



Taking Oral Evidence in Chile from Child Victims in Priority Groups: Challenges for the Practice and Training of Justice Professionals

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Abstract

In Chile, Law 21.057 established in 2019 that, for criminal cases in which there is a child or adolescent victim of a sexual or other serious crime, professionals who take the evidence from the victim during the investigative interview and court testimony are required to be specially trained as interviewers and intermediaries, respectively. Although Chile has been progressively moving into a child-friendly justice system, the expertise and training on how to address victims who have particular communicative, emotional, cultural, or social needs have been rather limited. This study explores the challenges experienced by investigative interviewers and intermediaries with child victims from priority groups, through the lens of their instructors. The term “priority groups” encompasses people who require special protection because of a condition that puts them at a disadvantage. Using purposive sampling, 12 of the most experienced instructors were recruited, and five semi-structured group interviews were conducted remotely. Through thematic data analysis, eight categories of challenges were found. First, the study identified particular difficulties experienced by professionals with six groups of children and adolescents who are here called priority victims or members of priority groups: (1.1) preschool children, (1.2) victims with neurodevelopmental disorders, (1.3) victims with psychiatric disorders, (1.4) reluctant victims, (1.5) Indigenous and migrant victims, and (1.6) victims in complex contexts/crimes. Secondly, the analysis identified cross-cutting challenges for the professionals related to (2.1) difficulties remaining after their initial training, and (2.2) the unavailability of background information about the victims before the proceedings. The article emphasizes the need to strengthen advanced competences and training content regarding priority groups, to reinforce initial skills, and to refine guidelines to assess and address these victims adequately, in order to facilitate their access to justice.

Keywords Child victims · Priority groups · Investigative interview · Intermediary system · Court testimony · Chile

Introduction

In 2019 in Chile, Law 21.057 incorporated the investigative interview technique into the investigation of criminal cases involving sexual and other serious crimes against children and adolescents, as well as the intermediary system in the court testimony of these victims and witnesses. The aim of

both measures is to facilitate the right of children and adolescents to participate and be heard in judicial proceedings by installing a child-friendly infrastructure, specialized protocols, and specially trained professionals to obtain accounts from these victims during the forensic interview and during the trial. Despite the fact that, in general terms, these two processes have been functioning correctly (Ministerio de Justicia y Derechos Humanos de Chile 2021), surveys and focus groups conducted after this policy was implemented detected that some cases were particularly complex for professionals when conducting investigative interviews or judicial intermediations; these complex cases involved preschool victims, children who are reluctant to provide an account, and victims who have a learning, behavioral, or speech difficulty (Fundación Amparo y Justicia 2020; Ministerio de Justicia y Derechos Humanos de Chile 2021). These evaluations preliminarily indicated that, in spite of the intensive training program undergone by the officials, there are still

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some areas in which they need to deepen their competences in order to interact in the best way with child victims or witnesses with special communication or emotional needs.

The present study extends these findings by exploring, now through the lens of their instructors, the experiences and performance of Chilean interviewers and intermediaries when conducting investigative interviews and judicial inter-mediations with child victims who are perceived by them as being particularly complex to interrogate or who might have particular needs. The study identifies, in the first place, six groups of these complex types, which are here called priority groups as these victims might require specialized protection given that they are in a disadvantaged or excluded condition (Defensoría de la Niñez 2021). These groups are children or adolescents who might have special communication, social, and cultural needs, including preschool children; children with neurodevelopmental disorders; children with psychiatric or emotional disorders; reluctant victims; Indigenous and immigrant victims; and victims from socially complex contexts or of complex crimes. The article also describes the general challenges related to the preparation for and the planning of the proceedings with these victims. The purpose of this work is to provide a preliminary overview of some of the elements that should be considered in the training of interviewers and intermediaries and in the allocation of resources aimed at enhancing the performance of judicial processes with priority victims.

The article starts with a brief overview of child-friendly procedures for obtaining oral evidence and in-court testimonies from child victims from specific groups across the world, and this is followed by a description of the training process for investigative interviewers and intermediaries in Chile. The methodology is then presented, and this is followed by the results of the group interviews with the trainers, and ends with a discussion of the findings in the light of international research.

Obtaining Testimonies from Child Victims of Priority Groups

In recent decades, many jurisdictions have reformed their justice systems in order to facilitate the participation of child victims in judicial processes by installing child-friendly infrastructures, establishing standardized guidelines, and training professionals to interact with children in a better way (e.g. Council of Europe 2010; Criminal Justice Joint Inspection (CJJI) 2014; NSW Department of Justice 2016; Myers 1996). Regarding the criminal investigation of cases, one of the most important measures that have been implemented by several countries is the use of interviewing protocols such as the NICHD (from the National Institute of Child Health and Human Development, Orbach et al. 2000) or the ABE

(Achieving Best Evidence – Children (CJJI) 2014). Some countries, such as Australia, England and Wales, Northern Ireland, South Africa, New Zealand, and Taiwan, have also established the figure of the intermediary or communicative assistant in order to help especially vulnerable witnesses to provide their evidence during an investigative interview and/or the trial (Cooper and Mattison 2017; Department of Justice Northern Ireland 2016; New Zealand Law Commission 1999; NSW Department of Justice 2016).

Although there are vast amounts of research on forensic interviews with child victims in general (e.g., Lamb et al. 2018; La Rooy et al. 2015; Powell et al. 2005), there is less specialized literature regarding interviews or court testimonies with victims or witnesses who might have a special communicative, cultural, or social need or difficulty, who are classified here as victims from priority groups.

Priority groups or priority attention groups are those identified as subjects in a situation of social disadvantage as a result of their condition (Inquilla 2015). Thus, they require reinforced protection or actions to support them with the inequality gaps they experience (Defensoría de la Niñez 2021). The concept has mainly been used in the context of the implementation of specialized social, health, or educational policies or initiatives with “target populations,” that is, women, people with disabilities, older adults, members of Indigenous communities, and immigrants, among others. In Chile, the Children’s Commissioner considers that those in priority groups are children who are in a disadvantaged or excluded situation or who are victims of discrimination, including children with a disability, homeless children, immigrants or refugees, Indigenous children, children in residential or foster care, hospitalized children or children with health issues, children who are gender diverse, adolescents deprived of their liberty, and members of any other similar group (Defensoría de la Niñez 2021). In this work, such children and any other victim or witness with a special communication, social, cultural, or emotional need are considered to fall within this category, given the possibility that they might have special needs during judicial proceedings such as forensic interviews or court testimony.

Preschool Victims

One of the groups for which there is the most literature regarding oral evidence is that of preschool children. Research has found that, although older victims report more details in an investigative interview, children as young as 3 years old are able to provide a substantial amount of forensically relevant detail in response to open-ended and directive questions (Gagnon and Cyr 2017; Hershkowitz et al. 2012; Lamb et al. 2018). While presenting some challenges in terms of language, memory, temporality, suggestibility,

and the amount and accuracy of detail, the communicative competence of these children mainly depends on the interviewer's ability to adapt their interrogation style to the child's needs (Gagnon and Cyr 2017; Hershkowitz et al. 2012; Lamb et al. 2018; The Advocate's Gateway 2021). Nonetheless, despite the fact that there has been relatively fast progression on the characteristics of these testimonies, a challenge that professionals face is that the protocols do not necessarily provide standardized indications for interviewing young children. Consequently, studies have found that investigative interviewers tend to ask very few open-ended questions and instead to ask more specific and suggestive questions to preschool children (Baugerud et al. 2020; Lamb et al. 2018), and that most of them tend to adjust the interview structure with these children and to attribute challenges with these victims to their developmental capacities, to the interview itself, and to legal aspects (Magnusson et al. 2020).

Victims with Developmental Disabilities

The literature about forensic interviews with children with disabilities has mainly focused on intellectual disability, autistic spectrum disorder, and attention deficit hyperactivity disorder (ADHD) (e.g., Collins and Henry 2016; Henry et al. 2011; Lamb et al. 2018; Mental Disability Advocacy Center (MDAC) 2015; Wyman et al. 2019). These are different types of deficits, and might influence a child's ability to describe their experience in different ways, so there is no generalized way to approach these victims during a judicial procedure. Research has shown that, despite the cognitive or social difficulties of children or adolescents with intellectual disabilities or developmental disorders, such children are able to provide meaningful, useful, and relatively accurate information about an event (CJJI 2014; Collins and Henry 2016; Henry et al. 2011; Lamb et al. 2018). Nonetheless, this ability depends on the mental age of the child, the severity of the disorder, and the interrogation strategies used to obtain testimony (Lamb et al. 2018). Studies have also reported on some of the challenges faced by officials working with children with disabilities (Aaron et al. 2004; Lamb et al. 2018; Milne and Bull 2008; Plotnikoff and Woolfson 2007; Wyman et al. 2019). For example, an awareness of the disorder seems to promote less desirable interviewing strategies. Also, the professionals feel that they receive scarce background information about such victims; that they do not have sufficient skills, training, or resources to interrogate them; and that these victims' accounts are considered as less reliable or accurate by judges.

Reluctant Victims

Another category considered in this work as a priority group, given that members of this group also require

professionals to learn special competencies to facilitate their testimonies, consists of children who are reluctant to provide an account. It has been found that reluctant children avoid establishing a rapport at the beginning of the interview, are less responsive to interviewers' questions, provide less information, deflect questions, and do not respond to open-ended questions, but provide more information on alternative questions (Ahern et al. 2019; Henderson et al. 2021). It has also been shown that interviewers behave differently with reluctant children by asking more questions in general, fewer open-ended questions, and more alternative and leading questions (Lamb et al. 2018). Based on these studies, recommendations have been developed, and an adapted version of the NICHD protocol (NICHD-R) has even been elaborated to facilitate the elicitation of testimonies from these victims by building a more trusting relationship with them, and emphasizing socioemotional communication to reduce resistance (Ahern et al. 2019; Blasbalg et al. 2018; Hershkowitz et al. 2014; Hershkowitz et al. 2017; Karni-Vissel et al. 2019; Lytle et al. 2017).

Migrant and Indigenous Victims

Research into the cultural and linguistic aspects of testimonies of immigrant and Indigenous children and young people has been less developed. The scarce literature on this topic highlights the fact that the crime, the cultural and familial environment, the testimonies, the ways of relating to professionals, and emotional aspects during the proceedings might be different from the situation with non-migrant or non-Indigenous victims, which might affect the applicability of protocols (Hamilton et al. 2016, 2017). Thus, it has been reported in some countries, such as Australia, Mexico, New Zealand, South Africa, and the USA, that there is a need to deal with the multiple cultures and languages within the nation (Bekink 2016; Benuto and Garrick 2016; Cashmore and Shackel 2018; Connor and Martínez 2021; Coughlan and Jarman 2002; González 2021; Hamilton et al. 2017; Jonker and Swanzen 2007; NSW Department of Justice 2016). Some of the elements that have been stressed include the following needs: to recruit more diverse intermediaries (e.g., Aboriginal professionals and specialized interpreters); to elaborate special protocols to interact with victims who speak different languages (asking for their language preference, establishing rapport with interpreters, etc.); to conduct criminal proceedings following an intercultural approach; to apply the tools of legal pluralism to guarantee the rights of these victims; and to consider language differences, cultural biases, communication barriers, and special obstacles arising from the legal or cultural condition of these victims.

The Training of Investigative Interviewers and Intermediaries in Chile

In 2019 in Chile, Law 21.057 established a series of modifications to criminal proceedings involving child and adolescent victims of sexual and other serious crimes, in order to avoid their secondary victimization. This public policy is one of the largest reforms implemented in the country and in Latin America to improve access to justice for child victims. Before this Act, the norms, protocols, and specialized training aimed at protecting these victims during their transit through the justice system (i.e., special rooms within Justice Centers, and a special investigative interview protocol, among other things) were neither compulsory nor coordinated at the national level. Therefore, on many occasions the rights, integrity, dignity, and well-being of these victims were not safeguarded, and children had to interact with professionals or proceedings that were intimidating for them or that questioned their experiences (MIDE UC 2009; Orellana et al. 2015; Universidad San Sebastián et al. 2019).

Although Law 21.057 is recent, it has operated well and has significantly improved the conditions of judicial proceedings to facilitate the right of children and adolescents to participate and be heard (Ministerio de Justicia y Derechos Humanos de Chile 2021; Ulloa et al. 2022). The policy incorporated nine protocols to regulate and standardize processes, from the disclosure and reporting of criminal events to the investigation and trial stages. Among other measures, the Act incorporated videorecorded investigative interviews as the official technique for interrogating child victims during the investigation stage, and the judicial intermediation of court testimonies during the trial stage, with the aim of facilitating the communication between the court and child victim or witness. The former must be conducted in a child-friendly room within police or prosecutor offices, where only the interviewer may be present to ask questions (unless an interpreter is needed). The intermediation must be conducted in a special room within the court offices that is linked via an intercom and CCTV system with the hearing room. Only the intermediary may be present in the special room, and he/she is responsible for transmitting the questions from the court and the parties to the child or adolescent in a developmentally adapted way, while also monitoring their emotional state.

Law 21.057 also established that the officials who conduct these two processes may only be personnel from the Public Prosecutor's Office, the two police forces (Carabineros de Chile and Policía de Investigaciones de Chile (the "Investigative Police"), the Judicial Branch (the judiciary), and the Ministry of Interior and Public Security, who must be specially trained and accredited through a program of initial and ongoing training imparted by those

same institutions.¹ The professionals are trained to learn both roles, that of investigative interviewer and that of intermediary, in the same initial program, which is known as the Initial Course of Specialized Training (or CIFE, which is its acronym in Spanish). This has proved to be effective with professionals from the Prosecutor's Office (Pietrasanta, et al. 2022) and from the police forces (Pérez et al. 2022). It consists of a 4-week (20-day) theoretical and practical face-to-face course, and has recently also been made available in an online version designed during the COVID-19 pandemic (Fundación Amparo y Justicia 2022).

The goal of this training program is to provide participants with the skills and knowledge required for a correct application of both types of process with children or adolescents of any age, condition, or culture. Therefore, it includes general content related to cognitive, socioemotional, and moral development, and to testimonial competencies (i.e., memory, suggestibility, trauma). The course teaches the participants how to apply the NICHD protocol during an investigative interview and the intermediation protocol² during an oral trial. Both protocols specify the types of questions that are appropriate to use when interviewing abused, exploited, or maltreated children, and guide professionals through the different phases of the proceedings (pre-substantive, substantive, and closing). The protocols are designed to interrogate child victims in general, and do not formally incorporate special adjustments for particular conditions or needs.

Although the initial training incorporates some basic content on how to interact with preschool children and children with an autistic spectrum disorder, as well as strategies to deal with reluctant victims, it does not probe these competencies nor does it include practical exercises with these or other particular groups of victims who might require special communicative or cultural considerations. Moreover, although the aim of the ongoing training is to reinforce the basic skills and learn about new advanced topics, the recentness of the reform and the lack of human and financial resources have prevented institutions from developing a wide variety of training material and activities regarding special groups of children in order to respond to the particular demands of such children.

¹ Judges may only be trained to become intermediaries, whereas prosecutors are only able to conduct investigative interviews, although other professionals from the Prosecutor's Office, such as psychologists or social workers from the Victims and Witnesses Unit, are trained to conduct both processes, as are police officers. The only restriction on police officers is on participating in trials when they have been involved in the investigation of the case.

² The protocol was designed by the institutions that operate Law 21.057 with the support of Fundación Amparo y Justicia and based on international experiences regarding intermediary systems, as well as national-level experiences of the Judicial Branch with child and adolescent victims and witnesses.

Current Study

Given that the training of interviewers and intermediaries is centered on providing the basic skills that are required to interrogate any child victim, it becomes necessary to inquire into the experiences of professionals with priority victims (who might require advanced competences), including the challenges and difficulties they have faced, their apprehensions and fears, and their performance. Thus, the aim of this study is to explore, through the lens of instructors, the difficulties that investigative interviewers and intermediaries have faced when obtaining testimonies from child victims who they perceive to be particularly complex. The purpose is to identify training and practice gaps in obtaining judicial testimonies from children and adolescents, in order to raise awareness about the needs of justice professionals and about some of the special considerations that should be taken into account with victims who have particular needs.

Methodology

Study Design

A qualitative design was adopted in order to inquire into the difficulties experienced by interviewers and intermediaries 2 years after the entry into force of Law 21.057 in 2019, through the perceptions of their trainers. The purpose of the study was to complement and extend previous survey and focus group findings about the perceptions of interviewers and intermediaries (Fundación Amparo y Justicia 2020; Ministerio de Justicia y Derechos Humanos de Chile 2021), using qualitative data coming from the opinions and evaluations of their instructors, collected through group interviews. The instructors are the professionals who train, accompany, supervise, and give expert feedback to these officials; therefore, they have access to numerous interviews and intermediations and have an overview of the complex cases faced by the officials. It must be noted that, during the study, the Law was in its first stage of implementation,³ which corresponded to it being implemented in six of the 16 regions of the country; thus, the instructors were interviewed about their experiences with professionals from the regions of Arica and Parinacota, Tarapacá, Antofagasta, Maule, Aysén, and Magallanes. Furthermore, this work was supported by all the institutions of the law, and it corresponds to one part of a series of evaluations that have been and will be conducted,

³ The Law was implemented progressively in three stages: the first commenced in October 2019, in these six regions; the second in June 2021, in six other regions; and the last stage in October 2022, in the four remaining regions.

Table 1 Participants and total number of trainers and accredited interviewers by institution

Institution	Trainers participating in study	Total trainers
Judicial Branch	3	3 certified ^a
Prosecutor's Office	3	9 certified 9 in training
Investigative Police	2	4 certified 10 in training
Carabineros de Chile	2	2 certified 14 in training
Ministry of Interior	2	2 certified

^aCertified trainers are professionals that already completed a Specialized Training Program delivered by Fundación Amparo y Justicia

both to improve the training of professionals and to assess the implementation of Law 21.057.

Participants

Five semi-structured online group interviews were conducted with a total of 12 instructors from the five institutions that train investigative interviewers and intermediaries working with children for the operation of the system (see Table 1): three from the Public Prosecutor's Office, two from the Investigative Police, two from Carabineros de Chile, two from the Ministry of the Interior, and three from the Judicial Branch (which only trains intermediaries, not interviewers). Each agency relies on a certain number of trainers who supervise professionals from different regions of the country; some of them have been "graduated," some are working in the training process, and some have left the system (Table 1).

The study used purposive sampling to select the most experienced instructors from each institution, with the aim of obtaining their accounts of the experiences and performance of the students that they have trained and supervised since Law 21.057 was implemented. The trainers were recruited by contacting their institutions, which were asked to select two or three (depending on availability) of the instructors with the most years of service in this role.

The rationale for selecting instructors instead of interviewers/intermediaries was that it allowed a global vision of the phenomena to be obtained, from the viewpoint of those in charge of evaluating and accompanying the professionals carrying out the investigative interviews and intermediations. The instructors have taught and currently supervise dozens of professionals throughout the country; therefore, they were able to provide accounts regarding numerous experiences of interviews and intermediations. Moreover, the trainer's viewpoint has the advantage of giving an external perspective on the performance of the professionals,

while at the same time providing a rich perception of their experiences, as they maintain a close relationship with them and receive requests for support and feedback. Finally, although quantitative and qualitative instruments had previously been conducted with interviewers and intermediaries, no instruments had been applied to collect the opinion of instructors regarding this topic.

Regarding the characteristics of the sample, ten of the interviewees were female and two male. Nine of them were psychologists, while the others were a lawyer/judge, a physiotherapist, and a special educator. They had been instructors for between 2 and 4 years (except for one novice trainer⁴), and they had different ways of supervising professionals. Within the Judicial Branch, the three instructors together are in charge of the initial and ongoing training of all the judge intermediaries of the institution. In the Investigative Police, the trainers together supervise all the interviewers/intermediaries, with the other two instructors, and in the Ministry of Interior the instructors are in charge of the supervision of the current group of four professionals. In the Prosecutor's Office, the interviewers/intermediaries are distributed by region, and national trainers support regional instructors. Currently, they supervise nearly 20 professionals each. In Carabineros de Chile, the instructors each supervise eight professionals.

Data Collection

The interviews with the instructors were conducted in August 2021 by videocall, using the Teams platform. They lasted 80 to 90 min. Verbal informed consent was obtained from the participants prior to the interviews, and in order to protect their anonymity, their names are not displayed in the results section. The scheme for the interviews addressed the following themes:

- General difficulties experienced by their graduate trainees (interviewers and intermediaries) during the conduct of investigative interviews and intermediations with child victims.
- Victims experienced as more complex to interrogate, and types of difficulty reported by the investigative interviewers/intermediaries or observed by the trainers during the preparation and execution of the proceedings.
- Performance of interviewers and intermediaries in these cases, including the interaction with the victims and the application of the protocols.

- Availability of background information for the proceedings with these victims.
- Contribution of initial and ongoing training for these topics.
- Suggestions for advanced training.

Data Analysis

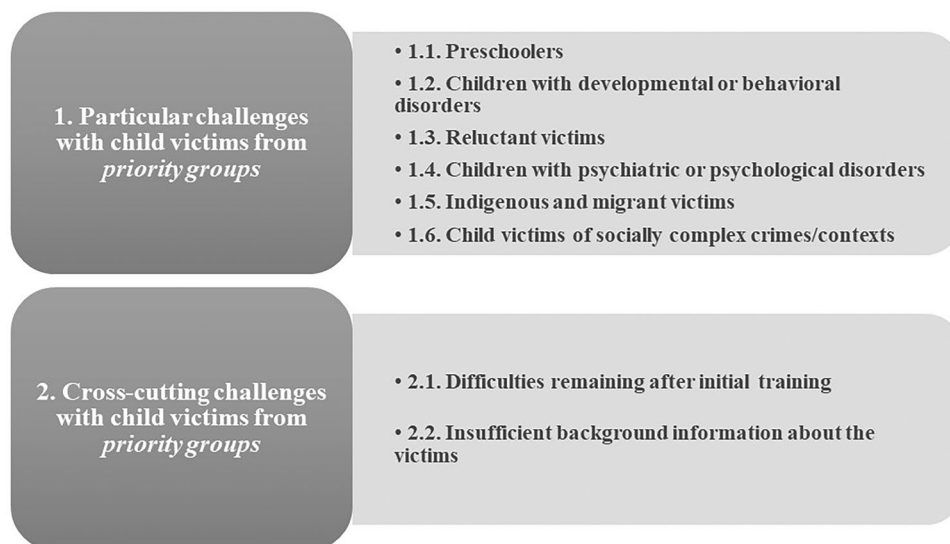
The results were analyzed using thematic analysis, a method for identifying, analyzing, and finding patterns or themes that emerge as important for describing a phenomenon (Braun and Clarke 2006). A hybrid process of inductive and deductive analysis was used (Fereday and Cochrane 2006), by incorporating a deductive a priori set of categories of priority groups of victims, coming from previous evaluations of Law 21.057; these categories were preschool children, children with an intellectual or behavioral disability, reluctant victims, and Indigenous and migrant victims. These categories were complemented with data-driven codes and categories that emerged from the discourses of the instructors about the challenges experienced by their students during the judicial proceedings. The analysis of the transcripts was performed by the researchers with the aid of the software Atlas ti, version 9, and involved the following phases: familiarization with the data; elaboration of initial codes and categories (i.e., each group of priority victims plus other general challenges); search for themes (types of difficulty experienced for each category); and group revision of the initial themes by the research team in order to confirm, refine, and redefine the codes and categories and description of the themes (Braun and Clarke 2006).

Results

Eight categories of challenges experienced by investigative interviewers and intermediaries when interrogating child victims from the priority groups were found (see Fig. 1). These were the following: (1) **Particular challenges** with (1.1) **Preschool children**, (1.2) **Children with neurodevelopmental or behavioral disorders**, (1.3) **Reluctant victims**, (1.4) **Children with psychiatric or psychological disorders**, (1.5) **Indigenous and migrant victims**, and (1.6) **Children from socially complex contexts or crimes**; and (2) **General or cross-cutting challenges with these groups**, including (2.1) **Difficulties remaining after initial training**, and (2.2) **Insufficient background information about the victims**. Categories 1.1, 1.2, 1.3, and 1.5 correspond to groups of difficult cases that were also detected during previous evaluations of Law 21.057 (Ministerio de Justicia y Derechos Humanos de Chile 2021), whereas the other categories emerged from the interviews with the instructors. Each theme describes the patterns of difficulties that the instructors perceived as more frequent in their (graduate)

⁴ The Ministry of Interior only used the services of two trainers; one of these participants did not have vast experience as an instructor, but she did have broad experience as an interviewer/intermediary.

Fig. 1 Categories and subcategories that emerged from the group interviews



trainees.⁵ The findings are accompanied by textual quotations from the participants to illustrate and support the description of the categories.

Particular Challenges Regarding Priority Groups

When the trainers were asked whether they had to supervise investigative interviews and intermediations that were particularly complex for the professionals who conducted them, six groups of cases or child victims were identified. They are here called priority groups, given the special needs or conditions of their members. The cases that were most frequently mentioned by the instructors were preschool children, children with a neurodevelopmental disorder, and victims who were reluctant to give their stories or who had recanted. To a lesser extent, but just as relevantly, the participants mentioned judicial proceedings with victims with psychiatric disorders and psychological or emotional problems, with migrant and Indigenous child victims, and with victims of complex crimes and in contexts such as commercial sexual exploitation or being in residential care. Only one of the participants mentioned that professionals should also be trained regarding LGTBIQ+ victims, and none of the other participants noted this as a challenge, so it was not considered a category. The following sections present the specific difficulties experienced by judicial professionals with each of these subgroups.

⁵ Given that most intermediations have been performed by judges, the findings regarding intermediaries were mostly provided by the trainers of the Judicial Branch, whereas the perceptions about investigative interviewers were provided by the instructors from the rest of the institutions.

Preschool Children

All the trainers reported that they usually receive requests for support on how to approach an investigative interview with a preschool child. They indicated that these cases often generate anticipatory anxiety in interviewers, who feel that they do not have sufficient knowledge about the developmental characteristics of these victims. The participants mentioned that there is also a recurrent belief that preschool children have limited capacity to tell a story and that it is more difficult to work with children with more concrete thinking.

It has been continuously expressed by interviewers that working with preschool children is complicated for them. They start with many biases... that it is not possible to inquire in an open way with preschool children, that they will not understand, that they will not be able to answer. There are many fears associated with this stage. (Instructor, Public Prosecutor's Office)

A particular observation of the trainers was that interviews with children under the age of 6 tend to be more directive. It was also said that professionals perceive it to be complex to establish a communicative relationship with preschool children, that it is more difficult for these victims to establish temporal locations, that they are more restless, that it is more difficult to obtain specific details, and that it is necessary to adapt the protocols and types of question.

In general, I believe that several difficulties have to do with how to adapt the protocol to some cases that are a little out of the ordinary, so to speak, so how the protocol is applied. For example, in a case of a preschool victim, who perhaps due to their cognitive characteristics, lapses of attention, and vocabulary, require that all

the interventions be adapted in a simpler, more understandable and shorter way. I believe that this has represented a difficulty for interviewers, because in some way they learn the protocol and how it is applied with a standard case... (Instructor, Carabineros)

Finally, the instructors from the judiciary also mentioned that although trials with preschool children may run properly, there have been examples of cases in which the parties do not collaborate with the intermediary by considering the capacities and limitations of the victim, and that they tend to cross-examine using extremely technical or complex language.

Neurodevelopmental or Behavioral Disorders

According to the instructors, investigative interviews with children with neurodevelopmental disorders also tend to generate anxiety or insecurity in the interviewers, and they often do not feel adequately prepared to deal with these cases. The conditions that were most frequently mentioned by the trainers as being especially complex for professionals included autistic spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD). To a lesser extent, they mentioned children with intellectual, language, or learning disabilities.

Among the fears and difficulties that interviewers or intermediaries have mentioned to them are a lack of knowledge about the characteristics of these children, a lack of knowledge about when or how to adjust the protocols, the belief that they will obtain less information, the complexity of simplifying the language, and the greater effort that is necessary for monitoring the children's emotional or behavioral state. The trainers from the judiciary also indicated that it may be complex for intermediaries to be aware of what is happening in the courtroom while monitoring and assisting the condition and needs of the victim.

He (victim with ASD) had a very good vocabulary, spoke well, understood very well the context, but had significant difficulties with remaining calm in the space. He was very demanding, and that might be added to the fact that he had waited for a long time; he waited several hours. So, it was a case that demanded a lot from the intermediary. (...) So, this situation of having to be aware of what happens in the courtroom, in addition to a child who has more demands, from the emotional, from the behavioral point of view, could have been a more complex case. (Instructor, Judicial Branch)

Other isolated behavioral elements or symptoms mentioned as particularly complex were motor restlessness, hyperactivity, and verbosity (quantitative alteration of the

flow of language characterized by accelerated speech and difficulty with being interrupted). The participants indicated that it was particularly complex when the victim was continuously moving around the room without being able to remain seated for a long time, was unable to maintain their attention over a long time, fixed their attention on different elements in the room, did not maintain contact with the interviewer or intermediary, or lost their focus.

A girl with attention deficit hyperactivity disorder, it was really complicated, because she never sat down, then my colleague told me 'the technician is telling me to please tell her to sit down because later he won't be able to distort the video...', because the girl was jumping around like... It was very complicated, very complicated, and in the end, we were going to get to something and no, we could not get a story. (Instructor, Ministry of Interior)

Reluctant Victims

Another challenge reported by the instructors was the conduct of investigative interviews and intermediations with victims who were reluctant to give an account of the crime. They pointed out that some professionals had interviewed victims who did not want to talk about the reported event, despite adequate rapport having been generated and/or adherence to the protocol. They mentioned that the greatest difficulty observed in these cases was transiting to the substantive phase or starting talking about the event, and added that this task becomes especially complex when the victim does not know the reason for the interview or when the disclosure was not made by the victim.

So, when there are complaints due to suspicions, it is very difficult for the interviewers to be able to situate the fact in the substantive phase, I have seen this several times. Related to that, children who do not want to talk. It is also a difficulty that arises. Children who do not want to move forward in the substantive phase. And it happened some time, 'tell me all about it', 'I don't remember anything else'. So, there is no possibility of continuing with an open formulation. (Instructor, Public Prosecutor's Office)

Other cases mentioned as complex for taking a testimony were those when the victim has recanted the disclosure of the event or denies what they have said.

And another case, which goes along the line of recantation, specifically of an interview is that... She recanted because she did not want her boyfriend, who was the accused, to finally go to jail or have any problems with him, because even though she recognized herself as a

victim, she was in that duality where she felt she loved him and did not want to cause him harm. (Instructor, Investigative Police)

Psychiatric Disorders and Emotional Problems

Some trainers also indicated that some professionals have experienced difficulties in conducting interviews or intermediations with children with certain kinds of psychological or psychiatric disorder or problem. Among these, they mentioned depression, panic attacks, suicidal ideation, substance abuse, insomnia, and lack of impulse control. According to some participants, carrying out the procedures in these cases tends to generate uncertainty and anxiety in the professionals because they do not necessarily know how to deal with these victims in the event that a problem arises. It might also imply that they must increase their effort to concentrate on monitoring the emotional and physical condition of the child. One of the difficulties reported as being associated with the presence of these conditions occurs when the use of psychotropic drugs affects the victim's ability to concentrate and their language.

This boy was on medication and had many language difficulties. Um... he had very severe depression, so the medication prevented him from modulating well, and he spoke very softly, he had a very introspective attitude, very shy, he did not make any eye contact, and the diagnosis he had was severe depression. (Instructor, Ministry of Interior)

Indigenous and Migrant Children

The trainers pointed out that few interviews or intermediations with Indigenous or migrant victims have been conducted to date. They noted that, in general, they have neither heard nor observed important difficulties or inconveniences in the proceedings with these children. However, some trainers did mention the need to deepen the knowledge of the sociocultural and language characteristics of victims from other countries, Indigenous peoples, and victims from rural areas.

With regard to migrant children, they mentioned the need to evaluate the proficiency in Spanish of victims whose mother tongue is not Spanish, as well as the need for a translator. In cases of Spanish-speaking children and adolescents, they reported procedures in which the interviewers or intermediaries found it difficult to understand certain words or expressions, and stated that linguistic or cultural differences might even complicate the formulation of questions according to the protocols.

I saw an interview yesterday where both the interviewer found it difficult to understand what the girl, who was a Peruvian girl, was saying, and the girl found it difficult to understand the interviewer's questions. So, for example, the 'tell me more', 'you told me this', 'tell me more about that'. 'What do you want me to tell you?'. That formulation was more complex (for that victim). (Instructor, Public Prosecutor's Office)

Regarding Indigenous victims, it was also mentioned that there have been a few cases in which there have been difficulties in understanding words or expressions used by the victims. In addition, they mentioned, as an apprehension, the possibility that Indigenous children resist talking to officials because of historic conflicts between some communities and the Chilean state.

Last year we received a girl from the north, who had a family of Chilean Aymara and Bolivian ancestry (...) She used very specific words in the interview, which later had to be clarified. (Instructor, Investigative Police)

Children from Socially Complex Contexts and/or Crimes

Other cases that instructors mentioned as being especially complex for investigative interviewers, in particular, are interviews in which the victim is in residential care and/or is a victim of a complex crime such as commercial sexual exploitation.

Regarding the first category, the participants from the Public Prosecutor's Office highlighted that is particularly complex to conduct interviews with institutionalized child victims because of circumstances that complicate the investigation of the facts. These include the poly-victimization that these victims may have suffered, and the fact that the information on the crime and the disclosure is sometimes unclear, unreliable (e.g., because it involves workers from the residence) or very delayed in time. Finally, they mentioned as a complexity the distrust that some of these children feel towards institutions.

I believe that one difficulty has to do with children with poly-victimization, children living in residences, where the problems are quite extensive and there are.... There is no one who has followed their development, let's say a significant figure... where the complaints are often complaints on suspicion or where there is involvement of the same people in the residence in the commission of the crimes. (Instructor, Public Prosecutor's Office)

With respect to the second category, the trainers, except for those from the judiciary and the Investigative Police, indicated that investigative interviews with victims of crimes of commercial sexual exploitation have been particularly complex for the professionals. The difficulty is more related to the phenomenology of the crime and the context than to the characteristics of the victim, given that the facts usually involve multiple defendants, victims, and/or crimes, which makes interviews procedurally more complex in their planning and execution.

Children and adolescents in commercial sexual exploitation... the phenomenon is complex, they are poly-victimized, so the way to approach them in the interview and to be able to approach the criminal type, according to what the interviewers have reported to me, is quite complex, because there are many victims, there are many participants... (Instructor, Public Prosecutor's Office)

Cross-cutting Challenges with Priority Victims

In addition to the particular challenges associated with the groups mentioned in the previous section, the instructors identified difficulties related to obstacles that might derive from the initial training of interviewers and intermediaries, as well as from the preparation for and planning of the proceedings, specifically regarding the availability of background information on the victims. Both categories are described below.

Difficulties Remaining After Initial Training

According to the instructors, there have been important advances in the implementation of Law 21.057 and in the training of interviewers and intermediaries. One of their most generalized opinions, though, is that the initial training is just a starting point or a basis for the officials to learn the technique and protocols and be able to apply them with child victims in general. Hence, ongoing training is required to continue consolidating the basic skills and to be able to apply them in more complex cases, such as with children from priority groups.

I believe that the initial training always provides the general... attempting to transmit it in a way that may be flexible to adapt it to particular cases, but we will always fall short. (Instructor, Carabineros).

Regarding the investigative interviewers, the instructors agreed that, although the professionals they supervise tend to adhere adequately to the NICHD protocol, they have

observed cases in which the interviewing skills were not sufficiently good or had decreased with the passage of time, especially if the officers had not had the opportunity to conduct interviews and receive expert feedback. Among the competencies identified as more difficult to perform properly is the adequate and timely formulation of different types of questions, while at the same time fulfilling the forensic objectives of the investigative interview.

The formulation of the questions, the types of questions, how to ask open-ended questions has been... I have noticed in my interviewers, that it has been more difficult than we expected, for them to know how to formulate the questions and to use them in a timely manner. In other words, at what point do I go deeper to obtain information, at what point do I extend to sequence the facts, manage to combine open questions, and later combine them with specific questions. (Instructor, Public Prosecutor's Office)

Another skill they mentioned as being complex was the effective incorporation of the pre-substantive phase, indicating that sometimes interviewers go through the stages of this phase without achieving the objectives of a rapport or the basic rules. In addition, they mentioned that they have observed difficulties in interviewers performing the transition to the substantive phase (i.e., when the professionals have to begin to inquire into the reported facts). In fact, one trainer pointed out that some professionals have difficulty in performing all of the competencies together.

Yes, I think it varies from interviewer to interviewer, because there are some who are able to adhere very well to the protocol, but they might have some difficulty with investigative aspects, namely, how to obtain information regarding a specific type of crime. (Instructor, Carabineros).

Regarding judicial intermediation, the trainers from the Judicial Branch mentioned that judges who perform the role of intermediary usually adhere remarkably well to the protocol. Nonetheless, one of the main difficulties is that for some of these magistrates it is complex to assume only the role of intermediary (to transmit questions and monitor the children), and to disengage from their court functions, such as directing or making trial decisions.

In the case of the presiding judge who assumes the intermediation, he was directing the hearing the whole time. The next day, intermediation, and then he has to leave his presiding judge role in the courtroom and go to the special courtroom as an intermediary. However, he is then going to leave the room and go back to the court. So, that balance is very difficult. (Instructor, Judicial Branch)

Insufficient Background Information About the Victims

Regarding the general obstacles related to interviews and intermediations with priority victims, the most frequently mentioned drawback was that the professionals often do not have sufficient information about the characteristics of the victims. They added that there is an urgent need for more in-depth and thorough *previous evaluations*⁶ of their communicational competencies, their physical and emotional state, and their special needs, so that those who interview or intermediate may prepare themselves to execute the interview or court testimony in an optimal way, to attend to the requirements of the victim in a personalized manner, and to avoid any impact on the child or on the judicial process.

One of the difficulties at the time of planning (an interview) is perhaps... it is not a criticism, but it is something that needs to be improved is the previous evaluations made by the professionals from the Victims Unit, which many times is done by telephone. In a particular case, this week we had a child with autistic spectrum disorder; the evaluation was done with the mother and the truth is that... there are questions that are essential for a certain type of diagnosis, because we should not force a child to attend who has no language or who cannot express what has happened to them and is only able to communicate with their mother (Instructor, Investigative Police).

Related to the investigative interview, the trainers added that the preparation and planning of the process depend on the locality and on the relationship that the interviewer has with the prosecutor and/or the professionals of the Victims Unit. Among the inconveniences they have noted that might hinder the professionals from an optimal performance are:

- When interviewers do not have the chance to plan the interview with the prosecutors.
- When the *previous evaluation* only produces limited information on the victim, without details on their communication skills, special requirements, sociocultural characteristics, etc.
- When the *previous evaluation* is conducted many days in advance, which prevents interviewers from knowing the most up to date emotional condition of the child.
- When victims attend in an inadequate physical or emotional condition to give an account, and interviewers are instructed to carry out the procedure despite this.

- The delivery of erroneous investigative files.
- The presence of inaccurate or erroneous information on the communication skills of the child.

They have reported that in general they have been told, for example, ‘the child has super good language ability, it’s super easy to communicate with him’ and everything. And the child comes to the interview and actually no, their language ability is quite poor. So, the interviewer finds themselves with some characteristics of the children that are considered by the responsible adult to be more accessible to conduct the interview than what they find later on during the interview. And that has happened with children who have some cognitive difficulty and with preschoolers. (Instructor, Prosecutor’s Office)

Discussion

Although the investigative interview and judicial intermediation implemented in Chile in 2019 by Law 21.057 have been an important step forward for the exercise of children’s rights within the criminal justice system, the findings of this study provide evidence that there are still some challenges left regarding the training and practice of justice professionals and criminal justice institutions with victims from priority groups.

The study found, on the one hand, cases that are perceived or experienced by professionals as particularly complex, and identified six groups of child victims or witnesses who could be classified as priority victims, given that they might have special needs and require particular protection during investigative interviews and court testimonies. These groups were preschool children, children with neurodevelopmental or behavioral disorders, reluctant victims, children with psychiatric or emotional disorders, Indigenous or migrant children, and victims from socially complex contexts or of complex crimes. The results present the different types of difficulties, limitations, and apprehensions that instructors have observed in the practice of Chilean interviewers and intermediaries with each of the groups. In sum, they include the perception of having insufficient knowledge or erroneous notions about the developmental and psychological characteristics of each condition; the need for tools to adjust the protocols and to address problems during the proceedings; the existence or perception of communicative and cultural barriers (e.g., not understanding words); the need for specialist expertise to inquire into the facts of complex crimes or crimes against institutionalized victims; and feelings of distress about the interaction with these victims. These findings are in line with international evidence showing that

⁶ This is a mandatory assessment carried out by professionals from the Victims Unit before the proceedings to evaluate the condition of the child and their availability to participate.

forensic interviewers vary in their performances with these victims, have preconceived notions, and/or experience certain challenges related to the particular characteristics of the victims, the proceedings, or their institutions (Aaron et al. 2004; Bagerud et al. 2020; Henry et al. 2011; Lamb et al. 2018; Magnusson et al. 2020; Milne and Bull 2008; Wyman et al. 2019).

On the other hand, the study found a set of categories of general or cross-cutting challenges related to the initial training and to the planning of the proceedings with these victims. First, it was reported that, despite the positive progress observed by instructors regarding the adherence of professionals to the interviewing and intermediation protocols, there are some cases in which there remain some deficiencies related to the performance of the basic skills that are taught in the initial training (e.g., formulation of questions, correct application of phases, monitoring the emotional state of the victim). This echoes international evidence that has shown that interviewing skills are often not maintained after the initial training program, especially when there is no opportunity to practice (Lamb et al. 2018; La Rooy et al. 2015; Powell et al. 2005). It also highlights the need for interviewers and intermediaries to continue improving their competences through a continuous training program. Secondly, one of the most widely mentioned obstacles of this study was the lack of background information on the developmental, cultural and psychological characteristics, communication skills, and special needs of the victim, as well as on their physical and emotional condition, before the proceedings. This prevents professionals from properly preparing for these instances and may impair their interactions with the child/adolescent or the quality of the testimony. Similar results have been found in the UK and South Africa, with respect to the intermediary system, including the lack of protocols to assess the vulnerability, communication competencies, and cultural needs of victims in order to plan and execute interviews and cross-examinations in a better way (Bekink 2016; Cooper and Mattison 2017; Coughlan and Jarman 2002; Victims Commissioner 2018).

Implications for the Training and Practice of Justice Professionals

The findings of this study have two relevant implications for justice system institutions: the first relates to the training of justice professionals and the other to their practice. The first is the crucial need for ongoing training for investigative interviewers and intermediaries, in order to reinforce their basic skills and to deepen their advanced competences and improve the knowledge needed to address priority cases or child victims who have particular characteristics that require special attention and specialist skills. Some countries have dealt with these challenges

by delivering courses on these groups (e.g., courses by the National Child Advocacy Center or the Zero Abuse Project in the USA or the Centre for Investigative Interviewing in Australia), by producing specialized manuals (e.g., guidance by The Advocates' Gateway in the UK), or by using intermediaries who have a professional background in child psychology, special education, or linguistics (e.g., in the UK or Australia). The challenge for other countries is to design and to elaborate material, training activities, and a methodology that is suitable and attractive for delivering the required competencies to investigative interviewers and intermediaries. Moreover, notwithstanding the six categories of priority groups that were found in this research, the results highlight the need to strengthen advanced general knowledge related to the developmental psychology of preschool children; cognitive, behavioral, emotional, and psychiatric disorders; cultural brokerage competency (awareness of cultural biases) and linguistic considerations with migrants and Indigenous child victims; the phenomenology of commercial sexual exploitation; crimes against children in residential care or from other vulnerable contexts; and gender and LGBTIQ+ considerations, among others.

The second implication relates to the practice of interviewers and intermediaries. Although much of their fieldwork depends on their competences and training, the institutional conditions and support they receive might have an important impact on their performance. Specifically, the findings of this study emphasize the need to establish more clear, standardized, and thorough assessment protocols for the prior evaluation of the communication, emotional, and cultural needs of victims, and to transmit the information in a timely fashion to the professionals who will interact with them. Having this prior information about victims would permit officials to be aware of and to prepare for possible diagnosis, protocol adjustments, and cultural and linguistic considerations, among other things.

Other issues that must be addressed during these proceedings are the need for specialized protocols during interviews with language interpreters, and the need to lead the whole judicial process through an intercultural approach, given the divergences associated with different customs, religions, feelings, relationship styles, and so on (Benuto and Garrick 2016; Connor and Martínez 2021; González 2021).

Limitations and Future Research

This work corresponds to one of the first steps within a series of evaluations and measures that will be conducted in order to improve the implementation of Law 21.057 and the training of justice professionals. Thus, it represents exploratory and preliminary findings from a modest sample

of experienced instructors, which should be complemented by national-level studies in the coming years. One of the limitations of this research was that, given that the Law was applied only in 2019, the work could only consider the experiences of the professionals from the first stage of its implementation (in six of the 16 regions of Chile), when the policy was not functioning at its regular capacity and at a national level. Also, this article describes the difficulties experienced by interviewers and intermediaries from the point of view of their trainers. As mentioned in the method section, there were multiple reasons for this, including the possibility of gaining an external perspective of the performance of professionals (who had been surveyed previously), and gathering, through a few interviews, the experiences of multiple interviewers and intermediaries. Nonetheless, it is clear that further research requires an inquiry into the experiences of the officials themselves as well as from other professionals in the justice system.

The passage of time should provide more experience, which should enhance the learning of future practitioners, trainers, and institutions. What is most important is the need to inquire into the views of these child victims and their caregivers. Hearing their voices is essential to understand in depth their real needs when they participate in judicial processes. Each category of victims has its own needs and challenges for interviewers, and the intersection of each feature makes the scene even more complex. Hence, each priority group category could later be redefined or reorganized according to the perspective of other professionals and the victims themselves. Therefore, it is necessary to treat these findings as a starting point for research, training, and policy lines that should soon be deepened.

Conclusion

The present study contributes evidence and a framework to the international research and practitioners' community, as it introduces the concept of priority groups into the field of child testimonies and oral evidence within judicial processes. It calls for further research and training to facilitate the rights to participate and to be heard of child and adolescent victims who might be in a situation of special disadvantage and therefore need reinforced protection and active measures to guarantee their access to justice. The study provides an overview of the challenges for the professionals and institutions of the criminal justice system of interrogating victims with special communicative, emotional, cultural, or social particularities and needs. The six subgroups of child victims that were identified (preschool children, children with developmental disorders, children with psychiatric disorders, reluctant victims, children from migrant or Indigenous communities, and victims of socially complex crimes and from complex contexts) each

entails a particular kind of training (theoretical and practical) and particular guidelines and measures, and also requires constant coordination with other justice professionals, in order to have the necessary information and tools to respond to these victims in the best possible way. Hence, it is essential to adjust judicial proceedings to the particular needs of each child, overcoming prejudices and biases, and recognizing the unique characteristics, competencies, and limitations of each child (CJJI 2014).

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Author Contribution Both authors declare to be employees in Fundación Amparo y Justicia and, therefore, the work was done in the course of our employment at the direction of our employer and within the scope of our employment. Thus, the copyright in this Contribution is owned by this organization.

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Data Availability The data that support the findings of this study are available on request from the corresponding author and after an authorization by the Subcomisión Técnica de Implementación de la Ley 21.057.

Declarations

Ethics Approval The study was previously approved by the *Subcomisión Técnica de Implementación de la Ley 21.057* which is a Committee comprised by the institutions that are responsible for implementing Law 21.057, the act that regulates the investigative interview and judicial intermediation in criminal cases of child victims of sexual and other serious crimes. The Committee agreed and approved the conduction of the group interviews with the participants of this study, namely the trainers who work for each of these institutions: the Judiciary, the Public Prosecutor's Office, Policía de Investigaciones de Chile (investigative police force), Carabineros de Chile (order police force), and the Ministry of Interior and Public Security.

Informed Consent Verbal informed consent was obtained from all individual participants included in the study prior to the interviews.

Conflict of Interests The authors declare no competing interests.

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