

Judicial Colloquium on Witness Protection

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PROTECTION AND PARTICIPATION OF CHILD WITNESSES: LAW AND PRACTICE IN UGANDA.

A PRESENTATION BY CENTER FOR JUSTICE STUDIES & INNOVATIONS.

INTRODUCTION

Witness protection is defined as protection of a threatened witness or any person involved in the Justice system including defendants and other clients, before, during and after a trial usually by police¹. While a witness may only require protection until the conclusion of a trial, some witnesses are provided with new identities and may live out the rest of their lives under Government protection. Protection is usually sought where law enforcement sees a risk for witnesses to be intimidated by colleagues of defendants or the defendant. It is also used to protect witnesses at war crimes trials.

Arising out of the above definition, Child witness protection refers to the protection of children² who interface as witness within the justice system. Child witness participation is therefore the involvement of children in the judicial system in whatever dimensions that they may be engaged.

Uganda like some other countries has no formal witness protection programmes but the courts and police may implement informal protection as the need arises in specific cases.³

Initially, the primary objective of witness protection was to protect the physical security of witnesses for the purpose of securing their testimony in a criminal justice process. However, as protective practice has developed, improving witness related conduct throughout the justice system has become important because of the need to achieve witness cooperation at each phase of the justice process⁴

The Ugandan legal system therefore broadly recognizes the complex ways in which Children participate in the Justice system whether as victims, perpetrators or by -standers. Many of these children can be in position to provide valuable evidence on a number of issues.

¹ <http://en.wikipedia.org/wiki/file>

² Definition of a child as per the UNCRC and the ACRWC and the Constitution of the Republic of Uganda 1995 as amended

³ The witness Protection bill providing for general witness protection in criminal law is an attempt I by the Uganda government to establish a formalized witness protection mechanisms.

⁴ institute for security "the justice sector afterthought, witness protection in Africa"

WHAT LAWS ARE APPLICABLE TO CHILD WITNESS PROTECTION AND PARTICIPATION IN UGANDA?

1. INTERNATIONAL LEGAL FRAMEWORK

a) THE UNITED NATIONS CONVENTION ON THE RIGHTS OF A CHILD.

Uganda is a signatory to this convention that sets international parameters on the rights of children. The United Nations convention on the rights of the child⁵ (CRC) is a human rights treaty setting out civil, political, economic, social and cultural rights of children. Like all the other conventions ratified, once a nation state ratifies this convention is bound to it by international law. Compliance to its terms and conditions is monitored by the United Nations committee on the rights of a child. The convention does not make specific mention on the protection and participation of child witnesses, but the following provisions can imply the above aspects in relation to children.

PROTECTION OF ALL CATEGORIES OF CHILDREN

The convention imposes a duty⁶ on state parties to take appropriate measures to ensure that any child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members. The protection⁷ extends to the wellbeing of the child taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for the child, and to this end, shall take all appropriate legislative and administrative measures. Institutions, services and facilities responsible for the care of the protection shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision⁸.

PARTICIPATION OF ALL CATEGORIES OF CHILDREN

⁵ Entry into Force 2 September 1990, in accordance with article 49

⁶ Part 1, Article 2.2

⁷ Article 3.2

⁸ Article 3.3

Article 12.1 of the convention provides that parties shall **ensure to the child who is capable of forming his or her own views** the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The child shall therefore be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with procedural rules of national law. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice⁹. These rights are subjected to restrictions that are only necessary and are provided by law.

Article 40 provides for the protection of a child offender. Clause 2(iv) states that such child shall not be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality. The privacy of such a child is to be respected at all stages of the proceedings¹⁰.

2. REGIONAL LEGAL FRAME WORK

a) *The African Charter on rights and welfare of a child*

The African Charter on the Rights and Welfare of the Child(ACRWC) or Children's Charter was adopted by the Organization of African Unity (OAU) in 1990 and was entered into force in 1999. Similar to the UN Convention on the Rights of a Child, the African Children's Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The ACRWC and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights relating to children.

PARTICIPATION OF ALL CATEGORIES OF CHILDREN

- Article 3 provides for **the principle of non discrimination of Children.** Every child is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this charter irrespective of the child's or his/her parent' or legal guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

⁹ Article 12.2

¹⁰ Article 40 (2)(vii)

- Article 7 provides for **freedom of expression**. Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

PROTECTION OF ALL CATEGORIES OF CHILDREN

- Article 4 provides for the primary consideration of the **best interests of a child** in all matters concerning children by any person or authority. In all judicial or administrative proceedings affecting a child who is capable of communicating his or her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority with the provisions of the appropriate law¹¹.
- Article 10 provides for the **protection of privacy of a child**. No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honor or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such inference or attacks.

RWANDA: THE INTERNATIONAL TRIBUNAL FOR RWANDA

This tribunal is established by the statute of the international criminal tribunal for the prosecution of persons responsible for genocide & other serious violations of international humanitarian law committed in the territory of Rwanda & Rwandan citizens responsible for genocide & other such violations committed in the territory of the neighboring states between 1 Jan to 31 Dec 1994.

*This statute was adopted by Security Council resolution 955(1994) of 8 November 1994 and has undergone several amendments since then. In its proceedings Article 21 provides for the **Protection of victims and Witnesses under the Court**. It provides that the **International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity***

¹¹ Article 4 (2)

We can use the best practices from the Rwanda Tribunal to include or modify to the witness protection guidelines in Uganda which is still in the process

3. NATIONAL LEGAL FRAMEWORK

a) THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995 (AS AMENDED)

*The constitution does not expressly make mention of the above subject. However Article 28 provides for the Right to a fair hearing into which witness protection can be implied. Clause 3 (g) is to the effect that every person charged with a criminal offence shall be afforded, **facilities to examine witnesses** and to obtain the attendance of other witnesses before the court. Nothing done under the authority of any law shall be held to be inconsistent with the above clause to the extent that the law imposes conditions that must be satisfied if witnesses called to testify on behalf of the accused are to be paid their expenses out of public funds. It's paramount to note that this refund is only envisaged to witnesses in criminal proceedings.*

In relation to children in contact with the law , Article 34 (6) provides that a child offender who is kept in lawful custody or detention shall be kept separately from adult offenders, while sub article 7 provide for special protection to orphans and other vulnerable children. We can place the description vulnerability in context with child witnesses.

b) THE EVIDENCE ACT CAP 6

*This Act recognizes the participation of children as witnesses in the Justice system¹². This section provides **for all persons to be competent witnesses** unless they are precluded from understanding questions put to them for various factors including being of tender age.*

*In practice, courts in Uganda conduct a *voire dire* before any a child considered to be of tender years is allowed to participate in the justice system as a witness. The judicial officer is required to conduct this procedure as a preliminary examination to test the mental competence of the witness or evidence say of a person incapacitated by age among other factors. This procedure usually determines the competence and credibility of witness and the weight respectively to be given to his or her evidence.*

c) CHILDREN'S ACT CAP 59

¹² Section 117 Evidence Act

This Act provides for procedure in Family and Children Court¹³.The procedures are among other factors subject to the following conditions¹⁴;

- *Proceedings shall be held in camera*
- *Proceedings shall be as informal as possible and by inquiry rather than exposing the child to adversarial procedures*
- *Parents and guardians of the child shall be present whenever possible*
- *The child shall have the right to legal representation*

d) THE DOMESTIC VIOLENCE ACT 3 OF 2010

This law does regulate the protection and relief to victims of domestic violence. The Act interalia defines a domestic relationship to be a family relationship, a relationship similar to a family relationship or a relationship in a domestic setting that exists or existed between a victim and a perpetrator¹⁵.By this definition; children are also captured because they form part of the domestic setting. They can therefore be victims and or witnesses under the Act.

*Section 11 of the Act provides that the court may issue an **interim protection order for the victim** where the court is satisfied of a prima facie case against the perpetrator for committing, is committing or is threatening to commit an act of domestic violence¹⁶.The order is for a maximum period of three months¹⁷.*

*Section 12 (1) of the Act provides for the **issuance of the protection order**. This can sought as a remedy by the victim where it's proved to the court that domestic violence has been committed, is threatened or is being committed by the perpetrator.*

The contents¹⁸ of the order may be to prohibit the perpetrator from committing or enlisting the help of another person to commit an act of domestic violence; direct the perpetrator to stay away from the premises or place where the victim resides or any part of those premises, if the prohibition is in the best interest of the victim; prohibit the perpetrator from entering or approaching any place or premises where the victim works, frequents, attends or any part of the premises or place; direct the perpetrator to pay

¹³ Section 16 Children's Act Cap 59

¹⁴ Section 16 (1)

¹⁵ Section 3(1) of the Domestic Violence Act

¹⁶ Clause (1)(a)

¹⁷ Section 11(4)

¹⁸ Section 13(1)

maintenance in respect of the victim's needs or the needs of any child or dependant of the perpetrator including necessities; award the temporary custody of any child or dependant of the perpetrator to any person or institution and regulate rights of access by the perpetrator to the child or dependant; etc

e) THE PREVENTION OF TRAFFICKING IN PERSONS ACT 7 OF 2009

The Act defines the offence of trafficking¹⁹ in persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, or abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation

*The Act provides for measures for **the protection, assistance and support to victims** of trafficking to be interpreted and applied in a way that is not discriminatory to persons on the basis of among others, age.*

Section 12 provides for the protection, assistance and support for victims of trafficking. A victim of trafficking shall be legally recognized as such and shall not be penalized for any crime committed as a direct result of his or her trafficking; the victim must be informed in a language that he or she understands about his or her rights and duties; the victim shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the proceedings; a person instituting proceedings under this section shall be exempted from payment of nay filling fees required under civil procedure laws; a victim of trafficking in persons will be accorded the available health and social services, medical care, counseling and psychological assistance, on a confidential basis and with full respect of his/her privacy, in a language he/she understands.

A victim of trafficking shall be considered for the provision of safe and appropriate accommodation and material assistance, where necessary and possible; and the protection, assistance and support to children shall be provided in accordance with their special needs, especially with regard to accommodation, education and care²⁰.

¹⁹ Section 2 Act 7, 2009

²⁰ Clause 9

A victim of trafficking shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the possibilities of assistance and support²¹. This protection, assistance and support subscribed in this section shall be provided by Government and other agencies²².

***Confidentiality** is also respected under this Act²³. At any stage of the investigation or trial, law enforcement officers, prosecutors, judicial officers and medical practitioners as well as parties to the case, shall recognize the right to privacy of the victim of trafficking. Proceedings of the court shall be conducted in camera, outside the presence of the media, in cases involving children²⁴.*

***Repatriation of Victims.** The minister in-charge of Internal Affairs²⁵ in cooperation with the appropriate government agencies shall be responsible for the facilitation of the repatriation of victims of trafficking in persons to and from Uganda.*

Where the repatriation is likely to expose the victim to greater risks or to compromise his or her safety, the minister may through the relevant office negotiate with the host government for the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect the victim²⁶.

e) THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT 5, 2010

This Act is to provide for the prohibition of female genital mutilation and matters connected to the thereto. Female genital mutilation id defined as all procedures involving partial or total removal of the of the external female genitalia for non-therapeutic reasons²⁷. The Act provides interalia that where the offender is apparent, guardian or person having authority or control over the victim ,the offence is termed as aggravated female genital mutilation.

A magistrates' court is empowered to issue a protection order in favor of a girl who is likely to undergo female genital mutilation, upon application by any person. And where

²¹ Clause 10

²² Clause 11

²³ Section 13

²⁴ Clause 2

²⁵ Section 2(h)

²⁶ Clause 2

²⁷ Section 1 -Interpretation

this protection order is in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary²⁸.

f) INTERNATIONAL CRIMINAL COURT ACT 2010

This Act was designed to give effect to the Rome statute of the international criminal court in the Ugandan Context. Section 46 provides for the protection of witnesses who interface with the Court. The section authorizes the use of the Evidence Act cap 6 in relation to handling witnesses and taking their evidence under any proceedings in the Court. Nothing in this provision is to be construed as requiring a person to give evidence that the person cannot be compelled to give in any investigation by the prosecutor or any proceedings before the Court.²⁹

Section 49 provides for the request for voluntary appearance of a witness. The section under which this provision falls is titled "FACILITATING APPEARANCE OF WITNESS". The court is empowered to send a request for assistance by the minister to facilitate the voluntary appearance of witness before the court. The minister may then grant authority for the request to proceed and transmit the request to the appropriate Ugandan agency if he is satisfied that there are reasonable grounds to believe that the witness is or maybe in Uganda.

This Act does not particularly make mention of the protection and participation of Child witnesses. It is a blanket provision.

4. CHILD WITNESS PROTECTION AND PARTICIPATION IN MATTERS OF ARMED CONFLICT AND POLITICAL VIOLENCE

Children are usually targeted in times of conflict because of their vulnerability becoming direct victims of recruitment, rape, torture and slavery .In some cases, children have been targeted for systematic and widespread violations including genocide, crimes against humanity and war crimes. Though many children die in such conflicts, countless others suffer the indirect effects of conflict including traumatization, malnutrition and disrupted education. These disruptions have long term consequences on the children and their societies.

Until recently, violations against children were not singled out from the atrocities committed against civilian populations generally. The landscape has changed with the near-universal ratification of the Convention on the Rights of the Child, the United Nations' 1996 landmark study on the Impact of Armed Conflict on Children by Graça Machel, the adoption of the

²⁸ Section 13 Act 5, 2010

²⁹ Section 46 (3) ICC Act 2010

Optional Protocol on the Involvement of Children in Armed Conflict in 2000, and the 2002 passage of the statute establishing the International Criminal Court, which criminalized specific crimes under international law, including those against children. These have generated increased attention to crimes against children and to the potential for children to participate in transitional justice processes

WHAT ARE THE CHALLENGES OF WORKING WITH CHILD WITNESSES IN MATTERS RELATED TO ARMED CONFLICT OR POLITICAL VIOLENCE?

The need for special consideration for children in judicial proceedings is widely recognized under international and national laws and it should be from this background that all practice frameworks should take root. The law consider the following factors to affect a child's experience in the court room; age, dependence on adults and the environment, compromised decision making ability, inability to recognize his or her own best interest or plan for the future, generally uncritical attitude toward adults and susceptibility to influence.³⁰

In particular the justice system face the following constraints while dealing with child witness and their participation in trials

1. Coached witnesses

Courts are concerned with finding the truth and bringing justice in all claims before the court, and is largely reliant on witness testimony to accomplish this task. The court therefore has an obligation to protect its child witnesses against re-traumatization in certain cases, as it has an interest in preserving the integrity of the evidence before it. Children may be more inclined to give answers that they think an adult want to hear and there is a risk that child witnesses may learn their testimony as they go, taking their cue from the adults who interview them to assist them. The courts therefore must ensure that they protect their child witnesses against renewed psychological harm and ensuring that they provide trustworthy and reliable evidence.

2. Memory loss and trauma

The typical concerns about a child's ability to testify in a court of law relate to his or her linguistic, cognitive, moral and emotional development. The Ugandan judicial system draws upon children of all categories of age groups but especially adolescents. Their relative maturity tends to alleviate concerns that linguistic or cognitive under-development could affect their ability to testify. However delays in their moral and emotional development may still have negative effects on both the child witness and the quality of testimony. In cases of traumatic experiences, a witness's ability to understand or remember time frames dates and physical dimensions. It may appear that the risk of re-traumatization among these witnesses is lessened because they are in fact almost adults, but many of them still struggle with trauma of their experiences. Even where development is not affected, trauma itself can cause memory problems that affect a child's testimony. For example victims of trauma commonly 'dissociate' themselves from their surroundings. This mental detachment can impede a witness's temporal or spatial

³⁰ *Protecting witness and victims: Special measures for women and children, UN Human rights Commission Report*

perception, thereby affecting their ability to recall aspects that maybe relevant. The child may not remember what happened because although his body was present his mind was not especially where the child was forced to engage in the traumatizing experience.

3. Technical legal processes

Other factors that may influence the performance of child witnesses include exposure to the court processes which may seem confusing or overwhelming, intimidation by the court room environment, fantasies about the consequences of testimony and general anxiety about Testifying.

4. Protection of Witness identity.

In countries like Uganda where the justice system facilities are often times insufficient it is a challenge to protect the witness identity, from perpetrators or their associates who may identify them as targets to erase incriminating evidence

EMERGING GOOD PRACTICES AND RECOMMENDED PROTECTION MEASURES³¹.

Protection of witnesses and victims is crucial in any efficient investigation and prosecution of perpetrators of human rights violations. A successful protection programme, designed to provide a full range of physical protection and psychosocial support to witnesses and victims, creates an enabling environment to report cases and is key to ensuring access to justice, fair trials and combating impunity

“Special protection measures are provided during testimony,” said An Michels, a psychologist in the Victims and Witnesses Unit of the International Criminal Court. **“They include providing in-court psychological assistance, shielding the witness from the accused, avoiding embarrassing and repetitive questions, offering space for free narrative, and inviting the witness to take breaks,”** she added.

Michels explained that these measures **“help to create a safe environment in which witnesses feel encouraged to tell their story.”** Victims of sexual violence, for instance, often benefit from the presence of a support person or psychologist in the courtroom. **“By giving them the space to tell their story in their own words,”** she said, **“they feel that their testimony can bring closure, even if the process of testifying is often very emotional and difficult for them.”**

The above practice can be adopted by the courts and or tribunals in cases of child witness participation in transitional justice in addition to the following

³¹ Key Principles for Children & Transitional Justice: Involvement of Children & Consideration of Children's Rights in Truth, Justice and Reconciliation Processes. Outcome of Children & Transitional Justice Conference April 27-29, 2009. (DRAFT)

1. Use of truth commissions³² and application of truth seeking mechanisms.

Truth commissions are temporary, non-Judicial and non punitive bodies mandated to investigate, document and report on human rights abuses. By generating public discussion on accountability and social reform, truth commissions can build capacity for active citizenship and democratic process. Not only do children have a right to express their views and to be considered in such processes,³³ their own perspectives and experiences are a valuable resource to document the past and inform the way forward. The Convention on the Rights of the Child provides a guiding framework for the participation and protection of children in transitional justice contexts and serves as the basis for a truth commission's approach on issues related to children.³⁴

Criteria for determining whether a truth commission is appropriate for child and adolescent participation include:

- Independence and impartiality of the commission;
- Compliance with international human rights standards;
- A human-rights based approach that is participatory and comprehensive;
- Community engagement with specific focus on vulnerable groups and victims
- The best interests of the child guides the entire process;
- Guarantee of children's safety and security;
- Policy and procedures to protect the rights of children involved;
- Availability of appropriate psychosocial support;
- Long-term support for community-based reintegration and reconciliation

2. Taking into account Children's divergent views and needs.

Children's rights to protection and participation should take into account their diverse needs and experiences. The challenges faced by girls and boys, adolescents and younger

³² Their role has gradually evolved since 1980s & early 1990s in Chile, El Salvador and Haiti. Subsequent commissions in Guatemala (1997-1999) and South Africa (1995-2002) investigated and reported a substantially higher number of Child and Adolescent Victims. The final report of Peru's truth commission (2001-2003) had a chapter on children and the truth commission in Timor-Leste (2002-2005) had both a chapter on children in its final report and a public hearing dedicated to children. The commission in Sierra Leone (2002 to 2004) was the first to explicitly mention children in its mandate and recognized the rights and protections for children's involvement. Liberia's commission (2005 to 2009) went further, systematically including children in its activities throughout the country.

³³ UNCRC, Article 12.

³⁴ The Convention on the Rights of the Child (CRC) addresses the full spectrum of rights and recognizes all rights as indivisible and interdependent. Many of the obligations in the CRC are affirmed and expanded upon in the Optional Protocol to the CRC on the involvement of children in armed conflicts (articles 6 and 7) and the Optional Protocol on the sale of children, child prostitution and child pornography (Articles 8, 9, 10).

children, refugee and internally displaced children, children recruited into armed forces and groups, children orphaned by war, children from different religious and ethnic backgrounds, and children with disabilities, all require specific attention. When assessing the risks of child and adolescent participation in a truth commission and judicial proceedings the potential risks of excluding young people from the process must also be considered.

3. Outreach and consultations.

The presiding court or justice system should adopt a strategy of National and community outreach. To inform and engage children is critical for their successful participation in transitional justice processes. Children should be consulted on the most effective forms of outreach, helping to ensure that transitional justice processes reflect their experiences and needs, and maximize their participation. Consultations with children on such judicial processes should make use of existing local structures such as schools, clubs, child welfare committees, religious and faith-based groups; involve child protection agencies and local leaders in identifying and supporting child participants while recognizing possible risks; ensure girls voices are encouraged and heard through separate consultations for girls, as needed; include children from ethnic, racial, religious and other groups, as well as children with disabilities; give feedback directly to the communities on consultation outcomes ;explain limitations, whether in the case of a court, truth commission or reparations program or any other form of accountability process, so that expectations are realistic and realizable.

4. Local, Traditional and Restorative Justice Processes.

These can contribute to accountability for the broad range of crimes committed during periods of unrest or political violence and support transformation to a more peaceful and stable society, when the state has entrusted such process to carry out certain legal tasks in its legal order. However such processes must conform to international human rights standard, in particular with regard to judicial guarantees, gender quality and the protection of children's identity and well being.

5. Reparations to Children.

Reparation programmes attempt to repair, through a range of measures, the impact of violations suffered by victims during any conflict or violence. Reparations can contribute to children's recovery and their reintegration within their families and communities. Eligibility for reparations should consider the multiple ways in which children have been affected. Safeguards should be put in place to ensure that eligibility for reparations does not categorize or stigmatize groups of children identified and that children's rights to protection of identity and privacy are fully protected.

6. Institutional reform.

Child focused institutional reform in transitional contexts should build a protective environment for children by strengthening health care and educational systems, social services and public institutions to protect and promote children's rights. Early engagement and coordination is needed between sectors undertaking institutional reform and transitional justice processes to enable children's protection and participation. The genuine and meaningful participation of children in institutional reform can strengthen the protective environment and assist in preventing the recurrence of violence and conflict

7. Applicability of the different existing legal regimes.

Reference should also be made to all laws as applicable and those mentioned above to ensure that there is harmonization of procedures and processes relating to participation of children as witnesses or victims in court proceedings. Where a situation arises that is not specific to particular national or applicable law, the courts should exercise judicial activism and use all the available international standards and procedure to ensure a child friendly procedures and rights based approach to witness protection.

8. Relaxation of court rules and procedures in favour of children

Generally rules of courts are stringent and intimidate children , who interface with the system. The following can be adopted to curtails some of the challenges

Exclusion of Witnesses

The general rule is that a witness has to remain outside the courtroom when he or she is not testifying. The purpose of the rule is to prevent witnesses from changing their testimony based on what other witnesses have said at trial. The rule may be relaxed in the case of a child witness. The judge can permit a parent or therapist to accompany the child into the courtroom and remain there during the child's testimony.

Protection of Child Witnesses

Special laws have been adopted in some states for the protection of child witnesses. For example, a child might be allowed to testify through closed-circuit television so that he or she would not have to be in the same room with the person who had abused the child. Also, a child's videotaped deposition could be introduced in evidence instead of requiring the child to testify in court. The judge has the discretion to relax various courtroom formalities and to exclude the public from the courtroom while the child testifies.

Questioning of Child Witnesses

Leading questions (questions that suggest the answer) are not typically allowed on direct examination of a witness. However, the judge will sometimes allow leading questions if a child is the witness. Anatomical dolls and other aids can be used to help the child testify on the witness stand.

Conclusion

The confidence of the witness in a judicial system and the process of engaging witnesses at all levels including preliminary investigation greatly affect the nature and outcome of

any trial and whether .Child witness are vulnerable and its critical that all the process are handled bearing in mind that whatever decision or process that is taken ant any levels is in line with their best interest to ensure that justice is done in all ways. It is important that courts and prosecution give effect to all laws as applicable at international and national level.