

**A Review of the Multi-Disciplinary Approach in addressing Sexual Violence against
Children in the Criminal Justice System**

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Abstract

The criminal justice process begins at the time a report is made at a police station. Proper investigations are the foundation of any trial process. Historically, investigations into cases of child sexual violence have been characterized by the lack of specialized investigators, which has led to insensitivity, poor investigations and consequently low conviction rates. The newly formed specialized Child Protection Unit within the Directorate of Criminal Investigations, formed by the Inspector General pursuant to Section 10(1)(h) of the National Police Service Act of 2011, is a positive development that heralds a new era in investigation of child sexual violence cases. The bulk of investigations, however, remain wanting in terms of the trial process. The Kenyan trial process has been historically adversarial. International best practices provide that children must have psychosocial support to mitigate against the effects of the typically traumatic trial process (Cross, Jones, Walsh, Simone, & Kolko, 2007). A key objective of this paper is to highlight how a collaborative, multi-disciplinary approach ensures that any issues arising over the course of the trial, including custody, medical, and psychological needs of the child are met. With this approach, the court hearing the matter can give directions on any issue arising rather than directing a new process to be instituted in the children's court. This paper posits that a multi-disciplinary approach (MDA) involving investigations, legal representation, and aftercare specialists safeguards the child's best interest during all stages of the criminal trial

Introduction and Background

The Kenyan criminal trial process has been historically adversarial with a normative burton passing from one stage and/or actor to another. In a typical criminal trial for a victim of child sexual abuse, the case begins at a police station where the initial report is made. It is then transferred to the medical fraternity where a doctor is expected to examine the victim, fill in the prerequisite forms and then refer the matter back to the police station. Once received, and the police finalize all investigations, the case is then transferred to the courts and handed over to the Director of Public Prosecution (DPP) for prosecution. It is unfortunate when the victim is re-traumatized through the tedious court processes (Cross, Jones, Walsh, Simone, & Kolko, 2007).

International best practices provide that children must have psychosocial support to mitigate against the effects of the traumatic trial process. With this general rule, a collaborative multi-disciplinary approach is a supported method where all the main actors in the criminal justice system work closely together and the risk of re-traumatization is minimal (The United Nations, 1989, art. 39).

Different agencies working on a child's case after the alleged abuse is reported usually need to have the child's account of what happened, often at different times. This leads to multiplicity in reporting in different locations with new and different people which can have harmful effects on the child victim. The child may be re-traumatized as he or she has to recount the traumatic event in particularly stressful environments. Investigations can generate painful experiences for the child victim (Lalayants, 2011).

In addition, the multiple interviews in typically non-child-friendly facilities are equally harmful to the criminal investigation as the repetition can distort the child's account. The high

stress levels preclude optimal expression for the child and therefore a total account of events is often not acquired. With younger children, especially between ages 3-9 years, suggestibility is high as the different interviewers ask leading and misleading questions, creating discrepancies in the child's story. The lack of coordination between different stakeholders involved, absence of interview guidelines, and lack of personnel with appropriate training and specialization ultimately violate the principle of "best interest of the child" (Lalayants, 2011).

The multi-disciplinary approach ensures that from the time of a complaint at the police station and throughout the trial process until completion, the principle of best interest of the child is the driving force. It ensures that the criminal justice community provides the child victim with timely and appropriate responses.

A growing number of jurisdictions around the world have established multi-sectorial teams (MST) comprising professionals from law enforcement, child protective services, prosecution, medicine, counseling and related fields, to minimize additional trauma to children and increase their investigative result. These professionals work together in a coordinated and collaborative manner that ensures an effective response to reports of violence against children (Bilchik, 1998, p. 5).

The UN Convention on the Rights of the Child, Article 3.1 stated: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration." Since January 1990, Kenya has been a signatory to the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child from July 2000. In fact, work to establish a child protection system in Kenya began in 2002 with the objective of "promoting the well-being of children through prevention of violence

and exploitation ensuring that in case it happens, prompt and coordinated action is taken to prevent further occurrence” (NCCS, 2011, p. iii).

The Children’s Act, passed in 2001, comprehensively codified the rights and protections of children. In 2006, the Kenyan parliament passed the Sexual Offenses Act (SOA), criminalizing all forms of sexual offenses against children. By 2008, the Government had launched the first ever National Plan of Action for Children, running through 2012, pledging to focus investment in prevention and improving the functioning of state institutions responsible for law enforcement.

Children who find themselves as victims in the criminal process are not treated in the same manner as children in conflict with the law, despite the protections envisaged in both the Children’s Act and the Victim Protection Act. Matters involving children in conflict with the law are heard and determined in children’s court, in a timely manner, where there are specialized personnel exclusively dealing with children’s matters. Furthermore, the children’s court has a wide jurisdiction to deal with any issue arising in the course of the trial including custody, and medical and psychological needs of the child since the child’s best interest remains the goal of the trial process. The court is equally set up in a child friendly manner (Sec 76, Children’s Act, 2001).

In contrast, child victims go through the normal criminal justice system that is not set up to meet the children’s needs, from the personnel, the structure and the model of the trial. Moreover, should an issue arise related to the best interest of the child during the “normal” trial process, directions on that issue have to be transferred to the children’s court for determination. This means the a magistrate can only direct a new process to be instituted in the children’s court.

This causes delays in dealing with critical and immediate issues of the child's welfare that perpetuates re-victimization (Sec 73, Children's Act, 2001).

In 2014, the Victim Protection Act (VPA) was passed into law as recognition that child victims needed to be part of the process as the Act outlines their rights and protection within the trial process. Victims have direct access to court and are now not limited to do so through the state. The court is privy to the needs of the victim and is able to address them (Sec 4(2), VPA, 2014).

One of the objectives of the VPA is to prevent re-victimization of child victims during the trial process. Despite this clear objective of the Act, it does not provide guidelines or processes on how to achieve this. The trial process translates the child's legal representative to the child's psychosocial support system. What is more, the legal representative, will seldom have the skills required to help the child effectively participate in the trial process nor the ability to identify the child's needs.

Conclusions have been drawn to recommend presentation of a united knowledge front to perform effective investigation and prosecution. Children's Advocacy Centers (CACs) have been developed with an aim to improve child forensic interviewing following allegations of child abuse. The intent is to coordinate multiple investigations, provide child-friendly interviewing locations, and limit redundant interviewing. These CACs also are designed to improve the community collaborative response to child sexual violence and the criminal justice processing of these cases. In Kenya there are three such centers in Malindi, Nakuru and Garissa. Malindi has been in operation for the past six years. Free legal services and self-representation training are offered through the CACs. Also, the different actors carry out a collaborative approach of assisting victims which prevents re-interviewing and consequentially re-traumatizing them.

These are great strides; however challenges such as funding, mutual professional respect, government driven commitment and collaborative guidelines between the different actors are still an impediment (Muoki, 2016).

The International Justice Mission (IJM) has been representing victims in child sexual violence (CSV) cases in Kenya since 2001. IJM has identified a lack of coordination amongst responders to child abuse as a key impediment to the effective functioning of Kenya's child protection system. The traditional process of investigating and prosecuting child sexual violence is not child friendly. Taking a child through the adult-oriented, adversarial process can have a detrimental impact and impede the child's ability to recover from the initial victimization. Therefore, IJM's empirically supported intervention to child sexual violence has been the multi-disciplinary approach comprising investigators, advocates and victim aftercare specialists. This approach embodies the functions of the different actors in the justice system, i.e., the police, to carry out the investigation, the advocate to represent the victim in the trial process while assisting the Office of the Director of Public Prosecution (ODPP), and the aftercare specialist to provide psychosocial support for the victim.

Literature Review

There has been significant pressure around the world and locally for professionals working in children's matters to act promptly, yet professionally and with best practices, when faced with a report of child sexual abuse. However, there is no single profession or department that has the ability to respond adequately without the support of others. Lone interventions always leave gaps in the area of expertise the intervening group is lacking. For this reason, there

has been numerous studies on how to make a multi-sectoral team function well and lessons from existing teams have been learned (Lalayants, 2011).

One study conducted in a multidisciplinary clinical consultation program in a large, governmental child protection agency in the UK, examined best practices using program development theory by Tripodi, Fellin, and Epstein (1977). Bielawski and Epstein (1984) found that multidisciplinary collaboration is multidimensional, interactional, and developmental and that several factors affect collaboration. Most of the factors identified were interactional in nature as opposed to the protocols. Six factors identified as important for successful collaboration were: pre-planning, commitment, communication, strong leadership, understanding the culture of collaborating agencies, structural supports and adequate resources for collaboration. In addition, the research findings concluded that strategies to achieve success in collaboration must include efforts at dual levels: individual and organizational (National Children's Advocacy Center, 2010).

Although the above study's data were drawn from only one program, the issues uncovered and generalizations drawn were consistent with research in other organizational environments suggesting that the types of difficulties experienced in the collaborative process may be highly transferable and strategies for improving collaborative practices may be applicable to a variety of settings, including Kenya (Flâm, 2009). According to Newman and Dannenfelser (2005), the process of collaboration in child abuse investigations has been emphasized since 1974. One of the major barriers identified to the process of collaboration was conflicts over case control and lack of cross training. This is consistent with many studies, where teams did not appreciate other team members' origin of work ethic. In the process, the child was

then viewed as a means to an end and hence deprived of protections and re-victimized by the process.

In Kenya, the VPA (2014) guarantees victims a right to protection from intimidation, harassment, fear, tampering, bribery, corruption, and abuse. This right extends to their families as well as their property. Further, where the personal interest of the victims is affected, they are entitled to have their views presented before court in person or by their legal representative. The previous status of the victims' legal representatives was limited to a supportive role in the proceedings, and as such they had no right to address the court as was held in *R v Florence Wambui*

Njuguna, in the High Court in Kisumu, Criminal Case No. 7 of 1990. The right to cross-examine a witness is the preserve of the advocates for the prosecution and defense. Section 9 of the VPA now allows for the victims' concerns and views to be presented and considered at stages of the proceedings that the court may deem appropriate provided that such indulgence does not prejudice the rights of the accused or affect the process of a fair trial. Section 4 of the Act underscores the fact that victims' participation in court is a policy goal of the Act. At the International Criminal Court trials, victims' lawyers are allowed to cross-examine witnesses.

Arguably, victims can by themselves or through their advocates address the court, raise an objection, make an application or submit before the court at an appropriate stage of the trial, for example, a victim impact statement (*Honorable Mwiti Vs ODPP & Others*, Petition No 151 of 2015). For the successful implementation of the Sexual Offences Act and the Victim Protection Act, there requires a multi-sectoral concerted effort of key players in the criminal justice system and members of the public. Everyone on the team must be committed to the concept that a coordinated and collaborative process is required for a successful investigation of

reported instances of child sexual abuse. That commitment may not be fully developed when the team is first formed, but there must be at least an agreement to implement the MDA team philosophy. To be viable, such collaboration must have support of the leadership of its member organizations and agencies. There is overwhelming evidence that supports collaborative team effort which reveals that in jurisdictions where this is present, there is a close working relationship between law enforcement and child protective services; and that most cases result in convictions as the children are well supported and their best interests taken care of, hence reducing system intervention trauma (National Criminal Justice Reference Service, 2016).

Findings and Discussions

The IJM has learned over the years that guidelines on interventions between the differing professionals are paramount in order to maintain high quality and consistent responses in the long-term. However, the role and responsibilities of core responders need to be very clear. There is need for development of protocols customizing individual worker responses into an ideal multidisciplinary, coordinated response; and a clear working tool that shows the distinct and interrelated responsibilities among the team members (MNCASA, 2017: NSVRC, 2011, p. 6).

Due to different backgrounds in training on the MDA team, structures and accountability processes are needed that allow for flexibility based on specific case variables. Inter-departmental accountability is enhanced when policies are followed. This has reduced conflict because there is a shared understanding of intervention practice. Diminished inter-disciplinary conflict means more energy and attention are spent on the case and individual client, contributing to swifter and more precise resolution. That in turn has alleviated trauma to children and their

families as children's best interests are always at the fore by the team, and especially by aftercare specialists (SART, 2016).

Confidentiality was another barrier to effective teamwork. Information sharing between teams allows key and crucial information to be shared and supports the success of the case and caters to the child's best interest. Conflict resolution practices must be developed within the team as conflicts are bound to arise as child abuse cases are complex, demanding and frustrating. When conflict is resolved, mutual respect is developed. Finally, periodic self-analysis and accountability is crucial to ensure the needs of child victims are met. Team members of the MDT should be encouraged to attend trainings together. Equally, cross-discipline training allows all members to operate from a common set of principles. It is therefore important for professionals from differing backgrounds and training to understand and respect each other's work and professional abilities.

A case in point.

**Joan was a 13-year-old minor with mental disabilities, who was defiled by her neighbor. Her parents reported the matter to the nearest police station for redress. The investigating officer processed the case but realized he could not make headway with the child, as interviewing her was difficult. Recognizing his inadequacy in these skills, he brought in a children's officer to help in retrieving the abuse story. After their concerted efforts they were able to record the complaint and witness statement. The team escorted the child to hospital where they briefed the doctor, the child was treated and a mental health assessment conducted that was later useful in court during the trial process. Once the case was in court, the prosecutor was briefed by the investigating officer who continued supporting the team in further prosecution-led investigations. During the trial process the team worked together in the best interest of the child and her family. At one point, Joan could not testify due to heightened trauma reactions coupled with constant threats. This was brought to the attention of the court through the children's officer and the investigating officer. The court was able to deal with the matter expeditiously. The team stayed on until the conclusion of the trial process (IJM, 2011).*

It is now well supported that the best response to the challenge of child sexual violence investigations and prosecutions is the formation of a multi-disciplinary teams. The approach

promotes well-coordinated child abuse investigations that benefit from the input and attention of many different professionals, especially law enforcement, prosecution, medics and child protective services, to ensure a successful conclusion to the investigation and to minimize additional trauma to the child victim.

Conclusion and Recommendations

In conclusion, successful investigations of cases of child sexual violence that are attentive to the best interests of the child require the full participation and collaboration of team members who share their knowledge, skills, and abilities. An effective response to reports of child abuse and neglect entails an investigation that is timely and objective and that causes the least possible trauma to children and families. Team members remain responsible for fulfilling their own professional roles while learning to take others' roles and responsibilities into consideration. Effective teamwork can prevent further abuse of children and can bring those who harm children to justice. These benefits can translate into safer communities.

Kenya requires an MDT implementation policy. Currently teams work together due to goodwill, but protocols with well-laid-out consequences are not required. Kenya needs to harmonize its various laws dealing with children's matters so as to develop proper policy guidelines that include the roles and expectations of each stakeholder.

There is therefore need for specially trained MDT personnel dealing wholly with children's matters in relation to sexual-gender based violence (SGBV). These include trained prosecutors, magistrates, medics, police investigators and children's officers. There is also need for well-equipped specialized courts and waiting areas in courts for children.

The government should set aside resources to deal with SGBV and fund various programs around child sexual violence. One of the areas that would require funding is a government laboratory to deal with the rising number of cases that require DNA evidence. Therefore, there is a need for resources, infrastructure, oversight and political will to get the work done by effectively prosecuting violence against children (Alai, 2016).

We recommend local research in the MDA to identify intervention areas and usefulness in tackling violence against children. Currently, local documentation on its effectiveness is lacking. Findings on why a MDA has not been adopted by government bodies would enrich this area.

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