience of their participation in the proceedings. In some cases, the child may have to repeat the same statement to law enforcement officials, social workers, staff of non-governmental organizations, psychologists, experts, investigating judges and trial judges, in addition to being available for questioning by the prosecution and defence. The more people the child meets during an investigation, the more stressful it is for him or her. Repetition of statements may also lead the child to feel that the process is useless or that the previous versions of the statement were "not good enough" and need improvement. It can be perceived as "not being heard" or "not being believed", with several repercussions on his or her trust and emotions.

### Sierra Leone, Truth and Reconciliation Commission Act 2000, section 7 (2):

"The Commission may seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation."

section 7 (4): "The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may not wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations."

In order to minimize unnecessary stress for the child, a single interview with child victims and witnesses should be preferred. This single interview would take place during the pretrial (investigation) phase and might be conducted, depending on each domestic legal system, by law enforcement investigators, prosecutors or investigative judges. As mentioned earlier, child advocacy centres, where they exist, have the advantage of limiting the number of interviews. It is important at the stage of this first and only interview to take measures in order to keep an accurate record of the evidence: such a record could be achieved, depending on procedural legislation and the technological means available, by way of a written statement<sup>182</sup> or audio or video recording of the interview (see box).<sup>183, 184, 185</sup> Some States make the audio or video recording of child victims' first interview automatic, with the consent of the child or his or her legal representative, in cases of sexual offences.<sup>186</sup>

A distinction needs to be made between different legal systems. In civil law countries, where the investigative judge leads the investigation, measures taken during the pretrial stage can be relied upon during the trial stage. However, in common law countries, there is incompatibility between the use at trial of evidence collected during the pretrial phase and the right of the accused to cross-examine witnesses. Several solutions have been devised to protect the child witness while respecting the right to cross-examination:

- (a) Ensuring that the parties have sufficient opportunity when the statement is recorded to cross-examine the witness;<sup>187, 188</sup>
- (b) Subjecting the tape to scrutiny in court and allowing the judge to edit the tape and exclude any parts of it that would be against the law of evidence;<sup>189</sup>
- (c) The interviewer himself or herself may also be called for cross-examination at trial. In Israel, any child under the age of 14 is interviewed by a special child-interviewer. The interviewer is then called to testify and provide his or her impression of the child's credibility. The children themselves do not testify;
- (d) Another solution that may fit procedural requirements of common law countries is, as provided for in Australia, to reserve the appearance of victims for the most crucial phase of the proceedings, namely his or her testimony in court at trial, thereby exempting him or her from attending pretrial proceedings, such as the committal hearing (see box).<sup>190</sup>

**United States (Arizona), Arizona Revised Statutes, article 30, Child Witnesses, section 13-4252:**

"A. The recording of an oral statement of a minor made before a proceeding begins is admissible into evidence if all of the following are true:

1. No attorney for either party was present when the statement was made.

2. The recording is both visual and aural and is recorded on film or videotape or by other electronic means.
3. Every voice on the recording is identified.
4. The person conducting the interview of the minor in the recording is present at the proceeding and available to testify or be cross-examined by either party.
5. The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.
6. The minor is available to testify.
7. The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered.
8. The statement was not made in response to questioning calculated to lead the child to make a particular statement.
9. If the electronic recording of the oral statement of a minor is admitted into evidence under this section, either party may call the minor to testify and the opposing party may cross-examine the minor."

Notwithstanding the inquisitorial or adversarial nature of criminal procedure, the use of pre-recorded child evidence at trial should be encouraged.

The principle that there should be only a single statement made by the child may be tempered where there are good reasons to conduct additional interviews, such as in order to avoid long initial questioning sessions, to build the child's confidence or to double-check certain issues in his or her statement. The most important factor here is that this issue should be handled in a sensitive manner from the beginning of the procedure, prioritizing the best interests of the child over the need for further information by avoiding unnecessary interviews.

## F. Exempting the child from being confronted by the accused

Often, when the child testifies, he or she will have to be in direct eye contact with the accused. Where it is alleged that the accused abused the child, such contact can be traumatic for the child, especially in cases of potential threats. The Guideline contained in subparagraph 31 (*b*) aims to reduce as much as possible the feeling of intimidation that child victims and witnesses may have while appearing before the court and, in particular, when confronting the alleged offender. A variety of measures can be taken in order to assist children when giving or receiving evidence. These measures relate to the admissibility of evidence, such as pretrial videotaped recordings of their statement (see sect. E, above) and the use of facilities allowing the child to give evidence by CCTV without seeing the accused, from a special interview room within the court's premises (see sect. D, subsect. 1, above) 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.

The use of screens between the child and the accused is often seen as a less expensive alternative to the use of CCTV as they are far easier to install and move. Various types of screen are used in different jurisdictions, such as a removable, opaque partition separating the child and the accused so that they cannot see 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 that can be seen by the accused. The use of such devices is provided for in the domestic legislation of several States.<sup>191, 192</sup> Such measures shall be ordered by the judge and may be automatic or discretionary. Judges may order such a measure of their own accord *proprio motu* or upon request by a party or by the child, his or her parents or legal guardians. In Fiji, a parent or guardian can ask the prosecutor for a screen to be put around the child and the prosecutor relays this request to the court.<sup>193</sup>

The removal of the accused from the courtroom while the child testifies is another measure provided for in some domestic systems.<sup>194, 195, 196</sup> The accused is usually allowed to follow the child's testimony on a monitor from a separate room.

Preventing eye contact between the child and the alleged offender raises the issue of identification of the accused in court. Formal identification in court is considered a fundamental underpinning of the presumption of innocence by most legal systems. It is therefore standard procedure for witnesses who make allegations about an accused to be required to identify him or her in the court. The most common form of identification is visual. The witness is asked if he or she sees the person he or she is referring to in the courtroom, and then, if an affirmative answer is given, to point to the person. In order to reduce the impact of such a dramatic and potentially re-traumatizing identification by child's evidence, it is provided, in Australia, that the identification of the accused by the child should take place after the completion of all his or her evidence, including cross- and re-examination, and that the child should not be required to be in the presence of the defendant any longer than is necessary for that purpose.<sup>197</sup>

The Guideline in paragraph 31 (b) also stresses the necessity of avoiding direct cross-examination of the child by the accused, whenever it is compatible with the legal system and the rights of the defence. In the common law procedural system, the right to cross-examine prosecution witnesses constitutes an essential element of the presumption of innocence. 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 himself or herself, direct cross-examination of vulnerable witnesses, such as children, becomes an issue.

The domestic legislation of some States simply prohibits unrepresented accused from cross-examining child witnesses, especially in the case of sexual offences.<sup>198, 199</sup> In those States, judges must deny requests made by unrepresented accused to cross-examine child witnesses. In some countries, it is provided that, alternatively, the judge may appoint a representative for the accused for the specific purpose of such cross-examination: this representative will relay the questions of the accused to the child, thereby avoiding direct harassment or intimidation.<sup>200</sup>

## G. Ensuring child-sensitive questioning and preventing intimidation

The questioning of witnesses may take different forms, depending on each State's procedure. In civil law and other countries where cross-examination *per se* does not exist, questions are normally put by the president of the chamber only, who decides whether or not to ask questions suggested by the parties.<sup>201,202</sup> Some civil law countries authorize the parties to question the witness directly, which is different from cross-examining him or her, but such questioning always remains under the close control of the president of the chamber.<sup>203</sup> In both cases, the presiding judge of the chamber has full control over the way witnesses are questioned by the parties and can order a party to reformulate or withdraw a question and warn the parties against addressing vulnerable witnesses, including children, in a way that they find overly intimidating, abusive or otherwise improper.

Intimidation can be prevented through simple measures, such as reminding the parties that vulnerable witnesses, including children, shall be addressed in plain language<sup>204</sup> and with extra care.<sup>205, 206, 207</sup>

If control by the judge over the way children are addressed in court proves insufficient, other mechanisms, such as asking questions through a communicator who translates them into language that is understandable to the child, may be ordered by the presiding judge (see chap. V on the right to express views and concerns).<sup>208, 209</sup>

Similarly, in situations where the child's appearance is not held in camera to protect the child's privacy (see chap. VII on the right to privacy), the presiding judge may nevertheless exclude the public in order to protect the child from intimidation during his or her appearance.<sup>210, 211, 212</sup>

Intimidation is most likely endured during the cross-examination phase. The Guidelines address this particular mode of questioning in paragraph 31 (c). In jurisdictions where this practice is common, cross-examination and other forms of questioning of the child that are undertaken in an insensitive manner by actors such as law enforcement officials, prosecutors, judges or defence counsels are frequently mentioned as one of the most stressful aspects for children of the criminal justice process.

The right of the accused to question or have questioned a witness is sometimes used to intimidate a child witness. Defence lawyers may, for instance, ask questions beyond the child's developmental level and use hostile tactics that can have harmful effects on the child. In particular, in a case of sexual abuse, the child victim may be the only witness and successful prosecution can rest almost exclusively upon the evidence he or she provides. Tactics used by defence lawyers, which should be prevented by judges, include (a) building up the child's trust and then destroying it, thereby recreating the child's experiences at the hands of the abuser; (b) asking irrelevant questions specifically intended to upset the child; (c) confusing the child with repetitive and/or rapid questioning, repeated interruptions to responses or by demanding unrealistically specific times and details; (d) asking the child to estimate the time of an occurrence or to provide the number or sequence of events, to which the child is led to respond

by silence or with an acknowledgement that he or she does not know or an inaccurate answer; (e) stating that the child had consented to the activity or subjecting the child to questions regarding their sexual history.

Presiding judges should exercise a 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.<sup>213, 214</sup> More generally, like other questioning, cross-examination should be led while keeping in mind that vulnerable witnesses, including children, should be addressed in a simple, careful and respectful way. Where necessary, it is the responsibility of the judge to remind the parties of this leading principle and to reflect if it is in the best interests of the child to take part in such mechanisms.

### Implementation checklist 8: the right to be protected from hardship during the justice process

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child's right to be protected from hardship during the justice process, the following actors may consider:

- (a) Judges:
  - (i) Ordering that child victims or witnesses be accompanied at all times by a support person during their involvement in the justice process;
  - (ii) Explaining to children appearing before the court the importance of their testimony and the significance for the case of giving full and truthful testimony;
  - (iii) Making it a requirement that children be familiarized with court proceedings before their appearance;
  - (iv) Granting priority to cases involving child victims or witnesses over other pending cases on the roll of the court;
  - (v) Favouring hearing the evidence of children given from a special room decorated in a child-friendly way or, where available, by CCTV;
  - (vi) Closely monitoring the examination, and in particular cross-examination, of child victims and witnesses in order to protect them from harassment or intimidation and ensuring that the language used is appropriate;
  - (vii) Favouring an informal and friendly atmosphere for the hearing of children by, for example, ordering the removal of formal court outfits;
  - (viii) Limiting the duration of a child's stay in court or the number of questions put to him and ordering rest breaks;

- (ix) Monitoring the appearance of the child to ensure that the child is not unduly tired, distressed or otherwise suffering undue discomfort;
  - (x) Scheduling children's appearances in court in a way that is compatible with their own rhythm, with respect to school attendance, late sessions, and so forth, and, when preparing the schedule for a session, giving priority to cases involving children so that they are heard first, at the beginning of the session;
  - (xi) Limiting as far as possible the number of child interviews by issuing orders guaranteeing the proper recording of a child's initial statements and giving recorded evidence the same weight as live testimony, as long as the rights of the defence are respected;
  - (xii) Where necessary, ordering that a child's evidence be given on the other side of a device preventing direct eye contact with the accused, or ordering that the accused be removed from the courtroom; when such an order is made, ordering that the identification of the accused by the child, if any, occurs at the end of the child's evidence (including cross- and re-examination) and that the child does not stay in the presence of the accused more than is necessary for purposes of the identification;
  - (xiii) Where possible, ordering that a child's testimony be given in a closed session;
  - (xiv) Prohibiting direct cross-examination of child victims or witnesses by an accused who is not legally represented and, where necessary, assigning a representative to the accused for the sole purpose of the child's cross-examination.
- (b) Law enforcement officials:
- (i) Assigning a single agent to the child, preferably one of the gender of the child's choice who has undertaken specific training on child-sensitive issues, including communicating with children and other relevant skills, to follow him or her throughout the case;
  - (ii) Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language;
  - (iii) Reacting without delay and in a child-friendly manner on any report of a case involving a child victim;

- (iv) Interviewing children in a child-friendly, preferably neutral, environment, such as at his or her school, in a specific room decorated in a child-friendly way or at a child advocacy centre;
  - (v) Promoting a multidisciplinary approach to child-related cases by creating specific police units with staff specially trained for that purpose and who are involved in multidisciplinary child abuse teams;
  - (vi) Limiting as far as possible the number of interviews of child victims and witnesses, by keeping an accurate record of the original evidence taken by way of written statements or audio or video recording.
- (c) Lawyers:
- (i) Applying for the assignment of a support person to accompany a child victim or witness at all times during his or her involvement in the justice process;
  - (ii) Assigning a single person to the child, preferably of his or her gender, who has received specific training in child-sensitive issues, to follow him or her throughout the case;
  - (iii) In countries where victims are assisted by a lawyer, familiarizing child victims with the court proceedings before their appearance in court;
  - (iv) Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language;
  - (v) Acting so as to avoid any delay in the proceedings;
  - (vi) Interviewing children in a child-friendly environment, such as at his or her school, in a specific room decorated in a child-friendly way or at a child advocacy centre.
- (d) Legislators/policymakers:
- (i) Making it a requirement that children be familiarized with court proceedings before their appearance;
  - (ii) Making persons or professionals, including medical staff, who suspect that abuse or neglect is being or has been committed against a child liable for reporting it to the authorities;
  - (iii) Providing expedited procedures that may permit stages to be bypassed where they are not crucial to the fairness of the proceedings and when it is in the interests of child victims and witnesses;

- (iv) Encouraging the creation of multidisciplinary child abuse teams, including child advocacy centres.
- (e) Medical staff: getting involved in multidisciplinary child abuse teams, including child advocacy centres;
- (f) Non-governmental organizations:
  - (i) Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language;
  - (ii) Organizing and supporting multidisciplinary support initiatives for child victims, which should be community-based, respect confidentiality and avoid the stigmatization of particular groups of children;
  - (iii) Contributing to sensitization efforts to inform communities about the existence of support initiatives for child victims, contributing to initiatives to encourage the reporting of child abuse;
  - (iv) Contributing to training on communication with children for law enforcement officials and judges;
  - (v) Advocating for the implementation of appropriate protective measures for children involved in justice mechanisms, monitoring trials and following up cases involving children.
- (g) Prosecutors:
  - (i) Applying for the assignment of a support person to accompany a child victim or witness at all times during his or her involvement in the justice process;
  - (ii) Assigning a single person to the child, preferably one of the gender of the child's choice who has undertaken specific training on child-sensitive issues, to follow him or her throughout the case;
  - (iii) Familiarizing children with court proceedings before their appearance in court;
  - (iv) Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language;
  - (v) Acting so as to avoid any delay in the proceedings;
  - (vi) Interviewing children in a child-friendly environment, such as at his or her school, in a specific room decorated in a child-friendly way or at a child advocacy centre;

- (vii) Encouraging the creation of multidisciplinary child abuse teams, including child advocacy centres;
  - (viii) Limiting as far as possible the number of child interviews by keeping an accurate record of the original evidence given, whether by way of a written statement or audio or video recording;
- (h) Social workers:
- (i) Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language;
  - (ii) Getting involved in multidisciplinary child abuse teams, including child advocacy centres;
- (i) Teachers: contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by disseminating posters or booklets in child-friendly language.



## IX. The right to safety

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XII, The right to safety

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.

34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

- (a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;
- (b) Using court-ordered restraining orders supported by a registry system;
- (c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
- (d) Placing the accused under house arrest;
- (e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

Involvement as a victim or witness, or both, in a criminal process may be a perilous experience, especially when organized crime is involved. In these cases, victims and witnesses may even fear a threat to their life. In such extreme circumstances, ensuring their safety is essential. Witnesses and victims can be at risk of intimidation because of their involvement in the justice process. The risk of intimidation of children should be given special attention, particularly in cases of sexual abuse, trafficking or in cases where the alleged perpetrator is someone close to the child. Ensuring the safety of child victims and witnesses can entail a range of actions such as protective and security measures to prevent them from being further harmed, intimidated or retaliated against. The right to safety also includes the right to confidentiality with regard to information and evidence (see chapter VII on the right to privacy) and physical and emotional protection during the judicial process. In addition, their safety should be ensured before and after the trial by either keeping their whereabouts confidential or taking action against an offender to stop intimidation and retaliation.

Victim and witness protection before, during and after participating in criminal proceedings is reflected in the domestic legislation of most States.<sup>215, 216, 217</sup> Some State legislation addresses the necessity of such protection specifically with respect to child victims and witnesses.<sup>218, 219</sup> The right to protection must be balanced with the rights of the defence.<sup>220</sup>

Protection is most often provided to the victim or witness himself or herself, but can also be provided to his or her family and other close relatives.<sup>221, 222</sup> The burden of protecting victims and witnesses and their families is generally put on the prosecution, with the assistance of law enforcement agencies. In some countries, special witness protection units have been established.

Protective measures are usually applied before the trial in order to ensure that the victim or witness will be available and fit to testify at trial. However, these measures should, in principle, continue to apply as long as they remain necessary to protect the victim or witness, including after his or her testimony, in order to avoid possible retaliation. Guidance on this issue may be found in the law of Chile, which provides that protective measures shall be renewed as long as they remain necessary (see sidebar).

The Guidelines contemplate a set of protective measures to be implemented by State authorities. This list, however, is not exhaustive, as shown by the words “[s]uch safeguards could include” in paragraph 34. The first measure, contemplated in paragraph 33 of the Guidelines, is requiring mandatory reporting of offences against children immediately upon the discovery of the offence (see sect. A, below). The other measures, contemplated in paragraph 34, aim to protect children once they become involved in justice proceedings (see sect. B, below).

## A. Reporting and investigating offences against children

Several countries make the reporting of crimes against children to the competent authorities immediately upon their discovery a general obligation.<sup>223, 224, 225</sup> In

### International practice.

Before international criminal jurisdictions, the safety of witnesses, including victims, is a permanent concern. These tribunals have had recourse to a wide range of protective measures, which include (a) the creation of a specific section, under the authority of the Registrar, in charge of the protection of and provision of support to witnesses and victims; (b) concealing the witness from the public by means of a screen and prohibiting photography; (c) hearing testimony in closed sessions; (d) non- or limited disclosure of information concerning witness identity and whereabouts; (e) anonymity or distortion of voice and image; (f) testimony via video link; and (g) providing support in obtaining refugee status.

Chile, *Código Procesal Penal*, Law No. 19696 (2000), article 308, “Witness protection”:

“The court, in serious or aggravated cases, may order special measures to protect the safety of any witness requesting such protection. Such measures shall be applied for a reasonable period as ordered by the court and may be extended whenever necessary.

“Likewise, the Public Prosecutor’s Office, ex officio and at the request of the party concerned, shall adopt such measures as are appropriate to afford the witness the necessary protection, whether before or after that witness has given evidence. ...”

those States, any failure to report the offence may constitute a criminal offence. The obligation to report crimes is nevertheless strengthened for certain categories of professionals working in contact with children, including teachers, social workers, doctors and nurses.<sup>226</sup>

Special alarm-raising mechanisms have also been put in place to assist child victims to report crimes to the competent authorities. They include the creation of permanent multidisciplinary telephone services, where the child can call freely and anonymously and explain what he or she has experienced or witnessed.<sup>227</sup>

Several States have developed legislation that insists on the need for immediate action upon discovery of an offence that has been or is about to be committed against a child and specific procedures for the investigation of such cases. For example, in Tunisia, special officials for the protection of the child have been appointed to prosecute referrals of alleged offences committed against children, with exceptional powers of investigation, such as entering all places and buildings without a warrant.<sup>228</sup>

## B. Protective measures for children involved in the justice process

Some of the measures aimed at protecting child victims and witnesses from threats and intimidation have already been addressed in chapter VIII on the right to be protected from hardship during the justice process. Regarding intimidation as a criminal offence, as in Bosnia and Herzegovina, is a reinforcement of protective measures (see box).

### **Bosnia and Herzegovina, Criminal Procedure Code, article 267, Protection of Witnesses from Insults, Threats and Attacks:**

- (1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of the witness before the court. In the case of the fine, provisions of Article 242, Paragraph 1 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall inform the prosecutor for the purpose of undertaking criminal prosecution.
- (4) At the petition of the parties or the defense attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

The first measures contemplated in paragraph 34 of the Guidelines rely on restrictions on the freedom of movement of the alleged offender. Although the use of police custody, pretrial detention and other restraining orders

are common measures to ensure the safety of victims and witnesses,<sup>229, 230</sup> it is important to remember that the imperative of protecting victims and witnesses must be balanced with the that of respecting the rights of defendants. However difficult striking such a balance proves, the safety of the child should be the primary consideration in the determination of bail issues in cases of child abuse or neglect.

The Australian approach of removing the offender rather than the child from the child's home might be perceived as less prejudicial to the freedom of the defendant. Taking the child away from his or her familiar environment should only be considered where there is no other solution to protect him or her from a dangerous situation. Where the child's removal from his or her home is the only available option, family-based care should be preferred.<sup>231</sup> Placing the child under the protection of special childcare institutions should always be contemplated as a last resort.<sup>232, 233</sup> Such measures may be used, in particular, when the offender belongs to the direct family of the child and the other members of the child's family are not able to guarantee his or her protection. However, they should not be ordered lightly, since it may prove prejudicial for the child if he or she is removed from his or her family environment without good cause. Young children, in particular, may consider such protective measures a punishment. The placement of the child should be reviewed on a regular basis. It is therefore important to provide procedural guarantees in order to avoid unnecessary placements, as demonstrated in the Social Services Act of Sweden (see sidebar).

Another way of protecting victims and witnesses, including children, is to limit the disclosure of information about their identity and whereabouts. These measures were addressed in chapter VII on the right to privacy. In some situations, the restriction on disclosure is underpinned by the existence of safety risks for the victim or witness. The degree of restriction imposed may vary, depending on the circumstances and risks. The first step in restricting the disclosure of information on the whereabouts of the victim or witness can be implemented by advising the victim or witness not to reveal his or her address of residence or his or her workplace. Sometimes, the victim or witness can give the address of a police station as a contact address<sup>234</sup> or, as in Honduras, the court itself (see box).

**Honduras, Code of Criminal Procedure, Decree No. 9-99-E, article 237, Witness protection:**

"If the court, on its own initiative or on the basis of a witness statement, deems that there are reasonable grounds to believe that there is a serious danger to the person or property of the witness or to his or her spouse or common-law spouse, or to a relative in the ascending or descending line or sibling of either, as a result of evidence given by that witness, it shall, having heard the parties, adopt such protection measures as it deems appropriate, which may include any of the following:

(1) Prohibition of the disclosure, during proceedings, of the first name, surname, address, place of work or occupation of the witness (which, having been recorded in a document which is to be kept in a sealed envelope, shall be known only to the court and to the secretary of the court), or of any information that could reveal his or

**Sweden, Social Services Act (1980:620), 1980, article 50, paragraph (a):**

"In an investigation as to whether the social welfare committee needs to intervene for the protection or support of a minor, the committee, in order to assess the need for measures, may consult experts and otherwise make such contacts as are needed. The investigation shall be conducted in such a way that no person is unnecessarily exposed to injury or inconvenience. It should not be made more extensive than is justified by the circumstances of the matter.

... The person affected by an investigation as referred to in subsection one shall be informed that an investigation is being opened."

her identity and location. The witness may be identified only by a number or code name during proceedings; and ... (3) Establishment of the address of the court hearing the case, for the purpose of communications, as the domicile of the witness, to whom the court shall convey such communications confidentially.”

Exceptionally, testimony can be given anonymously to ensure the complete restriction on disclosure of information relating to the identity of the victim or witness.<sup>235, 236</sup> In countries where such a measure is permitted, it can be achieved by permitting victims or witnesses to testify by videoconference with voice or image distortion mechanisms.<sup>237</sup> Even more exceptional, and done usually only in organized crime-related cases, is granting full anonymity, a change of identity and/or the relocation of the child.<sup>238, 239</sup>

### Implementation checklist 9: the right to safety

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child’s right to safety, the following actors may consider:

- (a) Judges: where appropriate, ordering protective measures for child victims and witnesses, to continue as long as necessary, even after their appearance in court;
- (b) Law enforcement officials:
  - (i) Setting up special police units specialized in the implementation of protective measures for child victims and witnesses;
  - (ii) Ensuring training for law enforcement officials on issues related to child protection, including the training of specialized staff within police units to investigate complaints and allegations of child abuse in a way that is child-friendly and ensures maximum protection;
- (c) Legislators/policymakers:
  - (i) Implementing in the legislation the principle that child victims and witnesses, as well as their relatives, should be protected from threats resulting from their involvement in the justice process and stipulating that such protection should continue as long as necessary, even after their appearance in court. Enacting legal provisions for the enforcement of protective measures for child victims and witnesses, to include, depending on the resources available and with due respect for the rights of the defence, pretrial detention and/or other restrictive measures against the alleged offender, the placement of children in specialized youth protection institutions as a measure of last resort, limiting the disclosure of information concerning the identity and whereabouts of

- the child, and granting full anonymity, a change of identity and/or the relocation of the child;
- (ii) Allocating sufficient means and resources to the judiciary or other competent authorities for the implementation of efficient child victim and witness protection schemes;
  - (iii) Making the compulsory reporting of crimes against children to the competent authorities, immediately upon their discovery, a general obligation or at least one that is imposed on professionals working with children;
  - (iv) Developing alarm-raising mechanisms facilitating the reporting of offences against children, such as free and anonymous permanent telephone helplines;
  - (v) Setting up special police units specialized in child protection.
- (d) Medical staff: where applicable, complying with the obligation to report child abuse and contributing to initiatives to facilitate the reporting of child abuse;
- (e) Non-governmental organizations and community-based organizations:
- (i) Establishing alternatives to institutional care for children who have been removed from their home environment;
  - (ii) Disseminating legislation that offers maximum protection for child victims and witnesses.
- (f) Prosecutors: where appropriate, requesting protective measures for child victims and witnesses, which should continue for as long as necessary, even after the immediate court proceedings.
- (g) Teachers and community or social workers:
- (i) Contributing to initiatives to facilitate the reporting of child abuse;
  - (ii) Where applicable, complying with reporting obligations;
  - (iii) Ensuring training on issues related to child abuse, such as recognition of indicators of abuse.



## X. The right to reparation

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XIII, The right to reparation

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

Reparation is a right that should be granted to all victims. It refers to measures taken to redress harm that victims may have suffered as a consequence of crimes committed against them. Reparations help victims to recover. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain recognition for ongoing suffering. Receiving reparation may also convey to child victims that some justice has been achieved, despite the fact that a crime has been committed and that they may never fully recover from the harm done to them.

The beneficiary of the reparation may be the victim himself or herself, his or her family or dependants. Paragraph 35 of the Guidelines provides the right to obtain reparation for all children, without age limit. However, some countries grant that only their parents can claim restitution for the damage they suffered as long as the child has not reached a certain age, such as 13 years old. States providing such an age limit should amend their legislation on this point or find solutions that would prevent the issue of children's access to justice becoming a bar to their right to reparation, such as has, for example, been done in Portugal with respect to State compensation (see sidebar).

### International practice

The International Criminal Court system makes the reparation scheme a "key feature" of the Rome Statute (International Criminal Court, Situation in the Democratic Republic of Congo, No. ICC-01/04, *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. 01/04-01/06, Under Seal Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58 (PT), 10 February 2006). Its specific regulations provide for the early tracing, identification and freezing or seizure of the property and assets of prosecuted persons (Rome Statute of the International Criminal Court, arts. 57 (3) (e), 110 (4) (b)), as well as the establishment of a trust fund "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims" (Rome Statute, art. 79; Rules of Procedure and Evidence, rules 218 (3) (b), 221).

Portugal, Law Governing Compensation for the Victims of Criminality, Law No. 31/2006, 2006, article 4 (2):

2—A person who is a minor at the date of the intentional act of violence may present the request for the grant of compensation by the State at any time up to a year after attaining the age of majority or being freed from the control of his/her parent(s) or guardian.

Victims' right to reparation can be satisfied in different ways. A distinction is usually made between restitution and compensation (see box).

### Restitution

"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." (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), principle 8.) Other forms of restitution, in the form of symbolic sentences or atonement have also been undertaken through restorative justice processes.

### Compensation

"Compensation" means financial compensation provided by the State, usually in replacement or complement of restitution available from the offender or other responsible persons. Compensation may cover treatment and rehabilitation for physical and psychological injuries, loss of income, pain and suffering, material damages, financial support for dependants, and so forth.

The principle of the victim's right to be granted restitution is admitted in most State legislation. However, differences exist as to the exact modalities through which this reparation might be granted.

A distinction should be made between civil law countries, which largely admit victims as parties to criminal proceedings, usually by way of what is referred to as “intervention” or “civil action”, whereby they claim restitution from the offender, and common law countries, which usually draw a distinction between criminal proceedings, in which the public prosecutor is in opposition to the offender, and civil proceedings, through which the victim may claim and obtain restitution for the tort. However, this distinction is not absolute: firstly, civil law countries may give victims an option to claim restitution either before the civil or criminal courts. Secondly, in some common law countries, an application may be made for restitution in criminal courts as part of the sentencing process. The fact that a restitution order is pronounced by the criminal court does not imply that the victims are parties to the criminal case. Nor does such a restitution order replace civil actions. Indeed, restitution may only be ordered in cases where the damage is calculable. An example of restitution orders that may be sought in the criminal sentencing process can be found in Canada (see box).

**Canada, Criminal Code, R.S.C. 1985, c. C-46, section 738 (1):**

738. (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

- (a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;
- (b) in the case of bodily or psychological harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable; and
- (c) in the case of bodily harm or threat of bodily harm to the offender's spouse or common-law partner or child, or any other person, as a result of the commission of the offence or the arrest or attempted arrest of the offender, where the spouse or common-law partner, child or other person was a member of the offender's household at the relevant time, by paying to the person in question, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable.

The distinction made in common law countries between criminal proceedings and civil claims may be highly prejudicial to the rights of the child: the multiplication of proceedings makes the child's involvement in the justice process more

onerous and complex. It also multiplies contacts with justice processes, hearings, potential appeals, and so forth. Giving jurisdiction on criminal suits and their resulting civil claims to the same court would facilitate the child's access to restitution or reparation.

The principle of State compensation for damages suffered by victims of crime is also provided for in numerous countries; both civil and common law, sometimes even at the level of the constitution.<sup>240</sup> In Islamic countries, the principle of compensation by the State whenever it cannot be obtained from the offender or where the offender remains unknown, is enshrined in the sharia.<sup>241</sup>

Special victim compensation funds have been created in several States.<sup>242, 243, 244</sup> However, financial considerations often prevent States from setting up effective compensation schemes. Various innovative solutions have been devised to limit the likely expenditure by the State: in Latvia, the State may provide compensation and then act by way of subrogation procedures to get the compensation reimbursed, in full or in part, by the offender(s) or other responsible bodies. The same rule is also provided in article 40 of the law on civil concord of Algeria. In France, a tax on insurance contracts has been created or offenders may be obliged to pay a fine dedicated to the funding of compensation schemes, or both.

Reparations can also take the form of symbolic benefits, distributed individually to victims or collectively to families and communities that suffered from the crime committed. Such symbolic reparations can consist of a significant act, such as an apology by the perpetrator, a memorial service or other meaningful, sometimes traditional, ritual. It can also lead to the establishment of a memorial site or any other intervention that preserves the memory of the violation that took place. Especially in contexts of violence experienced collectively, symbolic reparations can have an important value for the affected communities.

Restorative justice processes address, in particular, the harm done to, and needs of, victims. In the appropriate context, restorative justice processes can be ideal forums in which to address reparations (see box).

### Restorative process

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

The following are features of restorative justice programmes:

- A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually

- A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities ...
- An approach that can be used in conjunction with traditional criminal justice processes and sanctions
- An approach that incorporates problem solving and addressing the underlying causes of conflict
- An approach that addresses the harms and needs of victims ...
- A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder

*Handbook on Restorative Justice Programmes* (United Nations publication, Sales No. E.06.V.15), pp. 5-8.

### Implementation checklist 10: the right to reparation

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child's right to reparation, the following actors may consider:

- (a) Legislators/policymakers:
  - (i) In countries providing a minimum age limit for the pursuit of a civil claim and the existence of measures for restitution or compensation, either removing the age limit or providing solutions in order to safeguard the child's access to justice and his or her right to reparation;
  - (ii) In common law countries and other countries where criminal judges have no jurisdiction over civil claims, providing an exception to this principle with respect to child victims allowing, if they or their legal representatives so wish, their claim to be presented and having it determined by the same court and at the same time as the criminal case;
  - (iii) Developing State compensation schemes for those children who cannot obtain restitution from their offenders. These schemes may be financed, for example, through subrogation procedures to get the compensation reimbursed, in full or in part, by the offender(s) or other responsible bodies, through public funding, confiscation of the perpetrator's assets, fines or other sources, such as a tax imposed on insurance contracts;

(iv) Where applicable, establishing a legal framework for the establishment of restorative justice programmes; eliminating or reducing legal barriers to the use of restorative justice programmes; creating a legal inducement for using restorative programmes; ensuring protection of the rights of offenders and victims participating in restorative programmes.

(b) Non-governmental and other community-based organizations: promoting the development of restorative justice programmes.



## XI. The right to special preventive measures

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XIV, The right to special preventive measures

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

Children may already face twice as much risk of repeated victimization as adults because they often are, or are perceived by, a potential perpetrator as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult (see sidebar).

“Repeat victimization” means a situation when the same person suffers from more than one criminal incident over a specific period of time. (Council of Europe, appendix to recommendation Rec. (2006) 8 of the committee of ministers to member states on assistance to crime victims, paragraph 1.2)

The right to special preventive measures must be distinguished from the right of child victims and witnesses to be protected, addressed in chapter IX of the present *Handbook* on the right to safety. The right to safety is aimed at protecting child victims and witnesses from intimidation and from the commission of criminal acts directed at them in order to prevent or otherwise interfere with their

participation in the judicial process. Other aspects of prevention are also addressed in chapter VI on the right to effective assistance, with respect to measures aimed at promoting social rehabilitation of child victims.

Preventive measures for child victims and witnesses of crime need to be enshrined in the domestic institutions and legislation of the State and should specifically address the situation of child victims of crime. States vary in the ways in which they implement such legislation and recognize these rights: the laws of Bulgaria, the Philippines (see box) and Portugal provide examples.<sup>245, 246, 247</sup> Preventive measures, however, not only protect children and specifically child victims and witnesses of crime, but also assist States in combating and preventing crime. Although such measures are not always easy to institute, they usually have long-term benefits.

**Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act, No. 7610 (1992), article I, section 2.**

“It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same. It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.”

Once the principle of undertaking special measures of prevention of victimization targeted at vulnerable children is integrated in legislation, its implementation may vary from State to State.

## A. Judicial prevention of offences against children at risk

Several countries have set up special police units specialized in child-related crimes, staffed by law enforcement officials who are specially trained in dealing with specific forms of crime victimizing children, such as the sale to children of alcoholic drinks; tobacco products; drugs; obscene, indecent or pornographic materials; or addictive materials; as well as the mistreatment of children, human trafficking, and so forth. Such officials can also be empowered to use specific means or tools of investigation. For example, in Tunisia, special officials for the protection of the child have been appointed to prosecute alleged offenders who commit crimes against children and have been given exceptional powers of investigation, such as entering into all places and buildings without a warrant.<sup>248</sup>

The legislation of some States further promotes the prevention of crimes against children by imposing measures that may appear to restrict their freedom, but which are, in fact, aimed at protecting them from facing hazardous situations that could lead to exploitation or abuse. These measures may include the monitoring of certain activities exposing children to potential exploitation.<sup>249, 250</sup>

Upon the disclosure of offences committed against children, removing the child from his or her surroundings and providing alternative care is one measure that can prevent further victimization (see chapter IX on the right to safety, sect. B).<sup>251, 252</sup> However, this should only be a measure of last resort and institutionalization should be avoided. Alternative care should always favour solutions within the family setting.

Another judicial preventive measure that should be used is to demand references and a criminal background assessment before hiring personnel likely to work with children. Another option, which should be used with extreme caution to avoid causing human rights violations, is for employers to receive information about the criminal history of applicants. Such lists disclose the names of persons who have criminal records involving abuse of children or sexual abuse generally (see sidecar).<sup>253, 254, 255</sup> The creation and use of such lists can be highly prejudicial to individual freedom and should therefore be used only after due consideration has been given to the benefits in terms of child protection.

United States, Adam Walsh Child Protection and Safety Act of 2006, title I, Sex Offender Registration and Notification Act, sections 112 and 113, H.R.4472, ENR, 2006:

“A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.”

Japan, Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children, 1999, article 14:

“1. In light of the fact that such acts as child prostitution and the distribution of child pornography would seriously affect the mental and/or physical growth of children, the State and local public entities shall, to allow for the prevention of such acts, endeavor to educate and enlighten the public to deepen their understanding of the rights of children.

2. The State and local public entities shall endeavor to promote researches and studies that can help prevent such acts as child prostitution and the distribution of child pornography.”

## B. Promoting awareness-raising, information and education for the prevention of offences against children at risk

Beyond general policies aimed at preventing crime and, in particular, the re-victimization of child victims, prevention can be sought through the development of programmes promoting awareness-raising, information and education. Such programmes have been conducted in different States with respect to the prevention of specific forms of criminality affecting children (see sidebar).

Multidisciplinary approaches can be an asset in the prevention of crime since they combine different solutions and combat different aspects of the root causes of crime. In Cambodia, for example, a community programme was established to prevent sexual abuse and to facilitate the reintegration of child victims. The objectives were to mobilize the community with regard to the rights of the child, to establish a network of all the concerned organizations, to form a structure for the protection of children and to send volunteers to help in poor areas to which tourists were attracted, where children were vulnerable to being used as prostitutes and to sexual abuse.<sup>256</sup> The recognition that poverty, lack of education and low public awareness are important factors of victimization is crucial to address the problem in the long term. As part of a three-year project, Cambodia was to assess which practices and measures were the most effective and tailor the programme accordingly.

Another example of a multidisciplinary, broad approach to the prevention of criminality affecting populations at risk can be found in the Russian Federation, with respect to the prevention of trafficking in persons (see box).

**Russian Federation, Draft federal law on countering trafficking in persons, 2003, article 21, Organization of Prevention of Trafficking in Persons:**

1. The activities to prevent trafficking in persons shall be organized and coordinated by the Federal Commission in compliance with the federal program approved by the Government of the Russian Federation.
2. The system of preventive measures against trafficking in persons shall comprise:
  - (a) developing initiatives and taking measures to provide for equitable social and economic conditions for groups of risk, which includes: creating conditions for market integration of people belonging to a group of risk or residing in regions belonging to a risk group;
  - (b) conducting research on anti-trafficking issues;
  - (c) conducting monitoring [of the activities] relating to countering trafficking in persons;
  - (d) developing programs encouraging employers to retain people belonging to a risk group;
  - (e) developing programs aimed to resolve specific social problems which create conditions for expanding the area of activity of human traffickers;
  - (f) enhancing public awareness about dangerous situations to which potential victims of trafficking in persons may become exposed; about measures of protection offered by the state and special institutions, and about measures of criminal and administrative correction as adopted by the state to counter trafficking in persons;
  - (g) developing and implementing educational programs targeting educators and students of educational establishments, institutions for parentless children, as well as parents of students; the unemployed and semiliterate; people from risk groups, residing in the regions of risk; and victims of trafficking in persons;
  - (h) measures to train officials of federal executive authorities and the territorial agencies thereof that are engaged in issues of countering trafficking in persons. The training shall include methods of prevention of trafficking in persons, issues of criminal prosecution of persons involved in trafficking in persons, problems of protection to victims of trafficking in persons and witnesses, respect for and protection of human rights, gender-sensitive issues, cooperation with non-governmental organizations, and scientific and research institutions.

### Implementation checklist 11: the right to special preventive measures

In order to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, and, in particular, the child's right to special preventive measures, the following actors may consider:

- (a) Health workers, teachers, social workers and community workers:
  - (i) Promoting programmes of awareness-raising, information and education of children with respect to the risks of re-victimization;
  - (ii) Ensuring continuous training for health workers, teachers, social workers and others who interact with children in order to equip them with the motivation, skills and authority to identify and respond to child abuse.
- (b) Judges: where necessary, upon discovery of offences committed against children, ordering appropriate measures for their protection, including offering alternative family care. Ordering the removal of a child from his or her home should always be a last resort: institutional care should be avoided and family care preferred.
- (c) Law enforcement officials:
  - (i) Establishing special police units specializing in child-related crime intervention;
  - (ii) Intervening immediately and in a child-friendly manner upon receiving information about offences committed against children;
  - (iii) Ensuring continuous training so that law enforcement officials are equipped with the motivation, skills and authority to identify and respond to child abuse.
- (d) Legislators/policymakers:
  - (i) Adopting measures to encourage respect for and recognition of child victims and understanding of the negative effects of crime by personnel and organizations coming into contact with victims;
  - (ii) Enacting legislative provisions addressing the situation of child victims of crime and taking measures aimed at upholding their right to a safe environment;
  - (iii) Establishing police units specializing in child-related crime interventions, with exceptional powers of intervention and investigation, such as entering, without a warrant, all places and buildings where crimes are, or have allegedly been, committed against children;

- (iv) Establishing an adequate framework for legislation, in line with international legal standards, to protect children from violence, abuse, exploitation and trafficking;
  - (v) Enacting legislative provisions providing, where necessary, upon discovery of offences committed against children, appropriate measures for their protection. Ordering the removal of the child from his or her home should be a last resort: institutional care should be avoided and family care preferred;
  - (vi) Promoting the centralization of relevant information on persons with criminal records, especially in cases of crimes against children, and providing for procedures enabling potential employers of youth-related workers to receive information on an applicant's criminal record;
  - (vii) Promoting awareness-raising, information and education programmes aimed at children and law enforcement officials to draw attention to the risks of re-victimization.
- (e) Non-governmental organizations:
- (i) Promoting programmes to improve children's life skills, knowledge and participation as a protection from exploitation and abuse;
  - (ii) Developing programmes for the rehabilitation of child victims, in particular in cases of sexual abuse. Services should be provided in an environment that fosters the health, self-respect and dignity of the child;
  - (iii) Developing prevention programmes aimed at establishing a protective environment for vulnerable children in order to reduce the risk of them becoming victims of violence, abuse, exploitation or trafficking;
  - (iv) Building up a participatory and locally based monitoring and reporting system to record the incidence and nature of child protection abuses and to allow for an informed and strategic response.
- (f) Prosecutors:
- (i) Making the investigation and prosecution of crimes against children a priority;
  - (ii) Where necessary, upon discovery of an offence committed against a child, applying appropriate measures for the child's protection, including offering alternative family care in cases where the interests of the child require it and exercising great care when such removal and placement is requested.



## XII. Implementation of the Guidelines

### Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XV, Implementation

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

- (a) Relevant human rights norms, standards and principles, including the rights of the child;
- (b) Principles and ethical duties of their office;
- (c) Signs and symptoms that indicate crimes against children;
- (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- (e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
- (f) Special measures and techniques to assist child victims and witnesses in the justice process;
- (g) Cross-cultural and age-related linguistic, religious, social and gender issues;

- (h) Appropriate adult-child communication skills;
- (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
- (j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;
- (k) Methods to protect and present evidence and to question child witnesses;
- (l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.

The final chapter of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime suggests a number of measures for the implementation of recommendations contained in earlier chapters. Throughout the Guidelines, although numerous implementation measures are addressed with respect to each particular Guideline, in the final chapter (chap. XV) two issues are considered more fully: the first is the training of professionals working with child victims and witnesses (paras. 40-42) and the second is cooperation among all actors involved in justice matters, both at the national and international levels (paras. 43-46).

## A. The training of professionals working with child victims and witnesses of crime

Professionals should be trained to ensure that they are aware of the particular needs of the child in terms of care, assistance, empathy and attention, and that they take into account and safeguard the best interests of child victims and witnesses.

**International practice**

Although previous international tribunals required the presence of expert personnel, in particular within their respective victim and witnesses units, the International Criminal Court was the first to make training in issues of trauma, sexual violence, security and confidentiality a requirement for the Court and the parties. The training is carried out by the Victims and Witnesses Unit (International Criminal Court, Rules of Procedure and Evidence, rules 17 (2) (a) (iv), 18 (d) and 19).

**India, Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56, of 2000), article 63, Special juvenile police unit:**

“(1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the ‘juvenile or the child welfare officer’ who will handle the juvenile or the child in co-ordination with the police.

(3) Special juvenile police units, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.”

It is incumbent upon every State to set up its own training programmes for professionals who come into contact with child victims and witnesses of crime in accordance with its own domestic system and criminal procedure, and to give those professionals an opportunity to participate in international training organized at the regional level. Such training should target different professions, including health-care professionals, judges, law enforcement officials, lawyers, prosecutors and social workers.

In Bolivia (Plurinational State of) and Bulgaria, for example, the training of law enforcement officials who come into contact with child victims or witnesses of crime is a requirement.<sup>257,258</sup> Ideally, training courses 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.

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 into 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. 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, the role of law enforcement supervisors and victim support.

The training may also include victim and witness identification and interviewing, evidence-collection, interrogation of the accused, investigative procedures, case management, integrating law enforcement investigations with court procedures and presenting evidence in court. A law enforcement official specialized in child-related issues should also receive training on how to provide information and put victims and witnesses in contact with available support groups. A good example of legislation providing for specific training targeting police units is that of India (see sidebar). Similar initiatives can be found in other countries, such as Morocco and Peru.<sup>259, 260</sup> The development and dissemination of domestic guidelines addressing the issue of child victims and witnesses from the viewpoint of the police should also be encouraged.

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 the 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 programme 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>261</sup> In Belgium, legislation also provides that at least one person in each centre for socio-medical assistance shall receive specific training on child victim issues.<sup>262</sup>

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>263</sup> A comprehensive programme of training and coordination for social workers is also undertaken in Ukraine.<sup>264</sup> Brochures and leaflets to raise awareness among this category of professional have been disseminated in several countries.<sup>265</sup> Where applicable, similar training should be provided for voluntary workers assisting in providing victim services.

In common law countries, the training of prosecutors in child-friendly procedures may ensure that prosecutors, when preparing a case and presenting it to the court, take into account the specific requirements related to the situation of child victims and witnesses of crime. When leading the investigation and preparing a case for trial, prosecutors have an obligation to ensure that the rights of child victims and witnesses are respected. They should keep the child informed and facilitate his or her participation in the court 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 use of special measures such as waiting areas for child victims and witnesses and their families (see chapter VIII on the right to be protected from hardship during the justice process).

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 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, 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 on 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.

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.<sup>266</sup> 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>267</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.

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 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>268</sup>

Similarly, it is of crucial importance that all judges be trained in the rights of the child and child-related issues. In most countries, child-related issues are reserved for a special category of judges who have received proper training, making them specialists in these matters. These judges 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.<sup>269</sup>

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. An 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.<sup>270</sup> Other States have undertaken similar initiatives.<sup>271, 272</sup>

## B. Cooperation in the enforcement of protective measures for child victims and witnesses

Child victims and witnesses often experience additional hardship because of long delays in the processing of the case and in the scheduling of hearings and the trial. They may also be subjected to multiple questioning and interrogation by a

whole array of professionals, with negative consequences for their physical and emotional well-being (see chapter VIII on the right to be protected from hardship during the justice process). Such hardship could be alleviated through the establishment of cooperation among professionals, which could be encouraged through the use of protocols applicable to all staff and standardized questionnaires and forms for completion by the various professionals involved.

For cooperation to be achieved, professionals need to take into account and understand the limitations and skills required of other professional groups and how the knowledge and efforts of the various professionals can be combined. Examples of successful multidisciplinary teams may be found in Peru and the United States.<sup>273, 274</sup> Significant progress has been made with the advent of child advocacy centres, which focus on a multidisciplinary approach to the investigation, combining the expertise of the various professionals involved: law enforcement officials collaborate with child specialists and mental health providers to conduct the interviews. This method has greater potential for protecting the child and the accused because it allows for more thorough and accurate interviews to be conducted.

In some countries, the task of coordinating child protection is undertaken at the regional level. In the United Kingdom, for example, Local Safeguarding Children Boards 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 Boards, *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>275</sup> Similar initiatives can be found in Bolivia (Plurinational State of), India and Tunisia.<sup>276, 277, 278</sup>

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, judges, law enforcement officials and social workers.<sup>279</sup> 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) and the Philippines (for victims of child prostitution or other sexual abuse, child trafficking, obscene publications and indecent shows).

Countries that have endured widespread violence as a result of armed conflicts or internal disturbances often provide, with the support of international organizations, highly elaborate cooperative victim-support schemes. In Algeria, for example, an intersectoral assistance programme was launched by the Government with the support of UNICEF: the programme includes counselling centres that provide child victims located in the areas most affected by terrorist attacks with medical, psychological and social assistance, national centres for the care of child victims who have lost their parents, financial and material assistance for foster families, awareness-raising campaigns and management training for all professionals dealing with children.<sup>280</sup>

In France, the Institut national d'aide aux victimes et de médiation is a national federation of groups of victim support associations. It works in collaboration with the Ministry of Justice and other ministries that are its main contributors. The Institute is in charge of promoting and coordinating support and assistance to victims, mediation and all other measures aimed at improving recognition of the rights of victims.<sup>281</sup> Similar successful interactions between non-governmental agencies and State judicial authorities are found in countries such as Brazil and the Czech Republic.<sup>282, 283</sup>

### Notes

- <sup>1</sup> General Assembly resolution 40/33, annex.
- <sup>2</sup> General Assembly resolution 45/112, annex.
- <sup>3</sup> General Assembly resolution 45/113, annex.
- <sup>4</sup> Economic and Social Council resolution 1997/30, annex.
- <sup>5</sup> General Assembly resolution 40/34, annex.
- <sup>6</sup> Economic and Social Council resolution 1998/21, annex.
- <sup>7</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.
- <sup>8</sup> *Ibid.*, arts. 19, 39 and 40.
- <sup>9</sup> United Nations, *Treaty Series*, vol. 2187, No. 38544, arts. 68, 75 and 79.
- <sup>10</sup> United Nations, *Treaty Series*, vols. 2225, 2237, 2241 and 2326, No. 39574, arts. 6-8.
- <sup>11</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146, art. 32.
- <sup>12</sup> United Nations Children's Fund, *Implementation Handbook for the Convention on the Rights of the Child* (United Nations publication, Sales No. E.07.XX.11), pp. 37-49.
- <sup>13</sup> Venezuela (Bolivarian Republic of), *Ley Organica para la Protección del Niño y del Adolescente* (1998), No. 5.266, art. 8.
- <sup>14</sup> Finland, Child Welfare Act, No. 683 (1983), sects. 1 and 10.
- <sup>15</sup> Kenya, Children Act, 2001 (chap. 8 of the Laws of Kenya), sect. 4 (2).
- <sup>16</sup> Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act, No. 7610 (1992), art. I, sect. 2.
- <sup>17</sup> Bangladesh, Children Act, sects. 10 and 11.
- <sup>18</sup> Pakistan, Punjab Youthful Offenders Ordinance (annex 7, appendix XXI), 1983, sect. 12.
- <sup>19</sup> South Africa, Children's Act, 2005, Act No. 38 of 2005 (*Government Gazette*, vol. 492, 19 June 2006), sect. 61 (3).
- <sup>20</sup> Canada (Québec), *Loi sur la protection de la jeunesse* (L.R.Q. chap. P-34.1) (1977), art. 85.3.
- <sup>21</sup> Australia (Queensland), Evidence Act 1977.
- <sup>22</sup> Germany, Code of Criminal Procedure, art. 81c (3).
- <sup>23</sup> J. Shapland, "The criminal justice system and the victim", *Victimology*, vol. 10, 1985, pp. 585-589.
- <sup>24</sup> Graça Machel, *The Impact of War on Children* (United Nations publication, Sales No. E.01.XX.11).
- <sup>25</sup> Sierra Leone, Truth and Reconciliation Commission, *Truth and Reconciliation Commission Report for the Children of Sierra Leone: Child-Friendly Version* (Accra, Graphing Packaging Limited, 2004).
- <sup>26</sup> Belarus, Law on Child's Rights, No. 2570-XII, 1993 (as amended in 2004), art. 6.
- <sup>27</sup> Nepal, Children's Act, No. 2048 (1992), sect. 6, para. 1.
- <sup>28</sup> Estonia, Child Protection Act (*Riigi Teataja*) (*State Gazette*) 1992, 28, 370), art. 10.
- <sup>29</sup> Nepal, Children's Act, No. 2048 (1992), sect. 6, para. 2.
- <sup>30</sup> Estonia, Child Protection Act (*Riigi Teataja*) (*State Gazette*) 1992, 28, 370), art. 10.
- <sup>31</sup> Egypt, Children's Code, 1996, art. 2.
- <sup>32</sup> Yemen, Children's Rights Act, art. 9.
- <sup>33</sup> Ecuador, *Ley de la Juventud*, No. 2001-49, art. 4.
- <sup>34</sup> Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11(XV).
- <sup>35</sup> Syrian Arab Republic, Court of Cassation, decision No.28, 22 January 1979 and decision No.156, 3 March 1979 (Syrian Arab Republic, initial report to the Committee on the Rights of the Child (CRC/C/OPSC/SYR/1), para. 227).
- <sup>36</sup> Algeria, *Code de procédure pénale*, 1966, art. 93 (2), 228.
- <sup>37</sup> Australia (Queensland), Evidence Act 1977, sect. 9.
- <sup>38</sup> New Zealand, *R. v. Accused* (CA 245/90) (1990) 6 CRNZ 354.
- <sup>39</sup> Australia (Queensland), Evidence Act 1977, sect. 9C.
- <sup>40</sup> Iceland, Child Protection Act, No.80/2002, art. 54, para. 1.
- <sup>41</sup> Canada (Québec), *Loi sur la protection de la jeunesse*, L.R.Q., chap. P-34.1 (1977), art. 5.
- <sup>42</sup> Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 20.

- <sup>43</sup> Philippines, Anti-Violence against Women and their Children Act of 2004, No. 9262 (2004), sect. 31 (e).
- <sup>44</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 6 (1).
- <sup>45</sup> Argentina, *Código Procesal Penal*, art. 79 (d).
- <sup>46</sup> Australia, Victims of Crime Act 1994 (as amended on 13 April 2004), No. 83 of 1994, para. 4 (k).
- <sup>47</sup> New Zealand, Victims' Rights Act 2002, sect. 12, subsect. (1) (b).
- <sup>48</sup> Nicaragua, *Código Procesal Penal*, Law No. 406, 2001, art. 110 (1).
- <sup>49</sup> Kyrgyzstan, Criminal Code, art. 50 (9) and (10).
- <sup>50</sup> 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, para. 2.
- <sup>51</sup> Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 11 (IX).
- <sup>52</sup> South Africa, Department of Justice and Constitutional Development, "National Policy Guidelines for Victims of Sexual Offences" (Pretoria, 1998), chap. 10.
- <sup>53</sup> Canada, Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, principle 6.
- <sup>54</sup> Armenia, Criminal Procedure Code, 1999, art. 59 (9).
- <sup>55</sup> Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 75 (6).
- <sup>56</sup> Iceland, Child Protection Act, No.80/2002, art. 55, para. 1.
- <sup>57</sup> Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 215 (3).
- <sup>58</sup> United States (Alabama), Code of Alabama, 1975, Title 15, art. 3, sect. 15-23-72 (2) (e).
- <sup>59</sup> Colombia, *Código de Procedimiento Penal*, Law No. 906, 2004, art. 136 (12) and (14).
- <sup>60</sup> United States, United States Code collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, subsect. (a) (2).
- <sup>61</sup> Netherlands, "De Beaufort Guidelines", para. 6.1.
- <sup>62</sup> United Kingdom, The Code for Crown Prosecutors (London, 2004), sect. 5.13.
- <sup>63</sup> New Zealand, Victims' Rights Act 2002, art. 12, subsect. 1 (e) (i).
- <sup>64</sup> United States (Missouri), Constitution of the State of Missouri, art. 1, Bill of Rights, sect. 32 (2).
- <sup>65</sup> Canada (Québec), *Loi sur la protection de la jeunesse* (L.R.Q., chap. P-34.1) (1977), art. 5 (1).
- <sup>66</sup> Australia, Victims of Crime Act 1994 (as amended on 13 April 2004), No. 83 of 1994, sect. 4 (l).
- <sup>67</sup> Canada, Corrections and Conditional Release Act, S.C. 1992, c. 20, sect. 26.
- <sup>68</sup> Bulgaria, Child Protection Act, 2004, art. 15 (3).
- <sup>69</sup> Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 107 (d).
- <sup>70</sup> New Zealand, Children, Young Persons, and Their Families Act 1989, art. 10.
- <sup>71</sup> Marta Santos Pais, Director of the Division of Evaluation, Policy and Planning, United Nations Children's Fund, New York, *Child Participation* (available at [www.gddc.pt/atividade-editorial/pdfs-publicacoes/8182MartaPais.pdf](http://www.gddc.pt/atividade-editorial/pdfs-publicacoes/8182MartaPais.pdf)).
- <sup>72</sup> Sri Lanka, Supreme Court, *Harindra and Others v. The Ceylon Electricity Board and Others*, SC Application, No. 323/97, 1997, mentioned in the report of Sri Lanka dated 19 November 2002 to the Committee on the Rights of the Child (CRC/C/70/Add.17, para. 55).
- <sup>73</sup> Belarus, Law on General Concepts of State Youth Policy in the Republic of Belarus, No. 1629-XII, 1992, art. 5 (4).
- <sup>74</sup> Kenya, Children Act, 2001 (chap. 8 of the Laws of Kenya), sects. 4 and 76 (3) (a).
- <sup>75</sup> Myanmar, Child Law No. 9/93, 1993, art. 13.
- <sup>76</sup> Rwanda, *Loi relative aux droits et à la protection de l'enfant*, No. 27/2001, art. 9.
- <sup>77</sup> Tunisia, *Code de la protection de l'enfant*, Law No. 95-92, 1995, art. 10.
- <sup>78</sup> Nepal, Report on Laws and Legal Procedures Concerning Commercial Sexual Exploitation of Children (ECPAT International, Bangkok, 2004), p. 43.
- <sup>79</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 8 (1) (b).
- <sup>80</sup> Chile, *Código Procesal Penal*, Law No. 19.696 (2000) (as last amended in 2004), art. 109 (d) and (e).
- <sup>81</sup> United States, United States Code collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, subsect. (a) (4).
- <sup>82</sup> Estonia, Code of Criminal Procedure, 1961, sect. 40 (2).
- <sup>83</sup> United States, United States Code collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, subsect. (a) (4).
- <sup>84</sup> France, *Code de procédure pénale*, art. 306 (3).
- <sup>85</sup> New Zealand, Victim's Rights Act 2002, sect. 28.
- <sup>86</sup> Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 75 (6).
- <sup>87</sup> Nicaragua, *Código Procesal Penal*, Law No. 406, 2001, art. 110 (4).
- <sup>88</sup> France, *Code de procédure pénale*, arts. 85 and 495-13.
- <sup>89</sup> The former Yugoslav Republic of Macedonia, Code of Criminal Procedure, art. 55 (1) and (2).
- <sup>90</sup> United States (Alabama), Code of Alabama, 1975, Title 15, art. 3, sect. 15-23-74.
- <sup>91</sup> Armenia, Criminal Procedure Code, 1999, art. 59 (8).
- <sup>92</sup> France, *Code de procédure pénale*, art. 120.
- <sup>93</sup> France, *Code de procédure pénale*, art. 120.
- <sup>94</sup> The former Yugoslav Republic of Macedonia, Code of Criminal Procedure, art. 55 (2).

- <sup>95</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 738.
- <sup>96</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 8 (1) (a).
- <sup>97</sup> Uruguay, *Código del Proceso Penal*, Law No. 16.893, 1997, art. 75 (4).
- <sup>98</sup> Estonia, Code of Criminal Procedure, 1961, sect. 40 (2).
- <sup>99</sup> United States, United States Code collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, subsect. (a) (4).
- <sup>100</sup> Kazakhstan, Criminal Procedural Code, Law No.206, 1997, art. 75 (6).
- <sup>101</sup> Paraguay, *Código Procesal Penal*, art. 68 (5).
- <sup>102</sup> El Salvador, *Código Procesal Penal*, Decreto No. 904, 1997 (as last amended in 2006), art. 13 (6).
- <sup>103</sup> United Kingdom, Criminal Justice (Scotland) Bill, SP Bill 50, 2003, sect. 17.
- <sup>104</sup> United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (f).
- <sup>105</sup> United States, Department of Justice, Office for Victims of Crime, *Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses* (Washington, D.C., 1999), p. 17.
- <sup>106</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 722.
- <sup>107</sup> Jo Goodey, *Victims and Victimology: Research, Policy and Practice* (Longman, 2005), p. 166.
- <sup>108</sup> Germany, Code of Criminal Procedure, art. 52, (2) and (3).
- <sup>109</sup> Chile, *Código Procesal Penal*, Law No. 19.696 (2000) (as last amended in 2004), art. 6 (3).
- <sup>110</sup> New Zealand, Victims' Rights Act 2002, sect. 8.
- <sup>111</sup> Canada (Québec), *Loi sur l'aide aux victimes d'actes criminels* (L.R.Q., chap. A-13.2) (1988), art. 6 (1).
- <sup>112</sup> Algeria, *Décret présidentiel n° 06-93 relatif à l'indemnisation des victimes de la tragédie nationale*, 28 February 2006.
- <sup>113</sup> Zimbabwe, War Victims Compensation Act.
- <sup>114</sup> Philippines, Witness Protection, Security and Benefit Act, No. 6981, 1991, sect. 8 (b).
- <sup>115</sup> United Kingdom, Crown Prosecution Service, Children's Charter, 2005, sect. 3.14.
- <sup>116</sup> Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 3.
- <sup>117</sup> Morocco, *Code de procédure pénale*, art. 510.
- <sup>118</sup> United Kingdom, Crown Prosecution Service, Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance (2001).
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- <sup>120</sup> Zambia, Zambia Police (Amendment) Act, 1999 (No. 14 of 1999), chap. 107.
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- <sup>122</sup> France, *Code de procédure pénale*, arts. 706-50 and 706-51.
- <sup>123</sup> Libyan Arab Jamahiriya, Child Protection Act, No. 5, 1997.
- <sup>124</sup> Inter-agency guiding principles on unaccompanied and separated children, 2004, p. 47 (available at [www.icrc.org](http://www.icrc.org)).
- <sup>125</sup> Armenia, Criminal Procedure Code, 1999, art. 10 (3) and (4).
- <sup>126</sup> Bulgaria, Child Protection Act (2004), art. 15 (8).
- <sup>127</sup> Philippines, Anti-Violence against Women and their Children Act of 2004, No. 9262 (2004), sect. 35 (b).
- <sup>128</sup> France, *Code de procédure pénale*, art. 706-50.
- <sup>129</sup> Iceland, Child Protection Act, No. 80/2002, art. 60.
- <sup>130</sup> Peru, *Código de los Niños y Adolescentes*, Law No. 27.337, 2000, art. 146.
- <sup>131</sup> Pakistan, Juvenile Justice System Ordinance, 2000.
- <sup>132</sup> Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 107 (b).
- <sup>133</sup> Kazakhstan, Criminal Procedure Code, Law No. 206, 1997, art. 75 (6).
- <sup>134</sup> Sri Lanka, Constitution, art. 106.
- <sup>135</sup> Egypt, Constitution, arts. 44-45 and 57.
- <sup>136</sup> Chile, *Código Procesal Penal*, Law No.19.696 (2000) (as last amended in 2004), art. 289.
- <sup>137</sup> Kenya, Children Act, 2001 (chap. 8 of the Laws of Kenya), sect. 76 (5).
- <sup>138</sup> Qatar, Code of Criminal Procedure, art. 65.
- <sup>139</sup> Bangladesh, Children Act, sect. 17.
- <sup>140</sup> Italy, Code of Criminal Procedure, art. 114.
- <sup>141</sup> Japan, Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children, 1999, art. 13.
- <sup>142</sup> Russian Federation, Draft federal law on countering trafficking in persons, 2003, art. 28, para. 3.
- <sup>143</sup> Tunisia, *Code de la protection de l'enfant*, Law No. 95-92, 1995, art. 120.
- <sup>144</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486 (2).
- <sup>145</sup> France, *Loi sur la liberté de la presse*, 1881, arts. 39 bis, 39 quinquies, 42 and 43.
- <sup>146</sup> United Kingdom (Scotland), Children (Scotland) Act 1995, chap. 36, sect. 44 (2).
- <sup>147</sup> Bosnia and Herzegovina, Criminal Procedure Code, No. 56/03, 2003, art. 250.
- <sup>148</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486, subsects. (1) and (2).

<sup>149</sup> Honduras, *Código Procesal Penal*, Decreto No. 9-99-E, 2000, art. 308.

<sup>150</sup> Nepal, chapter on rape of Nepalese code, 1963, rules 9A and 10B.

<sup>151</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 5 (3).

<sup>152</sup> Centre for Children and Families in the Justice System, "Three years after the verdict: a longitudinal study of the social and psychological adjustment of child witnesses referred to the child witnesses project", 1993 (available at [www.lfcc.on.ca/3yrsexec.htm](http://www.lfcc.on.ca/3yrsexec.htm)).

<sup>153</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, art. 6 (3).

<sup>154</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486.1, subsect. 1.

<sup>155</sup> Austria, Criminal Code of Procedure, art. 162 (2).

<sup>156</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, (United Nations, *Treaty Series*, vol. 2171, No. 27531), art. 8 (1) (b).

<sup>157</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2237, No. 39574), art. 6 (3) (b).

<sup>158</sup> Treaty Between the Government of Canada and the Government of the Kingdom of Thailand on Mutual Assistance in Criminal Matters.

<sup>159</sup> Report of the Special Rapporteur on violence against women: mission of the Special Rapporteur to South Africa on the issue of rape in the community, 11-18 October 1996 (E/CN.4/1997/47/Add.3).

<sup>160</sup> France, *Circulaire relative à l'enregistrement audiovisuel ou sonore de l'audition des mineurs victimes d'infractions sexuelles*, 20 April 1999, sect. 3.1.2.

<sup>161</sup> Thailand, Criminal Procedure Code, sect. 133 bis.

<sup>162</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486.2.

<sup>163</sup> Australia, Western Australia, Evidence Act 1906, sect. 106N (2) and (4).

<sup>164</sup> Philippines, Special Protection of Children Against Abuse, Exploitation and Discrimination Act, 1992, sect. 30.

<sup>165</sup> Save the Children (UK), "Victim Friendly Initiative in Binga", in *Children, Sexual Abuse and Violence: Conference Report* (Harare, October 1998).

<sup>166</sup> Australia (Tasmania), Office of Law Reform Commissioner, "Child witnesses", report No. 62, 1990.

<sup>167</sup> Two such child advocacy centres in the United States are the South Mississippi Child Advocacy Center (the website of the Center is at [www.mscca.com/ChildAdvocacyBRCenter/tabid/55/Default.aspx](http://www.mscca.com/ChildAdvocacyBRCenter/tabid/55/Default.aspx)) and the Advocacy Center for Children of Galveston County, Texas (the website of the Center is at [www.co.galveston.tx.us/distatty/advocacy.htm](http://www.co.galveston.tx.us/distatty/advocacy.htm)). In Canada, one such centre is the Zebra Child Advocacy Centre in Edmonton, Alberta (the website of the Centre is at [www.zebracentre.ca/](http://www.zebracentre.ca/)).

<sup>168</sup> El Salvador, *Código Procesal Penal*, Decreto No. 904, 1997 (as last amended in 2006), art. 13 (13).

<sup>169</sup> United Kingdom, Crown Prosecution Service, Children's Charter, 2005, sect. 4.19.

<sup>170</sup> Australia (Victoria), Evidence Act 1958, No. 6246 (1958), sect. 37C (3) (d) and (e).

<sup>171</sup> United Kingdom (Scotland), Vulnerable Witnesses (Scotland) Act 2004, sect. 271E (2) (b).

<sup>172</sup> Sweden, The Care of Young Persons (Special Provisions) Act (1990:52), 1990, sects. 36 and 39.

<sup>173</sup> United States, United States Code collection, title 18, chap. 223, sect. 3509, subsects. (f) and (h).

<sup>174</sup> Thailand, Criminal Procedure Code, art. 172 ter.

<sup>175</sup> South Africa, Criminal Procedure Act, No. 51, 1977, sect. 170A and Children's Act, 2005, Act No. 38 of 2005, sect. 61 (2).

<sup>176</sup> New Zealand, Evidence Act 1908, sect. 23E (4) and Australia (Western Australia), Evidence Act 1906, sect. 106F (2) have equivalent provisions.

<sup>177</sup> The term "intimate conviction" refers to the French concept of the conviction intime (inner, deep-seated conviction) of the judge in contrast to rules of formal evidence that prescribe exactly when the evidence amounts to proof.

<sup>178</sup> South African Law Commission, *Sexual Offences against Children*, issue paper 10, project 108 (Pretoria, 1997), chap. 5, subsect. 5.7.9.

<sup>179</sup> United Kingdom, Criminal Justice Act 1988, sect. 32.

<sup>180</sup> France, *Code de procédure pénale*, arts. 706-71.

<sup>181</sup> *Handbook on Restorative Justice Programmes* (United Nations publication, Sales No. E.06.V.15), p. 105.

<sup>182</sup> United States (Puerto Rico), *Ley para el Bienestar y la Protección Integral de la Niñez*, Law No. 177 (P. del S. 2285), 2003, art. 45.

<sup>183</sup> Belgium, *Code d'instruction criminelle*, 2001, art. 92.

<sup>184</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 715.1 (1).

<sup>185</sup> Sri Lanka, Evidence (Special Provisions) Act (No. 32 of 1999).

<sup>186</sup> France, *Code de procédure pénale*, arts. 706-52.

<sup>187</sup> Norway, Criminal Procedure Act, No. 25, 1981 (as updated on 30 June 2006), sect. 239.

<sup>188</sup> United States, United States Code collection, Title 18, chapter 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (b), Alternatives to live in-court testimony, (2), Videotaped deposition of child, (B) (iii) and (iv).

- <sup>189</sup> New Zealand, Evidence Act 1908, sects. 23E (1) (a), 23E (2), 23F (2) (3).
- <sup>190</sup> Australia, Victims of Crime Act 1994 (as last amended on 13 April 2004), No. 83 of 1994, sect. 4 (j).
- <sup>191</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486.2 (1).
- <sup>192</sup> Spain, *Ley de Enjuiciamiento Criminal*, arts. 448, para. 3 and art. 707.
- <sup>193</sup> www.fijiwomen.com.
- <sup>194</sup> Brazil, *Código de Processo Penal*, art. 217.
- <sup>195</sup> Kazakhstan, Criminal Procedural Code, Law No. 206, 1997, art. 352 (3).
- <sup>196</sup> Switzerland, *Loi fédérale sur l'aide aux victimes d'infractions*, Recueil systématique du droit fédéral (RS) 312.5, 1991, arts. 5 (4), 10b.
- <sup>197</sup> Australia (Western Australia), Evidence Act 1906, sect. 106Q and New South Wales, Crimes Act 1900, sect. 405DC.
- <sup>198</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486.3 (1).
- <sup>199</sup> United Kingdom, Criminal Justice Act 1988, sect. 34A.
- <sup>200</sup> Australia (Western Australia), Evidence of Children and Others (Amendment) Act 1992, sect. 8.
- <sup>201</sup> Chile, *Código Procesal Penal*, Law No. 19.696 (2000) (as last amended in 2004), art. 310.
- <sup>202</sup> China (Macau), *Código de Processo Penal*, Law No. 17/96/M (1996), art. 330.
- <sup>203</sup> Mexico, *Código Federal de Procedimientos Penales*, 1934 (as last amended in 2006), art. 249.
- <sup>204</sup> Portugal, Law for the protection of children and young people in danger, No. 147/99 (1999), art. 86 (1).
- <sup>205</sup> Bosnia and Herzegovina, Criminal Procedure Code, No. 56/03, 2003, art. 100 (4).
- <sup>206</sup> The former Yugoslav Republic of Macedonia, Code of Criminal Procedure, art. 223 (4).
- <sup>207</sup> South Africa, Department of Justice and Constitutional Development, "National Policy Guidelines for Victims of Sexual Offences" and Department of Welfare, "Procedural Guidelines to Social Welfare Agencies and Appropriate NGOs in Assisting Victims of Rape and Sexual Offences" (Pretoria, 1998), chap. 3.
- <sup>208</sup> Ireland, Criminal Evidence Act, 1992, sect. 14.
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- <sup>210</sup> Dominican Republic, *Código Procesal Penal*, Law No. 76-02, 2002, art. 327 (2).
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- <sup>212</sup> Pakistan, Sindh Children's Act, 1955 (annex 7, appendix XIII).
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- <sup>215</sup> Jordan, Sharia Procedure Act, 1959.
- <sup>216</sup> Peru, *Código Procesal Penal*, No. 957, 2004, art. 247.
- <sup>217</sup> United States, collection, Title 18, chap. 237, sect. 3771, Crime victims' rights, 2004, subsect. (a) (1).
- <sup>218</sup> Bolivia (Plurinational State of), *Código del Niño, Niña y Adolescente*, art. 13.
- <sup>219</sup> Canada, Criminal Code, R.S.C. 1985, c. C-46, sect. 486 (2) (b) and sect. 486.2 (5) (a).
- <sup>220</sup> Colombia, *Código de Procedimiento Penal*, art. 133.
- <sup>221</sup> Argentina, *Código Procesal Penal*, art. 79 (c).
- <sup>222</sup> Kazakhstan, Criminal Procedure Code, Law No. 206, 1997, arts. 15 (3), 99.
- <sup>223</sup> Belarus, Law on Child's Rights, No. 2570-XII, 1993 (as amended in 2004), art. 9.
- <sup>224</sup> Morocco, *Code pénal*, art. 40.
- <sup>225</sup> Portugal, Law for the protection of children and young people in danger, Law No. 147/99 (1999), art. 4 (3).
- <sup>226</sup> France, *Code de procédure pénale*, art. 40, *Code de l'éducation*, art. L.542-1, *Code de la santé publique*, art. L.2112-6, *Code de l'action sociale et des familles*, art. L.221 6, *Code de déontologie médicale*, arts. 43 and 44, *Décret relatif aux règles professionnelles des infirmiers et des infirmières*, No. 93-221, 1993, art. 7.
- <sup>227</sup> Belgium, *Décret relatif à l'aide aux enfants victimes de maltraitance*, 2004.
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- <sup>230</sup> Sri Lanka, Code of Criminal Procedure (Amendment) Act, No. 28, 1998.
- <sup>231</sup> Save the Children (UK), *Facing the Crisis: Supporting Children through Positive Care Options*, January 2005.
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- <sup>234</sup> France, *Code de procédure pénale*, art.706-57.
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- <sup>236</sup> Netherlands, *Code of Criminal Procedure*, 1994, art. 226a.
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- <sup>240</sup> Switzerland, *Constitution fédérale de la Confédération suisse*, 1999, art. 124.
- <sup>241</sup> Report of Qatar to the Committee on the Rights of the Child (CRC/C/OPSA/QAT/1), para. 106.
- <sup>242</sup> Belgium, *Loi portant sur les mesures fiscales et autres*, 1985, arts. 28 and 31.
- <sup>243</sup> Mexico, *Ley de Atención y Apoyo a las Víctimas del Delito para el Distrito Federal* (2003), art. 25.
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- <sup>247</sup> Philippines, Special Protection of Children against Abuse, Exploitation and Discrimination Act, No. 7610 (1992), art. I, sect. 2.
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- <sup>251</sup> Costa Rica, *Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), art. 13.
- <sup>252</sup> Malaysia, Child Act, No. 611, 2001, art. 41.
- <sup>253</sup> Finland, Act on checking the criminal background of persons working with children, No. 504/2002 (2002), sects. 1-3.
- <sup>254</sup> South Africa, Children's Act, 2005, Act No. 38 of 2005, chap. 7 (*Government Gazette*, vol. 492, 19 June 2006).
- <sup>255</sup> United Kingdom (England), Safeguarding Vulnerable Groups Bill, House of Lords (HL) Bill 79, 2006, explanatory notes, paras. 3-6.
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- <sup>258</sup> Bulgaria, Child Protection Act (2004), art. 3 (6).
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- <sup>261</sup> United Nations Office on Drugs and Crime, *Independent Evaluation Report: Juvenile Justice Reform in Lebanon* (Vienna, July 2005), para. 38.
- <sup>262</sup> Belgium, *Décret relatif à l'aide aux enfants victimes de maltraitance*, 2004, art. 11.
- <sup>263</sup> Report of the Islamic Republic of Iran to the Committee on the Rights of the Child, December 2003 (CRC/C/104/Add.3), para. 36.
- <sup>264</sup> Ukraine, Law on Social Work with Children and Youth, 2001.
- <sup>265</sup> 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).
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- <sup>267</sup> Canada, Department of Justice, *A Handbook for Police and Crown Prosecutors on Criminal Harassment* (Ottawa, 2004), part. IV.
- <sup>268</sup> [www.barreau-marseille.avocat.fr/textes.cgi?rubrique=9](http://www.barreau-marseille.avocat.fr/textes.cgi?rubrique=9).
- <sup>269</sup> Brazil, Law on Statute of the Child and Adolescent, Law No. 8.069 (1990), art. 145.
- <sup>270</sup> Decree on Legal Protection of Children, No. 2235, 1997, para. 14 (e).
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- <sup>273</sup> Peru, *Código de los Niños y Adolescentes*, Law No. 27.337, 2000, arts. 149-150.
- <sup>274</sup> United States Code collection, Title 18, chap. 223, sect. 3509, Child victims' and child witnesses' rights, subsect. (g).
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- <sup>277</sup> India, Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56, of 2000), arts. 29, 37 and 39.
- <sup>278</sup> Tunisia, *Code de la protection de l'enfant*, 1995, Law No. 95-92, 1995, arts. 28 and 30.
- <sup>279</sup> Belgium, *Décret relatif à l'aide aux enfants victimes de maltraitance*, 1998, arts. 3-6 (Commission de coordination de l'aide aux enfants victimes de maltraitance).
- <sup>280</sup> Report of Algeria to the Committee on the Rights of the Child, 2005, paras. 194, 247 (CRC/C/93/Add.7).
- <sup>281</sup> [www.inavem.org/](http://www.inavem.org/).
- <sup>282</sup> Brazil, Law on Statute of the Child and Adolescent, Law No. 8.069 (1990), art. 145.
- <sup>283</sup> Czech Republic, *Bily Kruh Bezpeci*, non-political humanitarian association for victims of crime and prevention of criminality, 1991.



## Annex—Sources relating to child victims and witnesses of crime

### A. International sources

#### *International binding and non-binding instruments*

##### Universal treaties

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949

(United Nations, *Treaty Series*, vol. 75, No. 973), arts. 13-14, 23-24, 38 (5), 50

International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, *Treaty Series*, vol. 660, No. 9464), art. 1

International Covenant on Civil and Political Rights

(General Assembly resolution 2200A (XXI), annex), arts. 2 (1), 6 (1), 14 (1), 14 (3) (a) and (c), 17, 26

International Covenant on Economic, Social and Cultural Rights

(General Assembly resolution 2200A (XXI), annex), art. 10

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

(United Nations, *Treaty Series*, vol. 1125, No. 17512), arts. 9 (1) and 77

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

(United Nations, *Treaty Series*, vol. 1125, No. 17513), arts. 2 (1), 4 (3)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(United Nations, *Treaty Series*, vol. 1465, No. 24841), arts. 9 (1), 13-14

Convention on the Rights of the Child

(United Nations, *Treaty Series*, vol. 1577, No. 27531), arts. 2, 3 (1), 6 (1), 9 (1), 9 (3), 12, 18 (1), 20 (1), 21, 24 (1)-(2), 35, 39, 40 (2) (b) (ii)

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182), of the International Labour Organization

(United Nations, *Treaty Series*, vol. 2133, No. 37245), arts. 2 (b), 7 (2) (b), 11

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

(United Nations, *Treaty Series*, vol. 2171, No. 27531), arts. 6 (1), 8 (1), (3)-(4), 9 (1)-(4), 10 (1)-(4)

United Nations Convention against Transnational Organized Crime

(United Nations, *Treaty Series*, vol. 2225, No. 39574), arts. 14 (2), 18, 24-25, 29 (1)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

(United Nations, *Treaty Series*, vol. 2237, No. 39574), preamble and arts. 6 (1) and (3)-(6), 9 (1) (d), 10 (1)-(2), 29 (2), 30 (2) (d)

United Nations standards and norms in crime prevention and criminal justice and other non-binding instruments

Universal Declaration of Human Rights

(General Assembly resolution 217 A (III)), arts. 1, 7, 12, 22

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(General Assembly resolution 3452 (XXX), annex), art. 9

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

(General Assembly resolution 40/33, annex), arts. 2, 6.3, 8, 14.2, 17.1 (d), 21, 22.1

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

(General Assembly resolution 40/34, annex), principles 3-6, 8-9, 11-12, 14-17, 19

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)

(General Assembly resolution 45/112, annex), para. 58

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

(General Assembly resolution 45/113, annex), arts. 4, 19

Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice

(General Assembly resolution 52/86, annex), arts. 7 (c) and (g)-(i), 8 (c), 9 (a) (iii), (c)-(d) and (h), 10 (a), (c) and (e), 11 (a)-(b) and (e)-(f), 12 (a)-(b), 14 (b), 16 (a)-(b)

### Economic and Social Council

#### Guidelines for Action on Children in the Criminal Justice System

(Economic and Social Council resolution 1997/30, annex), arts. 2, 8 (a), 11 (a), 13, 16, 24, 27, 28 (c)-(d), 43-53

Basic principles on the use of restorative justice programmes in criminal matters  
(Economic and Social Council resolution 2002/12, annex), paras. 12 (c) and 19)

### United Nations

#### Basic Principles on the Role of Lawyers

(*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex), paras. 9, 25

Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Recommendation No. 190), of the International Labour Organization, paras. 2, 9, 16

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(*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex), para. 13 (a) and (d)

Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century

(General Assembly resolution 55/59, annex), para. 27

### Regional instruments

#### African Union

##### African Charter on Human and Peoples' Rights

(United Nations, *Treaty Series*, vol. 1520, No. 26363), arts. 3-5, 7 (1) (d), 18, 25, 28

##### African Charter on the Rights and Welfare of the Child

(*Human Rights: A Compilation of International Instruments, vol. II: Regional Instruments* (United Nations publication, Sales No. E.97.XIV.1), sect. C, No. 39), arts. 3, 4, 5 (1), 9 (2), 10, 13 (1)-(2), 14 (2) (b), 16 (2), 17 (1), 17 (2) (c) (ii)-(iv), 21 (1)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, arts. 1-3, 4 (2) (e)-(f)

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(United Nations, *Treaty Series*, vol. 213, No. 2889)

[(Council of Europe, *European Treaty Series*, No. 5)], arts. 2 (1), 6 (1) and (3) (a)

Recommendation No. R (79) 17, adopted by the Committee of Ministers of the Council of Europe on 13 September 1979, concerning the protection of children against ill-treatment, paras. 4, 16

European Convention on the Compensation of Victims of Violent Crimes

(Council of Europe, *European Treaty Series*, No. 116), arts. 2-4, 12

Recommendation No. R (85) 11, adopted by the Committee of Ministers of the Council of Europe on 28 June 1985, on the position of the victim in the framework of criminal law and procedure, paras. 1-3, 5-16

Recommendation No. 1065 (1987), adopted by the Parliamentary Assembly of the Council of Europe on 6 October 1987, on the traffic in children and other forms of child exploitation, para. 4

Recommendation No. 1074 (1988), adopted by the Parliamentary Assembly of the Council of Europe on 3 May 1988, on family policy, para. 17 (A) (v)

Recommendation No. R (90) 2, adopted by the Committee of Ministers of the Council of Europe on 15 January 1990, on social measures concerning violence within the family, paras. 7, 9, 18-19, 42-43

Recommendation No. 1121 (1990), adopted by the Parliamentary Assembly of the Council of Europe on 1 February 1990, on the rights of children, para. 2

Recommendation No. R (91) 11, adopted by the Committee of Ministers of the Council of Europe on 9 September 1991, concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, paras. 2-4, 13

Recommendation No. R (93) 2, adopted by the Committee of Ministers of the Council of Europe on 22 March 1993, on the medico-social aspects of child abuse, paras. 2.1-2.8, 3.1 (b) and (d)-(e), 3.2, 3.4, 3.5, 3.7, 3.9-3.11, 5.1

Recommendation No. 1286 (1996), adopted by the Parliamentary Assembly of the Council of Europe 24 January 1996, on a European strategy for children, paras. 7 (v), 8 (v)-(vii) and (x)

European Convention on the Exercise of Children's Rights

(United Nations, *Treaty Series*, vol. 2135, No. 37249)

[Council of Europe, *European Treaty Series*, No. 160.], arts. 1, 2 (d), 3 (a)-(b), (c), 6 (a)-(c), 7, 9-10

Recommendation No. R (96) 8, adopted by the Committee of Ministers of the Council of Europe on 5 September 1996, on crime policy in Europe in a time of change, paras. 25, 28-40

Resolution No. 1099 (1996), adopted by the Parliamentary Assembly of the Council of Europe on 25 September 1996, on the sexual exploitation of children, paras. 5, 14-15, 17

Recommendation No. 1325 (1997), adopted by the Parliamentary Assembly of the Council of Europe on 23 April 1997, on traffic in women and forced prostitution in Council of Europe member States, paras. 4, 6, 16 (vi) and (xi)-(xii)

Recommendation No. R (97) 13, adopted by the Committee of Ministers of the Council of Europe on 10 September 1997, concerning intimidation of witnesses and the rights of the defence, para. 1, 3, 8-15, 17-26, 28-30

Recommendation No. 1371 (1998), adopted by the Parliamentary Assembly of the Council of Europe on 23 April 1998, on abuse and neglect of children, paras. 13 (c) (iii) and (vii), (d) (v)-(vii), (e) (ii), (f), (j) (ii), 14 (b)

Recommendation No. R (98) 8, adopted by the Committee of Ministers of the Council of Europe on 18 September 1998, on children's participation in family and social life, principle 5, and appendix, para. 3

Recommendation No. 1450 (2000), adopted by the Parliamentary Assembly of the Council of Europe on 3 April 2000, on violence against women in Europe, para. iii (e)

Recommendation No. R (2000) 11, adopted by the Committee of Ministers of the Council of Europe on 19 May 2000, on action against trafficking in human beings for the purpose of sexual exploitation, paras. 2-3, 6-7, 26-36, 50-55

Recommendation No. R (2000) 19, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, on the role of public prosecution in the criminal justice system, paras. 3, 7-8, 23, 24 (c), 25, 32-33, 37-39

Recommendation No. 1523 (2001), adopted by the Parliamentary Assembly of the Council of Europe on 26 June 2001 on domestic slavery, para. 10 (iii), (vi) (b), (d) and (f)

Recommendation No. Rec (2001) 16, adopted by the Committee of Ministers of the Council of Europe on 31 October 2001, on the protection of children against sexual exploitation, preamble and paras. 7, 14, 30-35, 61

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

United Nations, *Treaty Series*, vol. 2297, No. 6841

[Council of Europe, *European Treaty Series*, No.182], arts. 9 (1), 10 (1), 23, 25, 26 (1) (c)

Recommendation 1545 (2002), adopted by the Parliamentary Assembly of the Council of Europe on 21 January 2002, on a campaign against trafficking in women, paras. 10 (vi), (viii) (a)-(c) and (e), (ix) (a)-(b) and (d)-(f), (x), 11 (ii) (a)

Recommendation No. Rec. (2002) 5, adopted by the Committee of Ministers of the Council of Europe on 30 April 2002, on the protection of women against violence, paras. 3 (e), 8-11, 16

Resolution No. 1291 (2002), adopted by the Parliamentary Assembly of the Council of Europe on 26 June 2002, on international abduction of children by one of their parents, paras. 3, 5 (ii) and (iv)

Council of the European Union framework decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography

(*Official Journal of the European Union*, L 13, 20 January 2004), art. 9

## European Union

Resolution of the Council of the European Union of 23 November 1995 on the protection of witnesses in the fight against international organized crime (*Official Journal of the European Communities*, C 327, 7 December 1995), paras. A (1)-(8), B (2)

Resolution of the European Parliament on the Commission communication on combating child sex tourism (COM(96)0547 C4-0012/97) and the aide-memoire on the European Union's contribution to reinforcing the prevention of the sexual abuse and exploitation of children (C4-0556/96)

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Council of the European Union decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet

(*Official Journal of the European Communities*, L 138, 9 June 2000), paras. 1 (2), 2, 19

#### Charter of Fundamental Rights of the European Union

(*Official Journal of the European Communities*, C 364, 18 December 2000), arts. 1, 20, 24 (1)-(2)

Resolution of the European Parliament on child trafficking in Africa, para. 6

Council of the European Union resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children

(*Official Journal of the European Communities*, C 283, 9 October 2001), paras. 2-2.3, 3

### Organization of American States

#### American Convention on Human Rights

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Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 2 and 4

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Inter-American Convention on International Traffic in Minors, arts. 1 (a)-(c), 4, 6, 8, 10-11, 14, 16, 18

Inter-American Convention to Prevent and Punish Torture, art. 8

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Charter for European Security, paras. 21 and 24

## *International courts*

### International Criminal Court

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*Situation in the Democratic Republic of Congo*, No. ICC-01/04, *The Prosecutor v. Thomas Lubanga Dyilo*, No. ICC-01/04-01/06, Decision on the Practices of Witness Familiarisation and Witness Proofing (PT), 8 November 2006, paras. 23-27, 37-42.

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*Prosecutor v. Serushago*, No. ICTR-98-39-S, Sentence (TC), 5 February 1999, para. 20

*Prosecutor v. Musema*, ICTR-96-13-A, Appeal Judgement (AC), 16 November 2001, para. 36

*Prosecutor v. Bagosora et al.*, ICTR-98-41-I, Decision on Prosecutor's Motion for Deposition of Witness OW (TC), 5 December 2001, para. 13-14

*Prosecutor v. Bagosora et al.*, ICTR-96-7-I, Decision on the Prosecution Motion for Special Protective Measures for Witnesses 'A' Pursuant to Rules 66 (C), 69 (A) and 75 (TC), 5 June 2002, paras. 25, 29

*Prosecutor v. Nahimana et al.*, ICTR-99-52-I, Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition, 10 April 2003, para. 7

*Prosecutor v. Karemera*, ICTR-98-44-I, Decision on the Prosecutor's Motion for Special Protective Measures for Witness G and T and to Extend the Decision on Protective Measures for the Prosecutor's Witnesses in the Nzirorera and Rwamakuba Cases to Co-Accused Ngirumpatse and Karemera, and Defence's Motion for Immediate Disclosure (TC), 20 October 2003, para. 11

*Prosecutor v. Muvunyi et al.*, ICTR-2000-55-I, Decision on the Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX (TC), 11 November 2003, para. 10

*Prosecutor v. Nahimana et al.* ("Media Case"), Case No. ICTR-99-52-T, Judgment and Sentence (TC), 3 December 2003, para. 1071

*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92 bis (TC), 9 March 2004, para. 16

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*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion to Allow Witness DBO to Give Testimony by Means of Deposition (TC), 25 August 2004, para. 8

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*International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*

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*Prosecutor v. Tadić* ("Prijeđor"), Case No. IT-94-1-A, Judgment (AC), 15 July 1999, para. 305

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*Prosecutor v. Aleksovski*, IT-95-14/1-A, Appeal Judgement (AC), 24 March 2000, paras. 62 and 185

*Prosecutor v. Mucić et al.* ("Celebici"), No. IT-96-21-A, Judgement (AC), 20 February 2001, para. 806

*Prosecutor v. Milošević*, No. IT-02-54, Decision on the Prosecution's Request to Have Written Statements Admitted Under Rule 92 bis (TC), 21 March 2002, paras. 24-27

*Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution's Second Motion For Specific Protective Measures For Individual Witnesses Testifying During the Kosovo Phase of the Trial, 22 March 2002

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*Prosecutor v. Taylor*, Case No. SCSL-03-01-I, Warrant of Arrest and Order for Transfer and Detention (TC), 7 March 2003

*Prosecutor v. Norman*, No. SCSL-03-08-PT, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003, para. 9

*Prosecutor v. Kondewa*, Case No. SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures Until Appropriate Measures Are in Place (TC), 10 October 2003, paras. 16-19

*Prosecutor v. Gbao*, No. SCSL-03-09-PT, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 10 October 2003, para. 56

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*Prosecutor v. Norman, Fofana, Kondewa* ("CDF Case"), Case No. SCSL-04-14-T, Ruling on Motion for Modification of Protective Measures for Witnesses, 18 November 2004, paras. 39-40, 47

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*Prosecutor v. Norman, Fofana, Kondewa* ("CDF Case"), No. SCSL-04-14-T, Order on Disclosure and Characterisation of the Age of Witness TF2 080 (TC), 14 April 2005

*Prosecutor v. Brima, Kamara, Kanu*, No. SCSL-04-16-T, Decision on the Confidential Joint Defence Motion to Declare Null and Void Testimony-in-Chief of Witness TF1-023, 25 May 2005, para. 22

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## B. Domestic legislation relating to child victims and witnesses of crime

### Algeria

*Code de procédure pénale*, 1966, arts. 93 (2) and 228

*Ordonnance 72-03 du 10 février 1972 relative à la protection de l'enfance et de l'adolescence*

*Loi sur l'information*, No. 90-70, 1990, art. 27

*Loi sur la concorde civile*, 13 juillet 1999, art. 40

*Décret présidentiel n° 06-93 relatif à l'indemnisation des victimes de la tragédie nationale*, 28 February 2006

### Argentina

*Código Procesal Penal*, arts. 79 (a), (c)-(d), 80

### Armenia

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Family Code, 2005, art. 44

### Australia

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New South Wales, Evidence Act 1898, sect. 42A

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Queensland, Criminal Code Act 1899, sect. 590AA (2)

Queensland, Evidence Act 1977, sects. 9, 9C, 9E, 21A (2), (4), (5A), (6), (8)  
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Western Australia, Evidence Act 1906, sects. 106E-106G, 106Q  
Western Australia, Evidence of Children and Others (Amendment) Act 1992,  
sect. 8

#### Austria

Criminal code of procedure, art. 162 (2)

#### Bangladesh

Children Act, sects. 10-12, 17

#### Belarus

Law on General Concepts of State Youth Policy in the Republic of Belarus, No. 1629-XII, 1992, arts. 5 (4), 7  
Law on Child's Rights, No. 2570-XII, 1993 (as amended in 2004), arts. 6, 9, 27-28

#### Belgium

*Loi portant des mesures fiscales et autres*, 1985, arts. 28, 31  
*Loi sur la fonction de police*, 1992  
*Décret relatif à l'aide aux enfants victimes de maltraitance*, 2004, arts. 3-6, 11, 12, 14  
*Code d'instruction criminelle*, 2001, arts. 64, 92, 99  
*Décret instituant un délégué général de la Communauté française aux droits de l'enfant* (2002), art. 2

#### Bolivia (Plurinational State of)

*Código del Niño, Niña y Adolescente*, arts. 10 (1)-(2), 12-13, 100, 103, 106, 176

#### Bosnia and Herzegovina

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#### Brazil

*Código de Processo Penal*, art. 217  
Law on Statute of the Child and Adolescent, Law No. 8.069 (1990), arts. 16 (II), 17-18, 98, 145, 150

#### Bulgaria

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National Programme for Prevention and Counteraction to Trafficking in Human Beings and Protection of the Victims, 2005

#### Burundi

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Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, art. 5

### Cameroon

Act on Education Guidelines, No. 98/004, 1998, art. 7

### Canada

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### Chile

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### China

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### Colombia

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### Comoros

Constitution of 23 December 2001, preamble

### Congo

*Loi No. 1-63 du 13 janvier 1963 portant code de procédure pénale*, arts. 91, 287 (2), 382

### Costa Rica

*Decreto por el que se crea la figura del Defensor de la Infancia*, No. 17.733-J, 1987

*Código Procesal Penal*, Law No. 7594, 1998, art. 71 (b)-(c)

*Código de la Niñez y la Adolescencia*, Law No. 7739 (1998), arts. 5, 13, 20, 24-25, 107, 120

### Czech Republic

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### Denmark

Notification Respecting a Children's Council, No. 2, 1998

### Djibouti

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### Dominican Republic

*Decreto por el que se Crea la Dirección General de Promoción de la Juventud*, No. 2981, 1985

*Código Procesal Penal*, Law No. 76-02, 2002, arts. 27, 84 (1)-(3), (6)-(7), 202, 327 (2)-(3)

### Ecuador

*Código de Procedimiento Penal*, R.O.360-S, 2001, art. 118

*Ley de la Juventud*, No. 2001-49, arts. 4, 8

### Egypt

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### Estonia

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Child Protection Act (*Riigi Teataja (State Gazette)* 1992, 28, 370), arts. 10, 31 (3), 32 (2)

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## France

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*Constitution du 4 octobre 1958*, preamble

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