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# REPORTS OF THE COURSE

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## GROUP 1

### DISRUPTING CRIMINAL ORGANIZATIONS ENGAGED IN DRUG TRAFFICKING

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## I. INTRODUCTION

This group workshop commenced on the 23<sup>rd</sup> May 2017 under the guidance and advice of Prof. Masahiro YAMADA and Prof. Takeshi MATSUMOTO. Mr. Wasawat CHAWALITTHAMRONG was appointed the chairperson and Mr. Shanaka WIJESINGHE as the Rapporteur. The rest of the members of the group are stated above. This report is the result of the collaboration of all the members of the group. The topics and the subtopics of this group were selected in collaboration with the views of all the participating members and also using the guidelines given by UNAFEI.

## II. BACKGROUND

Globally, drug trafficking is a serious issue. The involvement of criminal groups engaged in drug trafficking has caused a serious threat to the entire globe. Therefore, the need to focus on successfully controlling this threat, and also to investigate and prosecute the criminal organizations engaged in drug trafficking and disrupting them has arisen. To fight this threat which has now spread across all nations, international cooperation across borders is needed. Some countries have ratified conventions and agreements to tackle this issue.

Since a successful investigation is paramount for obtaining a conviction of the members of criminal organizations, the group agreed to focus on the subject of investigation and related matters pertaining to it.

## III. EFFICIENT COLLECTION AND HANDLING OF INFORMATION

### A. Collecting Information Efficiently

The group agreed that the gathering of proper information and intelligence plays a vital role when it comes to tackling the problem of drug trafficking and discussed the following sources and the means of collecting efficient information.

- Human sources – through people, agents, and decoys.
- Through police stations and other agencies.
- Information received through suspects – this source of information is vital as it will always give the investigator first-hand information about a particular crime. Therefore, gathering information promptly from the suspects, soon after arrest and at the time of interrogation was seen as paramount

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However, it was observed that information of such nature is dangerous and unreliable as the suspects could always go back on their statements, and therefore the investigators should be very cautious when obtaining information through the suspects. Therefore, it is the duty of the investigator to scrutinize the background of the suspects and to confirm whether the information obtained was genuine or not.

At this point it was pointed out that the information received from the family members of the suspects too could assist the investigators.

- From informants – The investigators should obtain information from informants at the grassroots level such as from village chiefs etc. In some jurisdictions it was highlighted that some informants were even paid for the services they provided as this source has become highly successful in obtaining positive information. Using plain clothes policemen as informants is important and this has brought good results in many jurisdictions. The concept of community policing was also discussed, and this method has brought positive results in some jurisdictions to obtain information. In some jurisdictions like the Congo, even the prosecutors have informants who collect information through their informants.
- Information received at the border has become a very vital source of obtaining information especially in former Soviet Union countries. Therefore, the investigators should take necessary steps to plant informants in all the vital points, like the points of entry.
- Information obtained through cooperating witnesses at the investigation stage is important and this has led to positive results in countries like Armenia and Congo
- Through undercover operations – undercover operations done by the investigators have brought in good results in many jurisdictions, but it was observed that this cannot be put in to operation without the assistance of decoys and agents
- Through the Internet by detecting online activities of criminal groups
- Information received through official sources
- Information received from other countries

**B. Handling Information Collected**

The view of the group was that the collected information should be handled in secrecy, and the information gathered from different sources should not be contaminated. However, it was agreed that in view of successful investigation and prosecution, the collected information should be exchanged with utmost secrecy among other agencies who are engaged in investigations.

**C. Accumulating and Analysing Information**

The group observed that the collected information should be analysed with experience, patience and also using digital software. However, the information gathered should be cross checked for its truthfulness and reliability. The information also should be analysed pertaining to the location the drug was seized (e.g. at the border, at the point of entry) and the past criminal records of the suspects.

**D. How to Share Information with other Agencies, Including Foreign Agencies**

The view of the group was that the information received should be shared promptly locally and with the foreign agencies who are involved in fighting drug trafficking. This should be done through a focal point. However, this is subject to treaties and agreements in force between the countries. The group also observed the importance of sharing information through informal networks and on an ad hoc basis.

**E. Issues in Using Information in the Criminal Justice System**

There are a number of constraints in using the collected information. Whether the information are collected formally or informally, they have to be obtained according to the accepted legal procedure and norms. The collected information should be admissible in a court of law as per the rules pertaining to evidence and procedure. Further it was noted that the investigator should be also cautious about the double

standards adopted by the suspects.

#### **IV. EFFICIENT INVESTIGATION MEASURES BASED ON CURRENT LAWS AND PRACTICES**

##### **A. Effective Search and Seizure**

The group unanimously agreed that effective search and seizure should lead to a successful investigation, and therefore the investigators should take all possible steps to bring not only the members but even the leaders of the criminal organizations dealing with drugs before the legal process. They were also of the view that the search and the seizures have to be carried out according to the prevailing laws of the jurisdictions, and steps should always be taken to account for the searches and seizures.

There was a division of opinion about arresting and searching of a suspect with or without a warrant obtained either from a judicial officer or a prosecutor. Some members of the group were of the view that arresting a suspect and seizing the property without a warrant could be a violation of fundamental rights. However, it was also suggested that due to the urgency of the matter such as detecting and seizing drugs, arrest could be made without a warrant and the investigators should subsequently complete all the legal formalities as early as possible.

The following points were discussed, and methods were suggested, to improve the quality of search and seizure of suspects:

- Searches should be done before an independent witness to give more weight to the conduct of the investigators
- To have two search parties at the same time so there could be more accountability
- The items seized should be itemized and a list of the items should be prepared in the presence of two independent witnesses.
- Video recording of the arrest and the seizures was recommended subject to its admissibility in a court of law
- To use only reasonable force for the purpose of arresting and then seizing of property.
- To transfer the items seized as soon as possible out of the police stations to authorities such as to the court or to the analyst or to the pharmacist etc.
- To obtain the services of a female police officer when searching and arresting a female suspect.

##### **B. Observation and Interview**

The investigators after arresting a suspect should be very vigilant and should observe all the aspects of the suspects such as his behaviour and his past record. The investigators through observation should gather information pertaining to the modus operandi of the suspect or the group that he is working with.

The common concession agreed to was that the interviews of the suspect should be done early without delay and that it should be done only with the suspect and without anyone else being present along with the suspect.

##### **C. Investigations Pertaining to Financial Agencies**

It was discussed at length that in view of disrupting criminal organizations engaged in drug trafficking it is necessary to investigate financial agencies, as the drug dealers use these agencies to deal with the illicit money they earned. There was a division of views on this aspect as in some jurisdictions prosecutors themselves could get information directly from banks while in other jurisdictions information could be gathered only through a central authority such as the central bank. In some jurisdictions, information could be obtained only through a court warrant.

#### **D. Investigations of Telecommunications**

Call detail records (CDR) are vital to investigations in order to curtail organizations engaged in drug trafficking. However, it was observed that a warrant is required to obtain these records, and when it comes to the trial stage notice with sufficient time should be given to the accused or his attorney regarding the usage of these pieces of evidence against the accused. The call detail reports are a vital clue as to the entire group of drug dealers as it will highlight all the calls taken and received by them.

#### **E. Controlled Delivery**

The concept of controlled delivery was also discussed. Some members were of the view that this is the best method to track the suspects and bring them within the legal framework. This could be a method to detect the real suspects operating locally or even internationally. However, the participants also discussed the constraints this could have when dealing internationally with other investigators who are operating in other jurisdictions.

#### **F. Electronic Surveillance**

Methods such as wiretapping, bugging, video surveillance (CCTV cameras) GPS and cybertracking were discussed at length. Cybertracking, though comprehensively expensive, is a very successful method of tracking suspects through social media networks such as Facebook, Viber, etc. In Japan, use of GPS evidence is now restrained due to a court ruling as this could intrude on the personal life of a person. The participants also raised concerns about the constraints of using these methods and the admissibility of its evidence and observed that these methods should be developed in the future for successful investigations to disrupt criminal organizations engaged in drug trafficking.

#### **G. Wiretapping**

Wiretapping is an efficient tool of investigation and is being used in most of jurisdictions. However, the method of obtaining it was the subject matter of discussion. In Bhutan, due to the urgency of the matter, wiretapping could be done even without a warrant while in Bangladesh this is an executive order and in Uzbekistan a judicial warrant is needed to obtain evidence through wiretapping.

### **V. EFFICIENT PROSECUTION MEASURES BASED ON CURRENT LAWS AND PRACTICES**

#### **A. Measures to Fully Use the Law, Including Administrative Regulations**

The group unanimously agreed that all the laws, conventions and agreements, nationally and internationally should be adopted for the successful prosecution and conviction of the suspects engaged in drug dealing. They also agreed that all the administrative methods and regulations to support the laws should be in place and should be forcefully used to prosecute the offenders. They also agreed that laws and regulations should be adopted to enhance the punishment of offenders.

#### **B. Plea Agreements**

As for plea bargaining the members of the group confirmed that there is no plea-bargaining system in their respective jurisdictions pertaining to drug cases. However, it was observed during the discussions that even for cases pertaining to drugs, this method could be adopted to bring down the charges in view of saving time of the investigators and the prosecutors. However, it was observed that this should be done subject to tight supervision and scrutiny.

#### **C. Issues in Disclosures**

All the participants agreed that all the material pertaining to the case should be fully disclosed to the defence to have a fair trial against the accused person. If the prosecution does not disclose the full particulars, it was observed that there will be obstacles and delays in the entire process and that this will consume a lot of time. However, it was also observed that only the items needed for trial should be disclosed, as the disclosure of unrelated items will hamper the investigation process.

## VI. ADJUDICATION

### A. Protection of Witnesses

#### 1. Physical Protection

It was unanimously agreed that the protection of witnesses is vital in any criminal trial. After a successful investigation when an accused person is brought before a court of law the witnesses are vital and they need to be protected for the conclusion of a successful trial. Except in Sri Lanka and Thailand, the other countries in the group did not have a witness protection system. In Thailand, a witness protection system has been in place since 2003, and once a request is made to the investigator and upon a decision being made by him, the witnesses are protected throughout their lives (e.g., in their jobs, households etc.); each protected witness is even issued with a new identity card and given a new life. In Sri Lanka the witness protection Act No 4 of 2015 has given a conducive environment where the witnesses will be protected and assisted. This act has even established a national authority to protect witnesses. However, in countries like Bangladesh and Bhutan though there is no formal witness protection law, after making an assessment, protection is given to the witnesses when the need arises.

#### 2. Suppression of Identity

The Group observed that this method of protection of witnesses was not in force in any jurisdiction except in Japan where it was possible and legally provided. The group deliberated at length regarding the consequences of this method, as the accused person will not know the real person who is testifying against him. It was also observed that the element of corruption could creep in as the investigators and the prosecutors will do anything to secure a conviction at any cost.

#### 3. Testimony behind Screens

Participants from all countries except Japan indicated that in their respective jurisdictions trials are conducted in open court, which is open to the public. Japan has a system of testifying behind a screen. But it was observed that the judge, prosecutor and the defence attorney could see the witness and the defence attorney needs to give his consent for this system to be used. However, this system, too, could lead to corruption, and it could violate the rights of the accused person.

#### 4. Testimony through Video Link

It was noted that except in Japan and Thailand none of the other countries was familiar with this system. In Japan the witness is located in a separate room, and he can give evidence through a video link, which will be shown in court. In Thailand, a witness can give evidence even based from their embassy in another country. It was agreed that this system could be a very effective tool to protect the witness and that it will make a witness comfortable when giving evidence.

#### 5. Use of Voice Distortion and Facial Disguise

None of the countries in the group adopt this method. All the countries in the group have systems where trials are held in open court and in public, except in extreme cases like treason and sexual offences where the judge uses his discretion to have closed trials. In Japan, Sri Lanka and in Congo, the constitution provides for an open trial. The group discussed this concept at length and observed that this may be even a far fledged method and that there has to be a legal backing to proceed with this method. It was observed that this system may violate the concept of a fair trial and may raise many objections from the defence.

### B. Methods to Ensure the Presence of Witnesses

The participants observed the following methods and tools to ensure that the presence of the witnesses would be useful:

- Obtain a warrant through court
- Through video link as observed above
- Observing the reasons for the witness for not appearing in court and using positive methods to counter them.
- Using motivational methods like providing the witness with security and paying him for his passage

(if he is abroad) etc.

It was observed that the authorities concerned should do whatever possible to bring the witness to court. If the witnesses are subsequently punished for not appearing before court, the witness will never give evidence against the accused persons who will be subsequently be discharged due to lack of evidence.

### **C. Measures to Protect Other Trial Participants**

#### **1. Protection of Judges and Members of Juries**

It was interesting to note that different methods were adopted to protect judges in different jurisdictions. In Sri Lanka, judges are provided with a police officer while in Bangladesh this facility is given only to the senior judges and only after a threat assessment. In Japan and in Thailand, judges are not provided with security. In Congo and Uzbekistan, judges have the right to protect themselves with a gun in case of a threat. However, the common agreement of the group was that the judges should be provided with sufficient security to carry out their duties successfully. Most of the participants disclosed that their jurisdiction did not have a jury system, but some jurisdictions like in Japan has a system where lay judges work in harmony with professional judges. It was observed that they, too, should be given security to a certain extent.

#### **2. Protection of Prosecutors**

In countries like Congo, Uzbekistan, Thailand and Armenia, prosecutors have the right to carry a gun, and it lies with their discretion to use them or not. The general agreement of the participants was that since the prosecutors are dealing with the criminals, they should be provided with security.

#### **3. Protection of the Accused and Defence Attorneys**

Protection for the accused is not needed as they are protected by the law enforcement agencies and the prison authorities. It was also observed that if the accused persons had a threat to their lives, they would prefer staying in remand and they would not canvass for bail. It was also observed that in a case of a member of a drug organization incarcerated in remand, he should be kept in a separate cell as he would have threats from inmates belonging to rival organizations.

Regarding protection of defence attorneys, some participants raised the concern that they too should be protected as they will have threats from rival groups of the accused person that they are defending. But it was decided that the threat should be assessed on case-by-case basis, and protection should be then provided accordingly.

## **VII. HOW TO FINANCIALLY WEAKEN CRIMINAL ORGANIZATIONS ENGAGED IN DRUG TRAFFICKING**

The main purpose of a criminal organization engaged in drug trafficking is to make a profit out of their illicit activities. Therefore, identifying the assets and subsequently tracing them and then freezing the said illicit proceeds are vital steps of fighting against the criminal organizations engaged in drug trafficking. These topics were deliberated at length by the group, and the following topics were discussed by the participants.

### **A. Identifying the Proceeds of Crime**

The group unanimously agreed that the monies earned out of drug dealing, commonly known as black money, are never kept with the members of the group. The leaders of the group will never possess and deal with the money, and the members of the group will never have any money in their accounts or possess any property which would raise any suspicion about their illicit activities.

The criminal groups engaged in drug trafficking always will make an attempt to legalize the illicit proceeds so that they won't be easily detected by law enforcement authorities. The difficult task of identifying the said proceeds of crime therefore falls on the investigators.

The group observed that the illicit proceeds could be easily transferred by the drug dealers to the accounts of relatives, family members or friends. The property acquired will definitely be in the name of a third party. Some illicit proceeds would be transferred to another country, preferably to a country which has tax concessions. The criminal groups dealing with drugs are always ahead of the law enforcement authorities, and therefore identifying the illicit proceeds is a difficult but not an impossible task. The group observed the

following methods of identifying the illicit proceeds of crimes.

- Unusual life styles of a person who lives an extravagant life far above his basic income
- The earnings and properties which could not be justified
- Information acquired through an arrested member of a group – This information is vital as this will be an initial step to break into the activities of the other members of the group.
- From telephone call details – This information can be obtained after receiving information from an arrested member of a criminal organization dealing in drugs. This will lead to clues regarding the rest of the members of the criminal organization.
- Through joint investigations with foreign jurisdictions.

#### **B. Tracing Proceeds of Crimes**

At this stage it was observed that before steps are taken to freeze the assets identified as illegally acquired, the law enforcement officers should have identified the layering of those assets. This is where the illicit assets acquired in a particular country are moved mainly to a foreign jurisdiction. This is a very complex situation and definitely needs international cooperation.

#### **C. Freezing Assets**

The participants discussed the freezing of assets, and it was observed that in their jurisdictions confiscation takes place only after a conviction. In Sri Lanka and in Bangladesh freezing of assets could be done through the police by making an application in court, but this is done only for a specific period of time. In Japan, banks also can take steps to freeze property through the police, and the activities of the frozen accounts are restricted except for taxation purposes.

In Thailand, the police can freeze assets immediately as swift action is needed to freeze the illicit proceeds before they are transferred out of the banks to a foreign jurisdiction. In Armenia, Uzbekistan and in the Congo, freezing can be done only through a warrant obtained from court. In Japan, it was observed that banks could seize property, but the banks are very cautious as they could be sued in a court of law subsequently.

#### **D. Confiscating Property**

The participants observed that in most of their jurisdictions, confiscation could be done only after conviction.

#### **E. Non-conviction-based Confiscation**

None of the countries except Thailand adopted the method of non-conviction-based confiscation. It was observed that since the properties are seized prior to conviction and the activities of those properties are restricted, the need to confiscate the properties would not arise. However, it was deliberated with much interest about the benefits of non-conviction-based confiscation. It was discussed at length about the possibility of having non-conviction-based confiscation in a case where a suspect is convicted and his assets are confiscated, but the lack of evidence to confiscate the rest of the assets becomes an issue. It was observed that even in a non-conviction-based confiscation, the trial judge has to look for evidence in order to confiscate property.

### **VIII. INTERNATIONAL COOPERATION**

Due to the globalization of the criminal activities of the organizations engaged in drug trafficking and due to its transnational nature, working jointly with the law enforcement authorities from other nations is very important. It was pointed out that treaties and agreements signed between countries become operational and admissible when dealing between two countries. However, in Japan certain difficulties have arisen in jointly working with some African nations. All the participants agreed that to keep pace with cooperation in combating criminal organizations at the international level, harmonization of the law, international training and even establishing a common database are vital.

## **IX. CONCLUSION AND RECOMMENDATIONS**

From the extensive discussions the group had, it was noted that criminal organizations dealing with drugs operate and spread across borders. The illicit proceeds acquired by these organizations also cross borders, and this working group apart from the observations and suggestions made during the time of deliberations, suggests the following tools which will hopefully contribute to combating this ever-growing problem:

- To introduce a non-cash-basis transaction system, such as using ATM cards, as this will easily detect suspicious transactions,
- One person, one account system – Where an individual could open only a single account,
- Imposing severe tax penalties and better administration of a taxation system,
- A clause to impose severe liability on a guarantor when opening a bank account,
- More stringent laws with severe punishments should be implemented for persons dealing with drugs,
- More joint investigations with other countries,
- More awareness among the public in dealing with illicit drugs.