

GROUP 2

MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS WITH SPECIAL ATTENTION TO VICTIMS OF SERIOUS VIOLENT CRIME, INCLUDING HOMICIDE

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I. INTRODUCTION

The group started its discussion on 22 January 2010 and elected by consensus Mr. Co as its chairman, Mr. Sato as its co-chairman, Mr. Waheed as its rapporteur and Mr. Furukawa as its co-rapporteur. The main topic of discussion as assigned was “Measures for victims of crime at each stage of the criminal justice process with special reference to victims of serious violent crime including homicide”. The topic under discussion was too broad to cover, consequent upon which, the group further decided to focus only on the analysis of measures for the survivors of homicide. The agenda of discussion was planned by the group with the sub-topics: 1. Needs and concerns for victims of violent crimes; 2. Legal and Regulatory framework; 3. Measures for victims of violent crime at the Investigation Stage; 4. Measures for such victims at the prosecution stage; and 5. Measures for victims at the trial/sentencing and post sentencing stage.

II. SUMMARY OF DISCUSSIONS

A. Needs and Concerns of Victims of Violent Crime

All the participants identified five major needs of the victims of violent crime including homicide. The financial need of such victims was given much importance in the discussion and then the psychological need of such victims was discussed. The physical safety of the victim was also declared an important need and concern. Access to information was also discussed as an important need of victims of violent crime and then the available facilities for medical treatment was considered a second important need for such victims.

The Japanese participants discussed the available financial measures available after the enactment of the Basic Act and Compensation Payment Act. Ms. Nishimura said that the victim had to pay all expenses at the initial stage, which is a big financial burden. Mr. Furukawa from Japan stressed the role of non-governmental organizations in providing financial support for victims of violent crime. Mr. Waheed from Pakistan discussed the expenses related to burial ceremonies and issues related to blood money. He stated that the victim’s family gets blood money as a result of compromise as homicide in many countries is still a compoundable offence, which is not case in Japan and other countries.

The psychological needs of such victims were identified by the group. All the participants stressed on the behaviour of criminal justice practitioners can be overcome through training of officers on crisis intervention.

The issue of physical safety was thoroughly discussed by almost each participant. In Japan the system of patrolling the home of victim was discussed whereas Mr. Waheed pointed out that the use of modern gadgets

can be helpful for tracking the offenders and ensuring the safety of victims. Mr. Fakir from Bangladesh explained that the system of quick response teams should be available for the safety of such victims. Mr. Al-Dhaheeri from Yemen pointed out that it is the responsibility of the tribe, clan and then family to provide physical safety for the victims of violent crime. Mr. Co explained that it is the duty of the police and village government in Philippines to ensure such safety.

The victims' need regarding access to information was discussed by the group and it was found that such a formal mechanism is available only in Japan. The institutional methods and infrastructure for providing information are not available in Pakistan, Bangladesh, Yemen and Vietnam. It was agreed by the group that a system of notification should be a mandatory part of the criminal justice process.

The issue of medical facilities for the victims of crime was discussed by each participant and many discrepancies were discovered in the criminal justice systems of countries where there is no culture of life insurance.

B. Legal and Regulatory Framework

The legal aspects for victim's treatment were thoroughly discussed by all participants.

Mr. Al-Dhaheeri from Yemen explained that there are some special laws for children, juveniles and women to protect the rights of these groups of victims. But there are no special laws for victims of crime. Mr. Waheed from Pakistan said that the right to life is the most important and foremost fundamental human right and further explained the surrounding legal issues in Pakistan. He concluded that though the constitution and some substantive and procedural laws explain the rights, it does so in much generalized terms. There is no separate enactment specifically meant for the rights of victims of crime. Mr. Fakir stated that the situation in respect to the legal and regulatory framework is the same as that of Pakistan, except the recent enactment of some special laws for some special groups and cases. Ms. Nishimura and Mr. Sato from Japan discussed the available legal and regulatory measures. Mr. Ha from Vietnam also pointed out that there is no separate laws in Vietnam stating victims' rights. Mr. Co also agreed that separate enactment for victims is a necessity of the time. There are some special laws for women and children in the Philippines but other categories of victims are still ignored. It was the consensus of all participants that without a legal framework it is not possible for any state to provide institutional means for better victim treatment.

C. Measures for Victims at the Investigation Stage

The problems faced by the victims of violent crime were discussed by the group in detail. Mr. Waheed from Pakistan discussed nonprofessional treatment by first responders because of lack of training in crisis intervention. Moreover, there are no special investigation units regarding each category of crime. The investigators more focus on offenders in the process of interrogation and analysis of evidence and forget the victim, which is always damaging for establishing a bond of trust and confidence. The issue of trust deficit is a major problem in most of developing countries where there is more chance of political interventions and unjust treatment of the victims of crime. Mr. Sato from Japan also pointed out that sometimes the victim statement just after the occurrence of a crime is problematic. In the same way, Ms. Nishimura from Japan explained that in some cases, the media representation of the victim has very negative impact on the process of investigation as well as secondary victimization by the media. Mr. Co stated that in the Philippines, the village government, called the Barangay, has a very important role in providing basic information and services regarding victim treatment. He also emphasized the importance of dying declarations in the criminal justice process. It was the consensus of all participants that a victim impact statement is very important in the process of investigation. Such a system is not practiced in many countries.

D. Measures for Victims at the Prosecution Stage

There are some basic differences in the role of public prosecutors in different criminal justice systems. Mr. Waheed from Pakistan said that the prosecution service remained a part of the police service until made independent in 2005 by the Public Prosecution Act, but again, its role is very restricted and correctional. The victims of crime have less contact with the prosecutors in Pakistan and situation is the same in Bangladesh. In Japan, the Philippines and Yemen, the public prosecutor has a defining role in victim treatment. Mr. Sato pointed out that there is no system of private prosecution in Japan, whereas Mr. Co from

Philippines added that a private prosecutor works under the supervision of public prosecutor and the victim is consulted in a case for a plea bargain. In most of the represented countries, the screening mechanism at the prosecution stage is not available as in case of Japan, where about 54% of cases are not prosecuted at the discretion of public prosecutor, considering the circumstances and seriousness of the case. On the other hand, in countries where a screening mechanism exists, there should be another mechanism to review the discretionary power of prosecution authority for victims of crime.

The participants also discussed the alternative dispute resolution mechanism. Mr. Al-Dhaheri from Yemen stated that a very effective alternative dispute resolution mechanism through mediation and arbitration is available in the form of a tribal mediation mechanism. Mr. Waheed from Pakistan explained that there is bifurcation of offences into compoundable and non-compoundable. The historical method of alternative dispute resolution remains in practice but its role has been diminished due societal changes. The quality of justice in such institutions is always questionable. Mr. Co pointed out that the village government and indigenous practices play a significant role in out-of-court settlement. Ms. Nishimura said that out-of-court settlement may not divert serious violent cases from formal criminal proceedings in Japan because the system has to take care of the social injury caused by the offender.

E. Measures at the Trial/Sentencing Stage

In most of the represented countries, with the exception of Japan, a codified mechanism for presenting the views and concerns of victim is lacking. Mr. Furukawa explained that in Japan, the victim is consulted in the case of probation and parole. The victim has also the right to express his or her grievances at trial stage and also in the victim impact statement. Mr. Co also added that the victim is also consulted at the time of parole in the Philippines through the publication in newspapers of the names of persons to be released and victims and other concerned people can give their comments.

The issue of compensation and restitution was thoroughly discussed by each participant. Mr. Waheed said that the provision of restitution is available in the Penal Code of Pakistan but there are very few cases in which restitution orders have been passed by the courts. It is at the discretion of the court to pass a restitution order. On the other hand, the institutional mechanism for compensation to the victim of crime is not given in the criminal justice system of Pakistan. Mr. Fakir from Bangladesh added that the same system is in practice and political heads announce compensation in some cases; the amount varies according to the situation. Mr. Co claimed that in his country compensation for unjust imprisonment or detention and victims of violent crimes is granted by law. Of the represented countries, only Japan has a victim support fund.

F. Measures at the Post-Sentence Stage

Most of the participants agreed that there is a misconception in many countries that the role of victim is finalized at the sentencing stage when in fact there are many issues in the post-sentencing stage which are directly related to victims of crime. For example, Mr. Al-Dhaheri explained that in Yemen the victim has the right to prevent capital punishment even after a presidential order for such a sentence is given. Mr. Waheed pointed out that in Pakistan corruption and maladministration in correctional centres sometimes leads to hardened criminals using cell phones inside the prisons and threatening victims with dire consequences if they pursue the case. Moreover, the correctional centres transform “ordinary” criminals into hardened criminals because inmates learn from each other, which is again a threat for their victims. In the case of parole and probation, in Japan, a victim is informed through the notification scheme. But in other countries, the victim is disassociated from criminal justice agencies, including the correctional centres, in the post-sentencing stage. Most of the time, the victim is not aware of offender’s treatment and even sometimes remains unaware of the release of the offender.

III. RECOMMENDATIONS

All group members finalized the following recommendations:

1. Each state may establish a separate national institution responsible for planning and execution of national victim policy;
2. There is utmost need for separate laws for victims’ rights regarding information, compensation and restitution and other allied facilities;

3. Each state should create a victim support fund for victims of crime for all categories of victims, but especially for women and children. Those states having financial constraints are recommended to implement a system of fine surcharge and some percentage of fines collected from offenders must be added to the victim support fund;
4. Each state may incorporate victim impact statements in their criminal justice process;
5. Basic training on victims' issues for common practitioners and advanced training for specialized units should be a mandatory part of training for criminal justice officials. Listening to the victims' experiences should also be a part of such training;
6. There must be infrastructure and a system to assist victims of crime. There is need for separate offices to provide such assistance;
7. A one-window operation to provide information to the victims of crime within a criminal justice system is recommended for each state to simplify the acquisition of information;
8. There is a need to establish a balance between the offenders and victims' rights at each stage of the criminal justice process. Greater focus on victims' rights should not prejudice the rights of suspects and offenders;
9. There is need to inculcate victims' rights in the education system of each state so that present and future generations are sensitized to victim issues;
10. The media should adhere to guidelines which accord with the International Code of Ethics for media practitioners when writing about victims to avoid victimizing them secondarily;
11. Communities should be involved in victims' issues through awareness, motivation and participation campaigns. A victims' day or week may be celebrated to sensitize communities to victims' issues;
12. Each state may encourage public-private partnerships (PPP) for victim support;
13. Research on victims' concerns should be both governmental and academic, and modifications in the criminal justice system can be undertaken in view of given policy recommendations. Independent sources within each state should undertake a national survey of crime victims;
14. There is need to focus on the "3Ms formula": "men, material and method". There is no shortcut without capacity-building in terms of human resources; then the basic requirement is separate infrastructure; and after modification of procedures and practices, a state will be able to establish a just and fair system for better treatment of the victims of crime.