

GROUP 3

MEASURES FOR THE VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS WITH SPECIAL ATTENTION TO VICTIMS OF ORGANIZED CRIME

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I. INTRODUCTION

Group 3 started its discussion on 22 January 2010. The group elected by consensus Mr. Araki as Chairperson, Mr. Reyes as Co-Chairperson, Mr. Durrani as Rapporteur, Mr. Sulaiman and Mr. Yokose as Co-Rapporteurs. The group, which was assigned to discuss “Measures for the victims of crime at the each stage of the criminal justice process with special attention to victims of organized crime”, agreed that since organized crime is a very vast subject, it might not be possible to cover all its aspects. Keeping this limitation in mind, the group unanimously decided to focus on human trafficking, as it is emerging as one type of organized crime which is affecting almost every country in one way or another. After having agreed on human trafficking as the main subject of the group discussion, the group conducted its discussion in accordance with the following agenda:

- 1) Definition of Human Trafficking;
- 2) Current situation with regard to the treatment of victims of human trafficking in participating countries;
- 3) Measures and counter-measures in place to alleviate the sufferings of victims of human trafficking;
- 4) Conclusion;
- 5) Suggestions.

II. SUMMARY OF THE DISCUSSION

A. Definition of Human Trafficking

The discussion started with the definition of organized crime and human trafficking as one of its components. As compared to ordinary crime, organized crime involves planning and co-ordinated execution among the tentacles of the organized criminal groups. It is transnational in nature. In the case of human trafficking, there are normally two or more countries involved i.e. the country of origin (from where the victim is trafficked), the transit country (through which the victim is trafficked) and the destination country (country to which the victim is finally trafficked). The group also attempted to differentiate between human trafficking and migrant smuggling. The participants opined that in the case of migrant smuggling, the smuggled persons’ consent is crucial. On the other hand, there is always an element of deceit, intimidation, coercion or enticement in cases of human trafficking.

B. Current Situation with regard to the Treatment of Victims of Human Trafficking in Participating Countries

Japanese participants were of the view that Japan could be a destination country for the victims of human trafficking. Since there is growing global concern regarding human trafficking, the Japanese government should adopt a proactive approach in order to identify the victims of human trafficking in Japan and provide

them with necessary assistance before their respectful deportation to their countries of origin. The group shared the concern that the trafficked persons, when detained in transit or destination countries, are, invariably, treated as illegal residents (immigrants). They are subjected to the same kind of harsh and inhuman treatment that is meted out to the offenders, which makes them victims of secondary victimization at the hands of law enforcement authorities. Once viewed as illegal immigrants, the victims of human-trafficking lose all prospects of respite. Even though they are provided with immediate assistance such as medical care and food, the victims (trafficked persons) do not receive any other assistance which might include legal assistance, safe accommodation, translators, etc. A few participants disclosed that those adults, who, of their own volition, opt to be trafficked, or smuggled, are prosecuted upon their apprehension in their country of transit or destination. They are also prosecuted in their original country upon their return after deportation from transit and destination countries.

Participants from a few countries informed the group that there was no state compensation for victims of any crime in their countries. However, if a victim suffers financial damages, his or her loss is compensated from the recoveries made from the offenders. In the case of human trafficking, the same procedure is adopted. Since the offenders of organized crime are very difficult to detect, poor victims end up being victims of multiple victimizations. Pursuant to ratification of the UN conventions, some countries made new special or specific laws relating to the victims of human trafficking, but they were found to be either insufficient or followed no strict enforcement.

C. Measures and Counter-measures to alleviate the Sufferings of Victims of Human Trafficking

Following local legislation, some countries adapted measures for the victims of human trafficking. National level agencies were established to identify and protect potential and actual victims. For instance, in Nigeria, the National Agency for the Prohibition of Trafficking in Persons is equipped with necessary material assistance for victims of human trafficking, especially those who are deported from transit and destination countries. The agency also provides other assistance such as legal and psychological counselling for traumatized victims. However, meagre resources adversely hamper the activities of the Agency. Participants from other countries also quoted the scarcity of resources to be the major impediment towards adherence to national and international commitments with regards to treatment of trafficked victims.

III. CONCLUSION

The group unanimously agreed on the fact that the existing laws were not sufficient to protect victims and witnesses at all stages of the criminal justice process with respect to organized crimes. Even if there are laws, their enforcement is defective. The main emphasis and focus of the law-enforcement agencies is to arrest, prosecute and punish offenders (agents) of trafficking-related offences. Little attention is paid to the sufferings and plight of victims, particularly at the investigation stage, which renders them victims of secondary victimization. The group opined that new legislation was required which should be aimed at protecting the victims of this organized crime. Victims of human trafficking should be treated as victims regardless where apprehended. Their treatment as offenders subjects them to secondary victimization which is against the very spirit of international and national legislation. The group also shared the alarming concern that there was no state compensation for the victims of organized crime in some countries.

A. Suggestions

After thorough and detailed discussions on the sensitive issue of victims of human trafficking, the group suggested the following short and long-term measures.

B. Short-term Measures

1. Special Units entrusted with the task of providing protection and safety to the victims and witnesses of organized crimes should be established;
2. Officials associated with the criminal justice system, especially at the investigation stage, should be trained in such a way to bring about behavioral and attitudinal changes in their treatment of victims of human trafficking. Sensitization of such individuals to the sufferings of victims of human trafficking is essential for the success of any measure. The government should improve upon the existing measures to make them more victim-friendly and comfortable;
3. More co-ordination and co-operation amongst various agencies/organizations in collaboration with

NGOs/civil society organizations should be streamlined by the national commission for prohibition of human trafficking in each country;

4. Awareness-raising campaigns should be launched targeting the potential victims, particularly more vulnerable groups, to educate them on all aspects of this crime. Different aspects of this crime, such as risk to life and health, should be highlighted in such awareness-raising campaigns;
5. Vulnerable and weak groups such as trafficked children and women should, in no case, be treated as offenders. If and when detained, they should not be confined and should be provided with all possible material assistance including psychological, social and legal counselling. Efforts should also be made to ensure that the victims are notified of their above-mentioned rights;
6. The affected countries, including country of origin and destination, should post representatives on a reciprocal basis who would liaise and oversee the treatment that is meted out to the victims hailing from his or her country.

C. Long-term Measures

1. The group suggests the establishment of an administratively and financially autonomous national level committee entrusted with the exclusive task of ensuring provision of immediate assistance to the victims of organized crime, particularly, human trafficking. In addition to the rehabilitation of victims, the committee should also devise ways to ensure restitution/compensation to the victims;
2. Best practices of victim treatment from countries should be replicated, even if they do not relate to the victims of human trafficking;
3. A national commission for prohibition of human trafficking, comprising legislators, academics, intelligentsia, representatives of I/NGOs and seasoned criminal justice practitioners, should re-visit/re-assess the existing substantive and procedural laws relating to human trafficking and its victims. They should suggest amendments as they deem fit for the victims of this inhuman crime;
4. The affected countries, i.e. origin, transit and destination, should maintain close co-ordination with one another. Bilateral and multilateral MOUs (Memoranda of Understanding) should be signed between these countries aimed at treatment of human trafficking victims with compassion and respect, even though these victims might emerge *prima facie* as offenders (illegal residents);
5. These MOUs should also include provision of informal mechanisms of information-sharing relating to the identification and protection of victims of human trafficking;
6. Private sector participation should be ensured and multi-national companies should be co-opted to extend social assistance to the victims of human trafficking;
7. An independent national institute should be established to conduct studies in victimology with special reference to the victims of organized crimes, including human trafficking;
8. The respective governments should create crime victim funds. A reasonable percentage of proceeds from the executed fines received from the defendants of all types of crimes should be deposited into such funds and compensation to the victims should be made from such funds;
9. In addition to creation of crime victim funds, it is also suggested that the proceeds received or recovered from the confiscated items of the offenders of organized crimes should also be used for compensation and restitution to victims.