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## LETTER FROM THE DIRECTOR

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It is my privilege to inform readers of the successful completion of the 120th International Senior Seminar on, "Effective Administration of the Police and the Prosecution in Criminal Justice" held from 15 January to 14 February 2002. In this Seminar, we welcomed 6 Japanese and 15 overseas participants: 7 from Asia, 1 from Oceania, 3 from Latin America, 1 from the Caribbean and 3 from Africa. They included police, public prosecutors, judges and other high-ranking public officials. As this newsletter demonstrates, the Seminar was extremely productive. It consisted of Individual Presentations, Group Discussion sessions, visits to relevant criminal justice agencies, and presentations by visiting experts and *ad hoc* lecturers.

During the five-week period, the participants diligently and comprehensively examined measures to improve police systems and enhance methods of case screening by prosecutors. They also looked at means of facilitating better cooperation between police and prosecutors. This was accomplished primarily through comparative analysis of the current situation and problems within police structures and the differing relationships between police and prosecutors. Our in-depth discussions enabled us to put forth effective and practical solutions to emerging problems in the investigatory and prosecutorial stages of the criminal justice process.

As crime has become more complex, diverse and sophisticated, the agencies that tackle such crime need to respond effectively. Unfortunately, there are often shortfalls in the expectations we have from our police and prosecution administrations and how effective these administrations actually are. It has been observed that investigations can be insufficient or cases are not adequately screened by prosecutors before they go to court. Factors such as these can cause low conviction rates, delays in trial proceedings and an inability of the courts to keep up with ever-increasing caseloads.

It is apparent that the power vested in prosecutors and police varies throughout the world. In whichever way authority is exercised, however, effective police and prosecution systems must be free from arbitrary political influences and there must be safeguards in place to ensure that external pressures are not exerted on these criminal justice agencies.

This Seminar was timely in that it reflected the United Nations current concern about the systematic and functional reform of the police and the prosecution. One of the topics to be discussed by the Eleventh United Nations Commission on Crime Prevention and Criminal Justice, to be held in 2002, will be "Criminal Justice Reform". The police and the prosecution, by definition, have a symbiotic relationship yet in many countries we see these agencies working, at best, separately from one another and, at worst, at odds with one another. Clearly these are situations that need to be identified and reformed.

I would like to offer my sincere congratulations to all the participants for their successful completion of the Seminar, made possible by their strenuous efforts. My heartfelt gratitude goes to the visiting experts and *ad hoc* lecturers who contributed a great deal to the Seminar's success. Furthermore, I appreciate the indispensable assistance and cooperation extended to UNAFEI by various agencies and institutions, which helped diversify the programme.

A warm tribute must be paid to the Japan International Cooperation Agency (JICA) for its immeasurable support throughout the Seminar. At the same time, I must express great appreciation to the Asia Crime Prevention Foundation (ACPF) and its branch organizations for their substantial contributions. Lastly, I owe my gratitude to all the individuals whose unselfish efforts behind the scenes contributed significantly to the successful realization of this Seminar.

Upon returning to their home countries, I genuinely believe that, like their predecessors, the strong determination and dedication of the participants will enable them to work towards the improvement of their respective nation's criminal justice systems, and to the benefit of the international society as a whole.

Finally, I would like to reiterate my best regards to the participants of the 120th International Senior Seminar. I hope that the experience they gained during the Seminar proves valuable in their daily work, and that the bonds fostered among the participants, visiting experts, lecturers and UNAFEI staff will continue to grow for years to come.

February 2002

*Mikinao Kitada*  
Director, UNAFEI

**THE 120TH INTERNATIONAL SEMINAR**  
**“EFFECTIVE ADMINISTRATION OF THE POLICE AND**  
**THE PROSECUTION IN CRIMINAL JUSTICE”**

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**Seminar Rationale**

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Crime is of major concern to all countries. As societies have been developing and changing more rapidly, crimes have become more complex and sophisticated. What poses a great threat to society is not only an upsurge of crimes but also an increase of more complicated crimes such as organized crime and transnational crime. Whereas the agencies involved in criminal justice systems have been making every effort to combat such crimes, regrettably, the system does not always work fully and efficiently. Looking at the problems in the system, a major obstacle to achieving the goals of criminal justice process (i.e., the investigatory and prosecutorial stages) is less efficient and successful than expected in spite of their extremely important roles. In other words, insufficient investigation and inappropriate screening of cases can cause various problems such as low conviction rates, overloading of courts, delays in trial proceeding, and the increase of prisoners awaiting trial, which seriously violate the rights of defendants and have an impact on society.

Under such circumstances, the systematic and functional reform of the police and prosecution has been or is being carried out in some countries throughout the world. In addition, one of the topics to be discussed at the eleventh session of the United Nations Commission on Crime Prevention and Criminal Justice to be held in 2002, will be “Criminal Justice Reform”. Therefore, it is right time to reconsider the criminal justice system, in particular the police and the prosecution, from the viewpoint improving the system as a whole. Unless both agencies function effectively and effectively, any law or international conventions would not have the desired effect of fighting crime. Considering this situation, we focus our discussion on how the police and the prosecution system should operate. Essentially we must identify the problems that arise in the criminal justice process and find the best way to make the process and system more effective.

In considering the issues of the police and prosecution, firstly, discussion has to be focused on the police structure. Needless to say, the police system itself should be sufficiently organized to carry out its tasks successfully. Effective cooperation and coordination amongst different investigative agencies, and between the national headquarters and the local police, are furthermore required.

Of the problems that hinder effective investigations, arbitrary political influence is one of the greatest concerns. It is, therefore, imperative to discuss how to structure safeguards which do not allow undue external influences to be exerted by arbitrary political interventions and pressure.

Secondly, there is the relationship between the police and prosecutors. Since they are intrinsically linked and inseparable, in light of their roles, they must complement each other in order to conduct investigation successfully. Effective cooperation between them must be realized. In some countries, prosecutors consult with the police even at an early stage, and

give advice or instruction to them to complete the investigation while responding respecting the independence of the police. Although the power vested with prosecutors differs throughout the various systems worldwide, it is imperative to discuss and ascertain the best system and practices for the effective and successful investigations ensuring between them.

Thirdly, we must discuss how to enhance prosecutorial functions, especially case screening. Effective and appropriate case screening conducted by the competent agencies (public prosecutors, police prosecutors, magistrates, or courts) is crucial to secure a sound and efficient criminal justice system, although case screening systems and evidentiary standards for prosecution differ from one country to another. This topic also looks at the issue of which agencies or systems would be more appropriate to conduct case screening effectively.

Giving due consideration to the above rationale, this Seminar intends to explore more effective administration of the police and the prosecution in criminal justice systems in each of the participating countries. By clarifying and analyzing the actual situation and problems, sharing experiences and knowledge, we will be able to find the most appropriate direction towards effective police and prosecution systems.

In the discussions of this seminar, focus will be placed on the following elements:

1. Effective police systems:

- (a) Current situations and problems
- (b) Conceivable measures to improve police systems
- (c) Independence from arbitrary political and external influence

2. Cooperation between the police and prosecutors:

- (a) Systematic relationship between the police and prosecutors
- (b) The role of prosecutors in criminal investigations, such as advice and instructions to the police

3. Effective case screening by prosecutors or other competent agencies:

- (a) Current situations and problems
- (b) Countermeasures to improve case screening

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## Seminar Summary

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### **Lectures**

In total, 7 lectures were presented by visiting experts and 2 by *ad hoc* lecturers. Six distinguished criminal justice practitioners from abroad served as UNAFEI visiting experts. They lectured on issues relating to the main theme, and contributed significantly to the Seminar by encouraging discussions after their own lectures, participating in the discussions of other programmes, and conversing with the participants on informal occasions. Additionally, *ad hoc* lectures were delivered by distinguished senior officials of the Government of Japan. The lecturers and lecture topics are listed on page 6.

### **Individual Presentations**

During the first three weeks, each Japanese and overseas participant delivered a forty-five minute and one-hour Individual Presentation respectively, which introduced the actual situation, problems and future prospects of his/her country. These papers were compiled into a book entitled "COUNTRY REPORTS FOR THE INTERNATIONAL SEMINAR IN CRIME PREVENTION" and distributed to all the participants. The titles of these Individual Presentation papers are listed on pages 7 and 8.

### **Group Workshop Sessions**

Group Workshop Sessions further examined the subtopics of the main theme. In order to conduct each session effectively, the UNAFEI faculty selected individuals to serve as 'group members' for the sub-topics, based on their response to a questionnaire previously distributed. Selected participants served as chairpersons, co-chairpersons, rapporteurs or co-rapporteurs, and faculty members served as advisers. Each group's primary responsibility was to explore and develop their designated topics in the Group Workshop Sessions. The participants and UNAFEI faculty seriously studied the topics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. After the Group Workshop Sessions, reports were drafted based on the discussions in the conference hall. These reports were subsequently presented in the Report-Back Session, where they were endorsed as the reports of the Seminar. Summaries of the Group Workshop reports are provided on pages 9 through 20.

### **Visits and Special Events**

Visits to various agencies and institutions in Japan helped the participants obtain a more practical understanding of the Japanese criminal justice system. In addition to the Seminar's academic agenda, many activities were arranged to provide a greater understanding of Japanese society and culture, with the assistance of various organizations and individuals, including the Asia Crime Prevention Foundation (ACPF). For more detailed descriptions, please refer to pages 21 through 24.

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**Lecture Topics**

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***Visiting Experts' Lectures***

- 1) Mr. Eberhard Siegismund (Germany)
  - The Competence of the Police in Investigation Proceedings
  - The Public Prosecution Office in Germany – Legal Status, Functions and Organization
- 2) Mr. Young Chul Kim (Republic of Korea)
  - The Effective System of Criminal Investigation and Prosecution in the Republic of Korea
- 3) Dr. Muhammad Shoaib Suddle (Pakistan)
  - Reforming Pakistan Police: an Overview
- 4) Dr. Kittipong Kittayarak (Thailand)
  - The Thai Constitution of 1997 and its Implication on Criminal Justice Reform
- 5) Mr. Peter Boeuf (United Kingdom)
  - Effective Administration of the Police and the Prosecution in the Criminal Justice System in England and Wales
- 6) Prof. Anthony Didrick Castberg (United States of America)
  - The Effective Administration of the Police and the Prosecution in the United States

***Ad Hoc Lectures***

- 1) Mr. Yuuki Furuta  
*Director General of the Criminal Affairs Bureau, Ministry of Justice, Japan*
  - Current Issues within the Criminal Justice Administration of Japan
- 2) Mr. Hayato Takagi  
*Deputy Director, Legal and Planning Affairs, Division of Commissioner General's Secretariat, National Police Agency, Japan*
  - The Reform of the Japanese Police

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### Individual Presentation Topics

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#### *Overseas Participants*

- 1) Mr. Marcos Aurélio Vitoriano Matias (Brazil)
  - Effective Administration of the Police and the Prosecution in Brazil
- 2) Mr. Sergio Andrés Muñoz (Chile)
  - Carabineros from Chile
- 3) Mr. Rosendo Armando Vásquez Bonilla (El Salvador)
  - County Report
- 4) Mr. Maninder Singh Sandhu (India)
  - Country Paper
- 5) Ms. Titiek Syamsiar Mokodompit (Indonesia)
  - The Role and Function of the Public Prosecution Service in the Indonesian Criminal Justice System
- 6) Mr. Gaguk Harijanto (Indonesia)
  - The Implementation of the Criminal Justice System in Indonesia
- 7) Mr. Daniel Kenduiywa Chesimet (Kenya)
  - Crime Prevention in Kenya
- 8) Mr. Azmi Bin Ariffin (Malaysia)
  - Effective Administration of the Police and Prosecution in Malaysia
- 9) Mr. Lok Jung Shah (Nepal)
  - Country Paper
- 10) Mr. Ejaz Husain Malik (Pakistan)
  - Effective Administration of the Police and Prosecution in Pakistan
- 11) Mr. John Haroro Maru (Papua New Guinea)
  - Effective Administration of the Police and Prosecution in the Criminal Justice of Papua New Guinea
- 12) Mr. Merton Meredith Charles (St. Christopher and Nevis)
  - Effective Administration of the Police and the Prosecution in Criminal Justice: Case Study on Juveniles
- 13) Mr. Laurean Mutahunwa Tibasana (Tanzania)
  - Effective Administration of the Police and Prosecution in Criminal Justice: the Practice and Experience of the United Republic of Tanzania
- 14) Mr. Seni Pimolsiri (Thailand)
  - Country Report

- 15) Ms. Nassuna Juliet (Uganda)  
• Effective Administration of the Police and Prosecution in Criminal Justice in Uganda

*Japanese Participants*

- 16) Mr. Mitsuru Itaya (Japan)  
• Collaboration between Criminal Justice Related Organizations in Relation to Victims of Crime
- 17) Mr. Hiromichi Iwakura (Japan)  
• Effective Screening of Cases by Prosecutors or other Authorities
- 18) Mr. Nobuyuki Kawai (Japan)  
• Effective Management of the Police and Prosecution in Criminal Justice in Japan
- 19) Mr. Masahiro Takeishi (Japan)  
• Amendments to the Japanese Juvenile Law – Recent Drastic Change
- 20) Mr. Takashi Yamashita (Japan)  
• The Cooperation between the Police and Public Prosecutors in Japan
- 21) Mr. Hidetsugu Yamane (Japan)  
• The Discretionary Power of Prosecution and the Prevention of its Abuse

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## Group Workshop Sessions

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The following section summarizes the Group Workshop Session reports. The full text of the reports will be included in UNAFEI Resource Material Series No. 60.

### Topic 1      **EFFECTIVE ADMINISTRATION OF POLICE SYSTEMS**

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<b>Chairperson</b>	Mr. Laurean M. Tibasana	(Tanzania)
<b>Co-Chairperson</b>	Mr. Marcos Aurélio Vitoriano Matias	(Brazil)
<b>Rapporteur</b>	Mr. Maninder Singh Sandhu	(India)
<b>Co-Rapporteur</b>	Mr. Rosendo Armando Vásquez Bonilla	(El Salvador)
<b>Advisers</b>	Professor Yasuhiro Tanabe	(UNAFEI)
	Professor Hiroshi Tsutomi	(UNAFEI)
	Professor Mikiko Kakihara	(UNAFEI)

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#### *Report Summary*

## I. INTRODUCTION

There is a growing determination in most countries of the world to introduce reforms in their respective criminal justice systems. Police institutions play an important role in the overall criminal justice system of any country. For reforms in the criminal justice system to have a meaningful impact, police institutions must also undergo reforms in order to render them more effective and efficient.

## II. DEFINITIONS

In deliberating on the efficiency and effectiveness of the various police systems and the problems common to almost all police systems, which affect their service delivery negatively we agreed that, taking into account the areas of responsibility and mode of control or supervision, the police systems of the world fall into three broad classifications, namely:

**A. Centralized or National Police Systems** – which have jurisdiction throughout the territory of the respective country.

**B. Semi-centralized (Dual Control) Police Systems** – where police agencies are dually controlled by both the central governments and the governments of the states, provinces or prefectures.

**C. Decentralized Police Systems** – where responsibility for police matters is the exclusive domain of the provincial or state governments in a federal constitutional arrangement.

### **III. CLASSIFICATION OF THE POLICE SYSTEMS**

In conformity with the classification we found that the following countries: Chile, El Salvador, Indonesia, Kenya, Malaysia, Nepal, Papua New Guinea, Tanzania, Thailand and Uganda have centrally controlled national police systems. We also found that Brazil and Japan have semi-centralized or dually controlled police systems while India and Pakistan have decentralized police systems with police agencies exclusively under the control of the state or provincial governments.

### **IV. PROBLEMS IDENTIFIED IN RELATION TO THE POLICE SYSTEM**

Our analysis of all the said police systems led us to identifying a number of problems, common to all police systems, which militate against their efficiency and effectiveness, thus negatively affecting their service delivery. The following are the main problems identified:

#### **A. Budgetary Constraints**

Most police agencies, irrespective of the police system, are forced to operate under severe budgetary limitations. As a consequence they are unable to plan meaningfully for recruitment, training of officers, providing logistical support or to acquire necessary equipment for performing routine functions, such as vehicles, uniform, radio communication equipment and other necessity items. Severe budgetary limitations are thus the main cause of ineffectiveness among police agencies.

#### **B. Lack of Training**

Police agencies have no clear criteria for recruitment, gloss over continued education and training of their personnel and tend to waste skilled personnel.

#### **C. Lack of Co-operation**

Police agencies tend to build empires, are bureaucratic and do not readily share information internally or externally even where the sharing of information would be beneficial to the attainment of their goals.

#### **D. Corruption**

Though it is well known that police work exposes police officers to potentially corruptive situations, few police agencies have put in place sustainable mechanisms to eliminate corruption within their agencies.

#### **E. Arbitrary External Interference**

Some police agencies are subjected to arbitrary external interference in the exercise of their functions which compromises the rule of law and democratic practice.

## **F. Lack of Personnel**

In some instances police agencies do not have enough personnel to attend to routine police functions.

## **V. CONCEIVABLE MEASURES**

We propose the following measures to address the problems we identified.

### **A. Budgetary Constraints**

Severe budgetary limitations affect the delivery of service to the citizens. Countries, irrespective of their other national priorities, should give special attention to sufficient and sustainable budgets for their police agencies.

### **B. Accountability of Police**

Governments, Ministries or other organs under which police agencies fall should consider putting in place various mechanisms which enhance the police agencies' transparency and accountability.

### **C. Arbitrary External Interference**

Governments, in collaboration with Ministries under which police agencies fall, must endeavor to put in place structural safe guards in order to ensure the exercise of police functions is not arbitrarily interfered with.

### **D. Politicization of Police Officers**

In order to avoid the harmful effects which result from the intrusion of politics into the exercise of the police functions, governments should ensure that police agencies stay away from politics.

### **E. Police Corruption**

In order to eliminate corruption police agencies should establish codes of conduct which emphasize professional ethical standards. All police officers should receive training in ethical values during their initial training and regular ethics courses should be conducted as part of continuous training. Governments should review the working environment of police agencies on a regular basis.

### **F. Lack of Training**

Since training is the life-blood of effective and responsible policing, police agencies should put in place adequate training programmes on initiation and during the service of their officers. Governments or relevant ministries should ensure sufficient budgetary allocations for sustaining training programmes for police agencies.

## **G. The Role of Police Associations**

In accordance with local custom, practice, law, the nature of the police agencies and where it is feasible, the establishment of police associations should be considered because they play an important role in raising professional ethical standards and may therefore assist in various areas of police reforms.

## **VI. CONCLUSION**

The problems we have identified manifest themselves in varying degrees of intensity in all police systems of the world. No single police system seems to be immune in its entirety from situations and circumstances that harm its effectiveness; hence no particular police system can be said, in respect of its structural arrangement, to be a panacea.

Reforms in the Criminal Justice System of which police agencies are an important component are aimed at making the various organs in the Criminal Justice System more responsive to the needs of the public. The principal objective of police agencies is to deliver service to the public. Police agencies however may not succeed in doing so if the various problems, which militate against their efficiency and effectiveness are not resolved, be it by the police agencies themselves or the various ministries under which they fall.

There is therefore an urgent need for governments to take concerted action to create an enabling environment for sustainable reforms in the police agencies in order to enhance and sustain the quality of the service they deliver to the public.

## Topic 2 COOPERATION BETWEEN THE POLICE AND PROSECUTORS

<b>Chairperson</b>	Mr. John Maru	(Papua New Guinea)
<b>Co-Chairperson</b>	Mr. Ejaz Husain Malik	(Pakistan)
<b>Rapporteur</b>	Ms. Nassuna Juliet	(Uganda)
<b>Co-Rapporteur</b>	Mr. Nobuyuki Kawai	(Japan)
<b>Advisers</b>	Prof. Yuichiro Tachi	(UNAFEI)
	Prof. Kei Someda	(UNAFEI)

### *Report Summary*

## **I. BACKGROUND**

### **A. Establishment of the Rule of Law**

The purpose of the criminal justice system is to realize the rule of law, which is one of the most fundamental conditions for the sustainable development of society. Prosecutors are vested with the responsibility of checking the police investigation against the due process of law.

### **B. Consideration of Effectiveness**

#### *1. Growing Challenges from Crime in Terms of Complexity and Magnitude*

An increasing complexity, diversity and magnitude of crime in this modern society has been posing more and more challenges to criminal justice authorities, especially to the police and prosecutors. Such circumstances require the police to improve their capability in scientific analysis, information and data processing, international cooperation and so forth, which results in, at least to some extent, prosecutorial dependency on the specialized knowledge of the police. The police are also expected to react flexibly and expeditiously to the modern forms of crime, which calls for more police discretion in criminal proceedings.

#### *2. Increasing Responsibility in Terms of De-regulation*

Currently, some countries, including Japan, are in the process of transition from societies of preconditioned ambiguous governmental regulations into societies of de-regulation with clearly stipulated rules and strict individual responsibility especially in the area of business activities. With such de-regulation, law enforcement authorities should be expected to take more responsibilities in dispensing justice to those who violate the rules.

## **II. ROLE OF PROSECUTORS IN INVESTIGATIONS**

Apart from their responsibility to prosecute criminal cases, prosecutors in every country play some important roles in criminal investigations despite the differences in basic legal principles. In some countries, prosecutors have an overall responsibility over investigations, while in others they have a limited role in carrying out investigations.

### **A. Giving Guidance/Instructions to Police Investigators**

One of the most important and common roles of prosecutors is to check police investigation against the due process of law, while maintaining the effectiveness of police investigations. In order to meet the rule of law standards, promote acceptance of court decisions by the accused and strengthen public confidence in the police's right to conduct searches and seizures in private premises, the investigation work of the police should be, at least in principle, critically monitored. Prosecutors' authorities in supervising and giving advice/instructions to police investigators can be viewed in this regard. The extent of such authorities varies from country to country, from non-binding advice to complete control over police investigations.

### **B. Supplementing Police Investigations**

In the countries where prosecutors are empowered to conduct investigations, prosecutors, if needed to ensure convictions in court, can supplement police investigations. In some countries, prosecutors are empowered to instruct police officials to assist their investigations. In this context, some participants pointed out that a conflict could occur between such an instruction to the police officer from prosecutors and the organizational chain of command of the police.

### **C. Conducting their Own Investigations**

In the countries where prosecutors are empowered to conduct investigations, prosecutors can initiate their own investigations. In many cases, prosecutors conduct their own investigations in such areas where prosecutors have a competitive advantage over the police. These areas include large-scale economic crime, political corruption cases, and so forth.

## **III. PROBLEMS DISCUSSED**

### **A. Psychological Traits of the Police and Prosecutors**

### **B. Conflicting Views over Case Disposition**

Despite the difference in the legal system of each country, which governs the relationship between the police and prosecutors, most of the participants reported that the police feel frustrated when the prosecutors' case-disposition conflicts with the expectations of the police. It is totally disappointing for investigators if an arrested suspect is set free by prosecutors on the ground that the prerequisites have not been fulfilled for keeping the suspect in custody, or where investigatory activity, despite a great deal of time and effort involved, leads to the termination of the proceedings.

### **C. Lack of Shared Common Goals**

A lack of sharing common goals with prosecutors as such can cause difficulty for prosecutors to motivate police to produce quality files on their investigations, especially in some of the countries with common law traditions where the prosecutors are empowered only to prosecute, but not to investigate.

#### **D. Lack of Objectivity**

In some of the countries with common law traditions such as Australia, Kenya, Pakistan, Papua New Guinea and Tanzania, most criminal prosecution in the lower courts are conducted by prosecutors who are full-time serving members of the police force. Even though there should be no disagreement between police investigators and prosecutors on the disposition of cases in such a system, several participants from those countries reported that a lack of independence of prosecutions in such a system leads to a lack of objectivity among prosecutors, which results in inappropriately screened prosecutions.

#### **E. Lack of Discretion in Police Investigations**

In the countries with civil law traditions such as Brazil, Chile, El Salvador, Germany, Indonesia, Italy, Japan and Korea, prosecutors are entrusted authorities concerning investigations, which include authority to implement investigations of their own, and authority to supervise, at least to some extent, police investigations.

Some of the participants from those countries, however, reported their concern over the excessive interference of prosecutors into police investigations. In some of those countries, the police are given very little discretion in the course of their investigation, resulting in a lack of flexibility in police investigation.

### **IV. SYSTEMATIC RELATIONSHIP BETWEEN THE POLICE AND PROSECUTORS**

#### **A. Systematic Checks and Balance Mechanism of Criminal Justice**

Participants were of the view that, it is rather natural and desirable for the two organizations, which bear different responsibilities to have conflicting views over certain case dispositions. Such conflicts between the police and prosecutors should be considered as evidence of the proper functioning of the checks and balances mechanism of the criminal justice system. Accordingly, the police should welcome, or at least try not to avoid, such checks from prosecutors. On the other hand, the prosecutors' supervisory functions such as giving advice/instructions to police investigators should be always accompanied with clear and reasonable explanations of their grounds.

#### **B. Elaboration of the Relationship**

##### *1. Sharing Common Values*

Effective criminal justice management requires concerted action of all relevant authorities in the government, which have the same ultimate goal of realization of the rule of law. Those authorities should share substantial common values which are supported by strong political will, such as the "Joint Business Plan for the Criminal Justice System" in England and Wales. Such notion of "joined-up working" should surely promote the practical cooperation between the police and prosecutors.

2. *More Communication*

Participants were of the view that the key to good working relations between the police and prosecutors is the promotion of mutual understanding through informal person-to-person contact, through, for example:

~Intensive Early Stage Consultation

~Regular Meetings, Workshops, Seminars

~Close Liaison

3. *Legislation*

Some participants were of the view that there should be legal provisions to clearly define the role of prosecutors and the police

4. *Cooperation Models for Simplified Proceedings/Diversion*

It was suggested that consideration should be given to the question of whether closer cooperation between the police and prosecutors in the form of delegation of responsibilities or preliminary examinations could simplify and speed up the conclusive handling of criminal proceedings.

## V. CONCLUSION

In order to realize the rule of law, prosecutors' guidance in police investigations is *sine qua non* for civilized and democratic societies. Modern police forces are highly professional, well trained and well equipped while prosecutors on the other hand have highly qualified legal brains. It is apparent that the police and prosecutors are getting more and more mutually dependent due to the increasing complexity, magnitude and other challenges of crime emerging in modern societies. Considering the heavy workload the police and prosecutors are facing, it is quite understandable that, in some countries, various ways of effective distribution of labor between the two organizations are being experimented.

**Topic 3****EFFECTIVE CASE SCREENING BY PROSECUTORS OR  
OTHER COMPETENT AGENCIES**


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<b>Chairperson</b>	Mr. Azmi Bin Ariffin	(Malaysia)
<b>Co-Chairperson</b>	Ms. Titiek Syamsiar Mokodompit	(Indonesia)
<b>Rapporteur</b>	Mr. Merton Meredith Charles	(St. Christopher and Nevis)
<b>Co-Rapporteur</b>	Mr. Takashi Yamashita	(Japan)
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	Prof. Kenji Teramura	(UNAFEI)
	Prof. Sue Takasu	(UNAFEI)

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*Report Summary***I. INTRODUCTION****A. Necessity and Importance of Case Screening**

The importance and necessity of case screening is in the interests of justice. There are two types of case screening. One is the test whether there is sufficient evidence to obtain conviction. It ensures expeditious prosecution of cases, helps to ensure that no innocent person is charged and where appropriate the accused is punished for the crime he/she committed. Another type of case screening is the test whether or not to prosecute even when there is sufficient evidence. This test helps to reduce overloading of the courts with trivial or minor cases, and in other cases where it would not be in the public interest to prosecute all of them but only the most serious cases. When the courts are overloaded with criminal cases, the consequential effect would be delayed trials. As far as the accused is concerned, it ensures the right of the accused to a speedy trial so that the stress that the accused has to undergo would be obviated. In addition, prosecutors can consider diversion and so-called “restorative justice” at the case screening stage.

**B. Who Conducts Case Screening**

In some countries, the court is also involved in this process. Since the main theme of this seminar is effective administration of the police and the prosecution in criminal justice, therefore we would like to focus our attention solely on the case screening segment which is conducted by the police and prosecutors.

**II. HOW CASE SCREENING IS DONE****A. Case Screening by Prosecutors***1. Authority given to Investigate or otherwise*

In certain countries, prosecutors do not have the authority to investigate crimes on their own. In these countries prosecutors scrutinize or screen the investigation paper referred by the police and decide whether or not to prosecute the suspects based on the evidence available.

In other countries like Korea and Germany, prosecutors play a significant role in the investigation. Prosecutors in these countries can initiate investigation or direct the police regarding all crimes.

## 2. *Suspension of Prosecution*

In some countries, prosecutors have the discretionary power to suspend or not initiate prosecution even if there is sufficient evidence to convict a suspect. This is called the Principle of Discretionary Prosecution.

## 3. *Evidentiary Test and Public Interest Test to Initiate Prosecution*

There are two tests applied by the prosecutors in making a decision to prosecute. The first test is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, prosecutors must decide if a prosecution is needed in the public interest.

## 4. *Plea Bargaining*

In certain countries, plea bargaining is an acceptable practice. To prevent the abuse of power, especially in serious crimes and public interest cases, prosecutors will have to lay down the reasons for reduction or amendment of charges before the investigation papers are submitted to their superiors for approval.

## 5. *Victim's Request*

In some countries, there are times where a victim will lodge a police report against the suspect but later decide not to pursue the matter.

## 6. *Summary Proceedings*

Summary Proceedings are proceedings in some countries such as Korea and Japan whereby the court usually imposes a fine or pecuniary penalty on the accused. In such countries, the public prosecutors have the authority to screen and to decide whether to proceed with the case to the court, by summary or formal proceedings. In Germany, there are also penal order proceedings to dispose criminal cases. Public prosecutors may apply for issuance of a penal order if a prison sentence is to be expected not exceeding one year.

## **B. Case Screening by the Police**

### 1. *Non-recognition of the Offense*

When there is no offense disclosed on the surface of the victim police report and it is only a minor/trivial offense, the police will not open the investigation paper.

## 2. *Fine/Pecuniary Penalty by the Police*

In certain countries, for minor cases such as traffic offenses, the police will issue a ticket to the offender who has committed the offense. If he/she pays the fine or pecuniary penalty within a certain period, the offense is considered settled.

## 3. *Completion of the Investigation*

At the end of the investigation, the senior officers will review the evidence. If he/she thinks there is no sufficient evidence, he/she will determine whether or not to send the file to the prosecutor.

### **III. PROBLEMS IN CASE SCREENING**

#### **A. Problems Faced by the Prosecutor in Case Screening**

1. *Lack of knowledge, skill and expertise*
2. *Delay of receiving files from the police*
3. *Abuse of power and corruption*
4. *Political influence*
5. *Lack of manpower*
6. *Lack of budget for public prosecutors office*

#### **B. Problems Faced by the Police in Case Screening**

1. *Lack of manpower and management*
2. *Lack of budget, equipment and other resources*
3. *Inadequate legal and investigative knowledge*
4. *Lack of co-ordination between prosecutor, police and other enforcement agencies*
5. *Political influence*
6. *Lack of legal materials*
7. *Abuse of power*
8. *Lack of cooperation from public and witnesses*

### **IV. RECOMMENDATION TO IMPROVE CASE SCREENING**

#### **A. Sufficient Budget for the Police and Prosecution**

## **B.     Independency of Prosecution**

In order to ensure that the prosecution is independent and immune from criminal or civil sanction, an officer of the public prosecution should be guaranteed by having its status protected by the law. Having such security, the prosecutor will have no fear to exercise the powers of screening.

## **C.     Checks and Controls on Prosecutors' Decisions**

### *1.     Internal control*

By superior, general and special guidelines in performing their duties found in a prosecutors manual, appeal of decisions of non-prosecution to High Public Prosecutors office and appeal to the courts for abuse of prosecutorial discretion, such as selective prosecution.

### *2.     External control*

In Japan, if the prosecutor decides not to prosecute and the victim is not satisfied with this decision, the latter can apply to a Committee for Inquests into Prosecution. Also the prosecutor has to give reasons to the victims and other enforcement agencies of his/her decision not to prosecute. This is important for the purpose of accountability and transparency.

## **D.     Time Frame to Complete Investigations**

The investigation and screening of cases should be undertaken as rapidly as possible, taking into consideration the rights of the suspect, the feelings of the victim, and the overall interests of justice.

## **E.     Increase the Number of Prosecutors**

## **F.     Adopt a Variety of Proceedings other than Trials**

Trials are time-consuming and expensive. Therefore, in order to maintain the efficiency of the criminal justice system as a whole, we should avoid trials if the suspect is prepared to accept his/her guilt, and try to proceed with other procedures when appropriate.

## **G.     Coordination between Prosecutors, the Police and other Enforcement Agencies**

Coordination between prosecutors, police and other enforcement agencies are important. Police should begin consulting with the prosecutor in the early stage of the investigation to establish close collaboration and to solve problems faced by them with regard to criminal investigation. Discussion and meetings should take place more frequently between them.

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**Observation Visits**

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<b><u>Date</u></b>	<b><u>Agency/Institution</u></b>	<b><u>Main Persons Concerned</u></b>
Jan 16	National Police Academy	<ul style="list-style-type: none"><li>• Mr. Seisaki Taniguchi Director of International Research and Training Institute for Criminal Investigation</li></ul>
Jan 23	Tokyo District Public Prosecutors Office	<ul style="list-style-type: none"><li>• Mr. Kunitaro Saida Chief Prosecutor</li></ul>
Jan 23	Ministry of Justice	<ul style="list-style-type: none"><li>• Ms. Mayumi Moriyama Minister of Justice</li></ul>
Jan 25	Tokyo District Court	<ul style="list-style-type: none"><li>• Mr. Fumihiro Abe Deputy Chief Judge</li> <li>• Mr. Megumi Yamamuro Presiding Judge Fifth Criminal Division</li> <li>• Mr. Takashi Matsumoto Judge Fifth Criminal Division</li></ul>

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**Group Study Tours**

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<u><i>Date</i></u>	<u><i>Group</i></u>	<u><i>Agency/Institution</i></u>	<u><i>Main Persons Concerned</i></u>
Jan 20~21	Nagasaki	<ul style="list-style-type: none"> <li>• Nagasaki Customs Office</li>   <li>• Nagasaki Prison</li> </ul>	<ul style="list-style-type: none"> <li>• Mr. Junji Shihara Public Relations Officer</li>   <li>• Mr. Masahiro Shigenaga Nagasaki Prison Governor</li> </ul>
Feb 11~13	Hokkaido	<ul style="list-style-type: none"> <li>• Sapporo High Public Prosecutors Office</li>   <li>• Sapporo District Public Prosecutors Office</li>   <li>• Hokkaido Prefectural Police Headquarters</li> </ul>	<ul style="list-style-type: none"> <li>• Mr. Kenji Koroyasu Superintending Prosecutor</li>   <li>• Mr. Hiroshi Sakurai Chief Prosecutor</li>   <li>• Mr. Mitsuo Uehara Chief of Police</li> </ul>

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## Special Events

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January 15

*Welcome Party*

January 17, 18 & 22      *Japanese Conversation Classes*

The overseas participants attended Japanese conversation classes provided by JICA. They learned practical Japanese expressions. The Sensei (teachers) were Ms. Yukiko Shiina and Ms. Nobuko Ishida. *Iroiro Arigato Gozaimashita.*

January 20~21

*Nagasaki Trip*

In addition to official visits to the Nagasaki Customs Office and Nagasaki Prison, the participants enjoyed sightseeing, including visits to the Glover Garden, the Nagasaki Atomic Bomb Museum and the Dejima History Museum.

January 23

*Courtesy Visit to the Minister of Justice*

Minister of Justice, Ms. Mayumi Moriyama greeted the participants during their visit to the Ministry of Justice.

*Reception by Vice-Minister of Justice*

After visiting the Ministry of Justice, a reception was held by Vice-Minister of Justice, Mr. Keiichi Tadaki at the Lawyers Club, Tokyo.

January 25

*Courtesy Visit to Tokyo District Court*

During their visit to the Tokyo District Court, the Deputy Chief Judge, Mr. Fumihito Abe, of Tokyo District Court received the participants in his private chambers.

*ACPF Nangoku-kai Party*

The Asia Crime Prevention Foundation (ACPF) Nangoku-kai Branch, affiliated with ACPF Headquarters, hosted a dinner party in the Ruby Ballroom of the Hotel Pacific Meridien Tokyo, Shinagawa, in honor of the participants.

February 1

*Public Lecture Programme*

The Public Lecture Programme is conducted annually to increase social awareness of criminal justice issues through comparative international study. The Programme, sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI, was held in the Grand Hall of the Ministry of Justice and was attended by distinguished guests, UNAFEI alumni and the participants of the 120<sup>th</sup> International Seminar.

This year, Mr. Peter Boeuf (Chief Crown Prosecutor of London, Crown Prosecution Service, England) and Mr. Eberhard Siegismund (Deputy Director General in the Judicial System Division, Germany) were invited as speakers to the Programme. They delivered lectures respectively entitled “The Crown Prosecution Service” and “The Function of Honorary Judges in Criminal Proceedings in Germany”.

February 1 *UNAFEI Alumni Reception*

A reception was held to introduce the participants to UNAFEI Alumni residing in Japan, hosted by the UNAFEI Alumni Association at the Lawyers Club, Tokyo.

February 4 *Bowling Tournament*

A Bowling Tournament was held in Fuchu for all of the participants. After the Tournament the participants were able to enjoy a party at UNAFEI.

February 11~13 *Hokkaido Study Tour*

In addition to the observation visits the participants were able to enjoy trips to the Sapporo Odori Park where they observed the Sapporo Snow Festival, the Winter Sports Museum and the Historical Museum of Hokkaido. The ACPF Sapporo Branch also put on a party for the participants on 12 February.

February 14 *Farewell Party*

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### Reference Materials Distributed

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- (1.) Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice
- (2.) Reports of the Course (Resource Material Series No.53: 107th International Training Course)
  - The Relationship of the Prosecution with the Police and Investigative Responsibility
  - The Role of Prosecution in the Screening of Criminal Cases
- (3.) Reports of the Seminar (Resource Material Series No. 55: International Senior Seminar)
  - Effective Measures for Better Detection of Crime and More Thorough Investigation
  - The Role of Prosecution in the Changing Society
- (4.) “Police Organization in the Twentieth Century” (Albert J. Reiss, Jr.: Modern Policing-Criminal and Justice- (A Review of Research Volume 15))
- (5.) “Relations between Federal and Local Police” (William A. Geller and Norval Morris: Modern Policing-Criminal and Justice-(A Review of Research Volume 15))
- (6.) “Police Politician Interface: An Uneasy Equation (Prakash Singh: National Police Academy)
- (7.) “Political Pressures and Influences on Police Executives: A Descriptive Analysis” (Kenneth D. Tunnell and Larry K. Gaines: Managing Police Organizations)
- (8.) “The Nation and the Police” (David H. Bayley: Forces of Order –Policing Modern Japan-)
- (9.) “What does the CPS do?”(from website of Crown Prosecution Service)
- (10.) “Prosecutors Advising in Police Stations” (John Baldwin and Adrian Hunt: The Criminal Law Review –August 1998-)
- (11.) “Police Summary Prosecutions: The Past, Present and Future” (Dr. Chris Corns)
- (12.) Prosecutorial Independence and the Democratic Requirement of Accountability in Italy (Giuseppe Di Federico)

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**EXPERTS & PARTICIPANTS LIST**

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*Visiting Experts*

Mr. Eberhard Siegismund	Deputy Director General, Judicial System Division, Federal Ministry of Justice, Berlin, Germany
Mr. Young Chul Kim	Senior Prosecutor and Professor, Judicial Research and Training Institute, Goyang, Korea
Dr. Muhammad Shoaib Suddle	Inspector General of Police, Balochistan, Pakistan
Dr. Kittipong Kittayarak	Director General Department of Probation, Ministry of Justice, Bangkok, Thailand
Mr. Peter Boeuf	Chief Crown Prosecutor of London, Crown Prosecution Service, London, England, United Kingdom
Prof. Anthony Didrick Castberg	Professor of Political Science, University of Hawaii at Hilo, United States of America
 <i>Overseas Participants</i>	
Mr. Marcos Aurelio Matias	Major, Federal District Police Department, Brasília-DF, Brazil
Mr. Sergio Andrés Muñoz	Lieutenant Colonel, Chilean Police, Santiago, Chile
Mr. Rosendo Armado Vásquez Bonilla	Police Chief, Civil National Police of El Salvador, San Salvador, El Salvador
Mr. Maninder Singh Sandhu	Joint Secretary, National Foundation for Communal Harmony, Ministry of Home Affairs, Delhi, India

Ms. Titiek Syamsiar Mokodompit	Assistant to Civil and State Administration, North Sulawesi High Public Prosecution Office, Manado, Indonesia
Mr. Gaguk Harijanto	Head of Community Policing Section, Department of Community Policing, Police Headquarters, South Jakarta, Indonesia
Mr. Daniel Kenduiywa Chesimet	Assistant Commissioner of Police, Criminal Investigation Department, Eastern Province, Embu, Kenya
Mr. Azmi Bin Ariffin	Deputy Public Prosecutor, State Legal Advisor's Office, Kelantan, Malaysia
Mr. Lok Jung Shah	Under Secretary/Prosecutor, Commission for the Investigation of Abuse of Authority, Kathmandu, Nepal
Mr. Ejaz Husain Malik	Director, Federal Investigation Agency, Rawalpindi, Pakistan
Mr. John Haroro Maru	Director, Police Prosecution, Royal Papua New Guinea Constabulary, Konedobu, Papua New Guinea
Mr. Merton Meredith Charles	Head of Criminal Investigations Department, Royal St. Christopher and Nevis Police Force, Basseterre, St. Christopher and Nevis
Mr. Laurean Mutahunwa Tibasana	Commissioner of Police, Operations and Training, Tanzania Police Force, Dar-Es-Salaam, Tanzania
Mr. Seni Pimolsiri	Superintendent, Staff Subdivision, Nongkhai Provincial Police, Nongkhai, Thailand
Ms. Nassuna Juliet	Secretary/Prosecutor, Law Council Disciplinary Committee, Ministry of Justice and Correctional Affairs, Kampala, Uganda

*Japanese Participants*

Mr. Mitsuru Itaya	Chief of 1 <sup>st</sup> Region Inquiry Section, Kinki Regional Parole Board, Osaka, Japan
Mr. Hiromichi Iwakura	Judge, Osaka District Court, Osaka, Japan
Mr. Nobuyuki Kawai	Deputy Director, Firearms Division, Community Safety Bureau, National Police Agency, Tokyo, Japan
Mr. Masahiro Takeishi	Chief of the Medical Care and Classification Section, Tokyo Regional Correction Headquarters, Tokyo, Japan
Mr. Takashi Yamashita	Public Prosecutor, Chiba District Public Prosecutors Office, Chiba, Japan
Mr. Hideotsugu Yamane	Professor, Research and Training Institute, Ministry of Justice, Tokyo, Japan

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**KENYA-UNAFEI JOINT SEMINAR**

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The Kenya-UNAFEI Joint Seminar was held in Nairobi on the theme of “Effective Administration of Juvenile Justice” from 14 August to 17 August 2001. The Government of the Republic of Kenya, through the Judicial Training Committee of the High Court, and UNAFEI organized the Seminar.

The Joint Seminar was attended by high-ranking Kenyan government officials, representing all sectors of the juvenile justice system as well as NGO members. The UNAFEI delegation comprised of the Director, five professors, an officer from the National Police Agency of Japan and a Family Court Probation Officer from the Osaka Family Court.

The Joint Seminar considered the below-mentioned topics, subdivided into presentations by UNAFEI and Kenyan participants. The participants heard presentations, reactions and open forums on the following five topics:

- Topic One    Importance of Coordinating Juvenile Justice Agencies
- Topic Two    The Role of Police and Prosecution in Juvenile Justice
- Topic Three    The Role of Judiciary in Juvenile Justice
- Topic Four    Treatment of Juvenile Delinquents
- Topic Five    International Contribution to Kenyan Juvenile Justice

On the morning of the final day of the Joint Seminar, the participants were organized into five workshops, the discussion themes of which reflected the five different topics discussed. Each group workshop formulated a draft of recommendations to be submitted to the final plenary meeting.

The plenary meeting was held on the afternoon of the final day where recommendations were discussed based on the recommendations of the five group workshops. The Joint Seminar concluded with the oral presentation and adoption of the resulting recommendations for the improvement of the administration of Kenyan juvenile justice.

The final recommendations, as adopted by the Joint Seminar, were as follows:

1. That a National Juvenile Training Institute should be set up to undertake the following;
  - (a) Training juvenile justice personnel.
  - (b) Conduct research and collate data on juvenile matters.
  - (c) Conduct public sensitization campaign on all juvenile matters.
2. The passing of the Children’s Bill should be done as a matter of urgency by Parliament. In passing the Bill the guiding principle should be the best interests of the child. Upon the passing of the Bill proper structures should be put in place to enforce the same. In enforcing the new Children’s Bill, all pre-trial and trial issues should be disposed off

within 3 months save for capital offences. As for capital offences such matters should be disposed off without undue delay.

3. Establishment of more Juvenile courts and the recruitment of adequate Juvenile Justice personnel in every District. (e.g. Children's Officers, Probation Officers, etc.) to handle juvenile matters which should be urgently undertaken.
4. Diversion programmes should be undertaken at the police station and at the court level coupled with the necessary welfare support for the effective integration of the juvenile within the community.
5. The Government should enlist the support of the Law Society, NGOs, Volunteer Organizations, private individuals, and other academic organizations to provide legal and welfare services to the juvenile.
6. A National Juvenile Committee should be established headed by the Judiciary incorporating all Juvenile Justice Departments/Agencies, NGOs, Civil Society organizations to address problems relating to Juvenile Justice including sourcing for funding.
7. The establishment of a special unit in the police force to handle juvenile matters is recommended.
8. District Children's Advisory Committees (DCAC's) should be strengthened and the full involvement of the local authorities in this Committee should be ensured.
9. The Government should ensure that the basic needs of children are provided for at all levels of the Criminal Justice system.
10. Regular Forums for those involved in Juvenile treatment should be conducted to carry out research, establish data-sharing mechanisms (e.g. a common case file system) improvise systems to share resources such as staff, funding and other amenities.
11. Juvenile Correctional Institutions should be classified to prevent contamination among inmates, facilitate interaction with family members and to cater for children with special needs such as mental illness.
12. Rehabilitative programmes, both at Institutional and community levels, should be strengthened by appropriate staffing, staff training and use of relevant financial resources.
13. Institutional treatment should be linked with community-based treatment to ensure appropriate after-care services such as tool provision, scholarships etc, are provided.

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## CORRUPTION CONTROL IN CRIMINAL JUSTICE

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The Fourth Training Course on Corruption Control entitled, “Corruption Control in Criminal Justice” was held from 5 November to 30 November 2001. In this course, twelve foreign officials and three Japanese officials, engaged in corruption control, comparatively analyzed the current situation of corruption, explored current methods of corruption prevention, and looked at measures to enhance international cooperation in this regard.

### *Participants*

Mr. Sailendra Kumar Adhikary	Chief Metropolitan Magistrate, Metropolitan Magistrate Court, Bangladesh
Mr. Chaudhary Vinay Veerendra	Deputy Commissioner of Police, Anti Corruption Branch, Directorate of Vigilance, Government of National Capital Territory of Delhi, India
Mr. Toton Suprpto Sh.	Justice, Supreme Court of Indonesia, Indonesia
Mr. Kennedy Bosire Masita	Superintendent of Police, Fraud Investigator, Criminal Investigations Department, Headquarters, Nairobi, Kenya
Mr. Asan Kangeliev	Prosecutor of the Department, General Prosecutor Office of the, Kyrgyz Republic, Kyrgyz
Mr. Thomas Akin Jelimin	Deputy Public Prosecutor / Senior Legal Officer, State Attorney General's Chambers, Sarawak, Malaysia
Mr. Idham Bin Abd. Ghani	Deputy Public Prosecutor/ Head of Research Unit, Anti-Corruption Agency, Malaysia
Mr. Kumar Bahadur Khadka	Section Officer Commission for the Investigation of Abuse of Authority Nepal

Ms. Christiana Ijeoma Onuogu	Legal Adviser / Head of Prosecution, Independent Corrupt Practices Commission, Nigeria
Ms. Grace Morales Hernaez	Graft Investigation Officer , Office of the Ombudsman, Mindanao, Republic of the Philippines
Mr. Prasong Kunajiraporn	Judge, The Court of Appeals Region 9, Thailand
Ms. Supinya Berkfah	Senior Officer, The Office of the National Counter Corruption Commission, Thailand
Mr. Takushi Noguchi	Assistant Judge, Yamaguchi Family Court (Iwakuni Branch), Japan
Ms. Saori Watanabe	Public Prosecutor, Yokohama District Public Prosecutors Office, Japan
Mr. Tsuyoshi Kishi	Public Prosecutor, Sendai District Public Prosecutors Office, Japan

### *Discussion Topics*

The Course had two topics of general discussion. Topic One considered the, “Current Problems Relating to the Systems for Combating Corruption and Solutions for them from an Investigative Perspective” and Topic Two considered the, “Judicial Perspective on Current Problems Relating to the Systems for Combating Corruption and Solutions for them.” The tables below are abbreviated versions of the ones produced by the participants of the Course which give an overview of individual state’s situations in relation to the two topics.

*Topic One: “Current Problems Relating to the Systems for Combating Corruption and Solutions for*

*them from an Investigative Perspective”*

Country	Name Of Agency / Date Established	Controlling Or Supervising Body	Investigation And Prosecution Powers	Name Of Act/Law	General Remarks
Bangladesh	Bureau Of Anti-Corruption 1948	Prime Minister's Office	Investigation power only  Prosecuting lawyers are appointed by the Ministry of Law	Prevention Of Corruption Act - 1956	Not at all effective to combat corruption
Hong Kong	Independent Commission Against Corruption (ICAC) / 1974	Independent Committee comprising responsible citizens drawn from list of all sectors of community by the Chief Executive	Possess investigation powers under Sec. 12 of ICAC Ordinance  Prosecution - responsibility of Dept. Of Justice	Independent Commission Against Corruption (Icac) Ordinance	High political will of the administration in combating corruption
India	1. Central Vigilance Commission / 1964  2. Central Bureau Of Investigation / 1961  3. Anti-Corruption Branches Under Respective State Govt.	1. None  2. Supervised by CVC in corruption matters, other matters by Central Govt.	1. None  2. Both  3. Investigation power only	Prevention Of Corruption Act 1988  Criminal Procedure Code  Indian Evidence Act  CVC Ordinance 1988	High broadbased political will is required to be developed
Indonesia	1. Public Prosecutor  2. State Police	1. None  2. None	1. Both  2. Investigation only	1. Public Prosecutor Act 2. State Police Act	
Japan	1. Police  2. Public Prosecutors Office	1. National & Prefectural Public Safety Commission  2. Minister of Justice, however, he/she can control only the Prosecutor-General concerning the investigation and disposition of individual cases	1. Investigation power only  2. Both	Penal Code, Code Of Criminal Procedure And Others	Independence of investigative and prosecutorial power from political influence is steadily secured. in addition, since the public prosecutors office, especially the Special Investigation Departments in Tokyo and Osaka District Public Prosecutors OFFICE achieved brilliant successes during the last 50 years. As such, prosecution and police effectively played the role of an independent investigative authority for corruption cases in Japan.
Kenya	Kenya Anti Corruption Authority / 1997	President	Both	Prevention Corruption Act Cap 65 (Amended 1997)	Currently declared unconstitutional by the Constitutional Court In December 2000
Kyrgyz	General Prosecutor's Office	Parliament	Both	1. Legal Act Of The President Of The K.R. "About Additional Measures To Increase Struggle With Economical Crimes And Corruption" 2. "Coordinate Activity Of The Law Enforcement Agencies"	
Malaysia	Anti-Corruption Agency/ 1997	Prime Minister	Both	Anti-Corruption Act 1997	For procedure and evidence we refer to the

					Criminal Procedure Code And Evidence Act 1950
Nepal	Commission For The Investigation Of Abuse Of Authority (CIAA) / 1991	Parliament	Both	Prevention Of Corruption Act, 1960 CIAA Act, 1991	
Nigeria	Independent Corrupt Practices And Other Related Offences Commission (I.C.P.C.)	None	Both	Corrupt Practices And Other Related Offences Act 2000	The Act targets mainly public officers and not private office workers
Philippines	Office Of The Ombudsman / Constitutionally Created In 1987	None	Both	Republic Act No. 3019 (Anti-Graft And Corrupt Practices Act) Revised Penal Code And Others	The office was envisioned to be an independent body, a dispenser of justice free from any political interference.
Singapore	Corrupt Practices Investigation Bureau (CPIB) / 1952	Prime Minister's Office	No power of prosecution. Public prosecutor prosecutes.	Prevention Of Corruption Act	Political leadership is key factor. Once the political will to control corruption is high, everything else will fall in place
Thailand	The National Counter Corruption Commission (NCCC) / 1999	None	Resolution sent to the prosecutor general. If no agreement, working group finds more evidence. If no resolution, NCCC can prosecute by itself.	Organic Act On Counter Corruption, 1999	The constitution intended to lay a strong foundation for reforming the political and administrative structures to be more legitimate, transparent, stable and accountable to the people

*Corruption and Solutions for them”*

Country	Appointing body	Who handles the budget	Security of tenure of Judges	Disciplinary authority	Impeachment procedure	Burden of proof whether different for corruption cases
<b>Bangladesh</b>	<p>1. Chief Justice; President with the consent of Prime Minister</p> <p>2. Other Justice of the SC; Government prepare proposal in consultation with Chief Justice, for approval of President</p> <p>3. Judges; Public Service Commission is the recruiting authority. Ministry of Law is the appointing authority.</p> <p>4. Magistrates; Public Service Commission is the recruiting authority. Ministry of Establishment is the appointing authority.</p>	Ministry of Finance	Secured in case of SC Justice. Lower Judicial Officers job also secured, except, a few, transfer, harassment	<p>1. Supreme Judicial Counsel, headed by Chief Justice has authority of supervise subordinate Courts.</p> <p>2. Ministry of Law and Justice works as controlling authority for the Judicial Cadre of officials</p> <p>3. Ministry of Establishment works as controlling authority for the Magistrates belonging to Administrative Cadre</p>	Parliament with 2/3rd majority can impeach, a HC/SC Justice, Departmental action may be taken against Judges/Magistrates as per Discipline and Appeal Rule	No
<b>Hong-Kong</b>	Chief Executive on the Recommendation of the Judicial Officers Recommendation Commission					
<b>India</b>	President on advice of Cabinet in consultation with a collegium of senior judges	Judiciary budget is part of the main budget but once the funds are put at the disposal of the CJI, the discretion to incur expenditure rests with him.	65yrs	For lower judiciary, it is the High Court and the Supreme Court but for SC there is no controlling authority. For proven misconduct, they can be removed only by impeachment proceedings	By two third Voting in a joint session of Upper and Lower House after address is given committee on judicial accountability and a nominated person on behalf of the judge.	General rule applies except where tainted bribe money is recovered or he is in possession of assets disproportionate to income.

<b>Indonesia</b>	President	Justice Department	1) 65 yrs for Justices 2) 63 yrs for Judges in the Appeal Court 3) 60yrs for Judges in the District Court	The Supreme Court	President	Yes. But it's not reduce the duty of Public Prosecutor to prove the defendant is guilty.
<b>Japan</b>	1. The Chief Justice of SC; the Emperor (as designated by the Cabinet) 2. The other Justice of SC; the Cabinet 3. Judges of the other courts; the Cabinet (from a list of persons nominated by the SC)	The Cabinet shall prepare and submit to the Diet (however, the Cabinet is expected to pay particular attention to the original bill by the SC)	1) 70yrs for Justices and Summary Court Judges 2) 65 yrs for Judges in the other Court	1. Not for dismissing; SC or HC 2. For dismissing; The Court of Impeachment	The Court of Impeachment, a legislative body composed of Representatives and Councilors drawn from the Diet.	No
<b>Kenya</b>	The President of the Republic appoints the Chief Justice, Judges of Appeal and High Court Judges	The Judiciary	Available 1) 75 yrs for Chief Justice 2) 73 yrs for Court of Appeal Judges 3) 65yrs for High Court Judges	The President through a Judicial Inquiry	Yes	No
<b>Kyrgyz</b>	Parliament (President introduce candidate and Parliament votes)		Work for 5yrs term	1. Council of the SC recommends to the Parliament 2. SC supervises subordinate courts		No
<b>Malaysia</b>	King on advice of Prime Minister	Government	Yes, judges to retire at age 65yrs.	Judicial enquiry (tribunal) appointed by the King	Yes	No
<b>Nepal</b>	His majesty on the recommendation of constitutional council for chief Justice of SC and for others Judicial Council	Government	Chief Justice 7yrs-of office, SC Justices 65yrs, others 63yrs old	Judicial Council	2/3 majority of House of Representatives	No
<b>Nigeria</b>	President on the recommendation of the National Judicial Council subject to confirmation by the Senate	The Senate	Yes	The President on the recommendation of the National Judicial Council	Yes	Yes

<b>Philippines</b>	Appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council	1987 Constitution provides: "The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released."	Yes	Supreme Court	Verified complaint or resolution of impeachment filed by at least one-third of all the Members of the House shall constitute the Articles of Impeachment and trial by the Senate shall forthwith proceed	No
<b>Singapore</b>	President on advice of Prime Minister and in consultation with chief Justice	Usual budgeting process through Finance Ministry	Yes	Only for misconduct on recommendation of a tribunal handed by the Chief Justice		Yes
<b>Thailand</b>	The King with the advice of the Judicial Commission	Ministry of Finance will prepare and submit to the Parliament (Both institutions should approve original bill requested by the Office of the Court of Justice)	60-year-old age and 5 year extension as senior judges	The Judicial Commission	The President and the Vice-President of the Supreme Court may be impeached	Prosecutor (corruption charge) Offender (unusual wealthiness)

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**PHILIPPINES-UNAFEI JOINT SEMINAR**

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The Philippines-UNAFEI Joint Seminar was held in Manila on the theme of “Community Involvement in the Criminal Justice Administration” from 5 to 8 December 2001. The Government of the Republic of the Philippines, through the National Police Commission, and UNAFEI organized the Joint Seminar.

The Joint Seminar was attended by high-ranking Filipino government officials, members of NGOs and persons representing all sectors of the criminal justice system. The UNAFEI delegation comprised of the Director, Deputy Director, four professors, the Linguistic Adviser and an officer of the National Police Agency of Japan.

The Joint Seminar considered the below-mentioned topics, subdivided into presentations by UNAFEI and Filipino participants. The participants heard presentations, reactions and open forums on the following five topics:

Topic One	Community Involvement in Law Enforcement
Topic Two	Community Involvement in the Prosecution of Crimes
Topic Three	Community Involvement in the Courts
Topic Four	Community Involvement in the Rehabilitation and Treatment of Offenders
Topic Five	Mobilizing the Community for Improved Criminal Justice Administration

On the penultimate day of the Joint Seminar the participants were organized into five group workshops, the discussion themes of which reflected the five different topics discussed. Each group workshop formulated action plans after identifying the issues and problems that arose within their groups.

A Plenary Session was held on the final day where recommendations were formulated based on the recommendations of the five group workshops. The Joint Seminar concluded with the oral presentation and adoption of the resulting recommendations for the furtherance and improvement of community involvement in the Filipino criminal justice system.

The Final Recommendations, as adopted by the Joint Seminar, were as follows:

1. Appropriate measures should be undertaken to promote the coordination and cooperation of law enforcement agencies, prosecution, courts and corrections vis-à-vis the community through more effective sharing of information, for example, by strengthening the National Crime Information System (NCIS).

2. Public trust and confidence in the criminal justice system should be further developed through community involvement in the operations and workings of each criminal justice agency.
3. In order to attain full community involvement in the criminal justice administration, criminal justice agencies should observe the principles of transparency, integrity and impartiality.
4. Adequate legislation should be enacted to strengthen community involvement and participation in crime prevention and the administration of criminal justice through such programmes as the Volunteer Probation Programme (VPP), Volunteer Information Programme for Youth (VIPY), and the Community-Oriented Policing System (COPS).
5. The active participation of witnesses in the prosecution of cases should be assured by amending the existing law like the Witness Protection, Security and Benefits Programme.
6. Congress, local government councils, and community-based organizations (NGOs and private sectors, among others) should be encouraged to provide personnel and resources to correctional agencies in order to achieve the full implementation of correctional activities.
7. Credibility of all agencies in the criminal justice system should be improved through continuing capability training, seminars, etc. in order to attain swift and fair dispensation of justice.
8. The active participation of the community should be ensured in national policy-making bodies as a means through which agencies of government can work with the community.
9. Effective measures should be undertaken to build and strengthen community-based groups, where seminars/training/dialogues should be undertaken for the purpose of enhancing cooperation and coordination between law enforcement agencies and prosecutors.
10. The Department of Justice should encourage the community to assist in the recruitment of qualified and competent lawyers for the prosecution service.
11. Public information education programmes through responsible media should be enhanced in order to increase community awareness on crime prevention and the treatment of offenders.

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## INFORMATION ABOUT PROGRAMMES & ACTIVITES

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### *Forthcoming Programmes*

#### **1. The 121<sup>st</sup> International Training Course**

The 121<sup>st</sup> International Training Course, entitled “Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process”, is scheduled to be held from 20 May to 14 July 2002. The 121<sup>st</sup> International Training Course will examine current initiatives and the use of non-custodial measures at every stage of the criminal justice process.

#### Rationale

The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) was adopted by the United Nations General Assembly on the basis of a recommendation by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, which provides guidelines and basic principles for diversified non-custodial measures. The Tokyo Rules aim at reducing the use of incarceration and rationalizing criminal justice policies by enhancing community-based approaches in order to alleviate problems relating to prison overcrowding and encourage the reintegration of offenders into the community.

Since its adoption, according to the survey results of the Tokyo Rules submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session in 2001, the Tokyo Rules have been recognized as important in their administration of justice by most states and a number of states have undertaken special efforts to align national systems with the Rules by prescribing the introduction and use of non-custodial measures by law or other regulations. However, efforts to reduce the use of incarceration by adopting alternatives have generally not proven successful in most states. Indeed, currently, the continuous increase of the prison population and overcrowding is one of the major pressing problems to be solved in criminal justice in many countries.

In response to this situation, “The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century”, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in 2000, stressed the importance of promoting effective alternatives to incarceration in order to contain the growth and overcrowding of correctional facilities’ populations (para.26). As a follow-up, draft plans of action for the implementation of the Vienna Declaration is to be adopted by the next Commission on Crime Prevention and Criminal Justice in 2002, where a paragraph on action on prison overcrowding and alternatives to incarceration is included. It encourages member states to prioritize non-custodial measures to imprisonment where possible, and to deal with minor offences using community-based options such as mediation between concerned parties. It also recommends conducting public awareness and education campaigns on alternatives to imprisonment and how they work.

No one would say with certainty that all offenders can be rehabilitated, however, considering that the vast majority will return to the community, every effort should be made to encourage and assist offenders to become law-abiding citizens, which is ultimately in the best public interest. Overcrowded correctional facilities cannot effectively treat, manage and return offenders to the community as law-abiding citizens, as it puts a strain on staff, budgets, programming and so on. More importantly, it is commonly believed that, unless offenders need to be separated from society, community-based programmes should be pursued as much as possible, because such programmes are more effective and appropriate than incarceration in terms of the rehabilitation of offenders and the efficient allocation of resources for criminal justice.

In this context, recognizing the urgent necessity of making a variety of community-based measures and programmes available, it is important to earnestly examine and review why alternatives to incarceration have not been adopted more effectively and efficiently and to find out what needs to be done to enhance community-based measures and programmes as alternatives.

Among the various obstacles to the development and further adoption of community-based alternatives might be the lack of support and understanding of the criminal justice practitioner. Because of this, in many countries, suitable community-based measures exist, but they are not used. Lack of public support and understanding may also be obstacles as it is necessary for practitioners to work in partnership with communities to successfully implement community-based measures. Scarcity of resources is also a problem, which was highlighted by the above-mentioned survey results, in terms of both funds and personnel. It would be appropriate, as recommended in the conclusion of the survey results of the Tokyo rules, for each government to review the allocation of funds and other resources for alternatives to incarceration in criminal justice systems.

There are many forms of community-based alternatives, which can be provided at various stages of the criminal justice process from the pre-trial stage, such as at the police or prosecution stage to the post-sentencing stage. Some of these are community service, probation or other forms of supervision in the community, conditional sentences that allow offenders to serve their sentences in the community with certain conditions such as obtaining treatment for drug problems, fines, restitution, electronic monitoring, conditional release such as parole, which are all initiatives that attempt to either avoid the use of custody or reduce the length of custody. Besides these relatively traditional alternatives, there are some examples of innovative community-based alternatives under way in some countries, one being the restorative justice approach, which has implications for the reduced use or length of custody. This approach is usually used as community diversion programmes at the pre-trial stage, that is, when a police officer or a prosecutor determines diversion is appropriate, the case is referred to a resolution conference programme that involves the victim, families, friends and the community. All forms of these alternatives, as well as other forms, can be explored during the course.

The purpose of this International Training Course is to offer participants opportunities to share experiences and views on the challenges faced in the course of adopting community-based alternatives to incarceration and find out what kinds of measures should be taken to enhance community-based programmes and measures to encourage minimal incarceration

and the rehabilitation of offenders at all stages of the criminal justice process. Among the major topics to be discussed are the following items:

- (1) To assess needs for enhancing community-based alternatives in each country
- (2) To examine the current administration of community-based alternatives – scope of availability and utilization at each stage of the criminal justice process in each country
- (3) To analyze problems in the administration of alternatives to incarceration and to explore any solutions.

## **2. The 122<sup>nd</sup> International Training Course**

The theme of the 122<sup>nd</sup> International Training Course is, as yet, undecided. It is scheduled to be held from 2 September to 3 November 2002.

## **3. Seventh Special Seminar for Senior Criminal Justice Officials of the People's Republic of China**

The Seventh Special Seminar for Senior Officials in criminal justice in the People's Republic of China, "International Cooperation in Criminal Matters", is scheduled to be held at UNAFEI from 25 February to 15 March 2002. Ten senior criminal justice officials and UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

## **4. Seminar on Judicial System for Tadzhikistan**

The First Special Seminar for Officials involved in criminal justice from Tadzhikistan will be held from 4 March until 21 March at UNAFEI. The objectives of this course will be to study the Tadzhikistan criminal justice system from a comparative perspective, including an overview of the Japanese criminal justice system and to study the current situation, problems and countermeasures in respect of transnational crime.

### ***Overseas Trips by Staff***

Mr. Mikinao Kitada (Director), Mr. Keiichi Aizawa (Deputy Director), Mr. Toru Miura (Professor), Mr. Yuichiro Tachi (Professor), Mr. Kenji Teramura (Professor), Ms. Mikiko Kakiyama (Professor), Mr. Sean Eratt (Linguistic Adviser) and Mr. Takuma Kai (Staff) represented UNAFEI at the Philippines-UNAFEI Joint Seminar on "Community Involvement in the Criminal Justice Administration", in Manila, the Philippines, from 5 December to 8 December 2001.

Mr. Mikinao Kitada (Director) and Mr. Yasuhiro Tanabe (Professor) represented UNAFEI at the Coordination Meeting of the United Nations Prevention and Criminal Justice Programme Network on the occasion of the 20<sup>th</sup> Anniversary of HEUNI. This was held in Helsinki, Finland from 12 December to 17 December 2001.

Mr. Yuichiro Tachi visited Indonesia from 6 January to 19 January 2002 where he conducted research on behalf of UNAFEI into judicial reform in Indonesia.

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