張 瑋 心\*

### 目 次

- 壹、兒童是完美被害人
- 貳、聯合國兒童權利公約
- 參、兒童被害人兼證人之司法權利
  - 一、兒童最大利益的考量
  - 二、獲得尊嚴和同情對待的權利
  - 三、不受一切形式歧視的權利
  - 四、案件進度的受通知權
  - 五、意見表達的權利
  - 六、獲得有效援助的權利
  - 七、身份不公開的權利
  - 八、偵查過程不受痛苦的權利
    - ○選任輔佐人之權利
    - (二兒童法庭之設置
  - 力、受保護的權利
  - 十、獲得賠償的權利
  - 十一、要求特別預防措施的權利

## 肆、結論

- 一、兒童司法權利之檢驗清單
- 二、我國落實兩公約的施行與適用

**關鍵詞:**兒童司法權利、兒童被害人、性侵害、人權、兒童證人

**Keywords**: Judicial Rights of Children, Child Victim, Sexual Abuse, Human Rights, Child Witness

責任校對: 黃右瑜

<sup>\*</sup> 中國文化大學、銘傳大學法律學系兼任副教授。

### 摘 要

有實務界論者表示,我國刑事訴訟法於2003年9月1日修正採用改良式當事人進行主義後,為充分保障被告人權,不僅落實交互詰問之程式外,亦踐行更為嚴謹之證據法則,惟新制實施迄今,咸認修正後之訴訟程式,似有輕忽弱勢被害人及證人之感¹。假以性侵害事件屬私密犯罪之角度思考,兒童作為被害人兼唯一證人之情形下,兒童要對抗成人被告著實不易,更遑論加害人同為家庭成員時之困境。另一方面,我國自「國際人權公約國內法化」後,兒童人權的議題更顯迫切。本文爰以性侵害事件兒童被害人為例,探討兒童參與刑事司法之權利,呼籲正視兒童於訴訟架構中居於弱勢地位之事實,並且落實對於兒童在法律上的平等保護。

# Rights on Justice in Matters Involving Child Victims and Witnesses-United Nations Frame of Reference

## Chang, Wei-Hsin

#### **Abstract**

A researcher in practice noted that our Criminal Procedures adopted adversarial system on Sept. 1st, 2003 to protect the defendant's human right, by carrying out cross-examination and strict evidence rules. Although the new law has been executed so far, victims and witnesses at weak state have also been overlooked. From the aspect of sexual abuse a secret crime, a child victim as the only witness, how she fights with an adult defendant, and even needless to mention the dilemma caused where the accused is a family member. On the other hand, we have made International Human Rights Treaties into our domestic laws effective, and there is no way to overlook the issue of Children's human rights. This paper, based on UN Children's Bill of Rights, aims to demonstrate the truth of child victims with unequal defense weapons in criminal procedures, and to spread the perception of judicial rights a child should possess as a victim and witness, as well as the right of equal protection.

<sup>1</sup> 張介欽、王鑫健檢察官,〈英國刑事訴訟程式保護弱勢證人、被害人之法制及實務運作現況研究報告〉,臺灣臺北地方法院檢察署,2008年2月29日,頁1-2。