

GROUP 2

EFFECTIVE COLLECTION AND UTILIZATION OF EVIDENCE IN CRIMINAL CASES

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I. INTRODUCTION

Group Two started its discussion on 9 September 2013 at 0940 hrs. The group elected, by consensus, Mr. Mahmood Saleem as its Chairperson, Mr. Andrey Mendonca as its Co-chairperson, Mr. Alexandru Bejenaru as its Rapporteur, and Mr. Kinlay Wangdi as its Co-rapporteur. The Group, which was assigned to discuss “Effective Collection and Utilization of Evidence in Criminal Cases”, agreed to conduct its discussions in accordance with the following agenda: 1) Effective collection and utilization of oral statements; 2) Collection of objective evidence; and 3) Necessary measures to improve/develop investigation in each country.

II. SUMMARY OF DISCUSSIONS

Mr. Andrey, the co-chairperson, suggested that for each subtopic, discussions should be based on questions which could be formatted into a table to save time, and later converted into a report. All participants agreed to proceed with the group work in the format as suggested by Mr. Andrey. The group decided to discuss the three broad topics of discussion country-wise and agreed to conduct its discussion in accordance with the following format.

A. Significance of Oral Statements in Criminal Cases in Each Country

1. Significance of Statements of Suspects

The questions/points on the said topic to be discussed by the group as agreed and the prevailing situation regarding these matters in the participating countries are summarized as follows:

(a) The suspect has the right to remain silent

All the countries stated that the suspect’s right to remain silent is in place in their respective countries. There were some discussions on the pros and cons of the suspect having the right to silence. Some participants stated that the right was not necessary while others said that it is crucial. However, the group unanimously agreed that the right to remain silent is a basic human right conferred upon an individual based on natural principles of justice.

(b) Can the suspect be punished if he lies? Any negative consequences?

Except for the countries of Bhutan and Moldova, the rest of the countries stated that they do not have any punishment for the offence of lying by the suspects either during investigation or during trial. In Bhutan, the Penal Code of Bhutan provides for the offences of deceptive practice, perjury and

¹Mr. Azer Ramiz Taghiyev had to leave training on 21st September, 2013 due to unavoidable circumstances.

155TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

hindering prosecution for lying during an investigation or during trial. In Moldova, the suspect may be punished for lying only during trial at the court.

(c) Do you ask further questions if the suspect remains silent?

The participants stated that asking further questions after the suspect chooses to remain silent is not illegal. Participants of some countries stated that further questions are asked to the suspect even if the suspect remains silent. This is done so that the investigator can allow the suspect speak on different issues which may be relevant for the case, and so that there is every chance that the suspect might speak on some other issues though he remains silent on some issues. On the other hand, some countries stated that once the suspect remains silent, they do not ask any further questions to the suspect because they see no reason to ask anything to somebody who remains silent. Further, the participant from Brazil stated that in Brazil, police officers do not ask questions to suspects who remain silent. By doing this, the suspect would not be able to prepare and anticipate the questions which could be asked in court.

(d) Can defence counsel be with the suspect during interrogation?

The participants from Azerbaijan and Moldova stated that it is mandatory for the defence counsel to be present with the suspect during interrogation. The participants from Brazil and Maldives stated that the defence counsel may be present with the suspect during interrogation if the suspect so desires. The participants from Bhutan stated that presence of defence counsel with the suspect during investigation is not a right and the investigating officer has the discretion to disallow counsel if his presence is likely to hamper the investigation. However, during the trial, defence counsel can be present if he wishes to. Lastly, the participants from Japan stated that defence counsel is not allowed to be present with the suspect during investigation.

(e) Can the suspect be convicted just based on confession?

Except for the participants from Bhutan and Maldives, other participants stated that a suspect cannot be convicted based on confession, and other strong evidence is required to support the confession. The participants from Bhutan stated that in Bhutan, the judge may convict a suspect based on his confession but in such cases the judge has to be fully satisfied of the commission of the offence by the suspect, and it also depends case by case and happens rarely. The Maldivian participants stated that the accused could be convicted based on his confession during trial provided that the accused is in a sound state of mind and confesses in court.

(f) Whether or not defendants who confess should receive lighter sentences?

Except for Japan, in the remaining five countries, the defendants who confess could receive lighter sentence. Moreover, in Brazil, such a defendant is even granted a pardon if his confession was useful and significant to the prosecutor, and in Maldives, a suspension of sentence may also be given to the defendants who confess to drug-use offences. On the other hand, the Japanese participants stated that in Japan, their laws do not provide for any lighter sentences for the defendants who confess but in practice, the sentencing could be more lenient if they confess.

(g) Relationship between the suspect and defence counsel during investigation; can defence counsel answer on behalf of the suspect during interrogation?

Some participants stated that defence counsel may guide the suspect but cannot advise him during interrogation and cannot answer on behalf of the suspect. However, police officers sometimes allow the defence lawyer to be present during interrogation. Some participants stated that the defence lawyer could advise the suspect only during their visits and the investigator may allow the presence of the defence lawyer if his presence does not hamper the interrogation. Some participants stated that the defence lawyer could ask questions to the suspects to clarify a suspect's statement.

(h) Coercion during interviewing/interrogation of suspects during investigation

Participants from Brazil and Bhutan stated that in their countries, suspects are sometimes coerced or tortured to make them confess during their interrogation. Statement obtained in such cases are not admissible in court and the burden of proof lies with the defendant. Participants from Japan, Azerbaijan, Maldives and Moldova stated that in their countries, the prosecutors have to prove in court that the statement produced by them in the court was taken voluntarily without any coercion, duress or

undue influence.

(i) *Problems faced by countries relating to the statements of the suspects were discussed as follows:*

- 1) Participants from some countries stated that they had problems in the investigation process. There was a lack of professional training of the investigating officers on interviewing and interrogation. There was either a lack of or shortage of scientific aids to investigation like video and audio recording, lie detectors, etc. in many police stations, and there were no proper interrogating rooms in many police stations of some countries.
- 2) Some participants stated that the possibility of the suspect or defendant to retract their statements during investigation or during trial is very high. The lack of laws to penalize the suspects during the investigation stage itself tempts the suspect to retract his statement in a court of law during trial.
- 3) Some participants stated that the right to remain silent may sometimes be used as a strategy by defence counsel and there should be a difference between the right to remain silent and denial or telling lies.
- 4) Some participants stated that it is very difficult to prove perjury in some countries due to the strict standard and it is impossible to establish perjury as an offence. Since a lot of resources are spent in verifying the statements of the suspects, lying by suspects should be controlled by punishment.
- 5) Some participants stated that if the suspect remains silent during investigation and starts talking in court, that's something which should be objected to as it takes a lot of time to prove, and if the suspect starts talking at trial, the suspect could be questioned about the credibility of the suspect's statement.
- 6) Some participants stated that there should be a difference between the right to remain silent and telling lies and the two should not be taken together. The right to remain silent should be a human right whereas lying should be made an offence by the concerned state.
- 7) The lack of sentencing guidelines such as a separate sentencing law also affects the judges in rendering just and appropriate sentences for the offenders. The participants from Japan, Bhutan and Maldives stated that there are no sentencing guidelines. However in Brazil, there is a guideline for the judge to award sentences. In Moldova and Azerbaijan, there are general principles written in the criminal procedure but there are no separate guide books on the matter.

2. Significance of Statements of Victims

The significance of statements of victims was discussed as follows:

(a) *Significance*

All the countries agreed that the statements of victims are very significant in the investigation of criminal offences. Some participants stated that a victim's statement could be considered as evidence in a court of law, and could be used for the discovery of evidence and to establish the commission of an offence. It could be used to identify a crime scene and could also be used in court to corroborate other evidence. Some participants stated that victim's statement is very valuable evidence especially in sex-related offences and other offences like robbery, sex offences against children, domestic violence and assault cases where there are no other witnesses. However in most cases, the victim's statement should be accompanied by other evidence. Some participants stated that the victim's statement is very important since it gives clues to the investigator.

(b) *Whether victims could be punished for perjury for lying during investigation and during trial*

The participants from all countries except Brazil stated that the victims could be punished for perjury for lying during an investigation and during trial. The participant from Brazil stated that

155TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

victims cannot be punished for lying as they do not take oaths, but they could be liable for false denunciation. The participants from Japan stated that victims could be punished for perjury only during trial, with some exceptions.

(c) Can the court convict the defendant solely based on the victim's statement

The participants from Azerbaijan, Bhutan, Maldives and Moldova (with some exceptions for some countries) stated that the defendant cannot be convicted by the court solely based on the victim's statement as it has to be corroborated by other strong evidence. On the other hand, participants from Brazil and Japan stated that the defendant could be convicted based solely on the victim's statement especially in sex offences and crimes where there are no witnesses, but it depends on the reliability of the statement of the victims and the full satisfaction of the judge.

(d) Problems faced by countries in relation to the statements of victims

1. Most of the participants stated that they do not have a system of proper protection of victims or programmes for their protection, and that they lack experts, trained manpower or specialized agencies to interrogate and interview or to protect the victims. Some participants stated that the victim's statement may give a wrong impression to the investigator. The victim's statement might make the offence appear heinous but may turn out to be a minor offence. Therefore in order to obtain the most truthful statement, the investigator should be properly trained and professional.
2. Some participants stated that victims may sometimes retract their statements due to fear or due to coming to an agreement with the accused. The non-cooperation from the side of the victim in the investigation adversely affects the prosecution of crime.
3. The participants from Japan also stated that it is very difficult to prove the offence of perjury in a court of law.

3. Significance of Statements of Witnesses

The significance of the statement of witnesses in each country and the problems faced were discussed as follows:

(a) Significance

The participants from all countries agreed that the statement of witnesses in a criminal case is very significant. The participants from Brazil, Bhutan and Maldives stated that the statements of witnesses could be used as oral evidence or testimony in a court of law. The participant from Azerbaijan stated that the statements of witnesses can be significant only in certain criminal cases. The participants from Japan stated that when the objective evidence is not very strong, statements of witnesses are very important.

(b) Whether prosecutor can prepare the witness before trial

The participants from all countries stated that the prosecutors can prepare their witnesses before trial, although it is not commonly practiced in some countries, like Azerbaijan and Brazil. The participants from Japan stated that as per their criminal procedure rules, there is an obligation on the part of the prosecutor to confront and prepare witnesses before trial but during such times, the prosecutors do not try to guide and direct the witnesses but rather confirm the testimony of the witness as required by law and refresh and make the witnesses anticipate questions from defence counsel.

(c) Type of witnesses — interested and disinterested witnesses

The participants from Azerbaijan, Moldova and Japan stated that in their respective countries, some witnesses who are related as family members of the suspect can refuse to stand as witnesses or give statements against the suspect. The participants from Bhutan stated that in their country, in practice, the statement of witnesses who are related (interested witnesses) is not admissible during investigation or trial. The participant from Brazil stated that family members and interested witnesses could be refused by law to be witnesses but the judge could oblige if he deems it important, but in such cases, they do not swear an oath. The participant from Maldives stated that as per their Sharia law,

all statements of witnesses either related or not are admissible in a court and moreover statements of family members against their other family members are strongly considered.

(d) Special measures for protection of vulnerable or intimidated witness — which measures

Most countries have special measures for the protection of vulnerable or intimidated witnesses like video conferencing or linking, in-camera hearings, distortion of voice and image, use of intermediaries and masks, separation of witnesses from the suspects, excusing the witness's presence at trial, providing police protection and witness shielding. In all participating countries, the protection of vulnerable and child witnesses is prioritized. Some of the countries like Azerbaijan, Moldova and Bhutan have special laws relating to the protection of vulnerable and child witnesses while in most of the countries, special measures of protection are provided in practice though not provided by law. In most of the countries, children and vulnerable witnesses are investigated in the presence of their parents or legal representatives and psychologists.

(e) Problems faced by the countries in relation to statements of witnesses

1. Some participants stated that there is a risk of retraction of statements by the witnesses in a court of law if the statement of the witness is not supported by other evidence, which would lead to the failure of the case.
2. Some participants stated that there is a lack of proper interviewing rooms in most of the police stations and also the interviewers are not trained in the interviewing techniques, especially such techniques for interviewing children and vulnerable witnesses. In most countries, advanced witness protection programmes and trained personnel are also not in place. The participant from Moldova stated that the procedure to obtain permission for the protection of witnesses is very difficult.
3. Some participants stated that since the prosecutors do not prepare their witnesses for trial, it becomes difficult to get the best testimony from the witnesses during trial.
4. Some participants stated that in their country, there are no laws regarding witness protection and they lack institutional and human resource capacity. There is also the problem of lengthy trial or delay in trial which greatly hampers criminal justice.
5. Some participants stated that it is impossible or very difficult to change the identities of witnesses and to re-locate them.

4. Significance of Statements of Accomplices

The significance of the statement of accomplices in each country and the problems faced were discussed as follows:

(a) Significance

All the participants stated that the statements of accomplices in their respective countries is very significant mainly in cases where the accomplices confess to committing the crime, and in countries like Japan, it could also be one of the main pieces of evidence. The statements of the accomplices are required to prove the conspiracy in committing the crime and to indict the accomplice himself. The participants from Maldives and Moldova stated that statements of the accomplices should be accompanied by other evidence and as per the participant from Brazil, if one of the accomplices made an agreement with a prosecutor to tell the truth, he must do so in court or else he may be punished for obstruction of justice. As per the participant from Azerbaijan, the accomplices' statement is important for cross examination and the accomplices must be provided legal aid by the state.

(b) Whether a judge can convict an individual solely based on the statement of the accomplice

The participants from all countries except Japan stated that in practice, a judge will not convict an individual solely based on the statement of the accomplice, and it has to be corroborated by other relevant evidence. In Japan, a judge could convict the suspect solely based on the accomplices' statement but the judge must be satisfied with the credibility of the accomplice.

(c) Could the accomplices be cross examined by the other defendant

The participants of all the countries stated that in their countries, the accomplices could be cross examined by the other defendant.

(d) Problems faced by the countries in relation to the statements of accomplices

1. Some participants stated that accomplices do not usually cooperate with the police for fear of being indicted and at times retract their statements in court.
2. Participants from Brazil and Japan stated that it is very common that accomplices make uniform false statements and most of the time in cases of organized crime they are protected by their organization.
3. The participants from Maldives stated that the same lawyer can represent many suspects who are accomplices and accomplices may be intimidated by the suspects, and moreover there were no written laws on the subject.

III. EFFECTIVE METHODS OF INTERVIEWING/INTERROGATION

A. Current Situation in Each Country

The current situation and challenges of interviewing/interrogation in each country and the approaches to enhance the ability of interrogators were discussed as follows:

1. Current Problems/Challenges of Interviewing/Interrogation

Participants from most countries stated that in their respective countries there are no proper interviewing/interrogation rooms in most of the police stations and that they lacked scientific aids to investigation like audio- and video-recording systems, etc. The participants also stated that there was a lack of trained, specialized, skilled and professional/expert interviewers and interrogators and an absence of a set of reference guidelines for interviewing and interrogation. The participant from Azerbaijan further stated that in his country, there were many investigative agencies for various specific crimes, and, due to this, there were separate research institutes and academies but no uniform institute specifically for interviewing/interrogation. The participant from Brazil also stated that disclosure of all evidence to the suspect and his lawyer at any time during investigation and trial, even before interrogation, is a disadvantage for the interviewers/interrogators. The participants from Maldives stated that in their country there was a different set up of interviewing and interrogation of suspects whereby it is mandatory to have the presence of two officers besides the investigator to witness the interview/interrogation and both officers have to sign the defendant's statement, confirming that the suspect has been interviewed and given his statement in their presence. Therefore, it is felt that it is not necessary to have the presence of the two officers. Lastly, the participants from Japan stated that in Japan, there is no organized, systematic or set techniques of investigation and mainly the techniques are taught by the seniors to juniors. Moreover in some cases, investigators obtain false statements, and in cases where the recording and use of other investigative aids would be required by law, it would be a challenge for the Coast Guard in Japan.

(a) Current approaches to enhance the ability of interrogators

1. All the participants stated that more domestic and foreign training programmes in interviewing/interrogation for the investigators were needed and programmes for training of trainers in the field of interviewing/interrogation in countries with professionalized and developed systems are required so that they could train the officers back home.
2. The participants stated that proper, well-equipped and modernized interview/interrogation rooms in all the police stations of the respective countries need to be established, and the latest and modernized scientific aids to investigation like audio and video recording, lie detectors, etc., should be developed and provided to all police stations.
3. Some participants also stated that a manual of uniform guidelines for interrogation and

interviewing encompassing the best practices of other countries needs to be formulated and disseminated for reference.

4. The participant from Brazil further stated that the problem of disclosure of evidence even before interrogation in Brazil needs to be reconsidered.
5. The participants from Maldives stated that the adoption of different interview/interrogation techniques may help in the improvement of the interviewing/interrogation and in their country investigators are encouraged to follow the PRICE (P-Preparation, R-Rapport, I-Information gathering, C- Confirmation and Clarification, E- Evaluation) method of interviewing/interrogation. However, these techniques adopted by the countries should be taken into consideration to be implemented by the investigators and the investigators should also possess legal knowledge.
6. The participants also stated that cooperation from other relevant agencies should be made possible and encouraged.
7. The participant from Moldova stated that interviewing/interrogation techniques could be improved with the assistance from more experienced investigators or a psychologist, and since the behaviour of a suspect is the most important, the presence of a person trained in human behaviour should be encouraged.
8. The participants stated that the police and the prosecutor's office should come to a consensus regarding the basic principle of interviewing/interrogation developed in their countries. Also, specialized training of the interviewers of mentally disabled persons should be provided, and recently in the police, the transfer of techniques from the senior to the junior officers has been initiated.
9. Finally, all the participants agreed that countries should adopt and implement the various developed and set techniques of interviewing/interrogation prevalent around the world but these techniques could be modified and developed in such a manner that is most suitable and applicable to the respective countries.

1. Effective Methods of Interviewing/Interrogation

The effective methods of interviewing/interrogation in each country were discussed as follows:

(a) Methods of interviewing/interrogation (PEACE Model/Cognitive Interviewing (UK) or Reid Technique (USA) or any other)

The participants from Japan stated that their technique of interviewing/interrogation is similar to the PEACE model and at present, the Public Prosecutor's Office is researching both the PEACE and REID models. The participant from Azerbaijan stated that in Azerbaijan, there are some elements of the PEACE model but they have established their own model and there are provisions in laws on how to interview/interrogate. The participants from Bhutan and Moldova stated that in their countries, some elements of the PEACE model are adopted but there are no specific models. The participant from Brazil stated that there were no specific models of interviewing/interrogation in his country, and the participants from Maldives stated that though the PRICE model is being practiced, there is no specific model in general.

(b) Can the suspect be persuaded to confess

All the participants agreed that the suspect could be persuaded to confess in their respective countries. However the participants from Maldives stated that though it is possible to persuade the suspect to confess, the need to do so is generally not felt, and the participants from Japan stated that it is not only possible to persuade the suspect to confess but there is also a need to persuade the suspects to confess though it takes much time.

(c) Will you still use the statement of the suspect in a court even if there is a risk of being rejected by the court?

All the participants agreed that the statement of the suspect could be used in court even if there is a risk of being rejected by the court. However, the participants from Japan stated that it depends on the case and if the risk of rejection by the court is minor and the statements are significant, public prosecutors would try to use the statements as evidence.

IV. OBTAINING STATEMENTS OF SUSPECTS/ACCOMPLICES — UTILIZATION OF PLEA BARGAINING IMMUNITY

The utilization of plea bargain immunity in countries which have the system and the status in countries which do not have the plea bargaining system were discussed as follows:

A. Adoption of Plea Bargaining (if yes, contents; if no, whether there is another system or the system is being considered)

All the participants unanimously agreed that there were two types of plea bargaining as explained by the adviser, Professor Mio: one was between the prosecutor and the defendant whereby the prosecutor may mitigate the charges for the defendant if the defendant cooperates with the prosecutor (Type 1), and the other was between the Prosecutor and the accomplice whereby the accomplice must admit guilt, provide information to the prosecutor and testify against the defendant in return for lesser charges (Type 2). The participants from Azerbaijan, Maldives and Japan stated that they do not have both types of plea bargaining in their countries, but in Azerbaijan, a similar principle is provided in the criminal procedure code whereby if the defendants help in investigation, his sentence could be lighter. In Maldives, their Constitution and the Prosecutor General's Act provides the prosecutor with discretion to prosecute a case or not, and this discretion is mainly exercised in offences against children, corruption and other serious offences. And in Japan, the adoption of both types of plea bargaining, especially Type 2, is currently being considered in the legislative committee. The participants from Brazil, Bhutan and Moldova stated that in their countries, both types of plea bargaining are available and provided for by law.

B. Typical Cases in Which the System is Utilized

The participant from Brazil stated that in Brazil Type 1 plea bargaining is used in crimes with penalties of 2 years or less, and Type 2 is used mainly in organized and serious crimes. The participant from Moldova stated that in Moldova, Type 2 plea bargaining is utilized for corruption and organized crime, and the participants from Bhutan stated that plea bargaining is used when the defendant or accomplice provides material evidence to the prosecutor for another more heinous offence in exchange for lighter charges.

C. Statements of Accomplices in Organized Crime — How Obtained?

The participants from Bhutan, Brazil and Moldova stated that statements of accomplices in organized crime are obtained by utilizing the concept of plea bargaining. The participant from Azerbaijan stated that if the accomplice helps in such an investigation, it could be taken into account. The participant from Maldives stated that there is no specific method to obtain an accomplice's statement, and the participants from Japan stated that such statements are obtained by persuasion.

D. Current Problems/Challenges:

1. The participant from Brazil stated that there is a risk to the accomplice due to lack of witness protection and difficulty in providing protection due to inefficiency of the system, and accomplices are reluctant to cooperate because it is better for him to try to get acquitted without confessing than to make an agreement with the prosecutor. Moreover, Type 1 plea bargaining, even in the medium cases, should be considered — not only in minor cases.
2. The participants from Bhutan stated that the principle of plea bargaining is rarely used due to the lack of awareness on the part of the defendants, and the participant from Moldova stated that in order to enter a plea agreement, it should be mandatory that the suspect pay restitution to the victim or society.

3. The participants from Japan stated that in Japan they are facing a lot of problems without the system and in the near future, the method of persuasion may be challenged by the people due to their awareness of the law. Therefore, they are currently working on adopting the system.
4. The participants from Maldives stated that in Maldives there is presently no uniformity and no set rules on the discretion of the prosecutors, and the accomplice has no duty to cooperate with prosecutor.
5. The participant from Azerbaijan stated that in Azerbaijan the concept of plea bargaining could be adopted in the future, but the adoption of such a concept would be difficult to achieve.

V. RECORDED STATEMENTS OF INTERVIEWS/INTERROGATION IN EACH COUNTRY

A. How Statements Are Recorded

All the participants stated that in their respective countries, statements are recorded in written documents with the signature of the persons giving the statement. The participant from Azerbaijan further stated that as per their Criminal Procedure Code, audio/video and other forms of recording statements could be used. The participants from Bhutan stated that audio/video recording is also done, although it is not mandatory. The participant from Brazil stated that in Brazil sometimes audio/video recordings are also done by the police but only in few cases especially in confessions, and during the judicial phase, all statements are audio or video recorded. The participants from Maldives stated that audio recording is mandatory while video recording is optional, and there is a regulation stating that if the suspect demands an audio copy of the statement, it should be given to him. The participant from Moldova stated that in Moldova, audio recording is not used while video recording, though not mandatory, is used for serious criminal cases in practice. The participant from Japan stated that audio/video recording is done for suspects who are detained for some serious offences by the police and prosecutor and for an accomplice who is being interviewed as a suspect.

B. Utilization of Statements at Trial as Proof

All the participants stated that the statements of suspects, victims, witnesses and accomplices, if relevant, could be used as corroborative evidence in a court of law. The participant from Brazil stated that all the statements are submitted to the court with the indictment and statements must be taken again in court to be used as corroborative evidence at trial. The participants from Japan stated that if the reliability and voluntariness of the statement is in question, audio/video recording devices (DVDs) are used as evidence in court to prove the fact. However, all the participants agreed that the statements to be utilized in court as corroborative evidence should have been obtained in accordance with the requirement of the laws of the respective countries.

1. Collection of Objective Evidence

The current situation and the challenges of each country relating to the collection of objective evidence in investigation were discussed as follows:

(a) Current Situation (Scientific investigation techniques and aids to investigation — search, seizure and analysis of crucial evidence)

The participant of Azerbaijan stated that in Azerbaijan, there are two bodies dealing in forensic analysis, one with the Ministry of Justice which deals with all except medical, and one with the Ministry of Health which deals with medical forensics. Currently forensic examination provides 22 types and 44 specializations in Azerbaijan. He also stated that the forensic research centre established in 1938 bought a lot of modern forensic equipment and expertise, and this centre not only did analysis but also research.

The participants from Bhutan stated that in Bhutan, except for simple fingerprint and document analysis, complex issues of forensic examination including DNA analysis, etc., are done in India and some other foreign countries, and autopsies are conducted rarely due to religious beliefs. They further stated that though the police stations are well equipped for lifting, labeling and packaging evidence and forensics-trained manpower, proper and well-equipped forensic laboratories are not available, and

155TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

there is a requirement of court order to obtain bank and financial records and phone records as provided by the code of procedure.

The participant from Brazil stated that in Brazil DNA examination is done, though it is very expensive, and they have developed a system for analyzing bank and financial records whereby a standard procedure for all banks to submit documents has been developed. He also stated that in Brazil there is no automated system of analyzing security cameras and there is no DNA database, though it is in the process of developing.

The participants from Maldives stated that in Maldives the Maldives Police Service has established a forensics department, including crime scene investigation, fingerprint development and comparison, digital-evidence analysis (mobile/computer), audio and video analysis, drug analysis, DNA analysis, document analysis and polygraph examinations. They also stated that no autopsies are done due to religious beliefs and the lack of legal framework. By law, it is obligatory for the banks to disclose information if requested in writing by the police.

The participant from Moldova stated that in Moldova no DNA analysis or voice recognition analysis is done. Such requests must be sent to other countries for analysis. Though there are experts, there is no equipment. There is also an absence of facilities from internet providers to track cyber-crimes, and old equipment is used for forensic scientific examination which is time consuming, and there are three forensic laboratories in Moldova.

The participants from Japan stated that in each prefecture, there is a forensic laboratory, and DNA and fingerprints are analyzed in these laboratories. For autopsies, in each prefecture, the body is sent to the medical-forensics laboratory for examination. In Japan, security cameras are set up at various places, and the videos from these cameras are collected by the police for analysis. Digital forensics is done by the forensics laboratories of police bureaus and some private companies. For bank transactions, there is no need to get warrants as the banks would give information just by referral by the police, but to obtain call histories, warrants from the courts are required. In the Japanese Coast Guard, there is a special division for analysis of oil, water and GPS.

(b) Challenges/problems faced

The participant from Azerbaijan stated that in Azerbaijan, there is no DNA database and no equipment for analyzing helicopter and airplane accidents. In Azerbaijan, there is a need of warrants for searches, seizures and analysis of evidence.

The participants from Bhutan stated that in Bhutan, most police stations around the country lack the latest scientific aids for investigation, and complex issues of forensic analysis are sent to India and other countries, which delays investigations. In Bhutan, there is a lack of proper and well-equipped forensics laboratories and limited tools or scientific aids to investigation for the investigators. The requirement by law to obtain court orders for the search, seizure and analysis of bank and financial records, phone records, etc., delays and hampers investigations.

The participant from Brazil stated that in Brazil a DNA database and analysis of security cameras should be developed. He further stated that wiretapping and detection of cyber-crimes is very difficult as there is no digital-forensics expertise or equipment and the forensic analysis of computer evidence takes very long. In Brazil, there is a lack of internet laws and regulation, and there is no national database of fingerprints. There are also no rules in cyber cafes, so it becomes difficult to identify who uses them; since there are no rules about mobile phone chips/sim cards, they could be misused by criminals.

The participants from Maldives stated that in Maldives, there is a lack of specialist training opportunities and limited budgets, and also admissibility of forensic evidence in courts is very difficult. In Maldives, the banks and communication authorities are reluctant to provide information, and the service providers are also very reluctant to provide information due to privacy issues, etc.; there are no laws mandating them to keep records. Security cameras are available but not maintained properly due to limited budgets.

The participant from Moldova stated that in Moldova modern forensic and scientific equipment including DNA analysis equipment and a DNA database need to be established, and special programmes to help investigation of financial and internet crimes also need to be developed.

The participants from Japan stated that in Japan there is only a limited number of samples for DNA databases, and though DNA is collected from crime scenes, for comparison, there is only limited data. In Japan, requirement of conditions for wiretapping is very strict. The domestic financial institutions are very cooperative in providing information on bank accounts but many transactions take place in overseas banks with hidden transactions so it is very difficult to get international assistance in investigation. In Japan, sometimes suspects are found not guilty because the investigators erroneously analyze, overestimate and present the objective evidence at court, so the police and prosecutors must develop analytical ability regarding such evidence. In the Japanese Coast Guard, there is a need to develop experts for forensic analysis.

C. Necessary Measures to Improve/Develop Investigation in Each Country

The necessary measures to improve/develop investigation in each country were recommended as follows:

1. All the participants agreed that it is necessary to develop a system for exchange of information regarding investigation, prosecution and adjudication of criminal cases between countries to be coordinated by an organization like UNAFEI.
2. All the participants agreed that there should be advocacy on interrogation and interviewing techniques, proper collection and handling of evidence and printing of guidelines to research the issues. Research institutes regarding interviewing/interrogation techniques should be established in each country for all investigation agencies. The countries should develop guidebooks with minimum requirements for interviewing/interrogation techniques, and publish a series meant exclusively for investigators with specific cases for sharing of experiences with law enforcement agencies.
3. All the participants agreed to establishing a well-equipped separate room in each police office for interviewing/interrogation, and to establish a practice for assistance during interview/interrogation by psychologists or more experienced investigators.
4. The majority of the participants agreed to considering the development of witness/victim/accomplice protection programmes and funding for such programmes to be managed by a specific and specialized Governmental agency or department. There should be development of a legal framework relating to witnesses, victims and accomplices, and easier procedures to change the names.
5. All the participants agreed that the plea bargaining system should be considered in countries, where possible, due to its advantages.
6. The participants agreed on establishing the position of “assistants for investigators” to assist in investigative techniques where such a system is not in place.
7. All the participants agreed on formulating legal provisions and procedures for dealing with internet issues regarding handling of evidence and cooperation from the service providers.
8. All the participants agreed on considering the audio- and video-recording system relating to oral statements during criminal investigation, whenever necessary, especially in serious crimes.
9. The majority of the participants agreed to consider providing more powers of investigation to the prosecutors in certain cases, especially when the police may not investigate independently.
10. All participants agreed to consider cooperation with private companies to develop digital forensic analysis, such as the Japanese model, through a legal framework.

155TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

11. All the participants agreed on establishing an inclusive approach between the police and the prosecution to achieve better results for investigation and prosecution of cases, and the investigating officer and prosecutor should work as a team.
12. All the participants agreed on considering wider institutional opportunities in capacity building for the stakeholders involved in the criminal justice system of countries for development of the respective institutions and staff. For instance, all new staff should have induction, formal monitoring and be assigned a line supervisor. The line supervisor should discuss development and performance issues with the member of staff in a formal way. Development should be periodically reviewed, and also prosecutors should be trained for trial.
13. The participants agreed on considering the preparation of witnesses, victims and accomplices in cases involving serious cases by the prosecution authorities prior to trial.
14. All the participants agreed that there should be enactment of relevant legislation to build a strong legal framework to investigate and prosecute cases to bring criminals to justice, especially the providing for the admissibility of confessions if obtained lawfully, in countries lacking such provisions.
15. The participants agreed on establishing a quality and comprehensive evidence storage facility to store, retain and utilize evidence effectively, in countries where it is lacking.
16. All the participants agreed on considering the development of techniques of interviewing/interrogation best suitable for the respective countries after considering models such as the PEACE model and the REID model.
17. The participants agreed that in countries where coercive interrogation still exists, a system where the burden of proof lies on the prosecutor with the use of video recording, medical and psychological examinations should be established.
18. All the participants agreed on the significance of creation and development of a national DNA and fingerprint database in their respective countries.
19. The participants agreed on reconsidering the obligations of the prosecutors to prosecute all the crimes by establishing a discretionary model.
20. The participants agreed on considering the disclosure of evidence during the investigation phase in some countries.
21. All the participants agreed on considering the need to establish a standard procedure for financial institutions to provide information for investigation purposes, as developed in Brazil.
22. The participants agreed to regulate and develop the analysis of security cameras installed in public places.
23. All the participants agreed on the need for more training for investigators concerning interviewing/interrogation techniques.
24. All the participants agreed on the need to secure funds and equipment from the developed nations and international organizations, and to provide various scientific aids to investigation to the all the police stations of the respective countries.

VI. CONCLUSION

The group thoroughly deliberated and discussed the current issues and problems of each participating country relating to effective collection and utilization of evidence in criminal cases. Following thorough discussions, the group developed certain recommendations and necessary measures to be

implemented in their respective countries for the development and improvement of the criminal justice system focusing mainly on investigation. However, it should be noted that the measures and the recommendations in this report should be adopted and implemented in the respective countries based on the necessity and suitability in their countries with the goal of ultimately achieving an effective and efficient criminal justice system.