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**Model Guidelines for the Effective Prosecution
of Crimes Against Children**

MODEL GUIDELINES FOR THE EFFECTIVE PROSECUTION OF CRIMES AGAINST CHILDREN

The Model Guidelines have been developed as a result of responses received from nineteen countries and are meant to be a practical instrument used in the prosecution of crimes against children and the treatment of child victims and witnesses in a manner which is respectful of their rights and needs, bearing in mind the different traditions of civil, common law and other jurisdictions. It is meant to assist:

- states in mobilizing their criminal justice systems;
- heads of prosecution units who are responsible for establishing policy; and
- individual prosecutors in their day to day practice.

The Model Guidelines seek to implement and build upon international human rights norms and standards that address the issues of children as victims and witnesses in the criminal justice system and specifically to ensure the practical application of these standards by prosecutors. The following instruments recognize the need for all aspects of the criminal justice system to promote regard for children as human beings and members of society with human rights:

- The *Convention on the Rights of the Child*¹ recognizes that children, by reason of their physical and mental development, need special safeguards and care;
- The *United Nations Guidelines for Action on Children in the Criminal Justice System*,² place emphasis on the special and protective role that prosecutors should play in cases involving child victims and the need to prevent further victimization of vulnerable children by the criminal justice system;
- The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*³ notes that all victims of crime are to be treated with compassion and respect for their dignity as well as calling for the judicial and administrative process to be responsive to the needs of victims;
- The *United Nations Guidelines on the Role of Prosecutors*⁴ affirm the important responsibilities of prosecutors to promote the administration of justice as well as considering the views and concerns of victims;
- The *United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice*⁵, provide for a comprehensive set of criminal justice strategies and measures to address all forms of violence against women and the girl child. In particular, prosecutors must take the primary responsibility for initiating prosecutions, and

¹ United Nations General Assembly resolution 44/25, annex, of 20 November 1989.

² United Nations Economic and Social Council resolution 1997/30, annex of 21 July 1997.

³ United Nations General Assembly resolution 40/34, annex, of 20 November 1985.

⁴ UN Doc. A/CONF.144/28/Rev.1 at 189 (1990)

⁵ United Nations General Assembly Resolution 52/86, annex, 12 December 1997.

ensure that girls subjected to violence have an opportunity to testify in court proceedings equal to that of other witnesses and that testifying be made as painless as possible; and

- **The *International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* reaffirm that the exercise of prosecutorial discretion should be as open as possible, consistent with personal rights, sensitive to the need not to re-victimize victims and should be conducted in an objective and impartial manner.**

I. GENERAL PRINCIPLES

- 1. Prosecutors must recognize that children are particularly vulnerable and therefore should do all that is in their power to ensure that child victims or witnesses are treated in a caring and sensitive manner throughout the prosecution process, taking into account age and level of maturity, and ensure that they are effectively protected.**

UN standards and norms. The need for children to be protected against all forms of exploitation because of their vulnerability and immaturity first appeared in the 1924 League of Nations *Declaration of the Rights of the Child*. The United Nations *Universal Declaration of Human Rights* adopted in 1948 proclaims that childhood is entitled to special care and assistance. The United Nations *Declaration of the Rights of the Child* (1959) further promotes the need to extend particular care to the child. The adoption of the United Nations *Convention on the Rights of the Child* in 1989 provides a clear statement of the rights of and special treatment for the child. The preamble of the *Convention on the Rights of the Child* reiterates the *Declaration* by stating that the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. The *Convention* also states that in all actions concerning children, the best interests of the child shall be a primary consideration. While these norms and standards recognize the vulnerability of children, one should be careful not to perceive children solely as passive and vulnerable beneficiaries of services.

- 2. Prosecutors must ensure that the rights of all child victims or witnesses are respected throughout every stage of the prosecution, including:**

- **the right to be treated with appropriate compassion and dignity;**
- **the right not to be discriminated against on the basis of being a child; and**
- **the right to be treated as a capable witness.**

UN standards and norms. The *Convention on the Rights of the Child* adopts a rights-based approach to the treatment of children setting out four general principles: non-discrimination; upholding the best interests of the child; the right to life, survival and development; and the respect for the views of the child. The *Convention* recognizes the child as a full human being, with integrity and personality and with the ability to participate fully in society. In treaty form and widely ratified, the standards contained in the *Convention* are binding and truly universal. While most provisions affirm earlier human rights standards, the *Convention* is the only binding instrument of its kind specifically intended to define the basic rights of children. The *Convention* further calls for the promotion of physical and psychological recovery and social rehabilitation of children who have been victims of any form of neglect, exploitation or abuse. The prosecutors must ensure that their role fosters the health, self-respect and dignity of the child. The *UN Guidelines for Action on Children in the Criminal Justice System* states that any measure established to treat child victims should ensure that they are treated with compassion and respect for their dignity.

- 3. Prosecutors must also ensure that the defendant's rights and the right to a fair trial are protected and respected. The special considerations required for child victims or witnesses do not diminish these rights but rather enhance the overall goal of ensuring justice.**

UN standards and norms. The United Nations *International Covenant on Civil and Political Rights* in Article 14 calls on States to ensure that all persons have the right to a fair trial. Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and public may be excluded from the trial in certain circumstances. The article proceeds to list the minimum guarantees to ensure a fair trial. The United Nations *Guidelines on the Role of Prosecutors* recognize that prosecutors play a crucial role in the administration of justice and therefore must promote the respect for and compliance with the right to a fair trial.

II. CASE MANAGEMENT AND TRAINING

- 4. Prosecution services should develop guidelines for the proper management of cases involving child victims and witnesses. In designating prosecutors to these kinds of cases, emphasis should be placed on:**

- **the prosecutor's experience with children and understanding of children's special needs;**
- **any special training received;**
- **prosecutors with the appropriate experience should handle cases involving an extra-territorial dimension in order to act as a point of contact for other jurisdictions.**

- 5. Prosecution services should make every effort to ensure continuity in cases involving crimes against children. Continuity allows the child to establish a rapport with the prosecutor and can enhance the effectiveness of a child's testimony. When permitted in the jurisdiction, continuity is provided by assigning a prosecutor at the earliest opportunity who remains on the case until its conclusion.**

- 6. Prosecutors handling cases involving children as victims or witnesses should receive specialized training in dealing with these cases. Emphasis should be placed on:**

- **knowledge of relevant human rights instruments;**
- **understanding the impact, consequences and trauma of crimes against children;**
- **knowledge of special measures and techniques to assist the child victim or witness in the criminal justice system;**
- **knowledge of cross-cultural and gender-sensitivity issues;**
- **learning interviewing techniques that minimize any trauma to the child while maximizing the amount and quality of information from the child;**

- **learning how best to present the evidence and how best to question child witnesses; and**
- **learning appropriate communication skills.**

UN standards and norms. Article 19 of the *Convention on the Rights of the Child* broadly calls on States to take protective measures and effective procedures to provide the necessary support for the child. In the management of cases involving crimes against children, ensuring well-trained, sensitive and knowledgeable prosecutors assigned at the earliest opportunity is one way to provide support for the child. The need for training is mentioned in many United Nations instruments, including the *Guidelines for Action on Children in the Criminal Justice System*, which emphasize training in dealing with cases where children are victims, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the *Guidelines on the Role of Prosecutors* and the *Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*. The *Guidelines for Action on Children* further call on States to consider establishing specialized units to deal with cases involving offences against children and also to establish a code of practice for proper management of cases involving child victims.

III. PRE-TRIAL DECISIONS

7. In jurisdictions where prosecutors have a discretion whether or not to proceed with prosecutions, the following should be considered when making such decisions in cases involving children as victims or witnesses:

- **crimes against children, by their very nature, should always be regarded as serious, and where there is sufficient evidence, prosecution should normally follow;**
- **when considering any alternative measures to prosecution, prosecutors should exercise caution.**
- **children should be considered as capable of credibly reporting events and of being credible witnesses;**
- **prosecutors must consider the protection of the child, including the risk of further trauma and victimization;**
- **prosecutors should make an early assessment of the ability of the child to give evidence and form an appreciation of the child's developmental level. This may involve meeting the child and reviewing videotaped and other evidence; and**
- **prosecuting cases involving repressed memory requires particular caution in determining whether to proceed. This may include consultation with expert witnesses or specialists to assist in making this determination.**

UN standards and norms. The norms applicable to this guideline come from various sources and are rather piecemeal. All human rights instruments contain equality and nondiscrimination clauses. Therefore it follows that children should not be considered as unreliable witnesses solely on the grounds that they are children. The protection of children from exploitation and harm, including re-victimization is stressed in numerous articles of the *Convention on the Rights of the Child*. A few instruments touch on the issue of alternative measures. The *Guidelines for Action on Children in the Criminal Justice System* calls on States to take measures, when appropriate, to prevent the settling of penal matters through compensation outside the justice system, when doing so is not in the best interests of the child. The *Guidelines on the Role of Prosecutors* also discuss alternative measures to the formal criminal justice system and calls upon

prosecutors to give due consideration to such diversion while fully respecting the rights of the suspect and the victim.

- 8. Any decision not to prosecute a case involving crimes against children and the reasons therefore should be recorded and retained for the purpose of review.**

- 9. In considering a request from a child, parent or guardian that proceedings be discontinued, prosecutors should recognize the complex factors underlying a child's reluctance to proceed with a prosecution. Such factors may include:**
 - the child's fear of the criminal process;
 - pressure or threats exerted by the accused or someone acting on their behalf;
 - pressure exerted by the family of the child and feelings of shame or loyalty;
 - cultural or community attitudes;
 - the child's fear arising from the trauma of the offence.

- 10. Prosecutors, in considering whether to stay or recommence proceedings or to proceed with plea resolution, should always reflect on how these decisions affect the rights or welfare of the child. The prosecutor should discuss the proposed plea resolution or stay of proceedings with the child victim, parent or guardian and, while their wishes do not determine the resolution, prosecutors should take them into consideration. Prosecutors should explain any decision in a manner that the child can understand.**

UN standards and norms. The *Convention on the Rights of the Child* provides that in all actions concerning children, the best interests of the child shall be a primary consideration. This is also provided for in the *Guidelines for Action on Children in the Criminal Justice System* that calls on States to ensure that child victims are provided with appropriate access to justice and fair treatment. It further provides that proceedings in criminal matters should not be removed from the justice system if it is not in the best interests of the child.

- 11. Children who engage in criminal activities through coercion by others who profit by their acts should be considered victims of exploitation rather than perpetrators of crime. Prosecutors should treat these children as victims and should actively pursue charges against the adults involved.**

UN standards and norms. *Resolution on the Instrumental Use of Children in Criminal Activities* (GA Resolution 45/115, 3 April 1991) recognizes the need to make justice personnel sensitive to those situations of social risk that cause children to be manipulated by adults into engaging in crime. Appropriate sanctions are to be applied against adults who are the instigators and authors of crimes, rather than against children involved who themselves are victims of criminality by virtue of their being exposed to crime.

- 12. Prosecutors should ensure that all decisions are made at the earliest opportunity. In particular, children should benefit from certainty about support measures.**

13. Where child victims or witnesses may be the subject of intimidation and threats, prosecutors should seek either detention or appropriate conditions of pre-trial release.

14. Prosecutors should do all that is in their power to ensure that contact between the child victim and the offender is prevented during the process of investigation, prosecution and trial.

UN standards and norms. The *Guidelines for Action on Children in the Criminal Justice System* call for measures to ensure the safety of child victims and witnesses from intimidation and retaliation. They further provide that direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings as much as possible.

IV. CASE PREPARATION

15. Prosecutors should ensure that cases involving crimes against children are given priority in trial scheduling and that unnecessary delays are avoided at every stage of the prosecution.

UN standards and norms. The *Guidelines for Action on Children in the Criminal Justice System* call for measures to be taken to minimize delays in the criminal justice process.

16. Prosecutors should determine whether any expert evidence is required. This may include medical evidence, psychological evidence or evidence regarding the dynamics of violence to children or the effect of sexual abuse on children.

17. In most cases involving crimes against children the victim's testimony is vital and prosecutors should develop techniques which lessen the child's trauma and ensure that the testimony is reliable and of good quality by:

- **assessing the ability of the child to give evidence;**
- **appreciating the relevant language skills and conceptual ability of the child;**
- **being informed about cultural differences and the impact they may have on the testimony of the child; and**
- **determining whether an interpreter is necessary.**

UN standards and norms. Article 19 of the *Convention on the Rights of the Child* broadly calls on States to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of violence and exploitation. Such protective measures are to include effective procedures in judicial proceedings that provide the necessary support for the child. Procedures should also be established to assist in the identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.

18. Prosecutors, working in conjunction with other relevant agencies, should ensure that children are prepared for court by familiarizing them with the criminal process and their role in it. The prosecutor must ensure that the children and parents or guardians are kept informed about the timing and progress of the proceedings.

UN standards and norms. In looking at the needs of the child victim and witness, the *Guidelines for Action on Children in the Criminal Justice System* call on States to ensure that the child victim is informed of his/her role and the scope, timing and progress of the proceedings, especially where serious crimes are involved. States are encouraged to develop child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence.

V. TRIAL PROCEDURES

19. Prosecutors should facilitate the development, availability and the use of procedures to assist the child's testimony. Prosecutors should inform themselves of available procedures in their jurisdiction, consult with the child and assist the child in making an informed decision regarding the use of these procedures, and apply to the court in a timely manner to have these procedures in place for the child during the trial. These procedures vary from jurisdiction to jurisdiction according to law and practice and may include:

- **allowing a videotaped statement of the child's evidence;**
- **the use of closed circuit television;**
- **alternative arrangements for giving evidence, such as screens;**
- **allowing for the presence of a support person or child advocate while the child is giving evidence;**
- **considering the use of an intermediary to assist the child witness to give evidence;**
- **prohibiting the defendant from cross-examining the child victim in person;**
- **objecting to aggressive or improper cross-examination by the defence;**
- **closing the court to the public;**
- **a media ban; and**
- **reducing the formality of the courtroom, such as removal of advocates' robes.**

UN standards and norms. The *Convention on the Rights of the Child* guarantees a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. For this purpose, the child is to be provided the opportunity to be heard either directly or through a representative. The *Guidelines for Action on Children in the Criminal Justice System* recognizes that child witnesses need assistance in the judicial process. The *Guidelines* specifically mention that the identification of the child victim in the media should be prohibited where necessary to protect the privacy of the child. Where prohibition is contrary to the fundamental legal principle of States, such identification should be discouraged. The *Guidelines* also calls on prosecutors to apply more child friendly practices and calls on States to amend their penal procedural codes to allow for the videotaping of the child's testimony and its presentation in court as official evidence.

VI. SENTENCING

20. Prosecutors, depending on their role in the sentencing process, should:

- **seek sanctions that are commensurate with the seriousness of the offence and the harm caused;**
- **advise the court, in appropriate cases, of any aggravating circumstance, including whether the case involved an element of breach of trust or whether the accused had a special relationship with the child;**
- **ensure that the safety and well being of the child victim is a primary consideration in making any submissions on sentencing;**
- **consider whether expert testimony is required, for example, on pedophilia.**
- **ensure that the court takes into account the severity of the physical and psychological harm experienced by the child. This may include oral or written victim impact statements.**

UN Standards and norms. The *Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice* call on States to review and evaluate their sentencing policies in order to meet the goals of: holding offenders accountable for their acts related to violence against women; stopping violent behavior; taking into account the impact on victims and their families; and promoting sanctions that are comparable to those for other violent crimes. They further promote considering in the sentencing process the severity of the physical and psychological harm and the impact of victimization, including through the use of victim impact statements where such practices are permitted by law.

VII. SERVICES TO THE CHILD AND MULTI-DISCIPLINARY TEAMS

21. Prosecutors should make every effort to adopt a multi-disciplinary approach by familiarizing themselves with services available to children, such as victim support, advocacy, economic assistance, counseling, health and social services.

22. Prosecutors should take the initiative in a multi-disciplinary team approach to ensure that the response to cases involving children is coordinated and effective.

23. Prosecutors should contact the appropriate authorities to ensure the safety and well being of the child, when they believe that a child victim or witness is in need of protection.

24. Prosecutors, at all stages of the case, should consider any special needs of the child victim or witness and facilitate contact with and make use of relevant agencies.

UN standards and norms. The *Guidelines on the Role of Prosecutors* call on prosecutors to strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies

or institutes in order to ensure the fairness and effectiveness of prosecution. The *Guidelines for Action on Children in the Criminal Justice System* note that child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counseling, health and social services, social reintegration and physical and psychological recovery services. It notes also that special assistance should be given to those children who are disabled or ill.

VIII. INTERNATIONAL COOPERATION AND ASSISTANCE

25. Prosecution services should be encouraged to establish cooperative mechanisms for the purpose of facilitating the prosecution of transnational offences involving children as victims.

26. Prosecutors should collaborate across borders in prosecuting offenders involved in trafficking or other transnational crimes involving children as victims.

UN standards and norms. The *Convention on the Rights of the Child* and numerous United Nations plans of action, such as the *Programme of Action for the Prevention of the sale of children, child prostitution and child pornography*, and the *Programme of Action on the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others*, call for strong cooperation between States and all sectors of society both at the national and international level.

IX. IMPLEMENTATION AND MONITORING

27. Prosecution services should utilize these Model Guidelines as a basis for developing written policies, standards and protocols aimed at assisting child victims and witnesses involved in the criminal justice system.

28. Prosecution services should, together with other agencies in the criminal justice system, periodically review and evaluate their role in the criminal justice system in ensuring the effective prosecution of crimes against children and the protection of the rights of the child.

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