
REPORTS OF THE COURSE

GROUP 1

EFFECTIVE CRIMINAL JUSTICE RESPONSES TO CHILD ABUSE AND DOMESTIC VIOLENCE

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I. INTRODUCTION

The Group was assigned to discuss “Effective Criminal Justice Responses to Child Abuse (herein after referred as “CA”) and Domestic Violence (herein after referred as “DV”)” and conducted its discussion in accordance with the following agenda:

1. Problems inherent in the investigation/adjudication of CA/DV
 - (i) Criminalizing CA and DV
 - (ii) Evidential sparseness
 - (iii) Need for a multidisciplinary approach to victim protection and support
2. Beginning of Investigation
 - (i) Means to induce and maximize reports from relevant agencies, personnel, etc.
 - (ii) Ways and extent of criminal intervention
3. Technical improvements of criminal justice procedures
 - (i) Prioritizing victim safety
 - (ii) Speediness
 - (iii) Obtaining valid and admissible testimony from children/DV Victims
 - (iv) Minimizing secondary victimization
4. Effective dispositions
 - (i) Desirable dispositions
 - (ii) Utilization of diversion
 - (iii) Holistic legal approach (Ex. Unified Family Court)

II. PROBLEMS INHERENT IN INVESTIGATION AND ADJUDICATION OF CHILD ABUSE AND DOMESTIC VIOLENCE

The Group first reviewed the problems inherent in investigation/adjudication of CA/DV such that those problems set the limit to criminal justice intervention.

The first subtopic, criminalizing CA and DV literally limits the authority of criminal justice agencies because criminal justice agencies are basically institutions for pursuing the criminal responsibilities of offenders. The Group considered three points, (1) there are two types of offence, generic and procedural, (2) in which laws the acts of CA/DV are prescribed as crimes and (3) to what extent should psychological

violence and neglect be criminalized.

In regard to the first point, the Group identified generic offences in CA/DV as, in accordance with the United Nations guidelines, physical, sexual and psychological violence for DV and with the addition of neglect for CA. The procedural offences in CA/DV are those offences which penalize disobedience of protective legal measures, such as a restriction order, to further condemn those acts of CA/DV.

For the second point, the Group agreed that formality of the law is irrelevant as long as the necessary acts of CA/DV are prescribed as crimes. In Zimbabwe, there are two types of law, traditional law and modern law. Ms. Muronda (Zimbabwe) said that in traditional law, CA and DV are not criminalized and people generally follow traditional law. The participant from Indonesia, Ms. Irene, said that in her country CA/DV are increasing in numbers. As a result, Indonesia enacted new legislation in September 2004, the “Domestic Violence Protection Act”. Ms. Turcios (El Salvador) said that her country criminalizes DV in a special Domestic Violence Act but CA is criminalized only in the Penal Code. Law reforms in El Salvador are not easy. Mr. Lim, participant from Cambodia, said that CA/DV are considered as a private matter in Cambodia. There is no specific law dealing with CA/DV. Such offences are normally dealt with as rape, assault and murder and these are criminalized in Cambodia by the Penal Code. Mr. Hossam, the participant from Egypt, said that there is no specific law of CA/DV because it is criminalized under the Penal Code. Mr. Aoki and Mr. Yokoyama, participants from Japan, said that Japan enacted special laws for CA/DV but these are not to criminalize the violent act itself and criminalization is stipulated in the Penal Code.

Most of the participants agreed that acts pertaining to CA/DV should be criminalized. The fact that the violence takes place within a marriage or a family is irrelevant. CA/DV should be taken as seriously as other crimes of violence.

For the third point of discussion, most of the participants said that neglecting children constitutes a crime but most countries do not criminalize neglect of a spouse. In Japan, however, neglecting a spouse could be a crime when a person abandons his/her spouse who is in need of help by reason of senility, immaturity, deformity, or illness.

Psychological violence is not criminalized in most countries either. However, if the verbal abuse is so grave, it may constitute the crime of threat (intimidation). Also, if the psychological damage became so serious to reach the point that doctors could diagnose it as post-traumatic stress disorder (PTSD) or some other illness, it may constitute the crime of bodily injury (Japan).

Mr. Lim (Cambodia) and Mr. Hossam (Egypt) pointed out the evidential and investigation difficulties in cases of neglect or psychological abuse if those were criminalized. Yet considering the grave damage caused by those acts, guidelines pertaining to the criminalization of neglect and psychological violence should be put into place.

Subtopic two is evidential sparseness. There may be some difficulties in gathering evidence of CA/DV, particularly in cases of repeated abuse. The difficulties are:

- There may be lack of witnesses because the offence was committed in a private setting, or the wife/children as the victim may be the only witness.
- Difficulties in determining whether the injuries were accidental or were the result of violence.
- The victim (wife/child) may wish to protect the offender (husband/parent, guardian).
- The victim may be unable to report the violence because of such factors as fear and dependency.

Due to the difficulties mentioned above, in some countries, such as Indonesia, evidential law is eased for the prosecution such that a single witness is sufficient to prove a case of CA/DV when a regular crime requires corroborating evidence. Most of the participants also confirmed that for CA/DV, a single witness is normally sufficient to prove the crime.

However, as Ms. Muronda (Zimbabwe) said, the crucial problem of evidential sparseness in CA/DV is not about the amount of evidence to be submitted to trial because if the case is being prosecuted, that means the prosecutor found enough credibility in that evidence. The problem in CA/DV is that the evidence is so scarce, such that the investigator cannot distinguish the cause of the incident as intentional abuse or an

accident, thus it is hard to proceed it as a criminal case. In these aspects, the level of evidential sparseness sets another limit to criminal justice intervention in CA/DV cases.

For subtopic three, reflecting the above two limitations of criminal justice agencies to handle CA/DV cases, all participants agreed that there is a need for a multidisciplinary approach to victim protection and support. Victim protection and support is needed not only in terms of practical living support but also emotional support. Even during investigation/adjudication, it is necessary for criminal justice agencies to work together with other fields such as social workers, educators, psychiatrists and medical personnel to make a proper assessment of the case to deliver the most plausible outcome. Victim support is necessary for both the short and long-term period, but some participants stated that their state lacks sufficient finances for long-term support.

III. BEGINNING OF INVESTIGATION

The first subtopic was means to induce and maximize reports from relevant agencies, personnel, etc. As Mr. Lim (Cambodia) analyzed, the Group agreed that criminal agencies come to know about the incident of CA/DV from the report of the victim, eye witnesses or relevant agencies.

To maximize the reports from victims, Ms. Turcios (El Salvador) pointed out, and the Group agreed, that at first the victim needs to know what has been done to him/her, so promoting education/public awareness of the mechanism of abuse is important.

The Group also agreed that priority should be given to protect the victim after the incident has become known to the police so victims do not have to fear their lives are endangered because of reporting. At least for the police, Ms. Turcios (El Salvador) said that the police need to respond to an emergency call or they could be held accountable for neglecting their occupational obligations. Also to not embarrass victims of sexual abuse or of marital rape, Mr. Yokoyama (Japan) proposed for police to assign female officers to receive the complaint. In regard to that proposal, the Group generally agreed on the importance of having a special unit of police to be well-trained to handle CA/DV.

On the other hand, Mr. Lim (Cambodia) pointed out the fact that many victims of CA/DV do not want to report an incident fearing that the perpetrator, who tends to be the person earning the means of living in the household, may be kept in custody thus leaving the household without any income. Therefore, to assess the true needs of victims and not to go overboard with excessive criminal intervention against the victims' will, Mr. Hossam (Egypt) stressed the importance of good judgement in each criminal proceeding by receiving help from other disciplines such as welfare services and psychiatrists.

To maximize reports from eye witnesses, Ms. Muronda introduced the Zimbabwean practice of anonymous suggestion boxes. Also, if the witness takes the injured child to hospital, the law requires the incident be reported to the police before the hospital treats the child on the state's expense. To expedite reporting to the police and hospital treatment, Mr. Hossam stated that in Egypt, there are police officers present in every public hospital.

Ms. Turcios spoke about the Salvadorian practice to obligate medical professionals to report suspected incidents of CA/DV to the police instead of the victim or witnesses having to report the incident. Mr. Hossam also added that it is the same for private hospitals in Egypt. By obligating, the Group also found that it is necessary to exempt these reporters from their professional confidentiality obligation. Further, the Group generally agreed to obligate not only medical personnel but to obligate school/kindergarten teachers, welfare agencies, or other relevant agencies to report to the police. The establishment of the before mentioned special unit of police and notifying its hotline number to those relevant agencies should make it easier for them to report.

The second subtopic was ways and extent of criminal intervention.

The Group based its discussion on the Canadian policy of mandatory arrest when there is evidence to indicate CA/DV. However, at first, the Group found that the term "arrest" infers different legal contexts depending on the system. Therefore, the Group decided to use "mandatory intervention" instead of

“mandatory arrest” to mean “mandating police officers to initiate a criminal investigation on the reported incidents of DV or CA”.

The Group did not reach agreement on three points. First, there was no consensus whether to deal with DV similarly to CA. An opinion was raised that the victims’ opinions should be respected in DV cases with regard to handling the case criminally but the policy of mandatory intervention should be applied in CA cases. This is due to the fact that victims in DV are mature enough to be able to make an informed decision, whereas victims in CA cases are often very young and need protection.

A second point of disagreement was whether to mandate police officers to intervene in every incident as a beginning of criminal procedure. In this, Mr. Nagai (Japan) disagrees with a mandatory intervention policy given the current Japanese criminal justice practice which has a possible detrimental effect on future family reintegration. Therefore, he considers the police should be given the discretion on whether or not to intervene. Irene also suggested that police should not be mandated to intervene in all cases of DV.

Mr. Aoki (Japan), on the other hand, believes that the prosecutor should make the decision whether or not to go further with the criminal procedure when he/she prosecutes the case. He says the decision of whether or not to intervene criminally should not be left entirely to the police’s decision because the prosecutor would have more information as a result of investigation and could assess the needs of the particular family better. Ms. Muronda (Zimbabwe) also suggested that a mandatory intervention policy should be affected in all cases of CA/DV since criminal intervention has deterrent effects and could serve to modify the abuser’s behaviour.

The third point of disagreement was whether there is need to take offenders into custody. Ms. Turcios (El Salvador) suggested that perpetrators should be detained for the victim’s safety but for a short time only and there should be respect for human rights. Mr. Hossam (Egypt) indicated that victim protection should be given priority. He then preferred to respond in terms of restriction orders instead of detaining the offender.

IV. TECHNICAL IMPROVEMENTS OF CRIMINAL JUSTICE PROCEDURES

At first, the Group discussed the first two subtopics together; prioritizing victim safety and speediness of criminal justice procedures, because the Group agreed that delays in the criminal justice system compromise victim safety.

So in order to achieve speediness and not to sacrifice the victim’s needs, the Group agreed that criminal justice agencies need to be aware of the victims’ needs for safety, security and a restored sense of well being. There also is a need to change the attitude of criminal justice agencies towards the offences of CA/DV. Criminal justice agencies that are in contact with potential victims should be specially trained to recognize the signs of CA/DV. They also need to know the appropriate steps to respond to the problem.

There also were several suggestions to prevent re-offending and thus protect victims from further violence. The first strategy is to reduce the offenders’ access to means of violence. For example, where the abuse is mainly linked to firearms, there is a need to limit accessibility to firearms. Likewise, where violence is linked to alcohol, there is need to reduce availability of alcohol. One of the visiting experts, Dr. Butchard, introduced in his lecture a study, which found this method to be very effective to reduce the prevalence of abuse and thus protect victims from re-victimization. Secondly, Ms. Muronda (Zimbabwe) suggested that making a database on CA/DV offenders would make follow-ups by law enforcement easier. She said that many countries lack such a database but this database, if made not only after conviction but right after arrest or prosecution may benefit courts to see whether the offender went through behavioural changes because of criminal intervention and then may make wiser decisions in the selection of punishment or other means of rehabilitation.

In terms of speediness, it was generally agreed that cases of CA/DV have to be dealt with speedily. However, in some countries, for instance, the police may lack even basic tools, such as transportation. Ms. Muronda (Zimbabwe) raised this problem, that it is difficult to process cases quickly due to the overload of cases compared to the few number of police officers, prosecutors and courts. However, considering victim’s safety issues, an opinion was offered that the police need to respond to the initial report of the incident as

soon as possible to assess the seriousness of the case and even if there are not enough officers to dispose of the case quickly, the police, by cooperating with welfare agencies, need to follow-up on the case in a timely manner to make sure the victim is not endangered.

Also, Mr. Hossam (Egypt) said that the first intervention does not have to be a criminal intervention. He added victims of violence and abuse require practical, emotional and legal support. These may not be given by criminal justice agencies but may be obtained by networking with various agencies such as health, social welfare and non-governmental organizations. Mr. Lim (Cambodia) also agreed that these organizations complement each other in their activities, thus, ensuring the victims' safety. Networking is thus advantageous in meeting the victims' short-term and long-term needs. Ms. Irene (Indonesia) also added that legal intervention, such as a protection order, injunction or interdict, can also be put in place to ensure the victims' safety even if a speedy criminal response is not possible. The advantage of such an order is that these orders prevent perpetration of violence on the victim without penalizing the perpetrator.

Mr. Yokoyama (Japan) remarked that delays in the criminal proceedings may not always contradict victim's safety because victims may be traumatized to such an extent that they are unable to testify. Delays are also occasioned by the fact that some of the witnesses of CA/DV may be too young to testify. There is a need to establish a rapport with the child before commencement of trial; this could also result in a delay.

In general, the Group agreed that the criminal justice procedure needs to respect the offenders' rights but the Group also agreed to Ms. Deol's, the visiting expert's comment, that protection of the accused should not jeopardize the victim's safety. To make a compromise between the offenders' right to a speedy trial with the possible delays of a court date due to the victim's incapability to testify, Ms. Turcios introduced the Salvadorian practice to allow the prosecution to postpone the trial date one time for a reason but not a second time for the same reason. The Japanese members of the Group also introduced the Japanese evidential rule that allows, under limitation, usage of victims' statements taken at the investigative stage instead of court testimony where the victim is unable to give proper facts due to psychological strain.

For the third topic, obtaining valid and admissible testimony from children/DV victims, in some countries, such as in Indonesia, the spouse is not allowed to testify under an oath thus theoretically has limited credibility compared to testimony given under oath. However, since this limitation is a legal categorization of testimony and judges have authority to determine the credibility of particular testimony in relation with other details of the case, the lack of oath does not present any problems with admissibility of such testimony.

In terms of child witnesses, some countries, like Egypt have similar legal limitations such that a person under 14 years old cannot take the stand in a trial as a "witness". However, Mr. Hossam (Egypt) added that even a child under the legal age may make a statement in the court as a different category of evidence thus this age limitation does not present any problems with admissibility of child witness testimony.

In terms of validity of the context of testimony, the Group did not find the particular necessity to view DV victims any different from other adult witnesses in other types of crime. Mr. Hossam (Egypt) considered the issue of psychological strain on DV victims to present private issues in a public trial thus the Group decided to address the issue under the subtopic of "minimizing secondary victimization".

For child witnesses, Mr. Yokoyama (Japan) raised two possibilities for the child to give false statements. First, the child faces the psychological burden of presenting negative statements against the offender, the parent of the child. This point overlaps with the psychological strain of DV victims; therefore, the Group addressed the issue of minimizing secondary victimization. The second possibility is the suggestibility of a child to adult opinions. Ms. Turcios also explained that in El Salvador, some mothers pressure their children not to testify against the defendant; the father. She suggested that there is a need for the involvement of social welfare services in the initial stages of investigation, to protect the victims. In this context, Mr. Yokoyama (Japan) suggested the need to educate the legal importance of the statement to initial interviewers. Ms. Muronda (Zimbabwe) introduced her country's "victim friendly practice". This practice is to question the child through an intermediary or interpreter who is trained to work with children. This practice may allow the intermediary to block prosecutors or defence counsel's suggestive questioning.

The last subtopic for technical improvements of criminal justice procedure is to minimize secondary

victimization. The Group understood the meaning of “secondary victimization” as victimizing the victim by having him/her go through the criminal justice procedure.

In the context of giving testimony at trial, Ms. Irene (Indonesia) said that a video link system is useful for obtaining valid testimony from children and the victims of DV. Members from Japan stated that some technological improvements in most countries have actually enhanced victims’ safety when testifying for instance:

- (i) the use of a screen;
- (ii) the use of Video-link; and
- (iii) the recording of evidence by the court in the absence of the accused.

Where countries are not technologically advanced, they have developed alternative strategies which seek to protect the victim. Many allow cases of CA/DV to proceed behind closed doors away from the public.

The Group also recognized the need to try to make full use of expert testimony or other means to prove the case without the victim’s statement so criminal justice agencies can minimize the number of cases in which the victim has to go through the criminal justice procedure.

V. EFFECTIVE DISPOSITIONS

The subtopics were: desirable disposition, utilization of diversion and holistic legal approach but the Group discussed all issues together as possible dispositions.

Ms. Muronda (Zimbabwe) suggested that pre-trial diversion is preferable because there are a number of situations where a prosecution does not meet the best interests of the victim, the offender, the criminal justice system and society. In terms of diversion, Ms. Turcios introduced three types of diversion in El Salvador. First, when the accused admits the offence, the prosecutor or court may suspend the procedure under the condition to refer the offender to some rehabilitation programme such as drug rehabilitation or alcoholics anonymous. Second, where the offender pleads guilty, he/she may be diverted to a rehabilitation programme instead of incarceration. In this procedure, the penitentiary judge is to intervene when he/she finds it necessary to protect the rights of the victims. However, the problem in El Salvador is that there are no officers to assist the judge thus the judge is over-burdened to make proper decisions. Third, conciliation, or mutual agreement between the offender and victim, could suspend the procedure even if the offender does not admit his/her conduct. Ms. Turcios pointed out that there is a need for the involvement of an officer to ensure the victim’s free will but the current Salvadorian system lacks such a process.

Ms. Muronda (Zimbabwe) said even when the case is not suitable to incarcerate the offender, there should be some way to hold the offender accountable for his/her conduct. In this context, she offered an example of Zimbabwean practice to order the perpetrator to compensate the victim. The Group generally found this compensation practice favourable and believed it would give the victim a benefit from the criminal justice system unlike in the past where he/she had been just used as evidence to prove the state’s case without any reward. However Mr. Yokoyama (Japan) questioned the realistic advantage of a compensation order in the case of CA/DV where the income of the offender and victim are common if the victim is not separated from the offender.

The Group generally agreed on the need to rehabilitate offenders alongside of compensation to prevent re-offending. In this context, Mr. Aoki said that in Japanese practice, the public prosecutor has no means to follow-up on the offenders after suspending the prosecution. Mr. Aoki realizes the importance of diversion to rehabilitation programmes but said that it would be difficult to obligate offenders to go through such a programme under current laws without a conviction. Mr. Yokoyama (Japan) indicated the difference between the purpose of the criminal justice system and rehabilitation programmes. He stated that the criminal justice procedures are designed to clarify the facts and the extent of criminal liability for offences committed in the past but rehabilitation needs to assess the future thus it may go beyond the ability of criminal justice agencies. In addition, he said, to determine from various options including diversion to rehabilitation programmes, it is necessary for the criminal justice agencies to consult psychologists or someone with expertise on CA/DV to make an appropriate decision. The Group then agreed on the need to collaborate with outside agencies.

Members disagreed with the idea of a unified court to handle criminal cases and civil cases together because of the legal difficulty of combining two types of procedures together. Mr. Hossam (Egypt), however, offered a favourable opinion about one court to deal with criminal and its relevant civil case simultaneously. The other members saw a difficulty with the idea because it still requires changes in the law of jurisdiction of courts in most countries. Instead, Mr. Aoki (Japan) said it would be better to utilize the result of criminal proceedings in related civil suits.

VI. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

The Group agreed on the general importance of education/public awareness of the mechanism of abuse but as criminal justice agencies, the Group agreed that:

1. Acts pertaining to CA/DV should be criminalized.
2. There is a need for a multidisciplinary approach for victim protection and support.
3. Victim protection should not compromise the accused's right to due process and a speedy criminal procedure.
4. There is a need to rehabilitate offenders to prevent re-offending.

B. Recommendations

The Group, emphasizing the international perspective on the issue of CA/DV obtained from this training course and through discussion among members, agreed to make the following recommendations:

1. Criminalize CA/DV acts to ensure the purposes underlined by relevant UN instruments.
2. Train all stakeholders of the criminal justice system who deal with CA/DV.
3. Cooperate and collaborate with other agencies outside of the criminal justice system.
4. Search for a possibility to develop programmes to treat offenders.
5. Utilize experts and technological improvements for better performance as criminal justice agencies.