

# Communicating with Children

in Criminal and Civil Evidence Work

Joan van Niekerk

President ISPCAN

# Talking to children.....

- Should be easy ....
- After all – we were all children once
- But somehow we seem to lose these skills as we grow older
- Plus working with children to collect evidence for any legal process is a more specialised “talking”
- Every child is unique – the 9 year old you are interviewing may be quite unlike the 9 year olds in your life
- And some children simply don’t want to talk to us – or talk to us about their experiences!



# Talking to children about difficult/abuse experiences is challenging

- Children may not want to talk about these experiences for a variety of reasons:
  - Shame
  - Embarrassment
  - They may lack the vocabulary to describe the experience clearly
  - Threat and intimidation – both physical and psychological
  - They may feel they are responsible for what has happened to them
  - They may want to protect someone in the family/who they believe is close to them

# Research and spontaneous disclosure

- Under reporting is pervasive,
- Victim disclosure rates are low.
  
- However disclosure affected by
  - Age of victim
  - Gender of victim
  - If family is functional/dysfunctional
  - Whether child is living with the alleged offender – being abused in one's own home associated with lower rates of reporting
  - Whether the offender used force
  - Did or did not use a persuasive strategy. (Le Clerc and Wortley 2015)

# Barriers to disclosure – Collin-Vezina and others (2015)

## Barriers from within –

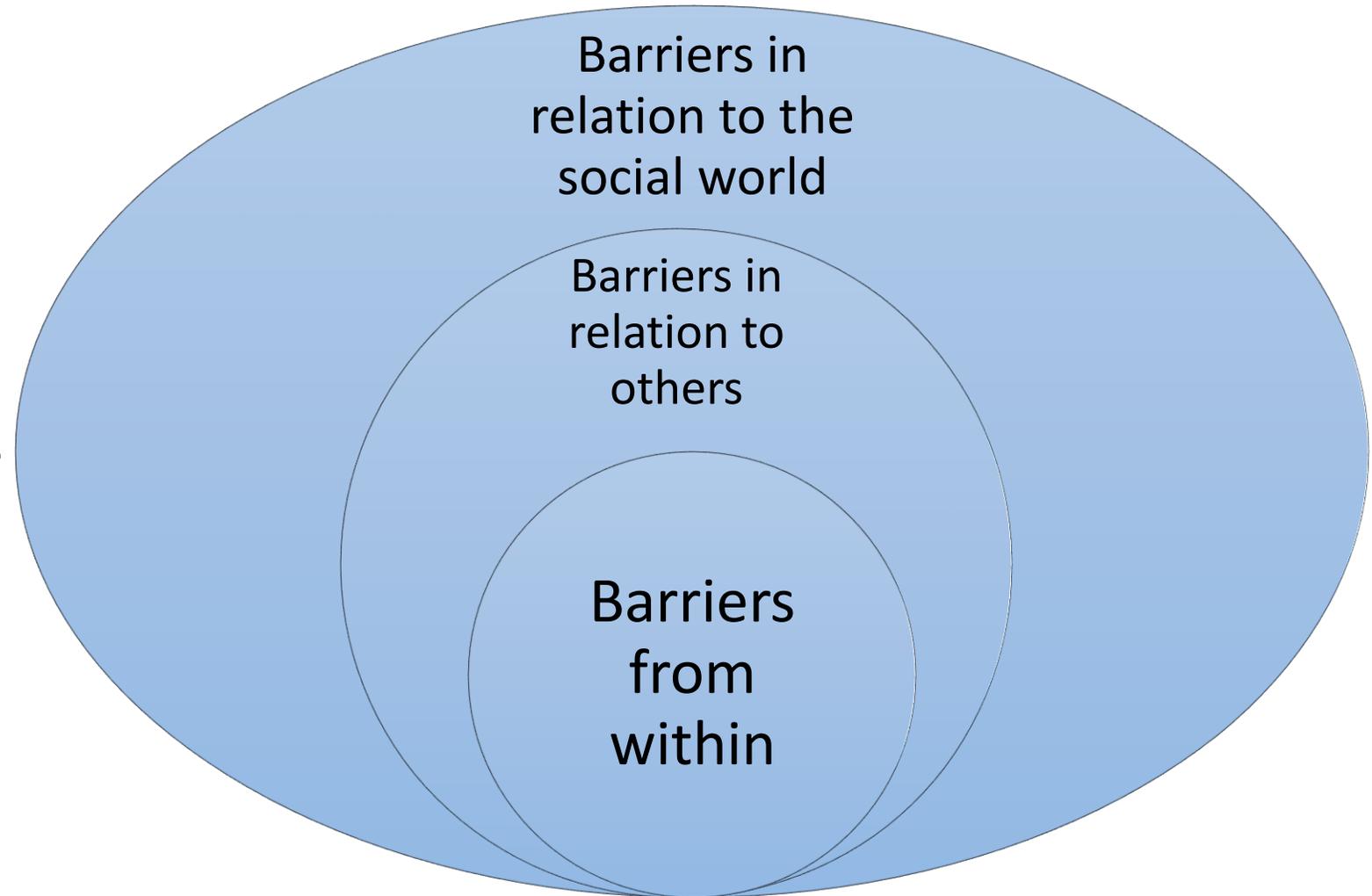
- Internalised victim blaming
- Mechanisms to protect the self
- Immature development

## Barriers in relation to others –

- Power dynamics
- Family dysfunction and violence
- Fragile social network
- Aware of impact of telling

## Barriers in relation to Social World

- Labelling
- Lack of services
- Sexuality taboo
- Culture/time



# A fourth circle - factors relating to the offender?

- Threats
- Relationship
- A sense of loyalty
- “affection”
- (Stockholm Syndrome)

# United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

- Objectives

(a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child, by parties to that Convention;

(b) To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

# Objectives - continued

- (c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; <sup>5</sup>
- (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

# Principles

(a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

(b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

# Principles

(c) *Best interests of the child.* While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:

(i) *Protection.* Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;

(ii) *Harmonious development.* Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

# Principles

(d) *Right to participation.* Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

# The right to be treated with dignity and compassion

- Treated with care and sensitivity
- Treated as an individual
- Keep interference in the child's life as minimal as possible
- Be sensitive, respectful and thorough
- Investigations conducted by trained professionals
- Be child-sensitive to age and stage of development and the circumstances of the child

# The right to be protected from discrimination

- Access to justice for all children – no matter what race, creed, gender etc.
- Treated fairly and equally
- Take account different and individual needs
- Age should not be a barrier as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

# The right to be informed

- Promptly
- Inclusive of parents/caregivers
  - ✓ Regarding the availability of services
  - ✓ Regarding procedures
  - ✓ Regarding support mechanisms
  - ✓ Regarding review
  - ✓ Regarding places and times of hearings and related events
  - ✓ Regarding their rights.
  - ✓ Regarding the progress of the case
  - ✓ Regarding the possibilities of reparation

# The right to safety and to be protected from hardship during proceedings

- Avoid direct contact with those who have/might harm the child
- Be provided with
  - Support
  - Certainty about the process
  - Clear expectations about the process and outcome
  - Privacy
  - Rapid finalisation of proceedings
  - Limitations on the number of interviews
  - Special measure where the child is particularly at risk.

# The right to reparation

- Wherever possible
- To enhance the possibility of recovery
- Combine the reparation with other justice processes to avoid prolonging the potential for harm

Wherever possible reparation should come from the offender.

# The need for professional training is emphasised including:

- Relevant human rights norms, standards and principles, including the rights of the child;
- Principles and ethical duties of their office;
- Signs and symptoms that indicate crimes against children;
- Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
- Special measures and techniques to assist child victims and witnesses in the justice process;

# Training continued

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

The need to be prepared... consider

- Our knowledge base
- The interviewing environment
- The child
- Ourselves



# We need to be prepared

- Our knowledge base: for example....
  - The legal system in which we work – even when we are not lawyers we need to know how our civil and criminal systems of law might impact or direct our work with children;
  - Child development – but remind ourselves that every child is unique;
  - Theories relating to communication with children, memory and retrieval of information from a child's memory;
  - The impact of trauma on children, PTSD and children and how PTSD impacts on memory and recall.

# We need to be prepared....

- Our environment
  - Is the environment in which we are communicating with children child friendly?
  - Is it fit for purpose? (gathering information about an event as a first report or is communication actually leading the child's evidence?)
  - Are there some activities/play materials available that children can engage themselves with, without interfering with our communication process?
  - Does it allow for privacy?
  - Have I tried to avoid all interruptions (sign on door, notice to switchboard)?

# We need to be prepared....

- The child
  - What do I know about this child?
  - his/her development
  - his/her communication abilities including language of choice
  - Will I need an interpreter?
  - What information do I have about the child's family and their functioning, communication patterns, vocabulary?
  - What do I know about their culture?
  - What is the present state of this child?



# We need to be prepared

- Myself:
  - Do have the consent forms that may be necessary if I am tape-recording this conversation with the child? Or needing to share the information?
  - Who is the person required to sign these? Parent or child?
  - Am I clear about purpose of this conversation?
  - Am I ready to work with concentration for the period put aside?
  - Have I made enough time available
  - Be aware of how your gender/age may/may not impact on communication.

# Some things to remember

- If I am working on disclosure – this for many children is a process – not an event.
- Brubacher and others 2014 – interviewers may obtain more incident specific information from children with multiple experiences across repeated interviews which may contribute to a more successful prosecution.
- A sense of connection may not take place in the first interview;
- A comfortable conversation in which the child feels connected, validated, believed and generally positive will begin a process of healing and pave the way for future contacts either with other child protection professionals or the interviewer.

# Protocols are available for investigative interviews

- Although research does indicate that they have variable value in communicating with children the evidence tends to be more positive than negative.
- Examples include:
  - NICHD – the National Institute of Child Health and Human Development

Gives detailed guidance to interviewers through all phases of the investigative interview

# NICHD protocol – summary of steps

- Introduction and ground rules and expectations – request for the truth, tell me if you do not understand the question...

(this may be very difficult for some children in some cultures where this behaviour may be taboo)

- Rapport building phase – create a comfortable atmosphere and a neutral event is described by the child – who is treated as a valuable informant
- Transitional phase – moving towards the target event
- Free recall phase
- Then a shift to more specific questioning

# Child Advocacy Centre protocol

- [https://www.umc.edu/uploadedFiles/UMCedu/Content/Administration/Health\\_Equities/Childrens\\_Justice\\_Center/NCAC\\_forensic\\_interview\\_model.pdf](https://www.umc.edu/uploadedFiles/UMCedu/Content/Administration/Health_Equities/Childrens_Justice_Center/NCAC_forensic_interview_model.pdf)
- Introductions
- Rapport building
- Developmental screening
- Ground rules and guidelines
- Assess competency
- Introducing the topic of concern
- Abuse specific questioning – open ended questions
- Follow up questions – more specific
- (specialised techniques for eliciting information, use of anatomical dolls or drawing)
- Closure.

# Starting off...

- Introductions – self

- Names

- Roles

## The child

- Name – preferences

- Some personal information

## Both

- Purpose

- Expectations (sometimes these may be coloured for the child by many pre-interview experiences)

# Best Practice interviewing...

- Ask questions that maximise narrative detail
- Ask as few questions as possible
- Open-ended
- Non leading
- Use body posture, facial expression as appropriate in your culture
- Use minimal encouragers
- Give time for retrieval.

# Some practices to avoid...

- Avoid suppositions relating to any information that the child has not told you
- Avoid focussing retrieval from memory of specific details
- Avoid forced choice questions –
- Avoid multi-part prompts – “tell me more about how he looked and the room you were in..” two or more demands for information. These result in poorer information retrieval (Katz and Hershkowitz, 2012)

# The role of interviewer supportive and non-supportive comments

- Supportive comments:
  - Encouragements (compliments and positive reinforcement)
  - Respecting the child – following the child’s pace, not interrupting, using the child’s name
  - Reassuring the child by normalising and generalising the situation
  - Limited self disclosure and small talk
- Non-supportive comments and behaviour
  - Bargaining
  - Controlling – eg interrupting the child
  - Doubting the child’s answers
  - Impatience
  - Minimization of the child ‘s experience

Some extra points

Child Abuse

Accommodation

Syndrome

Picking up on  
inconsistencies and  
exploring them

The question of  
whether therapy should  
wait until after the  
Justice processes are  
over



# Child Abuse Accommodation Syndrome (the recanting of disclosure)

- Described by Summit (1983)

Still relevant today

Describes the process of recantation when a child has experienced secondary trauma after disclosure – for example

- where the family responds with disbelief or anger when the child discloses
- Or the child experiences stigma.

5 stages

- Secrecy
- Helplessness
- Entrapment and accommodation
- Delayed disclosure
- Retraction

# It may have serious consequences

- For any legal process
- For the continued protection of the child.
- It is often used against the child – thereby pushing the child further into secondary trauma.
- The position of the child in relation to significant others should be explored where a child discloses and then recants/withdraws the statement.

# Inconsistencies

- Explore these with the child rather than avoid them
- They either may reflect
  - Disclosures about different events of abuse
  - Misunderstandings about questions
- Or a specific anxiety eg – Karen – fear of punishment

# Which comes first – therapy/justice needs?

- The principle of the child's best interests is entrenched in the UN Convention on the rights of the child.
- Delaying therapy may compromise the child's best interests
- Therapy may be enabling
- Follow guidelines: **Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance** (British Home Office Website)
- Stresses that this should be a consultative group decision inclusive of the caregiver and, if appropriate, the child.

**Thank you!**

**joanvn@iafrica.com**