

Experts' Roundtable
Human Rights Council 54th session

If they know, we will not be safe, they will look for us, they will follow us until they find us

Improving victims and witnesses' protection in accountability and truth-seeking processes

9 October 2023

Introduction

Victims and survivors of human rights violations and abuses are frequently prevented from accessing justice because of fear of retaliation, in particular when the perpetrators are state actors. This fear is exacerbated by the non-existent or defective framework for victims and witnesses' protection in many accountability and truth-seeking processes and in particular the requirement to disclose their identities in many national, regional and international legal proceedings, without adequate protection measures in place. This practice constitutes, in fact, one more barrier to justice for victims and survivors. More can and must be done to protect victims and witnesses, and to uphold their right to pursue justice, without fear.

This closed-door roundtable brought together experts and leaders in the field to identify (1) a set of recommendations for courts, tribunals and treaty bodies, and (2) concrete actions that can be undertaken immediately and with limited funding in order to improve protection of victims and witnesses in accountability and truth-seeking purposes.

1. Survivors' experience with seeking justice and truth telling.

The roundtable was opened by interventions from survivors unfolding the harrowing experiences and barriers faced when seeking justice for conflict-related atrocities. They raised key issues such as pervasive fear of intimidation and reprisals, systemic and socio-political barriers, and concerns over obtaining justice, which is often discriminatory and relies quite heavily on access to resources. Challenges such as lack of political will to address specifically conflict-related sexual violence (CRSV) and inadequate methods to document human rights violations, were also highlighted.

The testimonies underscored the vital need for accessible reporting platforms for victims and witnesses; comprehensive protection, including confidentiality and security measures to ensure the safety of witnesses who fear retaliation; holistic and long-term support for survivors, including psycho-social support services; capacity building for organizations and justice actors to undertake documentation work; funding and support for grassroots organisations to continue raising awareness on issues of sexual and gender-based violence (SGBV) and CRSV. Survivors also reminded the group of the importance of including men and boy victims in the discussion on SGBV.

2. Discussion

The discussion was opened with an overview of good practises on victims and witnesses' protection by international and/or regional tribunals and human rights mechanisms, at procedural and jurisprudence level.

In their discussions, survivors and experts expressed their concerns regarding institutional challenges related to survivor protection and legal system weaknesses, such as Ukrainian survivors being unable to access justice under universal jurisdiction. They also shared their concerns over emerging challenges, such as the increasing presence of non-state armed actors, which debilitate a country's legal apparatus. Experts stated that in specific contexts, issues of access to justice must first be tackled at the national level, before being addressed at the international level. The need to monitor the establishment and work of transitional justice mechanisms, where applicable, in a way that allows for victims to come forward and feel safe was also mentioned.

Historical judicial institutions, such as those in Guatemala and the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, were spotlighted to showcase victim-centred approaches that could guide protection strategies in contemporary and forthcoming contexts. However, a challenge was underscored that protection schemes, utilized by international tribunals, may not be effectively replicable across different settings. Furthermore, the political will of member states to enhance witness protection can support victims and witnesses’ participation, experts agreed, while the lack of it can undermine the whole process for accountability and truth telling.

The dialogue converged on the need to revitalize advocacy from grassroots to high level as a pressing need, in order to achieve legislative and practical measures of protection; to leverage past successes through lessons learned and best practices; and to enhance collaborative efforts to fortify protection for survivors by strengthening engagements with UN Treaty Bodies and collaborating with mechanisms attached to the Security Council.

3. Domestic, regional and international human rights and criminal justice mechanisms: state of victims and witnesses’ protection and recommendations

Beyond international or domestic tribunals, experts also discussed access to UN Treaty Bodies and human rights mechanisms through individual complaints and inquiry procedures. Under the current practice, victims cannot submit complaints without their identity being disclosed to the state concerned, thus they are exposed to risks of reprisals. The need for Treaty Bodies to interpret their rules of procedure in a creative way, allowing victims to denounce atrocities, without undermining the rights of the concerned state was highlighted. The use of technology in a way to adjust the work of accountability mechanisms to the needs of victims was also mentioned.

The dialogue pursued with experts debating the issue of non-alignment of domestic laws with international standards, including when it comes to definitions, such as the one of “rape”, which was set under the Istanbul Convention. Finally, concerns were raised on the weight of responsibility carried by survivors and domestic systems. Experts agreed that Security Council resolutions on women, peace and security are currently not adequately implemented, particularly on CRSV; that there should be a better use of Universal Periodic Reviews to understand the contexts in which gross violations occur; and that what comes out of the Human Rights Council should translate into national action plans.

4. Next steps

The next steps of this enriching discussion, in order to promote the protection of victims and witness in accountability and truth-seeking processes, are the following:

- **Annual expert meeting:** Following the interest in the topic during the roundtable and the expressed concern that significant challenges persist for many victims to seek justice, LAW is happy to establish a recurring annual meeting that will function as a forum to share concerns and updates, as well as to brainstorm on solutions and next steps on the topic of protection of victims and witnesses in accountability mechanisms. The next meeting will take place in the second half of 2024.
- **Legal opinion** on the protection of victims and witnesses, including the protection of their identity: As mentioned during the roundtable, LAW will publish a legal opinion on the topic in the beginning of 2024.
- **Reach out to experts:** LAW will continue bilateral advocacy with experts working in or with courts, UN Treaty Bodies and other accountability mechanisms, in order to better identify the applicable procedures, challenges, good practices and space for advocacy and change, with the aim to achieve better standards for protection of victims and witnesses.
- Last, although not discussed in the roundtable, LAW proposes that an annual survivors’ conference, organized by LAW, provides concrete input to the above-mentioned expert meeting, so that solutions identified by victims and witnesses themselves are taken into consideration.