

GROUP 2

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

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I. INTRODUCTION

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

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

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

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

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

³In all actions concerning children, whether undertaken by public or private social welfare-institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

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

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

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

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

II. MEASURES OF PROTECTION

A. Investigation Phase

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

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

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

1. Victim Support Agencies

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

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

⁵Such as waiting rooms.

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

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

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

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

Other functions of the victim support centres are:

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

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

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

2. Support Persons

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

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

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

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

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

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

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

re-victimization or secondary victimization”.

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

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

3. Specially Trained Personnel

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Interview Rooms

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

5. Technical Communication Aids

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

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

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

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

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

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

²¹ Ibid.

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

²³ For instance Nepal.

6. Recordings

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

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

7. Number of Interviews and Duration of the Interview

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

B. Trial Phase

1. Waiting Areas

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

2. Measures to Protect the Privacy of a Child Witness

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

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

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

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

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

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

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

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

3. Measures to Protect the Safety of Child Witnesses

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

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

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

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

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

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

4. Protection of Children During Cross-Examination:

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

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

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

III. RECOMMENDATIONS

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

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

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

and physical support and ensuring swift judicial procedures.

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

IV. CONCLUSION

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

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

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

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

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