



## CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN TRINIDAD AND TOBAGO

National Report for AIMJF's Comparative and Collaborative Research.

*La participación de niños como víctimas o testigos en causas penales en Trinidad y Tobago  
Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales à  
Trinidad et Tobago*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

### Judiciary of Trinidad and Tobago

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Trinidad and Tobago.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Trinidad y Tobago

**Résumé :** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Trinidad et Tobago

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.



The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## **1. RIGHT TO BE HEARD**

### **1.1 Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?**

In Trinidad and Tobago, except as provided for under the **Children Act Chap 46:01**, every person is presumed competent, capable and compellable to give evidence (**Section 13A Evidence Act Chap 7:02**). When it comes to child witnesses however, the common law does not presume competence and capability for children of tender years. In such circumstances, the common law places a special duty on a judge to first ascertain whether the child understands the nature and consequence of an oath. The test as stated by Lord Lane in **R v Z [1990] 3 WLR 113** is:

*“Whether the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. Those criteria will inevitably vary widely from child to child, and may indeed vary according to the circumstances of the case, the nature of the case, and the nature of the evidence which the child is called upon to give. Obviously the younger the child, the more care the judge must take before he allows the evidence to be received”*

Justice of Appeal Warner opined in the case of **Mohammed v the State TT 1985 CA 39** as follows:

*“It is still the common law today that, as Robertson J.A. put it in R v Antrobus [1947] 2 D.L.R. at p.59, the fact of capacity to take the oath is not presumed, but must be shown where the child is under 14 years. Robertson J.A. also opined in that case “before a child of tender years may be sworn the requirements set out in Brasier's case must be fulfilled, namely that the child understands the nature and consequence of an oath”.*



In tandem with the common law, **Rule 11.5 of the Children Court Rules (2018)** provides for the procedure for when a child under the age of 14 is at an intake conference. Notwithstanding this, **Section 98 of the Children Act Chap 46:01** reduces the common law age to that of ten (10) years, in that once a child is over 10 years old, they will be presumed competent and capable to give unsworn evidence, unless in the discretion of the judicial officer, it is in the interests of justice to conduct a voir dire. If however, the child victim or witness is under ten years old, the presumption of capability to give evidence would not be in their favour, unless the Judge, after holding a voir dire, determines that he/she is possessed of sufficient intelligence to justify the reception of his/her evidence, and understands the duty of speaking the truth.

### **1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?**

The right to be heard is enshrined in **the Constitution of the Republic of Trinidad and Tobago (1976)**, ensuring that no individual is deprived of this right without due process of law. Presently, the only restriction on the right to be heard applies to children under the age of ten (10) years. This limitation depends on whether the child has sufficient intelligence to justify the acceptance of their evidence and understands the duty of telling the truth. In such instances, children are entitled to legal representation, through private Attorneys-at-law or through the appointment of an attorney *amicus curiae*. Furthermore, the Court can appoint Children Attorneys under **Section 88 of the Children Act Chap 46:01** to represent and safeguard the child's voice, ensuring their right to be heard is preserved.

### **1.3. Are children allowed to refuse to make a statement? If so, in which cases?**

Child victims or witnesses are permitted to refuse to make a statement, whether it be orally, written or by way of electronically recorded statements. Thus, when a report is made by or on behalf of a child victim or witness reporting abuse, the child is not legally required to provide a statement to police officers or any other interviewing body. Likewise, during a trial or during care matters under **Section 25 of the Children's Authority Act Chap 46:10**, the child victim or witness is not obligated to give any evidence, whether through a written or recorded statement or viva voce (oral) testimony.



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## 2. BROAD PERSPECTIVE OF THE LEGAL FRAMEWORK AND PROCEDURE

### 2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

The established international framework has laid the foundation for the protection of the rights of child victims and witnesses in Trinidad and Tobago. Although there isn't a specific piece of legislation governing the treatment of child victims and/or witnesses, various statutes and rules provide protections and safeguards. Key principles enshrined in **Sections 4 and 5 of the 1976 Constitution of Trinidad and Tobago** include the protection of the law, security of the person, equality before the law, due process, and the right to legal representation.

Key legislation includes:

- ✓ **The Children Act Chap 46:01**: Establishes special procedures for the management of child victims or witnesses.
- ✓ **The Children's Authority Act Chap 46:10**: Creates the Children's Authority of Trinidad and Tobago, responsible for the welfare of children.

In criminal proceedings, **Section 99 of the Children Act** allows the court to appoint a qualified intermediary for child witnesses to give evidence.



**Section 10A of the Administration of Justice Indictable Proceedings (Amendment) Act (AJIPAA) (2023)** provides the Children Court with the jurisdiction to determine the applicability of processes, programs, rules, procedures, restrictions, supervision, or measures under the **Family and Children Division Act, (2016)**. This ensures that even when a child is a victim or witness in a crime committed by an adult, they can still benefit from the Children Court's processes.

**The Children Court Rules 2018** offer safeguards and protections for child victims and witnesses during court proceedings. **Part 18** of these rules includes special measures for child witnesses and victims, such as allowing a child to give evidence with support from a sanctioned person, by alternative means, through video-recorded evidence or video conferencing technology from another part of the court building or another location, as well as by appointing a qualified intermediary. The Court can also reconfigure the courtroom layout, order the presence of a supporting person, and allow the child victim or witness to become familiar with the courtroom layout prior to the hearing.

**The Trafficking in Persons Act** mandates the Counter Trafficking Unit, through its line Minister and in consultation with the Children's Authority of Trinidad and Tobago and other agencies, to assist non-national child victims of trafficking. This assistance includes housing, education, legal assistance, information, and medical aid. Importantly, it prohibits placing child victims of trafficking in prisons or detention facilities meant for accused or convicted individuals.

**2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?**

Trinidad and Tobago has taken significant steps to ensure the implementation of a child justice system that meets internationally recognized standards. This has involved the development of



three (3) protocols among various stakeholders integral to the child justice system. These protocols are designed to promote greater efficiency and effectiveness through coordination and collaboration among agencies, thus ensuring a smooth transition from the initiation of proceedings to disposition. Each protocol includes flow charts and diagrams illustrating the touch points between stakeholders and agencies, as well as their distinct roles and functions as stipulated by legislation. The protocols are:

i. **The Trinidad and Tobago Multi-Agency Protocols addressing children in conflict with the law (July 2017)-** [https://www.ttlawcourts.org/images/Multi-Agency%20Protocols\\_July%202017.pdf](https://www.ttlawcourts.org/images/Multi-Agency%20Protocols_July%202017.pdf)

ii. **The Trinidad and Tobago Inter-Agency Protocols addressing students in conflict with the law (July 2017)-**

[https://www.ttlawcourts.org/images/Inter%20Agency%20Protocols\\_July%202017\\_1.pdf](https://www.ttlawcourts.org/images/Inter%20Agency%20Protocols_July%202017_1.pdf) ;  
and

iii. **The National Interagency Protocol for Child Abuse Prevention and Management (2023)-** <https://ttchildren.org/media/protocol/>

With regard to avoiding multiple interviews of a child victim or witness, special measures directions as provided for under **Part 18 of the Children Court Rules (2018)** allow for either a party to the proceedings or the Court on its own volition to make orders and give special directions as to how to treat with child witnesses. The use of audio/video digitally recorded evidence may be admissible as evidence for the simple reason that it avoids the re-traumatisation of child victims/witnesses. Additionally, written statements from the child can serve as the basis of their evidence, thereby eliminating the need for repeated interviews by other stakeholders.

### **2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?**

The steps in criminal cases can be adequately divided into two heads as follows:



**A. Pre-Initiation and Initiation of Proceedings-** In actions touching and concerning child victims or witnesses, pre-initiation of proceedings are covered under **Section 51B of the Children Act Chap 46:01**. Whenever a police officer is interviewing a child who is a suspect, victim, witness or otherwise, and it appears to the police officer that the child's ability to follow the interview or to communicate should be facilitated through an intermediary, the police officer may make an application to the Children's Authority of Trinidad and Tobago to appoint a competent and qualified person to act as an intermediary (**Section 51B(2)**). Further, under **subsection (3)** the parent, guardian, person with responsibility for the child and a private Attorney-at-law may also request the presence of an intermediary.

- ✓ *The making of a report-* In most instances, a victim of a crime will need to make a report to the nearest police station and a witness statement would be taken from that person. An adequate identification procedure may follow wherein the child victim/witness may be called upon to positively identify the accused, whether it be a child offender or an adult offender. The Victim and Witness Support Unit (VWSU) as well as the Child Protection Unit (CPU) of the Trinidad and Tobago Police Service (TTPS) may intervene based on recommendations from senior officers, to lend assistance to the child victim/witness. Counter Trafficking Unit (CTU) as well as the Immigration Division of the Ministry of National Security may also be engaged if it is suspected that the child victim/witness is a victim of trafficking.
- ✓ *Preparing the file and gathering evidence-* Based on the report and witness statement of the child victim/witness, the police will engage in the conducting of thorough investigations with a view to determine whether there is enough evidence by which they can properly charge an accused for the alleged crime committed as against the child victim/witness.



- ✓ *The subsequent arrest and charge of the child accused-* Once the Police is satisfied that there is enough evidence by which they can properly charge the accused, an arrest and subsequent detention as well as an interrogation/interview will follow, which ultimately ends in the accused being charged. The relevant information or complaint would be properly laid based on the type of offence, namely summary, indictable or either way offences.

**B. Post Initiating of Proceedings-** This step is dependent on the type of matter that is before the Court, as well as the Court in which the relevant information or complaint was laid.

**For a crime committed by an adult offender, a child victim or witness may still benefit from the** applicability of processes, programs, rules, procedures, restrictions, supervision, or measures under the **Family and Children Division Act, (2016)** pursuant to **Section 10A of the Administration of Justice Indictable Proceedings (Amendment) Act (AJIPAA) (2023)**.

For crimes committed against a child victim or witness by a child offender, post-initiation of proceedings is mainly governed by the **Children Court Rules (2018)**. In particular, **Part 10** provides the steps in the flow of cases in matters before the Children Court, from intake all the way to post sentence monitoring. Based on submissions from the relevant Attorneys-at-law, the Court as a problem solving court is empowered to make orders with a view to provide various types of targeted psychosocial and therapeutic interventions, as well as orders for counselling. The steps post-initiation include:

- ✓ *Intake-* This crucial step involves an intake officer conducting an interview with the child victim or witness to allow their voice to be heard and to gather necessary information which will assist in the progress of their interventions;
- ✓ *Case preparation and management-* The court manages the case, including preparation for hearings and ensuring all necessary steps are taken to safeguard the child's interests.





- ✓ *Hearing/ Initial/Sufficiency hearing* -Legal proceedings proceed through various hearings where the case is presented, arguments are heard, and decisions are made on sufficiency and trial readiness and finally determination of the matter.
- ✓ *Sentencing-* If the accused is found guilty, sentencing occurs, considering factors such as the nature of the offence and the best interests of the child victim or witness.
- ✓ *Post Monitoring-* the Court may monitor the case to ensure any ordered interventions, such as psychosocial support or counselling, are implemented and effective.

**Language and Communication:** Throughout the legal proceedings, judicial officers and involved parties must communicate in language appropriate to the child's age and maturity, ensuring their understanding and participation.

#### **2.4. In which moment(s) can a child be heard in this procedure?**

A child victim or witness can be heard at several key points throughout the legal proceedings, thus ensuring their voice is considered and their rights are persevered and safeguarded. The Court can hear from the child victim or witness through various forms including reports from Social Workers, Probation Officers, Psychologists, The Children Attorneys, witness statements as well as by way of recorded statements. The following are the main instances when this occurs:

##### **Initial Contact with Authorities:**

During initial contact with authorities, such as police officers, the child victim or witness may make a report or providing an initial statement about the details of the incident. This includes any interviews conducted to gather information regarding the alleged crime.

##### **Investigation Stage:**



The investigation process conducted by law enforcement agencies involves the child victim or witness providing detailed accounts of events, identifying the alleged offender, if applicable, and assisting in the collection of evidence.

### **Court Proceedings:**

*Intake Process:* At the intake stage when the case is formally brought before the Court, this may involve an initial interview or assessment by court officials to understand the child's perspective and needs as a victim or witness.

*Hearings:* The child victim or witness may also be heard during court hearings, where the child may be required to testify and give evidence as a witness, either through direct testimony (viva voce) or through the submission of written statements (depositions).

*Victim Impact Statements:* In cases where there is a plea agreement or sentencing phase, child victims over the age of fourteen (14) have the opportunity, along with their parent, guardian, or custodian, to submit a victim impact statement. Where the child victim is under the age of fourteen (14), the parent, guardian, or custodian may make a victim impact statement on behalf of the child victim: **Section 16 Criminal Procedure (Plea Discussion and Plea Agreement) Act No 12 of 2017**. This statement outlines the physical or emotional harm, financial loss or other impact that the offence has had on the child victim.

### **Post-Sentencing:**

The child victim or witness can also be heard during the post-sentencing phase, if applicable, where the Court considers the child's welfare and ongoing support needs. This can include decisions related to counseling, rehabilitation, or other support services.

### **Throughout the Process:**

The child victim or witness may also be heard at any point during the legal proceedings where the child's views, concerns, or preferences are relevant to decisions affecting their well-being or the outcome of the case.



These opportunities ensure that child victims and witnesses are empowered to express their perspectives and needs throughout the legal process, ensuring fair treatment and appropriate support.

**2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?**

In Trinidad and Tobago, a child victim does not possess the explicit legal authority to independently initiate, suspend, or terminate criminal proceedings. However, the child's consent or lack thereof can influence certain aspects of the legal process, particularly in cases involving sensitive matters such as sexual offences or abuse.

A child victim's consent is typically not required to initiate criminal proceedings. In cases involving serious crimes against children, such as sexual offences, the decision to proceed with charges rests primarily with law enforcement and the Director of Public Prosecutions (DPP), rather than with the child victim or witness or their guardians.

Once a child victim or witness' initial report or complaint is filed, it generally cannot be unilaterally withdrawn by the child or their legal guardians. The decision to proceed with or dismiss charges is made by the prosecuting authorities (DPP) based on evidence and public interest considerations.

The Court and relevant authorities may consider the child victim's views, especially regarding their readiness or ability to testify or participate in legal proceedings. This consideration aims to minimize further trauma to the child and prioritize their well-being.

In cases involving plea agreements or sentencing, child victims over fourteen (14) years old, along with their parent, guardian, or custodian, have the opportunity to submit victim impact statements, or have such statements submitted on their behalf, in the case of children under the age of fourteen (14). These statements detail the impact of the offence on the child, influencing sentencing decisions.



In summary, while a child victim cannot independently initiate, suspend, or terminate criminal proceedings in Trinidad and Tobago, their consent and views are considered within the broader legal framework. This ensures their protection, well-being, and meaningful participation in the justice process.

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### **3. PREPARATION FOR THE CHILD PARTICIPATION**

#### **3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?**

The following resource material is available online. The links are as follows:

- ✓ **Children Court Child Friendly Fact Sheet-**  
[https://www.ttlawcourts.org/images/FCD/Children Court Child Friendly Fact Sheet Updated Oct 2023.pdf](https://www.ttlawcourts.org/images/FCD/Children_Court_Child_Friendly_Fact_Sheet_Updated_Oct_2023.pdf)
- ✓ **United Nations Convention on the Rights of the Child- Child Friendly Language-**  
<https://tchildren.org/legislation/uncrc-child-friendly-language/>
- ✓ **National Child Policy:**[http://opm-gca.gov.tt/Portals/0/Documents/2021/Publications/Child%20Friendly%20Version%20National%20Child%20Policy%20\(ENG\).pdf?ver=fX6FuwYT0s6z\\_LBQQMKuzw%3d%3d](http://opm-gca.gov.tt/Portals/0/Documents/2021/Publications/Child%20Friendly%20Version%20National%20Child%20Policy%20(ENG).pdf?ver=fX6FuwYT0s6z_LBQQMKuzw%3d%3d)

**3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before**



**interview/hearing, or any other?) How long before the interview/hearing does this happen?**

While some child-friendly materials are available on the Judiciary’s website, much of the information is delivered directly to the child victim or witness throughout the court process.

**Before court hearings:** The child may meet with court-appointed professionals, such as social workers or Child Advocates, who provide additional information and support. These professionals use child-friendly materials, such as brochures or videos, to help the child understand the court process. They also prepare the child for what they might experience during hearings, including the roles of different people in the courtroom and what it means to give testimony.

**During hearings:** Judicial Officers and court staff play a crucial role in ensuring the child’s comprehension and comfort during hearings. They take care to explain each step of the process in a manner that is understandable to the child victim or witness, breaking down complex legal terms into simpler concepts. For instance, a Judge might explain what a hearing is, who will be speaking, and why the child’s testimony is important. This can include explaining the roles of lawyers, the judge, and other court personnel in terms the child can grasp.

In some cases, intermediaries or child psychologists are involved to facilitate communication between the child victim or witness and the Court. These professionals ensure that questions posed to the child are appropriate and that the child’s responses are clearly understood. They also help the child articulate their experiences and concerns without feeling overwhelmed or intimidated.

If a child victim or witness must testify, the Court may allow special measures to make the experience less stressful. This can include testifying from a separate room via video link, having a support person present, or using screens to prevent the child from seeing the defendant. These measures help create a safer and more supportive environment for the child to speak.

**After court appearances:** Follow-up support is provided to ensure the child victim or witness understands what happened and what the next steps will be. Court staff or the Child Advocates



are available to answer any remaining questions and provide emotional support, helping the child process their experience and maintain a sense of stability and reassurance.

This comprehensive approach ensures that child victims and witnesses are not only informed about the legal process but are also supported throughout their involvement, helping to minimize stress and confusion and ensuring their rights and well-being are protected.

**3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?**

In the case of child victims or witnesses coming to the attention of the Children Court, the flow of cases differs from that of adult court. The Children Court treats with various types of matters touching and concerning child victims or witnesses including criminal matters, children in need of protection matters (Section 22 to 25 of the Children’s Authority Act Chap 46:10), domestic violence matters or mental health matters: Section 3(1) Family and Children Division Act No 6 of 2016.

An Intake Hearing precedes the Hearing Phase, allowing the child to receive necessary interventions before the actual hearing. This intake hearing is presided over by the assigned Judicial Officer and serves to determine the particulars of the child, as well as those of their parents, guardians, or responsible persons.

The Intake Hearing allows the Court to gather detailed information about the child, their parents, guardians, or responsible persons, assess the child's needs and wants appropriate to their age, and determine if any special accommodations are necessary during the hearing. Consequently, the Court orders various interventions and assessments to be conducted by the Social Services Unit of the Children Court, with subsequent pre-hearing reports submitted to



the Court, as stipulated by **Section 35(3) of the Family and Children Division Act (2016)**.

Some of the internal assessments include:

- ✓ Psychosocial assessment; and
- ✓ Psychological assessment;
- ✓ Probation officers report (where the child is a victim or witness in a crime perpetrated by a child offender)– **Section 8A Probation of Offenders Act Chap 13:51**

The Court may also refer the child victim or witness, and in cases of domestic violence and care and protection matters, their parents, guardians, or responsible persons, to auxiliary programs for additional support.

Additionally, the TTPS and The Children's Authority conduct their respective needs assessments of child victims and witnesses to ensure that the child's needs and circumstances are thoroughly understood before they are interviewed.

These comprehensive assessment processes ensure that child victims or witnesses are adequately supported and that their individual needs are considered throughout the legal proceedings.

### **3.4. Is there any kind of contact or evaluation with the parents or legal guardians?**

The Children Court, by its very nature, is a solutions-based and problem-solving court that addresses not only the needs of the child victim or witness but also the needs of the parents, guardians, or persons responsible for the child. As such, in cases of domestic violence, care and protection matters and even mental health matters, these individuals are required to attend intake conferences and benefit from various programs and interventions offered by the Court, including individual counselling, parent support training, and parental counselling.

### **3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?**



The Court has the authority under its case management powers to issue special measures directions, either at its own discretion or upon request from a party involved in the proceedings. These directions are designed to familiarize the child victim or witness with the courtroom environment, as detailed in **Part 18.3 of the Children Court Rules (2018)**.

Such measures may involve scheduling visits to the courtroom before the interview or hearing, allowing the child to observe ongoing proceedings, or explaining courtroom procedures in a way that is appropriate for the child's age and comprehension level. These initiatives are aimed at ensuring that the child victim or witness feels comfortable and prepared when appearing in court.

### **3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?**

Child victims or witnesses receive various types of support from the Court prior to hearings to ensure they are adequately prepared and supported throughout the process.

At the Children Court, the Intake Conference for children matters allows the Court to determine the particulars of the child victim or witness as well as particulars of parents, guardians or persons with responsibility, his needs and wants appropriate to his age, as well as whether he requires any special needs during the course of the hearing. The Court may order various assessments and reports to understand the child's background, emotional and psychological state as well as to determine if specific psychological support is needed during the legal proceedings. Additionally, the Court may provide or refer the child victim or witness to counselling services to address any emotional or psychological issues stemming from their involvement in the legal process, aimed at helping them cope with stress, anxiety, or trauma.

In so doing, during the course of proceedings, the Court may make orders referring the child victim or witness to the Social Services Unit of the Children Court, the Probation Services Division, Ministry of Social Development and Family Services. The Social Services Unit of the Children Court which comprises social workers, psychologists, and Children's Probation Officers who are also social workers, play an integral role in providing support services to the





child from intake all the way to disposition. The Judicial Officer would make the relevant orders for internal referrals of these services and programmes, including:

- ✓ Counselling and psychosocial and analysis and support to the child and family
- ✓ Mediation Services;
- ✓ Probationary and Diversionary services through the Children Probation Officers attached to the Unit;
- ✓ Risk Assessment by the Children Probation Officers; and
- ✓ Psychotherapy and psychosocial evaluations and assessment.

The Court may also order the child victim or witness and in the case of domestic violence and care and protection matters, his parents, guardians, or persons with responsibility for him, to be referred to certain auxiliary programmes by which he may benefit.

The Court may assign intermediaries or social workers specializing in children to provide guidance, answer questions, and ensure the child's welfare needs are met throughout the court proceedings: **Part 11.5 and 11.6 Children Court Rules (2018)**. In cases where the Court makes a determination that the child victim or witness is not proficient in the English language, a special measures direction can be made so as to ensure the presence of a court interpreter, proficient in the native language of the child victim or witness: **Part 18.12 Children Court Rules (2018)**. Furthermore, the Court may recommend the child victim or witness' participation in tailored support programs such as educational support, peer groups, or family services, all designed to enhance the child's well-being and stability.

The Children Court may also refer a child victim or witness to the Children Court's Witness Support Unit for the necessary support and intervention during the course of proceedings: **Section 7(5) Family and Children Division Act No 6 of 2016, and Rule 5.4(3)(b) Children Court Rules (2018)**.

Children are entitled to legal representation to ensure that their rights and interests are protected. Where necessary, the Court ensures that legal representation is provided to the child victim or witness. Legal support is embodied in the right of the child to legal representation and as such, at the intake phase and throughout the process, the Court would ensure that the



child victim or witness has legal representation, either through Legal Aid, a Children’s Attorney through the Solicitor General’s Department (**Section 88 of the Children Act Chap 46:01**), through the appointment of an attorney *amicus curiae* or through a private Attorney-at-law.

If necessary, the Court arranges medical assessments to address any physical health concerns the child may have, ensuring their medical needs are considered during the legal proceedings. Medical support would be engaged as necessary from the various Regional Authorities of the Ministry of Health. Prior to the interview, the Court may also make a referral for psychiatric evaluation of a child victim or witness, and based on the reports received, may make orders for long term placement at the Couva Extended Care Centre.

It should be noted that the Children Court retains a monitoring role in all matters touching and concerning children, and as such, the Court does not become functus until a child turns 18 years of age, or the sentence, in the case of a child accused, has expired.

Court staff and judicial officers explain legal proceedings in age-appropriate language, including courtroom procedures, roles of individuals like judges and lawyers, and what the child victim or witness can expect during interviews or hearings.

Pursuant to **Section 10A of the Administration of Justice Indictable Proceedings (Amendment) Act (AJIPAA) (2023)** child victims and witnesses of adult perpetrated crimes will also benefit from the support and services of the Children Court.

Overall, these various types of support are crucial to ensuring child victims or witnesses feel supported, informed, and prepared when participating in legal proceedings, minimizing stress and trauma associated with their involvement in the justice system.

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#### **4. PROTECTION AND SUPPORT**

**4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?**



Two main stakeholders, namely The Children’s Authority of Trinidad and Tobago and The Probation Services Division of the Ministry of National Security, primarily carry out risk assessments. The risk assessment involves a comprehensive evaluation of various factors such as the child's living situation, familial environment, any history of abuse or neglect, the child's psychological and emotional state, and any potential risks posed by the alleged perpetrator or other individuals involved.

#### **4.2. In case of identification of risks, what kind of protective measures are available in your country?**

When dealing with all children, we are guided by the overarching international principle that in all actions touching and concerning a child, we are to act with a view to furthering and securing the best interest of the child. In this regard, various protective measures are in place to ensure the safety, well-being, and protection of child victims or witnesses when risks are identified.

The Children's Authority or the Police can take immediate action to remove a child from a dangerous and harmful environment. This may involve placing the child at a Community Residence, with another family member or at the Children Authority’s Child Reception Centre.

Courts have the authority to issue protection orders under the **Children Authority Act Chap 46:10** and the **Domestic Violence Act Chap 45:56** to prevent contact between the child victim or witness and alleged perpetrators or other individuals posing a risk. These orders are crucial for ensuring the child's safety during the proceedings.

Social workers, Case Workers or Children’s Probation Officers are assigned to closely monitor and supervise the child's situation. Regular visits and assessments help ensure ongoing safety and well-being.



Child victims receive psychological counselling and support services to address trauma, anxiety, or emotional distress stemming from the crime. These services are vital for the child's recovery and resilience.

Legal procedures may include special provisions for the child's testimony to be taken in a protected environment, such as through video-recorded statements or with the aid of intermediaries. This minimizes the trauma of reliving the experience in a courtroom.

Measures are implemented to maintain educational continuity for the child victim or witness, even if their schooling is disrupted due to legal processes or safety concerns. This can include tutoring or enrollment in alternative educational programs.

Once immediate risks are addressed, efforts focus on reintegrating the child victim or witness into their community and supporting long-term rehabilitation. This may involve vocational training, life skills development, and facilitating family reunification where appropriate.

These protective measures operate within Trinidad and Tobago's legal framework governing child protection and welfare. Their goal is to uphold the child's rights, ensure their safety, and promote their well-being while holding perpetrators of crimes against children accountable.

**4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)**

Please see response at paragraph 3.6 above

**4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?**



In Trinidad and Tobago, intrafamilial violence involving child victims or witnesses is governed by the **Domestic Violence Act Chap 45:56** and the **Children's Authority Act Chap 46:10**. The legislation ensures that child victims of domestic violence receive appropriate recognition and support through a range of interventions aimed at safeguarding their security and well-being.

Under **Section 6 of the Domestic Violence Act (supra)**, the Court can issue Protection Orders that include specific provisions to safeguard the child's security such as:

- ✓ A Protection Order may direct that the child victim receive professional counselling or therapy from approved agencies or programs to address the emotional and psychological impact of domestic violence **(Section 6(b)(viii))**;
- ✓ The Court can refuse the respondent (the perpetrator) contact with the child victim if it is deemed not in the child's best interest **(Section 6(1A))**;
- ✓ Alternatively, the Court may order structured contact between the respondent and the child under specific conditions **(Section 6(1A))**; and
- ✓ In severe cases, electronic monitoring may be imposed on the respondent as a condition of the Protection Order to ensure compliance and prevent unauthorized contact with the child victim: **(Section 6(3A))**.

Under **Sections 22 to 25 of the Children Authority Act (supra)** the child victim can be deemed a child in need of care and protection and various orders inclusive of a Care Order can be granted to provide ongoing protection and support for the child, ensuring their security in cases of intrafamilial violence.

In summary, Trinidad and Tobago's legal framework provides robust measures to protect child victims of intrafamilial violence. These measures include immediate responses, such as immediate removal, granting of emergency protection orders as well as longer-term interventions aimed at ensuring the child's security, well-being and recovery from the effects of intrafamilial violence.



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## 5. ENVIRONMENT

### 5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

The Children Court is tailored to meet the needs of children involved in legal proceedings. It offers a child-friendly atmosphere with trained staff who ensure that children feel secure and understood. The courtrooms are designed to be less intimidating, and special measures are often implemented to make the experience less stressful for the child, regardless of whether they are an offender or a victim/witness.

To minimise stress, child victims or witnesses may be permitted to provide testimony remotely via video link. This option is especially useful during the trial phase, where the child victim or witness might otherwise have to face the accused in an in-person court setting. Remote testimony setups are designed to be as comfortable and non-intimidating as possible for the child victim or witness.

Child victims and witnesses typically report incidents at the nearest police station and may then be referred to the Child Protection Unit (CPU) or the Victim and Witness Support Unit (VWSU) of the Trinidad and Tobago Police Service (TTPS) for specialized intervention and assistance. Interviews with the child victims or witnesses are to be conducted in the dedicated interview rooms of these units.

Child victims or witnesses in need of care who come before the Children's Authority would be interviewed in the Assessment Centres pursuant to **Section 14(1), (2) of the Children's Authority Act Chap 46:10**

Child victims and or witnesses coming to the attention of the Counter Trafficking Unit (CTU) of the Ministry of National Security would be interviewed at their offices: **Section 12 (b) Trafficking in Persons Act Chap 12:10.**

**5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate ‘building’ specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children).**

The Children Court is child specific both in architecture and amenities. The Court is equipped with comfortable waiting rooms for children outfitted with toys, books computers and other items to keep the children relaxed and engaged while they wait. Separate interview and hearing rooms are provided for children. These rooms are designed to be less intimidating and more comfortable, often decorated in a child-friendly manner to help the child victim or witness feel at ease.

The Children Court holds fast to the international prohibition against the mixing of children, whether it be adults with offenders, or children in need of protection with children in need of supervision, as well as witnesses and victims. The Court is therefore equipped with multi-purpose rooms which can be further adapted and outfitted to suit the various needs of the child victim or witness, and the unique circumstances of his case.

The Children Court also has Virtual Access Customer Centres (VACC) which are equipped with the technology needed to ensure that the child can be properly brought before the Court for pre-trial hearings in matters in which they are a victim or witness and may not want to be physically present in the courtroom.

The Children’s Authority by its very mandate acts as a guardian to all children in Trinidad and Tobago, including those that are victims and witnesses. As such, their Child Support Centres are child-specific and are therefore wholly separate and apart from any adult offender or detainee.

**5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?**

**The Children Court Rules (2018)** provides that the Court shall take into account the welfare of any child and where a Court is required to make a determination of what is in the best interest

of the child, the Court shall consider and evaluate all factors affecting the child, having regard to the child's age and developmental needs. **Part 18** allows the Court to exercise its case management powers by way of a special measures direction with a view to ensuring that the child victim or witness is comfortable and relaxed when giving an interview or attending a hearing. Additionally, international best practice dictates that children ought not to be mixed with adults unless it is in their best interests. Justice Quinlan-Williams in the case of **CV2017-03522 Joshua Mitchell v. The Attorney General of Trinidad and Tobago**, relying on the guidance of the Committee on the Rights of the Child in **General comment No. 24 (2019) on children's rights in the child justice system** noted as follows:

*“The guidance of the Committee illustrates that the mixing of children with adults ought not to occur. States are mandated to establish separate facilities for children as mixing can compromise their basic safety and well-being”*

**Photos:**





**Figure 1: Hearing Room- Children Court South**



**Figure 2: Waiting Room at the Children Court**

#### **5.4. Is there a specific waiting area for the child?**

The Court is outfitted with comfortable waiting rooms for children equipped with toys, books, computers and other items to keep the children relaxed and engaged while they wait. These areas are supervised by specially trained Child and Youth Officers. In order to uphold the international prohibition against the mixing of children, offenders, children in need of supervision (CHINS) and victims and witnesses do not share the same waiting space, are kept separate and apart at all times.

**5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? If so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)**

Whether it be at the Children Court or the adult court in which the child is a victim or witness, the **Children Court Rules (2018)** and **Section 10A of the Administration of Justice Indictable Proceedings (Amendment) Act (AJIPAA) (2023)** ensure that there are protection measures to avoid direct contact between a child victim or witness and an alleged offender.

In addition to the design and layout of the Children Court building and the hearing rooms, **Part 18 of the Children Court Rules (2018)** is instrumental in ensuring that protection measures are in place to avoid direct contact between the child victim or witness and the alleged offender. At the Court, children and alleged offenders use separate entrances to avoid any interaction before, during, or after the hearing. Although child offenders who are on bail use the same front door as a child victim or witness, security and administrative measures are put in place so as to ensure that there is no contact between the parties. Child victims and witnesses and alleged offenders have distinct waiting areas, ensuring they do not come into contact with each other while waiting for proceedings to begin.

The multi-purpose rooms at the Children Court may be adapted and configured to suit the needs of the particular user and as such, child victims or witnesses are interviewed and heard at entirely separate times so as to maintain the privacy, confidentiality and integrity of the interview/hearing. These rooms are designed to be child-friendly and less intimidating.

Child victims or witnesses may give evidence via video link or by way of teleconference from an entirely different location whether it be within or outside of the courtroom, thereby ensuring no contact with the alleged offender. This also helps minimize the stress and trauma associated with facing the alleged offender.

In some cases, technology may be used to distort the child's voice or image when providing testimony, further ensuring their anonymity and protection.



Physical screens or shields may be used in the courtroom to prevent the child victim or witness from seeing the alleged offender while testifying.

Further, Child victims or witnesses are often escorted by trained professionals who ensure their safety and provide support throughout the process.

These special measures are critical in creating a safe and supportive environment for child victims and witnesses, helping to protect them from potential harm and additional trauma during the legal proceedings.

#### **5.6. In case identification of the offender is needed, how is this conducted, and where?**

Identification of an alleged offender is carried out by police officers of the Trinidad and Tobago Police Service (TTPS) and the procedure for same is governed by the **Judges Rules and Administrative Directions to Police (1975)** and **Police Standing Orders** in the case of an adult offender and the **Judges Rules for Children (2016)** in the case of a child offender. In each instance however, the identification officer, upon the instructions of his senior, would determine the type of identification procedure to be utilized based on the unique circumstances of each case.

In the case of a child offender however, **Rule IX of the Judges Rules for Children (2016)** provides the process and procedure to be adhered to by police officers. Of importance is the hierarchy of identification procedures stipulated under **Rule IX(B)** wherein a reasonable explanation must be provided as to why the hierarchy was not adhered to.

Where there is a child victim or witness however, the identification procedure for the alleged offender must be tailored in a way that allows for securing a positive identification, whilst at the same time, ensuring that the risk of re- traumatisation of the child victim or witness is minimised. An identification parade, video identification by electronic means or even a photo array may be suitable depending on the circumstances of the case. Confrontation or group identification may not be best suited when treating with child victims and/or witnesses, as it would allow for face to face interaction between the alleged offender and the child victim or witness.



It should be noted that amendments to the **Evidence Act Chap 7:02** seek to create statutory requirements to be followed by police officers in the conduct of identification procedures. **Section 12A** as proposed under the heading **Division 2- Identification Procedures** impacts identification procedures in that it expands the manner in which an eye-witness may give a description of suspects by way of photos as well as by way of audio or video recording. Any refusal by either the suspect or the eye witness would be documented in the Station Diary. However **the Evidence Amendment Act (Act No 1 of 2021)** is only partially proclaimed, and the operational sections treating with identification remains unproclaimed. It should be noted that at present, the Judges Rules for adults and children are only of guidance to police officers, and do not have the force of law. Once proclaimed however, any breach of the operative sections governing identification procedures can significantly affect the validity of an identification exercise.

Identification during the course of the hearing can be achieved with the use of special measures and judicial oversight to ensure not only the well-being of the child victim or witness but also the fairness and integrity of the hearing.

**5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?**

With the implementation of virtual and hybrid hearings by the Judiciary of Trinidad and Tobago (**Practice Direction (Hearings by Electronic Means) issued by the Honourable Chief Justice on March 26th, 2020**) the location of the child's residence in relation to the proceedings is no longer a hindrance. Children who are victims or witnesses can participate in hearings remotely, ensuring access to justice is maintained. They can either log on from the comfort of their homes, their attorneys' offices or from a Virtual Access Customer Centre (VACC). Where a child victim or witness is in the care of the Children's Authority, measures can be put in place for the child to appear remotely/virtually from a Community Residence, one of the Child Support Centres, or from the Authority's Head Office.



Where a physical hearing is necessary in the interest of justice, the Court has the discretion to make an order for conduct money to be paid for the transportation and subsistence of the child and his parent or guardian to be able to attend the hearing physically at the court or virtually from a VACC and return home.

**5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?**

The initial interviews are conducted by the Police and that stakeholder is best placed to respond to this question.

As aforementioned, with the advent of virtual and hybrid hearings by the Judiciary of Trinidad and Tobago (Practice Direction (Hearings by Electronic Means) issued by the Honourable Chief Justice on March 26th, 2020) there are now mechanisms in place that promote the use of technology and the dispensation of justice by electronic means. The Practice Direction allows for hearings to be conducted by way of teleconferences, video link, internet link or any other manner of instant communication. As such, once ordered by the Court, both the judicial officer and the child victim or witness can appear virtually for his hearing. Parties to the proceedings including Children’s Attorneys can also appear remotely. This is further echoed in Part 18.4 and Part 18.9 of the Children Court Rules (2018) where the Court has the power to give special directions so that a child can utilise alternative means of giving evidence.

All children matters or matters touching and concerning a child are held in camera and as such, the court room is only open to those parties directly related to the matter. Leave of the Court has to be sought for any other person to appear in the matter.

This framework not only supports accessibility and efficiency in legal proceedings but also emphasizes the protection of child victims and witnesses by providing a secure and controlled environment for their participation in the judicial process.

**5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?**

Both the substantive legislation as well as the Rules allow for recorded investigative interviews to be admitted as evidence in court, without the need for the child to have to appear either in person or virtually. **Sections 3 and 4 of the Family and Children Division Act (2016)** provide for sittings of the Children Court to be done by telephone, video conference or other appropriate electronic means.

**Section 15I(1)(e) and (g) of the Evidence Act Chap 7:02** provides for a video recording made of a statement to be admissible as evidence in chief of a witness. Further, the **Evidence Amendment Act (Act No 1 of 2022)** sought to make amendments to the **Evidence Act** so that the new **Section 14B** allowed the admissibility of an electronic record in evidence on the sole ground that it is an electronic record. The effect of the new **Section 14B** is that electronic records are now prima facie admissible. There is no longer the need to satisfy pre-conditions for admissibility as was under the old system. Additionally, the workability of the device is presumed unless there is sufficient evidence to raise doubt as to same. **The Electronic Transactions Act Chap 22:05** also seeks to give legal recognition to electronic records and electronic signatures by way of evidentiary presumptions, thus allowing for the same legal effect as paper records.

Further, **Sections 93, 94 and 95 of the Children Act Chap 46:01** allows for an interview by way of video recorded evidence to be admitted into evidence once it treats with an issue in the proceedings, as well once leave of the Court is sought.

**The Judges Rules for Children (2016)** also allow for the recording of audio and visual interviews of child offenders by police officers. **Rule IV(20) and (21)** make provision for electronic recordings of interviews and interrogations, unless it is not practical to do so as follows:

*“(20) All interviews and interrogations of a child shall be recorded by electronic audio recording or video recording unless it is not practical to do so.*

*(22) Subject to sub rule (20), the electronic audio recording or video recording shall be the official record of the interview and interrogation and shall be verified by the certificate of those responsible for the accuracy of the recording.”*

**Sub rules 20 and 21** therefore creates the option for police officers to engage in audio and video electronic recordings of statements by children. The sub-rules do not seem to be drafted in a way that gives priority to audio recordings over video recordings. However, either one must be utilised and where it is not practical to do so, only then shall a written record be utilised: **Sub rule 22.**

**The Children Court Rules** is also in tandem with the **Judges Rules for Children (2018)** and **the Evidence Act (as amended)** in providing for recorded investigative interviews of all children, whether victim, witness or offender, to be admitted into evidence in court. **Part 18.4(c) of the Children Court Rules** allows the Court to sanction a video-digital recording as an alternative means of giving evidence. Further, **Part 18.10 and Part 18.11** provides for a video-digital recording of an interview of the witness to be admitted as evidence-in-chief of the witness, and cross-examination and re-examination to be recorded by video digital recording.

The Court is vested with the discretion to determine whether to grant an application for a special measures direction based on the following considerations **(Part 18.10(2))**:

- (a) the interest of justice;
- (b) whether there would be prejudice to the accused;
- (c) whether the witness will be available for cross-examination; or
- (d) whether there has been compliance with any Rules of Court requiring disclosure of the circumstances in which the recording was made.



These factors, along with the fair administration of justice and the overarching best interest principle, guide the decision on whether the child victim or witness should attend in person when a digital recording is readily available.

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## 6. SPECIFIC LEGAL GUARANTEES FOR THE CHILD

**6.1. Does the child have the right to legal assistance? For free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)**

Sections 4 and 5 of the Constitution of Trinidad and Tobago (1976) secures the right of all persons including children, to legal representation. In the case of a child offender, legal representation may be afforded by way of Duty Counsel, an Attorney in the office of the Public Defender's Department or a private Attorney-at-law.

In the case of a child victim or witness however, he or she may be afforded specialized legal representation in the following ways:

- ✓ *Legal Aid-* Part III and IV of the Legal Aid and Advisory Act Chap 7:07 – if the Court is satisfied that the child victim or witness is without adequate means to obtain legal advice and it is desirable that such legal aid be provided, the Court may make an order directing the Legal Aid and Advisory Authority to appoint an attorney to represent the child during the course of the proceedings.
- ✓ *Children's Attorney-* Section 88 Children's Act Chap 46:01- During the course of proceedings, if a child is unrepresented, the Court may also make an order directing the Solicitor General to appoint a Children's Attorney who will represent and safeguard the voice of a child so that the child's right to be heard





is preserved. It must be noted that the Children Attorney does not provide legal representation to the child, but rather ensures that his voice is heard.

- ✓ *Private Attorney of choice*- A child through his parent, guardian or person with responsibility for the child may at any time retain the services of a private attorney at law, from the moment of making a report, all the way to the determination of the court matter. However, the child's family has to be of adequate means to afford a private Attorney, unless the Attorney has opted to treat with the matter pro-bono.
- ✓ *Amicus Curiae*- The court may also appoint an amicus curiae, or "friend of the court," to provide specialized expertise and support during legal proceedings to the child victim or witness.

Regarding court proceedings, the Court has a duty to ensure that a child victim or witness appearing before it has legal representation at all times and as soon as possible. As such the Court must exercise its case management powers to make the necessary orders as applicable to secure the right to legal representation: **Rule 5.1(b) Children Court Rules (2018)**.

### **6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?**

Each of the positions listed in 6.1 above, plays a multifaceted role that includes advocating for the child's best interests, representing their views, providing legal advice, speaking on their behalf, protecting their rights, liaising with other professionals, and facilitating communication with the Court. These responsibilities collectively ensure the child victim or witness is adequately supported and their interests are prioritized throughout the legal process.



## **6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?**

In Trinidad and Tobago, a child has the right to be accompanied by a support person during legal proceedings. The Court can grant a special measures direction under **Part 18.3(3)(b) of the Children Court Rules (2018)** to facilitate a child victim or witness giving evidence in the presence of a support person.

Pursuant to **Part 18.7(3)** it is the duty of the party so requesting, to make an application for the presence of the supporting person, giving particulars as to that person's identity, the reasons for the application, supporting documents as well as reasons as to why the person is an appropriate companion for the child witness.

Supporting persons may include the parent, guardian, or person with responsibility for the child, an officer from the Victim and Witness Support Unit (VWSU), or any appropriate adult who has the requisite qualifications including but not limited to a psychologist, psychiatrist, intermediary, interpreter, or social worker.

The support person is entitled to be present throughout the proceedings unless the Court orders otherwise. Their role includes advocating for protective measures to protect the child victim/witness from further trauma or stress, communicating on behalf of the child to ensure that the child's needs are met and providing emotional support to manage the child's emotions during the proceedings.

The presence of a supporting person is essential to ensure the child's comfort, understanding and participation in the process. Their presence helps safeguard the child's well-being and ensures that the child's rights are protected throughout the judicial process.

## **6.3. What is the role of parents/legal representative?**

The role of the parent, guardian or person with responsibility for the child (PWR) is based on the fact that they are directly responsible for the care, control and custody of the child. All decisions touching and concerning the child victim or witness will require the consent of the

parent, guardian or person with responsibility, although in most cases, the Court retains a residual discretion to make orders in the child's best interest despite the lack of parental consent. Additionally, the parents also provide emotional and moral support to the child during the process.

The legal representative offers specialized legal advice to ensure the child's legal rights are protected. They assist in preparing the child victim or witness for interviews or court appearances and provide guidance on the best course of action.

### **6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?**

Parents, guardians or person with responsibility for the child are often always included in proceedings, save and except where:

- (i) they cannot be found;
- (ii) they themselves are the perpetrators of a crime as against their child; or
- (iii) there is evidence or suspicion that a parent or legal representative has engaged in exploitative behaviour towards the child, such as coercion or manipulation, they may be excluded to protect the child's best interests and prevent further harm.

In such situations, the Court may make a determination to exclude the parents or legal representatives from participating in certain aspects of the proceedings to ensure that the child's rights and well-being are protected.

### **6.3.2. If excluded, is there another legal representative appointed/ if so by whom?**

If the parent, guardian or person with responsibility for the child is excluded from the proceedings, the Court has the power to make an order that an appropriate adult be appointed pursuant to **Section 3(1) of the Children Act Chap 46:01**. Additionally, in ordering that the parents or legal representatives be included, a friend of the court can then be appointed in lieu.

**6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child cannot be identified?)**

**Section 34(1) of the Family and Children Division Act (2016)** grants the Children Court the authority to restrict the publication of names of parties and any details from proceedings, judgments, or orders. This provision ensures that the identities of children involved in legal matters, particularly victims and witnesses, remain confidential. Additionally, the Court's proceedings are conducted in camera, in that they are private and not open to the public unless otherwise ordered, thereby further safeguarding the child's right to privacy: **Section 34(3).**

To bolster confidentiality, the Court may also direct that any published proceedings, judgments, or rulings be anonymized to prevent the identification of parties or children involved: **Section 34(4).** Furthermore, transcripts of court proceedings are only issued on approval by the judicial officer and relevant documents can be sealed by a Children Court Judge or Master, ensuring their confidentiality unless the Court orders otherwise: **Section 34(5).**

These measures collectively aim to protect the identities and privacy of child victims or witnesses in legal proceedings, preventing their identification through public disclosure or publication.

**6.5. Is the child allowed to plea for cautionary measures?**

The child victim or witness typically makes the request for cautionary measures through their attorney. However, the child is also given an opportunity to address the Court if they wish thereby creating an opportunity for the child themselves to ask any questions and make any requests they deem necessary to protect their well-being during the proceedings.



## **6.6. Does the child have the right to appeal any decision?**

The right to appeal is a fundamental aspect of due process, ensuring that parties including children victims or witnesses have recourse to the Court of Appeal if they believe that a decision was unjust or incorrect.

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## **7. INTERVIEWING STRUCTURE AND PROCEDURE**

### **7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?**

In the pre-trial phase, child victims or witnesses are usually interviewed by specially trained professionals such as child protection officers, prosecutors, social workers, medical practitioners and psychologists. The child victim may also be interviewed by the Judge or Master during the case management phase (intake and initial hearing phases).

During the trial phase, the child victim or witness may provide evidence before the Court. The child's testimony can be heard by the Judge or Master, and both the Prosecution and Defence attorneys may have the opportunity to question the child. Special measures can be taken to make the child more comfortable, such as testifying via video link or behind a screen.

There are no limits on the number of pre-trial and trial interviews. As it relates to a limit on the total number of pre-trial hearings, **Rule 11.3(4) of the Children Court Rules (2018)** provides that the intake conferences should not exceed a total of five sittings, though each case is dependent on its facts.

The exact number of interviews and hearings are dependent on the complexity of the matter and the investigation. It must be noted that there is an emphasis on minimizing numerous interviews to prevent re-traumatisation.

## **7.2. Is it mandatory that this professional has specific training for child interviews?**

It is mandatory for professionals conducting interviews with child victims or witnesses to have specific training tailored to handle such sensitive cases. This requirement ensures that the interview process is conducted in a manner that considers the child's psychological, emotional and developmental needs.

**The Family and Children Division Act No 6 of 2016** mandates that Judges, Masters, Registrars and other court staff assigned to family and children matters possess the necessary special training, experience, and temperament to execute their duties within the Division.

Additionally, Police officers stationed in the Victim and Witness Support Unit (VWSU) or the Child Protection Unit (CPU) are also specially trained in children matters. Children Probation Officers are also trained and qualified as a specialist in the welfare of children: **Section 18(aa) Probation of Offenders Act.**

## **7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?**

1. The Children's Authority has adopted their own internal protocol to be utilized when interviewing children:

[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@americas/@ro-lima/@support\\_of\\_spain/documents/presentation/wcms\\_862866.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@americas/@ro-lima/@support_of_spain/documents/presentation/wcms_862866.pdf)

2. The Institute for Gender and Development Studies of the University of the West Indies has created an outline for Draft Protocols for Child Sexual Abuse-Interviewing for both Trinidad and Tobago:



[https://sta.uwi.edu/igds/breakthesilence/documents/UWI\\_IGDS\\_BTS\\_2011\\_Protocols\\_Draft.pdf](https://sta.uwi.edu/igds/breakthesilence/documents/UWI_IGDS_BTS_2011_Protocols_Draft.pdf)

3. **National Interagency Child Abuse Protocol (2023)** provides a framework and guidelines for preventing, reporting, investigating, managing child abuse cases, and filing relevant documents in the court system. This protocol ensures that interviews and interactions with child victims and witnesses are conducted in a standardized and sensitive manner, minimizing trauma and ensuring the child's best interests are prioritized:

<https://ttchildren.org/wp-content/uploads/2023/07/NATIONAL-INTERAGENCY-PROTOCOL-FOR-CHILD-ABUSE-PREVENTION-AND-MANAGEMENT.pdf>

#### **7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?**

During an interview with a child victim or witness, the parent, guardian or person with responsibility for the child (PWR) should be present as well as legal representation through an Attorney-at-law. In addition to these persons, support persons may be allowed to participate in the interview hearing including a social worker, psychologist or an appropriate adult, according to the needs of the particular child victim or witness. An intermediary or interpreter may also be present if the circumstances so warrant: **Section 51B(2) Children Act Chap 46:01, Section 99 Children Act, Section 18.12 Children Court Rules, (2018)**.

During the hearing phase, when the child victim or witness gives evidence in Court, the individuals present include the Judge or Master, the child's legal representative, the Prosecutor, and the Defence attorney. If necessary, the alleged offender may be located in a separate room and participate via video link to prevent direct confrontation with the child victim or witness. Additionally, the child's support person and any intermediaries or interpreters needed for the child's participation may also be present to facilitate the proceedings.

**7.5. Who is addressing the child victim/witness: only the interviewer? Cross examination allowed? If only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?**

In a pre-trial court setting, it is usually only the judicial officer who addresses a child victim or witness. The Court may address the child directly or through the child's legal representative or intermediary.

In a trial setting however, the child victim or witness may be called as a witness to give evidence in chief and then for cross-examination by the Defence.

Where the Court gives a special direction to allow the video-digital recording of an interview, the Court may decide whether the child should be present in court to be called as a witness for cross-examination, or whether cross-examination shall be given otherwise than by oral testimony: **Part 18.10(2) and (3) Children Court Rules (supra)**. Where the Court has allowed into evidence a video recorded interview pursuant to **Section 93 of the Children Act Chap 46:01**, cross-examination shall be by means of video conferencing: **Section 94**. Where the Court has given special directions for a video digital recording to be admitted into evidence, the discretion may also be for cross-examination and re-examination to also be by way of video digital recording: **Part 18.11 Children Court Rules**.

It is important to note that the Court controls the court proceedings and will intervene to ensure that the child's best interest are protected at all times.

**7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?**

In dealing with interviewing a child victim or witness, all parties involved must be cognizant of the complexity of the language used and ensure that it is appropriate to the child's age, maturity and level of understanding. As such, if during cross-examination of the child witness or victim, a legal representative is of the opinion that the nature of the question is too complex



or compounded, they may raise an objection. If the objection is upheld, the judicial officer will request that the interviewer rephrase the question in a way that is easier for the child to understand.

Where an interview is conducted by persons prior to court proceedings, the support personnel or legal representative may also raise an objection as to the nature of the language used in the question, and ask that same be rephrased in a manner that is akin to the child's age, maturity and level of understanding.

**7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?**

**Section 93, 94 and 95 of the Children Act Chap 46:01** thereafter allow for an interview by way of video recorded evidence to be admitted into evidence with leave of the court once it treats with an issue in the proceedings. In court proceedings, where the proceedings are recorded electronically, the audio or video recording forms the official record of proceedings and the source of truth: **Record of Proceedings Act Chap 4:31**. A transcript of the proceedings may also be prepared, verified by certificates of those responsible for its accuracy: **Section 5 Record of Proceedings Act (supra)**.

The purpose of recording interviews, whether audio or video, includes ensuring the accuracy of the child's statements, facilitating their admissibility as evidence, reducing the risk of re-traumatizing the child by minimizing the need for repeated interviews and providing a reliable record for use in other courts on appeal or transfer. In many instances, the recorded evidence serves as the child victim or witness' evidence in chief.

**7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?**

When a recording is admitted as evidence in court, several protection measures can be applied to safeguard the child victim or witness. These measures include:

- (i) The court may use technology to distort the child's image and voice to protect their identity and ensure their anonymity;
- (ii) The child victim or witness can provide testimony from a separate room via video link, preventing direct confrontation with the alleged offender and reducing the stress and trauma associated with appearing in court;
- (iii) In the courtroom, screens or partitions can be used to shield the child victim or witness from seeing the alleged offender while still allowing the child to testify;
- (iv) The child victim or witness may be accompanied by a support person, such as a social worker, psychologist, or trusted adult, during their testimony to provide emotional support and comfort.
- (v) The Court may order or direct that any or all persons not being officers of the court or parties to the case, their attorneys-at-law or other person directly concerned in the case, be excluded from the court during the taking of evidence from the child: **Section 101 Children Act Chap 46:01**;
- (vi) Only essential personnel, such as the Judge or Master, legal representatives, and court staff, may be allowed in the courtroom during the child's testimony.

These measures aim to create a safer and more supportive environment for the child victim or witness while ensuring the integrity and effectiveness of the judicial process.

### **7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?**



For a recording to be admissible as evidence, it must be of high quality to ensure that all parties can clearly comprehend the information conveyed during the interview. Should the recording's quality be inadequate or should the recording fail, the Court, exercising its trial management powers, may choose to exclude the audio or video recording from evidence, pursuant to **Section 15(I)(3)(c) of the Evidence Act, Chap 7:02** and may call upon the witness to give viva voce evidence in lieu.

**7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?**

If a written statement is obtained from a child victim or witness, the child has the right to review the statement and make corrections or provide additional information to address any inaccuracies. Additionally, both the child victim or witness and their legal representative are entitled to receive a copy of the written statement. This ensures they can adequately prepare for court proceedings and have a clear understanding of the statement's contents.

**7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?**

Each case turns on its own facts. However, the child's participation in legal proceedings generally follows their willingness and ability to give evidence in the matter. While adaptations and accommodations are made to facilitate their participation such as using simplified language, providing breaks, or allowing a support person, the child's right to be heard remains fundamental. The aim is to balance their participation rights with protective measures that minimize the potential for re-traumatization and ensure their testimony is reliable and credible.

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## **8. OFFENDER'S RIGHT DURING OR AFTER THE INTERVIEW**

### **8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?**

During interviews conducted by external stakeholders, such as the police, the alleged offender is not allowed to participate in the interview of the child victim or witness. Similarly, their Defence Attorney is not permitted to be present during these interviews. This is to ensure that the child victim or witness can provide their account without influence or intimidation from the accused.

However, at the stage of court proceedings, specifically during examination in chief of the child victim or witness, whether it be by in person hearings, or by way of audio or video recording, the Defence Attorney retains the right to cross-examine the child victim or witness subject to **Part 6.2(5)(b)(i), Part 18:11 Children Court Rules (2018) and Section 94 Children Act Chap 46:01.**

### **8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?**

At the first hearing, the Court gives directions for the disclosure of evidence gathered during the investigation to the Defence, including statements made by the child victim or witness during interviews. This enables the Defence to prepare their cross-examination strategy and identify areas of inconsistency or relevance to their case.

Once the case proceeds to trial, the Defence Attorney may be given the opportunity to cross-examine the child witness or victim. This crucial phase allows the Defence to interrogate the child's testimony, dispute their statements, and assess the credibility of their account. Cross-examination plays a pivotal role in the adversarial legal process, enabling the Defence to present their client's perspective and potentially challenge the assertions made by the child victim or witness.



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## **9. PARALLEL PROCEEDINGS – COORDINATION**

### **9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?**

In cases of parallel proceedings, such as those in family or child protection procedures based on the same facts, the initial consideration is the readiness and ability of the child victim or witness to be interviewed, encompassing their physical, mental, and psychological preparedness. The level of trauma experienced by the child plays a crucial role in determining the sequence of interviews, prioritizing the protection and welfare of the child above all else.

Effective coordination among the involved agencies is essential to ensure that interviews are conducted in a manner that serves the child's best interests. Typically, family courts or child protection agencies take precedence when the primary concern is the immediate safety and welfare of the child. Established protocols and interagency agreements define roles and responsibilities to prevent duplication of efforts and minimize any additional trauma to the child.

Judges have the authority to issue specific orders that clarify which proceeding holds priority, considering factors such as the nature of the allegations, the urgency of the situation, and the potential impact on the child. Furthermore, case management conferences involving all relevant parties can facilitate decisions on the most suitable course of action, ensuring that the child's well-being remains the central focus throughout the process.

### **9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?**

In coordinating parallel child protection proceedings, adherence to the **National Interagency Child Abuse Protocol (2023)** plays a pivotal role among all relevant stakeholders. This protocol establishes a framework and guidelines grounded in law, facilitating a coordinated



response to various aspects of child abuse prevention, reporting, investigation, management, and the subsequent handling of court documents.

The Court's policy is that where a child may have multiple matters, one judicial officer is assigned to deal with that child. In the event that there is a family matter at the Family Court and a child protection matter at the Children Court, the Children Court will transfer the matter to the Family Court as that court has jurisdiction to also hear and determine child protection matters.

**9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?**

In parallel proceedings, the goal is to minimise as far as reasonably practicable, the risk of re-traumatising the child victim or witness. As such, the external agencies may coordinate with a view to sharing interviews and information amongst themselves based on their particular roles and responsibilities.

Regarding court proceedings, the official record includes all filed documents, reports, and recordings of the proceedings. Upon transfer of the matter or upon request, the court's file inclusive of reports and transcript are forwarded to the relevant court to ensure comprehensive access to the case information.

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## **10. TRAINING**

### **10.1. Are judges and magistrates trained to deal with child victims?**

Pursuant to the **Family and Children Division Act No 6 of 2016**, the Chief Justice may assign to the Family Court and Children Court, Judges, Masters and Registrars who, by reason of their special training, experience and temperament, are suitable to adjudicate in family and children



matters. **Sections 16 and 31 of the Act** further mandates that all staff of the Family and Children Division possess the special training, experience and temperament necessary for the execution of their roles.

Additionally, the Judicial Education Institute of Training and Tobago (JEITT) facilitates training for Judges, Judicial officers and staff either through local faculty or foreign experts. This includes training from the National Centre for State Courts (NCSC) to ensure that Judges and Judicial Officers engage in continuous learning so as to possess the requisite skills, training and knowledge to effectively adjudicate upon matters involving child victims and witnesses.

**10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?**

The training provided to judges and judicial officers in Trinidad and Tobago is interdisciplinary. The training is designed to encompass a wide range of relevant disciplines, equipping judicial officers to handle cases involving child victims and witnesses effectively. Some of the areas include child psychology and development, trauma-informed practices and child protection and welfare.

The training sessions often involve collaboration with various professionals, including psychologists, social workers, child protection officers, and the police. This multidisciplinary approach ensures that judicial officers receive a comprehensive education that includes legal, psychological and social perspectives, which are crucial for understanding and adjudicating cases involving child victims or witnesses.

Such interdisciplinary training helps judicial officers to be better prepared to address the complex needs of child victims and witnesses, promoting a more holistic and informed approach to cases.

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**11. REFORMS IN PROGRESS**



**11.1. Are there reforms in progress in your country regarding child’s victim rights, the procedure among others? What is the aim and the main subject of it?**

The Judiciary is unable to provide a response to this question.

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