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### Commission on Crime Prevention and Criminal Justice

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Item 8 (b) of the provisional agenda\*

#### **Use and application of United Nations standards and norms in crime prevention and criminal justice: guidelines on justice for child victims and witnesses of crime**

##### **Canada: draft resolution**

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following resolution:

#### **Guidelines on justice for child victims and witnesses of crime**

*The Economic and Social Council,*

*Recalling* its resolution 1996/16 of 23 July 1996, in which it requested the Secretary-General to continue to promote the use and application of United Nations standards and norms in crime prevention and criminal justice,

*Recalling also* its resolution 2004/27 of 21 July 2004 on guidelines on justice for child victims and witnesses of crime, in which it requested the Secretary-General to convene an intergovernmental expert group in order to develop guidelines on justice in matters involving child victims and witnesses of crime,

*Recalling further* General Assembly resolution 40/34 of 29 November 1985, by which the Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the resolution,

*Taking into account* the provisions of the Convention on the Rights of the Child, adopted by the General Assembly by its resolution 44/25 of 20 November 1989, in particular articles 3 and 39 thereof, as well as the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Assembly by its resolution 54/263 of 25 May 2000, in particular article 8 thereof,

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\* E/CN.15/2005/1.



*Recognizing* that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused persons,

*Recognizing also* that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process,

*Mindful* of the serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses,

*Mindful also* of the fact that the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness,

*Recognizing* the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime,

*Noting with appreciation* the work of the Intergovernmental Expert Group Meeting to Develop Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, held in Vienna on 15 and 16 March 2005, with the financial support of the Government of Canada, and the report of the Intergovernmental Expert Group,<sup>1</sup>

*Taking note* of the report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, regarding the item entitled "Making standards work: fifty years of standard-setting in crime prevention and criminal justice",

1. *Adopts* the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime annexed to the present resolution with a view to enhancing the protection of child victims and witnesses in the criminal justice system;

2. *Invites* Member States to draw on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings;

3. *Calls upon* Member States that have developed legislation, procedures, policies or practices for child victims and witnesses to make information available to other States, upon request, and to assist them in developing and implementing training or other activities in relation to the use of the Guidelines;

4. *Calls upon* the United Nations Office on Drugs and Crime to provide technical assistance and advisory services to Member States, upon request, to assist them in the use of the Guidelines;

5. *Requests* the Secretary-General to ensure the widest possible dissemination of the Guidelines among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and non-governmental organizations;

6. *Calls upon* the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, in collaboration with the International Bureau

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<sup>1</sup> E/CN.15/2005/14/Add.1.

for Children's Rights where appropriate, to provide training in relation to the Guidelines and to consolidate and disseminate information on successful models at the national level;

7. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its seventeenth session on the implementation of the present resolution.

## Annex I

# Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

## I. Objectives

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.

2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of these Guidelines in their entirety.

3. The Guidelines provide a practical framework to achieve the following objectives:

(a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child;<sup>2</sup>

(b) To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

(c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>3</sup>

(d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special

<sup>2</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

<sup>3</sup> General Assembly resolution 40/34, annex.

needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.

5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.

6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

## II. Special considerations

7. The Guidelines were developed:

(a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;

(b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;

(c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;

(d) Reaffirming that every effort must be made to prevent victimization of children, including, among other things, through implementation of the Guidelines for the Prevention of Crime;<sup>4</sup>

(e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;

(f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;

(g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;

(h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;

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<sup>4</sup> Economic and Social Council resolution 2002/13, annex.

(i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;

(j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;

(k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

### III. Principles

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting 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;

(b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

(c) *Best interests of the child*. Every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:

(i) *Protection*. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;

(ii) *Harmonious development*. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) *Right to participation*. Every child has the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities and evolving capacity.

### IV. Definitions

9. Throughout these Guidelines, the following definitions apply:

(a) “Child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;

(b) “Professionals” refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: 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; judges; law enforcement officials; medical and mental health professionals; and social workers;

(c) “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;

(d) “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.

## **V. The right to be treated with dignity and compassion**

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings. Professionals should not treat any child as a typical child of a given age or as a typical victim or witness of a specific crime.

12. Interference in the child’s private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines should be conducted in a child-sensitive and empathetic manner in a suitable environment that accommodates the special needs of the child. They should also take place in a language that the child uses and understands.

## **VI. The right to be protected from discrimination**

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In many cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. Age should not be a barrier to a child's right to participate fully in the justice process. Every child has the right to be treated as a capable witness and his or her testimony should be presumed valid and credible at trial unless proved otherwise and as long as his or her age and maturity allow the giving of intelligible testimony, with or without communication aids and other assistance.

## **VII. The right to be informed**

19. Child victims and witnesses, their families and their legal representatives, from their first contact with the justice process and throughout that process, have the right to be promptly and adequately informed of, *inter alia*:

(a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;

(b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which "questioning" will be conducted during the investigation and trial;

(c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;

(d) The specific places and times of hearings and other relevant events;

(e) The availability of protective measures;

(f) The existing mechanisms for review of decisions affecting child victims and witnesses;

(g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their families and their legal representatives have the right to be promptly and adequately informed of:

(a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;

(b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

## **VIII. The right to be heard and to express views and concerns**

21. Professionals and other participants in the justice process should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

(a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;

(b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;

(c) Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

## **IX. The right to effective assistance**

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40-42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable him or her to participate effectively at all stages of the justice process.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

(a) Child victim and witness specialists to address the child's special needs;

(b) Support persons, including specialists and appropriate family members to accompany the child during testimony;

(c) Where appropriate, to appoint guardians to protect the child's legal interests.



## **X. The right to privacy**

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through 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.

28. Where appropriate, measures should be taken to exclude the public and the media from the courtroom during the child's testimony.

## **XI. The right to be protected from hardship during the justice process**

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

(a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;

(b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

(c) Ensure speedy trials, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

(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 goes to court only when necessary and other appropriate measures to facilitate the child's testimony.

31. Professionals should also implement measures:

(a) To limit the number of interviews. Special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of pre-recorded videos;

(b) To avoid unnecessary contacts with the alleged perpetrator, his or her defence team and other persons not directly related to the justice process. Professionals should ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator. As necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

## **XII. The right to safety**

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.

34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

(a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;

(b) Using court-ordered restraining orders supported by a registry system;

(c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;

(d) Placing the accused under house arrest;

(e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

## **XIII. The right to reparation**

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

#### **XIV. The right to special preventive measures**

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

#### **XV. Implementation**

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

(a) Relevant human rights norms, standards and principles, including the rights of the child;

(b) Principles and ethical duties of their office;

(c) Signs and symptoms that indicate crimes against children;

(d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;

(e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;

(f) Special measures and techniques to assist child victims and witnesses in the justice process;

(g) Cross-cultural and age-related linguistic, religious, social and gender issues;

(h) Appropriate adult-child communication skills;

- (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
- (j) Skills to deal with child victims and witnesses in a sympathetic, understanding, constructive and reassuring manner;
- (k) Methods to protect and present evidence and to question child witnesses;
- (l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.