

**CEB-IASC meeting of Investigatory Bodies on Sexual Exploitation, Abuse and Harassment in the Humanitarian Sector**  
**26 November 2018**

**Session 2: Co-chaired by OHCHR, OVRA and UNICEF**  
**Survivor/Victim-Centred Approach to Investigations: Protection of Survivors/Victims and Witnesses**

**Presentation by Francesca Marotta, Chief, Methodology, Education and Training Section, OHCHR: “Practices to ensure survivor/victim and witness protection in the context of human rights investigations into allegations of sexual violence, drawing on specific initiatives and case examples”.**

I am very pleased to join today’s discussion on the protection of victims and witnesses in investigations on sexual exploitation and abuse. The comments and practices I will discuss draw on OHCHR experience in three contexts: (i) OHCHR work in carrying out human rights investigations of sexual violence under its mandate or in support of investigative bodies such as Commissions of Inquiry and Fact Finding Missions; (ii) OHCHR work in advising and supporting national authorities on investigating and prosecuting sexual violence; (iii) OHCHR investigation of and follow up to allegations of SEA by international forces operating under UN mandates in the context of the UN response to Sexual Exploitation and Abuse.

OHCHR approach to investigations is guided by the effort to maximise access to justice and an effective remedy for victims, while minimising any negative impact the investigative process may have upon them, based on the norms and principles that Jane has outlined.

Our experience reminds us of the importance of keeping at all times in mind that victims are not a homogenous group – they have different identities, priorities and assistance needs. That we cannot make assumptions and pre-determined judgements about what is best for victims and decide on their behalf, including with regard to their needs and expectations on protection. Victims’ individual choices must be the key drivers of our interventions aimed at protection as well as accountability.

It also underlines the need to look at victims’ rights as a continuum, which cuts across all stages of prevention and response, including investigations and follow up with Member States for accountability and remedy. The protection of victims also needs to be an integral aspect of all phases of handling an allegation, from receipt of the initial report and during investigations through to reporting and cooperation with judicial institutions for corrective action.

For today’s discussion, I would like to focus on four areas among those requiring particular attention to strengthen the protection of victims in investigations.

First, in OHCHR experience, **risk assessments are essential for the protection of victims**. Where there is a risk to victims or witnesses, the expected benefits of any specific action (e.g. initiating contact or conducting an interviewing with a victim) must be carefully assessed and weighed up before deciding whether to proceed with the action. This is an essential aspect of operationalizing the ‘do no harm’ principle. **In some situations, do no harm means renouncing to pursue cases**. For example, in Somalia, when dealing with allegations of sexual violence, the human rights component is constantly constrained with regard to the protection measures that may be applied, in view of limited protection provided by local authorities and international forces, and the lack of security guarantees for victims who report. This has meant adjusting strategies to document allegations and deciding at times

not to actively seek to find victims to avoid exposing them to threats and reprisals. **Risk assessments need to be individualized, context-specific, and draw on the expertise of relevant actors**, including human rights staff and local organizations, in addition to **fully involve the victims themselves**. When needed, protection plans must be put in place.

Secondly, many of the measures applied by human rights teams relate to **protection against reprisals, intimidation and stigmatization for victims of sexual violence**, including seeking to preserve and conceal victims' identity during investigations. Some of these measures include, for instance, using strategies of discretion or visibility depending on the context. When deployed in Darfur, human rights teams often chose discretion as the standard approach to protection, which implied making all efforts not to expose victims and witnesses, for example, by reaching out to them through trusted intermediaries, walking long distances to meet them, or arranging meetings in locations where their identity could be protected.

Linked to the above are an entire range of protective measures in **organizing and conducting interviews with victims/witnesses**. Most recently, for example, the UN Fact-Finding Mission on Myanmar sought the support of INGOs and UN actors in identifying women-friendly spaces where interviews with victims of sexual violence could be held in a confidential setting. As these spaces were places where support was offered to women, and were not seen as associated with investigations, visiting them did not lead to stigma. **Victim-sensitive approaches encourage reporting**, as practice from other contexts confirms.

Protection of victims is also about **protection from psychological harm**, which is especially relevant for victims of sexual violence due to the traumatic and sometimes stigmatising experience they have suffered. Psychological care is essential to support victims overcome harm resulting from the violation, but also to prevent or mitigate risks of stress and re-traumatization associated with investigative and judicial proceedings. We need to be candid in realising investigators' bias that can further exacerbate stigmatisation of victims and increase the risks of secondary victimisation. For instance, bias may come across by questioning the credibility of the victim because of inconsistencies in her or his testimony that could equally have arisen from the circumstances of a traumatic experience.

Hence, there are many benefits of **training investigators** to guide them in their interactions with victims of sexual violence, not only to reduce the risk of re-traumatisation for the victims, but also to help them deliver stronger and more coherent testimonies. For example, in the expectation that any interviewee could potentially be a victim/witness of sexual violence, the Fact Finding Mission on Myanmar took the approach of training the entire investigations team on interviewing child victims and victims of sexual violence. Such efforts were fundamental as enabling interviewees to speak required much care and sensitivity, particularly male victims because of feelings of shame and fear of stigmatisation.

Thirdly, **clear and predictable information sharing arrangements among actors** interacting with victims and witnesses of sexual violence, exploitation and abuse are key to ensuring the prompt and effective handling of allegations and the protection of victims' rights. Where these arrangements are not in place, delays in response are inevitable, as well as gaps in the provision of appropriate assistance and advice to victims. Equally important is to **develop, and ensure the consistent application of, a shared understanding of confidentiality and informed consent standards** among all actors involved at the intake and investigation stage. In our experience, while steps have been taken in this regard, both within and outside the UN, this is an area where work remains to be undertaken, moving from ad-hoc arrangements to more general protocols on information sharing, and to harmonized and systematic application of standards related to confidentiality and informed consent.

Fourthly, while UN and humanitarian actors may find agreement on applying best practice standards with regard to victims' protection in their own investigations, a significant challenge we face in our work is to **ensure a uniform and victim-focused approach by State authorities conducting investigations**. Our experience speaks to the **importance of actively engaging with States' investigative and judicial authorities**, to generate an understanding of victims' rights and of the concrete concerns that need to be addressed – from avoiding stigmatization and re-traumatization to protecting confidentiality – and to ensure the adoption of appropriate protection measures.

Through engagement, advocacy and advisory support, we have ensured the adoption of protection measures by authorities that have enabled victims to cooperate with investigations and judicial proceedings. Victims fearing for their safety or from stigma in their local community have agreed to provide their testimony to investigative authorities, for example, when they were offered the possibility to travel to another village to meet with the authorities.

Our work in the Democratic Republic of Congo provides good examples of national proceedings having been adjusted to enable victims' participation. Introducing measures to **preserve victims' identity during judicial proceedings** is a key measure to help reduce risks of re-traumatization and intimidation by alleged perpetrators. **MONUSCO** human rights officers cooperate with judicial authorities to ensure confidentiality of victims and witnesses. Normally, the human rights component prepares a protection plan together with the victim/witness that is agreed with the magistrates. When victims/witnesses are willing to testify but afraid to do so in court, a safe house is identified close to their community, where the investigator can hear their testimony out of public sight. In some cases, the magistrate may meet the victim/witness at a location away from their residential area. In all cases, the human rights component works with local partners to identify the best option and prepare the hearing. When victims/witnesses are willing to testify in court, the human rights component engages with magistrates to put in place protection measures, which may entail using disguises for victims, having them appear behind shields or blinds, testifying from a nearby room or holding a private hearing. These measures allow victims/witnesses to participate in judicial processes without fear of reprisal.

Similar efforts are underway by MINUSCA to support the Democratic Republic of Congo in holding a **mobile court in Bangui**, with regard to allegations of SEA involving their personnel previously deployed in CAR. Alongside other MINUSCA components, the human rights component is involved in exploring options to guarantee protection for victims and witnesses during the process, for instance by identifying a secure and confidential location for the court with the possibility of victims/witnesses testifying from outside the court room using technology, such as video conference.

More recently, OHCHR has engaged with national authorities in order to facilitate SEA victims' participation in judicial proceedings in the country of nationality of the alleged perpetrators. On one side, we have sought clarification from the authorities about the details of the proceedings and the rights and protection measures that could be guaranteed to victims; on the other side, we have re-approached victims to provide such more detailed explanations to enable them to make an informed choice about their cooperation with the proceedings. Based on the more comprehensive information made available to them, some victims consented to cooperate, modifying their initial position. This example well illustrates how **victims' informed choices need to be the key driver of initiatives aimed at protecting them and at accountability**. If such more detailed information is already made available at the stage of investigations, this would go a long way towards fulfilling victims' rights to information as well as ensuring their informed consent.

In conclusion, there is a variety of practices and approaches that have proved effective in protecting the rights of victims and witnesses in investigations of sexual violence, both at the

national and international level, that can be adopted, and adapted, to investigate sexual exploitation and abuse in humanitarian contexts.