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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 100. This volume contains the work product of the 163rd International Training Course, conducted from 18 May to 23 June 2016. The main theme of the 163rd International Training Course was *Children as Victims and Witnesses*.

For over 25 years, the Convention on the Rights of the Child has set global standards to ensure the protection and safety of children by requiring that States Parties, when taking actions that impact children, do so in the best interests of the child. Although these principles are universally accepted, violence against children remains a worldwide problem. When children are victimized, it is all too common that they experience secondary victimization through participation as victims and witnesses in legal systems that are designed for adults. To fully implement the standards set forth by the Convention and to protect the best interests of child victims and witnesses, criminal justice practitioners should become familiar with the global issues and trends of violence against children. Moreover, practitioners should develop strategies for improved detection and reporting of violence against children, enhance skills in child-sensitive forensic investigation techniques and identify channels for international cooperation in the fight against child abuse, trafficking and violence of all forms.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Course to explore various issues that relate to children as victims and witnesses. This issue of the *Resource Material Series* contains papers contributed by one of the visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Course. I regret that not all the papers submitted by the participants of the Course could be published.

I would like to pay tribute to the contributions of the government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

December 2016



Keisuke Senta
Director of UNAFEI

RESOURCE MATERIAL SERIES
No. 100

Work Product of the 163rd International Training Course
“Children as Victims and Witnesses”

UNAFEI



Global Situation of Violence against Children

Dr. Sita Sumrit
Chief of the Women and Children Empowerment Programme
Thailand Institute of Justice

Remember that...

Violence remains the **hard reality of children** around the globe regardless of economic and social circumstances, culture, religion or ethnicity

Experiences of violence often **overlap** and come in **multiple forms**

Children can be **victims, perpetrators and witnesses** to violence-**all at the same time**

Realities of VAC are far more confounding and multidimensional than any attempts to define, categorize or quantify it.



Also remember that...



10 Facts

about Violence against Children



1

of all homicide victims are children (approx. 95,000)



2

children are physically punished by caregivers on a regular basis



3

students involved in one or more physical fights



4

students experience bullying on a regular basis



10 Facts

about Violence against Children



5

adolescents admit to having bullied others at least once



6

girls report being victims of some form of physical violence



7

girls have been subjected to forced sexual intercourse or other forced sexual acts (approx. 12 million)



8

adolescent girls have been victims of violence committed by their husbands or partners (approx. 84 million)



10 Facts

about Violence against Children



9

adults believe that physical punishment is necessary



10

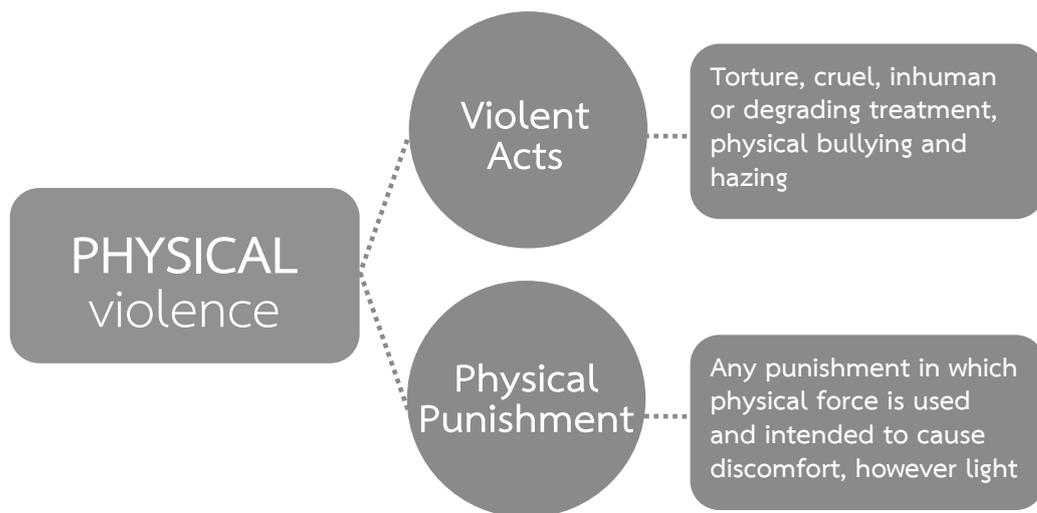
of all girls think a husband is sometimes justified in hitting or beating his wife (approx. 126 million)



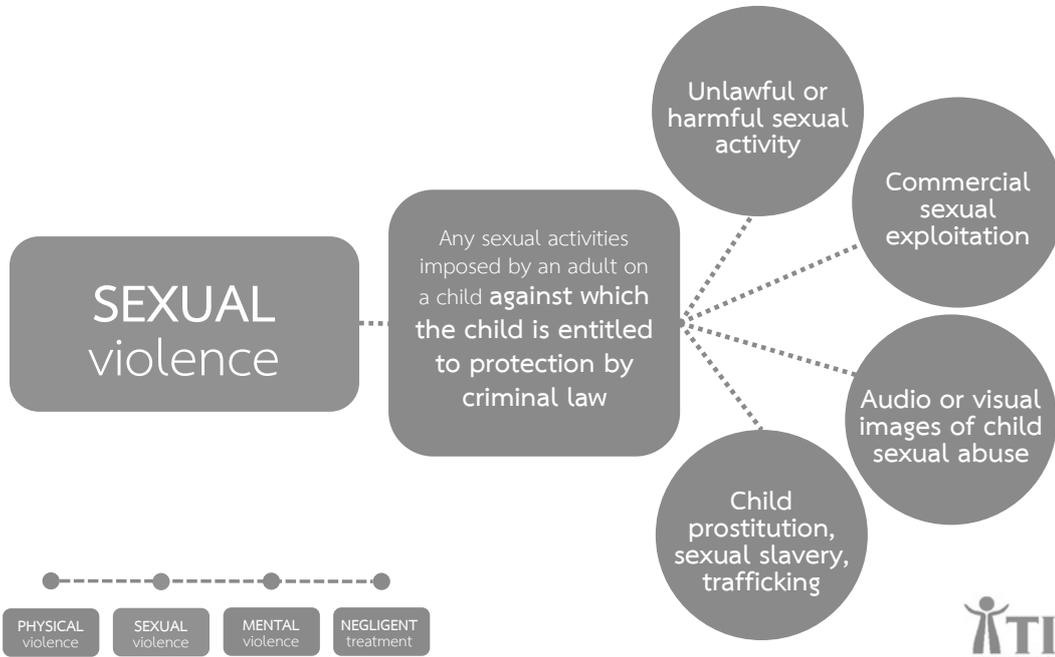
Common Forms of Violence against Children



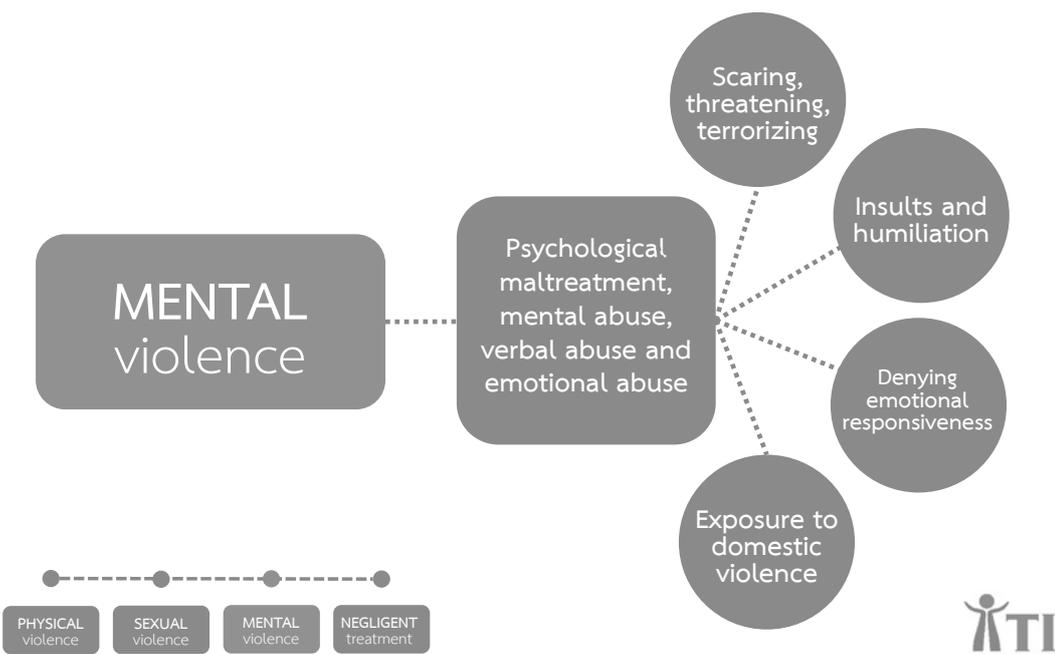
Common Forms of Violence against Children



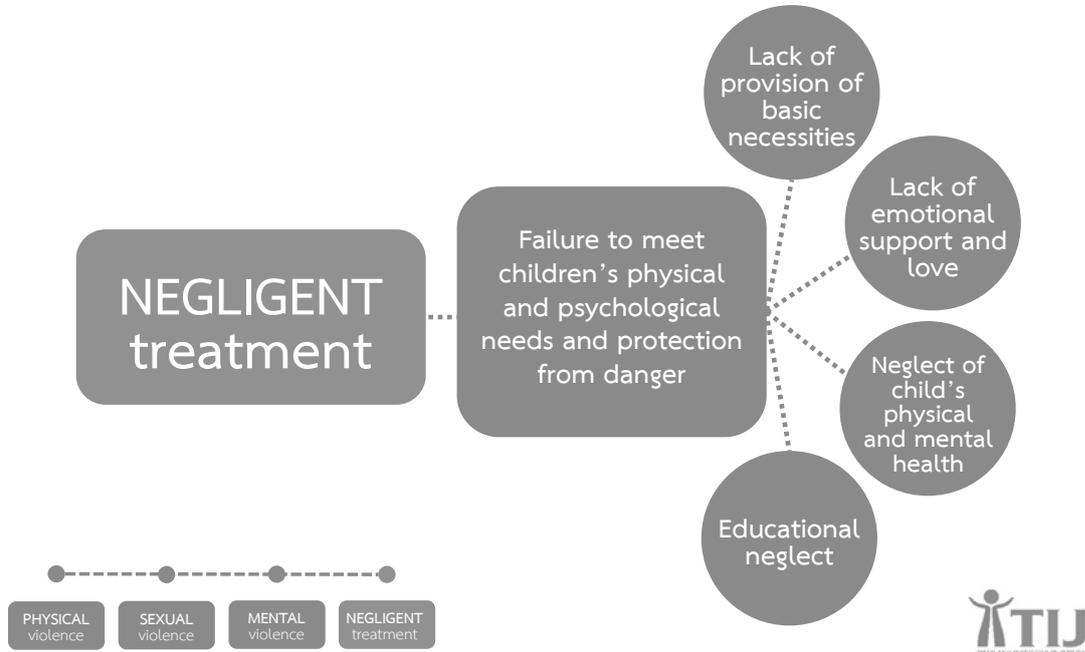
Common Forms of Violence against Children



Common Forms of Violence against Children



Common Forms of Violence against Children



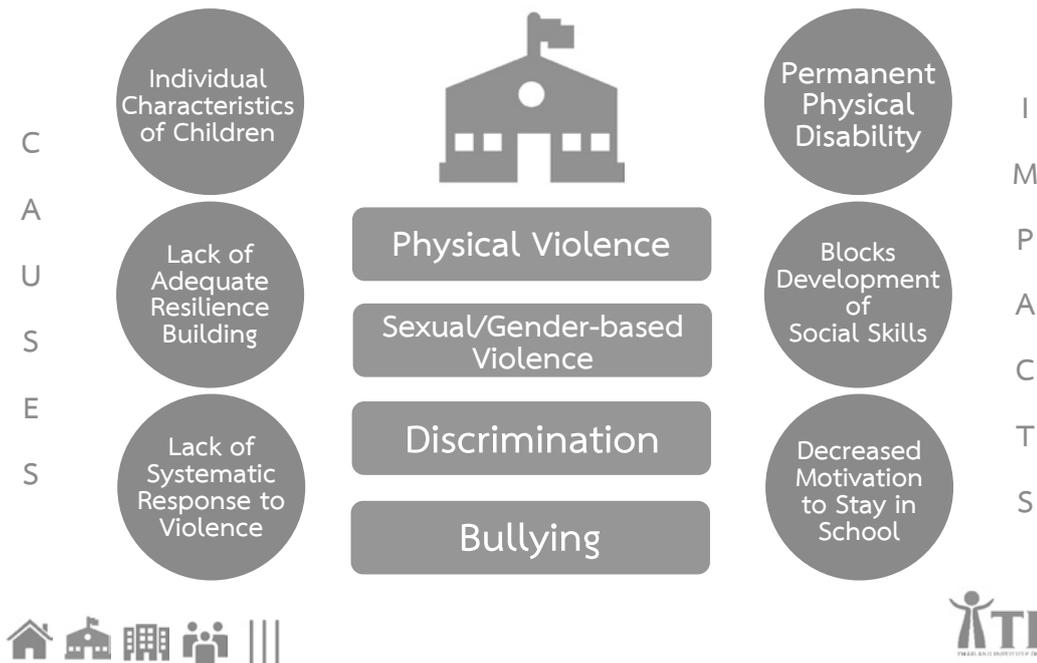
Violence against Children In Various Settings



Violence against Children In Various Settings : Home and Family



Violence against Children In Various Settings : School and Educational Settings



Violence against Children In Various Settings : Places of Work

C
A
U
S
E
S

Children are perceived as weak

Unsafe Working Environment

Lack of Child Labour Protection Laws



Beating, Whipping, Shouting, Insulting

Excessive/Forced Labour, Under-Compensation

Forced into Drugs Trade/ Sexual Exploitation

Increased Child Involvement in Illicit Activities

Children Held in Bonded Servitude/ Slavery

I
M
P
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S



Violence against Children In Various Settings : Community

C
A
U
S
E
S

Alcohol and Other Substance Abuse

Situations of Unrest and Conflict

Rapid Urbanisation



Homicide/ Physical Violence

Violence from Intimate and Dating Relationships

Coerced First Sex

Trafficking of Children

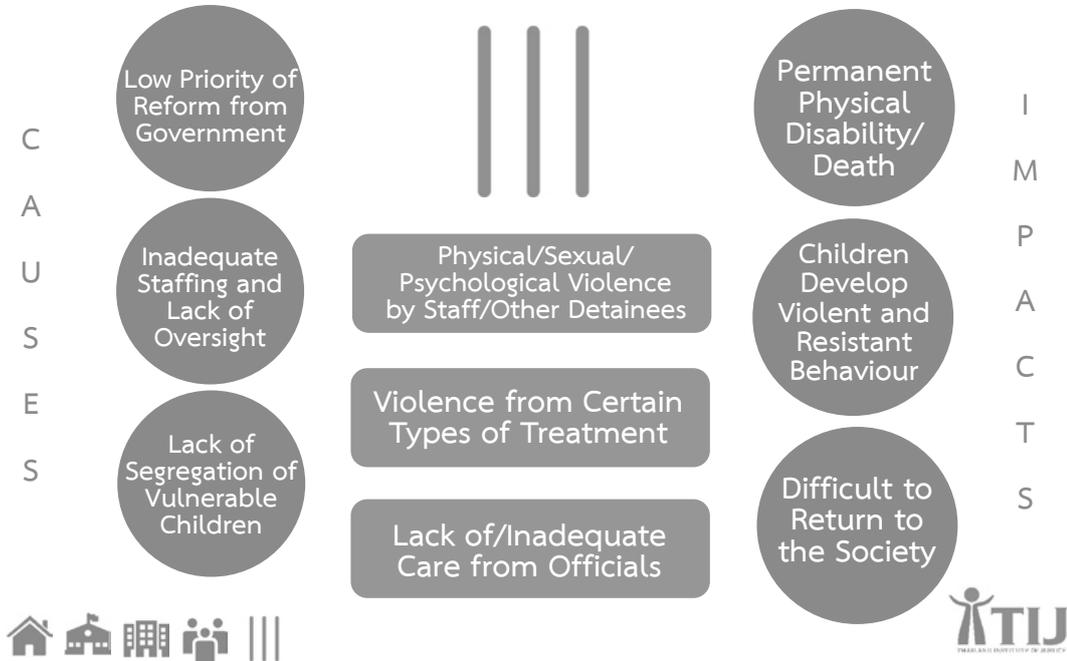
Permanent Physical Disability/ Death

Decreased Feelings of Safety toward the Community

I
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Violence against Children In Various Settings : Justice Institutions



“All forms of violence against children, however light, are unacceptable. [...] Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interest of the child, **but definitions must in no way erode the child’s absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.**”

United Nations Committee on the Rights of the Child, General Comment No.13 on the Convention on the Rights of the Child

Social and Economic Cost of Violence against Children

Dropping
out

Less likely to
anticipate
attending college

Lower grades
and IQ test
scores

Suspension

Absenteeism

Impact on
Educational Performance and Achievement



Social and Economic Cost of Violence against Children

Less likely to
own assets

Less likely to
be employed

Reduces a person's
earning potential
by \$5,000 per year

In economic terms,
women appear to
be more severely
affected by
childhood abuse
than men

Economic Impact on Individuals



Social and Economic Cost of Violence against Children

In 2008, the estimated
lifetime cost of new cases of
child abuse in the US is

\$124 billion

which included
lifetime costs of

\$210,012 per abuse
victim who
survived and **\$1.3
million**
per abuse
victim who died

It is estimated that the
economic cost of child
abuse in East Asia and
the Pacific will exceed

\$160 billion

Based on economic
losses due to death,
disease and health risk
behaviours attributable
to child abuse

Economic Impact on Society



Attitudes and Social Norms that Perpetuate Violence against Children

Wife beating is
justifiable

Corporal punishment
of children
is necessary

No internationally
comparable data on
attitudes towards child
sex abuse currently exist



Global Efforts to End Violence against Children



Turkey

- Violence against Children National Strategy drafted by the government, NGOs and children
- Training programme for professionals on intervening in violence against children cases

Launched a social media campaign

“Time to Sound the Red Siren”

challenging social norms that sanction violence against girls



India



Zimbabwe

Launched the National Girls’ Empowerment Framework to address sexual violence, unintended pregnancies and HIV among adolescent girls

The Prosecutor’s Office established child-friendly legal services for child victims of sexual abuse and their families along with the revision of the justice system and the development of protocols to deal with violence against children cases



Bolivia



Policy Recommendations

Supporting parents, caregivers and families

Implementing laws and policies that protect children

Helping children and adolescents manage risks and challenges

Providing and promoting support services for children

Changing attitudes and social norms that encourage violence and discrimination

Carrying out data collection and research





International Standards and Norms Related to the Elimination of Violence against Children

Dr. Sita Sumrit
Chief of the Women and Children Empowerment Programme
Thailand Institute of Justice



“Over the last decade, recognition of the pervasive nature and impact of violence against children has grown. Still, the phenomenon remains largely undocumented and underreported. This can be attributed to a variety of reasons, including the fact that some forms of violence against children are socially accepted, tacitly condoned or not perceived as being abusive. Many victims are too young or too vulnerable to disclose their experience or to protect themselves. And all too often when victims do denounce an abuse, the legal system fails to respond and child protection services are unavailable.”

(UNICEF, 2014)

United Nations Convention on the Rights of the Child (CRC)



The first **legally binding** international agreement setting out the civil, political, economic and social and cultural rights of every child, regardless of their race, religion or abilities



United Nations Convention on the Rights of the Child



United Nations Convention on the Rights of the Child



Monitored by the
**Committee on the
Rights of the Child**



United Nations Convention on the Rights of the Child



Optional Protocol on the Involvement of Children in Armed Conflict

Ensures that no children under 18 years of age are forcibly recruited into armed forces



Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Prohibits child prostitution, child pornography and the sale of children into slavery



Optional Protocol on a Communications Procedure

Enables children whose rights have been violated to complain directly to the UNCRC Committee

3 Optional Protocols



United Nations Convention on the Rights of the Child

Adopted in May 2000
and entered into force
in January 2002

Prohibits:

- sale of children
- child prostitution
- child pornography

Delineates:

- Criminal, civil and administrative responsibility for participation in the offenses denied
- Jurisdiction and extradition
- Mutual Legal Assistance
- Prevention
- The rights of child victims
- International assistance and cooperation



Optional Protocol on the Sale of Children,
Child Prostitution and Child Pornography



United Nations Convention on the Rights of the Child

Japan – Punishing Acts related to Child Prostitution and Child Pornography, and for Protecting Children (1999 – amended in 2004)

Complies with many of the requirements of the Optional Protocol

“It prohibits the prostitution of any child below the age of 18 and defines prostitution broadly to include not only intercourse but also “similar” acts and acts “for the purpose of satisfying one’s sexual curiosity”. The use of child prostitutes is punishable by five years’ imprisonment and the facilitation of child prostitution by imprisonment for seven years. Production, distribution, sale, possession or transportation of child pornography as a business is punishable by up to three years of imprisonment. Legal entities whose employees commit such crimes can be fined up to 10 million yen. The law gives Japanese courts jurisdiction over nationals involved in child prostitution and child prostitution abroad, and recognizes the duty to provide children who have suffered mental or physical damage, or both, as a result of prostitution or pornography, with protection and recovery assistance. According to ECPAT, the amendment to the law “has had a significant deterrent effect.”

UNICEF, 2009

United Nations Convention on the Rights of the Child

A legally binding
instrument

State parties are
increasingly adopting
National Plans of Action

Relatively
consistent
monitoring efforts

Optional Communications
Procedure allows individuals to
file complaints with the
Committee for violations of
their rights under the
convention if domestic
remedies have been exhausted



Successes



United Nations Convention on the Rights of the Child

After 26 years of the CRC's adoption, the number
of children not in school, children suffering
from preventable diseases, child labour, and
children in detention facilities are still high

Delayed progress
in legal reform

Resistance to State interventions
(formal criminal justice process)
to comprehensively protect
children from violence

Challenges



United Nations Convention on the Rights of the Child

Despite CRC Committee's emphasis that all corporal punishment should be prohibited, even with the family, <40 countries have reformed their laws to prohibit corporal punishment in the family rooted in the principle of "reasonable" or "moderate" chastisement of children within the private sphere

LEGAL CHANGE ≠
SOCIAL CHANGE

Challenges

At least 58 million children are not in school. 168 million children are engaged in child labour and every year, an estimated 14 million girls around the globe (38,000 per day) are married before they reach 18 years of age



United Nations Convention on the Rights of the Child

Harmonization of of existing national legal provisions on children with the provisions of the CRC:
External harmonization and Internal harmonization

Challenges



United Nations Convention on the Rights of the Child

Need for robust
legal reform

Improvement of
public education
on child rights



Ways Forward

Comprehensive
overhaul of policy
framework



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

First international instrument to **fully articulate the responsibility of the police and other criminal justice institutions and agencies** to prevent and respond to violence against children

A new set of international standards and norms adopted by the UNGA in Dec 2014 that are grounded in the CRC to not only improve the effectiveness of the criminal justice system in preventing and responding to VAC but also to protect against any violence that may result from their contact with the system (TIJ, 2015)

Overview



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

General
prevention
strategies

Part I

Strategies to
improve the ability
of the criminal justice
system to respond
to VAC

Part II

Strategies to
prevent and respond
to violence against
children within the
justice system

Part III

Overview



How can the model strategies on VAC be used?

Used by States as
Guidelines

I

Used as a
benchmark for
review and gap
identifications
and priorities
setting

II

Used to identify area of
work and collaboration
(monitoring and sharing
best practices)

III

Remind you about specific rights of child at different
stages of the justice process



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

Clash with the context of some cultures and religions, such as child marriages and corporal punishment

The soft law, non-legally binding nature, and the openness to interpretations

No monitoring mechanism and lack of specially trained personnel to facilitate implementation

Challenges



The ASEAN Regional Plan of Action
on the Elimination of Violence against Children

Adopted in
November 2015

Echoed the commitment of ASEAN member states to implement the 2013 Declaration on the Elimination of Violence against Women and Children

Delineates concrete actions for implementation between 2016-2025

Anticipates the need for action on emerging risks to children's protection from violence due to the advent of new technologies

Overview



The International Legal Framework

International Treaties and Conventions
Convention on the Rights of the Children - Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - Optional Protocol on the Involvement of Children in Armed Conflict
Convention on the Elimination of Discrimination Against Women (CEDAW) - Optional Protocol to CEDAW - Reservations to CEDAW Specify
International Covenant on Civil and Political Rights (ICCPR) - Optional Protocol to the ICCPR - Second Optional Protocol to the ICCPR, aiming at abolition of death penalty
International Convention on the Elimination of all Forms of Racial Discrimination
International Covenant on Economic, Social and Cultural Rights (ICESR)
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - Optional Protocol to the Torture Convention
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Convention on the Rights of Persons with Disabilities (CRPD) - Optional Protocol to the Convention on the Rights of Persons with Disabilities
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
UN Convention Against Transnational Organized Crime - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children - Protocol Against the Smuggling of Migrants by Land, Sea and Air
Slavery Convention - Protocol amending the Slavery Convention
Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others
International Convention for the Protection of All Persons from Enforced Disappearance
Convention Against Discrimination in Education
Hague Convention on Intercountry Adoption
Convention relating to the Status of Refugees - Protocol relating to the Status of Refugees
Convention relating to the Status of Stateless Persons
Convention on the Prevention and Punishment of the Crime of Genocide
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
Geneva Convention relative to the Treatment of Prisoners of War

Geneva Convention relative to the Protection of Civilian Persons in Time of War - Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts (Protocol I) - Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
ILO Conventions - Worst Forms of Child Labour Convention (C182) - Forced Labour Convention (C29) - Migration for Employment Convention (C97) - Migrant Workers (Supplementary Provisions) Convention (C143) - Abolition of Forced Labour Convention (C105) - Minimum Age Convention (C138) - Protection of Wages Convention (C95) - Indigenous and Tribal Peoples Convention (C169)



Status of Key International Conventions and Extraterritorial Legislation

STATUS OF KEY INTERNATIONAL CONVENTIONS AND EXTRATERRITORIAL LEGISLATION SOUTHEAST ASIA					
Country	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	UN Protocol to Prevent, Suppress & Punish Trafficking in Persons	ILO Convention 182, Elimination of Worst Forms of Child Trafficking	Extraterritorial Legislation	
	Signature ²⁷	Ratification ²⁸	Signature	Ratification	Ratification
Bruni Darussalam	-	✓ Accession	x	x	✓ ✓
Cambodia	✓	✓	✓	✓	✓ ✓
Indonesia	✓	✓	✓	✓	✓ ✓
Lao PDR	-	✓ Accession ²⁹	-	✓ Accession	✓ ✓
Malaysia	-	✓ Accession	-	✓ Accession	✓ ✓
Myanmar	-	✓ Accession	-	✓ Accession	✓ ✓
Philippines	✓	✓	✓	✓	✓ x
Singapore	x	x	x	x	✓ ✓
Thailand	-	✓ Accession	✓	✓	✓ ✓
Timor-Leste	-	✓ Accession	-	✓ Accession	✓ ✓
Vietnam	✓	✓	-	✓ Accession	✓ ✓ ³⁰

STATUS OF KEY INTERNATIONAL CONVENTIONS AND EXTRATERRITORIAL LEGISLATION OTHER COUNTRIES					
Country	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	UN Protocol to Prevent, Suppress & Punish Trafficking in Persons	ILO Convention 182, Elimination of Worst Forms of Child Trafficking	Extraterritorial Legislation	
	Signature	Ratification	Signature	Ratification	Ratification
Australia	✓	✓	✓	✓	✓ ✓
China	✓	✓	-	✓ Accession	✓ ✓
France	✓	✓	✓	✓	✓ ✓
Germany	✓	✓	✓	✓	✓ ✓
Japan	✓	✓	✓	x	✓ ✓
Republic of Korea	✓	✓	✓	x	✓ ✓
Russian Federation	✓	✓	✓	✓	✓ ✓
United Kingdom	✓	✓	✓	✓	✓ ✓
United States of America	✓	✓	✓	✓	✓ ✓



After all these years and standards and norms...

During these decades of CRC implementation we all grow to understand that unless we address *the basic underlying factors*, such as legal identity, multi-dimensional child-poverty, family and other enabling (safeguarding) environments, and spaces for child participation – we may not be able to protect our children.

Violence against Children in Southeast Asia: the case of child sex tourism in Thailand, Lao PDR and Cambodia

Dr. Sita Sumrit
Chief of the Women and Children Empowerment Programme
Thailand Institute of Justice

Violence against Women in Southeast Asia



Violence against Children
is prevalent
in all countries

Violence against Women in Southeast Asia



- A Regional Review and Synthesis of Findings on VAC (UNICEF 2014)
- Preliminary result on child sex tourism in Thailand, Cambodia, and Lao PDR (TIJ, Thai Police Force and Fight Against Child Exploitation (FACE), (2016)



Violence against Women in Southeast Asia

17 – 35% Prevalence
in Lower – Middle Income
Countries



1 - 13% Prevalence
in Upper Middle - High Income
Countries



Violence against Children is
more prevalent in
lower income countries



ASEAN Regional Plan of Action (RPA) on the Elimination of Violence against Children

Institutionalize policies on elimination of violence against children among ASEAN member states

Promote the **establishment of prevention and protection services** supported by national legal framework and institutional mechanisms



ASEAN Regional Plan of Action (RPA) on the Elimination of Violence against Children



ASEAN Regional Plan of Action (RPA)

on the Elimination of Violence against Children

Lack of specific plan or designated agency to tackle sexual exploitation of children in travel and tourism

Lack of specially trained personnel to facilitate implementation

Newly developed soft law, not fully implemented by countries

Each country has its own “context and reservations”

No systematic financial support and staffing

Difficulties in solving trans-national issues

No monitoring mechanisms

Key Challenges



Child Sexual Abuse

“Child sexual abuse occurs when someone *involves a child in a sexual activity by using their power over them or taking advantage of their trust.* Child sexual abuse includes *all forms of unwanted sexual behaviour.* This can involve touching or even no contact at all.”

(World Vision 2014)

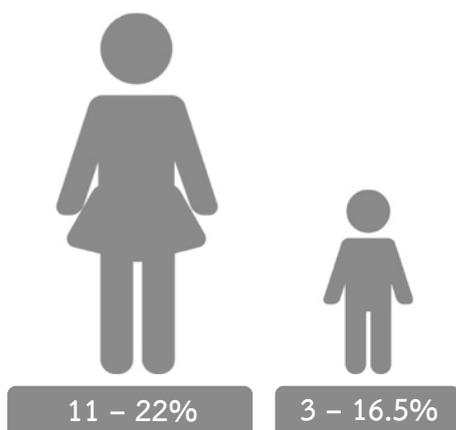


Child Sexual Abuse

Child sexual abuse in travel and tourism denotes *child sexual abuse by tourists, travelers or foreign residents who commit child sexual abuse in the country or countries in which they are visiting or living*



Child Sexual Abuse



Child sexual abuse is more prevalent for girls than boys in most areas

(UNICEF 2014)



Child Sexual Abuse



For **low income countries**, child sexual abuse is slightly more prevalent for boys

(UNICEF 2014)

Needs more study to learn *why the prevalence and outcomes may be different for boys* and *address high prevalence of violence against girls* in the region



Child Sex Tourism in Southeast Asia – Overview



In 2014, fastest growth in sexual exploitation of children by foreigners



Child Sex Tourism in Southeast Asia – Overview



Traditional
Destinations:
**Thailand and
The Philippines**



Child Sex Tourism in Southeast Asia – Overview



Emerging Destinations:
**Cambodia,
Lao PDR, Myanmar
and Vietnam**



Child Sex Tourism in Southeast Asia – Overview

Male from another Southeast Asian country or East Asian countries (Japan, China, South Korea)

Offenders



Stateless children, refugees, indigenous children, ethnic minority groups, children working close to tourists

Children at Risk



Child Sex Tourism in Southeast Asia – Overview

Emerging Pattern:
Cheap Travel costs
and new technology
allow for expedient
information sharing

*- A record of 96.6 million
international visitors in 2014*

*- A rise of webcam-based child sex
tourism due to the advancement of
information technologies*



Child Sex Tourism in Southeast Asia – Causes



Offenders' preference for sexual activities with children

Demand



Take advantage of the demands and seek out children to create supply

Provider



Victims' need for financial security contributes in a small part

Supply



Child Sex Tourism in Southeast Asia – Impacts and Consequences

Victims traumatized imposing negative impact on both physical and mental health

Many survivors have substance abuse problems as means to cope with their pain

Survivors have increased suicidal thoughts and tendencies



Child Sex Tourism in Southeast Asia - Common Points of Access

Establishment-based prostitution: Bars, Karaoke Venues, Beer Gardens, Massage Parlors that operate as brothels

Direct/facilitated solicitation of vulnerable children living/working in public places popular among tourists such as beaches and market places

Access may even be **facilitated by those in child-contact roles such as schools and orphanages** who target children from broken homes



Child Sex Tourism in Southeast Asia - Thailand



Thailand

- Infamously known as the “center of child sex tourism”
- High risk areas are Chiang Mai and Pattaya
- Travel agencies and hotel operators are the main facilitators
- Children are bought from their parents and forced into sex trade



Child Sex Tourism in Southeast Asia - Thailand

- State justice systems often **inaccessible & inhospitable** to child victims of sexual violence
- **Corruption** in certain factions of the police leads to the tipping off of owners of brothels and sex clubs in exchange for bribes
- State judicial systems often fail to monitor and restrict the movements of accused exploiters in the pre-trial period
- More common to confine the child victims who are often confined for a long period of time following their rescue in highly restrictive and inadequate shelters for the duration of the criminal investigation and prosecution
- Inconsistent implementation of child-friendly procedures
- Prolonged and delayed prosecution of cases – leading to further **distrust in the justice system**

Flawed Justice Processes for Victims



Child Sex Tourism in Southeast Asia - Cambodia



Cambodia

- Emerging as a growing target destination for child sex tourism
- Weak laws against prostitution and child sex tourism
- High risk areas are Siem Reap and Mondulkiri



Child Sex Tourism in Southeast Asia - Cambodia



Child Sex Tourism in Southeast Asia - Cambodia



Child Sex Tourism in Southeast Asia – Lao PDR



Lao PDR

- Rapid growth in child pornography and emerging target for child sex tourism due to the development of information technology infrastructures
- Child prostitution activities commonly found in beer shops, where owners pay regular fees to the government, therefore reducing incentives for local officials to inspect or close down beer bars.



Child Sex Tourism in Southeast Asia - Recommendations

1

Prevention interventions should take an all-inclusive approach

2

Prevention interventions should not only focus on child sexual abuse by travelers/tourists in tourist hubs, but also by locals and foreigners in remote and indigenous areas

3

Attitudes and practices must be observed from a holistic and dynamic perspective to fully address the risks and vulnerabilities of children to sexual abuse

4

More attention should be paid to the sexual abuse of boys



Child Sex Tourism in Southeast Asia - Recommendations

5 Children should be targeted in prevention interventions and provided education to help them recognise signs of abuse and encourage them to disclose information to a trusted adult if they are being abused

6 Prevention interventions should reach out to both school-going and disadvantaged children

7 Prevention information and messaging should be conveyed to children via their favourite communications platforms

8 Parents should be targetted in preventative interventions and provided with the information and skills to protect and communicate effectively with their children



Child Sex Tourism in Southeast Asia - Recommendations

9 Parents and duty bearers must be updated on children's tools and communication channels

10 Prevention interventions should reach out to both school-going and disadvantaged children

11 Interventions at community level should work in cooperation with, and in support of, existing local child protection mechanisms

12 Besides providing information and education, interventions should also include advocacy with relevant high-level jurisdictional entities to amend and enforce criminal justice responses to child sex offending



Child Sex Tourism in Southeast Asia - Recommendations

13

Implementation of international and regional instruments and strengthening of cooperation

14

Developing database and evidence based research to inform policy and enhance understanding of patterns and evolutions of child sex tourism in the region

15

Improving and strengthening legal frameworks and law enforcement to combat child sex tourism through the adoption, revision and implementation of relevant legislation



Child Sex Tourism in Southeast Asia

“It is much easier to place blame firmly on a sexually perverse foreign man abusing innocent children than it is to look at a situation where the sexual abuse of children is endemic and has become normalized, and indeed, institutionalised”



Child Sex Tourism Catching the Predators



PARTICIPANTS' PAPERS

CHILDREN AS VICTIMS AND WITNESSES UNDER THE EGYPTIAN LEGAL SYSTEM: PROSPECTS AND CHALLENGES

*Abdelalim Morsy**

I. INTRODUCTION

Egypt was one of the leading countries that signed and ratified the Convention on the Rights of the Child. Meeting its international obligations, Egypt adopted Child law no. 12 of 1996 and its amendment by law no. 126 of 2008. The said law constituted a grand leap in the protection of children, as it firstly specified the cases where a child is considered exposed to risk. Procedurally, the law in question introduced both General and Subsidiary committees, as well as General department for the Child Helpline.

Pursuant to article 3,9 of the convention, and following the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime issued in 22 July 2005, the Egyptian legislature stipulated in article 116-bis (d) of law 126 of 2008 that "Child victims and witnesses of crime, at all stages of arrest, investigation, trial, and implementation, shall have the right to be heard, and to be treated with dignity and sympathy with full respect for their physical, psychological, and moral safety,¹ and shall have the right to protection, to health, social and legal assistance, to rehabilitation, and integration in the society, in accordance with the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime." Thus, law no. 126 of 2008 was the first law that recognizes children as victims and witnesses through drawing a general procedural rule to deal with them.

It is clear that the Egyptian legislature did not enact detailed procedures of investigation and trial for child victims and witnesses of crime, but rather referred to the United Nations Guidelines on Justice for Child Victims and Witnesses of Crime. Thus, through this legislative reference, such guidelines have been incorporated in the Egyptian legislation and became a part of its domestic legal system. On the other hand, the legislature was keen on stipulating upon detailed procedures regarding cases where a child is an offender.

Certainly, it would have been preferable if the legislature had adopted the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime, which was drafted to provide a practical tool for countries to incorporate in their local legislations. There is a legitimate concern that mere reference to the guidelines will not be sufficient to fully accomplish the aim of its drafting. Because those guidelines are generic and lack the sufficient details to be considered self-executing. To wit, they introduce general concepts that states should consider when drafting a statute. Thus, the legislature shall adopt a new law for protecting child victims and witnesses, based on the model law that was issued by the United Nations Office on Drugs and Crime.

Nonetheless, in the absence of provisions regulating the inquiry of children as victims and witnesses, we must refer to the general rules stipulated upon in the Criminal Procedures Law and other laws such as the Child Law 126 of 2008 and the Anti-Human-Trafficking Law no. 64 of 2010. Both the Child Law and Criminal Procedures Law contain many articles that can be applied in the context of these guidelines, for instance, article 273 of the Criminal Procedures Law states that the court shall protect the witness from explicit or allusive statements that might cause confusion or intimidation. Such provision can be used by the court in the context of article 116-bis (d) from law 126 of 2008 in order to hold the session in the offenders' absence if there are reasonable grounds that the child witness will be exposed to such statements.

Similarly, some modern Egyptian legislation assured the rights of victims of crime including children,

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¹Dr. Hesham Abd el Hamid Farag – Child Abuse – 1st edition 2010 – p. 7.

for instance: Anti-Human-Trafficking Law no. 64 of 2010 stipulated in its 22nd article upon the victim's right for physical and psychological safety in all preliminary inquiries and investigation procedures, also the right to know the administrative and judicial procedures, besides the right to have proper legal consultation and to be protected, and therefore non-disclosure of identity if required.

This study will attempt to shed light on the cases in which law no. 126 of 2008 considered a child at risk, then explain the procedures that shall be taken to protect the child who is found to be at risk. Afterwards, it will list and describe the role of agencies responsible for receiving reports of violence against children. In addition, it will explain the special procedures for investigating, prosecuting and adjudicating cases of children as witness and victims.

II. CASES WHERE A CHILD IS EXPOSED TO DANGER UNDER THE EGYPTIAN LAW

Generally, a child under the Child Law is anyone who "ha[s] not reached the age of eighteen (18) complete calendar years". The old Child Law no. 12 of 1996 stipulated the cases where a child is exposed to deviation under article no. 96, whereas the new child law no. 126 of 2008 modified that article to be the cases where a child is exposed to "risk" rather than "deviance", and introduced new cases where a child is considered exposed to risk.

Those conditions embrace the cases where the child's safety, morals, health, or life is at risk, or if the conditions surrounding the child's upbringing in the family, or at school, or in care institutions, or others, places him at risk, or if the child is exposed to neglect, abuse, violence, exploitation, or vagrancy, or if the child is exposed in the family, school, care institutions, or other to violence, or to acts contrary to public morals, or pornographic material, or to commercial exploitation of children, or to harassment or sexual exploitation, or to the illegal use of alcohol or narcotic substances affecting the mental state.

It is noticed that the modification of this article complies with the modern international conventions and declarations; because the former law considered the child who is exposed to "deviance" should be treated as a potential criminal, which was reflected on the procedures enacted to face "deviance". While the new law considered the child at victim rather than a potential criminal, and therefore introduced new rules to protect him/her. Further, it reveals the alteration of the legislature's philosophy in dealing with children at risk in a way that maximizes legal and social protection of children.²

III. MEASURES FOLLOWED IN CASES WHERE A CHILD IS AT RISK

It is noteworthy that – pursuant to article 96 of the child law – most of the crimes committed against children can fall within the scope of article 96. For instance, a child assaulted by one of the family members can be considered at risk, and therefore specific procedures are to be initiated to deter such risk. The importance of this rule is manifested in the powers given by the Child Law to child agencies when a child is at risk. Such powers allow them to take steps toward protecting the child, whereas most of the legislation does not give the agencies equivalent powers.

Critically speaking, limited interference ability of child agencies cannot be cured only by the efforts of judges and/or investigative agencies. If someone – who is not one of the child's family members – raped a child, it would be difficult to presume such a crime as exposure to risk, such presumption can be challenged on the grounds of that the said crime has a temporary nature so that it is not considered literally "exposed to risk", because such "exposition" should have a continuous nature. Also, this presumption cannot be applied where a child is a witness of a crime and not victim of it. Therefore, this procedural loophole shall be firmly confronted with an amendment to the legislation, aiming to permit the child agencies to interfere whenever a child is a victim of a crime or its witness.

A. Substantive Measures

Article 96 of law 126 of 2008 provides that "any person putting a child at risk shall be imprisoned for a period not less than six (6) months, and a fine of not less than two thousand (2,000) Egyptian pounds, and not exceeding five thousand (5,000) Egyptian pounds, or by one of the two penalties." It is notable that

²Chancellor Abdallah Mofteh, Children's Rights, 4th ed. 2015, p. 63.

such penalties are not absolute, and they may be superseded if the same act formed another crime for which the legislature provided a harsher penalty.

Moreover, Article 116-bis of the above-mentioned law stipulates that “The minimum penalty decreed for any crime shall be doubled if the crime is committed by an adult against a child, or if it is committed by one of the parents, or by one of the child’s guardians, or by people in charge of supervising or upbringing the child, or by those who have authority over the child, or by a servant to any of the above mentioned.”

B. Procedural Measures

Art. 99-bis of the law 126 of 2008 provides for temporary and preventive measures to be taken if a child is found at risk, and those measures are:

- 1- Keeping the child with his family and committing the parents to take the necessary measures to remove the dangerous environment within a specific deadline. The sub-committee shall carry out periodic supervision visits.
- 2- Keep the child with his family and regulate the social intervention methods of the agencies responsible for providing social, educational, and health services necessary for the child and for assisting his family.
- 3- Keep the child with his family while taking necessary precautions to prevent any contact between the child and the persons that could pose a threat to his health, physical, or moral well-being.
- 4- Recommend to the relevant court to place the child temporarily, until the risk is removed, in a family or association, or social or educational institution or, when necessary, at a health or therapeutic institution, in accordance with the legal procedures.
- 5- Recommend to the relevant court to take urgent and necessary measures to place the child in a reception center or rehabilitation center or health care institution or with a reliable family or association or an appropriate social or educational institution for a period of time until the risk is removed; this is in cases where children are at risk or are neglected by the parents or guardians.

In cases of imminent danger, the General Department for the Child Helpline at The National Council for Childhood and Motherhood (NCCM) or the Committee for Childhood Protection, whoever is closer, shall take all necessary measures and urgent procedures to remove the child from the place where he is at risk and place him in a safe place, with the assistance of concerned officials, if necessary.

IV. SPECIALIZED AGENCIES IN CHILD PROTECTION

Although the legislature stipulated — in article 98-bis of law 126 of 2008 — “Any person who finds that a child is at risk should provide urgent help that is adequate to shield or remove this child from danger”, the legislature did not lay down a penalty for those who do not provide help to children, or for those who did not report that the child was endangered. At least, the right of reporting is reserved for any one who discovers that a child is at risk, especially if one of the child overseers *inter alia* “Teacher, doctor...etc.”

As a general rule, the police are the primary competent authority to receive complaints and reports on crimes, Article 24 of the Egyptian criminal procedures law states that “Judicial officers shall accept reports and complaints made thereto on crimes and shall promptly send such to the Public Prosecution. Judicial officers and the heads thereof shall obtain all necessary information and carry out relevant inspections with a view to facilitating the verification of facts received thereby or known thereto by any means”.

Yet, regarding the very distinctive nature of cases involving child as victims, they require a great deal of expertise and qualifications. The legislature introduced few agencies that are competent to receive complaints and reports of children who are exposed to risk.

Actually, the legislature introduced through article 97 two types of committees. The first is called “The General Committee for Childhood Protection”, and the second is called “The Sub-committees for Childhood Protection”. Both types of committees enjoy a wide range of competences and powers over protecting children at risk. Such committees embrace social, psychological, medical, educational and security members within their composition. Moreover, the legislature also regulated the General Department for Child Helpline as a subsidiary entity to the NCCM. This department informally existed under the old law 12 of 1996. The new law only regulated its formulation and specified its jurisdiction and powers.

A. The General Committee for Childhood Protection

1. Formation

According to law 126 of 2008, a general committee for childhood protection shall be formed in every governorate; it shall be formed by a decision issued by the competent governor. The by-law 2075 of 2010 specified the formation of the committee. It shall be headed by the competent governor, and composed of the chief officer of the governorate, the head of the local social solidarity authority, the head of the local educational authority, the head of the local health authority, a representative of the concerned civil society organizations and whoever the governor finds suitable to be a member in the committee.

The legislature was keen on including different specialties in the formation of the committee to enjoy the maximum expertise and capabilities in dealing with situations where a child is at risk. However, I argue that it could have been more effective if the formation of the general committees was altered, especially regarding its head and the chief officer of the governorate. Through substituting them with full-time personnel, who could devote more energy and certainly more availability. A good alternative to the governor could be one of the personnel of the National Council for Childhood and Motherhood, who would enjoy sufficient experience to direct and draw the policies of the committee.

2. Function

The General Committee for Childhood Protection shall — pursuant to article 97 from the law 126 of 2008 — formulate the general policy for childhood protection in the Governorate, and shall follow up the implementation of this policy. Besides, if any sub-committee fails to remove the cause of a complaint submitted to it, it shall raise a report concerning the incident and the exact measures undertaken to the General Committee for Childhood Protection to take necessary legal measures. Finally, every general committee shall establish a sub-committee in every police district within the governorate.

B. The Sub-committees for Childhood Protection

1. Formation

Contrary to the general committees, the law did not require certain personnel to be included in the formation of the sub-committees. Nonetheless, the law 126 of 2008 requires it in article 97/3 to include security, social, psychological, medical, and educational representatives. The number of its members shall be at least five (5) and not exceeding seven (7), including the chairman of the committee. The sub-committee may include among its members one or more representatives from the organizations of the civil society concerned with childhood affairs.

2. Function

The sub-committees have an executive nature; they are the competent authorities for taking any of the aforementioned measures stipulated in article 99-bis of law 126 of 2008. Art. 99 of the same law laid down the duty of those committees to receive complaints about cases of children at risk, and their duties to investigate such complaints to determine the gravity of the risk, if it appears to be so, they can summon the child, or his parents, his guardian, or any person in charge of the child so as to listen to what they know regarding the facts of the complaint. The sub-committee shall examine the complaint and endeavour to remove all its causes.

Also, the committees for childhood protection — whether general committees or sub-committees — shall periodically monitor the procedures and results of implementing the measures undertaken concerning the child. The Committees for Childhood Protection shall recommend to the authorities, when necessary, to review those measures and replace or suspend them to keep the child with his family as much as possible, except as a measure of last resort and for the shortest appropriate period of time; in such a case, the child shall be returned to his family as soon as possible.

C. The General Department for Child Helpline

1. Formation

The Department was founded on June 29, 2005 as a subsidiary to the National Council for Childhood and Motherhood; it was called the child helpline administration. It is considered one of the most successful forms of cooperation between the council and the civil society institutions interested in childhood protection. Offices of this department were provided at numerous civil society associations all over Egypt, and the personnel were paid by the council. Furthermore, a free hotline 16000 was assigned to this department and a wide campaign of advertisement commenced to raise the awareness about that line.

The department carried out the task of receiving reports and intervening in cases of imminent risk. This department achieved significant success in the course of providing rapid intervention in rescuing children who are exposed to imminent risk, besides providing legal consultation to those who ask for it, either adults or children. Namely, the reports aided in preparing a map illustrating the pools of homeless children in four governorates: Cairo, Giza, Qalubya, Alexandria. Moreover, it helped in preparing a database comprising the types of risks children may be exposed to.³

The legislature intervened to regulate the General Department for Child Helpline in article 97/5 from the law 126 of 2008. The articles stated that the department should include among its members representatives for the Ministries of Justice, Interior, Social Solidarity and Local Development selected by the concerned ministers, in addition to representatives from civil society organizations selected by the NCCM Secretary General, as well as any other party as deemed necessary by the Secretary General.

2. Function

The General Department for Child Helpline executes numerous tasks: firstly, it is mandated to receive children's and adults' complaints, and handle them efficiently to protect children from all forms of violence, risks, or neglect. Moreover, it is empowered to inspect any complaint received, follow up the investigation results, and forward reports concerning the findings to the relevant authorities.

Many jurists suggest that the department personnel should hold the powers of a judicial officer,⁴ by which they can inspect crimes committed against children as well as their perpetrators, because without those powers, the department would be a mere agency that receives reports and gathers information without real ability to protect children at risk. It would be then more practical to directly call the police in cases of imminent risk.⁵

Also, some crimes against children are not expected to be reported, such as female circumcision. Due to some misunderstood religious and deeply ingrained social beliefs, in some parts of the Egyptian countryside the crime of female circumcision usually starts and ends without anyone ever knowing. No reporting for this crime is expected — except in very few cases — because it is regarded to be a right of the parents in raising their female child. Such crime is regarded to be one of the most common crimes against children in Egypt, which needs to be confronted with firm legal procedures.

V. RIGHTS OF CHILDREN AS VICTIMS AND WITNESSES IN THE INVESTIGATION PHASE

Under the Egyptian Criminal Procedures Law, prior to investigation there are many procedures referred to as "preliminary inquiries" which mainly aim at discovering violations of the criminal laws, gathering evidence of such violations and identifying their perpetrators, unless and until a judicial investigation has been initiated⁶, followed by the preliminary judicial investigation which is initiated by the public prosecution or the investigative Judge, then the final judicial investigation which is conducted by the court. Under this topic we will deal with the first two stages of inquiries and the preliminary judicial investiga-

³Ibid. at p. 70.

⁴Prof. Akmal Youssef El Sae'ed - The Criminal Protection for Children Against Sexual Exploitation - Dar el Gam'a el Gedida - 2014 - p. 483.

⁵Moftah, ibid. at p. 71.

⁶Mohamed Mansour - The Egyptian Procedural Law after the revolution - research paper presented to "joint program on countering terrorism - held at justice academy of Turkey - 2013 - p. 10.

tion, leaving the final stage to the next topic addressing adjudication involving children as victims and witnesses.

A. The Rights of the Child in the Preliminary Inquiry Phase

Article 5 of the criminal procedural law provides that if the victim of a crime is younger than fifteen years of age, the complaint shall be made by the guardian thereof. If the criminal offence is deemed a crime against assets, a complaint shall be accepted from the guardian or the caretaker.

The child has the right to be protected by the police by stopping the assault or ensuring that it will not be repeated. Additionally, police must protect the child if he is a witness of a crime. This could be of paramount importance when the only evidence is the testimony of a child, as there may be a risk that the offender would intimidate or threaten the child or his family to refrain from or alter his testimony.

Also, the police should give children appropriate treatment, according to their mental and psychological status at the time of the incident, and they should address the suitable questions that do not hurt the feelings of the children, and they should not be questioned for too long.⁷

These precautions are not limited to police only, but also apply to any agency involved in the preliminary inquiry phase. As mentioned before, the sub-committees and the General Department for Child Helpline may have significant roles in this phase. Especially in cases where the child is in imminent risk, they have the availability to cooperate with the police in removing the child from the risky place. Finally, the police may recourse to these agents' aid when questioning a child, as article 97/4 of law 126 of 2008 provides that the sub-committees for childhood protection shall take the necessary preventive and therapeutic interventions for all cases where a child is found at risk and shall follow up on measures taken.

B. The Rights of the Child in the Preliminary Investigation Phase

The Criminal Procedures Law sets a rule of paramount importance regarding the victimized children in article no. 365, that is, "Where necessary in any felony or misdemeanor committed against a minor that has not attained the age of fifteen years, an order may be issued to deliver him to a trustworthy person who undertakes to observe and care for him, or to a charitable institution accredited by the Ministry of Social Affairs, until the case is decided. Such order shall be issued by the investigating judge either on his own motion or upon a request from the Public Prosecution, or shall be issued by the magistrate judge upon a request from the Public Prosecution, or the court hearing the case".

Article 365 was enacted in 1952 and modified in 1962. Although it was considered a good step towards protecting victimized children at that time, it is now not completely in compliance with modern conventions and declarations on the rights of children. That's because the protective measures stipulated don't cover those who range between 15 and 18 years old. Further, the law did not extend the protection to the stage after the case is decided.

Again, the Egyptian legislature did not assign special rules for questioning children as witnesses in the process of the preliminary investigation. The only rule laid by the legislature in this regard is mentioned in article 283/2 which stated that "witnesses under the age of fourteen may testify without taking an oath, as a matter of inference". Therefore, the testimony of a child is considered inferior to that of an adult pursuant to this article, but that does not refrain the investigation authority and the court from considering it as an evidence.

However, the child prosecution which is specialized mainly in investigating and prosecuting juvenile crimes, has also some jurisdiction in cases where a child is found exposed to risk. As it shall — upon sub-committee request — warn in writing, the child's guardian to remove the causes placing the child at risk, if the child is still found in one of the situations of being at risk, the child prosecution shall take one of the measures of delivery to parents, guardians, or custodians, placement in one of the social care institutions, or placement in one of the specialized hospitals.

In addition, the periodical instructions⁸ of the Egyptian General Public attorney no. 19 of 2008 related

⁷El Sae'ed – Ibid – p. 494.

to the application of law 126 of 2008, laid down several guidelines for prosecutors to regard while investigating cases involving children at risk. That includes coordination and cooperation with Child Committees and the General Department for Child Helpline, and extensively studying and rapidly filing cases against offenders proved responsible for placing children at risk as well as swiftly issuing decisions that facilitate the execution of the urgent procedures decided by the committees and the General Department for Child Helpline. Finally, children who are presented to testify should be treated with sympathy, pursuant to article 116-bis (d) of the law 126 of 2008.

VI. RIGHTS OF CHILDREN AS VICTIMS AND WITNESSES IN THE TRIAL PHASE

A. The Role of the Prosecution at Trial

The public prosecution has a substantive role through trial procedures; it shall prepare pleadings that include detailed information on the facts and evidence of the crime committed against children, and that shed light upon how heinous it is, requiring therefore to inflict the maximum penalty upon the offender.

Additionally, the public prosecution — pursuant to article 252 of the criminal procedures law — has the right to ask the court to appoint a *guardian ad litem* for the victimized child, to present the civil rights claim to the court on behalf of such person without being charged with additional judicial costs.

The prosecution also has the right to demand holding in camera court sessions, in order to protect dignity and feelings of the victimized child, this right is derived from article 286 of the criminal procedures law which stipulates upon “The court may, in consideration of public order and observation of morals, order the case to be heard in a secret hearing, wholly or partially, or to prevent specific groups from attending the hearing”. Also, the public prosecution member may object to any question directed from the offenders and/or their advocates if it is likely to hurt the feelings of the child, or includes implied threatening.

The prosecution also reviews and challenges the court ruling if necessary. The public prosecution also shall respond to the international judicial cooperation requests, especially those pertaining to crimes that have transnational nature, such as human trafficking cases.

B. The Role of the Courts

1. Procedural Role

The legislature stipulated in a very limited manner special measures taken by the court while adjudicating cases where children are victims or witnesses, which includes not requiring an oath of witnesses under the age of fourteen; however, the court has wide range of powers pursuant to Article 116-bis (d) of the law 126 of 2008.

For instance, as said in subtitle (A), the court may by its discretionary power or upon the request of the parties of the trial – including the prosecution – order holding in camera court sessions, wholly or partially. This rule can be applied by the court if it finds that holding public hearings may hurt the feelings of the child.

Yet it is deeply debatable whether this power includes the right of the court to order to remove the accused person from the courtroom as a preventative measure, if the accused's presence will reasonably affect the child witness, but the prevailing opinion is that right of the court to remove the accused from the courtroom is limited to when he/she causes actual disturbances necessitating his removal, pursuant to article 270 of the criminal procedures law which states that “The accused person ... may *not* be removed from the courtroom while the case is being heard, unless he causes disturbances necessitating his removal”.

In the course of calling the child for testimony, the court – pursuant to article 273/3 of the criminal procedures law – may refrain from hearing the child if it finds that the incident is sufficiently evidenced.

⁸Some sort of periodical publications issued by the General Public Prosecutor, they constitute a set of rules to be followed by the prosecutors usually regarding implementing new or modified law. Disobedience of these instructions may expose the infringer to disciplinary penalty.

Otherwise, it can rely on its authority to order any competent child agency to appoint a social expert to attend the testimony of the child; this power is derived from article 292 of the criminal procedures law which states that "The Court may, either on its own motion or upon a request from the litigants, appoint one or more expert to the case." Yet without the court's order, the competent sub-committee for Childhood Protection, may appoint one of its members to attend the court session by virtue of article 974 which states that "The sub-committees for childhood protection shall monitor all cases of children at risk and take the necessary preventive and therapeutic interventions for all these cases and shall follow up measures taken". However, this member can never interfere in the trial procedures without the order of the court. Also, any civil action brought by these committees will be rejected, because — under Egyptian legal system — civil action is only accepted from the directly injured party from the crime.

All in all, the third conference of the Egyptian committee of criminal law issued recommendations to protect victimized children, for instance, prohibiting contact of the child with the offender except in necessary cases, non-disclosure of the data of the child witness, restricting media coverage and preserving the secrecy of the hearings⁹. The Egyptian legislature took some of these recommendations into consideration when drafting the Anti-Human-Trafficking Law.

2. Objective Role

Contrary to the procedural rules, the Egyptian legislature specified numerous offences where the penalty is harsher on those who commit crimes against children as follows:

- (i) Article 242 bis of the Penal Law determined a penalty of imprisonment for a minimum period of three months and a maximum period of two years, or fine no less than one thousand and no more than five thousand Egyptian pounds, for whoever causes wounds through committing female circumcision.
- (ii) Article 268 of the Penal Law, increases the penalty for assaulting a person sexually by force or threat, or attempts such assault if the victim of the said crime has not attained sixteen years of age, or the perpetrator of the crime is one of the victim's relatives, or those in charge of rearing, observing, or having power over him/her, or is a paid servant to him/her or to the aforementioned persons, the period of the penalty may be extended to the ceiling determined for temporary imprisonment, "15 years". If these two conditions combine together, the ruling shall be a sentence to permanent imprisonment, "25 years".
- (iii) Article 269 of the Penal Law stipulates that the penalty of indecently assaulting a lad or a lass not yet attaining eighteen complete years of age, without force or threat shall be punished with detention. If he or she has not attained seven complete years of age, or the person committing the crime is one of the victim's relatives, or those in charge of rearing, observing, or having power over him/her, or is a paid servant to him/her or to the aforementioned persons, the penalty shall be temporary rigorous imprisonment.
- (iv) The crimes of kidnapping, hiding a newborn child, or replacing him/her with another, or ascribes him/her falsely to other than his/her mother or exposing them to danger by leaving them in unoccupied places that are mentioned in articles 283-289 of the aforementioned law, kidnapping a female and raping her is punished by death.
- (v) Article 292 of the Egyptian Penal Law stipulates punishment of rigorous imprisonment for a term of not less than five years and a fine of not less than fifty thousand pounds and not more than two hundred thousand pounds for one involved in the purchase or sale of children or offer for sale, as well as of delivery or transfer as slaves, or sexual or commercial exploitation, or use in forced labour, or in other illicit purposes, even if the crime took place abroad.

Finally, the custodian of the child can amicably settle cases pertinent to some misdemeanours pursuant to article 18 bis of the criminal procedures law, such settlement is available in any stage of litigation, even after the final sentence.

⁹El Sae'ed – Ibid – p. 646.

VII. CONCLUSION

This paper touched upon the key issues that lack legislative regulation. Although the Child Law contains many articles that regulate – in some of its aspects – the agencies responsible for taking action towards a child at risk, the said law lacks several rules and procedures that should be stipulated especially in comparison with the model law. Those rules encompass the duty of maintaining the confidentiality of all information on child victims and witnesses that relevant agencies may have acquired in the performance of their duty, stipulating a certain level of training required for personnel and investigators who deal with children, and also the appointment of a supporting person who accompanies the child through all the stages of investigation and trial. A mere pointing to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime in one article of the Child Law will not achieve most of the goals intended by the child protection policy.

It is highly advisable that the legislature interferes by drafting a law that regulates these procedures, especially for the very distinctive manner of the witness and victim thereof, which requires maximum legal protection possible without prejudice to the right of the offender. That protection cannot be left to the efforts of concerned agencies to construe the general rules in light of powers conferred by the Child Law. Whatever extent these efforts can reach, it cannot cover all the situations that invoke protection for the child. Also procedures that involve child protection should not be left to the discretionary power of the courts whether to apply protection or not. For instance, the Egyptian criminal legal system does not recognize Alternatives to Live In-Court Testimony, such as Videotaped deposition¹⁰. This way of testimony is contrary to the mandatory rules of the criminal procedures law and can deem the whole testimony null.

Finally, it is highly crucial to confer upon the personnel of the sub-committees and hotline department the judicial officer capacities. In order to have real authorities in tracking and spotting crimes without waiting for the reports, namely, the crimes which include social and familial character like female circumcision.

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¹⁰ Which are stipulated upon in comparative laws, see U.S. Code 18 USC § 3509- Child victims' and child witnesses' rights.

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CHILD ABUSE IN MALAYSIA: LEGAL MEASURES FOR THE PREVENTION OF CRIME AND PROTECTION OF THE VICTIM

*Yusnany Yusop**

I. ABSTRACT

Child abuse is not a new phenomenon. It happens all over the world. From the statistics, child abuse is not something that we should take lightly. Even though many steps have been taken by the government, cases of child abuse keep increasing. Hence, it should be taken seriously, and we must provide the way to protect the victim and to prevent it from happening. In Malaysia, many laws have been passed with the objective of protecting the welfare of the child. At the same time, the law also tries to prevent the crime from being committed. This paper will discuss the Malaysian Child Act 2001 (Act 611) which came into force on 1 August 2002. The Act attempts to promote the rights of the child and at the same time aims to implement the United Nations Convention on the Rights of the Child (UNCRC). However, the discussions will only focus on the provisions relating to the welfare of the child abuse victim and the rights and responsibilities of the public to prevent child abuse. As the victim of the abuse may later on be required to give evidence in a court of law, being a child, it is expected that a normal criminal justice procedures should not be applied to them. There should be a special way of obtaining and allowing them to give evidence. In 2007, the Evidence of Child Witness Act was passed with the aims to make provisions relating to giving of evidence by child witnesses. It is the aim of this paper to see how such laws are effective in protecting the child abuse victim.

II. INTRODUCTION

Child abuse and violence are of global concern and have long been unresolved issues. Even though many steps have been taken by the government to prevent them, statistics show that child abuse cases keep increasing. Children experience violence in spaces most familiar to them: in homes, schools and in the communities they live in. They also suffer abuse and exploitation in orphanages, in places of detention and on streets. The willful maltreatment of children has been recognized internationally as a matter of great sociological impact with legal significance and medical concern. Law is one of the mechanisms to ensure that all the policy and planning of the government run smoothly. For example, it is a policy of the government of Malaysia that no child is abused or neglected. Therefore, the government of Malaysia has passed legislation to protect the child from being abused and also to ensure the perpetrator is punished. The Domestic Violence Act 1994 and the Child Act 2001 are the main laws which govern cases of child abuse. The other laws which dealt with the case of child abuse are the Penal Code and the Evidence of Child Witness Act 2007.

III. DEFINITION OF CHILD

Age is an important factor in determining whether a person is a child or not. It is important to determine whether a person is considered as a child because if he is a child, specific provisions of law which provides for the protection of a child will be applicable. Therefore, the child will be protected from being exploited. The Child Act which was passed in 2001 (Act 611) to consolidate three major statutes governing children and young persons, i.e., the Juvenile Court Act 1947, Child Protection Act and Women and Girls Protection Act 1973, defines a child as all persons aged below 18 years. The definition is also in line with Article 1 of the Convention on the Rights of the Child 1991, i.e., a child is defined as someone who is under the age of 18.

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IV. DEFINITION OF CHILD ABUSE

It is difficult to define child abuse with precision as there can be no universal meaning based on a broadly acceptable value. This is because the form of neglect may not be an abuse of one community but it may be considered as a form of abuse in another society. The World Health Organization defines child abuse as all forms of abuse whether physical, emotional, sexual, neglect, abuse, maltreatment or exploitation which may cause injury or damage to the health, life, development or dignity of the child done by those who have the responsibility, trust or authority over the child. Sometimes we need to differentiate between abuse and the rights of the parent to discipline their child. The parent has the right to discipline their child as long as it is done in a reasonable manner and moderate in degree and otherwise does not constitute cruelty.

V. FORMS OF CHILD ABUSE

Child abuse can be divided into four kinds—emotional, physical, sexual and neglect. It usually consists of a pattern of behaviour which may include more than one kind of abuse. It may take the form of failure to meet a child's need for affection, attention and stimulation (even though good physical care may be provided) or that may be constant verbal abuse, rejection, threat of violence or attempts to harm the child. It may also refer to the negative behaviour of the parents or guardians towards children under their custody. Physical abuse occurs when a child is injured by a parent or guardian. An act or omission would amount to "physical abuse" if they occur intentionally or with intent to injure the child. The examples of physical abuse are kicking, punching, shaking, strangling, beating until he passes out and breaking bones. While injuries which are always associated with physical abuse are bruises, scratches, brain damage, bleeding and some cases involving death, sexual abuse is defined as involvement of children in sexual activities where they do not fully understand what is being done or the impact of the consent given, or the act is something contrary to role of the family. The example of sexual abuse included the act of having sex with a child, rape, incest, exposing genitals, sexual sadism, child prostitution and child pornography. Acts of molestation like holding, kissing, rubbing private parts of children and unnatural sexual behaviour are also sexual abuses. Neglect can be defined as the persistent and serious failure to provide basic physical, emotional and developmental needs in terms of health, education, emotional development, nutrition, shelter and a safe life for children. (Malaysia's National Policy). Neglect occurs when caretakers fail to provide children with essential food, clothing, shelter, medical care, education, nurturance, or love.

VI. FACTORS THAT CONTRIBUTE TO CHILD ABUSE

There is generally no single factor that results in abuse. There is also no known cause of child abuse. Nor is there any single description that captures all families in which children are victims of abuse. However, research has proved that there are a number of risk factors or attributes commonly associated with maltreatment. The risk factors can be grouped into four domains, i.e. parent or caregiver factors, family factors, child factors and environmental factors.

VII. LEGAL MEASURES TO PREVENT AND PROTECT THE VICTIM

It is undoubted that law is the important component to prevent abuse and neglect. Therefore, most countries have passed laws for the protection of the children. For example, the Children Act 2001 in Ireland, the Protection of Children and Juveniles Ordinance in Hong Kong, and the Children and Young Persons Act 2001 in Singapore. As for Malaysia, a number of laws are providing the protection for the abused child.

A. The Child Act 2001

The Child Act 2001 brought major changes in the law relating to the protection of the child in Malaysia where the rights of the child were recognized openly by the government. The preamble of the Act recognized children as an important component of the society and since the children are not mature, protection and special care should be given to them. The Child Act provides provisions to protect abused children or children in need of care and protection as follows:

1. Restrictions on Media Reporting and Publications

In order to protect the interest and welfare of the child, any mass media report regarding any child in respect of whom custody is taken under Part V of the Child Act shall not reveal the name, address or educational institution, or include any particulars calculated to lead to the identification of any child so concerned whether as being the person against or in respect of whom action is taken or as being a witness to the action. The picture of any child concerned or any other person, place or thing which may lead to the identification of any child concerned also shall not be published in any newspaper or magazine or transmitted through any electronic medium (section 15(1) and (2) of the Child Act 2001).

2. Taking a Child into Temporary Custody

It is the duty of a protector/police officer to take a child into temporary custody and put him or her in a safe house. Here, protector means the Director General, the Deputy Director General, Divisional Director of Social Welfare, Department of Social Welfare, the State Director of Social Welfare of each state, any social Welfare Officer appointed under the Child Act 2001. If the protector or police officer is satisfied on reasonable grounds that a child is in need of care and protection, they may take the child into temporary custody (section 18 of the Child Act 2001).

3. Duty to Inform the Relevant Authority of Abuse

The duty to inform is imposed on the medical officer or medical practitioner who believes on reasonable grounds that a child he is examining or treating is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or has been sexually abused (section 27(a) of the Child Act 2001). Failure to report is an offence and shall on conviction be liable for a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding two years or both (sections 27(b) of the Child Act 2001). The duty to report is also extended to the family members of the child and the child care provider (sections 28 and 29 of the Child Act 2001). This is different as compared to the Child Protection Act 1991 which only imposed the duty on medical practitioners. Looking to these two additional categories, it can be said that there are two categories that also have the possibility to know of the abuse cases earlier than the medical practitioner. Section 2 of the Act defines "member of the family" as including a parent or a guardian, or a member of the extended family, who is a household member, while household member is defined as a person who ordinarily resides in the same household as a child. While child care provider is defined as a person who looks after one or more children for valuable consideration for any period of time, the duty to report arises according to section 28(1) and section 29(1) when the respective parties have the reasonable grounds to believe that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or has been sexually abused. Here, the standard used is whether a reasonable man based on reasonable grounds believes that the child is being abused. Since the law makes it compulsory for the family member and child care provider to report abuse, failure to comply with the duty is an offence under section 28 of the Act and if convicted is to be released on bond on conditions to be determined by the Court. Failure to comply with the bond will render the person liable to a fine not exceeding RM5,000.00 or to imprisonment for a term not exceeding two years or both. It is suggested that the duty to report should be extended to neighbours as well as teachers because they are the people who always deal with the child and may have seen the signs of abuse.

B. The Child Witness Act 2007

As the victim of the abuse may later on be required to give evidence in the court of law, being a child, it is expected that a normal proceeding cannot be applied to them. There should be a special way of obtaining and allowing them to give evidence. According to section 118 of the Evidence Act 1950 if the child can understand the nature of the question put to him and can give a rational answer to that question, he is competent to give evidence. A child being a competent witness will be treated as an adult witness. He is expected to retell the story, live, on the day of the trial in front of the judge, court officials, defence counsel and the alleged offender. This is a strange environment for the child, and it can rapidly confuse him. The young child may also find it frightening to see the accused in court. The child will also be subjected to cross-examination by the defence counsel which will not only traumatize the child but also make him less likely to tell the truth. In Malaysia, the Evidence of the Child Witness Act was passed in 2007 with the objective of reducing the trauma experienced by child witnesses in court appearances. The Act provides for child witnesses to give evidence in the courtroom but shielded by a screen between the witness and the accused person or a child charged with the offence or by the live link or by video recording.

1. Video Recording

In this case, the child witness should be interviewed by a qualified and experienced person and a videotape of the interview should be used as evidence at trial. Video recording means a video recording of the oral evidence of the child witness in the form of an interview conducted by a police officer or other officer and the child witness, expressed upon any format, made with a view to its admission as evidence of examination in chief of the child witness. The major advantages of the use of the recorded evidence are less trauma for the child, the freshest possible evidence is obtained, pleas of guilty are encouraged and the accused who asserts his/her innocence is in a better position to do so when he/she knows all the details of the child's evidence before the trial. However, the video recorded evidence may be attacked as improper by the defence counsel since it may involve leading questions asked in order to conduct an effective interview. This may discredit the reliability of the statement given by the child witness. (Appendix)

2. Live Links or Closed-Circuit Television

Live link means a live TV link or other arrangement whereby the child while absent from the courtroom is able to see or hear or be seen and heard by the persons in the courtroom. The section provides for the evidence to be given in a normal way except that the witness will not be in the courtroom. It is mainly introduced to minimize the stressful effect of a court appearance upon child witnesses in alleged child abuse cases. Examination of the child witness may be done through the court or an interpreter or an intermediary authorized by the court. The intermediary communicates the questions put to the child witness and communicates the child's answer to the person putting the questions. He also explains the questions and answers to be understood by the child but shall not prompt or influence the child or disrupt the questioning. If the accused person is unrepresented, he is not entitled to question a child witness directly but he may do so through an intermediary.

3. Screening

A child witness, while giving evidence in Court, may be prevented by means of a screen or other arrangement from seeing and being seen by the accused or a child charged with an offence. However, the screen or other arrangement shall not prevent the child witness from being able to see, and to be seen by, the Court, the prosecutor, the advocate for the accused or the child charged with any offence and the interpreter.

4. Accompanying Adult

The court may allow a child witness to be accompanied by an adult while giving evidence, presumably to give physical comfort and assurance to the child to lessen the trauma. Section 9 of the Child Witness Act provides that the court may allow a child witness to be accompanied by one or more adult but the adult accompanying the child shall not prompt the child witness to answer the question or influence the answer or disrupt the questioning of the child witness.

5. Formal Court Attire

Formal court attire may be dispensed with. This is provided in section 10 of the Evidence of Child Witness Act 2007. This can be seen as one of the ways to make the courtroom appear friendly and normal in cases where the child witness gives evidence in the courtroom. It cannot be denied that the experience of being a witness is unpleasant and even daunting for most children. The usual set-up of courtrooms and court personnel are intimidating from children's perspectives, who, for this very reason may be discouraged from giving reliable testimony. The objective of this section is to make the courtroom appear friendly and normal in cases where the child witness gives evidence in the courtroom.

VIII. CONCLUSION

Despite significant strides made by the government in improving child protection measures, in recent years, the cases of child abuse keep increasing. The laws and procedures alone cannot solve the problem. It is only one of the methods of providing a solution to the problem. More efforts should be taken to make society aware that child abuse is a crime and can cause a country to lose human potential. The Department of Social Welfare under the Ministry of Women, Family and Community Development and NGO's have carried out awareness campaigns periodically in mass-media and a nationwide campaign through posters and billboards as the main source of medium. As for the protection of the victim, they also provide

shelter for the victim. Community-based projects should also be developed which involve the society at large to create awareness that child abuse is a crime. They should be made aware of the current situation, the law concerning the issues and measures taken by the government and government agencies.

Appendix

Abstract:

Child victim safety and comfort were ensured by the establishment of the Child Interview Centre (CIC) which has started in 2002. The main purpose for its establishment is to record the evidence of victims / witnesses through video recording (DVD) under the provisions of the Evidence of Child Witness Act 2007 (sec 6 and 7). Therefore, since its establishment, child victims were dealt with in a friendly environment where audio and video recordings of the child's interview at the CIC were being used as evidence in chief of the child.

This practice reduces the trauma suffered by the child victims/witnesses. Moreover, from the recordings tendered in courts, we can see that the whole process was made in a comfortable environment and they did not show fearful expressions. Apart from that, the professionally trained interviewer did give the child chances to utilize the equipment provided in the centre to explain the acts done by culprits. This practice has proven to be efficient as they can explain better using this equipment and were very helpful to the Prosecution.

Issues (Background):

- 1) The CIC was introduced in the year of 2002, and until recently CICs were only in 3 different states. Small districts were facing problems to refer a child victim to CIC since these districts are located in remote areas.
- 2) Several problems have been detected in relation to the implementation of the CIC. These include difficulties in translating the languages other than the National Language, shortage of interpreters in other languages/dialects (in cases where the victims were not fluent in Bahasa Malaysia), manner of questioning by the recording officers such as the use of leading questions during recordings giving rise to a challenge by the defence and shortage of trained recording officers because of promotions or being transferred to another department.

Strategy and Implementation:

- 1) In 2003, the CIC were established only in three states which are Johor, Pulau Pinang and Kuala Lumpur. Now, the number has increased to 15 with a ratio of 1 CIC for each state in Malaysia.
- 2) To enhance the quality of the CIC, (with regard to the facilities and environment) as well as recordings of interviews, Training of Trainer on Child Interviewing Skills for D11 officers were organized with full support from Unicef Malaysia (in 2013). The Ministry of Women, Family and Community Development of Malaysia, also organized various trainings, which includes counselling skills, religious input, handling specific groups of children (young/older/disabilities), child development (behavioural, language and cognitive), Preparation Of Transcript Course, Preparation Of Transcript immediately after recording and preparation for accredited interpreters. For sexual cases, only experienced Investigating Officers who were certified as interviewing officers were allowed to deal with sexual victims because they have better knowledge on the matter.

Progress and Results:

- 1) As far as the CIC records are concerned, since 2003 up to now, a total number of 15 CIC have been established with a ratio of one CIC for each state. A total number of 2711 recordings have been conducted throughout Malaysia with a total number of 108 recordings used and tendered in court. This number is not much compared to the recordings done due to the accused who had pleaded guilty at the very early stage of trials and there are also victims who can speak extremely well in court, better than the video taken.
- 2) An evaluation of the effectiveness of the CIC and the recordings tendered in courts was done during the Magistrates and Sessions Court Judges Trainings which are held annually. During the

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course, feedback was given by the judicial officers informally. From the feedback, the evaluation showed that Magistrates and Judges exhibited a higher level of sensitivity in dealing with the victim during the cross examination process where lawyers are not allowed to badger the child victim and there were occasions where the court dismissed irrelevant questions from the defence which made the child uncomfortable.

Good Practice:

- 1) The Child Interview Center has been very helpful for children to give evidence with more confidence and they were free from the rigid courtroom processes. Hence, the Prosecution Division in ensuring that the child witness is protected from the normal courtroom processes of having to confront the perpetrator in court has issued a directive that evidence of a child witness (especially in sexual cases) to be taken by way of recordings from the CIC.
- 2) The focus of CIC on producing quality recordings has led to trainings organized for the recording officers.
- 3) The judicial officers on the other hand have shown a high level of sensitivity when dealing with child victims. Moreover, judges who have experienced a trial using the CIC recordings have shared their valuable experience with their colleagues to create awareness of CIC and the law involved in the process of admitting the CIC recordings.

CHILDREN AS VICTIMS AND WITNESSES

*Mariyam Thoifa**

Violence against children today is an ever increasing, horrible epidemic around the world, including not only physical but sexual, emotional and psychological abuse. Unfortunately, there has been a shockingly massive increase in the cases of violence against children in our country in the past few years, not only in the quantity of the reported cases but also in the severity of the offences, including negligence, assault, sexual abuse, prostitution and murder. Among the crimes reported, most were committed by someone related to or known by the child. This problem is something that people did not talk about; it was considered a family matter, something to shove under the carpet, something to ignore and act as if nothing was happening.

I. RELATED AGENCIES

A. Maldives Police Service

The main authority for the investigation of crimes reported.

B. Ministry of Law and Gender

The Ministry of Law and Gender will oversee all government functions related to families, children, women, people with special needs, and human rights. These sectors had previously been under the authority of the Ministry of Health and Gender.

C. Family Protection Authority

The Family Protection Authority will also be brought under the Ministry of Law and Gender, with the Attorney General, Usthaaz Mohamed Anil, being responsible for overseeing its functions. The Ministry of Law and Gender will further be mandated with tackling the issue of domestic violence, apart from those responsibilities of the courts and the Maldives Police Service.

D. Prosecutor General's Office

The authority for public representation in the court in criminal cases.

E. Courts

Both the criminal and family courts deal with cases involving child victims and witnesses. The criminal court hears cases of criminal matters while the family court deals with protection issues of the child, i.e., issuing protection and child custody orders.

II. REPORTING

Anyone can report a crime to the Maldives Police Service (MPS), the Ministry of Law and Gender, the Family Protection Agency or any other non-governmental organization working to protect children by phone, mail or by any other means. However, cases reported to other agencies must be reported to the MPS for investigation. The reports can be made anonymously for the protection of the complainant. Furthermore, to encourage people and children to report such cases, the Ministry of Law and Gender has established a toll-free child help line.

III. INVESTIGATION

Cases involving child victims are investigated by the Family and Child Protection Department (FCPD)

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of the MPS. The department deals with cases of child victims, children in conflict with the law and domestic violence cases. The investigating officers in this department are officers trained to deal with child victims and witnesses and children in conflict with the law. The department is located apart from the police main headquarters and has child friendly interview rooms. The investigating officers are to be present in casual attire when dealing with child victims. An interview with a child victim will be done in a child friendly manner in the presence of a social worker or the guardian. If the perpetrator is the guardian of the child or someone related to the child, the interview will be conducted only in the presence of the social worker. In addition, if the investigating officer finds that the guardian or the family of the child victim is not supportive of the investigation and the child's presence in his/her home is not safe for the child, the child will be taken into state custody and brought to a state shelter.

However, the FCPD only investigates cases reported to Male', the capital of the Maldives. Cases reported in the islands will be investigated by island police stations. MPS met their target in 2015 to have an investigating officer sensitized and completed the child and family centered training at all police stations across the Maldives.

IV. SOCIAL SERVICE WORK DONE WITH THE VICTIMS

Along with the police investigation of the case, the case would also be filed with the Ministry of Law and Gender, and a case officer will be appointed to work with the victim. The social workers will keep records and notes about the victim in their case file. They would be taking sessions with the victim and would recommend psychological therapy if necessary. Also the social workers will be making home visits to victims and keep track of the situation of the victims. In cases where the child is taken into custody, the children will be assigned to a social worker along with a programme for the child.

V. PROSECUTION

As soon as the investigation is completed, the case will be brought to the Prosecutor General's Office. The case would then be discussed with the appointed prosecutor and the investigating officer. After the discussion, if the prosecutor finds the investigation is complete and that the case can be submitted to court, the prosecutor will then draft the charges, which will be double checked by the senior prosecutors, and then submitted to court. On the other hand, if the prosecutor finds the investigation is incomplete, he/she will send the case back for further investigation along with a list of things to be completed.

Before the case hearing, the victim's family/guardians will be informed that the case has been submitted to court and the crimes that the offender has been charged with. The witnesses will be prepared before being summoned to court by the witness assistance unit and the prosecutor handling the case.

VI. COURT PROCEDURE

Under the Special Provisions Act to Deal with Child Sex Abuse Offenders, no. 12/2009, a special procedure needs to be followed to take child victim and witness testimony. Under section 48 of the act:

To obtain testimony of a child for purposes of this law, testimony of the child should be obtained through interview which should be video recorded. The interview should take place away from and trial proceedings and the police station, and be carried out in a familiar environment for the child, in the presence of familiar or trusted person to the child. Further, where the child has a disability, the interview should be video recorded and carried out in the presence of a trusted or familiar person to the child, in addition to the person capable of translating what the child narrates.

The act also establishes other special provisions, including section 47's evidential requirement:

Section 47. The evidential requirement for a criminal offence Law no: 12/2009 (Special Provisions to Deal with Child Sex Abuse Offenders) stated in another law shall not apply when charges are made under this law or, when establishing offence stated in this law or in establishing the commission of a sexual offence with a child where at least 5 types of evidences are available from the following types of

evidences. Where the 5 types of evidences are available, such evidence shall be deemed to constitute sufficient evidence to establish the offence beyond reasonable doubt as stated in Article 51 (a) of the Constitution.

- (a) An official document establishing that a sexual offence has been committed with a child.
- (b) Results of scientific investigations.
- (c) Statements of eyewitness accounts.
- (d) Forensic evidence and evidence derived from investigations.
- (e) Evidence received from video records.
- (f) Statement given by the child to the child's parents, or relatives, or friend, or doctor, or health worker, or psychologist, or psychiatrist or police officer involved in the investigation, or a child protection worker, within a short period or duration of commission of the act.
- (g) Child's statement explaining the events and what had transpired with the child.
- (h) A child's narration of the events when a long time had not elapsed between the time of the event and the narration, and grounds to believe that slander is being uttered against a person does not exist.
- (i) Corroboration between the child's statement Law no: 12/2009 (Special Provisions to Deal with Child Sex Abuse Offenders) and medically established physical injury, and findings of forensic investigations.
- (j) The person who had engaged in the sexual act with the child has a previous conviction for committing a child sex offence
- (k) Material evidence
- (l) Child's narrative when interviewed by investigator.

Obtaining testimony of a child. The main purpose for such provisions in the act is:

- (a) Protect children of the society from person who could harm them and to maintain that protection by detaining child sex abusers in custody during investigation and trial stages, and monitoring of offenders under a specific monitoring mechanism even after they have served their sentences.
- (b) In addition to the types of evidence admissible Law no: 12:2009 (Special Provisions to Deal with Child Sex Abuse Offenders) to court, to permit other types of evidence to be admitted to establish child sex abuse, and lower the admissibility criteria of evidence.
- (c) Stipulate severe punishment for child sex abusers and those who aid and abet in the commission of such.
- (d) Prevent requests to the child to demonstrate to court through actions, or by other means, the manner in which the abuse was carried out or committed.

Although special provisions are only made in the above-mentioned act, if child witness testimony is necessary in any other case, the testimony must be taken under the procedure established in section 48 of the act number 12/2009 Special Provisions Act to Deal with Child Sex Abuse Offenders. Furthermore, if the prosecution requests the judge to protect the identity of the witnesses and the testimony to be taken without revealing their identity, the court arranges the hearing to be conducted in such manner (i.e., audio-video conferencing without the presence of the witness inside the court).

REPORTS OF THE COURSE

GROUP 1

SPECIAL MEASURES IN DEALING WITH CHILD VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

Chairperson	Mr. SUIAMA Sergio Gardenghi	(Brazil)
Co-Chairperson	Ms. YUSOF Zamrosni	(Malaysia)
Rapporteur	Ms. THOIFA Mariyam	(Maldives)
Co-Rapporteur	Mr. MAJEED Rashid	(Pakistan)
Members	Mr. ALMAJALI Ref'at Nayel	(Jordan)
	Mr. FOFANA Bandiougou	(Mali)
	Mr. VIPOLCHAI Nisit	(Thailand)
	Mr. AKISHINO Kuniharu	(Japan)
	Ms. NODA Ayaka	(Japan)
	Ms. KOBAYASHI Reiko	(Japan)
	Advisers	Prof. WATANABE Ayuko
Prof. HIRANO Nozomu		(UNAFEI)

I. INTRODUCTION

The theme of the 163rd International Training Course was “Children as Victims and Witnesses”. The course was held at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) from May 18th to June 23rd, 2016.

During the training course, participants from 21 countries had the opportunity to attend lectures delivered by both visiting experts and professors from UNAFEI, and also to visit child centres, child foster homes, juvenile institutions, courthouses and other institutions related to the issue at stake. All the participants also wrote Individual Presentation Papers (IPP) in which they provided relevant information on the serious problem of the violence against children (VAC) in their respective countries. The papers were presented and discussed by all the participants.

Afterwards, three working groups were formed in order to discuss the theme of the course. The current report is the result of the discussions had by Group 1, which consisted of participants from Brazil, Japan, Jordan, Maldives, Malaysia, Mali, Pakistan, and Thailand. The purpose of this document is threefold: a) to provide a brief account of the current situation of the issue in the countries of the members of the group; b) to summarize the main topics concerning the protection of the children in the criminal justice system; c) to make recommendations to their respective countries in order to improve the response to the problem.

The group was particularly interested in discussing and presenting practical recommendations that could be incorporated in the criminal law of each country regardless of the legal system adopted by it (either adversarial or inquisitorial). These recommendations are grouped into three main topics: a) detecting and reporting VAC; b) special procedures for interviewing child victims and witnesses during the investigation and the trial phase; c) protective measures that shall be adopted by the States in order to ensure the rights of the children.

The group acknowledged the importance of taking into account not only the rights of the children as victims and witnesses but also the rights of the defendant, especially those related to the due process of law. This statement is according to the document *Justice in Matters involving Child Victims and Witnesses of Crime*¹, developed by the UN Office on Drugs and Crime in cooperation with the UN Children's Fund (UNICEF) and the International Bureau for Children's Rights, article 1: “Every child, especially child victims and witnesses, in the context of the Law, has the right to have his or her best interest given primary consideration, while safeguarding the rights of an accused or convicted offender”.

¹ Available at: <https://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf>.

II. CURRENT SITUATION OF VAC IN THE PARTICIPANTS' COUNTRIES

As it is shown in the appendix of this report, Brazil, Japan, Jordan, Maldives, Malaysia, Mali, Pakistan, and Thailand have established in their criminal legislation all the offences set out in the Convention on the Rights of the Child and its Protocols. The member from Mali, however, remarked that in the Penal Code of his country it is not clearly stated that female genital mutilation is an actual criminal offence. Therefore, in general terms, the group found that there are no major loopholes in the domestic legislation of the countries regarding the duty to criminalize the offences set by the international community.

The survey conducted by the group also found that child sexual abuse, followed by physical abuse, neglect and child labour, are the most common offences committed against children in the countries cited above. Participants also mentioned sexual exploitation, child pornography and forced marriage as other common offences in their respective countries.

A. Duty to Investigate

Despite the establishment of mechanisms such as hotlines and special police stations or administrative bodies in Brazil, Japan, Malaysia, Maldives, and Thailand, the participants agreed that cases of VAC remain *under detected and underreported* mostly because officers in charge are not sufficiently sensitized, trained or prepared to deal with such cases. Traditional cultural practices such as physical punishment by parents and teachers in Pakistan, Brazil, Malaysia, Mali, Thailand, and Japan, as well as female genital mutilation in several countries in Africa have been pointed out as another reason for underreporting cases of VAC.

Also, it was pointed out that there is a *general lack of special procedures for investigating VAC cases*, with the exception of Jordan, Malaysia, Maldives (only for child sexual abuse cases), and Thailand. In Brazil, notwithstanding, several police stations and prosecution units are specialized in investigating violence against children and women.

Regarding the topic of special provisions for protecting child victims and witnesses of crimes during the investigation phase, most of the countries (with the exception of Mali) have adopted measures such as pre-trial detention of the alleged offender, restraining orders, and temporary custody (reported by the participants from Brazil, Japan, and Maldives).

Attending to the measures taken during investigation by the respective agencies, most of the countries have not fully developed sensitive plans and systems for the protection of children. For example, most of the participants' countries have not done enough research or study about the best practices for interviewing child victims and witnesses.

B. Duty to Prosecute and to Adjudicate

In respect of the protection of child victims or witnesses during trial, we learned that some countries have special provisions stipulated in their laws: for example, a special procedure in Brazil, Maldives, Japan and Malaysia to take child testimony based on a video-audio link system, the presence of parents or guardians during the testimony and/or child friendly courtrooms. However, we also found that even these countries face challenges in the application of these provisions in practice.

The group also noticed a general lack of special training for law enforcement members who are dealing with VAC cases. Participants from Brazil, Jordan, Maldives, Mali, and Thailand reported that most police officers, prosecutors and judges are not properly trained nor sensitized to tackle the issue. On the other hand, the members from Japan and Malaysia reported practical training in cooperation with Child Guidance Centres and other relevant programmes.

III. STATE MEASURES TO DEAL WITH THE PROBLEM OF VAC

A. Establishing Effective Detection and Reporting Mechanisms

1. Awareness

Creating awareness among the people about the subject matter is the most important step for establishing an effective detection and reporting mechanism. If people in the community do not know *what the*

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crimes are, how to respond to them, or why it is necessary to take immediate action against those crimes, the issues regarding the matter would be left unattended.

Despite the collective efforts around the world to create awareness about violence against children (VAC) or child victims and witnesses, most among the target groups still either do not believe that VAC is an issue or they keep enduring/committing VAC because of their cultural and religious beliefs.

So it is vital for each country to:

- Identify who the target groups are
- Determine what issues awareness should be carried out
- Determine how to respond to such issues
- Where they should report to
- Build trust within the community about the country's criminal justice system

By doing so, the countries can develop trenchant content for the awareness programme and then the relevant authorities could determine the type of campaign and who will carry it out:

- For children and adolescents: related components could be included in the educational system;
- For adolescents and adults in developed areas: media and social media could be very effective;
- For underdeveloped areas: dissemination of necessary information by conducting sessions within the area, different and separate sessions for different target groups;
- For teachers, parents, medical and Internet service providers: awareness on the detection of VAC;
- For the public in general: public media, social media, leaflets, brochures etc.

2. Identifying the Risk Factors and Indicators of VAC

To further ensure effective detection of these crimes, it is crucial to establish a mechanism where criminal justice professionals, including investigating officers, prosecutors, social welfare authorities and other stakeholders who regularly deal with VAC are informed about the probable risk factors and indicators of the issues.

To do so, the relevant authorities of each country should establish a mechanism in which they could gather necessary information from concerned agencies and assess the data to identify the risk factors and indicators; such measure would contribute to the detection of VAC cases. In addition to developing such mechanisms, the relevant authority could also utilize academic research and expert opinions by scholars in the field.

3. Accessibility and Confidentiality of the System

Furthermore, to ascertain effective reporting and protection of child victims and witnesses, the relevant authority of each country (such as the police, administrative agencies etc.) shall establish easily accessible procedures. A mechanism by which anyone could report the crime anytime with utmost trust in the system, in which the identity of the reporter would be kept confidential if necessary, hence encouraging children or their representatives or even a third party to report cases without fear. The relevant authorities shall also guarantee that VAC reports made in good faith will be protected from any kind of reprisal.

The relevant authority could set up a toll free helpline which would operate 24/7 to which anyone could call. Also, the calls could be made anonymous and thus invigorate reporting despite the financial or

social background of the reporter.

4. Mandatory Reporting and Accountability

It could be made legally mandatory for people who are aware of or are actual witnesses to a case of VAC to report it to the relevant authorities. If they fail to report, sanctions could be predicated upon such omission considering the nature and severity of the crime, especially in cases where the person knows that a child is in serious danger or his/her safety is at risk. Such measures are extremely crucial to prevent crimes.

In addition, the related agencies where reports shall be made (police, social welfare authorities etc.) shall set up means to monitor the response taken after the reports are received to ensure an effective response to VAC.

The group also acknowledged that *local administrative bodies* (such as the Japanese “Child Guidance Centre” or the “Tutelary Councils” in Brazil) are granted powers to receive, scrutinize and forward reports on alleged cases of VAC, as well as to summon the parents of the child, constitute another important mechanism of detection.

B. Interviewing Child Victims and Witnesses during Investigation and Trial

After thorough discussion, the group members came to the understanding that applying special measures during a child victim’s interview is necessary to avoid re-victimization of the child due to insensitive procedures or questioning during investigation, to avoid re-victimization caused by repetitive interviews done by multiple agencies on the same matter, and to elicit accurate information from the child victim.

The members of the group came to the understanding that such interviews shall only be carried out by trained forensic experts. However, all the relevant stakeholders including the investigating body and social welfare authorities shall be present to observe the interview and give input if necessary.

The group agreed that the protocol set by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD)² as well as the document *Achieving Best Evidence (ABE Interviewing) in Child Sexual Abuse Cases*³ provided by the Criminal Justice Joint Inspection (CJJI) on Child Victim Interviewing are methods that may be applied among the countries. Thus, our model on child victim interviewing is based on these protocols.

1. Interviewing a Child During the Investigation

(a) *Planning and preparation for the interview*

Before the interview takes place, interviewers should engage in multi-disciplinary planning with the related agencies and consider factors such as:

- How the content, structure and rules of the interview will be explained to the child;
- Child’s gender, age, race, culture, and use of language, his or her religion, any special needs, the child’s cognitive abilities, memory and linguistic abilities, his or her current emotional state and range of behaviours, relationships with family members, the child’s sexual education and sexual knowledge, family routines, the use of discipline, the presence of any recent stress and whether the child needs to be assessed by a psychologist or psychiatrist to find out his or her mental status. This information could be collected through the victim’s parents, schoolteachers, and through established facts of the case. For example, if the child had suffered grievous harm as a result of sexual or physical assault, and the child has undergone massive trauma, the interviewers could foresee that it is important for an evaluation of the victim’s mental status. Also in cases where the gathered facts suggest that the child victim might have mild cognitive disability, although the victim fully understands and reacts to situations, to ensure the credibility of the interview, a psychological evaluation can be done beforehand. So, by gathering such information

² Available at: <<http://nichdprotocol.com>>.

³ Available at: <https://www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2014/12/CJJI_ABE_Dec14_rpt.pdf>.

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the interviewers can prepare for the interview accordingly.

- Examine all the pieces of information gathered in the investigation before the interview. For example, if a forensic report or a witness statement was previously taken, the officers in charge shall go through them and collect as much information as they can regarding the case, and, if possible, also the previous records, case files, background and behaviour of the suspect.

(b) The interview

(i) Phase one of the interview: rapport building

The interviewer shall build rapport with the child victim and try to bring him/her to a comfort zone where the victim can freely express himself or herself. However, the interviewer must maintain neutrality throughout the interview and be careful not to present him- or herself as being in favour of the victim.

The interviewer shall start with neutral topics to continue a normal conversation for a few minutes. The interviewer may use this moment to observe the victim's cognitive abilities, test his or her memory and indirectly prepare the victim for the main part of the interview.

It is also crucial for the interviewer to inform the child victim of the ground rules of the interview and the significance of telling the truth during the interview.

(ii) Phase two of the interview: free narrative

This is the most important part in an interview. The free narrative means all of what happened with the child victim should be expressed by the child victim him- or herself. The child should not be led or guided, and it is strictly necessary to elicit all the essential information from the victim him- or herself. Interviewers should refrain from interfering with a child who is freely recalling significant events.

(iii) Phase three of the interview: questioning

After the free narrative, relying on the facts that the victim has shared, the interviewer may ask questions to the victim filling out the gaps and clearing out inconsistencies in the story told by the child. If necessary, the interviewer may ask closed questions to cover compulsory areas still not clarified by the interviewee.

(iv) Phase four of the interview: closure

When the interviewer has covered all the necessary areas and has elicited all the facts or information from the victim, the interviewer should recapitulate the interview.

(v) Further interviews

A further interview may be necessary in some circumstances. These include:

- Where the initial interview opens up new lines of enquiry or wider allegations that cannot be satisfactorily explored within the time available for the interview;
- Where significant new information emerges from other witnesses or sources;
- Where the witness indicates to a third party (e.g. a care-giver) that they have significant new information that was not disclosed at the initial interview, but which they now wish to share with the interviewing team;
- Where in the preparation of their defence, the accused raises matters not covered in the initial interview.

In such circumstances, a further interview may be incumbent. However, further interviews should only be conducted if the investigation team is sure that it is necessary, after consultation with the prosecution.

2. Interviewing a Child during Trial

The group agreed that the alleged perpetrator should be given the right of cross examination during the trial in accordance with the due process of law. However, all members agreed that the child victim

should not be summoned to the same courtroom or should not be presented for testimony in the presence of the alleged suspect. So the group concurs that it would be ideal to establish a mechanism where a child should be cross-examined in a special room, using audio-video link in a manner where the child cannot see the accused, though the judge, prosecutor and the defence lawyer can have a visual link to see the child during the examination. For a balanced and fair trial for the accused, the group members also believe that the relevant parties have the right to examine the child victim or witness; it is in the best interest of the child that those questions are directed to the child victim by a qualified expert. In addition, the group also agreed that the judge in such cases should closely supervise cross-examination as much as possible in order to ensure the rights of the defendant.

C. Protective Measures for Child Victims and Witnesses

When a case of VAC is reported or detected, it is important for the all the relevant agencies to act promptly to the situation. Along with the investigation of the case, the social welfare authorities should also assess the case in order to decide on the necessary protective measures and on how intervention should be done. This is because in most of the cases the crime committed against the children is done by someone related to the child. So depending on factors like the relationship between the perpetrator and the child victim, the position or status of the perpetrator in the community, and the probable risk of the perpetrator getting in contact with the child victim should be considered when deciding on the intervention method for the protection of the child victim.

1. Temporary Custody, Alleged Offender's Detention and Other Similar Measures

Among the intervention methods for the safety of the child, placing a child in temporary custody is one way of ensuring a child victim's protection. This method is usually acted upon if the perpetrator is related to the child victim or lives in the same place with the child. There are two methods in which temporary custody can be provided. First, to hand over the child's custody to a relative of the child who could take the full responsibility of him or her. This way the child would feel more comfortable, and the impact from being separated from his/her home would be lessened.

The second way to ensure the safety of the child is to take the child into state custody. This means the child will be taken to shelters provided by the state, and the state would be the guardian of the child. In such cases, utmost priority should be given to the child victim to minimize the impact on being separated from the family and try as much as possible to ensure that the new shelter is a comfortable zone for him or her.

However, in both cases the process should be carried out in an accountable manner. For example, the relevant authority of the country can come to an official agreement with the substitute guardian regarding the temporary transfer of guardianship, or this process could be done through a court order.

In addition, the relevant authority should also develop guidelines or regulations to monitor the status of the child victim during temporary custody to further ensure the child's safety. For example, if the child is placed in the care of a substitute parent, spontaneous home visits could be made by the relevant authority to ascertain the status of the child. In cases where the child is taken into state custody, it could be made mandatory for the institutions to report back to the relevant authorities regarding the status of the child. It is also equally important to establish a mechanism where relevant authorities could directly get feedback from the child victim regarding his or her temporary custody.

Another main protective measure of the child victim protection is the pre-trial detention of the alleged offender. The topic was intensively discussed and debated among the group members. The fact that the detention of a person not yet convicted of a crime would be a violation of human rights, or the fact that protection of a child victim could be ensured without detaining the suspect, was a heavy discussion topic within the group. After hours of debate and discussion on the matter, the group subsequently agreed that considering certain factors and the facts of the case, the necessity of pre-trial detention may arise. Nevertheless, the group strictly urges that measures be taken to protect the rights of alleged offenders as well.

The group agreed that a judge would be the most appropriate authority to take the decision on this matter. The burden lies upon the prosecution or the investigative body to strictly establish certain factors before the judge to decide on the detention of the perpetrator. The factors include:

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- Nature/severity of the crime: depending on the nature or the severity and how the crime was committed, the prosecution can emphasize the need to detain the suspect on the ground that the alleged offender is a threat to the community as a whole.
- The risk of repetition: the prosecution should also bring forth the previous criminal record of the suspect and also stress the probable risk factors for repetition of the crime either to the same victim or multiple victims.
- Lack of protective shelters: in countries where there are no mechanisms to provide protective shelters to child victims, in order to ensure the children's safety, the detention of the alleged offender would be important.
- Risk of influencing or threatening child victims or witnesses: although there are mechanisms to provide protection for child victims, there are no special measures to ensure child witnesses' safety or measures to avoid the risk of the child witness getting in contact with the suspect. In cases where the perpetrator is not in police custody, the risk of the child witness or victim being influenced by the suspect is higher.
- Relationship with the victim: this would be the most important reason for a child victim to be taken into protective custody. The likelihood of the child victim to be threatened or influenced is very high if the perpetrator is related to the child or if the perpetrator lives in the same household with the child victim. Moreover, in such cases the probability of having witnesses within the home is also high. Thus, the risk of witnesses being threatened or influenced by the perpetrator is also more likely.
- Risk of fleeing or destroying evidence: if the prosecution finds reasonable facts to believe that the suspect might flee or destroy evidence, it shall be disclosed before the judge. For example, if the perpetrator is a foreigner, the chances that he or she may flee the country would be high. If the crime committed against the child is done on the Internet, the chances of the suspect hiding or destroying evidence is higher.

Although the group believes that pre-trial detention may be necessary, the group also believes the necessity may vary depending on the case. For instance, if the perpetrator is a first-time offender, or is not related to the child, or if the offence is relatively minor, there may be no reasonable grounds for him or her to be detained. Nonetheless, other mild measures like restraining orders or supervised house arrest could be adopted.

The group was further convinced with the issue of pre-trial detention considering the document "Justice in Matters involving Child Victims and Witnesses of Crime", developed by the UN Office on Drugs and Crime in cooperation with the UN Children's Fund (UNICEF) and the International Bureau for Children's Rights, article 11:

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

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

2. Protection of the Identity of the Victim during the Investigation and the Trial Phases

It is also essential to follow certain special procedures during the trial for the protection of the child, such as:

- Expunging child victim or witness names, addresses, information about the family, school or any other information that could reveal the identity of the child victim or witness from statements and case reports which may be published;
- In order to provide a fair opportunity for the defence lawyer to prepare for the case or for cross-examination, the court could disclose the documents after expunging the necessary details of the child. The judge can also assign pseudonym numbers to child victims or witnesses.
- The child victim or witness testimony should be carried out in the manner explained in section B (2) of this report.
- The hearing should not be open to the public. However, the court could issue summarized news briefs to the public after the hearing.
- The prosecution could file for a non-disclosure order, prohibiting the defence lawyer from giving any information to the public that may reveal the identity of the child victim or witness.

In short, special procedures need to be followed regarding child victims and witnesses during investigations and trials. However, the procedures may vary depending on the facts of the case and also the situation of the child victim or witness.

IV. RECOMMENDATIONS

As a result of the discussions and lectures, the group agreed on the following main recommendations:

A. **Detection and Reporting**

All the participants agreed that it is necessary to strengthen the mechanisms of identification of the *risk factors* of VAC especially through:

- Data collection and analysis by a national level agency;
- Funding of academic research on the issue.

The participants also agreed that *community policing* as well as other community-oriented initiatives (such as “door-to-door campaigns”) are an important strategy to enhance detection of VAC cases.

Local administrative bodies granted with powers to receive, scrutinize and forward reports on alleged cases of VAC, as well as to summon the parents of the child, constitute another important mechanism of detection.

Awareness campaigns against VAC shall be permanently developed and shall involve multiple stakeholders, especially schoolteachers, medical services, media, and internet service providers. Also, with the growth of sexual tourism in Eastern Asia and Latin America, people working in the tourism industry should also be sensitized and work together with law enforcement agencies. The campaigns shall specifically address the cultural issues that contribute to practices such as female genital mutilation (in several countries) and physical punishment by parents.

A 24/7 toll-free child helpline service shall be established as a mechanism of reporting VAC.

Mandatory reports by schoolteachers, medical services and internet service providers shall be considered by countries as a way to improve the capacity of the criminal justice system to respond to VAC.

B. Interviewing Child Victims and Witnesses During Investigation and Trial

All the participants highlight the crucial importance of *sensitizing* and *training* all members who deal with VAC cases including all workers who are involved in different levels of the criminal justice system. The training should be carried out according to the work in the field done by those members. For example, frontline officers shall have different training compared to those who are in charge of interviewing and investigating VAC cases. Those involved in the interviewing of the child victim should have more extensive and sensitive training. Law enforcement agencies shall provide permanent programmes and policies on this matter, as well as appropriate resources and funding.

With the aim of avoiding revictimization, states shall consider *reducing to the minimum necessary the number of times a child is interviewed by law enforcement agencies and other administrative bodies*. That requires strong integration between the agencies and, in many cases, legal reform.

Also, the adoption of a *forensic method of interviewing* children is strongly recommended. The group agreed that the *Investigative Interview Protocol* set by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), as well as the document *Achieving Best Evidence (ABE interviewing) in child sexual abuse cases* provided by the Criminal Justice Joint Inspection (CJJI), provides a secure basis for the enhancement of our law enforcement system and shall be considered as a valuable resource for forensic experts, police officers, prosecutors and judges who deal directly with the issue. The method could be applied both during the investigation and the trial phases, regardless of the system (inquisitorial or adversarial) adopted by the countries. Legal reform may be necessary for this purpose.

Basically, the method states that the interviews shall be planned in advance and shall consider, among other factors, the gender, age, race, culture, and current emotional state of the child, his or her relationship with other family members, and whether the child needs to be assisted by a psychologist, a psychiatrist or a social worker.

The interviewer shall build rapport with the child by trying to bring him/her to a comfort zone where the victim or witness could freely express himself or herself. However, the interviewer must maintain neutral ground throughout the session in order to ensure the credibility of the evidence during trial.

Besides, it is also crucial to stimulate a free narrative of the events as much as possible. The child shall not be at all led or guided, and it is strictly necessary to elicit all the essential information from the victim himself or herself. Questions may be asked to the child only in the final part of the interview, aiming at filling out the gaps and clearing out inconsistencies in the story told by the victim or witness.

Whenever it is necessary to ensure the search for truth, as well as the right to a fair trial, the child victim or witness may be heard by the Court. However, in such cases the child shall not be summoned to the same courtroom and must not be presented for testimony in the presence of the alleged suspect. Therefore, the group agreed that it would be important to establish a mechanism where the child could be cross-examined in a room specially designed to ensure safety, privacy, comfort, and adequate reception conditions to him or her. The room shall be equipped with a video-recording system and the interviews shall be conducted by a forensic expert (a psychologist, a social worker or a trained officer) of the same gender as the child, upon his or her request. The group also agreed that the judge in such cases shall closely supervise cross-examination as much as possible in order to ensure the rights of the defendant.

C. Protective Measures for Child Victims and Witnesses

1. Temporary Custody, Alleged Offenders' Detention and Other Similar Measures

The group agreed that the main purpose of protective measures such as temporary custody of the child and the detention of the alleged offender shall be the protection of the integrity and safety of the victim or witness. On the other hand, the rights of the suspect/defendant must not be taken for granted.

Given that, states shall adopt among others the following protective actions stated in the document "Justice in Matters involving Child Victims and Witnesses of Crime": a) to avoid direct contact between a child victim or witness and the accused at any point in the justice process; b) to request restraining orders from a competent court (such as "stay away" and "no contact" orders); c) to request pre-trial detention order for the offender from a competent court; d) to request temporary custody for the child, in cases

where he or she must not stay with his or her family. The group agreed that the latter two measures shall be only adopted as a last resort, in cases where there is either an actual threat to the child, the possibility of the repetition of the crime, or a risk that the suspect may flee. Accountability and judicial review shall be strictly adopted and enforced in those cases aiming at protecting the interests and needs of both parties involved.

2. Protection of the Victim's Identity during the Investigation and the Trial Phases

Officials shall ensure confidentiality of any piece of information related to child victims and witnesses both during the investigation and during the trial phase. Personal information such as name, image and address shall be kept confidential in order to protect them from any negative impact that can cause revictimization.

Furthermore, the criminal justice system shall adopt all the necessary measures to prohibit the publication or broadcasting of such information by the media, to the extent that, even when such information leaks out despite the restrictions, the media are prohibited from making use of it.

Holding closed trial sessions is another important measure that shall be taken by the criminal justice systems of the states, in order to protect the privacy of child victims and witnesses.

3. Medical Examinations.

Medical examinations – especially those related to child sexual abuse cases – shall be conducted by trained health providers and shall include appropriate treatment.

V. CONCLUSION

In light of the discussions, the group concludes that even though most of the countries do have specific provisions criminalizing violence against children, there are many challenges and issues in this regard that have not been sufficiently addressed by many states.

Most VAC cases remain under-detected and underreported even in developed countries, especially due to cultural issues. Furthermore, lack of a proper framework and public policies on detection and reporting has been acknowledged.

Additionally, most of the law enforcement members are admittedly not prepared, nor sensitized to deal with VAC.

A child-sensitive approach shall be considered in all stages of the criminal justice system and shall be balanced with the rights of the defendant, ensuring for both parties, therefore, the right of a fair trial.

The implementation of the recommendations stated above, which are the result of our lectures, discussions and own experiences, would be, in our view, an important step towards the improvement of the criminal justice systems of our countries on this matter.

However, our aim can only be achieved if we all play our roles according to our responsibilities effectively and efficiently as citizens, parents, police officers, prosecutors and judges.

APPENDIX:

a. DUTY TO CRIMINALIZE

a-1 Does your country cover all the provisions established in the Convention and its Protocols? If does not, what are the offences that are not criminalized in your legal system?

Country	Answer	Supplement
Brazil	Yes	
Japan	Yes	
Jordan	Yes	
Malaysia	Yes	
Maldives	Yes	
Mali	Yes. However, genital mutilation is not clearly stated as a criminal offence in the Penal Code.	
Pakistan	Yes	
Thailand	Yes	

a-2 What are the most common offences committed against children in your country?

Country	Answer
Brazil	Sexual exploitation of children/child prostitution, neglect (either by families and by the society), domestic violence against children
Japan	Physical abuse, child pornography, sexual abuse
Jordan	Domestic violence, child labour
Malaysia	Sexual abuse, physical abuse, neglect, abandonment of babies, and drug trafficking (children as mules)
Maldives	Sexual abuse, assault, neglect, child prostitution, murder
Mali	Genital mutilation, sexual abuse, early/forced marriage, physical violence, forcible recruitment, child labour
Pakistan	Child labour, domestic violence, sexual abuse, kidnapping
Thailand	Sexual abuse, physical violence

b. DUTY TO INVESTIGATE

b-1 Detection/Reporting issues. Have VAC cases been properly detected and reported?		
Country	Answer	Supplement
Brazil	Not completely/ properly detected and reported	However, the following have been established: - A national hotline (Dial 100) - A decentralized system of protection composed by elected citizens in every municipality of the country. ("Tutelary councils") Even though, VAC is underreported.
Japan	Yes	- Anonymous Report Dial - Internet Hotline Centre Japan (IHC) (which is founded by the NPA, has dealt with illegal or harmful information) - Amendment of the Child Welfare Act - On-the-spot protection and guidance activity through internet by police
Jordan	Not all of them.	Most cases are reported to and observed by the Family Protection Department, while others are not detected due to social habits and fear by children from consequences. Developing and extending the power of juvenile police department and family protection department in Jordan is a challenge.
Malaysia	Yes	- A national hotline (Talian Kasih 15999) - Emergency call 999 to Police, Hospitals & Fire Brigade - Toll-free call by various agencies including NGOs that work on VAC - Internet sites held by the Police, Minister of Women, social and welfare. private sector, and NGOS - Toll-free lines direct to Prime Minister office
Maldives	Yes and No	Toll free helplines, reports could be made anonymously. However, the rate of reporting depends on the level of awareness and empowerment of the people.
Mali	No	However, an office for children has been established at each court and several NGOs are playing roles, the system is not working properly.
Pakistan	Yes	Although cases of minor gravity are not reported by parents, heinous offences and acts are properly reported to the police.
Thailand	Yes	Toll-free hotlines connected to police stations

b-2 Are there special procedures for investigating VAC in your country?		
Country	Answer	Supplement
Brazil	No	However, there are police stations and prosecution services specialized in violence against women and children.
Japan	No	
Jordan	Yes	There are special procedures to protect the integrity and confidentiality of data. Special rooms are used to interview children and to accommodate their needs.
Malaysia	Yes	Depending on the nature of the offence, children are placed in custody according to the opinion of the investigation officer. Cases are investigated by a special department and the children are interviewed in a special programme conducted by the Child Interviewing Centre.

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Maldives	Yes, except for child sexual abuse offences.	Special remand procedures to keep the accused in detention before and throughout trial, special procedures followed by the investigation on VAC cases, special department, trained IO's, child friendly interview rooms, presence of the guardian or social worker.
Mali	No	
Pakistan	No	Cases of VAC are being investigated as other offences. Police officers should be given training to deal with cases of VAC.
Thailand	Yes	Psychologists and prosecutors join in interviewing juveniles. There are special rooms for interviewing child victims or witnesses.

b-3 Are there special provisions for protecting children victims and witnesses of crimes during the investigation?

Country	Answer	Supplement
Brazil	Yes	<ul style="list-style-type: none"> - A general programme for protecting victims and witnesses - A provision in the Criminal Procedure Code ensuring the arrest of the offender, whenever it is necessary - A provision in the Criminal Procedure Code establishing the possibility of a restraining order ("stay away provision")
Japan	Yes and No	It is not in judicial procedures, in such case, temporary protective custody is provided by Child Guidance Centre.
Jordan	Yes	Consideration of the use of children as witnesses, witness care and of special measures to enable them to give evidence in the best way possible in terms of quality of their evidence and reducing trauma to them.
Malaysia	Yes	<ul style="list-style-type: none"> - A provision in the Criminal Procedure Code ensuring the arrest of the offender, whenever it is necessary - Restraining order against the suspect - Protection of the identity of the victim - Temporary custody
Maldives	Yes	The special procedure of pre-trial detention is not mandatory; it is in the discretion of the police and prosecution to request detention. However, this is only for sexual abuse cases. The identity of the victim or witness can be protected.
Mali	No	
Pakistan	Yes	All the witnesses and victims are protected by common law including children. Police protection can be provided to them.
Thailand	Yes	There is the witness protection act. If victims/witnesses request, officials will protect them.

b-4 Are there child sensitive measures and/or procedures regarding forensic examination of children?

Country	Answer	Supplement
Brazil	Yes and No	<p>There are some specialized forensic services, but they are only available in a few cities of the country (mostly capitals of larger states).</p> <p>Several hospitals provide special medical services for child victims of sexual abuse.</p>

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Japan	Yes	Sensitive measures are taken in such cases. However, they are not stipulated by the Law.
Jordan	Yes	In compliance with the juvenile law, children are examined in a different manner than adults, but the law does not describe how to distinguish children from adults.
Malaysia	Yes	Sensitive measures are taken in such cases, which include compulsory medical treatment, collecting evidence in a sensitive way, Special Scan Teams.
Maldives	Yes	Sensitive measures are taken in such cases. However, they are not stipulated by the Law.
Mali	Yes	Whenever the victim requires the intervention of an expert
Pakistan	Yes and No	Parents and guardian accompany the victim during whole process.
Thailand	Yes	They are not similar to common measures/procedures for adults. Children are examined by psychologists in a separate room.

b-5 In case of conflict of interest between parents/guardians or in case the child has no guardian, are there special provisions to protect the child during the investigation?

Country	Answer	Supplement
Brazil	Yes	According to the Criminal Procedural Code, the judge may appoint a third person to defend the interests of the child.
Japan	Yes	Not as a part of judicial procedures. In such cases, the child will be placed under temporary custody of a Child Guidance Center. Consequently, protection of the child is ensured.
Jordan	Yes and No	Not mentioned in the law but implicitly applied to emphasize juvenile interest. No explicit guideline to guarantee implementation, which makes it subject to negligence.
Malaysia	Yes	Temporary Custody and Interim Protection Orders in cases of domestic violence against children and women
Maldives	Yes	No provisions in the law, but there are internal procedures followed by the related agencies. In such cases the interview will be done in the presence of a social worker only and, if need be, the child will be taken into state custody.
Mali	Yes	The juvenile judge can still take steps to protect the child by entrusting him or her to another person, state institution or an NGO.
Pakistan	Yes	
Thailand	Yes	There are both governmental and non-governmental organizations.

b-6 Is there pre-trial detention of the perpetrator in VAC cases? In which cases?

Country	Answer	Supplement
Brazil	Yes	Especially in cases of domestic violence against children or women.
Japan	Yes	In many VAC cases perpetrators are detained.
Jordan	Yes and No	No special rules are mentioned; the Judiciary applies the general rules for detention.
Malaysia	Yes	Especially in cases of domestic violence against children or women.

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Maldives	Yes	Special procedures could only be followed in sexual abuse cases, due to extended investigation the accused is often released from pre-trial detention. In any case, depending on the nature, severity, and the risk of influencing the victim or witnesses, the judge could order detention through trial. This is under a special regulation. But in child sexual abuse cases, this is stipulated in the Act 12/2009. In domestic violence cases, even if the judge releases the accused from detention, the victim could apply for a protection order under the domestic violence act from the family court.
Mali	Yes	In case of crime or offence committed by a minor of at least 15 years.
Pakistan	Yes	Police officers may arrest perpetrators for twenty-four hours after the First Information Report.
Thailand	Yes	Only in serious cases. The suspect can apply for bail unless the victim challenges.

b-7 Are police officers sufficiently trained to deal with VAC cases?

Country	Answer	Supplement
Brazil	No	Most police officers do not have special training nor are sensitized for the children's needs and interests.
Japan	Yes	Japanese police conduct practical training and role-playing cooperating with Child Guidance Centres.
Jordan	No	Not adequately especially after establishing juvenile police departments because this department is newly established and more training is needed.
Malaysia	Yes	Only a Special Police Division (D-11) can deal with such cases.
Maldives	No	Not every island has a police station, although each police station has a trained IO to deal with VAC cases. However, only one IO in each police station is not sufficient.
Mali	No	Not the majority
Pakistan	Yes	Only police officers having vast experience can deal with cases of VAC.
Thailand	Yes	Some training has been provided but it is not enough for dealing with all the VAC cases. Women police are involved.

b-8 Have children been interviewed by the police in a sensitive manner and in a friendly environment?

Country	Answer	Supplement
Brazil	No	Most police officers do not have special training nor are they sensitized for the children's needs and interests.
Japan	Yes	Most of the police officers are aware about the issue of proper interviewing of children. Sometimes they use the reception room for that purpose.
Jordan	Yes	They are privately interviewed and treated in a special manner.

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Malaysia	Yes	- Trial Programmes: while the report is being prepared, victims are put in special rooms, according to their gender. - After the report has been completed, the document will be sent to a special unit along with the victim.
Maldives	Not always	Some islands do not have enough trained officers or special interview rooms.
Mali	No	
Pakistan	Yes	A child victim of violence is always interviewed in a friendly atmosphere.
Thailand	Yes	The number of psychologists and special rooms for interviewing children are not enough.

b-9 Are there specific policies to avoid the repetition of the testimony (re-victimization)?

Country	Answer	Supplement
Brazil	No	Due to a lack of integration between the stakeholders, the victim is obliged to tell the story several times (school, police, tutelary council, court).
Japan	Yes	Forensic interview method and MDT (multi-Disciplinary Team)
Jordan	No	
Malaysia	Yes	According to the law, the child would be heard only once during the trial.
Maldives	Yes	Although we follow internal procedures to avoid re-victimization, no special measures are stipulated in our laws. If we find corroborating evidence relying on a child's statement and if the child's statement and witness statement differs, witnesses are questioned further.
Mali	No	
Pakistan	Yes	Child victims and witnesses are examined and testify only once in the courtroom.
Thailand	Yes	Child victims and witnesses are interviewed only once. Psychologists participate in the interview.

b-10 Have the law enforcement agencies and other administrative bodies been working in an integrative and multidisciplinary way, in order to avoid re-victimization?

Country	Answer	Supplement
Brazil	No	Due to a lack of integration between the stakeholders, the victim is obliged to tell the story several times (school, police, tutelary council, court).
Japan	Yes	There are "Comprehensive Child and Family Services Centres". In these centres, police officers and Child Guidance Centres are put together and engage in integrated cooperation to avoid re-victimization.
Jordan	Yes	New adjustments are being vastly concentrated on this topic, and cooperation has been made between all parties.
Malaysia	Yes	

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Maldives	Yes	Police, Prosecutors Office and the Ministry of Law and Gender have been engaged in collective efforts to avoid revictimization. We try as much as possible to work together; however, sometimes where the victim is an offender or the offender becomes a victim, doubts arise about which agency's mandate the case falls in.
Mali	No	
Pakistan	Yes	There is an ideal working relationship between departments doing investigation like police, health and others. So there are rare chances of re-victimization. However, if it happens, police register criminal cases. Cases of VAC are being monitored by senior officials of the investigating agency.
Thailand	Yes	Psychologists are the only ones who can interview juveniles. Psychologists generally participate in the interview.

c. DUTY TO PROSECUTE AND TO ADJUDICATE

c-1 Are there special procedures for prosecuting VAC in your country?

Country	Answer	Supplement
Brazil	No	
Japan	No	
Jordan	Yes	There are stated guidelines during the trial and investigation.
Malaysia	Yes	The law provides for the detention of the perpetrator considering the circumstances. There are also special courts for adjudicating VAC cases.
Maldives	Yes	Not stipulated in regulation. Considered as high priority cases, special supervision and guidance to police during investigation.
Mali	No	
Pakistan	No	No special procedure in law.
Thailand	Yes	There are special prosecutors to prosecute VAC cases.

c-2 Are there special provisions for protecting children victims and witnesses of crimes during the trial?

Country	Answer	Supplement
Brazil	Yes	<ul style="list-style-type: none"> - The arrest of the defendant if it is necessary to protect the child. The victim or witness may also opt to get into the programme of protection. - "Hearing rooms" - "harmless testimony" implemented in 120 courthouses so far. - A provision in the Criminal Procedure Code establishing the possibility of restraining orders ("stay away provision").
Japan	Yes	The Code of Criminal Procedure to protect crime victims of all ages are used to protect children. Protection of victims' identifying information, screens, attendants, video link, witness examination outside of court
Jordan	Yes	There is confidentiality, and the child's parents or guardians must attend.
Malaysia	Yes	Same as c-1

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Maldives	Yes	Special provisions to take child victim and witness testimony, and even in other sexual offences where a child is a witness.
Mali	No	
Pakistan	Yes	According to precedents, courts can protect victims and witnesses and can also provide police protection for them.
Thailand	Yes	There is a witness protection act for these cases. Juveniles will be protected whenever necessary.

c-3 In case of conflict of interest between parents/guardians or in case the child has no guardian, are there special provisions to protect the child during the trial?

Country	Answer	Supplement
Brazil	Yes	According to the Criminal Procedural Code, the judge may appoint a third person to defend the interests of the child.
Japan	Yes	It is not a judicial procedure; in such cases, the child will be placed under temporary custody by a Child Guidance Centre officer. Consequently, protection of the child is ensured.
Jordan	Yes	
Malaysia	Yes	- Temporary custody and substitute guardians. - Interim protection order.
Maldives	Yes, but not necessarily only at the trial stage	In such cases guardianship will be transferred to someone who is capable within the family or if not, the child will be taken into state custody.
Mali	Yes	Judges can take steps to protect the child by entrusting him or her to another person, to a state institution or to an NGO.
Pakistan	Yes	Normally it does not happen due to social and religious norms; however, if it happens, courts can appoint any person from civil society as a guardian of the child.
Thailand	Yes	Some organizations will deal with this problem. They will take care of the child during trial.

c-4 Does your country include some sort of witness or victim preparation before her/his testimony?

Country	Answer	Supplement
Brazil	No	According to Brazilian law, the preparation of victims or witnesses either by the police or by the prosecution service is prohibited by law.
Japan	Yes	The public prosecutor or the defence counsel who has filed a request for the examination of a witness shall prepare so as to be able to conduct an appropriate examination
Jordan	sometimes	Sometimes, they explain the case and the reason why he is being asked to give testimony.
Malaysia	Yes	It is allowed by the law and it depends on the Attorney General's provisions and discretion.
Maldives	Yes	Witness preparation is conducted by the Witness Assistance Unit of the Prosecutor General's Office.

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Mali	No	
Pakistan	Yes	Child victims and witnesses are briefed by the Prosecutor before the trial.
Thailand	No	According to the law, the preparation of victims or witnesses either by the police or by the prosecution service is prohibited by law.

c-5 Have prosecutors and judges sufficiently been trained to deal with VAC cases?

Country	Answer	Supplement
Brazil	No	
Japan	Prosecutors: Yes; Judges: No	Prosecutors have just started training on child interviewing.
Jordan	Yes	Recently, there have been some initiatives on training law enforcement members on VAC.
Malaysia	Yes	Special unit for children in the Attorney General's Office
Maldives	No	No special training given to judges or prosecutors as a whole to deal with such cases.
Mali	Yes	However, they should deepen their knowledge to improve their efficiency including the methodology to detect and manage VAC.
Pakistan	Yes	
Thailand	Yes	There is a special course for them.

c-6 Have children been interviewed by prosecutors and judges in a sensitive manner and in a friendly environment in court?

Country	Answer	Supplement
Brazil	Yes	But only in a few courthouses (120 so far).
Japan	Yes	However, it depends on the initiative of judges and prosecutors.
Jordan	Yes	They interview them and take into consideration their ages, social circumstances and gender.
Malaysia	Yes	Can object to summoning the child victims or witnesses to testify in court; sometimes use the interview video recording taken during the investigation at trial.
Maldives	No	Due to lack of facilities, most of the courts across the country cannot apply the special provision to take child victim or witness testimony. Some courts rely on the video recording of the child's interview while other judges continue questioning out of court without video recording. Can object to summoning the child victims or witnesses to the court; sometimes use the interview video recording taken during the investigation at trial.
Mali	No	
Pakistan	Yes	Children are always interviewed in a friendly atmosphere. Courts do not allow the defence counsel to ask questions which can cause re-victimization.
Thailand	Yes	There are special rooms in the court for interviewing child victims and witnesses.

GROUP 2

IDEAL MEASURES TO PROTECT CHILDREN AS WITNESSES IN INVESTIGATION AND TRIAL PHASES

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I. INTRODUCTION

It has been recognized internationally after much hue and cry that children have rights which must be safeguarded and protected in every country that boasts of having the rule of law. Several international instruments have been drafted to outline the rights and provide mechanisms for safeguarding the same¹. Most countries have adopted the legal instruments and further enacted domestic laws that ensure the rights of children within their borders are safeguarded. However, most of these countries have loopholes in their legislation concerning the rights of the children as witnesses. Moreover, the measures adopted by these countries concerning the rights of child witnesses face practical challenges that need urgent redress.

The members of the group held successive meetings, and each one of them discussed in length the ideal² measures applied in their own countries. In choosing the topic of the research, numerous deliberations occurred concerning the title. It was suggested to discuss the rights of children as victims and witnesses as the former are more vulnerable and need more protection than those who are witnesses of a crime and not victims of it. Yet, for the purposes of specification and accuracy, discussing the rights of children as victims requires shedding light upon means of reporting, civil action and rehabilitation. Those measures require more time and resources which may be not available. Further, it was noticed that some countries give special attention to child witnesses only when they are victims, despite that article 3.1 of the CRC³ does not discriminate between the child as a victim and as a witness. Finally, the criminal justice process is initiated by the action of victims and witnesses in reporting of crime. Without a reported crime, the criminal justice system cannot become involved in the protection of victims or witnesses. Witnesses also play important roles in the investigation and prosecution process, because without them most of the cases would collapse for the lack of evidence.

This group chose the protection of children as witnesses, as it is crucial for their health and well-being in any given society. Unfortunately, many children fall victim to violence notwithstanding the fact that there are so many rules and regulations that emphasize their protection. Their rights to health, education, nutrition and leisure are compromised, and the children become vulnerable to exploitation in their efforts to survive in the hands of judicial systems. Thus, concerted efforts must be made towards realizing the

¹Namely; 1) *Convention on the Rights of the Child* adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990. 2) *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* adopted by the UN Economic and Social Council in its resolution 2005/20 of 22 July 2005. 3) *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime and Related Commentary*.

²"Ideal: the best possible." Def.1. Cambridge Dictionaries Online. <<http://dictionary.cambridge.org/dictionary/english/ideal>> accessed 20 June 2016.

³In 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 the primary consideration.

rights of children as witnesses, as their cognitive abilities are not fully developed.

The group members agreed on the measures that should be applied as the standard measures needed to secure the welfare of children as witnesses⁴. Such measures are described as “Ideal” from the members’ point of view. In electing such measures, the group depended on the UN Model Law and Related Commentary, the best practices adopted by member’s countries and comparative approaches from the different legal systems. The measures that the group elected are classified into the pretrial phase and the trial phase. However, some of these measures are required in both phases.⁵ Further, such measures secure the best protection for the safety and privacy of child witnesses and aim to lessen the hardship that the child witness may face during different stages of judicial procedure.

This research was therefore necessitated by the various reactions that emanated from all the countries that were represented in this training, and this group chose to focus on the measures implemented by each country and the ways and means of adopting the best practices.

This paper will also seek to analyze the legal regime that safeguards the rights of children as witnesses in the model law. Further it shall delve into the current systems and structures in various countries, identifying the opportunities and challenges for children in the criminal justice system, and will make practical recommendations in addressing the plight of children who find themselves in the wheels of justice, not only as child witnesses but also as children in need of care and protection.

II. MEASURES OF PROTECTION

A. Investigation Phase

This is the first stage where the child comes into contact with the law. This is the formative stage of the trial process, and it is always important that it is conducted according to the best standards. At this stage, there has to be a complaint made against a child or an adult. A complaint can be made by the complainant, his/her intermediary or by the community at large. Responsible officials in any criminal process must identify the victims at the earliest opportunity and proceed to identify the key witnesses. At this stage, we are going to look at the measures that are available to ensure that the witnesses feel satisfied and confident with the system, especially noting the fact that witnessing is a horrible scene and a burden to the child.

To minimize the risks of having inconsistent statements from child witnesses whose cognitive abilities are not fully developed, the physical atmosphere as a means of interview is important. Means of interview could be described as special procedures for collection of evidence which should be implemented in order to reduce the number of interviews, statements, hearings and specifically unnecessary contact with the justice process.⁶ Moreover, under the Model Law⁷ measures to protect the physical and mental well-being of the child witness help to prevent distress or harm to the child. Therefore, child friendly interview rooms, technical communication aids, specially designed waiting rooms and recordings will make witness less frightened.

It is important to note that the cognitive abilities of children are not fully developed at this stage, and hence the processes involved should not only be friendly but also efficient. Reactions from the countries represented agreed that they have met the basic principles applicable to ensure that the witness is protected. Some of these measures include:

1. Victim Support Agencies

Due to the vulnerability of child witnesses, it was deemed necessary by the members to agree that a support agency is important during the pretrial stage of every criminal process. The support agencies are

⁴Special focus on Egypt, Japan, Uzbekistan, Kenya, Mongolia, Malaysia, Guinea, Nepal and Bhutan.

⁵Such as waiting rooms.

⁶Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 31 (a)
<<http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>> accessed 20 June 2016

⁷*Model Law on Justice in Matters involving Child Victims and Witnesses of Crime*
<<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

known to offer emotional support, guidance and counselling for the child victims of crimes. The members agreed that the role of these agencies shall be extended also to support the child witnesses to crime even if they are not victims, given that the child witnesses to crimes are subjected to hardship during the judicial process that highly demands providing multiple aspects of support.

Support centres provide safe and child friendly environments before and after the cases. The victim care centre is staffed by professionally trained victim care officers who provide psycho-social support to the child victim and witness. Some centres provide both psychological assistance and monetary assistance. A good example of the extended protection presents in Malaysia, which has adopted a support agency called the Victim Care Center (VCC). According to the Malaysian member of the group, Ms. YUSOP Yusnany, the Malaysian law stipulates the primary purpose of the VCC, which is providing support and service to victims.⁸ However, it also provides support to children as witnesses in practice regardless of whether they are victims of crimes or not. The Malaysian government has also embraced other support mechanisms to ensure that children as victims and witnesses get as much support as possible, the agency works with the help of the Ministry of Women, Family and Community Development, the Department of Social Welfare and the Ministry of Health.

Other functions of the victim support centres are:

- a) Attending to witnesses to help them cope with traumatic events
- b) Providing conducive and therapeutic settings for the comfort of the victims/witnesses and their families
- c) Providing care and protection to the witnesses according to their needs
- d) Assisting investigation officers to procure information from witnesses using counselling techniques.
- e) Networking with other relevant agencies, NGOs, and the Departments of Social Welfare during and after investigations.

Another example is the Kenyan Witness Protection Agency, which was established by virtue of the Witness Protection (amendment) Act, 2010. The agency objective and purpose is to provide the framework and procedures for giving special protection, on behalf of the state, to persons in possession of important information and who are facing potential risk or intimidation due to their cooperation with prosecution and other law enforcement agencies⁹; such agency may also provide support to children witnesses.

Other countries like Japan¹⁰, Mongolia¹¹ and Uzbekistan¹² have also embraced victim support centres, though their organizational structures may differ in some aspects and do not provide support to witnesses of crimes only.

2. Support Persons

The Model Law provides that at the beginning of every investigation phase, the child shall be supported by a person with training and professional skills to communicate with and assist children of different ages and backgrounds.¹³ The Model Law defines the support person as “a specially trained person designated to assist a child throughout the justice process in order to prevent the risk of duress,

⁸Section 8, *the Malaysia Children Act*, 2001.

<<http://www.kpwkm.gov.my/documents/10156/4bc6e4b9-1f19-4168-8327-7a2c745017f2>> accessed 20 June 2016.

⁹Article 3B of The witness protection (amendment) act, 2010

¹⁰Japan: Child Guidance Centre, a centre that accepts consultations relevant to children aged under 18 and supports them and families with the relevant specialized knowledge and skills, Child Welfare Act [Act No.164 of December 12, 1947] Article 12.

¹¹ Mongolia: the National Centre against violence is a nongovernmental organization that provides legal consultations and shelters for the victims of domestic violence.

¹² Uzbekistan: Commissions on juvenile affairs and guardianship authorities, which have the authority to provide proposals to the relevant state bodies and other organizations with respect to measuring children's rights violations.

re-victimization or secondary victimization”.

It is needless to say that witnessing a horrible scene is a burden on the child. In addition, a witness of a crime is forced to explain the traumatic and painful incident many times. Therefore, these children need emotional support.

Support persons will also act as intermediaries in court cases when the witness is giving testimony in court, by providing information on court procedures, offering emotional support, visiting court before trial to familiarize witnesses with the layout of the court, providing practical assistance like transportation of child witnesses to court, among others.

3. Specially Trained Personnel

The Model Law asserts that investigators specially trained in dealing with children shall guide the interview of the child, using a child-sensitive approach¹⁴. Also, it provides that the professionals working with child victims and witnesses shall undergo appropriate training on issues related to child victims and witnesses¹⁵. In defining the word “professionals”, the Model Law mentions “child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and defence lawyers; diplomatic and consular staff; domestic violence programme staff; magistrates and judges; court staff; law enforcement officials; probation officers; medical and mental health professionals; and social workers”.

These are people who have undergone some forensic training to ensure that they are able to carry out the investigation in a professional manner, so as to reduce the burden on the witness. Specially trained persons are able to coordinate evidence from witnesses in a professional manner. This is especially important for child witnesses who are always vulnerable in the criminal justice system. The purpose of using specially trained persons on children is due to the fact that the cognitive ability of children is not fully developed and someone has to perceive and explain their experiences in a different manner. The information must be obtained freely and treated with confidentiality by well-trained employees. The risk of the witness providing inconsistent statements is much higher and, thus, explains the necessity of having a trained person to take them through this stage.

Specially trained persons must be empathetic and pay attention to any symptoms of nervousness in the child. Children frequently perform the difficult witness’s role in criminal proceedings. A child may be just a witness to an offence, but more often he or she is both a witness and a victim. In both cases the experience of being a witness is extremely difficult and distressful for the child. Undoubtedly, however, when the child has been victimized by the offender, the situation becomes traumatic.

Unfortunately, more and more frequently the testimony of a child victim of physical or emotional violence or sexual abuse is the only way to stop the child’s suffering and punish the offender. The person interviewing a child witness therefore faces two major tasks:

1. To elicit a complete, credible account of the offence;
2. To protect the child’s psychological well-being, which has been seriously harmed by the abuse experience

Most of the team members shared their experiences from their own countries, and it became apparent that in most countries like Malaysia, Japan, Uzbekistan, Kenya, Mongolia, Malaysia, and Egypt¹⁶, the Model Law makes a provision that a specially trained investigator shall be appointed to guide the interview of

¹³ Article 15, *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime*, <<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

¹⁴ Article 13, *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime* <<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

¹⁵ Article 8, *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime* <<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

¹⁶ In Uzbekistan and Egypt, provision of support person is done on case by case basis.

the child during investigation in order to prevent re-victimization.¹⁷

1. At the investigation phase, the group members also felt that there is a need to have special rooms to conduct the interviews. The room should have cameras for monitoring and video recording, and other members of the staff can be able to monitor the interview without necessarily being present in the room. The participants from Japan and Malaysia were conversant with this kind of evidence recording because they have always used it while conducting their investigations.
2. Lastly, it is important to ensure the adequacy of the laws protecting children at the investigation stage so that child witness protection at the investigation stage is therefore guaranteed.

The dilemma, however, in the pretrial phase is how to reconcile the images of children as vulnerable and uninformed and trying to extract reliable information that will guarantee the conviction against the offender.

4. Interview Rooms

The interview room is a room with child-friendly settings for interviewing a child about a crime he/she witnessed, other than common places for interviewing adult witnesses. Such rooms may be on the same premises for investigating other crimes or in a special institute for child care. The “Guidelines on justice on matters involving child victims and witnesses of a crime” pointed to this measure¹⁸, in which they mentioned that those special interview rooms should be “designated for children”, but the guidelines did not mention how these rooms should be designated for children. The interview room has no universal standard measures. However, it is agreed that minimal distractions in the interview room allow the child to maintain focus on the interview process. There is a debate around the components of this room; some require this room to have only the furniture necessary for the child and the interviewer, prohibiting any other means to be placed inside the room such as toys, drawings, etc.¹⁹ Other views²⁰ suggest that in preparing the interview room, it should be equipped with anatomical diagrams or dolls that should be prepared by the interviewer to represent the age, gender and ethnicity of the child and the alleged offender, because this will reduce issues of suggestibility and confusion for the child during the interview and potential subsequent court hearing.²¹ From here we can switch our discussion from specifically prepared interview rooms to the system of communication with some technical input from the child.

5. Technical Communication Aids

This is a system of building communication tools which are used to help the child to express his/her testimony. With help of “images, photos, drawings and etc...” which are familiar to child witnesses, interviewers can collect evidence without burdening the child. Professionally trained interviewers guide the child on how to utilize equipment to explain the acts done by culprits. The practice has proven to be efficient as child witnesses can explain better when using the tools or equipment, and most of the time they are very helpful to the prosecution. In the digital era, evidence in the form of a document issued by a computer is very important for a criminal or civil cases in court. For instance, in Malaysia, use of a certificate²² is often accepted to avoid bringing the child in the courtroom. Besides the best practices, technical communication systems are not applied by the court in the trial phase or by police in the investigation phase for child victims and witnesses in some countries²³.

¹⁷ Article 13, *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime*

<<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

¹⁸ Section 11 “The right to be protected from hardship during justice process” of The Guidelines on justice on matters involving child victims and witnesses of a crime.

¹⁹ Makiko Naka - Hokkaido University Judicial interview guidelines - 10.2010 - <http://child.let.hokudai.ac.jp>> accessed 20 June 2016.

²⁰ The national child protection training centre newsletter fall 2004 - p.3 - <<http://www.nationalcac.org/professionals/images/stories/pdfs/forensic%20interview%20room%20set%20up.pdf>> accessed 20 June 2016.

²¹ Ibid.

²² Under section 90A (2) of the Malaysia Evidence Act adopted in 1950, <www.lawnotes.in/Malaysia_Evidence_Act,1950>, accessed 20 June 2016.

²³ For instance Nepal.

6. Recordings

Video recording means recording of the oral evidence of the child witness, in the form of an interview conducted by a police officer or other officers, expressed in any format, made with a view to its admission as evidence of the examination in chief of the child witness. In Malaysia, child witnesses shall be protected from the normal courtroom processes of having to confront the perpetrator in court. A directive may be issued that evidence of a child witness and victim may be taken by way of recordings. Children who testify in such a way become more confident, and they are free from the rigid courtroom processes. This is important to ensure that the information recorded in the form of a video of the child can be submitted to the court in conformity with legal principles, thus avoiding rejection on technical grounds. A video recording must be accompanied by a transcript of the original language used in the video recording. In this case, the child witness should be interviewed by a qualified and experienced person, and a videotape of the interview should be used as evidence at the trial. According to the Children's Act, video recording is allowed²⁴, provided that the contents of the video recording shall be subject to the Evidence Act 1950.

It is stipulated in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, as a special procedure meant for limiting the number of interviews for collection of evidence from child witnesses; specifically, unnecessary contact with the justice process should be avoided. Proper measures would define that there should be a special procedure to limit the number of child interviews for the collection of evidence.

7. Number of Interviews and Duration of the Interview

It is stipulated in the Model Law²⁵ that the investigator shall avoid repetition of the interview during the justice process in order to prevent secondary victimization of the child. The commentary provides that the interview shall be conducted in a more thorough and accurate way. It is better to stipulate the maximum number of interviews for the child for the following reasons. Firstly, multiple interviews require the child to experience the traumatic event again and again, which increases stress before trial. Secondly, the more interviews there are, the more likely it is that one of the interviewers might ask leading or suggestive questions. The duration of the interviews depends on the child, although it should not exceed two hours, according to the best practice of Malaysian child interview professionals. The child's testimony may evolve into what appears to be rehearsed responses.²⁶

B. Trial Phase

1. Waiting Areas

Waiting areas shall be invisible or inaccessible to the accused and shall be separated from the adults' waiting areas. Participation in criminal proceedings may cause the child to experience secondary victimization if the investigation and trial facilities do not meet the required standards. This facility is very important to the child witness to make sure that he or she does not meet with the accused or with his/her family members face to face before testifying. However, there are no waiting areas specialized for children victims and witnesses in many jurisdictions of the participants' countries.

2. Measures to Protect the Privacy of a Child Witness

This means protecting a child witness by limiting the disclosure of information about their identity and whereabouts. It aims to protect the privacy and the physical and mental well-being of a child to prevent undue distress and secondary victimization. Applying this measure is derived from the dignity principle laid down by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. It was further explained under section "X: Right of privacy" of the guidelines which provides that information relating to a child's involvement in the justice process should be protected as a priority by 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.

²⁴ Section 6 of the Child Witness Act adopted in 2007, (PDF) Evidence of Child Witness Act, 2007 International resource centre <www.internationalresourcecentre.org>, accessed 20 June 2016.

²⁵ Article 13.2, *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime* <<http://www.unicef.org/tdad/childvictimswitnesseslawandcommentary.pdf>> accessed 20 June 2016.

²⁶ Colin H. Murray — *Child-Witness Examination* — American Bar Association, April 01, 2005 <http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/childwitness.html#top> accessed 20 June 2016.

This means of protection also is mentioned under article 28 of the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime. This article mentioned numerous measures in order to apply the concept of privacy, *inter alia*, removing the information that could be used to identify the child from the public records, ordering the non-disclosure of any records that identify the child, assigning a pseudonym or a number to a child.

Some jurisdictions put restrictions on media reporting and publications in order to protect the interest and welfare of the child. For example, Part V of the Malaysian Child Act prohibits revealing the name, address, educational institution, or any information that leads to the identification of any child.

Another practical application of the privacy protection of child witnesses is holding closed sessions, which is mentioned in article 28 (f) of the Model Law. Although the latter did not define the closed session, leaving it to the practice of the states, it can be defined as the right of the court to hold the trial in the absence of certain persons or groups. This measure is applied in several countries, for example, article 202 of the Japanese Rules of Criminal Procedure give the judge the right to order certain observers to leave the courtroom when a witness is believed to be unable to give sufficient testimony in the presence of such observer.

Yet this measure shall be restricted by the right of the accused person to access the witnesses data in order to prepare his/her defence, as the complete restriction on disclosure of information related to the identity of the victim or witness would be prejudicial to the rights of the defence. This limitation is mentioned in article 28 (d) of the Model Law which stipulates – in case of assigning a pseudonym or a number to a child witness – the requirement of revealing the full name and date of birth of the child to the accused within a reasonable period for the preparation of his or her defence.

3. Measures to Protect the Safety of Child Witnesses

Child witnesses should be provided with protection against any form of intimidation, threats or harm. According to section XII of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, “The right to safety”: appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include avoiding direct contact between child witnesses and the alleged perpetrators at any point of the justice system.

The Commentary on the Model Law further explains this measure by stating that it aims as much as possible to reduce the feeling of intimidation that child witnesses may have while appearing before the court, in particular when confronting the alleged offender. The model law expressed several examples for concealing the features or physical description of the child giving testimony or to prevent distress or harm to the child. Such examples include, but are not limited to:

- i) Giving testimony behind an opaque shield: by the use of screens between the child and the accused to prevent them from seeing each other, a one-way mirror allowing the accused to see the child but not vice versa or a movable opaque partition with a video camera transmitting the image of the child to a television monitor visible to the accused.
- ii) Through examination in another place, transmitted simultaneously to the courtroom by means of closed-circuit television: usually by placing the child witness in a special interview room on the premises of the court connected to the courtroom by means of closed-circuit, whereby the judge, prosecutor, defence attorney and defendant can see and hear the child during their testimony. Further, they can question the child through this closed circuit.
- iii) By way of videotaped examination of the child witness prior to the hearing: it is safe to say that the Model Law and its commentary does not provide a comprehensive explanation for the process of videotaped examination, while other jurisdictions, such as the United States, specify the process and grounds for initiating this measure. According to 18 U.S.C. § 3509 on child victims’ and child witnesses’ rights, the judge can order that a deposition be taken of the child’s testimony and that the deposition be recorded and preserved on videotape. If the child is likely to be unable to testify in the physical presence of the defendant, jury, judge, or public as a result of fear or foreseeable emotional trauma from testifying in open court, or the conduct by

defendant or defence counsel causes the child to be unable to continue testifying, or suffering mental or other infirmity.

Moreover, the court may order temporary removal of the accused from the courtroom while a child is testifying. This measure is also a way of avoiding direct contact between child witnesses and the alleged perpetrator. This measure can be applied if the child refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking the truth in the presence of the defendant. The accused is usually allowed to follow the child's testimony on a monitor from a separate room.

Many domestic jurisdictions apply the former measure. For instance, article 157-4 of the Japanese Code of Criminal Procedure allows the court, after hearing the opinions of the public prosecutor and the counsel, to order the accused to leave the courtroom during the testimony of a witness, if court finds that the witness is unable to testify sufficiently owing to the pressure of being in the presence of the accused.

4. Protection of Children During Cross-Examination:

In order to lessen the hardship that a child witness may suffer during justice procedures, strict rules should be imposed upon the cross-examination of the child. Such a measure is a practical application of paragraph 13 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, which requires interviews, examinations and other forms of investigation to be conducted in a sensitive, respectful and thorough manner.

Also, the guidelines provide in paragraph 31 (b) that child witnesses should be protected from being cross-examined by the alleged perpetrator. However, the cross-examination of the witness is crucial to the accused person's ability to challenge the testimony of the witness, especially in common law countries, where oral evidence is given considerable weight and usually prevails over written evidence.²⁷ So, this measure is limited by the right of the defence attorney to cross-examine the witness. And if the accused is not legally represented, the court shall appoint a legal representative for him/her. In case of a child being cross-examined by the defence attorney, judges should exercise close scrutiny and strict supervision of the cross-examination. Domestic practice in common law countries in particular prohibits any intimidating, harassing or disrespectful questions, bearing in mind that vulnerable witnesses, including children, shall be addressed in a simple, careful and respectful way.

Although it is mentioned in article 27 of the Model Law that this measure is an option for the common law countries, it is worth mentioning that cross-examination is applied also in civil law countries, where the witness can also be subjected to the defence attorney. Some of civil law countries deal with this case by specifying certain procedures regarding the questioning of the witness. Namely, the Egyptian Criminal Procedures Code provides in article no. 273 that the Court shall prevent questions being posed to the witness if irrelevant to the case or unacceptable. The court shall also protect the witness from explicit or allusive statements that might cause confusion or intimidation.

III. RECOMMENDATIONS

Critically speaking, it is obvious that there are many measures that countries need to take and many loopholes to avoid, in order to build a concrete system for protecting children as witnesses. The group members agreed on recommending the following measures as ideal:

- A. By enacting special laws to protect child witnesses, this law may bestow the same protection upon child victims. The special law shall follow the UN Model Law and best practices as far as they suit the social and legal status of the state in question. Finally, this law shall stipulate the following measures:
 1. Special procedures to avoid hardship that the child witness may suffer during the entire judicial procedure. These procedures may include providing special waiting areas for them, stipulating the right of the child to be accompanied by a support person to provide the child with emotional

²⁷ Caslav Pejovic - *Civil law and common law: two different paths leading to the same goal* - 2001 - p. 833.

and physical support and ensuring swift judicial procedures.

2. Special procedures to assure the privacy of the child witness. These procedures may include the removal of the identity of the child from public records and non-disclosure of the identity of the child.
 3. Special procedures to assure the safety of the child witness by separation between the accused and the child. These procedures may include holding in-camera sessions, videotaped dispositions and removal of the accused from the courtroom while hearing the child's testimony.
 4. Holding few interviews of the shortest duration possible is strongly recommended. The defence attorney shall have the right to ask questions to the child through the interview in order to limit the number of interviews. "Two times with maximum two hours for each is a good practice".
 5. The child witness should be questioned in a way that suits his/her age and mental capacity. Any intimidating, harassing or disrespectful questions are prohibited. Cross-examination of a child witness must be conducted under the strict supervision of the court in order not to pose such prohibited questions.
- B. Countries shall establish special agencies to support child witnesses during and after the judicial process.
- C. Countries shall initiate training for personnel of its judicial system who have contact with children as witnesses such as investigators, prosecutors, attorneys and judges. Further, dealing with those children should be limited to trained personnel.
- D. Countries shall provide experts to assist in interviewing the child witnesses and to protect the child mentally and psychologically. Those personnel also include intermediaries and interpreters.
- E. Separate child friendly rooms should also be provided. Such rooms shall be equipped with limited technical communication aids and recording facilities. The interview transcript shall be presented to the court.

IV. CONCLUSION

Based on the presented research, it has become evident that protection of witnesses is crucial in any efficient investigation and trial process to ensure that their rights are not violated. For insuring such protection, numerous measures should be applied throughout the whole judicial procedure. Such measures include training personnel, investigation facilities that help in protecting the child emotionally and psychologically, introducing legislative amendments that ensure the protection of the privacy and security of the child and reducing the hardship of the child witness may face through the judicial process.

Protection of witnesses is a guiding principle not only in international law but also at the domestic level. The best interests of the child are not confined to court decisions only but also include administrative decisions and policy formulations that affect the child.

Successful performance of pre-trial procedure and trials involving children as witnesses require deep understanding of the developmental processes and age-related changes in children's psychological and social functioning.

Thus, the importance of the criminal justice actors in the juvenile system is not only being interrogators but eliciting a complete account of the offence and, hence, protecting the child's psychological well-being. Group members have embraced the relevant measures, in various stages of law enforcement.

Although it is not always possible to avoid the child's appearance in court as a witness, this group focused on the measures that have been adopted in their countries and have made recommendations on other measures which can be adopted to guarantee the protection of children as witnesses.

GROUP 3

IMPROVING SKILLS AND PRACTICES IN INTERVIEWING CHILD VICTIMS AND WITNESSES DURING INQUIRY AND TESTIMONY

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I. INTRODUCTION

One of the roles of the criminal justice system, generally starting with the police investigation and ending in court, is to ascertain the truth while balancing the rights of the accused and the victims. Performing this role includes respecting the principle of equity, which imposes a treatment adapted to the situation of each type of litigant, especially, according to the criterion of age. From this view, children have been recognized to be different from adults in many ways. Children are highly suggestible and some people think what they say is often ambiguous and incomplete. Although, in criminal justice systems, many countries have adopted a special procedure for juvenile delinquents, even more countries need to develop special procedures focused on children as victims and witnesses.

For a long period of time, child victims and witnesses were treated just like adults, in both inquiry and testimony. In general concept, the inquiry and testimony of the child victims and witnesses are the processes to collect credible evidence in order to identify the facts thoroughly, objectively and in due course.

However, the child victims and witnesses should be treated in appropriate ways to ensure that they do not receive further damage or go through longer and more frequent inquiry and testimony. In addition, the intention should be focused on making the process less upsetting for children and increasing the aptitude of the child to participate, which will ultimately enhance the chances of a successful result of investigation and prosecution.

This report, therefore, addresses "Improving Skills and Practices in Interviewing Child Victims and Witnesses during Inquiry and Testimony".

II. CURRENT SITUATION OF INQUIRY AND TESTIMONY

A. Multiple Interviews

Although criminal procedure varies from country to country, child victims and witnesses are commonly interviewed several times by professionals involved in criminal procedure before he/she gives testimony in the court. For example, when a child abused by his/her father is found injured in a school, the police officer and the public prosecutor will each interview the child several times in order to understand what happened to him/her despite the fact that the child will have been possibly questioned by teachers, doctors and other guardians.

The practice of multiple interviews by police officers and public prosecutors is justified by the aim of finding accurate facts. In other words, it has been thought that in order to obtain a credible statement of the child victim to clarify what exactly happened to him/her, multiple questions should be asked to the

child victim by various people. However, according to recent research done by psychologists and doctors, children's memories are possibly altered by induced and other inappropriate questions, and such practice will turn out to be the opposite of what was intended at the beginning.

In addition, multiple interviews cause re-victimization of the child. Furthermore, through multiple interviews, child victims and witnesses are forced to recall their terrifying ordeal of the crime. There is absolutely no need for child victims and witnesses to re-experience what they already went through.

Until recently, such problems were not much considered and even now, multiple interviews are still done in practice because of lack of coordination and know how between the child victim's guardians and professionals involved in the criminal justice system.

B. Questioning Skill: Techniques and Time Management

There are cases that are dismissed due to the interviewer not being able to obtain sufficient statements from the child victims and witnesses. In such cases, the interviewer has not received adequate training to interview a victim or witness. Even if they possess a theoretical knowledge, they cannot apply that knowledge due to lack of practices following standard protocols and technique/age-appropriate approach. The investigating officers or other professionals concerned should be able and prepared to adjust their approach to the child's developmental level.

Sometimes, interviewers possess a hypothesis based on a fact which is learned from other sources. Interviewers with preexisting biases may ask suggestive questions and risk confirming their beliefs and getting false information. Many interviewers do not remain neutral during the interview and this often negatively affects the fact-finding process.

Also, the outcome of interviews is not satisfactory in the case where interviewers do not take sufficient preparation. Due to lack of preparation some important information may be missed while various misleading and irrelevant information may be received. First of all, which information is required and how the question will be asked should be analyzed by the interviewer. Furthermore, in most of the countries no standard limitation on duration of the interview is followed. In practice it is seen that children are interviewed several times for an unspecified period. It may be stressful for the child, and he/she may not cooperate with the professionals.

C. Rooms, Facilities and Conducive Environment

In most of the countries, interviews are often done in a police station; however, there are no child-friendly rooms to conduct interviews. The interviewer often talks to the child victim face to face which may be intimidating. The child victim may even meet the suspect at the station, which possibly strains the child victim's mind. This not only increases risk of obtaining unreliable statements from the child but also places a psychological burden upon child victims and witnesses when they talk about the incident. Further, it may not be in the keeping with the rights of the accused who may later use it in his favour to argue that the child was influenced to wrongly identify the accused.

To decrease the strain, the interviewer sometimes allows the family members of the child victim to accompany the child during the inquiry, but child victims and witnesses can be influenced by them easily. Especially when family members are perpetrators, child victims and witnesses may hesitate to disclose the facts in front of them.

D. Support Services

Support services are geared towards ensuring that the child victim is confident and willing to give testimony. The current situation in some jurisdictions is that there is a dearth of places of safety. Even where available, they further jeopardize the child's welfare if no counselling is offered. The child may also miss some days at school. There are instances where victim relocation is seen as an admission of failure of the support structures. It is also costly in terms of the human sacrifices involved in the relocation of the victim/witness.

Fact-finding is often compromised when the protection of the child or sense of security for the family is not guaranteed. This is mainly the situation of children assaulted by one of their parents and who must

keep living with the other one during the process. It is also the case when the offender is a third party who seriously threatens the security of the child.

Child victims and witnesses require aid and information to effectively take part in the criminal justice process and to heal their damage. This is not currently available in many jurisdictions. It affects the decisions of families and victims of whether or not to report crimes and follow up with prosecution and disposition of the case.

E. Fear Caused by the Presence of the Perpetrator

When a child victim or a witness faces an inquiry or giving testimony, he/she is likely to feel confusion, fear and ostracization. If the child victim's, or even his/her family's, security is not ensured throughout the criminal procedure, such negative feelings will increase. Although intimidating the child victim might not be the intention of the accused, once the child is frightened, it will be difficult for the child to talk about the crime, which will cause difficulty in fact-finding. On the other hand, the accused has the right to access all evidence including the statement and the testimony of the child. Therefore, both the needs of ensuring the security of the child and his/her family and ensuring the right of the accused must be considered in practice.

F. Delay in Procedures

There are a number of cases in which the child victim has not been found for a long period of time, even after the suspect has been identified. Such problem may occur in cases of sexual abuse, physical abuse and rape found in the internet, such as cybercrime. Delay in procedure makes fact-finding difficult, and the child suffers from the effect of the crime for a longer time.

Even after the child victim is identified and the investigation begins, it generally takes months or even years for a criminal case to be resolved in court, and professionals do not properly consider the effect of this problem.

Another cause of delay in procedure is the increasing number of pending cases. The long gap of time between the inquiry and testimony may decrease the child's memory and affect his/her testimony during cross-examination, making fact-finding difficult. In addition, no matter what the causes of these problems are, the child victims or witnesses will have less benefit from pending cases.

G. Insufficient and Obscure Legislation

In many countries, there is no legal provision for investigation of child abuse cases without any formal complaint from the victim. But it may not be possible in all cases for the victims to lodge a complaint due to hesitation of being exposed in public, pressure from family members, power imbalance between perpetrators and victims, and so on. For these reasons, most victims remain unheard and unnoticed, subsequently reducing the intervention of criminal justice officers. More effective and appropriate legislation is required to widen the power of investigators to investigate such case on the basis of suspicion only, even without a formal complaint. It may be helpful to intervene in the lives of abused children before the cases get any worse. Furthermore, people who are likely to know the incidents of child abuse cases are not under any obligation to report such cases.

III. RECOMMENDATIONS

Considering all the problems discussed above, the suggestions listed below may be useful.

1. Institutions involved in child abuse cases should have standard operating procedure manuals for protecting child victims from the beginning of investigation until the conclusion of trial. The prosecution of child victim's crimes should be carried out carefully with consideration of the child's position as a victim, regardless of the concerns of witness inducement, so that child victims and witnesses will not refuse to say what they experienced for fear of being punished for the crimes they themselves committed.
2. Cases involving children should be prioritized. The time gap between recording the first inquiry and the child's testimony at trial should be reduced to avoid risk of contamination of evidence.

3. Multi-disciplinary teams, consisting of all relevant agencies, should be formed to conduct interviews of child victims and witnesses to avoid multiple interviews.
4. Child victims and witnesses should be interviewed in a separate child friendly room having no distracting elements. The interviewer should sit close to the child victim/witness. The child should be interviewed alone unless he or she is too young to be separate from the parent or guardian.
5. Officers involved should receive in depth training regarding interviewing skills, child development and the impact of victimization and witnessing violence against children.
6. Interviewers should build rapport with the child and should provide the child with necessary information about the purpose of the interview in simple language. It must be done patiently with the interviewer being neutral and professional. Communication must be done in a decent manner.
7. At the beginning, a few questions may be asked on neutral topics to encourage the child to give detailed narrative answers. This practice allows the interviewer to measure the child's memory and ability to describe past events.
8. Interviewers should use open-ended questions to avoid repeating specific, closed, and yes-no questions.
9. Installation of a video camera, closed circuit television or a system of audio recording is needed to clarify what the child said and how he or she spoke at the interview.
10. Measures should be taken to reduce the possibility of face-to-face contact with the defendant at the trial to protect the child from feeling intimidated. Installation of video cameras, audio systems and screens for testimony should be considered.
11. Legal aid for indigent and vulnerable persons, including children, should be established.
12. Regular and effective debriefing of officers dealing with cases of violence against children can help to reduce burnout.

IV. CONCLUSION

This topic has been repeatedly discussed internationally and locally; still it remains relevant and useful since it offers, through this working group, a pragmatic view of the judicial actors' experiences or innovations. Children are expected to take part in a process that many adults find difficult, confusing, and terrifying. Improving interviewing skill can help them to ease the process and encourage them to share the ultimate facts. Criminal justice officials need to understand the importance of properly interviewing child victims and witnesses. In this way, fact-finding protects all the parties involved and achieves the role of the criminal justice system.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

● *163rd International Training Course*

UNAFEI

The 163rd International Training Course



Left to Right:

Above

Ms. Tracy Liu (United Kingdom)

4th Row

Ms. Iwakata (Staff), Ms. Odagiri (Chef), Ms. Yamada (Staff), Ms. Hando (Staff), Mr. Ueki (Staff), Mr. Miyagawa (Staff), Mr. Ohno (Staff), Mr. Haneda (Staff), Mr. Ozawa (Staff), Mr. Furuhashi (Staff), Ms. Oda (Staff), Ms. Sato (Staff), Ms. Kita (JICA)

3rd Row

Mr. Hosono (Japan), Ms. Kobayashi (Japan), Ms. Sakurai (Japan), Ms. Noda (Japan), Ms. Nyamsuren (Mongolia), Mr. Nakamizo (Japan), Mr. Suiama (Brazil), Mr. Vipolchai (Thailand), Ms. Yusop (Malaysia), Ms. Sangviroon (Thailand), Mr. Khusanov (Uzbekistan), Ms. Liza (Bangladesh), Mr. Chanthapanya (Lao PDR), Ms. Ogaki (Japan), Ms. N' Goran (Cote d' Ivoire)

2nd Row

Mr. Fofana (Mali), Mr. Dorji (Bhutan), Mr. Akishino (Japan), Mr. Takai (Japan), Mr. Sharma (Nepal), Mr. Soe (Myanmar), Mr. Nguyen (Viet Nam), Mr. Almajali (Jordan), Ms. Yusof (Malaysia), Mr. Morsy (Egypt), Mr. Kumararatnam (Sri Lanka), Ms. Mwangi (Kenya), Mr. Majeed (Pakistan), Ms. Gichana (Kenya), Ms. Thoifa (Maldives), Mr. Dansoko (Guinea)

1st Row

Mr. Schmid (LA), Mr. Ito (Staff), Prof. Yamamoto, Prof. Minoura, Prof. Akashi, Prof. Watanabe, Dr. Sita Sumrit (Thailand), Director Senta, Deputy Director Morinaga, Prof. Yamada, Prof. Yukawa, Prof. Hirano, Mr. Jimbo (Staff), Mr. Shojima (Staff)

