



Cultures of silence

A study of silence towards the criminal justice system

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the criminal justice system

English summary of Brå report 2019:10

**The Swedish National Council for Crime Prevention (Brå)
– centre for knowledge about crime and crime prevention measures**

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Summary

Brå has been instructed by the Government to study the phenomenon of cultures of silence and the offence of interference in a judicial matter, and how they can be counteracted. The background of the instruction is that the criminal justice system has highlighted that it has become more difficult to persuade people to report and testify regarding criminal offences and that there is discussion of cultures of silence in some parts of society. The project aims to answer two overall questions: what motivates the silence and how can more people be persuaded to provide information to the criminal justice system?

In this study, *cultures of silence* refers to a system of norms among a defined group dictating non-cooperation with the criminal justice system. Individuals can both be influenced by cultures of silence in a group to which they belong and have *individual reasons* for silence, independent of such cultures of silence. Irrespective of the basis for the silence, what occurs is what we call here *silence mechanisms*, i.e. different reasons for silence towards the criminal justice system. The subject of our study is thus wider than cultures of silence alone.

The offence of *interference in a judicial matter* entails that a person, ordinarily through threat or violence, attempts to stop an individual from reporting an offence, providing information in a criminal investigation, or giving testimony at a trial. The offence can also apply to situations where a person has already participated and is therefore exposed to threats, violence, or some similar act.

The study has five focus areas: offences in the context of honour-based violence, domestic violence, criminal networks, offences in socially disadvantaged areas, and offences against and within organisations.

The report is based on own data in the form of interviews with crime victims, witnesses and other individuals, an analysis of convictions with preliminary investigations regarding interference in a judicial matter, and an online survey directed to public prosecutors. In addition, existing statistics and a review of the literature, particularly regarding rectification measures, have been included.

Interference in a judicial matter and influence

Briefly stated, the criminal statistics show that approximately 5,000 cases of interference in a judicial matter are reported to the police each year. This has remained relatively unchanged over recent years. Person-based clearances have declined somewhat, which is consistent with other offences. The number of

individuals convicted has also declined. In 2018, 518 individuals were found guilty of interference in a judicial matter, compared with 757 individuals in 2009.

According to our review of convictions with appurtenant preliminary investigations, most cases of interference in a judicial matter are committed in connection with the perpetrator having committed the underlying offence. Assault and robbery are clearly the most common underlying offences. The most common perpetrators are youth, men in intimate relationships, and individual criminals or networks of criminals. Of those convicted, 90 per cent are men and 10 per cent are women. The breakdown for injured parties is somewhat more equal – two-thirds are men and one-third are women. Seen broadly, the results are similar to a corresponding review which was published in 2008 (Brå 2008:8).

Operational prosecutors at the Swedish Prosecution Authority and the Swedish Economic Crime Authority received an online survey containing questions about the suspected attempts to influence injured parties or witnesses during one working week. The same survey was sent over the course of four weeks in 2018. The percentage who reported suspected attempts to influence varied somewhat over the four weeks, but was between 7 and 9 per cent. In total during the four weeks, 18 per cent, or 120 public prosecutors, stated that they perceived attempts to influence. The most common influencer was the suspected perpetrator in the matter (64 per cent of the public prosecutors stated this alternative), but it could also be a relative of the person suspected of the offence, someone entirely different, or an unknown person.

The prosecutor survey was also conducted previously with similar results. An important difference when comparing the current results with previous years is that the public prosecutors more often state that the offence was committed in socially disadvantaged areas, in the context of honour-based violence¹, or as a part of organised crime.

Eleven mechanisms underlying silence

A crime victim or witness often has multiple parallel reasons for their silence. We have identified eleven mechanisms underlying silence in respect of not providing information about an offence to the criminal justice system (see table 1). Certain specific mechanisms, or several of them jointly, may constitute particularly strong impediments. Depending on their strength, the distance to the criminal justice system may vary.

The mechanisms which carry particular weight are guilt and shame, fear of threats and violence, and loyalty or solidarity with the perpetrator.

The mechanisms have been broken down into three categories: conceptions regarding crime and the criminal justice system, emotions of the targeted victim or witness, and solidarity with the perpetrator. The instruction is based on formulating proposals for persuading more crime victims and witnesses to provide information to the criminal justice system. Given the number of mechanisms which are based on an emotion or on solidarity with the perpetrator, reducing the silence may appear to be a difficult task for the criminal justice

¹ The first two of these were not fixed response alternatives in the preceding study but were provided as open-ended question responses.

system. However, the results indicate that mechanisms which reflect conceptions regarding crime and the criminal justice system are often weighed against the mechanisms which represent an emotion for the targeted victim or witness (see table 1). For example, frightened crime victims are willing to take a greater risk if they believe that the police will treat them with respect and that reporting will lead to something, than if they lack confidence in the police. This means that the police can actually work to reduce the significance of mechanisms such as shame and guilt, or fear and worry about different types of reprisals.

Table 1. Mechanisms underlying silence

Conceptions regarding crime and the criminal justice system	Emotions of the targeted victim or witness	Solidarity with the perpetrator
Does not see the incident as an offence	Shame and guilt	Controlled by, or dependent on, the perpetrator
Lack of knowledge regarding the legal process	Fear of threat and violence	Loyalty to, or solidarity with, the perpetrator
Reporting does not give any (desired) result	Fear of bad reputation and damage to brand	Own gain and advantages from the criminality
Insufficient confidence in the police		Solve the problem through another structure

The five focus areas

Offences within the context of honour-based violence

The most important mechanisms for silence towards the criminal justice system in connection with offences in the context of honour-based violence are that the crime victim feels controlled by, dependent upon, loyal to, or solidarity with the perpetrator. In addition, fear of a bad reputation is described not only for oneself, but also for family members.

Belonging to a context where honour-based violence occurs is almost synonymous with belonging to a culture of silence. The milieu is described as relatively closed. The logic is understood to be to protect the group and to value it higher than the individual's best interests. The exit for individuals who live in a context where honour-based violence occurs is often difficult, since many times they must leave their entire social network. In certain cases, the crime victim needs to change their name, be relocated, and be protected. This can lead to loneliness which is difficult to live with, and thus some of them return to the family that exposed them to the offence. An additional risk is that they contact other relatives which, in the long term, can lead to a threat if their new identity and address information is disclosed.

Domestic violence

The most important mechanisms for silence towards the criminal justice system in connection with domestic violence is that as a result of a normalisation process, the crime victim does not designate the acts as offences, or they feel shame, guilt, loyalty, or solidarity with the perpetrator. A feeling of guilt can be incorporated into the crime victim's perception of reality through influence by the perpetrator, or they can be ashamed of not being able to solve "their own problems" *within* the relationship. In addition, in some cases, the crime victims perceive that they are controlled by, or dependent on, the perpetrator, or they feel fear that others, such as their common children, will be subject to violence.

It is difficult to talk about domestic violence as an outright culture of silence since the silence only exists among some individuals in a family and not in a larger group. The closest that one comes to a culture of silence is when even friends, relatives, or family members know about the offences but choose to remain silent towards the criminal justice system. The individual reasons for silence may, however, have equally serious consequences for the targeted individual, who does not initiate contact with the criminal justice system. The offences may have been underway for an extended period of time and may have led to serious consequences, which also makes it more difficult for the crime victim to describe concrete criminal acts if they go to the police.

Criminal networks

The most important mechanisms for silence towards the criminal justice system for offences that occur within criminal networks are described as being that these crime victims generally have their own gains or advantages from the criminality (such as status), or that they feel loyalty to and solidarity with the perpetrator, or that there is a fear of violence. In addition, the distance to the police can be perceived as great since the network itself appears to have an oppositional relationship to the police, who are perceived within the milieu as not having any positive qualities.

Belonging to a criminal network is synonymous with belonging to a culture of silence. This means that in order to openly cooperate with the criminal justice system, the individual must exit the milieu. The study shows that a will to do so may exist, particularly in conjunction with one's own exposure to crime, when one perceives a serious threat, or when one has distance from the milieu, for example while in a penal institution.

An important aspect of the criminal cultures of silence is that they can spread to persons outside of the milieu. This can take place when the group's intimidation capital² is communicated through media reporting or rumours.

The consequence can be that individuals outside of the criminal milieu do not dare to report offences or testify if they have reason to believe that the perpetrator belongs to a criminal network.

² Intimidation capital entails, above all, groups' bad reputations and ability to carry out violence. It can be enhanced through, for example, acts of violence, myths, and media attention (Brå 2016:12, cf. Wierup 2007, cf. Rostami 2016).

Offences in socially disadvantaged areas

This focus area includes offences which affect or are witnessed by residents in a socially disadvantaged area merely as a consequence of the fact that they live there. Since crime occurs relatively openly in certain areas, many residents are witnesses. The most common mechanisms for silence are stated to be fear of threats and violence, that reporting does not lead anywhere, and – particularly among younger men – a lack of confidence in the police and other public authorities.

The results show various degrees of silence towards the criminal justice system in socially disadvantaged areas. There are elements of cultures of silence and there are also individual reasons which explain residents' silence towards the criminal justice system. There are also offences which are reported and which offer an opportunity to cooperate with the police in that context, but those are beyond the scope of this study. The cultures of silence are maintained not only by criminals who, among other things, use territorial control to attempt to spread their norms against speaking with the police – even law-abiding neighbours, friends and relatives can (reasonably with the best of intentions) remind residents of the importance of remaining silent towards the criminal justice system. Stories about relatives of crime victims and witnesses being visited by perpetrators and their accomplices with such “reminders” are particularly troubling.

Offences against and within organisations

In this focus area, the study covers several different types of organisations, such as companies, municipalities, county councils, and public authorities. In order for the organisations to be relevant to our study, they must be silent towards the criminal justice system in some way. The most important mechanisms are said to be concern about a bad reputation and damage to brand, lack of trust that the reporting will lead to a desired result, and the failure to identify the acts as an offence. Certain organisations also enjoy financial benefits from the criminality, such as illicitly purchased services.

We see signs of cultures of silence in certain organisations, but often only in one, or some, of the operational lines of the organisation or in centralised functions. In addition, there are individual reasons for silence in some organisations. Several interview subjects pointed out the significance of middle managers in securing silence between different parts of the organisation. Cultures of silence are maintained with reprisals against the employees who wish to shine light on an offence. This involves social pressure and different types of penalties involving the work environment or the employee's career.

Many people want to help

Irrespective of focus area, many people want to help crime victims and witnesses, which can be seen in the quantity of, and variation in, all of the measures we identified. Non-profit organisations take significant responsibility in this respect, with activities ranging from witness support, advice, and referral to the relevant authority, to providing protected housing. Municipal actors also launch initiatives and contribute financing for some of the measures organised by non-profit organisations. The healthcare system and professional support providers work with counteracting the consequences of crime and cultures of silence. They provide support in a way other than calling the police.

When a targeted victim or witness reports an offence, the public authority's capacity to act and provide adequate support is very important. This is the case because, not insignificantly, it sends a signal to other targeted victims or witnesses (who are silent) that there is a way out of their situation. What appears to be central, particularly when atypical crime victims seek help, is that public authorities and non-profit organisations provide a broader picture of who can perpetrate crime and who can be exposed, for example that women can subject men to domestic violence.

Persons at public authorities and support persons at non-profit organisations who meet crime victims can, themselves, also suffer from a lack of confidence in the legal process. Some interview subjects describe this as the reason why they have difficulty motivating crime victims and witnesses to report offences to the police and to testify. In some cases, targeted victims or witnesses perceive that persons at public authorities and support persons at non-profit organisations explicitly advise them not to cooperate. This is a particularly troublesome result.

Brå's assessment

We have identified clear examples of cultures of silence within four of the five focus areas we studied. These cultures of silence are a problem not only for the individuals who are included but, in the long term, they also constitute a threat to democracy and the rule of law. The situation is particularly serious in the case of honour-based violence and for residents in socially disadvantaged areas, since it is difficult for people in those contexts to break out of those milieus. It is a problem which the criminal justice system cannot solve alone. Society as a whole must counteract the silence. Brå can observe that although efforts are taking place, they have not been enough. Much more must be done in order to break wider layers of silence in these groups of injured parties and witnesses.

Based on our results and the compilation of measures (see appendix 1), it is our opinion that the following measures are central in order to counteract cultures of silence and interference in judicial matters. It should be emphasised that it is difficult for the criminal justice system to rectify problems with cultures of silence on its own since, in the typical case, cultures of silence entail that individuals do not have any natural contact interface with the police. However, our material includes interference in judicial matters and reminders to those who have started to cooperate in the legal process that they are to be silent. Accordingly, in the assessment, we focus on measures which the criminal justice system should be able to take to a greater extent.

Proposals for measures with a specific focus

The results indicate that the criminal phenomena where the offence is committed *within* a group entails particular challenges for the criminal justice system and society. This applies specifically to the focus areas of offences within the context of honour-based violence and criminal networks. The clearest measures to counteract the cultures of silence within criminal networks is defector activities. Drawing on the expertise of different public authorities and providing support and protection based on the assessed needs of defectors is significant. Relatives may also need to be included in the efforts.

The measures against honour-based violence are not as well-developed and are, to a significant extent, based on the activities of non-profit organisations. A significant challenge which is described is creating new social networks for people who have reported offences and have been forced to break with their family.

In socially disadvantaged areas, present and proactive police officers are important as a counterpoint to the visible and present criminality. The police should, at a minimum, take the residents' crime problem seriously and also prioritise minor, but visible offences, in order to show that criminals do not own the area. This can increase confidence and, in the long run, lead to more information for the police. Residents emphasise that it is necessary that individuals recognise and have confidence in a specific police officer in order to dare to report offences that the individual has witnessed.

In respect of offences against and within organisations, the criminal justice system can obtain more information if it also takes more interest in intelligence tips. The results indicate that such tips are easier to obtain than outright police reports. Intelligence operations within the Swedish Economic Crime Authority, the Swedish Police, and the Swedish Tax Agency can then learn about new criminal *modus operandi*, which can then be disseminated for the purpose of crime prevention, and information which can be used in order to develop investigations. The perpetrators are often involved in organised crime or economic crime. Without intelligence work, it is difficult for the criminal justice system to succeed in such investigations.

Proposals for general measures

In addition, there are measures which may be valuable irrespective of the focus area to which the victims or witnesses belong. Perhaps the most important result in the report is that upset and frightened individuals at a crime scene often tell the police more at that moment than later during the investigation, when silence mechanisms have had time to come into play. There are examples of the police using technical equipment, such as image and sound recordings, which can constitute important evidence. In addition, they may have then been exposed to interference in a judicial matter or other attempts to influence. The opportunity to obtain information at the crime scene or in conjunction with the police report must therefore be taken advantage of by the police.

This involves both having time to listen and secure evidence and discussing changes to the legal process. It involves taking a position on whether information which is provided in the process earlier than at the time of trial a) is higher-quality and b) should be afforded more weight. Both silence mechanisms and difficulties in remembering can worsen the quality of the information during the course of the legal process. This could be solved if it were possible for the court to afford greater weight to what was said during the preliminary investigation than is currently possible (Swedish Government Official Report 2017:98, Swedish Government Official Report 2019:38). When the crime victim is a child, the possibility already exists to provide video testimony which is played during the trial. This is carried out in a more rigorous manner, for example with party insight, in order to guarantee due process. This procedure could be considered for more crime victims. Taken as a whole, the proposals could reduce the incentive for the perpetrator to seek to exercise influence.

Shortened investigation times also reduce the risk that crime victims and witnesses choose to remain silent, and also make it easier for them to remember what happened. Additional existing methods which can be used to a greater extent involve allowing the witness to testify within the defendant's hearing but not in the defendant's presence (*Sw. medhörning*), witness testimony via live link, and planning in order to separate crime victims, witnesses, and perpetrators on the courts' premises.

Finally, we can observe that individuals who have been threatened as a consequence of cooperation with the criminal justice system may undertake major deviations from their everyday life, and may even leave it behind. The importance of protection being available for those who need it cannot be emphasised enough. Some people are also not willing to sacrifice as much as is necessary, which means that they either continue to live under conditions where they are repeatedly exposed to crime or are silent towards the criminal justice system about what they know. Public authority personnel and support persons in non-profit organisations must be confident that the protective efforts have staying power and are sufficient, otherwise they strengthen the crime victims' and witnesses' sense that cooperation with the criminal justice system may be risky.