

**ANNOTATED VERSION**

**MODEL GUIDELINES FOR THE  
EFFECTIVE PROSECUTION OF CRIMES  
AGAINST CHILDREN**

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*The Prosecutor in the New Millenium*

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## MODEL GUIDELINES FOR THE EFFECTIVE PROSECUTION OF CRIMES AGAINST CHILDREN

### *THE ANNOTATED VERSION – Work in Progress*

*The original intent in drafting Model Guidelines for the Effective Prosecution of Crimes against Children was to provide a practical tool to assist States; heads of prosecution units and individual prosecutors to ensure protection and respect to child victims and witnesses in the criminal justice system. In keeping with this intention, the annotated version contains examples from different jurisdictions as to how the guidelines can be practically implemented in various jurisdictions. As a “work in progress”, this document is a backgrounder for the workshop on the Model Guidelines held during the 7th IAP conference (Sydney Australia). In order to ensure a practical tool that represents all criminal justice legal traditions from all regions, more information is required, particularly from the African, South America and Middle Eastern regions and from countries with a civil law tradition. We hope that the workshop will encourage the exchange of and sharing of information that can contribute to the annotated version being a practical tool.*

**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* 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*, 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* 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* 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*, 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 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.**

*The role of prosecutors varies from jurisdiction to jurisdiction. According to the UN Survey (5<sup>th</sup> UN Survey of Crime Trends and Operation of Criminal Justice Systems (1990-1994)), “prosecutor refers to government officials whose duty is to initiate and maintain criminal proceedings on behalf of the state against persons accused of committing a criminal offence”. Prosecution of cases may be initiated by the police, by the Office of Public Prosecutor or by the Procurator, to name a few. Countries differ in whether a prosecutor is a member of a separate agency, or a member of the police or judiciary. In countries with a common law tradition, the role of the prosecutor is seen by examining the structure of the office of public prosecutor. In countries with a civil law tradition, there is more emphasis on the investigative stage and the office of the Procurator. Typically in civil law tradition jurisdictions, prosecution involves three agents: the judicial police, procurators (prosecutors), and examining magistrates (judges).*

*Whatever systems prosecutors work under, be that inquisitorial or accusatorial procedures or whether under regimes of prosecutorial discretion or strict liability, all prosecutors are guided by the Convention on the Rights of the Child, which asserts that “the child, by reason of his or her physical and mental immaturity need special safeguards and care”.*

## GENERAL PRINCIPLES

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.

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 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* state that any measure established to treat child victims should ensure that they are treated with compassion and respect for their dignity.

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.**

*The General Principles are based on the core norms elaborated in international human rights instruments that address the rights of the child and the right to a fair trial. These principles recognize that lengthy investigation and the public trial process can be traumatic for a child. Various jurisdictions have emphasized the vulnerability of children as witnesses in criminal proceedings, either through alternative arrangements or through greater sensitivity, which are articulated in more detail below. Prosecutors must recognize and attempt to deal with the special concerns and needs children have going to court.*

*Terminology used in the Model Guidelines reflects the differences found in various jurisdictions in implementation. The definition of “child”, even in one jurisdiction, may vary depending on whether one is speaking of the age of criminal responsibility, or consent, or the availability of various child friendly procedures. However, under the Convention on the Rights of the Child, a child means “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. While various jurisdictions approach this issue differently, it is essential to treat child victims and witnesses in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age and level of maturity. While crimes against children are not new, our understanding of them is continually changing, from abuse in the family and in institutions, to organized sexual abuse, including child prostitution, sex tourism and child pornography. Some countries have differing levels of “legal” violence to children, characterizing such violence as allowable punishment.*

*Children’s rights are a relatively new concept. Therefore it is important that jurisdictions recognize that children are to be regarded as human beings and full members of society with full human and legal rights, not simply as objects to control or protect. Prosecutors must see child victims and witnesses as having the right to be treated with compassion and dignity, not just because adults think it would be nice but because children are entitled to such treatment. All children’s rights must be ensured, including children who are citizens of the state and immigrants, legal and illegal.*

*In tandem with the rights and needs of the child is the need to protect the interests of the accused person in order to ensure the right to a fair trial. While there is a duty to ensure that children are treated with special care because of their special need, the balance of fairness requires that the accused person’s rights be not in any way diminished by the special procedures required for children. The argument that special considerations for children in court may conflict with the defendant’s right to a fair trial should be taken seriously. However, often these special considerations can enhance the reliability of evidence from the child, which in turn enhances the overall goal of ensuring the right to a fair trial.*

*The Crown Prosecution Service Policy in England and Wales provides a good example of how general principles underline specific practical procedures to ensure the effective prosecution of crimes against children. Three key principles: (1) Expedition. acknowledgement that delays can cause unnecessary distress to child witnesses. Prosecutors must do all they can to ensure that cases are expedited through the court process. (2) Sensitivity. special sensitivity is required in handling child cases because of the additional stress often experienced by the young witnesses, especially those who have suffered abuse. Prosecutors are therefore urged to use all available procedures to assist children to give their evidence. (3) Fairness. consistency of approach when evaluating the evidence of adults of adults and children means that there should be no artificial hurdles constructed when considering the reliability of a child’s evidence. It should be considered no less reliable simply because it comes from a child.*

## CASE MANAGEMENT AND TRAINING

**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.**

*General.* This Model Guideline recognizes the need to establish some criteria for the management and the assignment of prosecutors to these cases and sets out minimum criteria that should be used. The establishment of detailed criteria and the case management structure is left to the local jurisdiction to take into account local situations and resources.

*Case Management.* The development of guidelines for the proper management of these cases has been undertaken differently in various jurisdictions. In some jurisdictions, the guidelines have been developed by the Prosecution Unit responsible for establishing policy, whereas in others, Working Groups or Standing Committees specifically on vulnerable witnesses or child witnesses have been created.

- *In Australia (New South Wales), the Office of the Director of Public Prosecutions (DPP) has developed a “Child Sexual Assault Policy and Guidelines Manual” which aims at providing a complete and self-contained guide to the prosecution of child sexual assault matters. It contains policy; guidelines; procedural aspects; best practice; information on factors affecting child victims; and relevant legislation. For indictable matters, which includes all child sexual assault cases, the Office of the DPP has implemented a “Strategy for the Preparation of Defended Indictable Matters”. This strategy lists 19 procedures for the prosecutor to follow in these cases, which must complement the individual case management approach.*
- *In Azerbaijan, a special department on children functions in the Prosecutor’s Office of the Republic of Azerbaijan (the head prosecutor’s office), and monitors the indicted category of cases involving crimes against children throughout the whole country and prepares the methodical recommendations for local offices and prosecutes the most serious crimes. (submission by Fikrat Mammadov, Deputy Prosecutor General of the Republic of Azerbaijan)*
- *In Canada, the federal government has developed the Justice Canada’s Crown Policy Manual which includes guidelines on the decision to prosecute and plea and sentence negotiations. It is the provincial jurisdictions that have developed specific guidelines on the prosecution of crimes against children. In British Columbia, the Core Policy “Child Abuse – Physical and Sexual” and the Practitioners Manual “Prosecution of Child Abuse” contains Sample Investigative Checklist and Sample Case Management Materials. In Ontario, the Crown Policy Manual has policies dealing with “Child Abuse – Physical and Sexual” and “Victim/Witness with special needs”.*
- *In England and Wales, there are various agreements involving good practices, including “The Statement of National Standards of Witness Care International Centre for Criminal Law Reform and Criminal Justice Policy in the Criminal Justice System”(1996) and “CPS Service Standard on According Priority to Child Abuse Cases” (1994) and the “PDH Checklist for Children’s Cases”.*
- *Hong Kong has issued recommendations of the Technical Working Group on Vulnerable Witnesses and the Practice Directive issued by the Chief Justice. (submission by I. Grenville Cross, QC. SC., Director of Public Prosecutions)*
- *In Peru, the “Children and Adolescent Code” comprises the principles that govern the protection and rights for children and adolescents.(submission by Blanco Nelios Colan Maguire Comision Ejecutiva del Ministerio Publico)*

- *In **Scotland**, the Procurator Fiscal Service has a Standing Committee on Children whose responsibilities are: (i) to investigate, promote and provide instruction and guidance on policy issues involving children to members of the Service; (ii) to provide general advice on all child related matters to members of the Service; (iii) to provide advice to legislators and to receive all legislation involving child issues; (iv) to organize training for members of the Service, and providing inter-agency training; and (v) to represent the Service at meetings and conferences in child related areas. (submission by Morag McLaughlin, Crown Agent's Office)*
- *In the **United States**, the National Centre for Prosecution of Child Abuse, the American Prosecutors Research Institute and the National District Attorneys Association have developed a manual on "Investigation and Prosecution of Child Abuse" which provides a comprehensive guide to handling cases involving crimes against children. This guide establishes standards that promote uniformity within a prosecutor's office by helping to assure that similarly situated defendants are treated similarly no matter who handles the case. These standards emphasize the need to prosecute crimes against children with the same vigor as crimes against adults.*

**Specially trained prosecutors.** One way to ensure implementation of this guideline is to ensure that specially trained prosecutors should be assigned these cases. Policies for assigning these cases by the head or chief prosecutor have been developed in some countries. Criteria for assigning these cases vary from jurisdictions and include: the prosecutor's desire to prosecute these cases; experience with children or knowledge of the special needs inherent in these kinds of cases; and trial experience. In some jurisdictions, prosecutors with special interest are preferably assigned these cases, but this is not a fixed rigid rule. Gender of the prosecutor is not routinely considered in assigning these types of cases. While some female victims relate better to female prosecutors, this is not always the case. However, where a child complainant expresses a preference with respect to the gender of the prosecutor, this preference will usually be honored. One prosecutor expressed the concern that prosecuting these types of cases on a continuous basis may result in burn out and suggested that prosecutors with the appropriate level of competence be rotated in order to avoid tunnel vision.

- *In **Canada**, provinces have developed policies and directives relating to the assignment of prosecutors to cases involving crimes against children. For example in Nova Scotia the directive entitled "Child Abuse Prosecuting and the Crown Attorney" notes that crowns with both special interest and training should conduct these cases.*
- *In the **Czech Republic** the chief prosecutor is responsible for ensuring specialised prosecutors who are in charge of prosecuting crimes against children cases. (submission by Jaroslava Novotna, Supreme Prosecutor's Office of the Czech Republic).*
- *In **England and Wales**, the Crown Prosecutor Service strongly recommends local managers to establish specially designated caseworkers and lawyers with appropriate experience and training to advise on and handle child witness cases. Lawyers and caseworkers with sufficient general prosecution experience will be able to be designated to deal with child cases by Area managers who are also satisfied that they have an aptitude and interest in these types of cases. These lawyers will receive special training. (submission by Deborah Turnbull, Crown Prosecution Service).*
- *In **Finland**, in larger cities, cases are usually allocated to prosecutors specializing in violence crime. (submission by Raija Toiviainen, Office of the Prosecutor General).*
- *In **Japan**, while there are no special units or written guidelines, the practice is that these cases are assigned to the fittest prosecutors in terms of experience and character. (submission by Eiji Ito, Prosecution Service of Japan).*
- *In **Malawi**, where the victim is of a particular sex, the prosecutor must be of the same sex, in order to make the victim feel more comfortable. (submission by Kamudoni Nyasulu, Director of Public Prosecutions for Malawi).*
- *In **South Africa**, the National Guidelines for Prosecutors in Sexual Offence Cases note: A specialist prosecutor is the ideal person for this type of case. In offices where there is only one prosecutor, the burden will obviously fall on this person. However, in big offices prosecutors must be selected or should be identified to handle these matters. These prosecutors are expected to exhibit the necessary interest and sympathetic attitude that such cases require.*
- *In **Scotland**, a dedicated resource team has been developed which undertakes to assist in the investigation and prosecution of serious crimes against children. These members receive additional*

*specialized training in child interview techniques and basic child development. (submission by Morag McLaughlin, Crown Agent's Office)*

**Specialize prosecutorial units.** *The debate on whether prosecution services should consider establishing specialized units to deal with cases involving crimes against children is reflected in various jurisdictions. Certain jurisdictions – do not have special prosecutorial units. New South Wales, Australia decided against these units, pointing out that cases involving crimes against children should be rotated to avoid tunnel vision, staleness or weariness with this type of work. Others, such as the Director of Public Prosecutions for Malawi, Kamudoni Nyasulu, felt that these units are desirable but not practical in small jurisdictions. However several countries, such as Germany and Hungary, do have child protection units that handle such prosecutions.*

- *In **Germany**, crimes against children are dealt with by special prosecutorial units. Therefore all criminal offences involving children under 14 years of age are assigned to a special prosecutorial unit. (submission by Hans-Joerg Albrecht, Max-Planck Institute).*
- *In **Hong Kong**, the Prosecutions Division of the Department of Justice has a Vulnerable Witnesses Team consisting of twelve counsel. They give advice and prosecute cases involving vulnerable witnesses, which includes child witnesses, mentally handicapped witnesses and witnesses in fear. (submission by I. Grenville Cross, QC. SC., Director of Public Prosecutions)*
- *In **Hungary**, there are specialized prosecutorial units to proceed with juvenile cases and some crimes against children cases organised on county and metropolitan levels. (submission by Laszlo Venzl, Hungarian National Association of Prosecutors).*
- *In **South Africa**, there are a few specialist rape courts, that also deal with child-abuse matters which have been formally established and include specialized prosecutorial units. At other locations, these units exist informally. (submission by Retha Meintjes, National Union of Prosecutors of South Africa).*
- *In the **United States**, many large (over 250,000 population) jurisdictions will have an exclusive specialised prosecutorial unit for crimes against children. Midsized jurisdictions (between 25,000-249,000) may have a special unit but may alternatively have one or two prosecutors designated to handle these cases. (submission by Susan Kreston, National District Attorney's Association).*

**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.**

***General.** This Model Guideline recognizes that continuity is extremely important, especially from the point of view of the child. Continuity ensures a sense of security and support that can enhance the effectiveness of the child's testimony. Prosecutors should make every effort to ensure continuity and to minimize the number of people who have contact with the child. Cases involving crimes against children should not be randomly assigned to prosecutors in the office. Many jurisdictions have a policy for vertical prosecution, where a prosecution file is assigned at the earliest opportunity and handled by the same prosecutor from beginning to end. Vertical prosecution is meant to ensure consistency and continuity in the handling of these cases. Further, it is recognized that the effectiveness of a child's testimony depends to a large extent upon the rapport established with the prosecutor and that having one prosecutor involved right from the beginning goes along way to establish such rapport. In some countries, for example Scotland, vertical prosecutions are difficult in its system as the local prosecutor is involved in the initial procedure and preparation and a separate high court prosecutor prosecutes the case at trial. However, where it is ascertained that a particular case is especially difficult or sensitive, a particular prosecutor may be appointed, having regard to the experience and expertise of the prosecutor.*

- *In **Canada**, the British Columbia Crown Counsel Manual on Child Abuse – Physical and Sexual notes: Every effort should be made to have child abuse cases handled by the same crown from beginning to end. Crown should be assigned to a case at the earliest opportunity, before the first appearance or judicial interim release hearing, and should remain with the case until final disposition at trial. While it is recognised that in some instances circumstances may make vertical prosecution impossible this policy is meant to ensure consistency and continuity in the handling of these cases. This is particularly*



*important in prosecutions involving child witnesses.... Where a vertical prosecution is not possible, careful transition from one prosecutor to another is critical. Wherever possible, a crown that has developed expertise in handling child sexual abuse cases shall be assigned to those cases.*

- *In South Africa, the National Guidelines for Prosecutors in Sexual Offence Cases note: The principle is that the prosecutor who first handles the case should follow it through the trial stage until its conclusion. Changing prosecutors during the course of the trial must be avoided at all costs.*
- *United States – the manual, “Investigation and Prosecution of Child Abuse”, 2<sup>nd</sup> ed. highly recommends vertical prosecution of child abuse cases, meaning that the same prosecutor who makes the charging decision should handle all subsequent phases of the case including witness preparation, pre-trial motions, trial and sentencing. The manual further calls for the filing of the charge to be made by or with the consultation of prosecutors who have experience and training in child abuse cases.*

**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.**

*General. This Model Guideline considers that training is a high priority and that prosecution services should make a special effort to define the elements of specialized training.*

- *In Australia, the New South Wales office of the DPP has a unit: Training and Development that conducts courses for prosecutors in the following topics: child sexual assault issues; grief and loss workshops; aboriginal cultural awareness training; conducting conferences with witnesses; domestic violence workshops; victim issues workshops; and continuing legal education lectures in relation to the Interagency Guidelines and changes in relation to legislation dealing with child victims. (submission by Nicholas Cowdery, Director of Public Prosecutions).*
- *In Canada, the various provincial jurisdictions provide specialised conferences; specialised written material, such as policy, practice bulletins, manuals, protocols as well as availability of specialised crown resource units and electronic research. An example is the “The Child Abuse Prosecutions and the Crown Attorney Program” manual which is a two day training programme for prosecutors who deal with child abuse cases. This was developed by the Nova Scotia Public Prosecution Service and the Family Violence Prevention Initiative. In British Columbia, the Ministry of Attorney General developed A Manual for Practitioners – Child Witness Preparation which targets prosecutors, victim service workers, police and social workers.*
- *In Denmark, newly appointed prosecutors will, during their first three years, receive a training course comprising of six modules, one covering interviewing of witnesses. (submission by Henning Fode, Director of Public Prosecutions).*
- *In England and Wales, the Crown Prosecutor Service developed a national 2-day training course on how to handle child witnesses. It is Crown Prosecution Service Policy that all staff who handle child witnesses are familiar with the booklet and video called “A Case for Balance” developed by National Society for the Prevention of Cruelty Against Children and Childline. This is aimed at judges and lawyers and demonstrates good practice in child cases. (submission by Deborah Turnbull, Crown Prosecution Service).*
- *In Finland, the development of prosecutor training has recently moved to a direction where certain sectors, one being cases of sexual offences against children, will require designated prosecutors with specific expertise who have received advanced training. (submission by Raija Toiviainen, Office of the Prosecutor General of Finland).*

- *In Japan*, public prosecutors take various training programs in the Research and Training Institute of the Ministry of Justice and are also taught by senior prosecutors through on the job training. (submission by Eiji Ito, Prosecution Service of Japan)
- *In Thailand*, there is internal and external training courses. As for internal, it is to develop special techniques and skills necessary for the effective investigation, prosecution and conducting courtroom proceedings of this kind of case. With regard to external training, it is to prepare the prosecutors to work with other agencies in the disposition of child abuse cases. (submission by Trakul Winitnaiyapak, Office of the Attorney General)
- *In South Africa*, prosecutors should received specialised training prior to having to prosecute these matters. Training should at least include: identifying the need for expert testimony and how to present such testimony; what experts are available and on what kinds of topics; what special measures are available/provided for and what to do to implement these; how to deal with the child victim and what should/may be done to make such witness feel at ease; what the differing roles of other agencies involved are and how to best cooperate with them; what evidence might serve as corroboration; how best to exercise the prosecutorial discretion, taking into account relevant factors; and how to cope with the stress such prosecutions necessarily entails. (submission by Retha Meintjes, National Union of Prosecutors of South Africa).
- *In the United States*, the American Professional Society on the Abuse of Children provides training courses to prosecutors. Topics include: developing courtroom skills for expert testimony in child maltreatment cases; advanced medical evaluation of physical or sexual abuse; coordinated multidisciplinary approaches. The American Prosecutors Research Institute and the National Centre for the Prosecution of Child Abuse provides training for prosecutors involved in child abuse cases. Also in the United States the National Indian Justice Centre has developed “The Child Sexual Abuse Training Manual” which offers information necessary to effectively handle sexual abuse cases in Indian Country. (International Bureau for Children’s Rights “Final Report – Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System”, 2001)

**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.**

## **PRE-TRIAL DECISIONS**

**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.

*General.* In most jurisdictions, prosecutors do not act on behalf of any specific victim, but represent society and a wider public interest and must remain independent from political or public pressure. In common-law tradition jurisdictions, prosecutors exercise discretion and the principles that govern the exercise of such discretion are usually set out in policies, codes, guidelines or directives. Generally, the discretion as to whether or not to proceed with a prosecution, is guided by whether the available evidence would allow for a reasonable chance of conviction and whether the public interest required the case to be prosecuted. In civil law tradition jurisdictions the prosecutor is obliged to bring a charge based on the results of the investigator's recommendation. In some jurisdictions there is statutory grounds for prosecutors to decide not to bring a charge, or waiver of prosecution (such as in Finland and Denmark). Where the public prosecutor may decide not to prosecute a case under conditions defined in the legislation, normally the Ministry of Justice is authorised to set up non-prosecutorial guidelines (an example being in Germany).

**Serious nature of crimes against children.** When there is sufficient evidence, the public interest is then analyzed to determine whether the case should be prosecuted. In some jurisdictions, policies, codes or protocols specifically address the public interest in prosecuting certain crimes against children.

- In **Canada**, the *Child Abuse Protocol: Ottawa-Carleton* provides guidance to prosecutors - abuse of children is an unacceptable act which should be prosecuted when prosecution is in the best interests of the child and the community. In the *Ontario Crown Policy Manual: Child Abuse - Physical and Sexual* it states that these prosecutions are to be handled with diligence and vigor.... Civilized society views crimes against children with abhorrence.
- In **England and Wales**, the *Code for Crown Prosecutors* sets out relevant factors for analyzing the public interest tests as including: the defendant being in a position of authority or trust; the victim is vulnerable, put in considerable fear, of has suffered personal attack, damage or disturbance; where there is marked difference in age (chronological or stage of development) between the victim and the defendant; or if there is any element of corruption... Public interest factors relevant to cases involving children as victims are likely to provide a balance in favor of prosecution in terms of public interest. However, cases which do not pass the evidential test cannot be prosecuted no matter how serious the offence is or how overwhelming in favor of prosecution the public interest factors are. Modifications to procedures in cases involving child victims and witnesses have therefore focused on increasing the

prospects of witnesses being able to give their evidence to the court, whilst safeguarding the fairness of the proceedings for the accused.

- In **Germany**, where the public prosecutor has discretion to waive a prosecution, the conditions are defined in the Criminal Procedural Code, which is quite narrow. One commentator wrote that most crimes against children, especially sexual offences will not fall under the scope of this statute and would be prosecuted. (submission by Hans-Joerg Albrecht, Max-Planck Institute).
- In the **United States**, the presumption is that if there is sufficient evidence, it is in the public interest to bring the charge so that the case can be heard in court. (submission by Susan Kreston, National District Attorney's Association)

**Diversion.** In jurisdictions that allow diversion, prosecutors should exercise extreme caution when considering alternative measures. At a minimum, prosecutors should consult with the victim and parent or guardian and explain the process; ensure that there is no apparent history of abuse; and ensure that the offence is not considered to be of a serious nature as to threaten the safety or tolerance of the community. In some jurisdictions, there is a debate surrounding the use of alternative measures (such as diversion schemes) in cases dealing with child victims. The trend in some jurisdictions for restorative justice and diverting matters from the formal criminal justice system has many advocates.

- In **Australia** (New South Wales) the Pre-trial diversion of offenders program offers a treatment program for parental/de fact child sexual assault offenders, where certain categories of child sexual assault offenders are given a sentencing option of entering into a 2-3 year treatment programme. (Pre-trial Diversion of Offenders Act (NSW) 1985)
- In **Canada**, the Ontario Crown Counsel Policy Manual on Child Abuse – Physical and Sexual - provides that: Offences involving child abuse are serious and as a general rule, these cases should not be recommended for diversion. Counsel should consult with regional crown before making a decision to divert in child abuse cases.
- In the **Czech Republic**, the various forms of diversion do not apply to those crimes that are endangered by the higher penalties, over 5 years imprisonment. (submission by Jaroslava Novotna, Supreme Prosecutor's Office of the Czech Republic).
- In **South Africa**, the process of diversion is not legally prescribed but does occur at an informal level and usually when the offender is a youth. In cases of adult sexual offenders, cases are seldom if ever diverted. A Director of Public Prosecutions may decide to divert in exceptional cases, such as where the offender acknowledges the offence, agrees to undergo therapy and to comply with certain conditions and where this will be in the public interest. (submission by Retha Meintjes, Society of State Advocates of South Africa)

**Capable witnesses.** In looking at the sufficiency of evidence, children should generally be viewed as capable of credibly reporting events and of being credible witnesses. Children are often seen as unreliable witnesses which can lead to their complaint being disbelieved or ignored. A child should not be barred from testifying because of his or her age, but this is often the case where jurisdictions have competency requirements. Some legislations enable children to give “unsworn” evidence in court.

- In **Australia** (New South Wales) there is no age limit as to who can give evidence; what is necessary is for the court to establish if the witness is competent to give evidence. A person who is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence is not competent to give sworn evidence. However, the person can give unsworn evidence if the court is satisfied that he or she understands the difference between the truth and a lie. A person who is incapable of giving a rational reply to a question about a fact is not competent to give evidence about the fact, but may be competent to give evidence about other facts. (Evidence Act (NSW), 1995 s. 13)
- In **Canada**, according to the Canadian Evidence Act, a child may testify on promising to tell the truth if they can communicate the evidence which is determined by looking at the capacity to observe, recollect and communicate.
- In **England and Wales**, following the Home Secretary's 1998 Report – Speaking Up For Justice, the laws were amended to allow a child under 14 to give evidence if the court is satisfied that the child is able to give “intelligible testimony”. Using caution to assess the credibility of the child's testimony provides more flexibility and reflects an appreciation to the varying narrative forms that children use at different ages. This reflects an acceptance that the testimony of young children may be just as reliable as that of their elders. (Section 33A of the Criminal Justice Act 1988 as inserted by s. 52 of the

*Criminal Justice Act 1991 and amended by Schedule 9 of the Criminal Justice and Public Order Act 1994)*

- *In **Malawi**, the Director of Public Prosecutions states that there should not be undue emphasis on sworn testimony of the child. (submission by Kamudoni Nyasulu, Director of Public Prosecutions)*
- *In **Scotland**, the evidence of children is admissible if the child has sufficient intelligence to understand the obligation to speak the truth. There is no age limit fixed by law. (Criminal Procedure (Scotland) Act 1995).*

**Protection of children.** *In some jurisdictions, if at any point the prosecutor is satisfied that the proceedings are simply too traumatic for the child’s meaningful participation or that the proceedings pose a real risk of psychological or other harm to the child, then the question of continuing with the proceedings will be reconsidered.*

- *In the **Czech Republic**, the Criminal Proceedings Code states that in hearings where a witness is under 15 years of age, repetition of the facts can negatively influence the mental and moral development of that person and therefore should be carefully considered. (submission by Jaroslava Novotna, Supreme Prosecutor’s Office of the Czech Republic)*
- *In **Malawi**, the Director of Public Prosecutions states that the prosecutor should only proceed with the case where it is very grave and that the repeated trauma of reliving the crime is outweighed by the needs for redress. (submission by Kamudoni Nyasulu, Director of Public Prosecutions)*
- *In **Thailand**, the best interest of the child is considered to be of utmost importance. However, public interest and parent interest will also be taken into consideration. (submission by Trakul Winitnaiyapak, Office of the Attorney General)*
- *In **South Africa**, the best interest of the child is of paramount importance. Therefore, the discretion not to prosecute should be exercised where too much agony and distress will be caused to the child involved. (submission by Retha Meintjes, Society of State Advocates of South Africa)*

**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.**

**General.** *In reflecting good practice in protecting all parties, this guideline recognizes the importance of such a practice in cases dealing with child victims. These cases often involve complex issues and transparency and accountability are particular important to maintain public confidence. Therefore, decisions should be recorded and available for review in accordance with established procedures. Certain jurisdictions require that a prosecutor who is refusing to prosecute a case involving a child victim should justify his or her decision.*

- *In **Canada**, the crown counsel policy manual has been developed in most provinces in directives, for example, in the Nova Scotia Policy Directive on Exercise of Prosecutorial Discretion states: When a prosecution is being terminated, a notation shall be placed on the file indicating the reasons why the prosecution is being terminated. In cases where there was evidence which could sustain a conviction but the crown is considered terminating the prosecution in the public interest, the crown shall consult with the Associate Regional Crown Attorney.*
- *In the **United States**, the manual on “Investigation and Prosecution of Child Abuse” states: many prosecutors’ offices notify relevant parties when deciding not to prosecute and set out their reasons in writing. This serves several purposes: the police and child protection service worker will learn how to correct any mistakes and improve on the ways investigation is done; if the prosecutor has made a mistake in judgement or is misinformed, his communication gives a chance to correct the error; the child and parent deserve to know the decision and the reasons.*

**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; and**
- **the child’s fear arising from the trauma of the offence.**

*General.* This guideline recognizes the complex factors that can affect a victim’s willingness to cooperate. Many jurisdictions are faced with the issue of how to deal with reluctant child witnesses and victims. All child witnesses will be reluctant to some degree. The children’s fears about the criminal justice process might be based on not knowing or understanding the process. There is a need to provide support and information of the procedure to ensure that reluctance is not based on that. In order to address this reluctance or fear, prosecutors should meet with the child witness as often as is practical so as to answer questions for the child, increase the comfort of the child and establish rapport. These meetings are for the purpose of establishing rapport with the child and not to review their evidence at each meeting. Prosecutors may have to explain to the victim that despite their reluctance, society has an interest in prosecuting offenders who commit crimes against children. Careful consideration should be given to any request by a victim that proceedings be discontinued. Requests properly considered and freely made should be accorded significant weight.

- *In Australia (New South Wales), the Office has implemented a “Strategy for the Preparation of Defended Indictable Matters”. Under this strategy, prosecutors must refer child sexual assault cases to the Office’s Witness Assistance Service; early conferences must be held to ascertain any problems or difficulties that the child and/or family may be experiencing as well as to explain procedures and process relating to the prosecution and to enable court preparation for the child witness. If the child is still reluctant to proceed, the prosecutor may consider for a No Bill Submission, where the prosecutor would recommend to the Director that the matter not proceed.*
- *In Australia (New South Wales) Policy Guidelines No. 24 states that careful consideration should be given to any request from a victim that proceedings be discontinued. In sexual offences, particularly, such requests, properly considered and freely made, should be accorded significant weight. It must be borne in mind, however, that the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the accused or where the gravity of the alleged offence requires it, the public interest must prevail.*
- *In Finland, a firm request by the injured party for not bringing a charge is heeded. However, the prosecutor must be convinced that the request does not arise from pressure exerted by the suspect on the injured party or from other comparable circumstances. There are grounds for bringing a charge against the request of the injured party. Such grounds include: the offence being directed at several children, the long duration of the offence, or the special seriousness of the act. (submission by Raija Toiviainen, Office of the Prosecutor General, Finland)*
- *In South Africa, National Guidelines for Prosecutors in Sexual Assault Offence Cases, Guideline 3 – Consultation with the Victim states: the prosecutor must consult thoroughly with the victim before the trial commences. The prosecutor must ascertain what fears the victim has and attempt to allay these fears. It is often useful to familiarize the victim beforehand with the courtroom itself and the interpreter, if applicable. All court room proceedings must be explained to the victims so that they can fully understand. The victims need to be treated with the utmost empathy and respect at all times.*

**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 call on States to ensure that child victims are provided with appropriate access to justice and fair treatment. They further provide that proceedings in criminal matters should not be removed from the justice system if it is not in the best interests of the child.**

**General.** This guideline reflects the need for prosecutors to make every effort to consult and inform victims, thereby ensuring that all decisions they make are reasoned ones. Prosecutors must keep in mind that the expressed wishes of the victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the accused or where the gravity of the alleged offence requires it, the public interest must prevail. Some responses indicated that plea resolution is appropriate where it can alleviate stress for the child, especially the stress of testifying in a trial.

- In **Canada**, the British Columbia Crown Counsel Policy Manual on Child Abuse – Physical and Sexual recognizes that crown should bear in mind that the social worker and non-accused parent need information about the criminal proceedings in order to effectively protect and support the child. Therefore, the social worker and non-accused parent or guardian of the child should be advised of any charges laid, conditions of release, adjournments, change of plea or stay of proceedings, and that crown counsel is available to provide appropriate information about the case.
- In **Peru**, the Children and Adolescent Code sets out principles that establish that the superior interest for children and the humanitarianism must prevail in all acts related to children and adolescents. (submission by Blanco Nelios Colan Maguire Comision Ejecutiva del Ministerio Publico)
- In the **United States**, the manual “Investigation and Prosecution of Child Abuse” under the heading of plea negotiations discusses the approach; the benefit of early guilty pleas; use of sentence recommendations as negotiating tool; factors to consider in plea negotiations; accurate reflection of seriousness of crime and dangerousness of offender; victims’ wishes and well-being; and reasons for altering charges.

**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.**

**General.** This Model Guideline deals with situations where victimized children are treated as perpetrators of crime in certain circumstances. It is not meant to encompass situations where a child’s conduct as victim and accused are not spatially connected, for example when an abused child becomes aggressive towards others; rather when children are engaged in criminal activity through coercion, instigation or enticement by adults who profit by their acts. Different jurisdictions define coercion differently.

- In **Australia** (New South Wales) where there is an allegation that a child between the ages of 10 and 17 years has offended, the child should be charged and dealt with accordingly. If it emerges that the child has been a victim of abuse then the matter is dealt with accordingly, meaning the child will be interviewed, a statement taken and charges laid against the alleged offender. (Child Protection Council, Position Paper “Managing Sex Offenders: A Child Protection Perspective 1995)
- In **Canada**, where the child is perceived as both victim and offender by the nature of the situation, for example, when an adult sells illegal drugs to a child or involves the child in prostitution, both the adult and the child may have committed offences. In these situations, the conduct of the adult is commonly viewed as more culpable and criminal charges are usually laid against the adult only and the child is viewed as the victim. In other cases, the victim and offender aspects of a child’s conduct are not as spatially connected, for example a child abused by a parent is removed to a foster home, where the child later assaults other persons. The young offenders’ regime in Canada is based on the notion that children are not responsible for their conduct in the same manner and to the extent as adults. The degree to which a child offender is a victim of some other crime perpetrated by some other person is

reflected in the disposition part of the process. (submission by Daniel Bellemare, Department of Justice Canada)

- **In Hong Kong**, prosecutorial discretion might be exercised if the child is a victim as well as an offender, with matters being referred to the Social Welfare Department for follow-up if the child was in need of care and protection. (submission by I. Grenville Cross, QC. SC., Director of Public Prosecutions)
- **In Scotland**, crown policy notes that where the child is both a victim and an accused, normally the children are treated as victims rather than accused unless some extraordinary feature of the case dictated otherwise. (submissions by Morag McLaughlin, Crown Agent's Office)

**Specific crimes against children.** In many countries, children who have been trafficked for prostitution or are illegal immigrants are picked up by authorities and end up in the justice system as criminals rather than victims. There still exists a tendency to make distinctions between the victims of child sexual abuse, such as incest or rape, and children who are exploited into becoming prostitutes. These distinctions are laden with value judgments about good and bad children, which may predetermine which children should be helped and which should be punished.

- **In the Czech Republic**, the commercial exploitation of children for the purpose of prostitution or producing pornography is the subject of criminalisation. (Article 216 and 233 of the Criminal Code).
- **In Finland**, recent legislation has criminalized, among other things, the purchase of sexual services from a young person, as well as the distribution or possession of pictures or recordings depicting a child having sexual intercourse or otherwise in an obscene manner.
- **In South Africa**, where a girl under 16 is found in a brothel, she is deemed to have been taken there against her will and a parent or guardian that permits/assists/procures the commission of indecent acts or defilement, seduction or prostitution of a child under 18, commits an offence (Sexual Offences Act of 1957).

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

**General.** This Guideline recognizes that the length of time of the trial process is difficult for all victims, but particularly so in cases where the victims are children. There is a need to deal with these cases in a timely manner. Some jurisdictions enable the court to determine issues regarding the trial before the commencement of the trial and after the accused has been arraigned, such as ruling as to the admissibility of evidence.

- **In Western Australia, Australia**, pre-trial decisions can be made on matters including the approval of a support person; appointment of a communicator; giving of evidence-in-chief by video-tape; giving of all evidence at pre-trial hearing; declaration that a person is a special witness. (The Evidence Act 1906 (WA) amended 1992, 106S)
- **In England and Wales**, there are guidelines, "Supplementary Pre-Trial Checklist for cases involving young witnesses" used by judges and drafted by criminal justice agencies, including Crown Prosecutor Service. These guidelines include: admitting a pre-recorded video statement as the child's evidence in chief; applying for a live TV link, screen, support person; arrangements for the child to refresh his or her memory from previous statements; pre-trial court familiarization visit; witness scheduling in order to minimise waiting time for the child; etc.
- **In Malawi**, the prosecutor must consult the probation or welfare agencies as early as possible on the possible effects of a prosecution. (submission by Kamudoni Nyasulu, Director of Public Prosecutions)
- **In Scotland**, the Procurator Fiscal Service Book of Regulations recognize the need for good communications, cooperation and effective liaison with other agencies, particularly the Reporter to the Children's Panel, who has the responsibility for child protection procedure.
- **In South Africa**, the National Guidelines for Prosecutors in Sexual Offence Cases note: It is imperative that the prosecutor, who takes the case to trial, ensures that the case docket has been fully investigated before the trial commences so that no unnecessary delays occur.
- **In Uganda**, the practice is for prosecutors to use probation officers or female personnel to counsel witnesses or to handle the cases where possible. (submission by Richard Buteera, Director of Public Prosecutions)



**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.**

*General.* Where prosecutors are involved in hearings to determine the status of pre-trial detention, considered appropriate conditions for pre-trial release include: no contact or non-communication with the victim and/or family; non-attendance at or near victim's residence or school; if it appears that the accused may present a danger to children, condition of non-association and no contact with other children or non-attendance at parks, schools, daycare centre, etc. If the accused is a member of the victim's family, then conditions relating to custody and access or monetary support may be ordered to ensure the well being of the child. Other general conditions include reporting conditions; firearms or weapons prohibitions; alcohol or drug prohibition. Prosecutors should apply for pre-trial detention in cases where there is an allegation of pedophilia or where there is an extra-territorial dimension. Crimes against children routinely merited motions for pre-trial detention due to both the seriousness of the crimes involved and the possibility of further criminal acts by the defendant. Prosecutors should have the following information at judicial interim release hearings: history of abuse; full statement of alleged facts; complete criminal history; assessment of risk if bail granted. Prosecutors should always address the issue of whether the accused presents a continuing danger to the victim or other children and what conditions of release should be imposed to prevent or minimize risk to children.

- *In Australia*, (Northern Territory) the Bail Act specifically refers to whether the offence is alleged to have been committed against or in respect of a child as part of the considerations during a bail hearing.
- *In Canada*, the Crown Counsel Policy Manual on Recognizance to Protect Children notes: Crown should encourage the police to file Reports to Crown in appropriate cases to ensure that persons who constitute an ongoing danger to children, particularly pedophiles, are subject to effective controls under s. 810.1(1) recognizance. In the Policy Manual on child Abuse – Physical and Sexual – it notes that Crown's position at any judicial interim release hearing involving allegations of child abuse should always address the issue of whether the accused presents a continuing danger to the victim or other children. Crown should consider seeking a detention order and if the accused is to be released, crown should consider what conditions should be imposed to prevent any risk to a child. In cases of sexual abuse, crown should ask that the accused have no contact, directly and indirectly with the victim. Where it appears that the accused may present a danger to children, crown should consider requesting a condition that the accused not communicate with any child 18 years of age or younger unless supervised; a condition that the accused attend counselling; or in appropriate circumstances that the accused be detained in custody.
- *In Scotland*, The General Principles on the Opposition to bail in Scotland include the factor: where the accused is charged with committing a serious assault or sexual assault on his children or persons with whom he is in close association.
- *In South Africa*, the National Guidelines for Prosecutors in Sexual Offence Cases, Guideline s9 Bail notes: The general approach should be that applications for bail must be opposed. If bail is, however granted, the prosecutor must request special conditions, i.e. if the victim is related to the offender, a condition forbidding contact should be requested. If the offender resides with the victim, the prosecutor must insist on a condition that the offender reside at some other place. The prosecutor can also request special conditions, for instance that the offender is not allowed to contact or come into contact with the victim that the offender is not allowed within a certain kilometer radius of the victims house, etc. In suitable cases, prosecutors may invoke s. 50(6) of the Criminal Procedure Act and request a postponement of the bail application. It is vital to inform the victim of the results of any bail application.
- *In the United States*, the manual "Investigation and Prosecution of Child Abuse" under the heading of motions regarding bail and pre-trial release discusses: considerations; no-contact orders (prohibiting contact with the victim and other children); compliance with therapy as a condition; and motions to revoke pre-trial release.

**Witness protection programs.** Prosecutors should also be aware of the existence of any witness protection programs in their jurisdiction and refer child victims and witnesses where appropriate.

- In **Brazil**, the Protection Program or Witnesses and Victims of Violence where witnesses are offered social, psychological and judicial assistance by multidisciplinary teams.
- In **South Africa**, the Criminal Procedure Act provides for an application for the witness to be detained in or placed under protective custody.

**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.**

**General.** In many cases involving crimes against children, there is a close relationship between the child and the offender and one of the prosecutor's duties is to ensure the safety of the child and keep them apart. One way to ensure this is during the hearing dealing with pre-trial release, where the prosecutor can seek conditions that have the purpose or objective to ensure that the child is not subject to intimidation and threats. Another way is to ensure conditions are such that during any hearings and trials that the child does not have to share a common waiting room and facilities with the accused, his or her family and defence counsel. Some jurisdictions have specially constructed witness protection rooms.

- In **Azerbaijan**, the special law, *State Protection of Persons Participating in the Criminal Process* (1998) provides for a complex of measures for witness and victims protection, especially children, at the expense of the state.
- In the **Czech Republic**, the Police Law provides some measures for protection of witnesses, such as no disclosure of the identity of the victim or placement of guards
- In the **United States**, the manual "Investigation and Prosecution of Child Abuse" notes that protecting the rights of the victims can start with something as simple as not disclosing the victim's address and telephone number to the defense. No-contact orders prohibiting contact with the victim can include no personal, phone or written contact.

**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.**

## CASE PREPARATION

**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.**

**General.** This Guideline recognizes that a child's recall of details is particularly affected by the passage of time and that a prolonged waiting period is likely to increase trauma to the child. How to give these cases priority in trial scheduling varies from jurisdiction to jurisdiction. Some jurisdictions allow for fast tracking child abuse cases, provided that the rights of the accused are not infringed. Some legislation requires the court and prosecutors to take appropriate action to ensure a speedy trial. Other jurisdictions require that criminal cases involving child victims be given precedence over other court cases.

- In **Australia** (New South Wales) the *Child Sexual Assault Policy and Guidelines Manual* notes under the heading *Priority for Trials: Child sexual assault trials are to be given the highest rating (after matters where the accused is in custody), being designated as category "A" trials. Because of this classification there is a greater certainty of the trial being heard during the week it is listed.*

- *In Canada (British Columbia) the Crown Counsel Policy Manual on Child Abuse – Physical and Sexual notes: Child abuse cases should be given priority in trial scheduling. This is critical in cases involving child witnesses because a child’s recall of detail is particularly affected by the passage of time.*
- *In England and Wales, a recent procedure was introduced where the Director of Public Prosecutions (DPP) may refer a matter involving a child witness directly to Crown Courts, bypassing the committal stage. This “notice of transfer” will be given by the DPP when certain conditions are met: the evidence is sufficient to commit the accused; a child is involved as complainant or witness; and the case should be transferred and proceeded without delay by the Crown Court for the purpose of avoiding any prejudice to the welfare of the child. (Criminal Justice Act 1991(UK) s. 53.*
- *In the United States, there are a number of states that have passed legislation mandating speedy disposition of criminal cases involving child victims or witnesses. In Arizona, in any action for a prosecution involving a dangerous crime against children, the State may file a certificate stating that the case is of special public importance. The chief judge shall immediately designate a judge to hear and determine the action. (Ariz. Rev. Stat. Ann. s. 13-123 (West 1989). In California, criminal actions in which a minor is a victim or a material witness shall be given precedence over all other criminal actions on the trial calendar. (Cal. Penal Code s. 1048 (West Supp. 1998). In Idaho, in all criminal cases that involve a child victim or witness, the court and the prosecutor shall take all appropriate actions to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or request for a delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well being of the child victim or witness. (Idaho Code s. 19-110 (Supp. 1997).*

**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.**

*General.* Prosecutors may want to call an expert witness for a number of reasons, including: to demonstrate that the child can give reliable evidence; the dynamics of the abuse. There is a concern that a child who has been abused usually needs psychological treatment raising with this the concern of possible contamination that therapy may have on the testimony of the child in court. When an expert is called, there may also be a concern about further invasion of the child’s privacy if counseling records are requested. Prosecutors should vigorously object to this invasion.

- *In Queensland, Australia, the court can accept expert evidence in determining the ability of a child under the age of 12 years to give reliable evidence. (Evidence Act 1977 (Qld) 9A).*
- *In Canada (British Columbia) the Crown Counsel Policy Manual on Child Abuse – Physical and Sexual notes: Crown should consider calling expert witnesses on the dynamics of child abuse.*
- *In Finland, social and medical authorities play a role during the trial as experts, on the general experiences on sexual abuse of children and also on their concrete evaluation of the particular case. For example, where the social worker conducted the videotaped interview and the requirements to ensure the rights of the accused were met, the tape would be shown in court, accompanied by the expert testimony of the social worker. (submission by Raija Toiviainen, Office of the State Prosecutor of Finland).*
- *In New Zealand, there is a broad range of issues of which an expert could be called upon by the court to testify in cases involving sexual crimes against children. These include: the child’s intellectual attainment, mental capacity and emotional maturity; the general development level of children of the same age; and the consistency of the child’s alleged behaviour of sexually abused children of the same age group as the child. (The Evidence Amendment Act 1989)*
- *In South Africa, forensic social workers are employed by the police to assess the child for purposes of expert behavioral testimony. (submission by Retha Meintjes, Society of State Advocates of South Africa)*

**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.**

*General.* A number of jurisdictions point to the fact that in child abuse cases the child victim's testimony is crucial. One of the features of these cases is that there is usually only one witness to the crime - the victim. Therefore the child's testimony has to be of good quality and reliable. One way to ensure good quality is to lessen the trauma to the child during the prosecution process. When a child feels more comfortable this increases the accuracy of the testimony. Other jurisdictions have placed more emphasis on the trauma that testifying in court can cause to the child and does not require the child to provide viva voce evidence at trial (for example Sweden or Israel, where it is the decision of a youth interrogator to permit a child to testify in court or in Rhode Island, United States where there is a presumption that a child victim 13 years or younger is unable to testify in open court without suffering harm). In all jurisdictions, whether the child is required or not to testify in court, the pre-trial interviews must avoid revictimization. In recognizing the importance of the child's testimony, prosecutors are called upon to develop techniques to lessen the child's trauma.

**Limiting number of interviews with the child.** Some jurisdictions mentioned that the number of pre-trial interviews required of the child should be reduced, lessening the chance of further traumatizing the child. In other jurisdictions, there is only one interview of the child, which is videotaped and can be used as evidence in court without requiring that the child testify.

- *In the **Czech Republic**, the Criminal Proceedings Code provides that where children under 15 years of age are questioned repeatedly about the facts of the case and this repetition may have negative influence on the mental and moral development of the child, the child should be held especially careful. (submission by Jaroslava Novotna, Supreme Prosecutor's Office of the Czech Republic)*
- *In **Denmark**, where the child has been a victim of sexual offences and is under the age of 14 years, the child's evidence is videotaped and the tape can be played in court without requiring the child to give evidence. The questioning of the child is done by an appropriate person (police or social worker) and ensuring the rights of the accused (the accused and defence counsel are in an adjacent room and can relay questions). (submission by Erik Merlung, Office of Public Prosecutions)*
- *In **Finland**, the investigative interview of the child is videotaped and conducted by an appropriate person, such as a social worker in order to address the child's special nature and vulnerability. Given the procedural requirements in interviewing the injured party, the prosecutor who has special expertise in such cases should be involved at the initial interview. (submission by Raija Toiviainen, Office of the State Prosecutor of Finland).*
- *In **Scotland**, in cases dealing with child witnesses, the Prosecutor fiscal can make a prosecution interview report available to the defence in cases where the defence agrees that this will avoid a second interview by the defence. In other circumstances, the Crown can sometimes make special arrangements for child witnesses to be interviewed by the defence either at the procurator fiscal's office or at the police station. (submissions by Morag McLaughlin, Crown Agent's Office)*

- *In South Africa*, in some provinces there are one-stop shops where most of the role players are represented and can work together to limit the number of interviews that a child victim must submit to. (submission by Retha Meintjes, Society of State Advocates of South Africa)
- *In Thailand*, the procedure in taking the statement of the child victim by videotaping is supported by a number of reasons, one being the reduction of the number of pretrial interviews required by the child. (submission by Trakul Winitmaiypak, Office of the Attorney General)
- *In the United States*, there are a number of states that have passed legislation that limit the number of interviews with the child victim. In Alabama, the presiding judge, after consultation with the prosecutor, may provide for reasonable limits on the number of interviews for a victim of sexual abuse or exploitation, who is under 12 years of age, for law enforcement or other purposes. (Ala. Code s. 15-1-2(a) (1995). In Florida, the judge, after consultation with the prosecutor, defense, police, shall provide reasonable limits on the number of interviews that a victim under 16 years must submit to. (Fla. Stat. Ann s. 914.16 (West Supp. 1998). In North Dakota, the prosecutor, defense attorney, the court and appropriate law enforcement personnel, to the extent possible, shall protect the child victim or witness from the psychological damage of repeated or lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation (N.D. Cent. Code s. 12.1-35-04 (Supp. 1997).

**Early assessment.** Making early contact with the child assists in building a rapport, reduces the trauma for the child and enhances the quality of the testimony. Prosecutors should meet as early as possible with the child in order: to assess the child's competence to give evidence; to form an appreciation of the child's developmental level, including language and conceptual skills, their capacity to understand concepts such as time and locality and their capacity to concentrate; to form an appreciation of the child's level of anxiety in relation to the proceedings; to establish some trust and rapport with the child. Case preparation must be child specific, in particular; the prosecutor must appreciate the relevant language skills and conceptual ability of each child. Interviewing child victims requires time, patience, sensitivity and the use of special techniques. In determining a child's level of competence, prosecutors should be mindful of not only legal competence but also the emotional and mental competence of the child that can be affected by situational elements.

- *In Australia* (New South Wales) the Interagency Guidelines for Child Protection Intervention under the section describing court preparation of child victim notes: The prosecutor should at meeting [the child well prior to the commencement of proceedings]: assess the child's competence to give evidence; form an appreciation of the child's developmental level, including language and conceptual skills, their capacity to understand time concepts and concepts in relation to locality and their capacity to concentrate; form an appreciation of the child's level of anxiety in relation to the proceedings; establish some trust and rapport with the child; refer to a sexual assault service; refer to the Witness Assistance Service of the DPP where appropriate. This contact, if involving very young children, may need to occur over several meetings. It will enable the prosecutor to decide what special arrangements should be sought from the court to facilitate the child giving evidence.
- *In Azerbaijan*, special attention is paid to the psychological features of the child in the course of an interview of a child under 14 years. The interviewer should study the personality of the child beforehand and determine the necessity of participation of teacher, psychiatrist or parents. The tactics for interviewing are developed through generalization of judicial and investigation practices, such as non-admittance of using an official tone during the interview. Interview is to be conducted in the form of common conversation. (submission by Fikrat Mammadov, Deputy Prosecutor General of the Republic of Azerbaijan)
- *In Canada* (British Columbia) the Crown Counsel Policy Manual on Child Abuse – Physical and Sexual notes: Child witnesses should be interviewed by crown sufficiently in advance of the date of the preliminary hearing or trial to ensure that the child's ability to communicate the details of the alleged offence can be assessed, the necessary rapport with the child can be established, the court process can be explained to the child and non-accused parent, and the child can be prepared for testimony at trial in a manner appropriate to the child's level of development. Interviewing victims of child abuse requires time, patience, sensitivity and the use of special techniques.
- *In France*, an example of developing techniques for interviewing children is the protocol Melanie, that has been developed for police officers to follow when interviewing a child.

**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 or 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.**

*General.* This Guideline emphasizes the special and protective role that prosecutors can play in prosecuting crimes against children. While it may not be the prosecutor that familiarizes the child with the court and its procedures in every jurisdiction, it is felt that the responsibility is on prosecutors to ensure that it is done, either by their office or by other relevant agencies should be ensured. This guideline recognizes the need for the child victim to be prepared for court either by the prosecutor or by child witness assistance programs. Information should be offered to assist in understanding the court process and procedures.

- In **Australia** (New South Wales) the Interagency Guidelines for Child Protection Intervention under the section describing court preparation of child victim notes: A child victim who is required to give evidence in criminal proceedings must be offered information to assist in understanding the court process and procedures...It is the responsibility of the DPP to ensure that a child is appropriately prepared to appear as a witness. This should involve the prosecutor meeting the child and caregivers well prior to the commencement of proceedings in order to assess the need in relation to that child. If sexual a sexual assault service is involved, the prosecutor should liaise with that service and the key worker to discuss the child's specific needs with regard to court preparation and support.
- In **Malawi**, the prosecutor always refers child witnesses to support groups, such as court users committees, before they are required to testify. (submission by Kamudoni Nyasulu, Director of Public Prosecutions)
- In **South Africa**, national guidelines urge prosecutors to familiarize the child with the relevant procedures, the court, what is expected, etc., in an attempt to reassure and to allay fears. (submission by Retha Meintjes, Society of State Advocates of South Africa)

**Court preparation programmes.** Prosecutors should become familiarized with available court preparation programmes for children that are available in their jurisdiction, and if none are available, prosecutors should initiate such programs. These programmes may include, court room visits and knowledge about the process and who plays each role in that process. Some jurisdictions have tools such as cartoon booklets, coloring books that familiarize the child to the process. Others have miniature-sized courtrooms for explaining the process.

- In **Canada**, there are books, pictures, audio or video materials specially prepared to assist children in understanding his or her role in the court proceedings. An example is *Kids In Court in the Northwest Territories* booklet.
- In **England and Wales**, material has been developed for those involved in preparing child witnesses, for example the *Young Witness Pack* and child witness video. (submission by Deborah Turnbull, Crown Prosecution Service)
- In **South Africa**, a colour book "*Busi Goes to Court*" is provided to child witnesses, which tells the story of Busi who is a young child and her experiences in going to court.
- In the **United States** (Tulare County) offers a *Kid's Court* educational programme where prosecutors and other criminal justice personnel meet with children and explain each of their roles.

## TRIAL PROCEDURES

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* recognize 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 call 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.

*General.* The experience of testifying in front of the accused can be very traumatic for a child resulting in a feeling of revictimization of the child and may denigrate the credibility of his or her testimony. Parents, not wanting their child to be revictimized in courts, frequently refuse to allow their child to testify. Many jurisdictions have recognised the necessity to accommodate the needs of the child victim and modify the regular court proceedings. This guideline provides a list of child friendly procedures, which is not meant to be exhaustive. While many of these procedures may require changes to legislation, prosecutors can play an active role by contributing their practical experience to the considerations involved in the development of these measures. The prosecutor is in the position to facilitate the application of these measures and provide the child with the opportunity to tell the judge what has happened. It is the obligation of the prosecutor to assist the child in telling the story to the court in the best way they know how. In some jurisdictions, such as New South Wales, Australia, the Office of Public Prosecutions has an obligation under the Victims Rights Act to inform child witnesses of their right in relation to the use of alternative procedures for giving evidence.

These child friendly measures are used to protect the child from trauma. Different jurisdictions use various factors to determine the degree of trauma to the child and the appropriate use of these measures. Factors usually include age and maturity of the child, the nature of the offence, the nature of the testimony, the effect of the testimony on the child; reasons why the child is unable to testify in open court (fear, emotional trauma, mental infirmity, etc.). Where alternative procedures for giving evidence are available, it is the

wishes of the child that must be considered and it is the duty of the prosecutor to inform the court of these wishes.

**Advanced testimony.** In some jurisdictions it is possible to arrange that child witnesses are examined and cross-examined early on in the criminal process before the trial has taken place. This allows the child to move on with his or her life without the stress and anxiety that can be caused in awaiting the trial. In other jurisdictions, the record of a witness's out-of-court statement serves as evidence in lieu of the witness's oral evidence at the committal hearing. In some jurisdictions, a child is prohibited from testifying because of the danger of trauma to the child.

- In **Israel**, a child may be heard as a witness in cases involving offences against morality only where a youth interrogator has given his or her permission. (*Law of Evidence (Revision Protection of Children Law)*, 5715-1955)
- In **New Zealand**, in any committal involving sexual offences where the complainant is under 17 years of age, the child's videotaped evidence may be admitted if the court is satisfied that the videotape has been made and is identified in the prescribed manner and form (*Summary Proceedings Act 1957 (NZ)* s. 185CA (1)).
- In **Sweden**, it is prohibited to have the child testify in court. (*International Bureau for Children's Rights "Final Report – Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System"*, 2001)
- In **Thailand**, for specific cases involving child and woman witnesses, testimony can be taken in advance. The accused is entitled to counsel and cross-examination of the witness whose written testimony is then read into court at a later date. (*Criminal Procedure Code* s. 237 bis).

**Recorded or videotaped statements.** The interview should be videotaped without any interruptions. Videotaping preserves an early account of the alleged events and may prompt a guilty plea by the defendant. In some jurisdictions, videotaped statements can be used as examination-in-chief but still requires the child to appear in court for submission to cross-examination. Videotaped statements can also be used to refresh the child's memory. Criteria for admissibility varies from different jurisdictions.

- In **Australia**, New South Wales provides for the audio and videotaping of children's statements. This recording may be used wholly or part of the child's evidence in chief in any criminal proceedings if the child is under the age of 16 years at the time of giving evidence. The child must be available for cross-examination and re-examination. In Western Australia where the legislation provides for the admissibility of videotaped statements, the Judges of the Supreme Court developed guidelines for the operation of the special procedure available. (*Evidence of Children and Special Witnesses: Guidelines for the Use of Closed-Circuit Television, Videotapes, and Other Means for the Giving of Evidence* (April 1996). Sample of these guidelines are as follows: (i) The twin aims of the Act which are- (a) to enable the child witnesses who would not otherwise be able to give evidence effectively, or at all, to do so; and (b) to avoid undue trauma to child witnesses arising from such features of the traditional trial process as confrontation with the accused person and the need to tell a distressing story in a daunting public environment. (ii) The child's age. Where the child is very young – say, under the age of 8 or 10 years- the Court should lean towards allowing the procedure. A very young child may have difficulty in giving evidence in another way. (iii) The length of time likely to elapse before the matter comes to trial. Here the Judge needs to take into account the fact that a period of more than six months before trial will, in general, impact more on a very young witness's recall than on a mature person's. In addition, it may be more difficult for a young witness to recover from the traumatic events while the prospect of going to court remains and while he/she is not permitted to discuss the events with anyone... (v) Any special circumstances applicable to the case or to the child witness. These may include personal factors (such as intellectual delay or physical or intellectual handicap) and family circumstances, cultural factors which may make it more than usually difficult for the witness to talk in front of people, and evidentiary issues.
- In **Canada**, At common law, out-of-court utterances by a child about an offence committed against that child might be admissible (from other persons or from audio or video records) as substantive evidence at trial. This is one of the reasons why interviews of children are commonly recorded on videotape. Such evidence must first meet the threshold tests of necessity and reliability before it can be admitted. By statute, the out-of-court statements of a child might be introduced at trial in certain circumstances and in respect of certain offences where the statement is recorded by videotape. However the videotape



does not become substantive evidence by this provision unless the child adopts the contents of the tape in his or her courtroom testimony. (s. 751.1 of the Canadian Criminal Code and described in Crown Counsel Policy Manual on Child Abuse – Physical and Sexual).

- **In Denmark**, the statement of the child is taken by a police officer (usually a woman) and recorded. During the trial, the Administration of Justice Act allows for the videotaped statement to be played in court with the police officer as witness providing evidence regarding to the child's statement and any identification of the accused. This means that the child does not have to appear in court. (submission by Erik Merlung, Prosecution Service Denmark).
- **In England and Wales**, the Criminal Justice Act 1991 (UK) allowed the prior video-recorded testimony of a child to be adduced in evidence as the original evidence of the child and to be cross-examined by means of the live TV link.
- **In Finland**, the legislation provides for an interview of a child to be videotaped. While there are no official recommendations on the procedure, recent Finnish articles have recommended that the interview of the child should be videotaped as a rule and without interruptions due to the special nature of the case and the vulnerability of a child. The presentation of such evidence is governed by the provisions on a fair trial, therefore in order to have the videotape account of a child admitted as evidence, the tapes must be disclosed to the accused at the investigation stage and the accused must be given an opportunity to put his or her questions to the child. Under exceptional circumstances the videotaped account may in a given case be admitted as evidence in situations where the child cannot be personally heard in court. This possibility puts certain requirements on the interview, meaning that the accused has the opportunity to put his or her questions to the child at the investigation stage. (Criminal Investigation Act and submission by Raija Toivianen, Office of the Prosecutor General, Finland)
- **In Germany**, a child witness's testimony may be introduced in trial proceedings via videotape under the condition that a judge has interviewed the child and under the conditions that the parties consent. The European Convention on Human Rights in principle allow the introduction of videotaped testimony under the condition that the accused and/or the defence counsel has had the opportunity to put forward questions to the witness. (submission by Hans-Joerg Albrecht, Max-Planck Institute)
- **In Hungary**, videotape may be used in the criminal proceedings provided that the rules of evidence has been taken into consideration when making the video record. The child need not be present at the time of trial (from submissions by Laszlo Venzl, Hungarian National Association of Prosecutors).
- **In New Zealand**, the trial judge may view the tape before it is shown to the jury and may order that any evidence be deleted which would, but for the use of the videotape, be excluded. The accused retains the right to cross-examination. (Evidence Act 1908 (NZ) s. 23E).
- **In South Africa**, videotaped statement of the child can be presented as the child's evidence in chief, not in lieu of viva voce evidence. (submission by Retha Meintjes, Society of State Advocates of South Africa)
- **In Thailand**, the procedure in taking the statement of the child victims by videotaping, if done according to the criteria, can be admissible in court in cases where the child could not be brought to the court for testifying purposes. (submission by Trakul Winitmaiypak, Attorney General's Office in Thailand)
- **In the United States** several states have enacted laws allowing the introduction of videotaped pre-trial interviews of child witnesses under certain circumstances. These statutes are closely related to child hearsay statutes and raise many of the same constitutional issues. In general, these statutes either require the child to be available to testify subject to cross-examination, or require a showing of trustworthiness of the statements if the child is not available to testify. (Child Abuse and Neglect State Statutes Series 1998: Volume IV: child Witnesses – Number 22: Admissibility of Videotaped Interviews or Statements)

**Closed Circuit television.** In some jurisdictions, cases involving an assault or abuse against a young child, the evidence of the child must be given by means of closed circuit television unless the court is not equipped to do so (such as New South Wales). In other jurisdictions, using CCTV is a routine procedure and does not require an application to be made to the courts (such as Belgium). Most jurisdictions that allow for CCTV or screens requires the judge to inform the jury that it is standard procedure for children's evidence in such cases to be given by those means and that they should not draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of that technology.

- *In **Australia**, in Australian Capital Territory and Queensland, the court must make a finding as to the witness's emotional state or ability to give evidence in the normal way before allowing the use of CCTV. In New South Wales, proceedings may be moved to allow use of CCTC, if the venue that the hearing is listed in does not have the appropriate facilities and the child wishes to use CCTV (Crimes Act 1900 (NSW) s. 405DD)*
- *In **Belgium**, when the tribunal estimates that the minor's testimony is required for determining the truth, testimony shall be given by videoconference unless the minor wishes to testify in person at the trial. (International Bureau for Children's Rights "Final Report – Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System", 2001)*
- *In **Germany**, as a consequence of a 1989 amendment, a child victim may be heard as a witness via closed-circuit television. (submission by Hans-Joerg Albrecht, Max-Planck Institute)*
- *In **Scotland**, the court takes into account the age and maturity of the witness, the nature of the charge, the nature of the evidence which the child is likely to be called on to give and the relationship, if any, between the witness and the accused when deciding whether alternative measures are allowed. (Criminal Procedure (Scotland) Act 1995, s. 271).*
- *In **South Africa**, legislation allows for the child to be situated in a separate room linked with video equipment to the courtroom and for an intermediary to convey both answers to the court and questions to the victim. The presiding officer has a discretion to allow evidence through an intermediary if it appears to them that the witness under the age of 18 years would be exposed to undue mental stress and suffering if he or she testifies. The court may direct that the witness gives evidence at a place informally arranged, out of sight of any person whose presence might be upsetting but still within sight and hearing, through the use of electronic or other devices, of those that need to hear and see the witness. A court could also order evidence be given by means of closed circuit television or similar electronic media (without the aid of an intermediary but still from outside of the court, if such procedure would prevent unnecessary delay; save costs; be convenient; be in the interest of the security of the state or of public safety or in the interest of justice or the public; or prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings. (Criminal Procedure Act and submissions by Retha Meintjes, Society of State Advocates of South Africa)*
- *In the **United States**, many states allow for the use of live, closed-circuit television testimony in place of in-court testimony by the child. The particulars of closed-circuit television statutes vary greatly among the states. In some states, the defendant, defense attorney, prosecutor, and judge are all in the room with the child and the jury remains in the courtroom. Two-way closed-circuit television transmits the images of each room to the other simultaneously. In some states, most of the participants – including the defendant – are required to stay in the courtroom to watch the child's televised testimony. The United States Supreme Court has held that the state's interest in protecting children from trauma can justify altering traditional methods of confronting witnesses in court. As a result, statutes identify the degree of trauma to the child that must be shown before closed-circuit television may be used. (Child Abuse and Neglect State Statutes Series 1998: Volume IV: Child Witnesses, Number 20 – Use of Closed-Circuit Television Testimony)*

**Alternative measures, such as screens.** This measure is less expensive than closed circuit television or videotaped statements. Various types of screens are used in different jurisdictions. Screens where the accused and child witness cannot see each other; screens where the accused can see the child but not the other way round; a screen with a video camera projecting the image of the child on a television in view of the accused.

- *In **Canada**, the Criminal Code sets out the screen application criteria: (1) accused charged from a list of crimes (2) complainant or witness at the time of trial or preliminary hearing is under 18 years or is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability (3) the judge can order the use of the screen if it is necessary to obtain a full and candid account of the acts complained of from the complainant or witness. Factors to be considered include: the age of the child; whether child is undergoing psychiatric therapy; whether child expects to be protected against seeing the accused; degree of the child's fear and anxiety of seeing the accused; and the child's general shyness and emotional frailty. (Canadian Criminal Code s. 486 (2.1))*

- *In Hong Kong*, the Criminal Procedure Ordinance provide for special procedures for vulnerable witnesses to give their evidence by live television link and video recorded and provides that a child witness can give evidence behind a screen (Criminal Procedure Ordinance, Chapter 221, s. 79A to 79G)
- *In Malawi*, children are allowed to testify in camera and where there that is not possible they can testify behind a screen (submission by Kamudoni Nyasulu, Director of Public Prosecution)
- *In South Africa*, due to lack of sufficient intermediary and closed-circuit television equipment at all centers, the use of one-way glass in court is an effective alternative to prevent the child having to confront the accused (submissions by Retha Meintjes, Society of State Advocates of South Africa)

**Support person.** *In common law jurisdictions, a judge has inherent jurisdiction to control his or her court in a manner which promotes justice. So a prosecutor in those jurisdictions can apply for the presence of a support person, even in situations where such is not provided in legislation. In some jurisdictions the prosecutor can request that a guardian ad litem appointed in order to protect the best interest of the child.*

- *In Australia (New South Wales)* a child witness is entitled to have a support person, near to him or her. (Evidence Act 1906 (WA) s. 106S).
- *The Philippines* Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act also provides for guardian ad litem who explains the legal process to the child; advise the judge (as a friend of the court) regarding the child's ability to understand the proceedings; advise the prosecutor concerning the ability of the child to cooperate as a witness for the prosecution; attend all investigations, hearings and trial proceedings and monitor and coordinate the court actions. In France, the Procedural Criminal Code allows for the prosecutor or investigative judge to appoint an ad hoc administrator amongst people known to the child or people previously selected to act in the best interests of the child. (Procedural Criminal Code 706-50)
- *In the United States*, many state legislatures have authorized the appointment of special support persons to help the child through the process. In some states, attorneys must be appointed to represent child victims of abuse or neglect. States also allow appointment of non-attorney support persons to provide emotional support to the child while testifying or to independently represent the child's interests to the court. In Delaware, a child victim or witness is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the child trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. (Del. Code Ann. tit. 11, s. 5134 (1995)). (other examples are found in the Child Abuse and Neglect State Statutes Series 1998) Volume IV Child Witnesses – Number 26: Authorization for Special Support Persons in Criminal Child Abuse Proceedings.)

#### **Child advocate or guardian ad litem**

- *In some States in the United States*, there are court-appointed special advocates who are advocates for children and work to resolve cases in the best interest of the child. They study case records, question the child about their needs and wishes and interview relevant people, including social workers, therapists, teachers, provide a reassuring presence in court and explain the process to the child in child appropriate language. For example, in Florida, the court can appoint a guardian ad litem to represent a minor in any criminal proceeding if the minor is a victim of or witness to child abuse or neglect, or if the minor is a victim of a sexual offence. The guardian shall have access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the minor at all proceedings, and may request additional examinations by medical doctors, psychiatrists or psychologists. (Fla. Stat. Ann. s. 914.17 (West Supp. 1998). (other examples are found in the Child Abuse and Neglect State Statutes Series 1998) Volume IV Child Witnesses – Number 26: Authorization for Special Support Persons in Criminal Child Abuse Proceedings.)
- *The American Bar Association* have developed Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases. The child's attorney can decide whether to call the child as a witness (looking at a number of factors) and ensure that questions to the child are phrased in a grammatically and linguistically appropriate manner. (International Bureau for Children's Rights "Final Report – Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System", 2001)

**Intermediary.** An intermediary can be seen as an interpreter, who would translate the question to the child and the child's answers in appropriate language for the child.

- In **Australia**, where the *Guidelines for the Use of Closed-Circuit Television, Videotapes, and Other Means of Giving of Evidence* (WA 1996) stated that there is a need for a trained person “such as a child psychologist or a kindergarten teacher” to assist the child in understanding the questions put to him or her and the court in understanding the child's responses where a child is of a young age.
- In **Australia (Western Australia)** provides for a communicator in order to translate the questions and answers of the child (*Evidence Act 1906 (WA) s. 106F2*).
- In **Finland**, the child can be heard outside the main hearing proper, for example, in a child welfare clinic or in other surroundings suitable for the child. In this event, the members of the court, the defendant and the defendant's counsel can monitor the interview through a one-way mirror. In the interview room, a police officer or a medical officer already known to the child puts questions to the child. The parties and the members of the court can also put questions to the child, relayed by the person in the interview room. (*Criminal Investigation Act and submission by Raija Toivianen, Office of the Prosecutor General, Finland*)
- In **Ireland**, cases involving sexual offences or offences involving violence or the threat of violence to a person under 17 years of age and giving evidence through a live television link, the court may require an intermediary who is appointed by the court. Questions put to a witness through an intermediary shall either be in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked. (*Criminal Evidence Act 1992 s. 14*).
- In **Israel**, if the youth interrogator decides that the child should not give evidence if it is their opinion that in doing so would likely cause psychological harm to the child, then the youth interrogator goes into the witness box and gives evidence as a surrogate for the child based on the pre-trial investigations and interviews. (In this system, the rights of the accused are protected by the requirement of corroboration). (*Law Evidence Revision Protection of Children Law – 5715-1955*).
- In **New Zealand**, the judge can order a person to sit next to the child who is giving evidence through audio link and who shall repeat the question to the child (*Evidence Act 1908 (NZ) s 23E(4)*).
- In **South Africa**, intermediaries are used in matters involving child witnesses where it appears to the court that it would expose any witness under the age of 18 years to undue mental stress or suffering if he or she testifies. The examination is done by the court through the intermediary where the intermediary can convey the general purport of any question to the child witness. Intermediaries can include social worker or psychologist with 2 years experience; teacher with 4 years tertiary education and 4 years experience; and trained childcare worker with 3 years accredited training and 4 years experience; and medical practitioner (no experience required). (*Criminal Procedure Act 1977 s. 170A*)
- In **Zimbabwe**, the intermediary provides a buffer between the questioner and the child and will use child friendly language without losing the meaning of the question. (*International Bureau for Children's Rights “Final Report – Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System”, 2001*)

**Reducing aggressive cross-examination.** In some jurisdictions, courts appoint an expert who will conduct the examination of a child witness.

- In **Austria**, the examining judge can entrust the questioning of a witness under the age of 14 to an expert, which could include a psychologist, psychotherapist or psychiatrist. (*Code of Criminal Procedure s. 162a*).
- In the **Czech Republic**, an experience person such as an expert in forensic psychiatry can conduct the examination of the child witness, using child sensitive methods, such as puppets or toys. (*Code of Criminal Procedure s. 102*)
- In **England**, a child witness is protected from being cross-examined directly by an unrepresented accused (*Criminal Justice Act 1988 (UK) s. 34A as added by s. 55 of the Criminal Justice Act 1991*)
- In **New Zealand** and some jurisdictions of **Australia**, if the unrepresented accused in sexual abuse cases where the complainant is a child or a mentally handicapped person, the accused's questions must be stated to a person approved by the judge, such as an intermediary, child communicator or other person approved by the court. (*The Evidence Act 1908 (NZ) and Acts Amendment (Evidence of Children and Others) Act 1992 (WA) s. 8 and Evidence Act 1906 (WA) s. 106G*)

- In **Thailand**, the judge can call for an expert to examine, cross-examine and re-examine the child witness. (Criminal Procedural Code s. 172ter).

**Closing court, media ban.** In addressing the need to protect children, closing the court and banning media can be exceptions to the defendant's right to a public trial.

- In the **Czech Republic**, it is possible to exclude the public during the child's testimony. Even the accused person may be asked to remove him or herself from the courtroom during the testimony of the child, provided that he or she is informed about the content of the witness's testimony. (submission by Jaroslava Novotna, Supreme Prosecutor's Office of the Czech Republic).
- In **Denmark**, the Administration of Justice Act allows the court to order the accused to leave the court while a witness is examined, if particular grounds call for this. Such grounds include where a child is a witness and it is shown that on the basis of the child's condition, a comprehensive, credible statement cannot be had if the accused were present in the court. (submissions by Henning Fode, Director of Public Prosecutions in Denmark)
- In **France**, the victim has the right to ask for the trial to be held in camera when the case involves rape or sexual violence (Procedural Criminal Code Art. 306).
- In **Japan**, in cases that involve children, media bans can be ordered to ensure that their identity is protected. (The Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children, Art 13.)
- In the **Philippines**, the prosecutor in a child abuse case can ask the exclusion of the public during the child victim's testimony, the limitation of the publication of information, photographs or artistic renderings that may identify the victim and prevent the undue and sensationalized publicity of all the case. (Philippines Special Protection of Children against Child Abuse, Exploitation and Discrimination Act (R.A. 7610); Amendment (R.A. 7658) and Implementation rules & regulations – Council for the Welfare of Children Rules and Regulations on the Reporting and Investigation of Child Abuse (1993)).
- In the **United States**, many states have passed legislation permitting the courtroom to be closed during child victim or witness testimony in criminal child abuse cases. For example, in Illinois, in a prosecution for certain sexual crimes, where the alleged victim of the offence is a minor under 18 years of age, the court may exclude from the proceedings, while the victim is testifying, all persons, who, in the court's opinion, do not have a direct interest in the case, except the media. (725 Ill. Comp. Stat. Ann. s.5/115-11 (West Supp. 1998) In Wisconsin, if the defendant is accused of sexual assault, the judge shall at the request of the complaining witness, exclude from the hearing all persons not officers of the court, members of the witness's or defendant's families or others deemed by the court to be supportive of them or otherwise required to attend. The judge may exclude all such persons from the hearing in any case where the defendant is accused of sexual assault, sexual assault of a child, sexual exploitation of a child, incest, or a crime against chastity, morality or decency. (Wis. Stat. Ann. s. 970.03(4) (West Supp. 1997) The federal legislation states: when a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial harm to the child or would result in the child's inability to effectively communicate. (U.S. Code 18 U.S.C.A. s. 3509(e) (West Supp. 1998)

**Techniques to reduce the formality of the courtroom.** These techniques include the use of microphones, booster seats, removal of wigs and robes and provision of toys.

- In **Australia**, the court can direct the lawyers not to robe and to be seated while questioning the child witness. (Evidence Act 1958 (Vic) s. 37C(3)(d) and (e))
- In **England and Wales**, the court may permit the lawyers to remove wigs and gowns to make the proceedings less intimidating. (Youth Justice and Criminal Evidence Bill (UK) and the Home Office's Achieving the Best Evidence in Criminal Proceedings: Guidelines for Vulnerable and Intimidated Witnesses, including Children)
- In **Scotland**, the Memorandum by the Lord Justice General on the Treatment of Child Witnesses by the Courts lists examples of the measures which may be taken with a view to achieving the general objective which is to ensure, so far as is reasonably practicable, that the experience of giving evidence by all children under the age of 16 causes as little anxiety and distress to the child as possible in the circumstances. These include: the removal of wigs and gowns by the judge, counsel and solicitors; the

*positioning of the child at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box; permitting a relative or other support person to sit alongside the child while he or she is giving evidence; and the clearing from the courtroom of all persons not having a direct involvement in the proceedings.*

- *In the **United States**, various states have passed legislation permitting the use of anatomical dolls in criminal child abuse cases; legislation permitting the use of leading questions with child witnesses; legislation limiting the length of a child victim's in court testimony.*

## SENTENCING

**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; and**
- **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.**

***General.** While in some jurisdictions it is not the role of prosecutors to press for the highest possible penalty, in many jurisdictions prosecutors do have a very active role in sentencing. Prosecutors must ensure that all relevant material is before the court and draw the court's attention to significant facts, such as aggravating circumstances, dynamics of child abuse, pedophilia, etc. In some jurisdictions, because of the seriousness of this type of offence, a special effort must be made by prosecutors to address the court fully in every case, even considering calling expert testimony. Where there is a history of abuse, even in the case of a first time offender, prosecutors should take the position that such history is relevant on sentencing. In other jurisdictions, prosecutors do not have an active role in sentencing. however, a submission from Scotland commented that while the prosecution in Scotland has little involvement in sentencing, the prosecutor must consider possible sentence in his consideration of the charge to lay before the court and the choice of forum. He should also ensure that the court is fully appraised of any aggravations which the court should take into consideration in passing sentence. (submission provided by Morag McLaughlin, Crown Agent's Office, Scotland).*

- *In **Australia**, (New South Wales), the Office of the Director of Public Prosecutions New South Wales: Prosecution Policy and Guidelines note a scale of severity of crimes, for example if there was a special relationship between the victim and the accused, such as position of trust; fathers or stepfathers and defined circumstances of aggravation, for example violence, threats, age of victim, person in authority.*

- *In the **Czech Republic**, the court will take into consideration aggravating circumstances, which include the use of the defenselessness or dependence of the victim. (submission by Jaroslava Novotna, Supreme Prosecutor's Office of the Czech Republic).*
- *In **South Africa**, the National Guidelines for Prosecutors in Sexual Offence Cases, Guideline 11: Sentencing notes that: Prosecutors should place before the court evidence relating to the impact (physical, emotional or financial) the crime has had on the victim's life. Where the available evidence pertaining to aggravating circumstances has not been placed on record during the trial, this must be done after conviction. When the merits and complexity of a matter before the court demand expert witnesses, they should be called to testify. An example is the problem encountered on treating sexual offenders such as pedophiles. The provisions of section 286A of the Criminal Procedure Act that allows persons to be declared dangerous may be useful. Because of the seriousness of this type of offence, a special effort must be made by the prosecutor to address the court fully in every case. The prosecutors must not hesitate to call for a sentence of imprisonment. When arguing for imprisonment the shortcomings and/or disadvantages of other sentencing options must be highlighted. For example, a suspended sentence or a sentence of correctional supervision will usually result in the offender being released back into his own home. This is obviously totally inappropriate where the victim resides in that home. The prosecutor should consider prosecuting all cases of assault and indecent assault involving children under the age of 18, in the regional court, for purposes of proper sentences.*

**Victim impact statements.** *In many jurisdictions, children can make victim impact statements, usually written by a counselor on behalf of the child. However, in other jurisdictions, these statements are not allowed, but prosecutors can make submissions specifically on the effect on the child of the crime.*

- *In **Australia**, (New South Wales), the Criminal Procedure Act 1986 enables victim impact statements to be provided in some circumstances and the Charter of Victims Rights provides that victims should have access to information and assistance for their preparation. In the Northern Territory, in cases of young children, the crown may compile a victim report to be considered by the court before imposing sentence.*
- *In **Canada**, the courts are obliged to consider the input of a victim as recorded on a prescribed form, the Victim Impact Statement (which varies in form from province to province). In addition, the court may also consider different means to convey victim impact to the court, including: securing and presenting to the court some other form of statement from the child (where the child is able to write); calling the child as a witness on sentencing (where the child understands that he or she is not obliged to testify on sentencing but indicates a willingness to do so); calling other witnesses (parents, siblings, case workers) who are able to attest to what they know of the child and how the crime has affected the child; making oral representations (based upon observation of and interaction with the child, as well as information provided about the child from other reliable sources).*
- *In **Hungary**, the child or his or her representative may submit proposals, comments in front of the court, may ask for information about their rights and obligations and suggest questions for the prosecutor to ask. (submission by Laszlo Venczl, Hungarian National Association of Prosecutors).*
- *In **Thailand**, the child is asked by an official his or her opinion regarding the punishment of the offender which is written down and presented to the court at the sentencing hearing. (submission by Trakul Winitaiyapak, Office of the Attorney General).*
- *In the **United States**, if the child is of sufficient age and maturity, he or she may fill out a victim impact statement such as adult victims do. If the child is too young for such formality, letter writing, drawings or any other expression of the child's feelings may be put before the court. Additionally, parents of victimized children may also be able to give an impact statement. (submission by Susan Kreston, National District Attorneys Association)*

## **SERVICES TO THE CHILD AND MULTI-DISCIPLINARY TEAMS**

**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.**

**General.** *The Dublin IAP conference recommendation called for a multi-disciplinary approach to the investigation of these cases. This guideline recognizes that the objective for prosecutors is not just the effective prosecution of the case, but also the protection of the child. Crimes against children involve legal, social and psychological issues that must be addressed by a variety of professionals. Therefore prosecutors play an important role in cooperating with other agencies to work together in the best interests of the child. This approach adds to the maintenance of the credibility and reliability of the child's testimony by minimizing the number of interviews, monitoring the child's safety and well being and to ensure that the needed services to the child are available.*

**Inter-agency approach.** *Many jurisdictions have incorporated a multi-disciplinary approach to a certain extent. This may include inter-agency protocols for the assessment, the investigation and the prosecution of these cases that encourage cooperation amongst agencies that provide services to children. The list of services to children that are available in various jurisdictions include: witness assistance services, counseling services, housing, and court preparation programs. Protocols should recognize the respective responsibilities of the different agencies, allow each agency to know from the outset what is expected by each from the other, and the steps that ought to be expected as the prosecution moves forward.*

- *In **Australia**, New South Wales have Interagency Guidelines for Child Protection Intervention. These Guidelines allocate responsibility for the protection of the child to various government agencies. The DPP is responsible for giving advice to the police as to whether criminal charges should be laid. ... It is the responsibility of the Office of the DPP or the police in charge to inform key workers on each occasion any of the following: dates of court listings, hearings, trial adjournments; dates for the hearing of evidence from a child victim; bail applications, granting of bail and any conditions; breaches of bail conditions; progress of proceedings; charges withdrawn by the crown; findings or determinations of courts; sentencing decisions; and any other matter which arises and is relevant to the safety or welfare of the child.*
- *In **Azerbaijan**, a Child's Commission, made up of actors from the Ministry of Youth and Sports, the Ministry of Education and the Prosecutors' Office are mandated to ensure the rights of children. (submission by Fikrat Mammadov, Deputy Prosecutor General of the Republic of Azerbaijan).*
- *In **Canada**, the British Columbia Crown Counsel Policy Manual on Child Abuse – Physical and Sexual notes in a section entitled Inter-agency coordination: crown counsel should continue to participate in the development of local protocols to establish interagency procedures for responding to child abuse cases. The purpose of protocols is to ensure that the response is co-ordinated and effective, to facilitate the development of a network of inter-agency contacts, and to provide a mechanism for sharing information and expertise. Most communities also have inter-agency committees to develop and improve inter-agency procedures on a continuing basis. In each area, a crown counsel should be designated to consult with the other professionals involved.*
- *In **England and Wales**, in 1997, the Home Secretary set up a review into vulnerable or intimidated witnesses in the criminal justice system, including all child witnesses. The resulting report – Speaking Up For Justice – made 78 recommendations encompassing all relevant actors in the criminal justice system.*
- *In **Finland**, there are certain localities that have multidisciplinary cooperation amongst agencies dealing with sexual offences. The local social and medical authorities, the police, the prosecutor and the courts are represented. The groups operate as forums for general discussions on approaches and for the creation of interauthority cooperation networks. (submission by Raija Toivianen, Office of the Prosecutor General, Finland)*
- *In **Hungary**, the prosecution keeps contact with the investigating authorities, may give guidelines and orders, keeps contact with the houses of corrections, with probation officers and with the public guardian authority. (submission by Laszlo Venczl, Hungarian National Association of Prosecutors)*
- *In **Scotland**, prosecutors participate in various multi-agency groups relating to arrangements for cases involving child witnesses and victims. These include Child Protection Committees, which are non-statutory authorities operating on a regional basis and comprising of senior representatives of the relevant statutory agencies and professional interest, including Procurator Fiscal Service, Police, Reporter to the Children's Panel, Social Work, education and health services. One of this Committees functions is to ensure that local inter-agency guidelines on child related procedures to be followed in individual cases are produced, maintained and regularly reviewed. (submissions by Morag McLaughlin, Crown Agent's Office)*



- *In Uganda, there is good cooperation between the prosecutors and the probation and social welfare officers. The Uganda Human Rights Commission and the National Council for Children also provide a focal point for ensuring the rights of children. (submission by Richard Buteera, Director of Public Prosecutions)*

**Multidisciplinary teams.** *The multidisciplinary approach make take the form of a multidisciplinary team of agencies. Agencies that may be included on the team is as follows: prosecutor, law enforcement, child protective services, health care professionals and/or victims. These teams can serve a useful purpose in educating various agencies that deal with child victim and witnesses with the roles each take and in working together. Further these teams can ensure that the response to cases involving children is coordinated and effective, facilitate the development of a network of agencies and provide a mechanism for sharing information and expertise. Some countries do not have multidisciplinary teams operating in their jurisdiction. One of the submissions received in preparing the Model Guidelines raised the concern that prosecutors should be independent, separate from other social and legal institutes in presenting the case in court.*

- *In Finland, some Finnish prosecutors have participated in multidisciplinary groups which have discussed the problem of sexual abuse of children at a local level. An inquiry into an individual offence is normally a case for social workers, physicians, child psychiatrists, the police and lawyers. (submission by Raija Toiviainen, Office of the Prosecutor General of Finland)*
- *In Hong Kong, when a case of child abuse is suspected, there will be a case conference comprising of various concerned departments, i.e. police, the hospital authorities, the social welfare department, the department of education who then seeks advice from the department of justice. Guidelines are established for multi-agencies to follow. (submission by I. Grenville Cross, Director of Public Prosecutions)*
- *In Thailand, the multidisciplinary child abuse team functions as a case-specific team to ensure that the appropriate interventions are identified and provided to meet the needs of the abused child, the family and the offender. (submissions by Trakul Winitnaiyapak, Office of the Attorney General).*
- *In the United States, various states have passed legislation mandating or authorizing the creation of multidisciplinary/multi-agency child protection teams. Such legislation recognizes the crucial role multi-disciplinary teams play in the prompt and thorough investigation and prosecution of criminal child abuse and neglect. (Child Abuse and Neglect State Statutes Series 1998 Vol. III. Investigations No. 15)*

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

**General.** *There must be a high level of cohesion in the team since those persons represent different disciplines and agencies, each with his or her own mission and agenda. The strong leadership in this coordinated effort should be the prosecutor. The prosecutor has a role in virtually all phases of the prosecution and makes the key decisions about the prosecution. In jurisdictions, where the child must provide viva voce evidence, the most traumatic stage of the criminal process is when the child must appear in the courtroom and the main support and line of communication is with the prosecutor.*

- *In the United States (Massachusetts), the Suffolk County Prosecutor's Office Victim Witness Program takes the lead in coordinating the jurisdiction's multi-disciplinary approach to child abuse cases. A forensic interviewer in the program conducts a multidisciplinary team interview while other members of the team watch through a two-way mirror.*

**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.**

**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.**

**General.** *Where there may not be formal multidisciplinary units, prosecutors should facilitate contacts of relevant agencies that assist in addressing the needs of child victims and witnesses.*

- *In Japan*, the prosecutors make referrals to welfare facilities, such as the Child Guidance Centre, when children connected with cases do not have appropriate guardians. (submission by Eiji Ito, Prosecution Service of Japan)
- *In Peru*, there is an Ombudsperson, his purpose is to defend the constitutional and main rights of people and community as well as to supervise the accomplishment of the duties of the government administration. Prosecutors should make use of this agency to ensure that superior interest for children is provided for in the criminal justice system. (submission by Blanco Nelios Colan Maguire Comision Ejecutiva del Ministerio Publico)

**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. They note also that special assistance should be given to those children who are disabled or ill.

## INTERNATIONAL COOPERATION AND ASSISTANCE

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

**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.

*General.* These guidelines recognize the need for international cooperation and mutual assistance in transnational cases involving children as victims, especially those cases involving trafficking in children. Given the increasingly international dimensions of exploitation of children, cooperation between governmental law enforcement agencies, including prosecutors is important. Such cooperation should develop simplified procedures so that the problems of language and differing legal systems can be minimized. Cooperation can include information sharing, mutual assistance treaties and liaison officers in the prosecution service.

- The **German** and **Thai** governments reached agreement in 1995 in which these countries accept direct communication between the criminal prosecution authorities in addition to the diplomatic channels. This allows for faster reaction to requests made by either prosecutor service.
- The **Canadian** and **Thai** government have signed treaties of mutual assistance in criminal matters.

## IMPLEMENTATION AND MONITORING

**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.**

**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.**

*General.* With respect to the issue of implementing and monitoring the Model Guidelines, it was viewed that it is the prosecutors themselves who should monitor implementation. It is the prosecutors in the field that will know whether the guidelines are being implemented effectively. Field prosecutors could establish a forum in which to report on experiences in using these guidelines. In drafting the Model Guidelines, there were numerous suggestions as to how these guidelines could be monitored. These include: setting up a prosecutor review panel or an internal inspectorate; the establishment of an independent agency set up, for example a Children's Ombudsman. However, one response argued that the need for independence of the prosecution services would be unduly watered down by an ombudsmen or parliamentary committees. Some mention that one way to ensure effective compliance is to provide the child with legal representation. Another mentioned that these guidelines are not more than a guide which each jurisdiction will implement differently.

Prosecution services are called upon to develop written policies, standards or protocols that are jurisdiction specific. This guideline recognizes the importance of all parties to the criminal justice system in ensuring the effective prosecution of crimes against children and the protection of the rights of the child. Although these guidelines are limited to prosecutors, it is important to make the linkages between prosecutors and other relevant players in the system. Prosecutors are a crucial link between law enforcement and courts. Clearly, prosecution services can be properly involved in securing improvements without jeopardizing their independent role. In conjunction with other players in the system, they can contribute their practical experience, to reform of the criminal law to ensure the fair and equal treatment of child victims and witnesses.

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

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

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

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

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

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