

The Best Interests of the Child in Court

“ In 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 a primary consideration ”

Article 3, United Nations Convention on the Rights of the Child 1989



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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS





The Concept

- Rights within the Convention are not to be read in isolation from the guiding principle/core value of the best interests of the child.
- The underlying theme of “the best interests of the child” must be incorporated into all actions which seek to protect children.
- The best interests of the child concept requires a holistic approach which takes into account the child's security and all aspects of their physical, psychological and emotional development.



The Context

- Child victims of sexual abuse and other forms of abuse may find themselves testifying in court proceedings.
- In the Cambodian context, this may mean being exposed to further victimisation in the lead up to the trial, the trial itself and it's aftermath.





The Context

Child victims are potentially subjected to the following:

- Direct exposure to the perpetrator and in some situations the perpetrator's family
- Confrontation with the perpetrator and in some instances the perpetrator's family
- Testimony given in open court rather than a separate room
- Open trials with an audience of people they do not know
- Harsh cross-examination in language which may be complex and in loud and accusatory voices



The Context

- Lengthy trial procedures and in some cases, multi level court proceedings (municipal court, appeal court and supreme court)
- Delays in the case coming to court
- Unfamiliar surroundings and unfamiliarity with the legal process and those involved in the process
- Violation of privacy so that identification and details of abuse suffered is revealed to the public
- Court officials and police officers who are untrained in child friendly procedures and techniques
- Security issues in terms of reprisals by the perpetrator and/or perpetrator's family



The Context

These kinds of issues can give rise to:

- Severe anxiety, depression and fear
 - Loss of appetite and insomnia
 - Shame and embarrassment
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- Can last into the long-term resulting in grave consequences for the psychological, emotional and physical development of the child.
 - The trauma of testifying in court may be enhanced further for the child victim if the court process does not end with a conviction of the perpetrator, which is more likely to happen if the child is subjected to the procedures mentioned above.





Application in the Courts

We demand a lot from children when we ask them to be participants in the court system, therefore, in a system designed for adults, we need to adapt practices to make them sensitive to children caught up, through no fault of their own, in the system.



Application in the Courts

- Attention must be paid not only to prosecute the alleged perpetrator but also to prevent abused children from further exploitation through the court system, in line with the best interests of the child. A balance must be sought.
- This principle must be utilised for all children involved in the court system, and especially children who are the victims of sexual exploitation.
- If we are to encourage child victims to take part in court proceedings, the system must be adapted to their specific needs.



Application in the Courts

- It means on the one hand fostering an environment which allows children to give evidence, encourages children to testify and enhances the ability of the child to participate effectively in the proceedings; all of which will serve to increase the chance of successful convictions
- On the other hand, we want to minimise the risk of causing further trauma by re-victimising children through the court system which can serve to cause further long-term physical, emotional and social problems.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Court visits to reduce anxiety and stress before court hearings. This should not take place too early so as to avoid causing anxiety and not too late so as to avoid confusion and fear. It should include an explanation of the roles of people involved in the court.
- Training of judges, prosecutors, lawyers and police officers in child friendly techniques.
- Appointment of a prosecution lawyer whom the child feels comfortable with and is able to trust. And, where possible for the prosecutor to meet with the child prior to the trial.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Pre and post-trial therapeutic support is fundamental to ensure the child is supported as much as possible. Emotional support is critical before, during and after the trial.
- Ensure the child is as fully prepared as possible for testifying. This includes detailed information of the scope of their role, timing and progress of proceedings.
- Procedures and processes of the court system explained to the child in a language they understand, taking into account the age of the child but also any disability and level of development. The lack of understanding of often complex legal procedures can cause severe anxiety.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Expedite cases of child sexual exploitation whenever possible to encourage quicker healing. Reduce delays in cases coming to court.
- Allow the child to give evidence in a separate room, where questions are relayed to him in a language which they understand. Use of closed circuit television and taped testimony should be considered as an alternative to the presence of the child in the trial, whenever possible.
- Make the court system less adversarial to child victims of sexual exploitation.
- Identity of any child victim of abuse, especially sexual exploitation should never be released in the media in order to protect the child. The fear of public exposure, particularly for victims of sex crimes can cause feelings of deep apprehension as well as serving to further isolate the child, stunt the healing process.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Whilst we stress that testimony in a separate room is the ideal, if a child victim is expected to testify in court then the media, the general public and the perpetrator should be removed from the court during the child's testimony, particularly in the case of child victims of sexual abuse.
- In this regard, judges should remind the media that under the Press Law they are not permitted to publish the identity of any child involved in a court case. The support person, parent and/or social worker should however remain present.
- Have a separate child waiting area near the courtroom so that the child is not exposed to the possibility of seeing the defendant and/or abuser.
- Try to curtail the number of interviews undertaken with the child in the run up to the trial.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Face-to-face contact with the alleged abuser should be minimised as much as possible and this should include not making child victims stand right next to the accused when they are testifying.
- Harsh cross-examination should not be permitted as well as abusive language and language which is threatening and loud.
- If the child is not permitted to testify outside the courtroom, then court room infrastructure needs to be adapted, for example, providing a child-sized chair, allowing the child to sit next to a support person, etc.
- Unnecessary and prolonged questioning of child victims should not be allowed. Child victims should not be required to be present in court before and after testifying, unless they wish to be.
- Allow the view of the child to be expressed and taken into consideration.



Specific Guidelines for Incorporating “the best interests of the child” into Practice

- Do not allow the perpetrator to ask the child victim direct questions.
- The child must be allowed to have their parents/guardian present, unless it is not in the best interests of the child. Whenever possible a social worker that the child knows and trusts should also be allowed to be present during trial proceedings.
- Judges should ensure that any cross-examination is conducted at a level appropriate for the age/ability of the child and should intervene if the child is distressed or confused.
- Finally, adapting to the specific needs and best interests of the child, one should pay extra attention to not direct the testimony of the child (before and during the trial) and thereby ensure no additional pressure is placed upon the child.



One child's story at the hands of the Cambodian judicial system

- There now follows a short story of a girl who was the victim of abuse and who went through the Cambodian judicial system in order for us to better understand the experiences and effects such a process can have.
- This will give us the opportunity to reflect on her advice and recommendations for making the system better for the most vulnerable it serves.