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# REPORTS OF THE COURSE

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## GROUP 1

### THE RELATIONSHIP OF THE PROSECUTION WITH THE POLICE AND INVESTIGATIVE RESPONSIBILITY

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#### I. INTRODUCTION

This special report is the product of an intense group workshop called upon to examine and discuss the relationship between investigation and prosecution as it pertains to the nineteen countries represented on the course. To realize this objective, it was necessary in each case to look at the police; to what extent, if at all, prosecutors get involved in investigations; the practical problems faced by investigators, police and prosecutors alike; the role played by public prosecutors in overcoming the drawbacks and problems faced by investigators; and, recommending possible avenues of circumventing existing and perceived hurdles in the way of qualitative and effective investigation and prosecution of crime and its offenders. The countries under review were conveniently divided into two principal jurisdictions, namely:

- (1) countries in which only the police has investigative authority, and
- (2) countries in which the police and public prosecutors are vested with investigative authority.

#### II. USE OF TERMS

For purposes of this report, the following terms shall be construed as hereunder:

“PROSECUTOR”: Any person appointed or designated under the law as a public prosecutor or one who acts as such on behalf of the state and whose powers and functions include, *inter alia*, the following:

- (a) the power of control over the presentation of a case before court; and
- (b) the power of control over the continuance or discontinuance of prosecution.

“POLICE”: Any organization with personnel appointed under the law and exercising the power and function of a law enforcement officer to maintain law and order in the country. This report focuses on the function of the police as an investigator.

“INVESTIGATOR”: Any person who detects crime and discovers offenders through the exercise of legal powers.

**III. CLASSIFICATION:  
RELATION OF THE PUBLIC  
PROSECUTOR AND THE POLICE**

Nations have different institutions which conduct investigations. In some countries such as Costa Rica, Ghana, India, Kenya, Malaysia, Maldives, Nepal, Pakistan, Singapore, Sri Lanka, Thailand and Zambia, the authority to investigate lies with the police. In Cameroon, China, Indonesia, Japan, Laos, the Philippines and the Republic of Korea, the role of investigation lies with both the police and the prosecution.

**A. Countries in Which Only The  
Police Has Investigative  
Authority**

**1. Costa Rica**

**a) Organizational structure of  
the police and the  
prosecution**

*Police:* The investigative authority is the judicial police, which is under the General Director. The judicial police is under the supervision of the Internal Affairs Office. When a crime which is punishable by a fine or less than three years' imprisonment is reported to the police, all investigation thereof is conducted by the police. Upon conclusion of such investigation, the police submits the results of investigation to the prosecutor.

*Prosecution:* Public prosecutors belong to the Public Ministry under the supervision of the Prosecutor General. Only public prosecutors can institute criminal proceedings before the court.

**b) Role of prosecutors in police  
investigations**

When a police investigator submits to the prosecutor the results of his investigation, and if it is an offense punishable with imprisonment, not exceeding three years or a fine, the prosecutor must then require all relevant witness and suspect statements

and any other material evidence considered necessary to be collected by the judicial police. Once this is satisfied, the prosecutor delivers the dossier to the trial judge.

Similarly, in offenses punishable with more than three years' imprisonment, a police officer on receipt of a complaint hands over the investigation file to the prosecutor. The prosecutor then draws up a "formal instruction requirement" which, together with the case file, he submits to the examining judge. The latter effectively takes over the case and conducts the necessary investigation. With the help of the judicial police, the collection of evidence such as witness and suspect statements, ordering the production and inspection of public and private documents, and making available results or reports of forensic laboratory tests, is done by the examining judge. The prosecutor only controls the labor of the examining judge by way of appeal to the Appeal Court if he does not agree with the proceedings followed by the examining judge. After this, the dossier is handed over to the prosecutor for prosecution.

**2. Ghana**

**a) Organizational structure of  
the police and the  
prosecution**

*Police:* The investigation of all crime is the responsibility of the police. This power derives from the Police Service Act No. 350/70. The police falls under the Ministry of Interior. The police powers of investigation include the power to arrest with or without a warrant, as per section 10(1) of the CPC Act 30/60 and the power to search with or without a warrant. The police is also empowered to grant bail to suspects. Suspects who can not be granted bail should be brought before a court within forty-eight hours. After the police has completed its investigations, it submits the dossier to the prosecutors for prosecution.

107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

*Prosecution:* The prosecutorial function is exercised by the Attorney General. That is to say, all public prosecutors are designated by the Attorney General and operate under the Attorney General's Chambers. The Attorney General is the Minister of Justice. There are also police prosecutors exercising the powers of prosecution on behalf of the Attorney General. Police prosecutors appear before Circuit Tribunals, Community Tribunals and Juvenile Courts (these are subordinate courts of first instance). All major offenses (1st degree) are triable on indictment before the High Court. All appeal matters are handled by state attorneys from the Attorney General's Chambers.

**b) Role of prosecutors in police investigations**

The police seeks legal advice from the Attorney General whenever necessary during the course of an investigation. After the police has completed an investigation, a duplicate docket of the case to be tried on indictment is sent to the Attorney General's Chambers. Before the prosecutor initiates criminal proceedings in court, he studies the docket. Should there be any need for further investigation, he advises the investigator to do so. The prosecutor also arranges pretrial conferences. Here he meets and interviews all parties of a case, with a view to clarifying certain issues and ascertaining the relevance of witnesses. This also gives the prosecutor a chance to expose and work on weaknesses in the case before the matter goes to trial. During investigations, the prosecutor applies to the court for arrest, search and detention warrants, which are then executed by police investigators.

**3. India**

**a) Organizational structure of the police and the prosecution**

*Police:* The Central Bureau of Investigation (CBI) is the premier investigation agency of the central government. The CBI is under the Ministry of Personnel and Training, headed by a Director and answerable to the Prime Minister. The CBI has concurrent investigative jurisdiction in the Union Territories. It can also take up the investigation of cases at the request of the state governments. Besides the CBI, there are state police forces headed by Directors General of Police, who are appointed by the state government concerned. The police has power to initiate investigations of cognizable offenses itself but require a court order for non-cognizable offenses. Other investigative powers, include arrest, search, seizure and interview suspects and witnesses.

*Prosecution:* The prosecution wing in a state is headed by the Director of Prosecutions who is responsible for the prosecution of cases in the Magistrate's Courts. He is aided by the Additional, Deputy and Assistant Public Prosecutors (Grade I and Grade II), appointed by the state government. Public prosecutors who prosecute cases in the High Court are appointed by the state government from the panel of suitable lawyers prepared by the state government in consultation with the High Court. Public prosecutors who appear in Sessions Courts are also appointed by the state government from such panel in consultation with the Sessions Judge. They do not fall under the jurisdiction and control of the Director of Prosecutions, but rather are responsible to the District Magistrate.

The prosecution agency does not have a national level body. At the central level, the Attorney General is the most senior law

officer of the Government of India with legal power to address all courts in the country. Prosecutors appointed by the central government appear in High and District Courts in cases involving the central government.

#### **b) Role of prosecutors in police investigations**

Though prosecutors have no powers to initiate and conduct investigations, the police seeks legal advice from prosecutors during investigations. The police respects and complies with the legal advice given by prosecutors. However, prosecutors have no legal authority to direct or supervise the police. Prosecutors are employed in the CBI to provide legal services to the investigative body on a daily basis. The Head of the Legal Division of the CBI is called the Legal Advisor and is assisted by Additional and Deputy Legal Advisors and Public Prosecutors. These law officers guide the process of every criminal investigation by reviewing cases and offering legal insights into those cases and useful guidelines on how to proceed with particular investigations.

#### **4. Kenya**

##### **a) Organizational structure of the police and the prosecution**

*Police:* The National Police is under the Office of the President. The police initiates and conducts all criminal investigations. In the course of these investigations, the police consults prosecutors for advice. The police department is headed by the Commissioner of Police.

*Prosecution:* The Attorney General is the prosecution authority. All public prosecutors including police prosecutors, exercise prosecutorial functions on behalf of the Attorney General. In matters of prosecution, police prosecutors are controlled by the Attorney General.

##### **b) Role of prosecutors in police investigations**

The prosecutor has no authority to conduct investigations. The role of the prosecutor is an advisory one. In certain cases though, the Attorney General can instruct the Commissioner of Police to initiate investigations if there is a greater public interest to be served. At the conclusion of each investigation, the police files the case with prosecutors for prosecution.

Prosecutors study the investigation file and when necessary request the police to carry out additional investigations such as the recording of additional statements from witnesses, the interrogation of any other suspect and inspection of certain documents.

#### **5. Malaysia**

##### **a) Organizational structure of the police and the prosecution**

*Police:* In Malaysia, the Royal Malaysian Police is under the Ministry of Home Affairs. The investigation is usually done by the police. However, only police officers of above the rank of sergeant have investigative powers. In non-seizable offenses, the investigating officer can only carry out investigation after he has obtained an Order to Investigate (O.T.I.) from the public prosecutor as provided under section 108(2) of the Criminal Procedure Code. In carrying out investigation, the police can detain any person suspected of committing any seizable offense for a period not more than twenty-four hours. If it is necessary to detain the suspect for further investigation, the police officer must produce the suspect before a Magistrate's Court and request an order of remand for a period of not more than fourteen days.

*Prosecution:* The prosecution of criminal cases is a function of the Attorney General.

107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Public prosecutors exercise this power on behalf of the Attorney General. Police officers are also allowed to prosecute as per section 20 of the Police Act, 1967 and sections 377 and 378 of the CPC. Prosecution by the police prosecutor is carried out in the Magistrate's Courts and the Sessions Courts. While the police prosecutor performs prosecution in the courts, they act on behalf of public prosecutors.

**b) Role of prosecutors in investigations**

Public prosecutors do not have the legal authority to conduct investigations, save for police prosecutors who have investigative powers by virtue of the police office. Public prosecutors, at best, advise and instruct police investigators in the legal efficacy and expediency of carrying out investigations. Thus advice relates to cases brought to the notice of prosecutors during the investigation stage and those cases whose files have been submitted to the prosecution office for study with a view to instituting criminal proceedings.

**6. Maldives**

**a) Organizational structure of the police and the prosecution**

*Police:* The police is under the Ministry of Defense and National Security. The police conducts investigation and can arrest suspects, as well as search and seize on its own decision without warrants.

*Prosecution:* The prosecutors are under the Attorney General. The Attorney General is appointed by the President. The other prosecutors (the State Attorneys) are appointed by the Office of the President.

**b) Role of prosecutor in police investigations**

Prosecutors do not conduct investigations. They do not meet suspects or witnesses

before trial. The prosecutors can not give directions to the police on how to conduct investigation. Once the investigation by the police is completed, the case is sent to the Attorney General's Office, which can request the police to conduct supplementary investigation if necessary. The police has no legal obligation to follow the request. However, in practice, the Attorney General's advice or request is followed.

**7. Nepal**

**a) Organizational structure of the police and the prosecution**

*Police:* The Police Headquarters are under the Ministry of Home Affairs. The police is authorized to conduct investigation, detect suspects, manage crime scenes and collect physical evidence. The police can arrest a suspect with or without warrant and can detain for a period of twenty-four hours without recourse to the court or the prosecutor. However, the police should within that time bound (i.e., twenty-four hours) produce the accused before the court for additional time, if needed for further investigation. If the court also deems necessary that the investigator needs additional time, then the court may permit him to detain a suspect for an additional period of twenty-five days. If the court feels that it is not necessary to detain a suspect, he will immediately be released. The investigating police officer should take the statements of witnesses and other third parties in the presence of the public prosecutor. When the investigating police officer concludes his investigation, the results should be submitted to the public prosecutor to frame the charge-sheet.

*Prosecution:* The prosecutorial function is independently exercised by the Attorney General of the Kingdom of Nepal, which he can delegate to his subordinate officers too. Thus in Nepal, except for the Attorney

General, no any other agency (neither the investigator nor the victim) can prosecute. The Attorney General is appointed and can be dismissed by His Majesty' the King upon the recommendation of the Prime Minister.

**b) Role of prosecutors in police investigations**

Though the Nepalese public prosecutor is not directly involved in investigating a crime and his participation during the investigation is limited, as and when the investigating police officer submits the case to the public prosecutor, before putting it forward to the court, the public prosecutor can direct or instruct the investigating police officer to collect some more evidence or interrogate someone, if necessary. The investigating police officer should obey such directions or instructions.

**8. Pakistan**

**a) Organizational structure of the police and the prosecution**

*Police:* The Federal Police is under the Ministry of the Interior. The Provincial Police comes under the Provincial Home Department.

The investigation of crime is the responsibility of the police. Like in most common law countries, the police is empowered to arrest without a warrant for cognizable offenses and produce such arrestees before the court within twenty-four hours. Thereafter, only the court has the power to sanction further remand of an accused person by issuing an extended remand warrant of up to fourteen days.

*Prosecution:* The Attorney General is the ultimate prosecution authority. He is appointed by the President on the recommendation of the Prime Minister, and he is also a cabinet minister of the federal government.

The Advocate General is the Head of Prosecution at the provincial state level,

and public prosecutors are appointed by the provincial government. The Attorney General and his deputy represent the federal government in the Supreme Court. The Advocate General and the Assistant the Advocate General appear in the High Court on behalf of the government. In District Sessions Courts and Magistrates' Courts, the Public Prosecutors and District Attorneys represent the government.

**b) Role of prosecutors in police investigations**

Public prosecutors do not investigate crime, but advise the police on better legal approaches to investigations. They can request the police to do supplementary investigation when evidence is lacking in a case. The prosecutors do not control or supervise police investigations.

**9. Singapore**

**a) Organizational structure of the police and the prosecution**

*Police:* The police is under the Ministry of Home Affairs. The police conducts investigations, and has power of arrest with or without a warrant for non-seizable and seizable offenses. It can also search and seize property upon a warrant from the court.

*Prosecution:* Public prosecution is under the Attorney General's authority. The Attorney General, who is the Public Prosecutor, is appointed by the President on the advice of the Prime Minister. The Deputy Public Prosecutors are appointed by the Legal Service Commission or the Senior Personnel Board. As for police prosecutors, they are appointed by the police force.

**b) Role of prosecutors in police investigations**

After the investigation by the police is completed, the case is sent to the Attorney

107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

General's Chambers. The prosecutors do not conduct investigations by themselves, but supervise and control the process of evidence collection by the police. This is done by giving advice and directions to the police on the conduct of investigations. After investigations are completed and when the case is ready for trial, the prosecutors may interview witnesses prior to going to court to establish the credibility of the witnesses or to clarify the issues. Should the prosecutors feel that the investigation is incomplete, they can return the case file to police pointing out areas requiring attention and what needs to be done.

The police investigator and the prosecutors maintain a good working relationship.

#### **10. Sri Lanka**

##### **a) Organizational structure of the police and the prosecution**

*Police:* The police is under the Ministry of Defense. It exercises all powers of investigation. The police can arrest and detain a suspect up to twenty-four hours under a warrant issued by the court. This detention can be extended up to fifteen days.

*Prosecution:* The Attorney General is the head of all prosecutions. The Attorney General is responsible for initiating and conducting all public prosecutions. Prosecutors fall under the Ministry of Justice. The Attorney General is appointed by the President.

Police prosecutors are answerable to the Attorney General in all matters affecting their prosecutorial work.

##### **b) Role of prosecutors in police investigations**

State Counsels are prosecutors in the Attorney General's Department. They are authorized to direct or supervise investigation. State Counsels have the

power to advise the police at any stage of criminal inquiry. Further, State Counsels can require the police to carry out further investigations into specific areas of a case once a review of the investigation file has exposed deficiencies in evidence collection.

#### **11. Thailand**

##### **a) Organizational structure of the police and the prosecution**

*Police:* The police falls under the Ministry of Interior. The power to investigate all criminal offenses is exercised by the police. Section 121 of the Thai CPC confers this power on police officials. Police are also empowered to carry out arrests, searches and seizures and detain suspects by themselves. They have the power to issue warrants by themselves for purposes of search and arrest when necessary. The police can detain a suspect for up to three days prior to a court appearance. The court can allow the extension of remand warrants for intervals of twelve days up to a maximum of eighty-four days.

*Prosecution:* The Attorney General is the repository of the prosecution function. He falls under the direct supervision of the Prime Minister. He is assisted by four Deputy Attorney Generals, the Director of the Criminal Litigation Department and the Directors General of regional departments. The public prosecutors under the Attorney General's Office are career professionals.

##### **b) Role of prosecutors in police investigations**

The prosecutors are not involved in police investigations. They wait for the investigation report from the police. The police inquiry file gives the prosecutors a chance to deliberate and assess the evidential value and sufficiency of the investigation before deciding whether to prosecute or not.

If the evidence is insufficient, they then request the police to do further investigations or to send witnesses to them for further questioning.

## **12. Zambia**

### **a) Organizational structure of the police and the prosecution**

*Police:* The police department is under the Ministry of Home Affairs. The police is the main investigative security organ of the state. Police officers are empowered both under the Police Act and the CPC to effect arrest with or without a warrant, to conduct search and seizure, and to detain suspects in police custody for a period of twenty-four hours.

Detained suspects should be produced before court within twenty-four hours for the judicial authorities to determine the legality of an arrest and subsequent detention. However, section 33 of the CPC allows the police to detain a suspect beyond twenty-four hours for purposes of an investigation if the circumstances do not make it practicable to produce him before court within twenty-hour hours, but may do so as soon as it is practicable.

*Prosecution:* The Director of Public Prosecutors (DPP) is the prosecuting authority. He is independent of the Attorney General but comes under the Ministry of Legal Affairs. He is appointed by the President and enjoys a constitutional tenure of office equivalent to a puisne judge of the High Court.

State advocates and police officers are appointed by the DPP to act for him as public prosecutors pursuant to sections 86 and 87 of the CPC.

### **b) Role of prosecutors in police investigations**

Public prosecutors are not investigators either by law or practice. After the police has done its inquiry, it forwards the inquiry

file or docket to the prosecution office for study and advice.

Prosecutors may suggest to police investigators from a legal point of view how the inquiry should be conducted and what elements of evidence to look for in order to satisfy the offense. The police usually comply with the advice of prosecutors.

A prosecutor must satisfy himself that the investigation is thorough before he can proceed to court.

## **B. Countries in Which the Police and Prosecutors Have Investigative Authority**

### **1. Cameroon**

#### **a) Organizational structure of the police and the prosecution**

*Police:* The public security police, the gendarmerie and the judicial police constitute the main investigative agencies. The gendarmerie falls under the Ministry of Defense and is responsible for investigations in the rural areas, where police structures are in existence or inadequate. The public security police falls under the National Delegation of Internal Security, which is answerable to the Republican President.

In the conduct of investigations, the police and gendarmerie act as judicial police officers and assist the judiciary in the control of the State Counsel. Generally the judicial police is competent to investigate felonies and complex misdemeanors nationwide and participates in international investigations. It should be noted that the control and supervision of the judicial police in administrative matters such as promotions, transfers and disciplinary matters revert to the supervisors within the police and gendarmarie command structures.

*Prosecution:* Prosecution is under the Legal Department. The Minister of Justice exercises overall control over the Legal



107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Department. The head of prosecution is called the Procureur General and assisted by Advocate-Generals, Substitute-Generals and Attachés. Only the public prosecutors can initiate and conduct public prosecution for and on behalf of the state.

**b) Role of prosecutors in police investigations**

Under the Ordinance on Judicial Organization, the State Counsel has absolute power to conduct personally investigations for all offences. However, in practice, he investigates in relation to serious offences such as murder and assassinations, particularly sensitive cases or those involving senior officials.

Where a crime has been committed, the victim, witness or any person having knowledge of the circumstances may report them orally or in writing either to the State Counsel or any other investigative agency. The State Counsel upon receipt of the crime report forwards the same to the competent investigative agency with specific instructions as to the manner in which investigations should be conducted. If dissatisfied with the conduct of investigations, he may order fresh or complementary measures.

Basically, there are two types of investigations, that is, preliminary investigation and flagrante delicto investigations. Where a suspect is arrested in relation to a case of flagrante delicto, the police shall conduct him to the nearest State Counsel within twenty-four hours. The suspect may only be detained thereafter by order of the State Counsel. The said order is valid for twenty-four hours and may be extended thrice. Thereafter, if investigations are not completed the suspect must be released.

The State Counsel has wide powers to order any measures necessary during investigation to enable him to obtain evidence that will contribute to the manifestation of the truth. It is in this

regard that warrants of arrest, search, remand, etc., are made his prerogative. Investigation officers, (i.e., the police) execute these warrants under the supervision and control of the State Counsel.

**2. China**

**a) Organizational structure of the police and the prosecution**

*Police:* The police, under the Public Security Organ, is responsible for the general investigation of crime and exercise powers of detention, arrest and interrogation.

*Prosecution:* Public prosecutors fall under the People's Procuratorates, which are the state organs of legal supervision. The Procurator General of the Supreme People's Procuratorate is elected by the National People's Congress. The public prosecutors are appointed and dismissed by the corresponding level Standing Committee of the People's Congress. The prosecution performs its duty independently.

**b) Role of prosecutors in police investigations**

The People's Procuratorates are responsible for prosecutorial work; approving arrest, investigating cases of corruption and bribery in public offices and initiating public prosecution, as per CPL Article 3. In other words, public procurators, like the police, have the authority to interrogate suspects, interview witnesses, search, seize, inspect, examine, detain and arrest suspects. When the police wishes to have a person arrested, it must seek approval from the procurators. Further, the law obliges the police to submit itself to the supervision of the procurators vis-à-vis police duties. This means that procurators have the power to require the police to file a case for investigation, send

an officer to participate in the discussion of a major case investigated by the police or demand that there be a re-inspection or re-examination of evidence in matters of criminal investigation (CPL articles 66, 87 and 107). However, in cases of corruption, bribery and dereliction of duty committed by state personnel and other major crimes of abuse of official powers, procurators file the cases for investigation and subsequent prosecution.

In reviewing the case that requires supplementary investigation, the procurator may return the case to the Public Security Organ for supplementary investigation and may also investigate on its own.

### 3. Indonesia

#### a) Organizational structure of the police and the prosecution

*Police:* The State Police is a component of the Indonesia Armed Forces and is led by the Commander-in-Chief of the Armed Forces. The State Police is responsible for the investigation of general crime. Article 7(1) of Act No.8/1981 gives power to the police to receive reports and complaints about crime and take steps to establish the existence of an offense and identity of an offender. This includes the power of arrest, search, detention, interrogation, and termination of investigation.

*Prosecution:* The Prosecution Service is headed by the Attorney General who is responsible for the prosecution of all criminal cases. Prosecution is under the Attorney General's Office. The Attorney General is a member of cabinet.

#### b) Role of prosecutors in police investigations

The public prosecutor has investigative power in corruption and anti-subversion offenses (Law No. 3 of 1971 and Law No.11/Nps/ 1963). These laws give wider powers

of search, seizure, interrogation and detention to prosecutors. Besides the investigation by prosecutors themselves, the public prosecutor exercises a great deal of control and influence over police investigations. For instance, the investigator shall inform the public prosecutor about the commencement of the investigation; the public prosecutor shall grant extension of remand to the investigator for completing the investigation; the public prosecutor shall give instructions to the investigator and the investigator shall complete the case bundle according to the instruction of the public prosecutor; and if the investigator stops an investigation, he shall inform the public prosecutor, and, likewise, if the prosecutor stops prosecution, he shall so inform the concerned investigator.

### 4. Japan

#### a) Organizational structure of the police and the prosecution

*Police:* The police of Japan consists of the National Police Agency and the Prefectural Police Headquarters. The National Police Agency is supervised by the National Police Safety Commission, and the Prefectural Police Headquarters is supervised by the Prefectural Police Safety Commission. Criminal cases are mainly investigated by the police which belongs the Prefectural Police Headquarters. The National Police Agency conducts coordination between the Prefectural Police Headquarters. The police has investigative powers of all crimes and exercises such incidental powers as arrest, search, seizure and interrogation.

*Prosecution:* Public prosecution is under the Ministry of Justice. The Public Prosecutor General is the chief law officer and prosecution authority.

**b) The role of prosecutors in police investigations**

The public prosecutor has concurrent investigative powers with the police. In practice, the police does the initial investigation, after which the case with documents is sent to a public prosecutor's office. In the same way, an arrested person must be sent to a public prosecutor within forty-eight hours. The public prosecutor would then interrogate the suspect and, if necessary, request police to carry out certain complementary investigation to obtain relevant evidence. Public prosecutors also choose to interview the victims of crime and witnesses before deciding whether to prosecute or not. Ordinarily, particularly in serious offenses, public prosecutors get involved from the start. The police report to the public prosecutor concerning the investigation and, together, the police and the public prosecutor plan the investigation strategy, the evidence required, and when to initiate compulsory investigation. In cases initiated by the public prosecutors office, public prosecutors conduct independent investigation. The PPOs have a criminal investigation division of specialized investigators, mostly in economic crimes.

**5. Republic of Korea**

**a) Organizational structure of the police and the prosecution**

*Police:* The Korean National Police is under the National Police Agency (NPA), an independent agency of the Ministry of Home Affairs. The National Police Commission (NPC) conducts administrative supervision over the police. Under the NPA, there are Provincial Police Agencies in each province. Police stations are administered through the PPAS. The police serves as investigative assistant to the public prosecutor, even though it may in practice initiate the investigation of most crimes. The Criminal

Procedure Code vests the power to initiate and conclude the investigation of crime in the public prosecutor.

*Prosecution:* The Public Prosecutor's Office belongs to the Ministry of Justice. The Prosecutor's Office is an independent entity comprising the Supreme Public Prosecutor's Office, five High Public Prosecutor's Office, twelve Public Prosecutor's Offices and their branches, each corresponding to a respective court. All public prosecutors are qualified attorneys.

**b) Role of prosecutors in police investigations**

As the law vests the power of investigation in the public prosecutor, it is the responsibility of the public prosecutor to take a lead in initiating and directing the conduct of criminal investigation. Consequently, the police and special investigative agencies conduct investigations in accordance with the general standard and/or special direction issued by the public prosecutor, and necessarily, transfer all cases to the public prosecutor for the conclusion of an investigation.

In short, the public prosecutor has the authority and duty to supervise judicial police officials. The police must request the public prosecutor for issuance of a warrant of arrest or detention by a judge.

It is noteworthy that in practice most public prosecutors are enthusiastic to do their own probes into serious crimes. Cases of organized crime, white collar crime, drug offenses, environmental offenses, corruption, are mainly investigated and prosecuted by the public prosecutors themselves.

## **6. Lao People's Democratic Republic**

### **a) Organizational structure of the police and the prosecution**

*Police:* The police is under the Ministry of Interior. The Minister of Interior is Head of the police. He is appointed and dismissed by the Prime Minister. The police has the power to investigate crime. This power extends to arrest, search, seizure, and the interrogation and interview of suspects and witnesses. However, the police must obtain a warrant from the court or a prosecutor in order to effect arrest, search or seizure.

*Prosecution:* The Attorney General Prosecutor is the head of public prosecutors. He is appointed and dismissed by the National Assembly, on recommendation of a Standing Committee. The Attorney General Prosecutor appoints and dismisses the chief of public prosecutors at provincial, prefectural and district levels.

### **b) The role of prosecutors in police investigations**

Public prosecutors have the authority to initiate investigations of all crime. They have the power to arrest, search, seize and interrogate suspects by themselves. They can also issue warrants of arrest, search, seizure and detention. Public prosecutors can take up a case from the police and conduct supplementary investigation. When the police get information about crime, they normally report to prosecutors about the case within forty-eight hours. In practice, prosecutors only conduct investigations of corruption by themselves. The prosecutors work through the police, ordering them to execute warrants of arrests, search, seizure and detention. Public prosecutors, however, work very closely with the police and conduct joint investigations in cases of corruption.

## **7. The Philippines**

### **a) Organizational structure of the police and the prosecution**

*Police:* The police is under the Department of the Interior and Local Government (DILG). A police officer is appointed and dismissed by the Head of DILG.

The authority to investigate crime is vested in the police. This includes the power to interrogate suspects, interview witnesses, search and seizure and arrest without warrant.

*Prosecution:* The prosecution is under the Department of Justice. Public prosecutors are appointed and dismissed by the President of the Philippines on the recommendation of the Secretary of Justice.

When a complaint is submitted to a public prosecutors office, the public prosecutors also conduct investigation, which they call "preliminary investigation".

During the preliminary investigation, public prosecutors have the right to interrogate the suspect and interview witnesses, but they do not have the right to execute other investigative measures.

The police and the public prosecutors can investigate all kinds of cases, except graft and corrupt crime.

### **b) Role of prosecutors in police investigations**

Prosecutors have no hand in the investigation of the police. In the Philippines, the police and the public prosecutors office belong to different ministries, and, thus, they work independently. Once a case is investigated by the police, it will be the only investigating agency, and the public prosecutor is not involved in the case. Public prosecutors do not conduct supplementary investigation by themselves, and cannot take over the case from the police.

#### **IV. DRAWBACKS AND PROBLEMS OF INVESTIGATIONS CONDUCTED BY POLICE INVESTIGATORS**

Investigation into the breach of criminal laws plays an important and primary role in achieving justice and fair play in every society.

The group after studying the relationship between the police and the prosecution during investigation has identified some drawbacks and problems in police investigation.

##### **A. Inappropriate Procedural Approach**

Inappropriate procedural approaches include where investigators engage in illegal investigations such as arresting or detaining suspects without a legal basis or beyond the legalized period and the use of excessive force on suspects when seizing physical evidence and obtaining the statements. When the latter happens, such statements are rejected by the court, with the consequent result of not obtaining a conviction in that particular case. This happens in countries where statements taken by the police are admissible in the court.

##### **B. Delay in Investigations**

Delay of investigation could be due to different reasons. In Japan, sometimes for very important and sensitive cases, the police takes a long time. Moreover, public prosecutors also are in the picture and in the collection of some important evidence, delay can happen. In the Republic of Korea sometimes when suspects have moved to another place, the cases are transferred and this can cause delay in investigation.

Delay, for example, occurs in some countries in a case where two or more suspects are involved but the police could arrest only one. After the maximum period of detention expires, the suspect is produced before the court which places him

in a detention center or judicial custody. In such cases, the police can request the court for adjournment of trial till the other suspects are arrested. In this situation, the investigation can be delayed. This way the justice for victim as well as defendant is delayed. This situation is sometimes justified, but sometimes due to other rush work, the police becomes lazy.

Delay in investigation could be due to the following reasons:

- (1) Excessive work load of investigators at a given time which may either be due to an increase in crime or a shortage of manpower. This is mostly in countries where prosecutors do not assist in investigations. When such situations exist, efficient and effective investigations are sacrificed. In some instances such delay leads to the discharge of the offenders in the court.
- (2) In some instances, the police initiates investigation very late, and consequently, either the suspect escapes or implements used in the crime are destroyed.
- (3) The frequent deployment and transfer of police officers are causes which contribute to delays in investigation by the police. An officer does not undertake his career at one station or in one unit. When it happens, discontinuity is created in the investigation of cases which that officer may be handling.

##### **C. Inadequate Legal and Investigative Knowledge**

1. It was realized that some investigators lack adequate knowledge. The problem is that during investigations, they at times do not understand correctly who should be the target of the investigation, what crime the offense constitutes, what evidence to look for, and how to interrogate the witnesses

and the suspects. The training offered to them during their recruitment is not job-specific and is usually very short (six months or, at most, twelve months). They, therefore, become ill-equipped for the job that they take on.

In some situations, the investigation is not fully carried out on alibi, the search is not fully conducted for the important evidence, the statements of witness as well as the accused person are not recorded correctly, and there may be contradictions among the evidence, which the investigator may not be able to notice due to the lack of adequate legal and investigative knowledge.

2. Due to advancements in communications and the introduction of the Internet, organized criminals use the modern techniques for which the investigators, police and prosecutors are not much trained. Consequently, they face difficulty in completing the investigations into offenses committed by use of such modern technologies.

#### **D. Lack of Coordination between the Police and the Prosecution**

In studying the system of countries, it was observed that the police and the prosecution are under different departments. The police and the prosecution sometimes lack coordination on investigative issues. The approach of police and prosecution are sometimes different. Sometimes the prosecutor has a different idea necessary for achieving good investigation results. However, due to the lack of coordination, it can not be communicated to the police.

In some countries, prosecutors only get to know of cases after the investigations have been completed and they are asked to prosecute the cases. It may be too late even for the prosecutor to suggest for additional investigations for the collection of additional evidence. Sometimes the

police does not convey the necessary information to the prosecutor, and, in such cases, the prosecutor can not advise at the appropriate time.

#### **E. Lack of Forensic Science Facilities**

In some countries where the forensic laboratories for testing fingerprints, firearms, DNA, etc., can be conducted are few or situated at far distances. As a result, in the investigation of such related cases, the material evidence may arrive very late, thereby impairing the early completion of an investigation. Due to the lengthy procedures associated with scientific evidence, the police tries to avoid its use and rely on easy ways to collect evidence.

#### **F. Political/Governmental Influence**

In some countries where the police is controlled by the executive, political influence is exerted in some cases investigated by the police. These influences may come in the course of investigations, when high-ranking government officials and politicians have a direct or indirect interest in the case.

### **V. ROLE PLAYED BY PROSECUTORS IN OVERCOMING THESE DRAWBACKS**

The group identified that prosecutors play diverse roles in solving the problems and drawbacks identified above. However these roles depend on the enactments establishing the police and the prosecution and the commitment to work together to achieve criminal justice in their countries.

The group members suggested the following roles which prosecutor could play in overcoming these drawbacks.

#### **A. Suggestions for Inappropriate Procedural Approach**

In such cases, the prosecutor should immediately study an investigation and

107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

suggest to the police to undertake the investigation in the right way according to law. In cases where evidence is inadmissible in court due to illegal investigative procedure, the public prosecutor should tell the police that the evidence is inadmissible and request them to look for other evidence. In serious cases, the public prosecutor should release the suspect and drop the case. Also prosecutor can recommend for administrative action against the police officer.

While studying the systems as to this issue, it was observed that in Japan prosecutors carefully inquire and interview the suspects and witnesses regarding whether excessive force or threats and other mental pressures were used in seizing the physical evidence or obtaining the statements by the police. They also look into the admissibility of evidence, and if they feel that the evidence will be found inadmissible, the prosecutors will instruct the police to look for other evidence. In serious cases, the prosecutor releases the suspect and drops the case. In the Republic of Korea, the prosecutors have to inspect the police detention facility regularly. If any illegality by police is discovered, they release the suspects or order the police to submit the case to the prosecutors immediately. Similarly, in China, when the prosecutors learn of an illegal investigation through a complaint by the victim, a Bill is issued to the police demanding correction of the illegality. In Indonesia, prosecutors play role in cases of torture by asking the police to release the suspects as soon as possible. They ask the police to release and also recommend for action against the police.

In countries like Ghana, India, Pakistan and Zambia where prosecutors have no power of investigation, senior police officers make frequent visits to the police detention facility, and if any suspects are found to have been held beyond the legal detention time, their release is ordered. In some

cases, the investigation is also transferred to another police officer.

### **B. Suggestions for Delays in Investigation**

The group has suggested as under to avoid delays:

1. For cases of public interest, the prosecutor can ask the senior police officers to reduce the work load of a particular officer so that he can complete the investigation of such cases.

2. In a system where the prosecution is in a position to know the progress of a case or receive complaints from the public with regard to delay of investigation, the prosecutor can ask the police to report on the progress of an investigation from time to time and also to explain the reasons for any delay. The prosecutor should give instructions and guidance in order to expedite the investigation.

In those countries where the prosecutor has no legal authority to know the progress of an investigation, it is suggested that some legal provision be made so that this is possible.

3. Senior police officers should avoid transferring any investigation officer who is involved in an important investigation. The prosecutor may also suggest that the senior police officers to stay such transfer till the completion of the pending investigation.

### **C. Suggestions for Inadequate Legal and Investigative Knowledge**

1. Regarding inadequate knowledge of investigation and law, it was suggested the prosecutors be allowed to give from time to time guidance to the police in each case. Also it was suggested that on-the-job training and short-term refresher courses be arranged where prosecutors are allowed to give lectures as to how cases are

conducted in the court and value of evidence.

2. In consideration of advancements in technology, special training programs should be introduced for the police and the prosecutors. In this case, immediate technical help can be taken by companies which are producing such technology. The opinion of such experts can be sought during investigation. The police and the prosecution departments should have experts on computers.

#### **D. Suggestions for Lack of Coordination between the Police and the Prosecution**

It was suggested that the police and the prosecution should have regular and *ad hoc* meetings from time to time. During such meetings, the police can discuss the position of pending investigations and prosecutors can advise on these so that the investigation can be completed in a correct and timely manner. In important cases, the police and the prosecutors should have meetings during the investigation and before the indictment for such cases, wherever needed.

In countries where prosecutors have a role during investigation like China, Japan and the Republic of Korea, such meetings are often held. But those countries where there is no such provision (though unofficially they might be holding meetings but not often), it is suggested that a system be initiated where the police and prosecutor have regular meetings.

#### **E. Suggestions for Lack of Forensic Science Facilities**

Regarding shortage of forensic science facilities and laboratories, the investigator should prioritize the collection of evidence. Those which are important and require technical opinion regarding fingerprints, chemical examinations, DNA testing, firearms report, etc., should be completed as early as possible. In such cases, the

prosecutors should also give guidance to investigators in identifying the important scientific evidence.

It is also suggested that more forensic science laboratories be equipped, since in some countries there is only one.

The prosecutors should also advise the police about the importance of scientific evidence like blood tests in murder cases, or in cases where firearms are used, ballistic tests.

#### **F. Suggestions for Political/ Governmental Influence**

To avoid political pressure in serious organized or corruption cases against politicians and senior civil servants, the investigator should try to maintain the secrecy of evidence. After the arrest of the suspect, they can give proper information to the media so that they can get support from the public and can avoid such pressure.

Where prosecutors have the authority to investigate, they should give instructions to police for proper investigation. In spite of these instructions, if the police is still under political pressure, the prosecutors should take over the investigation.

Both the police and public prosecutors should show professionalism and act according to the law.

It is suggested that an agency be established which is free from influence from the executive and which has the authority to call case papers from police, when it feels that some political interference is involved. In such cases, it should take immediate legal action against such illegal influence.

### **VI. INVESTIGATION INITIATED BY PUBLIC PROSECUTORS**

In Cameroon, China, Indonesia, Japan, Laos, the Philippines and the Republic of Korea where prosecutors also have the authority to initiate the investigation of



107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

cases, they do not investigate all the cases in practice.

In China, according to Article 18 of the Criminal Procedure Law of the People's Republic of China, "with regard to the crime of corruption and bribery, the crime of dereliction of duty committed by state personnel, the crime of illegal definition, extorting confession by torture, retaliation and framing and illegal search to infringe on citizens' rights of the person committed by state personnel who take advantage of the functions and powers and the crime of infringement on citizens' democratic rights, peoples procuratorates (public prosecutors)" should file such criminal cases for investigation.

In Japan, Article 6(1) of the Public Prosecutors Office Law states "Public prosecutors may investigate any criminal offense," and Article 191(1) of the Code of Criminal Procedure states "A public prosecutor may, if he deems necessary, investigate an offense himself." In practice, however, they investigate major corruption tax evasion or bankruptcy cases, etc.

In Indonesia, the prosecutors investigate corruption and subversion cases. Moreover in subversion cases, the prosecutor is assisted by the police and the army for summoning witnesses and arresting suspects.

The Criminal Procedure Code of the Republic of Korea vests the power of the initiation and conclusion of criminal investigation solely on the public prosecutor. The police and other special investigative agencies serve only as assistants to the public prosecutor and should conduct investigation in accordance to the general standard and/or special directions issued by the public prosecutor. Most cases involving serious offenses such as organized crime, white-collar crime, corruption, drug offenses and environmental offenses are handled by the public prosecutor from the beginning.

In Cameroon, Laos and the Philippines, public prosecutors have authority to investigate the case, but in practice most cases are investigated by the police under the supervision of prosecutors.

In countries where prosecutors initiate investigation, it was realized that due to the effective role of prosecution, there are certain benefits which lead to a good investigation. As prosecutors have adequate legal knowledge as well as conversant in legal interpretation, they prepare good cases for indictment. Their ability and experience have been deemed as a benefit for the law enforcement system in combating crime. Earlier involvement by prosecutors in investigation, guarantees a successful prosecution and conviction.

**VII. PROBLEMS IN  
INVESTIGATIONS INITIATED BY  
PUBLIC PROSECUTORS**

In countries where prosecutors have the authority to initiate the investigation such as in China, Indonesia, Japan and the Republic of Korea, the group workshop has found some problems faced by the public prosecutors, namely:

**A. Limited Number of Prosecutors**

In most prosecution offices, there is a limited number of prosecutors and assistant officials, especially for initiating the investigation. As it has been realized, initiating the investigation has been time-consuming since the public prosecutors have to conduct investigation by themselves (such as collecting evidence interrogation of the suspects and witnesses, search and seizure, etc.). At the same time, the number of cases that must be handled has been increasing. This problem is more serious when the prosecutor's office has to deal with prosecution in the court and supervise the police investigation.

### **B. Difficulty in Finding Clues and Credible Evidence of Crime**

The cases committed in secrecy like corruption and bribery are difficult to detect, as there is no direct victim. Evidence is hard to come by due to the secrecy surrounding these transactions.

In such cases, public prosecutors rely on the statements of witnesses and the confession of the suspects. However, the suspects tend to deny the facts and the witnesses tend not to cooperate with the public prosecutors in the trial stage.

### **C. Media Publicity**

When competition for giving news starts in the media, it becomes difficult to keep the secrecy of an investigation, and once information is leaked, the related persons and suspects do not cooperate in the investigation, the suspects and the witnesses could escape and also the defense counsel of suspects becomes more active, thereby making investigation difficult. In sophisticated cases, the suspects and the witnesses destroy the evidence, which further frustrates proving the offense.

## **VIII. SOLUTIONS TO THE PROBLEMS IN INVESTIGATION INITIATED BY PUBLIC PROSECUTORS**

In view of the problems in investigations initiated by public prosecutors, the group workshop identified some possible solutions, namely:

### **A. Suggestions for Limited Number of Prosecutors**

#### **1. Investigation of Selected Cases**

To overcome the problem of overwork, it can be suggested to the appropriate authority that the number of prosecutors be increased. However, while it is difficult, the investigation of selected cases like those of corruption against civil servants, politicians, subversive activities, cases of

national interest, etc., could be given priority.

#### **2. Temporary Attachment System**

If in some offices the work load is too heavy, some prosecutors from other offices could be temporarily attached to assist.

#### **3. Cooperation between Prosecutors with the Police and Other Investigative Agencies**

In view of the limited number of prosecutors, when initiating and conducting the investigation of cases, public prosecutors can ask for cooperation from the police if necessary. There may be relevant cases which are found as offshoots of another investigation initiated by the public prosecutors and which can be investigated by the police. In such cases, the public prosecutors can ask the police to investigate such offshoots. It is suggested that when prosecutors need some help, the police should extend immediate cooperation.

As in China, Indonesia, Japan and the Republic of Korea, in special cases of taxes, customs, security transactions, the officers of respective department give permanent cooperation. In Japan, some tax officers are permanently attached to the special investigation department of the prosecutors offices.

### **B. Suggestions for Difficulty Finding Clue and Credible Evidence**

Public prosecutors should have their own sources of information, which can provide clues to cases. The public prosecutors can also ask the public to assist in giving information. While investigating other cases and examining relevant documents, public prosecutors must try to find clues of other big offenses. Public prosecutors should also pay attention to the correspondence from the public relating to information on cases.

107TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

In Japan, public prosecutors can obtain information relating to all crimes directly from the public or government officials through all means of communication, complaints and so on. In China, there is a criminal report center in each public procuratorate office, where they receive information about crimes from the public. This information is subsequently sent to the most appropriate departments. In Indonesia, there is "P.O. Box 5000" for receiving such information.

While recording the statements of the witnesses and suspects, public prosecutors have to obtain credible and concrete statements, which will support a conviction.

### **C. Suggestions for Media Publicity**

When the media competes for information, it becomes difficult for prosecutors to conduct an investigation. In such cases, the secrecy of information and investigation must be maintained.

The senior officers of public prosecutor's offices or the public relations department should brief the press from time to time so that the media does not publish articles based on mere speculation or conjecture.

## **IX. CONCLUSION**

From the study and discussion of the criminal systems of different countries, it was gathered that for any criminal justice system to succeed, each pillar of criminal justice administration has to play an important role. The group workshop studied the role of prosecution and prosecutors in investigation. It was observed that prosecutors have a twofold role in investigation and prosecution. These roles are commonly established in the criminal procedures of each country, but tend to differ from country to country.

During the study of the criminal systems of those countries where prosecutors have an authorized role in police investigation

or where they have the authority to investigate, the results of investigation are good and the conviction rate are higher. Conversely, in those countries where prosecutors are not authorized to investigate and do not have any role during investigation, the conviction rate is comparatively lower.

The other benefit can be that prosecutors could give reasonable instruction or advice to police, keeping in view their experience and knowledge. This also contributes to shortening the time period for the investigation.

As discussed in the proceeding paragraphs, it was acknowledged that investigation by prosecutors is very beneficial due to their adequate knowledge of law and legal interpretation. This experience improves the standard of investigation.

It is noteworthy that investigation and prosecution are fundamentally linked and inseparable. Consequently, where those powers are not deposited in one agency, the relevant investigation and prosecution agencies must complement each other, always realizing that neither function or agency is inferior.

The members of the group workshop concluded that the role of prosecution must be made effective in order to have a good criminal justice system. It is expected that those countries where prosecutors have no role in investigation, will also realize the importance of such role. In these countries, the system should be modified so that prosecutors can play an active role in the improvement of investigation and thereby assure due process of law.