

Thematic discussions on Pillar II: Advancing the criminal justice system

Thematic session 1: Safeguarding victims' rights and protecting witnesses and reporting persons; Improving criminal investigation processes (5 December 2022)

Opening remarks – Anna Giudice, Team Leader, Access to Justice, Crime Prevention and Criminal Justice Section, DTA, UNODC (anna.giudice@un.org)

Thank you, Mr. Chairperson for giving me the floor.

Distinguished delegates,

I will attempt to provide a brief introduction on key trends, challenges, relevant policy frameworks and good practices regarding the following thematic areas covered by today's debate:

1. Victim protection, assistance, compensation and reparation
2. Witness protection in criminal proceedings; and
3. Improving criminal investigation processes through evidence-based interviewing methods

My colleagues will speak on reporting persons in the afternoon.

First, with regards to victims I would like to recall that a fair, effective, inclusive and efficient criminal justice system focuses on the need to prevent victimization, to protect and assist victims, to treat them with compassion, and to respect their dignity, in line with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The provisions of the Declaration remain key to protecting, assisting and providing compensation and reparation to victims while moving towards a more victim-centered approaches to criminal justice in order to meet the SDGs, in particular Goal 16.

With regard to global trends, one of the main trends of the last years has been the increased organisation and activism of organised or spontaneous groups of victims/survivors who have protested worldwide against the perceived impunity of perpetrators to particular types of crimes or to crimes that target particular groups. Protests and activism have also been seen against the lack of adequate responses from criminal justice institutions including secondary victimisation at the hands of the police or assistance providers. To be fully victim-centred would require to engage with those groups in processes aiming at reforming police, prosecution and judiciary responses but also when addressing the need to have multi-disciplinary responses to victimisation that include legal aid, social, health, educational and other state and civil society providers of assistance. Such mass protests and activism have in some countries led to national enquiries, legislative reforms and other efforts at addressing the shortcomings of the criminal justice systems.

Another important trend over the last years which has accelerated during the pandemic has been the increase in online victimisation, with steep increases in online hate crime, sexual and other types of harassment and threats on the basis of gender and other grounds. The difficulties of victims accessing support and protection are exacerbated with online victimisation and often victims decide not to seek such services.

In terms of state responses and standard setting, a third key trend with regards to victims, is the increasing impact of human rights law and regional and global monitoring bodies, as well as the adoption of binding and non-binding instruments at regional level, in particular in Europe (both at EU and Council of Europe level). Binding provisions on protection and assistance to victims also exists under the Protocol to Prevent, Suppress and Punish Trafficking in

Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The developments in victim assistance in international criminal justice bodies are also worth noting for their impact on national criminal justice systems.

However, globally, the challenges to provide victim assistance, protection and support remain, with limited attention and resources invested in delivering sustainable systems for all victims of all types of crimes, beyond the essential services provided to particular groups of victims or victims of particular types of crimes.

Second, with regard to the protection of witnesses, it is evident that the ability of witnesses, both lay and expert, to cooperate with law enforcement and prosecutors, particularly to provide evidence in court is crucial to the effective functioning of criminal justice systems, and to the successful investigation into and prosecution of crime, in particular organized criminal groups. However, obtaining the cooperation of witnesses remains one of the great challenges for law enforcement and prosecutors, when witnesses are either actually threatened with harm or have reason to feel that their cooperation may threaten their security and that there will be no response or support for the criminal justice system. States parties to the Convention on Transnational Organized Crime (UNTOC) and the Convention against Corruption (UNCAC) are obliged to take measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings. An analysis of the review of implementation of art. 32 of UNCAC in 156 countries showed that witness protection measures are available in the majority of countries, although no measures had been taken in a number of jurisdictions and a number of States parties did not have a comprehensive witness protection

system but only limited and fragmented measures, mostly lacking procedures for the physical protection of witnesses, experts and their families. Among the challenges identified in the protection of witnesses were inadequate normative frameworks, the costs of witness protection programmes, limited awareness of state-of-the-art measures and practices for witness and expert protection, and weak interagency coordination and limited capacities.

Finally, with regard to improving the effectiveness of investigations, through a professionalisation of interviewing methods, as called for by the Kyoto Declaration, there is a global trend towards adopting so-called investigative interviewing methods. As a follow-up to the recommendation of the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, in his last report in 2016, to develop guidelines to replace coercive interrogation by rapport-based interviewing and implementation of safeguards, a group of international experts developed the Principles on Effective Interviewing for Investigations and Information Gathering (Mendez Principles). Investigative interviewing is an evidence-based method which has proven results in terms of quality of investigation – more accurate and reliable information collected - and human-rights compliance – less risks of torture, coercion and false confessions. Evidence shows that this approach can be used in investigating all categories of crime and interviewing both victims, witnesses and offenders.

All of these advances contribute to advancing access to justice for all and implementing State obligations under international law and UN standards and norms in crime prevention and criminal justice.

I look forward to listening to our distinguished panelists.

Thank you for your attention