



SUPPORTING CHILD VICTIMS AND WITNESSES

A guide for practitioners working with child victims and witnesses

HAGAR
the whole journey

SUPPORTING CHILD VICTIMS AND WITNESSES

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CONTENTS

| | |
|---|----|
| Introduction | 06 |
| Overview of legal procedures to protect child victims and witnesses | 08 |
| Planning a strategy to support a child witness | 40 |
| Understanding children and trauma | 46 |
| Gathering evidence from a traumatised child | 58 |
| Preparing a traumatised child for court - for lawyers | 66 |
| Preparing a traumatised child for court - for non legal support persons | 76 |
| The day of the hearing | 88 |

INTRODUCTION

Why do we need special tools to support child victims and witnesses?

The justice process can be frightening and distressing for people who have been victims or witnesses to a crime. For children, the process can be especially difficult.

It is likely that children who are victims of crime and abuse will suffer from trauma as a result of those incidents. Trauma affects the way they think, the way they behave, and the way they engage with other people. It can also affect their ability to provide evidence in court, and their ability to receive justice for the crimes which may have been committed against them.

Additionally, the justice process, including having to testify in court, can be a highly traumatic experience in and of itself. Child victims are vulnerable to suffering further traumatisation, which is explained further in the following chapters.

It is important to use special tools – child-friendly measures – to support child victims and witnesses who are required to engage in the justice process.

What is the purpose of a Court Preparation Programme?

It is crucial that child victims and witnesses receive the best possible support while they take part in the justice process. This will achieve two important goals:

- Minimising the distress and trauma to the child
- Improving their ability to give the best quality evidence at trial.

Who is this guide intended for?

This guide is intended for professionals who support children through the justice process. This can include parents and guardians of the child, counsellors, NGO workers, child protection workers, lawyers and other support persons. We also encourage NGOs and other providers who support children through the justice process to use this as an ongoing training tool for their staff.

Inside this guide, we have included easy-to-use tools and practical checklists to make your job easier.





OVERVIEW OF LEGAL PROCEDURES

Using the law to protect the child at each stage of the justice process

From the moment a report is made about an offence against a child, those supporting the child must use their best efforts to protect the child's best interest. One of the most important tools to do this is to use the law.

For counsellors, social workers, NGO workers or other non-legal persons who support a child through the court process it is important that you have a basic understanding of the stages involved in getting a case to court.

Why?

- You will be able to support the child better, answer the child's questions, and anticipate stressful or frightening events in the court process.
- You may be one of the few people whom the child trusts. You can help to explain things to the child about the court process and build his or her confidence.
- Everyone can use the law to protect the child! It is not just lawyers who can take steps to use the law to protect a child victim/witness.

For lawyers – review this chapter for an overview of the laws that you can use to protect your child client.

The Chart at the end of this chapter summarises how you can use the law to protect a child victim or witness at each stage of the justice process from the incident to trial.

Types of Offences and Types of Investigations

Different Types of Offences

There are three different categories of crime, each with different penalties.



Attempts at criminal offences (even if the attempts are unsuccessful) are also punishable.

Different types of Investigations

If an offence is committed, or if there is a suspected offence, the police must carry out an investigation.

There are two types of police investigations that are carried out, depending on the type of the offence:

1. A flagrant offence investigation is carried out where the suspect has:
 - Been caught during the commission of a misdemeanor or felony, or immediately after it has been committed.



- Been caught with an object, scar or other evidence showing that he committed an offence.

Example:

An “uncle” is caught in the act of raping a young girl.

For flagrant cases, the police MUST immediately inform the Royal Prosecutor.

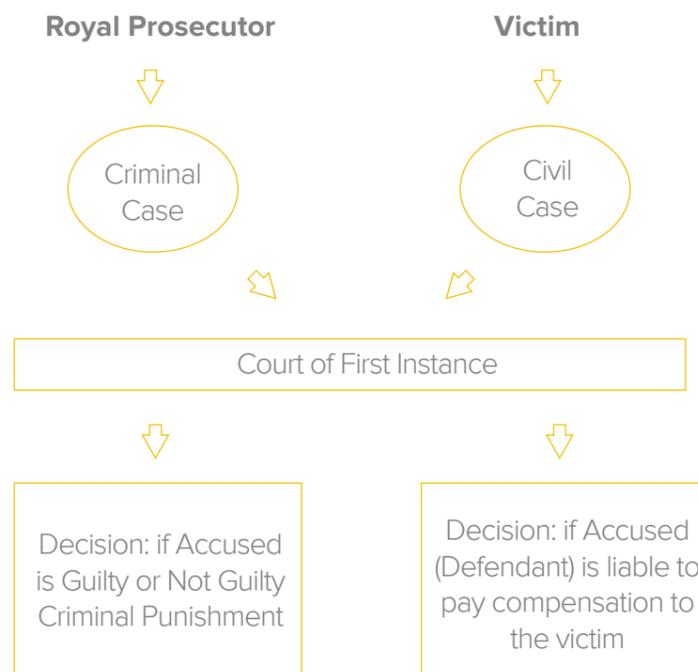
2. A preliminary investigation is carried out where the police know of acts that may be a felony, misdemeanor or petty offence (see below). The police have discretion whether to conduct a preliminary investigation.

Criminal Cases and Civil Cases

There are two types of “cases” which can be brought in court:

- A criminal case is brought by the Prosecutor (on behalf of the public interest) to investigate whether a crime has been committed, if a victim has filed a complaint.
- A civil case is brought by a private individual (victim) to obtain compensation for injury or damage that the person has suffered as a result of something done by someone else.

Although the cases are different, if they concern the same matter, they are heard at the same time in court.



For example, where a child has been raped:

- There is a criminal case, run by the Prosecutor, to see if the accused is guilty of rape and needs to be punished.
- The victim may also pursue a civil case against the accused to seek money to compensate the victim for her injuries.
- Both cases are heard in the Court of First Instance at the same time.

After the decision is handed down by the Court of First Instance:

- Only the Prosecutor (or the General Prosecutor of Court of Appeal) or the Accused (but not the victim) can appeal the criminal case to the Court of Appeal (and later the Supreme Court).
- Only the Accused (known as the Civil Respondent) or the victim can appeal the civil case to the Court of Appeal (and later the Supreme Court).

If there is a civil case, the victim may have a lawyer to represent them in court

A victim is not assigned a lawyer in a criminal case.

However, if there is a civil case brought, the victim is entitled to be represented by a lawyer.

This is important because the civil lawyer can help the victim through the whole court process, including the criminal case.

Withdrawing a Civil Case Doesn't Stop the Criminal Case

A criminal case can be filed even without a civil case being filed. This means that if there has been a crime committed, and the victim decides to not file or to withdraw a civil case, the criminal case may still proceed (CCP, Art 25). However in practice, it is often unlikely that the police would continue with the criminal case if the victim does not file the complaint or withdraws the case.

If the Accused Agrees to Pay the Victim Money, this does Not Stop the Criminal Case

An out of court agreement for the accused to pay money to the victim (or his/her family) does NOT mean the criminal case should be dropped.

It is unlawful for police to dismiss a criminal case without processing even if the victim withdraws the complaint, or if there are negotiations between the victim and accused (CCP, Art 75).

Procedure for bringing a criminal and civil case to trial

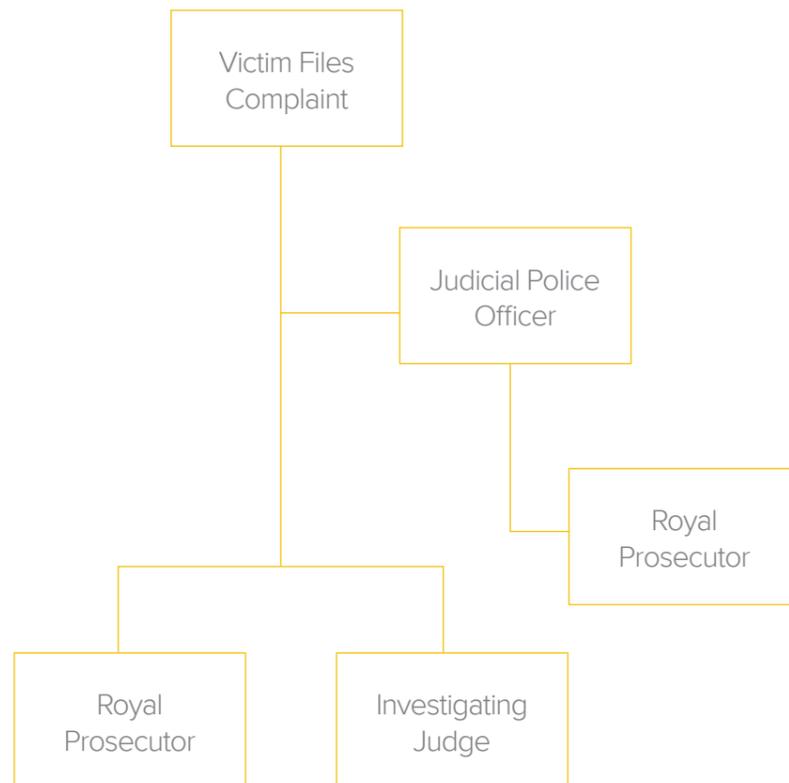
There are a number of steps involved from the time an incident happens to a child victim, until the point where the case is brought to trial. There are five main stages:



You will see an easy graph summarising how each stage progresses at the back of this Guide.

The following is a summary of the most important provisions only, and you should examine the exact provisions of the Code of Criminal Procedure.

Filing A Criminal Complaint



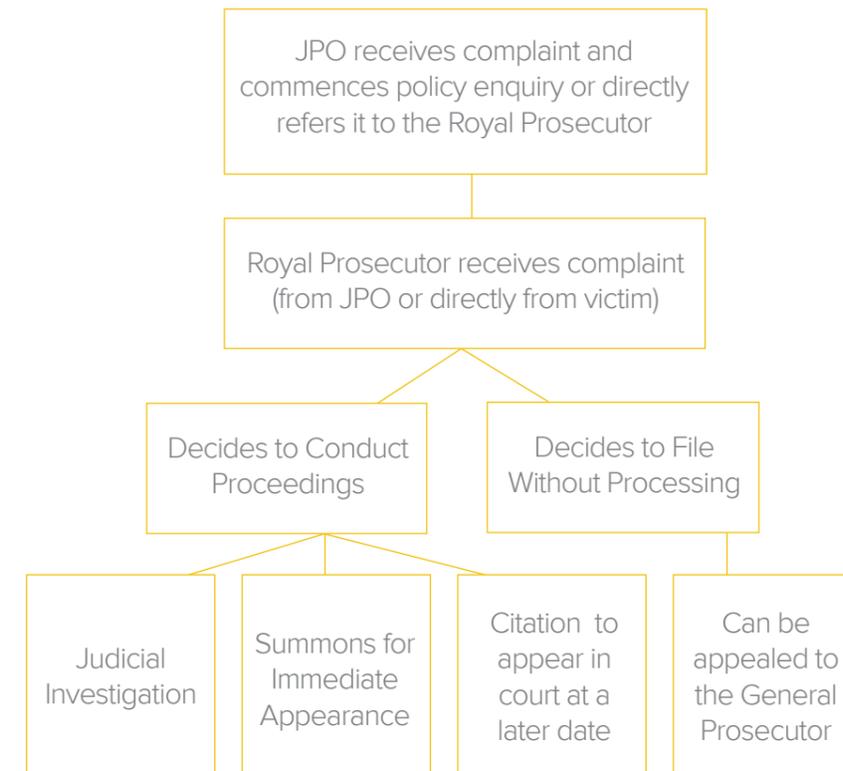
A complaint about a criminal offence can be made by any victim (CCP, Art 5 and 6) to either:

- a Judicial Police Officer (JPO) (who will refer it to the Royal Prosecutor); or
- the Royal Prosecutor with proper jurisdiction (the Prosecutor of the site where the offense was committed; in the place of the residence of the person who is suspected of committing the offense; or of the territory in which the person is suspected of committing the offense); or
- the Investigating Judge directly (by way of commencing a civil claim).

The Royal Prosecutor is the one who will file the criminal suit, for the general interests of society (CCP, Art 6).

If the Royal Prosecutor does not respond to the victim's complaint or keeps the file without processing, the victim may bring a request directly to the General Prosecutor (who is attached to the Court of Appeal). The General Prosecutor may dismiss the appeal or may agree with the victim and order that the Royal Prosecutor commence the criminal action (CCP, Art 41).

Preliminary Investigations



Policy Inquiry or Royal Prosecutor Investigation

Once the JPO has received a complaint, the JPO is required to either (CCP, Art 74):

- immediately initiate a preliminary police enquiry
 - If the offence is a flagrant offense, the JPO must complete their inquiry within 7 days from the date of the occurrence of an offense, otherwise the JPO must refer the case file to the Prosecutor (CCP, Art 106)
- send a record of the complaint to the Royal Prosecutor for them to decide whether they will conduct a preliminary investigation (or refer it back to the JPO to do so).

Whether the Royal Prosecutor or the JPO commences the preliminary investigation, the JPO will take actions such as ordering the appearance of persons (including the child victim) for interviews to provide information about the case, collecting evidence, and identifying and arresting suspects.

During this preliminary investigation, the JPOs can order suspects to be interrogated, and to be kept in police custody for up to 48 hours (possibly extended by the Royal Prosecutor for another 24 hours for suspects who are not minors) (CCP, Art 96).

After the completion of any preliminary policy inquiry, the JPO hands all written records to the Royal Prosecutor.

Royal Prosecutor Decides to Commence a Criminal Suit or Not

Within 2 months of receiving the complaint, the Royal Prosecutor can decide to either:

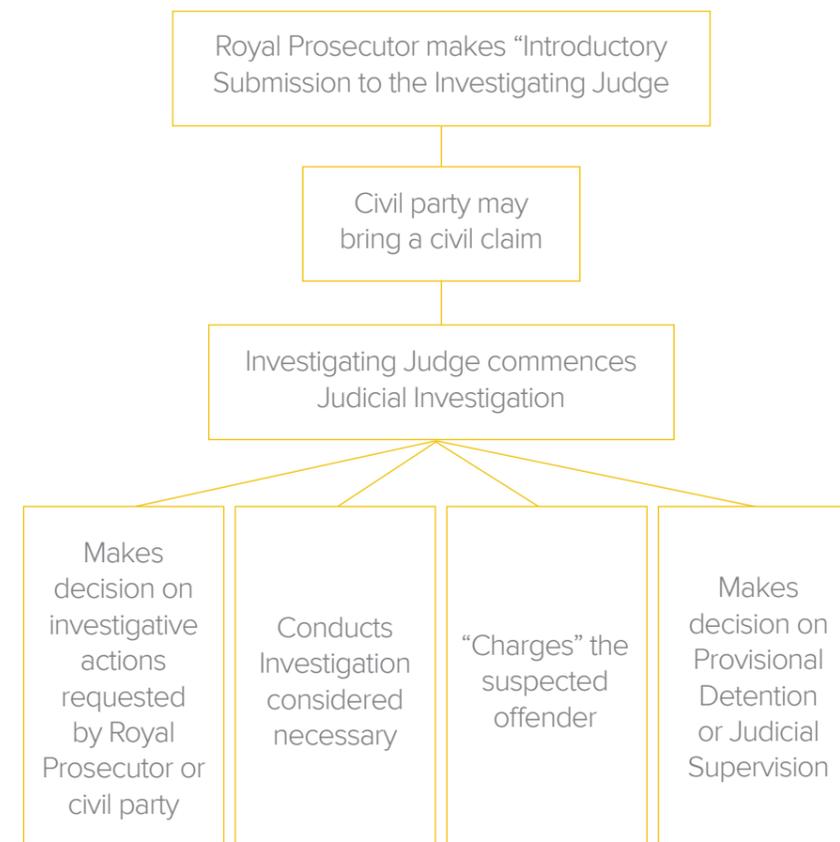
- hold the file without processing; or
- conduct proceedings against the offenders.

If the Royal Prosecutor has decided to file the complaint without processing, if the victim wishes, he or she can appeal to the General Prosecutor (attached to the Court of Appeal) in Phnom Penh (CCP, Art 41).

Judicial Investigation, Citation or Immediate Appearance

If the case is proceeding, the Royal Prosecutor will proceed depending on whether the case is a felony, misdemeanor or petty crime.

- For felonies the Royal Prosecutor must commence a judicial investigation (where the case is further investigated by an Investigating Judge). This is optional for a misdemeanor (CPO, Art 122).
- For misdemeanors, the Prosecutor may either:
 - open a judicial investigation, or
 - issue a citation (an order to the accused to appear before the Court of First Instance at a certain time); or
 - issue a summons (an order for the accused to immediately appear before the Court of First Instance in accordance).
- For petty crimes, the Prosecutor will issue a citation (an order to the accused to appear before the Court of First Instance at a certain time)



To open a Judicial Investigation, the Royal Prosecutor makes “Introductory Submissions” to the relevant Investigating Judge who is the Investigating Judge at either the place of:

- the criminal offense;
- the residence of a suspected offender; or
- where a suspected offender was arrested (Art 39).

The Investigating Judge can order any suspect to be brought in (CPC, Art 186) and can “charge” any person with offences. The suspect then becomes a “charged person”.

Bringing a Civil action to the Investigating Judge

The victims of a felony or misdemeanor may bring a civil complaint to the Investigating Judge (CCP, Art 5, CCP Art 137, 138). A civil party has the right to be assisted by a lawyer (CCP, Art 150)

Who can bring a civil complaint for a minor victim?

If the victim is a minor, his or her legal representative or an adult under legal guardianship can bring the claim on behalf of the victim (CCP, Art 15).

Additionally, if the victim (or his or her lawyer) agrees, certain associations can bring a civil claim on behalf of the victim, for certain specified offences:

- for offences of Intentional threat against life; Harassment against personal integrity; Sexual harassment, a claim may be made by an association that has made a declaration within 3 years before the date of occurrence of the offense that a subject of its governing statutes is the struggle against sexual violence or domestic violence or violence against children (CCP, Art 17)
- for offences of related to the LSHT, any association that has made a declaration within 3 years before the date of the offense that a subject of its governing statutes is a struggle against kidnapping, trafficking of persons or commercial sexual exploitation (CCP, Art 18).

The Investigating Judge forwards the civil complaint to the Royal Prosecutor, who files the Introductory Submission with the Investigating Judge for the civil case.

In case an investigating judge decides not to investigate the civil complaint, that judge must immediately issue an order with the statement of reasons and notify the civil party without delay (CCP, Art 139). The civil party may appeal to the General Prosecutor of the Court of Appeal within five days from the date the order was notified

The civil case is heard at the same time as the criminal case. The victim becomes the “plaintiff” to civil proceedings.

Conduct of Judicial Investigation

During the Judicial Investigation:

- The Royal Prosecutor may request the Investigating Judge to conduct any investigation that may be useful (CCP, Art 132).
- The civil party may also request the Investigating Judge to question him or her, any witnesses, interrogate the charged person. The Investigating Judge must decide whether to do so within one month, otherwise the Royal Prosecutor can make the decision (CCP Art 134).

If the Investigating Judge makes an order refusing to undertake any requested investigative action, whoever made the request (the civil party or the Royal Prosecutor) may appeal to the General Prosecutor of the Court of Appeal within five days from the date the order was notified.

Interviewing the Victim as a Civil Party

If the investigating judge decides to interview a civil party during the Judicial Investigation, the judge is required to summons the lawyer of the civil party at least 5 days before the interview.

The civil party may be interviewed only if their lawyer is present (although if the lawyer was properly summonsed but does not show up, the investigating judge may interview the civil party without the presence of the lawyer).

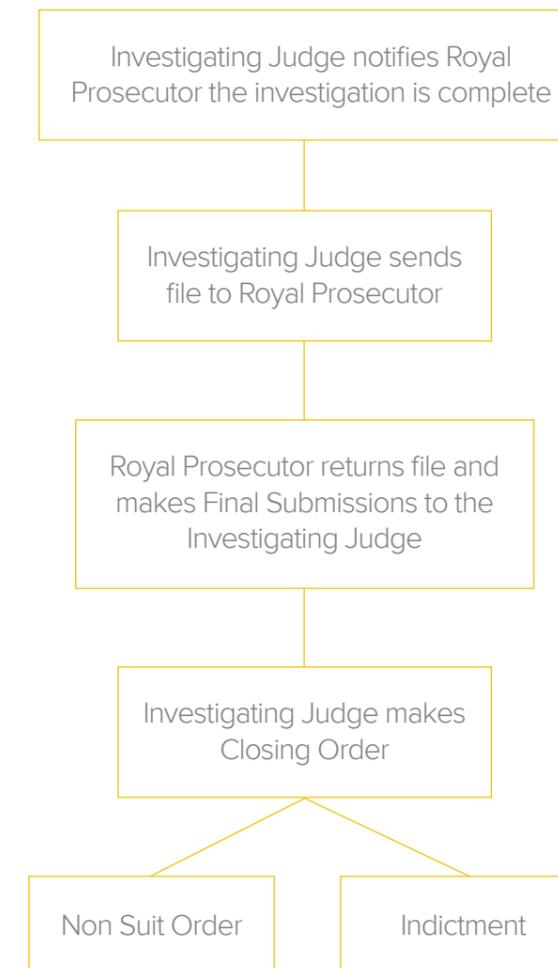
During the interviews, the Royal Prosecutor and the lawyers may ask questions with the authorization of the investigating judge (CCP, Art 151).

Provisional Detention or Judicial Supervision during Judicial Investigation

During the Judicial Investigation, the Investigating Judge may decide to order Provisional Detention of the charged person (pending completion of the investigation), or order that the charged person can remain at liberty but be placed under Judicial Supervision.

- Provisional Detention
 - In any felony or misdemeanour cases which involving a punishment of imprisonment of one year or more, the Royal Prosecutor may apply to the Investigating Judge to order Provisional Detention of the charged person (CCP, Art 204) up to a maximum period (described below).
 - If the judge decides not to order the detention, the judge must issue an order “not to detain” within 5 days. The Royal Prosecutor must be informed immediately.
 - If the investigating judge fails to decide within 5 days, the Prosecutor may directly seize the Investigation Chamber who will decide instead of the investigating judge. (CCP, Art 207)
- Judicial Supervision
 - The Investigating Judge, either at his own initiative or after a request by the Royal Prosecutor, may issue an order for “Judicial Supervision” against a charged person so that the person remains at liberty but subject to certain conditions.
 - If the Royal Prosecutor has made the request for judicial supervision and the investigating judge does not approve the request, the judge must issue a rejection order within 5 days (CCP, Art 226), and the Royal Prosecutor shall be notified of the rejection order without delay.
 - If the investigating judge fails to decide within 5 days, the Prosecutor may directly seize the Investigating Chamber which will make the decision instead of the investigating judge.

Termination of Judicial Investigation: Royal Prosecutor files Final Submissions



When the Investigating Judge considers that the judicial investigation is complete, the judge notifies the Royal Prosecutor, the charged person, the civil parties and the lawyers.

Two days later, the Investigating Judge sends the case file to the Royal Prosecutor for examination. The Royal Prosecutor might order further investigations if considered necessary.

The Royal Prosecutor must then return the case file to the investigating judge together with the Royal Prosecutor’s “Final Submission” within 30 days of receiving the case file (though, if the suspect is in Provisional Detention, this must be done within 15 days of receiving the case file).

In the Final Submission, the Royal Prosecutor may request the Investigating Judge to issue an indictment against the suspect or to issue a non- suit order. (CCP Art 246).

Investigating Judge Issues a Closing Order.

An investigating judge terminates the judicial investigation by a closing order of either (CCP, Art 247):

- Indictment (the charged person becomes the “Accused” in a Criminal Trial); or
- Non-Suit Order.

The closing order has the effect of (CCP, Art 249):

1. Terminating any order of Provisional Detention (CCP, Art 249).

- However, by a separate decision issued together with the closing order, the investigating judge may order that the Accused be kept in Provisional Detention until the time he or she is called to appear before the trial court. However, If the charged person is not called to appear before the trial court within these four months, the charged person shall be automatically released.

2. Terminating any order of judicial supervision.

- However, by a separate decision issued together with the closing order, the investigating judge may order to keep the charged person under judicial supervision until such time he is called to appear before the trial court.

After the Investigating Judge has issued an indictment, the judge sends the case file to the trial court president to fix a date for trial.

Time expiry of Judicial Investigations

Judicial Investigations are meant to be conducted promptly, in order to be fair to all the parties involved. Therefore (CCP, Art 286):

- After one year after a charged person has been notified that he or she is under judicial investigation, the charged person can request the investigating judge to close the investigation.
 - The investigating judge must decide within one month of receiving the request. If the investigating judge fails to decide within that period, the charged person may apply to the President of the Investigation Chamber (the chamber deciding appeals against investigating judges), who may order the investigating judge to issue a decision.
- After one year after a person has been named civil party in a civil case, the civil party may request the investigating judge to close the investigation.
 - The investigating judge must decide within one month of receiving the request. If the investigating judge fails to decide within that period, the civil party may apply to the President of the Investigation Chamber, who may order the investigating judge to issue a decision.

Court of First Instance Hearing

Civil Parties can still apply

Even if the victim has not applied to be a civil party to the case during the Judicial Investigation, he or she can still apply to join proceedings as a civil party before the trial court by making an application to the court clerk (CCP, Art 311).

The civil case is heard at the same time as the criminal case:



Commencing the Criminal Trial

Where the case is commencing with an Indictment, the Royal Prosecutor is required to summons the following persons to attend the hearing:

- the accused;
- civil party;
- victims who have not applied to become a civil party before the investigating judge;
- witnesses;
- experts;
- interpreters/translators;
- civil defendants identified by the accused or by the civil party

The case is heard by a panel of three Trial Judges.

Judgment

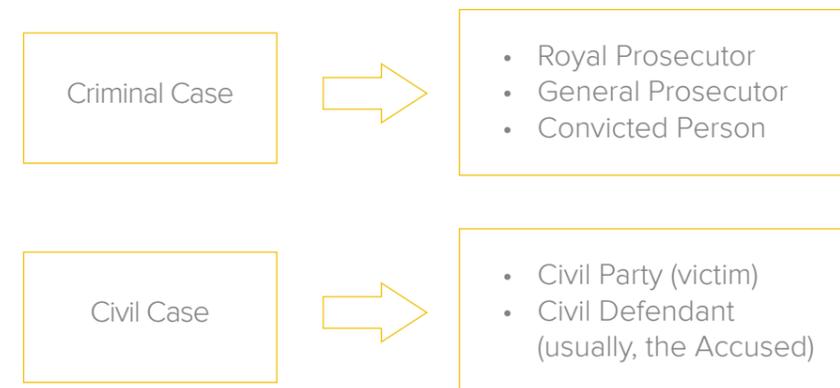
After the conclusion of the trial, the court will issue a decision in relation to:

- The criminal case (guilty or not guilty and any criminal penalty against the Accused person).
- Any civil case (the civil defendant's civil liability and compensation which he or she must give to the victim/civil party).

Appeal

An appeal against the decision of the Court of First Instance may be filed to the Court of Appeal (CCP, Art 372) by (CCP, Art 375):

- in the criminal case - the Royal Prosecutor, the General Prosecutor attached to a Court of Appeal (or the convicted person);
- in the civil case the civil party (or the civil defendant - usually, the Accused), regarding the civil matter of the case.



Time Limits for Appealing

For a criminal appeal (CCP, Art 381, 382) by:

- The Royal Prosecutor, it must be filed within one month
- By the General Prosecutor, it must be filed within three months
- By the convicted person, it must be filed within one month from the date the judgment was pronounced.

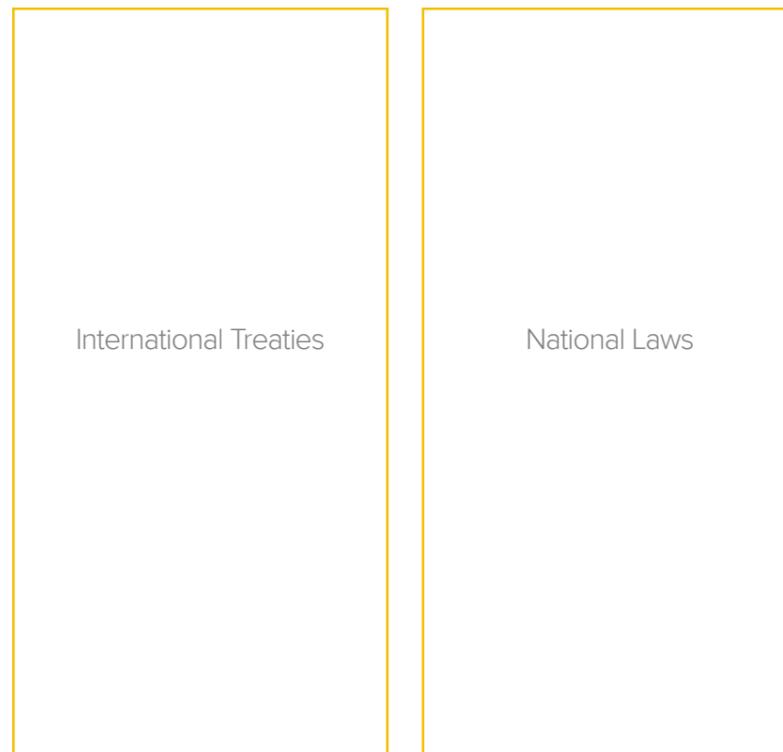
For civil appeals, the civil party or civil defendant must file the appeal within one month of the date the judgment was pronounced. (CCP, Art 382).

In cases of detention, an appeal on the decision of detention can be made by:

- The Royal Prosecutor (within 48 hours of the court decision on detention).
- The convicted person (within 5 days of the court decision on detention).



Framework of rights for child victims and witnesses



Throughout the process described above, there is a legal framework of protection setting out the rights and processes which apply where children are involved as victims and witnesses.

This includes international law as well as national legislation and other binding national instruments (including prakas, guidelines and other regulations).

Invoke these rights

Even for non-legal support persons, there are many ways for you to work with the child's lawyer to ensure that child-friendly practices are adopted in court.

Become familiar with the laws that are in place to protect children, so that you can be ready to ask the police or courts, and the lawyers, to invoke the child's rights. It is part of your job to make sure that these laws are enforced during police operations, victim interviews and in the courtroom.

International

The rights of child victims and witnesses

Cambodia has ratified a number of international treaties which are relevant to the rights of children who are victims and witnesses. The primary instruments are:

- **Convention on the Rights of the Child¹** - an international treaty that recognises the human rights of children (defined as persons up to the age of 18). State parties must ensure that all children—without discrimination—benefit from certain minimum rights and special protection measures. In particular:
 - The premise which underlies all obligations in respect of the child victim or witness is that in all actions concerning children, “the best interests of the child” shall be a primary consideration (Art 3).
 - States Parties must take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims (Art 39).
- **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²** - This requires States to implement procedures that allow for access to justice and fair treatment. This includes that:
 - Victims should be treated with compassion and respect for their dignity (Art 4)
 - Victims are entitled to access to the mechanisms of justice and to prompt redress for the harm that they have suffered (Art 5).
 - Victims should be informed of their rights in seeking redress through judicial and administrative mechanisms for seeking redress.

Human rights in the conduct of a trial

Cambodia has also ratified other human rights treaties which impose an obligation to protect human rights in the conduct of a trial, and to protect women and children specifically.

- **International Covenant on Civil and Political Rights³** - Article 14 sets out the rights related to a fair trial. In relation to victims, this includes excluding the press and public from a trial for moral reasons and when the interest of the private lives of the parties requires; and non-publication of judgments involving children.

1- Ratified by Cambodia on October 15, 1992. The Constitutional Council has issued Decision No. 092/003/2007 of 10 July 2007 determining that the international laws recognized by the Kingdom of Cambodia, including the Convention on the Rights of the Child are to be incorporated as parts of the national law to which the judges must refer in the hearing of a case.

2- General Assembly resolution A/RES/40/34 - although this Declaration passed by UN General Assembly resolution is technically non-binding on Cambodia, it will have persuasive force

3- Ratified by Cambodia on 26 May 1992

- **International Covenant on Economic and Social Rights⁴** - special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination (Art 10).
- **The Convention on the Elimination of All Forms of Discrimination against Women⁵** which provides for measures to protect women. States parties must take appropriate measures to ensure the full development and advancement of women (Art 3).

National

Law

- **Constitution of the Kingdom of Cambodia –**
 - The State is required to recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, covenants and conventions related to human rights, women’s and children’s rights (Art 31).
 - The State is required to protect the rights of children as set out in the Convention on Children; and that the State must protect children from acts that are injurious to their educational opportunities, health and welfare (Art 48).
- **Code of Criminal Procedure⁶** sets out the rules of criminal procedure in investigating a criminal offence.
 - After the opening of a judicial investigation, a victim may, at any time, file a request to be a civil party (Art 137). A civil party has a right to be assisted by a lawyer (Art 150).
 - During the investigation of the case by the Investigating Judge, if a child is interviewed, the child’s lawyer must be present, and with the Investigating Judge’s permission, may ask the child questions (Art 150, 151).

You can use this to insist on the lawyer’s presence to protect the child during the investigation phase.

If you know the child is going to be interviewed by the Investigating Judge, make sure you tell the lawyer (or find a lawyer as soon as possible to represent the child) so that the lawyer can be present at the interview.

A person charged with an offence may be detained for a period pending trial, under “Provisional Detention” (Art 206) in certain circumstances including to:

- Stop the offense or prevent the offense from happening again;
- Prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices.

The Provisional Detention may be: in the case of felonies, up to 6 months (possibly extended once by another 6 months); in the case of misdemeanours, up to four months (possibly extended once by another 2 months). However, a minor under 14 years old may not be temporarily detained (Art 212).

For a minor of 14 years to 18 years involved in a felony, provisional detention may not exceed four months if the minor is under 16 years old; and may not exceed six months if the minor is 16 to 18 years old (Art 213)

For a minor of 14 to 18 years old involved in a misdemeanor, provisional detention may not exceed two months if the minor is under 16 years old; and may not exceed four months if the minor is from 16 to 18 years old (Art 214).

You can use this provision to apply to the court for provisional detention to protect the child from the Accused prior to trial, if there is a risk of further offense or harassment.

As an alternative to Provisional Detention, the court may also make an order that any Accused who is charged with an imprisonable offense be allowed to remain free pending trial but under “Judicial Supervision” (Art 223). This means the Accused remains free but is under certain obligations, including not going outside the territorial boundaries determined by the investigating judge; not being allowed to change residence without the authorization of the investigating judge; and not being allowed to go to certain places determined by the Investigating Judge. Minors cannot be placed under Judicial Supervision (Art 224).

You can use this provision to apply to the court for an order of judicial supervision in order to protect the child from the Accused prior to trial, if the court has not granted Provisional Detention of the Accused.

- The victim or the victim’s lawyer may request a closed hearing (Art 316).

4- Ratified by Cambodia on 26 May 1992

5- Ratified by Cambodia on 15 October 1992.

6- Promulgated by Royal Kram No. NS/RKM/0807/024 (10 August 2007)

You can use this to protect the child's privacy in the courtroom. You should ensure that the lawyer request the judge to close the hearing to the public.

- The Penal Code⁷ enumerates offences, liability for offences, and penalties, including crimes about intimidating and threatening victims and witnesses, and reporting crimes against children. It is a crime:
 - For anyone to intimidate or threaten a victim not to file a complaint (Art 527)
 - For a perpetrator to intimidate a witness to not give a statement or to give false evidence (Art 546)
 - For anyone who knows about mistreatment or sexual abuse against a minor of less than 15 to fail to inform the court or administrative authority (Art 530)
 - For anyone to give a bribe to a witness in order to not testify or give false evidence (Art 548)

You can use this to protect the child from being threatened to withdraw a complaint.

If you think that the suspect's family is threatening the child or his/her family to convince them to withdraw a complaint, tell police. This is a criminal offence.

For sexual assault felonies, the court may grant additional penalties which are helpful in protecting the child victim, including (Art 245):

- Deprivation of certain civil rights of the perpetrator.
- Prohibit the perpetrator from taking up certain professions, possessing weapons, or taking up residency.
- For foreigners, prohibiting entry into and residence in Cambodia.

For crimes carrying a prison term of between six months and five years, a court may impose a probationary suspended sentence. Certain obligations may be imposed during the probation including (Art 120).

- Not pursuing certain areas
- Not associating with certain areas

You can use this if the perpetrator is released on probation, to prevent him or her from appearing in the vicinity of the child or associating with the child.

- The Law on Prevention of Domestic Violence and Protection of Victims⁸ sets out legal mechanisms to prevent domestic violence and to protect victims of domestic violence⁹:

- The nearest authorities have the duty to intervene where domestic violence occurs or is likely to occur. (Art 9)

You can use this to insist on intervention to protect the child who is at risk of domestic violence.

If, after your own preliminary investigation, you suspect a child is at risk of domestic violence, report this to the police and insist upon an intervention. Invoke their duty to intervene if the police do not take any investigative action.

- The authorities can issue an administrative decision to protect the victim including prohibiting the domestic violence, and prohibiting the perpetrators from approaching or entering the house or workplace of the victim (Art 14)

You can use this to protect the child who is at risk of domestic violence from contact with a perpetrator.

If your child client is a victim of domestic violence and the suspect is not in pre-trial detention and is a possible threat to the child or his/her family, ask the lawyer to apply for an administrative decision from the Commune Council to prevent the suspect from approaching the child or to remove the child.

- In addition to the intervention of the authorities, victims have the right to file a complaint to the municipal court for a protection order as a civil measure (Art 16). A protection order can order the victim be removed from the perpetrator and also prevent the perpetrator from doing things such as (Art 25)
 - i. Contacting the victim
 - ii. Destroying property of the victim
 - iii. Approaching or entering the house or workplace of the victim.
- The protection order can be effective for 2 or six months:
 - i. Temporary (effective for a 2 month "emergency period")
 - ii. A further period of 6 months during the period when the court is investigating the case (before the trial is concluded)

You can use this to protect the child from continuing to come into contact a domestic violence perpetrator, by restricting the activities of the perpetrator.

7- Promulgated by Royal Kram No. NS/RKM/1109/022 (30 November 2009)

8- Promulgated by Royal Kram No. NS/RKM/1005/031 (24 October 2005)

9- Domestic violence includes violence against husband, wife, dependent children, other dependents of the household.

If your child client is a victim of domestic violence and the suspect is not in pre-trial detention and is a possible threat to the child or his/her family, ask the lawyer to apply for a protective order to prevent the suspect from approaching the child or to remove the child.

- Where the domestic violence is against a child, the court can grant a mandate to institutions to seek assistance and support for the victims and protect them during the court proceedings (Art 28).

The Law on Suppression of Human Trafficking and Sexual Exploitation¹⁰ – contains provisions aimed at preventing human trafficking and sexual exploitation, and protection of victims.

- Mass media are prohibited from publishing or disseminating any information which can lead to the public knowledge of the identities of victims of relevant offenses (Art 49).

You can use this to insist on non-publication of the name of a child victim in the media.

If your child client is a victim of a human trafficking or sexual exploitation case, ask the lawyer to remind any media who may become aware of the case, that they must not report about the case in a way which would identify the child. Ask the judge, if appropriate, to make such a pronouncement.

- **Press Law**

- Unless there is permission from the court, the press are prohibited from publishing information, photographs or drawings which may make it possible for readers to identify or know the name of a child under the age of 18 in any civil or criminal suit (Article 15).

You can use this to insist on non-publication of the name of a child victim in the media.

If your child client is in any criminal or civil case, ask the lawyer to remind any media who may become aware of the case, that they must not report about the case in a way which would identify the child. Ask the judge, if appropriate, to make such a pronouncement.

Prakas, Guidelines and other Legal Instruments

- **Prakas No. 62 KYBrK/08 on Use of Court Screen and TV Linked Testimony from Child/Vulnerable Victims or Witnesses (6 October 2008) –**

Court screens or TV linked testimony should be used as a protective measure in all cases involving a child/vulnerable victim or witness where testifying in the presence of the accused would cause undue stress or trauma to the child/vulnerable victim or witness (unless the child/vulnerable victim or witness does not desire such measures and the judge, after consultation with the victim or witness, his/her lawyer, and/or social worker, thinks it is not in the victim/witness' best interests.)

Court Screens

- The court screen is the primary protective measure for child/vulnerable victims/witnesses (Item 1).
- The screen is to be set up before the child/vulnerable victim/witness enters the room, and be placed so that the victim/witness, judge, prosecutor and lawyers can see and hear each other, but the accused can't see the victim/witness.
- The screen shall be removed only after the victim/witness has left the courtroom (Item 8).

You can use this to protect the child from seeing the accused in the courtroom.

If your child does not wish to see the accused in court, ensure the lawyer makes an application to the court as soon as possible for a court screen to be used. The court cannot decline this request. Ensure it is set up before the child enters the room.

Waiting Areas and Entering/Leaving the Courtroom

- There should be separate waiting areas and arrangements to protect the child from seeing the accused:
 - The victim/witness may stay in a separate waiting area and only enter the court room when it is his/her turn to testify.
 - The victim/witness should be accompanied by appropriate adults such as a parent, social worker, clerk of court, police officer or other appropriate person when entering and leaving the courtroom.

10- Promulgated by Royal Kram No. NS/RKM/0208/005 (15 February 2008)

- The victim/witness should enter and leave the court room in a manner where he/she avoids contact with or seeing the accused– so either the victim/witness is already seated behind the screen before the accused enters, or the accused is already seated behind the screen before the victim/witness enters (Item 5).

You can use this to protect the child from seeing the accused whilst they are waiting in the courthouse.

Call the court clerk before the day of the hearing to make sure that there is a waiting room set aside for the child.

Testimony is to be given “in camera” (a court closed to the public)

- The testimony of a child or vulnerable victim is to be held in camera (Item 6).
- The court may also direct the location and movement of all the persons allowed inside the courtroom, including the parties, prosecutor, lawyers, court staff, witnesses and support persons, provided that the victim/witness, judge, prosecutor and lawyers can see and hear each other and that the defense lawyer can observe the demeanour of the victim/ witness (Item 6).

Presence of a Support Person for the Victim/Witness

- A court-approved support person such as parent, guardian, social worker, or other responsible adult chosen by the child shall be allowed to sit next to the child before the screen, if needed.

You can use this to ensure the child has support while giving evidence.

If the child is particularly vulnerable or frightened, ask the child if they wish to have a support person sit with them whilst they give evidence. If so, write to the court clerk (or ask the lawyer to do so) as early as possible before the hearing to request that a support person be allowed, giving the full details of the support person.

TV linked Testimony

- Where a victim/witness needs special protection that a court screen cannot serve, a TV-linked testimony may be used (Item 1).
- An application for an order that testimony be taken in a room outside the courtroom and be televised to the courtroom by live-link television may be made by the prosecutor or lawyer, at the beginning of the trial (Item 9).

- When considering the application for TV linked testimony, the judge will question the victim/witness (in the absence of the accused) how they feel about testifying in the courtroom (Item 9).

You can use this to protect the child from seeing the accused in the courtroom.

If the child is particularly vulnerable and even a court screen is not sufficient to make the child feel comfortable about giving evidence ensure the lawyer makes an application to the court as soon as possible for the child to give evidence in a TV linked room. Call the court clerk before the hearing to confirm that the equipment is set up before the child goes to court.

- **Guideline No. 01 KYSNN/09 (23 February 2009) on the Application of Article 42 (Sexual Intercourse with a Minor under Fifteen Years) and Article 43 (Indecent Act against a Minor under Fifteen Years) of the Law on Suppression of Human Trafficking and Sexual Exploitation issued by the Ministry of Justice.**
- **Policy and Minimum Standards for Protection of the Rights of Victims of Human Trafficking issued by MOSYVY.** This policy and minimum standards provide concepts concerning model protection and general policy on Protection of the Rights of Victims of Human Trafficking
- **Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia issued by the CNCC¹²** in order to assist child victims of trafficking to access their fundamental rights and receive appropriate re-integrative support.
- **Judicial Police Procedures Manual** adopted by the National Police of Cambodia

What can non- legal persons do to help enforce the rights of the child victim?

As a lawyer, social worker, counselor, or other non-legal support person for the child, you are the advocate for the child’s best interests, and are entrusted with protecting the child at each stage of the justice process.

In some cases, the child may not have a lawyer, and if that is the case, non-legal child advocates should take on the full role of ensuring that the child is protected by law, by working with the Prosecutor.

Kingdom of Cambodia
Nation Religion King

Request for Use Of Video Conference Room/Court Screen

Attorney _____ who is a member of the Bar Association
in the Kingdom of Cambodia, ID _____, having an office at

Respectfully To

_____ Presiding Judge at
_____ Court of First Instance

Subject: Request for Use Of Video Conference Room/Court
Screen for minor victim, named _____, age _____,
current address/shelter _____

Reference:

- Law on the Bar
- Code of Criminal Procedure of the Kingdom of Cambodia
- Power of Attorney Belongs to _____,
dated on _____

As mentioned above, I would like to let Mr Presiding Judge
know that: in the name of _____ (client), I am the
attorney representative for civil party responsible for protecting
the rights of the victim(s). I would like to request Mr Presiding
Judge's approval on the above mentioned request (ie. using
victim/child-friendly video conference room/court screen) in the
case of _____ on _____ in order to
make sure that the required testimony will be conducted safely
and remain confidential.

Therefore, may Mr Presiding Judge kindly give us approval and
facilitate the victim/ child-friendly procedures in this case.

Made in _____

Signature and Seal



From incident to trial: using the law to protect the child

| Incident | Judicial police investigation | Prosecutor Investigation | Judicial investigation | Trial | After trial |
|---|--|--|---|--|--|
| <ul style="list-style-type: none"> • Conduct interview of the child to gather evidence. • Accompany the child to any medical examination, pass on request for gender-specific examiner if the child requires • Ensure police preserve evidence at the crime scene • If a child victim wishes to file a complaint, insist the authorities act to intervene (LPDV Art 9) • Protect the child against threats, intimidation, bribes by reporting incidents to the police (PC, Arts 527, 546, 548) | <ul style="list-style-type: none"> • Ensure the child is ready to participate before allowing police interview to commence • Accompany the child to police interviews and ensure the child understands everything in the police statement before the child signs anything • Insist on child-appropriate questioning • Insist on translator if needed | <ul style="list-style-type: none"> • Ensure the child is ready to participate before allowing police interview to commence • Accompany the child to police interviews and ensure the child understands everything in the police statement before the child signs anything • Insist on child-appropriate questioning • Insist on translator if needed | <ul style="list-style-type: none"> • Accompany the child to interviews and confrontations by the Investigating Judge (CCP, Arts 150 and 151). Resist any interviewing by the court clerk. • Review Protection issues to ensure the child's safety and security <ul style="list-style-type: none"> - Apply for Provisional Detention of Accused (CCP, Art 206), or - Apply for Judicial Supervision (CCP, Art 223) - In domestic violence case, consider applying for Administrative Decision (LPDV Art 14) or Protection Order to prevent further contact with the Accused (LPDV, Arts 16, 25 28) | <ul style="list-style-type: none"> • Apply for extension of any Provisional Detention of Accused (CCP, Art 249) • Advocate for: <ul style="list-style-type: none"> • A support person to stand by the child in court (Prakas 62) • A closed court (CCP, Art 316) • Use of court screen or TV-linked evidence (Prakas 62) • Child friendly waiting room (Prakas 62) • Breaks where needed • Child-appropriate questioning • Prohibition of media naming the child (in cases of human trafficking or sexual exploitation), or on the press publishing information, photos, drawings or otherwise reporting in a way which identifies the child (in any case involving a child) (LSHTSE, Art 49; Press Law, Art 15) | <ul style="list-style-type: none"> • If the Accused has not been sentenced to imprisonment, consider applying for additional penalties preventing the Accused from contacting the child, in the case of foreigners from remaining in Cambodia (CCP, Art 245). • If the Accused is released on probation, apply for conditions which protect the child against the Accused approaching or contacting the child. |

CCP -
Code of Criminal Procedure

LPDV -
The Law on Prevention of Domestic Violence and Protection of Victims

LSHTSE -
The Law on Suppression of Human Trafficking and Sexual Exploitation

PC -
Penal Code

Prakas 62 -
Prakas No 62 KYBrK/08 on Use of Court Screen and TV Linked Testimony from Child/Vulnerable Victims or Witnesses



PLANNING A
STRATEGY TO
SUPPORT A
CHILD WITNESS

How you can support a child witness

Remember that each child is unique. They respond differently to traumatic situations. What works for one child may not work for another.

A child's developmental stage may not necessarily be in line with their chronological age. For example, a child who has suffered repeated trauma or neglect may have a level of understanding well below what one might expect of a child of their age.

Your strategy for supporting a child witness and court preparation should be based upon your understanding of that child's characteristics and circumstances including:

- Your observations about the child's behaviour, comprehension levels, demeanour
- Your understanding of the crime which has been committed
- The child's specific individual circumstances (including whether they have family or community support)
- Your assessment of what the child is worried about (for example, some children are afraid of seeing the accused at trial, others are not; some are worried about getting into trouble if they don't testify well).

Three important steps to support a child

There are three steps to support a child:



PROTECTION

Making sure the safety and security needs of the child are looked after



EMOTIONAL SUPPORT

Ensuring that trauma-informed emotional support is provided to the child to help them cope with the stress of engaging in the justice process.



PREPARATION

Preparing the child to understand and engage in the justice process –giving them information and tools

Providing pre-trial court preparation and support on the day(s) of the trial.

You can find our more information on these three steps in the following chapters of this manual.

Start as soon as possible

It is crucial that you start your Court Preparation Programme as soon as possible. Given that you are dealing with children who may be traumatised, you will require more time than normal to prepare them to go to court. You need to allow plenty of time to build rapport, provide psychological support, explain procedures, and prepare the child to answer questions.

Put together a team of supporters.

A team of supporters should be put together which will follow the child's case through to the end. It is better to have the same people stay with the child through the process, in order to provide a sense of continuity for the child. A child will be able to respond better to people with whom they have had the opportunity to develop relationships over time.

Your team should include the following persons, with each person performing a different role:



COUNSELLOR



LAWYER



CASE MANAGER



Working As A Team – Who Does What?

Everyone in the team is responsible for supporting the emotional and psychological well-being of the child as they get ready to go to court, and working towards getting a conviction of the offender.

All members of the team must work towards these two goals, with each focusing their work on different aspects of protection and preparation:

1. Provide emotional and psychological support
2. Prepare the child to testify in court

Each member of the team will focus on different areas of preparation:

- The **counsellor** focuses on providing emotional support to the child, addressing trauma conditions and equipping the child with coping techniques to help him or her through the process.
- The **lawyer** focuses on providing information to the child about the court process, prepares the child for attendance in court and answering questions, and makes arrangements to provide protection to the child in relation to attendance at court.
- The **NGO worker** co-ordinates the process and ensures that the child and parent or guardian are fully informed at each stage of the process, ensuring meetings are set up with the counsellor and lawyer to allow sufficient time for preparation. The case manager may also attend to logistical arrangements in relation to attendance at court (eg. transport).

Everyone should, in every action taken in respect of the child, act in the child's best interests, and always ensure the child's safety and security.

“Everyone should, in every action taken in respect of the child, act in the child's best interests, and always ensure the child's safety and security.”



Special Assistance in Human Trafficking Cases

In human trafficking cases, lawyers and other NGO workers supporting a child victim or witness should be aware of the Victim Witness Co-ordination Project which operates in two locations of Phnom Penh and Siem Reap for a pilot period of two years from 2015. This is a joint project between the Australia Asia Program to Combat Trafficking in Persons, MOSVY and the MOJ.

Under this project, two Victim Witness Coordinators are placed in the Prosecutor's Office and are available to support the victim-witness throughout the criminal justice process.

Lawyers and other NGO workers supporting a child victim-witness who is involved in a human trafficking case in Phnom Penh or Siem Reap should contact the Prosecutor's office for such support.





UNDERSTANDING
CHILDREN AND
TRAUMA

“Remember, a better supported child, and a well-prepared child makes for a better witness.”

What makes a child witness different to an adult witness?

Any professional who is supporting a child witness through the justice process needs to understand the unique characteristics of children, which make them significantly different to adult witnesses.

It is important to understand these differences because they will have a direct impact on what you can expect from the child, and how you prepare him or her for the justice process.

Remember, a better supported child, and a well-prepared child makes for a better witness.

- **Children often find it difficult to mentally process what has happened to them**

Children who have been impacted by crime – especially violent or sexual crimes - have usually experienced emotional trauma that is especially difficult for them to mentally process.

This usually means it will be necessary to spend more time with them, and engage in more repetition, before they are ready to take part in the justice process.

- **Children are still developing their ability to understand instructions**

Without fully developed vocabulary available to them, children are visual and experiential learners, and therefore benefit greatly from the use of aids to understand things around them.

This means that it is important to use creative ways to explain concepts – such as court participation – to them. You might consider using the court animation included in this resource kit.

- **Children may find it difficult to communicate their thoughts and memories**

Children may not have developed the skills to communicate their thoughts, feelings and memories. They may not have sufficient vocabulary to express what they want to say and have difficulty explaining events in simple chronological and relative ways.

This usually means that supporters and lawyers need to adopt child-friendly techniques of communication and questioning in order to help a child explain himself or herself.

- **Children may not be able to adapt as well as adults**

Because they have little control over their circumstances, children may be less able than adults to deal with, and adapt to, unexpected life events that cause them harm.

This can mean that they don't respond to the difficult stages of the justice process in the same way as adults – for example, they may find it more difficult to answer questions in an investigation, or give evidence in court.

- **Children often deal with traumatic experiences differently**

Events like violent and sexual crimes normally create significant trauma in victims and witnesses. The effect of this trauma lasts well beyond the event and can hinder the person's ability to engage with others and with the justice system.

Trauma is often manifested in children differently because their brains have not yet developed fully in order to help them deal with such trauma. A trauma-informed approach to support is therefore critical - this is discussed in more detail below.

- **Children are more vulnerable because they have less resources to protect themselves**

Violent and sexual crimes are usually linked to stigma, guilt and shame, which often prevents victims from speaking out. This is significantly more so with children, who can feel much more vulnerable because they do not have the same resources as adults to protect themselves. Children are entirely reliant on adults and the community, who in many cases have already betrayed the child's trust. They often can't speak up for themselves or are not given the opportunity to do so. They may also fail to disclose important facts because of guilt, or because they want to protect their family, or even the accused.

Bearing this in mind, sensitive timing and pacing is required in order to avoid pushing the child to make disclosures before they are ready.

The justice system through a child's eyes

The justice process can be incredibly overwhelming. Children will worry about:

I will have to talk about embarrassing, terrible and personal things – to adults I do not know or trust

I or my family might be unsafe or “get in trouble” because I’ve reported a crime

I might be separated from my family or people who look after me and be stigmatised by my community

I will have to see the person who hurt me in court – am I safe?

I will be in a courtroom full of strangers and intimidating and threatening people

I will have to answer questions from an aggressive defense lawyer who will try to challenge me or confuse me.

Such an intimidating and difficult environment creates a great deal of stress for the child. This stress can increase the risk that testifying in court will either create long-lasting psychological damage, or re-traumatise the child.

Why do we need to understand trauma in order to support a child witness?

Trauma changes the child's brain and body and therefore a traumatised child may behave very differently to how you might think a “normal” child should behave.

In supporting a child through legal processes, you need to understand that trauma impacts how the child:

- relates to people around them (including lawyers, police officers and court officials);
- thinks and processes information about what is happening to them and the court process;
- is able to understand questions which are put to them in court.
- deals with the stress of being in court.

What is trauma?

Trauma occurs when a person faces an event which is so threatening or frightening that his or her body responds with effects which are prolonged – the body has a physical reaction and an altered neurological state.

Trauma is therefore the emotional, psychological and physiological residue left over from heightened stress that accompanies experiences of threat.

Children are more vulnerable to trauma than adults, because their brains and bodies are not yet fully developed. They don't have the mental or physical resources to cope with what has happened to them, or to protect themselves.

How trauma impacts a child's behaviour

It is important for you to understand that trauma impacts a child mentally, physically and physiologically.

This means that if you are helping a child client who appears to be “misbehaving” or “not-co-operating” with the court process, you are not simply dealing with a naughty child.

The changes to the child's brain and body caused by trauma will impact the way the child behaves.



Trauma affects the brain

According to many studies, trauma changes the nervous system and the brain.

Several parts of a child's developing brain are physiologically changed as a result of trauma. As a result, various functions of the brain are compromised:

- The child's capacity to think, respond, control emotions and express feelings, are all compromised.
- The child may suffer developmental delays which means the brain has less capacity to allow the child to understand new things or develop new skills.
- A traumatised child can be living in a state of constant arousal and alarm which means that a traumatised child is easily triggered by minor issues.
- The child's memory system is under stress which means that the child can find it extremely difficult to recall events and retain new information. The child's brain may "block out" certain memories that are too painful to recall (such as a rape, or an attack).

In preparing a child for court, or guiding the child through the justice process, a child who is traumatised will therefore require significantly more attention and understanding.

Trauma impacts behaviour and feelings

Traumatic memory is experienced physically as well as emotionally and mentally. When a child recalls the traumatic event, he or she may physically react in the same way the child reacted when the trauma was happening.

A traumatised child might behave in the following ways¹:

- Flashbacks – the child may have memories of the event which come up at unexpected times.
- Triggering – even when the child is in a safe environment, something may remind the child of the original threatening event, and the child may experience the same physical and mental reactions which they had during the time of the initial threatening event.
- "Dissociation" – the child's body protects the child by distancing the mind from experiences that are too overwhelming to deal with.

¹Crenshaw, D "Guidelines for Attorneys and Judges to Recognize and Respond to Trauma Stress Reactions of Child Witnesses/Victims when Giving Testimony" available at www.childtherapytechniques.com

A child whose body is using a "dissociating" mechanism may show some of the following signs:

- Breathing rapidly, or gasping for breath
- Appearing frozen or move rigidly
- Eyes darting from side to side
- Having a glassy stare, and be unresponsive to contact
- Stop speaking, or appear incoherent or unresponsive.
- An impaired sense of safety – having been exposed to acute or chronic threats, a child may think of even a safe environment as threatening.
- Difficulty controlling emotions — the child's brain remains "on alert" to deal with threats, and they may feel emotionally overwhelmed easily and also lack the skills to calm themselves down.
- Lack of trust – the child's experiences have taught him or her not to trust those around them - perhaps even those closest to them such as their family members have betrayed their trust.
- Information processing – because of the delay in the development of certain brain functions and the impact of trauma on the brain connections, the child may have difficulty processing new information.
- Trouble with self-expression – the child may have difficulty in verbally explaining how they feel or telling you about their experiences.

It is important to understand that what looks like a "naughty" child is in fact a traumatised child. They need to be counselled and supported, not reprimanded.



Trauma in the Courtroom

In the courtroom, you may see traumatised children behave in ways which are unexpected, or which make them difficult witnesses.

For example:

- They have fewer coping mechanisms than others to deal with things which frighten them or which are unfamiliar (such as a courtroom), so they may act aggressively, emotionally, dissociate, or shut down.
- When they are asked questions (such as those asked by the judge or defence lawyer), they may be unable to understand questions, explain answers clearly, or remember things consistently.
- Their brains may “block out” certain memories which are too painful, in order to protect themselves. This may mean that a child cannot reliably recount their evidence.
- Stressful situations may trigger the child’s memory of the traumatic events and the child will behave as if the experience is being re-lived. When a child engages in the justice process, he or she will be exposed to many events which may trigger the traumatic memories: seeing police officers and prosecutors; being required to remember and speak about the traumatic event; seeing the defendant.

Guidelines for dealing with traumatised children

Do’s

- Introduce yourself, and what your role is
- Dress appropriately to make the child feel safe and comfortable.
- If possible, arrange meetings in a location that make the child feel comfortable, calm and safe – for example, where there are soft furnishings, children’s toys.
- Be patient. Take your time to build rapport with the child
 - Talk about safe, neutral or happy subjects before you deal with traumatic issues. For example: talk about a recent school activity

- Give the child your full attention
 - Switch off your mobile phone
 - Meet in a room where there is no other distraction
- Be aware of your non-verbal communication with the child
 - Use a soft, friendly voice
 - Sit at the same level as the child, but not too close.
 - Make eye contact, but do not stare
 - Allow silence, so that the child feels like they can continue to talk as much as they need.
 - Demonstrate compassion in your actions – but don’t hug or touch the child unless he/she initiates it.
- Address the child’s behaviour as a symptom of trauma
 - Don’t reprimand the child for “acting out” but instead, talk through with them what is making them angry/sad/ frustrated
- Engage in “active listening” – let the child know you are hearing what they are telling you by nodding, saying things such as:
 - I understand
 - I am pleased that you have told me
 - It is not your fault
 - I will help you
 - Thank you for telling me
- Take frequent breaks so that the child is not overwhelmed.
- Be honest – tell the child the risks and the challenges which might come up.
- Let them know that you are there to listen and to help them.
- Give the child as many choices as you can to allow the child to feel some sense of control over their lives
 - For example: what kind of juice do they want to drink? Would they like to hold a toy while they speak to you? Which one?
- Thank the child for sharing with you, at the end of each meeting.

Don'ts

- Don't make promises you cannot keep.
 - For example: do not promise that the Accused will go to jail and do not promise that you will not tell anyone else what they tell you
- Don't force the child to speak if they do not wish to.
 - If the child is not feeling prepared to speak about certain issues, talk about something else and schedule another meeting for another day
 - Start with easier questions, and move onto more difficult questions only when the child is ready
- Don't cut off the child's conversation if they want to tell you something.
- Don't say things which suggest the child is at fault, that you don't believe the child, or that you are judging the child, such as:
 - Why didn't you tell anyone before?
 - I can't believe it!
 - Are you sure this is true?
 - What did you do to them first?
- Don't be emotional – be compassionate in responding to what the child tells you, but stay calm and in control.

A traumatised child who is not properly supported is unlikely to be able to be a good witness. This is why a well-planned out strategy for supporting a child witness is critical. Read on to find out how you can help a traumatised child prepare for court.





**GATHERING
EVIDENCE FROM A
TRAUMATISED CHILD**

Gathering evidence from a traumatised child

As children understand and communicate events which have happened to them in such a different way to adults, special care must be taken in how you interview a child to gather testimonial evidence.

Children require a different style of questioning in order for you to be able to gather the most accurate and complete evidence.

Start with a “pre-interview”. It’s a non-threatening conversation before the interview begins. It only needs to take a few minutes.

Steps for the pre-interview

1. Choose a positive topic – for example, the child’s favourite subject at school.
For example: “Tell me what you like to do at school”
2. Follow up with more “tell me more” questions.
For example: “Tell me more about why you like drawing”
3. Then pick a neutral event – for example, a recent activity at school.
For example: “I understand that you play football at school every Wednesday”.
4. Test detail questions, including questions about sequence.
For example:
“What happens next?”
“How long do you play for?”

Things to do before you start asking questions

1. Explain the ground-rules
 - Explain to the child that when they are answering questions:
 - i. The most important thing is to tell the truth.
 - ii. It is okay to say “I don’t know”. You should not guess an answer to a question.
 - iii. It is okay to say “I don’t understand” if you don’t understand a question.
 - iv. If you disagree with anything I say, you should say so.
 - v. Let me know when you are tired and you need a break for a while.
2. Speak slowly, and give the child the chance to answer
 - Don’t cut off a child’s response.
 - Pause between questions and answers to allow the child to process information.
3. Explain why you need to ask them questions, especially about topics that they might feel uncomfortable talking about.
For example:
“I need to ask you a number of questions about what happened that day. I am trying to understand everything that happened so that I can help you tell your story in court. Some of the things that I need to ask you about may make you feel sad. Just take your time to explain these things to me. I am here to help you.”



Types of questions to ask

1. Structure the interview, and signpost the subjects
 - Do not mix topics, or switch back and forth between topics.
 - Let the child know when you are going to change the subject.
For example: “Now I’m going to ask you about...”
2. Start with open-ended questions that encourage the child to tell their story uninterrupted
For example:
“Tell me about...”
“What happened next?”
Then, you can move to closed questions to get more detail.
For example:
“Were there any people around you when this happened?”
3. Use simple, common words and short phrases.
4. Repeat names and places often
 - “What did xx say?” not “What did he say?”
 - “Were there many people in your house?” not “Were there many people there?”
5. Ask one short idea at a time
 - Ask: “Did you talk to xx that day?” “What did you say to him?”
 - Do not ask: “Do you remember talking to xx that day and if so, what did you say?”
6. Check the child’s understanding
 - Don’t rely on children to tell you if they don’t understand
 - Children may misunderstand words like “always/never” “before/after” and “more/less”
 - Clarify meaning by asking open-ended questions:
For example:
“Tell me more about that”
“What do you mean when you say?”

7. Explain why you need to clarify meaning, or repeat a question
 - Don’t simply repeat a question if you think the child has misunderstood. Explain why you need more information.
 - For example:
Q: “Were you alone with your uncle in your house?”
A: “No”.
Q: “I want to check whether anyone else was with you when your uncle was hitting you. Was there anyone else there with you and your uncle when he hit you?”
A: “No, there was no one. My brother was in the field outside”.
8. Use different aids to help the child tell the story, if necessary.
 - When talking about sexual incidents or touching NEVER have the child point to parts of their own bodies to show what happened.
 - Consider using diagrams, and open questions only.
For example:
“You said he touched you. Can you show me on this drawing where he touched you?”



Types of Questions to Avoid

1. Confusing questions

- Double-barreled questions. Only one question should be asked at a time so that the child can understand which question he or she is answering.

Q: "When and where was the first time you saw the man?"

• Leading Questions

Q: "You invited him in, didn't you? You wanted him to come and see you that evening, didn't you?"

• Negative questions

Q: It's the case, is it not, that you didn't ...?

Q: Do you not disagree with that?

Q: Are you saying none of that ever happened?

• Conceptually difficult questions (depending on the child's age)

Q: For how long did he touch you?

2. Questions containing difficult vocabulary or legal terminology

Q: "Did you give evidence earlier about...?"

3. Especially with younger children or children with poor comprehension skills, questions comparing periods of time, or numbers.

Q: "Did it happen three months ago, or four months ago?"

Q: How many times did it happen? Five times? Ten times?

4. Ambiguous questions

Q: After asking about the child's brother and uncle: "Was he in the room?" (Who? The brother or father?)

5. "Tag" questions

- A "tag" question is one where a statement is made, and then a short question corroborating that statement is added to the end:
- Don't ask: "You stayed at home that day, didn't you?"
- Instead, ask "Did you stay at home that day?"

6. Restricted choice questions

- A restricted choice question only gives the child of a choice between answers that are already suggested to the child.
- Don't ask: "When he hit you, did you shout or cry?"
- Instead, ask "What did you do when he hit you?"

7. Judgmental questions

- Don't ask questions which imply disapproval about the child's actions or choices. This will discourage them from telling the truth.
- Don't ask: "If you were so scared, why didn't you tell someone straight afterwards?"
- Instead, ask: "What did you do afterwards?" "How did you feel afterwards?" "Did you tell anyone about what happened to you?" "Can you tell me why you didn't?"

8. Questions which ask a child to guess a person's motive.

- Children cannot determine another person's motives, no matter how obvious they may seem.

For example:

Don't ask: "Why do you think he would do this?"

9. Questions that require an understanding of time or frequency (for younger children)

- Even children who can count may not understand numbers, or the idea of frequency and order of events.
- Provide concrete anchor points, using times or events that are relevant to the child.

For example:

Ask: "Did this happen before or after you came home from school?"

Don't Ask: "When did this happen?"

10. Refrain from praising particular answers.

- This gives the child a cue about which answers are "helpful". Children generally want to please adults and so they may provide "helpful" answers regardless of whether they are true.



**PREPARING A
TRAUMATISED CHILD
FOR COURT
FOR LAWYERS**

Preparing a traumatised child for court

Court preparation helps to minimise the trauma of attending court and leads to a better testimonial. Some parts of the court preparation programme will be carried out by non-legal support staff and others by lawyers.

The steps below should be followed by Lawyers.

Step one: preparing the child to answer questions in court

Preparing the child to answer questions in court involves two parts:

1. Helping the child to develop **question-answering skills** – understanding the difference between true and false, when and how to ask for clarification, and when and how to decline to answer a question.
2. Preparing the child in relation to his or her **specific evidence** – refreshing the child on the facts in evidence, and preparing him or her to respond truthfully to possible lines of questioning which the child may face by the judges, prosecutor or defense lawyer.

Teaching the child question-answering skills

Equip the child to understand how to answer questions truthfully, and how to respond to questions which they do not know the answer to or which they do not understand, and leading questions.

It is important that you tell them honestly that they may face hard or confusing questions. That the defense lawyer or the judge may speak to them in a harsh voice. The child should understand that these things may happen, but that they can have the skills to deal with them.

Things to explain to children about answering questions in court

- a. You may be asked hard and sometimes confusing questions in court. Don't be scared. Just pause, and think carefully about the question. If you understand the question, just answer as clearly as you can.

- b. Do not guess an answer to a question. If you do not know the response to a question, the correct answer is "I don't know." It is okay to not know the answer to a question. You should not guess.
- c. Sometimes, a question may be asked in a confusing way. If you don't understand the question, you can just say "I don't understand the question. Can you please ask the question in another way?"
- d. If you don't agree with something, say so. Sometimes, someone may ask you a question in such a way it might seem like you should say "yes". Think carefully before you answer, and it is important to say if you disagree.
- e. If you have something you want to add to your answer, even if the question is a "yes" or "no" question, you should add what you want to say. It is important the judge has all of the information.
- f. You might be asked things which you are embarrassed to talk about. Don't worry, the judge has heard many things before from many children, and you don't have anything to be embarrassed about. Just take a deep breath and say what you want to say slowly.
- g. The defense lawyer's attitude may seem harsh – for example, they might even laugh, or try to cut off your answers. Don't worry about this. You are not in trouble. You are there because the judge wants to hear your side of the story.
- h. Speak in a clear, loud voice – everyone in the court wants to hear what you have to say. You are a very important person in court! Speak loudly, in a clear voice.
- i. If you need a break, just say so – if you are feeling tired, or if you feel too sad to answer questions and you need to take a break before you continue, just let the judge know that you need a break.
- j. You are not allowed to ask someone else to help you answer questions. – the judge wants to hear what you have to say. You are not allowed to ask someone else (like your mother or father) to answer the question for you.

Preparing a child to testify in court

- Stress to the child the importance of **telling the truth** about what happened.
- **Review** in the child’s mind what the child remembers about the facts of the case:
 - Ask the child to think back to what they recall about the incident – let the child speak freely.
 - Ask them about specific details which are important.
 - After you have heard the way the child tells the story, you can suggest elaboration or changes (for example, to improve accuracy or clarify).
 - If there are areas of the child’s recall which contradict the evidence which he or she gave previously, ask the child to clarify the reason.
 - Do not suggest facts to the child which they have not told you.
 - Do not try to change the substance of what the child says is his or her evidence.
 - Do not use an accusatory tone of voice when you are questioning the child about inconsistencies. The child may be confused, or there may be a genuine reason for the change. This may need to be explained in court, and the child may need to be prepared to explain any difference. Try asking the same question in a different way.
- Discuss with the child **other testimony or evidence** that might be presented.
 - Let the child know about the evidence of other witnesses, or what the accused says about what happened.
 - Review with the child other documents or physical evidence that may be introduced by either the prosecutor or the defense lawyer.
 - Ask the child to reconsider their recall of events in light of the other evidence which might be presented
 - Do not ask leading questions.
 - Do ask open questions about what the child thinks about the other evidence. For example:
 - i. **WRONG:** “The accused has told police that your mother was there at your house when he came to visit you. He’s lying isn’t he?”

ii. **CORRECT:** “The accused has told police that your mother was there at your house when he came to visit you. Can you tell me what you remember?”

- Discuss **possible lines of questioning** that the child may have to answer in court (from the judge or defence lawyer). This helps a child to anticipate what they will be asked, and to avoid stumbling when they are in court.
 - First, explain to the child that you will be asking questions as if you were the judge or defence lawyer. Explain to the child:
 - i. “We are going to practice some questions which the judge or defence lawyer might ask you. I am going to be acting as if I am asking questions as the judge or defence lawyer”. This way, the child doesn’t get confused as to why you are asking them questions in this manner.
 - ii. “Sometimes, the questions may seem aggressive or like the judge or defence lawyer does not believe you. Those people are just doing their job.”
 - **Rehearse some questions** which the judge or defence lawyer may ask.

This is an opportunity to address anything the child may be confused about.

- i. For example, it is possible that a child misunderstands a question, gives irrelevant information, or fails to give relevant information. You can help the child frame their responses in a way which is clear and accurate and reflects the child’s actual meaning.

However, you must not tell the child what to say, or assist the child to testify falsely about a material fact.

- **Explain clearly the role of the judge and the lawyer** when they question the child:
 - The defence lawyer’s job is to try to defend the accused, and therefore he or she may try to convince the judge that the child should not be believed.
 - The judge’s job is to try to get all the information about the case, taking into account what the accused has said. Therefore, the judge may ask the child detailed questions, and ask the child to explain any differences between what the child said previously, and what the child is saying in court.

Step two: providing information about the court process to the child and parent/ care giver

Information lessens anxiety

A child is likely to have many questions about why they have to go to court, what the child's role is, and what happens in court. This uncertainty and lack of understanding can cause the child a lot of anxiety during the period leading up to the court hearing. If the child is able to anticipate what will happen, this will go a long way to addressing the child's fears and anxiety.

1. You will need to provide information to the child about:
 - The roles of the people in court
 - The child's role in the court proceedings
 - The court process.
 - What happens after court
2. This information needs to be given to the child in a child-friendly manner. Adjust your language depending on the age and ability of the child.
3. We have created some tools to help you to provide this information to the child:
 - Show the child the Court animation and talk through what happened. Is there anything which they are unclear about?
 - Provide the child with a copy of the two booklets: "Billy Goes to Court" and "Who Will Be in Court?" and read through these booklets with them.
4. Allow the child enough time to ask questions, and play some games with the child - for example, you can test their memory about who is in court, and where each person sits.

Providing Information to the Parent or Caregiver

1. You should meet with the parent/caregiver prior to the hearing date as the parent/caregiver will also need to be prepared for court. It is important that the parent or caregiver of the child understands the court process and the child's role in the process. This will allow the parent or caregiver to:
 - Re-inforce information to the child
 - Provide emotional support to the child throughout the process
 - Ensure the child receives practical assistance such as transportation to meetings with counsellors and lawyers, and attendance at court.

2. Often parents or caregivers will not understand the court process any more than the child. You will need to explain the court process to the parent.
 - Show them the Court animation which you have shown to the child
 - We have prepared a booklet especially for parents/ caregivers to explain to them the court process and court rules: "Helping A Child Prepare For Court".
 - Go through the booklet with the parent/caregiver
 - Give the parent/caregiver a copy of the booklet to take away.
3. Explain to the parent/caregiver that children are often very afraid of going to court, and the child will need extra emotional support from the parent/caregiver during this time.
4. Explain to the parent/caregiver that you (or the Case Manager) will contact them once a court hearing date is set, and it is important that the parent/caregiver get the child ready to attend court on that date. This includes:
 - Where necessary, explaining to the child's school that the child will be absent on the date of the hearing
 - Making arrangements to attend the hearing, such as asking for leave from work and, if necessary, arranging child-care for any other children
 - Getting the child ready on the day of the hearing and making sure that they meet with you and the counsellor at an agreed time before the hearing.

Step three: consider arrangements for court attendance

1. Make arrangements for a dedicated waiting room
 - It may be very frightening and intimidating for the child if he or she encounters the accused in the courthouse before the hearing.
 - The child is entitled to wait in a separate waiting area in the courthouse before he or she enters the room.
 - Communicate with the court clerk before the hearing date to ensure that a separate waiting room is reserved for the child.

2. Consider necessary arrangements for child-friendly testimonial aids

Witness Screen or TV-linked testimony

- Ask the child whether he or she is afraid to give evidence in the presence of the accused.
- If so, explain that you are able to request that a court screen be used, separating the child from the accused so that the accused will not be able to see him/her.
- If you think that even with a court screen, the child is so vulnerable that even being together in the same room as the accused will be too frightening or be a threat to the child, you may apply to the court for the child to give evidence by TV linked testimony.
- As soon as you have been informed of the court date, write a letter to the Court clerk to request that a Witness Screen or CCTV facilities be made available for the trial.
 - [See sample used by IJM, at the end of this chapter]
- Make sure that these will be set up BEFORE the start of the trial so that the child does not have to see the accused when the child walks into the court room.
- On the day before the hearing, call the court clerk to confirm the arrangements have been made.
- Do not make any promises to the child but once you have confirmed with the court that these arrangements are available, keep the child informed so that he/she knows what to expect.

Witness Support Person

- Ask the child's views on whether he or she is afraid to give evidence in the presence of the accused without someone standing or sitting next to him/her.
- Ask the child if he/she would feel more comfortable if there was a support person allowed to stand next to him/her whilst the child gives evidence. If so, who does the child want that person to be?
- As soon as you have been informed of the court date, write a letter to the Court clerk to request that a Witness Support person be allowed.
- Do not make any promises to the child – but once the court clerk has confirmed the arrangement is allowed, keep the child informed.

3. Consider protective arrangements

- As soon as you have been informed of the court date, write a letter to the court clerk requesting any of the following measures if they are appropriate:
 - a closed court
 - protective order
 - prohibition on media and press publishing information revealing the child's identity

4. Consider Logistical Arrangements for Attending Court

- Transport
 - Ensure the child, the parent/caregiver, the support person (if any) and the counsellor have arranged transport to the courthouse, with plenty of time.
 - The child should NEVER be transported to court in the same vehicle as the Accused.
- Arriving at Court
 - Before the day of the hearing, agree with each member of the team (counsellor, caregiver, lawyer, case manager, lawyer) on exactly where you will meet on the day of the hearing.
- Caregiver for the Child
 - Confirm that the child's caregiver has all information about the hearing date and venue and has made all arrangements necessary to accompany the child to court on the day.





**PREPARING A
TRAUMATISED CHILD
FOR COURT
FOR NON LEGAL SUPPORT PERSONS**

Preparing a traumatised child for court

Court preparation helps to minimise the trauma of attending court and leads to a better testimonial. Some parts of the court preparation programme will be carried out by non-legal support staff and others by lawyers.

The steps below should be followed by non-legal support staff:

Step one: assess the child

You will need to assess the child to understand the level of the child's trauma and his or her abilities as a witness. This will allow you and the lawyer to determine how much support and preparation the child needs, and any special accommodations that may be necessary.

1. Assess the child's level of trauma

- Build rapport with the child and observe the child's symptoms for trauma.
- Speak to the child's parents or caregivers to obtain information about the child's history, support, behaviour. A child who has experienced a history of trauma and who does not have a lot of family or community support will need more attention and time.

2. Assess the child's level of comprehension

- Speak with the child about subjects that are unrelated to the case to get an idea of the child's level of understanding and verbal communication skills.
- Ask the child questions that will tell you whether they can understand simple and open ended questions, and whether they can communicate a series of events. Adjust your style of communication according to the child's ability to understand and communicate.

For example:

- Can you tell me about school?
- What is your favourite thing about going school?
- Can you tell me about your friends at school?
- Can you tell me what you did today at school?

- You may need to confirm that the child understands the difference between the truth and a lie, and a promise to tell the truth in court.

For example:

- If I were to say that I am wearing blue shoes, is that true or not true? That would be a lie because I am wearing brown shoes.

3. Communicate your findings to the child's lawyer

- You need to communicate your findings to the child's lawyer so that the lawyer can understand how to adjust the preparation for the child.

Step two: provide emotional support to the child

1. Focus the counselling on court preparation

- A child who has been the victim of or a witness to a serious crime is likely to need long term counselling support to help him or her deal with the trauma experienced as a result of the event.
- Here however, we are concerned with the emotional support that a child victim needs in order to equip them to cope with the process of testifying in court.
- Therefore, focus on:
 - addressing and anticipating the potential areas of anxiety about giving evidence in court
 - possible triggering events,
 - providing reassurance and comfort in your support
 - teaching coping techniques.

2. Teach the Child Coping Techniques

Both fear about being in court and being in a triggered traumatic state can compromise a child's ability to give full, accurate evidence.

It is therefore necessary to equip the child before-hand with some coping techniques which they can use when they are giving evidence if they feel over-whelmed or scared. You can teach the child the following techniques.

Calm Breathing Exercise

When you feel scared, sometimes your breathing can become difficult.

Practicing “Calm Breathing” will help you slow down your breathing, and make you feel calmer.

Steps to teach the child:

1. Sit straight up in a chair, and hold one hand on your stomach.
2. Take a slow breath in through the nose, breathing into your lower belly (for about 4 seconds) until the hand on your stomach begins to rise.
3. Hold your breath for 1 or 2 seconds.
4. Blow the air slowly through the mouth (for about 4 seconds).
5. Wait a few seconds before taking another breath.
6. Do this about 6-8 times per minute to decrease anxiety, but find your own comfortable breathing rhythm.
7. Try this for about five minutes.

If you are experiencing flashbacks you should keep your eyes open when doing calm breathing.

Muscle Relaxation Exercises

Progressive Muscle Relaxation will teach you how to relax your muscles and release stress and tension. Through practice you can learn to tell the difference between the feelings of a tensed muscle and a completely relaxed muscle.

Relaxing your muscles will help you to relax whenever you are feeling anxious.

Steps to teach the child:

1. Focus on your left hand. Imagine you are holding a lemon.
2. Take a slow, deep breath and squeeze the lemon in your hand as hard as you can for about 5 seconds.
3. After about 5 seconds, let all the tightness flow out of your hand as you let go of the lemon. Exhale as you do this step. You should feel the muscles in your hand become loose and limp, as the tension flows out.
4. Repeat this slowly, about 4 or 5 times.

Cooked and Uncooked Noodle

This is also a muscle relaxation activity. It can be fun and can be used with younger and older children – boy or girl.

Steps to teach the child:

1. Sit comfortably in a chair or on the floor.
2. Let's practice how to tighten up our muscles. Tighten up your hand(s) as hard as you can.
3. Imagine a bowl of noodles. Cooked noodle is soft; Uncooked noodle is stiff. And so for the muscles.
4. When I say “Uncooked Noodle”, tighten up your hand(s), just like a stiff uncooked noodle. Keep them tight! [You can leave it around 6-7 seconds between the Uncooked and Cooked Noodle.] Then, when I say “Cooked Noodle”, you can release your muscles so they go soft, just like a cooked noodle.
5. Let's do that a few times.
6. Let's try this with tightening up the muscles of other parts of our bodies.

To make it more fun, you can ask the child to stand up, then ask them to uncook (tighten) and hold the muscle starting from toe upward to head. When their whole body tightens, you can ask them to walk. So they will feel like a walking-robot. Then you can say “Cooked Noodle” to release their muscles.

Grounding

Grounding is a very helpful technique if you are experiencing flashbacks or losing touch with the present moment.

Grounding teaches you to stop losing touch with the present moment by focusing on the present or by directing your attention to something else.

Steps to teach the child:

1. Keep your eyes open. Look around you and notice where you are.
2. Touch objects around you, and describe them (texture, colour). For example, “I'm standing on the ground. My shoes are blue. The ground is hard and is made of wood, and there is a red chair in the corner of the room.”

3. Name things with your senses (“What can you hear in the room right now?” “Name 5 things in this room that are green.”)
4. Keep your eyes open so that you can see and focus on what is around you right now. Speak out loud, describing what you are seeing and doing.
5. Remind yourself “So I know (name the trauma by title only again, e.g. ‘being hurt by my uncle’) is not happening now or anymore.”

Important Note: Muscle relaxation, control breathing are just some of the techniques traumatised children can use to calm themselves down. Many other activities are also available and useful to help them feel relaxed such as drawing, painting, playing puzzles, listening to music, etc. Every child is individual. A technique which is useful for one child may not be useful for another child. Asking the child what they normally do to feel relaxed is important before giving suggestions to them.

Step three: provide information about the court process to the child and parent/ care giver

Information lessens anxiety

A child is likely to have many questions about why they have to go to court, what the child’s role is, and what happens in court. This uncertainty and lack of understanding can cause the child a lot of anxiety during the period leading up the court hearing. If the child is able to anticipate what will happen, this will go a long way to addressing the child’s fears and anxiety.

Remember when you meet with the client, these children are often scared, traumatised, and may have never met with a lawyer before. Take your time to make them feel comfortable with you.

1. You will need to provide information to the child about:
 - The roles of the people in court
 - The child’s role in the court proceedings - make it very clear to the child that he or she is not the one on trial
 - The court process
 - What happens after court

This information needs to be given to the child in a child-friendly manner. Adjust your language depending on the age and ability of the child.

2. We have created some tools to help you to provide this information to the child:
 - Show the child the Court animation and talk through what happened. How do they feel about what they saw?
 - Provide the child with a copy of the two booklets: “Bona Goes to Court” and “Who Will Be in Court” and read through these booklets with them.
3. Allow the child enough time to ask questions, and play some games with the child - for example, you can test their memory about who is in court, and where each person sits.

Providing Information to the Parent or Caregiver

1. You should meet with the parent/caregiver prior to the hearing date as the parent/caregiver will also need to be prepared for court. It is important that the parent or caregiver of the child understands the court process and the child’s role in the process. This will allow the parent or caregiver to:
 - re-inforce information to the child
 - provide emotional support to the child throughout the process
 - ensure the child receives practical assistance such as transportation to meetings with counsellors and lawyers, and attendance at court.
2. Often parents or caregivers will not understand the court process any more than the child. You will need to explain the court process to the parent.
 - Show them the Court animation which you have shown to the child
 - We have prepared a booklet especially for parents/ caregivers to explain to them the court process and court rules: “Helping A Child Prepare for Court”.
 - Go through the booklet with the parent/caregiver
 - Give the parent/caregiver a copy of the booklet to takeaway.
3. Explain to the parent/caregiver that children are often very afraid of going to court, and the child will need extra emotional support from the parent/caregiver during this time.

4. Explain to the parent/caregiver that you (or the NGO worker) will contact them once a court hearing date is set, and it is important that the parent/caregiver get the child ready to attend court on that date. This includes:

- where necessary, explaining to the child's school that the child will be absent on the date of the hearing
- making arrangements to attend the hearing, such as asking for leave from work and, if necessary, arranging child-care for any other children
- getting the child ready on the day of the hearing and making sure that they meet with you and the counsellor at an agreed time before the hearing.

Step four: consider arrangements for court attendance

1. Make arrangements for a dedicated waiting room

- It may be very frightening and intimidating for the child if he or she encounters the accused in the courthouse before the hearing.
- The child is entitled to wait in a separate waiting area in the courthouse before he or she enters the room.
- Communicate with the court clerk before the hearing date to ensure that a separate waiting room is reserved for the child.

2. Consider necessary arrangements for child-friendly testimonial aids

Witness Screen or TV-linked testimony

- Ask the child whether he or she is afraid to give evidence in the presence of the accused.
- If so, explain that you are able to request that a court screen be used, separating the child from the accused so that the accused will not be able to see him/her.
- If you think that even with a court screen, the child is so vulnerable that even being together in the same room as the accused will be too frightening or be a threat to the child, you may apply to the court for the child to give evidence by TV linked testimony.
- As soon as you have been informed of the court date, write a letter to the Court clerk to request that a Witness Screen or CCTV facilities be made available for the trial.
 - [See sample used by IJM, at the end of this chapter]

- Make sure that these will be set up BEFORE the start of the trial so that the child does not have to see the accused when the child walks into the court room.
- On the day before the hearing, call the court clerk to confirm the arrangements have been made.
- Do not make any promises to the child but once you have confirmed with the court that these arrangements are available, keep the child informed so that he/she knows what to expect.

Witness Support Person

- Ask the child's views on whether he or she is afraid to give evidence in the presence of the accused without someone standing or sitting next to him/her.
- Ask the child if he/she would feel more comfortable if there was a support person allowed to stand next to him/her whilst the child gives evidence. If so, who does the child want that person to be?
- As soon as you have been informed of the court date, write a letter to the Court clerk to request that a Witness Support person be allowed.
- Do not make any promises to the child – but once the court clerk has confirmed the arrangement is allowed, keep the child informed.

3. Consider protective arrangements

- As soon as you have been informed of the court date, write a letter to the court clerk requesting any of the following measures if they are appropriate:
 - a closed court
 - protective order
 - prohibition on media and press publishing information revealing the child's identity

4. Consider Logistical Arrangements for Attending Court

- Transport
 - Ensure the child, the parent/caregiver, the support person (if any) and the counsellor have arranged transport to the courthouse, with plenty of time.
 - The child should NEVER be transported to court in the same vehicle as the Accused.

- Arriving at Court
 - Before the day of the hearing, agree with each member of the team (counsellor, caregiver, lawyer, case manager, lawyer) on exactly where you will meet on the day of the hearing.
- Caregiver for the Child
 - Confirm that the child's caregiver has all information about the hearing date and venue and has made all arrangements necessary to accompany the child to court on the day.





THE DAY OF
THE HEARING

Bring your “team” for the day

On the day of the court hearing, every member of the court support team will need to do their part to support and protect the child.

What you need to do if you’re a non-legal support person

Your role on the day of the hearing is crucial. You are there to emotionally support the child, protect the child from the Accused, and speak up if you think that the child-friendly measures are not being adopted.

Remember that the child is probably feeling frightened, intimidated, possibly unsafe and overwhelmed. They may be in a “triggered” state from seeing the Accused, or being put in a position where they need to talk about their traumatic memories.

See the Checklist for Non-Legal Support Persons for further advice.

What you need to do if you’re a Lawyer

Your role on the day of the hearing is crucial. You are there to legally represent the child and ensure that the proceedings are being carried out in the child’s best interests. You need to ensure that the child understands everything which is happening in court, that any questions directed to the child are done so in a child-friendly manner, and that the child is legally protected.

Remember to use the help of the other members of the team – the counsellors, the child’s parent or caregiver, and the case manager – to help you support and protect the child throughout the day.

See the Checklist for Lawyers and review the Questions you need to Stop in Court below for further advice

Questions you need to stop in court

It is your job to insist on appropriate questioning of the child. If you see this type of questioning from the defence lawyer, prosecutor, or judge, you should object to the judge and ask for the questioning to be stopped and for the questions to be re-phrased in a child-friendly manner.

1. Confusing questions (object if it appears the child doesn’t understand or is getting confused).

Double-barreled questions:

Q: “You invited him in, didn’t you? You wanted him to come and see you that evening, didn’t you?”

Q: “When and where was the first time you saw the man?”

- Only one question should be asked at a time so that the child can understand which question he or she is answering.

Negative questions

Q: It’s the case, is it not, that you didn’t ...?

Q: Do you not disagree with that?

Q: Are you saying none of that ever happened?

Conceptually difficult questions (depending on the child’s age)

Q: For how long did he touch you?

2. Insulting or offensive questions

Questions which unnecessarily demand detail about sexual incidents

Questions which imply the child “enjoyed” a sexual experience

Q: “You enjoyed it didn’t you?”

3. Irrelevant questions

It may be irrelevant to seek explanations of behaviour if it is of little evidential value and irrelevant for the purposes of the trial.



4. Repetitive questions.

Persistently repeating a question in the same form can encourage children to alter their response according to what they may think the questioner wants to hear.

Q: “You didn’t tell anyone did you?”

Q: “Did you tell anyone?”

Q: “How many people did you tell?”

5. Questions containing difficult vocabulary

This includes legal terminology:

Q: “Did you give evidence earlier about...?”

6. Unless the child has well developed cognitive skills, questions comparing periods of time, or numbers.

Q: “Did it happen three months ago, or four months ago?”

Q: How many times did it happen? Five times? Ten times?

7. Ambiguous questions

Q: After asking about the child’s brother and uncle: “Was he in the room?” (Who? The brother or father?)

8. “Tag” questions

A “tag” question is one where a statement is made, and then a short question corroborating that statement is added to the end:

Q: “You stayed at home that day, didn’t you?”

9. Restricted choice questions

A restricted choice question only gives the child a choice between answers that are already suggested:

“Q: When he hit you, did you shout or cry?”

Debriefing (both non-legal support persons and lawyers)

Your job has not ended when the hearing is finished.

A very important part of supporting and protecting the child is “debriefing” with the child after the hearing.

This means you should, as a team, take some time after the hearing has finished to gather together with the child in a private area, and do the following:

- Thank the child for being brave enough to appear in court
- Reassure the child that they have done a good job
- Explain to the child that the judge will take some time to think about everything which has been said in court. Even if the verdict is “not guilty” it is important to understand that this does NOT mean that the judge did not believe the child. The child’s evidence is only one part of the story, and the judge might decide that there is not enough evidence.
- Explain to the child what happens next – that you will contact the child’s parents or caregiver once a date for the verdict and sentencing has been notified.
- Ask the child if they have any questions about what happened in court today, and address those questions.



