



## Экономический и Социальный Совет

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### Комиссия по предупреждению преступности и уголовному правосудию

Тринадцатая сессия

Вена, 11–20 мая 2004 года

Пункт 5 предварительной повестки дня\*

### Международное сотрудничество в борьбе с транснациональной преступностью

#### Канада: проект резолюции

Комиссия по предупреждению преступности и уголовному правосудию рекомендует Экономическому и Социальному Совету принять следующий проект резолюции:

#### Руководящие принципы, касающиеся правосудия для детей – жертв и свидетелей преступлений

*Экономический и Социальный Совет,*

*ссылаясь* на резолюцию 40/34 Генеральной Ассамблеи от 29 ноября 1985 года, в которой Ассамблея приняла Декларацию основных принципов правосудия для жертв преступлений и злоупотребления властью,

*ссылаясь также* на положения Конвенции о правах ребенка, которую Генеральная Ассамблея приняла в своей резолюции 44/25 от 20 ноября 1989 года, в частности статьи 3 и 39 этой Конвенции, а также положения Факультативного протокола к Конвенции о правах ребенка, касающегося торговли детьми, детской проституции и детской порнографии, который Ассамблея приняла в своей резолюции 54/263 от 25 мая 2000 года, в частности статью 8 этого Протокола,

*принимая во внимание* соответствующие положения Венской декларации о преступности и правосудии: ответы на вызовы XXI века, которая содержится в приложении к резолюции 55/59 Генеральной Ассамблеи от 4 декабря 2000 года, а также планы действий по осуществлению Венской декларации, которые содержатся в приложении к резолюции 56/261 Ассамблеи от 31 января 2002 года,

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\* E/CN.15/2004/1/Rev.1 и Corr.1.



в частности планы действий, касающиеся свидетелей и жертв преступности, а также правосудия в отношении несовершеннолетних,

*принимая во внимание также* документ, озаглавленный "Мир, пригодный для жизни детей", который Генеральная Ассамблея приняла в своей резолюции S-27/2 от 10 мая 2002 года,

*ссылаясь* на свою резолюцию 1996/16 от 23 июля 1996 года, в которой он просил Генерального секретаря продолжать содействовать использованию и применению стандартов и норм Организации Объединенных Наций в области предупреждения преступности и уголовного правосудия,

*сознавая* серьезные физические, психологические и эмоциональные последствия различного рода преступлений для жертв, особенно детей-жертв,

*признавая*, что участие детей – жертв и свидетелей преступлений в уголовном судопроизводстве является необходимым условием для эффективного преследования за совершение различного рода преступлений, в том числе по делам, связанным с сексуальной эксплуатацией детей, торговлей детьми и другими формами транснациональной организованной преступности, в которых дети часто являются единственными свидетелями,

*сознавая* тот факт, что детям – жертвам и свидетелям преступлений требуются особая защита, помощь и поддержка, соответствующая их возрасту, уровню зрелости и индивидуальным особым потребностям, с тем чтобы не допускать причинения им дополнительных неприятностей в связи с их участием в уголовном судопроизводстве,

*подчеркивая*, что стандарты и нормы Организации Объединенных Наций в области предупреждения преступности и уголовного правосудия дополняют свод деклараций, договоров и других документов, направленных на продвижение реформы уголовного правосудия в государствах-членах в целях принятия эффективных и гуманных мер борьбы с любыми формами преступности и ее предупреждения во всем мире,

*приветствуя* вклад Международного бюро по правам детей в разработку руководящих принципов, касающихся правосудия для детей – жертв и свидетелей преступлений, совместно с Руководящим/редакционным комитетом, состоящим из известных международных экспертов в области прав ребенка, уголовного права и виктимологии,

1. *просит* Генерального секретаря созвать, при условии наличия внебюджетных ресурсов, межправительственную группу экспертов с целью разработки руководящих принципов, касающихся правосудия для детей – жертв и свидетелей преступлений;

2. *просит* межправительственную группу экспертов в рамках своего совещания принять во внимание руководящие принципы, касающиеся правосудия для детей – жертв и свидетелей преступлений, которые разработало Международное бюро по правам детей и которые содержатся в приложении к настоящей резолюции;

3. *предлагает* одиннадцатому Конгрессу Организации Объединенных Наций по предупреждению преступности и уголовному правосудию в рамках основной темы, озаглавленной "Обеспечение применения стандартов: пятьдесят

лет нормотворческой деятельности в области предупреждения преступности и уголовного правосудия", в ходе семинара–практикума по укреплению реформы системы уголовного правосудия, включая реституционное правосудие, и в ходе дополнительных совещаний неправительственных и профессиональных организаций рассмотреть и обсудить вопрос о руководящих принципах, касающихся правосудия для детей – жертв и свидетелей преступлений, и разработать рекомендации, которые будут переданы на рассмотрение межправительственной группы экспертов;

4. *просит* Генерального секретаря представить Комиссии по предупреждению преступности и уголовному правосудию на ее пятнадцатой сессии доклад о результатах совещания межправительственной группы экспертов с целью его рассмотрения и принятия мер.

## Приложение

### Руководящие принципы, касающиеся правосудия для детей – жертв и свидетелей преступлений\*

#### A. OBJECTIVES AND PREAMBLE

##### OBJECTIVES

1. The Guidelines on justice for child victims and witnesses of crime provide good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.
2. They provide a practical framework to achieve the following objectives:
  - (a) 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 UN Declaration on *Basic Principles of Justice for Victims of Crime and Abuse of Power*;
  - (b) 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 fully implement the UN *Convention on the Rights of the Child*;
  - (c) To assist governments, international organizations, public agencies, non-governmental and community based organisations 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;
  - (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.
3. Each jurisdiction will need to implement the Guidelines consistent with its legal, social, economic, cultural and geographical conditions. However, the jurisdiction should constantly endeavour to overcome practical difficulties in their application, as the Guidelines are, in their entirety, a set of minimum acceptable principles and standards.
4. In implementing the Guidelines, each jurisdiction must ensure that adequate training, selection and procedures are put in place to meet the special needs of child victims and witnesses of crime, where the nature of the victimisation affects categories of children differently, such as sexual assault of girl children.
5. These 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.

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\* Настоящие руководящие принципы воспроизводятся в том виде, в каком они были получены.

6. The Guidelines should 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.

### **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 these children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;
  - (b) Reaffirming that every effort must be made to prevent victimization of children, particularly through implementation of the UN *Guidelines for the Prevention of Crime*;
  - (c) 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 on 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;
  - (d) Stressing that all States Parties to international and regional instruments have a duty to fulfil their obligations, including the implementation of the *Convention on the Rights of the Child and its Protocols*;
  - (e) Recalling international and regional initiatives that implement the principles of the *Declaration on 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;
  - (f) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;
  - (g) 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;
  - (h) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders, including those that focus on children in conflict with the law, such as the Beijing Rules;
  - (i) Bearing in mind the variety of legal systems and traditions and noting that crime has an increasingly trans-national nature and that there is a need to ensure child victims and witnesses of crime receive equivalent protection in all countries.

## **PRINCIPLES**

8. In order to assure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of these children must respect the following cross-cutting principles as stated in other 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:
- (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, 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 all matters, 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.

## **DEFINITIONS**

9. Throughout the 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 crimes 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, 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 national, international or regional, adult or juvenile criminal justice, or in customary or informal systems of justice;
- (d) **Child-sensitive** denotes an approach which takes into account the child's individual needs and wishes.

## **B. GUIDELINES ON JUSTICE FOR CHILD VICTIMS AND WITNESSES OF CRIME**

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

- (a) 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.
- (b) 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.
- (c) 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.
- (d) In order to avoid further hardship to the child, interviews, examinations and other forms of investigations should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
- (e) 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.

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

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

- (c) In many cases, special services and protections will need to be instituted to take account of the different nature of particular offences against children, such as sexual assault involving girl children.
- (d) 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 until proven 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.

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

- (a) Child victims and witnesses, their families, and/or their legal representatives, from their first contact with the justice process and throughout that process, have the right to be promptly informed of:
  - (i) 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;
  - (ii) 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;
  - (iii) 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;
  - (iv) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
  - (v) The specific places and times of hearings and other relevant events;
  - (vi) The availability of protective measures;
  - (vii) 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 existing mechanisms for review of decisions affecting child victims and witnesses; and
  - (ix) The relevant rights for child victims and witnesses pursuant to the *Convention on the Rights of the Child* and the *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*.

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

- (a) Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process.



**(b) Professionals should:**

- (i)** Ensure that child victims and witnesses are consulted on the matters set forth under 3 *The Right to be informed*; and
- (ii)** Ensure 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)** Professionals should give due regard to the child's views and concerns and, if they are unable to accommodate them, should explain the reasons to the child.

**5. The right to effective assistance**

- (a)** 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 subsection C-1 below. This includes assistance and support services such as financial, legal, counselling, health and social 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 them to effectively participate at all stages of the justice process.
- (b)** In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.
- (c)** Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until these services are no longer required.
- (d)** Professionals should develop and implement measures to make it easier for children to give evidence and to improve communication and understanding at the pre-trial and trial stages. These measures may include:
  - (i)** Child victim/witness specialists to address the child's special needs;
  - (ii)** Support persons, including specialists and appropriate family members to accompany the child during testimony; and
  - (iii)** Guardians *ad litem* to protect the child's legal interests.

**6. The right to privacy**

- (a)** Child victims and witnesses should have their privacy protected as a matter of primary importance.
- (b)** Any 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.

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

**7. The right to be protected from justice process hardship**

- (a) 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.
- (b) Professionals should approach child victims and witnesses with sensitivity, so that they:
  - (i) 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;
  - (ii) 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;
  - (iii) Ensure speedy trials, unless delays are in the child's best interest. Investigations 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;
  - (iv) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, 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 on-call system to ensure the child only goes to court when necessary, and other appropriate measures to facilitate the child's testimony.
- (c) Professionals should also implement measures to:
  - (i) 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 contacts with the justice process, such as through use of pre-recorded videos;
  - (ii) 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 their alleged perpetrator. Wherever possible, and 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;

- (iii) Use testimonial aids to facilitate the child's testimony. Judges should give serious consideration to permitting the use of testimonial aids to facilitate the child's testimony and to reduce potential for intimidation of the child, as well as exercise supervision and take appropriate measures to ensure that child victims and witnesses are questioned in a child-sensitive manner.

## **8. The right to safety**

- (a) Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of these safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.
- (b) Child-focused facility staff, professionals, and other individuals 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 where harm is likely to occur.
- (c) 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:
  - (i) Avoiding direct contact between child victims and witnesses and their alleged perpetrators at any point in the justice process,
  - (ii) Using court-ordered restraining orders supported by a registry system;
  - (iii) Ordering pre-trial detention of the accused and setting special "no contact" bail conditions;
  - (iv) Placing the accused under house arrest; and
  - (v) Wherever possible, giving child victims and witnesses protection by police or other relevant agencies, and safeguarding their whereabouts from disclosure.

## **9. The right to reparation**

- (a) Child victims and witnesses 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.
- (b) Provided the proceedings are child-sensitive and respect the Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

- (c) Reparation may include restitution from the offender ordered in the criminal court, aid from state victims compensation programmes, 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 automatic enforcement of reparation orders and payment of reparation before fines.

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

- (a) 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 repeat victimization and/or offending.
- (b) Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks of further victimization to child victims. These strategies and interventions should take into account the nature of the victimization, including related to: abuse in the home, sexual exploitation, abuse in institutional settings, and trafficking. The strategies include those based on government, neighbourhood and citizen initiatives.

### **C. IMPLEMENTATION**

#### **1. Professionals should be trained and educated on these Guidelines in order to deal effectively and sensitively with child victims and witnesses**

- (a) Adequate training, education, and information should be made available to front-line professionals, criminal and juvenile justice officials, justice system practitioners and other professionals working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes.
- (b) Professionals should be selected and trained to meet the needs of child victims and witnesses, including in specialized units and services.
- (c) This training should include:
  - (i) Relevant human rights norms, standards and principles, including the rights of the child;
  - (ii) Principles and ethical duties of their office;
  - (iii) Signs and symptoms that point to evidence of crimes against children;
  - (iv) Crisis assessment skills and techniques, especially for making referrals with an emphasis placed on the need for confidentiality;
  - (v) Impact, consequences and trauma of crimes against children;
  - (vi) Special measures and techniques to assist child victims and witnesses in the justice process;

- (vii) Cross-cultural and age-related linguistic, religious, social and gender issues;
- (viii) Appropriate adult-child communication skills;
- (ix) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
- (x) Skills to deal with child victims and witnesses in a sympathetic, understanding, constructive and reassuring manner;
- (xi) Methods to protect and present evidence and to question child witnesses; and
- (xii) Roles of, and methods used by, professionals working with child victims and witnesses.

**2. Professionals should cooperate on the implementation of these Guidelines so that child victims and witnesses are dealt with efficiently and effectively**

- (a) Professionals should make every effort to adopt an interdisciplinary approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, health, legal, and social services. This approach may include protocols for the different stages of the justice process that encourage cooperation amongst agencies 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.
- (b) 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 trans-national crimes involving child victims and witnesses.

**3. The implementation of the Guidelines should be monitored**

- (a) Professionals should utilize these 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.
  - (b) Professionals should periodically review and evaluate their role, together with other agencies in the justice process, in ensuring protection of the rights of the child and the effective implementation of these Guidelines.
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