

GROUP 3

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

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I. INTRODUCTION

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

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

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

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

II. CURRENT SITUATION OF INQUIRY AND TESTIMONY

A. Multiple Interviews

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

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

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

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

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

B. Questioning Skill: Techniques and Time Management

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

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

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

C. Rooms, Facilities and Conducive Environment

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

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

D. Support Services

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

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

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

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

E. Fear Caused by the Presence of the Perpetrator

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

F. Delay in Procedures

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

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

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

G. Insufficient and Obscure Legislation

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

III. RECOMMENDATIONS

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

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

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

IV. CONCLUSION

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