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The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

ANNUAL REPORT FOR 2017

AND

RESOURCE MATERIAL SERIES NO. 105

ENHANCING THE RULE OF LAW IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE: POLICIES AND PRACTICES BASED ON THE UNITED NATIONS CONVENTIONS AND STANDARDS AND NORMS

UNAFEI

Akishima, Tokyo, Japan **September 2018**

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 105. This volume contains the Annual Report for 2017 and the work produced in the 168th International Senior Seminar, conducted from 11 January to 9 February 2018. The main theme of the 168th Seminar was *Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms*.

In order to establish peaceful, inclusive and sustainable societies, legal institutions must apply the law fairly and equally to all members of society. While many countries have made great efforts to strengthen their legal institutions, there is a limit to the success that state agencies and policymakers can achieve on their own. Over the past several decades, a global consensus has emerged recognizing that many challenges in the field of crime prevention and criminal justice can only be solved with the participation and support of an informed public. In this sense, it is important that criminal justice practitioners consider how the rule of law can be supported and enhanced by law-related education, access to justice for all, public participation in criminal justice, and measures to prevent state agencies from infringing on the legitimate rights of citizens.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Seminar to explore various issues that relate to the rule of law. This issue of the *Resource Material Series*, in regard to the 168th International Senior Seminar, contains papers contributed by visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Seminar. I regret that not all the papers submitted by the participants of the Seminar could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

September 2018

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Takeshi SETO
Director of UNAFEI

PART ONE

ANNUAL REPORT

FOR 2017

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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2017 – 31 December 2017)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1962 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in the Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

One of the most significant developments during the 2017 calendar year was UNAFEI's move from Fuchu to the Ministry of Justice's International Justice Complex in western Tokyo on 2 October 2017. Working side by side with the staff and professors of the International Cooperation Department (ICD), UNAFEI is poised to provide the same high-quality capacity-development programmes in state of the art facilities. UNAFEI's new address is 2-1-18 Mokuseinomori, Akishima-shi, Tokyo 196-8570.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of the criminal justice field discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice from the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). Approximately one hundred government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA is an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in the criminal justice field.

By the end of 2017, UNAFEI had conducted a total of 167 international training courses and seminars. Over 5,000 criminal justice personnel representing 136 different countries and administrative regions have participated in these seminars. UNAFEI also conducts a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and hold important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 165th International Senior Seminar

1. Introduction

The 165th International Senior Seminar was held from 12 January to 13 February 2017. The main theme was "Juvenile Justice and the United Nations Standards and Norms". Twenty-six overseas participants (including one observer) and five Japanese participants attended the Seminar.

2. Methodology

Firstly, the Seminar participants introduced the roles and functions of criminal justice agencies in their countries in regard to the main theme. After receiving lectures from UNAFEI Professors and visiting experts, the participants were then divided into three group workshops as follows:

Group 1: A Few Measures to Prevent and Reduce Recidivism

Group 2: Reducing Crime and Recidivism of Juveniles: Discussions and Suggestions

Group 3: A Holistic Approach to Juvenile Justice Systems

Each Group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experiences, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the Reports of the Seminar. The full texts of these Reports were published in UNAFEI Resource Material Series No. 102.

3. Outcome Summary

(i) A Few Measures to Prevent and Reduce Recidivism

Group 1 conducted a comprehensive review of the status of juvenile justice in the participating countries and identified challenges facing juvenile justice systems. The group workshop report addressed the following topics: (1) the need for prompt intervention by the juvenile justice system; (2) comprehensive assessment of juveniles; (3) responsibilities of parents and guardians; (4) diversion programmes; (5) restorative justice; (6) multi-agency cooperation.

The group reported that timing of juvenile justice dispositions varies widely from country to country, and stressed the importance of prompt interventions, thus minimizing the time spent by the juvenile in the system. At the same time, comprehensive assessment of the needs of each juvenile must be conducted by qualified professionals using reliable assessment tools and comprehensive social inquiry reports. Due to the important role that parents play in the sound upbringing of their children, the United Nations standards and norms on juvenile justice encourage parental participation in the juvenile justice system. Nevertheless, the group concluded that most countries do not have such procedures and practices in place.

To avoid formal process, diversion programmes should be developed or expanded, particularly for minor juvenile offences. Many countries lack diversion programmes and enabling legislation. Among countries that have diversion, many of the options are limited or are not carried out promptly. To implement an effective diversion programme, constant training and specialized knowledge for personnel are important. Likewise, though restorative justice practices are encouraged by the UN standards and norms, implementation varies greatly. Data analysis is important to strengthen restorative justice practices based on each country's needs through a formal mechanism of monitoring and data analysis.

The group found that the protection of children in conflict with the law requires, among other measures, multi-sectoral coordination between government agencies, the community and the private sector. The group concluded that governments should recognize and strengthen the work of community leaders, such as volunteer probation officers, and non-governmental organizations (NGOs), which provide rehabilitation services through, for example, the operation of halfway houses.

Ultimately, a holistic approach is required to tackling juvenile recidivism. Countries need diverse options based on their domestic situations, and policies must be implemented in line with each country's legal system. Yet despite legal and cultural differences, all countries are united in the aspiration to eliminate recidivism

among juveniles.

(ii) Reducing Crime and Recidivism of Juveniles: Discussions and Suggestions

The group members addressed the issue of juvenile crime and recidivism, recognizing that youth are, due to their maturation and growth process, fundamentally different than adults in terms of responsibility for their conduct and their prognosis for rehabilitation.

The group identified common factors that contribute to juvenile recidivism in the participating counties, which include insufficient use of diversion, the quality of treatment programmes due to lack of evaluation, and the problem of discontinuation of care and lack of synergies resulting from underutilization of multi-agency cooperation. Other factors identified by the group include: inadequate training facilities, lack of rehabilitation programmes, stigmatization, poverty, lack of funds, inadequate training of social workers, poor education, and lack of jobs.

In response to these issues, the group recommended: (1) strengthening governmental and non-governmental juvenile justice and welfare institutions; (2) enhancing the capacity of human resources though training; (3) empowering families to provide necessary care for juveniles; (4) reviewing existing programmes by increasing emphasis on diversion; (5) reviewing existing law and enacting new legislation to address emerging issues; (6) enhancing public awareness to reduce stigmatization of juvenile offenders; (7) conducting monitoring and evaluation of existing programmes; (8) increasing research on juvenile justice; (9) use of data management tools; (10) promoting guidance and counselling for juveniles.

Multi-agency cooperation with the community and the private sector is also important to reducing recidivism. Key measures to enhance multi-agency cooperation include promoting information sharing to enhance cooperation; establishing linkages among complementing organizations; promoting exchange programmes with other agencies with a view to adopt and adapt to best practices; establishing inter-agency initiatives such as meetings, working committees and central database management for easy reference during monitoring and evaluation; promoting joint panel discussions and talk shows hosted by staff of complementing agencies; promoting and sharing of resources among agencies in the juvenile justice system; and promoting community-based programmes to empower communities to take part in the treatment and rehabilitation of juveniles.

The group concluded by noting that the issue of juvenile delinquency and recidivism cuts across nations and is a threat to national security. The existence of recidivism indicates that the goals of a country's juvenile justice system have not been achieved, but these can be resolved by appropriate intervention. Although the factors causing juvenile recidivism and the group's recommendations are not exhaustive, it is hoped that they provide a general understanding of the problems facing juvenile justice systems and possible solutions in order to establish a just, safe and secure society for all.

(iii) A Holistic Approach to Juvenile Justice Systems

Group 3 addressed common challenges facing juvenile justice systems and provided recommendations to resolve them. The following topics were addressed: (a) the minimum age of criminal responsibility (MACR); (b) diversion; (c) special procedures for juveniles; (d) inter-organizational cooperation among related agencies; and (e) multi-agency cooperation with the community and the private sector.

Regarding the age of criminal responsibility, the group noted that the Convention on the Rights of the Child defines children as persons below the age of 18, recognizing that the convention is construed as setting the minimum age of criminal responsibility as no lower than 12 years of age. Among the participating countries, it was reported that the MACR varies from the ages of 10 to 15. Consequently, the group recommended that all countries increase the MACR to a minimum of 12 years of age and the international community should strive to achieve a uniform age for the MACR.

Diversion is an important juvenile justice measure that diverts juveniles from the traditional juvenile justice process thereby avoiding the negative effects from the stigma of conviction and sentence. All countries participating in the group have implemented diversion in some form, although at different stages of the juvenile justice process and by different decision makers. Countries with informal diversion measures should enact legislation to formalize such measures, and countries with formal systems should focus on

increasing the effectiveness of rehabilitation programmes.

The group also reviewed special procedures for juveniles in the participating countries, stressing the importance of these procedures to ensure rehabilitation and that all action taken by the juvenile justice system is done in consideration of the best interests of the child. In order to address juvenile justice in a holistic manner, inter-organizational cooperation and multi-agency cooperation with the community and private sector are important for making sure that all relevant stakeholders and organizations are involved in providing services necessary for the development of juveniles, such as health care, education and social welfare. All countries reported frameworks for working with non-governmental organizations.

The group recognized that, in line with the United Nations standards and norms on juvenile justice, each country has an obligation to improve its system and practices, and identified several challenges to achieving these goals. Recommended solutions include enhancing research, monitoring and evaluation of juvenile justice programmes and policies, strengthening community participation in juvenile justice, specialization of juvenile justice practitioners through training, among others.

B. The 166th International Training Course

1. Introduction

The 166th International Training Course was held from 10 May to 15 June 2017. The main theme was "Criminal Justice Procedures and Practices to Disrupt Criminal Organizations". Twenty-two overseas participants and eight Japanese participants attended the Course.

2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations, lectures by visiting experts and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Disrupting Criminal Organizations Engaged in Drug Trafficking

Group 2: Trafficking in Persons: Focus on Sex Trafficking

Group 3: Effective Measures to Collect Information, Conduct Investigation and Financially Weaken Criminal Organizations on Money Laundering

The three groups each elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the reports of the Course. The full texts of the reports were published in full in Resource Material Series No. 103.

3. Outcome Summary

(i) Disrupting Criminal Organizations Engaged in Drug Trafficking

Group 1 addressed the theme of disrupting criminal drug trafficking organizations that operate on a global scale, noting that the laws in many jurisdictions are insufficient to combat the cross-border nature of such crimes. Thus, in addition to focusing on effective investigation techniques, the group stressed the importance of engaging in international cooperation to overcome the jurisdictional impediments that limit effectiveness of domestic investigations.

The paramount objective of investigation is to collect information and intelligence quickly and effectively according to proper procedure so that it can be admitted as evidence at trial. Information gathered must be analysed by investigators with experience and with access to the necessary technology. This information must be shared with relevant domestic and foreign investigating agencies, although it must be handled with utmost secrecy. Sound practices for prosecution and adjudication of organized crime are also vital to ensuring successful trials. These measures include, among others, the use of plea agreements, proper disclosure of evidence and measures for witness protection.

To combat organized crime, investigators must employ a variety of techniques to gather information on the criminal organization's activities. The group emphasized the importance of: electronic surveillance (particularly video surveillance and bugging), wiretapping and Call Details Records (CDR), observation and interviews of suspects and their criminal associates, the use of informants, undercover agents and decoys, cybertracing, search and seizure, and financial investigation. For example, wiretapping is important to develop the investigators' understanding of the organization's criminal network, daily routines, strengths and weaknesses, planned crimes, and so on. Similarly, observation and prompt interviews of suspects help investigators understand the organization's modus operandi and reveal previously unknown criminal associates, including the organizational structure of the group. Informants, undercover agents and decoys are important to infiltrate the organization, and cybertracing, search and seizure, and financial investigation provide valuable leads and evidence.

To effectively combat global drug crime, the group recommended, among others: (1) enhancing public awareness and participation in the process of combating crime; (2) implementation of witness protection programmes; (3) harmonization of criminal laws; (4) enhancing responses to "e-cash" based transactions, which present a significant challenge to law enforcement; and (5) joint investigation by practitioners from around the world.

(ii) Trafficking in Persons: Focus on Sex Trafficking

Human trafficking—the gruesome practice of pressing vulnerable people into forced labour—is a heinous crime with global impact, and the crime is routinely perpetrated by organized crime groups who transport people and funds across international borders. Group 2 considered effective measures for combating trafficking in persons, particularly sex trafficking, addressing the topics of investigation, prosecution, adjudication and countermeasures.

Investigation of sex trafficking is particularly difficult because the victims are typically reluctant to report their crimes to the police. Thus, investigators must proactively investigate the crime by relying on a wide variety of sources, including electronic and print media, social media, government agencies, and public informants, among many others. Enhancing public awareness of the crime and willingness to report is extremely important. Once information is gathered, information sharing among relevant agencies is important to advancing the investigation, but information must be screened for use, as only the information that is gathered according to the legal procedures applicable to the jurisdiction can be used as evidence at trial. While traditional investigative measures are important in any case, sex-trafficking investigations must make use of special investigative measures, such as computer forensics, DNA profiling, digital face recognition technology, GPS tracking, etc.

In addition to the importance of investigation, the prosecution and adjudication stages are important to disrupt criminal organizations. Cooperation between the police and prosecutors is critically important, and plea agreements are useful tools to obtain evidence from defendants for use against senior members of the criminal organization. During the process of adjudication, witnesses and victims must be protected so that they are willing to testify at trial. Also, the group recommended the use of special courts, laws or procedures for sex trafficking cases.

The group identified a number of countermeasures to combat organized crime, including sex trafficking. Attacking criminal organizations' financial capabilities is particularly effective, and, thus, freezing, seizing and confiscating the proceeds of crime is a necessary step. Furthermore, the use of non-conviction-based confiscation should be considered as a measure to secure the forfeiture of criminal proceeds, subject to applicable domestic law. The group recommended that all confiscated property be deposited into a human trafficking fund. Similarly, governmental and non-governmental organizations should consider establishing victims' compensation funds to alleviate the damages suffered by victims of sex trafficking, whether or not the offender can be identified, sentenced or punished.

(iii) Effective Measures to Collect Information, Conduct Investigation and Financially Weaken Criminal Organizations on Money Laundering

Group 3 selected the topic of combating and financially weakening criminal organizations through effective responses to money laundering. To do so, it is incumbent upon criminal investigators and prosecutors to identify and confiscate proceeds of crime. The United Nations Convention against

Transnational Organized Crime (UNTOC) calls for the criminalization of money laundering, and the group reported that all participating countries have relevant laws providing a legal basis to address it. However, the group reported that the laws and practices vary significantly from country to country, which impacts the speed and effectiveness with which illicit proceeds are confiscated.

To investigate money laundering, investigators must rely on a variety of sources of information, including community reports, bank transactions, taxation reports, immigration reports, trade records, information provided by other countries, past criminal records, social media and witness testimony. The legal limits on authority to compel cooperation were also discussed. Bank secrecy has been an historical barrier to financial investigations. However, with the near universal ratification of UNTOC, article 12(6) thereof overcomes this problem by requiring States Parties to empower their judiciaries to obtain access to bank records.

To confiscate the proceeds of crime, the group discussed a number of techniques, including physically tracking money, freezing of accounts/assets, non-conviction-based confiscation, differentiating between legitimate assets and proceeds of crime, and how to speedily seize illegal assets. Regarding the nature of the assets, the group reported that some jurisdictions allow the seizure of all assets, requiring the defendant to prove that the assets were obtained legitimately. In other jurisdictions, seizure requires a warrant and only illegitimate assets can be seized.

A common problem of investigation is that it is difficult to differentiate legal assets from illicit assets. This process is simplified in jurisdictions that permit the confiscation of the equivalent value of illicit proceeds in the event that those illicit proceeds cannot be found. However, several countries reported that bank accounts are not used or are uncommon, which complicates the investigation. Moreover, some countries only permit confiscation of assets upon conviction.

The group recognized the broad differences in economic, social, cultural, legal and political status among countries. These differences impact the effectiveness and timeliness of investigation and confiscation of proceeds of crime. Understanding and working with these differences is a critical component of successful international cooperation.

C. The 167th International Training Course

1. Introduction

The 167th International Training Course was held from 23 August to 21 September 2017. The main theme was "Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists". Fourteen overseas participants (including two observers) and seven Japanese participants attended.

2. Methodology

The participants of the 167th Course endeavoured to explore the topic primarily through a comparative analysis of the current situation and the problems encountered. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations, lectures by visiting experts and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into two groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Specific Measures: Disengagement Interventions in Prisons

Group 2: Responding to Organized Crime Members and Terrorists in Contact with the Criminal Justice and Penal System

Each Group elected a chairperson, co-chairperson, rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Both groups examined the course theme. The Groups presented their reports in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports were published in full in

UNAFEI Resource Material Series No. 104.

3. Outcome Summary

(i) Specific Measures: Disengagement Intervention in Prisons

The group focused on interventions in prison that lead to the disengagement of offenders from violent extremism, stating that most states do not want to hold the growing number of extremists in prison and lack the resources to do so. Thus, there is global demand for effective measures to rehabilitate and release former violent extremists without posing a threat to society. Acknowledging that prisons must prioritize security, offender rehabilitation in prison must be pursued to achieve disengagement from violent extremism. This process requires interventions from professional staff, such as psychologists, religious leaders, teachers, social workers, etc. However, maintaining prison security while providing an environment conducive to rehabilitation requires good quality and well-trained correctional officers.

To classify, allocate and accommodate violent extremists in prison, the group proposed a hybrid strategy that accommodates highly influential extremists in separate housing units or in isolation while placing criminal opportunists and rehabilitated offenders in the general population. To assess the risks and needs of violent extremists, Group 1 proposed a process of ongoing assessment utilizing interviewing, qualitative data and the verification of information. Noting that several assessment tools are available, the group presented the VERA II (Violent Extremist Risk Assessment) model. This tool identifies risk factors (not changeable) and needs factors (changeable), which can be used for case-management planning and tailoring of interventions, such as through cognitive-behavioural therapy.

The group offered a number of methods and approaches to encourage extremist offenders to disengage from their violent activities. These methods focus on a psychological and cognitive approaches to encourage disengagement at the crucial early stages, and they require continued monitoring and support after the completion of rehabilitation. Further measures include dissuasion from extremism by credible interlocutors; social, vocational and recreational activities; and government and civil society must match or exceed the support offered by terrorist organizations by providing employment support and involving the offender's family, as well as media and social media campaigns to counter terrorism.

In conclusion, the group's key recommendations are to ensure security in the prison environment by segregating highly influential extremists from the general population, employing professional staff and training correctional officers, conducting evidence-based assessment of violent extremists, and pursuing the reintegration of rehabilitated extremists into society by working with all segments of the community.

(ii) Responding to Organized Crime Members and Terrorists in Contact with the Criminal Justice and Penal System

Group 2 considered alternative measures to imprisonment for rehabilitating and reintegrating former members of organized crime groups and terrorists into society, concluding that diversion from prison has many advantages, such as identifying low-risk offenders and preventing sympathizers from joining terrorist organizations. However, factors such as the severity of the crime, the organization that the offender was affiliated with, the offender's level of radicalization, the likelihood of reoffending, the offender's receptiveness to intervention and treatment, and acceptance of alternative measures by the victim and the community must be considered.

The group agreed that courts should tailor alternatives to imprisonment and rehabilitation programmes to each offender with due consideration for public safety. Alternative measures should be based on a comprehensive assessment of the offender, including an intelligence review; juvenile offenders should be subject to investigations using medical, psychological, pedagogical and other expert knowledge. Measures for treatment in the community may include electronic monitoring and unpaid community service under enhanced supervision. However, the group recommended that serious crimes, such as first-degree murder, firearms trafficking, and so on should not be subject to alternative measures to imprisonment.

To reintegrate former organized crime members and terrorists into society, the acceptance of the community is of utmost importance. Offenders require continuous assistance and support in the community with the goal of preventing recidivism. Non-governmental organizations should be involved to provide offenders with support, counselling, social activities and accommodation at halfway houses. Additionally,

private-sector employers should be enlisted to provide offenders with jobs upon release, and the employers may be incentivized to hire ex-offenders by providing incentive payments, as is the case in Japan. Other important measures include the involvement of religious leaders and community volunteers such as volunteer probation officers. Furthermore, the mass media is a powerful public channel for enhancing public acceptance of offender rehabilitation by communicating positive stories of successful rehabilitation and reintegration and interviews demonstrating self-reflection by former organized crime members and terrorists and rejection of their past extremist activities. Finally, the group recommended the use of a restorative justice approach, through which the offender works to repair the harm caused to the victims, including victim-offender mediation.

III. SPECIAL TRAINING COURSES AND TECHNICAL ASSISTANCE

A. UNODC Regional Workshop

From 13 to 16 February 2017, the UNODC and UNAFEI co-hosted a regional workshop on "Preventing and countering radicalization and violent extremism leading to terrorism though the rule of law based criminal justice approach, and engaging private sector and civil society actors in the national framework". The workshop was held in Tokyo, Japan at UNAFEI and was attended by 50 participants from Middle Eastern and North African countries.

B. The Fourth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries

The Fourth Criminal Justice Training Programme for French-speaking African Countries (13–24 February) in Abidjan, Cote d'Ivoire: 32 practitioners from 8 French-speaking African countries discussed capacity-building for investigation, prosecution and adjudication, and measures for combating cybercrime.

C. The Comparative Study on Criminal Justice Systems of Japan and Nepal

The Comparative Study on Criminal Justice Systems of Japan and Nepal (6–17 March): 10 Nepalese participants attended to study and compare Japanese and Nepalese procedures for charge sheet writing and analysis and evaluation of evidence.

D. Training Seminar for Prison Officials in Myanmar

The UNODC and UNAFEI Training Seminar for Prison Officers in Myanmar (9 February-2 March): 45 participants studied prison management in line with international standards and norms.

E. The Follow-up Seminar for the Third Country Training Programme (TCTP)

The Follow-up Seminar for the Third Country Training Programme (TCTP) for Development of Effective Community-Based Treatment of Offenders in Cambodia, Laos, Myanmar and Viet Nam (CLMV) Countries (24–28 July): 17 participants from 6 countries attended this seminar in order to confirm the outcomes of the first phase of the TCTP, discuss the challenges and strengthen the network among the CLMV countries.

F. The Second Asia Volunteer Probation Officers Meeting

The Second Asia Volunteer Probation Officers Meeting (12 September): Around 200 participants including volunteer probation officers (VPOs) and probation officers from the Asian and African region attended the meeting to share experiences and practices related to VPO programmes.

G. The Third World Congress on Probation

The Third World Congress on Probation (12–14 September): 371 participants from 34 countries/regions attended the Congress to share each country's practices and current topics and to discuss the role of Community Corrections through keynote speeches and workshop sessions.

H. Training Seminar for Prison Officials in Myanmar

The UNODC and UNAFEI Training Seminar for Prison Officers in Myanmar (13 September-13 October): 55 participants studied prison management in line with international standards and norms;

I. The Eleventh Regional Seminar on Good Governance for Southeast Asian Countries

From 17 to 19 October 2017, UNAFEI held the Eleventh Regional Seminar on Good Governance in Hanoi, Viet Nam. The main theme of the Seminar was "Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia". Among other participants, 18 practitioners from ASEAN

member states attended as official delegates.

J. The 20th UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, took place from 1 November to 7 December 2017. A total of 28 participants attended: 23 overseas participants and 5 Japanese participants. The main theme of the Programme was "Effective Measures to Investigate the Proceeds of Corruption Crimes".

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2017, the 101st, 102nd and 103rd editions of the Resource Material Series were published. Additionally, issues 152 to 154 (from the 165th Senior Seminar to the 167th International Training Course, respectively) of the UNAFEI Newsletter were published, which include brief reports on each course and seminar and other timely information. These publications are also available on UNAFEI's website at http://www.unafei.or.jp/english.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 27 January 2017, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the participants of the 165th International Senior Seminar. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. In 2017, Professor Richard Dembo of the University of South Florida in the United States, and Dr. Matti Joutsen, then Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), were invited as speakers. They presented on "Civil Citation Programs (Diversion)" and the "Riyadh Guidelines and Havana Rules in Juvenile Justice", respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Deputy Director MORINAGA Taro visited Cairo, Egypt from 14 to 18 January 2017 to attend the GCTF's Criminal Justice and Rule of Law Working Group.

Professor YAMAMOTO Mana visited Valletta, Malta from 17 to 22 January 2017 to attend the workshop of Criminal Justice Actors' Role in Countering Violent Extremism.

Professor YOSHIMURA Koji visited Bangkok, Thailand and Yangon, Myanmar to research the criminal justice systems in Myanmar and to discuss the "Myanmar Country Programme" with related organizations.

Director SENTA Keisuke, Professor YUKAWA Tsuyoshi, and Professor YAMADA Masahiro visited

Abidjan, Cote d'lvoire from 9 to 26 February to conduct the fourth UNAFEI Criminal Justice Training Programme for French Speaking African Countries.

Professor MINOURA Satoshi, Professor WATANABE Hiroyuki and Professor AKASHI Fumiko visited Bangkok, Thailand from 12 to 25 February to conduct the Third-Country Group Training Programme for Development of Effective Community-based Treatment of Offenders in Cambodia, Lao PDR, Myanmar and Viet Nam.

Professor YOSHIMURA Koji visited Jakarta, Indonesia from 5 to 12 March to attend the 6th Asian Conference of Correctional Facilities Architects and Planners (ACCFA).

Professor MINOURA Satoshi visited Sidney, Australia from 6 to 11 March to discuss the Third World Congress on Probation, which was held in Japan in September 2017, with representatives of Australia.

Director SENTA Keisuke visited Vienna, Austria from 7 to 11 March to attend the Expert Group Meeting of Education for Justice Initiative.

Deputy Director MORINAGA Taro visited Zurich, Switzerland from 8 to 12 March to attend the Eleventh Global Counterterrorism Forum Coordinating Committee Meeting.

Deputy Director MORINAGA Taro visited Preah Sihanouk province, Cambodia from 18 to 24 March as a visiting expert to attend workshops hosted the by UNODC.

Professor WATANABE Hiroyuki and Professor AKASHI Fumiko visited Hanoi, Vietnam from 21 to 25 March for the research of the current condition of Community-based Treatment of Offenders in Vietnam.

Professor YAMADA Masahiro visited Hanoi, Vietnam from 21 to 24 March to discuss the "Eleventh Regional Seminar on Good Governance for Southeast Asian Countries" with related organizations.

Deputy Director MORINAGA Taro visited Seoul, Republic of Korea from 3 to 5 April to attend the 8th High-Level Regional Cooperation Seminar of the International Criminal Court (ICC) as a moderator.

Professor YAMAMOTO Mana visited Semarang, Indonesia from 10 to 13 April to attend a workshop hosted by the Global Counterterrorism Forum.

Professor MATSUMOTO Takeshi visited Hanoi, Viet Nam from 24 to 28 April to attend the UNODC needs assessment mission.

Director SENTA Keisuke visited Nairobi, Republic of Kenya from 30 April to 5 May to attend the 56th Annual Session and side events hosted by the Asian-African Legal Consultative Organization.

Deputy Director MORINAGA Taro visited Jakarta, Indonesia from 7 to 10 May to attend a workshop hosted by the International Institute for Justice and the Rule of Law (IIJ).

Professor YUKAWA Tsuyoshi visited Dakar, Senegal from 6 to 14 May to attend a workshop hosted by the International Institute for Justice and the Rule of Law (IIJ).

Director SENTA Keisuke, Deputy Director MORINAGA Taro, Professor YUKAWA Tsuyoshi and Professor YAMAMOTO Mana visited Vienna, Austria from 21 to 28 May to attend the 26th Session of the Commission on Crime Prevention and Criminal Justice.

Deputy Director MORINAGA Taro and Professor YAMAMOTO Mana visited Ponta Delgada, Portugal from 4 to 10 June to attend the IPPF (International Penal and Penitentiary Foundation) Colloquium.

Professor MINOURA Satoshi visited Bangkok, Thailand from 25 June to 1 July 2017 to attend an international workshop on diversion through restorative justice. Professor MINOURA also attended the 15th national symposium on ending violence against children in the juvenile justice system and made a

presentation on "Community Participation in Juvenile Reintegration–The Volunteer Probation Officer System and Halfway Houses in Japan".

Professor YAMADA Masahiro visited Kuala Lumpur, Malaysia from 16 to 23 July 2017 to participate in a seminar on Intelligence Based Investigation hosted by the Malaysia Anti-Corruption Academy (MACA).

Professor YUKAWA Tsuyoshi visited Tehran, Iran from 25 to 28 July to attend the Tehran Meeting on Preventing and Combating Cybercrime hosted by the UNODC. Professor YUKAWA made presentations on "Collection and use of digital evidence at trial" and "Acquiring evidence through MLA and other forms of international cooperation".

Professor YAMAMOTO visited Vienna, Austria from 11 to 13 October 2017 to attend the Expert Consultation on "Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment - Review of the Draft UNODC/WHO Handbook -" hosted by the UNODC and the WHO.

Director SENTA, Professor WATANABE Ayuko and Professor YAMADA visited Hanoi, Viet Nam from 15 to 20 October 2017 to conduct the Eleventh Regional Seminar on Good Governance for Southeast Asian Countries. The Seminar was co-hosted by the Supreme People's Procuracy of Viet Nam.

Professor MINOURA and Professor YAMAMOTO visited London, United Kingdom from 22 to 29 October 2017 to attend the 19th Annual Conference of the International Corrections and Prisons Association on "Innovation in Rehabilitation: Building Better Futures". Professor Minoura made a presentation on "UNAFEI's Technical Assistance to Establish and Promote Effective Community Corrections Systems in the ASEAN Region" and Professor Yamamoto made a presentation on "Psychological Factors and Recidivism among Incarcerated Female Drug Abusers".

Professor WATANABE Hiroyuki and Professor AKASHI visited Seattle, United States of America from 28 October to 3 November 2017 to attend 25th Annual International Research Conference on "Doing What Matters: Integrating Public Health and Criminal Justice Reform". Professor Watanabe and Professor Akashi made a presentation on "Community Corrections and the Role of Volunteers in ASEAN countries".

Professor HIRANO visited Kathmandu, Nepal from 8 to 17 November 2017 to discuss plans for the Comparative Study on Criminal Justice Systems of Japan and Nepal.

Professor YAMAMOTO visited Berlin, Germany from 12 to 17 November 2017 to attend the G20 International Conference on "Preventing Radicalisation – Towards Resilient Societies".

Professor WATANABE Hiroyuki visited Ottawa, Canada from 21 to 26 November 2017 to attend the Expert Group Meeting on Restorative Justice in Criminal Matters hosted by the UNODC.

Professor MINOURA visited Nairobi, Kenya from 3 to 9 December to follow up on JICA's Project in Kenya.

Deputy Director ISHIHARA, Professor WATANABE Ayuko and Professor YAMAMOTO visited Seoul, Korea from 6 to 8 December 2017 to attend the PNI Meeting and International Forum held by the Korean Institute of Criminology.

Professor YAMADA visited Hanoi and Ho Chi Minh, Viet Nam from 13 to 18 December to attend the Joint Study on the Legal Systems of Japan and Viet Nam.

D. Assisting ACPF Activities

UNAFEI cooperates and collaborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty and Staff Changes

Mr. MATSUMOTO Takeshi, formerly a prosecutor of the Osaka District Public Prosecutors Office, was appointed a professor of UNAFEI on 1 April 2017.

Ms. UMEMOTO Yumi, formerly a Judge of the Obihiro Branch of the Kushiro District Court, was appointed a professor of UNAFEI as well as the International Cooperation Department (ICD), Research and Training Institute of the Ministry of Justice on 1 April 2017.

Mr. MORINAGA Taro, formerly the Deputy Director of UNAFEI, was transferred to the International Cooperation Department, Research and Training Institute of the Ministry of Justice, as its Director on 2 October 2017.

Ms. ISHIHARA Kayo, formerly a prosecutor of the Tokyo High Public Prosecutors Office, was appointed as Deputy Director of UNAFEI on 2 October 2017. She was a professor of UNAFEI from 2005 to 2008.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

WORK PROGRAMME FOR 2018

I. TRAINING

A. Training Courses & Seminars (Multinational)

1. The 168th International Senior Seminar

The 168th International Senior Seminar was held from 11 January to 9 February 2018. The main theme of the Seminar was "Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms". Twenty-one overseas participants and seven Japanese participants attended.

2. The 169th International Training Course

The 169th International Training Course was held from 9 May to 14 June 2018. The main theme of the Course was the "Criminal Justice Practices against Illicit Drug Trafficking". Twenty-four overseas participants and seven Japanese participants attended.

3. The 170th International Training Course

The 170th International Training Course will be held from 22 August to 21 September 2018. The main theme of the Course is "Treatment of Illicit Drug Users". Government officials from across Southeast Asia and other parts of the world, including Japan, and visiting experts and lecturers will attend.

4. The 21st UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, will take place from October to November 2018. The main theme of the Programme is "Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society". Twenty-five overseas participants and several Japanese participants will attend.

5. The Twelfth Regional Seminar on Good Governance for Southeast Asian Countries

From 27 to 29 November 2018, UNAFEI will hold the Eleventh Regional Seminar on Good Governance in Da Nang, Viet Nam. Among other participants, 20 anti-corruption practitioners from the 10 ASEAN countries are expected to attend as official delegates.

B. Training Course (Country Specific)

1. The Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries

From 9 to 19 January 2018, UNAFEI co-hosted the Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

2. The Fifth UNAFEI Criminal Justice Training Programme for French-Speaking African Countries

From 12–23 February 2018, UNAFEI co-hosted the Fifth Criminal Justice Training Programme for French-Speaking African Countries in Abidjan, Cote d'Ivoire. 33 practitioners from 8 French-speaking African countries discussed capacity-building for investigation, prosecution and adjudication, and measures for combating terrorism and organized crime.

3. The Training Course for Myanmar Prison Officials

From 14–28 February 2018, ten prison officials from Myanmar studied the Institutional Correction System of Japan.

4. The Comparative Study on Criminal Justice Systems of Japan and Nepal
From 5–16 March 2018, nine Nepalese participants attended to study and compare Japanese and Nepalese trial procedure and police investigation and criminal identification practices.

5. The RTI-SPP Exchange Programme for Viet Nam
From 11–17 March 2018, two Vietnamese participants discussed the amended Criminal Procedure Code.

6. Training Course on Legal Technical Assistance for Viet Nam
From 12–23 March 2018, ten Vietnamese participants discussed the implementation of the amended Criminal Procedure Code.

7. Follow-up Seminar for the Second Phase Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries
From 26–28 June 2018, UNAFEI hosted the Follow-up Seminar for the Third Country Training Programme for Development of Effective Community-based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar, and Viet Nam).

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course – 169th International Training Course, U.N.Human Rights Courses and 1 Special Course)

研修参加者・セミナー参加者　地域別・職種別一覧表　（第1回国際研修から第169回国際研修まで）

As of 13 July 2018

	Country/Area	国・地域名	Judicial and Other Administration 司法行政（矯正・保護行政を含む）	Judge 裁判官	Police Officials 警察官	Correctional Officials (Adult) 矯正官（成人）	Correctional Officials (Juvenile) 矯正官（少年）	Probation Parole Officers 保護観察官	Family Court Investigation Officers 家裁調査官	Child Welfare Officers 児童福祉職員	Social Welfare Officers 社会福祉職員	Training & Research Officers 教育・研究・調査機関職員	Others その他	**Total** **計**
1	Afghanistan	アフガニスタン	11	9	5		1							32
2	Bangladesh	バングラデシュ	24	15	22	5	1	4			6		2	79
3	Bhutan	ブータン			23									23
4	Brunei	ブルネイ	4			2								6
5	Cambodia	カンボジア	1	3	7	1								13
6	China	中　国	13	5	10							8		41
7	Georgia	グルジア			1									1
8	Hong Kong	香港	21		12	31	3	9		1	3	1		81
9	India	イ ン ド	15	10	55	7	1	1			2	6	4	101
10	Indonesia	インドネシア	23	23	33	15		3			6		2	138
11	Iran	イ ラ ン	5	12	8	6						2	1	42
12	Iraq	イ ラ ク	6	3	8	5	5					2		32
13	Jordan	ヨルダン	1	1	7	2								14
14	Korea	韓国	13	3	6	35	4					3		117
15	Kyrgyzstan	キルギス	1		1									2
16	Laos	ラ オ ス	13	8	10									38
17	Malaysia	マレーシア	21	2	50	37	8	3		1	6	3	1	139
18	Maldives	モルディヴ	5	3	7	2		2						24
19	Mongolia	モンゴル	3		3							2		9
20	Myanmar	ミャンマー	11	1	10	3								26
21	Nepal	ネパール	38	18	34								3	111
22	Oman	オマーン			4									5
23	Pakistan	パキスタン	21	12	46	8	1	2				2	2	97
24	Palestine	パレスチナ	2		1			1			1			8
25	Philippines	フィリピン	21	9	43	11	3	16	3	1	7	5	7	155
26	Saudi Arabia	サウジアラビア	5		7	3						1	1	17
27	Singapore	シンガポール	11	18	12	10	3	10			3	1	1	74
28	Sri Lanka	スリランカ	23	21	24	20	1	11		1	3		1	125
29	Taiwan	台湾	12	4	2	1								21
30	Tajikistan	タジキスタン	1	3										4
31	Timor-Leste	東ティモール				1								1
32	Thailand	タ　イ	28	51	19	22	9	19	1		8	7	1	211
33	Turkey	ト ル コ	2	1	2							1	1	8
34	United Arab Emirates	アラブ首長国連邦	1											1
35	Uzbekistan	ウズベキスタン		3	1								1	5
36	Viet nam	ベトナム	15	5	8	1					4	5		44
37	Yemen	イエメン	2		2									4
	A S I A	**小計（アジア州）**	373	243	483	228	40	81	4	4	49	49	28	1,849
1	Algeria	アルジェリア		4										6
2	Botswana	ボツワナ	2		5	2					1			11
3	Cameroon	カメルーン	4											5
4	Cote d'Ivoire	コートジボアール		12	2									17
5	Democratic Republic of the Congo	コンゴ民主共和国	2	3	2									10
6	Egypt	エジプト	1	4	3							3	1	14
7	Ethiopia	エチオピア	3		2									5
8	Gambia	ガンビア			2									2
9	Ghana	ガ ー ナ	1		5	1								8
10	Guinea	ギ ニ ア	2		4									7
11	Kenya	ケ ニ ア	13	6	14	10	2	18				2		67
12	Lesotho	レ ソ ト			1			2						3
13	Liberia	リベリア										1		1
14	Madagascar	マダガスカル			1									1
15	Malawi	マラウィ												1
16	Mali	マリ	1	1										4
17	Mauritius	モーリシャス		1										1
18	Morocco	モロッコ	2	1	4							1	1	10
19	Mozambique	モザンビーク	1		1	1								3
20	Namibia	ナミビア	2		1	2								6
21	Niger	ニジェール												1
22	Nigeria	ナイジェリア	1		6	7							1	15
23	Somalia	ソマリア	1											1
24	South Africa	南アフリカ共和国			4	3					1	1		9
25	Seychelles	セーシェル			4			1						5
26	Sudan	スーダン	2		13	1		1				2		20
27	Swaziland	スワジランド			2									2
28	Tanzania	タンザニア	4	3	9	2								25
29	Tunisia	チュニジア		1	1									2
30	Uganda	ウガンダ			5								1	7
31	Zambia	ザンビア		1	6									8
32	Zimbabwe	ジンバブエ	1		8									12
	A F R I C A	**小計（アフリカ州）**	43	37	105	29	2	22	0	0	2	10	4	289
1	Australia	オーストラリア						1			1			3
2	Cook Islands	クック諸島	1					3						4
3	Fiji	フィジー	7	1	22	17					1			57
4	Kiribati	キリバス	1											1
5	Marshall Island	マーシャル	1		4									5
6	Micronesia	ミクロネシア			1			1						2
7	Nauru	ナ ウ ル			1	1								2
8	New Zealand	ニュージーランド	1		1									2
9	Palau	パラオ			2	1								3
10	Papua New Guinea	パプアニューギニア	17	1	24	10		9			1		4	72
11	Samoa	サモア	4		2	1		2					1	10
12	Solomon Islands	ソロモン	3		2	1								8
13	Tonga	ト ン ガ	2	1	7	4		4				1		19
14	Vanuatu	バヌアツ			4	2		1						8
	THE PACIFIC	**小計（大洋州）**	37	3	70	37	0	21	0	0	3	1	5	196

1	Antigua and Barbuda	アンティグア・バーブーダ			1			1						2
2	Argentina	アルゼンチン	2	2	2								1	7
3	Barbados	バルバドス			2			1						3
4	Belize	ベリーズ	1		2									3
5	Bolivia	ボリビア		1									1	2
6	Brazil	ブラジル	3	1	30	4				1	1			60
7	Chile	チ　リ	1		4	2								8
8	Colombia	コロンビア	3	1	6					1			1	14
9	Costa Rica	コスタリカ	3	5								1	2	16
10	Dominican Republic	ドミニカ共和国			1									1
11	Ecuador	エクアドル			4		1							6
12	El Salvador	エルサルバドル	2	1	5	1						1	1	12
13	Grenada	グレナダ			1									1
14	Guatemala	グアテマラ	2		1	1							1	5
15	Guyana	ガイアナ			3	1								4
16	Haiti	ハイチ			1									1
17	Honduras	ホンジュラス			8								1	11
18	Jamaica	ジャマイカ	3		2	5	1							11
19	Mexico	メキシコ	2		2								1	5
20	Nicaragua	ニカラグア		1										1
21	Panama	パ ナ マ	1		5								2	14
22	Paraguay	パラグアイ	1		9		1							12
23	Peru	ペ ル ー	4	10	5	1						1	2	27
24	Saint Christopher and Nevis	セントクリストファー・ネイヴィス			1									2
25	Saint Lucia	セントルシア	1		1	1								3
26	Saint Vincent	セントビンセント			2									2
27	Trinidad and Tobago	トリニダード・トバゴ	1			1								2
28	U.S.A.	米国							1					1
29	Uruguay	ウルグアイ			3									3
30	Venezuela	ベネズエラ	1		12							1		15
	NORTH & SOUTH AMERICA	**小計（アメリカ州）**	31	22	113	17	3	2	1	2	1	4	13	254
1	Albania	アルバニア	1		2									3
2	Armenia	アルメニア	1											1
3	Azerbaijan	アゼルバイジャン	1											1
4	Bulgaria	ブルガリア			1									1
5	Estonia	エストニア												1
6	Former Yugoslav Republic of Macedonia	マケドニア旧ユーゴスラビア共和国	2											2
7	Hungary	ハンガリー	1											1
8	Lithuania	リトアニア			1									1
9	Moldova	モルドバ			1									1
10	Poland	ポーランド			1									1
11	Ukraine	ウクライナ	1	2								1		8
	EUROPE	**小計（欧州）**	7	2	6	0	0	0	0	0	0	1	0	21
	United Nations Office on Drugs and Crime	**国連薬物・犯罪オフィス**											1	1
1	**JAPAN**	**日　本**	119	207	112	106	100	228	71	38	2	48	90	1, 450
125	**TOTAL**	**合　計**	610	514	889	417	145	354	76	44	57	113	141	4, 060

MAIN STAFF OF UNAFEI

Directorate

Mr. SENTA Keisuke	Director
Mr. ISHIHARA Kayo	Deputy Director

Faculty

Mr. YUKAWA Tsuyoshi	Professor, Chief of Training Division
Ms. WATANABE Ayuko	Professor
Mr. MATSUMOTO Takeshi	Professor
Mr. YOSHIMURA Koji	Professor
Mr. MINOURA Satoshi	Professor
Mr. AKASHI Fumiko	Professor
Mr. YAMADA Masahiro	Professor
Mr. HIRANO Nozomu	Professor
Ms. WATANABE Hiroyuki	Professor, Chief of Information and Public Relations
Dr. YAMAMOTO Mana	Professor, Chief of Research Division
Mr. TSUJI Takanori	Professor
Mr. Thomas L. SCHMID	Linguistic Adviser

Secretariat

Mr. JIMBO Katsuhiko	Chief of Secretariat
Mr. HAGIWARA Mutsuo	Chief of General and Financial Affairs Section
Mr. KIKUCHI Yoshimi	Chief of Training and Hostel Management Affairs Section

AS OF 31 DECEMBER 2017

2017 VISITING EXPERTS

THE 165TH INTERNATIONAL SENIOR SEMINAR

Dr. Ann Skelton	Professor Director of Centre for Child Law University of Pretoria
Dr. Richard Dembo	Professor Department of Criminology College of Behavioural & Community Sciences University of South Florida
Dr. Eduardo Vetere	(Former) Director Division for Treaty Affairs United Nations Office on Drugs and Crime (UNODC)
Dr. Matti Joutsen	Director European Institute for Crime Prevention and Control (HEUNI)
Mr. Gary Hill	Scientific Coordinator Milan, Italy-based International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Program (ISPAC)
Dr. Kittipong Kittayarak	Director Thailand Institute of Justice (TIJ)

FOURTH UNAFEI CRIMINAL JUSTICE TRAINING PROGRAMME FOR FRENCH-SPEAKING AFRICAN COUNTRIES

Mr. Thomas Meindl	Vice-Président Chargé de l'Instruction Tribunal de Grande Instance de Bastia France
Ms. Alice Cherif	Vice-Procureur Chef de la section F1 Lutte contre la cybercriminaté Tribunal de Grande Instance de Paris France
Mr. Patrick Boismenu	Crime Prevention and Criminal Justice Officer (Cybercrime) United Nations Office on Drugs and Crime (UNODC) Programme Office for Tunisia Tunis, Tunisie

THE 166TH INTERNATIONAL TRAINING COURSE

Dr. Francesco Testa	Chief Prosecutor Chieti Prosecutors' Office Italy
Mr. Joseph Wheatley	Trial Attorney Organized Crime and Gang Section (OCGS), United States Department of Justice United States
Ms. Santanee Ditsayabut	Provincial Public Prosecutor Office of Attorney General Thailand

THE 167TH INTERNATIONAL TRAINING COURSE

Dr. Andrea Moser	Director General Women Offender Sector Correctional Service Canada Canada
Ms. Chiara Bologna	Associate Programme Officer United Nations Interregional Crime and Justice Research Institute Italy
Dr. Rohan Gunaratna	Director International Centre for Political Violence and Terrorism Research Nanyang Technological University Singapore
Ms. Sabariah Binte Mohamed Hussin	Research Analyst International Centre for Political Violence and Terrorism Research Nanyang Technological University Singapore

THE 20TH UNAFEI UNCAC TRAINING PROGRAMME

Ms. Mary Butler	Chief of International Unit Money Laundering and Asset Recovery Section Department of Justice United States
Mr. Vincent Lim	Senior Deputy Director (Private Sector / Financial Investigations and Policy) Corrupt Practices Investigation Bureau Singapore

Mr. Vladimir Aras	Federal Appellate Prosecutor Federal Prosecution Service Brazil
Dr. Eduardo Vetere	Vice President International Association of Anti-Corruption Authorities Italy

2017 UNAFEI PARTICIPANTS

THE 165TH INTERNATIONAL SENIOR SEMINAR

Overseas Participants

Mr. Rinzin DORJI	Superintendent of Police Division VIII, SAMDRUP JONGKHAR Royal Bhutan Police Bhutan
Ms. Alessandra Charbel Janiques REBOUCAS	State Prosecutor Office of the Prosecution in the Protection of Childhood and Youth in Juvenile Justice in SAMAMBAIA/DF Office of the Prosecution of the Federal District and Territories of Brazil Brazil
Mr. Luiz Ricardo DUARTE	Director Directorship of Citizen Safety Public Safety Department of Santa Catarina State Brazil
Mr. Pablo Neri PEREIRA	Chief of Operation Section Chief of Staff Office Military Police of Santa Catarina State Brazil
Mr. Terepai OBEDA	Senior Probation Officer Probation Service Ministry of Justice Cook Islands
Mr. Tuaine Manavaroa Junior MANAVAROA	Probation Officer Probation Service Ministry of Justice Cook Islands
Mr. Bi Ohou Noel BOTI	Investigating Judge Court Division Ministry of Justice, Human Rights and Public Liberty Cote d'Ivoire
Mr. Koffi Jean Claude ABOYA	Counsellor Court of Appeal Ministry of Justice, Human Rights and Public Liberty Cote d'Ivoire
Mr. Rootman Estivens PEREZ ALVARADO	Criminal Policy Secretary Public Ministry of Guatemala Guatemala

Mr. Zacharia Kuria MWANGI	Superintendent Administration Police Service National Police Service Kenya
Mr. Basheer MOHAMED	Head Family and Child Protection Department Maldives Police Service Maldives
Ms. Zaeema Nasheed ABOOBAKURU	Registrar Juvenile Court Maldives
Mr. Zaw Min Oo	Commander of Region (3) Yangon Drug Enforcement Division, Myanmar Police Force Ministry of Home Affairs Myanmar
Ms. Meera CHAUDHARY	Superintendent of Police Central Investigation Bureau, Kathmandu Nepal Police Nepal
Mr. Surendra Prasad MAINALI	Joint Director Human Resource Development Department Training Directorate, NAXAL Nepal Police Nepal
Mr. Yam Bahadur BANIYA	District Attorney District Government Attorney Office MAKAWANPUR Nepal
Mr. Ghulam Ali	Director Ministry of Human Rights Government of Pakistan Pakistan
Mr. Rahim Gul	Secretary Law & Prosecution, Law Department GILGIT-BALTISTAN GILGIT Pakistan
Ms. Liana Edith ORTEGA	Responsible for Station Service Childhood and Adolescents National Police Panama
Mr. Luis Alberto ZEGARRO	Director Office of Citizen Participation Public Security Ministry Panama

Ms. Cathy Fred KAIUN	Assistant Director-Restorative Justice Crime Prevention & Restorative Justice Branch Department of Justice & Attorney General Papua New Guinea
Mr. Collin SAKAP	Assistant Director-Community Engagement Crime Prevention & Restorative Justice Coordination Branch Department of Justice & Attorney General Papua New Guinea
Ms. Elly Elis NAPHAL	Senior Probation Officer Community Based Correction Department of Justice & Attorney General Papua New Guinea
Ms. Suzie Uware VUVUT	Chief Probation Officer Community Based Corrections-Probation Services Department of Justice & Attorney General Papua New Guinea
Mr. Omega Jireh Deocares FIDEL	Chief, Case Monitoring Division Directorate for Investigation and Detective Management Philippine National Police Philippines
Ms. Kattiya RATANADILOK	Director Research and Development Institute Department of Juvenile Observation and Protection (DJOP) Thailand

Japanese Participants

Ms. ETO Junko	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. NAKAGAWA Takahisa	Judge Kobe District Court
Mr. NAKAZAWA Satoshi	Chief Family Court Investigating Officer Kofu Family Court
Mr. NISHIE Naoto	Rehabilitation Manager Chugoku Regional Parole Board
Mr. YAMAMOTO Masaya	Principal Treatment Supervisor Osaka Medical Prison

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PART TWO

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Work Product of the 168th International Senior Seminar

"Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms"

UNAFEI

VISITING EXPERTS' PAPERS

THE RULE OF LAW AS A CONCEPT IN DISCUSSIONS AT THE UNITED NATIONS

*Matti Joutsen**

> *"When I use a word", Humpty Dumpty said, in rather a scornful tone, "It means just what I choose it to mean – neither more nor less." "The question is, said Alice, "whether you can make words mean so many different things." "The question is", said Humpty Dumpty, "which is to be master – that's all."* (Lewis Carroll, *Through the Looking Glass*, chapter 6)

I. INTRODUCTION: ON WHAT LEVEL DOES THE 'RULE OF LAW' APPLY: NATIONAL OR INTERNATIONAL?

The concept of the rule of law has a lengthy but uneven history in the work of the United Nations. The path from a brief reference in the preamble to the 1948 Universal Declaration of Human Rights to incorporation into one of the Sustainable Development Goals in 2015 was anything but smooth. As often happens with concepts in the United Nations, there have been considerable disagreements over what is meant by the rule of law, and in what way it is relevant to the work of the UN.

This paper examines how the concept has been used and understood within the context of the United Nations. Words are used to convey specific meanings, and the assumption is that the audience – in this connection those involved in the work of the United Nations – have a shared understanding of these meanings. This is not always the case. When different speakers use a key word or phrase in a different way, difficulties arise in seeking consensus. And if consensus is reached despite disagreement over what key words or phrases actually mean (a situation which, in UN jargon, has at times been jocularly referred to as 'constructive ambiguity'), it will be equally difficult to decide what consequences that consensus should have, what action should be taken, what priorities should be set.

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In 1948, the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights (GA resolution 217 A). The third preambular paragraph states that '... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...'

A second, indirect, early reference to the rule of law can be found in the preamble to the UN Charter, which states that one of the aims of the United Nations is 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.' Presumably, one condition under which justice and respect for legal obligations can be maintained is that they can be recognized and enforced; hence, the rule of law.

The reference in the Universal Declaration of Human Rights, in particular given that the language of this Declaration focuses largely on the rights of the individual, points to the role of the rule of law in protecting the individual against the state. The indirect reference in the Charter, in turn, points to sources of international law. At the time the Charter was drafted, the primary actors under international law were the individual states. For this reason, this latter reference points to the role of the rule of law in ensuring respect for sovereignty and non-intervention in the affairs of other states.

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The seeds for disagreement over how the 'rule of law' should be understood had been sown: should the concept be understood to apply on the national level (protecting individuals against the state) or on the international level (protecting one state or people against another)?

The ambiguity of the concept was fostered through many years of disuse in the discourse in the halls of the United Nations. Despite the early recognition given to the importance of the rule of law, the phrase was not in very wide usage during the first decades of the work of the United Nations. For example, it is not to be found in any subsequent major human rights instrument, such as the International Covenant on Civil and Political Rights, or the International Covenant on Economic, Social and Cultural Rights. 'Rule of law' did not really begin to become an everyday working term for the UN until in the immediate aftermath of the massive geopolitical changes in Europe at the end of the 1980s and the beginning of the 1990s.

When the fall of the Berlin Wall and the advent of the era of *perestroika* and *glasnost*, Western powers triumphantly asserted the importance of human rights and democracy. The 1993 World Conference on Human Rights, held in Vienna, made reference to the rule of law, after which the phrase began making regular appearances in General Assembly resolutions, in which the rule of law was regarded as an essential factor in the protection of human rights.[1] Promoting the rule of law also became a priority in United Nations technical assistance activities carried out by the High Commissioner for Human Rights, and in the work of the United Nations Development Programme.

At the same time, the phrase gained wider use in the context of UN peacekeeping operations. Before the 1990s, 'blue helmets' were generally deployed to observe and maintain ceasefires, as with the first missions in connection with the 1948 Arab-Israeli war, the Indo-Pakistani wars of 1947 and 1965, and the Suez crisis in 1957. The Security Council resolutions that established the mandates for these missions saw no reason to refer to the rule of law (or, for that matter, to human rights). Following the end of the Cold War, however, UN peacekeeping missions began to involve more non-military elements. As noted by Hans Corell, the Under-Secretary-General for Legal Affairs, the conflicts that these missions were addressing 'are but symptoms of the absence of a system under the rule of law'.[2] The resolution that adopted the so-called Brahimi Report on UN Peacekeeping expressly stated that the Security Council

> 'Emphasizes that the biggest deterrent to violent conflict is addressing the root causes of conflict, including through the promotion of sustainable development and a democratic society based on a strong rule of law and civic institutions, including adherence to all human rights - civil, political, economic, social and cultural',

and that the Security Council

> 'Welcomes the Secretary-General's intention to spell out more clearly, when presenting future concepts of operations, what the United Nations system can do to help strengthen local rule of law and human rights institutions, drawing on existing civilian police, human rights, gender and judicial expertise'.[3]

Four years later, in 2004, the Secretary-General delivered on his promise to provide an outline of what could be done in the context of UN peacekeeping operations. This came in the form of a report entitled 'The rule of law and transitional justice in conflict and post-conflict societies'.[4]

Despite this increased reference to the rule of law, there is no authoritative definition of the rule of law in the UN context. Perhaps the closest to an authoritative definition of the rule of law in the working of the United Nations is the description given by the Secretary-General in a report published in 2004, in which he

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[1] See, for example, Thomas Fitschen, *Inventing the Rule of Law for the United Nations*, in A. von Bogdandy and R. Wolfrum (eds, 2008), Max Planck Yearbook of United Nations Law, pp. 347–380, at pp. 358–361.
[2] Hans Corell (2000), '*The Role of the United Nations in Peacekeeping – Recent Developments from a Legal Perspective*', presentation at the Conference National Security Law in a Changing World, Washington DC, available at: http://legal.un.org/ola/media/info_from_lc/washingtonDec00.pdf
[3] Security Council resolution 1327 (2000).
[4] Report of the Secretary-General, S/2004/616.

described the rule of law as 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.'[5]

One phrase in the Secretary-General's description raises again the issue of whether the rule of law should apply on the national or the international level: his assertion that also the State itself is accountable under the rule of law. This is a far cry from the Justinian concept that what pleases the prince is law, which in time led to Blackstone's famous assertion that 'the king can do no wrong'. As noted in the Secretariat working paper for the Tenth Crime Congress (2000), the rule of law was seen as a remedy for human rights abuses. The working paper stresses one fundamental reason why the rule of law should be a particular concern in criminal justice: 'The very nature of the criminal justice systems and sanctions makes them the ultimate instrument for turning the rule of law itself into a mechanism of repression for political, social, economic or other purpose.'[6]

This, indeed, appears to be the primary source of the contention: some saw the concept 'rule of law' as a tool to be used in advocating for democratic reforms, while others regarded such advocacy as intervention in matters which are essentially within the domestic jurisdiction of states, intervention which is prohibited under art. 2(7) of the UN Charter.

II. DISCUSSIONS ON THE RULE OF LAW IN THE CONTEXT OF THE SUSTAINABLE DEVELOPMENT GOALS

The debate during the 1990s over whether and how the concept of the rule of law is of relevance in the work of the United Nations continued into the work on the Millennium Development Goals (MDGs). In adopting these goals, the member states of the United Nations resolved to 'strengthen respect of the rule of law in international as in national affairs', and to 'spare no effort to promote democracy and strengthen the rule of law', but were unable to reach agreement on any specific goals in this respect.[7]

In the process of formulating the 2030 Agenda for Sustainable Development, a strong argument was made that the implementation of the MDGs had been hampered by poor governance, conflict, and absence of legal rights: essentially, the absence of the rule of law.[8] The point was made, for example, by the UN System Task Team on the Post-2015 UN Development Agenda,[9] the High Level Panel of Eminent Persons advising the UN Secretary-General on the Post 2015 Agenda,[10] and the Open Working Group on Sustainable Development Goals.[11]

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[5] Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, para 6.
Fitschen argues that this 'report, in the eyes of many, provided the first formulation of a common concept where no coherent policy direction had existed before' (Fitschen, op.cit., p. 350 and the literature cited therein). He notes, however, that subsequent debates in the UN showed that 'there is hardly a common understanding of this issue'; ibid., p. 354.

[6] A/CONF.187/3, paras 2 and 4.

[7] GA A/RES/55/2, para 9 and 24.

[8] This was the conclusion, for example, of the UNDP in an analysis of a compilation of country reports on implementation of the MDGs. UNDP, *The Path to Achieving the Millennium Development Goals: A Synthesis of Evidence from Around the World*, New York, 2010. See e.g. pp. 51–53, 57–59 and 66–67.
On the discussion on the rule of law in the context of the SDGs more generally, see also Per Bergling and Sophie Tim (2015), *The New Black on the Development Catwalk: Incorporating rule of Law into the Sustainable Development Goals*, Washington International Law Journal, available at https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1493/24WILJ0435a.pdf?sequence=4&isAllowed=y pp. 437–439

[9] *Realizing the Future We Want for All* (2012), Report to the Secretary General – UN System Task Team on the Post-2015 UN Development Agenda, New York.

[10] *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development. The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, available at http://www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf

[11] GA resolution A/68/970.

This sense that the rule of law is fundamentally important in development was strengthened by the adoption of the Declaration of the high level meeting of the General Assembly on the rule of law at the national and international level.[12] Several paragraphs in this lengthy Declaration make an explicit connection between rule of law and development. Paragraph 7 can be cited in particular, as it looks forward to the formulation of the post-2015 agenda:

> '7. We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and internal levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law, and for this reason we are convinced that this interrelationship should be considered in the post-2015 international development agenda.'

The recognition that the various UN task forces and the Declaration of the General Assembly gave to the importance of the rule of law, however, did not end the debate over whether or not the rule of law should be incorporated into the SDGs. The difficulties had to do with (1) the politicized debate over whether the rule of law, in the UN context, should be seen at the national or the international level, (2) disagreement over the relationship between governance and the rule of law, and (3) the more technical issue of how to measure the rule of law.[13]

The national versus international aspect of this debate has already been mentioned. Most developed countries, and a number of developing countries, were of the view that the United Nations should be concerned with the rule of law also on the national level, with national compliance with human rights norms, and with issues such as access to justice. The Non-Aligned Movement, in turn, emphasized that the focus in the UN should be on the international level (for example with the status of Palestine), and countries in this group made reference to the fact that article 2(7) of the UN Charter prohibits the Organization from interfering in essentially domestic matters. The Non-Aligned Movement also stressed that because of the diversity of legal, political and economic systems, there was no 'one size fits all' for the rule of law; the national context should be respected.[14]

A second difficulty referred to above had to do with the concept of 'good governance' and its relationship to the rule of law. The Western industrialized countries, which at the same time are often the donor countries in development aid, tend to be of the view that economic development and poverty reduction can be promoted by reducing the role of the state, breaking up the dominance of corrupt political elites, and encouraging private enterprise and foreign investment (the so-called 'Washington Consensus' that prevailed during the 1980s and the early 1990s).[15] This would imply an agenda that emphasizes the transparency of decision-making in national and local government, liberalization of the economy, and encouragement of grass-roots democratic movements. It would also imply what has been referred to as conditionality in technical assistance: donors would provide assistance only on condition that the recipients undertake certain structural and political reforms which, in the eyes of the donors, would improve the effectiveness and sustainability of the assistance.

The third difficulty mentioned was finding a way to measure the rule of law. In the case of several other goals being considered, it was (relatively) easy to identify quantifiable goals and to indicate possible data sources: the rate of infant mortality, the number of persons living on less than $1.25 a day, the rate of literacy, and so on. The concept of the 'rule of law', in comparison, remained vague. There was also the difficulties posed by the variety of legal systems, the absence of uniform terminology,[16] and the paucity of comparable hard data on the operation of justice. Those critical of including a goal on the rule of law seized on these

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[12] GA resolution A/RES/67/1.
[13] Bergling and Tim, op.cit., pp. 439–449.
[14] Bergling and Tim, op.cit., pp. 444–445.
[15] Regarding the 'Washington Consensus', see in particular David Kennedy, *The 'Rule of Law,' Political Choices, and Development Common Sense*, in David M. Trubek and Alvaro Santos (eds., 2006), The New Law and Economic Development. A Critical Appraisal, Cambridge, pp. 95–173, at pp. 128–150.
[16] For example, offences are defined differently in different countries, and even such basic concepts as 'crime', 'police officer', 'court' and 'conviction' are understood in widely different ways.

technical difficulties as further arguments to bolster their case.[17]

Despite the concerns by the Non-Aligned Movement countries, the SDGs ultimately did include a specific target on the rule of law, under Goal 16, which calls for the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and the building of effective, accountable and inclusive institutions at all levels. This target, 16.3, however, is rather vague: the member states are to '*promote the rule of law at the national and international levels and ensure equal access to justice for all.*'

III. EMERGENCE OF THE CONCEPT OF THE RULE OF LAW IN THE UNITED NATIONS CRIME PROGRAMME

It is presumably not coincidental that the phrase 'rule of law' began to appear in the context of the UN Crime Programme during the 1990s, at the same time as the phrase was gaining traction in the UN human rights programme, in the UN Development Programme, and in peacekeeping operations.

The first indication that a terminological shift was underway in the UN Crime Programme could be seen in the standards and norms on crime prevention and criminal justice. The drafting of these 'soft law' instruments began during the early years of the work of the United Nations, and they have been widely used for example in technical assistance.[18] However, despite the central role of these standards and norms, it was only in 1990 that the phrase 'rule of law' made its first appearance in the one of them, the UN Standard Minimum Rules on Non-Custodial Treatment (the Tokyo Rules), in the context of legal safeguards for the offender.[19] Several subsequent standards and norms make reference to the phrase.[20]

The rule of law has also made frequent appearances in (draft) resolutions formulated by the UN Commission on Crime Prevention and Criminal Justice, for submission to ECOSOC and, in some cases, to the General Assembly. The phrase has even been the main topic of several resolutions, such as the (draft) resolutions on the rule of law and development (2004), the rule of law in Africa (2005 and 2006), the rule of law and criminal justice reform (2006), the rule of law and prosecution services (2008), the rule of law and criminal justice reform, particularly in the context of the UN system-wide approach to fighting transnational organized crime and drug trafficking (2012), and – feeding into the process of formulating the SDGs – the rule of law, crime prevention and criminal justice in the United Nations development agenda beyond 2015 (2013 and 2014).

The most important events in the UN Crime Programme are the UN Congress on Crime Prevention and Criminal Justice, which are organized every five years. The 1995 Crime Congress was the first one to be organized after the major political changes in Eastern Europe, and coincidentally also the first to be organized after the UN Crime Programme was restructured (in 1991). The 1995 Crime Congress had as one of its four main themes, 'International Cooperation and Practical Assistance for Strengthening the Rule of Law: Promoting the United Nations Crime Prevention and Criminal Justice Programme,' and one of the resolutions adopted at this Congress dealt with 'International Cooperation and Practical Assistance for Strengthening the Rule of Law: Development of United Nations Model Instruments'.[21] The next Crime Congress, in 2000, also had the phrase inserted into the formulation of one of its four main themes, 'Promoting the rule of law and

[17] Extensive consultations were held on this measurement issue. The author participated in one process, which resulted in the UNODC publication, *Accounting for Security and Justice in the Post-2015 Development Agenda*, Vienna, 2013. This publication suggested a large number of possible indicators.

[18] An excellent presentation of the UN standards and norms can be found in Roger Clark (1994), *The United Nations Crime Prevention and Criminal Justice Program. Formulation of Standards and Efforts at Their Implementation*. University of Pennsylvania Press. The standards themselves are available at https://www.unodc.org/documents/justice-and-prison-reform/compendium/English_book.pdf

[19] Rules 2.5 and 3.3.

[20] The phrase 'rule of law' appears not only in the Tokyo Rules, but also in the Guidelines for the Prevention of Crime (ECOSOC resolution 2002/13, annex, principle 12), the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (GA resolution 65/228, annex, para. 16(j)), the Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC resolution 1998/21, annex, para. 4), the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, and ECOSOC resolution 2006/23, annex, preambular para 5 and principle 1), and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (GA resolution 67/187, annex, para 1 and principle 1).

strengthening the criminal justice system'.[22]

The working paper prepared by the Secretariat for the UN Crime Congress[23] held in 2000 identifies some of the 'elements or requirements of the rule of law', such as the need for the law to be comprehensive, clear, certain and accessible, the legitimacy of the law, equality before the law, and institutional independence and the separation of powers. Although several speakers during the High-Level Debate, which was arranged for the first time at such a Crime Congress, noted the importance of the rule of law, the description of the concept provided by the Secretariat did not generate any significant discussion at the Congress.[24] The phrase does not even appear in the final Congress declaration, although a vague echo of it can be found in the reference in preambular paragraph 4, which stresses that 'a fair, responsible, ethical and efficient criminal justice system is an important factor in the promotion of economic and social development and of human security'.

The declarations of the subsequent Congresses, however, refer to the phrase quite often. The Bangkok Congress Declaration (2005), for example, refers to it in paras 6, 8, 9, 11 and 24. In Bangkok, the member states voiced their support for a more integrated approach within the United Nations in respect of technical assistance and cooperation in criminal matters 'as a contribution to the establishment and strengthening of the rule of law' (para 6), and their conviction that upholding the rule of law and good governance and proper management of public affairs and public property at the local, national and international levels are prerequisites for creating and sustaining an environment for successfully preventing and combating crime' (para. 8). The member states further recognized 'the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations' in crime prevention and criminal justice, and encouraged the 'adoption of measures to strengthen this role within the rule of law' (para. 9).

Five years later, the member states at the Salvador Congress declared their recognition of 'the centrality of crime prevention and the criminal justice system to the rule of law' and that 'long term sustainable economic and social development and the establishment of a functioning, efficient, effective and humane criminal justice system have a positive influence on each other' (preambular para. 4), as well as their concern about 'the negative impact of organized crime on human rights, the rule of law, security and development' (preambular para. 6).[25]

The most recent Crime Congress, held in Doha in 2015, even had the phrase enshrined in the (lengthy) title of its Declaration: the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation.

The star billing given to the rule of law at the Doha Congress can be attributed directly to the fact that the Congress was held a few months before the General Assembly was to finalize and adopt the Sustainable Development Goals, and the Doha Congress was seen as an excellent opportunity to contribute to the process, and in particular to seek to ensure that the rule of law would be featured as a self-standing goal in the SDGs.

In this light, it is understandable that the Doha Declaration refers to the rule of law time and time again. The single preambular paragraph sets the tone, by asserting that the member states had gathered in Doha to 'reaffirm our shared commitment to uphold the rule of law and to prevent and counter crime in all its forms and manifestations, at the domestic and international levels, to ensure that our criminal justice systems are effective, fair, humane and accountable, to provide access to justice for all, to build effective, accountable,

[21] References in the Crime Congress documentation indicate that in this context, the rule of law was largely understood as something that could be attained by promoting the implementation of UN standards and norms on crime prevention and criminal justice. See, for example, section I(3) of the Congress Recommendations on the four substantive topics of the Congress, A/CONF.169/16/Rev.1. See also para 22 of the report of the Asia and Pacific regional preparatory meeting, A/CONF.169/RPM.1/Rev.1., and para II(1) of the Resolution of the African regional preparatory meeting, A/CONF.169/RPM.2.

[22] The 2000 Crime Congress, however, did not make any reference to the rule of law in its Congress Declaration.

[23] A/CONF.187/3, paras 9–21.

[24] The present author served as Rapporteur at the 2000 Congress.

[25] The rule of law was also mentioned in paras 8, 43 and 44 of the Salvador Declaration.

impartial and inclusive institutions at all levels, and to uphold the principle of human dignity and the universal observance and respect of all human rights and fundamental freedoms'.

The Doha Declaration goes on to make several more points regarding the rule of law:

- a central component of the rule of law is the importance of effective, fair, humane and accountable crime prevention and criminal justice systems and the institutions comprising them (para. 3);
- sustainable development and the rule of law are strongly interrelated and mutually reinforcing, and in the context of the work on the SDGs the member states at the Congress 'reiterate the importance of promoting peaceful, corruption-free and inclusive societies for sustainable development, with a focus on a people-centred approach that provides access to justice for all and builds effective, accountable and inclusive institutions at all levels' (para 4);
- there is a need to 'ensure appropriate training of officials entrusted with upholding the rule of law and the protection of human rights and fundamental freedoms (para. 5(a));
- the importance of education of children and youth for the prevention of crime and corruption and for the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities (para. 7);
- the need for more analysis of information and practices relating to evolving forms of transnational organized crime in order to more effectively prevent and counter crime and strengthen the rule of law (para. 9(g));
- the need for awareness-raising programmes to convey key values based on the rule of law and supported by educational programmes (para. 10.(b)); and
- the need to promote a culture of lawfulness based on the protection of human rights and the rule of law 'while respecting cultural identity' (para.10(c)).
- the importance of technical assistance in enhancing international cooperation, upholding the rule of law and ensuring that crime prevention and criminal justice systems are effective, fair, humane and accountable.

IV. IS THE DEBATE IN THE UNITED NATIONS ON THE IMPORTANCE OF THE RULE OF LAW OVER? REFLECTIONS ON THE UNITED NATIONS DISCUSSION REGARDING A 'CULTURE OF LAWFULNESS'

Since the 1990s, the rule of law appears to have come into its own in the United Nations. To judge by its frequent appearance in resolutions and in the debate in the Security Council, the General Assembly and the Economic and Social Council, member states are comfortable with it, and accept its importance. To use UN jargon, the concept has become 'agreed language'.

Similarly, the extent to which the phrase is invoked in the UN work on human rights, development, peacekeeping, and crime and justice suggests that all is well.

Such an assumption, however, would be misleading. A hint to the continuation of the conflict in perspectives can be found in the formulation used in one of the most visible aspects of the work of the United Nations, the Sustainable Development Goals. Target 16.3 is formulated so that member states are to 'promote the rule of law at the national and international levels and ensure equal access to justice for all.' Given that no definition of 'rule of law' is offered, and the target is rather vague. both those advocating that the rule of law protects the individual against the state (the national level) and those advocating that it protects one state (or people) against another (the international level) can maintain their own position and priorities.

This is not merely a question of semantics. The SDGs and the UN resolutions guide the work of the UN bodies, and are used to formulate national policy. If there is no agreement on what a key phrase refers to, consensus will continue to rest on the basis of 'constructive ambiguity', with individual member states continuing to formulate national policy based on their own interpretation of the concept.

This can be illustrated by recent debates within the framework of the UN Crime Programme revolving around the concept of a 'culture of lawfulness'. This concept is not very well-known in English. Just as is the case with the 'rule of law' as a concept, it may well be misunderstood, or at least understood in different ways by different people.

Outside of the United Nations, the 'culture of lawfulness' concept is largely used in very specific connections, and in very specific ways:

- in peace-keeping and transitory justice projects (primarily US-funded technical assistance projects in Latin America and the Middle East), it tends to mean that society rejects violence and calls for a stable rule of law;
- in the law enforcement context, it is used as a synonym for integrity on the part of law enforcement personnel; and
- in the anti-corruption context, it is used as a synonym for integrity on the part of decision-makers both in government and in the private sector.

In distinction from these specific connections, the concept is usually associated with a general set of attitudes and conduct in society. Roy Godson has briefly defined a culture of lawfulness as a culture that is supportive of the rule of law.[26]

Within the UN Crime Programme, in turn, the term apparently first appeared in the context of the formulation of the UN Guidelines for the Prevention of Crime.[27] Principle 12 of these guidelines states:

> '12. The rule of law and those human rights which are recognized in international instruments to which Member States are parties must be respected in all aspects of crime prevention. A culture of lawfulness should be actively promoted in crime prevention.'

The concept appeared in a somewhat different formulation at the 2010 UN Crime Congress. In para. 43 of the Salvador Declaration, which again speaks largely about the prevention of crime, the member states note that they 'endeavour to take measures to promote wider education and awareness of the United Nations standards and norms in crime prevention and criminal justice to ensure a culture of respect for the rule of law. In this regard, we recognize the role of civil society and the media in cooperating with States in these efforts.'

Five years later, para. 7 of the Doha Declaration from the 2015 Crime Congress echoed this language, by emphasizing that 'education for all children and youth, including the eradication of illiteracy, is fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities.' Para 10(c) largely repeats this point by noting that the member states undertake to 'promote a culture of lawfulness based on the protection of human rights and the rule of law while respecting cultural identity, with particular emphasis on children and youth, seeking the support of civil society and intensifying our prevention efforts and measures targeting and using the full potential of families, schools, religious and cultural institutions, community organizations and the private sector in order to address the social and economic root causes of crime'.

Already during the negotiations of the Doha Declaration, some national delegations questioned the use of the term 'culture of lawfulness' and pointed out, quite correctly, that it was not 'agreed language' in the UN, and that there was no agreed definition of the term.

Although consensus was ultimately reached on the inclusion of the concept in these two paragraphs that were focused on crime prevention, heated discussion emerged subsequently at sessions of the Commission on Crime Prevention and Criminal Justice, when some delegations sought to return to the concept in connection

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[26] Roy Godson has written extensively on the subject (e.g., *A Guide to Developing a Culture of Lawfulness* [2000]), citing practical examples from e.g. Colombia, Hong Kong and Sicily of how the fostering of a culture of lawfulness can be used to respond to wide-spread violence and organized crime

Godson's brief definition is substantially the same as that used by the US-government funded Culture of Lawfulness Project (https://www.yumpu.com/en/document/view/11251856/building-a-culture-of-lawfulness-national-strategy-information-):

> "A society in which the overwhelming majority of members are convinced that the rule of law offers the best long-term chance of securing their rights and attaining their goals. They believe that this is achievable and are committed to upholding it."

For a somewhat longer definition, see Roy Godson, *A Guide to Developing a Culture of Lawfulness* (2000), p. 5.

[27] ECOSOC resolution 2002/13, annex.

with the 2020 Crime Congress, to be held in Kyoto, Japan.[28]

What appears to lie behind this convoluted debate is the concern of some representatives of states in the Non-Aligned Movement that the 'culture of lawfulness' as a concept is being used to disguise efforts to reassert the focus on rule of law at the national level. The concept can be understood from two diametrically opposed perspectives, that of the government (and practitioners), and that of the general public.

The government may understand a 'culture of lawfulness' to mean that the public respects the law – and those who represent the law, in other words the government. This would enhance the rule of law – more specifically, the law as defined by constitutionally approved bodies, whether these are a democratically representative body (such as a parliament) or a body consisting largely of a religious, political or economic elite.

The general public, in turn, may understand a culture of lawfulness to mean that the government (and practitioners) should follow the law, i.e., they should respect the rule of law. From this perspective, the 'law' could be understood more broadly to include not only national legislation, but also internationally recognized human rights standards. The 'rule of law' can also be understood to require that the government adheres to basic democratic principles.

From these two diametrically opposed perspectives, it is not a very long leap to the heated debate that has emerged in the United Nations on the role of civil society, and of non-governmental organizations. The debate has been particularly heated in the context of the United Nations Crime Programme.[29] According to one view, civil society activity, including that of non-governmental organizations, should be encouraged as widely as possible. According to the second view, such non-governmental activity should be supervised in order to ensure that the NGOs in question do not have malevolent intentions, or serve as a channel for importing foreign (and undesirable) social and cultural values.

The first view could be described as a bottom-up, community-based approach. Local communities have a wide range of concerns, among which may be the impact of crime on the local level. Through awareness-raising and advocacy, they may contribute to the detection of crime, and stimulate the authorities to respond.[30] This view has a direct analogy in community policing, which holds that the police and the public are jointly responsible for responding to crime and improving the quality of life on the community level. Community policing programmes generally seek to encourage public initiative, recognizing that while the goals of individual civil society groups need not necessarily be in full alignment with police goals, the work of these groups supplements the work of the police. In both a literal and a figurative sense, the mobilization of the public extends the reach of the criminal justice apparatus, in a way that not only enhances the effectiveness of criminal justice, but also fosters the trust of the public in the operation of the criminal justice system.

The second view could be described as a top-down approach, which seeks to ensure that civil society activity is in compliance with national law. The concerns expressed, as noted, at times refer to the potential that non-governmental organizations may have as channels for bringing unwanted foreign social and cultural values into a country. This is illustrated by the discussions held at the UN Crime Congress in 2015. As reflected in the report of the Congress, in respect of the discussions at the workshop on public participation in

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[28] The flash point was the proposal that one of the four themes at the 2020 UN Crime Congress would essentially deal, quite simply, with the promotion of a culture of lawfulness. What originally was envisaged as a short and snappy theme (in the view of one delegation, it should be possible to encapsulate the theme in a single 140-character 'tweet') ultimately emerged as a mouthful: 'Multidimensional approaches by Governments to promoting the rule of law by, inter alia, providing access to justice for all; building effective, accountable, impartial and inclusive institutions; and considering social, educational and other relevant measures, including fostering a culture of lawfulness while respecting cultural identities, in line with the Doha Declaration'. (This would require two of the new and longer 280–character 'tweets'.) (Full disclosure: the comment regarding the 'tweet' was made by the present author, as the representative of Finland, during the informal negotiations in Vienna on the draft resolution on the 2020 Congress.)

[29] The background to, and evolution of, this debate is described in Civil Society Engagement in the Implementation of the United Nations Convention against Corruption. Conference Room paper submitted by the delegation of Finland, CAC/COSP/2015/CRP.3.

[30] The view is often associated with requests that governments operate in a more transparent manner, so that the public is provided with greater access to information for example on how decisions on public matters were made, and on what grounds.

crime prevention and criminal justice,

> "A number of speakers noted that the engagement of civil society organizations should take place within the appropriate regulatory framework, in line with national legislation and in coordination with relevant oversight bodies, for example crime prevention councils, while also ensuring that organizations had the skills and knowledge for their functions. One speaker noted that any civil society activities should be framed and moderated by Governments, that non-local non-governmental organizations (NGOs) could propagate ideas or value systems that were foreign to some countries, and that those NGOs should respect the economic, cultural, social and religious values of societies. Some speakers referred to the need to build trust and transparency in that regard."[31]

As expressed by one speaker at the Thirteenth United Nations Crime Congress workshop, the role of civil society is important if the groups are local and are based in the country, and if this role occurs in a certain context. Such groups understand the culture, they are subject to regulation and they are moderated by the government. The speaker observed that the groups should be transparent, and should respect the social and cultural values of the country in question; in the view of the speaker, this is of particular importance in developing countries.

It should be emphasized that this second view does not question the potential utility of the work of non-governmental organizations. The focus is on ensuring that NGOs function in accordance with the law – as the law is defined by the member state in question.

V. CONCLUDING REFLECTIONS

The concept of the rule of law has become part of 'agreed language' at the United Nations. The importance of the concept has increased incrementally since the beginning of the 1990s, and is much evident in the UN work on human rights, technical assistance, peacekeeping, and crime and justice.

The increased references to the rule of law, however, should not be understood to mean that the phrase is always understood in the same way, and should be promoted in the same way. A disagreement has arisen over whether the rule of law should be regarded from the national or the international perspective, as binding on governments in respect of their citizens, or as binding on states in their relations with one another and the international community at large.

Current practice is to paper over this disagreement by referring to 'promotion of the rule of law at the national and the international levels', thus allowing both sides to say that their view has been respected (usually a sign of a successful compromise). It should also be noted that this disagreement has not significantly affected the day-to-day work that United Nations staff are carrying out on the ground in the context of human rights, peacekeeping and technical assistance missions, since these are based on mandates of the Security Council, the General Assembly and ECOSOC, and are generally at the request of the countries in question.

Within the UN Crime Programme, however, the disagreement has carried over into a debate on the relation between the rule of law and a 'culture of lawfulness', and specifically on the extent to which civil society (and non-governmental organizations) should be encouraged to take part. Does the rule of law entail that views that are critical of the government in power should nonetheless be tolerated, as an expression of freedom of speech? Should local communities be allowed greater input into determining what their priorities are in the prevention and control (and perhaps even in the definition) of crime?

The debate in the United Nations on the rule of law shall apparently continue for years to come.

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[31] Report on Workshop 4 of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, 12–19 April 2015. A/CONF.222/L.4/Add.1, para. 15.

WHAT IS THE ROLE OF THE PUBLIC IN CRIME PREVENTION AND CRIMINAL JUSTICE? THE DEBATE IN THE UNITED NATIONS

*Matti Joutsen**

I. SCOPE OF THE PAPER

Those who work in the criminal justice system, and those who have studied it, take it for granted that the public has a key role in crime prevention and criminal justice. It is the public (the broader community) that is the source of the values, morality and priorities that form the basis for the criminal law and the criminal justice system. It is members of the public (the victims themselves, or witnesses and other third parties) who provide most of the initial reports of suspected offences, and it is the victims and the witnesses who can provide critical information regarding the identity and guilt of the suspect that can be used in criminal procedure. It is from the public that the criminal justice system receives the outreach and manpower necessary to supplement the official criminal justice system through voluntary and, depending on the system, semi-official programmes, such as victim support organizations, mediation projects, community policing projects and volunteer probation officer projects.

Criminological research has demonstrated the central importance of informal social control in preventing crime, in restraining individuals from embarking on a criminal career or from committing crime on impulse, and in supporting offenders in desisting from crime and becoming reintegrated into society. There has also been a rich tradition of research on the relations between the public and the criminal justice system, as shown for example by the extensive research that has been carried out on public confidence in the police, and public attitudes towards punishment.

For these reasons, practitioners and researchers alike know that the formal criminal justice system on its own cannot "protect" the public from crime. They know that the operation of the criminal justice system depends on the public, and on the relationship between the public and the criminal justice agencies.

In this light, it may seem peculiar that a debate is underway in the United Nations that seems to challenge these self-evident assumptions of the role of the public. The idea of "cooperation with non-governmental organizations" a phrase long used in United Nations dialogue, has been challenged, and even seem to be disappearing from resolutions and other texts that are drafted on the basis of consensus.

Debates in the United Nations often revolve around the choice of words, and in the meeting rooms where UN decisions are crafted, these words may take on meanings that are not immediately apparent to persons who are not familiar with how the UN works. In this paper, I trace how the idea of partnership between government authorities and the general public in crime prevention and criminal justice has evolved in the United Nations, what factors have contributed to this evolution, and what implications this has for the work of the United Nations crime prevention and criminal justice programme.

I have personally been quite active in this debate, and it is for this reason that I welcomed UNAFEI's invitation to address the topic. I shall do so in three steps. The first step is largely historical: a brief review of the development of the role of non-governmental organizations (NGOs) in the United Nations in general, and in the UN Crime Programme in particular. The second step is largely philosophical: a description of a key shift in how some governments have approached the prevention and control of crime.

My third step is semantic. I shall look at how shifts in the attitude within the UN towards NGOs, and shifts in how governments have approached the prevention and control of crime, have affected the language of the

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United Nations, and I raise the question of whether this means a change in United Nations policy towards public participation.

In my view, the historical and the philosophical analyses are both necessary if we are to understand why some national delegations are concerned about references to non-governmental organizations, and even to public participation in crime prevention and criminal justice. By understanding these concerns, it should be easier to find common ground – whether in formulating a Congress Declaration in 2020, or in deciding what we, as the United Nations, can do to promote a better criminal justice system.

A few words about terminology. When dealing with the role of the public in crime prevention and criminal justice in the context of the United Nations crime prevention and criminal justice programme, one possible source of confusion is the concepts being used.

The term "non-governmental organization" has a specific legal meaning in the UN. It is an entity that has a recognized legal structure and purpose, and its representatives can act on its behalf (locally, nationally and internationally). Non-governmental organizations can apply for consultative status with the Economic and Social Council, and a large number have done so.

The term "civil society" is used within the UN with greater inconsistency than the term "non-governmental organization". Most dictionaries define civil society as the aggregate of groups or organizations that work alongside government and the private sector to promote shared interests. Thus, civil society consists not only of non-governmental organizations but also of various other more or less organized structures. However, quite often in UN texts the term "civil society" appears to be used as a synonym for "the community" or "the public".

The term "the community", in turn, seems to be used in UN texts as a general concept to refer to the public at large, to persons who are not (necessarily) acting in an organized manner.

Finally, the term "the public" is used to refer to the mass of people in society in their role as citizens, and thus as a counterpoint for example to persons acting in the capacity of civil servants or as representatives of other stakeholders (such as the private sector).

While these distinctions may help in bringing conceptual clarity, the drafters of the UN texts have been anything but consistent, a subject that I shall return to later on.

II. THE EVOLUTION OF THE ROLE OF NGOS IN THE UNITED NATIONS

Even though the United Nations is an intergovernmental organization (an organization that is constituted by national governments), it has since its establishment recognized the importance of partnership with civil society. When the UN was founded in 1945, non-governmental organizations succeeded in lobbying for a provision in the Charter that grants NGOs consultative status with the Economic and Social Council.[1] Article 71 of the UN Charter states:

> The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 71 makes a distinction between international NGOs and national NGOs. An "international non-governmental organization" is an organisation that functions in more than one country, but is not founded on an international treaty.[2] A "national NGO" is one that is based in one country. A national NGO can be granted consultative status only if it is not a member of an international NGO, or it has "special experience" to offer to ECOSOC. As required by the wording of Article 71, furthermore, the views of the host member state of a national NGO are to be obtained when deciding whether or not to grant a national NGO consultative status.

[1] See Willets (2000), p. 191.

ECOSOC's preference has been for international NGOs, and up to the 1990s, very few national NGOs were granted consultative status.[3] Since the mid-1990s, however, national NGOs have been encouraged to apply for consultative status.[4]

According to the ordinary meaning of the word, when you "consult" with someone on a matter, you discuss this matter with that person or organization in order to obtain their advice or opinion. It would therefore seem to be enough to fulfil the requirements of Article 71 to simply send a letter to an organization that has consultative status with ECOSOC, asking it to submit its opinion in writing, which could then be distributed to the governments attending ECOSOC sessions. However, from the very first days of the work of the United Nations, the distinction between arrangements for consultation, and participation without vote in the deliberations of ECOSOC "has been blurred in practice: NGOs have obtained some participation rights that go beyond consultation, whereas governments have usually prevented NGOS from gaining the same rights as observers".[5]

The visible participation of NGOs in ECOSOC has of course been noted by governments, and has been a source of criticism by individual governments. *Which* NGOs participate, and *how* they participate, have been a long-standing subject for debate. Willets provides a historical record of the political tensions involved in accrediting NGOs, as well of the evolution of the NGOs right of participation. He notes, for example, how the Cold War led the two blocs to putting forward their own proxies for consultative status with ECOSOC, and seeking to prevent proxy NGOs put forward by the other side from gaining such status. He also notes how votes were forced on whether or not to grant consultative status to some human rights groups and Jewish and Catholic groups on the grounds that they were "politically motivated", and that the initial practice of allowing NGOs to submit items for the agenda of sessions of ECOSOC was soon discontinued.[6]

Willets also notes that although the Charter does not grant NGOs a similar consultative status with other UN bodies, NGOs "have encroached substantially on the General Assembly; and they are starting to appear on the fringes of the Security Council"; the earliest signs of this were during the early 1960s in the Special Committee on Decolonization, the Special Committee Against Apartheid, and the Committee on Palestinian Rights.[7] In view of the issues that were debated at these Special Committees, it is understandable that also entities other than recognized governments had a political interest in being heard.

The UNODC, on its website, provides more examples of NGO involvement in UN bodies other than ECOSOC:

> The UN General Assembly has on many occasions invited NGOs to participate in the work of its committees and some NGO leaders have been invited to address plenary sessions. NGOs have been active in the First Committee on disarmament issues, in the Third Committee on human rights matters, and in the GA High Level Dialogue on Financing for Development (FfD) for the follow-up to the Monterrey Conference. NGOs are also very active in a number of commissions, including the Commission on Sustainable Development, the Commission on Social Development, and the Commission on the Status of Women. The constructive and vital NGO role in the creation and support for the International Criminal Court is evident to all.[8]

Beyond the General Assembly, the Security Council and ECOSOC, much work of the United Nations is conducted for example in conferences. Also here, Willets has traced a long-term strengthening of the role of NGOs. In his view, NGO participation at conferences and, more importantly, in decision-making at

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[2] See ECOSOC resolution 288 (X) of 27 February 1950. Jolanta Redo (2012) estimates that there are some 3,500 international IGOs working with the United Nations; Redo (2012b), p. 125.

If an international NGO is based on an international treaty, then it would be referred to as an 'intergovernmental organization'. Examples are the United Nations itself, the World Trade Organization, the Association of Southeast Asian Nations, and the World Bank.

[3] Willets (1996), p. 2.

[4] Willets (2000), p. 192.

[5] Ibid, pp. 191–192.

[6] Willets (1996), pp. 5–10.

[7] Ibid, pp. 196–199.

[8] https://www.unodc.org/unodc/en/ngos/DCN0-NGOs-and-civil-society.html

conferences has increased in that "[a]ccess to decisionmaking has changed from a limited role in the main plenary bodies to significant influence in the committees, to NGO representatives quite often taking part in the small working groups where the more difficult questions are thrashed out. In some fields, such as human rights, population planning, and sustainable development, NGOs have changed from being peripheral advisers of secondary status in the diplomatic system to being high-status participants at the center of policymaking".[9] (Subsequent to the appearance of Willets' article, the number of special conferences organized by the United Nations has decreased, to be replaced at least in part by special sessions of the General Assembly. At the General Assembly, NGOs have a considerably lower profile than they do at UN conferences.)

Examining the status of NGOs overall, Willets, writing in 2000, came to the conclusion that, following Article 71 of the UN Charter and three major reviews, NGO participation in ECOSOC has become part of customary international law.[10]

> When the UN was formed, it was an established norm that the subjects of international law were states. In diplomatic practice and in academic analysis, it used to be taken for granted that international relations consisted solely of the relations between states. Now such a position cannot be argued. ... the only accurate way to describe what has happened is to recognize that [international] NGOs have become a third category of subjects in international law, alongside of states and intergovernmental organizations.[11]

NGO participation thus appears to have become part of customary international law. Willets also stresses that the influence of NGO arises from three factors: NGO access to documents, NGO access to the buildings in which sessions are held (thus giving them access to the delegates when these are not in closed meetings), and the legitimacy that consultative status gives NGOS.[12]

Willets was writing in the year 2000, soon after a review of the consultative status of NGOs at ECOSOC. Resolution 1296 of 1968 was replaced by resolution 1996/31 adopted in 1996, which, among other things, made it easier for national NGOs to become accredited. The UN Non-Governmental Liaison Service is of the view that

> UN-NGOs relationships changed profoundly in the 1990's, both quantitatively and qualitatively. The involvement of NGOs in the UN-organized world conferences, in particular, marked a turning point. Tony Hill talks about a "second generation" of UN-NGOs relations. This generation "is marked by the much larger scale of the NGO presence across the UN system, the more diverse institutional character of the organizations involved, now including national, regional and international NGOs, networks, coalitions and alliances, and the greater diversity of the issues that NGOs seek to address at the UN. Above all, the second generation of UN-NGOs relations are essentially political and reflect the motivation of NGOs to engage with the UN as part of the institutional architecture of global governance".[13]

The need to strengthen cooperation between the United Nations and NGOs has been underlined in various documents since the beginning of this century, in particular in the Millennium Declaration of September 2000, but also in the 2005 World Summit Outcome Document (para 172–174).

In 2004, Secretary-General Kofi Annan set up a panel of experts which was asked to formulate recommendations to strengthen UN — civil society interactions. This resulted in the "Cardoso Report" (A/58/817). Following the "Cardoso Report", the Secretary-General issued a set of proposals to bring greater

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[9] Willets (2000), pp. 193–194. He cites as examples the Earth Summit in Rio de Janeiro (1992), the World Social Summit in Copenhagen (1995), and the Beijing Conference on Women (1995). NGOs accredited to these conferences could take part in the work of the respective commissions. At Habitat II in Istanbul (1996), NGOs constituted Committee II, an integral part of the official proceedings.

[10] Willets (2000), p. 205.

[11] Ibid. Willets is more cautious about the status of national NGOs in the work of ECOSOC, since up to the mid-1990s relatively few national NGOs participated.

[12] Willets (1996), p. 10.

[13] UN – Non-Governmental Liaison Service website, available at https://www.un-ngls.org/index.php/11-engage-with-the-un

coherence and consistency to UN-NGO relations. Those include simplifying the accreditation process, increasing financial support for the participation of southern NGOs, improving country-level engagement of UN representatives with NGOs and opening further the General Assembly to NGOs. Since the Cardoso Report, some concrete developments have taken place. For example, the General Assembly has started to hold informal hearings. A Trust Fund has also been established to support UN country teams work with civil society.

III. THE EVOLUTION OF THE ROLE OF NGOS IN THE UN CRIME PROGRAMME

In the UN Crime Programme, NGO involvement can be traced back to the very first years of the United Nations.[14] The UN Crime Commission operates, and its forerunner the UN Crime Committee operated, under ECOSOC rules of procedure.[15] Consequently, NGOs have participated in, and have been very active in, the various sessions of the UN Crime Committee and the UN Crime Commission.

Indeed, during the first years of the UN Crime Programme, it is difficult to discern where the borderline should be drawn between UN activity and NGO activity. This was due to the fact that the UN Committee (which was replaced by the government-dominated UN Crime Commission in 1992) consisted of a small group of experts appointed by the UN Secretary-General in their personal capacity. The advisory group of experts appointed in 1948 consisted of six persons, of whom one (Stanford Bates, of the United States) was the President and a second (Thorsten Sellin, also of the United States) the soon-to-be elected Secretary-General, respectively, of the International Penal and Penitentiary Commission (IPPC).[16] This dominance of IPPC figures was largely due to the transfer being prepared of the IPPC international conferences to become the responsibility of the United Nations, in the form of the quinquennial UN Crime Congress, yet another direct connection between NGOs and UN activity.

A review of the experts appointed as UN Crime Committee members up to the end of its run in 1992 shows that academic experts continued to be well represented, and generally these academic experts were also leading members of international NGOs active in crime prevention and criminal justice.

Four international NGOs in particular should be mentioned in this connection. The International Penal and Penitentiary Foundation, the International Association of Penal Law, the International Society of Criminology and the International Society for Social Defence (known collectively within the UN Crime Programme as the "Big Four") are international NGOs that bring together academics and practitioners with a particular interest in crime prevention and criminal justice.[17] Although the four have somewhat different profiles of membership and orientation, for many years there was very close networking especially among the members of the board of directors of these four organizations, the membership of the UN Crime Committee (and to a lesser degree the UN Crime Commission) and the UN Secretariat. For a period roughly from the late 1970s to the end of the 1980s, there was even an effort to align the main themes of the international conferences of the respective "Big Four" with the theme of the UN Crime Congresses, and to avoid conflicts in the scheduling of these major events. Furthermore, from 1963 to the mid-1990s, the "Big Four" held joint conferences that specifically focused on one of the main topics of the following UN Crime Congress.[18]

In addition to the "Big Four", of course, there are many NGOs that are involved in crime prevention and criminal justice. The International Scientific and Professional Advisory Council (ISPAC) was established in 1968 to serve as a structure for networking among these NGOs, as well as academic institutions interested in the work of the UN Crime Programme.[19] For many years, ISPAC hosted annual coordination meetings of the

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[14] See for example Clark (1994), p. 92 and passim. Linke (1983) provides an overview of NGO involvement in the UN Crime Programme after the responsible Secretariat unit was transferred from New York to Vienna in 1976.

[15] Rules of Procedure of the Functional Commissions of the Economic and Social Council, available at http://www.ohchr.org/Documents/HRBodies/CHR/RoP.pdf

Rule 75 provides for the right of NGOs to designate representatives to attend, as observers, public meetings of the commission and its subsidiary organs. Rule 76 provides for consultation with NGOs, including the right to be heard by the Commission.

[16] Clifford (1979).

[17] The volume edited by Bassiouni (1995) contains chapters dealing with the activities of each of these four NGOs and their contribution to the UN Crime Programme.

[18] Rostad (1985), pp. 87–88.

[19] Clark (1994), pp. 92–94.

UN Crime Programme Network of Institutes.

More broadly, alliances of NGOs with consultative and associated status have been established in both New York (1972) and Vienna (1983).[20]

The role of NGOs has been particularly strong at the UN Crime Congresses, from the first such Congress held in 1955. As already noted, these Congresses continue a tradition established by the International Penal and Penitentiary Commission almost 150 years ago. Not only NGOs but (in distinction from the tradition of most other UN conferences) even individual experts may take part in the UN Crime Congresses.[21] Furthermore, up to the Fifth United Nations Congress in 1975, non-governmental organizations (and experts attending in a personal capacity) had the right to vote at UN Crime Congresses "for consultative purposes".[22]

An expanding part of the UN Congresses, in addition, has been the so-called ancillary meetings, which are generally organized by NGOs.[23]

The role of NGOs is also quite discernible in the drafting of the UN standards and norms on crime prevention and criminal justice, beginning with the first, the Standard Minimum Rules on the Treatment of Prisoners (SMRs), adopted in 1955. The SMRs had, indeed, been drafted under the auspices of the IPPC.[24] Especially during the time of the UN Crime Committee, other standards and norms were generally drafted by outside experts, who often worked together with various NGOs and academic institutions that were active in respect of the subject matter of the draft.

Thus, the conclusion can be drawn that within the UN Crime Programme, there has traditionally been less of the political tensions over NGO participation that Willets has found in ECOSOC, the General Assembly and the Security Council.

The stress in the previous paragraph, however, should be on the word "*traditionally*". The attitude that some national delegations have taken towards NGO participation in the work of the UN Crime Programme has changed significantly over the past few years.

The first signs of tension arose in connection with the restructuring of the UN Crime Programme, and in particular the replacement of the UN Crime Committee (consisting of experts serving in their personal capacity) with the UN Crime Commission (consisting of 40 Member States elected by ECOSOC). Among the arguments put forward for the transfer to a government-dominated UN Crime Programme was that the expert-driven UN Crime Committee had engaged in excessive drafting of soft-law (standards and norms, generally with NGO support), and the national governments had not had sufficient input.[25]

There was also a debate during the first sessions of the UN Crime Commission as to whether or not to recognize the body of standards and norms that had been produced under the UN Crime Committee, or whether these could be treated with "benign neglect", largely on the grounds that they had not been drafted with sufficient input from national governments. In the event, the Commission submitted to ECOSOC a draft resolution on the standards and norms that reaffirmed the important contribution that the use and application of this soft law make to criminal justice systems.[26]

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[20] Redo (2012b), p. 126.

[21] Redo (2012a), p. 113 and Lopez-Rey (1983), pp. 112–114. Lopez-Rey, who was a key figure in the development of the UN Crime Programme, emphasizes in particular that one of the main features of the discussions in the UN in the preparation of the first UN Crime Congress in 1955 was 'to bring in as much as possible the cooperation of international agencies and non-governmental organizations' (ibid., at p. 114). At p. 115, Lopez-Rey notes that already this first UN Crime Congress was attended by 43 NGOs and 230 individual professionals. These two groups accounted for over half of the total attendance.

The rules of procedure for the most recent UN Crime Congress, in 2015, are available at https://www.unodc.org/documents/congress//Documentation/A-CONF.222-2-Rules_of_Procedure/ACONF222_2_e_V1500298.pdf

Rule 58 deals with observers from NGOs, and Rule 59 deals with individual experts and consultants.

[22] Redo (2012a), p. 112.

[23] Clark (1994), pp. 78–79.

[24] Rostad (1985), p. 85.

[25] See for example Clark (1004), pp. 42–45 and 129–132.

[26] Draft resolution 1994/18. The author was a member of the delegation of Finland, and participated in this heated debate.

After that initial debate on the status of the standards and norms, many years passed without any perceptible tensions regarding NGO participation in the UN Crime Programme.

This situation changed significantly as a result of a disagreement that arose over the mechanism for the review of the implementation of the United Nations Convention against Corruption (UNCAC). The disagreement was originally over the participation of NGOs as observers in the Implementation Review Group and in other UNCAC subsidiary bodies set up by the Conference of the States Parties to UNCAC. The disagreement arose because the UNCAC review mechanism, for the first time with a UN treaty, incorporated peer review, in which experts from two countries assess the implementation of the treaty in the country under review. To some government representatives, this appeared to have elements of intervention in the domestic affairs of a sovereign state, something which is prohibited by article 2.4 of the UN Charter.

The issue of corruption in itself is sensitive, and is often used in internal political campaigns, quite commonly with those not in power claiming that those in power are corrupt and should be voted out of office. In addition, many Governments were concerned that reports of corruption in their country may have a negative impact for example on investment. Several international (and national) NGOs are active in anti-corruption. As part of their public advocacy for anti-corruption reforms, they often report on studies and individual cases of corruption. The annual "corruption perception index" reports put out by Transparency International have, in particular, been a source of criticism.[27]

The debate was a quite heated one, and continues to this day.[28] It has so far produced a tenuous compromise, on the basis of which NGOs may not participate in the meetings of the Implementation Review Group (IRG) or of the other working groups set up by the Conference of States Parties. A "briefing" is organized for the NGOs in connection with the annual meetings of the IRG. The Conference of States Parties has called for a continuous dialogue on this issue. At numerous UNCAC meetings, some States Parties supporting a more visible role for NGOs in the mechanism have returned to this issue and the need for a continuous dialogue (whether or not the issue is featured on the agenda of the meeting), while those opposing a more visible role for NGOs have responded by referring to the decisions already taken at sessions of the Conference of the States Parties in Doha in 2009 and in Marrakesh in 2011, which in their view decisively shut NGOs out of the mechanism on the international level.

On the national level, on the other hand, the vast majority of States Parties to UNCAC appear to be seeking to involve NGOs in the review of implementation of UNCAC, and in general in the strengthening of anti-corruption on the national and local level.[29]

From the debate over the review mechanism for UNCAC, this disagreement over NGO involvement on the international level has spread to other issues and can be seen in different ways. Negotiations on the adoption of a review mechanism for the United Nations Convention against Transnational Organized Crime (UNTOC) have also struggled with the extent to which such a review mechanism would involve NGOs. More generally, some States have raised concerns about the activities of at least some non-governmental organizations on the local or national level in crime prevention and criminal justice, quite apart from the implementation of UNCAC (or UNTOC).

Governments critical of NGOs have, among other points of criticism, questioned the appropriateness or qualifications of NGOs on the international level, including their perceived "relevance", representativeness, professionalism and accountability.[30] Some governments have also expressed concerns that in particular NGOs funded from abroad may be promoting a "political agenda" that is contrary to the dominant values of

[27] https://www.transparency.org/research/cpi/overview
[28] An extensive analysis of this disagreement, and a proposal for resolving it, is presented in CAC/COSP/2015/CRP.3 (2015), Civil Society Engagement in the Implementation of the United Nations Convention against Corruption, prepared by the present author.
[29] In this respect, there has been a marked shift, with the overwhelming majority of countries under review arranging for 'on-site' visits, during which the representatives of the reviewing countries can consult with a broad range of national stakeholders, civil society representatives included.
[30] These statements are not reflected in the official reports of the respective sessions of the IRG, but have been recorded in the notes made by the author of this paper, who has attended all of the relevant sessions of the IRG, including the briefings.

the country, or that are openly hostile to the Government in power.[31] In this respect, there are clear differences between political systems, and between public officials, in attitudes towards the role of NGOs as advocates and as political actors. For some, such political activity is part and parcel of the freedom of association and the freedom of speech, guaranteed by international human rights standards. Others, however, are of the view that some, if not many, NGOs act on the basis of insufficient information and use improper channels.

Overall, therefore, diverging views have been expressed within the framework of the United Nations crime prevention and criminal justice programme on the value of non-governmental activity on the local and national level. According to one view, such non-governmental activity should be encouraged as widely as possible. According to a second view, such non-governmental activity should be supervised in order to ensure that the NGOs in question do not have malevolent intentions, or serve as a channel for importing foreign (and undesirable) social and cultural values.

The first view could be described as a bottom-up, community-based approach. Local communities have a wide range of concerns, and crime is one such concern. In both a literal and a figurative sense, the mobilization of the public extends the reach of the criminal justice apparatus, in a way that not only enhances the effectiveness of criminal justice, but also fosters the trust of the public in the operation of the criminal justice system. One manifestation of this approach is community policing, which is based on the view that the police and the public are jointly responsible for responding to crime and improving the quality of life on the community level. Community policing programmes generally seek to encourage public initiative, recognizing that while the goals of individual civil society groups need not necessarily be in full alignment with police goals, the work of these groups supplements the work of the police.

The second view could be described as a top-down approach, which seeks to ensure that civil society activity is in compliance with national law. The concerns expressed, as noted, at times refer to the potential that non-governmental organizations may have as channels for bringing unwanted foreign social and cultural values into a country. As noted in the report on the 2015 United Nations Crime Congress, in the course of the workshop on public participation in crime prevention and criminal justice,

> A number of speakers noted that the engagement of civil society organizations should take place within the appropriate regulatory framework, in line with national legislation and in coordination with relevant oversight bodies, for example crime prevention councils, while also ensuring that organizations had the skills and knowledge for their functions. One speaker noted that any civil society activities should be framed and moderated by Governments, that non-local non-governmental organizations (NGOs) could propagate ideas or value systems that were foreign to some countries, and that those NGOs should respect the economic, cultural, social and religious values of societies. Some speakers referred to the need to build trust and transparency in that regard.[32]

As expressed by one speaker at the UN Crime Congress in 2015, the role of civil society is important if the groups are local and are based in the country, and if this role occurs in a certain context. Such groups understand the culture, are subject to regulation and are moderated by the government. The speaker observed that the groups should be transparent, and should respect the social and cultural values of the country in question; in the view of the speaker, this is of particular importance in developing countries.

It should be emphasized that this second view does not question the potential utility of the work of civil society groups. The focus is on ensuring that such groups function in accordance with law – and by extension that they should be under the control of the government.

The key difference between the two views presumably has much to do with the degree of control, intended to ensure the lawfulness of the activity of civil society groups. To what extent, for example, can members of the public exercise their right of association and freedom of speech? To what extent are they

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[31] See for example para. 15 of the Report on Workshop 4 of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, 12–19 April 2015 (A/CONF.222/L.4/Add.1).

[32] Report on Workshop 4 of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, 12–19 April 2015 (A/CONF.222/L.4/Add.1), para. 15.

required to file for approval of activities such as "Neighbourhood Watch" or restorative justice projects? To what extent can such civil society groups (or in general, members of the public) obtain information on the conduct of the police, on corporate activity and on public procurement contracts, in order to detect possible crime and corruption?

On this point, the common ground will presumably revolve around the right of civil society groups to act in a lawful manner to assist the authorities in crime prevention and criminal justice, and around the right of sovereign States to determine what laws and regulations apply to such groups. Given the wide differences between States in legal and administrative systems, as well as in economic, political and social development, there cannot be a "one-size-fits-all" model. Noting the principle of non-intervention in domestic affairs, it should be clear that for example the UN Crime Commission cannot determine the specific extent to which States may regulate civil society groups, as long as the right of association and the freedom of speech, as provided in recognized international instruments, are respected.

IV. THE SECURITIZATION OF THE DEBATE ON CRIME PREVENTION AND CRIMINAL JUSTICE: FROM CRIME AS A SOCIETAL ISSUE TO CRIME AS A SECURITY ISSUE

The second step in my story has to do with a shift in in how crime is viewed: from a societal issue to a security issue. How you view something, the framework that you use in your analysis, will influence what policy options you look for.

We have always been interested in knowing why people commit crime. Over the centuries, we have broadly speaking gone from a largely religious understanding of crime ("crime is a sin against God") to a largely philosophical understanding ("crime shows a lack of honesty or empathy on the part of the criminal").

At the end of the 1800s and the beginning of the 1900s, a more scientific and empirical approach emerged, in the form of criminology. The first criminologists, such as Cesare Lombroso, took a decidedly biological or medical approach, and sought to diagnose what genetic failure, disease or mental failure led a person to commit a crime.

These individual-oriented theories continue to attract considerable theoretical attention and research, but world-wide in criminology and criminal justice, they have largely been replaced by society-oriented theories.[33] Such theories latch on to different elements in an attempt to explain crime: anomie, capitalism, conflict in society, social disorganisation, differential association, subcultures, self-identification as an offender, and so on. What is common to all the major criminological theories today is that they see crime as the result of a complex interaction between an individual and the surrounding society.

While the individual-oriented theories sought to proceed from a diagnosis of a genetic, medical or psychological disorder to the identification of a suitable treatment and, in time, "cure" of the individual from his or her criminal tendencies, the society-oriented theories seek to suggest social (and, at times, political) solutions to crime: better child-raising, better education, early intervention, better community development, better social development, improved identification and correction of situations which may motivate a person to commit a crime, and so on.

Both the individual-oriented and the society-oriented theories have fed into the prevailing approaches around the world to the treatment of offenders. Over the years, many different correctional treatment programmes have been developed, and considerable thought has been given to how to improve the effectiveness of community-based corrections. Practitioners and researchers have been very active locally, nationally and internationally in exchanging information and experiences on what works and what (apparently) does not. They have contributed to the public debate on how to develop a rational, effective and human criminal justice system.

The basic outline of the democratic process of policy formulation is that the public elects its

[33] Individual-oriented theories continue to have relevance in helping to explain a predisposition to engage in socially disproved behaviour, and in suggesting methods of treatment for specific types of offenders.

representatives to govern, policy proposals are developed in consultation with practitioners and academia, and the elected representatives engage in a debate on the respective merits of different policy options. This is of particular importance in respect of crime prevention and criminal justice, areas which are imbued by the fundamental values and principles of society, and where the policy choices that are made may involve the use of coercive force by the state against individuals suspected or convicted of blameworthy conduct.

A shift appears to have taken place in this respect nationally and internationally, parallel with the growing concern with organized crime and terrorism.

A currently fashionable term in social science is "securitization". Broadly speaking, this refers to a process in which something (such as social disorder, drug use, an increase in uncontrolled migration) is identified as a "security threat", which must be countered by extraordinary measures, perhaps even bypassing public debate and democratic procedures.[34] Researchers have identified signs of securitization in relation to discussions on such phenomenon as climate change and unemployment. One of the topics in which it is especially prevalent is crime control and criminal justice.

Within the UN Crime Programme, this securitization process is evident in three respects: the topics being discussed, the proposals made, and the language used. The process can also be traced quite directly to the restructuring of the UN Crime Programme at the beginning of the 1990s.

The shift from an expert-driven UN Crime Committee to a government-driven UN Crime Commission resulted in a growing emphasis on (transnational) organized crime and transnational criminal justice (international law enforcement and judicial cooperation, measures which, significantly, are the responsibility of the state), with a corresponding decrease in the attention devoted to so-called ordinary crime and the day-to-day working of the criminal justice system: various crime prevention approaches, community-based measures, restorative justice and improvement of the criminal justice system (which to a large extent can involve the community). This was accompanied by a shift of work from "soft law" instruments (such as standards and norms) to "hard law" instruments, in particular the UN Convention on Transnational Organized Crime and the UN Convention on Corruption.[35]

The language used includes, unsurprisingly, increasing references to "security". One of the first signs of this was in the title of a declaration adopted at the 1995 UN Crime Congress held in Cairo: the "United Nations Declaration on Crime and Public Security".[36] References to security can also be found in the declaration adopted at the UN Crime Congress held in 2010, in the form of a recommendation for "stronger coordination between security and social policies, with a view to addressing some of the root causes of urban violence" (para 45). This same formulation was repeated in preambular paragraph 16 of General Assembly resolution A/RES/68/188 on the rule of law, crime prevention and criminal justice in the United Nations development agenda beyond 2015.

In March 2011, soon after the UN Crime Congress in Salvador, the Secretary-General established a UN System Task Force on transnational organized crime and drug trafficking "in order to develop an effective and comprehensive approach to the challenge of transnational organized crime and drug trafficking as threats to security and stability". The task force is co-chaired by DPA and UNODC.

Several ECOSOC resolutions during recent years have included references to security. A formulation that can be found in such resolutions is that transnational organized crime "represents a threat to health and safety, security, good governance and the sustainable development of States".[37]

Perhaps the most illustrative example of the extent of the shift is ECOSOC resolution 2014/21, which bears the seemingly "soft" title of "Strengthening social policies as a tool for crime prevention". However, a

[34] The term is generally associated with what is known as the "Copenhagen School". See for example Emmers (2003) and Stritzel (2012).
[35] Joutsen 2017.
[36] GA res 51/60, annex, 1996.
[37] See, for example, the first preambular paragraph of ECOSOC 2012/19, which is entitled Strengthening international cooperation in combating transnational organized crime in all its forms and manifestations.

reading of the text, and in particular of the preambular paragraphs, shows that the resolution is considerably more concerned with "security" policies than with "social" policies.

The emphasis on the link between crime and security has not been limited to the UN Crime Commission. On 19 December 2014, the Security Council adopted Resolution 2195 on terrorism and cross-border crime, including drug trafficking, as threats to international peace and security.[38]

V. REFERENCES TO THE ROLE OF THE PUBLIC AT UN CRIME CONGRESSES: THE CURIOUS CASE OF THE DISAPPEARANCE OF REFERENCES TO NON-GOVERNMENTAL ORGANIZATIONS

The annex to this paper provides a review of references to public understanding, awareness and cooperation in the UN standards and norms. It notes that these standards and norms contain a great variety and number of such references, often in respect of the importance of raising public awareness of the issue in question, and in calling for better mobilization of community resources and public participation. Also the most recent standards and norms, and in particular the 2014 UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contain many such references.

As for the UN Crime Congresses, the need for cooperation between the authorities and the public in crime prevention and criminal justice has been recognized from the outset, as shown for example by the discussions on juvenile delinquency at the first and second UN Crime Congresses in 1955 and 1960, and the discussions on social change and crime at the second and third Congress in 1960 and 1965. (Indeed, the theme of cooperation imbued essentially all of the topics at the third Congress, which had as its overall theme "Prevention of Criminality", and as the substantive agenda items "Social change and criminality", "Social forces and the prevention of criminality, "Community preventive action", "Measures to combat recidivism, "Probation and other non-institutional measures", and "Special preventive and treatment measures for young adults".) Fifty years ago, at the 1970 UN Crime Congress in Kyoto, the topic was directly addressed under the theme, "Participation of the public in the prevention and control of crime and delinquency".

Between 1955 and 1995, the UN Crime Congresses produced not only reports, but also a large number of resolutions. A very general comment would be that both the reports and the resolutions show that the participants at the Congresses were aware of the importance of cooperation between the authorities and the public, urged governments to promote this cooperation, and welcome the input of non-governmental organizations and civil society.

Reports, however, essentially reflect the various opinions expressed, and were not subject to extensive negotiation. Individual resolutions, in turn, generally dealt with very specific issues, such as the substance of a new standard and norm. The 1995 Crime Congress was the first to produce a more consolidated document that sought to express the views of the participating member states on the issues at hand.[39] This "omnibus resolution" focused narrowly on the four themes of the Congress, which dealt, essentially, with (1) technical assistance in promoting the rule of law, (2) action against transnational and organized crime, and the role of criminal law in the protection of the environment, (3) management of the criminal justice system, and (4) crime prevention.

NGOs and public participation did receive several mentions in this omnibus resolution. Para I(15) invited the Commission to call on, inter alia, all relevant NGOs to continue cooperating with the UN in training. Para III(7) called on member states to consider the adoption of the community policing approach, and to promote cooperation with local communities and the private sector in crime prevention. Para 1V(1) invited member

[38] S/RES/2195 (2014), 19 December 2014.

[39] The 1995 Congress was the first to be held after the restructuring of the UN Crime Programme. In the negotiations on the restructuring, considerable criticism was directed at the large number of resolutions and instruments that emerged from the 1990 Congress - a grand total of 45. There was thus a strong push at the 1995 Congress to consolidate as many resolutions as possible into what the participants began to refer to as an 'omnibus resolution'.

The push was not fully successful in 1995, as in addition to this one 'omnibus resolution' there were also several separate resolutions, although considerably fewer than five years earlier: eight.

states to have due regard to the role of, inter alia, the community in developing effective crime prevention measures, and para IV(13) urged member states to give attention to public awareness in crime prevention. Finally, para IV(17) recommended that member states establish where necessary local, regional and national bodies for crime prevention and criminal justice with the active participation of the community.

The 2000 Crime Congress was the first to adopt a single consolidated document, a Congress Declaration. This presumably makes it easier to see what issues the member states regard as current priorities, and how they see the connections between different issues.

> Para 13 of the Vienna Congress Declaration states:
> We emphasize that effective action for crime prevention and criminal justice requires the involvement, as partners and actors, of Governments, national, regional, interregional and international institutions, intergovernmental and non-governmental organizations and various segments of civil society, including the mass media and the private sector, as well as the recognition of their respective roles and contributions.

Two years after the 2000 Crime Congress, the Crime Commission formulated a Plan of Action for the Implementation of the Vienna Declaration. This contains a large number of references to cooperation between member states, intergovernmental and non-governmental organizations,[40] and to the importance of the authorities working together with civil society.[41]

At the next UN Crime Congress in 2005, the Bangkok Congress Declaration contained the following two paragraphs related to NGOs and civil society:

> para 9: We recognize the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in contributing to the prevention of and the fight against crime and terrorism. We encourage the adoption of measures to strengthen this role within the rule of law.
>
> para 34: We stress the need to consider measures to prevent the expansion of urban crime, including by improving international cooperation and capacity-building for law enforcement and the judiciary in that area and by promoting the involvement of local authorities and civil society.

The references to NGOs and civil society in the 2000 and 2005 Crime Declarations were thus quite concise and relatively clear: member states were agreed that non-governmental actors had an important role to play in crime prevention and criminal justice. In view of the subsequent and increasingly heated discussion within the UN Crime Programme on the role of NGOs and civil society, it is relevant to note that the Bangkok Declaration specified that the role of "individuals and groups outside the public sector" should be "within the rule of law". The insertion of the phrase suggests that at least some delegations wanted assurance that actions taken by individuals and groups outside of the public sector to prevent and fight against crime and terrorism were not in themselves unlawful, for example that they did not involve vigilante justice.

A comparison of the 2000 and 2005 Declarations with the Salvador Congress Declaration of 2010 shows some clear shifts in language. The key paragraph on this topic in the Salvador Declaration is para 33:

> We recognize that the development and adoption of crime prevention policies and their monitoring and evaluation are the responsibility of States. We believe that such efforts should be based on a participatory, collaborative and integrated approach that includes all relevant stakeholders, including those from civil society.

All three Congress Declarations (2000, 2005 and 2010) thus see crime prevention and criminal justice as a collaborative activity that also involves civil society. However, the member states at the 2010 Congress wanted to stress that crime prevention and criminal justice – and even its monitoring and evaluation – is the

[40] See paras 4(a), 11(d), 14(d), 26(f), 27(c) and 47(h).
[41] See paras 7(b), 11(d), 14(d), 24, 26(b), 26(f), 27(b), 27(c), 38(f) and 47(h).

responsibility of governments, not of non-state entities, such as non-governmental organizations. This does raise some questions. Arguably also non-state actors (certainly, for example, academia and research institutes) should be free to monitor and evaluate crime and criminal justice in a country. What presumably is meant here is that it is ultimately the state which has the responsibility to draw conclusions from monitoring and evaluation (done in a participatory, collaborative and integrated approach that includes all relevant stakeholders), and amend and develop governmental, formal crime prevention policies accordingly.

The Salvador Congress Declaration also contained four other paragraphs with references to civil society and non-governmental organizations. Para 31 called upon civil society, including the media, to support efforts to protect youth from violent content in the media. Para 36 deals with cooperation with civil society and NGOs in following a victim-centred approach to the victims of trafficking in persons, and para 37 recommends that member states, inter alia, undertake awareness-raising campaigns, in cooperation with civil society and non-governmental organizations, on the topic of the smuggling of migrants.

Para 43 of the Salvador Declaration notes that member states "endeavour to take measures to promote wider education and awareness of the United Nations standards and norms in crime prevention and criminal justice to ensure a culture of respect for the rule of law. In this regard, we recognize the role of civil society and the media in cooperating with States in these efforts."

Reference could also be made to para 34 of the Salvador Declaration, the paragraph that immediately follows the key paragraph on states having the ultimate responsibility in crime prevention policy formulation. This brings in, for the first time in a UN Crime Congress Declaration, the issue of cooperation between the state and the private sector. Para 34 recognizes "the importance of strengthening public-private partnerships in preventing and countering crime in all its forms and manifestations."

The most recent UN Congress, in Doha in 2015, elevated the issue of public participation into the (lengthy) overall theme: "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation". Comparing the Doha Declaration to the previous Congress Declarations, a number of points can be made regarding references to non-governmental organizations and civil society.

First, the introductory paragraph 1, which acknowledges the 60–year legacy of the UN Congresses, refers to them as "one of the largest and most diverse international forums for the exchange of views and experiences in research, law and policy and programme development between States, intergovernmental organizations and individual experts". Proposals by several delegations to insert the usual reference to non-governmental organizations in this connection were rejected by a few delegations, and thus did not meet consensus.[42]

Second, the Doha Declaration contains a large number of references to public participation and civil society, more than in the previous three Congress Declarations combined. These are to be found in the context of three lengthy paragraphs, 5 (which deals largely with crime prevention and criminal justice policy), 10 (which focuses on public participation) and 11 (which deals with technical assistance). However, one term is conspicuous in its absence: there is not a single reference anywhere in the text of non-governmental organizations. Again, several efforts were made to bring back this standard UN language, but again, a few delegations were able to block consensus.

In para 5, the member states "reaffirm our commitment and strong political will in support of effective, fair, humane and accountable criminal justice systems and the institutions comprising them, and encourage the effective participation and inclusion of all sectors of society". Among its many subparagraphs, subpara (i) notes that the member states shall endeavour to "enhance equality for all persons before the law, including gender equality, for individuals belonging to minority groups and for indigenous people, through, inter alia, a comprehensive approach with other sectors of government, relevant members of civil society and the media." Subpara (m) notes the intention of the member states "to work, as necessary, with regional, international and

[42] This issue was not raised in the negotiation of the Salvador Declaration. However, it may be noted that the second preambular paragraph of the Bangkok Declaration refers to the Congresses as constituting 'a major intergovernmental forum', thus ignoring the traditional strong participation of non-governmental organizations at these Congresses.

civil society organizations to overcome the obstacles that may impede the delivery of social and legal assistance to victims of trafficking. Subpara (q), which deals with hate crime, notes that the member states shall consider providing specialized training to criminal justice professionals on responding to hate crimes, to help engage effectively with victim communities and to build public confidence and cooperation with criminal justice agencies".

As noted, para 10 deals exclusively with the development and implementation of consultative and participatory processes in crime prevention and criminal justice in order to engage all members of society. The point is made once again that it is the state that is in charge: the member states "recognize our leading role and responsibility at all levels in developing and implementing crime prevention strategies and criminal justice policies at the national and subnational levels". However, the member states also recognize the importance of taking measures "to ensure the contribution of civil society, the private sector and academia".

The thirteen subparagraphs to para 10 forms a long "shopping list" of issues in respect of which, and ways in which, public participation should be encouraged. The following summarized points are particularly relevant to the issue of public participation:

(c) the promotion of a culture of lawfulness, and seeking the support of civil society in crime prevention, in order to address the social and economic root causes of crime;
(d) dealing with social conflict through mechanisms of community participation, including by raising public awareness, and increasing cooperation between the public, competent authorities and civil society;
(f) fostering public participation in the use of traditional and new information and communications technologies in crime prevention and criminal justice;
(g) enhancing public participation through the promotion of e-government systems in crime prevention and criminal justice, including the promotion of the use of new technologies to facilitate cooperation and partnerships between the police and the communities they serve;
(h) strengthening public-private partnerships in crime prevention and control; and
(k) consideration of partnering and supporting community initiatives and fostering the active participation of citizens in ensuring access to justice for all, and in crime prevention and the treatment of offenders.

Para 11, which deals with technical assistance, calls on the UNODC, the network of institutes of the United Nations crime prevention and criminal justice programme, and all relevant United Nations entities and international and regional organizations, to continue to coordinate and cooperate with Member States to provide effective responses to the challenges faced at the national, regional and global levels, *as well as to strengthen the effectiveness of public participation in crime prevention and criminal justice*, including through the preparation of studies and the development and implementation of programmes (emphasis added here).

VI. PUBLIC PARTICIPATION IN THE AGE OF THE 2030 AGENDA

Have the disagreements referred to above in the UN Crime Programme regarding the role of non-governmental organizations, as well as the other developments such as securitization, affected how the UN Crime Programme works?

The easy answer to this is "yes". The concept of non-governmental organizations appears to have all but disappeared from UN Crime Programme texts formulated by consensus.

There are three main reasons, however, why that would be a misrepresentation of the essence of the UN Crime Programme.

The first is linguistic. Although "non-governmental organizations" is a recognized legal concept in the UN, and non-governmental organizations continue to have a strong institutionalized role at the UN Crime Commission, at the UN Crime Congresses and in other work of the UN, it has become a politically charged term when referring to work being done by other than governmental actors. This is very evident from the rapid change that has taken place, in the space of only a few years, in what terminology is used at UN Congress Declarations.

The UNODC has already responded to this concern by simply replacing the word "non-governmental

organization" with a synonym, "civil society organization". To quote from the UNODC website:[43]

> UNODC recognizes the need to promote strong partnerships with civil society organizations in dealing with the complex issues of drug abuse and crime which undermine the fabric of society. The active involvement of civil society, which includes NGOs, community groups, labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations and foundations is essential to help UNODC carry out its global mandates.
>
> As the Charter recognizes, civil society organizations are important partners of the United Nations. Over the past sixty-five years they have developed a close relationship with the Organization, working in a variety of areas such as service delivery, policy development, analysis and advocacy. Today thousands of accredited Non-Governmental Organizations work with the UN worldwide, serving as important sources of public information about the UN and bringing fresh information and ideas from the field.

The second reason is that UN Crime Programme continues to produce reports, resolutions and UN Congress Declarations that acknowledge the central importance of public participation in crime prevention and criminal justice. Despite the securitization process referred to above, the member states do continue to deal with "soft" issues of public participation, even though relatively less time is spent on these.

The third reason is the most important one, the guiding effect of the 2030 Agenda, the Sustainable Development Goals. Although also these SDGs do not contain a single reference to non-governmental organizations, they do refer several times to civil society, and in one connection (para. 41) even to civil society organizations.

The 2015 UN Crime Congress in Doha contributed, on its part, to the incorporation of the rule of law, crime prevention and criminal justice issues into Goal 16 of the SDGs. It is this that now clearly provides the frame of reference for the UN Crime Programme.

In so doing, the SDGs challenges the UN Crime Programme to pay increasing attention to how crime prevention and criminal justice can contribute to sustainable development around the world, in developing and developed countries alike. Such a UN Crime Programme would be framed by the link between Goal 16 and other Goals such as gender equality, the sustainability of communities, and poverty reduction. It would continue to deal with pressing questions related to transnational and organized crime, but would also deal with the prevention of and response to "ordinary" crime. It would continue to identify best practices in international law enforcement and judicial cooperation, but would also seek to identify best practices in the strengthening of access to justice, restorative justice, victim support and community-based sanctions.

The intellectual debate from the early years of the UN Crime Programme can be revitalized in order to bring in research and best practices from around the world, channelled for example through the UNODC and the Programme Network of Institutes so that it is reflected in the discussions at the UN Crime Commission, the Crime Congresses and other meetings.

The government-driven discussions in the UN Crime Commission can in this way benefit from the input of experts, who can identify what best practices can be adapted to the different circumstances around the world so that they meet not only the general needs of member states, but also the ground-level needs of practitioners and of local communities, of victims and of offenders.

Moreover, Goal 17.17 of the SDGs expressly states that the target is to "encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships".

The soft law and the hard law elements of the UN Crime Programme reinforce one another in strengthening local, national and international crime prevention and criminal justice, and in this way

[43] https://www.unodc.org/unodc/en/ngos/DCN0-NGOs-and-civil-society.html

contribute to the ongoing work on the review of the implementation of the 2030 Agenda. This review of implementation will presumably figure prominently in the discussions at the next United Nations Crime Congress, to be hosted by Japan in 2020.

Civil society will continue to have an important seat at that table.

References

Bassiouni, M. Cherif (1995), *The Contributions of Specialized Institutes and Non-Governmental Organizations to the United Nations Criminal Justice Programme. In honour of Adolfo Beria di Argentine*, the Hague

CAC/COSP/2015/CRP.3 (2015), Civil Society Engagement in the Implementation of the United Nations Convention against Corruption. Conference room document submitted by Finland

Clark, Roger S. (1994), *The United Nations Crime Prevention and Criminal Justice Program. Formulation of Standards and Efforts at their Implementation*. University of Pennsylvania Press, Philadelphia

Clifford, William (1979), Echoes and Hopes. The United Nations Committee on Crime Prevention and Control, Australian Institute of Criminology, Canberra

ECOSOC Resolution 1996/31 on Consultative relationship between the United Nations and non-governmental organizations

Emmers, Ralf (2003), The Securitization of Transnational Crime in ASEAN, Institute of Defence and Strategic Studies, Singapore, available at http://www.tandfonline.com/doi/abs/10.1080/0951274032000085653

Fitschen, Thomas (2008), Inventing the Rule of Law for the United Nations, Max Planck Yearbook of United Nations Law, Volume 12, 2008, pp. 37–380, available at http: //www. mpil. de/files/pdf3/mpunyb_10_fitschen_12.pdf

Joutsen, Matti (2017), Four Transitions in the United Nations Crime Programme, HEUNI, available at https: //www. unodc. org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/E_CN15_2017_CRP4_e_V1703636.pdf

Joutsen, Matti and Adam Graycar (2012), When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption, *Journal of Global Governance* 18, 2012, pp. 425–439.

Linke, Robert (1985), The Cooperation Between Non-Governmental Organizations and the United Nations in the Field of Crime Policy, in *Course on United Nations Criminal Policy. Report of the European Course Held in Helsinki, Finland, 25-29 March 1985*, HEUNI publication no. 6, Helsinki, pp. 90–95

Lopez-Rey, Manuel (1985), United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, in *Course on United Nations Criminal Policy. Report of the European Course Held in Helsinki, Finland, 25-29 March 1985*, HEUNI publication no. 6, Helsinki, pp. 113–121

Redo, Jolanta (2012b), Non-Governmental Organizations in the United Nations Crime Prevention and Criminal Justice Programme, in Redo (2012a), pp. 125–126

Redo, Slawomir (2012a), Blue Criminology. The Power of United Nations Ideas to Counter Crime Globally - A Monographic Study, HEUNI publication no. 72, Helsinki

Rostad, Helge (1985), The History of International Collaboration in Crime Prevention and Treatment of Offenders – With Special Emphasis on the Activities of International Penal and Penitentiary Foundation, in *Course on United Nations Criminal Policy. Report of the European Course Held in Helsinki, Finland, 25-29 March 1985*, HEUNI publication no. 6, Helsinki, pp. 79–89

Stritzel, Holer (2012), Securitization, power, intertextuality: Discourse Theory and the Translations of Organized Crime, *Security Dialogue* 43(6), pp. 549–567

Willets, Peter (1996), Consultative status for NGOs at the UN, available at http://www..staff.city.ac.uk/p.willets/NGOS/CONSSTAT.HTM

Willets, Peter (2000), From "Consultative arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN, Global Governance, 6/2000, pp. 191–212

Annex 1. References in UN standards and norms to NGOs and the role of the public

Up to the mid-1980s, the UN standards and norms on crime prevention and criminal justice contained almost no reference to civil society, to non-governmental organizations, or to partnership with the public. This could be explained largely by their subject, and in part also by who was involved in their drafting.[44] Two of the first six instruments dealt with capital punishment, and two with torture and other cruel, inhuman or degrading treatment.[45] The focus in all four was on strengthening human rights safeguards in the administration of justice. Presumably at the time that these were being drafted, the lawyers, physicians and criminal justice professionals involved in the process did not regard civil society as having any particular relevance in such matters.[46] As a result, there are no references to the public or to non-governmental organizations in these instruments.

To some extent, this conjecture could be applied also to the Code of Conduct for Law Enforcement Officials, adopted in 1979. The drafting was largely in the hands of law enforcement specialists, who focused on training and oversight. Again, there are no references to the public or to NGOs.

Of these six first standards and norms that had been adopted, the first, the Standard Minimum Rules on the Treatment of Prisoners, at least contains a passing mention of "the public". Rule 46(2) of the SMR provides that "The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used."[47, 48]

During the 1980s, a marked change took place in the standards and norms in several respects. One change was in the number and scope of such instruments being adopted. Only six instruments had been drafted before 1985. In comparison, as many as 26 appeared during the ten years between 1985 and 1995, dealing with a wide variety of issues. (Since then, the pace has decreased.) A second change was that non-governmental organizations became even more actively involved in their drafting. A third change has to do with the substance of this paper: many of the new instruments made extensive references to civil society, non-governmental organizations, and participation of the public.

This third change can largely be attributed to the second: perhaps inevitably, the NGOs often wanted to insert references to their role in crime prevention and criminal justice.

A review of what references to NGOs, civil society and the community were inserted into the standards and norms, and what terms were used, shows considerable variety.

Of the three terms, "non-governmental organization" has been used most consistently, and generally (but not always) as a part of the standard formulation "Governments, intergovernmental and non-governmental

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[44] For an excellent overview of the emergence of the UN standards and norms, see Clark 1994, esp. pp. 97 ff.

[45] General Assembly resolution on capital punishment (1971), the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment (1975), Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (1982), and Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984).

[46] However, it might be noted that para. 2 of the resolution by which the "Safeguards" instrument was adopted invited non-governmental organizations to conduct research on the use of the death penalty – a harbinger of one way in which the future standards and norms will envisage a role for NGOs.

[47] In addition, two rules offer a potential for non-governmental participation. Rule 61 deals with the role of "community agencies" in assisting correctional staff in the rehabilitation of prisoners, and rule 81, correspondingly, with the role of "services and agencies, governmental or otherwise" in assisting released prisoners.

[48] When the SMRs were updated in 2015, and became renamed as the "Mandela Rules", no additional provisions relating to civil society et al were included.

organizations and the public". This consistency is clearly due to the fact that, within the context of the activities of the United Nations, "non-governmental organization" has a specific legal meaning. As noted at the beginning of this paper, non-governmental organizations can apply for consultative status with the Economic and Social Council, and a large number have done so.

In various standards and norms, the drafters had apparently wanted to restrict the scope of NGOs addressed to those with a special interest or expertise in the area in question, and thus a few standards and norms refer to "the non-governmental organizations concerned" (Procedure 12 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary), "relevant non-governmental organizations" (articles 19, 20 and 22 of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice), and "competent non-governmental organizations" (guideline 19 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which deals with technical assistance in matters relating to such access).

The term "civil society" is used in several standards and norms. In addition, the following three variations appear:

- "civil society organizations" (para 5 of the resolution adopting the Kadoma Declaration on Community Service)
- "civil society groups" ((g) of the Arusha Declaration on Good Prison Practice), and
- "members of civil society" (Guideline 9 of the Guidelines for Action on Children in the Criminal Justice System).

The term "the community", in turn, is used as a general concept to refer to the public at large, to persons who are not (necessarily) acting in an organized manner. Guideline 5 of the Guidelines for the Prevention of Crime states that "[w]hile the term "community" may be defined in different ways, its essence in this context is the involvement of civil society at the local level."[49]

To confuse the terminology even more, the following terms, all of which are derived from the word "community", arguably refer also to civil society:

- community-based organizations (para 9 of the introduction to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems),
- community organizations and agencies (guideline 22 of the Riyadh Guidelines),[50]
- community groups (guideline 29 of the Riyadh Guidelines; see also guidelines 32 through 39),
- community representatives (Guideline 2 of the Guidelines for cooperation and technical assistance in the field of urban crime prevention), and
- voluntary organizations, local institutions and other community resources (the Beijing Rules, rule 26)

Finally, it can be mentioned that "the community" as a basic term appears in two standards and norms, the Basic Principles for the Treatment of Prisoners (basic principle 10) and the Tokyo Rules (general principle 1.2 and rule 13.4)

As for the substance of these different references, they fall into three general categories:
- references calling for non-governmental organizations to assist the Secretary-General, for example in the collection of data or in the preparation of reports;
- references calling for better public awareness of the issues dealt with in the instrument in question, including wider dissemination of copies of the instrument to the public (or, alternatively, to non-governmental organizations); and
- references calling for mobilization more widely of community resources, and for public participation.

[49] Somewhat confusingly, this same standard and norm, having made an attempt at conceptual clarity, then proceeds to use several different concepts, all of which seem to be much the same: community organizations and non-governmental organizations (both used in Guideline 9), civil society (Guidelines 21, 24, 26 and 27), 'all segments of civil society' (Guidelines 15 and 19), and 'communities and other segments of civil society' (Guideline 16).
[50] In addition, guideline 9(c) of the Riyadh Guidelines refers to 'non-governmental agencies'.

References to the provision of assistance to the Secretary-General

The first of the three categories is the smallest of the three.

Three standards and norms adopted during the same year, 1989, contain a provision stating that the Secretary-General is to prepare periodic reports on the implementation of the standard and norm, in cooperation with, inter alia, non-governmental organizations.

Para II (B) (2) of the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials states that the Secretary-General shall prepare such periodic reports

> "drawing also on observations and on the cooperation of specialized agencies and relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council".

Along the same lines, Procedure 8 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary mandates the Secretary-General to prepare independent quinquennial reports on implementation on the basis not only of information received from governments, but also from, inter alia, non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council. Finally, Procedure 13 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary mandates the Secretary-General to "take steps to ensure that non-governmental organizations in consultative status with the Economic and Social Council become actively involved in the implementation process and the related reporting procedures".

These three standards and norms are anomalies, in that no similar provision existed in earlier standards and norms, nor were similar phrasing incorporated into later standards and norms. 1989 was the year in which the restructuring of the UN Crime Programme got underway, and one of the driving forces was the wish of member states to have greater say in the programme. In this light, it is somewhat understandable that subsequently drafted standards and norms dropped such provisions.

The standard and norm on "Firearm regulation for purposes of crime prevention and public health and safety" (1997) is another anomaly, in that para 6 makes reference to the involvement of NGOs in regional workshops to be held later on that year, "although not when sensitive law enforcement issues will be discussed". Para 7 requests that the views of e.g. NGOs be solicited on the development of a declaration of principles.

The Guidelines for Action on Children in the Criminal Justice System (1997) provides in Guideline 40 for the establishment of a coordination panel that would formulate a common strategy, and that would have NGOs "that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in the formulation of the common strategy".

Finally, the Plan of Action for implementation of the Victim's Declaration (1998) contains several provisions opening the work of the UNODC for input from, inter alia, non-governmental organizations. Para 2 requests the Secretary-General to develop, in collaboration with relevant intergovernmental and non-governmental organizations, criteria for the selection of technical cooperation projects for the establishment or the further development of victim services. The following paragraph invites Member States, intergovernmental and non-governmental organizations and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network to assist the Secretary-General in updating a Guide and Handbook on implementation. Para 5 requests the Secretary-General, in cooperation with interested Member States and non-governmental organizations, to support an international database on practical national and regional experiences in providing technical assistance and on bibliographic and legislative information, including case law relevant to this field, and para 6 invites Member States and non-governmental organizations to provide information for the database on projects, new programmes, case law and legislation and other relevant guidelines and to help in identifying experts who could assist Member States, upon request.

References in standards and norms calling for better public awareness

When UN standards and norms were drafted from the mid-1980s on, a provision was generally included

on the importance of promoting public awareness about the issue in question. Such provisions called either for dissemination of the UN standard and norm itself, or for greater public awareness.

An example of a provision calling for dissemination of an instrument is para II(B)5 of the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials,[51] which provides that "The Secretary-General shall make available the Code and the present guidelines to all States and intergovernmental and non-governmental organizations concerned, in all official languages of the United Nations." Correspondingly, the last preambular paragraph of the Basic Principles on the Independence of the Judiciary[52] provides inter alia that "[t]he following basic principles ... (should) be brought to the attention of judges, lawyers, members of the executive and the legislature *and the public in general*..." (emphasis added here).

As for the many standards and norms containing provisions on public awareness, the formulation depends on the context. Some of these provisions emphasized the importance of the public understanding the importance of the work being done by the criminal justice system. For example Rule 8 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty refers to the awareness of the public "that the care of detained juveniles and preparation for their return to society is a social service of great importance",[53] and guideline 11(c) of the Guidelines for Action on Children in the Criminal Justice System emphasizes the importance of the *understanding of the public* of the spirit, aims and principles of child-centred justice" (emphasis added here).[54] Para. 4 of the Basic Principles on the Role of Lawyers, in turn, refers to the need to inform the public about their rights and duties under the law "and the important role of lawyers in protecting their fundamental freedoms".[55]

Provisions in other standards and norms are designed to mobilize public opinion regarding the seriousness of certain issues. Perhaps the most comprehensive set of such provisions is to be found in the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.[56] Article 22, which deals with crime prevention, urges among others "relevant non-governmental organizations", as appropriate,

- to develop and implement relevant and effective public awareness and public education initiatives, as well as school programmes and curricula, that prevent violence against women by promoting respect for human rights, equality, cooperation, mutual respect and shared responsibilities between women and men,
- to set up outreach programmes, and provide relevant information to women about gender roles, women's human rights and the social, health, legal and economic aspects of violence against women in order to empower women to protect themselves and their children against all forms of violence,
- to set up outreach programmes for offenders or persons identified as potential offenders in order to promote non-violent behaviour and attitudes and respect for equality and the rights of women,
- to develop and disseminate, in a manner appropriate to the audience concerned, including in educational institutions at all levels, information and awareness-raising materials on the different forms of violence that are perpetrated against women and the availability of relevant programmes that include information on the relevant provisions of criminal law, the functions of the criminal justice system, the victim support mechanisms that are available and the existing programmes concerning non-violent behaviour and the peaceful resolution of conflicts,
- to support all initiatives, including those of non-governmental organizations and other relevant organizations seeking women's equality, to raise public awareness of the issue of violence against women and to contribute to the elimination of such violence.

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[51] Economic and Social Council resolution 1989/61, annex.
[52] *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.
[53] General Assembly resolution 45/113, annex.
[54] Economic and Social Council resolution 1997/30, annex,
[55] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.1), chap. I, sect. B.3, annex.
[56] General Assembly resolution 65/228, annex.

References in standards and norms calling for mobilization more widely of community resources, and for public participation

A very large number of standards and norms recognize the importance of mobilizing all possible resources in order to respond to the issues addressed in the respective instruments:

- the Beijing Rules (Rules 1.3 and 25),
- the UN Victim Declaration (art. 14; see also preambular para 1 of the 1989 resolution on the implementation of the Victim Declaration),
- Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (Procedures 12 and 13),
- the resolution on implementation of the Basic Principles for the Treatment of Prisoners (para 10),
- the Tokyo Rules (general principle 1.2, and rules13.4, 19 and 22.1),
- the Riyadh Guidelines (Guidelines 6, 9(c), 22, 29 and 32 through 39),
- Declaration on the Elimination of Violence against Women (art. 4(e), 4(o), 4(p) and5(h),
- Guidelines for cooperation and technical assistance in the field of urban crime prevention (Guideline 2 (b), 3(b)(ii)) and 3(d)(ii)(c)),
- Guidelines for Action on Children in the Criminal Justice System (Guidelines 5, 9, 23, 27, 34, 40 and 53),
- the Kampala Declaration (points 1, 4 and 8),
- Plan of Action for implementation of the Victim's Declaration (paras 1, 4, 7, 8 and 9),
- the Kadoma Declaration on Community Service (para 5 of the adopting resolution),
- the Arusha Declaration on Good Prison Practice (para g),
- the Basic Principles on the use of restorative justice programmes in criminal matters (para 22),
- the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Guidelines 3(b), 13(c)(iii), 16, 18 and 36), and
- the Bangkok Rules (preambular para 5 and rules 46, 47, 59 and 62)

Four standards and norms deserve special attention when speaking of resource mobilization and public participation:

- the 2002 Guidelines for the Prevention of Crime,
- the 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,
- the 2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and
- the 2014 UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

Not only are these four standards and norms of relatively recent vintage – the most recent was adopted only three years ago – but they are commendably clear on the importance of promoting cooperation between the governmental and the non-governmental sectors. Guideline 16 of the Guidelines for the Prevention of Crime, although it acknowledges the leadership role of the state, notes the importance of civil society:

> "In some of the areas listed below, Governments bear the primary responsibility. However, the active participation of communities and other segments of civil society is an essential part of effective crime prevention. Communities, in particular, should play an important part in identifying crime prevention priorities, in implementation and evaluation, and in helping to identify a sustainable resource base."

Moreover, some of the guidelines appear to stress that both governments and civil society have an independent responsibility to act. Guidelines 24, 26 and 27, for example, are addressed to "governments and civil society", and set out what activities they should engage in, without suggesting that civil society should (always) act in line with governmental requests and under governmental supervision.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recognize that it is the state that has the responsibility for providing access to justice. In this light – and in comparison with the way on which the Guidelines for the Prevention of Crime at times place governments and civil society on an independent footing as actors – the legal aid standard and norms generally uses a formulation like "states in consultation with civil society".

UNAFEI PANEL DISCUSSION ON ACCESS TO JUSTICE

*Matti Joutsen**

In connection with the topic, 'Measures to enhance access to justice for children and women as victims in the field of criminal justice', I have been asked to address two questions: 1) the background to the discussions during the adoption of 2030 Agenda for Sustainable Development on the origin and development of the concept of 'access to justice', and what measures will be required in the future regarding access to justice, and 2) the status of developing indicators on access to justice for the SDGs (target 16.3).

I. SIGNPOSTS ON THE ROAD TO THE SUSTAINABLE DEVELOPMENT GOALS

'Access to justice' has been incorporated into Goal 16 of the SDGs, which calls upon member states to '[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.' This is backed up by Target 16:3, which is to '[p]romote the rule of law at the national and international levels and ensure equal access to justice for all.'

Several different elements of the United Nations system, and several constellations of stakeholders contributed to this incorporation. Access to justice is regarded as a key element of the rule of law (and thus a human rights issue), and was recognized as such in paras 14–16 of the 2012 Declaration of the High-Level Meeting on the Rule of Law,[1] an important milestone in the formulation of Goal 16. Separately, access to justice has been recognized also for example as a gender equality issue, a fundamental right of children, a development issue, and a criminal justice issue.

The basic international instrument on the rights of women is the Convention on the Elimination of All Forms of Discrimination against Women. This convention does not contain an express provision on access to justice, although it is implicit in the second article, on protection of the rights of women. The 1995 Beijing Women's Conference considered the issue of access to justice in a rather piecemeal fashion, in connection with violence against women (paras. 118 and 124), labour laws (para. 164), gender-based discrimination (para. 178) and general legal literacy (para. 227). Subsequently, access to justice has been recognized as a fundamental element of the human rights of women.

Also the basic international instrument on children, the Convention on the Rights of the Child, does not contain a specific reference to access to justice. Nonetheless, the Committee on the Rights of the Child has held that the right to an effective remedy is an implicit requirement of the Convention. Access to justice for children is dealt with at length in the report presented by the High Commissioner for Human Rights in 2013 to the UN Human Rights Council, which held a special session on the theme of 'access to justice for children' (A/HRC/25/35).

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[1] 30 November 2012, A/RES/67/1. These paragraphs read as follows:

14. We emphasize the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.

15. We acknowledge that informal justice mechanisms, when in accordance with international human rights law, play a positive role in dispute resolution, and that everyone, particularly women and those belonging to vulnerable groups, should enjoy full and equal access to these justice mechanisms.

16. We recognize the importance of ensuring that women, on the basis of the equality of men and women, fully enjoy the benefits of the rule of law, and commit to using law to uphold their equal rights and ensure their full and equal participation, including in institutions of governance and the judicial system, and recommit to establishing appropriate legal and legislative frameworks to prevent and address all forms of discrimination and violence against women and to secure their empowerment and full access to justice.

In respect of development, the UNDP sees the importance of access to justice in alleviating poverty and promoting economic growth. The UNDP defines access to justice as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards.

Within the United Nations Crime Programme, in turn, the key instrument is the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems was adopted as recently as 2012 (GA resolution 67/187). This is the first international instrument on the right to legal aid. It establishes minimum standards for the right to legal aid in criminal justice systems and provides practical guidance on how to ensure access to effective criminal legal aid services.

II. THE NEGOTIATIONS ON THE GLOBAL INDICATORS

The United Nations have developed an initial set of 'Global Indicators' that set global benchmarks for the practical implementation of the SDGs in all countries.[2] The Global Indicators are intended both to promote progress within countries and to facilitate comparisons of the progress made by countries relative to one another.

In respect of access to justice, a grand total of two indicators are included in the Global Indicators:
16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms
16.3.2 Unsentenced detainees as a proportion of overall prison population

Several comments are in order regarding these two indicators. As background, it can be noted that they were the result of an intensive debate. 'Access to justice' has many dimensions, and many stakeholders were involved in the negotiations. Each, of course, had their own special interests in seeking to ensure that at least certain aspects of access to justice would be assessed through the indicators. Few, if any, of the stakeholders were fully satisfied with the two indicators that 'made the final cut'.

During the negotiations, other access to justice indicators had been proposed, among them
- ratification and implementation of the key human rights treaties,
- the proportion of those who have experienced a dispute in the past twelve months, who have accessed a fair formal, informal, alternative or traditional dispute mechanism, and who feel the process was just,
- the physical distance to affordable and effective legal services,
- accessibility of dispute settlement mechanisms,
- the opinions of 'users' regarding the 'fairness' of justice processes,
- the availability of counsel for criminal defendants, and
- the financial threshold at which legal aid is provided.

The basic problem was that the proposed indicators had to be quantifiable (measurable); there had to be some prospect that the necessary data already is, or can readily be made, available at reasonable cost (and that this data would be both valid and reliable)[3], and the indicators had to be easy to understand and to convey to the public. Furthermore, the indicators should capture elements of access to justice that are particularly relevant for the purpose at hand.[4] For a variety of reasons, the alternatives noted above were not included in the official list.

A second observation is that both of the final two access to justice indicators focus on criminal justice. From the point of view of gender equality, the rights of children, the eradication of poverty and human development, access to civil justice is arguably as important as access to criminal justice, if not more so. Civil law involves issues as diverse as proof of national identity, family and matrimonial rights, child custody, rights

[2] The Global Indicators were established by the United Nations Interagency Expert Group on Sustainable Development Goals, or IAEG-SDG. They are available at https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework_A.RES.71.313%20Annex.pdf.
[3] This requires a balance between being satisfied with the status quo of what data are available, and proposing realistic (but not yet universally available) indicators that could play a role in catalyzing new data collection efforts and capacity building.
[4] Timothy Hansen, 'Rule of Law' Indicators in the SDGs, available at deliver20302030.org/?p=6859

of the disabled, property rights, the right to accommodation, the right to fair employment and fair wages, financial and consumer rights, commercial rights and contractual rights.

A third observation is that, even from the point of view of criminal justice, the two indicators are quite limited. They focus only on victimization to violence, and on the use of pre-trial detention. There is nothing about many key aspects of victimization (victimization to other types of crimes, the availability of victim support, the availability of compensation), of the criminal process (the right to legal aid as a defendant or as a victim, confidence in the police, the length of proceedings, the right to appeal, satisfaction that the outcome was 'just') and of corrections.

III. ONGOING WORK ON INDICATORS

In light of the differences between countries, all countries are expected to establish their own national indicators for measuring progress toward achieving each of the Goals, including Goal 16. Regional indicators had been developed already (and for different purposes) in Europe (for example by the European Commission for the Efficiency of Justice, and the Fundamental Rights Agency of the European Union) and in Latin America (for example by the Economic Commission for Latin America and the Caribbean). National examples include the comprehensive set of indicators developed in the United States.[5] A number of other countries conduct surveys that are useful in this regard; among them are a large number of developing countries.

Reference should also be made to sector-specific indicators, such as those developed to assess implementation of CEDAW[6] and of the two corresponding regional conventions on violence against women (the Council of Europe Convention and the Inter American Belém do Pará Convention), as well as the indicators developed by various organizations, institutes and think tanks, such as the OECD Social Institutions and Gender Index, the Rule of Law Index developed by the World Justice Project, and the Gender Statistics developed by the World Bank.

IV. HOW SHOULD WE FURTHER DEVELOP INDICATORS OF ACCESS TO JUSTICE?[7]

Indicators should serve not only to assess progress in implementation of the SDGs, but also to strengthen work on access to justice. Broadly speaking, indicators should be developed that deal with what could be referred to as the enabling environment (the existence of remedies), the 'supply side' of access to justice (the institutions and human resources that provide justice services, and their outreach to those in need of access) and the 'demand side' of access to justice (the ability of persons to seek access to justice).[8] Given the interest in gender equality, the rights of children and the rights of disadvantaged groups, data should ideally be disaggregated by race, ethnicity, gender, age, disability, and other categories.

The **enabling environment** ensures that remedies exist. This includes international and constitutional law, legal and regulatory frameworks, and customary norms and jurisprudence that set out the rights and entitlements, and the legislation and safeguards that determine when and how persons can have access to justice.

This enabling environment can be assessed by expert interviews, or reviews of legal documents. In respect of the rights of women, one indicator could be the extent to which national laws prohibit direct and indirect discrimination in respect of legal capacity/standing, property rights, inheritance rights, rights within marriage, rights to obtain a divorce and custody over children, the capacity to open a bank account, the right

[5] Recommended Access to Justice Indicators for Implementation of Goal 16 of the UN 2030 Sustainable Development Agenda in the United States. Developed for the "Civil Society Consultation with White House Legal Aid Interagency Roundtable on Goal 16 Access to Justice Indicators and Data", Thursday, September 15, 2016 Washington, DC, available at http://web.law.columbia.edu/human-rights-institute and http://ncforaj.org

[6] See in particular Teresa Marchiori, A Framework for Measuring Access to Justice. Including Specific Challenges Facing Women, Report commissioned by UN Women. Realized in partnership with the Council of Europe, October 2015, available at https://rm.coe.int/1680593e83

[7] This section is based largely on Marchiori, pp. 123–140.

[8] See, for example, Marchiori, op.cit., p. 124, and Ramaswamy Sudarshan, Rule of Law and Access to Justice: Perspectives from UNDP Experience, paper presented at the European Commission Expert Seminar on Rule of Law and the Administration of Justice as Part of Good Governance, Brussels, 3–4 July 2003.

to acquire, change, retain or convey one's nationality, the right to education, and the right to employment.

The **supply side** of access to justice is the capacity of the formal and the informal justice system to provide effective remedies through adjudication, enforcement and oversight. The supply side includes the outcomes of the process of justice – including the largely intangible issues of the fairness of the process and the outcome.

Examples of supply side indicators include the number of judges (by sex, and by type and level of court), the number of cases per judge, the provision of mandatory training for justice personnel on gender issues, the number of legal aid providers per 100,000 inhabitants (by sex, and by civil / criminal cases), the availability of free legal assistance for indigent defendants, the quality of the legal aid service provided, the percentage of persons reporting that physical access to justice fora is convenient in terms of distance, the average cost of judicial proceedings (by type of case), the percentage of persons reporting that access to courts is affordable (by sex), the percentage of persons reporting having been asked to pay a bribe or other inducement to initiate or expedite a court process or to obtain a favourable decision, the average length of procedures (by type of case), the availability of a small claims court or fast track procedure for small claims, and the number of cases that are dropped or that exit the system through attrition.

The **demand side** (legal empowerment) involves legal awareness, the ability to use legal advice and representation (legal aid), and the ability to access formal and informal justice services. The demand side also relates to the question of justice needs, and of trust in the system of justice.

Examples of demand side indicators are the types and number of complaints that are lodged with dispute resolution mechanisms, user surveys and expert surveys of the main justiciable issues experienced by persons, the action taken by them to solve the disputes, and the main barriers that they have experienced in accessing justice; household surveys of the extent to which women and men are aware of specific laws or rights, as well the extent to which they are aware of the main dispute resolution mechanisms available; the number of women and men who have benefited from legal aid, the yearly attrition rate in rape, domestic violence and sexual violence cases; and household surveys of the confidence expressed by respondents that they can access affordable and quality legal assistance and representation, that they would be treated fairly and without discrimination in the resolution of a dispute, and the percentage of respondents who have experienced a dispute who report access to a satisfactory dispute resolution.

CITIZEN PARTICIPATION IN CRIMINAL TRIALS AND REFORMATION OF CRIMINAL JUSTICE IN JAPAN

*Masahito Inouye**

I. INTRODUCTION

Despite various opinions about its historical origins, a system of lay participation in criminal trials has existed for centuries in many Western countries. It takes the form of either a jury, such as in Anglo-American countries, or a mixed panel court consisting of professional judges and selected citizens, such as in many Continental-European countries[1].

Quite recently, on the other side of the globe, Japan and South Korea[2] adopted, and Taiwan[3] also has been planning to adopt, their own systems of lay participation in criminal trials[4]. Each system differs in various aspects, reflecting the social, cultural, political and legal background in each country or area. Still, it is remarkable that these three neighbors have made similar changes almost simultaneously.

The introduction of a lay participation system necessarily accompanies formal or informal reforms of criminal procedure. It might also stimulate certain modifications in the interpretation or application, if not the text itself, of substantive criminal law. As combined, they could induce substantial reformation of criminal justice and, at the same time, bring about new challenges.

That is what has been happening in Japan[5]. And these reforms have been not only changing the way of thinking and attitudes of professionals engaged in criminal justice, but also affecting public understanding of the criminal justice system. There seems to be a growing number of people who have begun thinking more seriously about crime and punishment as a matter closely related to themselves. Thus, the reforms will have a profound effect on Japanese criminal justice in the long run.

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[1] *E.g.*, WORLD JURY SYSTEMS (Neil Vidmar ed., 2008); Valerie P. Hans, Jury Systems Around the World (Cornell Law Faculty Publications, Paper 305, 2008)〔available at http://scholarship.law.cornell.edu/facpub/305〕.

[2] The (South Korea) Act for the Participation of Citizens in Criminal Trials, Act No. 8489, June 1, 2007, *enforced* Jan. 1, 2008. *Cf.* Jae-Hyup Lee, *Korean Jury Trial: Has the New System Brought About Changes?*, 12 ASIAN-PACIFIC LAW & POLICY JOURNAL No. 1, 58 (2010).

[3] In 2012, the Judicial Juan of Taiwan proposed to introduce the "Advisory Jury System" in criminal trials and began its trial run by holding mock trials in several major district courts. After the presidential election of 2016, however, they made a new proposal for a mixed panel court type of lay participation, the System of "People's Participation in Trials", which would be much closer to the *Saiban-in* System. In April 2018, the bill to implement it was introduced and is now under deliberation in the legislature. *See* the Website of the Judicial Juan of Taiwan〔http://www.judicial.gov.tw/LayParticipation/〕.

[4] As for the "People's Jury System" in China, *see e.g.* KONG XIAO XIN, CHUGOKU JINMIN BAISHIN-IN SEIDO KENKYU (*A Study on the People's Jury System in Chaina*) (2016); Jinying Zhao, China's New Law for Its Jury System〔http://www.linkedin.com/pulse/chinas-new-law-its-jury-system-jinyung-zhan-l〕.

II. INTRODUCTION OF THE *SAIBAN-IN* SYSTEM

A. Overview

In 2004, Japan enacted a statute (the *Saiban-in* Act)[6] to introduce a system of lay participation in criminal trials. In the new system, six citizens selected randomly from among the voters in each case would serve as *Saiban-in* (or lay judges) and, in collaboration with three professional judges[7], engage themselves in deciding both guilt and sentence in the trials involving capital and other serious offenses[8]

After five years of preparation, the *Saiban-in* Act came into force on May 21, 2009. In the nearly nine years until the end of March 2018, annually 1,000 to 1,500 (a total of 11,045) defendants charged with murder, robbery resulting in bodily injury or some other subject offense (Figure 1[9]) were tried by *Saiban-in* courts at 50 District Courts and 10 of their branches throughout the country[10]. 62,214 citizens already served as *Saiban-in*, and, if we add the number of those selected as supplementary *Saiban-in*, 93,401 citizens participated in criminal trials[11].

B. Historical Background

But why and for what purposes did Japan adopt such a system in the first place? To get a better understanding, we need to look back briefly at the historical background of lay participation in Japan.

1. Former Jury System

The *Saiban-in* system is not an entirely novel experience for lay participation in criminal trials in Japan. From 1928 through 1943, there was a jury system in which twelve selected citizens heard the evidence and decided the guilt of the defendant in trials involving serious offenses[12].

The former jury system was adopted as a result of party politics in the 1910s and 1920s[13] when the so-called *Taisho* Democracy movements appeared temporarily to prevail in various aspects of the Japanese

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[5] The criminal justice reforms in Japan since the turn of the century, including the introduction of the *Saiban-in* system, have already been the subject of many, not only domestic, but also overseas, publications. *E.g.*, the literatures listed in Mark A. Levin & Adam Mackie, Truth or Consequences of the Justice System Reform Council: An English Language Bibliography from Japan's Millennial Legal Reforms, 14 ASIAN-PACIFIC LAW & POLICY JOURNAL 1 (2013); Daniel H. Foote, Citizen Participation: Appraising the Saiban' in System, 22 MICHIGAN STATE INTERNATIONAL LAW REVIEW 755 (2013); Symposium, Citizen Participation in Criminal Trials in Japan: The Saiban-in System and Victim Participation in Japan in International Perspectives, 55 INTERNATIONAL JOURNAL OF LAW, CRIME & JUSTICE 1 (2014); Caleb J. F. Vandenbos, Patching Old Wineskins, 24 PACIFIC RIM LAW & POLICY JOURNAL 391 (2015); Stacey Steele, Proposal to Reform the Japanese Saiban-in Seido (Lay Judge System) to Exclude Drug-Related Cases, 16 AUSTRALIAN JOURNAL OF ASIAN LAW 19 (2015); LEON WOLFF, LUKE NOTTAGE & KENT ANDERSON (eds.), WHO RULES JAPAN? (2015); DIMITRI VANOVERBEKE, JURIES IN THE JAPANESE LEGAL SYSTEM (2015); Harrison L. E. Oweris, Trial by One's Peers, 25 PACIFIC RIM LAW & POLICY JOURNAL 191 (2016); ANDREW WATSON, POPULAR PARTICIPATION IN JAPANESE CRIMINAL JUSTICE (2016); ANNA DOBROVOLSKAIA, THE DEVELOPMENT OF JURY SERVICE IN JAPAN (2017).

[6] The Act for the Participation of *Saiban-in* in Criminal Trials, Act No. 63, May 28, 2004, *enforced* May 21, 2009 (hereinafter cited as the *Saiban-in* Act).

[7] *Saiban-in* Act, art. 2, sec. 2. Exceptionally, in cases where there is no contest about the charge, the court may assign the case to a smaller panel court composed of one professional judge and four *Saiban-in* if it is deemed appropriate to do so, considering the nature of the case and other circumstances, and neither party objects (secs. 3 and 4). As a matter of fact, such exceptional assignment has never been resorted to.

[8] *Saiban-in* Act, art. 2, sec. 1, *enumerating* the offenses for which the death penalty or life-imprisonment is prescribed by law and the intentional offenses resulted in the death of the victim for which the minimum sentence of imprisonment of not less than one year is prescribed by law.

[9] Saiko Saibansho Jimu-sokyoku, Saiban-in Seido no Jisshi Jokyo ni tsuite (Seido-Shiko～Heisei 30 Nen 3 Gatsu-matsu) (*General Secretariat of the Supreme Court, the Enforcement Situation of the Saiban-in system until the end of March 2018*), p. 4.

[10] *Id.*, pp. 2–3. The annual number of the defendants tried by *Saiban-in* courts, which account for around 2% of those tried by the District Courts in regular trial proceedings, decreased from the peak of 1,568 in 2011 down to 993 in 2017 in proportion to the general downward trend of criminal cases in these years.

[11] *Id.*, p. 5 and Figure 2. If it is deemed necessary, the court may select an appropriate number (not more than six) of supplementary *Saiban-in*. (*Saiban-in* Act, art. 10, sec. 1). Actually, two are selected in most cases.

[12] The Jury Act, Act No. 50, Apr. 18, 1923, *enforced* Oct. 1, 1928. The cases involving any offense for which the death penalty or life imprisonment was prescribed by law were mandatorily subject to jury trial unless the defendant waived it (art. 3), and those involving any offense for which the imprisonment not less than 3 years was prescribed by law, with some exceptions, were put to jury trials if the defendant applied for it (art. 4).

society before militarism and totalitarianism took over. There were outcries for popular elections and freedom of political speech, for gender equality and laborers' right to organize unions and for liberalism or modernism. A political historian later presumed that the jury system, modeled after the American one, was proposed by the cabinet with the intention of attaining a populist effect in place of popular elections, which they deemed too early to adopt[14].

Although the introduction of the jury trial into the authoritarian, inquisitorial criminal justice system at that time was a remarkable innovation, it deviated from its American model in a crucial point. The judges of the court could overturn the jury verdict if they found it inappropriate and select a new jury to retry the case (*renewal of jury*). This was because of the constitutional provision at that time guaranteeing the individual's right to "trial by judges determined by law[15]," which was interpreted to prohibit jury verdicts from binding independent judges' decisions.

It is also realistically doubtful if the jury trials had any substantial impact upon the criminal justice system as a whole or the general public in those days. Only a small portion of the people, males thirty and over who paid a considerable amount of income tax (less than 8% of that age group), were eligible to serve as jurors. In addition to that, most of the defendants who were entitled to have a jury trial actually waived it. In the fifteen years of its operation, there was a total of 484 jury trials[16], including 448 mandatory cases (less than 1.8% of those which could have been subject to jury trial if the defendant had not waived it)[17].

As wartime came, jury trials decreased year by year, finally down to just one case in 1942. The next year the military government suspended the Jury Act[18], terminating the short life of the early Japanese lay participation system.

2. Post-war Developments under the Constitution of 1946

During the postwar occupation by the Allied Forces, the question of whether to adopt or revive a jury system was temporarily put on the agenda[19] in addition to the criminal procedure reform in which the adversarial principle was adopted after the model of American law. As a matter of fact, the new Constitution of 1946 provides for the right to "trial by an impartial tribunal[20]" "in the court[21]" in place of the former constitutional provision mentioned above. These changes in wording were presumably intended to admit even a jury equipped with full power. The Court Act of 1947 also confirms explicitly that the establishment of a jury system for criminal cases by a separate statute shall not be prevented[22].

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[13] TAICHIRO MITANI, SEIJI-SEIDO TOSHITENO BAISHIN-SEI (*the Jury System as a Political Institution*) (revised ed., 2013), pp. 91 *et seq.*

[14] *Id.*, p. 141.

[15] The Constitution of the Empire of Japan of 1889, art. 24.

[16] This includes 24 retrials by renewed juries. Among the 484 jury trails, 215 involved murder and 214, arson. The jury found the defendant not guilty in 81 cases (17.6% of those excluding 24 retrials). Masao Okahara, "Baishin-ho no Teishi ni kansuru Horitsu" ni tsuite (*On "the Act concerning the Suspension of the Jury Act"*), HOSOKAI ZASSI Vol. 21, No. 4 (1943), p. 16; Shiho-seido Kaikaku Shingikai Jimukyoku, Wagakuni de Okonawareta Baishin Saiban (Jissi Jokyo) (*Secretariat of the Justice System Reform Council, The Jury Trials Formerly Enforced in Japan*) (Material 18, Apr. 17, 2000).

[17] TAKASHI MARUTA, BAISHIN-SAIBAN WO KANGAERU (*Thinking about the Jury Trial*) (1990), pp. 133, 137–138.

[18] The Act concerning the Suspension of the Jury Act, Law No. 88, Apr. 1, 1943, *enforced* on the same day.

[19] A provision for the right to trial by jury was included in the early tentative versions of the so-called "MacArthur Draft," which the occupation authorities prepared and presented to the Japanese government as a basis for the drafting of the new Constitution. Although the provision was deleted in its final version for unknown reasons, the Japanese government believed that they were required to consider seriously the adoption of such a system in the revision of the Code of Criminal Procedure. *E.g.,* Shihosho Keijikyoku, Keijisosho-ho Kaisei Hoshin Shian (*Ministry of Justice Criminal Affairs Bureau, Plans for the Revision of the Code of Criminal Procedure: A Tentative Draft*) (Apr. 30, 1946), in KEIJISOSHO-HO SEITEI SHIRYO ZENSHU: SHOWA KEIJISOSHO-HO (*Collected Legislative Materials of the Criminal Procedure Laws: Code of Criminal Procedure of 1948*), Vol. 2 (M. Inouye *et al.* ed. 2007), p. 368; Keijisosho-ho Kaisei nitsuki Koryo subeki Mondai (*Issues for Consideration concerning the Revision of the Code of Criminal Procedure*) (presented at the first meeting of the governmental Justice System Council, July 7, 1947), *id*, pp. 33–34. *See also* Nobuyoshi Toshitani, Sengo Kaikaku to Kokumin no Shiho-sanka (*Postwar Reforms and Citizen Participation in the Justice System*), in SENGO KAIKAKU, Vol. 4 (the University of Tokyo Institute of Social Sciences ed. 1975), pp. 109–130.

[20] Const. art. 37, sec. 1.

[21] Const. art. 32.

[22] The Court Act, Act No. 59, Apr. 16, 1947, *enforced* May 3 the same year, art. 4, sec. 3.

Such an idea, however, was not realized in spite of rapid democratization of all systems of governance during the occupation. Not only the Japanese government[23], but also the occupation authorities[24], were not so enthusiastic about the jury system, probably because of its infeasibility given the destruction, including court houses, and social disorder throughout postwar Japan[25].

Still a certain number of lawyers and scholars, individually or in groups, continuously proposed lay participation in criminal trials for many years since then. Such movements were stimulated especially since the late 1980s when the judiciary, under the instruction of the then Chief Justice of the Supreme Court, began broad research on the situations of lay participation in several Western countries[26].

The proponents of lay participation were divided into two schools. One school of people urged the adoption of an Anglo-American type of jury system for the purpose either of democratizing the highly bureaucratic, closed Japanese judiciary or of preventing miscarriage of justice by professional judges who, in their opinion, were biased toward the prosecution or had become too much accustomed to rendering judgments of guilt to rule on each case without prejudice against the defendant[27]. Another school of people rather preferred a Continental-European type of mixed panel court because of their concern about possible miscarriage of justice by an inexperienced, emotional or runaway jury and ineffective appellate remedy for it because no detailed reason would be shown for the jury verdict. In contrast to the former school's skepticism against possible manipulation of lay assessors by professional judges in a mixed panel court, the latter rather expected that a collaboration of professional judges and citizens should enlighten both of them[28].

Quite the contrary, however, there also were deep-seated basic oppositions against lay participation among lawyers and scholars. In addition to the constitutional objections[29] inherited from the age of the former Jury Act, they convinced themselves that fair and right justice could be done only by independent, legally trained and suitably experienced professional judges[30]. Many of them also doubted whether the

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[23] In response to the negative opinions in the Justice System Council against a jury system for the reason of high cost and possible harmful effects, the Ministry of Justice presented an alternative proposal to adopt a Continental-European type of mixed panel court system, which could not gain majority support either. The discussion ended with a deferral mainly because of its uncertain constitutionality. *See* KEIJISOSHO-HO SEITEI SHIRYO ZENSHU: SHOWA KEIJISOSHO-HO (*Collected Legislative Materials of the Criminal Procedure Laws: Code of Criminal Procedure of 1948*), Vol. 3 (M. Inouye *et al.* ed. 2008), pp. 115, 120, 226–227, 293–296. *See also* Toshitani, *supra* note 19, pp. 130–141.

[24] At the same time, the occupation authorities thought it necessary for the Japanese government to show due respect for public participation as a principle of a democratic judicial system. The above art. 3, sec. 3 of the Court Act of 1947 was the very product of their recommendation on such a ground. Toshitani, *supra* note 19, pp. 150–153.

[25] *Id*., pp. 114–118, referring to the answers of the Ministers of State in charge of the new Constitution and of Justice at both Houses of the Diet (legislature), and pp. 158–159, speculating the occupation authorities' basic attitude toward the matter and its backgrounds.

[26] Under the instruction of Chief Justice Koichi Yaguchi, which was not necessarily intended to adopt any Western type of lay participation, several judges were dispatched from 1988 through 1990 to the United States and the United Kingdom on mission to research the actual situation of their jury systems. In the following years, the General Secretariat of the Supreme Court extended the research further on the mixed-panel court systems in several Continental European countries. Saiko Saibansho Jimusokyoku, Baisin-Sanshin Seido: Beikoku-Hen (*General Secretariat of the Supreme Court, Jury and Mixed-Panel Court Systems: Part of the United States*), Vols. 1–3 (1992–1995); Eikoku Hen (*Part of the United Kingdom*) (1999); Doitsu Hen (*Part of Germany*) (2000); France Hen (*Part of France*) (2000); Sweden Hen (*Part of Sweden*) (2001); Denmark Hen (*Part of Denmark*) (2003); Italy Hen (*Part of Italy*) (2004).

[27] *E. g.*, EIGORO AOKI, BAISHIN SAIBAN (*Jury Trial*) (1981); CHIHIRO SAEKI, BAISHIN SAIBAN NO FUKKATSU (*Resurrection of Jury Trials*) (1996); Satoru Shinomiya, Baishin, Sanshin, Shokugyo Saibankan (1) Baishin-sei no Tachiba kara (*Jury, Mixed Panel Court or Professional Judges (1) From the Viewpoint of a Jury System Supporter*), KEIHO ZASSI Vol. 39, No. 1 (1999), p. 18; Nihon Bengoshi Rengo-kai, Baishin Seido no Jitsugen ni muketeno Teigen (*Japan Federation of Bar Associations, Proposals Towards the Realization of Jury System*) (Mar. 17, 2000), recounting its position declared in its "Shiho Kaikaku ni mukete no Kihonteki Teigen (*Basic Proposals Towards the Realization of Justice System Reform*) " (Nov. 19, 1999).

[28] *E.g.*, Ryuichi Hirano, Kokumin no Shiho-sanka wo Kataru (*Talking about the Citizen Participation in the Justice System*), HO NO SHIHAI No. 87 (1992), p. 38; *id*., Sanshin Seido Saiyo no Teisho (*A Proposal for the Adoption of a Mixed Panel Court System*), JURIST No. 1189 (2000), p. 50; Hiroshi Sato, Baishin, Sanshin, Shokugyo Saibankan (2) Sanshin-sei no Tachiba kara (*Jury, Mixed Panel Court or Professional Judges (2) From the Viewpoint of a Mixed Panel Court System Supporter*), KEIHO ZASSI Vol. 39, No. 1 (1999), p. 30.

[29] *E. g.*, HAJIME KANEKO, SHIN-KENPO TO SHIHO (*New Constitution and the Justice System*) (1948), pp. 75–76 and 81; HOGAKU KYOKAI, CHUKAI NIHONKOKU-KENPO (*Commentaries on the Constitution of Japan*), Vol. 2 (1953), pp. 1122 and 1128.

characteristics of the Japanese people whom they stereotyped as obedient to authority as well as averse to litigation would fit in with a Western-fashioned lay participation system, especially with an Anglo-American type of jury system[31]. As a matter of fact, results of various polls indicated that the public generally put confidence in the work of professional judges[32].

C. The JSRC's Recommendations and Their Implementation

1. Proposals for Comprehensive Reforms

In 1999, when the Cabinet established the Justice System Reform Council (JSRC) in order to discuss a wide range of challenges to the Japanese justice system and to recommend reforms to make the system much more accessible, reliable and effective in accordance with various needs of the people, lay participation was put on the agenda, mainly on the initiatives of bar association members who had been longing for a jury system[33]. However, with the above-described sharply divided opinions for and against it, many people were skeptical if any consensus could be reached on the subject.

As it turned out, the JSRC, after two years of intensive discussion, presented comprehensive recommendations that consisted of three pillars of reform: (1) reforms of the civil and criminal justice systems in order to establish "a justice system that meets public expectations," (2) increased production of well-qualified lawyers trained in newly founded professional law schools in order to supply "the legal profession supporting the justice system," and (3) citizen participation in order to establish "the popular base" for the justice system[34]. The highlight of the third pillar was the introduction of the *Saiban-in* system.

2. Proposal for *Saiban-in* System and Its Implementation

At the initial stage of the JSRC's discussion, there seemed to be sharp division of opinion between several members who are enthusiastic for a jury system and the others who were cautious or negative about it[35]. Most of them, however, shared the view that the existing justice system, which was too exclusive to professionals, should reflect regular citizens' sense and feelings more keenly and that increased public involvement in some form or another should help, not only for that purpose, but also for the people themselves to identify with the justice system.

What marked a turning point is the hearing of opinions of "*hoso sansha*" (three sectors of the legal profession, *i.e.*, the judiciary, the Ministry of Justice and public prosecutors' offices, and the bar). Among others, the General Secretariat of the Supreme Court presented its opinion that it should be desirable to adopt a variant mixed panel court system in which lay assessors could express their judgment on the case, but not formally participate in the final verdict of the court[36]. They were afraid it might cause a constitutional dispute if participating citizens' judgment had a legally binding effect upon the judges. Although the opinion appeared too reluctant especially to those who were enthusiastic for lay participation, this became a critical juncture in terms of setting a bottom line for the subsequent discussion on the subject in the JSRC, which was virtually deprived of any possibility to totally reject lay participation.

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[30] *E.g.*, KANEKO, *supra* note 29, p. 31.

[31] *E.g.*, Fumio Aoyagi, Baishin-sei Sanshin-sei ni tsuiteno Ichi-Kosatsu (*A Study on the Jury System and the Mixed Panel Court System*), JOCHI HOGAKU RONSHU, Vol. 4, No. 1 (1960), pp. 27 *et seq*.

[32] For instance, a nation-wide questionnaire survey conducted by a national newspaper right before the beginning of the justice system reform revealed that the public highly evaluated the general quality of criminal trials by professional judges and that 79% of the respondents deemed judges reliable, the highest score among the professions involved in criminal justice, followed by police officers (74%) and public prosecutors (72%). The Yomiuri Shinbun, Dec. 27, 1998, morning issue, special page A.

[33] The Act to Establish the Justice System Reform Council, Act No. 68, June 9, 1999, *enforced* July 27 the same year, art. 2, sec. 1; the JSRC, The Points at Issue in the Justice System Reform (Dec. 21, 1999) (English ver.), III 2(4)〔available at http://www.kantei.go.jp/foreign/policy/sihou/singikai/991221_e.html〕

[34] Recommendations of the JSRC: For a Justice System to Support Japan in the 21st Century (June 12, 2001) (English ver.), Chap. I, Part. 3 〔available at-http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html〕.

[35] *See* Masahito Inouye, Saiban-in Seido no Donyu ni itaru Keii to Sono Gaiyo (*the Course of Things up to the Introduction of the* Saiban-in *System and Its Outlines*), JURIST No. 1279 (2004), pp. 74 *et seq*. Except for the first few sessions, all the deliberations in the Council were monitored simultaneously by the representatives of news organs and their complete verbatim minutes were published on the Prime Minister's Office Web site 〔http://www.kantei.go.jp/jp/sihouseido/gijiroku-dex.html〕.

[36] Saiko Saibansho, Kokumin no Shiho-Sanka ni kansuru Saibansho no Iken (*Supreme Court, Opinion of the Judiciary on the Citizen Participation in the Justice System*), IV, *presented* at the 30th meeting of the JSRC, Sep. 12, 2000〔available at http://www.kantei.go.jp/jp/sihouseido/dai30/30bessi5.html〕.

After these and other twists and turns, the JSRC reached the conclusion that an original style of popular participation in criminal trials should be adopted in order to improve the quality of justice done by the court in terms of effectively reflecting "the sound social common sense of the public[37]." Evaluating positively the general quality of existing criminal trials by professional judges, the JSRC thought that citizens' collaboration with them should make it much better[38].

The *Saiban-in* Act was the fruit of further detailed deliberation in the expert committee, over which I presided, of the Cabinet's Headquarters for the Promotion of the Justice System Reform to materialize the JSRC's recommendations[39].

III. ACCOMPANYING REFORM OF THE CRIMINAL JUSTICE SYSTEM

A. Unique Features of Japanese Criminal Justice in Action

The JSRC also expected that the introduction of the *Saibai-in* system should contribute to the promotion of their first pillar of reform, the reform of the criminal justice system.

The modern criminal justice system of Japan was built by adopting a succession of Western legal traditions: first French[40], then German[41], and most recently, right after World War II, the whole system was drastically changed by the current Code of Criminal Procedure of 1948[42] (CCP), replacing a Continental-European type of inquisitorial system with an adversary system after the model of American law. Such adoption of Western legal traditions, however, was followed by a process of "*Japanization*." This pattern is more evident in the actual practice than on the face of the law, and it produced remarkable, unique characteristics of Japanese criminal justice in action, as explained below[43].

The investigation of a crime is pursued very thoroughly with a special emphasis on the questioning of suspects. Even in the investigation of ordinary cases in which the police play a primary role, public prosecutors also question suspects and principal witnesses in person. They seek to discover the true facts of the case and to become well-informed about the personal details of the suspect and other persons involved so that they can properly exercise their broad discretion in deciding whether to prosecute the suspect, not only from the viewpoint of his/her guilt, but also from the consideration of his/her possible rehabilitation without prosecution[44]. Such thorough case-screening and active use of broad discretion by prosecutors are reflected in the amazingly high conviction rate of over 99%.

After a case goes to trial, court sessions are not held consecutively, but with an interval of several weeks. Trials rely heavily on documentary evidence, including written records of the suspects' and witnesses' statements obtained by prosecutors' as well as police investigative questioning. Most of the documentary evidence is presented just summarily in open court and subject to later careful reading by the judges back in their chambers. Such a practice is most often supported by the consent of the defense and contributes to a

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[37] Recommendations of the JSRC, *supra* note 34, Chap. IV, Part. 1, 1.
[38] Inouye, *supra* note 35, p. 76.
[39] From February 2002 through July 2004, the Expert Deliberation Committee on the *Saiban-in* System and Criminal Justice Reform held a total of 32 sessions, 12 of which were spared exclusively to the deliberations on the *Saiban-in* system. Their complete verbatim minutes also are publicized on the Prime Minister's Office Web site〔http://www.kantei.go.jp/jp/singi/sihou/kentoukai/06saibanin.html〕. *See also* HIROYUKI TSUJI, SAIBAN-IN HO, KEIJI-SOSHO HO (*the Saiban-in Act and the Code of Criminal Procedure*) (Shiho-seido Kaikaku Gaisetsu, Vol. 6, 2005).
[40] The Code of Criminal Instruction, Proclamation No. 37 of the Grand Council of State, June 17, 1880, *enforced* Jan. 1, 1882. This Code, originally drafted by Professor Gustav E. Boissonade of Paris University, was replaced ten years later by the Code of Criminal Procedure, Act No. 96, Oct. 7, 1890, *enforced* Jan. 1, 1893, which maintained the substance of the 1880 Code except for the provisions relating to the German style of court organization adopted by the Constitution of 1889.
[41] The Code of Criminal Procedure, Act No. 75, 1922, *enforced* Jan. 1, 1924.
[42] The Code of Criminal Procedure, Act No. 131, June 10, 1948, *enforced* Jan. 1, 1949.
[43] Masahito Inouye, Keiji-Saiban ni taisuru Teigen (*Proposals to Improve Criminal Trial Proceedings*), SHIHO-KENSHUSHO RONSHU, No. 85 (1991), pp. 94–96; *id*., Keiji-Shiho Kaikaku wa Nani wo Kaeruka? (*Criminal Justice Reform: What Will It Change?*) (1), LAW & PRACTICE No.10 (2016), pp. 7–16. *See also* Kazumasa Ishii, Waga-kuni Keiji-shiho no Tokushoku to sono Kozai (*Distinctive Features of the Japanese Criminal Justice and their Merits and Demerits*) SHIHO-KENSHUSHO RONSHU, No. 79 (1987), pp. 304 *et seq*.
[44] CCP art. 248 gives to the prosecutor wide discretion not to initiate prosecution if it is deemed unnecessary "owing to the character, age and environment of the offender, gravity and circumstances of the offense, and situation after it."

less costly disposition of mass of uncontested cases in the system without an expedient method of guilty plea. But even in contested cases, critics have pointed out that trial courts are very lenient in admitting documentary evidence. Trial judges, in their quest for the whole picture of the case, are inclined to examine a large amount of this and other evidence and, based upon it, to make detailed fact-finding even on uncontested issues, including the motives and personal background of the defendant. In such a way, investigative questioning of the suspect and witnesses could substantially affect the trial.

These features, collectively called "*seimitsu shiho*" (minute justice), were so unique that a prominent scholar compared them to the epidemic species which Charles Darwin observed on the isolated Galápagos Islands[45].

Critics even denounced such a structured practice as pathological and abnormal[46] in terms that, deviating far from the original ideal of the adversary system, the criminal trial was deprived of its substance as a legitimate forum for the disposition of each case on the basis of open, fair and lively contests between two parties. They further criticized that excessive eagerness of the police and prosecutors to obtain detailed confessions from the suspects should necessarily cause undue infringement on human rights as well as false confessions, which in turn should lead to serious miscarriage of justice.

Against such criticism, there existed quite opposite opinions that rebutted the criticism as unfounded or one-sided. Some of them even praised the criminal justice system as contributing much to making Japan the safest country in the world[47].

But, it is undeniable, at least, that the investigation of crime and its proof at trial relied too much upon the investigative questioning of the suspects and the written records of their statements and that such excessive reliance had detrimental side-effects. To the general public as well, the nontransparent features disturbed their understanding of, and trust in, the whole system. Although most criminal trials under the existing system were managed promptly, several high-profile cases in which trials took a considerable period of time caused the people's loss of trust in the criminal justice system.

B. Purposes and Items of the Reform

The basic direction of reform, therefore, must be to realize efficient and effective trial proceedings through active allegation and presentation of evidence by the parties, preferably relying on live testimony in court rather than documentary records of out-of-court statements, and focusing on truly contested issues, in concentrated proceedings. The introduction of a public participation system, in the JSRC's opinion, should make the demand for such reform even more pronounced because it could not be expected for participating citizens to serve for a long period of time or to read voluminous documentary evidence[48].

For that purpose, the Code of Criminal Procedure (CCP) was revised, on the recommendations of the JSRC, to introduce several measures, including a new preparatory procedure (the pretrial or intermediate arrangement procedure) in which contested issues would be sorted out on the basis of appropriate disclosure of evidence between two parties according to a new framework set forth by law as described in Section IV, C-2, and a clear plan for trial proceedings could be established in advance[49]. The pretrial arrangement procedure is mandatory for the cases subject to the *Saiban-in* trial[50].

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[45] KOYA MATSUO, KEIJIHO-GAKU NO CHIHEI (*Horizon of Criminal Law Jurisprudence*) (2006), p. 9; *id*., Keiji Saiban to Kokukmin Sanka (*Criminal Trials and Citizens' Participation*), HOSO JIHO Vol. 60. No. 9 (2008), p. 13.

[46] Ryuichi Hirano, Genko Kiji-sosho no Shindan (*Diagnosis of the Current Japanese Criminal Procedure*), in DANDO SHIGEMITSU HAKASE KOKI SHKUGA RONBUNSHU (*Essays in Celebration for the 70th Anniversary of the Birth of Justice Shigemitsu Dando*), Vol. 4 (1985), pp. 407 *et seq*.

[47] *E.g*., Yoshihusa Nakayama, Nihon no Keiji-shiho no Tokushoku: Saiban no Tachiba kara ((*Distinctive Features of the Japanese Criminal Justice from the Viewpoint of a Judge*), KEIJI TETSUDUKI, Vol.1 (M. Mitsui *et. al* ed., 1988), pp. 1 *et seq*.; Kazuo Kawakami, Nihon no Keiji-shiho no Tokushoku: Kensatu no Tachiba kara (*Distinctive Features of the Japanese Criminal Justice from the Viewpoint of a Public Prosecutor*), *id*., pp. 11 *et seq*.; Takeshi Tsuchimoto, Mou-Hitotsu no Shindan — Waga Keiji Shiho wa "Byoteki" ka (*Another Diagnosis: Is Our Criminal Justice "Pathological"?*), KENSHU No. 492 (1989), pp. 3 *et seq*.

[48] Recommendations of the JSRC, *supra* note 34, Chap. II, Part. 2, 1.

[49] CCP arts. 316–2 through 316–32.

[50] *Saiban-in* Act art. 49.

The public criminal defense system, which previously had been available only to defendants after public prosecution[51], also was enlarged to the suspects detained for an offense punishable with the death penalty, life imprisonment or imprisonment for more than three years[52]. This would provide appropriate legal support to suspects and defendants continuously from the early stage so that the defense could prepare adequately for the pretrial arrangement procedure as well as the concentrated trial proceedings, including the *Saiban-in* trials. A special public entity, the Japan Legal Support Center, was established to manage the combined public criminal defense system for suspects and defendants in cooperation with bar associations and to supplement the insufficiency of available local defense lawyers with its own staff attorneys.

Based upon these arrangements, the principle of consecutive trial proceedings was reconfirmed[53].

IV. IMPACTS OF THE REFORMS AND NEW CHALLENGES

A. Acceptance of the *Saiban-in* System

1. Constitutional Legitimacy

Even after the enforcement of the *Saiban-in* Act, strong opposition has still continued in and outside the legal profession. Many lawyers, including former well-known criminal law judges and prosecutors, have publicized opinions attacking the new system for various reasons. Some have stuck to the conventional belief, or even natural repugnance, that justice might be spoiled by unrestrained, emotional judgments of lay people. Others attacked it for its unconstitutionality in terms of violating the defendant's right to trial by an impartial tribunal[54] as well as imposing on the people the obligation to serve as *Saiban-in* and other accompanying undue burdens in violation of their right to the pursuit of happiness[55], freedom from involuntary servitude[56], freedom of thought and conscience[57] and so on[58].

Practically, however, the legitimacy of the *Saiban-in* system has been established since the Supreme Court rejected these constitutional claims in a series of judgments and decisions[59].

2. Public Acceptance

Furthermore, until the *Saiban-in* trials actually began, not only the press, but also many people concerned were more or less anxious if the *Saiban-in* system would be welcomed by the public and if they really would come to participate when they were summoned for *Saiban-in* duties. Various official and nonofficial questionnaire surveys had revealed that only a limited percentage of the respondents expressed their willingness to participate (Figure 3[60]).

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[51] Under the current Constitution and the CCP before its revision of 2004, all the suspects and defendants had the right to retain his/her own defense counsel (Const. arts. 34 and 37, sec. 3; CCP art. 30; CCP art. 30). In addition to that, the defendants, which means those who are publicly prosecuted, are also guaranteed the right to have a defense counsel assigned by the court in case he/she cannot retain one on his/her own (Const. art. 37 sec. 3; CCP art. 36).

[52] CCP art. 37–2.

[53] CCP art. 281–6.

[54] Const. arts. 32 and 37.

[55] Const. art. 13.

[56] Const. art. 18.

[57] Const. art. 19.

[58] *E.g.*, Taro Okubo, Saiban-in Seido Hihan (zoku) (*Criticism Against the Saiban-in System: a Sequel*), part 1, HANREI JIHO No. 1172 (2002), p. 3; Toshimaro Kojo, Saiban-in Seido no Goken-sei (*Constitutionality of the Saiban-in System*), GENDAI KEIJI-HO Vol. 6, No. 5 (2004), p. 24; KIICHI NISHINO, SAIBAN-IN SEIDO HIHAN (*Criticism Against the Saiban-in System*) (2008), pp. 79 *et seq*.

There have been many published articles analyzing and rebutting these arguments. *E.g.*, Masakazu Doi, Nihonkoku Kenpo to Kokumin no Shiho-Sanka (*the Constitution of Japan and Citizen Participation in the Justice System*), in HENYO SURU TOCHI SYSTEM (*Ruling System in Transformation*) (M. Doi ed. 2007), pp. 241 *et seq*.

[59] Sup. Ct. (Grand Bench) judgment of Nov. 16, 2011, KEISHU Vol. 65, No. 8, p. 1285; Sup. Ct. (2nd Petty Bench) judgment of Jan. 13, 2012, KEISHU Vol. 66, No.1, p. 1; Sup. Ct. (2nd Petty Bench) judgment of March 2, 2012, SAIBANSHU KEIJI No. 307, p. 695; Sup. Ct. (3rd Petty Bench) judgment of March 6, 2012, SAIBANSHU KEIJI No. 307, p. 699; Sup. Ct. (3rd Petty Bench) judgment of March 6, 2012, SAIBANSHU KEIJI No. 307, p. 709; Sup. Ct. (3rd Petty Bench) judgment of March 27, 2012, SAIBANSHU KEIJI No. 307, p. 767; Sup. Ct. (3rd Petty Bench) judgment of Oct. 16, 2012, SAIBANSHU KEIJI No. 308, p. 255; Sup. Ct. (1st Petty Bench) judgment of Dec. 6, 2012, SAIBANSHU KEIJI No. 309, p. 67; Sup. Ct. (3rd Petty Bench) judgment of Sep. 2, 2014, SAIBANSHU KEIJI No. 314, p. 267. *See also* Sup. Ct. (3rd Petty Bench) judgment of March 10, 2015, KEISHU Vol. 69, No. 2, p. 219.

I was a little more optimistic because it is rather natural for the people to be inclined to avoid such burdensome duties, and their actual behavior might be different from their response to hypothetical questionnaires. As a matter of fact, nearly half of the respondents answered that they would participate if they were legally obliged to do so[61].

It has turned out that 72.6% of those summoned to the court for *Saiban-in* selection showed up (Figure 2), and once selected, most of the *Saiban-in* served until the closing of the trial. This is partly due to the generous policy of the judiciary to excuse flexibly and generously prospective *Saiban-in* from the duty on their application for various reasons[62].

It is not without worries. There has been no substantial change in the public response to subsequent questionnaire surveys about their willingness to participate (Figure 3). While the rate of prospective *Saiban-in* excused in the selection process (*see* Figure 2) increased from 53.1% in 2009 to 66.0% in 2017, the attendance rate of those summoned to the *Saiban-in* selection proceeding in the court decreased from 83.9% to 64.8% in the same period[63]. There have been serious discussions, in and out of the judiciary, about how to improve such situation on the basis of its cause analysis[64].

Still, a sufficient number of candidates have shown up to execute a proper selection of *Saiban-in* for each case. A fair cross-section of the society is generally secured in the composition of *Saiban-in* (Figures 4–1, 4–2, 4–3[65]). Once they were selected, almost all of them served very diligently and sincerely. It is reported that, even in a relatively minor, uncontested case, *Saiban-in* do not like to dispose of it in one day; they prefer spending time to examine and decide carefully because they are conscious of the effects their judgment could have on the defendant's life. That is why a certain amount of time is usually spared for, among others, the final deliberation even in uncontested cases[66]. Also, an overwhelming majority of those who actually served as *Saiban-in* or supplementary *Saiban-in*, including those who had been unwilling or reluctant to participate before it, evaluate the experience very positively (Figure 5[67]).

Thanks to their sincere and serious involvement, *Saiban-in* trials in general are operating smoothly and effectively so far. It seems that the system has been accepted by the people in spite of the occasional media coverage of sensational cases in which difficulties and excessive burdens on *Saiban-in* are emphasized.

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[60] According to the result of the officially entrusted survey on public awareness right before the enforcement of the *Saiban-in* system, only 4.4% of the respondents wished, and 11.1% were ready, to participate while 37.6% wouldn't do so even if it were their legal obligation. Saiko Saibansho Jimu-sokyoku, Saiban-in Seido ni kansuru Ishiki Chosa Kekka Hokokusho (*General Secretariat of the Supreme Court, Report of the Survey on Public Awareness concerning the Saiban-in System*) (Mar. 2008), p. 22.

[61] *Ib.*

[62] The top five reasons for excusing prospective *Saiban-in* at their request in 2016 are (1) important business matters (49.9%), (2) mental/financial disadvantage (27.8%), (3) illness/injury (4.5%), (4) care for a family member (4.4%) and (5) hospitalization of a family member etc. (2.2%). Saiko Saibansho Jimu-sokyoku, Heisei 28 nen ni okeru Saiban-in Saiban no Jissi-jokyo tou ni kansuru Shiryo (*General Secretariat of the Supreme Court, Materials on the Enforcement Situation of Saiban-in Trials in 2016*) (June 2017), p. 23.

[63] Saiko Saibansho Jimu-sokyoku, *supra* note 9, p. 5.

[64] A recent officially entrusted cause analysis by a nongovernmental institute has pointed out the five most probable causes inducing both the increase in the rate of prospective *Saiban-in* excused upon request and the decrease in the attendance rate of those summoned to the *Saiban-in* selection proceeding: (1) lengthening of trial schedule, (2) changes of employment situation such as shortage of workers and increase of non-regular employees, (3) aging of the population, (4) decrease in people's interest in *Saiban-in* trials and (5) reduction of the number of *Saiban-in* candidates put on the master list. NTT Data Institute of Management Consulting, Inc., Saiban-in Kohosha no Jitai-ritsu Josho Shusseki-ritsu Teika no Gen-in Bunseki Gyomu Hokokusho (*Diagnosis Report of the Increase in the Rate of Prospective* Saiban-in *Excused at their Request and the Decrease in the Attendance Rate of Those Summoned to the Saiban-in Selection Proceeding*) (March 2017). The report also indicated that it should improve the situation if they could reduce undelivered summons due to the absence of prospective *Saiban-in* by redelivering them.

[65] *Id.*, pp. 73–76 and Saiko Saibansho Jimu-sokyoku, Heisei 27 nen ni okeru Saiban-in Saiban no Jissi-jokyo tou ni kansuru Shiryo (*General Secretariat of the Supreme Court, Materials on the Enforcement Situation of Saiban-in Trials in 2015*) (June 2016), p. 28.

[66] The average time spent for the final deliberation per one *Saiban-in* trial in the nearly nine years until the end of May 2018, was 640.3 hours (501.1 in uncontested cases and 808.1 in contested cases). Those times have been getting even more prolonged, from 504.4 hours (438.7 in uncontested cases and 623.4 in contested cases) in 2010 to 760.3 hours (580.3 and 916.6 respectively) in 2017. Saiko Saibansho Jimu-sokyoku, *supra* note 9, p. 9.

[67] Saiko Saibansho, Saiban-in tou Keikensha ni taisuru Anketo Chosa Kekka Hokokusho (Supreme Court, Report on the Results of the Questionnaires to Former *Saiban-in* and Supplementary *Saiban-in*) 2017 (March 2018), pp. 47 and 49.

The publicity of many *Saiban-in* trials, including sensational capital cases, has contributed to the people's better understanding of the criminal justice system (Figure 6[68]). Apparently, they have started thinking about crime, punishment and the administration of the criminal justice system as matters of concern close to themselves.

As *Saiban-in* trials become regular daily events, the media, and therefore the general public also, seem to be losing their initially strong interest in them. Yet, on the other hand, a growing concern about, and a spreading practice of, "*ho-kyoiku*" (law-related education) at high, junior high and primary schools after the Justice System Reform, in which the *Saiban-in* system as well as criminal justice is a major subject[69], are expected to promote more substantial, long-lasting understanding and commitment among the next generation of people. Thus, these basic changes might have a profound effect on Japanese criminal justice as a whole in the long run.

B. Transfiguration of Trial Proceedings

The introduction of the *Saiban-in* system has definitely been inducing a wide-range, overt or covert, transformation of Japanese criminal procedure in various ways and is bringing about new challenges to cope with. The most covert and dramatic changes have been witnessed in trial proceedings.

1. Activation, Visualization and Concentration

In order to ensure meaningful participation of *Saiban-in* as well as to reasonably limit the burdens on them, the *Saiban-in* Act requires judges, public prosecutors and defense counsel to make trial proceedings speedy and easily understandable[70]. The Rules for *Saiban-in* Trials also provide that both parties shall present arguments and evidence in an easily understandable way so that each *Saiban-in* can form his/her own opinion based upon the trial hearings[71].

In compliance with these directions, the judiciary, public prosecutors' offices and bar associations, separately as well as collaboratively, have made continuous efforts to make their modes of presentation at trial as efficient and effective as possible by focusing on the key points, making full use of visualization methods, and relying on live testimonies in court instead of documentary evidence.

At the initial stage, trial court judges and prosecutors, who would prefer saving time and unnecessary burden upon witnesses, as well as defense counsel, who would not like to have the victim testify in person at trial, were inclined to agree on the use of written records of the witnesses' statements to the prosecutor or the police, especially in uncontested cases. But, with persistent, repeated reminders and warnings from the judiciary[72], they have evidently changed their attitude in terms of relying much more on live testimony even in uncontested cases[73].

As a result, the sight of Japanese criminal trials has changed dramatically in terms of activation, visualization and concentration, as far as *Saiban-in* cases are concerned.

2. Expediting

Then, have the trial proceedings actually become speedy and easily understandable for participating citizens?

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[68] Saiko Saibansho Jimu-sokyoku, *supra* note 60, p. 43.
[69] *E.g.*, Homu-sho Ho-Kyoiku Project Team, Chugakusei muke Kyozai: Saiban-in Seido *(Ministry of Justice Law-related Education Project Team, Teaching Materials on the* Saiban-in *System for Junior High School Students)* 〔available at http://www.moj.go.jp/keiji1/saibanin_info_saibanin_kyozai.html〕; *id.*, Keiji Shiho ni tsuite Kangaeyo (*Let's Think About Criminal Justice*) 〔available at http://www.moj.go.jp/housei/shihouhousei/index2.html〕. *See also* the Web-sites of the Japan Society for Law and Education 〔http://gakkai.houkyouiku.jp/〕 and the Law-related Education Forum 〔http://www.houkyouiku.jp/〕
[70] *Saiban-in* Act art. 51.
[71] The Rules on the Criminal Trials with the Participation of Saiban-in, Sup. Ct. Rules No. 7, July 5, 2007, *enforced*, May 21, 2009, art. 42.
[72] *E.g.*, Chief Justice Hironobu Takesaki, Shin-nen no Kotoba (*Words for the New Year*), SAIBANSHO JIHO No. 1545 (2012), p. 1.
[73] For instance, the average number of witnesses who testified at one *Saiban-in* trial have increased from 2.1 (1.5 in uncontested cases and 3.3 in contested cases) in 2010 up to 3.1 (1.9 and 4.2, respectively) in 2017. Saiko Saibansho Jimu-sokyoku, *supra* note 9, p. 8.

According to the official statistics, the period of trial itself has been drastically shortened, from an average of 6.5 months for previous trials involving the same offenses in the three years right before the enforcement of the *Saiban-in* Act down to 7.8 days for *Saiban-in* trials (in contested cases, from 10.8 months to 10.7 days)[74]. While previous criminal trials sometimes took many years in big cases, there have been so far just twelve *Saiban-in* trials that took or will take over two months (Table 7). Even in these cases, actual trial sessions took less than 40 days and the rest were spared for interval or weekend recesses and final deliberation, except for the ongoing longest case that is scheduled to take 207 days, including 76 trial sessions.

Undoubtedly, the longer the period, the higher the rate of prospective *Saiban-in* who ask to be excused, and then the proper selection of *Saiban-in* becomes harder. In anticipation of such hardship, the *Saiban-in* Act was revised in 2015 to empower the court to exclude from *Saiban-in* trial a case in which the selection or service of *Saiban-in* is deemed difficult due to the extraordinary length of the scheduled trial period[75]. This exclusion clause, however, has never been resorted to, even in the lengthy cases listed in Table 7 in which trials were held after the enforcement of the revision[76].

It should not be overlooked that the pretrial arrangement procedures for *Saiban-in* trials have taken an average of 6.9 months (8.8 months in contested cases) and the period has been lengthening from 5.4 months (6.8 months in contested cases) in 2010 to 8.3 months (10.0 months in contested cases) in 2017. It takes over a year or more in a substantial number of cases[77].

Although this is attributable, to a considerable extent, to additional charges filed subsequent to the initial indictment as well as psychiatric examination of the defendant which would suspend the proceedings for months, some point out that it takes time for the defense to respond to the prosecutor's offer of proof and to make their allegations after discovery of evidence, which sometimes takes many days. Improvements have been under discussion in and out the judiciary.

3. Understandability

The majority of former *Saiban-in* evaluate the trial proceedings in their cases as easily understandable (Figure 8[78]). At one time, negative respondents increased, though still less than 10%. Worried that this might be attributable to a revival of easy reliance on documentary evidence in uncontested cases, the judiciary warned repeatedly against such a practice, with the result of a decrease in the rate of negative responses.

However, the understandability of the presentations and arguments by defense counsel are evaluated remarkably lower than the performances of professional judges and prosecutors (Figure 9[79]). Although they are in a disadvantageous position of speaking even for the client who makes incoherent or unreasonable assertions, it might be caused by total reliance on the style and ability of each individual defense lawyer without sufficient systematic training. The bar associations have been seriously trying to cope with this challenge, for instance, by holding special seminars to improve defense lawyers' in-court performances and skills[80].

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[74] Saiko Saibansho Jimu-sokyoku, Saiban-in Saiban Jissi Jokyo no Kensho Hokoku *(General Secretariat of the Supreme Court, Report of the Examination on the Enforcement Situation of Saiban-in Trials)* (Dec. 2012), pp. 40–41; *Id*., supra note 9, p. 6.

[75] The Act to Revise a Part of the Act for the Participation of *Saiban-in* in Criminal Trials, Act No. 37, June 12. 2015, *enforced* Dec. 12 the same year.

[76] In eleven out of the twelve lengthy cases listed in Table 7, no substantial trouble was reported in the selection of *Saiban-in* or their service in spite of much more prospective *Saiban-in* being excused than in ordinary cases. However, in the remaining longest case in which the trial is still in progress at a pace of four sessions a week, three out of the six *Saiban-in* have already been discharged at their request within forty days from the beginning of the trial. Although the vacancies have been filled by three of the six supplementary *Saiban-in*, there is concern that the trial proceedings should be suspended and considerably delayed due to the additional *Saiban-in* selection in case four more *Saiban-in* are discharged. Kobe Shinbun NEXT, June 29, 2018.

[77] Saiko Saibansho Jimu-sokyoku, s*upra* note 9, p. 6.

[78] Saiko Saibansho, *supra* note 67, p. 18.

[79] *Id*., p. 20.

[80] *See e.g*., Masashi Akita, Bengonin kara Mita Saiban-in Saiban (*Saiban-in Trials from the Viewpoint of a Defense Counsel*), HO NO SHIHAI No. 177 (2015), pp. 77–79.

4. Other Cases

As described above, the JSRC recommended that the activation, concentration and expediting should be realized in all criminal trials, not limited to *Saiban-in* trials, which the Council expected would give a decisive motive to promote such changes. However, *Saiban-in* trials account for only a small percentage of all criminal trials. As a matter of fact, trials in non-*Saiban-in* cases do not appear to have changed much so far, probably because those concerned have been too occupied by implementing and managing *Saiban-in* trials to spare their energy for other regular cases.

Realistically, there is a need to dispose of the many uncontested cases efficiently as well as to avoid unnecessary burdens on witnesses. Consecutive, concentrated trial proceedings relying mainly on oral testimony will not be suitable for cases involving tax violations as well as business or financial offenses, for instance, in which a large amount of documentary evidence is to be examined.

However, it is evidently undesirable that *Saiban-in* and non-*Saiban-in* trials are administered in two different ways, causing the appearance of "justice by double-standard.[81]" Discussions and efforts for further changes in this respect have just begun among concerned judges and others.

C. New Challenges and Developments of Judicial Precedents

1. Overview

The introduction of the *Saiban-in* system has produced various new challenges to the existing criminal procedure. As mentioned above, the CCP was revised in preparation for several predictable challenges. Still, new challenges have come up through the continuous efforts in practice to effectively realize the purposes of those statutory revisions as well as the *Saiban-in* system itself. It is noteworthy that, contrary to their conventional negativism, the Supreme Court and other courts have actively and promptly, or even in advance, addressed many of them, with the result of remarkable developments of judicial precedents.

Although the courts adopted such new precedents apparently in anticipation of *Saiban-in* trials, they did so technically by interpreting related statutory provisions that apply to all cases, including those to be tried by professional-judge courts. Therefore, the new precedents impact the whole system. At the same time, they in turn have brought about further challenges that call for serious efforts to cope with.

2. Disclosure of Evidence

Disclosure of evidence had long been a matter of heated disputes before the new system was adopted by the 2004 revision of the CCP. Under the new system, the defense may have a three-phased disclosure of evidence from the prosecution in the course of the pretrial arrangement procedure[82]. *First*, the prosecutor shall submit to the defense a document describing the facts he/she plans to prove and disclose all the evidence he/she has requested to examine, including some written record of investigative questioning or a document indicating how each prosecution witness is supposed to testify at trial. *Second*, upon the request of the defense, the prosecutor shall disclose to the defense several categories of evidence (tangible evidence, results of expert examination, recorded former statements of the defendant as well as prosecution witnesses etc.) deemed important to evaluate the credibility of the prosecution's evidence, if the prosecutor deems it appropriate considering the extent of necessity for the defense and the extent of possible harm the disclosure might cause. *Third*, when the defense requests after revealing the facts they plan to prove and other allegations they intend to make, the prosecutor shall disclose to the defense the evidence which is deemed relevant to those facts and allegations if the prosecutor deems it appropriate based on similar considerations. The defense, if discontented with the prosecutor's disclosure or non-disclosure at any phase, may request review by the trial court (the professional judges in the *Saiban-in* cases), which may order the prosecutor to disclose particular evidence to the defense if it is deemed appropriate[83].

In practice, it is reported that the public prosecutors' offices use their discretion generously to disclose the evidence much earlier and more widely than required by law, and that the defense will have access to any evidence they would need in most cases.

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[81] *E.g.*, Zadankai, Saiban-in Seido no Genjo to Kadai (*Round-table Talk, Present Situation and Challenges of the* Saiban-in *System*) HO NO SHIHAI No. 177 (2015), pp. 39–41 (remarks of Yukihiko Imasaki and Yutaka Osawa).
[82] CCP arts. 316–13 through 316–20.
[83] CCP arts. 315–25 through 315–27.

Still, there remain several points at issue. One of them is whether the disclosure required by law is limited to the evidence which is actually in the custody of the prosecutor. Although some concerned lawyers opined differently, the drafters of the new disclosure procedure apparently had such evidence in mind[84].

Therefore, it is rather amazing that in 2007 and 2008 the Supreme Court, emphasizing the purpose of the disclosure procedure, adopted a liberal interpretation that items (such as the police officers' memoranda of their questioning of the suspect) not filed in the prosecutors' office also should be subject to disclosure as long as it had been made or obtained during the investigation of the instant case, and was in the custody of a public official and easily obtainable for the prosecutor[85]. Discussions have been continuing on how far the scope of the decision extends.

Defense lawyers have kept demanding a list of all the evidence in the prosecutors' custody to be disclosed at an early stage of the pretrial arrangement procedure so that they could make their requests for disclosure more effectively. This demand would eventually become accepted in large part by the subsequent criminal justice reforms as described later in Section V.

3. Law of Evidence

(a) Overview

After the current CCP adopted such evidentiary rules as the exclusion of involuntary confession and that of hearsay evidence[86], which were totally novel at that time, Japanese scholars and lawyers eagerly studied the American law of evidence. Since then, various basic principles of American evidentiary law have been shared commonly in the Japanese legal world. Many pages in criminal procedure textbooks and many hours in criminal procedure classes at law schools are spared on the law of evidence.

As a matter of fact, there have been few substantial developments in the actual evidentiary rules other than the original exclusionary rules of illegally obtained evidence and confession that the Supreme Court and lower courts have adopted[87]. I suppose this might be attributable largely to the lack of lay participation because professional judges, who are authorized both to admit and to evaluate the evidence, prefer handling it at their discretion to being bound by inflexible rules.

However, the introduction of the *Saiban-in* system changed such structure. Participating lay persons must be protected from possible prejudicial effects of inadequate evidence and guided by appropriate rules of proof so that they could properly determine the facts of the case.

On such recognition, the Supreme Court of Japan and other high courts have been actively making new case law on evidence as follows.

(b) Proof beyond a reasonable doubt

In the five-year preparation for the enforcement of the *Saiban-in* Act, judges, lawyers and scholars have elaborated how to instruct or explain to participating lay citizens about difficult legal norms and terms in plain language so that they can understand the elements of each charged offense as a prerequisite for their fact-finding as well as various principles of criminal procedure. Among others, proof beyond a reasonable doubt was one of the hardest.

A model instruction used in the Tokyo District Court describes, "(a)lthough we cannot ascertain in person if a particular fact existed in the past, —you shall find the defendant guilty in cases where, assessing in accordance with common sense, you are convinced that he/she committed the indicted offense. On the contrary, you shall find the defendant not guilty if, assessing in accordance with common sense, you have a doubt about his/her guilt."

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[84] *E.g.*, Hiroyuki Tsuji, Keijisosho-ho no Ichibu wo Kaiseisuru Houritsu nitsuite (*Commentaries on the Act to Revise Several Parts of the Code of Criminal Procedure*) (2), HOSO JIHO Vol. 57, No. 8, p. 2311.

[85] Sup. Ct. (3rd Petty Bench) decision of Dec. 25, KEISHU Vol. 61, No. 9, p. 895; Sup. Ct. (1st Petty Bench) decision of Sep. 30, 2008, KEISHU Vol. 62, No. 8, p. 2753.

[86] CCP arts. 319 and 320.

[87] *E.g.*, Sup. Ct. (1st Petty Bench) judgment of Sep. 7, 1978, KEISHU Vol. 32, No. 6, p. 1672; Tokyo High Court judgment of Sep. 4, HANREI JIHO No. 1806, p. 144.

Anticipating the enforcement of the *Saiban-in* Act, the Supreme Court itself indicated in advance in 2007 that proof beyond a reasonable doubt does not mean the nonexistence of any possibility of opposite facts, and that, even when there is room to doubt if opposite facts exist as a matter of abstract possibility, the defendant could be found guilty as far as, according to sound social common sense, such doubt is deemed to lack reasonableness[88].

While it is not certain how effective such instructions are, I suppose that hours of group deliberation among all the members of the court based on repeated explanation by the professional judges from an early stage of the trial should help ease the hardship *Saiban-in* might feel in forming their own judgment.

(c) Proof by circumstantial evidence

The hardship for *Saiban-in* in this respect, if any, must be much bigger in cases where the proof of guilt relies entirely on circumstantial evidence. As a matter of fact, there has long been a controversy even among professional judges, lawyers and scholars about what should be required to fulfill the standard of proof beyond a reasonable doubt in such a case. While one school of thought would think it sufficient if the court, assessing comprehensively all the circumstantial evidence, reaches the judgment that the defendant's guilt is proved beyond a reasonable doubt, others would demand proof of at least one fact which is unexplainable unless the defendant actually committed the charged offense.

Apparently in anticipation of the possible confusion such controversy could cause to *Saiban-in* trials, the Supreme Court declared in 2010 that a fact unexplainable or extremely difficult to explain unless the defendant was the perpetrator of the charged offense must be included among the facts proved by circumstantial evidence[89].

Although there are divisions of opinion about the appropriateness of this ruling, it has actually had an evident effect on subsequent *Saiban-in* trials. As a matter of fact, right after the Supreme Court's judgment, a defendant charged with robbery and murders of an elderly couple was found not guilty for the very reason that such an unexplainable fact as required by the Supreme Court ruling was not included in the facts proved by circumstantial evidence. The *Saiban-in* trial court acquitted the defendant, despite the findings that his fingerprints and cell debris found at the crime scene in the victims' house aroused strong suspicion of his breaking in and ransacking the house around the time of the robbery and murders in question and that his total denial of entering the house was a lie[90].

In another case, in which the *Saiban-in* trial court had convicted the defendant for setting fire to a car owned by her lover's wife on circumstantial evidence, the appellate court reversed the conviction and found her not guilty on the grounds that any fact proved by circumstantial evidence could be reasonably explained even if she was not the arsonist.[91]

(d) Exclusion of similar fact evidence

In reference to the Anglo-American law of evidence, it has long been almost an established theory that similar fact or bad character evidence such as the defendant's previous convictions for, or criminal records of, similar offenses should not be admissible to prove his/her guilt unless it involves a significantly characteristic modus operandi common to the instant case or it is used for a limited purpose of proving the defendant's criminal intent when his/her committal is proved by other evidence.

Actually, it was not necessarily clear where to draw the dividing line between the principle and its exceptions in a concrete case.

In a cause célèbre where the defendant was charged with killing four neighbors and injuring many others by serving them arsenic-poisoned curry and rice at a local festival, the prosecutors produced as a evidence of her guilt the proof that she had attempted to murder her husband and an employee for insurance money by serving them foods containing arsenic repeatedly. The prosecutors also produced the proof that she had

[88] Sup. Ct. (1st Petty Bench) decision of Oct. 16, 2007, KEISHU Vol. 61, No. 7, p. 677.
[89] Sup. Ct. (3rd Petty Bench) judgment of Apr. 27, 2010, KEISHU Vol. 64, No. 3, p. 233.
[90] Kagoshima Dist. Ct. judgment of Dec. 10, 2010, HANREI HISHO L06550725.
[91] Fukuoka High Ct. judgment of Nov. 2, 2011, HANREI HISHO L06620534.

served foods containing arsenic or sleeping drug to her acquaintances for the same purpose. Despite the differences in the motive and other circumstances from the instant case, the trial court consisting of professional judges admitted them[92] and found the defendant guilty, inferring her committal from the facts of her three attempted murders and one previous similar act involving the use of arsenic on top of other circumstantial evidence. The appellate court found inappropriate the admission of the proof concerning the use of sleeping drug, but still affirmed the trial court's judgment[93].

After the introduction of the *Saiban-in* system, however, courts have become more conscientious and self-restrictive about the problem.

In a case involving alleged trespass, theft and arson, the defendant admitted he stole into the victim's empty apartment and took a small amount of money, but denied his involvement in setting fire there, though it happened within the same six-hour time range before dawn. The professional judges of the *Saiban-in* trial court rejected the prosecution's proof of his involvement in the arson by the facts that he had been convicted some 17 years earlier for at least 10 cases of similar trespass, theft and arson, and the court found him not guilty on the charge of the arson. This judgment was reversed by the appellate court, which found the defendant's previous convictions for similar offenses admissible because of their similarity to the instant case both in terms of his habit of setting fire to heating oil in the dwelling and in his frustration over the lack of valuable property within the dwelling as the motive for doing so[94].

On appeal, however, the Supreme Court quashed the appellate court judgment, proclaiming that the evidence of the defendant's previous convictions for similar offenses should not be admitted to prove his committal of the charged offense unless the previous criminal acts had such significant characteristics considerably similar to the charged criminal act as to enable by themselves a reasonable inference that the identical person committed both the former and the latter offenses. Such evidence, the Court reasoned, tends to lead to an empirically unfounded personal evaluation of the defendant's criminal tendency, which in turn could cause a wrongful inference of the defendant's committal in the instant case[95].

Five and a half months later, the Supreme Court further reconfirmed that the ruling should extend to the similar criminal acts other than the previous convictions of the defendant[96].

These rulings, however, have left a difficult question: in what sense and to what extent the characteristics common to the previous criminal acts and the charged criminal act must be significant before the exception applies.

The difficulty is even more amplified when we take into account the concurring opinion of Justice Kanetsuki to the second Supreme Court decision. He mentioned that a further exception could be admitted in cases where a number of similar offenses repeated by the same defendant in the same short period of time as the charged offense in question are indicted and tried simultaneously in the same proceedings[97]. As Justice Kanetsuki was a prominent criminal law judge, its implication over the scope of the Supreme Court rulings seems to demand detailed analysis[98].

Indeed, a somewhat similar view to his indicated exception has been adopted by an appellate court in another cause célèbre called "Metropolitan-area Serial Suspicious Death Cases." The defendant was charged

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[92] Wakayama Dist. Ct. decision of Oct. 10, 2001, HANREI TIMES No. 1122, p. 132, sentencing the defendant to death.
[93] Osaka High Ct. judgment of June 28, 2005, HANREI TIMES No. 1192, p. 186.
The defendant's *jokoku* appeal against the High Court judgment was rejected by the Supreme Court, which affirmed, without any reference to the proof by similar facts, that the defendant's committal was proved beyond a reasonable doubt by circumstantial evidence, including (1) the detection of arsenic of the same characteristic composition at the defendant's house, (2) that of arsenic component from her hair, (3) the fact that nobody other than the defendant had an opportunity to poison the curry and (4) her suspicious behavior witnessed around the time and place of the offense. Sup. Ct. (3rd Petty Bench) judgment of Apr. 21, 2009, HANREI JIHO No. 2043, p. 153.
[94] Tokyo High Ct. judgment of Mar. 29, 2011, HANREI TIMES No. 1354, p. 250, remanding the case to the Tokyo District Court for a new *Saiban-in* trial.
[95] Sup. Ct. (2nd Petty Bench) judgment of Sep. 7, 2012, KEISHU Vol. 66, No. 9, p. 907.
[96] Sup. Ct. (1st Petty Bench) decision of Feb. 20, 2013, KEISHU Vol. 67, No. 2, p. 1.
[97] *Id*., p. 5.

with, among others, killing in a relatively short time period of eight months two middle-aged men, whom she met on online dating sites and allegedly cheated them out of their money with a false promise of marriage, and one 80 year old man, whom she frequently visited and allegedly stole property from, by firing a briquette to generate carbon monoxide gas inside a sealed car, apartment and house, respectively, where she allegedly left her victims behind after drugging them with sleeping pills. At the trial, the defense rebutted, in vain, that the deaths of her two boyfriends possibly were suicides and the third victim possibly was killed by an accidental fire in his dwelling. The *Saiban-in* trial court found her guilty on all the charges and sentenced her to death[99].

On appeal, the Tokyo High Court affirmed the trial court judgment, rejecting the defendant's challenge against the prosecutors' reference in the closing argument to a set of common features shared by all the three murders: (1) that the defendant had prepared a large amount of briquettes and heating appliances in advance, (2) that she was the last person who saw the victim, (3) that the victim died of carbon monoxide poisoning, (4) that there remained at the scenes the same kind of briquettes and burning appliance as she had prepared, and (5) that she killed the victim by burning a briquette inside a sealed place after putting each victim to sleep. The prosecutors' argument that either of the defendant's criminal acts of special modus operandi, if proven, should be admissible as evidence of her committal of another criminal act of similar special modus operandi, the High Court held, was not in contradiction with the above-mentioned Supreme Court rulings because the common features, when considered together, were strikingly similar to the criminal act to be proven.[100]

4. Appellate Review of Fact-Finding

(a) Law and practice of appellate review before and after the introduction of the Saiban-in *system*

In the course of the justice system reform, there was a discussion whether an appellate court consisting exclusively of professional judges could be justified to review and reverse the guilty/not-guilty finding or a sentence of the *Saiban-in* trial court solely based on documentary records without diminishing the purpose of public participation.

In this regard, the CCP of 1948 made a drastic change to its criminal appeal system from the former law under which the second instance court (mainly the High Court), on appeal (*koso*) would hold a *huku-shin* (new trial) just the same way as the first instance trial court, while the highest Court of Grand Instance, on further appeal (*jokoku*), would review, in principle, only legal issues involved in the lower court judgments and decisions. As the Supreme Court, newly founded in place of the latter court, was assigned by the current Constitution to carry out the most important task of reviewing the constitutionality of statutes and other official actions[101] as well as to unify judicial precedents only by fifteen Justices, it was mandated to shift the task of reviewing ordinal legal issues onto the High Courts, of which works in turn also had to be reasonably

[98] The Supreme Court rulings do not mean to further prohibit the production of the defendant's previous convictions or criminal records of similar offenses as sentencing material. In this regard, a group of scholars and lawyers have been stressing the necessity to bifurcate the trial hearing into two phases of guilt-finding and sentencing in order to prevent prejudicial influence of sentencing materials on *Saiban-in*. However, a majority, with which I concur, prefers a more flexible solution. In uncontested cases, it would be inappropriate to bother the same witness testifying on the matters relating to both guilt and sentence to show up to the court multiple times. In contested cases, the hearing as well as the intermediate deliberation among the members of the court could be divided into multiple phases, not necessarily the above two, but possibly more according to separate issues raised in each case, by an appropriate exercise of discretion by the professional judges in the pretrial arrangement procedure. Repeated instruction by the presiding judge also could help *Saiban-in* to save themselves consciously from possible prejudicial influence of sentencing materials. As each *Saiban-in* is supposed to state the reason for his/her judgment in the deliberation, it should be checked and corrected by other *Saiban-in* and professional judges even if any one of them had made his/her judgment unreasonably. As a matter of fact, there have been no grounds to suspect such a flexible solution does not work. *See* Hosei Shingikai Sin-Jidai no Keiji-shiho Seido Tokubetsu Bukai, Jidai ni sokushita Aratana Keiji-s Seido no Kihon Koso (*Council on Legislation Special Division on the Criminal Justice System in the New Era, Basic Plans for the New Criminal Justice System Responding to the Demands of the Times*) (Jan. 2013), p. 34 〔available at http://www.moj.go.jp/content/000106628.pdf〕; Homu-sho Saiban-in Seido ni kansuru Kento-kai, Torimatome Hokoku-sho (*Ministry of Justice Deliberation Committee on the Saiban-in System, A Summary Report*) (June 2013), pp. 29–30 〔available at http://www.moj.go.jp/content/000112006.pdf〕.

[99] Saitama Dist. Ct. judgment of Apr. 13, 2012, HANREI HISHO L06750221.

[100] Tokyo High Ct. judgment of Mar. 21, 2014, LEX/DB 25503368, dismissing the defendant's allegation that the trial court unlawfully failed to make the prosecutors correct their final argument to prevent prejudicial effect on the guilt finding by the *Saiban-in*, though the trial court actually did not rely, at least explicitly, on the similar fact evidence as argued for by the prosecutors.

[101] Const. art. 81.

reduced and rearranged. Thus, although the *koso* appeal against trial court judgments for mistake of fact-finding or inappropriate sentence is retained in the current CCP[102], the task of the second instance court is limited principally to doing "*jigo-shinsa*" (post-fact review) on the basis of the trial records, whether such prejudicial mistake of fact-finding existed in the trial court judgment or its sentence was inappropriate as the appellant asserts.

At the same time, however, the CCP allows the appellant to refer to, and the appellate court to take into consideration, changes in circumstances subsequent to the trial court judgment (such as the conclusion of settlement between the defendant and the victim) as a factor that might make the trial court's sentence inappropriate[103]. It further gives the appellate court discretion to conduct an ex officio inquiry whether there were any other detrimental errors in the trial court judgment than those asserted by the appellant and, if necessary, to examine new evidence that is not included in the trial record[104].

While such challenges against the guilty/not-guilty finding or the sentence of the trial courts actually accounted for the overwhelming majority of *koso* appeals[105], the High Courts, especially from the 1960s, actively exercised this discretion. Many of them unhesitatingly examined old and new evidence in addition to the trial record and rendered their own decisions on the defendant's guilt or the sentence to be imposed rather than remanding the case to the original first instance court, even when they quashed the latter's judgment[106]. Critiques have pointed out that this form of appellate review in practice has substantially assumed the nature of "*zoku-shin*" (successive trial) on top of the first instance trial.

Considering this situation, it appeared even more doubtful whether appellate review of the guilty/not-guilty finding or sentence of a *Saiban-in* trial court could be justified.

Despite such doubt, it was a majority opinion of the JSRC that appellate review is indispensable to remedy mistakes of fact-finding and inappropriate sentences possibly caused even by *Saiban-in* trial courts[107]. And in implementing the Council's recommendation, the expert committee rather took a different approach of substantially altering the above practice by inducing appellate courts to return to their originally intended role of post-fact review. Then, the appellate court, the committee thought, could be justified to reverse the *Saiban-in* trial court's judgment principally by carefully examining the trial record, a task which only experienced professional judges would be qualified for.[108] Hence there was no revision to relevant provisions of the CCP.

Still, a very critical question had been presented to appellate court judges, asking how they actually could and should execute their reviewing function properly while paying due respect to the judgment of the *Saiban-in* trial court. Ever since the enactment of the *Saiban-in* Act, serious discussions had piled up[109]. Some people stressed that appellate courts as the "last instance of facts" should not hesitate to fulfil their mission of finding

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[102] CCP arts. 381 and 382.
[103] CCP arts. 382–2, 393, 397, sec. 2, *added* by the 1953 revision of the CCP.
[104] CCP art. 392, sec. 2 and art. 393, sec. 1. *See also* Sup. Ct. (1st Petty Bench) decision of Sep. 20, 1984, KEISHU Vol. 38, No. 9, p. 2810, affirming the appellate court's discretion to examine new evidence as far as it relates to the fact that existed before the trial court judgement.
[105] Among 76,199 criminal *koso* appeals disposed of by all the High Courts in the nine years from 2000 to 2008, 74,066 (97.2%) were those filed only by the defendants and 496 by both parties. 54,267 (72.8% of their total) were for the reason of inappropriate sentence and 18,717 (25.1%) for the reason of mistake of fact-finding. Saiko Saibansho Jimu-sokyoku, Shiho Tokei Nenpo 2: Keiji-hen (*General Secretariat of the Supreme Court, Annual Reports on Judicial Statistics, Part 2: Criminal Cases*), 2000–2008, Table 44.
[106] In 54,391 (71.4%) of all criminal *koso* appeal cases disposed of in the above nine years, appellate courts engaged themselves in examination of the facts, including the questioning of the defendant (31.2%), examination of documentary or tangible evidence (34.55) or hearing of the witnesses' testimony (14.6%). As the result of these appellate reviews, trial court judgments were quashed in 11,027 cases (14.5%), among which only 106 (0.14%) were remanded to the original or other first instance trial court. *Id*., Tables 45 and 48.
[107] Recommendations of the JSRC, *supra* note 34, Chap. IV, Part. 1, 1(4)c.
[108] Masahito Inouye, "Kangaerareru Saiban-in Seido no Gaiyo nitsuite" no Setsumei (*Commentaries on the Chairperson's Tentative Draft "the Outlines of a Thinkable Saiban-in System"*) (Oct. 28, 2003), Part 3, 5 〔available at http://www.kantei.go.jp/jp/singi/sihou/kentoukai/saibanin/dai28/28siryou3.pdf〕.
[109] *Cf.* Sukeaki Tatsuoka, Joso-shin no Arikata (*How the Appellate Review on the* Saiban-in *Trial Court's Judgment Should Be*), RONKYU JURIST No. 2 (2012), pp. 77 *et seq.*

the true facts and securing justice being done even in *Saiban-in* cases. Others who would pay maximum respect to the results of *Saiban-in* trials, in contrast, demanded limited appellate review, under which the appellate court could or should not reverse the *Saiban-in* trial court judgment unless its fact-finding involves substantial violation of rules of inference or thumb, or its sentence evidently exceeds a reasonably allowable range.

As a matter of fact, for a couple of years right after the beginning of *Saiban-in* trials, prosecutors rarely filed an appeal against the *Saiban-in* trial court judgment, and appellate courts also were very careful in intervening in them[110]. As a growing number of contested, as well as uncontested, cases involving serious offenses that might result in heavy sentences were put to *Saiban-in* trials in the following years, more appeals were filed against their results, even by prosecutors, and appellate courts also began intervening more actively, though it was most often for the reason of subsequent circumstances affecting the sentence that they quashed *Saiban-in* trial court judgments (Figures 11, 13, 15[111].). Thus, the issue became more realistic and urgent to resolve. Then in 2012, the Supreme Court at last defined its position for a limited appellate review on possible mistake of fact-finding in the *Saiban-in* trial court judgment.

(b) Supreme Court judgment of 2012

As the result of customs inspection at the Narita International Airport, it was detected that the defendant, an arriving passenger from Malaysia, carried three chocolate boxes containing some 1 kg of methamphetamine in his bag. He was charged for smuggling the stimulant drugs at the request of his acquaintance, but he disputed his awareness of the contents of the chocolate boxes. He asserted that, in Malaysia where he went to pick up a forged passport on behalf of that acquaintance, he was asked by a local person to bring the chocolate boxes back to Japan as a souvenir. Despite the prosecution's circumstantial proof that the defendant was compensated for his travel to Malaysia by the person who had been indicted for smuggling stimulant drugs, that he actually brought back the chocolate boxes containing stimulant drugs, that the boxes were noticeably heavier that those containing only chocolates, and that he had behaved suspiciously during the customs inspection, the *Saiban-in* trial court found him not guilty because the court could not become "certain according to common sense" that he was aware of the illegal drug being contained in the chocolate boxes (Chocolate Box Case)[112].

Acquittals for similar reasons in several *Saiban-in* trials involving similar stimulant drug smuggling followed this[113], shocking public prosecutors and investigative agencies who had never imagined that such an excuse as asserted by the defendant could be accepted by the court contrary to their "common sense." Their arguments against these trial court judgments were accepted by several appellate courts, which reversed the judgments, including the one in the above Chocolate Box Case[114]. In most of those cases, appellate courts found the defendants guilty, coming to the opposite conclusion based on their evaluation of the circumstantial evidence.

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[110] Probably thanks to a series of serious discussions among appellate court judges about the right way of executing their reviewing power, they seem to have become more careful not to overstep their basic role of post-fact review. For instance, according to the official judicial statistics, the rate of the cases in which appellate courts examined facts dropped from 75.1% in 2000 down to 47.6% in 2016. Saiko Saibansho Jimu-sokyoku, Shiho Tokei Nenpo 2: Keiji-hen (*General Secretariat of the Supreme Court, Annual Reports on Judicial Statistics, Part 2: Criminal Cases*), 2000—2016, Table 45. But, *also note* the latest symptom of possible change described on page 93.

[111] Saiko Saibansho Jimu-sokyoku, Saiban-in Saiban no Jissi-jokyo ni kansuru Sioryo Heisei 21–nen～28–nen (*General Secretariat of the Supreme Court, Materials on the Enforcement Situation of Saiban-in Trials, 2009—2016*), Tables 69, 72 through 74.

[112] Chiba Dist. Ct. judgment of June 22, 2010, KEISHU Vol. 66, No. 4, p. 549.

[113] Until the end of March 2018, 33 defendants have been totally acquitted in cases involving stimulant drug offenses (*see* Table 10); the acquittal rate (that of the totally acquitted defendants among those tried by *Saiban-in* trial courts) is 3.75%, much higher than that (0.75%) in the *Saiban-in* trial cases in general. Table 10 and Saiko Saibansho Jimu-sokyoku, *supra* note 9, p. 4. The number of acquittals by *Saiban-in* trial courts in stimulant drug cases must become larger when the partial acquittals in multiple-count prosecutions are counted.

According to an official statistical study, the acquittal rate of *Saiban-in* trials was 0.47% (0.74%, counting in partial acquittals) in general and 2.33% (2.62%) in stimulant drug cases in the three years after the enforcement of the *Saiban-in* Act while that of professional judge trials involving the same categories of offenses was 0.6% (0.86%) in general and 0.56% (1.7%) in stimulant drug cases in the preceding three years. Saiko Saibansho Jimu-sokyoku, *supra* note 74, p. 46.

[114] Tokyo High Ct. judgment of Mar. 30, 2011, KEISHU Vol. 66, No. 4, p. 559, finding the defendant guilty and sentencing him to imprisonment for 10 years.

The Supreme Court, however, quashed the appellate court judgment in the Chocolate Box Case[115]. On the basic understanding that an appellate review of possible mistake of fact-finding in the trial court judgment generally should be conducted from the viewpoint of whether the trial court's evaluation of the credibility of each piece of evidence or its comprehensive assessment of all the evidence was unreasonable such as being in violation of rules of inference or thumb, the Supreme Court stressed that such a limited approach should be observed especially in relation to *Saiban-in* cases. The appellate court judgment in the instant case, the Court concluded, failed to demonstrate concretely that the trial court's fact-finding was unreasonable according to rules of inference or thumb.

Thus, the controversy was settled theoretically. However, it is doubtful if the hardship for appellate court judges has actually been eliminated or reduced. As a matter of fact, the appellate court judgments reversing the acquittals in three other stimulant drug smuggling cases were, in contrast, affirmed subsequently by the Supreme Court[116].

In the first case, the defendant, a foreigner coming recently from Mexico, allegedly attempted to receive two cardboard boxes containing 6 kg of methamphetamine which his unknown accomplice had sent by air freight from Mexico. The *Saiban-in* trial court, conceding that the defendant had a guess about the contents of the air cargo when he was ordered by an organized crime member to receive it in Japan, found him not guilty on the grounds that there remained a reasonable doubt about the existence of the conspiracy between him and the alleged accomplice, which was not deemed "certain according to common sense."[117] The appellate court reversed this judgment for the reason of the unreasonable fact-finding in contradiction with the rules of thumb, according to which, in the appellate court opinion, a tacit agreement between them was reasonably inferred from the facts that the defendant had received air tickets, a considerable amount of compensation as well as a portable computer for communication from the organized crime member and actually communicated with that person around the time of his arrival in Japan, in addition to the fact that he, being aware that the air cargo probably contained stimulant drugs, had agreed and actually attempted to receive it in Japan at the request of that person[118].

The second case was more similar to the above Chocolate Box Case in terms that the *Saiban-in* trial court denied the defendant's awareness of some 2.5 kg of methamphetamine contained in his suitcase which was detected by customs inspection on his arrival from Uganda by way of Benin and Paris. Conceding that the involvement of an organized crime group was inferred from the quantity as well as the artful concealment of the stimulant drugs, the court deemed it conceivable that some group member asked the defendant to transport the suitcase without letting him know its contents or its recipient in Japan[119]. The appellate court found it against the rules of thumb to think that some organized crime group dared to enlist the defendant to transport the suitcase containing that amount of illegal drugs such a long way, bearing his travel expenses, but without telling him the name of the recipient or the destination, and inferred from these and other facts that he was aware that some illegal drugs were probably contained in the suitcase[120].

The prosecution of an Iranian defendant in the third case for masterminding a conspiracy of smuggling stimulant drugs for profit also arose from the detection of some 4 kg of methamphetamine as the result of airport customs inspection of the suitcase of an arriving passenger ("D") from Turkey. To prove the defendant's guilt, the prosecution presented the statement of an alleged accomplice "A" that he engaged himself in several activities to further the criminal enterprise at the defendant's command, the phone logs of the defendant, "A" and other accomplices which indicated frequent telephone communications among them, as well as the facts that the defendant went to the airport each time when stimulant drug carriers recruited by "A" were supposed to arrive there over the preceding year and that the defendant earned a large amount

[115] Sup. Ct. (1st Petty Bench) judgment of Feb. 13, 2012, KEISHU Vol. 66, No. 4, p. 482.
[116] Sup. Ct. (3rd Petty Bench) decision of Apr. 16, 2013, KEISHU Vol. 67, No. 4, p. 549; Sup. Ct. (1st Petty Bench) decision of Oct. 21, 2013, KEISHU Vol. 67, No. 7, p. 755; Sup. Ct. (1st Petty Bench) decision of Mar. 10, 2014, SAIBANSHO JIHO No. 1599, p. 2.
[117] Tokyo Dist. Ct. judgment of July 1, 2011, KEISHU Vol. 67, No. 4, p. 632.
[118] Tokyo High Ct. judgment of Dec. 8, 2011, KEISHU Vol. 67, No. 4, p. 637, finding the defendant guilty and sentencing him to imprisonment for 12 years.
[119] Chiba Dist. Ct. judgment of June 17, 2011, KEISHU Vol. 67, No. 7, p. 853.
[120] Tokyo High Ct. judgment of Apr. 4, 2012, KEISHU Vol. 67, No. 7, p. 858, finding the defendant guilty and sentencing him to imprisonment for 10 years.

of money in that period. The *Saiban-in* trial court, however, found the defendant not guilty on the reason that the statement of "A" was not reliable because of several inconsistencies with the call histories recorded in the phone logs. Based upon the statements of "D" and another accomplice that they heard a strange voice of some male beside "A" when they talked with him on the phone and some other circumstantial evidence, the court also mentioned that the charged smuggling possibly was commanded by a different person[121]. Quite contrarily, a detailed analysis of the same evidence and some others led the appellate court to the findings (1) that the call histories lead to the strong inference that many of the telephone calls were related to the smuggling and were consistent in large part with the statement of "A," and (2) that the existence of an unknown ringleader as mentioned by the trial court was only an unsupported abstract possibility. The trial court's contrary fact-finding and resulting denial of the defendant's involvement, the appellate court concluded, were unreasonable according to rules of thumb[122].

The Supreme Court affirmed all of the three appellate courts' reversals of trial court judgments as supported by a concrete demonstration that each trial court's fact-finding was unreasonable in contradiction with rules of thumb.

(c) Significance of the Supreme Court rulings

However, it is unclear how consistent the conclusions in the Chocolate Box Case and the three other cases are. Although "rules of inference or thumb" were evidently the common key factors in these rulings, the Supreme Court did not specify what rules of inference or thumb were in question in each case. Even if we could clarify it by a detailed analysis, it cannot be generalized or applied to other cases, because what rules of inference or thumb, especially the latter, are relevant must vary in each case, depending on what fact is to be proved, through what inference process and from what evidence.

Therefore, it has been left to the courts engaged in each individual case. Appellate court judges are required to specify the applicable rules of inference or thumb so that they can exercise their authority to review the trial court's fact-finding appropriately in accordance with the Supreme Court rulings. The trial court judges in their turn, in anticipation of possible appellate review, are supposed to have, and in *Saiban-in* trials to make *Saiban-in* share, a clear idea of what, if any, rules of inference or thumb they should refer to in their fact-finding in each individual case on trial. This does not seem to be an easy task for any of them.

Nevertheless, rather amazingly, the official judicial statistics indicate that appellate courts have not become hesitant, but even a bit more active, in reviewing and reversing the fact-finding of *Saiban-in* trial courts after the above Supreme Court rulings (Figure 15), which possibly have made them more confident in executing their reviewing power over the judgments of *Saiban-in* trial courts.

Moreover, the Supreme Court in subsequent cases either quashed or affirmed the appellate court judgments that reversed professional judges' as well *Saiban-in* trial courts' convictions or acquittals of defendants, by checking if each appellate court complied with the requirements for reversal imposed by the above Supreme Court rulings, without specifying what "rules of inference or thumb" were in question in each case[123]. The Court even quashed both the appellate court and the professional-judge trial court judgments that convicted the defendant for stealing money out of the envelope the victim left on a desk in a bank. The fact-finding of either court, in the Court's majority opinion, was not reasonable "in violation of the rules of inference or thumb" in termies of easily inferring the existence of the money in the envelope solely from the

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[121] Osaka Dist. Ct. judgment of Jan. 28, 2011, HANREI HISHO L06650051.

[122] Osaka High Ct. judgment of Mar. 2, 2012, KOSAI KEIJI SOKUHOSHU 2012, p. 181, remanding the case to the Osaka District Court for a new *Saiban-in* trial.

[123] Sup. Ct. (1st Petty Bench) judgment of Mar. 20, 2014, KEISHU Vol. 68, No. 3, p. 499 (quashing the appellate court judgment that reversed the professional judge trial court's conviction of the defendant for abandonment of a mentally disturbed person in their custody resulting in death); Sup. Ct. (1st Petty Bench) decision of June 8, 2014, HANREI TIMES No. 1407, p. 75 (affirming the appellate court judgment that reversed the professional judge trial court's conviction of the defendant for murder and a forcible obscene act resulting in death); Sup. Ct. (3rd Petty Bench) judgment of Mar. 18, 2016, SAIBANSHU KEIJI No.319, p. 269 (quashing the appellate court judgment that reversed the professional judge trial court's acquittal of the defendant for negligent homicide while driving); Sup. Ct. (1st Bench) decision of Dec. 25, 2017, SAIBANSHO JIHO No.1691, p. 51 (quashing the appellate court judgment that reversed the *Saiban-in* trial court's conviction of the defendant for assisting to attempted murder); Sup. Ct. (2nd Petty Bench) judgment of Mar. 19, 2018, SAIBANSHO JIHO No. 1696, p. 95 (quashing the appellate court judgment that reversed the professional judge trial court's acquittal of the defendant for abandonment of her underdeveloped child).

ambiguous testimonies of the victim and her mother, and concluding that only the defendant could have stolen it despite of the bank's CCTV video of the scene that did not clearly demonstrate the defendant's conduct[124]. But here, neither the majority specified the key phrase any further,

Careful and detailed analysis will be needed to see if the higher courts have been executing their reviewing authority appropriately and consistently in substantial accordance with the Supreme Court rulings rather than just giving a case-by-case ad hoc evaluation with the nominal use of the above key phrase as a mere cliché.

5. Sentencing and Its Appellate Review

(a) Difficulties for Saiban-in

One of the motives for the introduction of the *Saiban-in* system was the public opinion that sentencing by professional judges from time to time differed from regular citizens' sense of justice. Hence the *Saiban-in* are supposed to engage themselves also in sentencing so that it would reflect a public sense of justice more keenly.

As a matter of fact, the Japanese Penal Code, in this regard, defines each offense in relatively comprehensive ways. For instance, it does not divide a murder into several ranks such as first degree, second degree and so on like in some other countries. And a wide range of penalties is prescribed for each offense. A murder, as well as residential arson, for instance, is punishable by the death penalty, life imprisonment or imprisonment for not less than five years and not more than twenty years[125].

In the conventional practice of professional-judge trial courts, a "market price," or a rough range of usual sentences, has been built up according to nature, type and other principal factors of the offense and the offender. But such customary, unwritten standards are not shared by *Saiban-in* who participate in criminal trials for the first time and, probably, only once in their lifetimes. It is not easy for them to form their own opinions about what is the right sentence for a particular defendant within the wide range of penalties prescribed by law. It must diminish the meaning of *Saiban-in*'s participation if the professional judges would lead them to follow the conventional "market price." But at the same time, it must be inappropriate if, due to the case-by-case, ad hoc decision-making of *Saiban-in* courts, sentences would vary significantly among the cases of similar natures. As mentioned earlier, an appeal can be filed against an inappropriate sentence by a *Saiban-in* trial court because reasonable and objective decision-making as well as equal treatment is required in sentencing. Hence, it became very crucial to consider how we could effectively achieve these twin goals.

(b) Sentencing data search system

The General Secretariat of the Supreme Court confronted the challenge by developing the "*Ryokei Kensaku* System",[126] a system of sentencing data retrieval by computer. Under that system, a range and distribution of sentences in similar cases, defined by more than ten key factors such as premeditation, motives, modus operandi, use of weapon, number of victims, defendant's relationship with the victim and so on, can be retrieved from the database of all the sentencing records after April 2008. If needed, the result of such retrieval will be provided in graphic forms to all the members of *Saiban-in* trial courts as a reference for their sentencing deliberations. This system is available also for prosecutors and defense counsel, who can refer to similar retrieval results in forming their opinions on sentencing.

This system could contribute to achieving the above twin goals wisely, at least under two conditions. First, the retrieval result provided to *Saiban-in* itself must be reasonably relevant to the sentencing in the instant case. For that, it is important to select appropriate key factors to specify effectively the range of similar cases from which sentencing data will be retrieved. Second, the results should not have undue effect of depriving *Saiban-in* of their own initiative to form and express their opinions on sentencing. For that, we need to define how the *Ryokei Kensaku* System should be used in the course of sentencing deliberation.

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[124] Sup. Ct. (2nd Bench) judgment of Mar. 10, 2017, SAIBANSHU KEIJI No. 321, p. 1.

[125] Penal Code arts. 199 and 108, respectively.

[126] Cf. Munehisa Sugita, Ryokei-Jijitsu no Shomei to Ryokei-Shinsa (*Proof of the Facts, Hearing and Deliberation for Sentencing*), RYOKEI JITSUMU TAIKEI, Vol. 4 (Osaka Keiji-jitsumu Kenkyuukai ed., 2011), pp. 210–13; Katsunori Ohno, Saiban-kan kara Mita Saiban-in Saiban Seido (*Saiban-in Trial System from the Viewpoint of a Judge*), HO NO SHIHAI No. 177 (2015), p. 61.

(c) Theoretical framework of sentencing

In this regard, it was rather common in conventional practice that trial courts, in their reasoning for sentence, referred to various factors, including not only those related to the criminal act itself, but also the personal background of the defendant, his/her attitudes subsequent to the criminal act as well as the response of the victim and the general public, without any reasoned order or distinction. But, for the above purposes, we need to have a firm theoretical framework to clarify what factors, in what order and how, they should consider in sentencing.

Serious discussions on that subject among concerned judges, lawyers and scholars produced a fruitful report of a semi-official study group[127]. On the recognition that, under the current Japanese law, the sentence for each convict should be assessed basically according to his/her criminal responsibility, the report stressed that, as the first step of sentencing, we should fix the basic range of sentence considering the factors relevant to the convict's criminal responsibility, such as the manner and results of his/her criminal act, his/her motive or purpose, and circumstances that led to the criminal act and so on. Any other factors, including the convict's personal background and subsequent attitudes, victim's feelings, and public response, should be ranked as subsidiary considerations; those factors may be considered only in deciding the final sentence within the above basic range of sentence. This framework, which represented a majority understanding, has been well received by many judges and lawyers.

(d) Actual situation and appellate review of sentencing by Saiban-in trial *courts*

How, then, have the *Saiban-in* trial courts actually performed in their sentencing? According to an official statistical study, *Saiban-in* trial courts' sentences in general do not seem to differ substantially from the sentences by previous professional-judge trial courts in the same categories of cases, except for the cases involving sex crimes, in which heavier sentences are imposed by *Saiban-in* trial courts probably reflecting the recent public indignation against those crimes (Figures 16–1 through 16–5[128]). As before, *Saiban-in* trial courts also most often impose imprisonment on convicted defendants for approximately a 20% to 25% diminished time period from the recommendation of the prosecutor, though it sometimes happens that the *Saiban-in* trial court imposes heavier or notably lighter sentences than recommended by the prosecutor.

Although appellate courts, respecting the purpose of the *Saiban-in* system, strictly restrained themselves from intervening in the *Saiban-in* trial courts' sentencing for the first few years, they began exercising their reviewing power especially in cases where, in their opinions, an inappropriately heavier sentence had been imposed. However, it seemed that they were searching for the right limit and standards for their intervention until the Supreme Court indicated a basic policy on sentencing and its appellate review in 2014.

(e) Supreme Court judgment of 2014

In the case where a young couple was charged with abusing their infant daughter resulting in death, the *Saiban-in* trial court found them guilty and, stressing the growing social demand for protecting children from domestic abuse, sentenced both of them to 15 years' imprisonment, which surpassed the 10 years' imprisonment recommended by the prosecutor[129]. These sentences were affirmed by the appellate court, which did not deem them as inappropriate[130].

However, the Supreme Court quashed both the trial court's and appellate court's judgments, sentencing the husband to ten years' imprisonment and the wife to eight years' imprisonment[131]. The Court declared that general trends or precedents of sentence for each type of offense should be considered as a first guide in sentencing deliberation to attain objectivity and equal treatment. Respecting the purposes of the *Saiban-in* system, the Court conceded that *Saiban-in* trial courts might be permitted to change or deviate from the customary standards by reflecting sound social commonsense, but it could be permitted, the Court stressed, only if they could demonstrate reasonable grounds to justify it. Apparently based on the theoretical framework of sentencing presented by the above study group report, the Court concluded that the *Saiban-in*

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[127] Makoto Ida *et al*., Saiban-in Saiban niokeru Ryokei Hyogi no Arikata nitsuite (*On How the Sentencing Deliberation in* Saiban-in *Trials Should Be*) (the Judicial Training and Research Institute, 2012).
[128] Saiko Saibansho Jimu-sokyoku, *supra* note 74, Figures 52–1, 52–3, 52–4, 52–7 and 52–8.
[129] Osaka Dist. Ct. judgment of Mar. 21, 2012, KEISHU Vol. 68, No. 6, p. 948.
[130] Osaka High Ct. judgment of Apr. 11, 2013; *id*., p. 954.
[131] Sup. Ct. (1st Petty Bench) judgment of June 24, 2014; *id*., p. 925.

trial court did not successfully demonstrate reasonable grounds because such factors as the growing social demand for protecting children from domestic abuse, which should be ranked as a subsidiary factor in that framework, were not significant enough for that purpose.

(f) Significance of the Supreme Court ruling

Thus, the Supreme Court defined its position by giving priority to the objective reasonableness and equal treatment in sentencing in general and extended it to *Saiban-in* trials as well by indicating the significance of "general trends or precedents" as a first sentencing guide.

Although, theoretically, the Court left room for *Saiban-in* trial courts' innovation in changing or deviating from the customary standards, it is doubtful if the courts actually could do so successfully. The basic range of sentence, under the above theoretical framework, must be fixed by the highest ranked, mostly objective factors relevant to the convict's criminal responsibility, of which significance will hardly be evaluated in a substantially different way even by reflecting "sound social common sense," compared to other subsidiary general circumstances such as the defendant's subsequent attitudes, victim's feelings, and public response.

6. Sentencing in Capital Cases

(a) Background

Most serious, among others, is sentencing in capital cases. As a matter of fact, there has been an argument that it is too heavy a burden for *Saiban-in* to involve themselves in deciding life or death of a defendant who is in their presence in court, at the same time taking into consideration the horrible scene of victimization as well as the rage of the victim's family presented to them. But for the very reason that it is the most serious matter, citizens should be asked, and even entitled, to share the responsibility for making such decisions. Considering there exist various opinions about the death penalty itself, their participation is desirable because it enables decision-making to reflect various views among the public.

Still, it is undeniable that *Saiban-in* have a hard time to reach the final decision on sentencing in these cases. Regarding such hardship, many more days are allocated for the final deliberations in capital cases.

A total of 35 defendants were sentenced to death by *Saiban-in* trial courts in the nearly nine years until the end of March 2018[132]. Although most of them involved the killing of multiple victims, there are four cases of single killing.

In this regard, previous courts had long adhered to the so-called Nagayama Standards indicated by the Supreme Court judgment of 1983[133]. In that judgment, the Court held that death sentences should be permissible only when it is deemed "absolutely necessary" from the viewpoint of the extreme gravity of the defendant's culpability, the proportionality of the punishment to the crime, as well as crime prevention, on comprehensive assessment of various factors, including the number of victims killed. While there were single killing cases in which the defendant was sentenced to death, almost all of them involved a premeditated robbery and murder, a murder for insurance money, a murder by a kidnapper or a convicted murderer on parole[134].

Considering these facts, the above study group report suggested that even the *Saiban-in* trial courts should respect precedents in sentencing in capital cases, where each person might have quite a different opinion[135].

(b) Supreme Court decisions of 2015

As if responding to the suggestion, the same division of the Tokyo High Court overturned the first two death sentences by *Saiban-in* trial courts in single killing cases in 2013[136]. In the first case (Minami-Aoyama Case) where the defendant was found guilty of intentionally stabbing the sleeping victim to death with a

[132] Saiko Saibansho Jimu-sokyoku, *supra* note 9, p. 4
[133] Sup. Ct. (2nd Petty Bench) judgment of July 8, 1983, KEISHU Vol. 33, No. 6, p. 609.
[134] Ida *et al*., *supra* note 127, pp. 110–115.
[135] *Id*., p. 103
[136] Tokyo High Ct. judgment of June 20, 2013, KO-KEISHU Vol. 66, No. 3, p. 1 (Minami-Aoyama Case); Tokyo High Ct. judgment of Oct. 8, 2013, KO-KEISHU Vol. 66, No. 3, p. 42 (Matsudo Case).

cooking knife he carried after stealing into the victim's condominium with the intent to commit robbery, the *Saiban-in* trial court imposed the death penalty in consideration of, among others, the fact that the defendant had served a twenty-year imprisonment sentence for murdering his wife and young daughter until only a half year before the instant robbery and murder[137]. The *Saiban-in* trial court in the second case (Matsudo Case) found the defendant guilty of intentionally killing a female university student who came home after he broke into her room to take her property and sentenced him to death, considering the facts that the defendant repeatedly and cold-bloodedly stabbed the promising female student to death with strong intent, that he returned to the crime scene the next day to conceal his offense by burning the room, that he committed serial offenses of a dangerous nature such as robberies resulting in bodily injuries and robbery-rapes in neighboring areas in the same period, and that he never showed any remorse for his offenses[138].

However, the defendant's previous conviction for murders in the Minami-Aoyama Case was, the Tokyo High Court pointed out, of a different nature because he killed his wife after a quarrel and his daughter as a result of an attempted double suicide, both without premeditation. Neither did the appellate court agree with the *Saiban-in* trial court's assessment of the above sentencing factors in the Matsudo Case in terms, among others, that the murder of the victim itself was not premeditated and that the serial robberies in the same period were not of the nature of endangering the victim's life.

As these appellate court judgments were sensationally reported by mass media and induced public controversy[139], the Supreme Court promptly defined their position in 2015[140]. On the recognition that the death penalty as an ultimate punishment must be applied very carefully and in such a way as to secure equal treatment, the Court declared that, in sentencing deliberations on capital offenses, it is necessary to have a common view, based upon precedent as the results of such careful applications, what factors should be considered as well as from what viewpoint and how each of them should be assessed for choosing the death penalty. And, on the total assessment of those factors, the court must demonstrate concrete and persuasive grounds to deem the death sentence "absolutely necessary" when they choose it. Stressing that *Saiban-in* trials are no exception, the Court upheld both of the appellate court judgments since, in the Supreme Court's view, such concrete and persuasive grounds were not successfully demonstrated by the *Saiban-in* trial court in either case.

(c) Significance of the Supreme Court rulings

Thus, holding on to its basic position of placing more emphasis upon objective reasonableness and equal treatment in sentencing, the Supreme Court made it even more evident in relation to the death sentence. Especially, it is remarkable that the Court did not admit any possibility for *Saiban-in* trial courts to change or deviate from the precedents by reflecting "sound social common sense" like in regular sentencing. This might mean that even the purposes of the *Saiban-in* system are forced to yield to the ultimate nature of capital punishment, which must be chosen as the last resort by absolute, uniform standards.

Still, the Supreme Court rulings could not stop furious criticism arising from every appellate court judgment that reverses the death sentence by *Saiban-in* trial court. The controversy among experts as well as the public will continue, more or less in conjunction with the basic pro and con arguments about the death penalty itself. Neither will it eliminate further contests on the appropriateness of sentencing in subsequent capital cases, each of which may vary with its own unique character different from others.

Despite the Supreme Court rulings, a year later a *Saiban-in* trial court, in another cause célèbre involving a single killing, sentenced to death the defendant who was found guilty of killing a little girl after abducting her for indecent purpose and mutilating her body for abandonment[141]. But this latest and fourth death sentence in single killing cases[142] was quashed by the appellate court for the reason that "concrete and persuasive grounds" were not sufficiently demonstrated, considering that the murder itself was not

[137] Tokyo Dist. Ct. judgment of Mar. 15, 2011, HANREI JIHO No. 2197, p. 143.
[138] Chiba Dist. Ct. judgment of June 30, 2011, KEISHU Vol. 69, No. 1, p. 168.
[139] *E.g.*, News Letter of the National Associations Crime Victims and Surviving Families, No. 46 (Dec. 10, 2013), p. 1, criticizing the two Tokyo High Court judgments as a betrayal to the nation; *id.*, No. 47 (Mar. 31, 2014), pp. 5–6.
[140] Sup. Ct. (2nd Petty Bench) decision of Feb. 3, 2015; KEISHU Vol. 69, No. 1, p. 1 (Minami-Aoyama Case); Sup. Ct. (2nd Petty Bench) Decision of Feb. 3, 2015; *id.*, p. 99 (Matsudo Case).
[141] Kobe Dist. Ct. judgment of May 18, 2016, HANREI HISHO L07150189.

premeditated and that the modus operandi was "not unprecedentedly cruel"[143]. As the prosecutor filed a *jokoku* appeal against the appellate court ruling, it is being closely watched how the Supreme Court will decide.

V. FURTHER CRIMINAL JUSTICE REFORMS

A. Investigation Procedure as a Remaining Area

In contrast to the trial proceedings, reforms were very limited regarding the criminal investigation procedure. There remained unsolved a deep-rooted, structured problem, *i.e.*, the excessive reliance on the investigative questioning of suspects and the written records of their statements in the investigation of crime and its proof at trial.

In this regard, the above-mentioned extension of the public defense system to suspects detained for serious offenses was naturally a significant improvement. Although every suspect had been entitled to retain defense counsel, only a limited number of them actually had done so for financial or other reasons. In most of the cases, unrepresented suspects had been subjected to investigative questioning by the police and prosecutors. Now that the public defense system is available to many of them, nearly 70% of the suspects are represented (Figures 17-1 and 17-2[144]). Probably as its consequence, it is reported that a growing number of the suspects deny the charges or remain silent when questioned by the police or prosecutors.

However, other reforms that had been put on the agenda of the JSRC were not adopted. Among others, defense lawyers and opposition groups who intended to control abusive or improper questioning of suspects by the police and prosecutors proposed several measures, including the mandatory video- or audio-recording of such questioning to "visualize" this invisible process[145]. Because of sharply divided opinions arising from quite different assessments of the current state of affairs as mentioned above, discussions on those proposals could not reach any concrete conclusion, other than mandating prosecutors and investigative agencies to document the time, duration etc. of., as well as names of officers engaged in, each and every questioning of detained suspects[146].

In response to the request the Judicial Affairs Committees of the legislature attached to their decisions for the 1994 revision of the CCP[147], "*hoso sansha*" (three sectors of the legal profession) thereafter continued the discussions, but in vain.

B. Moves toward Further Reforms

It was nothing but the imminence of *Saiban-in* trials that made a breakthrough. Even in former days, it had been a difficult task for the professional judges to find out what actually had happened in the course of investigative questioning when the voluntariness or trustworthiness of the defendant's confession was disputed at trial. There was hardly any proof available other than conflicting testimonies of investigating officers and the defendant. In *Saiban-in* trials where only professional judges are technically empowered to decide the voluntariness issue, *Saiban-in* are also supposed to hear the evidence on what happened in the course of investigative questioning because it is relevant to their evaluation of the trustworthiness of the defendant's confession at issue[148]. If the above situation of poor proof is not improved, *Saiban-in* will experience much greater hardship and confusion.

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[142] In the third case (Okayama Dist. Ct. judgment of Feb. 5), the defendant, who was condemned for the murder, rape and robbery of his former colleague and the mutilation of her body, withdrew his *koso* appeal against the death sentence, which was then finalized and executed later.

[143] Osaka High Court judgment of Mar. 10, 2017, HANREI HISHO L07220108.

[144] Saiko Saibansho Jimu-sokyoku, *supra* note 105, Tables 26, 27; *id*, Tables 26, 27.

[145] *E.g.*, the Japan Federation of Bar Associations, "Kokumin no Kitai ni kotaeru Keiji Shiho no Arikata" nitsuite (*On "How the Criminal Justice System Should Be in Response to the Expectation of the People*) (presentation paper to the JSRC, July 27, 2000), pp. 34–35, recounting its position declared already in its "Vision for Justice System Reform" (Nov. 20, 1998). As to the history of the arguments for visualizing investigative questioning in Japan, *see e.g.* Inouye, *supra* note 42, pp. 19–20; Hisashi Kosakai, Torishirabe Kashika no Jidai (*Era of Investigative Questioning Visualization*), KIKAN KEIJI-BENGO No. 82 (2015), pp. 11–13.

[146] Recommendations of the JSRC, *supra* note 34, Chap. Ⅱ, Part 2, 4(1) and (2).

[147] House of Representatives Committee on Judicial Affairs, Supplementary Resolution of Apr. 23, 2004; House of Councilors Committee on Judicial Affairs, Supplementary Resolution of May 30, 2004.

The mandatory documentation of the relevant facts regarding each questioning of the suspect would offer some help[149], but only to a limited extent. Thus, especially to ease such hardship for *Saiban-in*, the necessity to "visualize" invisible investigative questioning by video- or audio-recording became more keenly recognized among concerned people, including judges[150] and political parties[151]. In response to that, the public prosecutors' offices[152], and then the police[153], decided to make a discretionary trial run to record on video their questioning of suspects detained for an offense subject to *Saiban-in* trial, and gradually expanded its scope.

Defense lawyers and opposition groups who aimed to control the whole process of investigative questioning, however, were not content with such response because it was up to the discretion of prosecutors and the police themselves whether and to what extent the questioning of suspects would be recorded. They demanded that the whole process of investigative questioning of every suspect, detained or not, as well as principal witnesses must be recorded on video in any category of cases[154].

No wonder, these radical demands were not accepted by the public prosecutors' offices or the police. From their standpoint, such a far-reaching measure was not only impracticable, but also harmful because it

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[148] *E.g.* OSAMU IKEDA, KAISETSU SAIBAN-IN HO (*Commentaries on the Saiban-in Act*) (2nd ed. 2009), p. 10. The court may, if appropriate, have *Saiban-in* present at the hearing on the exclusive prerogative matters of professional judges, including the voluntariness of confession, and hear their opinions *Saiban-in* Act art. 68, sec. 3.

[149] The Rules of Criminal Procedures were revised in 2006 to add a new provision obligating the prosecutor to do his/her best to prove speedily and accurately the circumstances of the investigative questioning of suspects or others, when he/she would do so, with the use of the materials including such documentary records as much as practicable (art. 198–4).

[150] Already in 2013, two influential, prominent criminal law judges published their opinions stressing the urgent necessity for such measures in anticipation of *Saiban-in* trials, Makoto Yoshimaru, Saiban-in Seido no Moto niokeru Kohan-tetsuduki no Arikata nikansuru Jyakkan no Mondai (*Several Problems regarding the Administration of Trial Proceedings under the* Saiban-in *System*), HANREI JIHO No. 1807 (2003), p. 3; Fumiya Sato, Saiban-in Saiban ni fusawasii Shoko-shirabe to Gogi nitsuite (*On the Appropriate Manner of Evidentiary Examination and Deliberation* in *Saiban-in* trials), HANREI TIMES No. 1110 (2003), p. 4.

[151] *E. g.*, Komei-to, Saiban-in Seido Sekkei nitsuite (*New Komeito Party, For the Implementation of the* Saiban-in *System*) (December 2004); *id*., So-senkyo manifestos (*Manifestos for the General Election*) (September 2005).

In contrast, Minshu-to (*Democratic Party*) took a more radical position similar to the Japan Federation of Bar Associations, putting more stress upon strict regulation of investigative questioning by mandating the video- or audio-recording of its whole process in every case. *Id*., So-senkyo Manifestos (*Manifestos for the General Election*) (September 2005). The latter party actually proposed an enactment to realize their opinion, which was passed once in the House of Councilors in June 2008, and once more in its Committee on Judicial Affairs in June the next year.

[152] In May 2006, the Supreme Prosecutors' Office adopted the "Trial Run Policy," under which prosecutors, if it is deemed necessary to do so in preparation for later effective proof of the voluntariness of confessions, shall record on a video appropriate parts of their questioning of arrested or detained suspects (mainly the scene of their summing up of what the suspect had stated and the latter's affirmation of it at the end of questioning) unless it would disturb the function of the questioning. Then, after extending the trial run from Tokyo to other districts, the Office adopted the "Full-Scale Trial Run Policy" in March 2008, instructing all the prosecutors' offices to execute such video-recording, in principle, in every case that would be subject to *Saiban-in* trials. *Cf.* Takeru Tanojiri, Kensatsu niokeru Torisirabe no Rokuon-Rokuga no Unyo (*Operation of the Video-/Audio-Recording of Investigative Questioning in Prosecutors' Offices*), KEIJI-HO JOURNAL No. 42 (2014), p. 12. As for the subsequent developments, *see infra* note 168.

Furthermore, after the Democratic Party took over the ruling power in the general election in 2009, the newly appointed Minister of Justice began an internal high-level study meeting to discuss the visualization of investigative questioning, with the intention of realizing the party's policy described in note 151. After a two year study, during which the Council on Legislation began deliberating on the subject, as described below, the study meeting published its conclusion in August 2011, that the questioning of suspects, at first those detained in cases subject to *Saiban-in* trial, should be recorded on a video as widely as practicable, though not mandatorily or without exception, that they should discuss its extension to the questioning of mentally disabled persons or the cases under the independent, direct investigation by the prosecutors' office after a certain period of trial run, and that they should expand the current operational trial run to various cases, subjects and situations. The conclusion is available at http://www.moj.go.jp/content/000077866.pdf.

[153] The National Police Agency decided in April 2008, to begin a trial run recording of the questioning of arrested or detained suspects in the prospective *Saiban-in* trial cases in similar ways to prosecutors' offices, which began in five major prefectures in September that year and gradually extended to other prefectures, *Cf.* Yusuke Kawahara, Torishhirabe no Rokuon-Rokuga oyobi Do Seido nitaisuru Keisatsu no Taiou nitsuite (*Video-/Audio-Recording of Investigative Questioning and Its Handling by the Police*), KEISATSU-GAKU RONSHU Vol. 69, No. 92 (2016), pp. 64–65. As for the subsequent developments, *see infra* note 169.

[154] Among others, the Japan Federation of Bar Associations repeatedly publicized its official opinions demanding such full-scale video-/tape-recording. *Id*., Torishirabe no Kashika nitsuite no Ikensho (*Opinions on the Visualization of Investigative Questioning*) (June 2003).

would make it unduly difficult to obtain even voluntary and trustworthy crucial statements of suspects or key witnesses, for instance, in organized crime cases or cases of a sensitive nature, with the result of seriously disrupting effective law enforcement.

Several acquittal and retrial cases involving misconduct of the police[155] or the prosecutors[156] in their investigative questioning as well as handling of evidence in the following years triggered the second stage of criminal justice reform at the beginning of the 2010s.

In response to the strong demands for a wholescale review of the above-mentioned conventional structure of the criminal justice system, especially that of criminal investigation procedure[157], the Minister of Justice entrusted such review to the Council on Legislation in June 2011.

C. Recommendation of the Council on Legislation of 2014

After three years of research and deliberation mainly in its Special Division on the Criminal Justice System in the New Era[158], the Council recommended a package of reforms in September 2014[159].

From the sequence of events leading to this second stage, the main focus of discussions in the Council was naturally put on the video- or audio-recording of investigative questioning, more specifically, upon such issues as how widely it should be mandated and what situations should be exempted from that mandatory recording. But, here again, differences of opinion were so big that even a deeply involved insider like me could not say for sure the Council would reach any conclusion whatsoever.

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[155] *E.g.*, Kagoshima Dist. Ct. judgment of Feb. 23, 2007, HANREI TIMES No. 1313, p. 285 (Shibushi Case) (finding not guilty a local election candidate, his wife and ten residents charged with election law violations, for the reason of the establishment of an alibi for the candidate and the untrustworthiness of the defendants' confessions obtained by the improper questioning of the police); Toyama Dist. Ct. Takaoka Branch judgment of Oct. 10, 2007, HANREI HISHO L06250309 (Himi Case) (finding innocent at a new trial a convict who served out a three-year imprisonment sentence for rape, after the real perpetrator came out and confessed). *See also* Tokyo High Ct. decision of June 14, 2008, HANREI TIMES No. 1290, p. 73 (Fukawa Case) (affirming the Mito Dist. Ct. Tsuchiura Branch decision to start a new trial for two convicts serving a life imprisonment sentence for robbery and murder, for the reason of the discovery of new evidence that would, in association with the existing evidence, induce a reasonable doubt about their guilt; subsequently, both convicts were acquitted at a new trial in 2011); Tokyo High Ct. decision of June 23, 2009, HANREI TIMES No. 1303, p. 90 (Ashikaga Case) (affirming the Tokyo Dist. Ct. decision to start a new trial for a convict serving a life imprisonment sentence for abduction of a little girl for obscene purpose and murder, etc., for the reason of the contradictory findings of new DNA testing; subsequently, the convict was acquitted at a new trial in 2010).

Considering such situation, the National Public Safety Commission supervising the police entrusted in February 2010 a study for "upgrading the investigative methods and questioning" to a committee composed of various experts, including those enthusiastic for the video- or audio-recording of investigative questioning. Two years later, the committee published its final report, in which they proposed for, at least as a first step, expanding the current trial run of video-recording to many more cases as well as extending it to the questioning of mentally disabled persons. The final report is available at https://www.npa.go.jp/bureau/criminal/sousa/sousa_koudoka_kenkyukai/pdf/saisyuu.pdf.

[156] In 2010, it was revealed that the prosecutor of the Special Investigation Division of the Osaka District Prosecutors' Office in charge of a false official document production case against a high-ranking governmental official forged the log data of an electric file that might have been favorable evidence to the defendant. The revelation of his misconduct shocked the nation and urged the whole-scale review of the entire prosecution service,

The Minister of Justice responded promptly by setting up the "Kensatsu no Arikata Kento-Kaigi" (*Commission to Deliberate on What the Public Prosecutors' Offices Should Be*), composed of fifteen members representing various legal and non-legal sectors, including me. After the six-month intensive discussions, the Commission produced a comprehensive set of proposals for many reforms regarding the organization, internal controls, personnel management, training system, professional ethics, etc. *Id.*, Kensatsu no Saisei ni mukete (*For the Regeneration of the Prosecution Service*) (Mar. 31, 2011) 〔available at http://www.moj.go.jp/content/000072551.pdf〕.

[157] Among others, the above mentioned Commission, in its recommendations, urged the Minister of Justice to start immediately such wholescale review by setting up a "forum for thorough deliberation reflecting both the people's opinions and the expertise of professionals, including relevant organs". *Id.*, Part. 4, 3.

[158] The Special Division, composed of 26 members including me, held a total of 30 meetings (and each of its three sub-committees held ten meetings) from June 29, 2011 through July 9, 2014, to reach its conclusion. Their complete verbatim minutes are published on the Ministry of Justice Web site 〔http://www.moj.go.jp/shingi1/shingi03500012.html〕. *See also* Takashi Kikkawa, Hosei Shingikai niokeru Shingi no Keika to Gaiyo (*Progress and Outlines of the Deliberation in the Council on Legislation*), RONKYU JURIST No. 12 (2015), pp. 4 *et seq.*

[159] The Council on Legislation, Aratana Keiji-shiho Seido no Kochiku nitsuiteno Chosa Shingi no Kekka (*The Results of the Research and Deliberation for Building Up a New Criminal Justice System*) (Sep. 18, 2014) 〔available at http://www.moj.go.jp/content/001127393.pdf〕.

At the very end of the deliberation, however, the Council finally managed to decide with unanimity to take a realistic approach, *i.e.*, improving the matter step-by-step from the starting point on which consensus could be obtained. The Council recommended to mandate in principle video-recording of every investigative questioning of detained suspects regarding the cases subject to *Saiban-in* trial as well as those under the independent, direct investigation by public prosecutors[160]. Additionally, the Council expressed its expectation that the trial-run video-recording by the prosecutors as well as the police should be extended to the extent possible and that, on the basis of its result, the scope of mandatory video-recording should be reconsidered within an appropriate period of time[161].

In addition to that measure, the Council further proposed a more comprehensive, structural change to decrease excessive reliance on the investigative questioning of suspects and the written records of their statements throughout the process of criminal investigation and proof at trial by a combination of three groups of measures:

(1) Measures to deter or to check improper investigative questioning

In addition to the video-recording of investigative questioning itself, the Council recommended the extension of the public defense system so as to cover all the suspects in detention for that purpose[162].

(2) Measures other than investigative questioning to obtain useful, trustworthy statements from the persons involved

Included is a negotiation procedure between the prosecutor and the defense counsel in which favorable prosecutorial treatment, such as suspension of prosecution, reduction or non-prosecution of certain charges, and recommendation for a lenient sentence, could be promised to the suspect or defendant in exchange for his/her cooperation to solve a case against others involving an organized, financial or business crime. The Council also proposed the adoption of an immunity procedure with which an accomplice could be forced to give crucial testimony to convict a major figure in an organized crime or conspiracy[163].

(3) Effective measures to collect objective evidence

Among others, the Council proposed the reinforcement of interception of telecommunications by making it more efficient, easier to use as well as more reliably controlled with the use of electronic encryption techniques[164].

Accepting these and other recommendations, the government introduced a bill to revise related laws, which was passed in the legislature in May 2016[165], and the new law is being put into force in four steps, finally becoming effective by June 2019.

D. Prospect for the Effects of the Reforms

Proponents for much stricter restriction on the investigative powers of prosecutors and the police are naturally discontent with the new law. They are criticizing the reforms as providing less than minimum restrictions necessary, while increasing investigative powers, any of which, in their opinion, will induce abuse or other serious problems. They assert, among others, that the video-recording of investigative questioning is legally mandated only in two categories of cases that account for an extremely small portion, probably 3% or so, of all criminal cases and that several exceptions to that already limited extent of mandatory video-recording further will make a big loophole[166].

However, considering the long-standing structured practice, as mentioned earlier, as well as sharply divided opinions about it, it should not have been realistic or appropriate to insist on a one-point breakthrough

[160] *Id.*, Outline of the Recommendations 1, *implemented* in CCP art. 301–2.
[161] *Id.*, Outline of the Recommendations 1.
[162] *Id.*, Outline of the Recommendations 5(1), *implemented* in CCP art. 37–2.
[163] *Id.*, Outline of the Recommendations 2(1), (2), *implemented* in CCP art. 350–2 and arts. 157–2, 157–3, respectively.
[164] *Id.*, Outline of the Recommendations 3, *implemented* in the Interception of Tele-Communication Act, arts 3, 5, 6, 14, 20, 21, Table 2 etc.
[165] The Act to Revise a Part of the Code of Criminal Procedure and Related Laws, Act No. 54 of June 3, 2016. *Cf.* Hiroyuki Tsuji, Keiji Sosho-ho tou no Ichibu wo Kaiseisuru Horitsu no Seitei Keii tou nituite (*Background of the Enactment of the Act to Revise a Part of the CCP and Related Laws and Its Outlines*), KEISATSU-GAKU RONSHU Vol. 69, No. 8 (2015), p. 1.

only by such drastic, maximum extension of the mandatory video-recording without taking any concrete action to change the basic structure as a whole. If members of the Council had stuck to an all-or-nothing approach, nothing would have changed. It was, in my opinion, very important to take one actual step forward, which we can and should keep extending.

The video-recording in the new law itself is legally mandated in the most serious or high-profile cases where large-scale investigation is normally pursued by numerous investigating officers and suspects are most likely subject to tough questioning in the custody of the police and prosecutors. Its scope is substantially enlarged from the former trial-run in that the whole process of every investigative questioning of a suspect regarding such case must be recorded from right after his/her arrest. I believe this will have much larger and penetrating impacts than it may appear.

Furthermore, whenever the voluntariness of a defendant's self-incriminating statement obtained by investigative questioning is disputed at the trial involving such offense, the prosecutor must present the video of the investigative questioning at issue[167]. Otherwise, the prosecutor could not prove the voluntariness successfully unless the court finds the questioning at issue was exempted from mandatory video-recording. Once such videos become indispensable to prove effectively the voluntariness of the suspect's confession in those cases, it must be practically hard to do so without similar video in contested cases involving other offenses as well. Thus, it is highly probable, I think, that this eventually will become a de facto standard method of proof in other contested cases as well.

As a matter of fact, the public prosecutors' offices have already decided to record, and actually have been recording, on a video, as far as practicable, the whole process of their questioning of every arrested or detained suspect in (1) the prospective *Saiban-in* cases and (2) the cases under the independent, direct investigation by the prosecutors' office, as well as that of (3) mentally disturbed or mentally disabled suspects in detention. They even further expanded their trial run to (4) their questioning of suspects in other categories of cases and major witnesses in the cases where its legality or properness is likely to be disputed at trial[168]. The police also, though more slowly and conservatively, have been taking after the prosecutors especially in the cases where the voluntariness or trustworthiness of confession and other statements obtained by their questioning might be seriously disputed at trial[169].

While many front-line investigating officers still feel resistance against it, video-recording, from a broad perspective, should prove itself beneficial to prosecutors and the police as well because it certainly would reduce unfounded accusations against them for illegal or improper questioning and troublesome disputes over the voluntariness of suspects' statements.

VI. CONCLUSION

These and other new reforms could certainly have substantial effects on various aspects of Japanese criminal justice. But it will depend much upon the persistent, patient, attentive, sincere and constructive

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[166] *E.g.*, KEIJI-SHIHO KAIKAKU TOWA NANI KA (What Is the Criminal Justice Reform) (H. Kawasaki and S. Mishim ed., 2014)); Nanae Toyosaki, Torishirabe oyobi Sintai Kosoku no Kaikaku (*Reforms of Investigative Questioning and Detention of Suspects*), KEIHO ZASSI Vol. 55, No. 1 (2015), pp. 89–101; Shinichiro Koike, Torishirabe no Rokuon-Rokuga (*Video-/Audio-Recording of Investigative Questioning*), HO TO MINSHU-SHUGI No. 510 (2016), p. 10. *See also* Yuji Shiratori, Hoseishin Tokubetsu-bukai wa Kadai ni kotaeta ka (*Has the Special Division of the Legislation Council Fulfiled Its Task?*), HORITSU JIHO Vol. 86, No. 10 (2014), pp. 5–6; Hiroyuki Kuzuno, Torisirabe no Rokuon-Rokuga Seido (*System of Video-/Audio-Recording of Investigative Questioning*), *id.*, p. 16; Akira Goto, Keiso-ho tou Kaisei-an no Zentai-zo (*General Outlines of the Bill to Revise the CCP and Related Laws*), HORITSU JIHO Vol. 88, No. 1 (2016), pp. 6–7.

[167] CCP art. 301H-2 (to be enforced by June 2019).

[168] *Cf.* Tanojiri, *supra* note 152, pp. 12–13. According to the latest official report, the video-recoding execution rate has reached to 100% or so in the first three categories; the whole process of the questing was recorded in 99.6% of the cases in the first category, 100% in the second category, 85.2 to 88.8% in the third category in the six months from April through September 2017. The number of trial-run video-recodings executed in the fourth category also have been increasing. Saiko Kensatsu-cho,, Kensatsu niokeru Torishirabe no Rokuon-Rokuga nitsuiteno Jissi Jokyo (*Supreme Prosecutors' Office, Enforcement Situation regarding the Video-/Audio-recording of the Investigative Questioning*) (Feb. 2018) 〔available at http://www.kensatsu.go.jp/kakuchou/supreme/rokuon_rokuga01.html〕.

[169] *Cf.* Kawahara, *supra* note 153, pp. 64–69.

efforts of all the parties involved, as well as lasting public support for them, to what extent and how the reforms actually change the above-mentioned conventional structure and improve the total quality of Japanese criminal justice. There still is a long way to go.

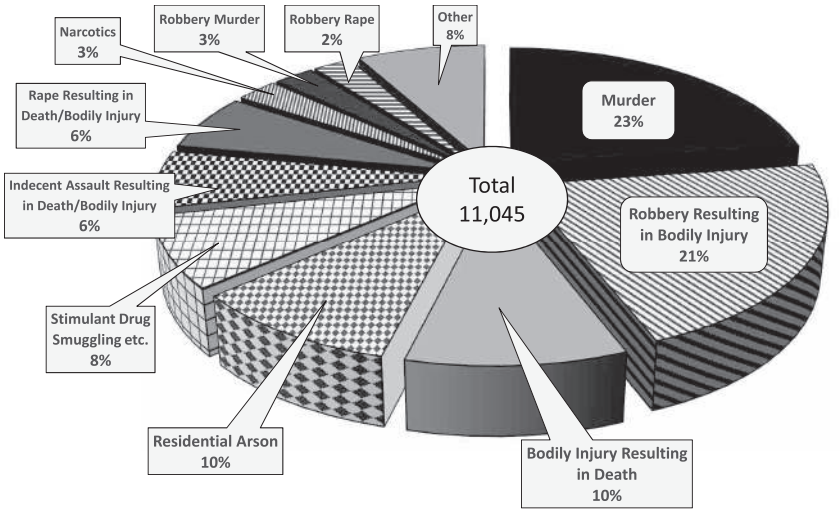

Figure 1: Charges Against the Defendants who Received Final Judgment by *Saiban-in* Trial Courts (2009.5 ～ 2018.3)

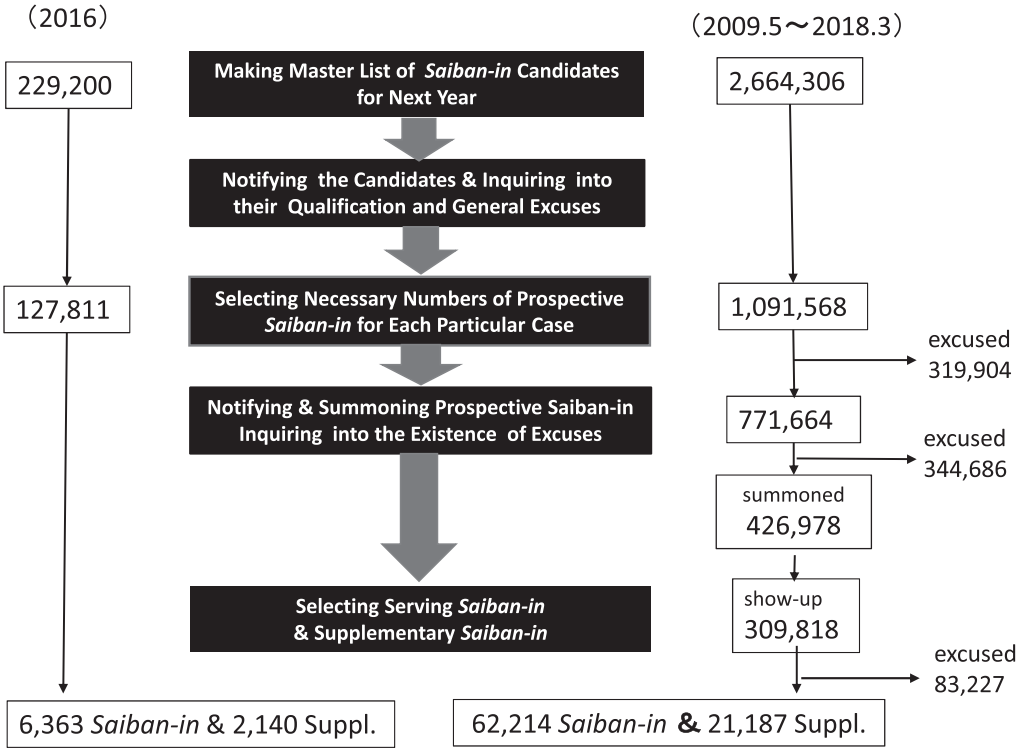

Figure 2: *Saiban-in* Selection Process

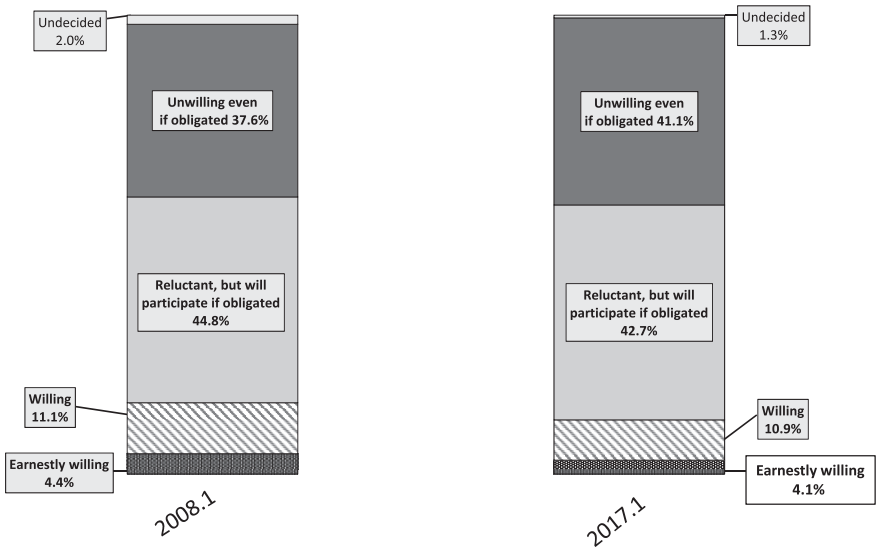

Figure 3: Public Willingness to Participate Before and After the Introduction of *Saiban-in* System

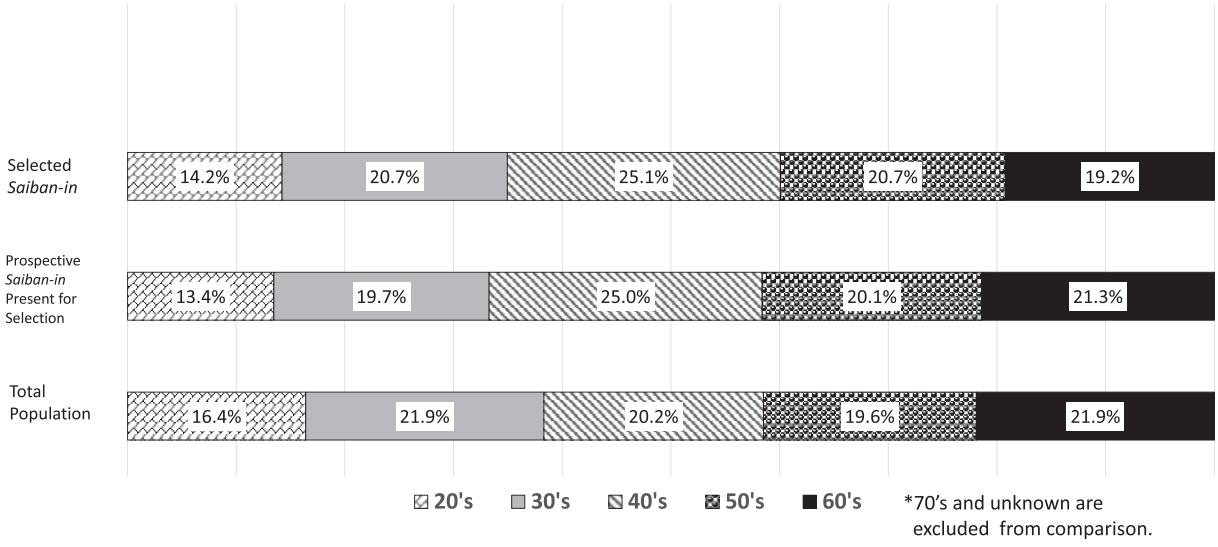

Figure 4-1: Age Distribution in Comparison: Total Population, Prospective *Saiban-in* Present for Selection and Selected *Saiban-in*（2015）

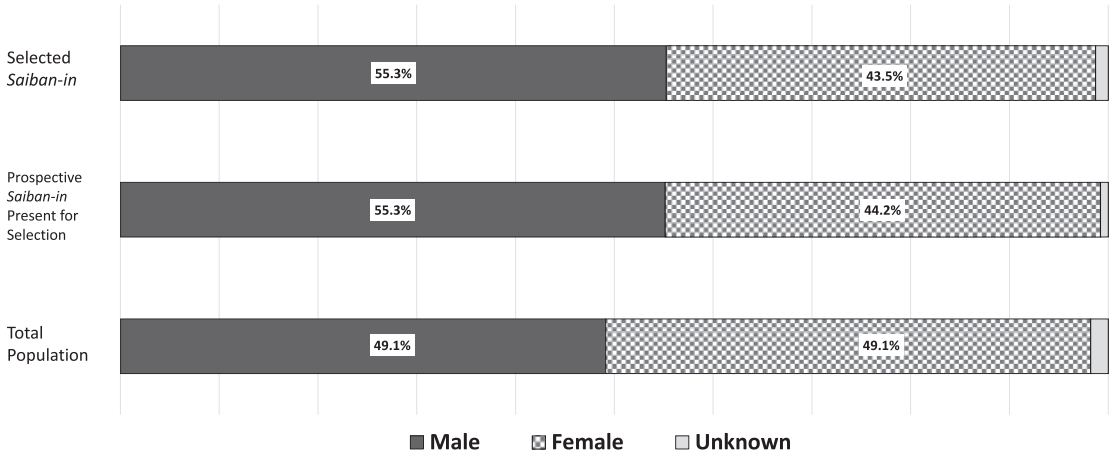

Figure 4-2: Gender Distribution in Comparison: Total Population, Prospective *Saiban-in* Present for Selection and Selected *Saiban-in*（2015）

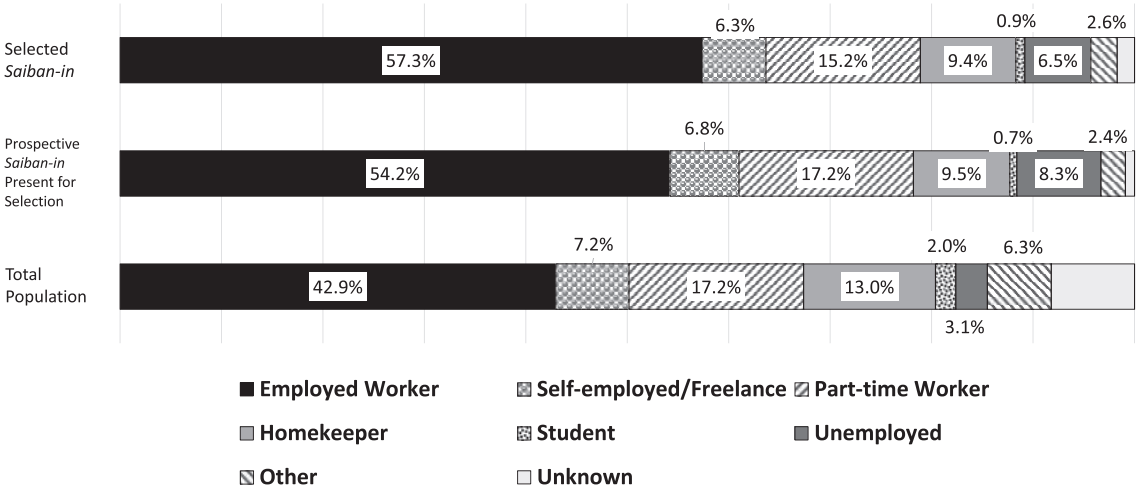

Figure 4-3: Occupational Distribution in Comparison: Total Population, Prospective *Saiban-in* Present for Selection and Selected *Saiban-in*（2015）

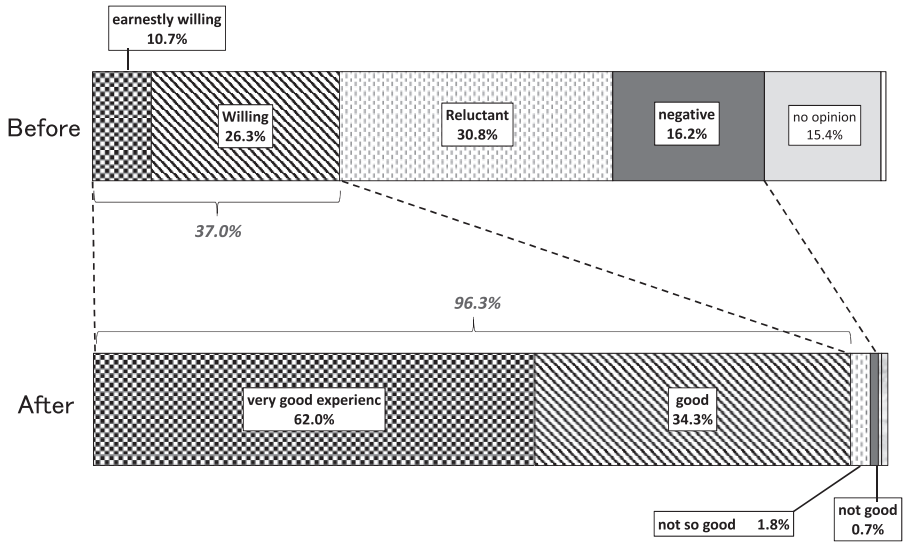

Figure 5: Feelings of Former *Saiban-in* Before & After Their Service（2017）

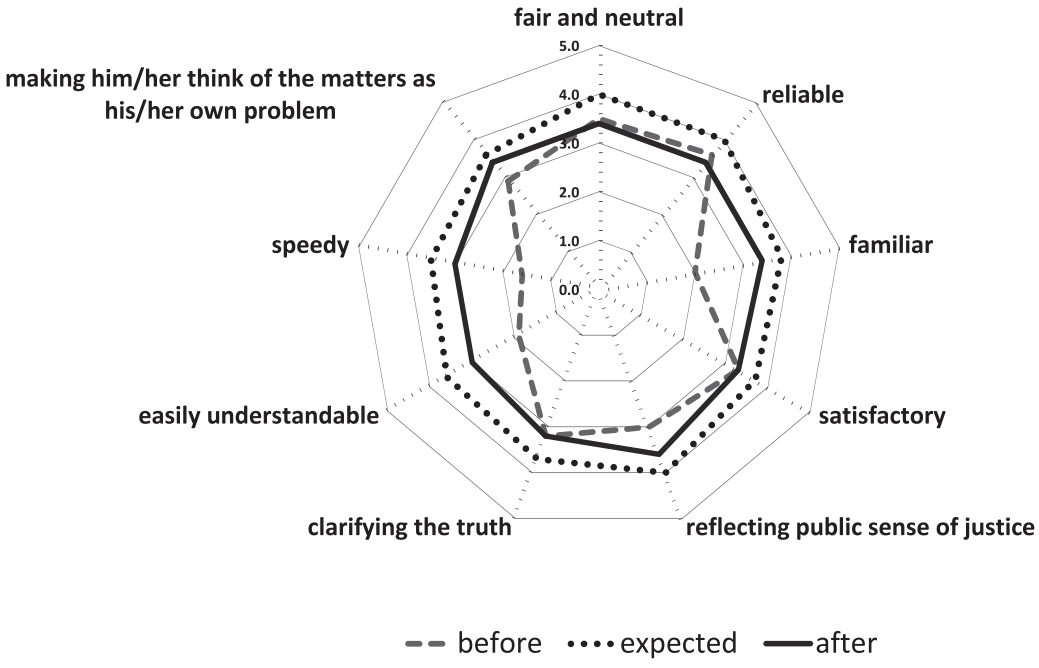

Figure 6: Public Image of Criminal Justice System Before and After the Enforcement of *Saiban-in* System（2017）

Table 7: Long *Saiban-in* Trials

Dist. Ct. Year	1st Sesssion to Judgment	Number of Trial Sessions	Charges	Sentence
Kobe（Himeji Br.） 2018	207 days （scheduled）	76 days （scheduled）	3 Murders etc.	
Nagoya，2016	160 days*	18 days	2 Murders, 1 Injury Resulting in Death	Life Imprisonment, *appealed*
Kyoto，2017	135 days	38 days	3 Murders, 1 Attempted Murder	Death, *appealed*
Kobe，2015	127 days	28 days	3 Murders, Corpse Abandonment etc. against 3 Defendants	21 years' Imprisonment, *1 defendant appealed*
Kobe，2015-16	121 days	25 days	3 Murders, Unlawful Confinement etc.	23 years' Imprisonment
Kobe，2014-15	116 days	29 days	2 Murders, Corpse Abandonment etc.	17 years' Imprisonment
Tokyo，2015	105 days	39 days	14 Murders, Attempted Murders etc.（Aum Cult Case）	Life Imprisonment *appealed*
Saitama，2012	100 days	36 days	3 Murders, Frauds etc.（Metropolitan Area Serial Suspicious Death Cases）	Death *appeals rejected*
Kobe，2015	87 days	19 days	3 Murders, Bodily Injury Resulting in Death etc.	Life Imprisonment *appealed*
Tottori，2012	74 days	20 days	2 Robbery Murders, Fraud etc.（Tottori Serial Suspicious Death Cases）	Death *appeals rejected*
Nagoya，2017	68 days	21 days	1 Murder, 3 Attempted Murders	Life Imprisonment
Tsu，2013	67 days	22 days	1 Murder	17 years' Imprisonment

* Including 78 days of suspension due to the partial change of charges against the defendant.

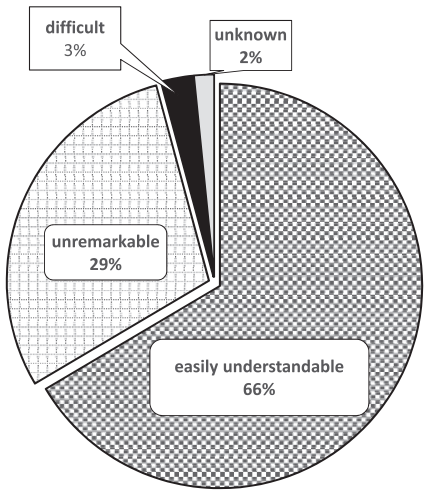

Figure 8: Understandability of Trial Proceedings as Evaluated by Former *Saiban-in*（2016）

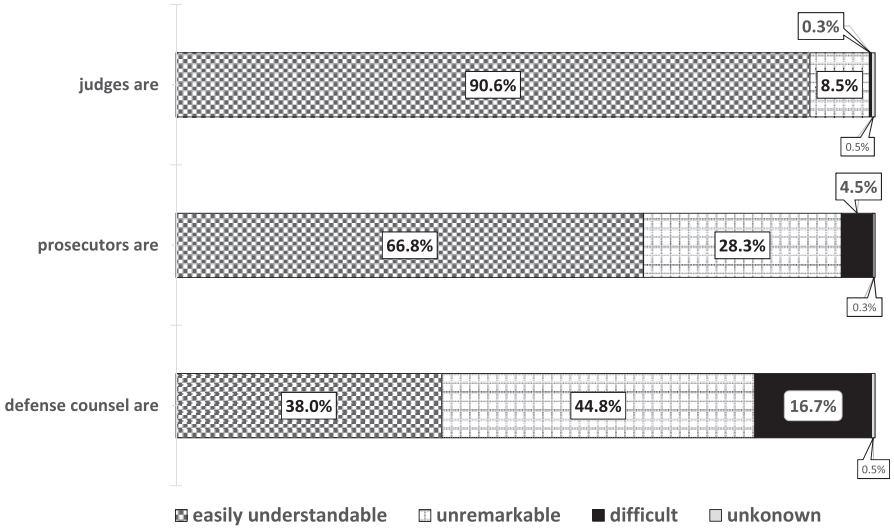

Figure 9: Understandability of the Presentation & Arguments of the Prosecutor and Defense Counsel and the Instruction of Professional Judges as Evaluated by Former *Saiban-in* (2016)

Table 10: Final Disposition by *Saiban-in* Trial Courts and *Koso*-Appeals Filed against It (2009.5 ～ 2018.3)

	Defendants Receiving Final Disposition	Convicted	Acquitted	Transferred to Family Courts	Prosecution Dismissed etc..	*Koso*-Appeals Filed
All Cases	11,045	10,723	86	101	225	3,908 (36.1%)
Stimulant Drug Cases	880	835	33	0	12	418 (38.6%)

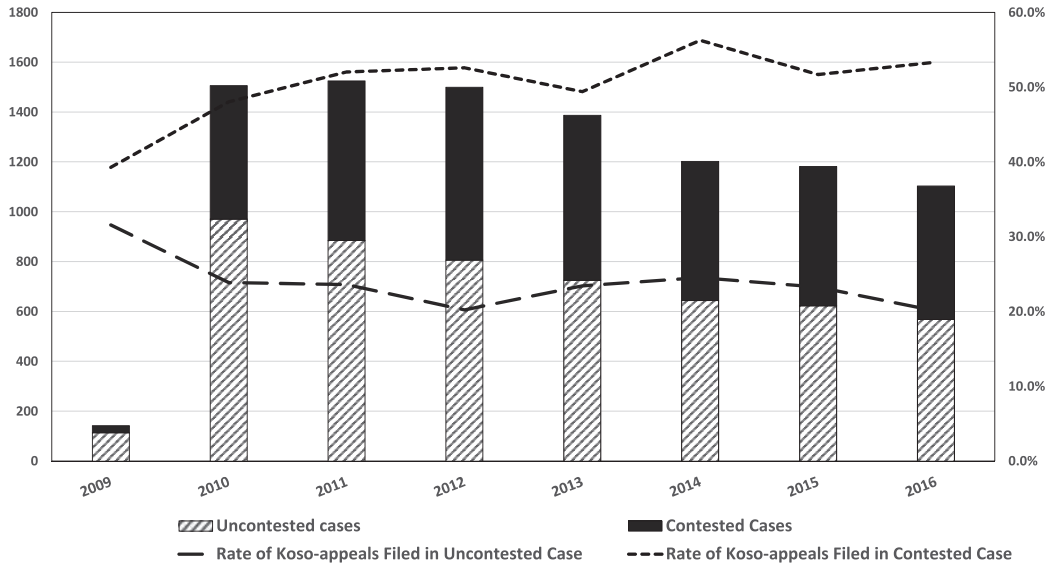

Figure 11: Distribution of Contested and Uncontested Cases Tried by *Saiban-in* Courts & Rate of *Koso*-Appeals Filed against Their Judgments in Each Category（2009 ～2016）

Table 12: Reasons for *Koso*-Appeals against *Saiban-in* Trial Court Judgments（2009 ～ 2016）

Defendants Receiving Appellate Courts' Final Disposition	Insufficient Reasoning *etc.*	Legal or Procedural Error	Mistake of Fact-Finding	Inappropriate Sentence	Subsequent Circumstances	Other
3,020	122 （4.0%）	670 （22.2%）	1,867 （61.8%）	2,232 （73.9%）	293 （9.7%）	16 （0.5%）

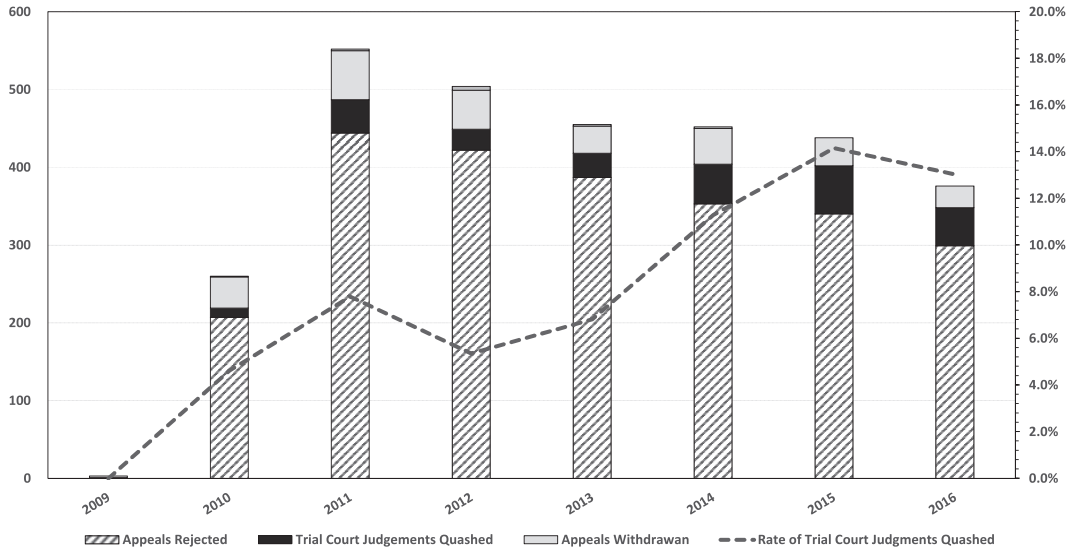

Figure 13: Disposition of *Koso*-Appeals by Appellate Courts in *Saiban-in* Cases（2009 ～2016）

Table 14: Reasons for Quashing *Saiban-in* Trial Court Judgments on Appeal（2009 ～ 2016）

Total	Insufficient Reasoning etc.	Legal or Procedural Error	Mistake of Fact-Finding	Inappropriate Sentence	Subsequent Circumstances	Other
220 （Rate of Quashed Cases 9.9%）	6 （0.3%）	21 （0.9%）	58 （2.6%）	21 （0.9%）	124 （5.6%）	0 （0.0%）

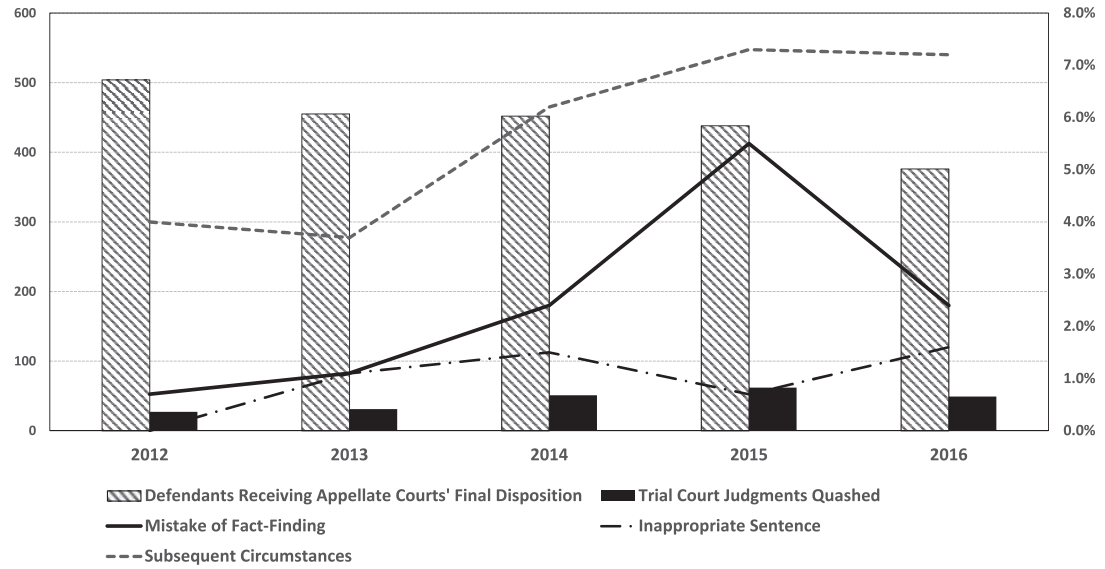

Figure 15: Rate of *Saiban-in* Trial Court Judgments Quashed by Appellate Courts by Reason
(2012 ～ 2016)

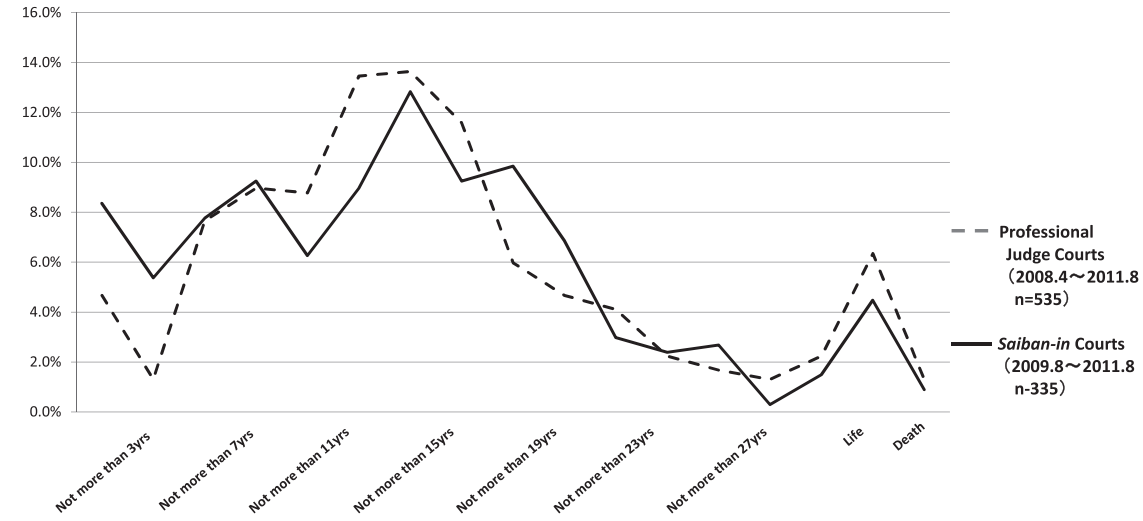

Figure 16-1: Comparison of Sentences Between *Saiban-in* & Professional-Judge Trial Courts in Murder Cases

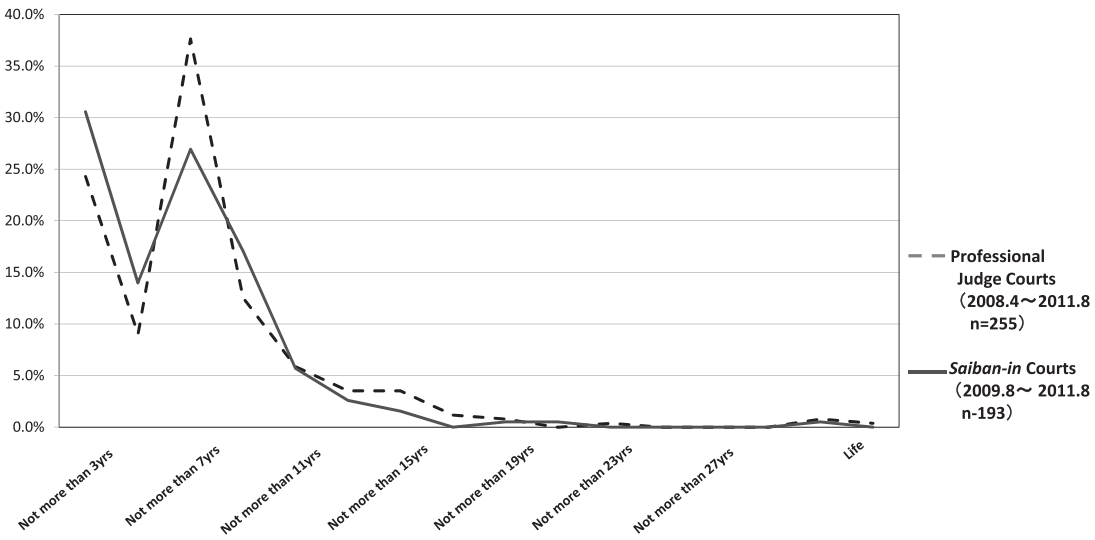

Figure 16-2: Comparison of Sentences Between *Saiban-in* & Professional-Judge Trial Courts in Residential Arson Cases

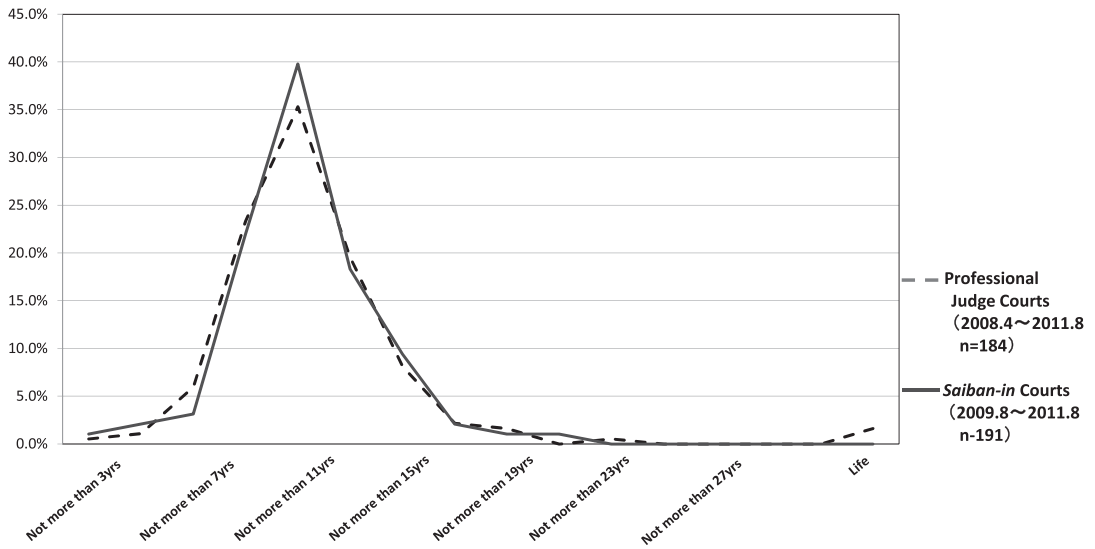

Figure 16-3: Comparison of Sentences Between *Saiban-in* & Professional-Judge Trial Courts in Serious Stimulant Drug Offense Cases

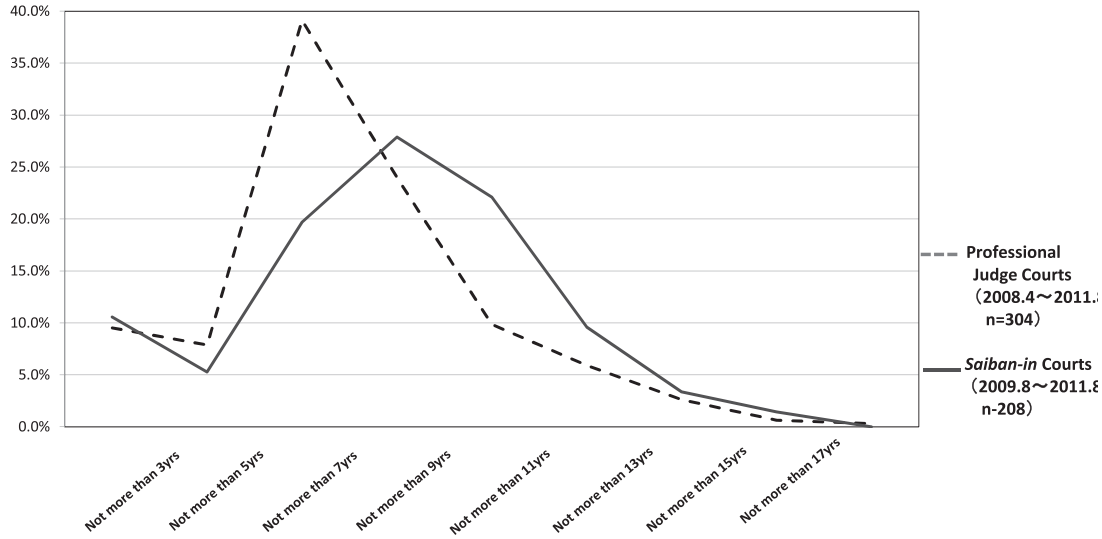

Figure 16-4: Comparison of Sentences Between *Saiban-in* & Professional-Judge Trial Courts in Cases of Bodily Injury Resulting in Death

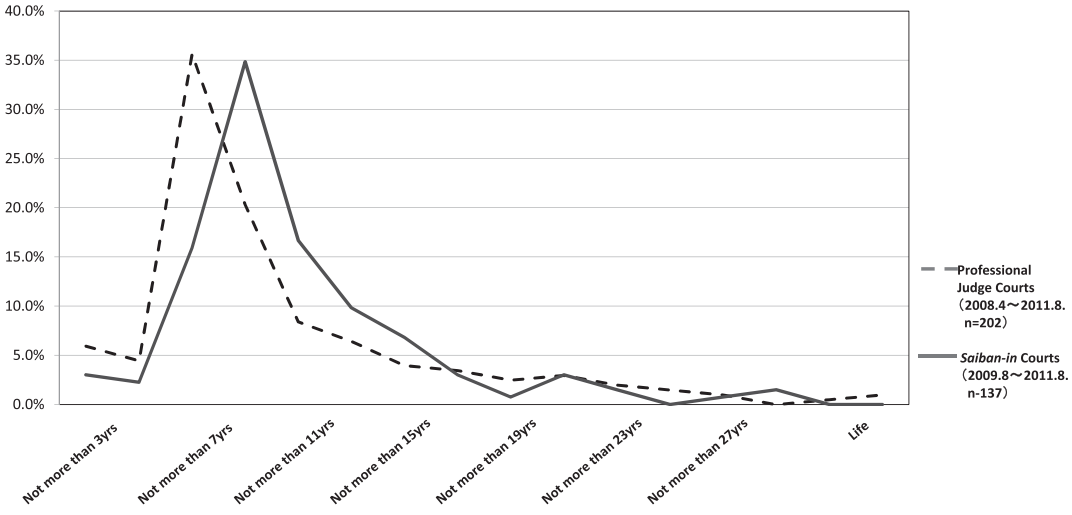

Figure 16-5: Comparison of Sentences Between *Saiban-in* & Professional-Judge Trial Courts in Cases of Rape Resulting in Bodily Injury

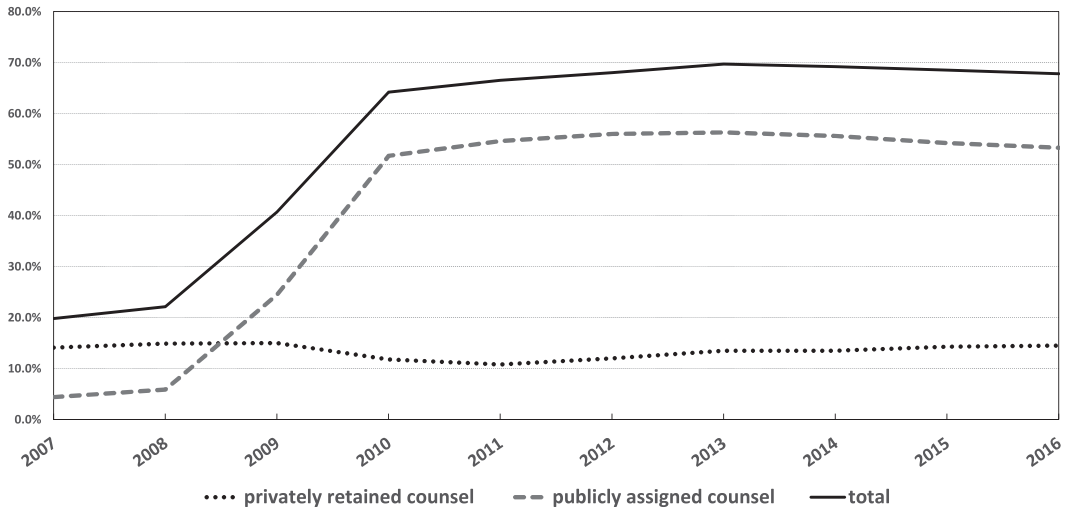

Figure 17-1: Rate of the Defendants Receiving Final Disposition by District Courts Who Had the Assistance of Defense Counsel from Investigation Stage（2007 ～ 2016）

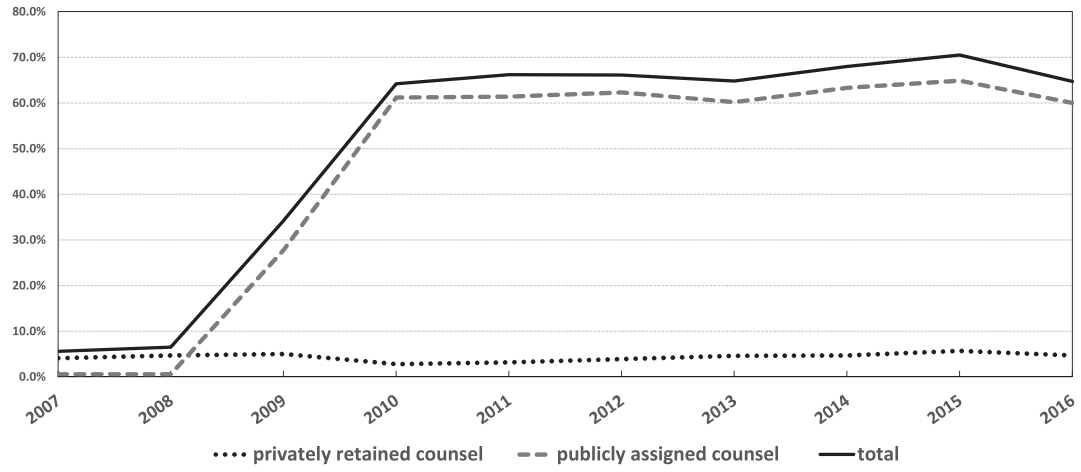

Figure 17-2: Rate of the Defendants Receiving Final Disposition by Summary Courts Who Had the Assistance of Defense Counsel from Investigation Stage（2007 ～ 2016）

CURRENT SITUATION AND CHALLENGES OF LAW-RELATED EDUCATION

*Kyoko ISOYAMA**

I. INTRODUCTION

The purpose of this paper is to discuss the current situation and challenges of Law-Related Education. In this paper, the discussion centers on the idea of Law-Related Education, the diversity of Law-Related Educational curriculum in the United States, the characteristics of Law-Related Education in Japan, and the idea of justice studies in elementary and junior high school.

Law-Related Education in Japan is affected by the United States. Law-Related Education in Japan arose mainly out of the field of social studies in the 1990s. The father of Law-Related Education in the United States is Isidore Starr, while the father of Law-Related Education in Japan is Yuji EGUCHI[1].

Social studies in Japan was established after World War II and focused on Constitutional Education. It is evaluated as having achieved some results toward the realization of a democratic society in Japan. However, this resulted in a limited understanding of the relationship between the state and individuals, only as a hierarchical relationship between the state and the people. Law-Related Education in Japan is an attempt to position legal citizenship as a concept that includes horizontal relationships between society and the citizen and between citizen and citizen.

II. THE IDEA OF LAW-RELATED EDUCATION

A. Definition of Law-Related Education

Law-Related Education in the United States is a leading model of Law-Related Education in Japan. According to "The Law-Related Education Act of 1978"[2], which was approved in the United States Congress, Law-Related Education in the United States is defined as "education to equip non-lawyers with the knowledge and skills pertaining to the law, the legal process, and the legal system, and fundamental principles and values on which these are based."

Since then, Law-Related Education in the United States has been actively positioned as one of the educational subjects to be addressed throughout the United States as a whole. The U.S. Department of Education promoted institutional expansion of Law-Related Education in the United States.

According to U.S. Department of Education regulations, Law-Related Education helps students "respond effectively to the law and legal issues in our complex and changing society."[3] The definition of Law-Related Education in the United States reveals three features. Firstly, it targets non-lawyers, including children, and is different from law-school education, which is targeted to those seeking to become legal experts. Secondly, it addresses "the law, the legal process, and the legal system, and fundamental principles and values on which these are based". Law-Related Education in the United States deals with the law in a broad sense. It is not limited to constitutional law, civil law, or criminal law, but addresses dynamic, active and working laws and legal values. Thirdly, it fosters "knowledge and skills" that can be used. In addition to gaining knowledge, it is

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[1] Yuji EGUCHI. (1993). Shakaikaniokeru 'Hokyoiku' no Juyousei: Americashakaikaniokeru 'Hokyoiku' no Kentowotoshite. Nihonshakaikakyouikugakkai. *Shakaikakyouikukenkyu*. No. 68. pp. 1–17. (江口勇治「社会科における『法教育』の重要性―アメリカ社会科における『法教育』の検討を通して―」日本社会科教育学会『社会科教育研究』No. 68, 1993 年, pp. 1–17.)

[2] Public Law 95–561. (1978). *Law-Related Education Act of 1978*.

[3] American Bar Association Division for Public Education. *Law-Related Education Network*. (https: //www. americanbar. org/groups/public_education/resources/law_related_education_network.html)(visit; 2018.1.5).

important to encourage skills acquirement and attitude formation.

From the late 1960s to the latter half of the 1970s, in the United States, there was a growing awareness that it was important to engage in Law Studies in a broad sense in school. Law-Related Education in the United States was intended for two purposes:[4] citizenship education and the prevention of juvenile delinquency. Firstly, in terms of citizenship education, it is a well-known fact that the Watergate affair caused political stagnation in the 1970s in the United States. In response to that, a diverse and concrete approach to citizenship education including global education and multicultural education was actively discussed. Law-Related Education is aimed at people recognizing the legal value of justice in the United States. Moreover, it was proposed as an approach for citizens to acquire skills to solve such legal problems related to justice. Secondly, Law-Related Education was also intended to prevent juvenile delinquency. Since the latter half of the 1960s, youth crime in the United State continued to increase and became a more serious problem. Law-Related Education was expected to reduce the total number of crimes and to improve the behavior of young people.

B. Goals, Contents, and Methods of Law-Related Education

One of the goals of Law-Related Education in the United States is to develop legal literacy. Legal literacy is established upon two main ideas[5]. Firstly, Law-Related Education should be recognized as an integral part of each person's basic education for becoming a knowledgeable and responsible citizen. Secondly, promoting the 'legal literacy' of citizens safeguards our democratic institutions.

When organizing Law-Related Education in elementary and secondary education at school, the main goal is to develop legal literacy for each citizen. According to "Law-Related Education: A Crucial Component of American Education"[6] presented by the American Bar Association Special Committee on Youth Education for Citizenship, "legal literacy is an essential prerequisite if one is to function effectively as a citizen in private and public affairs."

Legal literacy is thought to be an ability fostered by achieving three goals, with the assumption that the contents and realities change along with changes in society. Firstly, it is to learn of moral reasoning and ethical analysis skills. Secondly, it is to appreciate of the legal process and an understanding of the functions of the law. Thirdly, it is to acquire information about the law. The author thinks that it is meaningful that the order from first to third is skill acquirement, attitude formation, knowledge understanding.

Charlotte C. Anderson states the following ten features as characteristic changes of Law-Related Education[7].

① Perceiving law as promotive, facilitative, comprehensible, and alterable
② Perceiving people as having potential to control and contribute to the social order
③ Perceiving right and wrong as issues all citizens can and should address
④ Perceiving the dilemmas inherent in social issues
⑤ Being reflective decision-makers and problem solvers who make grounded commitments
⑥ Being able to give reasoned explanations about commitments made and positions taken
⑦ Being socially responsible conflict managers
⑧ Being critically responsive to legitimate authority
⑨ Being knowledgeable about law, the legal system and related issues
⑩ Being empathetic, socially responsible and considerate of others
⑪ Being able to make mature judgements in dealing with ethical and moral problems

[4] Report of the American Bar Association Special Committee on Youth Education for Citizenship. (1975). *Law-Related Education in America: Guidelines for the Future*. American Bar Association. pp. 3–4.
[5] Study Group on Law-Related Education on Law-Related Education. (1978). *Final Report of the U. S. Office of Education*. U. S. Government Printing Office. (ED175 737). p. xi.
[6] *Ibid*. p. 51.
[7] Anderson, Charlotte C. (1980). Promoting Responsible Citizenship Through Elementary Law-Related Education. *Social Education*. Vol. 44–5. p. 384.

Anderson states that "the major goal of Law-Related Education is to move children away from negative characteristics and toward characteristics more in keeping with the demands of democratic stewardship."[8] She also states that "Law-Related Education is congruent with good social studies in general and is a means of fostering the goals of citizenship education."[9]

Law-Related Education is fostered by the following abilities for children.

Correct recognition of the essence of law and the legal process: ①, ②
Acquiring skills to analyze and solve the legal problems: ③, ④, ⑤, ⑥, ⑦
Evaluation of the essence of law and the legal process: ⑧
Understanding law, the legal system and related issues: ⑨
Ethical and moral judgment of legal problems: ⑩, ⑪

Contents of Law-Related Education include the following twelve items[10].

① Legal principles and the values on which they are based
② The Bill of Rights and other constitutional law
③ The role and limits of law in a democratic society
④ Conflict and dispute resolution
⑤ The role of law in avoiding conflict and disputes
⑥ Development and administration of rules
⑦ The administration of the criminal and civil justice systems, and their strengths and weaknesses
⑧ Informal laws
⑨ Authority, freedom, enforcement, and punishment
⑩ Law as a vehicle to illuminate and resolve social and political issues
⑪ Areas of law that affect the daily lives of citizens
⑫ International relations, anthropology, and economics

As shown in points ① to ⑫ above, it is obvious that the law which is regarded as the contents of Law-Related Education is not limited in the narrow sense like "statute law" or "national law". Rather, the content of Law-Related Education is assumed as the law in a broad sense, such as "principles of democracy", "dispute resolution", "legal process", "customs law", "controversy problem", "citizen law", and "law in different fields".

The educational methods of Law-Related Education include inquiry learning and experience learning[11]. Various educational methods foster children's abilities such as the ability to choose, the ability to argue, the ability to think, and the ability to express.

III. THE DIVERSITY OF LAW-RELATED EDUCATIONAL CURRICULUM IN THE UNITED STATES

A. Features of Law-Related Educational Curriculum

In the United States, a variety of Law-Related Educational Curriculum is being developed based on the basic idea of Law-Related Education. Law-Related Educational Curriculum has the following two features[12]. Firstly, Law-Related Educational Curriculum shares a common goal of fostering the knowledge, skills, and values students need to function effectively in a society defined by its democratic institutions, pluralism, and the rule of law. Secondly, Law-Related Educational Curriculum strives to develop the active citizen a democratic society requires: those who can understand, live in, and contribute positively to the civic

[8] *Ibid*. p. 383.
[9] *Ibid*.
[10] Study Group on Law-Related Education on Law-Related Education. *op.cit*. pp. 1–3.
[11] *Ibid*.
[12] American Bar Association Division for Public Education. *op.cit*.

communities to which they belong.

According to the booklet "Youth for Justice; Making a Difference"[13] published by the American Bar Association, the following Law-Related Educational Curriculum was developed in the 1990s by the financial support of the Office of Juvenile Justice and Delinquency Prevention of the US Department of Justice. These are developed by national Law-Related Educational agencies.

The role of these agencies is to ensure that the "Youth for Justice is a unique national initiative that uses the power of active learning about the law to build upon the vitality of young people and to address the risks of being young in America today."[14] Law-Related Education aims to develop a sense of citizenship among youth and is intended as a judicial policy to prevent juvenile delinquency. While paying attention to the balance between these ideals and the reality, the author will review the features of the Law-Related Educational Curriculum developed by each institution establishing its own goals.

B. Types of Law-Related Educational Curriculum

1. Characteristics of "Foundations of Democracy"[15]

The Center for Civic Education developed "Foundations of Democracy" in the 1990s and has revised the curriculum many times. "Foundations of Democracy" can be thought of as a legal values model. The goals of "Foundations of Democracy" are summarized as follows. The knowledge is aimed at recognizing the system of constitutional democracy and the basic principle and value that they are based on. The attitude formation is aimed at achieving democratic values. "Foundations of Democracy" is organized to target the K-12 grade. "Foundations of Democracy" teaches four concepts: "Authority", which focuses on making law in society; "Privacy", which focuses on individual freedom; "Responsibility", which focuses on how to assign and accept responsibility; and "Justice", which focuses on applying law in society.

2. Characteristics of "Street Law"[16]

Street Law Inc. developed "Street Law", which is a curriculum that can be thought of as teaching about the law as it impacts youth in their daily lives. The goals of "Street Law" are summarized as follows. The knowledge is aimed at recognizing practical law in daily life situations, controversial legal problems, and the meaning of law in society. Attitude formation is aimed at achieving participation in the law, involvement in dispute resolution, values of justice, tolerance, and fairness. "Street Law" is organized to deal with the law in a broad sense. "Street Law" has seven themes such as "Introduction to the law and legal system", "Criminal law and juvenile justice", "Tort law", "Consumer law", "Family law", "Housing law", and "Rights and freedoms".

3. Characteristics of "Project Citizen"[17]

In the 1990s, the Center for Civic Education developed "Project Citizen". "Project Citizen" can be thought of as a law in community activities model. The goals of "Project Citizen" are to enable students to express their opinions, to decide which institution of the government should deal with certain problems, and to affect government policy decisions. "Project Citizen" has six steps. Specifically, these are "clarifying the policy problems of the community", "choosing the research theme", "gathering information on the research theme", "creating the portfolio", "presenting the portfolio", "evaluating the learning experience", and "the class portfolio". While learning about legal participation, Project Citizen has the distinctive feature of actually participating in the community as a citizen.

4. Characteristics of "Respect Me, Respect Yourself"[18]

In the 1990s, Phi Alpha Delta Public Service Center developed "Respect Me, Respect Yourself", which can be thought of as a conflict resolution model. The goals of "Respect Me, Respect Yourself" is summarized as attitude formation aimed at resolving disputes without violence. The educational method of "Respect Me, Respect Yourself" is mediation. With the aim of the knowledge understanding and skills acquisition of dispute

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[13] American Bar Association. *Youth for Justice; Making a Difference.*
[14] *Ibid.* p. 5.
[15] Center for Civic Education. (1998). *Foundations of Democracy; Upper Elementary, Middle School, High School.*
[16] National Institute for Citizen Education in the Law. (2005). *Street Law; A Course in Practical Law, Seventh Edition.* West Publishing Company.
[17] Center for Civic Education and the National Conference of State Legislatures. (2008). *Project Citizen.*
[18] Phi Alpha Delta Public Service Center. (1995). *Respect Me, Respect Yourself.*

resolution by mediation, using the Constitution of the United States and the Bill of Rights as teaching materials, "Respect Me, Respect Yourself" is organized based on the actual mediation process.

5. Characteristics of "I'm the People"[19]

In the 1990s, the American Bar Association Youth Education for Citizenship developed "I'm the People", which can be thought of as Integration of all of the above-mentioned models. The goals of "I'm the People" are summarized as follows. The curriculum is aimed at recognizing our constitutional democracy, essential concepts such as law, power, justice, freedom, and equality. Attitude formation is aimed at achieving and pursuing rights and responsibilities under the law, resolving conflict, discussing and analyzing public policy. The skills acquisition component is aimed at learning the ability to do critical thinking, the ability to gather, interpret, act properly, and participate effectively. "I'm the People" has four concepts: "Making Rules & Laws", "Resolving Conflicts", "Service in the Community", and "Influencing Public Policy". "I'm the People" is organized to deal with the legal process. "I'm the People" seems to be aiming at a curriculum composition based on the legal system view of the 1990s.

IV. THE CHARACTERISTICS OF LAW-RELATED EDUCATION IN JAPAN

A. Reasons for Introducing Law-Related Education in Japan

It is important for citizens to acquire legal literacy, which is a necessary component of citizenship. The reason that developing of legal literacy for citizens is important in Japan is important from three viewpoints: social background, institutional background, and educational background.

Social background includes Legalized Society. Legalized Society is a society established on the basis of a legal relationships. Citizens recognize legal values such as freedom and responsibility in Legalized Society. Legalized Society has been in progress since the 1980s. According to Shigeaki Tanaka, a representative researcher on legalization theory in Japan, it is considered that in this period two factors contributed to the progress of a legalized society in Japan[20]. The first is domestic factors such as rapid urbanization and progress of industrialization after the latter half of the 1960s. The dispute resolution system has been transformed. The second is international factors such as the progress of internationalization since the 1980s. The conflicts between international companies and trade friction became frequent.

In Japan, where a legalized society has developed, not only can we build a better dispute resolution system, but it is extremely important for each citizen to acquire legal literacy as a condition of citizenship. Specifically, each citizen is required to acquire the awareness and ability to participate in communication and making certain legal decisions while taking full advantage of legal thinking skills and dispute resolution skills against legal problems. The author thinks that it will be expected more and more from now on.

Institutional background includes the introduction of the lay judge (*saiban-in*) system in Japan. In May 2009, the lay judge (*saiban-in*) system was launched to give ordinary citizens a direct role in the criminal judicial process. The establishment of the Justice System Reform Council in July 1999 became an important opportunity to make the introduction of today's lay judge system a reality. In the final opinion proposed in June 2001, the Justice System Reform Council proposed the direction of citizen's judicial participation with the introduction of the lay judge system. Changes in society such as the introduction of this lay judge system can be considered as one of the developments of the legalized society. In such a society, not only lawyers, but also citizens are required to acquire legal citizenship. This is evident also from the fact that the Justice System Reform Council pointed out the importance of Law-Related Education[21].

Educational background includes the improvements of Course of Study in Japan. In January 2008, the "Report on improvements of Courses of Study at kindergarten, elementary school, junior high school, high

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[19] American Bar Association Division for Public Education. (1995). *Making Rules & Laws*. American Bar Association Division for Public Education. (1995). *Resolving Conflict*. American Bar Association Division for Public Education. (1996). *Serving the Community*. American Bar Association Division for Public Education. (1996). *Influencing Public Policy*.

[20] Shigeaki TANAKA. (1996). *Gendaishakaito Saiban: Minjisoshono Ichito Yakuwari*. Kobundo. p. 1. (田中成明『現代社会と裁判—民事訴訟の位置と役割—』弘文堂，1996 年，p. 1.)

[21] Shihouseidokaikakushingikai. (2001). *Shihouseidokaikakusingikai Ikensho: 21seikino Nihonwo Sasaeru Shihouseido*. pp. 102–103.（司法制度改革審議会『司法制度改革審議会意見書— 21 世紀の日本を支える司法制度—』2001 年 6 月，pp. 102–103.）

school and special school etc."[22] by the Central Council for Education stated that Law-Related Education was positioned at the school education. Specifically, through understanding of socio-economic systems such as increasing the role of justice, it is important to realize a sustainable society, developing citizenship to participate in public matters.

Law-Related Education in the Courses of Study is addressed through a cross-curricular approach. Social studies aims at developing citizenship. Home economics is aimed at appreciating family life and family, work and one's role in the family, one and one's family life as a consumer. Moral education is aimed at respecting promises and rules, laws and rules, personal responsibility, significance of laws and rules, justice, role and responsibility. Special activities is aimed at nurturing voluntary and practical attitudes to solving problems.

B. Law-Related Education in Social Studies[23]

1. Law-Related Education in Elementary Social Studies

In "The 2008 Elementary Social Studies Course of Study"[24], Law-Related Education, was positioned clearly as follows. In grade 3 and grade 4, content (3) "securing drinking water, electricity, gas and waste necessary for the lives of local people", content (4) "Prevention of disasters and accidents in communities", we deal with important laws and rules in conducting local social life. In grade 5, viewpoints of laws and rules are seen in the learning item ③ "The importance of protecting public health and living environment from pollution" of the content (1) "The state of nature in our country, etc.". In grade 6, viewpoints of laws and rules are seen in the learning item ⑧ "The promulgation of the Constitution of the Empire of Japan" and the learning item ⑨ "The establishment of the Constitution of Japan" of the content (1) "Main events in the history of our country". Furthermore, we deal with the relationship between the National Assembly and the Cabinet, the court's three powers, and the judicial participation of the people in the learning item ② "The Constitution of Japan" of the contents (2) "Political Work in Japan" .

"The 2017 Elementary Social Studies Course of Study"[25] shows the improvement of the contents. Law-Related Education is positioned mainly as follows. Firstly, it is the 4th grade content (2) "business that supports people's health and living environment". Secondly, it is the 6th grade content (1) "political work in Japan". It deals with the Constitution, the three branches of government—legislative, administrative and judicial—and political efforts by national and local governments. Law-Related Educational Contents in Elementary Social Studies include the Environmental Basic Act, the Constitution, the Constitution of the Empire of Japan, the Waste Disposal and Public Cleansing Act, the Cultural Assets Preservation Act, and International Law.

2. Law-Related Education in Lower Secondary Social Studies

"The 2017 Secondary Social Studies Course of Study"[26] shows the improvement of the contents. Law-Related Education is positioned mainly as follows: firstly, history such as the Constitution of the Empire of Japan; secondly, civics, which deals with views and perspectives in society, work and the market economy, respect for human beings and the Constitution, democratic politics and political participation, world peace and human welfare. Typical keywords of Law-Related Education in Lower Secondary Social Studies are "Rule building", "Conflict and agreement, efficiency and fairness", "Mutual respect of human rights", "Participation in the judicial system", "Participation in society/social participation", and "Contract" in the field of Civics.

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[22] Chuoukyouikushingikai. (2008). *Yochien, Shogakko, Chugakko, Kotogakkoyobi Tokubetsushiengakkono Gakushushidoyoryono Kaizennitsuite(Toshin).* (Report on improvements of Courses of Study at kindergarten, elementary school, junior high school, junior high school, high school and special school etc.).（中央教育審議会「幼稚園，小学校，中学校，高等学校及び特別支援学校の学習指導要領等の改善について（答申）」2008 年 1 月。）

[23] Educational contents and learning items in "Social Studies Course of Study" are distributed into numbers and katakana for each grade. The original is written in katakana, but this paper is written in circled numbers in order to be read easily. For example, ア(a), イ(i), ウ(u) is translated into ①, ②, ③.

[24] Monbukagakusho. (2008). *Shokakko Gakushusidoyoryo Kaisetsu Shakaihen.*（文部科学省『小学校学習指導要領解説社会編』2008 年 6 月。）

[25] Monbukagakusho. (2017). *Shokakko Gakushusidoyoryo Kaisetsu Shakaihen.*（文部科学省『小学校学習指導要領解説社会編』2017 年 6 月。）

[26] Monbukagakusho. (2017). *Chukakko Gakushusidoyoryo Kaisetsu Shakaihen.*（文部科学省『中学校学習指導要領解説社会編』2017 年 6 月。）

C. The Efforts of Law-Related Education by the Ministry of Justice

The Law-Related Education Promotion Council established in May 2005, has been conducting about 40 activities on an ongoing basis[27]. According to the "Guidelines for the Promotion of Law-Related Education"[28] presented in May 2005, the purpose of this council is to fulfill learning opportunities related to justice and law in school education in Japan as follows: firstly, the practice of Law-Related Education in school education etc.; secondly, efforts regarding Law-Related Education by educators and lawyers; thirdly, the preparation of teaching materials for Law-Related Education on the lay judge system; fourthly, others such as research, practice, and methods of dissemination regarding Law-Related Education.

These activities by the Law-Related Education Promotion Council, can be divided into the first phase from May 2005 to April 2007, the second phase from July 2007 to February 2010, the third phase from April 2010 to February 2014, the fourth phase from March 2014 to February 2016, and the fifth phase from March 2016.

The goal of the first and second phases was to develop teaching materials. In the 1st phase, the Law-Related Education Promotion Council finally presented two results as follows: firstly, creating teaching materials for junior high school; secondly, summarizing issues through consultation of Law-Related Education Promotion Council. In the second phase, the Law-Related Education Promotion Council dealt with Law-Related Education in Private Law and improvement of Law-Related Education in elementary school. The goal of the third phase though the current phase is to improve teaching materials and disseminate them. In the third phase, the Law-Related Education Promotion Council discussed ways to disseminate Law-Related Education, including holding a Law-Related Education writing contest. In the fourth phase, the Law-Related Education Promotion Council discussed ways to disseminate and provide information on Law-Related Education. In the fifth phase, the Law-Related Education Promotion Council is dealing with development of audiovisual teaching materials for Law-Related Education.

V. THE IDEA OF JUSTICE STUDIES IN ELEMENTARY AND JUNIOR HIGH SCHOOL

A. Law-Related Educational Program for Junior High School

1. Development of "The First Law-Related Education"[29]

The Ministry of Justice launched the Law-Related Education Study Group, organized the Law-Related Education Teaching Materials Preparation Subcommittee, and developed the Law-Related Education Unit in Lower Secondary Social Studies. In March 2005, "First Law-Related Education" was published. It was due to these efforts that Law-Related Education for junior high school spread and developed across the country.

2. Establishment of Law-Related Education in Japan

According to "The First Law-Related Education", Law-Related Education in Japan is defined as "Education for the public who are not legal experts to understand the law, the justice system, the values underlying these, and to acquire legal thinking". The goals of Law-Related Education in Japan are to understand the basic principles of the constitution and law, to develop the abilities necessary to participate in the management of a free and fair society, to understand that the law is familiar in everyday life, and to act according to law consciously in daily life and to foster the ability to use the law actively.

The contents of "The First Law-Related Education" are organized into four Law-Related Educational units such as "Rule making", "Private law and consumer protection", "The significance of the constitution", and "Justice". "Rulemaking" means the necessity of rule creation. "Private law and consumer protection" means understanding the relationship between individuals and individuals with law. "The significance of the constitution" means understanding the relationship between individuals and the state by law. "Justice" means dispute resolution by law. Under these Law-Related Educational units, while being aware of legal actors as citizens to be related to the law, learning activities are organized in view of the dynamic aspects of the law as

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[27] Homusho. *Hokyoikusuisinkyougikai*.（法務省「法教育推進協議会」（http://www.moj.go.jp/shingi1/kanbou_houkyo_kyougikai_index.html）（visit; 2018. 1. 5））

[28] Homusho. (2005). *Hokyoikusuisinkyougikaikaisaiyouryou*.（法務省「法教育推進協議会開催要領」2005 年 5 月（http://www.moj.go.jp/KANBOU/HOUKYO/kyougikai/gaiyou01-01.pdf）（visit; 2018. 1. 5））

[29] Hokyoikukenkyukai. (2005). *Hajimeteno Hokyoiku: Wagakuniniokeru Hokyoikuno Fukyu・Hattenwo Mezashite*. (First Law-Related Education). Gyosei.（法教育研究会『はじめての法教育―我が国における法教育の普及・発展を目指して―』ぎょうせい，2005 年 3 月。）

contents to form the attitude of participation in the law.

3. The Idea of Justice Studies for Lower Secondary School

The definition of justice studies is that students understand that, firstly, justice is a means of preserving law and order by protecting infringed rights and dealing with rules violations; secondly, the trial puts all parties in an equal position and a fair third party makes judgments based on fair rules through appropriate procedures. The goals of justice studies for Lower Secondary School are: firstly, increasing interest in the trial structure while comparing it with various dispute resolution methods; secondly, discovering legal problems in the cases of conflict, analyzing and evaluating the causes and points of conflict, and making judgments based on the evidence; thirdly, allowing students to think about and decide how to deal with laws and rules violations on a case-by-case basis; fourthly, understanding the mechanism and function of a fair trial based on the law in connection with the case. The contents of justice studies for Lower Secondary School are organized into 3 class periods. The first period is "Conflict resolution and civil trial in daily life". The second period is "Thinking about characteristics of criminal trials through comparison with civil trials". The third period is "Participation in the lay judge system".

B. Law-Related Educational Program for Elementary School

1. Development of "Whose rule? Considering Law-Related Education"[30]

The Law-Related Education Promotion Council summarizes the following three ways to develop teaching materials for Law-Related Education in elementary schools in a revised report, "Creation of Law-Related Education Teaching Materials for Elementary School Students"[31]. Firstly, in the elementary school, there is a possibility to devise various classes based on the philosophy of Law-Related Education. Secondly, in elementary school, enhanced learning effect can be expected by incorporating educational methods such as performing role-playing on familiar issues. Thirdly, in elementary school, it is useful to create opportunities to make rules in life and play and think about the solution when trouble happens between friends when teaching Law-Related Education.

The Law-Related Education Promotion Council developed the Law-Related Education Unit in Elementary School by reference to "Creation of Law-Related Education Teaching Materials for Elementary School Students". In March 2014, "Whose rule? Considering Law-Related Education" was published. The contents of "Whose rule?" are organized into four Law-Related Educational units: "Resolving a quarrel between friends", "To promise and to defend" for 3rd and 4th grades; "Living in an information society: as a receiver and sender" for 5th grade; and "Conflict resolution: participation in judicial judgment, making rules" for 6th grade.

2. The Idea of Justice Studies for Elementary School

The goals of justice studies for elementary school are as follows: firstly, increasing the interest in the lay judge system and understanding the significance of citizen's judicial participation; secondly, accurately grasping and evaluating facts and expressing your ideas appropriately based on facts, through case examples of familiar conflicts in school life; thirdly, understanding the significance of thinking actively and thinking about finding solutions, in order to solve problems related to the interests of everyone; fourthly, thinking about the significance of the rules in social life by solving problems around them by creating rules.

The contents of justice studies for elementary school are organized into 3 themes as 5 class periods. The first theme is "The structure of the court, the role of people involved in the trial". The second theme is "Resolution of disputes concerning everyone's interests". The third theme is "What is the truth?". The methods of justice studies for elementary school have the following features: experiencing fact-finding based on familiar cases and discussing how to resolve conflicts.

According to the child's developmental stage in 6th grade, teaching materials of justice studies for elementary school address the judiciary through children's experiences with fact-finding based on familiar cases. Discussing the way of resolving conflict, children can think about the significance of citizen's judicial

[30] Hokyoikusuishinkyogikai. (2014). *Rulewa Darenomono: Minnade Kangaeru Hokyoiku*. (Whose rule? Considering Law-Related Education). Homusho.（法教育推進協議会『ルールは誰のもの？―みんなで考える法教育―』法務省 2014 年 3 月。）

[31] Hokyoikusuishinkyogikai. (2009). *Shogakkowo Taishotoshita Hokyoikukyozaireino Sakuseinitsuite*. (Creation of Law-Related Education Teaching Materials for Elementary School Students). Homusho.（法教育推進協議会『小学校を対象とした法教育教材例の作成について』法務省，2009 年 8 月。）

participation. Using gained knowledge and way of thinking through those learning activities, children can find problems in real social life, solve problems and make rules. With a 6th grade level in mind, teaching materials of justice studies for elementary school are organized across the subjects such as social studies, the period for integrated studies, and special activities.

VI. CONCLUSION

This paper has shown the current situation and challenges of Law-Related Education as follows: firstly, Law-Related Educational Curriculum is developed by the functions of law. Law-Related Educational Curriculum shows the relationship between law actors and the law. Secondly, Law-Related Education includes justice studies. The contents of justice studies are citizen participation, the Constitution, dispute resolution, due process, and protection of equality. Recently, it has become important to practice Law-Related Education in Japan. Law-Related Education is expected to educate citizens and has the effect to continue dialogue with each other while showing the basis of opinion in human relations and to respect the values of yourself and others and find consensus. Law-Related Education is also expected to foster viewing and thinking in modern society such as conflict and agreement, efficiency and fairness.

References

Public Law 95-561. (1978). *Law-Related Education Act of 1978*.

American Bar Association Division for Public Education. *Law-Related Education Network*. (https://www.americanbar.org/groups/public_education/resources/law_related_education_network.html)(visit; 2018.1.5).

Report of the American Bar Association Special Committee on Youth Education for Citizenship. (1975). *Law-Related Education in America: Guidelines for the Future*. American Bar Association.

Study Group on Law-Related Education on Law-Related Education. (1978). *Final Report of the U. S. Office of Education*. U. S. Government Printing Office. (ED175 737).

Anderson, Charlotte C. (1980). Promoting Responsible Citizenship Through Elementary Law-Related Education. *Social Education*. Vol. 44-5.

Center for Civic Education. (1998). *Foundations of Democracy; Upper Elementary, Middle School, High School*.

National Institute for Citizen Education in the Law. (2005). *Street Law; A Course in Practical Law, Seventh Edition*. West Publishing Company.

Phi Alpha Delta Public Service Center. (1995). *Respect Me, Respect Yourself*.

American Bar Association Division for Public Education. (1995). *Making Rules & Laws*.

American Bar Association Division for Public Education. (1995). *Resolving Conflict*.

American Bar Association Division for Public Education. (1996). *Serving the Community*.

American Bar Association Division for Public Education. (1996). *Influencing Public Policy*.

Center for Civic Education and the National Conference of State Legislatures. (2008). *Project Citizen*.

Kyoko ISOYAMA. (2000). Construction of Law-Related Education in the United States. Annual Report of Graduate Studies in Education. Vol 24. *Doctoral Program Education University of Tsukuba*. pp. 133-144. original Japanese.（磯山恭子「アメリカの法教育におけるカリキュラム構成に関する研究―法の社会的機能の類型を手がかりとして―」『教育学研究集録』第 24 集，筑波大学大学院博士課程教育学研究科，2000 年，pp. 133-144.）

Kyoko ISOYAMA. (2001). Amerikaniokeru Hokyoikuno Toutatutenkara Manabu. Zenkokuhoukyouikunetwork, ed. *Hokyoikuno Kanousei: Gakkouniokeruniokeru Rironto Jissen*. Gendaijinbunsha. pp. 164–176.（磯山恭子「アメリカにおける法教育の到達点から学ぶ」全国法教育ネットワーク編『法教育の可能性―学校教育における理論と実践―現代人文社，2001 年 7 月，pp. 164–176.）

Yuji EGUCHI, Kyoko ISOYAMA, eds. (2008). *Shogakkono Hokyoikuwo Tsukuru: Hou・Rule・Kimariwo Manabu*. Toyokanshuppansha.（江口勇治，磯山恭子編『小学校の法教育を創る―法・ルール・きまりを学ぶ―』東洋館出版社，2008 年 5 月。）

Yuji EGUCHI, Yaruhiro OKURA, eds. (2008). *Chugakkono Hokyoikuwo Tsukuru: Hou・Rule・Kimariwo Manabu*. Toyokanshuppansha.（江口勇治，大倉泰裕編『中学校の法教育を創る―法・ルール・きまりを学ぶ―』東洋館出版社，2008 年 5 月。）

Yuhikaku. (2004). *Jurist*. Vol 1268.（『ジュリスト』No. 1268，有斐閣，2004 年 6 月。）

Shihouseidokaikakushingikai. (2001). *Shihouseidokaikakusingikai Ikensho: 21seikino Nihonwo Sasaeru Shihouseido*.（司法制度改革審議会『司法制度改革審議会意見書― 21 世紀の日本を支える司法制度―』2001 年 6 月。）

Chuoukyouikushingikai. (2008). *Yochien, Shogakko, Chugakko, Kotogakkoyobi Tokubetsushiengakkono Gakushushidoyoryono Kaizennitsuite (Toshin)*. (Report on improvements of Courses of Study at kindergarten, elementary school, junior high school, junior high school, high school and special school etc.).（中央教育審議会「幼稚園，小学校，中学校，高等学校及び特別支援学校の学習指導要領等の改善について（答申）」2008 年 1 月。）

Monbukagakusho. (2008). *Shokakko Gakushusidoyoryo Kaisetsu Shakaihen*.（文部科学省『小学校学習指導要領解説社会編』2008 年 6 月。）

Monbukagakusho. (2017). *Shokakko Gakushusidoyoryo Kaisetsu Shakaihen*.（文部科学省『小学校学習指導要領解説社会編』2017 年 6 月。）

Monbukagakusho. (2008). *Chukakko Gakushusidoyoryo Kaisetsu Shakaihen*.（文部科学省『中学校学習指導要領解説社会編』2008 年 6 月。）

Monbukagakusho. (2017). *Chukakko Gakushusidoyoryo Kaisetsu Shakaihen*.（文部科学省『中学校学習指導要領解説社会編』2017 年 6 月。）

Homusho. *Hokyoiku*.（法務省「法教育」（http://www.moj.go.jp/housei/shihouhousei/index2.html）（visit; 2018. 1.5）.）

Hokyoikukenkyukai. (2005). *Hajimeteno Hokyoiku: Wagakuniniokeru Hokyoikuno Fukyu・Hattenwo Mezashite*. (First Law-Related Education). Gyosei.（法教育研究会『はじめての法教育―我が国における法教育の普及・発展を目指して―』ぎょうせい，2005 年 3 月。）

Hokyoikusuishinkyogikai. (2007). *Hajimeteno Hokyoiku Q&A*. Gyosei.（法教育推進協議会『はじめての法教育 Q&A』ぎょうせい，2007 年 3 月。）

Hokyoikusuishinkyogikai. (2007). *Saibaninseidowo Daizaitoshita Kyoikukyozai*. Homusho.（法教育推進協議会『裁判員制度を題材とした教育教材』2007 年。）

Hokyoikusuishinkyogikai. (2009). *Shihobunyakyoikuno jyujitsuto Hokyoikuno Saranaru Hattennimukete*. Homusho.（法教育推進協議会『私法分野教育の充実と法教育の更なる発展に向けて』法務省，2009 年 5 月。）

Hokyoikusuishinkyogikai. (2009). *Shogakkowo Taishotoshita Hokyoikukyozaireino Sakuseinitsuite*. (Creation of Law-Related Education Teaching Materials for Elementary School Students). Homusho.（法教育推進協議会『小学校を対象とした法教育教材例の作成について』法務省，2009 年 8 月。）

Hokyoikusuishinkyogikai. (2014). *Rulewa Darenomono: Minnade Kangaeru Hokyoiku.* (Whose is rules?). Homusho.（法教育推進協議会『ルールは誰のもの？―みんなで考える法教育―』法務省 2014 年 3 月。）

Hokyoikusuishinkyogikai. (2015). *Hoya Rulette Naze Hitsuyonandarou? Watasgutachito Ho.* (Why Do We Have to Make Laws and Rules?). Homusho.（法教育推進協議会『法やルールって、なぜ必要なんだろう？―私たちと法―』法務省，2015 年 3 月。）

Additional Statement: This paper is rewritten in English by referring to the references, especially my copy.

PRACTICE OF LAW-RELATED EDUCATION TO DEVELOP LEGAL LITERACY

*Kyoko ISOYAMA**

I. INTRODUCTION

The purpose of this paper is to introduce the practice of Law-Related Education to develop legal literacy in Japan, focusing on the practice of Law-Related Education in elementary school, the efforts of Law-Related Education by courts and bar associations, and the efforts of Law-Related Education for teacher training in teachers' colleges. The practice of Law-Related Education in elementary school is known as Justice Studies. One of the learning activities is a case study called *Soji Toban* (Cleaning Duty, hereinafter referred to as the *Soji Toban* case study), which conveys the idea of justice within the context of school culture, education and laws and rules in Japan. Recently, various efforts of Law-Related Education have been implemented to develop legal literacy for citizens, trainee teachers and teachers.

II. PRACTICE "DISPUTE RESOLUTION: PUBLIC PARTICIPATION IN THE JUDICIAL PROCESS, MAKING RULES"

A. Process of "Dispute resolution: Public Participation in the Judicial System, Making Rules"[1]

This section presents a *Soji Toban* case study developed by the Law-Related Education Promotion Council. *The Soji Toban* case study was published in "Whose rules? Considering Law-Related Education"[2]. The contents of "Whose rule?" are organized into four Law-Related Educational units. *The Soji Toban* case study is one of the learning activities in the third unit which is titled "Dispute resolution: participation in judicial judgment, making rules" for 6th grade.

Japanese schools have a custom of the *Soji Toban* that are different from foreign schools. Through this case study, elementary school children can learn the idea of fact-finding in the judicial system. After that, according to their awareness, they can come to know other problems in their classroom and learn to make rules to solve those problems by themselves.

The *Soji Toban* case study takes place based on the following facts[3].

> In xxx Elementary School, the time for cleaning is set between 1:00 and 1:15 in the afternoon.
>
> The 6-1 Class is assigned to clean four places: its classroom (including a sink), a music room (4th floor), and stairs between the 1st floor and the 4th floor. The class has four groups, each of which is composed of eight pupils. Each group changes the place to clean every week among the four places. The music room has cleaning equipment to be used only for the room. Brooms and dustpans in a cleaning closet in the classroom are to be used for the classroom, the corridor, and the stairs. There are two dustpans in the closet, and pupils use one for both the classroom and the corridor, and the other for the stairs.
>
> The goal of the 6-1 Class is "to clean as much as possible." Every day, they finish the cleaning within the scheduled 15 minutes, and then the whole class enjoys playing tag or another game in the schoolyard.

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[1] Hokyoikusuishinkyogikai. (2014). *Rulewa Darenomono: Minnade Kangaeru Hokyoiku.* (Whose rules? Considering Law-Related Education). Homusho. pp. 46-68.（法教育推進協議会『ルールは誰のもの？―みんなで考える法教育―』法務省 2014 年 3 月，pp. 46-68.）

[2] *Ibid.*

[3] *Ibid.* p. 52.

Work in this case is allotted as follows:[4]

There are 10 brooms and 2 dustpans in the cleaning closet in the classroom. The dustpans are shared by pupils to clean places (1), (2), and (3).

(1) Classroom	8 pupils (4 for sweeping the floor with brooms, 4 for wiping the floor)
(2) Corridor & sink	8 pupils (2 for sweeping the floor with brooms, 2 for cleaning the sink, 4 for wiping the floor)
(3) Stairs	8 pupils (4 for sweeping the floor with brooms, 4 for wiping the floor)
(4) Music room	8 pupils (there are cleaning tools only for the room)

The following problem occurs:[5]

One day, Ms. A on cleaning duty got angry, saying that some people skipped their cleaning duty. Mr. B and Mr. C, who were criticized by name as truants, retorted that they did not skip their duty. They started to quarrel, which did not settle down. Other pupils gathered anxiously. Other pupils who had finished cleaning the other places as scheduled came to see how things were going. They had waited for all the classmates to get together in the schoolyard, but noticed there were no pupils in charge of cleaning the classroom. In the end, they could not play tag with all the classmates, which they had looked forward to.

After the children assess what state the case is in, they and the teacher will conduct the following role-play[6].

Teacher: What's the matter?

Ms. A (Classroom): Soon after we started cleaning the classroom, Mr. B and Mr. C disappeared. It is not the first time. They were getting along well, and they often chatted during cleaning time by shirking the cleaning duty. Even today, they disappeared as usual. Even when I tell them to clean, they always make excuses. I felt bad about their attitude.

Teacher: Was it hard to clean without the two of them?

Ms. A (Classroom): Today, one person was absent, which made it hard to carry desks. It was at least seven minutes since they disappeared. They were long coming. Therefore, we had to work much harder to complete the cleaning within the cleaning time. Mr. B and Mr. C are blameful, as they ignore the goal of our class, "Clean as much as possible."

Teacher: What were the two of you doing?

Mr. B (Classroom): She misunderstood us. It hurts me as I was engaged in cleaning seriously. I was on cleaning duty with a broom. I went to the closet to take a dustpan, but there was no dustpan. Feeling strange, I asked people in charge of cleaning the corridor and the stairs where the dustpan was. When I finally found it and came back, she criticized me for having avoided the cleaning duty. I think it is unreasonable. In the first place, it was only twice that we were accused of chatting during cleaning time.

[4] *Ibid*. p. 53.
[5] *Ibid*.
[6] *Ibid*. pp. 54–55.

Mr. C (Classroom): Mr. B was cleaning the classroom. When I heard there was no dustpan, I went with him to search for another dustpan. A person in charge of cleaning the corridor told us that persons in charge of cleaning the stairs use both. Therefore, I instantly went to the people in charge of cleaning the stairs. First, we went downstairs to the first floor and asked the person in charge of cleaning the stairs on the first floor for a dustpan. But we were told we couldn't use it. Then we went upstairs to the fourth floor and waited for a person to finish using a dustpan. Finally, we got the dustpan and returned. Yet, we were accused of having skipped the duty, and nobody listened to us. It is unreasonable. Unless we fetched a dustpan, we could not gather any trash.

Teacher: Ms. D, you were in the corridor, weren't you?

Ms. D (Corridor): I was cleaning the corridor. As Ms. A said, Mr. B and Mr. C were not in the classroom for a long time. I saw them going out of the classroom together. After a while, they were near the stairs. I saw them fooling around. Mr. B was tickling Mr. C in the ribs, and Mr. C burst into laughter. They did not seem to be looking for a dustpan. As they were always talking about soccer, they must have been talking about it then. In the first place, only one person is enough to pick up a dustpan. There is no need for two persons to fetch it.

Teacher: Mr. E, you were in the stairs, weren't you? Did you see two of them?

Mr. E (Stairs): Mr. B and Mr. C came to the stairs. I was on the fourth floor, and they ran up the stairs from the first floor. As I was using a dustpan, I had them wait for a while. Later I heard that a first grader turned over a trash can on the first floor and tiny pieces of wastepaper were scattered on the stairs. Therefore, people on the first floor could not give them the dustpan.

Teacher: Ms. D said that you and Mr. B were fooling around.

Mr. C (Classroom): Ms. D said I was fooling around, but that means that she kept looking toward the stairs without cleaning the stairs. I believe it is she that skipped the cleaning duty. As Ms. D has bad eyesight, she might mistake somebody else for me. Or, as she is good friends with Ms. A, she is convinced that we always skip cleaning duty. First, we tried to retrieve the dustpan from a person on the first floor, but failed. Then, we went up to Mr. E on the fourth floor. Again, we were told to wait. We went downstairs to the third floor and waited for Mr. E to return the dustpan there. Come to think of it, Mr. B cleaned some dirt off my clothes while we were waiting. I'm sure his action seemed playful to her.

In the case, Mr. B & Mr. C asserted that they did not skip cleaning duty, Ms. A asserted that they did skip cleaning duty, Ms. D testified that they did skip cleaning duty, and Mr. E testified as an unbiased witness that Mr. B and Mr. C had been looking for a dustpan and that one had not been returned from the first floor. Children get into character as Ms. A, Mr. B, Mr. C, Ms. D, and Mr. E, and they all explain what they experienced.

The teacher will ask the children, "What's the matter?" "Was it hard to clean without the two of them?" "What were the two of you doing?" "Ms. D, you were in the corridor, weren't you?" "Mr. E, you were on the stairs, weren't you? Did you see two of them?" "Ms. D said that you and Mr. B were fooling around."

The process of *Soji Toban* has mainly 6 steps:[7]

① Read the case *Soji Toban*
② Do the role-play.
③ First, think about whether Children B & C did or did not skip cleaning duty in your opinion. Why did you think so?
④ Discuss the *Soji Toban* case. Think about whether Children B & C did or did not skip cleaning duty in

[7] *Ibid.* pp. 50–60.

the group's opinion.
⑤ Present the group's opinion.
⑥ Then, after discussion, think about whether Children B & C did or did not skip cleaning duty in your opinion. Why did you think so? Did your opinion change?

When children look back on their experiences during the case study, they come to consider:[8] firstly, "When judging what was true, what kinds of things should you be careful about?", such as being careful in forming one's judgment and being conscientious of resolving all conflicts; secondly, viewing and thinking about justice; thirdly, the comparison of the *Soji Toban* case with trials; and fourthly, the interest in the lay judge system.

B. Child's Legal Viewing and Thinking Model

In the process of legal thinking, which is one of problem solving, there are several states including the "stage of searching for legal norms for problem solving", "stage of interpreting and applying the founded norms", "examining the results and making decisions stage" and "the stage legally justifying the decision"[9].

Given the discussions over these stages of legal thinking, children's legal views and thinking can be hypothetically represented graphically as the figure below indicates[10].

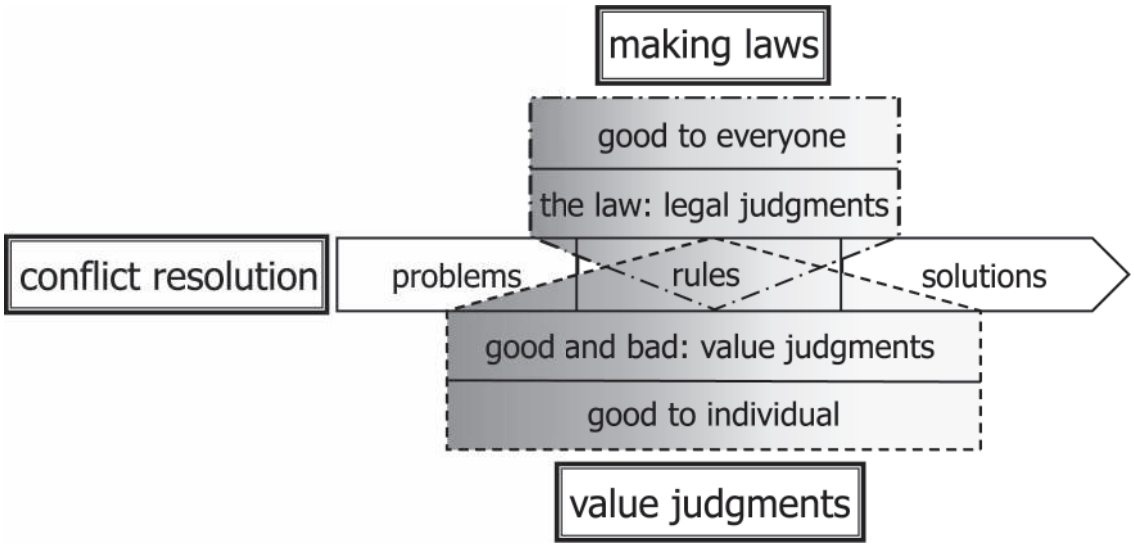

Fig. Child's legal viewing and thinking model
〈Fumihiko TAKAHASHI. (2013). Hotekishikoto Ronri. Seibundo. p. 227. In reference to Fig. 10-3, author designed from child's perspective.〉

The child's legal viewing and thinking works in a series of "conflict resolution" processes such as finding problems, applying rules, and thinking of solutions. The child's legal view and thinking work greatly, among other things, when the child applies rules. Specifically, the child will analyze problems to solve using two viewpoints such as "making laws" by legislators entrusted with legislation and "value judgments" for benefits and costs to individuals. From the viewpoint of "making laws", the child will consider based on the "legal judgment" criteria of laws and articles made by agreeing to be "good to everyone". From the viewpoint of "value judgments", the child will consider based on the criteria of whether the values are "good for the

[8] *Ibid*. pp. 61-64.
[9] Keizo YAMAMOTO. (1997). Hotekishikono Kosoto Tokushitsu: Jikorikaino Genkyoto Kadai. Masahiko IWAMURA, et al. eds. *Gendaihogakuno Shisoto Hoho. (Iwanamikoza Gendaino Ho 15)*. Iwanamishoten. pp. 256-258.（山本敬三「法的思考の構想と特質―自己理解の現況と課題―」岩村正彦他編『現代法学の思想と方法（岩波講座現代の法 15)』岩波書店，1997 年 6 月，pp. 231-268.）
[10] Fumihiko TAKAHASHI. (2013). *Hotekishikoto Ronri. Seibundo*. pp. 193-232.（高橋文彦『法的思考と論理』成文堂，2013 年，pp. 193-232.）

individual" or good for everyone. The child will think about events in social life and act to solve problems while going back and forth through legal viewing and thinking processes.

III. IMPORTANCE OF COOPERATION WITH LAWYERS AND EDUCATORS FOR EFFECTIVE LAW-RELATED EDUCATION

A. Law-Related Education to Develop Citizenship

The author's idea of citizenship is to encourage society to realize a better society, interested in problems that are occurring in society, and discussing cooperatively with diverse people toward solving the problems[11]. In the field of social studies, citizenship is generally defined as "knowledge, understanding, ability, attention, attitude required as a member of the state and society."[12]

The role of Law-Related Education to develop citizenship is as follows. Firstly, it is to be interested in the legal issues that are happening in society. Secondly, it is to discuss cooperatively with diverse people toward solving legal problems. Thirdly, it is to utilize viewing and thinking of legal things.

Jane Jenson explains that contemporary issues involving citizenship and law include citizenship requirements and their limits, the relationship between citizenship and democratic rules, and defining citizenship with a national perspective[13]. Such a reaffirmation of citizenship has had influence on the meaning of legal literacy. Legal literacy as an aspect of citizenship will be discussed, firstly, as participation in the political community in light of one's rights and responsibilities, secondly, as democratic participation and, thirdly, as participation as a member of the nation.

B. Law-Related Education to Educate Citizens

Law-Related Education in the United States is addressed as part of education for citizens. At that time, education for citizens is expressed in three phrases: "civic education" "citizenship education" or "public education". Law-Related Education as Civic Education is positioned in political education and civic education to foster citizens who can make decisions[14]. Law-Related Education as Citizenship Education refers to one approach to developing citizenship such as multicultural education, environmental education and Education for Sustainable Development (ESD)[15]. Law-Related Education as Public Education is considered as an educational activity for those who are not legal experts[16].

"Lawyers in the Classroom"[17] by the American Bar Association shows the importance of cooperation between lawyers and educators through suggesting the way to prepare for Law-Related Education classes. Specifically, those are to call the school, prepare, think about the student, observe the time, talk with eyes, ask for opinions and urge questions, participate actively, meet as a real person, be lively, ensure both sides of the debate are addressed, frequently ask students questions, share personal experience with the matter, teach in cooperation with teachers, refer to bulletin boards and postings, call on some students, walk around the classroom, enable students' questions and reactions to be heard throughout the class, prepare 35 copies, and leave the distribution to the teacher.

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[11] Kyoko ISOYAMA. (2016). Shogakko Shakaikaniokeru Houtekiliteracyno Ikuseiwo Mezasu Jyugyono Koso: Hotekisankagakushuno Jireiwo Tsujite. Kiyoshi KARAKI, ed. *'Komintekishishitsu'towa Nanika: Shakaikano Kako・Genzai・Miraiwo Saguru*. Toyokanshuppansha. pp. 26–27.（磯山恭子「小学校社会科における法的リテラシーの育成を目指す授業の構想―法的参加学習の事例を通じて―」唐木清志編著『「公民的資質」とは何か―社会科の過去・現在・未来を探る―』東洋館出版社，2016 年，pp. 26–27.）

[12] Akihide TANIKAWA. (2000). Komintekishishitau. Nihonshakaikakyoikugakkai. ed. Shakaikakyoikujiten. Gyosei. pp. 53–55.（谷川彰英「公民的資質」日本社会科教育学会（編）『社会科教育辞典』ぎょうせい，2000 年 10 月，pp. 54–55.）

[13] Jenson, Jane. (2006). Introduction: Thinking about Citizenship and Law in an Era of Change. Law Commission of Canada. ed. Law and Citizenship. UBC Press. pp. 3–21.

[14] Niemi, Richard G. and June, Jane. (1998). Civic Education; What Makes Students Learn. Yale University. p. 29.

[15] Parker, Walter C. and Kaltsounis, Theodore. (1986). Citizenship and Law-Related Education. Atwood, V. A. ed. Elementary School Studies: Research as a Guide to Practice. National Council for the Social Studies. pp. 14–33.

[16] Peck, Robert S. and White, Charles J. eds. (1983). Understanding the Law: A handbook on Educating the Public. American Bar Association.

[17] White, Charles, ed. (1984). *Lawyers in the Classroom*. American Bar Association Special Committee on Youth Education for Citizenship.

C. Law-Related Education as Public Education

Law-Related Education in Japan as Public Education is implemented through various efforts by organizations such as the Ministry of Justice, the Ministry of Education, Culture, Sports, Science and Technology, the Japan Federation of Bar Associations, other bar associations, the Japan Federation of Shiho-Shoshi Lawyers Association, each Shiho-Shoshi Lawyers Association, and the Supreme Court. Below, the efforts of Law-Related Education by courts and bar associations are introduced[18].

Law-Related Education by courts is implemented by lectures by judges, mock trials or mediations, court visits and the creation of audiovisual teaching materials[19]. In 2002, the Kanto Bar Association held a symposium on the theme of "Law-Related Education for Children". On April 19, 2003, the "Law-Related Education Committee for Citizens" was established. The "Law-Related Education Committee for Citizens" is aimed at the following:[20] firstly, the formulation and practice of Law-Related Education to nurture and support members in the free and fair democratic society; secondly, the research and development of teaching materials for Law-Related Education in schools etc.; thirdly, information exchanges with educators concerning Law-Related Education; and, fourthly, other measures necessary for achieving the above-mentioned measures.

IV. TEACHER TRAINING EFFORTS IN LAW-RELATED EDUCATION

The efforts of Law-Related Education for teacher training at Shizuoka University as a teachers' college are cooperation with the Ministry of Justice, cooperation with the Japan Federation of Bar Associations and the Shizuoka Bar Association, cooperation with the Court, the investigation of the judicial systems in other countries, and practicing Law-Related Education lessons.

Firstly, through cooperation with the Ministry of Justice, officials and students discuss development of Law-Related Educational teaching materials and classes. Sometimes students can meet "Hourisu-kun" which is a character created by the Ministry of Justice for Law-Related Educational events. Secondly, mock trial competitions for high school students are organized by the Japan Federation of Bar Associations. Students learn how to participate in mock trials in high school in preparation for the event. Sometimes, students can meet "Saisai" which is a lay judge character created by the Japan Federation of Bar Associations in Law-Related Educational events. Thirdly, students participate in a trial tour for university students organized by the court. Fourthly, students interviewed judges and prosecutors in Guam and Helsinki. Fifthly, students visited the border in Tijuana and learned the meaning of citizenship, equality and human rights from their experience. Sixthly, students as pre-service teachers practice Law-Related Educational lessons in junior high schools. Specifically, Law-Related Educational units include 'Contract', 'Judicial System', 'Conflict and Agreement'. These practices can improve their instructional skills to teach children Law-Related Education. Seventhly, through cooperation with the Shizuoka Bar Association, students used the courtroom to teach junior high school students about Law-Related Education.

V. CONCLUSION

This paper has shown the practice of Law-Related Education to develop legal literacy in Japan. Law-Related Education is provided to non-lawyers such as children and students, citizens, and trainee teachers and teachers as a part of teacher training. To enhance the effectiveness of Law-Related Education, cooperation between educators and lawyers is important.

However, there are a number of challenges to cooperation between lawyers and educators. These challenges include: firstly, the necessity of planned and ongoing projects; secondly, the support for autonomy of lawyers and educators; thirdly, the investigation of the effects of Law-Related Education through

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[18] The efforts of Law-Related Education by the Ministry of Justice can be found in my copy 'Current Situation and Challenge for Law-Related Education', same Resource Material Series.

[19] Hokyoikukenkyukai. (2005). *Hajimeteno Hokyoiku: Wagakuniniokeru Hokyoikuno Fukyu・Hattenwo Mezashite.* (First Law-Related Education). Gyosei. pp. 149–150.（法教育研究会『はじめての法教育—我が国における法教育の普及・発展を目指して—』ぎょうせい，2005 年 3 月，pp. 149–150.）

[20] Nihonbengoshirengokai. *Hokyoikutte Nani?*（日本弁護士連合会「法教育ってなぁーに？」（https://www.nichibenren.or.jp/activity/human/education.html）(visit; 2018.1.5).）

cooperation between lawyers and educators; fourthly, the clarification of legal qualities and abilities required of teachers; and, fifthly, the improvement of teacher training for Law-Related Education. It is hoped that Law-Related Education will be more deeply discussed and practiced by various people being actively involved.

References

Hokyoikusuishinkyogikai. (2014). *Rulewa Darenomono: Minnade Kangaeru Hokyoiku*. (Whose is rules?). Homusho. (法教育推進協議会『ルールは誰のもの？―みんなで考える法教育―』法務省 2014 年 3 月。)

Kyoko ISOYAMA. (2018). Hokyoikuniokeru Shakaitekijishono Mikata・Kangaekatano Ikusei: Hotekishikono Processwo Tegakaritoshite. Yuji EDUCHI, Yoshiyasu IDA, Kiyoshi Karaki, et al. eds. *21seikino Kyoikuni Motomerareru 'Shakaitekina Mikata・Kangaekata'*. Teikokushoin. pp. 12–23. (磯山恭子「法教育における社会的事象の見方・考え方の育成―法的思考のプロセスを手がかりとして―」江口勇治監修，井田仁康，唐木清志，國分麻里，村井大介『21 世紀の教育に求められる「社会的な見方・考え方」』帝国書院，2018 年 3 月，pp. 14–23.)

Akira HASEGAWA. (1996). *Kaishakuto Hoshiko: Legal・Mindno Tetsugakunotameni*. Nihonhyoronsha. (長谷川晃『解釈と法思考―リーガル・マインドの哲学のために―』日本評論社，1996 年 2 月。)

Naoki KOBAYASHI. (1991). Law and Legal Thinking: Characteristic and Limits of Legal Thinking. The Japan Association of Legal Philosophy. *Legal Thinking Today (The Annual of Legal Philosophy 1990)*. Yuhikaku. pp. 35–54. (小林直樹「法と法的思考」日本法哲学会編『法的思考の現在（法哲学年報 1990)』有斐閣，1991 年 3 月，pp. 35–54.)

Keizo YAMAMOTO. (1997). Hotekishikono Kosoto Tokushitsu: Jikorikaino Genkyoto Kadai. Masahiko IWAMURA, et al. eds. *Gendaihogakuno Shisoto Hoho. (Iwanamikoza Gendaino Ho 15)*. Iwanamishoten. pp. 231–268. (山本敬三「法的思考の構想と特質―自己理解の現況と課題―」岩村正彦他編『現代法学の思想と方法（岩波講座現代の法 15)』岩波書店，1997 年 6 月，pp. 231–268.)

Fumihiko TAKAHASHI. (2013). *Hotekishikoto Ronri. Seibundo*. (高橋文彦『法的思考と論理』成文堂，2013 年。)

Kyoko ISOYAMA. (2016). Shogakko Shakaikaniokeru Houtekiliteracyno Ikuseiwo Mezasu Jyugyono Koso: Hotekisankagakushuno Jireiwo Tsujite. Kiyoshi KARAKI, ed. *'Komintekishishitsu'towa Nanika: Shakaikano Kako・Genzai・Miraiwo Saguru*. Toyokanshuppansha. pp. 27–30. (磯山恭子「小学校社会科における法的リテラシーの育成を目指す授業の構想―法的参加学習の事例を通じて―」唐木清志編著『「公民的資質」とは何か―社会科の過去・現在・未来を探る―』東洋館出版社，2016 年，pp. 26–30.)

Kyoko ISOYAMA. (2010). Hokyoikuniokeru Hotekisankagakushuno Jyuyousei. Akihide TANIKAWA, Yuji EGUCHI, Yoshiyasu IDA, et al. eds. *Shiminkyoikueno Henkaku*. Tokyoshoseki. pp. 174–184. (磯山恭子「法教育における法的参加に関する学習の重要性」谷川彰英監修，江口勇治，井田仁康，伊藤純郎，唐木清志編『市民教育への変革』東京書籍，2010 年 5 月，pp. 174–184.)

Jenson, Jane. (2006). Introduction: Thinking about Citizenship and Law in an Era of Change. Law Commission of Canada. ed. *Law and Citizenship*. UBC Press. pp. 3–21.

White, Charles, ed. (1984). *Lawyers in the Classroom*. American Bar Association Special Committee on Youth Education for Citizenship.

Hokyoikukenkyukai. (2005). *Hajimeteno Hokyoiku: Wagakuniniokeru Hokyoikuno Fukyu・Hattenwo Mezashite*. (First Law-Related Education). Gyosei. (法教育研究会『はじめての法教育―我が国における法教育の普及・発展を目指して―』ぎょうせい，2005 年 3 月。)

Homusho. *Hokyoiku*. (法務省「法教育」(http://www.moj.go.jp/housei/shihouhousei/index2.html) (visit; 2018. 1.5).)

Nihonbengoshirengokai. *Hokyoikutte Nani?*. (日本弁護士連合会「法教育ってなぁーに？」(https://www.nichibenren.or.jp/activity/human/education.html) (visit; 2018.1.5).)

Saibansho. *Saibaninseido*. （裁判所「裁判員制度」（http://www.saibanin.courts.go.jp/）（visit; 2018.1.5）.）

Additional Statement: This paper is rewritten in English by referring to the references, especially my copy.

EFFECTIVE PRACTICE TO ENHANCE ACCESS TO JUSTICE FOR WOMEN AS VICTIMS IN THAILAND

*Dr. Kittipong Kittayarak**

I. INTRODUCTION

Ensuring gender equality and equitable treatment for women are crucial elements in achieving social development for all. Accordingly, this has been embedded in the 2030 Sustainable Development Goals (SDGs). The global community recognizes that the SDGs draw together the strands of peace, the rule of law, human rights, development and equality into a comprehensive and forward-looking framework to reduce conflict, crime, and discrimination in order to ensure an inclusive society. Goal 5, in particular, mandates the elimination of all forms of violence against women and gender discrimination. Combined with Goal 16 — the rule of law and access to justice for all — access to justice to end violence against women has now become one of the world's biggest promises in order to achieve sustainable development.

While the SDGs can be seen as '*promises*' to be realized by the year 2030, the issue of non-discrimination, access to justice and non-violence against women have been a mainstay in a number of core international instruments, including but not limited to, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, and the Convention on the Elimination of all forms of Discrimination Against Women. In particular, these SDG principles have been echoed in a number of key international documents in the field of crime prevention and criminal justice. One key example is the 'Doha Declaration[1]', which was unanimously adopted at the 13th United Nations Congress on the Crime Prevention and Criminal Justice in April 2015, and which requires mainstreaming the gender perspective into criminal justice systems by developing and implementing national strategies and plans to promote the full protection of women and girls from all acts of violence. To this end, states are encouraged to adopt gender-specific measures as an integral part of national policies on crime prevention, criminal justice as well as the treatment of offenders.

In a more detailed manner, *the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice*, adopted by the United Nations General Assembly in December 2010, provides comprehensive guidelines to respond to specific needs of women in the criminal justice system. By these Model Strategies, States are guided to apply gender sensitive measures in each step of the criminal process including, but not limited to, protecting the privacy and identity of the victims; to develop mechanisms to ensure a comprehensive multidisciplinary, coordinate, systematic response to violence against women; to ensure specific needs of victims of violence during the investigation; to ensure gender-equitable representation in the police force and other agencies of the justice system and; to ensure access to legal aid.

Despite the proliferation of international standards highlighting equal treatment of and ending violence against women, the situation remains worrying. According to UN Women, 35 per cent of women worldwide have experienced either physical or sexual violence at some point in their lives. This disturbing phenomenon is amplified when coupled with current statistics showing that as much as 80 percent of women victims of violence across the globe do not even report the violence they have encountered. Shortfalls in legal procedures as well as social and economic factors continue to challenge justice systems in addressing the urgent need for women to access justice in many parts of the world.

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[1] The Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation, paragraphs 5(f) and 5(g)

Thailand is not immune to these challenges. Sexual and domestic violence as well as violence in the context of human trafficking continue to be reported throughout the kingdom. However, SDGs and emerging trends in criminal justice frameworks have provided an array to better accommodate the needs of women. This paper will provide an overview of Thailand's situation and the challenges women face in accessing justice as well as measures adopted by the Thai government and other stakeholders to address those challenges in the first and the second parts. The final part will focus on the way forward in conjunction with the framework of SDGs presenting as opportunity to better address access to justice for women.

II. CONTEXT AND BACKGROUND IN THAILAND

A. Major Forms of Violence against Women in Thailand

Statistics suggest that violence against women is a universal problem. The World Health Organization (WHO) estimates that, globally, around one in three women have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime[2]. A study commissioned by the Thailand Institute of Justice reveals that the forms of violence against women across ASEAN countries include domestic violence, trafficking, rape and sexual assault. In Thailand, there are three main forms of violence against women, namely sexual violence, domestic violence and violence in the context of human trafficking.

1. Sexual Violence

In 2017, the estimated rate of rape was 0.95 per 1,000 women. An average of 87 cases of sexual violence are reported each day to the support service groups and health centers around the country, but very few reach the police station[3]. Female students are particularly vulnerable. It was found that 60% of the almost 32,000 girls and women raped in Thailand in 2013 were students and that alcohol had contributed to the violence in 37.7% of the cases surveyed[4]. The cases of sexual violence are mostly caused by someone the victims know: family members, current and ex partners, neighbors, friends, work colleagues or acquaintances. A study on sexual violence in Viet Nam and Thailand found that between 86 and 98 per cent of the suspects were known to the victims[5].

2. Domestic Violence

In some societies, certain types of violence may appear to be normal especially when law enforcement has little grasp or control on violence against women[6]. In Southeast Asian households, examples of justifications for using violence against women range from burning the food, arguing with one's husband, going out without telling the husband, neglecting children or refusing to have sex with one's husband. In Thailand, while country-wide statistics from government or academic sources are not available, a survey conducted in Bangkok by a human rights group indicated that 38 per cent of 2,800 women had experienced physical violence by an intimate partner during their lifetimes[7]. In addition, the Thai Health Promotion Foundation has reported that there is an increase in Thai women being subject to domestic violence. Factors contributing to the increase of domestic violence include work stress and the consumption of alcohol[8].

3. Violence against Women in the Human Trafficking Context

According to a recent report on Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand[9], 21 per cent of migrant workers in Thailand are victims of human trafficking, and most victims of trafficking in domestic services and sex industries are female. The ILO found that approximately 20 per cent

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[2] Violence against women. Intimate partner and sexual violence against women. 2017. Fact Sheet. World Health Organization. WHO. Retrieved from: http://www.who.int/mediacentre/factsheets/fs239/en/

[3] Study: one rape every 15 minutes. 2014. The Bangkok Post.. Retrieved from https://www.bangkokpost.com/print/400874/

[4] Ibid.

[5] The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam. 2017. Skinnider, E., Montgomery, R. and Garrett, S. UN Women, UNDP and UNODC.

[6] Scoping study, page 57

[7] Women who experience intimate partner violence, 2016. kNOwwVAWdata. Measuring prevalence of violence against women in Asia pacific. UNFPA Asia and the Pacific region. Retrieved from: http://asiapacific.unfpa.org/sites/default/files/pub-pdf/VAW%20Regional%20Snapshot_2.pdf

[8] http://morning-news.bectero.com/social-crime/22-Sep-2017/110920

[9] The report commissioned by the Thailand Institute of Justice in collaboration with the United Nations Office for Drugs and Crime (UNODC)

of those domestic workers experienced physical and sexual abuse in the premises where they work and live ranging from unwanted touching to sexual advances, beatings, rapes, and other forms of violence. Of the aforementioned figure, 8 per cent experienced sexual harassment. Another report commissioned by UNODC in 2013 estimated that around 140,000 workers operate in the sex industry in Thailand and 90 per cent of those are female. Consequently, about 5,600 sexual workers, both Thai and foreign nationals, might be victims of trafficking for sexual exploitation.

While depicting major forms of violence, it is useful to draw attention to three common characteristics of violence faced by women in Thailand. The first one is that the majority of perpetrators are known to the victim, and in most cases are known men comprising current and ex-intimates, family members, neighbors, and work colleagues. A study conducted by UN Women on sexual violence in Thailand and in Viet Nam shows that a staggering 98 per cent of the suspects are known to women. The second characteristic is that women are more likely to experience repeated acts of violence by the same perpetrator rather than a one-off victimization. Thirdly, the violence is often trivialized through inaccurate and unhelpful descriptions such as 'date rape'. The context in which the violence takes place can impact how criminal justice providers view the seriousness of the violence and in some situations, the violence might not even be criminalized.

B. Identified Problems in Access to Justice for Women

Worldwide, only 20 per cent of violence cases have been reported to police and undergone processes in the criminal justice system. In Southeast Asia, women who are subjected to violence face numerous legal, social, and cultural procedural and institutional hurdles that discourage reporting and cooperating with criminal justice officials. This section will analyze the following key barriers that women face in Thailand. This section will analyze several key barriers that women face in Thailand.

According to the 2017 UN Women, UNODC and UNDP report, "The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam," these excerpts capture the key obstacles to Thai women's access to justice:

- Delays in the criminal justice system: Court proceedings can be long and drawn out, and often focus on physical or forensic evidence or the victim's credibility rather than the credibility of the reported event or the victim's lack of consent. Significant delays plague many victims going through the administration of justice, which can start with late onset and completion of police investigations and carry through to delays in setting trial dates. The victim's character, behaviour or dress is often called into question. There is little preparation or court support for the victim. In many cases, the court acquits the accused.

- Inadequate sense of gender sensitivity among criminal justice providers: While sexual violence cases are complex and challenging to investigate, there are no specialized investigative units, and officers and investigators receive little or no specialized training or professional development. There are few female police and investigating officers. Many victims are turned away and urged to seek mediation or other forms of settlement outside of the formal criminal justice system. Victims are often required to tell their story multiple times or are treated with disrespect and insensitivity.

- Inadequate coordination among service providers: There are limited referral networks and coordination mechanisms within the justice system, and among government departments, justice system agencies, and civil society service providers. Data systems from different parts of the criminal justice system that do not speak to one another, and that may even use different definitions, terminology or casefile numbers, further hamper effective collaboration and increase the risk of information loss.

- Victims' lack of knowledge of legal rights and procedures: Many women have limited knowledge and limited access to information about their legal and procedural rights and what they can and should expect as they navigate complex criminal justice systems and processes. Protections offered to victims of sexual violence can be inadequate, as in limited victim or witness protection programmes, and communication between criminal justice service providers and victims largely ceases once the initial report has been taken. Where support services are limited, victims and their families may choose to forego seeing their cases through to completion.

III. DEVELOPMENT AND GOOD PRACTICES

Despite the shortfalls in criminal justice system and challenges faced by women in Thailand, there are promising emerging developments both in Thai law and practices that enhance access to justice for women. This section will identify key developments with the 1997 Constitution as a milestone towards the reform of the justice system responding to the needs of individuals and vulnerable groups. Developments are focused on the existence of the legislation, implementation of the laws and measures applied by the government and other stakeholders that have made significant, positive changes to the access to justice for women.

A. Developments in Thai Legislation

The 1997 Constitution lays the foundation for revolutionary reforms of the criminal justice system in Thailand. It puts great emphasis on establishing the rule of law and due process. Its constitutional legacy particularly on the protection of fundamental human rights, liberties, and equality of the Thai people is upheld by the 2007 Constitution and the 2017 Constitution. Among many progressive clauses, for the first time the rights of victims and witnesses in criminal cases were recognized in the constitution. Section 244 established that in a criminal case, a witness has the right to protection, proper treatment, and necessary and appropriate remuneration from the State as provided by law. Section 245 mandates that an injured person in a criminal case has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law.

Following the 1997 Constitution, the Witness Protection in Criminal Act B.E. 2546 (2003) was approved by Parliament. For women as witnesses in cases of sexual offences, the Witness Protection in Criminal Act provides that the witnesses under the Penal Code in respect of the following offenses may be provided special protection: witnesses to procuring offences under the law on women and children trafficking, and prostitution or prostitution business.

In accordance with the 2007 Constitution and criminal justice reform efforts, amendments to the Thai Criminal Procedure Code were made in 2008 to add provisions which offer greater guarantees of rights and protection for women as victims and witnesses at all stages of criminal procedure including:

- *The presence of female officers*: For collection of evidence during the investigation process, Section 132 (1) requires that a female officer or other woman shall be in charge of inspecting the body of a female injured person. Upon interrogation, Section 133 states that in the case of an offence relating to sexuality, inquiries of the female injured person shall be made by a female officer, unless the injured person gives consent otherwise or there is other cause of necessity, and such consent or cause must be noted. In addition, the injured person may request to bring another person to be present during the examination.

- *Non-confrontational procedure*: In the taking of evidence during trial, Section 172 allows for non-confrontational procedures after taking into consideration sexuality, age, status, health and mental state of a witness and her potential anxiety. A procedure may be conducted without direct confrontation between a witness and the accused person via closed circuit television, electronic media or any other method as prescribed under decisions of the President of the Supreme Court. In addition, inquiries may be conducted by a psychologist, social worker or other individual whom the witness trusts. One of the regulations issued by the President of the Supreme Court in 2013 reaffirms the provisions under Section 172 and further underlines that non-confrontational principles be applied before, during, and after the procedure.

- *Special measures in responding to sensitivity of violence cases*: As an exception to the principle of open trial, Section 177 upholds that the Court may, of its own motion or on the application of either party, issue an order that the trial be held behind closed doors, provided that it is in the interest of public order or good morals. In addition, Section 226/4 prohibits the accused person from presenting evidence or cross-examining the victim with a sensitive question unless permitted by the Court.

With regard to women as victims of domestic violence, the Protection of Victims of Domestic Violence Act B.E. 2550 (2007) is the first Thai law that defines "domestic violence" and allows a "person in the family" to be legally liable for offences under the Act. In this Act, a person in the family is interpreted widely and

includes spouse, former spouse, those who cohabitate or used to cohabitate as husband and wife without registering for marriage, child, adopted child, members of the family, including any individual who depends on or lives in the same household.

Most importantly, the law authorizes the competent official who witnesses or receives notification of an alleged act of domestic violence to: enter the residence or the scene to interview the person who allegedly committed domestic violence, the victim, or potential witnesses; arrange for the victim's medical treatment and advice from the psychiatrist, psychologist, or social worker; file the complaint on the victim's behalf when she lacks the ability or opportunity to do so.

In interviewing a victim of Domestic Violence, in accordance with the Criminal Procedure Code, the Inquiry Official shall arrange for the psychiatrist, Psychologist, Social Worker, or person which the victim of Domestic Violence has requested to join the interview in order to provide advice.

In the case of human trafficking, the Anti-Human Trafficking Act B.E. 2560 (2017) extends protection to women as victims and witnesses of human trafficking. Under this act, conducting bodily examination on a potential victim of human trafficking must be done with the victim's consent. If such person is a woman, the procedure must be carried out by a female examiner. The victim, as a witness, shall be under protection according to the law on protection of witnesses in criminal cases. In recognition that victims of human trafficking may be illegal migrants and are thus at risk of being denied fair access to justice if faced with prosecution, this Act clearly states that, unless written permission is granted by the Minister of Justice, the inquiry official shall be barred from taking legal proceedings against any victim on immigration offences. The same prohibition is applied to the following immigration-related offenses: providing false information to authorities; forging or using a forged travel document under the Penal Code; offences on prevention and suppression of prostitution, particularly on contacting, persuading, introducing, soliciting or pestering a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution; being an alien working illegally in Thailand.

B. Emerging Good Practices Enhancing Access to Justice for Women

In addition to improvements to Thai law, support is available for women in each stage of the justice system starting from awareness-raising programmes to encourage and provide information for women and girl victims to report violence. Once violence has been reported, services and necessary funding are available to assist females in each stage of the justice process. Capacity-building programmes for police and practitioners have also been put in place to enhance the quality of legal services provided for female victims.

Emerging key good practices are as follows:

1. One Stop Crisis Centres (Ministry of Social Development and Human Security)

Despite existing response services, multi-sectoral coordination mechanisms remain a challenge. This has led the Ministry of Social Development and Human Security to establish One Stop Crisis Centres (OSCC) all throughout Thailand, in partnership with the Ministry of Public Health, the Royal Thai Police, the Ministry of Labour, and non-governmental organizations working to end violence against women. The OSCC includes a hotline managed by trained staff, a network of 22,000 crisis centres around the country and 1,300 mobile units to access communities nationwide.

The crisis centres receive complaints, transfer cases and coordinate responses between Government agencies. Each OSCC is a multidisciplinary unit that provides comprehensive services for victims of violence in Thailand. The centres provide physical and mental treatment, legal assistance, and recovery and rehabilitation, with multidisciplinary teams to help women victims of all forms of violence. They work not only with medical doctors and nurses, but also representatives from the Royal Thai Police, the Office of the Attorney-General, non-governmental organizations, and emergency shelters. As a result, victims have access to immediate critical services and assistance. An OSCC usually assumes multifunctional roles.

The OSCCs are administered by the Ministry of Social Development and Human Security. They are computerized and able to track specific cases or survivors' rehabilitation programmes. They also feature a database that provides a snapshot of the true extent of violence reporting and the demand for social assistance, while collecting information on the OSCC's use, to ensure improvements in their responsiveness

and effectiveness. This national initiative responds to violence against women by providing immediate social assistance to victims of gender-based violence. It is expected also to play a preventive role by raising public awareness and focusing on rehabilitation.

2. Multi-disciplinary Team (Office of Attorney General)

The Model Strategies and Practical Measures on the Elimination of VAW in the field of CPCJ places one of its focuses on the establishment of a multidisciplinary response to violence against women which should include specially *trained police, prosecutors and other criminal justice officials as well as health* and social services and supports to contribute to the well-being of the victim. The aforementioned One Stop Crisis Centre is a clear example of how Thailand is operationalizing international standards. In addition, more progress has been recently made as multidisciplinary teams are being set up in the nation's provinces and include provincial attorneys, investigative officers, One Stop Crisis Center (OSCC) officers, local administrative officials, social workers and provincial Social Development and Human Security agents.

The Office of Attorney General of Thailand set up the multidisciplinary team, in consultation with public prosecutors, as a local mechanism for the effective response to violence against children cases and child protection particularly children in contact with the justice system. The team is expected to play roles in improving the reporting mechanism and designing prevention measures as well as rehabilitation plans. In designing the best course of action for each specific case, the views from various disciplines and stakeholders are very crucial. Team members come from various professions such as police, medical staff, social workers, teachers, and community leaders. In 2017, the team was able to resolve 90 violence cases — mostly domestic violence — affecting children in 9 provinces.

3. Justice Fund (Right and Liberty Department)

The Justice Fund was set up in 2006 to ensure equal access to legal assistance and fair treatment for the underprivileged by enabling impoverished people facing legal charges or victims of abuse to gain access to financial aid. The Rights and Liberties Protection Department has played an active role in the Justice Fund since its establishment, which led to the 2015 enactment of the Justice Fund Act. The Justice Fund has so far dealt with 18,530 of approximately 19,000 cases. More than 500 million baht has been spent on legal services and aid for assistance seekers.

Access to justice for Muslim women in southern provinces was one of the major challenges of Thailand not least due to the more limited economic opportunity in the area. The Justice Fund was in place to support the most poor and vulnerable to access justice, but for women in the south the largest challenge was to overcome stigma and social pressure in coming forward with complaints of domestic violence. The Government was promoting projects which raised the awareness and knowledge of women in the south about their rights, and how to access justice and approach the legal system. The Southern Border Provinces Administration was one agency which provided legal aid and information to women and also helped women understand how to apply all that knowledge in their daily lives.

4. Victim Support Programmes

In the past 20 years, efforts to combat violence against women have been made by cooperation among organizations in both the public and the private sectors in Thailand. NGOs focused on ending violence against women have played key roles in finding measures to provide gender sensitive assistance to women.

The Association for the Promotion of the Status for Women (APSW), a charitable organization mandated to address violence against women has provided shelter and fully comprehensive services for women and children confronting physical, psychological and sexual abuses, unwanted pregnancies, and abandonment including HIV/AIDS. The past 25 years have seen over 50,000 women and children receiving assistance from APSW and at present, on any single day, there are about 120 women and children sheltered at the APSW Emergency Home. APSW has in the past several years launched many rehabilitative as well as preventive activities. It has opened up a one stop service centre for rape victims (Kanitnaree Centre), fully equipped with medical examination and video-recorded investigation facilities to provide gender-sensitive and comprehensive services assistance.

5. Capacity Building Programmes

The lack of legal knowledge poses great challenges to womens access to justice. The criminal justice

system continues to disadvantage many women who find themselves in the process. There are many obstacles to accessing justice that women have to overcome including the lack of knowledge on criminal justice procedures and the awareness of legal rights.

Enhancing legal awareness is the key to women empowerment. To this end, the *Paralegal Training: Women for Justice, Justice for Women* training programme was initiated by Thailand Institute of Justice in collaboration with Foundation for Women, Law and Rural Development and Chiang Mai University. Upon completing training, participants are expected to be able to provide legal advice or assistance to women and others in need. Participants included social workers, community leaders, women right advocates, lawyers and local criminal justice practitioners. In 2017, the training was organized three times in the northern, southern and central regions of Thailand.

The Office of Attorney General has been working together with UN Women, UNICEF and Ministry of Social Development and Human Security in providing a number of training programmes for public prosecutors regarding violence against women cases. The training focused on the functions and the role of Prosecutors in protecting victims of sexual violence. Moreover, The Office of Attorney General also collaborated with the police cadet academy on organizing workshops for third-year police cadets on the topic of violence against women and the role of law enforcement in tackling such issues.

IV. CONCLUSION AND WAYS FORWARD

The SDGs and the Doha Declaration provide normative frameworks to mainstream gender perspectives into criminal justice systems. Although not legally binding, the SDGs and Doha Declaration provide principled guidance on how to tackle the issues of inequality, violence against women and access to justice for women in an integrated manner. Sections I and II of this paper depicts the current situation and remaining problems in accessing justice for women as well as developments in Thai legislations and good practices endeavoring to address these challenges. In moving forward, it is useful to draw lessons learned from practices in Thailand and to rethink opportunities presented to us by the framework of SDGs to improve access to justice for women. In this regard, this paper posits three lesson learned in Thailand's context from which we can draw to better improve the access of justice for women. These are, namely: the significance of inclusive and integrated approaches: the role of the rule of law; the use of a development framework to tackle the root causes of existing problems; and the crucial roles addressed below.

A. Inclusive and Integrated Approaches

The SDGs, in the preamble of the resolution A/RES/70/1, call for the involvement of all stakeholders. The role of civil society are recognized in several parts of the document as a key to making critical changes for a sustainable society. Likewise, the Doha Declaration highlights consultative and participatory processes to ensure the contribution of civil society, the private sector, academia, and all other relevant stakeholders, in the development and implementation of crime prevention policies.

Challenges faced by women in accessing justice are a combined result of social values, cultural patterns and practices, and lack of gender responsiveness in the criminal justice system. To fight these multi-dimensional challenges we need participants from all sectors, not just governmental bodies. A number of good practices in Thailand reflect the important role of civil society. One is capacity-building activities. Academics and NGOs have significantly enriched Thai training programmes by adding their views, knowledge and practical experiences. Another example is victim support programmes. A number of NGO-led shelters are being operated throughout the country to provide accommodation, physical and mental health care, and assistance for female victim. Assistance provided for victims includes legal assistance with intervention from pro bono lawyers.

At present there are a number of MOUs between groups of civil society and government bodies on services provided for women. As such, in moving forward, the role of civil society, such as NGOs and academics, cannot be underestimated. In addition, international stakeholders must not be overlooked. Not only local NGOs can be benefit from an inclusive and integrated approach, but international stakeholders as well. The government should consider the role of international organizations.

B. The Rule of Law

Every country has laws criminalizing rape and other forms of sexual violence. However this does not guarantee access to justice for female victims of violence. The rule of law is not only a matter of having the laws in place. It is also the way that the law and its implementation in reality understand and take into account the interests and concerns of people, or in this case of women. SDG Goal 16 on the rule of law comes into play by providing an appropriate legal infrastructure to protect women against violence. The international community has recognized that the rule of law, peace, justice and security are key elements in realizing sustainable development. The rule of law has therefore become one of the specific targets to guide our efforts to transform the world we live in.

For the SDGs, Goal 16 on the rule of law does not only stand as a goal in and of itself, it also provides an enabling environment for the achievement of other goals. When effective, the rule of law provides a society with a clear sense of assurance that the use of coercive power by the government, the utilization of natural resources, and the promotion of economic development shall benefit everyone. The rule of law implies a sense of respect for human rights, non-discrimination, mutual interest as well as effectiveness and due process when state agencies are to apply executive power.

Drawing from practices and developments in the Thai context, the rule of law has much to contribute to the improvement of access to justice for women. The rule of law helps us understand the situation by taking account of the vulnerability of female victims and sensitivity of issues. In this sense, the 1997 constitution and other legislation provides special measures in dealing with female victims and witnesses such as the non-confrontational process, prohibition of cross-examination with a question being concerned with the injured person's sexual behaviour with a person other than the accused, appropriate remuneration and support from the government, etc.

The rule of law also provides a creative framework for legal enforcement that serves the needs of all individual and vulnerable groups — female victims in this case. To ensure equal access to justice for all, the justice fund programme was therefore created to provide support for victims with financial difficulties.

C. Empowerment of Women to Tackle the Inequality

Challenges in accessing justice for women are rooted in inequality and resultant discrimination between men and women and gender stereotyping. To deal with inequality, one good approach is to work on the empowerment of women as key contributors to the development of society. The SDGs, in particular Goal 5, emphasize the empowerment approach which involves a process of systematic change through which women are enabled to exercise and advance their rights and interests using the law, together with access to educational and economic opportunities.

To depict this in a concrete way, one can think about providing opportunities for women to become players in the criminal justice system, or "justice makers." For women to fully enjoy gender equality, it is recognized that the fair and equal treatment is linked to broader questions of social justice. This includes the need to have more women as practitioners and administrators in justice systems. Women justice makers are agents of change and most of them contribute to improving the relationship between women and the justice system. This is particularly the case where access to justice of women is jeopardized due to the lack of gender sensitivity among justice personnel. The UN Committee on the Elimination of Discrimination against Women also noted that improving women's professional participation in the justice sector is key to enhance women's access to justice, achieving women's equality, democracy and the rule of law.

D. Crucial Role of Culture

In order to deal with social factors such as gender stereotypes and misconceptions identified as social barriers to access to justice, we should highlight the crucial role of culture. We need to build momentum from awareness-raising activities targeted at a broad spectrum of violence within our society.

TIJ has been working with partners in organizing the campaign *SpeakUp SpeakOut* continuously since 2014, targeting young people and the new generation. The activity seeks to encourage open discussions and debates on gender equality by sharing knowledge and raising awareness about one's roles in ending violence against women and girls. To ensure access to justice for women, it is essential to change the attitudes of the public towards violence against women—encouraging the justice system to be aware of the vulnerability of

women victims and improve procedures to protect and provide them with emotional support. Moreover, civil society plays a crucial role in promoting change so that women have the courage to utilize the justice system and enforce their legal rights. This will eventually lead to a greater decrease of violence against women and girls in the future.

In changing social norms and culture, also the media plays an important role. The media has a significant influence on how society understands and approaches the problem. It can contribute to activating community members regarding the seriousness of the issue. At the same time, media should not itself be a barrier to the access to justice for women. The positive role of media is, therefore crucial, and it can make change in our society.

Reference

Skinnider, E., Montgomery, R. and Garrett, S. (2017). *The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam*. UN Women, UNDP and UNODC.

The Bangkok Post (2014). *Study: one rape every 15 minutes*. The Bangkok Post. Retrieved from https://www.bangkokpost.com/print/400874/

Thailand Institute of Justice (2016). *Scoping study on Women's access to justice: Perspectives from the ASEAN region*. Thailand Institute of Justice.

Thailand Institute of Justice (2017). *Women as justice makers: perspectives from Southeast Asia.* Thailand Institute of Justice

UNFPA Asia and the Pacific region (2016). *Women who experience intimate partner violence, kNOwwVAWdata. Measuring prevalence of violence against women in asia pacific*. Retrieved from: http://asiapacific.unfpa.org/sites/default/files/pub-pdf/VAW%20Regional%20Snapshot_2.pdf

UNODC (2017). *Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand*. The United Nations Office of Drugs and Crime

UNODC (2015). *Report of Thirteenth United Nations Congress on Crime Prevention and Criminal Justice*. The United Nations Office of Drugs and Crime (UNODC). Retrieved from: https://www.unodc.org/documents/congress/Documentation/Report/ACONF222_17e_V1502929.pdf

WHO (2017). *Violence against women. Intimate partner and sexual violence against women. 2017. Fact Sheet.* World Health Organisation. WHO. Retrieved from: http://www.who.int/mediacentre/factsheets/fs239/en/

UNAFEI CONNECTION: THE IMPACT OF INTERNATIONAL TRAINING COURSES AND SEMINARS ON THE PROMOTION OF RULE OF LAW IN PARTICIPATING COUNTRIES

*Severino H. Gaña, Jr.**

I. INTRODUCTION

My first brush with UNAFEI happened more than twenty-six (26) years ago, in September of 1991, when I was sent to its 89th International Training Course with the theme "Effective and Innovative Counter-Measures Against Economic Crimes". Since then, I have been invited to UNAFEI's International Seminars as a visiting expert on various subject matters on criminal justice. These subject matters included among others: transnational organized crimes, firearms regulation, human trafficking, whistle-blower security and protection, and criminal trials. My humble contributions to UNAFEI in the form of at least seven (7) presentation papers now form part of its published resource materials.[1]

In those twenty-six (26) years, I have certainly gained a great wealth of information and experience that have molded me into a more aware, concerned and passionate justice worker not only for my home country, the Philippines, but for the community of nations as a whole. I should say that UNAFEI played a big role in molding me into what I am now and for whatever I have contributed to my country, and to some extent, to the international community.

II. THE UNAFEI ALUMNI NETWORK

The 89th International Training Course I attended in 1991 was conducted for a good 13 weeks—from September 17 up to December 7. We were 28 in our class, consisting of 13 Japanese and 15 foreigners. In those more than two months of being together almost every day—from the classrooms, to the locations of our study tours, up to the living quarters—we undoubtedly became very close to each other. The exchange of ideas, local experiences and insights, both inside and outside the discussion rooms, were shared among the class. Those almost three months of my career spent at a UNAFEI training course must have been one of the most enriching learning experiences I have ever had in my professional life.

I can probably claim that our class during the 89th International Training Course in 1991 may be one of the closely-knit classes of UNAFEI. This is because two years ago, we celebrated our silver or 25th anniversary through a reunion of sorts that was held here in Japan on April 16, 2016. The reunion was very cordial, and besides having fun looking back at our times in UNAFEI Class, we shared our meaningful experiences since our first meeting twenty-five years ago, especially as they relate to our respective roles in our countries' criminal justice systems.

One of the many benefits of being a UNAFEI alumnus is being in the loop of all its activities, trainings and

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[1] (1) "Extradition and Legal Assistance: The Philippine Experience", Resource Material Series No. 57, 114th International Seminar, January 23, 2000 to February 10, 2000; (2) "The Current Situation of and Countermeasures Against Transnational Organized Crime in the Republic of the Philippines", Resource Material Series No. 59, 119th International Training Course, September 10, 2001 to November 2, 2001; (3) "International Cooperation in Combating Trafficking in Human Beings and Smuggling of Migrants", Resource Material Series No. 62, 122nd International Training Course, September 30, 2002 to October 11, 2002; (4) "The Philippine Experience in the −Investigation and Prosecution of Trafficking in Persons and Smuggling of Migrants, with Special Focus on Punishing the Traffickers", Resource Material Series No. 73, 134th International Training Course, September 18, 2006 to October 6, 2006; (5) "Securing Protection and Cooperation of Witnesses and Whistle Blowers", Resource Material Series No. 86 for the 149th International Training Course, September 5 to 14, 2011; (6) "Building a Criminal Case in the Philippines: Problems, Insights and Proposals" and (7) "Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines", Resource Material Series No. 95, 158th International Training Course, September 10 to 17, 2014.

seminars. Hence, from the time I became an alumnus, I have always received information about upcoming UNAFEI activities. On several instances, I was extended the privilege of nominating participants to its international trainings and seminars. Therefore, knowing the considerable amount of knowledge, experience and advantage that could be gained from UNAFEI's trainings and seminars, I readily endorsed the attendance to these learning activities of colleagues and some junior prosecutors in our office who I knew had the potential to make an impact in our institution after the training course or seminar. As of date, I would estimate having successfully nominated more or less ten (10) prosecutors to these trainings over the last twenty or so years.

So far, I have not had any regrets in the nominations I have made. Most, if not all of these prosecutors from our office who had the privilege to participate in the international training programs and seminars of UNAFEI are now successful justice workers in the Philippines – some of them are now chief of our local or field prosecution offices who are doing very well in their respective posts, another one spearheads the Philippine's efforts in addressing human trafficking issues as head of our anti-trafficking secretariat, while some had become upstanding members of our judiciary as trial court judges and appellate justices. I have no doubt therefore, that the rich experience they gained from attending UNAFEI's courses has helped and continue to guide them in their individual work as stakeholders in our criminal justice system.

A. The Asia Crime Prevention Foundation (ACPF)

For my part, the UNAFEI alumni network paved the way to my membership in the Asia Crime Prevention Foundation (ACPF). The ACPF is a non-governmental organization founded and based in Japan which provides support to UNAFEI activities and helps enhance international cooperation. It lives by its slogan, "Prosperity Without Crime". As an organization, ACPF believes that while it is impossible to have a completely crime-free society, this aspiration may be put into action by contributing to the activities of the United Nations in the field of crime prevention and criminal justice. Although based in Japan, ACPF is active worldwide through its cooperating organizations in several countries, and the UNAFEI alumni network becomes its gateway to these countries. In the Philippines, for example, ACPF's local counterpart is the Crime Prevention Practitioners' Association of the Philippines, or CPPAP, which is mainly composed of Filipino UNAFEI alumni.

ACPF provides added value to and further enriches, the international trainings and seminars at UNAFEI by locally exposing participants to criminal justice offices in Japan and initiating cultural interactions.

B. Philippines-Japan Halfway House

My membership in the ACPF is especially highlighted by my having met and associated with the then eminent Mr. Minoru Shikita, ACPF's former Chairman. For those who have not heard about him, Mr. Shikita was a former prosecutor of Japan who was instrumental in the founding of the International Association of Prosecutors (IAP) in 1995. His strong advocacy for international cooperation among public prosecutors started when he was the Chairman of the United Nations Committee on Crime Prevention and Control in Vienna, Austria, from 1987 to 1989, and at the same time the Head of the Crime Prevention and Criminal Justice Branch of the United Nations Office in Vienna. As you may read further about the history of IAP, Mr. Shikita eventually became its first Vice-President and played a very important role in strengthening cooperation and support among prosecutors throughout the world.

Mr. Shikita was a driving force by himself. His presence and wisdom were a fount of inspiration to people around him. I, for one, am a testament to his powerful influence to take initiatives particularly in the field of criminal justice improvement and reform.

In one conference in 1996, Mr. Shikita casually asked me if I would be interested in putting up a halfway house for prisoners in the Philippines, which would provide programs and opportunities that will help them adjust to family and community life once they are released from prison. Knowing that we do not have such kind of facility in our national penitentiary, I immediately said yes. Thus, he asked me to formalize a request for assistance from ACPF regarding the putting up of a halfway house in the Philippines. I did not lose time. I requested my wife, who was a physician by profession, and who joined me then in Japan for the conference, to put together a concept note about the project while I was delivering my lecture. Before leaving the conference, we handed the document to Mr. Shikita.

It did not take time for Mr. Shikita to succeed in soliciting the help of one of ACPF's supporters – the Nagoya West Lion's Club of Japan – to finance the construction of the halfway house. In November 1996, with the seed donation of eight million pesos from the Nagoya West Lion's Club of Japan, the Philippines-Japan Halfway House was constructed inside the National Bilibid Prison Reservation Compound in Muntinlupa City, Philippines. A few months thereafter, the center was turned over to the Department of Justice and the CPPAP.

For two decades now, the Philippines-Nagoya Japan Halfway House has served as a temporary home for both pre-release and released prisoners where they receive support for their physical, social, spiritual, and economic growth. Its programs prepare its clientele of reformed prisoners to be reintegrated into society through counseling, skills trainings and job placement.

Three kinds of clientele avail themselves of the services of this Halfway House, namely: (1) live-in clients, meaning those who have been released by the Bureau of Corrections but are homeless or have encountered hardships, and those who are expected to be released within a period of four to six months; (2) live-out clients, or probationers who are interested and willing to avail themselves of its services, as well as new parolees and pardonees; and (3) minimum security inmates, or prisoners who are still serving sentences at the Minimum Security Compound of the National Penitentiary.

In summary, the following programs and services are given to Halfway House clients:

1. Casework and Counseling Services
   This is the intensive process of working with pre-release or released offenders from the time of admission up to the completion of their rehabilitation program, to include information, options, individual counseling, social services, referrals, support and opportunities to enable them to reintegrate to society.

2. Productivity Training
   Skills training and vocational education are provided as a major component of the project. These aim to develop positive work habits and attitudes, and for the clients to acquire basic skills in preparation for employment.

C. Medical/Health Services

This entails the referral of the clients to government as well as private agencies that provide medical and dental services.

D. Homelife Service

Another component of the project is the provision of a well-balanced, organized and non-formal program of activities that approximate homelife. Through this service, team leaders chosen by the clients from among themselves implement these activities under the supervision of the Halfway House's Housekeeping Counselor or a hired Center Coordinator. All activities are geared towards providing therapeutic intent and impact on the clients, including the provision of food and clothing, religious and social activities, and work assignments.

E. Placement Service

Finally, assistance is provided to the clients for possible job placement or referral to entities who are willing to give employment.

To date, the Philippines-Nagoya Japan Halfway House has provided services to more than 600 clients since its establishment in 1996. The ACPF continues to send its support to the Halfway House annually, which support is complemented by the assistance from various non-governmental organizations in the Philippines, like the Muntinlupa City Lions Club, Makati Golden Lions Club, Makati Gems Lions Club, and the Rotary International, Dasmariñas, Cavite Chapter.

As I speak, the Philippines-Nagoya Japan Halfway House continues to help reform criminal offenders and turn them into responsible, peaceful and productive members of our society. This is one important legacy that I am proud to have contributed to the cause of the rule of law, and it is one that I could not have done without my UNAFEI and ACPF connections.

III. ACTUAL CASES OF MUTUAL LEGAL ASSISTANCE

UNAFEI was not only established to be a hub for learning in this part of the globe. It was also envisioned to be an institution that will promote mutual cooperation among members of the United Nations, especially among developing countries in the Asia and the Pacific region. In the case of the Philippines and Japan, for instance, these countries have yet to have an extradition or mutual legal assistance treaty. However, the absence of this formal agreement has not prevented us, the Philippines, from lending our needed cooperation on matters that involve enforcement of the law in Japan. I, for one, can attest to several instances in the past where I, in my official capacity as an official of the Department of Justice, rendered assistance to the government of Japan in some investigations being conducted here, but where witnesses and some other forms of evidence were in the Philippines and must be secured in order to help in the investigation. And perhaps because I had been a constant visitor of the Japanese embassy in Manila, and our office knows me to be somehow associated with Japanese matters—like UNAFEI—these requests from the government of Japan were usually referred to me for appropriate action. I have previously discussed these instances in one of my lectures here in UNAFEI, but allow me to mention them again today.

A. The Kosumi Yoshimi Case

The first time I was directed to intervene in connection with a request for assistance from the government of Japan was on March 25, 1996, when I received a formal directive from our then Secretary of Justice to assist Japanese prosecutors in conducting an interview of a person in connection with a case that was being prosecuted in Nagoya, Japan. The person to be interviewed — Joemarie Baldomero Chua — was to be found in a Southern province of the Philippines.

It appeared that the person that we were supposed to interview, Joemarie Baldomero Chua, was involved in the killing of Kosumi Shozaburo, the father of Kosumi Yoshimi, one of Chua's three cohorts, along with two other Philippine nationals, namely Pablito Franco Barlis and William Gallardo Bueno. The incident happened on January 18, 1993 in Nagoya-shi, Japan.

Records of the case disclose that Kosumi Yoshimi, Joemarie Baldomero Chua, Pablito Francis Barlis and William Gallardo Bueno, helped each other knock down the victim — Kosumi Shozaburo — on his back, pushed bedding against his face, tightened an electrical cord around his neck and stabbed him in the neck with a sharp blade, which therefore caused Shozaburo to die from excessive bleeding. But that was not all, the four cohorts also sprinkled kerosene coming from the heater in the living room and into the bedding and ignited them with a lighter that one of them was carrying. Then, they allowed the fire to spread through a Japanese foot warmer (*kotatsu*) onto the house, causing the entire house to burn down.

Kosumi Yoshimi, Pablito Franco Barlis and William Gallardo Bueno were charged for murder under Article 199 of the Penal Code of Japan, as well as for arson of an inhabited structure under Article 1087 of the same Penal Code. Joemarie Baldomero Chua, was also charged as an accomplice to those crimes but had fled to the Philippines and settled in a sleepy town in the southern part of the country. Japanese police, with the help of our Philippine National Police and the International Criminal Police Organization (ICPO), had previously interrogated Joemarie Baldomero Chua in February of 1994, and succeeded to get his version of the incident. However, during the course of the trial proceedings of the case in Japan, Joemarie Baldomerc Chua's account conflicted on the following crucial matters with that of his cohort, William Gallardo Bueno, namely:

1. The time when the conspiracy to commit murder and arson was formed;
2. The details of the conspiracy;
3. The person or persons among the three (3) Filipino accomplices who actually murdered Shozaburo by winding and tightening an electrical cord around his neck and by stabbing him in the neck with a sharp blade; and
4. The person who sprinkled kerosene from a heater to set fire to the house.

The discrepancies in Joemarie Baldomero Chua's and William Gallardo Bueno's narration of events, specifically as regards the details of the actual execution of the crime, the particulars and circumstances of the conspiracy to commit the murder and arson, as well as the matters as regard the reward, made it difficult for Japanese authorities to determine the truth about the incident. Thus, Japanese prosecutors deemed it

necessary that a prosecutor in the Philippines again interrogate Joemarie Baldomero Chua in their presence, in order to clarify the discrepancies.

The day after I received the directives from the Secretary of Justice, I, together with the Japanese prosecutors, immediately flew to Iloilo City in the Southern Philippines. I personally conducted the questioning on Joemarie Baldomero Chua in the presence of his counsel, a lawyer from the Philippine Public Attorneys' Office, and the Japanese public prosecutors. During the interview, I was able to clarify the matters which the Japanese authorities believed were crucial in trying to prove the culpability of Kosumi Yoshimiand his two (2) Filipino cohorts. Aside from cooperating in the interview or questioning, Joemarie Baldomero Chua also executed a written sworn statement, which the Japanese prosecutors brought with them back to Japan.

At the conclusion of the trial proceedings in their cases, all three (3) accused were found guilty for the murder of Kosumi Shozaburo and the burning down of his house. Kosumi Yoshimi was sentenced to life imprisonment, while Pablito Franco Barlis was sentenced to thirteen (13) years' imprisonment with labour, and William Gallardo Bueno was sentenced to fifteen (15) years of imprisonment with labour. When I wrote my paper in 2001, both judgments in the cases of Pablito Franco Balis and of William Gallardo Bueno had become final, while that in the case of the principal accused, Kosumi Yoshimi, was pending appeal before the Supreme Court of Japan.

B. The Akira Fujita Case

On October 8, 1997, an official of the Japanese Embassy in Manila requested my assistance for the immediate arrest of Akira Fujita, a Japanese national who has been convicted and sentenced in Japan in 1990 for conspiring with a Yamaguchi-gumi (Yakuza) member, Hironori Takenouchi, in smuggling handguns and ammunition to Japan. Japanese authorities had information that Akira Fujita departed Japan on October 7, 1997 on board a Pakistan Airlines flight bound for Manila.

Without wasting time, I got in touch with the Chief of the Intelligence Division of our Bureau of Immigration and gave them the information relayed to me by the Japanese Embassy official about Akira Fujita. Barely a day after I received the request for assistance, or on October 9, 1997, Akira Fujita was arrested by Philippine immigration agents. One week thereafter, Akira Fujita was deported back to Japan.

C. The Case of Chow On Park alias Haruhiko Arai

On November 28, 1997, Ho Ji Chong alias Hiroshi Matsuda shot and killed Haruo Nishikawa in Kadoma-shi, Osaka. Thereafter, his cohort, Chow On Park alias Haruhiko Arai placed the dead body of the victim into the trunk of his own vehicle and drove the car to the parking lot of Hoshigaoka Kosei Nenkin Hospital located in Hirakata-shi, Osaka, and left it there. For having done that, Chow On Park received from Ho Ji Chong alias Hiroshi Matsuda on the same day a cash reward of around 30 million Japanese yen.

After receiving the reward, Chow On Park instructed his wife, Marucilla Park Ruby Cristina alias Ruby Arai, to go to the Philippines and bring along with her the 30 million yen reward for abandoning the corpse of Haruo Nishikawa. While in the Philippines, Ruby Arai asked her cousin, Marilou Bernardo, to keep the money in two separate safe-deposit boxes in Philippine banks, namely: 5.48 million yen at Westmont Bank, and 19 million at China Banking Corporation, or a total of 24.48 million yen.

In the meantime, Chow On Park was prosecuted in Japan for violation of Articles 60 and 190 of the Penal Code of Japan, for abandonment of a corpse. In connection with the prosecution of this case, Japanese prosecutors needed to seize and confiscate the reward for the criminal act. Thus, they had to go to the Philippines to recover the money.

In September 1998, Mr. Hideo Iida, the Chief Public Prosecutor of the Osaka Public Prosecutors' Office requested the Philippine government for assistance in connection with the criminal cases against Chow On Park, specifically for the recovery of the reward money kept by his wife in two Philippine banks. At the same time, two Japanese prosecutors were dispatched to the Philippines to attend to this matter.

The Japanese prosecutor's request was referred to me for action. Accordingly, I sought the assistance of our law enforcement offices in the Philippines to locate Chow On Park's wife, and we succeeded. Modesty

aside, we did not only succeed in locating Ruby Arai, but I also persuaded her to turn-over the money she kept in the banks with the help of her cousin. I personally received these moneys in the total amount of 24.48 million Japanese yen and delivered them to the Philippine Department of Foreign Affairs, which in turn transmitted them to the Japanese Embassy in the Philippines. The money was finally used in connection with the pending criminal proceedings in Osaka against Chow On Park, who was eventually convicted and sentenced to suffer imprisonment for the crimes he has committed.

D. The Akihito Ishiyama Case

Sometime in March of 1999, our office received another request for assistance from Mr. Norio Ishibe, the Chief Prosecutor of the Akita District Public Prosecutors' Office, in connection with an investigation of Akihito Ishiyama, a former postmaster of the Tokiwa Post Office in Akita, Japan. It appeared that Akihito Ishiyama, being the postmaster, administered the cash at the Tokiwa Post Office as part of his duties and responsibilities. However, in October 1998, Akihito appropriated for his own personal use, cash amounting to more than 32 million yen. When he was investigated, Akihito Ishiyama disclosed that he went to the Philippines bringing along with him cash in the amount of 33 million yen, and that while in the Philippines, he gave portions of this cash to some Filipinos.

Thus, the request of the Japanese government was to locate those Filipinos who supposedly received money from Akihito, to confirm his assertions, and to ascertain how the money he brought to the Philippines was spent. Two prosecutors from the Akita District were dispatched to the Philippines to interview the Filipinos named by Akihito Ishiyama. I personally accompanied these Japanese prosecutors to the place where these persons were found and in my presence, they freely and voluntarily gave their statements to the Japanese prosecutors. Back in Japan, the Japanese prosecutors utilized the sworn statements in connection with the trial proceedings against Akihito Ishiyama. After the trial, Akihito was found guilty of violating Articles 235 and 253 of the Penal Code of Japan and was sentenced to imprisonment with labour of four years and six months.

V. HOW UNAFEI INTERNATIONAL TRAINING COURSES AND SENIOR SEMINARS HAVE CONTRIBUTED TO THE PROMOTION OF THE RULE OF LAW IN PARTICIPATING COUNTRIES

As all of us know, UNAFEI was established in 1961 primarily to serve as a training institute of the United Nations in the Asian region for criminal justice personnel from all over the world, including among others: judges, prosecutors, law enforcement officers, probation and correction officers. The agreement between the United Nations and the government of Japan relative to the establishment of this institute likewise provides that UNAFEI conduct studies and research in the field of crime prevention and the treatment of offenders, especially focusing on preventing juvenile delinquency and treatment of juvenile delinquents.

True to its mission, UNAFEI, has been able to organize hundreds of international training courses and seminars over its past 50 plus years of existence. This multitude of trainings and seminars translates to more than 7,000 criminal justice officials spread across 137 countries worldwide.

These training and seminar participants go back to their respective countries bringing along with them a fresh, rich harvest of ideas and learnings that eventually find their ways into these officials' conduct of their daily work. Most of these UNAFEI alumni take on lead roles in their fields, whether as prosecutors, law enforcers, or probation and corrections officers. They help give shape to their countries' criminal justice machinery and become instrumental in introducing best practices and innovations in the administration of justice and the rule of law.

Among the countries that participate in UNAFEI's training seminars, the Philippines ranks second (to Thailand) in terms of the total number of trainees or seminar attendees sent to UNAFEI. These participants from the Philippines come from diverse backgrounds — law enforcers, prosecutors, jurists or judges, corrections officers — or from the whole spectrum of the criminal justice system, in other words. The Philippines therefore, has been very fortunate for these opportunities given to its justice workers since their individual or separate efforts in their respective fields bear down on the vast landscape of law enforcement, crime prevention, and most importantly, the rule of law in the country.

For instance, one Filipino UNAFEI alumna I interviewed shared with me that her attendance in the training course which focused on the role of the public and victim's participation in having a more fair and effective criminal justice administration, paved the way for our principal law enforcement agency, the Philippine National Police, to develop a community-oriented policing and crime prevention strategy for the country. This program, called 'Community and Service-Oriented Policing System' or CSOP, focuses on transforming police officers into community leaders by shifting their mindsets from a reactive to a more proactive law enforcers in preventing and solving crimes, in ensuring public safety and in strengthening the capability of local government units to deliver basic services. This system now serves as the foundation of community-oriented policing and crime prevention strategy in the Philippines. It therefore contributes to the promotion of the rule of law in the country as it seeks to address one of its important aspects — societal order and security — which is key to the enjoyment of the people's rights and freedoms.

Another fellow UNAFEI alumnus I know, a ranking official in the corrections pillar, believes that the UNAFEI training course he attended immensely helped him in his efforts to strengthen and promote the rule of law through programs that ensure not only the reformation and rehabilitation of prisoners, but also programs that instill in their minds the dire consequences of breaking the law. He also ensures that parole and probation officers efficiently guide former prisoners to become productive and law-abiding citizens who will not repeat their mistakes. During his watch, both the reoffending and revocation rates of parolees and pardonees were very low, while the grant of parole and pardon had been high.

As a major stakeholder in the promotion of the rule of law in the Philippines, the National Prosecution Service has greatly benefited from UNAFEI trainings and seminars. Quite a number of our prosecutors are UNAFEI alumni, and most if not all of them are now in positions where they are capable of implementing programs that help to strengthen the rule of law in the Philippines.

For instance, our prosecutor who heads an inter-agency task force against trafficking in persons in the Philippines, and who had the opportunity to be sent to a UNAFEI seminar, finds that the seminar helped her promote the rule of law by ingraining good networking programs into the task force's strategic national action plan. Using this strategy, the task force conducts national and international events that result in stronger partnerships and better coordination among both government and non-governmental agencies that work together to fight trafficking in persons. The networks that are created through these events strengthen domestic as well as international cooperation in handling local and cross-border trafficking-in-persons cases. She thus believes that these initiatives greatly contribute to the promotion of the rule of law in the Philippines since all key areas on prevention, protection, and prosecution are being addressed. In fact, all these efforts helped the Philippines achieve a Tier "1" rank in the US Global Trafficking in Persons Report in 2016 and 2017.

Another Philippine prosecutor who was a participant in a senior seminar on the prevention, prosecution, victim protection and promotion of international cooperation in trafficking in persons, believes that the UNAFEI seminar itself helped in the promotion of rule of law by enhancing the capacity of the participants to strengthen their respective justice institutions. For her part alone, she became a more impassioned advocate of anti-trafficking efforts in the Philippines, closely monitoring the investigation, and ensuring the successful prosecution, of cases involving trafficking in persons as well as illegal recruitment.

Another sector in the Philippines that has received tremendous benefits from UNAFEI is our Parole and Probation Administration (PPA). Through a partnership with UNAFEI and the Japan International Cooperation Agency (JICA), the PPA has piloted an In-Country Training Program on the holistic approach to the treatment of offenders, with Volunteer Resource Development as its main component. This program empowers the community as a pillar in the justice system to be an integral part of the rehabilitation of offenders and gives it a role in crime prevention through treatment and management of offenders. This program has gained recognition not only in the ASEAN Region, but also in Japan, China and Korea. As a matter of fact, there has been an informal "exchange program" between the Philippine's PPA and UNAFEI, wherein volunteer probation officers from Japan visit the Philippines and together with our volunteer probation assistants, share knowledge and skills in handling non-custodial offenders. This meaningful exchange enriches the experience and broadens the horizons of both Japan's and the Philippine's justice workers.

Aside from the Volunteer Resource Development Program, the Philippine's PPA also implements a "Balanced and Restorative Justice Program", which emphasizes the importance of elevating the role of victims and the community members through more active involvement in the justice process, holding offenders directly accountable to the people they have violated, and providing a range of opportunities for dialogue, negotiations, and problem solving, which can lead to a greater sense of community safety, social harmony and peace for all. The implementation of this Program was enhanced further after the PPA head's attendance in UNAFEI's senior seminar on "The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process".

VI. HOW PARTICIPANTS IN THE 168TH INTERNATIONAL SENIOR SEMINAR CAN BENEFIT FROM THE PROGRAM

Participants of UNAFEI training programs and seminars reap a great deal of benefits — starting from learning new information and ideas from lecturers, experts and fellow participants, to being exposed to local best practices here in Japan through study visits. From your interactions with fellow training participants, you will learn that there may be different ways of dealing with the same kind of criminal activity, and that there may be various strategies to address the challenges of your country's criminal justice systems. Thus, you have a distinct advantage of being able to 'shop' for new ideas that will help you when you return to your separate jurisdictions.

Best of all, as participants of this international training course, you become a part of a wide and diverse network of professionals throughout the world who carry out the same or similar mandate that you do in your own country. This network will certainly help you down the road, because the borderless nature of criminal activities nowadays entails that law enforcers and justice workers worldwide are inter-connected as well. This must have been one of the challenges of globalization to law enforcement and criminal justice. Take advantage then, of the network that you now have. Continue to be in touch. Compare 'notes', so to speak, for the situations and challenges in your jurisdictions may be the same but may be addressed differently. In other words, go out of your way to sustain the exchanges among yourselves in the months and years to come.

VII. CONCLUSION

UNAFEI training courses and seminars that involve the participation of justice workers of diverse backgrounds, cultures and practices, are not only venues for discourse, learning, exchange and international cooperation. They are in themselves powerful and effective occasions that promote and strengthen the rule of law not only in Asia, but the world over. They not only capacitate participants in the performance of their distinct functions in the justice system, but also inspire and motivate them to become better, if not the best, in their fields.

The rule of law is challenged on many fronts, that is why it is important that stakeholders from its various aspects are gathered together in common venues and occasions, like the ones we have in UNAFEI, in order to foster exchange of ideas and cooperation. The challenging times ahead in terms of crime prevention and solution demand that the international cooperation and exchanges among countries, governments and civil or non-governmental organizations are sustained. For this reason alone, UNAFEI has been a worthwhile undertaking as it is worth keeping.

PARTICIPANTS' PAPERS

SUCCESS FACTORS FOR SMASHING CORRUPTION AND NEW APPROACHES TO SUSTAIN PROBITY CULTURE IN HONG KONG

*Elis LEUNG**

Recognized as one of the cleanest cities with the least corruption in the world[1], Hong Kong has come a long way in the anti-graft battle. Before the inception of the Independent Commission Against Corruption (ICAC) in 1974, corruption was very rampant in both the public and private sectors in the city of Hong Kong. Most people accepted corruption as a way of life and were so ready to grease the palms of officials in seeking employment, schooling, housing and doing business. Today, the society of Hong Kong upholds high ethical standards and a zero-tolerance attitude towards corruption. According to the ICAC Annual Survey 2017[2], on a rating scale of 0 to 10, of which 0 represents zero tolerance and 10 represents total tolerance of corruption, the mean score for Hong Kong was 0.6. A vast majority of citizens agreed that keeping the city corruption-free was important to the overall development of Hong Kong and supported the anti-graft work of the ICAC.[3] Such transformation of attitude over the past 40 + years is the synergy of a host of factors serving as the pillars of success in the fight against corruption.

I. THE SUCCESS FACTORS

A. Strong Rule of Law and Profound Determination of the Government

Hong Kong enjoys worldwide acclaim as one of the most corruption-free places, with a sound anti-graft system and a culture of probity entrenched in the community. What lies at the heart of its success is the ICAC's and the Hong Kong Special Administrative Region (HKSAR) Government's undaunted determination in upholding the rule of law. The Prevention of Bribery Ordinance, *i.e.* the anti-corruption law of Hong Kong, comprehensively covers both the government and the private sector. More importantly, the law is enforced in a fair and impartial manner, without any political consideration. As emphasized in the Policy Address by the Chief Executive of Hong Kong in October 2017, the ICAC remains independent and is fearless, robust and effective in pursuing the corrupt. Regardless of the background, status and position of persons or organizations involved, the ICAC carries out investigation without fear or favour. Evidence is then passed to the Secretary for Justice who makes the decision of prosecution. The crooked will be brought to justice for open and fair trials before the court. The separate power of prosecution and independent judiciary are two fundamental elements in the checks and balances system to ensure there is no abuse of investigative power.

The HKSAR Government is committed to upholding judicial independence, the independent status of the ICAC and the rule of law. All of these are the core values of Hong Kong well affirmed by the Basic Law[4]. Keeping Hong Kong corruption-free is always at the top of the agenda of political leaders. The clear political will to eradicate corruption in the city enables the operational autonomy of the ICAC. The ICAC Commissioner is directly answerable to the Chief Executive of Hong Kong, to make sure the anti-graft

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[1] Hong Kong has consistently remained in the band of the top 20 economies with very low levels of corruption in the world according to the Corruption Perceptions Index compiled by Transparency International since 1995. The city is ranked the 13th least corrupt place among the 180 countries/territories in the Corruption Perceptions Index 2017.

[2] ICAC's Community Relations Department has conducted community-wide opinion surveys through interviews since 1992. Objectives of the surveys are to understand the public attitude towards corruption and the reasons behind it; to identify changing public concerns regarding corruption and the underlying reasons; to gauge public opinion towards the work of the ICAC; and to gauge the behaviour and experience of the public in reporting corruption. The surveys have been conducted by independent research firms that are commissioned through quotation exercises. A total of 1,516 persons were successfully interviewed in the 2017 face-to-face household survey.

[3] According to the ICAC Annual Survey 2017, 99.2% of respondents agreed that "keeping Hong Kong corruption-free is important to the overall development of Hong Kong"; whereas 96.8% of respondents responded that "the ICAC deserves their support".

[4] The Basic Law is the constitutional document for the HKSAR.

agency is free from any interference in conducting investigation. Over the years, the ICAC continues to receive full support from the city's top leaders and lawmakers, in terms of the comprehensive anti-corruption legislation; adequate investigative powers for effective law enforcement; and sufficient financial resources for implementation of its holistic three-pronged strategy to combat corruption.

B. Holistic Anti-corruption Strategy

Hong Kong has been tackling corruption with a holistic approach, combining enforcement, prevention and education to smash corruption on all fronts. Alongside deterrent enforcement actions which make corruption a high-risk crime, the ICAC has put in place a system and rules to eliminate corruption loopholes and has transformed the public attitude towards corruption from meek tolerance to rejection and to engagement in the graft fight through unremitting community education. During a visit to Hong Kong in 2016, Mr. José Carlos UGAZ, the former Chair of Transparency International, praised Hong Kong for its pioneering and time-tested three-pronged strategy as a role model for the world on how to deal with the problem of corruption. Both the symptoms and the root cause of corruption are fully addressed through this panoramic approach.

C. Persistent Public Support

Public support is of paramount importance to the success of anti-corruption work. The strong support from the public for the ICAC could be seen in some major findings of the ICAC Annual Survey 2017. For instance, over 96% of survey respondents opined that the ICAC deserved their support. Nearly 80% of respondents indicated that they were willing to report corruption. From the corruption complaints received, 90% of them came from the general public whereas over 70% of the complaints in 2017 were non-anonymous. All of these are solid evidence of the public confidence and trust towards the Commission. Support of the citizens of Hong Kong is an asset and driving force of the ICAC's in the fight against corruption.

II. CHALLENGES IN THE NEW ERA

While the aforementioned factors have contributed to the success in changing people's mindset and entrenching integrity as a core value in Hong Kong, the process of graft-fighting is not without challenges. The ICAC must stay vigilant to the uphill battle brought by the evolving society to its mission of sustaining the probity culture in the dynamic environment.

A. Anti-corruption Not the Priority

With the consistent and robust enforcement actions over the years, corruption is well under control in Hong Kong nowadays. The glorious achievement in eradicating corruption could possibly be a hindrance in enlisting public support to the anti-graft mission. To the general public, corruption is far more remote than other livelihood issues such as housing, education, medical care etc. Consequently, corruption is no longer perceived as a pressing problem in the city and receives diminishing attention. Hence, relentless effort is required to keep the issue on the public agenda and secure the continued support of our community for the graft-fighting work in the long run.

B. Perception of the Younger Generation

According to the ICAC Annual Surveys, youngsters (aged 15–24) are comparatively more tolerant of corruption than the other age groups.[5] A possible reason is that youngsters in Hong Kong have never experienced the plight of endemic corruption as the older generation did. They consider corruption too abstract and remote to them. The challenge to impress upon the new generation the evils of corruption and sustain their interest and support for anti-corruption is thus indispensable.

C. Potential Loss of Public Trust

Amid polarization and skepticism arising around the globe, there has been an increasing trend of public mistrust of the government in Hong Kong including the ICAC. The extensive media coverage of some high-profile cases might also intensify the corrosion of public perception and arouse questions about the capability of the ICAC. It can take just one lapse to ruin the reputation built up over many years. Therefore, the ICAC

[5] According to the findings of the ICAC Annual Surveys in the past eight years, the tolerance of corruption of young people aged between 15 and 24 (0.1 to 1.5 scores) was slightly higher than that of the people aged between 25 and 64 (0.5 to 1.2 scores).

has to remain sensitive to public sentiments and refine its work strategies in response to the change in the external environment.

D. Behavioural Change of Audience

The rapid technological advancement and rise of new and social media have brought unprecedented changes to the pattern of people's behaviour in reception of information in the modern society. People are now bombarded by the sheer volume of information every day and tend to spend shorter time on each piece of information. The interactive nature of new media allows users to easily screen out the content that is not of interest. To ensure probity messages effectively reach the target groups, the publicity campaigns have to be tailor-made and more concise with a sharper focus to arouse the attention of the target audience instantly. It is essential for the ICAC to keep abreast of the latest trends of communication when formulating its integrated marketing strategies.

III. TAKING ON THE CHALLENGES FROM THE PREVENTIVE EDUCATION PERSPECTIVE

To take on the challenges and continue the mission to safeguard the integrity culture in the evolving society, the Community Relations Department (CRD) of the ICAC devises an array of innovative publicity strategies to maximize the impact of its advocacy campaigns to different segments of the community.

A. Strengthening Alliances with Key Stakeholders

The CRD reaches out to different strata of the society and forms strategic alliances with key stakeholders to ensure anti-corruption and ethics management are always a top-of-mind concern of people in Hong Kong. Such partnership approach also enables the CRD to tap the resources, networks and expertise of the stakeholders so as to achieve a multiplying effect for the preventive education programmes.

An example is that the ICAC joins hands with the Civil Service Bureau[6] to implement the Ethical Leadership Programme (ELP). Under the ELP, each government department nominates a directorate officer serving as "Ethics Officer", who spearheads ethics training and integrity promotion initiatives within his department. Similarly, staunch partnership has been built with the business sector. The ICAC has the support of ten major chambers of commerce in Hong Kong to set up the Hong Kong Business Ethics Development Centre to promote business and professional ethics as the first line of defence against corruption and fraud. Messages on integrity management and ethical governance are promulgated to business practitioners through the extensive network of the chambers of commerce. This public-private partnership was recognized and affirmed by the international arena, such as the acknowledgment by the World Bank[7].

B. Engagement with Community

To sustain citizens' continued support for anti-corruption work, the ICAC needs to foster a sense of ownership amid the community in fighting corruption. Therefore, the Commission proactively engages different cohorts of citizens to take a participatory role in integrity promotion activities. The citizens have thus become multipliers and publicists of anti-corruption messages. In 2015, the ICAC launched a multi-year-multi-layer civic engagement and education programme entitled "All for Integrity" to instill positive values in people from all walks of life and mobilize Hong Kongers to support the anti-corruption cause. A series of events, including competitions, performances, exhibitions, bus parades, etc. have been rolled out. With over 300 organizations on board, nearly 780,000 people, or more than one-tenth of Hong Kong's population, were engaged so far. The Programme will continue to arouse public attention through intensive and multi-faceted activities, sustain the momentum of probity-culture building in the city of Hong Kong and put forth a

[6] The Civil Service Bureau is one of the 13 policy bureaus of the HKSAR Government. It assumes overall policy responsibility for the management of the civil service, including such matters as appointment, pay and conditions of service, staff management, manpower planning, training and discipline.

[7] The World Bank mentioned in its publication *Fighting Corruption in East Asia: Solutions from the Private Sector* (2003) that "the Hong Kong [Business] Ethics Development Center, established under the umbrella of the ICAC, provides many materials and supports training activities targeting small and medium-size enterprises ... Having a government agency directly involved in the dissemination of business ethics is quite exceptional worldwide and reflects the very strong policy of prevention implemented in Hong Kong."

profound and lasting effect in the society.

On the other hand, over 2,000 citizens are engaged as ICAC Club members as volunteers in promoting anti-corruption messages in their local communities. They render full support in ICAC's publicity projects and have become close allies and valuable partners of the ICAC in fostering the culture of integrity.

C. Riding on the New Trend of Communication

The CRD has been deploying online and offline channels to disseminate anti-corruption messages and reach out to the wider community. Digital advancement has enabled the ICAC to make effective use of multi-media platforms to engage the public. Alongside the conventional mass media production such as the TV Drama Series, TV and radio commercials and printed materials, the CRD produces microfilm, comics, animation and e-games to reach out to netizens and millennials through online media such as Facebook, Weibo and YouTube. To catch the eye of our target groups, in particular youngsters, the CRD has recently created an icon "iSir". With a professional yet friendly image, "iSir" serves as the spokesman of the ICAC to broadcast the latest news and initiatives of the Commission in a light-hearted manner through extensive channels.

IV. FOSTERING A NEW GENERATION WITH INTEGRITY

The CRD attaches great importance to moral education of the young generations and introduces positive values to them at every developmental stage. Education kits featuring the cartoon rabbit "Gee-Dor-Dor" and other parenting programmes are produced for kindergarten children. Whereas in a recent multimedia project for primary schools, over 50,000 students were engaged to produce creative audio-visual artwork on integrity themes and participate in on-campus interactive activities.

Secondary and tertiary students are recruited as ICAC Ambassadors to organize on-campus integrity activities for their peers. These initiatives help deepen young people's understanding of the importance of personal integrity and abiding by the law, hence providing a solid foundation before they enter the job market. These young supporters are also encouraged to pass on the core value of probity and exude a positive influence on the community by becoming ethical leaders in the future. On the other hand, a Youth Chapter of the ICAC Club has recently been launched to encourage more young people to contribute to the anti-corruption cause. In 2018, the ICAC will organize a large-scale youth engagement programme, the "Youth Integrity Fest", to reinforce the core value of integrity and probity culture among the younger generation. The latest virtual reality (VR) simulation and augmented reality (AR) technology will be adopted in the upcoming preventive education projects to showcase the evils of corruption through illustrative cases and demonstrate the importance of safeguarding a level playing field in Hong Kong to the younger generation.

V. WAY FORWARD

In the future, the ICAC will continue to sustain public vigilance through continuous anti-corruption education and engagement programmes with reference to the occupation, profession and daily life of different segments of the community. At the same time, the Commission accords top priority to the upkeep of public trust by informing the people in Hong Kong of its anti-graft efforts on three fronts: enforcement, system prevention as well as community education. The ICAC also spares no effort to connect with young people and engage the millennials through creative means to enhance their ownership of the anti-corruption cause so that the core value of integrity can be passed from one generation to another.

Social culture is dynamic and subject to shaping of different forces. To nurture and sustain an integrity culture is never an easy task. It requires perseverance and innovation to tackle new challenges coming one after another. ICAC officers are ready to undertake the mission with dedication and professionalism. The ICAC always welcomes the sharing of experience, knowledge and insights among regional and international counterparts to facilitate better understanding of the latest trends and anti-corruption strategies in a global context.

LAW-RELATED EDUCATION CONTRIBUTING TO PEACEFUL AND INCLUSIVE SOCIETIES

*Sanjeewa Manojith Dharmaratna**

I. INTRODUCTION

Sri Lanka police celebrated its 151st commemoration on 3rd September 2017. The present Sri Lankan police service was formally established on 3rd September 1866 under Ordinance No. 16 of 1865, during the British regime. Duties and responsibilities of police officers are mentioned in clause 56 of the police ordinance, which was formulated by the British and reads as,

Section 56
Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of police officers in every part of Ceylon.

i. to use his best Endeavour's and ability to prevent all crimes, offences and public nuisances;
ii. to preserve the peace;
iii. to apprehend disorderly and suspicious characters;
iv. to detect and bring offenders to justice;
v. to collect and communicate intelligence affecting the public peace; and
vi. Promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.

Our Vision
Towards a Peaceful environment to live with confidence, without fear of Crime and Violence.

Our Mission
Sri Lanka Police is committed and confident to uphold and enforce the law of the land, to preserve the public order, prevent crime and terrorism with prejudice to none – equity to all.

Including elements of the above points, the Sri Lanka Police vision and mission were been created.

Main Targets

I. Creating a safe and a peaceful environment for the Sri Lankans to live in harmony by producing people-friendly, professional, prestigious and elite Police officers with pride.

II. Devotion and commitment towards crafting exemplary and prestigious police officers to protect law and order by developing their knowledge, skills and humanity.

III. To train police officers to perform ritual police duties and to face unforeseen emergencies and other situations.

IV. Creating a peaceful society, taking adequate measures to prevent crimes, winning the confidence of the people by actively participating in the criminal justice system when crimes are committed and getting involved in implementing community-based policing, collecting criminal intelligence, taking prompt action to investigate crimes, educating the public of their roles and rights in curbing crimes, training police officers to perform anti-criminal work investigation and assess the work of territorial divisions, maintaining a good rapport with all relevant agencies involved in the criminal justice system, getting the

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fullest cooperation of the law abiding citizens to curb crimes.

V. To control the supply and demand of drugs through enforcement and educating the society on the evils of drugs, especially reaching out to youth. In achieving these objectives, the Police Narcotic Bureau changes its strategies according to the drug trend in the country. Close coordination is adopted among government institutions and non-government institutions that are directly involved in controlling the drug menace. Public cooperation is solicited for greater success through awareness programmes to reduce the abuse.

II. WHAT IS LAW-RELATED EDUCATION?

Law-Related Education (LRE) is "education to equip non-lawyers with the knowledge and skills pertaining to the law, the legal process, and the legal system, and fundamental principles and values on which these are based." It helps students "respond effectively to the law and legal issues in our complex and changing society." Education for citizenship in a constitutional democracy, not specialized legal education, is the main point of law-related education in elementary and secondary schools. Given the fundamental place of law in Sri Lankan society, every citizen needs to know how the legal and political systems function, how the law affects them, and how they can affect it.

In the past, major leaders in LRE described their field for a federal government report. They defined LRE as "those organized learning experiences that provide students and educators with opportunities to develop the knowledge and understanding, skills, attitudes and appreciations necessary to respond effectively to the law and legal issues in our complex and changing society" (Study Group on Law-Related Education). In line with this definition, central ideas of LRE1 programmes pertain to why certain legal procedures have been established and how they work in resolving disputes.

A. Development of Citizenship

Law-related education provides young people with knowledge, skills, and attitudes necessary for informed, responsible participation in general constitutional democracy. LRE clearly and indisputably increases students' knowledge of the justice system, government, and the rights and responsibilities of citizenship in a constitutional democracy.

There also is evidence that LRE contributes to development of skills in civic participation, decision making, and critical thinking. Finally, positive attitudes about the law, the justice system, and responsible citizenship may be enhanced through LRE programmes, such as through the following programme:

- **Advanced Diploma in Police Science**
  Period: - 24 Months
  Conducted by: - Sri Lanka Police Academy,
  Qualifications: - Advanced Diploma in Police Science and 03 years of active service following the Diploma or 03 years of service as a Gazette Officer and having been confirmed in the rank.

B. Prevention of Delinquency

A study conducted by the Social Science Education Consortium and the Center for Action Research indicates that LRE programmes, when properly conducted, can reduce tendencies toward delinquent behaviour and improve a range of attitudes related to responsible citizenship. For example, successful students of LRE programmes are less likely to associate with delinquent peers, use violence as a means of resolving conflict, and refrain from reporting criminal behaviour to authorities. For example:

- **Diploma in Leadership and Management training**
  Period: - 04 Months
  Conducted by: - Sri Lanka Police Academy
  Qualifications: - 05 years' active service at the rank of Inspector of Police and having been confirmed in the rank.

C. Growth of Student Interest in Social Studies

The content of LRE1 programmes is directly related to the lives of students. The variety of interactive

methods of instruction (*e.g.*, small group work, mock trials, simulations, case studies) seem to involve students positively in the learning process. Thus, law-related educators tend to report that students seem to "value LRE1 classes as relevant, useful, and interesting; that the classroom interaction is rewarding—offering students who had difficulties mastering the subject matter of other courses opportunities to participate successfully". Heightened interest and positive attitudes of students in LRE1 programmes may transfer to other courses in social studies. Some programmes include:

- Diploma in Scene of Crime (Conducted by the National Police Academy)
- Diploma in Senior Crime detective (Conducted by the National Police Academy)
- Diploma in Crime Scene Management (Conducted by the National Police Academy)
- Diploma in Cybercrimes (Conducted by the National Police Academy)
- Diploma in Community Policing (Conducted by the National Police Academy)

D. Provision of Breadth and Depth to Education in the Social Studies

Law-related concepts and facts are necessary to the understanding of history, government, and economics—subjects that are integral to education in the social studies in elementary and secondary schools. Sources of law, functions of law, legal processes, legal roles, and legal principles (*e. g.*, justice, equality, authority, freedom, order, etc.) are essential elements of the social studies curriculum. Thus, LRE1 is a necessary component of a sound social studies curriculum. Some programmes include:

- Diploma in Criminology (Conducted by the University of Sri Jayewardenepura)
- Bachelor of Science Degree/Police Science (Conducted by the University of Kelaniya)

III. PRIMARY, SECONDARY AND TERTIARY LAW-RELATED EDUCATION

A. Primary Law Related Education

According to the Primary Law Related Education in Sri Lanka the following topics are highlighted:

(i) School legal awareness programmes
(ii) School traffic controlling committees
(iii) Community policing programmes

B. Secondary Law Related Education

(i) Police colleges' programmes
(ii) Institutional programmes
(iii) 13 police in-service centres

C. Tertiary Law Related Education

(i) University degrees, advanced diplomas and certificate courses
(ii) National Police Academy degrees, advanced diplomas and certificate courses
(iii) Foreign courses

IV. LAW-RELATED EDUCATION FOR TEACHERS, COMMUNITY LEADERS AND THE GENERAL PUBLIC

Sri Lanka Police committed to educate the general public, teachers, community leaders, students etc. on prevailing law in the country in order to prevent crime and maintain a peaceful environment. To do the education programmes, suitable persons are sent to schools, clubs, institutes, etc. Sometimes the Sri Lanka Police College and the National Police Academy conduct short-term law education programmes for civilians in their respective institutions.

V. LAW-RELATED EDUCATION THROUGH MASS MEDIA

Mass media is a one of the options to promote crime-related information to the public and to reduce crime rates in Sri Lanka. These are some examples:

(i) Police gazette system
(ii) Awareness programmes for the public to increase knowledge regarding crime prevention

(iii) Radio advertisements with reward systems to collect information about highlighted crimes
(iv) TV news with CCTV information regarding crimes incidents
(v) Money laundering information
(vi) Police websites
(vii) Scene of crime management public awareness programmes

A. Some Important Points Enumerated in the Newspaper

(Sunday, 5 November 2017)

a) Reduce incidence of certain categories of crime, those on the upward trend to tolerable levels.
"...Of the 51,809 grave crime cases reported during 1996, in 3,395 cases firearms have been used. Of the 3,395, in 901 cases, automatic weapons have been used by the culprits.
In 2012, of the 4,885 grave crimes committed against persons, in 2,237 cases automatic weapons have been used. This developing trend needs to be added, in order to reduce the level of risk felt and experienced by the citizens..."

b) Maintenance of standards in criminal justice services:
Explains the importance in implementing sentencing guidelines and the theories of Restorative Justice.

c) Measurement of crime
A true picture of the crime situation in the country does not appear in the crime statistics.
Official statistics take into account only a set of standard violations of law, adopted globally, like, breaking and entering and theft; robbery, etc.
These are listed as grave crimes. In addition, it is important to undertake in-depth studies into specific crime problems prevalent in the country to understand the real crime situation. A few of them are:
* Offences committed against the environment, reservoirs, coasts and cultural heritage;
* Effects of screen violence, video parlors, phonographic materials, gaming and betting centres, especially, on the minors
* Bribery and corruption in the government and corporate sectors
* Organized crime and transnational crime, including, human and drug trafficking
* Developing adverse subcultures in tourist industrialized areas

VI. SIGNIFICANCE OF A CULTURE OF LAWFULNESS WHILE RESPECTING THE CULTURAL IDENTITY OF EACH COUNTRY

A. What is a Culture of Lawfulness?

A culture of lawfulness means that the population in general follows the law and has a desire to access the justice system to address their grievances. It does not require that every single individual in that society believe in the feasibility or even the desirability of the rule of law but that the average person believes that formal laws are a fundamental part of justice or can be used to attain justice and that the justice system can enhance his or her life and society in general. Without a culture of lawfulness, the population will have no desire to access the system and may resort to violence to resolve grievances. For the rule of law to be fully realized, the population needs to follow the law and support its application voluntarily rather than through coercion. The culture of lawfulness in Sri Lanka has solved so many highlighted crime cases. Some examples follow:

(i) Colombo-Pettah bus stand murder case – Western province in Sri Lanka
(ii) Gang rape and murder case in Kaytes – Northen province in Sri Lanka
(iii) Girl child "Seya Sadewmi" rape and murder case – Kotadeniyawa Gampahain Sri Lanka: Members of the public in the area had given information and our justice system was able to solve the crimes and brought the culprits to justice.

B. Programmes for Communities to Enhance their Culture of Lawfulness

(i) Awareness programmes
(ii) Public intelligence systems
(iii) Police and public patrolling system according to the crime clock and the map
(iv) Community policy committees. There are 14,022 villages that have a separate community policy committee.

(v) Women and child protection units

C. Guidance for Promoting a Culture of Lawfulness

Participation and communication can help build the foundations for a culture of lawfulness, which may not exist in a society emerging from conflict. Participation means that the population feels they are a part of the process and can use the law to improve their lives. Communication means that an open dialogue exists between the rule of law community and the population in general and that the public has the means to obtain information from the government.

Some examples in Sri Lanka:

I. 118, 1919 & 119 government Information systems
II. Legal aid agencies
III. Attorney General's Department
IV. Human Rights Commission

D. Promote Public Participation

In many societies emerging from conflict, the population may be afraid to speak out and voice their opinions. They may have little experience with participation. The international community should promote participation in rule of law reforms. When the members of the public start to feel like they are part of the process, they connect to their society, thus strengthening social cohesion and their investment in promoting the rule of law, and they begin to trust in their government and the justice system, both of which are essential for planting the seeds of a culture of lawfulness and respect for the rule of law.

E. Promote Communication between the Justice System and the Population

In societies emerging from conflict, a lack of mutual understanding and trust commonly exists between the population and the justice system. The international community should support efforts to open the lines of communication to help enhance mutual trust and understanding through dialogue between the public and the justice system. Dialogue can be convened around key issues affecting both the population and the justice system or through permanent communication structures such as local community-police fora. These dialogue sessions can also provide a forum for justice actors and the population to put forward joint proposals for rule of law reforms. Another way to foster communication and understanding is to establish more permanent communication structures such as local community policing boards in which the police meet with the population on a regular basis to discuss issues of concern to both sides.

F. Support School-based Education

By including rule of law in curriculum as part of school education for children, a strong culture of lawfulness message is sent not only to students but to the families and the community. School education programmes should help young people understand how the rule of law improves quality of life and why they should follow the law, as well as develop knowledge of the justice system and skills for preventing crime.

G. Engage the Mass Media and Popular Culture

The mass media and culture of citizens are powerful connections in many countries. They can send strong messages that support a culture of lawfulness and the rule of law. The media can also expose crime and corruption and provide a forum for the population to express their views on the rule of law by covering related issues or topics and by providing a forum for national discussion. Popular culture, through films, popular songs, television, advertising, and art can all convey positive rule of law messages.

H. Work with Law Enforcement Agencies

Law enforcement agencies are at the front lines and are the first point of contact of the justice system with the population. Law enforcement officials should send a message that rule of law matters, that corruption will not be rewarded, and that officers are expected to ensure responsive, service-oriented policing. Accountability mechanisms also support a culture of lawfulness. Education of law enforcement officials is necessary, as are performance reviews that take into account how the official has upheld the rule of law.

VII. COOPERATION BETWEEN THE LEGAL AND EDUCATIONAL PROFESSIONS

Since the inception of the Sri Lanka Police in 1866 we have been maintaining good cooperation between the police and other education professions. In order to enhance the law-related knowledge and raise service standards, we have entered into Memoranda of Understanding with the following institutions.

A. National Universities Assisting the National Police Academy to Facilitate Specialized Training Programmes

I. University of Sri Jayawardenepura
II. University of Moratuwa
III. University of Colombo
IV. University of Kelaniya
V. University of Peradeniya
VI. General Sir John Kotelawela Defense University

B. State Training Institutions Assisting the National Police Academy to Facilitate Specialized Training Programmes

I. Department of National Languages
II. Sri Lanka Institute of Development Administration
III. Bandaranaike International Diplomatic Training Institute (BIDTI)
IV. Sri Lanka Foundation Institute
V. National Institute of Social Development
VI. National Library and Documentation Board
VII. Attorney General Department
VIII. Government Analysis Department

C. Why Should LRE Be Included in the Social Studies Curriculum?

Four reasons for including LRE in the curriculum are,

I. Development of knowledge, skills and attitudes needed for citizenship
II. Prevention of delinquency
III. Growth of student interest in social studies
IV. Provision of breadth and depth to education in social studies

VIII. COOPERATION AMONG RELEVANT AGENCIES, ORGANIZATIONS AND INDIVIDUALS (*E.G.*, STATE AGENCIES, LOCAL GOVERNMENTS, SCHOOLS, NON-GOVERNMENTAL ORGANIZATIONS, BAR ASSOCIATIONS, PRO BONO LAWYERS)

There are a number of trends in the development of the contemporary Sri Lanka legal profession which have been widely remarked upon, among them:

- The growth in size of the profession;
- The increasingly boundary-free nature of legal practice;
- The imperatives for private legal practice to become more competitive and "business-like";
- The professionalization of certain formerly lucrative areas of legal practice, such as residential conveyance;
- The crisis in legal education caused by the very poor level of resources available to university law schools;
- The inaccessibility of the courts for reasons of cost and delay; and
- The consequent growth of Alternative (or preferably "Additional") Dispute Resolution (ADR).

IX. MEMBER ORGANIZATIONS

A. Human Rights Commission

a. To give force to the commitment of Sri Lanka as a member of the United Nations in protecting human

rights, and to perform the duties and obligations imposed on Sri Lanka by various international treaties; to maintain the standards set out under the Paris Principles in 1996, the Government of Sri Lanka formulated Act No. 21 of 1996 to establish the Human Rights Commission of Sri Lanka.

b. The Human Rights Commission of Sri Lanka is an independent commission, which was set up to promote and protect human rights in the country.

c. Prior to the establishment of the Human Rights Commission of Sri Lanka (HRCSL), two different institutions had been promulgated under emergency regulations; the Human Rights Task Force (HRTF) to prevent illegal arrest and detention and the Commission for Eliminating Discrimination & Monitoring of Human Rights (CEDMHR) to prevent discrimination.

B. Attorney General's Department

The Attorney General's Department provides legal assistance to the central government, provincial councils, government departments, statutory boards and other semi-governmental institutions. Legal officers of the Department provide instructions to the Government and governmental institutions on civil, criminal, constitutional and commercial matters and represent the Government and governmental institutions for the cases instituted in the Supreme Court, other Courts and labour tribunals on the island.

Three main divisions, named the Civil Division, the Criminal Division and the State Attorney Division, have been established in the Department for Civil and Criminal Cases and the Establishment Division and the Account Division have been established to conduct administrative work. In addition to those divisions, the Corporation Division, the EER Unit, which performs duties under the Extra Emergency Regulations and Prevention of Terrorism Act, the Child Abuse Cases Unit, the Immigration and Emigration Unit, the Public Petitions Unit and the Supreme Court Unit have been established for the smooth functioning of the Attorney General's Department.

C. Human Rights and the Rule of Law

It is desirable to relate personal values and, more specifically, organizational values, to human rights and the rule of law. Human rights can be an emotive topic with different interpretations across the globe. Historically, human rights have been developed over many hundreds of years and are embodied in the major religions. In recent times, the following list is widely accepted and endorsed by the United Nations. The Universal Declaration of Human Rights – summary version:

I. We are all born free and equal. We all have our own thoughts and ideas. We should all be treated in the same way.
II. These rights belong to everybody, whatever our differences.
III. We all have the right to life, and to live in freedom and safety.
IV. Nobody has any right to make us a slave. We cannot make anyone else our slave.
V. Nobody has any right to hurt or torture us or treat us cruelly.
VI. Everyone has the right to be protected by the law.
VII. The law is the same for everyone. It must treat us all fairly.
VIII. We can all ask for the law to help us when we are not treated fairly.
IX. Nobody has the right to put us in prison without a good reason, to keep us there or to send us away from our country.
X. If we are put on trial, this should be in public. The people who try us should not let anyone tell them what to do.
XI. Nobody should be blamed for doing something until it has been proved. When people say we did a bad thing we have the right to show it is not true.
XII. Nobody should try to harm our good name. Nobody has the right to come into our home, open our letters, or bother us, or our family, without a good reason.
XIII. We all have the right to go where we want to in our own country and to travel abroad as we wish.
XIV. If we are frightened of being badly treated in our own country, we all have the right to run away to another country to be safe.
XV. We all have the right to belong to a country.
XVI. Every grown up has the right to marry and have a family if they want to. Men and women have the same rights when they are married, and when they are separated.

XVII. Everyone has the right to own things or share them. Nobody should take our things from us without a good reason.
XVIII. We all have the right to believe in what we want to believe, to have a religion, or to change it if we wish.
XIX. We all have the right to make up our own minds, to think what we like, to say what we think, and to share our ideas with other people.
XX. We all have the right to meet our friends and to work together in peace to defend our rights. Nobody can make us join a group if we don't want to.
XXI. We all have the right to take part in the government of our country. Every grown up should be allowed to vote to choose their own leaders.
XXII. We all have the right to a home, enough money to live on and medical help if we are ill. Music, art, craft and sport are for everyone to enjoy.
XXIII. Every grown up has the right to a job, to a fair wage for their work, and to join a trade union. 24. We all have the right to rest from work and relax.
XXIV. We all have the right to enough food, clothing, housing and health care. Mothers and children and people who are old, unemployed or disabled have the right to be cared for.
XXV. We all have the right to education, and to finish primary school, which should be free. We should be able to learn a career, or to make use of all our skills.
XXVI. We all have the right to our own way of life, and to enjoy the good things that science and learning bring.
XXVII. There must be proper order so we can all enjoy rights and freedoms in our own country and all over the world.
XXVIII. We have a duty to other people, and we should protect their rights and freedoms.
XXIX. Nobody can take away these rights and freedoms from us.

According to Chapter III of the Constitution of the Democratic Socialist Republic of Sri Lanka, some selected fundamental rights for Sri Lankans are protected.

X. NATIONAL LAWS TO PROTECT THE RIGHTS OF CHILDREN IN SRI LANKA

National law in Sri Lanka has moved away from a position of exclusive faith in criminal processes to protect children to a more direct child- or victim-focused protective approach at the legislative and conceptual level (GOSL, 2008). National laws in Sri Lanka that cover child rights are as follows:

A. The Children and Young Persons Ordinance No. 48 of 1939

This ordinance is the principal legislation in Sri Lanka which addresses the rights and interests of a child or young person who is a victim of an offence or who is facing a charge for an alleged offence. It deals with the protection of children and young persons, juvenile courts and supervision of juvenile offenders.

B. The Adoption of Children Ordinance No. 24 of 1941

The adoption ordinance has general applications in Sri Lanka. Therefore, customary laws such as Muslim law and *Thesawalami* law does not apply except in the case of succession. This provides procedures for the adoption of children and registration for persons who are not the natural parents of the child but have the care, custody or control of the child, in the District courts. Types of adoption are categorized as local adoption (adopting a child from a receiving home or related or known child) and foreign adoption (adopting a child from a receiving home or a child who is related by blood).

C. The Tsunami (Special Provisions) Act 2005

This act has provisions to deal with persons affected by a tsunami; special provisions for tsunami-orphaned children regarding their guardianship, custody, foster care and adoption; monitoring and evaluation of custody, foster care and recommendations for adoption.

D. The Employment of Women, Young Persons and Children (Amendment) Act No. 8 of 2003

This act has strengthened child labour law by increasing the minimum age of employment from 12 to 14 years, and prohibiting the employment of children under 14 while enhancing the sentence for violation of this provision. This act has further classified the minimum age for employment at sea (on a vessel) as 15 years; for

training to take part in performances of a dangerous nature as 16 years; for public performances endangering life or limb, prescribed hazardous occupation and night work as 18 years.

According to this Act, a child may work in light agricultural or horticultural work before the commencement of regular school hours or after the close of school hours, with the permission of his or her parent(s)/guardian(s); or in any school or other institution supervised by a public authority that imparts technical education or other training for the purpose of any trade occupation.

E. The Factories Ordinance No. 45 of 1942

According to the Factories Ordinance, children between 16–18 years should not engage in work for more than 12 hours per day. They should not start work earlier than 6 a.m. and should not work after 6 p.m. Maximum hours of work for a young person are 60 hours per week, including overtime.

F. The Shop and Office Employees Act No. 19 of 1954

The minimum age for employment in a shop or office is 14 years. A child between 14–18 who is working in a shop or office is not allowed to work before 6 a.m. or after 6 p.m. Males who have attained the age of 16 years can work at night between 6 p.m. and 10 p.m. in or about the business of a hotel, restaurant or place of entertainment.

G. The Minimum Wages (Indian Labour) Ordinance No. 27 of 1927

Minimum age of work according to this ordinance is 14 years.

XI. CONCLUSION

A. Issues and Challenges

I. Due to 30 years of war, a small percentage of the society still has a criminal mentality.
II. As a result of 30 years of war, illegal weapons still peregrinate the society.
III. Inadequate advanced technical equipment
IV. Investigators having lack of knowledge & foreign exposure
V. Technology issues
VI. Unethical behaviour of the media

B. Suggestions

I. To improve knowledge of advanced investigations
II. Update technology
III. Resources
IV. Stakeholders
V. Open DNA labs island-wide
VI. Open Government Analysis department branches island-wide
VII. Easily available hand phone details facilities
VIII. Media support

References

- The Children and Young Persons Ordinance No. 48 of 1939
- The Adoption of Children Ordinance No. 24 of 1941.
- The Tsunami (Special Provisions) Act 2005
- The Employment of Women Young Persons and Children (Amendment) Act No. 8 of 2003
- The Factories Ordinance No. 45 of 1942
- The Shop and Office Employees Act No. 19 of 1954
- The Minimum Wages (Indian Labour) Ordinance No. 27 of 1927
- www.police.lk
- www.un.org/en/documents/index.shtml
- Sri Lanka Constitution
- Inspector General of Police administration books 2016
- "Sunday newspaper, On 5 November 2017"

EASY ACCESS TO JUSTICE FOR ALL INCLUDING VULNERABLE PERSONS IN MALDIVES

*Hassan Haneef**

I. INTRODUCTION

Access to justice is vital when it comes to human rights. Every person, be it child or adult, both men and women, has the right to have their voices heard and acknowledged. In a perfect justice system, everyone should be impartial and non-discriminatory against others and practice integrity and hold people who are wrong accountable. They should have a system implemented, where everyone can easily have access to legal awareness, legal aid, legal protection etc. While the developed countries have these kinds of highly functioning systems in place, they still face major obstacles when it comes to providing justice. Therefore, it is no surprise that Maldives, a country which is scattered in its geographical form, finds it difficult to provide a perfect justice system to all.

A. Current Situation

The legal and justice sector of the Maldives has undergone a number of changes over the last decades; however, it is still in its transitional stage with a bright future. Several UN conventions such the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Beijing Rules etc. have been injected into the legal system and embraced by all. This was the stepping stone for the start of introducing other laws and regulations which helped the general public, especially vulnerable groups to gain easy access to justice.

The general public of the Maldives had a low level of trust and respect for law enforcement, the government and the judiciary in the past. But due to the introduction of the laws and regulations which came from signing the above-mentioned conventions, people started becoming more aware of their rights and how to get the justice needed.

B. Access to Justice for Children and Women

1. Laws and Regulations

With the ratification of the CRC in 1990, Maldives implemented law 9/91 "Law on the protection of the rights of the child", which gave children several rights that protected them from abuse and negligence. Regulation 6.1, "Regulation on conducting trials, investigations and sentencing fairly for offences committed by minors", was brought into existence in 2006 in adherence to law 9/91, in order to maintain the fairness in investigations and trials against minors. This law prevented any kind of discrimination or injustice that may face the minor during investigation or trial. In 2009, Act 12/2009, "Special Provisions Act to deal with Child Sex Abuse Offenders", was instigated, making it much easier for law enforcement and the judiciary to attain justice for children.

When CEDAW was signed, it freed most women from the discriminations of the society. Most of the time, the main reasons that women are denied justice is due to discrimination based on Maldivian culture and social beliefs. In the past women did not have the right to vote nor did they have the right to work or hold equal positions and pay as men. For example, before CEDAW, women faced a lot of sexual harassment and discrimination within the workplace, which was not taken seriously, and they did not have a support system or a way of legally getting justice for these kinds of crimes. With the ratification of CEDAW by Maldives, these matters were addressed and women now have a good legal system to fight for their rights.

A lot of domestic violence cases did not get reported in the past due to the lack of confidence in the

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governmental and judicial systems' ability to provide them justice by seeing them as victims and also due to the fact it is often a hidden issue, where the victim silently lives in humiliation and indignity. Introducing the ruling of the "Domestic Violence Act" (Act No. 3/2012) gave a lot of women hope especially for those who were trapped in domestic violence situations. As the Act clearly and categorically identified domestic violence as a criminal offence[1], the implementation of this act changed the social perspective towards this sensitive issue. As a result, statistics show an increasing number of domestic violence cases lodged by women[2].

2. Legal Bodies and Referral Systems

Maldives consists of 1,190 islands, segmented into 20 atolls[3] and each of these atolls consists of more than one Police Station and a Family and Child Service Centre (FCSE) which deals with child protection. The presence of these agencies in the islands provides easy access to justice to all and brings about a swift triumph, eradicating the mentality that people living in rural areas of Maldives do not have access to justice.

NGOs such as Hope for Women, the Society for Health Education (SHE), Advocating the Rights of the Child (ARC), the Maldives Association of Physical Disables (MAPD) make it easier for vulnerable groups to attain justice within the society.

The current child referral system set in place by the Maldives Police Service, the Ministry of Law and Gender and the Ministry of Education, ensures that every child who suffers any kind of abuse and neglect does not seep through unnoticed. A reporting application "AHAN" and call center "1412" (established in May 2017)[4] are a few of the measures which were introduced in order to make it easier for the general public to report violence against children anonymously, thus making sure that even abuse from a family member, teacher, neighbour or a person in a position of trust does not go unreported.

Up to 2016, the referral system of domestic violence cases was maintained manually. And due to this there were delays in attending the cases and completing the investigation. However, in early 2016, a database named the "Geveshi Portal" was launched which eliminated the manual paperwork, and ensured that swift reporting was done throughout the chain. This portal is mostly useful for reporting domestic violence cases from the islands. The portal can be accessed through the Police Information Management System (PIMS) of the Maldives Police Service and is linked to the Ministry of Law and Gender and Family Protection Authority's system.

In order to properly manage the records of children as victims, the Maldives Child Protection Database was implemented on 20 June 2010 and the use of it was started by the Maldives Police Service, the Juvenile Justice Unit and the Ministry of Law and Gender. This database was later integrated with PIMS, where when the data is entered into the PIMS system, all the information are automatically transferred into the MCPD, making the process convenient for investigation officers who deal with cases relating to child abuse, juvenile offending and domestic violence. The main aim of implementing this database is to provide a platform for all stakeholders to work together to collect data for future use.

C. Legal Aid

Criminal Cases: The government is required to provide legal aid to defendants who cannot afford a lawyer. However, there are only a few lawyers on the roster of availability, and the government provides them only minimal compensation per case.

Victim Support: There are currently limited services for survivors of domestic violence, sexual and other abuse. The Victim Support Unit of the Maldives Police Service, the Family Legal Clinic by Hope for Women and SHE are among the few.

Public Outreach, Education and Legal Information: Even though Internet access is widely available, it is not used by people to access information about laws and procedures. Legal information initiatives are needed to reach the public.

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[1] (The Domestic Violence Act, 2012)
[2] Family and Child Protection Department, *Domestic Violence Statistics 2012, 2013, 2014, 2015, 2016*
[3] (Country meters, 2016)
[4] (UNICEF, 2017)

D. Effective Measures to Provide Legal Information to the General Public

Awareness sessions are conducted every year by different agencies regarding laws and regulations that relate to them. Over the past two years, the Maldives Police Service, in collaboration with relevant stakeholders, has conducted awareness sessions throughout Maldives, reaching out to approximately 13,221[5] individuals of different ages. The sessions conducted consisted of legal information on different types of cases.

Even with all the measures to ensure a smooth system, Maldives still faces many challenges such as:

- Lack of cooperation between stakeholders. Due to this, the MCPD and "Geveshi Portal" are not used to their full potential;
- There are no safe houses provided for vulnerable victims above the age of 18. FPA is mandated with providing a safe house to the victim, but due to lack of resources and funding, this has not yet been possible. Currently, the victim remains under police protection until another family member or a person that the victim trusts comes to collect her;
- Social, cultural and religious beliefs;
- Lack of awareness of legal rights and options, especially among vulnerable groups;
- Close-minded people mostly in the islands;
- Lack of resources and funding.

II. UNDERLYING PROBLEMS

- A sobering reality is that cases such as domestic violence rarely reach the prosecution stage following investigation. One of the biggest challenges for prosecution is that victims of abuse often retract their statements after lodging complaints. This normally happens due to lack of family support, family pressure, sensitivity to associated social stigma, economic dependency on the predator, fear of reprisal as well as lack of confidence in the available protection services;
- When cases are reported to the justice system, victims are not always treated with gender-sensitivity, including access to legal advice and health care;
- Few perpetrators of gender-based violence are convicted for their offences;
- Domestic violence and sexual abuse against children are significantly underreported to the justice system;
- Shortage of recourse to experienced workers to deal with emerging issues such as commercial sexual exploitation, online exploitation etc. As a result, this leads to issues getting out of hand and not being able to deliver justice to the victims;
- Geographical inaccessibility of needed legal support and services. Given that all the lawyers reside in the capital Male', it poses problems for those living in the islands to access the services of legal counsel. This raises the problem of the lack of standards for lawyers;
- Sometimes too many referrals are made, such that an individual loses interest or feels defeated.

III. RECOMMENDATIONS

The current situation indicates that there is room for change and the following recommendations can be taken into consideration in order to improve the current system.

[5] Family and Child Protection Department, *Public Awareness Statistics 2015, 2016*.

- To establish policing and the processes and procedures of the criminal justice system that are gender sensitive and take into account social and cultural difficulties in bringing such cases to the attention of the authorities;

- Ongoing professional development of police, investigators, prosecutors and judges and related professionals such as hospital staff and staff in key administrative centres in the atolls;

- Ensuring that the penal code adequately addresses issues of concern to women and children;

- Encouraging support for adequate public and private funding for legal aid and other legal services programmes that serve low-income and vulnerable clients, ensuring a strong and effective legal aid delivery system, giving all Maldivians meaningful access to justice;

- Conducting collaborative inter-agency awareness sessions that involve the general public;

- Conducting support programmes for different targeted groups of victims (low, medium, high risk);

- A mandate for lawyers to provide pro bono services is needed, and a regulated system to monitor the timeline between detention, request for a lawyer, and legal representation. Awareness raising and follow-up training regarding rights to legal aid would benefit both the public and the police.

- Roster of Lawyers: establish a system of compulsory pro bono legal services.

PUBLIC PARTICIPATION IN ADJUDICATION IN THAILAND

*Peerapong Pareerurk**

I. INTRODUCTION

The judicial power is an integral part of state sovereignty, separated from the legislative and the executive power. Exercise of the judicial power shall be in accordance with the rule of law. Under section 3 of the Constitution of the Kingdom of Thailand B.E. 2560 (A.D. 2017), "*Sovereign power belongs to the Thai people. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution. The National Assembly, the Council of Ministers, Courts, Independent Organs and State agencies shall perform duties in accordance with the Constitution, laws and the rule of law for the common good of the nation and the happiness of the public at large*". Therefore, a judge must adjudicate any cases in reliance on the rule of law. Generally speaking, a judge shall consistently comprehend the equal protection of law and equality before the law. Moreover, the court must allow the public access to fair trials and to be able to bring up any evidence to prove one's innocence. The verdict of the court must be effective, fast and fair. Consequently, it is essential that all rights and freedoms of each individual are protected by laws. As such, each individual must have a chance to participate in the process of judgement to the fullest possible extent as long as it does not negatively impact the independent discretion of the judge.

II. PUBLIC PARTICIPATION IN ADJUDICATION UNDER THE CONSTITUTION OF THE KINGDOM OF THAILAND

Unfortunately, the latest constitution of Thailand, the Constitution of the Kingdom of Thailand, B.E. 2560 (A.D. 2017), does not clearly address public participation in the justice procedure. Section 77 reads that "…*the State should also undertake to ensure that the public has convenient access to the laws and are able to understand them easily in order to correctly comply with the laws*…". This section provides contradiction to the Constitution of the Kingdom of Thailand, B.E. 2550 (A.D. 2007), under which it is explicitly stated in section 81 that "*The State shall act in compliance with the law and justice policies for ensuring the compliance with, and the enforcement of, the law to be correct, quick, fair and thorough, enhancing the provision of legal assistance and knowledge to the public, providing an efficient public service system and other State affairs in relation to the administration of justice with due regard to the participation of the public and the profession organizations, and providing legal aid service to the public.*" In the writer's point of view, the state shall statutorily uphold the alternative of public participation in the administration of justice in order to protect their rights and freedoms.

III. CURRENT FORMS OF PUBLIC PARTICIPATION IN ADJUDICATION IN THAILAND

A. Witnesses in Court

The ability of a witness to give testimony in any judicial setting or to cooperate with legal investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. This considers a general duty of a civilian to act as a witness in court because all nations have a common goal of creating peaceful societies. If the person witnessing the offences refuses to testify to such circumstance in court, the facts of such incident will not be determined by the court. In the end, the offender will not be punished.

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B. Court Mediators

Several years ago, a mediation programme was established in every court of first instance in Thailand. This programme was designed to be separated from the hearing process. If the mediation is not accomplished, the mediation dockets are not attached to trial dockets. Furthermore, mediation is conducted in a conference room, not a courtroom, in order to provide an appropriate atmosphere for definitive mediation. Additionally, in the first hearing session, parties may agree to use the mediation programme and, upon agreement, a designated judge of the case will refer the case to the mediation centre conducted by a mediator who shall not be a judge. The law provides that people have an opportunity to become a mediator in the court according to the President of the Supreme Court Regulation on Mediation B.E. 2554 (A.D 2011) of which article 51 stipulates that an applicant to become a mediator shall have the following qualifications and shall not have the following prohibited characteristics:

(1) be at least thirty years of age;
(2) be a graduate student with at least a bachelor's degree and a minimum of five years of work experience and has experience in various branches of work that will benefit mediation for not less than ten years;
(3) be a trainee in a technical course or mediation procedure administered by the Office of the Judiciary;
(4) having experience in mediation work in the court or in the Dispute Resolution Office, Office of the Judiciary, of not less than ten cases;
(5) be ready to devote time to performing the duties of a mediator;
(6) not being morally impaired;
(7) not being in an occupation or profession or conducting any business which may affect acting as a compromise advisor or may be disgraceful to the honour of the institute of justice;
(8) not being insolvent;
(9) not be a person who has been determined by the court to be an incompetent or quasi-incompetent person;
(10) not being a person who has been sentenced by a final judgment to imprisonment, except if the offence is committed negligently or is a petty offence.

There are many advantages when the mediator is selected from among people who are not judges, such as having different professional experience which may match the case and can help to find the true needs of parties rather than the judge, who has many limitations. It also gives people more opportunities to participate in the justice process.

C. Lay Judges in the Special Court

Only special courts in Thailand require lay judges to be denominated in a judicial committee thereof. Examples of special courts are the Juvenile and Family Court, Labor Court, and Intellectual Property and International Trade Court. Lay judges are people who have been selected by the Office of the Judiciary through written examination and interview. They have the power to jointly consider any relative cases with the judge. In court proceedings of juvenile cases, the lay judges will jointly consider criminal cases in which juvenile offenders are accused of crimes, and in the civil cases or family cases in which juveniles have interests involved. Moreover, lay judges are responsible for providing rehabilitation for violent children and juveniles. But, the current law does not require the presence of a lay judge in the normal criminal case in which the defendant is 18 years old or older.

IV. THE PROBLEMS OF PUBLIC PARTICIPATION IN THE JUDICIARY IN THAILAND

A. Implementation of a Jury System for Criminal Cases

The jury is composed of people who have been selected to hear testimony in court to determine whether the defendant committed an offence. This system is often used in countries where the common law system is used. However, in Japan, the jury system has been adapted in the form of *saiban-in*, who are citizens selected to participate as judges in trials for certain severe crimes[1]. In the writer's opinion, public participation in criminal cases is important. However, nowadays, there is no legal support for the use of the jury system in

[1] https://en.wikipedia.org/wiki/Lay_judges_in_Japan, accessed 6 Nov. 2017.

criminal cases of Thailand. It is considered an arduous task to establish the jury system in Thailand so far as most people in Thailand are not well educated on the hearing of evidence and criminal proceedings which may affect rights and freedoms of people. Also, an escalation of corruption in Thailand has become more problematic. Additionally, most people are likely to perceive the case with bias created from social media and their own experiences or personalities. Those factors are the main obstacles for setting up the jury system in Thailand.[2]

B. Appointment of Thai Judges

The recruitment of judges in Thailand is conducted through a proper examination, and they are selected from qualified candidates. The qualifications of academic excellence, capacity and experiences of candidates are statutorily specified by the Judicial Commission. There is less room for the citizen to participate in judge recruitment because there is no statue imposing the law related to the participation of the citizen. Practically, when a candidate passes the examination, a list of candidates will be announced to the public and any individual can oppose such concerned candidate. Nowadays, people in Thailand have raised concerns over the participation of public verification during the process of judge recruitment. This is because some judgements made by previous judges were thought to be unacceptable by certain groups of people. This issue still becomes more challenging for the court of justice to find the means to reach a compromise between the participation of citizens in the appointment of judges and the independence of the judicial power.[3]

C. Lack of Knowledge

With the fact that the greater part of people lack knowledge on public participation related to crime prevention and criminal justice, the public involvement in the judicial system, as a result, seems inconceivable. Due to the foregoing reason, accessibility to the judicial system is limited to certain groups of people. Without strengthening of public verification, this will result in the corruption of relevant officers.

V. RECOMMENDATIONS ON THE NOTION OF PUBLIC PARTICIPATION IN ADJUDICATION

A. Establishment of a Lay Judge or Jury System in Thailand

It is recommended that Thailand draw attention to the lay judge or the jury system and consider whether such a system should be applicable to the criminal procedure of Thailand. Generally, in many countries, the lay judge or the jury system is adopted because this system creates trust and righteousness to the public and, most importantly, participation of the public in the trial process of the judiciary itself promotes public confidence. Additionally, this is a democratic notion. The application of the jury system will give more opportunity to explore an external jury which may possess experiences different than a judge. To sum up, the establishment of a jury system would be better than reliance on the mere decision of the judges.

B. Right of the Public to Interpret the Laws

The right to interpret the laws belongs to the public especially in relation to the criminal law as it governs appropriate behaviour of not only individuals but also the society. To avoid criminal punishment, it is the duty of everyone to promote awareness of the existence of laws and the details thereof. If the Criminal Code is able to be properly and legally interpreted, the interpreter will easily become aware of criminal offences and prevent any violations of laws. In any circumstances, a court shall not construe any laws beyond its context and the spirit of the law, specifically, when criminal enforcement is involved.

C. Knowledge Relating to Public Participation

Certain people are not able to access justice because of their lack of knowledge related to the laws and the justice procedure. It is necessary to encourage people to participate in the justice process and to redesign the justice system. Nurturing public goodwill by actively participating in the dissemination of knowledge on the legal and justice system, as well as creating tools for equal access to justice, is something the state should take into account.

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[2] Study report by the cooperation between the Office of the Judiciary and Chicago - Kent College of Law, Illinois Institute of Technology, United States, during 7–14 June 2016. (http://www.jti.coj.go.th/doc/data/jti/jti_1478490903.pdf) accessed 5 Nov. 2017.
[3] Ibid.

D. Promoting a Community Justice System

A community justice system is an optional form of justice administration which generates reliance of the community on criminal surveillance and also enhances public empathy when there is involvement of society. This system can relieve congestion of prisons, enhance the role of the community to protect the rights of offenders and create an understanding among offenders, victims and communities. Community justice is one channel that is used to create a mechanism for the public to participate in and monitor the work of police officers, prosecutors, attorneys, and court institutions, which will result in benefits to the nation. In addition, this system reduces the risk of reoffending which will reduce the number of lawsuits going to court.

E. Participation in the Recruitment Process of Judges

It is recommended that there should be systematic research on how the people in Thailand think of the recent working procedure of judges, how considerable the participation in judge recruitment is expected be, and to what extent the public should be required to take part in the recruitment process of judges.

F. Tools for Public Participation

There should be tools for public participation during the court procedure. For example, in an environmental lawsuit which is affecting a great number of people, it appears that there are not many people who possess adequate knowledge. The state should assist the people in hiring attorneys and technical experts for finding and verifying evidence, finding for environmental litigation, and exemption of the court fee. Even in Thailand there are some agencies that support legal aid in environmental cases such as the Lawyer's Council, the Office of the Human Rights Commission, the Department of Protection of Rights and Freedoms, and the Ministry of Justice. However, because of a limitation imposed on the number of lawyers and experts, budget troubles, and lack of potential development, the protection of people in such environmental cases is not as good as it should be.

VI. CONCLUSION

To have a more effective criminal justice system which is compliant with the rule of law, Thailand should begin to reform it legal system in order to increase public participation in adjudication and to create trust in the justice system by reintroducing the lay judge or the jury system in criminal cases. The victim and witness protection programmes need to be strengthened. The state should create tools to assist public participation in adjudication, including community justice, which is one channel through which the public can participate.

REPORTS OF THE SEMINAR

GROUP 1
LAW-RELATED EDUCATION CONTRIBUTING TO PEACEFUL AND INCLUSIVE SOCIETIES

Rapporteur: Mr. Ahmed Risha (Palestine)
Co-Rapporteur: Mr. Abdelkader Taybi (Morocco)

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I. INTRODUCTION

The rule of law ensures that the laws are applied fairly and equally to all members and segments of society, and in so doing ensures the protection of human rights. However, there are still many jurisdictions worldwide in which their citizens are largely unfamiliar with criminal justice policy and/or having significant difficulties with respect to access to justice, in particular for vulnerable groups. New policies and measures are urgently needed so that the general public becomes aware of their rights, the process through which individuals can vindicate their rights and the way to access the justice system.

In fact, the need for improvement in terms of policymaking and practices to promote the rule of law with mutual cooperation among state agencies and the general public has been consistently recognized by the Crime Prevention and Criminal Justice Programme of the United Nations. The Eleventh UN Congress on Crime Prevention and Criminal Justice in 2005 adopted the Bangkok Declaration[1], which recognizes the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in contributing to the prevention of and the fight against crime and terrorism, and encourages measures to strengthen this role within the rule of law (Paragraph 9).

The Twelfth Congress in 2010 adopted the Salvador Declaration[2] which recognizes the importance of strengthening public-private partnerships in preventing and countering crime in all its forms and manifestations (Paragraph 34). In 2015 the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development[3] which stipulated the promotion of peaceful and inclusive societies (Goal 16), the

[1] "The Bangkok Declaration on synergies and responses: strategic alliances in crime prevention and criminal justice", A/CONF. 203/18, chap. I, resolution 1.
[2] "The Salvador Declaration on comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world", Economic and Social Council resolution 2010/18, annex.

rule of law at both the national and the international levels and ensured equal access to justice for all (16.3), including responsive, inclusive, participatory and representative decision-making at all levels (16.7), as well as encouraging effective public-private and civil society partnerships (17.17). Accordingly, inclusion of the general public and community organizations is attracting attention as an important issue to enhance the rule of law in the field of crime prevention and criminal justice.

With reference to the contemporary policies and measures which focus on inclusion and empowerment of the general public and communities to enhance the rule of law, this paper will focus on the strategies and implementation of law-related education contributing to peaceful and inclusive societies. It is believed that law-related education is a fundamental aspect among all approaches, because without a firm understanding of the purpose of the law and its obligations, members of the general public will not be able to follow the law or vindicate their rights, they will not comprehend the procedures for accessing the justice system or participating in it. Therefore, promoting law-related education among people is a key element in deepening their understanding about human rights, the rule of law and the values behind them[4]. Hence, it is a must for common people and society in general to develop a culture of lawfulness which consists mainly in respecting the law and believing in its justness and fairness. In this respect, this paper will tackle the issue of law-related education and the various strategies and actors contributing to its incorporation within the school curriculum, which are divided among four categories of targeted audiences, namely school educators/teachers, students, community leaders and the general public. The following table illustrates the information that will be presented in this paper on who, why, what, how, and by whom law-related education should be promoted such that it will lead to a peaceful and inclusive society.

Who	Why	What	How	By whom
Teacher	・Close to student ・Messenger ・Access to a lot of target groups at one time	・Rule of law based on developmental stage and level of understanding ・Human rights ・Purposes of Law related education (Knowledge, Attitude, Practices (Skills)) ・Culture of lawfulness	・Training in University (for new teachers) ・Teacher training college (PNG)	・Ministry of Justice ・Ministry of Education ・Legal professionals ・Prosecutors offices ・Probation offices (including volunteer probation officers) ・Juvenile training schools ・Police
Students	・Citizens of the future ・Young and amenable	・The importance of observing laws and rules ・The Constitution and the basic principles of law ・Considering legal issues and making fair	・Learning programme ・Teacher's guidance	・Ministry of Justice ・Ministry of Education ・Legal and educational professions

[3] "Transforming our world: the 2030 Agenda for Sustainable Development", General Assembly resolution 70/1

[4] The Convention on the Rights of the Child recognizes the right of the child to education (Article 28), and stipulates that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms (Article 29). The "United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, General Assembly resolution 45/112, annex)" focus on education as a measure to prevent juvenile delinquency and provide that young persons and their families should be informed about the law and their rights and responsibilities under the law (Article 23). The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography stipulates that States Parties shall promote awareness among the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to the present Protocol (Article 9). The Thirteenth UN Congress on Crime Prevention and Criminal Justice in 2015 adopted the Doha Declaration ("The Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation", Economic and Social Council resolution 2015/19, annex), which emphasizes that education for all children and youth is fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities (Paragraph 7).

		judgements based on solid grounds		
Community leaders	· Multiplier (Key persons) · Respected by citizens	· Contents and necessity of public education	· Flyers · Brochures · Visiting experts · Community visits · Lectures	· Police · Legal professionals · Courts · Juvenile training schools · Probation offices
General Public	· Reintegrate · Origin	· Moral, Rule of Law	· Media · Community visits · Lay judges · Increasing interest, acquiring knowledge, participating in society	· Police · Legal professionals · Courts · Juvenile training schools · Probation offices (including volunteer probation officers) · stakeholders

II. LAW-RELATED EDUCATION FOR TEACHERS

As mentioned previously, education is one of the most important sources of change in society, and it can be used to raise the level of awareness, science and culture, and change negative ways of thinking. Education is an essential factor which contributes to the development of human personality and the advancement of society.

In order to have the basic rule of law, and since we wish to establish a society in which the spirit of tolerance, justice and brotherhood prevails, the society has to be based on the rule of law, away from violence, taking the right by hand, rebellion and other uncivilized and illegal ways, which we do not wish to prevail in any society in the absence of the rule of law.

Many international conventions and declarations have stipulated that basic education must be provided to all groups within the society to eliminate illiteracy and disseminate knowledge, awareness and culture. To begin with, we must first ensure the availability of everything necessary to develop the society through the development of the abilities of students, teachers and trainers alike. There are many opportunities and challenges to improve both the scope and quality of education. The question that could be raised here is how can we ensure that quality educational experiences are accessible to all members of society?

"The availability of a good educational system means that schools, institutes and universities must have a good learning structure and can teach students and children and that the key role of the learning and education structure has become, at the present time, more complex. However, there are other parties to assume responsibilities for the development of education."

Education is an essential pillar which contributes to the development of human personality and the advancement of society. and that's why we need capable tutors to send the right message as a messenger, delivering the wanted message to as many students as possible.

In order to obtain the proper legal aid, it is necessary to consult the specialists. It should be noted that teachers are qualified to teach students, while the jurists are specialists in their field and they know many details. In order to achieve a successful education and to reach the desired result, these two matters must be properly integrated in order to obtain inputs and outputs as desired. For example, if we want the new generation to build knowledge and science based on the rule of law and knowledge of the basic legal culture, which distracts attention from the most important points, at first we must know where to begin and with whom we shall start, taking into account the age, and some of the common societal and cultural backgrounds in each community separately, with the aim of reaching the maximum level of legal and culture awareness

based on respect for human rights norms and the rule of law through knowing to whom and how.

Firstly, teachers must familiarize themselves with the basic rules in this matter on the one hand and, on the other hand, apply this with the students through what they know and have learned. For example, if we are to begin with teachers, as they will be in direct contact with the students, we should train specialized trainers; or in the event it is not possible to train teachers to give a valid legal culture based on the above-mentioned rule of law and respect for human rights, to emphasize what is mentioned in the international treaties, covenants and charters in a clear and direct manner, without addressing the legal complexities. The first objective is to obtain basic legal knowledge in a manner that is free from the complexity and details which may distract the attention from the main objective. At the same time, it is important to receive feedback on a regular or semi-regular basis to ensure their access to the desired information and to understand whether they obtained the necessary basic knowledge. This may be achieved through correspondence or periodic meetings as necessary.

III. LAW-RELATED EDUCATION FOR STUDENTS

There has been a general consensus on the necessity of including law-related education within the primary, secondary and tertiary curricula; notwithstanding the difficulty of the process of incorporating law-related education into the course outline, given the needed cooperation and interaction between the concerned sectors such as law enforcement, the media, community leaders and academics. On another scale, law-related education courses should consider the students' ages and educational levels in each stage; students should be endowed with the appropriate education each according to their level of thinking so that they can easily comprehend the rule of law. As we all agree that it is easy to teach new concepts to children as they are young and receptive compared to adults, educating the youth is crucial for socialization and making them familiar with the important ways of living as to develop the foundation of the culture of lawfulness. Most importantly, the students are our future generation. Accordingly, law-related education should be exclusively centred on three major stages: primary, secondary and tertiary education.

A. Primary School

In primary school, students are mostly compliant to their teachers; hence teaching them about the importance of laws in their lives and society in general is an easy task. However, teachers should focus only on the basic principles of law such as abiding by the rules in school, at home and in the streets with their friends and family relatives, keeping promises, the value of partnership, and adhering to morals and laws imposed by the relevant authorities. The employment of cartoon-like animated drawings and posters hung in school hallways, walls, libraries and classrooms is intended to teach the students about laws and customs sometimes as humorous comments depicting scenes about common crimes in society.

B. Secondary School

Secondary school students, nevertheless, reveal more maturity in their recognition and perception of laws and social order. Therefore, emphasis should be laid on more tangible segments of law so that they trust in the fairness and justness of the law: *e.g.*, introducing the concept of the rule of law to them could be considered as a fresh start to appreciate the rule of law and the role it plays in conserving the rights and liberties of people. In this course, students will be able to understand the notion of the rule of law and its importance in the improvement of their lives in particular and the common good of society in general.

Junior high curriculum should contain lessons about corruption, common crime and organized crime. Students will explore how corruption and organized crime threaten peoples' interests and society in general. They may be asked to explain the negative effects of corruption on people, society and the laws.[5] To this end, the teacher invites law-based activities to school in partnership with the concerned actors, *e.g.*, interscholastic mock trials and engaging law enforcement in sensitizing students about common crimes such as stealing.

[5] Fostering The Rule Of Law And A Culture Of Lawfulness : Teacher's Guide

CULTURE OF LAWFULNESS. On the importance of the lesson: this curriculum has always emphasized the necessity of supporting the rule of law and the existence of threats to the rule of law. This lesson looks at how corruption undermines the rule of law and ultimately the quality of life for all citizens., 112

C. Tertiary School

Tertiary school students are higher-level thinking and have already developed a standpoint regarding the need for the rule of law in maintaining peoples' lives and protecting their rights; therefore, the school should consider introducing them to the culture of lawfulness course. Students will broaden their understanding and knowledge about the culture of lawfulness and will develop strategies with which to address problems and other rule-breaking actions in society[6]. Consequently, students will act as effective contributors to the process of the prevention of crime and corruption as adopted by the 2015 Doha Declaration which "emphasize[s] that education for all children and youth, including the eradication of illiteracy, is fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights".[7]

IV. LAW-RELATED EDUCATION FOR COMMUNITY LEADERS

One of the greatest threats to law-related education is if stakeholders do not show any kind of interest in this system, or in other words a lack of interest concerning law-related education and the necessity of awareness of social participation. In order to start promoting this system, it is important to use community leaders, like celebrities, religious leaders, VPOs (volunteer probation officers, like in Japan), police officers, artists, politicians, village leaders and other well-known people who are respected in the society to promote this kind of new legal culture. By educating community leaders on the law, they can disseminate that knowledge to the members of the community around them, since their leadership is accepted by the public. Therefore, relevant messages will be passed to the society effectively, and it will enhance the peaceful and inclusive nature of the society. Police, legal professionals, corrections professionals, such as experts from the juvenile training schools and probation offices, may take part in providing the knowledge and understanding of the rule of law to community leaders.

First, the fundamental purpose of law-related education is to encourage the understanding that it is necessary to cooperatively build a society where citizens and local communities can live safely and securely. The second point is to proactively provide and share information about specific concrete measures of law-related education. The third point is to treat all contact points with citizens and local communities as opportunities for law-related education in a broad sense and to further expand the network based on related organizations and private sector collaborators.

To elaborate more on the mechanism of what and how to educate community leaders on law, the following example is illustrative. In Sri Lanka, village leaders, who are selected by the community members in the each village, will be provided with law-related education by the police. Sri Lanka has 25 administrative districts and 14,022 villages. Each village there has a community policing committee, and villagers themselves select and appoint 25 law-abiding, knowledgeable persons as their leaders for a certain period of time. They are the people who coordinate matters with the police and other institutions on behalf of the entire village.

Those community leaders do voluntary work and generally they meet once a month at an area police station or other convenient place. The police officer assigned to the particular village convenes the community policing committee. In that meeting, village leaders update the police officer regarding the situation of the village, and the police officer takes that opportunity to educate them on basic law and other laws pertaining to that village. For instance, if there is an increase of narcotic addiction, the police officer educates the community leaders on the narcotics law and advises the community leaders to disseminate that knowledge in order to prevent crime. By doing so community leaders as well as the general public feel that

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[6] Ibid., vi.

[7] The Thirteenth United Nations Congress on Crime Prevention and Criminal Justice-Doha 2015 on the integration of crime prevention and social justice into the wider United Nations agenda to address the social and economic challenges and strengthen the rule of law. Electronic Reference: http://undocs.org/ar/E/RES/2015/19.
Which emphasized: a. To create a safe, positive and secure learning environment in schools, supported by the community, including by protecting children from all forms of violence, harassment, bullying, sexual abuse and drug abuse, in accordance with domestic laws, b. To integrate crime prevention, criminal justice and other rule-of-law aspects into our domestic educational systems, c. To integrate crime prevention and criminal justice strategies into all relevant social and economic policies and programs, in particular those affecting youth, with a special emphasis on programs focused on increasing educational and employment opportunities for youth and young adults, d. To provide access to education for all, including technical and professional skills, as well as to promote lifelong learning skills for all.

they are part and parcel of the legal system and encourage themselves to pursue more legal education and join hands with the police to ensure peaceful and inclusive society.

V. LAW-RELATED EDUCATION FOR THE GENERAL PUBLIC

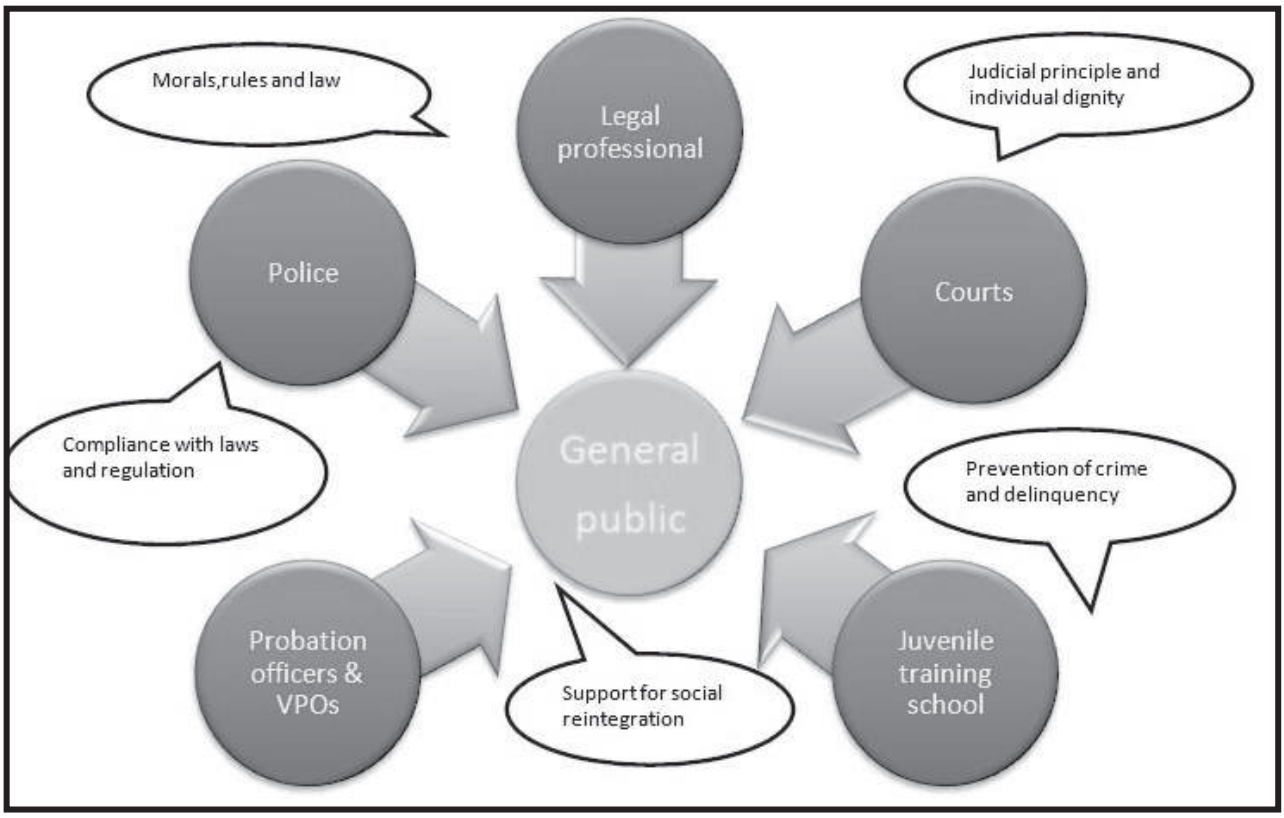
In order to ensure the sustainable development of the society, efforts to contribute to peaceful and inclusive societies must not only be implemented by the government or a specific and limited number of organizations. It is important that citizens and the entire community participate and organize these activities in order to prevent crime and to form a better society based on the rule of law and regulations and to facilitate the successful reintegration of the offenders into society. The general public must be involved in the law-related education by making them contribute to society by participating in the legal field. For example, in Japan, the judiciary (district court) holds guided observation of trials for the public. In some district courts, this event is co-hosted by judges, prosecutors and lawyers. An instance of the event is as follows. At first, a judge, a prosecutor and a lawyer explain their activities in the criminal justice system and criminal trials. Then, the participants observe a trial. After that, a judge explains the *saiban-in* (lay judge) system, and then the participants have the opportunity to ask questions of or clarify their understanding with the judge, the prosecutor and the lawyer to obtain legal literacy.

In Japan, the *saiban-in* system was introduced in May 2009. In *saiban-in* trials, generally speaking, a panel is made up of three professional judges and six lay judges. They decide not only facts but also sentence those who are convicted. Thus, the general public themselves participate in real criminal trials and they develop a deep understanding of the law, the judiciary, criminal procedure and so forth. Complementary to above, the Supreme Court of Japan made videos concerning the *saiban-in* system to enhance public awareness of and interest in the system.[8]

Among the other methods followed is the necessity to establish or conclude agreements with the ministries of education in most countries in order to cooperate between legal institutions, such as the memorandum of understanding signed by the Palestinian Minister of Education and Higher Education, Dr. Sabri Sidem and the Attorney General, Dr. Ahmad Barrak. This MOU is aimed at promoting sustainable action for the protection of children from the risk of delinquency[9].

There is no doubt that cooperation among the various institutions and concerned authorities contributes greatly to the promotion of legal culture and raising the required legal awareness, especially in the field of the rule of law and human rights and the knowledge of each party's rights and legal duties.

[8] The video is available on the website of the Japanese judiciary (http://www.saibanin.courts.go.jp/news/video.html)
[9] Source: official website of the Public Palestinian Prosecution, http://www.pgp.ps/ar/



To reach out to the general public and ensure the information pertaining to the rule of law is disseminated to every household, mass media is an indispensable means to broadly publicize the messages to the vast majority of the general public. Some common platforms for mass media are newspapers, magazines, radio, television, and the Internet. Deriving from the experience of various countries and regions in terms of the usage of mass media for law-related education, we will discuss some effective strategies and tactics of using mass media for law-related education for the general public in the following paragraphs.

While television and radio broadcasts enable information to be spread out quickly and extensively, the airtime is always limited and expensive. Thus, the authorities responsible for the law-related education campaign should strategically select the most significant messages to be put through with mass media so as to maximize the impact with the time and cost constraints. In many countries and regions, law enforcement agencies create an Announcement in the Public Interest (API) to disseminate the message to households and community education messages to the public. An example is an API entitled "Do You See It"[10]] produced by the Independent Commission Against Corruption (ICAC), Hong Kong in 2015. Simple and impactful images were used in the TV advertisement to call for citizens' action to report corruption whenever they see it. Other online and offline platforms, such as e-games at popular websites and printed posters bearing the same key visuals and images, were launched at the same time to create synergy effects so that the message to "report corruption" was reinforced.

Increased use is being made of the Internet to get across publicity messages. Among all, a trend that nobody could have neglected is the extensive use of social media. Digital advancement has enabled us to make use of social media platforms to engage the public instantly. From the Hong Kong experience, the ICAC maintains social media pages on Facebook, Instagram and Weibo. A dedicated team of staff is responsible for the production of videos, games and quizzes on these social platforms, such as its "All for Integrity" Facebook page[11], to promote the anti-corruption work of the Commission in an interesting manner. For example, recently in 2017, a series of "true man shows" featuring a group of young artists who worked as interns in the

[10] The API "Do You See It" - http://www.ichannel.icac.hk/player/html5.html?s=icac&v=en/ichannel/api/2015_see.mp4
[11] "All for Integrity" Facebook page - https://www.facebook.com/allforintegrity/

Commission were produced and uploaded onto social media. The videos feature the daily work of investigators, including investigation procedures, to increase the transparency of the ICAC and enhance public understanding on how the law is enforced impartially without fear or favour. Apart from content development, an important feature of social media is they enable interaction between users. Social media platforms allow us not only to post messages, in the format of texts, photos and videos, but also instantaneously get feedback from our target groups. Therefore, social media are powerful means to gauge the view of the general public. Administrators of these social platforms could suitably make use of the opportunities to interact with users and dispel any misunderstanding and misconceptions wherever appropriate.

To ensure messages pertaining to the rule of law are effectively put through to the general public, experience around the globe proves that the deployment of icons, such as cartoon characters, could more easily arouse the attention of the target audience. For example, in Japan, the Ministry of Justice created the icon "Hogo-chan," a cartoon penguin that is a mascot for the promotion of offender rehabilitation. The ICAC created "Gee-Dor-Dor", a cartoon rabbit with all the good virtues to teach positive values to kids; and an icon "iSir" with a professional yet light-hearted image to serve as the spokesman of the Commission to drive home anti-graft messages.

VI. CHALLENGES AND RECOMMENDATIONS

Promotion of law-related education may not be an easy task and there will be certain challenges. In the following paragraphs, we will present some of the challenges and then provide some recommendations to rectify those issues.

A. Teachers

There are two groups of teachers. One being teachers who are already in the school system and function as a teacher, and the other is college and/or university students who want to become teachers.

1) The most challenging tasks for current teachers are insufficient legal literacy and limitation of time. Teachers are often asked to respond to many requests from the related organizations such as the Ministry of Justice, Ministry of Public Health, and other NGOs that want to reach their students. In addition, the attempts for related organizations in promoting the rule of law were not unified. In this case, the curriculum would need to be well organized and systematized by interagency cooperation between legal professionals, the department of probation, the department of corrections, and the ministry of education to make it more time and resource efficient for the serving teachers. Also, the school administration should allow extra hours for the teachers who are working currently to attend training and workshops provided for them. Since there are often limited numbers of teachers who have a basic understanding of the subject. To be able to disseminate the knowledge and skill vastly and quickly, it may be best to conduct the Training for Trainers sessions.

2) The problem that is usually related to human resources development is the budget. The government must make law-related education a priority and provide sufficient funding to the teacher development programmes to ensure quality and quantity of the training. Another possible solution would be to obtain cooperation from international development agencies such as USAID, the EU, UNICEF or GOJUST. These organizations could play important roles in providing financial and technical support to capacity-building of teachers.

3) For new teachers, new curricula would need to be installed into the current education programmes for the new teachers. The curricula should be created by a committee that consists of related agencies and individuals such as the MOJ, the MOE, the Ministry of Home Affairs (Myanmar), the Ministry of Law and Order (Sri Lanka), the Ministry of Internal Affairs (Palestine), academic and legal and educational experts in the fields. The curricula then should be submitted to the MOE to then add them to the national mandate for the new teachers. In Japan, a committee under the MOJ makes recommendations to the MOE to modify law-related-education curricula. Papua New Guinea, however, has an education board that is under the MOE.

B. Students

Often times it is a challenge to motivate children to be interested in the subject of the rule of law. It is

important to make sure that the lesson that would be given to them is age and developmentally appropriate (please refer to the Law-related Education Table in Annex 1 to see a sample of the developmental stages that should be included in the curricula). In addition, the materials used to introduce the information to the students would need to be interesting. In this case, cooperation with the private sector is recommended. The final but very crucial point in this regard is teachers' abilities to deliver the knowledge and skills to the student. As explained in the recommendation for teachers, solutions may be found. Another challenge is the government's lack of emphasis towards providing sufficient law-related education for students. This could be solved if the Ministry of Justice and Ministry of Education propose to the government to make law-related education compulsory for all students.

C. Community Leaders

Community leaders are usually not interested in the topic of law-related education. This may be contributed to by the lack of understanding of the relationship between law-related education and the peacefulness and prosperity of their communities. However, we might not be able to educate everyone at first due to constraints of the budget and time, but we could recruit the leaders who may have interest in the topic and have them participate in dissemination of the information and knowledge to other leaders and people in their own communities. To maintain the level of participation, incentives (giving them certificates of recognition, allowances, uniforms, name tags, etc.) may be provided for the leaders who participate in the promotion of law-related education. In some countries religious leaders play very important roles in leading the community. If they are skeptical about law-related education, it could be an obstacle to the dissemination of the idea. To solve this issue, they should be enlightened as to the importance of law-related education and should be invited to participate in the community work to develop the culture of lawfulness.

D. General Public

Similar to community leaders, the general public share the challenge in not being interested in the subject of the rule of law. Something that could help enhance the interest of the general public is the improvement of the Ministry of Justice's public relations efforts. By providing information including crime statistics, causes of crime, and how can they be helpful in preventing crimes, such as by becoming VPOs or other types of volunteer work that is easy to understand, could help increase public interest in law-related education. In Japan, there are *koban* (police boxes) in every community. The police can play an important role in public relations by creating interest among the public in law-related education. Just like in Myanmar, police could conduct public meetings in villages to create better understanding of the rule of law. Media can be used to raise public awareness of the importance of the rule of law through advertisements, short films, comics, flyers, etc.

<Annex 1> *Law-related education on school*

<Purpose of law-related education in school education>

· For the students in developmental stage, let them understand the significance of laws, social rules, and the judicial framework, in the course of social studies, morals, special activities and other related subjects, based on the curriculum guidelines established by the Ministry of Education. The knowledge will be helpful to foster the attitude of actively participating in the formation of a better society based on laws and regulations.

Developmental stages	Primary school	Secondary school	Tertiary school
Viewpoints	Subjective (Own desire, A peripheral interest)	Objective (Third-party perspective, Interest and understanding of social things)	
Criterion for judgement	①Obedience to supervisors ②controlling self desires	③ Recognition of the necessity of the law to maintain social order ④ Social contract-like idea ⑤ recognition of universal principle and fundamental ethics	
Targets of each stage	· Learning about the importance of observing laws and rules.	· Understanding universal principles such as the Constitution and the basic principles of law.	· Considering legal issues and making fair judgments based on solid grounds.
Contents of law-related education	· Learning the importance of keeping promises and decisions in familiar lives (daily life, school, play etc.). · To cultivate morality by thinking from other's point of view.	·Understanding basic principles such as dignity of individuals and rule of law, and that law is not merely to regulate citizens, but to enrich people's lives. · Law is a mutual respecting rule for diversity of people to live together, to understand basic principles such as freedom of contract, responsibility, rights and obligations. ·Having them understand that the judiciary is to maintain and keep legal order through redressing infringed rights and coping with violation of rules based on law.	· Making a fair judgment, based on the fundamental principles of personal dignity and rule of law, and foster the ability of making persuasive arguments. In addition, understanding others' opinions and accepting feedback to own opinions. · Understanding that responsibility is involved in their own judgment and making each one recognize that it is an actor who creates law and better society. ·Developing abilities to identify issues and clarify the basic value to be reserved.

GROUP 2
ACCESS TO JUSTICE FOR ALL IN THE CRIMINAL JUSTICE SYSTEM

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I. INTRODUCTION

On September 25, 2015, world leaders from 193 countries met in Doha, Qatar for the United Nations Summit to discuss a set of new goals which built on the Millennium Development Goals and complete what they did not achieve. The countries adopted 17 objectives to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda.[1] Included in the 17 goals[2] was goal 16 on "*Peace, Justice and Strong Institutions*".

Goal 16 of the Sustainable Development Goals is dedicated to the *promotion* of *peaceful* and *inclusive societies* for sustainable development, the *provision of access to justice for all*, and *building effective, accountable and inclusive institutions at all levels*. Under Goal 16, objective 16.3 sets out one target to "*Promote the rule of law at the national and international levels and ensure equal access to justice for all.*"

As part of UNAFEI's 168th International Senior Seminar, the participants were allocated into groups to discuss particular topics under the overall theme of *Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice*. In this discussion paper, the group was assigned the topic of "Easy access to justice for all, including vulnerable persons".

A. Understanding the Definition of Access to Justice

The group's consensus was that the discussion would be focused on access to justice for victims of crime and the public. Here when we refer to the "*public*", it is to those who may be affected by crimes that may not have a specific victim, such as tax fraud and corruption cases. So the group settled on the overall topic of "*Access to Justice for All in the Criminal Justice System from the Perspective of the Victim*".

How does a member of the public or a victim report a crime? What is the process to arrest the perpetrator? What are the institutions involved in the criminal justice system? What is easy access to the criminal justice system?

The group had defined access to justice to include the victim reporting a complaint to the law enforcement and the law enforcement officials giving out information. Justice is to put things back in the previous state to the extent possible. For the purpose of criminal justice it is to punish the accused and importantly to offer a remedy to the victim. From a police investigator's perspective, what victims want is recovery but most have the expectation for the police to catch and arrest the offender.

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[1] www.un.org/sustainabledevelopment/sustainable-development-goals/

[2] Sustainable Development Goals - No poverty; Zero hunger; Good health and well-being; Quality education; Gender equality; Clean water and Sanitation; Affordable and clean energy; Decent work and Economic growth; Industry, Innovation and Infrastructure; Reduced Inequalities; Sustainable Cities and Communities; Responsible Consumption and Production; Climate Action; Life below water; Peace, Justice and Strong Institutions and Partnerships for the Goals.

When we refer to the criminal justice system, we refer to the police, prosecution, the judiciary, probation and corrections.

B. Why is It Necessary for the Public to Have Access to Justice?

Modern societies have avoided violence as a way of dispute resolution by establishing a judicial system based on an independent judicial power that will decide the questions submitted to it according to the legislation and the evidence provided by the parties. In order to settle its conflicts and disputes through this rational procedure, the citizens must have the power, the ability and the means to take their issues to the Courts.

In the field of criminal law in which the acts are more seriously threatening and affect the society, access to justice is especially relevant. Indeed, victims have suffered the burdens of the criminal act and depend upon the courts to punish their aggressors and to receive compensation for their losses.

Although generally granted in the various constitutions and national legislation, this right to access the judicial system must be ensured by the governments through practical measures that materialize the formal right. If the general population is deprived of this fundamental right – be it by financial, material or legal reasons – it may need to resort to force to satisfy its needs or simply renounce them.

Access to justice is the beginning of a process that will lead to subsequent investigation and eventual victim support. Having basic information of the criminal justice system will enable a person to make better informed decisions, understand the process of identifying wrongs committed against him or her and finding a remedy. The criminal justice system exists to address those breaches and provide a form of punishment to the wrongdoer. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, or challenge discrimination.[3]

The rule of law is rendered meaningless if the general public is unaware of their rights, unaware of the process through which groups and individuals can vindicate their rights and has insufficient access to the justice system. Therefore, understanding and participation of the general public is required.

The General Assembly of the United Nations approved in December 2012 a resolution adopting the United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice System. According to Principle 4, "without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime".

Considering that many countries still lack the resources and capacity to provide legal aid, the resolution encourages the States to "recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid" and to establish public-private and other forms of partnership to extend the reach of legal aid.

Guideline 9 refers to the implementation of the right of women to access legal aid and encourages the States to introduce an active policy of incorporating a gender perspective into all policies, law, procedures, programmes and practices relating to aid to ensure gender equality and equal and fair access to justice.

Access to justice is recognised as a global challenge; hence its significance being captured in the United Nations Sustainable Development Goals. It is true to say that crime affects prosperity both at the national and international levels, and therefore it is necessary to be addressed in taking steps to achieve the SDGs.

II. CURRENT SITUATION IN PARTICIPATING COUNTRIES

A. Brazil

The Brazilian Constitution ensures the right to access to justice whenever someone has been affected in his/her rights. However, this formal constitutional provision does not solve the problem by itself.

[3] www.un.org/ruleoflaw/

Victims are an especially vulnerable group. Unfortunately, the Brazilian criminal process and its main participants still see the victim as someone who will provide evidence and help the conviction of the defendant. Recent changes in criminal procedure, however, made it easier for the repayment for losses, damages or expenses that result from a crime.

In Brazil there is a national public institution, the public legal defence, which provides legal support to all. However, not all cities have public legal defence offices and even where there are, in some cases, they still lack the structure and the number of lawyers required to provide legal assistance to the general population. In the places where there is a shortage of means, priority is given to poor defendants.

B. Cote d'Ivoire

The Ivoirian government, along with the United States of America, has identified that judicial reform is central to the reconstruction process of the criminal justice system. This has resulted in the *ProJustice* project. The goal of this project is to make the justice sector more effective, accessible and equitable through a robust training programme targeting key actors in the justice sector, equipment support and infrastructure rehabilitation. The focus of this project is to improve the existing justice system and facilitate access to justice by strengthening legal aid resources and creating a broad information campaign to help public understanding of the judicial system. The project also provides for and upgrades infrastructure and equipment to increase the effectiveness and output of specialists working in the judicial sector. There are judicial officials known as *Gendarmerie* who use motor bikes to go to rural areas and assist the community with law enforcement. In Cote d'Ivoire to address the issue of access to justice, with the assistance of JICA, a call centre or hotline was set up. There is also the use of brochures such as Allo Justice.

C. Japan

Japan has comprehensive systems that enable access to justice for its citizens. It introduced new legislation to promote and facilitate access to justice for their people including establishing the Japan Legal System Center (JLSC). It provides legal aid services and a support system to the victim from investigation through prosecution and trial. The JLSC is based on the goal to realize a society where legal information and services are accessible anywhere in the country.

The public prosecutors' office provides victim support to reduce trauma and bad experiences of children. The measure of victim support has been introduced through various materials such as brochures placed at public offices. It also has in place a victim notification system by which the victims are informed about the case. The Victim Notification System provides such information as the disposition of the case, the outcome of the trial, treatment of the perpetrators in prison and the time of their release to the extent possible.

It also has the Koban system, which is a police box located in the communities where police officers work on shifts. This makes it easier for the public to have access to the police. Japan also has a strong law-related education programme which is included in the school curriculums where children are taught rules and the legal system.

D. Lao PDR

The Ministry of Justice in partnership with the Asia Foundation have established three legal aid clinics located in Oudomxai (north), Vientiane (central) and Champasak (south). These clinics focus on providing legal aid to poor and vulnerable people, especially women, children, and minority populations.

There is training of citizens to become paralegal resource people within their communities. These volunteers operate as mobile paralegal units, which, in collaboration with the Bar Association, are currently undertaking community legal education activities across eight provinces. The LBA has produced several easy to understand brochures and posters on legal aid and legal education that were disseminated widely, including to villagers, judges, prosecutors, and the police. Village Mediation Units operate under the auspices of the Ministry of Justice and are designed to address conflicts at the community level through negotiation and the law.

E. Maldives

The Maldives Constitution clearly states that every citizen must have equal rights and equal access to justice. The Child Protection Act and the Domestic Violence Act protect the rights of the children and

women who are most vulnerable. Free Medical treatment and counselling to victims is mandatory. But as a small island nation and due to geographical situations, access to justice and medical facilities to people living on remote islands is a huge challenge.

Another challenge is the lack of awareness of the people living in these communities. To tackle these problems crime prevention committees are established in every atoll and crime reporting measures are made accessible through different means, such as through the use of hotline numbers, email, by messaging, letters etc. Currently, crime prevention committees are established in every atoll. The members of the committee are elected from the public. They work together with law enforcement agencies to prevent crime by carrying out awareness programmes on the islands targeting the children, parents and the general public. Another good practice is door-to-door policing. Police officers carry out door-to-door activities on remote islands. By visiting homes, the police are able to get feedback from the public and take measures to improve the system.

F. Papua New Guinea

Access to justice services are still a challenge in Papua New Guinea. The Constitution provides for the right to the protection of the law but this mainly applies to those arrested and charged with criminal offences. There is no specific legislation on access to criminal justice. The police have a significant role in access to justice but suffer the challenges of manpower and lack of resources. Hence the establishment of a community police system in the villages. The Courts through the Chief Justice in the last three years have embarked on a mission of bringing the courts to the people and promoting legal awareness through court circuit sittings in the districts. The judges, prosecutor, public solicitor and police officers would go on circuit to the district level and deal with cases from that district, giving the people an opportunity to see the criminal justice system in action.

G. Sri Lanka

The Sri Lanka Constitution defines the right to access to justice for all. The legal aid system in Sri Lanka is governed by the Legal Aid Act No 22 of 1979 which provides:

- Establishment of the legal aid commission
- Grants of assistance to deserving persons
- Branches for legal aid set up island wide
- Set up a legal aid branch in every magistrate/district court (judicial zone)
- Legal aid officers appear for litigants in all courts
- Poor aggrieved parties have access to guidance, legal representation, both civil and criminal
- Accused have free legal representation in high courts

Most people go to the police, and they have built up trust among the community. There is a 24-hour hotline (119) which the public may access. Community policy committees have been established in 14,022 villages; however, police stations lack facilities for women and child protection bureaus. A National Child Protection Authority has already been established. There is law-related education for the children, which is still primitive and may not be effective in the long term. Law-related education should be implemented in the schools initiated by the Japanese government and which are intended for a long-term basis.

H. Thailand

Access to justice is a fundamental right guaranteed by the constitution as well as the rights to free compulsory education of which the curriculum covers legal education. However, for those in remote areas, the limit of education due to communication and transportation especially for the ethnic minority, misunderstanding of criminal justice, lack of resources and lower income are obstacles to access to justice, as well as gender and issues impacting vulnerable groups.

The right to legal aid has been recognized on a non-discriminatory basis as well as the rights to remedies for victims from defendants and public funds. Victims have rights to be informed. Legal education and legal aid, facilities, infrastructure, budget, resources as well as the contribution of each part of the society are all necessary to ensure the fair, humane and efficient justice system on both the national and international levels.

III. CHALLENGES OF ACCESS TO CRIMINAL JUSTICE

The group had identified the following as challenges of access to justice by the public.

A. Access to Police Stations and Facilities

The location of a police station is a challenge for the public. Some police stations are not conveniently located for rural areas and the environment in the station either in the urban or rural areas can be stressful or hostile. Further there may not be proper interview rooms, for example, rooms to record a child witness's statement or to interview a juvenile offender.

B. Legal Expenses for the Victim.

Legal advice and representation does not come cheap for most victims. Most people who need such services are mainly those who do not have the financial capacity to pay for it. Though most countries have the government-sponsored legal aid clinics or public solicitors' offices, they may not be located nationwide and have a lack of manpower to meet the demands.

C. Inefficiency and Lack of Trust in the Criminal Justice System

Some people have had bad experiences with the police in that they were not treated well by the officers or their cases were not handled well. In addition, there remains a general public perception of the inefficiencies of the criminal justice system.

Some police officers are not very friendly. In some countries, the public do not have a lot of trust in the police so sometimes they go straight to the public prosecutor or worse they do not report at all.

There is secondary victimization when people have to go to the police station, the public prosecutor's office or the courts and have to tell too many officers their story or are treated disrespectfully. This leaves an uncomfortable feeling for the victims.

D. Lack of Information of the Prosecution, Judgement and Sentence

One of the challenges the group discussed was the lack of information for the victims of crime. For instance once the complaint of a crime is made and the case is ready for prosecution, the victims are not aware or informed until the trial date. They may not have any say in how the case is handled and sometimes are never informed of the outcome of the case. If the offender is found not guilty, they are also not informed or it may not have been explained why the offender was released. If the offender is sentenced, the victims are not informed about the length of the sentence and the date of release for the offender.

E. Cooperation between Criminal Justice Agencies and Other Professions

Another challenge identified is the absence of a mechanism between different professions and criminal justice agencies. This may occur where a complaint of abuse is made by a child to either a teacher or child consultant; or when a medical doctor through medical examination finds out that the person may be subject to abuse but may not report because of this.

F. Information or Knowledge about the Criminal Justice System

The insufficiency of the information and knowledge about the criminal justice system is a challenge in achieving equal access to justice for the public. From the different countries' discussions on the challenges in their respective countries, there is a recurring issue of the lack of basic information about the criminal justice system. Law-related or moral and civic education is not compulsory in the education system for most countries[4].

G. Attitude and Community Pressure

There are some countries where there is community pressure not to report a crime especially where the suspect may be a prominent person in the community. Sometimes it is because the victim is afraid of the suspect because either there is fear of, or threats from, the suspect. In cases which involve fraud or corruption-related complaints, people may refuse to lodge a complaint or report the matter to the police

[4] Except in Japan, Thailand, Cote d'Ivoire where law-related or moral and civic education is compulsory.

because of political reasons or job security. There could also be out of court settlements in some cases and so there is pressure to not report to the formal system because the matter has been settled out of court. Not having the proper information or access to justice may leave a lot of unreported crimes and silent victims.

H. Access to Justice is Not a Priority

Access to justice is a topic that many in leadership may not consider to be a high priority because it does not give immediate results in election campaigns or winning of votes as opposed to health or education. On the other hand, policymakers may not view the subject as a priority. Hence no emphasis is placed on access to justice and allocation of resources.

IV. EXAMPLES OF GOOD PRACTICE

The good practices that the group identified that may be useful in addressing the issue of access to justice for all may be in the form of long-term plans and legislative effects on access to justice. In some countries, the constitution or national legislation may have provisions providing for access to justice while others have none.

A. Women only Police Stations

The group identified the use of women only police stations in Brazil as a good practice for addressing the barriers to access to justice for women and children in reporting crimes. Every city in Brazil that has more than 100,000 inhabitants has at least 1 women only police station. All cases from these police stations go to a specialized court, which also has specialized prosecutors. All officers at these police stations are female police officers and have specialized officers such as psychologists or social workers. It has made a huge impact in that more women are coming out to report and are treated well unlike before when they were not treated well. In fact, this example of women only police stations would be consistent with Guideline 9 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

B. Legal Support Centres for Victims

The Japanese Legal Support Centre provides information concerning the legal system, such as procedures to participate in the criminal proceedings as the victim of crime or to recover damages and reduce pain and suffering[5].

C. Forensic Interviewing

Another good practice used in Japan is forensic interviewing, which is an approach in interviewing that aims to elicit factual information from child witnesses or child victims without leading or biasing a child. This practice is used in Japan and Thailand as a form of interviewing using open-ended questions and getting the child to give his or her statement in relation to the crime. This interview is recorded on a DVD so it may be used in the prosecution of the case. It is intended to reduce the mental stress on the child in having to repeat his or her story so many times to too many people.

D. Information Brochures

Another simple practice of providing basic information which was considered a good practice and which is still effective is having brochures or pamphlets with information about access to justice. One example is a brochure prepared by the Japanese police providing information on human trafficking with a hotline number. These are simple but effective methods of disseminating information on the criminal justice system and how one can access the system.

E. Legal Aid Clinics

The establishment of legal aid clinics or *clinic juridique* as in the example of Lao PDR and Cote d'Ivoire where people can go for basic information about the law and also where they can then be referred to the appropriate criminal justice agency or other legal organization that may adequately assist them.

The Office of Civil Rights Protection and Legal Aid of the Attorney General in Thailand may provide a free litigator called a volunteer lawyer. Access of justice also extends to the availability of dispute settlement, since the public prosecutor's office of Civil Rights Protection and Legal Aid performs free mediation services

[5] Japan Legal Support Centre, July 2014.

upon the request of members of the public on a voluntary basis.

Another good example that may be practical is legal aid by the office of the attorney general including the provision of advice to those who walk-in to the office, by telephone, letter, facsimile, email, or by public prosecutors who travel to rural areas and set up a contact centre in a municipal office which can direct the people by paying a visit to provide legal knowledge or have the municipal staff direct the people in need of assistance to the public prosecutor's office by Skype or by driving them to the prosecutor's office.

F. Law-related Education

In Japan, law-related education is promoted and is implemented at all levels of the educational system. This is a good practice that has encouraged the development of the culture of lawfulness, hence contributing to make Japan one of the safest countries in the world. In Thailand the Office of the Attorney General has regularly conducted the training for empowerment of the public and to promote responsible civil society conducted in cooperation with the education sector, *i.e.*, schools and universities.

G. Participation of Civil Society

In Thailand, the private sector such as the Thai Women Lawyer Association provides free legal advisory services to people as well as shelter for short-term stays of women in emergency cases.

H. Alternative Dispute Resolution

The Thai government supports restorative justice and alternative dispute settlement, especially mediation. Public prosecutors conduct training on mediation to build capacity of the heads of villages throughout the country so that they can understand and mediate the disputes at the first stage. In the large scale or criminal-related offences, they can refer the case for mediation by the prosecutors including for mitigating the cases.

V. RECOMMENDATIONS

After having considered the significance, the challenges and some good practices in some of the participating countries of access to justice, the group considered that access to justice is vital to the criminal justice system and the rule of law.

The following recommendations were suggested in response to the challenges:

A. Access to Police Stations and Facilities

- Improving the location and facilities of the police stations by bringing them to the communities, *e.g.*, establishing community policing in villages and rural areas.
- Improving methods of reporting crimes by the public through the use of the internet, telephone hotlines or other channels and keeping confidentiality when necessary.
- Establishing women only police stations for domestic violence cases.

B. Legal Expenses for the Victim

Expanding the use of legal aid and legal support centres for victims.

C. Inefficiency and Lack of Trust in the Criminal Justice System

- Increase and improve the training of criminal justice agents including forensic interviewing in order to enable them to deal with victims of sexual crimes, children and vulnerable people.
- To have internal supervision of the cases and conduct of officials to maintain good public relations with people who interact with the criminal justice system.
- Create manuals or standard operating procedures and follow-up training for police officers on those manuals.
- Getting regular feedback from victims/complainants after the completion of the case on (a measure

of access to justice/quality of service provided) capturing the service of the different agencies in the system, *e.g.*, feedback boxes or forms, email or websites.

- Improving the efficiency of the system by declining and suspending criminal cases after proper assessment and informing the complainant.

- Establishing an Independent Integrity Commission that could be another avenue for the victims or the public to raise complaints and review the conduct of officers within the criminal justice agencies. The Commission could comprise members from the private sector, attorneys, academia and government officials.

D. Lack of Information of Prosecution, Judgement and Sentences

- Establishing a Victim Notification Mechanism to improve efficiency in the response and confidence in the criminal justice system.

- Improving the efficiency of the system by declining and suspending criminal cases after proper assessment and informing the complainant.

- Getting regular feedback from victims/complainants after the completion of the case on (a measure of access to justice/quality of service provided) capturing the service of the different agencies in the system, e.g., feedback boxes or forms, email or websites.

E. Cooperation between Criminal Justice Agencies and Other Professions

By establishing networks/frameworks and channels of communication between criminal justice agencies and relevant professionals.

F. Information and Knowledge of the Criminal Justice System

Promoting the work of the police and the criminal justice system through campaigns, the use of the media and distributions of informative materials, brochures, pamphlets, posters etc. to the public and placing these materials in public places.

G. Attitude and Community Pressure

- Improving methods of reporting crimes by the public through the use of the internet, telephone hotlines or other channels and keeping confidentiality when necessary.

- Promoting legal education both in schools and communities.

H. Access to Justice is Not a Priority

By using marketing strategies to promote the importance of access to justice for all in accordance with the international standards and norms, including by identifying the organization responsible for the implementation of the SDGs and working in coordination to promote access to justice.

VI. CONCLUSION

Access to criminal justice by the public is fundamental to the rule of law. The current situation in each of the participants' countries exemplifies the limitations and difficulties for victims in accessing the criminal justice system. The challenges include the lack of legal education; the infrastructure of criminal justice agencies; inefficiency and lack of trust in the criminal justice system; attitude and community pressure over the victims; poverty; and lack of political priority. In order to overcome these challenges, good practices were observed in the participants' countries that may be generally adopted. Based on these good practices, recommendations were made to facilitate access of victims to the criminal justice system. To implement these recommendations, it is necessary to secure budgets that are based on effective data analysis and proper record management.

GROUP 3

COMMUNITY-BASED DISPUTE RESOLUTION

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I. INTRODUCTION

There would be no opposition to the thought that one of the major objectives of our criminal justice system is to prevent crime in accordance with rule of law (Sustainable Development Goal 16.3). Our formal criminal justice system would be listed at the top of the options because those specialized organizations, such as the police, prosecutors' offices, courts, correctional facilities and probation offices, operate under statutory laws by duly appointed public servants. These organizations are supposed to be competent in crime prevention. Under such systems, a typical example of public participation is the jury system. Among participating countries, Japan has adopted a lay-judge system, through which the sound common sense of ordinary citizens is introduced into the legal system to curb the adverse effects of excessive expertise and abuse of power; also, citizens who have served as lay judges bring their experiences back to the community and enhance the public's understanding of the legal culture.

However, proper management of such entities is nothing more than a means and not the purpose. In addition, the formal judicial system in general is expensive, time-consuming and not necessarily familiar with the actual situations in which crimes are committed. These issues are even more important for countries which are challenged by underdeveloped economies, geographical remoteness and diversified cultures.

Considering these factors, the group has chosen "Community-Based Dispute Resolution" (hereinafter referred to as "CBDR")—through which members of the community participate in the criminal justice system in a broad sense—as the main topic, believing in its significance and importance; to effectively prevent crime by an approach incorporating the community; to improve access to justice and to enhance rule of law by providing fair, prompt and inexpensive means of dispute resolution; and to maintain peace and harmony in the community based on its diversified culture, etc.

It also should be mentioned that the group found it challenging to establish a detailed and specific definition of CBDR, mainly because of the difference and diversity in the legal systems and practices among the participants' jurisdictions. However, bearing in mind the above-mentioned significance and importance of CBDR, the group tried to identify the practices of each participant's jurisdiction and found common issues: how to enhance CBDR; how to guarantee fairness through CBDR; and how to ensure the performance of obligations agreed to through CBDR. This report summarizes the practices of CBDR and the discussions based on the above-mentioned issues.

II. OVERVIEW OF CBDR IN THE PARTICIPANTS' COUNTRIES

As mentioned above, the group accumulated its examples of CBDR in each participant's country as the basic materials for its further discussions.

A. Bhutan

Community-based dispute resolution has existed in Bhutan for a long time and is still in practice. In the Bhutanese context it is known as *nangdrik*, which means settling disputes and cases in the community by elders without going to court. However, there were some instances where certain heinous cases also were settled mutually by community elders. Later with codifying the law, such process was to be stopped, but due to mountainous terrain it was difficult for the people to go to court to settle the case, which proved expensive. To ease these burdens, the judiciary allowed the practice of community-based dispute resolution to continue, but there is a restriction that the serious cases cannot be settled at the community level. People are all aware about the system and are happy. They report the case to police and the police screen the case and allow them to settle the minor cases amicably at the community level.

The challenges faced in Bhutan are the lack of sufficient numbers of judges and prosecutors; hence all people who want to avail themselves of the service are deprived. Moreover, there are not many students interested in law since they are not taught in the elementary school. Only a few understand that the law is important and those ex-judges' children opt for law. Therefore, it is very difficult to have many judges. Some judges retire early and establish their own law firms which are lucrative at this juncture. Therefore, settling cases in the court takes a long time, which people do not like. Most people prefer resolving the case amicably without going to court. Moreover, there is no law college in the country for students who want to pursue law at their own expense, and they cannot go outside the country to study due to financial constraints. A law college has to be established in the country to solve the above-mentioned challenges. If a law college is established in the country, the current situation can be partly solved, and the rule of law can be enhanced. More legal awareness has to be promoted in the schools, which will create enthusiasm in the minds of students.

B. Indonesia

In Indonesia, especially in criminal cases, CBDR is not available in criminal cases. Only in civil cases is there an opportunity to settle the dispute using CBDR or mediation as we know it. Because in Indonesia there is the principle of legality (*nullum delictum nulla poena sine praevia lege poenali*) through the criminal code and the principle of codification, any criminal act must be processed based on Indonesia's written law by criminal procedural law. This challenge hinders the promotion of CBDR as an alternative option to avoid formal proceedings or trial by court, and the only remedy is the amendment of the criminal code and the criminal procedural law.

C. Japan

There is no CBDR system in the criminal procedure in Japan; however, it is possible for the parties to make civil reconciliation. Because civil negotiation is not decided statutorily, civil reconciliation can be held at any time and there is no limitation on those involved. Although the parties can also use the court's civil mediation system, the process is relatively time consuming. The mediator is selected from the private sector. Criminal liability is separated from civil liablility. So even if civil reconciliation is concluded, the criminal procedure does not end immediately. It can be a factor that reduces criminal responsibility. Although the police will send cases to the prosecutor once the investigation is started, the prosecutor will not prosecute those cases if mediation is concluded in minor cases.

D. Maldives

In Maldives, CBDR has not been effectively in place due to the country's ongoing legal reforms. Presently, a threshold issue in the Maldives is legal aid and numerous problems faced by citizens in obtaining competent and affordable legal representation due to high demand. However, many efforts have been taken to improve the criminal justice system. Disputes are handled predominantly on an intra-family basis or with the intervention of the Island Council or senior members of the community. In both rural and urban areas, police play a vital role in dispute resolution and guiding the public. In minor cases, the police try to solve the disputes by negotiation. If the matter is not resolved, investigation continues; if there is reasonable evidence, the case is sent to the Prosecutor General's Office for prosecution. In children- and family-related cases, after analysis, depending on the magnitude of the case, the case is sent back to the police for mediation. For juvenile cases, the court uses guidelines for mediation, in which case conferences are held for both pretrial cases and convicted cases. The agencies included are the police, prosecutors, correctional, juvenile justice unit case workers, family and gender case workers, and the Ministry of Education.

E. Papua New Guinea

Village Court Mediation in the PNG context is a customary way of resolving disputes and maintains peace and harmony in communities. Community leaders have a responsibility to maintain peace and harmony in communities. They use CBDR to mediate civil cases and in criminal cases. PNG law does not allow mediation of criminal cases, but local communities resort to mediation, especially in sensational cases, for the sole purpose of maintaining peace and harmony in communities. This does not, however, necessarily exempt the accused party from criminal liability; hence payment of compensation is taken into account as a mitigating factor in criminal proceedings. Cultural diversity and geography are major challenges. Clans or tribes compose their so-called community and each community has its own culture; therefore, it is almost impossible to come up with just one procedure to be adopted by all without encountering much resistance from the locals themselves. People from remote areas cannot easily access the regular courts, so they resort to the mediation process in the village courts. Good practices in PNG in regard to CBDR are as follows: social pressure from the community on the defendant to meet the agreed terms of settlement, so assistance is sought from tribes, clans in settling terms agreed upon during mediation. Community, clan or tribal contribution in settling disputes enables stronger communities in deterring crimes.

F. Philippines

In the Philippines, the *Barangay* Justice System is mandated by Republic Act No. 7160 or the Local Government Code of 1991 as a community-based mechanism for dispute resolution. The system has an established procedure that covers all issues that may arise in the administration of CBDR and all necessary forms were provided for proper recording of complaints, serving summons, observance of the period of settlement of disputes and other related procedures. There are some indigenous tribes mostly in the northern and southern part of the country who have their own customary traditions regarding conflict resolution in their respective communities; however, the law on the *Barangay* Justice System (BJS) provides that in communities that have distinct traditional practices in settling disputes, the customs and traditions of the indigenous cultural communities shall be applied. Thus, settling disputes through their Councils of Elders are recognized and followed with the same force and effect as the procedure in the BJS. It is also noteworthy to mention that there is an annual search for outstanding *Lupong Tagapayapa* or *Lupon* (Barangay Peace Council). Aside from the distinct honour, the chosen outstanding *Lupon* will be given the Presidential Commendation and a cash prize. This awards system is a strong motivation to all *Barangay Lupon* to perform their best.

G. Sri Lanka

In Sri Lanka mediation is governed by procedural law and is available for both criminal and civil matters but with limitations. Minor criminal cases such as injury and mischief where the sentence is less than one year necessarily should go to mediation. Minor civil claims of less than 25,000 rupees, too, should undergo the same process. The original court has jurisdiction to try these cases only if the mediation process fails. Legal representation is not permitted. The mediation is attempted by three mediators. Two of them are selected by both parties, and the leader is selected by those two. Mediation is not available in matters where the state is a party or in proceedings instituted by the Attorney General.

H. Thailand

Thailand attaches great importance to public participation in the settlement of disputes in the society. One form of CBDR in Thailand is the mediation process. The implementation of the mediation system aims to create fairness in the society. Mediation is an alternative dispute resolution process in which the mediator acts as a facilitator for helping and negotiating to settle the dispute between the parties. It is often used to settle disputes in civil cases and criminal cases which are compoundable offences such as fraud, embezzlement, libel etc. In Thailand the mediation can be done by the sheriff who is the head of the community by the request of the offender and with the consent of the victim. Even when the criminal case is ongoing, the justice process, not only in the investigation but also in the public prosecution proceeding, the police officer or the public prosecutor can also mediate a compoundable offence case. If the parties agree, the police officer or the public prosecutor will notify the victim to withdraw the petition and the victim's right to bring a criminal case against the suspect will be terminated. In the court proceedings, the mediation can continue as long as the case is not final. Initially, the case will be sent to the Mediation Center which will be conducted by the mediators who were selected from among people who are not judges. That is to say the mediation system in Thailand also gives the opportunity to the public to participate in the judicial process by being a mediator in court. Thailand has been promoting dispute resolution by mediation because when the

parties agree to resolve their dispute they also have a good relationship. The mediation process can reduce the number of cases that go to the court and also reduces the time and expense of litigation. Sometimes, the victim may receive compensation quickly and certainly because it can be determined as a condition that the victim will withdraw the petition when the suspect or offender has paid compensation to the victim. It also is good when the defendant has no prior history of offending.

III. CHALLENGES

The challenges faced in CBDR proceedings vary by jurisdiction depending on the unique and peculiar situations as well as the objectives in each country. Most countries use CBDR in civil or minor cases as a customary process of restorative justice in the community. Bhutan, Philippines, Maldives, Thailand and Sri Lanka mediate both civil and criminal offences but only in minor cases for criminal offences.

A. How to Enhance Mediation

The group generally agreed that enhancement of mediation is necessary in order to empower the public or community to actively and effectively participate in criminal justice. There are, however, challenges limiting this goal.

In Indonesia, they have rigid statutory law and do not recognize mediation in criminal cases because of the principles of legality and codification so that any criminal act must be processed based on Indonesia's written law. There are de facto mediations in Indonesian society, but it is quite rare for the parties involved to conduct them because even if they reach an agreement, it has no influence on the disposition of the criminal case.

In Maldives, CBDR is very challenging due to lack of cooperation between stakeholders, social, cultural and religious beliefs; lack of awareness of legal rights and options especially among vulnerable groups; close-minded people mostly in the islands, and geographical diversity. Furthermore, misuse of power by the negotiators especially at the local council level, since the councils have insufficient knowledge in this area, could diminish public trust in the criminal justice system.

In PNG, the individual perpetrator hides in the shadows of tribes or clans, and liabilities are shared by clans/tribes.

Public awareness, in the sense that the community must be educated on the process flow of the mediation, is lacking in almost all jurisdictions as mentioned by the participants during discussions. Promoting public awareness will enhance the effectiveness of the system. The public will be guided on what to do, where to go and whom to approach directly when an incident happens in their community, especially for the people living in remote areas.

B. How to Achieve Fairness in Mediation

There were different views shared by the group on principles of fairness in CBDR. A majority of the participants agreed based on experience and practice that wherever there is consensus reached by both parties, fairness is reached; however, if no amicable consensus is reached, the matter can be appealed to the next level of the formal justice system. In the case of Japan and PNG, social pressure from communities, whether positive or negative, can have a bearing on the outcome of the cases.

In Japan, the public legal support for victims had been weaker than that of the defendants or suspects. In some cases, the victim claimed that the mediation was not based on his/her consent, especially when only the offender is represented by his/her attorney. In other countries, it is also common that there are tendencies of unfairness in mediation due to the various reasons stated below:

1. Power Balance

In CBDR, there is always the challenge of striking the balance of power between the protection of rights of defendants versus the protection of victims' rights. This is the case in the Japanese system. Generally across the different countries, a lawyer is not needed in the mediation process as it is a customary process based on general consensus of resolving issues. Some issues are unresolved during mediation, partially because such cases can be referred to the formal justice system where legal assistance can be utilized.

2. Influence of Social Pressure

The influence of social pressure can have a positive and negative effect on mediation. The negative effect can be on the issue of collectivism versus individualism, where community expectations are placed on the offender or the victim which are contrary to the victim's will to resolve the issue. The social pressure can also influence the outcome of the mediation process at the community level based on general community expectation. On the other hand, the positive effect of social pressure helps in repairing the damage done by the offender.

In PNG where there is the issue of collectivism versus individualism, social pressure from communities can have a negative effect on the mediation process. Collectivism means the liabilities of the case are shared by clans or tribes who pay compensation upon agreement of mediation as seen as the customary way of settling disputes through mediation. Individualism is more of a formal process where individual perpetrators face the formal justice system on their own as individuals responsible for crimes committed. Perpetrators or complainants are also subject to social pressure by communities based on consensus.

3. Quality of Mediator

It was generally discovered in the group discussion that the selection of mediators was based on some criteria depending on the different context of mediation in each country. The importance of selection of mediators has become greater because it is at the core of achieving fairness in CBDR. In our discussion, we talked about the issues related to their incentives. We unanimously agreed that the internal incentives, *i.e.*, satisfaction felt by contributing to society could be the most important, because those who want such feelings are expected to be fair and sincere mediators. Countries that have formal mediation systems have criteria outlining different levels of competencies, codes of conduct and qualifications. Some countries have formal guidelines on how to conduct mediation while others do not. It was also generally observed that there is a growing need for mediators to be trained to ensure that quality mediation outcomes are realized. The diversity of cultural practices and geography also pose challenges. General agreement from discussion on enhancing fairness indicates that there is growing need for guidelines on mediation, training and appropriate procedure of selection to be in place to guide a fair process for the culturally diverse and geographically challenged countries with more public awareness on the process and training of mediators.

4. How to Secure the Execution of Settlements Resulting from Mediation

As realized in the group discussions, securing mediation settlement is often through consensus by the parties involved. The process of ensuring compliance of terms agreed upon during mediation differs from country to country. In Japan, prosecutors and counsel put importance on approaches incorporating the relatives or the neighbours of the defendants to encourage the defendant to comply with the obligations agreed to with the victim. In PNG, village court officials or clan/tribal leaders are responsible for ensuring compliance with terms of settlement agreements. If there is a breach of the agreement, the matter is referred to police for prosecution or to the courts. In Thailand, there are two types of agreements: one is conditional and the other is without condition. If the agreement is breached, the matter is referred to court for prosecution either civil or criminal in nature. In Bhutan, if there is a breach in the settlement agreement, it will be referred to the police for filing of charges, or they can directly approach the court for settling the case.

IV. RECOMMENDATIONS

After all the sessions concluded, the group agreed to the following recommendations to address the issues and challenges identified:

A. On Enhancement Issues

1. In order for the community-based mediation system to be effective, countries need to recognize its significance or impact on criminal justice and pass a statute as a basis to that effect. In turn, policy guidelines will be laid out for its implementation so that they can reap the benefits that it offers;

2. Public awareness or education campaigns must be actively carried out by stakeholders to disseminate the said statute and policy guidelines through the utilization of call centres, such as Japan does, and also the mass media or various social media platforms;

3. Collaboration with bar associations for *pro bono* legal assistance to parties; and

4. Establishment of volunteer probation officer systems which would be greatly beneficial in involving the public in the criminal justice system.

B. On Fairness Issues

1. Appropriate selection and training of quality mediators are important to increase the success of mediation. In Thailand, they have established a mediation centre in every court of first instance where mediators with proper training mediate cases, resulting in a 90% success rate, which means that 90% of cases were successfully mediated and only 10% went to court. In Japan, selection may also be an issue because of its aging population with the obvious problem of getting mediators from the younger age groups; however, this situation can be advantageous in the sense that older people have a wealth of knowledge and experience in dealing with conflicts or problems as well as their feelings of self-fulfillment that they will leave behind a legacy of their own.

2. Policy guidelines are also important here to guide the mediators in upholding the rule of law at all times whenever they mediate cases;

3. Providing incentives to mediators whether in monetary or honorary form, or both, will serve as motivation factors for them to perform their role the best they can to reciprocate the incentives they receive; and

4. As a last resort, when concerned parties are not satisfied with the settlement, they can always appeal their case and go to the formal legal procedure.

C. Securing Compliance with Negotiated Settlements

1. Inclusive mediation where family members, colleagues in the workplace, friends and other community members will be proactively involved in ensuring compliance with the settlement.

2. Include in the policy guidelines procedures for securing execution of settlement agreements in case the respondent does not voluntarily comply with the settlement to ensure that the victim will receive the compensation agreed upon.

V. CONCLUSION

The group came to the conclusion that public participation in criminal justice is not an independent topic to be tackled exclusively, but it is intertwined with the topics of access to justice and law-related education. This is due to the fact that in order for the public to actively participate in the criminal justice system, law-related education is required to make them aware and empowered to get involved. It is in the same way that CBDR, which is the focal point of this humble undertaking, provides access to justice, especially to the poor and underprivileged, who compose the majority of the population around the world, in order to bring forth justice for all. It is therefore the group's aspiration that this report will contribute to the promotion of the rule of law and the culture of lawfulness (SDGs 16.3) through possible replication of the good practices shared.

SUPPLEMENTAL MATERIAL

Report of the Follow-Up Seminar for the Second Phase of the Third Country Training Programme (TCTP) Focusing on the Development of Community-Based Treatment of Offenders in the CLMV Countries
by UNAFEI

UNAFEI

REPORT OF THE FOLLOW-UP SEMINAR FOR THE SECOND PHASE OF THE THIRD COUNTRY TRAINING PROGRAMME (TCTP) FOCUSING ON THE DEVELOPMENT OF COMMUNITY-BASED TREATMENT OF OFFENDERS IN THE CLMV COUNTRIES

From 26 to 28 June 2018, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) hosted the Follow-up Seminar for the Second Phase of the Third Country Training Programme (TCTP) Focusing on the Development of Community-Based Treatment of Offenders in the CLMV Countries (hereinafter, the "Follow-up Seminar"). This report summarizes the proceedings, country presentations and general discussions held throughout the Follow-up Seminar.

Proceedings

1. Ms. Kayo Ishihara, Deputy Director of UNAFEI, welcomed the participants and announced the opening of the Follow-up Seminar. Further, she recognized the efforts of the Japan International Cooperation Agency, the Department of Probation of Thailand (DOP), and the Thailand International Cooperation Agency (TICA) in organizing and implementing the TCTP with the cooperation of UNAFEI. Noting that the establishment of effective community-based treatment (CBT) in the CLMV countries faces numerous challenges, it is very important to share periodically what each country has achieved and to evaluate progress. To achieve the goal of the TCTP, Deputy Director Ishihara stressed that it is important for all participants, as experts and practitioners, to take the initiative to introduce and develop CBT in their respective countries, making use of the knowledge and insights obtained during the TCTP.

2. Mr. Payont Sinthunava, Deputy Director-General of the Department of Probation (DOP) of the Ministry of Justice of Thailand, emphasized the importance of implementing the Tokyo Rules in criminal justice systems in order to rehabilitate offenders in the community with their families and to allow them to become productive members of society. Noting that the first two phases of the TCTP have demonstrated the importance of implementing probation practices in the context of each country with an understanding of the "big picture" in terms of legislative, executive and judicial powers of the state, this Follow-up Seminar presents an opportunity to discuss the progress and challenges of implementing community-based treatment in the CLMV countries, with the goal of full implementation of the Tokyo Rules in the near future.

3. The Visiting Expert, Dr. Manuel G. Co, Ex Officio Member of the Board of Pardons and Parole and Administrator of the Parole and Probation Administration (PPA) of the Republic of the Philippines, delivered a presentation on "Countermeasures to Supervisees who Commit Bad Conduct".

4. Country presentations detailing progress made since the first phase of the TCTP were made by the delegations from Cambodia, Laos, Myanmar, and Viet Nam.

5. Lectures were delivered by: (1) Mr. Hitoshi Miyake, Principal Examiner of the Kanto Regional Parole Board, on an "Outline and details of punishment and sanctions imposed on persons released on parole and persons under probation with suspension of execution of the sentence" and (2) Deputy Director Ishihara, on the "Legislative Steps for Introduction of Community-based Treatment of Offenders".

Visiting Expert's Lecture

6. Dr. Co presented on the topic of dealing with supervisees who violate conditions of probation or parole, considering the question of whether revocation of probation or parole should be considered a failure of the system. In the Philippines, community corrections is implemented through individualized treatment. The PPA supervises and rehabilitates parolees, pardonees, probationers and first time minor drug offenders in the community, and its three vital responsibilities are investigation, supervision and rehabilitation. Post-sentence investigation into the background of each offender

identifies which offenders are suitable for community-based treatment, and those who are suitable are supervised in the community with the support of Volunteer Probation Assistants. Rehabilitation programmes are applied according to a three-pronged approach, including (i) restorative justice, (ii) the Therapeutic Community (TC) Ladderized Program, and (iii) volunteer resource mobilization.

Community-based treatment is a conditional release subject to conditions. While the conditions serve as a substitute to iron bars and prison laws, it is important that conditions are realistic and imposed for the purpose of helping each individual offender conform conduct to a law-abiding lifestyle. In addition to probation and parole, conditional pardons are used as a means to release offenders while maintaining control over their conduct in the community. Control over supervisees in the community is maintained through mandatory and special conditions. Mandatory conditions include the duty to report to probation offices, to reside at the offender's approved residence, and to refrain from committing further offences. Special conditions are designed to encourage offenders to develop as responsible, productive and socially redeemed individuals by requiring them to engage in productive behaviours, *e.g.*, employment, or to refrain from destructive behaviours, *e.g.*, drug use, possession of firearms, or relationships with criminal associates.

If mandatory or special conditions are breached, the PPA may take various actions depending on the nature of the violation. Minor violations of conditions may be addressed by administrative disciplinary protocols, which may include corrective measures imposed at the discretion of Probation and Parole Officers. If a parolee commits another offence while on conditional release, he or she must serve the remaining portion of the original sentence in addition to the term required for the new offence; probationers who reoffend must serve the time for the original and the new offence. Violations of conditions of parole or pardon are evaluated by the Board of Pardons and Parole based on fact-finding and the recommendations of probation officers, and the Board may issue an Order of Arrest and Recommitment to place the offender in custody. At any time during probation, the Court may issue a warrant for the re-arrest of a probationer for violation of any condition. In all cases, it is important to remember that offenders are entitled to the presumption of innocence and other constitutional rights.

In answering the question of whether revocation is a failure of the system, Dr. Co stressed that failure cannot be attributed to the probation officer alone, as each offender is ultimately responsible for his or her own behaviour and faces his or her own family and other problems in the community. The role of probation officers is to serve as gatekeepers of the justice system and to help offenders comply with their conditions. Recalling that the purposes of supervision are to implement conditions, rehabilitate the offender and prevent the commission of further crime, Dr. Co recommended that the participating countries consider the adoption of volunteer probation officer/assistant programmes to enhance offender supervision and rehabilitation through the use of community volunteers and community resources.

Country Presentations

7. Cambodia. Like a number of other countries, Cambodia has adopted legislation that addresses community-based treatment but has faced challenges in implementation. The reported challenges include public resistance to the concept and financial constraints that prevented the commencement of a pilot project. These challenges were raised at the Cambodian MOJ's annual congress, and the MOJ committed to further promotion of community-based treatment by disseminating relevant statues on non-custodial measures to judges, police, prosecutors and judicial police officers of various provinces. The Ministry of Interior has established a committee to address these issues, agreeing that the best way to initiate a trial programme would be to focus on the community-based treatment of juvenile delinquents. In 2019, responsibility for juvenile delinquents will be transferred from the Ministry of Interior to the Ministry of Social Affairs. Under existing law, prosecutors execute the decisions of the court with the assistance of judicial police officers. The delegation plans to raise public awareness of CBT and non-custodial measures though all means possible.

8. Laos. The delegation from Laos reported having gained useful knowledge during the Second Phase of the TCTP, which was reported to the Minister of Justice. The Criminal Procedure Law contains provisions on re-education without deprivation of liberty, stay of execution of penalty, conditional release, and other CBT-related measures. Currently, however, no ministry has been assigned as the

responsible agency for CBT, so offenders are entrusted to local administration authorities (such as village, district, and community police), mass organizations and other state organizations for rehabilitation, reintegration and recidivism prevention. The village administration system, including village mediation committees, are responsible for handling normal cases and non-violent cases, such as stealing property, traffic violations, battery and other cases resulting in minor damage or those that do not affect society. Applicable laws, regulations and policies will be disseminated to local administrations and the other organizations mentioned above to raise public awareness.

9. Myanmar. The delegation reported that there is no specific legal framework for CBT, but a CBT framework is applied in drug cases in which police officers take drug users to medical centres for medical treatment. Drug users who refuse treatment are sent to a rehabilitation centre for six months. This process involves the police, the courts, the Ministry of Home Affairs, the Ministry of Health and Sport, and the Ministry of Social Welfare, Relief and Resettlement (MOSWRR). The MOSWRR implements rehabilitation services by Centre Based Rehabilitation, Semi-Community Based Rehabilitation, and Community-Based Rehabilitation Reports on Activities of Rehabilitation. These processes involve interviewing and recording of the biological data of trainees and making assessments based on the use of drugs. The social work practices being carried out include mental and physical rehabilitation, providing vocational training, preparing for reintegration into society and the provision of after-care services. Myanmar is undertaking efforts to raise public awareness in order to educate the public, change the public mindset, promote the use of community corrections over imprisonment, and prevent recidivism.

10. Viet Nam. The delegation from Viet Nam reported learning about organizational structure, qualified staff, facilities, and professional volunteers during the second phase of the TCTP. In January 2018, Viet Nam issued guidance on conditional early release and the application of suspended sentence. In Viet Nam, CBT basically includes conditional early release, non-custodial sentences, and suspended sentences. Vietnamese law emphasizes the participation of the community in offender treatment through many measures such as education and job training, sport and cultural activities, yearly meetings for families of inmates, agreements with the private sector to support offender rehabilitation, and legal support and psychological counselling. Inmates are eligible for conditional early release based on good behaviour. Conditional release decisions are made by provincial people's courts where the inmates are serving the sentence. Offenders serving sentences in the community are subject to supervision and reporting, but they receive vocational training and job-hunting and financial support. To raise awareness of CBT in the community, the delegation recommended measures such as (i) issuing instruction documents, (ii) dissemination of information through the media, especially national television, (iii) conducting national surveys on CBT, (iv) developing mechanisms to reward active participation of people in the community and extending models of funds and clubs for rehabilitation.

Plenary Discussion

11. Professor Hiroyuki Watanabe (UNAFEI) chaired a plenary discussion, during which the participants shared comments and asked questions regarding their respective systems. Noting that Thailand took 22 years to adopt a fully functional CBT system, Mr. Sinthunava (DOP) stressed the importance of setting timelines for the adoption of such systems. Prof. Watanabe raised the issue of dealing with drug crimes in the CLMV countries, whereupon Mr. Nouth (Cambodia) pointed out that there is a difference in the way that drug use and possession is viewed in many countries. While drug *use* is considered a medical problem, drug *possession* is viewed as a crime. In jurisdictions where drug possession is aggressively enforced, the result is that even minor possession cases can result in prosecution, and, thus, prison overcrowding. Additionally, while the public may be more accepting of drug users in medical treatment, the public will be much less sympathetic to those who are labelled as criminals. Dr. Co (Philippines) raised the importance of performing drug dependency examinations prior to making probation decisions in drug cases because drug-dependent offenders cannot be effectively treated in the community (without first completing a drug addiction treatment programme at a rehabilitation centre). Professor Takuya Furuhashi (UNAFEI) enquired into the use of risk assessment in CBT programmes, and it was report that Thailand conducts assessment based on Andrews and Bonta's well-known Risk-Need-Responsivity (RNR) Model, which assesses each offender's (i) risk of reoffending and (ii) dynamic criminogenic needs that can be supported in various ways by government and community resources. Finally, all participants recognized the need to develop

effective strategies to promote public awareness of CBT.

Lectures

12. Mr. Miyake's presentation addressed the topics of probation supervision in Japan and sanctions for bad conduct. Pursuant to the Offenders Rehabilitation Act, the purpose of rehabilitation is to prevent reoffending and juvenile delinquency and to assist offenders as in becoming self-reliant as sound members of society. The primary measures for offender rehabilitation include (i) instruction and supervision, which guide offenders toward pro-social thinking and living, and (ii) guidance and assistance, which connects offenders with social services to facilitate their rehabilitation and reintegration. In Japan, probation supervision can be applied to juvenile and adult probationers and parolees. Supervision is conducted on an individualized basis, taking account of each offender's age, family situation, etc., and efforts are made to apply the most "appropriate" measures to facilitate the offender's rehabilitation and reintegration into society. For example, if a probationer exhibits self-reliance and other pro-social qualities, probation is no longer necessary or "appropriate". On the other hand, if probation is not effective in a particular case and the probationer's attitude or conduct deteriorates, the continuation of probation may not be appropriate. Probationers and parolees are subject to general and special conditions, and when these conditions are violated, action must be taken in response. For example, probationers are required to reside at a specific address that has been reported to the probation office. If the probationer cannot be found or has changed residences without permission, measures may need to be taken to address the probationer's violation of his conditions of probation (*i.e.*, bad conduct). In such cases, the probation officer will submit a report to the regional parole board, which will determine what action should be taken. If a probationer cannot be found, it may be necessary to suspended probation, which means that the probationer will not be given credit for serving probation for the period during which he or she cannot be found. This effectively extends the probationary period by the number of days the probationer was absent without leave. However, in cases where probation is no longer appropriate due to bad conduct, *e.g.* reoffending or violation of special conditions, probation will be revoked unless the regional parole board finds that special circumstances exist that make it reasonable to continue probation. Probation is revoked by the issuance of a warrant of appearance, and a probation officer may serve the warrant on and arrest the probationer. The probationer is then taken to the probation office, where he or she is interviewed and detained pending the final revocation decision of the regional parole board. If a probationer receives suspended execution of sentence and violates the conditions of probation, the public prosecutor must be informed to process the revocation through the courts.

13. Deputy Director Ishihara presented on legislative and practical strategies for the creation of effective CBT systems. Legislation is necessary because CBT is a constituent element of a criminal penalty which restricts the liberty of offenders. Thus, due process protections must be afforded to provide a check on the exercise of state power. Appropriate laws must address, among others, (i) the conditions upon which CBT can be applied, (ii) who may impose CBT, and (iii) which agency is responsible for conducting CBT. At the same time, the application of CBT must remain flexible, diverse and discretionary because the sanction is imposed in the community where offenders are faced with real-life challenges. Accordingly, input from practitioners on developing workable practices is extremely important. Of course, the enactment of legislation alone is insufficient. To carry out the purpose of the law, the following factors must be present when the law enters into force: an implementing agency, adequate resources, detailed procedures, and the support of relevant stakeholders and the general public. This makes it critically important to conduct adequate "market research" to determine an appropriate timeframe for implementation. In this context, market research is a process to gather information to estimate the number of offenders that will be subject to CBT once the system becomes operational. This requires policymakers to frame the scope of CBT by clarifying the major conditions as defined by law, such as the types of crime and penalties eligible for CBT, the degree to which criminal records and family relations are considered and so on. Each country will need to determine whether judges or administrative bodies will be responsible for deciding which offenders are eligible for CBT. If judges, make such decisions, the law should refer to the factors to be considered; if administrative bodies make such decisions, guidelines should be developed and training should be provided. Additionally, reliable statistics are necessary to plan for the implementation of CBT programmes. Such planning should take "market size" into consideration, for example, by recognizing that CBT in an urban setting is likely to face different challenges and require different resources than

in suburban or rural areas. After gathering the information necessary to create a roadmap to implementation, stricter conditions for eligibility and limiting the initial scope of CBT are options for accelerating implementation with the expectation of expanding the programme in the future.

Introduction of the Third Phase of the TCTP

14. Ms. Taruata Klaewkla (DOP) introduced the General Information for the Third Phase of the TCTP, reviewing the application procedures, participant qualifications, and the programme schedule. The programme will take place in Thailand from 10–22 December 2018. The primary objective of the Third Phase is to gain practical experience by working with Thai probation officers in the field.

Presentation on Halfway Houses in Japan

15. Professor Hidenori Ohinata (UNAFEI) delivered a final presentation on halfway houses. Japan currently has 103 halfway houses, which accommodate discharged offenders and provide aid and guidance necessary for offenders' reintegration. Halfway houses are run by persons approved by the Minister of Justice, and the government provides financial support for their operations. These operations include housing, feeding, and the provision of training and other guidance programmes for residents. Probationers, parolees, offenders released from prison after serving their full terms of imprisonment, and persons released from pre-trial detention are eligible to reside in halfway houses. Upon release, roughly 30% of parolees reside in halfway houses, and the average length of a resident's stay is 79.8 days.

Study Visit

16. At the conclusion of the Follow-up Seminar, the participants visited the *Saishukai* Halfway House in Tokyo's Shinjuku Ward

28 June 2018
Akishima City, Tokyo, Japan

APPENDIX

VISITING EXPERTS' PRESENTATIONS & COMMEMORATIVE PHOTOGRAPH

• *168TH INTERNATIONAL SENIOR SEMINAR*

UNAFEI

Public Lecture
刑事政策公開講演会
26 Jan. 2018

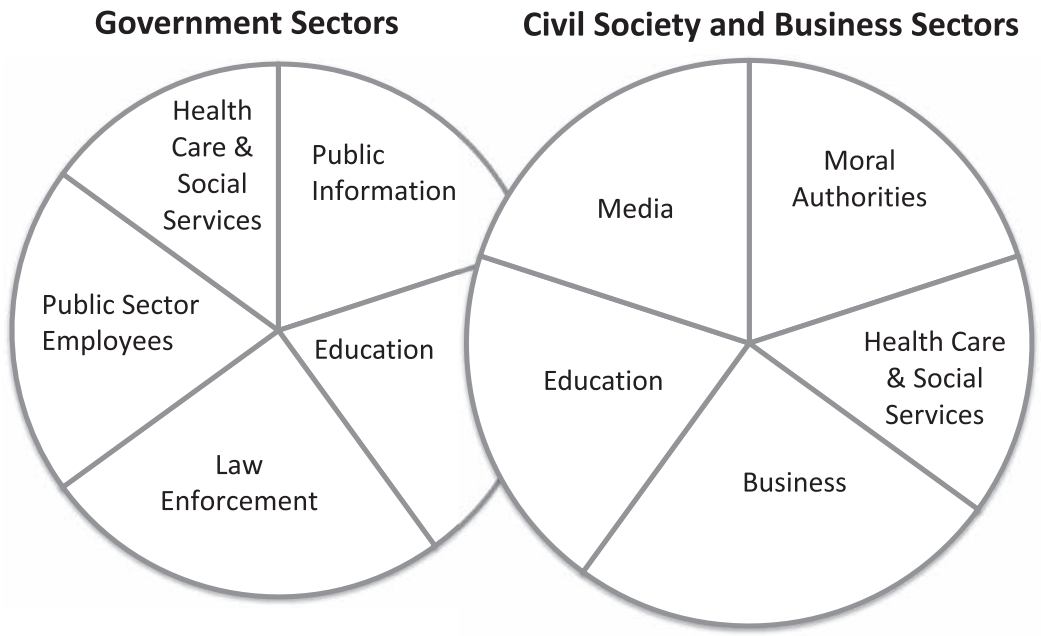
REVITALIZING URBAN CIVIC CULTURE

Dr. Roy Godson
Emeritus Professor
Georgetown University

REVITALIZING URBAN CIVIC CULTURE

1) How Urban Culture of Lawfulness and Public Safety Were Developed in a Relatively Short Time
   -- The Two Wheels of the Cart
2) Palermo and Other Cities
3) Techniques that Work
4) Applicability to Local Urban Environments
5) Next Steps?

THE TWO WHEELS OF THE CART



KEY SECTORS IN REVITALIZING CULTURE

Sector	Law Enforcement and Other Public Sector Employees	Mass Media	School-Based Education	Centers of Moral Authority
a) Role of Sector	▪ **Demonstrate that rule of law matters** and that corruption is not rewarded ▪ Show how to be a role model of the rule of law in and outside the organization ▪ Involve citizens in preventing crime and corruption	▪ Popularize CoL messages ▪ Involve citizens, particularly youth and families ▪ **Foster hope** by publicizing effective government and citizen efforts	▪ Reach students, families, communities ▪ Help young people understand how rule of law improves quality of life ▪ **Build knowledge and skills** to prevent crime, corruption, drug trafficking	▪ Reinforce school-based CoL lessons ▪ **Build awareness of citizens' role** and responsibility ▪ Show activists and believers that crime, corruption, & drugs are robbing them of their cultural values and identity
b) Methods	▪ Systematic education, incentives, and management to enhance professional integrity of public sector employees	▪ Seminars to build professional media knowledge, capacity ▪ Programs valorize and popularize ROL	▪ School-based CoL curriculum taught by regular classroom teachers during normal school day ▪ School projects and incentives	▪ CoL education by religious and cultural institutions
c) Sustainability	▪ CoL integrated into professional education and performance standards	▪ CoL programs are both entertaining and profitable in short and long term	▪ CoL curriculum institutionalized as part of regular education of children	▪ Civic and religious leaders adopt CoL as an integral part of their daily teaching and pastoral messages

MULTISECTOR APPROACH

- **Reaching Sizeable Audiences**
- **Sustainability**
- **Incentives**
- **Demonstration & Reinforcement Actions**

Model for Urban Environments

REQUIREMENTS FOR EACH SECTOR	DIAGNOSIS	PRESCRIPTION
Leaders -- Vision & Narratives		
Trainers, Mentors, Educators		
Heroes/Moral Authorities		
Education -- Rule of Law Respect Personal Responsibility		
Incentives		
Demonstrations		

NEXT STEPS ?

1) Secure Leadership Consensus on Complementary Cultural Approach

2) Review Opportunities, Obstacles, & Required Capabilities for Cultural Change

3) Development & Consensus on 3-5 Year Plan

Public Lecture
刑事政策公開講演会
26 Jan. 2018

168th International Senior Seminar of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

Under the theme: "Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices based on the UN Conventions and Standards and Norms"

Presentation by: Ms. Lulua Asaad

UNODC The Doha Declaration: PROMOTING A CULTURE OF LAWFULNESS education for justice

Background about the United Nations Crime Congresses and Preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice

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Congresses have been held every five years since 1955 in different parts of the world

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The United Nations Congress on Crime Prevention and Criminal Justice

- Held every 5 years since 1955, under the auspice of the General Assembly
- Brings together States, intergovernmental organizations and individual experts representing various professions and disciplines
- Major intergovernmental forum that has influenced national policies and practices, and promoted international cooperation in the area of crime prevention and criminal justice

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A short video about the history of the Congress

Kyoto, Japan 2020

Role of the Commission on Crime Prevention and Criminal Justice

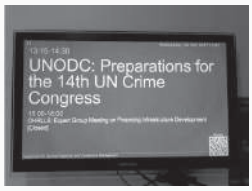
- Functional Commission of ECOSOC (established by resolution 1992/1)
- Membership: 40 States, elected by ECOSOC for 3 years (fact sheet website link)
- Preparatory body of the UN Crime Congress:

✓ Prepares GA resolutions on congress preparations and follow-up
✓ Reviews discussion guide
✓ Informal consultations for the formulation of the draft text of a Declaration

- Policy-making on crime prevention and criminal justice:

✓ Organized crime, corruption and terrorism
✓ UN standards and norms
✓ World crime trends and emerging issues

26th session of the CCPCJ (22-26 May 2017)



In response to request contained in GA resolution 71/94, the Commission approved a resolution, which was consequently adopted by the GA (72/192):

- ✓ The main theme of the 14th Congress
- ✓ The provisional agenda for the 14th Congress
- ✓ The issues to be considered in workshops
- ✓ Decision that the 14th Congress shall adopt a single declaration pursuant to CCPCJ resolution 59/119

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Action proposed to be taken by the General Assembly

● Calls upon Member States to:

- ✓ Actively participate in the regional preparatory meetings
- ✓ Undertake preparations for 14th Congress at an early stage (national preparatory committees)
- ✓ Be represented at the highest possible level
- ✓ Encourages relevant UN agencies and programmes, IGOs and NGOs to cooperate with UNODC in the preparations

● Calls upon the Secretary-General to:

- ✓ Encourage the participation of representatives from
- ✓ relevant UN entities
- ✓ Facilitate the organization of ancillary meetings
- ✓ Prepare a discussion guide for regional preparatory meetings (in cooperation with the institutes of the UN crime prevention and criminal justice network)

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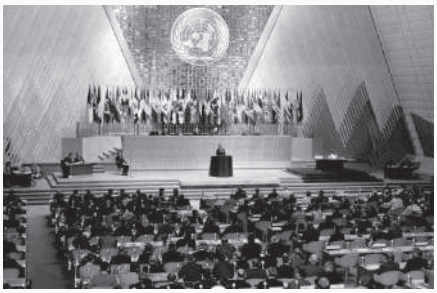
Fourteenth Crime Congress on Crime Prevention and Criminal Justice

Japan will be hosting the 14th Crime Congress in April 2020, 50 years after the 4th Congress held in Kyoto in 1970

5. *Also decides* that the main theme of the Fourteenth Congress shall be "Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda";



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DECLARATION OF THE FOURTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, meeting at Kyoto, Japan, in August 1970, attended by participants from eighty-five countries representing all regions of the world,

Being deeply concerned with the increasing urgency of the need for the world community of nations to improve its planning for economic and social development by taking greater account of the effects that urbanization, industrialization and the technological revolution may have upon the quality of life and the human environment,

Affirming that inadequacies in the attention paid to all aspects of life in the process of development are manifest in the increasing seriousness and proportions of the problem of crime in many countries,

Observing that the world-wide crime problem has many ramifications, covering the range of conventional crime as well as the more subtle and sophisticated types of organized crime and corruption, and subsuming the violence of protest and the danger of increasing escapism through the abuse of drugs and narcotics, and that crime in all its forms saps the energies of a nation and undermines its efforts to achieve a more wholesome environment and a better life for its people,

Believing that the problem of crime in many countries in its new dimensions is far more serious now than at any other time in the long history of these Congresses, and

Feeling an inescapable obligation to alert the world to the serious consequences for society of the insufficient attention which is now being given to measures of crime prevention, which by definition include the treatment of offenders,

1. *Calls upon* all Governments to take effective steps to co-ordinate and intensify their crime preventive efforts within the context of the economic and social development which each country envisages for itself;

2. *Urges* the United Nations and other international organizations to give high priority to the strengthening of international co-operation in crime prevention and, in particular, to ensure the availability of effective technical aid to countries desiring such assistance for the development of action programmes for the prevention and control of crime and delinquency;

3. *Recommends* that special attention be given to the administrative, professional and technical structure necessary for more effective action to be taken to move directly and purposefully into the area of crime prevention.

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Fourteenth Crime Congress on Crime Prevention and Criminal Justice

The Fourteenth Congress presents the international community with a unique opportunity to undertake a comprehensive stocktaking exercise, with a view to charting the way forward towards the role that the criminal justice system and the institutions comprising it can play as the infrastructure for the achievement of the Sustainable Development Goals:

- Nature of the Congress.
- The Fourteenth Congress, more particularly, comes at an important time in the life of the Sustainable Development Agenda.
- The Fourteenth Crime Congress returns to Kyoto, Japan, fifty years after the Fourth Congress was held there in 1970. The Fourth Congress was ground-breaking in many ways.
- Finally, The overall theme of the Fourteenth Congress, as well as its comprehensive provisional agenda, as determined by the General Assembly, covers a broad range of crime prevention and criminal justice issues

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Substantive Agenda Items and Workshop Topics for the Fourteenth United Nations Congress

9. *Approves* the following provisional agenda for the Fourteenth Congress, finalized by the Commission at its twenty-sixth session:

1. Opening of the Congress.
2. Organizational matters.
3. Comprehensive strategies for crime prevention towards social and economic development.
4. Integrated approaches to challenges facing the criminal justice system.
5. Multidimensional approaches by Governments to promoting the rule of law by, inter alia, providing access to justice for all; building effective, accountable, impartial and inclusive institutions; and considering social, educational and other relevant measures, including fostering a culture of lawfulness while respecting cultural identities, in line with the Doha Declaration.
6. International cooperation and technical assistance to prevent and address all forms of crime:
   (a) Terrorism in all its forms and manifestations;
   (b) New and emerging forms of crime.

10. *Decides* that the following issues shall be considered in workshops within the framework of the Fourteenth Congress:

(a) Evidence-based crime prevention: statistics, indicators and evaluation in support of successful practices;

(b) Reducing reoffending: identifying risks and developing solutions;

(c) Education and youth engagement as key to making societies resilient to crime;

(d) Current crime trends, recent developments and emerging solutions, in particular new technologies as means for and tools against crime;

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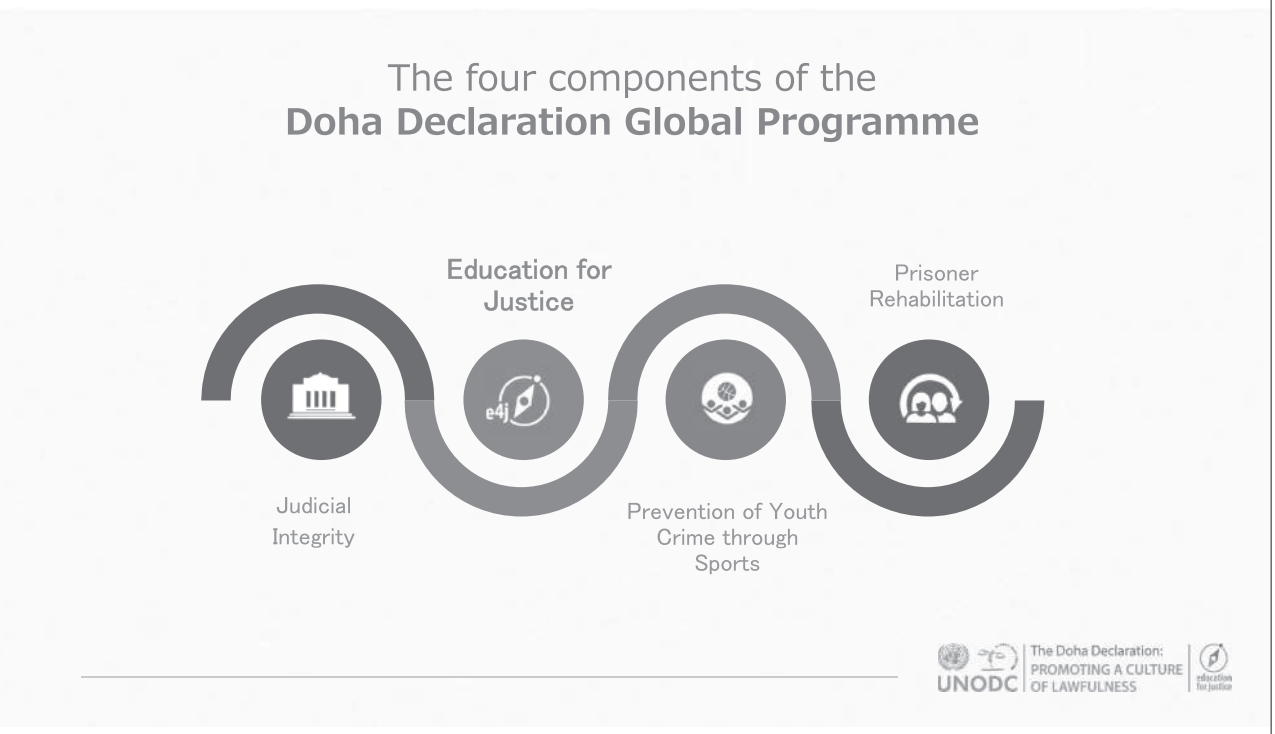
Visit www.unodc.org for further information on the Congress

The Doha Declaration

- Adopted in 2015 at the 13th UN Congress Congress on Crime Prevention and Criminal Justice
- Commitment to: prevent and counter corruption, enhance transparency in public administration, and promote integrity and accountability in the criminal justice system
- 2016 – Global Programme for Promoting a Culture of Lawfulness launched to support implementation of the Declaration


The four components of the
Doha Declaration Global Programme
Education for Justice
Prisoner Rehabilitation
Judicial Integrity
Prevention of Youth Crime through Sports
e4j
UNODC
The Doha Declaration: PROMOTING A CULTURE OF LAWFULNESS


e4j
Education for
Justice

Promoting a culture of lawfulness and the rule of law through education

The Education for Justice (E4J) initiative seeks to prevent crime and promote a culture of lawfulness through education activities designed for primary, secondary and tertiary levels. These activities will help educators teach the next generation to better understand and address problems that can undermine the rule of law and encourage students to actively engage in their communities and future professions in this regard.

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Education for Justice (E4J)

- Primary level approach: Value-based and skills education to support creating non-tolerance of crime and violence and helping children to solve ethical dilemmas.
- Secondary level approach: Promote the understanding of the basic concepts that lie at the core of UNODC-mandated areas and empower Youth
- Tertiary level approach: Support academics to teach in the fields of UNODC-mandated areas covering organized crime, corruption, terrorism prevention, cybercrime, criminal justice, trafficking of firearms, trafficking in persons, and the smuggling of migrants, as well as on integrity and ethics.

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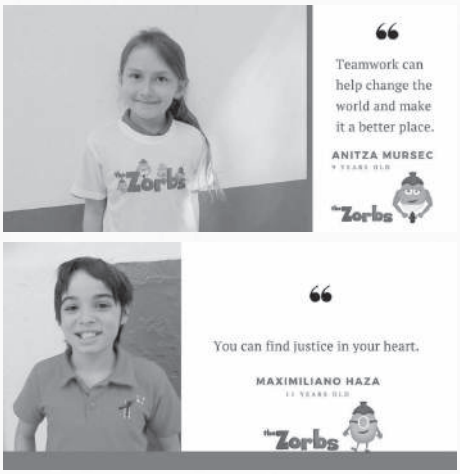
Practical approaches and examples on promoting a Culture of Lawfulness through the E4J initiative



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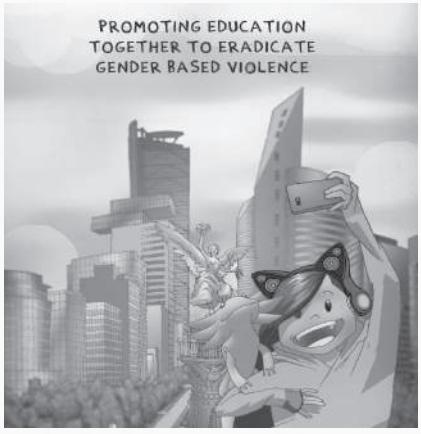

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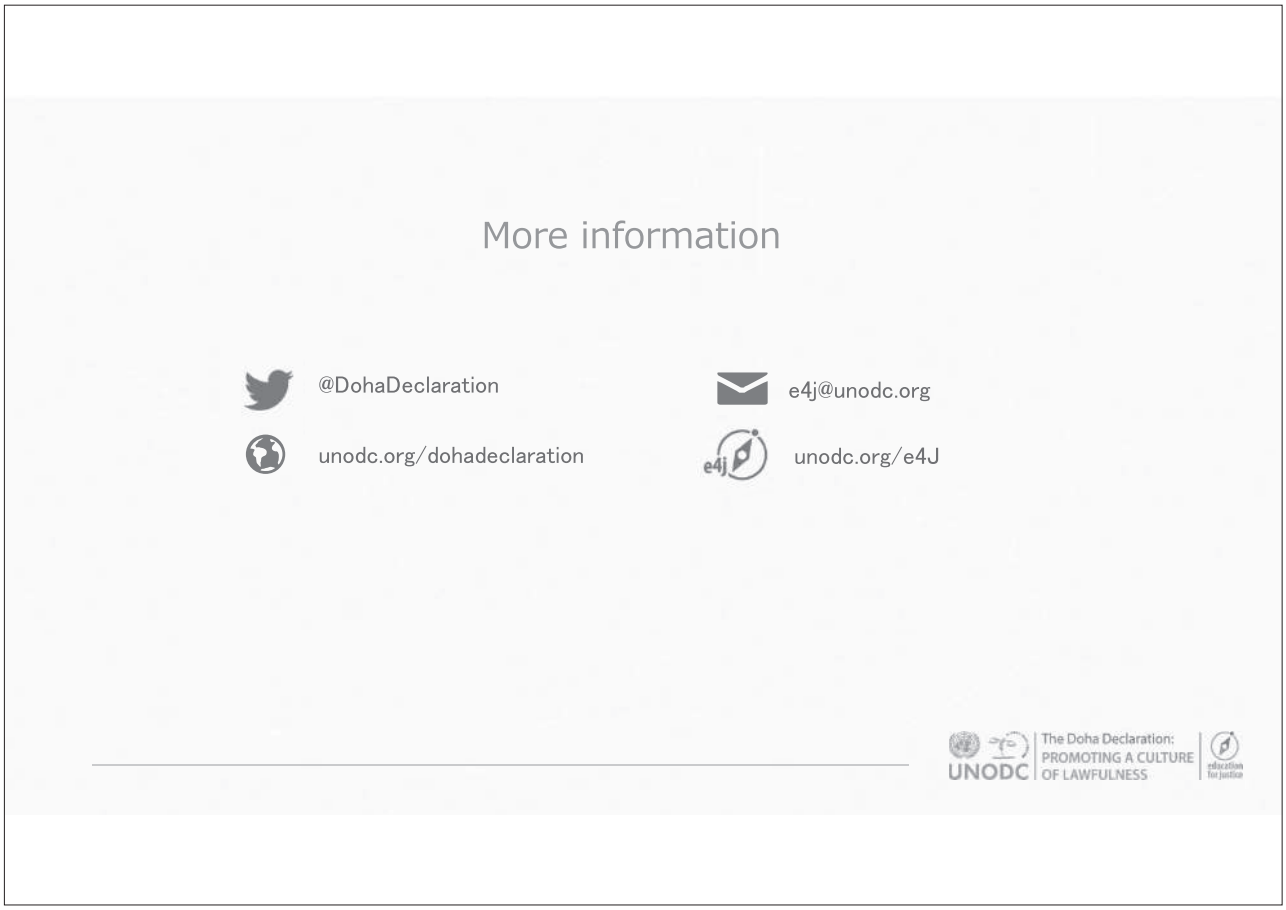

More information
@DohaDeclaration
e4j@unodc.org
unodc.org/dohadeclaration
unodc.org/e4J
UNODC
The Doha Declaration:
PROMOTING A CULTURE
OF LAWFULNESS

168th International Senior Seminar
Panel Discussion
Dr. Kittipong Kittayarak
(30 AM, Jan. 2018)

Enhancing Access to Justice for Children in Thailand

Professor Dr. Kittipong Kittayarak
Executive Director
Thailand Institute of Justice

3 out of 4 children in the world or 1.7 billion children were victims of violence

Source: Knowing Violence in Childhood Global Report

*In Thailand, **31,000** children were victims of various forms of sexual violence such as physical and sexual violence, deprivation of liberty and negligence.*

Source: TIJ

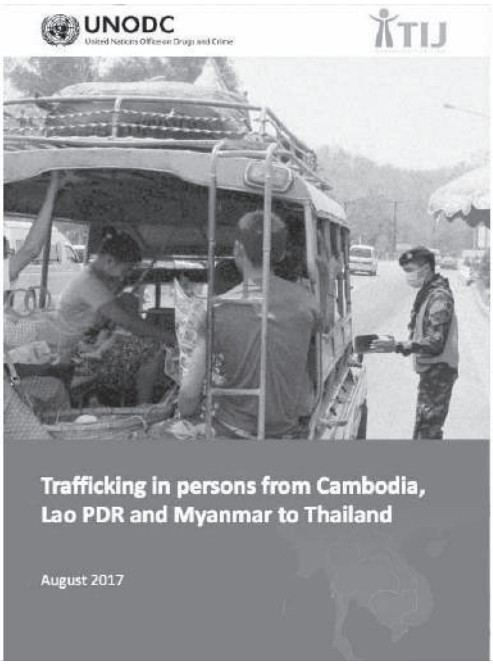
*In Thailand, **55%** of young alleged offenders had experienced physical abuses*

Source: TIJ

Addressing violence against children with the SDGs as a framework

" many victims of sexual abuses and labor exploitation come from poor rural areas, where their family do not own land or have suffered from poor harvest"

- Joint publication by TIJ and UNODC on trafficking in persons in Southeast Asia



Access to Justice for Children

TIJ
Thailand Institute of Justice

- Poverty and lack of access to economic opportunity and social development pose great challenges to access to justice for children

- Ensuring the criminal justice system that takes into account the special needs of children

Restorative Justice

- An alternative approach to justice which brings together victims and offenders to find the best course of action to restore the harm
- The law on juvenile and family courts and on juvenile and family cases (revised 2010) set criteria for Restorative Justice to be used at 2 stages which are:

➡ Before criminal charges are brought against children

➡ After the prosecution has commenced

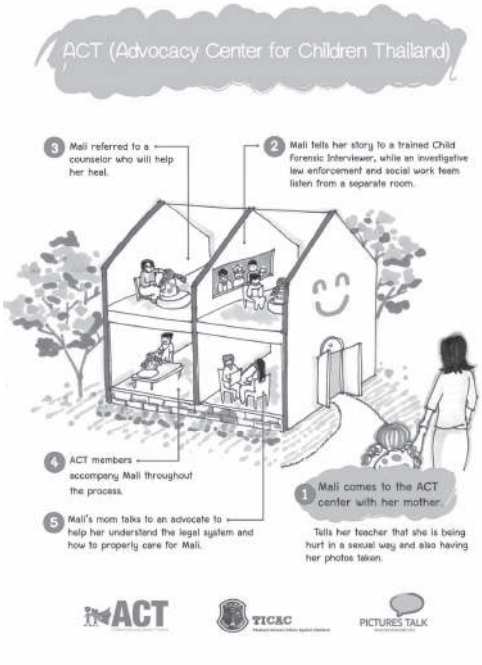
Multi Disciplinary Team (The Office of Attorney General)

- The network focuses on creating a robust reporting and monitoring mechanism that helps enhance the functioning of regular criminal justice
- The members of the team include the police, medical officials, social workers, teachers and community leaders with provincial public prosecutor as coordinator

Child Advocacy Center based in Chiang Mai run by HUG project

- More victim-oriented approach
- The better protection of child victims of violence

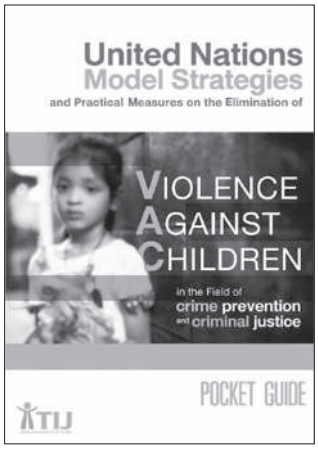
HUG PROJECT

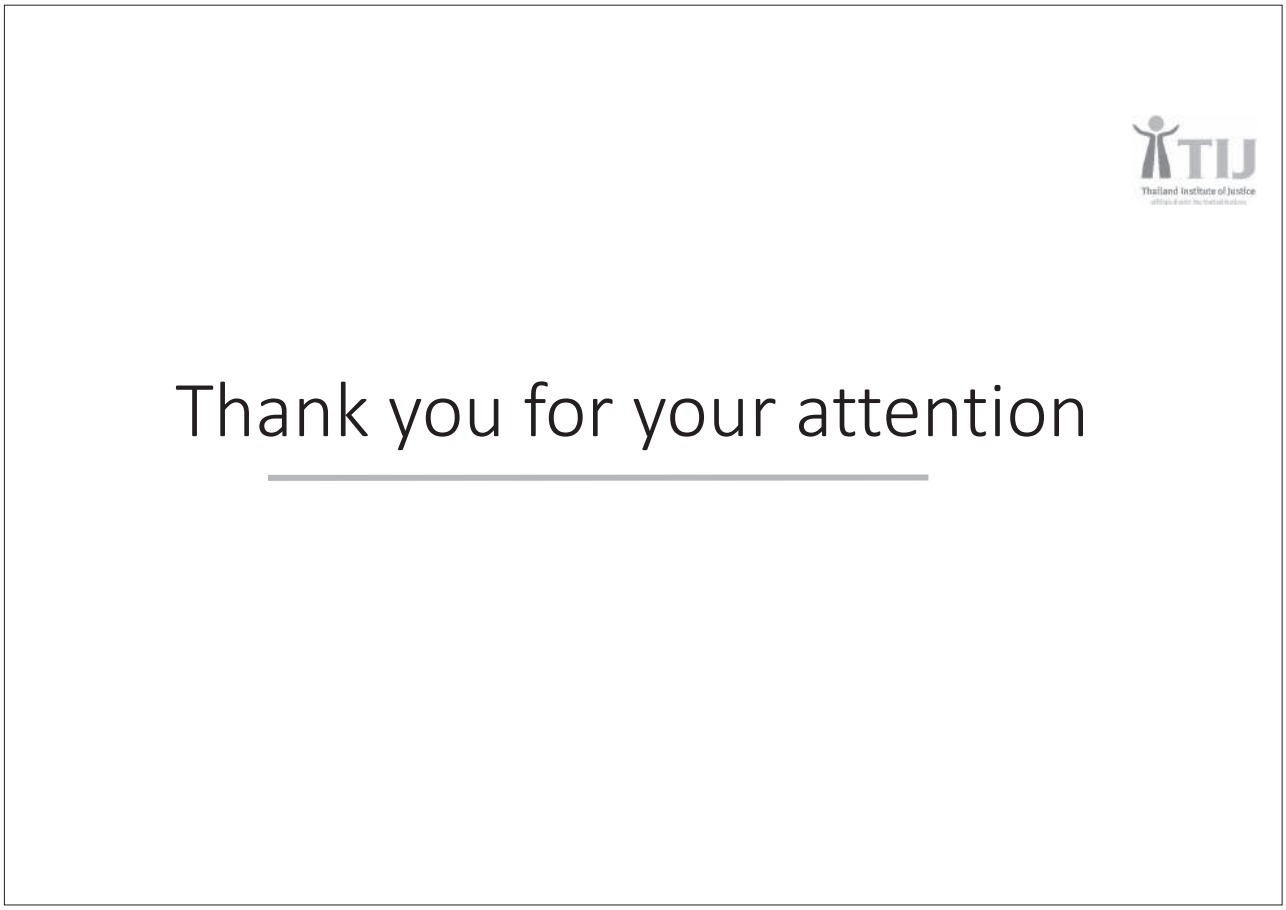


The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

TIJ Thailand Institute of Justice

- Calls for right-based approach in protecting children from violence
- Multi – disciplinary approach




TIJ
Thailand Institute of Justice
Thank you for your attention

Improving Access to Justice for Crime Victims

Experience of Legal Information Service in Japan and in Côte d'Ivoire

Wakaba HARA

Attorney-at-law , Member of the Committee on International Relations of the Japan Federations of Bar Associations (JFBA)

Former Expert of the Japan International Cooperation Agency (JICA) in Cote d'Ivoire

Topics

1. Introduction
2. JLSC (Houterasu) and its Information Service
   - 2-1 System for Access to Justice in Japan: Japan Legal Support Center (Houterasu) and its Call Center
   - 2-2 Support for Crime Victims by JLSC (Houterasu)
3. Sharing experience of Houterasu with MOJ of Côte d'Ivoire
   - 3-1 Access to Justice in Côte d'Ivoire
   - 3-2 Why call centers ?
   - 3-3 Call Center Project and setting up of Information Service
   - 3-4 People's reaction to "ALLO JUSTICE"
4. Conclusion

1. Introduction

1-1. Call Center “ALLO JUSTICE”

1-1.Call Center “ALLO JUSTICE” (VTR)

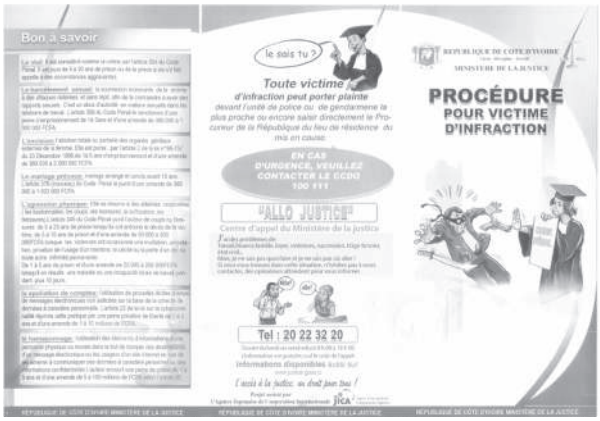
As to the video recording of TV report on the opening ceremony of the call center, please see the internet website indicated below.

Le 20 heures de RTI 1 du 06 décembre 2016 avec Fatou Fofana

https://www.youtube.com/watch?v=inE2lH5zXG0

(2 minutes starting from 16:20)

1-2: Leaflet for Crime Victims



1-3. JLSC Call Center (*Houterasu Sapoto Daiyaru*)

日本司法支援センター
法テラス

＊All photos of the JLSC Call Center except for the above are from the JLSC website.

1-4. JLSC Leaflets for Crime Victims

2-1. Japan Legal Support Center(*Houtereasu*) : System to support Access to Justice

- History: Public organization established in 2006, which provides comprehensive support for access to justice. One of the 3 major initiatives in our legal system reform in the 2000s. Consequence of years of efforts of attorneys and JFBA.
- Legal support/services operated by Houterasu:
  - Legal Information Service
  - Civil Legal Aid
  - Criminal Legal Aid
  - Measures for Areas with Limited Legal Services
  - Crime Victim Support
  - Supplemental Legal Aid Services Entrusted by JFBA, etc.
  - Legal Aid for the Victims of Disasters/the Great East Japan Earthquake

日本司法支援センター 法テラス

** For further details and statistics, please refer to the JLSC brochure/website !*

2-1. Call Center in Japan and its role (1) Outline of JLSC Call Center (*Houterasu Sapoto Daiyaru*)

Designed and served as the first number people could call when they have any problem which might be related to legal/procedural issues.

- established in 2006
- received 1,000 calls/day, 300,000 calls/year
- around 100 operators (max. 60 working at 1 time)
- 5,000 Q&As available
- around 1/3 of calls are referred to the 50 district *Hoterasu* offices where people can have legal consultations and file an application for legal aid.

∗ From the JLSC website

2-1. Call Center in Japan and its role (2) CC's position in the system of A2J

People in Need ⇒ ***Call Center*** *Website* *Walk-in counters at District offices* ⇒ Consultation with lawyer ⇒ Judicial procedures Litigation, etc.

↑ ↑ ↑

Legal Information Service based on the database which contains 5,000 Q&As and list of inquiry counters

Legal Aid* **Legal Aid***

∗ Accompanied by means test

2-1. Where inspiration came from for the idea of JLSC and its Call Center

At the time it started, the extensive research we have done on best practices on access to justice includes study tours to:

- US
- Australia
- Finland
- UK
- Korea

2-2. JLSC's Support for Crime Victims (1)

1. Information services *see next page*
2. Reference to Attorney

List of experienced attorneys is prepared at 50 regional offices upon collaboration with local bar associations.

3. Financial Aid

In addition to civil legal aid, support from JFBA funds would be available for certain cases.

4. Crime Victim Support Line at Call Center *see next page*
5. Enhancement of Measures

Since 2017, means testing was abolished for Legal Consultations in case of victims of certain crimes designated in the latest legislation (DV, etc.) .

2-2. JLSC's Support for Crime Victims (2) *Information Services* designed for Crime Victims

Information Service

Beyond the scope of "legal" information. More comprehensive and holistic approach in the context of protection for Crime Victims.

Crime Victim Hotline at Call Center (0570-7950714 *Don't cry*)

Calls are received by experienced and/or adequately trained personnel in the care of crime victims. Operated in accordance with the manuals particularly designed for crime victim support. Cases in need will be sent to regional offices immediately.

Eg: No limitation of duration of conversation.

Detailed information recorded/shared among operators (if appropriate). (It would be also shared with the regional office and attorney to be referred.)

Manuals/scripts prepared for calls from friends and families of crime victims.

3. Sharing our experience with the Ministry of Justice of Côte d'Ivoire

3-1. Outline of A2J in Côte d'Ivoire

(1) Court jurisdictions *Supporting partners*
1 Supreme court /3 appellate courts/9 District court (27 branches) ←EU,US
(2) Legal professionals
Judges/Prosecutors ("*Magistrats*"): 655 (as of 2015) ←France, US
Attorneys: less than 1000
Those associated with NGOs are active for A2J matters. Major NGOs: Association des Famme Juristes d'Cote d'Ivore (AFJCI), Transparency Justice
(3) Legal Aid
Prescribed in Civil Procedure Law and Décrets ←EU, US
(4) Initiatives to improve Access to Justice (PALAJ, etc) ← UN, EU, France, US
PALAJ (UN, EU, France), Drafting law on Access to Justice (EU)

3-2. Why Call Centers ?

- At first …..Request for establishing hotline for HR protection.
- Report by participants of study tour to JLSC Call Center (March 2015).
- Everybody supported the establishment of a Call Center.

Because…

1. Great demand for legal information

- It is clear that people have too little information on the law.
- Many people have legal problems.

(Legal needs survey by interview sessions with local residents of Yopougon (October 2015).) *see next page*

3-2. “Legal Needs Survey” in Youpougon

* Please see the questionnaire sheet for more details.

Ask people the following quesitions:

1. Whether they have any problem on the list. (The list shows major daily legal problems (including criminal issues).)
2. How they solve such problems/whom they consult with.
3. Why they do not consult with lawyers/go to judicial institutions.

Because they…

do not have money

are afraid to go to the court

prefer to solve problems in traditional way

think it takes too long ...

and ***first of all, they did not think that there is a legal problem.***

3-2. Why Call Centers ? (2)

2. Strong points of call centers and “Telephones”

(1) Call center can **reduce 3 major distances/obstacles to A2J**:

- **Geographical/physical distance** (It’s too far. I cannot go.)
- **Economical distance** (I don’t have money)
- **Psychological distance** (I don’t like lawyers, courts, judges)

(2) Recently, enormous spread of mobile phone in Africa changed ways of communication. Today, most of the **people can make a phone call** even in rural areas.

(3) Just **1 call center can serve the whole** country.

3-3. Call Center Project
3-3-1. How to set up a call center

3 essential elements

- Equipment and IT infrastructures
- Personnel and team, work-flow and manuals
- Legal information to be provided

3-3-1-1. Equipment and IT infrastructures

We start from a small CC with 2 operators and 1 supervisor.

What has been prepared:

- One extra room within the Department of Civil and Criminal Affairs in the Ministry of Justice has been renovated as a Call Center.
- 2 Telephone lines.
- 4 computers with Call Center system (4 calls can be received simultaneously, monitoring, call-back, keyword research of Q&As, statistical analysis of data, etc.)

3-3-1-1. Equipment and IT infrastructures

3-3-1-2. Personnel and Team, Operation Manuals

Team “ALLO JUSTICE”

- 2 operators
- 1 supervisor
- 1 Responsible person (Sub-director of the Department)

- Operation Manual (How to receive/respond to phone calls)

The draft outline was prepared based on the experience of the JLSC call center and revised/finalized upon discussions.

3-3-1-3. Information provided to people

What information should be provided ?

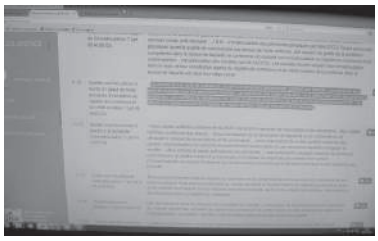
1. Very basic outline of rights and remedies available.
   ⇒ 700 Q&As

2. where to go to start dealing with the problem.
   ⇒ List of institutions

3-3-1-3. Overview of Q&As

Information regarding procedural/institutional matters

- Procedures 134 (civil 29, penal 40, commercial 12, administrative 19, arbitration 16)
- Judicial institutions and legal professions 79
- Legal aid 21



Information regarding Substantial Laws

- Family law (including civil rights) 180
- Civil law and contracts 23
- Labor law 41
- Real estate law 69
- Commercial law 49
- Penal law 61
- Others 42

The above represents the frequently-asked-questions of people in Côte d'Ivoire.

This is the most worthwhile part of the project, which may expand into the "legal information service" of the ministry of justice.

3-3-1-3. Q&As prepared for Crime Victims

* Please see the sample copy of Q&As for "Penal law"

A set of Q&As for Penal Law, consisting of 61Qs, is elaborated as information to be provided to crime victims.

Part 1: List of crimes consisting explanation of 44 major crimes.

In addition to the classical/typical crimes:
- the latest phenomena such as cyber crime
- protection for women and children

Part 2: Procedural matters crime victims should know.

- Basics of procedural matters
- Provide detailed information on the latest initiatives of the national police
  e.g. Website application for reporting Cyber crime

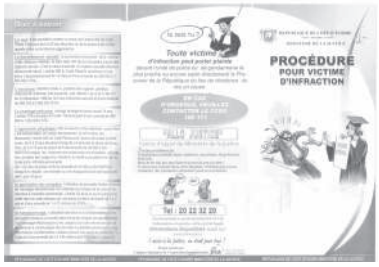
3-3-2. Expand into Legal Information Service

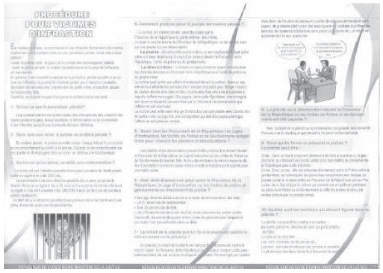
No information channel is perfect. So, for better legal information service, we should use multiple channels.

⇒Leaflets on 8 major subjects (Family law, Labor Law, Real estate Law, Commercial Law, Judicial Procedures, Legal Aid, Procedures for victims of Crime, Call Center and Access to Justice)

⇒Q&A will be uploaded on the website.

3-3-2. Leaflet for Crime Victim Support





Contents:

- Most of the procedural information in Part 2
- List of certain crimes needed to be recognized in the context of
  - adequate protection of women and children;
  - fight against cyber crime.
- Telephone numbers for help/further information.

Format:

- Easy- to-understand language
- User friendly visuals

3-4-1. People's reaction
(1) Number of calls received by "ALLO JUSTICE"

Operation started on December 5, 2016.

		Total
2016 December	83	83
2017 January	37	120
February	45	165
March	74	239
April	209	448
May	378	826
June	187	1013
July	158	1171
August	106	1277
September	110	1387
October	158	1546

3-4-1. People's reaction
(2) Inquiries from crime victims

- Around 6.1% of incoming calls.
  12 calls /195 calls (Dec. 5, 2016 – Mar. 16, 2017)
- **Breakdown of 12 calls**:

Subject	*Sex*	*Jurisdiction(ap)*	*How do you know?*
Theft 3	Male 11	Abidjan 9	TV 8
Bribery 2	Female 1	Bouaké 1	Radio 1
Sexual harassment 1		Daloa 2	Leaflet 1
Seeking to file a criminal complaint 4			MJ 1
Seeking damage (civil procedure) 2			
Others 1 (compliment for the information)			

⇒ *The outcome of operation of the first 3 months shows the huge potential of the service.*

3-4-2. People's reaction to "ALLO JUSTICE" (2) Interview sessions in Yopougon

Needs survey interview session (October 2015)

Most of the participants had certain legal problems, but they do not have means to consult with lawyers. Everyone supported the plan to establish the Call Center.

↓

Follow-up session (March 2017)

Most of the participants still had legal problems.

3 of them made a call immediately.

3-4-2. People's reaction to "ALLO JUSTICE"

Comments from 3 residents of Yopougon

- **WOBE Jean-Baptiste**

Le centre d'appel juridique du MJDH financé par la JICA vient comme un instrument des sans voix, qui apporte de la lumière à toute la population vivant dans l'ignorance. Cela est à saluer. Nous, ici présents feront tout pour faire connaitre cette structure à d'autres personnes. Il serait souhaitable que les médias de ce pays fassent connaitre cette structure.

- ***TCHAN Bi Bah André***

Le centre d'appel est la bienvenue. Le service est très accueillant et sait écouter et donner les orientations pour la suite des préoccupations. Bonne initiative !

- **RABE Daïdet Magloire**

Le centre d'appel ''Allo justice'' vient pour combler un vide dans le règlement des affaires juridiques au bénéfice de la population. Le centre d'appel est bien venu comme il est dit dans les saintes écritures « mon peuple périt pour manque de connaissance ».

3-4-2. People's reaction to "ALLO JUSTICE"

All of their reactions were positive.

⇒ "ALLO JUSTICE" actually contributes to the improvement of access to justice, restoration of reliance on justice in a post-conflict society, and promotes a peaceful society.

4-1. Conclusion (1) what information service can do for crime victim protection

3 Keys of Protection of Crime Victims (early stage):

1. Provide adequate information to people←*Information Service*
   - What consists of crime (lets people know whether he/she might be a victim)
   - Remedies available, including how to make a report to authorities
2. User-friendly-practice of reporting criminal offences←*Information Service*
   - technical/physical accessibility (e.g website reporting system)
   - adequate care for psychological difficulty to report
3. Adequate operation of investigation at initial stage and prevention of secondary harm

↓

Improvement of Information Service can be a good starting point for better protection of crime victims.

4-2. Conclusion(2) what we can do for SDG 16.3

GOAL 16: Promote peaceful and inclusive societies for sustainable development, *provide access to justice for all* and build effective, accountable and inclusive institutions at all levels.

16.3 promote the rule of law at the national and international levels, and *ensure equal access to justice for all*

Indicators designated by Japanese government (2016)

- Number of inquiries seeking legal information services responded to by the JLSC
- Number of lawyers who signed legal aid agreements with the JLSC

4-2. Conclusion (2) what we can do for SDG 16.3

There is no perfect tool for Access to Justice.

But there are best/better practices to realize A2J, and they are often applicable/adoptable by other states, despite differences of legal systems and culture.

↓

- **Share experiences/best practices.**
- **Build networks among legal professionals.**

- Continue to improve A2J practices (*kaizen*) for better realization of SDG16.3.

Thank you for your attention !

Merci de votre aimable attention !

Improving Access to Justice
for Crime Victims
Experience of Legal Information Service
in Japan and in Côte d'Ivoire

Supplement as of March 2018
People's reaction to the Call Center

Wakaba HARA
Attorney-at-law , Member of the Committee on International Relations of the Japan Federations of Bar Associations (JFBA)
Former Expert of the Japan International Cooperation Agency (JICA) in Cote d'Ivoire

1. Annual average of calls from crime victims (Dec. 2016-Dec. 2017)

Around **4.4%** of incoming calls.
77 calls / 1,735 calls (Dec. 5, 2016 – Dec. 31, 2017)
*Excluding calls seeking information on civil procedure or other supplemental information, compliments, etc.

⇒ *At the Call Center of the Ministry of Justice,*
1 out of 22 calls would be from a crime victim
who is actually suffering damage or is impacted by crime.

2. Breakdown of calls by subject (1)

Bodily injury	11 calls
Fraud / Breach of trust	10 calls
Theft / Interference with police	7 calls
Intimidation	6 calls
Violence against women	5 calls
Property Damage	4 calls
Murder / Kidnapping of minor	3 calls
Unlawful usury / Bribery / Sexual harassment / False claim	2 calls
Assault / Trespass to domicile /Contempt of court	1 call
Total	77 calls

2. Breakdown of calls by subject (2)

Crime against person	25 calls (7 for sex/gender crime)
Crime against property	42 calls
Crime against public interest	10 calls
Total	77 calls

⇒ The variety of crime reflects the actual situation of crime in the country, and demonstrates the potential of the call center to protect victims.

Currently, the average caller seems to be a person of a certain economical/social background. For further provision of access to justice for all people in need, it is desirable to continue good operation of the call center and to publicize information by using various channels.

3. Breakdown of calls by attribute of users (1) by sex

Male 67 calls cf. Dec 2016-Mar 2017: Male 10 calls
Female 10 calls (12.9%) Female 1 call (9%)

Details of calls by female:

Bodily injury…… 1 call (out of 11 calls)(9%)
Fraud…….. 1 call (out of 10 calls)(10%)
Breach of trust……. 2 calls (out of 10 calls)(20%)
Violence against women..3 calls (out of 5 calls)(60%)
Sexual harassment…… 1 call (out of 2 calls)(50%)
Assault…….. 1 call (out of 1 call)(100%)
Trespass to domicile……. 1 call (out of 1 call)(100%)

⇒ Call center usually receives more calls from men. In this regard, we should note that 60% of calls for "violence against women" are made by women. It shows that the call center can be an effective tool for protection of women in situation of crime and suffering damages.

4. Breakdown of calls by attribute of users (2) by appellate ct. jurisdiction

Abidjan 62 calls (80.5%) cf. Dec 2016-Mar 2017: Abidjan 9 calls (75%)
Bouaké 6 calls (7.7%) Bouaké 1 call (8.3%)
Daloa 9 calls (11.7%) Daloa 2 calls (16.6%)
total 77 calls

Details of calls from jurisdiction of Bouaké
(central part of the country)
Murder……..2 calls
Violence against women/property damage/bribery/false claim…1 call

4. Breakdown of calls by attribute of users (2) by appellate ct. jurisdiction

Details of calls from the jurisdiction of Daloa
(western part of the country)
Breach of trust/Theft/Property damage …….. 2 calls
Bribery/Fraud/Assault…1 call

⇒ Although the majority of the calls are from Abidjan, the largest city in the country and its surrounding area, we can find a variety of crimes in the entire country. The call center actually provided some victims that lived far away with adequate information on laws and procedures. Further analysis by comparison of population and number of cases of each crime in each jurisdiction, and public relation activities based on such analysis, would be appropriate to ensure further access to justice for crime victims.

5. Breakdown of calls by information channel of the call center

TV	58 (75.3%)	cf. *Dec 2016-Mar. 2017*
Family	10 (12.9%)	TV 8 (72.7%)
Court	4 (5.2%)	Radio 1 (9%)
Radio	2 (2.6%)	Leaflet 1 (9%)
Leaflet	1 (1.3%)	MJ 1 (9%)
MJ	1 (1.3%)	

⇒It seems that, in the period of April to December 2017, public relations activities of the call center had been mostly dependent on TV. It also shows that the PR by TV broadcasting is more effective in the jurisdiction of Abidjan (see slide 6). By using additional channels, such as local radio stations, distribution of materials at information desks of governmental offices, announcement at tribunals, ministry of justice, website of MJ, SNS, etc., the call center may extend its scope of potential users to those who live outside of Abidjan.

Reference (slide 30): People's reaction within the first 3 months

- Around 6.1% of incoming calls.
  12 calls /195 calls (Dec. 5, 2016 – Mar. 16, 2017)
- **Breakdown of 12 calls**:

Subject	*Sex*	*Jurisdiction(ap)*	*How do you know?*
Theft 3	Male 11	Abidjan 9	TV 8
Bribery 2	Female 1	Bouaké 1	Radio 1
Sexual harassment 1		Daloa 2	Leaflet 1
Seeking to file a criminal complaint 4			MJ 1
Seeking damage (civil procedure) 2			
Others 1 (compliment for the information)			

⇒ *The outcome of operation of the first 3 months shows the huge potential of the service.*

The 168th International Senior Seminar

The 168th International Senior Seminar (UNAFEI, 11 January - 9 February 2018)

Left to Right:

Above
Ms. Assad (UNODC), Mr. Gaña (Philippines), Ms. Leung (Hong Kong)

4th Row
Ms. Odagiri (Chef), Ms. Iwakata (Staff), Ms. Nagahama (Staff), Mr. Haneda (Staff), Ms. Yamada (Staff), Mr. Hirose (Staff), Mr. Ohno (Staff), Mr. Kiguchi (Staff), Mr. Ueki (Staff), Prof. Yoshimura, Prof. Minoura, Prof. Yamamoto, Prof. Akashi, Ms. Oda (Staff)

3rd Row
Mr. Arruda (Brazil), Mr. N'Guessan (Cote d'Ivoire), Mr. Risha (Palestine), Mr. Taybi (Morocco), Mr. Yangen (Papua New Guinea), Mr. Pareerurk (Thailand), Mr. Haneef (Maldives), Mr. Katada (Japan), Mr. Honda (Japan), Mr. Okuda (Japan), Mr. Tsutsumi (Japan), Mr. Shionoya (Japan), Mr. Wakabayashi (Japan)

2nd Row
Ms. Ide (JICA), Mr. Simeuang (Lao PDR), Mr. Myint Maung (Myanmar), Ms. Abeyratne (Sri Lanka), Mr. Mudalige (Sri Lanka), Mr. Dharmaratna (Sri Lanka), Mr. Dorji (Bhutan), Ms. Pommanuchatip (Thailand), Mr. Mangkuadiningrat (Indonesia), Mr. Lui (Papua New Guinea), Ms. Avancena (Philippines), Ms. Ratanadilok (Thailand), Mr. Fazeen (Maldives), Ms. Roalakona (Papua New Guinea), Mr. Uekusa (Japan)

1st Row
Ms. Kikuchi (Staff), Mr. Jimbo (Staff), Prof. Watanabe, Prof. Hirano, Dr. Joutsen (Finland), Dr. Godson (United States), Director Senta, Dr. Kittayarak (Thailand), Dr. Porporino (Canada), Deputy Director Ishihara, Prof. Watanabe, Mr. Hagiwara (Staff), Mr. Schmid (LA)

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	[Police, Prosecution and Courts]	28	Sep-Dec 1971
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5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
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6	Reform in Criminal Justice	32	Feb-Mar 1973
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