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Child sexual abuse in Brazil: the importance of victim testimony

Abstract

The child's testimony is a central part of investigating child sexual abuse. Many episodes of abuse do not leave physical signs. Forensic examiners and pediatricians and psychiatrists, and psychologists must be prepared to interview the child and obtain their description of the attack properly to get reliable evidence for the punishment of the crime. Based on medical literature research, the authors discuss the procedures adopted in Brazil after the enactment of Law 13431 of 2017, which establishes the obligation of "protected listening" to child victims of sexual abuse in the criminal process, as well as the justifications that lead the experts to consider the child testimony/disclosure about the abuse as vital evidence to convict the perpetrators in the courtroom.

Keywords: child sexual abuse; child interviewing; children's testimonies

Volume 11 Issue 4 - 2023

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Received: October 05, 2023 | **Published:** October 20, 2023

Introduction

A clinical or expert examination does not always confirm or rule out child sexual abuse.[1] For example, recent data[2] showed that between 11,725 reports from victims under 18 years, regarding medical-legal findings, only 1735 reports (14,8%) confirmed sexual abuse in Brazil. Therefore, complementary exams are often necessary, which are not always accessible in developing countries. As a result, the forensic expert can often not obtain evidence of alleged violence. As stated by Kotzé and Brits.,[1] "a clinical examination commonly shows no confirmatory findings," but the possibility of that child sexual abuse has occurred can never be ruled out. It is true (e.g., we can never rule out the possibility of an abuse had occurred), especially in cases of male child rape.[3] In these cases, medical history and the account of the alleged abuse are critical points of the conclusion that child sexual abuse happened.

The World Health Organization (WHO) defines child sexual abuse as "the involvement of a child or adolescent in sexual activity that he or she does not fully comprehend and is unable to give informed consent to, or for which the child or adolescent is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society."[1,4] There are some types of sexual abuse[1] and which do not always leave material traces. Non-contact sexual abuse, for example, or contact sexual abuse without sexual intercourse, like "inappropriate touching or kissing," rarely leaves shreds of evidence on the child's body. Other types of contact with penetration are not always easy to prove due to the difficulty of collecting conclusive and irrefutable evidence. Barth et al.,[5] Reported that forced intercourse occurs in 3% of men and 9% of women. In the case of boys, forced anal intercourse could only be proved, with the utmost certainty, when we found spermatozoa in the victim's anus.[3] Clinical findings and material evidence differ according to the time between the incident and the expert (or medical) examination. Adams et al.[6] Studied legally confirmed cases in children aged eight months to 17 years, of whom 42% presented within 72 hours after the incidents, and found 77% of the examinations were average or non-specific. Buswell et al.,[7] analyzed 239 case notes of forensic examination clients. They concluded that "the low prevalence of anal injury amongst pre-pubertal children suggests that absence of injury at the time of examination, following allegation of anal assault, is a common finding."

It is a big problem in daily forensic practice because the lack of physical evidence of sexual abuse can lead to impunity for the perpetrator. There are some reasons for the lack of confirmation of child sexual abuse on clinical examination, such as tissue factors; anatomical factors; lubrication; and perpetrator factors.[1] Thus, the victim's words and history become especially relevant in this context. Several authors[3,6,8–10] share this view based on previous findings (or "non-findings"). So, the victims' narrative became very important in clinical forensic practice and almost every clinical medical practice. However, lawyers or other non-medical professionals may have reservations about the role of the words and the history told by the victim. They say it may be biased in the process. On the other side, Kermani[11] points out a decision of the U.S. Supreme Court in 1992. The judges unanimously decided "that the spontaneous statement of an abused child, made outside the courtroom and while receiving medical treatment because of molestation, is trustworthy and may be allowed as evidence at trial." The criteria and legal requirements for the competence of child witnesses are not related to chronological age, but rather their ability to understand the concept of the truth and to perceive, recall, and relate.[11] The final decision in accepting the child's testimony as evidence rests with the judge, who may or may not request the opinion of experts in child psychiatry or child psychologists.

The Brazilian law

In Brazil, in 2017, Law 13431[12] was enacted on the protected listening of child victims of violence. In general, a group of professionals (psychologists and social workers) conducts this first listening and evaluation of the child's testimony regarding the consistency and reliability of the report. By this law, the testimony before the authority will have a unique character. In addition, it increases the victim's security conditions, allowing him (or her) to be heard without constraints when reporting the facts that occurred. Also, it prevents the victims from suffer any further embarrassment.

In the case of sexual violence, it will even serve as an advanced production of evidence, guaranteeing the accused's right to defense. This type of procedure is reliable for two reasons, as previously stated by the U.S Supreme Court: "1) what the justices called "spontaneous declaration," i.e., a person while excited utters a statement immediately after the event and before the mind has an opportunity to formulate a falsehood, and 2) the statement that the child made to the physicians (or to a group of professionals, in Brazilian case) was for medical diagnosis and treatment. Therefore, the presence of these two factors delivers special credibility guarantees."[11] Regarding forensic aspects, a medico-legal conclusion is worthless without a good history.[1] It happens because a good history directs the clinical examination and guides forensic experts about the nature of sexual contact. Besides, a good history promotes a proper collection of evidence.

Clarity, detail, and consistency without constraints

Adams et al.,[6] go further on this topic. They stated, "When the child makes a clear, consistent, and detailed statement, the physical examination should not be relied upon to provide the proof' before proceeding with criminal charges." However, it is crucial to remember that, due to the forensic nature of the victim's testimony, it is necessary to prevent unrealistic allegations that could contaminate forensic information. It is precisely the objective of Brazilian legislation.[10] Moreover, protected listening protects the children's testimony from constraints caused by external interests. Also, it avoids repetitions of the same story (re-victimization) so that their account has the strength of evidence in the forensic scope. In summary, to Adams et al.,[6] the value of the children's testimony relies on three key points: the account's clarity, detail, and consistency. The explanation of it is pretty straightforward: 1) children cannot lie elaborately about something they do not know; 2) lack of accuracy in their narrative is more due to omission than to an elaboration of the lie; and 3) the interviewer must let the children explain in their own words, without assuming assumptions, taking into account that the child's vocabulary is limited and they are not always able to describe the anogenital region adequately. It is essential to point out that "younger children and those with developmental delays may have limited cognitive and linguistic ability to recognize the abuse clearly and report it coherently. Combined with delayed or incremental disclosures, it may raise credibility concerns."[13] Hence, a professional group qualified in these particular issues has taken the importance of the child's testimony. The ability of children to report their experiences that could generate discredit in children's answers. A child's development has differences in temporal attributes,[14] and these differences may undermine confidence in their ability to testify or recall events.[15] Thus, knowledge of psychological development is essential to make quality arrangements for interrogation.[16] It is also "important for the credibility evaluation of the child's testimony." Despite everything, we cannot disregard the possibility of false allegations on the part of the child during a regular forensic examination. However, false claims are rare, Jones et al.,[17] in a study published in 1987, demonstrated that only 8% of 576 children made false allegations. It is more common among adolescents than in "children younger than six years, where the rate of false allegations is 2%."[1]

Final considerations: ten highlights

There are ten (10) essential pointers to take into consideration in the assessment of cases of child sexual abuse by the forensic practitioner:

Children sexually abused may not present any clinical signs;

I. The testimony of sexual activity given by the child is of the utmost importance in the assessment. It is essential to take the child's testimony as soon as possible and to avoid repetition;

II. Child sexual abuse includes actions that do not result in physical injury;

III. Lack of resources or the reluctance of the victim may compromise the examination technically;

IV. Examiners, mostly the less experienced ones, can make human errors;

V. False allegations are uncommon but cannot be ruled out;

VI. Children cannot lie elaborately about something they do not know;

VII. The interviewer must let the children explain in their own words, without assuming assumptions, and the lack of accuracy in their narrative is more due to omission than to an elaboration of the lie;

VIII. A multidisciplinary team experienced in the subject should take the victim's first report. Knowledge of the child's psychological development is vital to the quality and credibility of the child's testimony.

IX. The forensic specialist must consider the victim's stage of cognitive development and possible language difficulties in reporting what happened.

Acknowledgements

None.

Conflict of interest

The author declares there is no conflict of interest.

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Citation: Miziara ID, Galego Miziara CSM. Child sexual abuse in Brazil: the importance of victim testimony. *Forensic Res Criminol Int J*. 2023;11(4):122–124. DOI: 10.15406/frcij.2023.11.00380