

**EXPERT CONSULTATION**  
**Legal Frameworks, Procedures and Enforcement:**  
**Preventing and Responding to Sexual Exploitation of Children and Adolescents**

***Promoting Child-friendly Court Procedures: CRC Article 12.2***

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**13 and 14 October 2008**

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## Normative framework

- Art.12 of the CRC: the *right* of children to be heard and to have their views taken into account in legal ... proceedings
- Other relevant rights and principles:
  - the best interests of the child shall be a primary consideration in all actions concerning children, inter alia by courts and legislative bodies (CRC Art.3.1)
  - right of child victims of any form of exploitation or abuse to measures to promote psychological recovery (Art.39)
- Obligation of the State to prevent sexual abuse and exploitation
- Obligation to punish perpetrators – implicit in the CRC and express in Art.3 of the OPSC - implies a need for evidence.

## Inter-relationship & application of these principles 1

- relevance of age?

“Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.” UN Guidelines, No.18

But if courts have broad discretion to decide whether children will testify, taking into account risk of trauma, not clear that absence of age-based guidelines will result in more children being heard.

## Inter-relationship & application of these principles 2

child's decision?

- Need to distinguish between views or opinions, and testimony or evidence.
- Expression of views is a right, which may be exercised or not; giving evidence a legal obligation. Should children be exempt? always? if not, when?
- Laws that classify certain crimes as “private prosecution” or allowing victim to “pardon” generally seen as undesirable, esp. sexual offences against children (safeguards against parental exploitation possible but...)

Inter-relationship & application of these principles 3

risk of trauma?

- how to evaluate?
- how great must risk be?
- Nordic approach: balance risk/need for testimony

## Suggested Conclusions

1. Children's *views* on participation on criminal proceedings should *always* be heard and taken into account
2. In deciding to allow/require testimony or not:  
*Views* of the child should be taken into account  
*Need* for testimony should be taken into account  
Foreseeable consequences should always be assessed and taken into account
3. Fixed age limits are inappropriate, but presumptions re age limits may be useful

## Child-friendly or child sensitive proceedings

- How to reconcile this need for evidence with the best interests of the child?
- “Child-sensitive’ denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.” UN Guidelines No.9(d)
- International standards:
  - Art.8 of OPSC
  - UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20)
  - European Convention on the Protection of Children against Sexual Exploitation and Abuse
- OPSC only *some* sexual exploitation; Guidelines *all* crimes

# Synopsis of OPSC Art.8

- recognition of special needs (art.8.1(a))
- informing child victims about proceeding, about their rights and role, and about outcome (art.8.1(b))
- “allowing the views, needs and concerns of child victims to be presented” in proceedings where their personal interests are affected (art.8.1(c))
- appropriate support services to child victims throughout the legal process (art.8.1(d))
- protection of the privacy and identity of child victims (art.8.1(e))
- safety of victims and W from intimidation and retaliation (art.8.1(f))
- avoidance of delay in trial and execution of orders (art.8.1(g))

# Guidelines on Justice in Matters involving Child Victims and Witnesses, 2005

- III. Principles
  - (a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;
  - (c) *Best interests of the child*. ... includes the right to protection and to a chance for harmonious development:

# UN Guidelines - Rights

- V. to be treated with dignity and compassion
- VI. to be protected from discrimination
- VII. to be informed
- VIII. to be heard and to express views, concerns  
(modalities of participation, status of accused)
- IX. to effective assistance
- XI. to be protected from hardship during the justice  
process
- XII. to safety
- XIII. to reparation
- XIV. to special preventive measures

# UN Guidelines - example

30. Professionals should approach child victims and witnesses with sensitivity, so that they: (d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child does to court only when necessary and other appropriate measures to facilitate the child's testimony.

# Examples of implementation

- Video recordings
- Closed circuit video:
- audio recording
- screen
- video recording/written records: Jordan
- written record: Jamaica
- report by psychologist (watched by other parties): Argentina

# More examples...

- child interrogated by psychologist, not judge
- questioning in court but only by judge
- accused removed during child victim's testimony: Georgia
- testimony heard during trial but not in courtroom

# Examples - support person etc

- right to “support person
- mandatory support person
  - roles:      silent presence
  - help testify
  - explain proceedings to child
  - communicate child’s concerns
- Mandatory presence qualified psychologist
- Obligatory participation of children’s agency/ombud in trial
- Mandatory appointment of legal advisor/representative

# Examples - evidence

- definition of crime modified to avoid need for traumatic testimony
- testimony without oath
- requirement of corroboration eliminated
- questions on prior sexual history barred
- limitations on length of hearing, trial
- testify only once (no pre-trial testimony)
- testify only once before trial

# Conclusions

- issue deserves more attention than in Stockholm or Yokahama
- much action; little known about impact
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- more research needed
- recommendations should be flexible: experimentation with different methods is ongoing, no “one size fits all”

# Main Recommendations

1. Standards of OPSC Art.8 should be applied in all cases of sexual exploitation
2. States should be urged to follow UN Guidelines on Child Victims and Witnesses

# Possible additional recommendations

- 2 principles recognized: repeated questioning and direct confrontation should be avoided
- value of “support person” recognised
- Antiquated distinctions between different forms of sexual abuse should be eliminated
- Presumptions are better than fixed age limits
- more research needed
- experiences should be shared
- measures to protect the victim must not prejudice to rights of the accused; broader definition of sexual exploitation includes abuse within the family and by other children