

Sixth Regional Workshop for Police Officers, Prosecutors, and Judges in South Asia on Effectively Countering Terrorism

18-20 March 2013
Kathmandu, Nepal

Key Observations of the Organizers

The “Sixth Regional Workshop for Police Officers, Prosecutors, and Judges in South Asia on Effectively Countering Terrorism” was jointly hosted on 18-20 March 2013 in Kathmandu by the Government of Nepal and the United Nations Counter-Terrorism Committee Executive Directorate and organized by the Center on Global Counterterrorism Cooperation.

The workshop, which was supported by the governments of Australia and Denmark, was a follow-up to five previous workshops (held in Dhaka, Bangladesh, in November 2009; Colombo, Sri Lanka, in June 2010; Semarang, Indonesia, in November 2010; Thimphu, Bhutan, in May 2011; and New Delhi, India, in March 2012, respectively), at which participants indicated the need to examine in further detail areas of mutual interest relating to counterterrorism.

The overall purpose of the sixth workshop was to enhance the counterterrorism capacities of law enforcement personnel in the region. The workshop provided an opportunity for participants to discuss the role of the police, prosecutors, and judges in combating terrorism and the challenges they face in leading effective investigations and prosecutions, as well as a forum for discussing effective measures aimed at enhancing domestic and international cooperation in the fight against terrorism.

Participants included experts from all member states of the South Asian Association for Regional Cooperation (SAARC) as well as resource persons from UN member states and relevant international agencies, including the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime.

The meeting focused in particular on issues related to witness protection, media and the prosecution of terrorism cases, and enhancing the capacity of the judiciary to adjudicate terrorism and other complex criminal cases.

I. Working group session for police officers

- The working group session for police officers focused on witness/law enforcement personnel protection and on specific capacity requirements in South Asia in that regard.
- The need to ensure protection of witnesses was shared among the participants who cited instances of threats and intimidation of witnesses, as well as police officers, victims of crime, prosecutors, and judges.
- In general, it was noted, that South Asian countries do not have formal witness protection frameworks or laws for the protection of victims. Despite the absence of such legal frameworks, most of the participating jurisdictions do have measures in place for limited protection, such as safe houses, security escort for threatened individuals, and provision of travel allowances for witnesses to testify.

- In the absence of specific witness protection frameworks, many of the participants indicated that they rely on general provisions relating to criminal intimidation to deal with threats to witnesses. This approach, it was noted, is generally reactive, and not proactive, as criminal intimidation provisions can only be invoked when intimidation has occurred and may not sufficiently address situations where there is an unspecified threat to the security of a witness. In some countries, directives of superior courts can be relied upon to set in place witness protection measures.
- Some countries, it was noted, are in the process of developing legislation on witness protection but those laws are several years away from adoption and dependent on the support they receive from lawmakers.
- Participants observed that the scope and extent of witness protection measures are decided in different ways and at different stages of the proceedings in different countries in the region. Factors which could lead to such inconsistencies include, for instance, varying levels of security threats, delays in and the length of criminal proceedings, costs involved in the protection of witnesses, and resource constraints.
- Participants considered a number of techniques for protecting witnesses, including allowing witnesses to give testimony by closed-circuit television or video conferencing. Some witness protection measures, such as identity protection and relocation, it was noted, are difficult to implement in smaller countries with smaller close-knit communities.
- The participants observed the importance of having an isolated or autonomous body manage protection measures but noted that most of their jurisdictions do not have such arrangements. In most cases, it was noted that officials handling protection issues do not have sufficient training and often make determinations regarding protection measures without specific guidelines or objective criteria. Participants also pointed out that there is often a lack of coordination between the police and prosecution particularly in relation to witness protection issues.
- Corruption was also cited as an important concern which impinges on the effective protection of witnesses. Disclosure of information about the identity of witnesses, at different levels of the criminal justice system, poses a serious threat to the security of witnesses, as well as to the successful prosecution of offenders.
- Although participants agreed that witness protection is an important issue for many countries of the region, they noted that scarce resources also need to be spread across competing priorities such as ensuring the security of law enforcement personnel, prosecutors, and judges.
- Interest was expressed in developing witness protection and victim support programs in a gradual manner, beginning with basic measures, consistent with needs and resources, as well as respective regional priorities.

II. Working group session for prosecutors

- The participants in the working group session for prosecutors discussed the multifaceted impact that media coverage has on the prosecution of terrorism and other high profile cases. In particular, they considered the principles of open justice, right to fair trial, right of the accused to confront the evidence against them, the role of the media, and the need to balance between these, at times, competing imperatives.
- There was great appreciation within the group of the media's role in fulfilling the public's right to know, and an acceptance of the media's right to report on ongoing investigations and prosecutions, whether or not investigators and prosecutors engage with them.
- The prosecutors acknowledged that the media can play a constructive role in high profile cases, for example, in educating the public about the criminal justice process, building public confidence in the process, and improving transparency and ensuring accountability of investigations and prosecutions.
- Most of the participants acknowledged the merits of proactively engaging the media in high-profile cases but were clear that that engagement needs to be undertaken within clear limits, and should not interfere with the obligation to ensure fair trial. The participants suggested that it is particularly important to engage with the media in the context of terrorism trials, particularly as those accused of acts of terrorism seek to influence the media in order to advance their aims and objectives.
- Although there was general agreement on this point, there was a diversity of views in terms of the nature and extent of that engagement. It was noted that most prosecutors' offices in the region do not have dedicated press officers, and frequently do not have coordinated press strategies in high profile cases either within the department or with any other relevant agency (for example, investigators, foreign offices, and central government). Some expressed interest in developing improved mechanisms for engaging with the press.
- Participants discussed the challenges associated with engaging with the media at different stages – investigation, pre-trial, trial, and post-trial
- Participants highlighted their concerns regarding the media and its presence at a crime scene, in particular, in the immediate aftermath of a terrorist attack. Prosecutors found that the lack of physical 'control' over the media, coupled with a lack of awareness on its part, had led to crime scenes being compromised through, unwittingly, contaminating the evidence, prejudicing potential witnesses, and destroying the integrity of the crime scene. The prosecutors emphasized that it is vital that the integrity of the scene is preserved, and the media should seek to conduct itself in an informed manner. The prosecutors were asked if they test their own processes through, for example, case management exercises and if such exercises include the media representatives. There is no practice in the region of such 'critical exercises,' but the group appreciated the need for such exercises and the inclusion of the media to raise the media's appreciation of these concerns. It was suggested that a possible way forward is to encourage more dialogue between prosecutors, investigators, and the media.

- During the investigation stage, participants stressed the importance of coordinating press strategies between investigators and prosecutors to minimize sensitive/confidential operational information being released or statements being made at the investigative stage that may jeopardize the accused’s right to fair trial.
- During the trial phase, the starting point for most jurisdictions was the principle of “open justice” – the principle that court proceedings should be open to the public. In some jurisdictions this principle was near absolute, but in most certain restrictions may be imposed to balance that principle with the court’s primary responsibility to administer justice.
- Participants cited a number of measures that can be taken during the trial to protect witnesses, such as, prohibiting the publication of certain evidence. In some circumstances, trials may be conducted *in camera* in cases involving sexual assault, children, or cases that rely on confidential information.
- A common theme in the discussion was that concerns with regard to the media are more pronounced in jurisdictions that have jury trials, but it was emphasized that judges themselves are not immune to prejudice from the media.
- It was also noted that the ability to engage constructively with the media relies largely on the relative “maturity” of the media and the sophistication of their understanding of the legal process. In that regard, the participants cited a number of positive developments including voluntary steps taken by the media, for example the in wake of the Mumbai attack, for more responsible reporting.
- Finally, the group also reflected on the nature of their own role as prosecutors, in particular, whether their primary responsibility lay as a government representative to ensure a successful prosecution (*i.e.* a conviction), or as an officer of the court to ensure and uphold the fairness of the process. Participants were frank in their acknowledgement of the tensions that can emerge between these responsibilities in high profile cases. In that regard, they stressed the importance of prosecutorial independence.

III. Working group session for judges

- The discussions among the judges focused on the details of a three-year UN-led project to enhance the capacity of the judiciary to adjudicate terrorism cases, and on seeking the input of participants regarding the future direction of the project.
- All participants noted the importance of training for judges relating to the management and conduct of terrorism trials, which involve complex legal issues, as well as complex fact patterns. The need for training is particularly acute in countries where counterterrorism legislation has been recently amended or adopted. While the participants noted variations in the structure of the institutions which deliver judicial training in South Asia, all agreed on the importance of training, both for new and experienced judges.

- With respect to specific topics where future training would be helpful, participants expressed interest in the following topics: guidance on the use of evidence in cross-border investigations and prosecutions; international cooperation and extradition; judicial ethics; and uniform guidelines and procedures for the handling and management of terrorism cases.
- The participants also noted the importance of training with regard to counter-terrorism financing and anti-money laundering cases. This was viewed as an important area because these laws are complex, serve an important function in the prevention of terrorism, and because some states in the region have had very few cases using these laws. In this regard, it was agreed that in any such future trainings, it would be useful to have the involvement of prosecutors and investigators who have had experience with such cases.
- In addition to formal training, the participants noted the desirability of establishing regular networks of contacts among judges both within the South Asia region and beyond. It was noted that such networks would promote the sharing of knowledge and experiences about how to manage and handle terrorism cases and would promote the effective administration of justice throughout the region.
- The participants also discussed issues relating to human rights and due process in terrorism cases. In particular, participants discussed the importance of affording the accused pre-trial release; lawful interrogation techniques; the right to effective assistance of counsel; the right to a public trial; the presumption of innocence; and the right to appellate review in various phases in the proceedings and in the event of a conviction. In this regard, it was noted that the rights of victims of terrorism should also be acknowledged and respected. It was agreed that respect for human rights and the rule of law are critical, because a failure to respect them may diminish the authority of the judiciary and imperil the administration of justice.
- The participants also discussed the importance of security for judges handling terrorism and other criminal cases. The participants noted that it is not possible for judges, as well as others working in judicial systems, to be attentive to their responsibilities when they fear for their safety, as well as that of their families. It was agreed that security for judges is of paramount importance, and that the failure to provide it would impact the delivery of justice.
- The participants also discussed the use of special investigative techniques in terrorism cases, including wire taps, electronic surveillance, aerial surveillance, global positioning devices, and undercover agents. It was agreed that these techniques have the potential to be extremely effective. However, the participants agreed that these techniques pose special challenges as they are vulnerable to abuse. Thus, the use of these techniques should be monitored for abuse.