

## **GROUP 2**

### **THE ROLE OF PROSECUTION IN THE SCREENING OF CRIMINAL CASES**

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#### **I. INTRODUCTION**

1. As an introduction, a few preliminary issues such as the definition of screening, the importance and necessity of screening and who conducts screening have to be considered.

##### **A. Definition**

2. No legal definition to the phrase “case screening” is found in any of the legal lexicons or any dictionaries that we referred to. Hence, for the purpose of this report, the group has decided to define the word to give it a meaning that can bring forth the practical realities behind the process of case screening.

3. Case screening connotes a series of procedural steps that have to be followed at different stages of a criminal case by any body, be it an executive or a judicial authority, to determine the fate of a criminal case. It is a sieving process followed by a decision as to whether to proceed with the criminal case in a court of law or whether it should be concluded by any other means such as composition, discharge, nolle prosequi, suspension of

prosecution, etc. In essence, this process is sine quo non to due process of law. According to Blacks Law Dictionary the definition of due process of law implies “the right of a person affected thereby to be present before a court or tribunal which pronounces judgement upon the question of life, liberty or property in its most comprehensive sense.”

##### **B. Necessity and Importance of Screening**

4. The importance and the necessity of having a system of case screening is manifold. First, the system will enable the competent authorities to properly marshal and vet the evidence of a case before referring it to a court of law. Consequently the authorities will be able to keep a tab on all trial cases pending before that court and to minimize the delay in disposing of such cases. Secondly, case screening is important in order to meet the ends of justice. A criminal case which has not been properly screened may result in having the wrong person being accused of a crime or the actual culprit being discharged from further proceedings. This would stultify

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the essence of due process of law. As a result of case screening, the harassment that an accused has to undergo by facing frivolous or vexatious cases would be obviated. Therefore, case screening essentially is a device adopted to preserve the quality of justice in any society. Thirdly, case screening also prevents overloading of the courts with trivial and unimportant cases. This would speed up the trial process, preserving the true quality of justice. Lastly, screening can resolve the problems of prison overcrowding.

### **C. Who Conducts Screening?**

**5.** According to various procedures adopted by different jurisdictions of the world, screening is done by different authorities at different stages of a case. In some countries where cases are tried exclusively by a magistrate court or a sessions court, the police is entrusted with the powers of screening. Sometimes, such screenings are subject to the scrutiny of the prosecution. In some jurisdictions, the court is also involved in this process. For example, where preliminary inquiry is recognized by law, case screening is being done by the presiding magistrate.

**6.** The role of a prosecutor in case screening is one of the most important duties entailed to his job. From the very inception of his career, he is required to master this method by properly studying all the case records and investigation records submitted to him for scrutiny and making determination as to whether the matter should be tried by a court of law or whether other means of disposing the case should be employed. In some countries like Kenya, Malaysia and Singapore, police officers are employed as prosecutors. For the purpose of this report, police prosecutors will be considered as part of the prosecution.

**7.** The intention of this report is to discuss “case screening” in detail. In addition, attention will also be paid to the problems relating to case screening and we would endeavor to find practical solutions to the problems relating to the subject. New suggestions to find safeguards to protect and preserve the case screening system will also be discussed herewith.

## **II. SCREENING BY THE POLICE<sup>1</sup>**

**8.** In addition to investigations, the police may in some instances screens cases.

### **A. Investigations and Screening**

**9.** In almost every criminal justice system, the police plays a leading role in the investigation of criminal cases. The respective legislation on criminal procedure lays down the police powers to receive reports from any aggrieved party, record statements from witnesses, visit scene of crime, collect exhibits, records the investigation diary, arrest, search and summons, etc. In most countries influenced by the civil law, the powers of investigation are also bestowed on the public prosecutors. However, the initial investigations are usually carried out by the police.

**10.** The way investigations is conducted by the police has an important effect on the quality of screening conducted by the police, prosecution and the court. In a screening process, the agency that conducts screening has to review all the evidence that has been gathered throughout the investigations. An assessment of the cases is made based on the available evidence. Therefore, to a large extent, the accuracy of screening will depend on how well the investigations have been conducted. If the investigations are lacking, the screening will be less accurate.

## **B. How Screening is Done**

**11.** There are two possible levels of screening by the police. The first level is at the initial stage when the first information report is received from any person, particularly the victim of the crime. The report is recorded in writing in the book maintained by the police for this purpose and the police reviews the evidence to determine whether any specific offence has been disclosed. If there is an offence disclosed, then the report is classified according to the specific section of the law. However, if there is no offence, the report may be closed and no further action is taken. Normally, screening at this stage is done by the senior officer at the police station or the officer in charge of the police station. This form of case screening is found in most countries.

**12.** The second level of screening occurs at a later stage practiced in several countries, which are influenced by the common law system. A report that discloses a specific criminal offence is referred to the investigation officer, who will take the appropriate action to investigate the case with the ultimate aim of solving it and arresting the offender. On completion of the investigations, he will submit his investigation report to his superior officers, who are experienced investigators themselves having served many years as investigators. The latter will peruse the report to determine whether or not there is sufficient evidence to substantiate the ingredients of the charge relating to the alleged offence committed by the offender. If there is a need to obtain further evidence or when further clarification is required, the report is returned to the investigation officer with the appropriate instructions to do so. If by then a suspect is under custody, he may be released on police bail or produced in the court for order of remand to facilitate further investigation by the police. If the investigation officer still

cannot obtain any further evidence to supplement the earlier evidence he collected and that the earlier evidence collected is too weak to substantiate the charge, the police may then decide to close the case. In some countries, this applies to minor offences<sup>2</sup>.

**13.** In some countries, for minor cases, the police will refer to the cases to court for trial after screening. However, if the police is doubtful as to whether the action of closing the case is a correct one or not, it may also seek the advice of the public prosecutor for direction<sup>3</sup>. In screening cases, the police normally considers the statements of witnesses and the accused, the documents including the expert reports and the investigation diary. An experienced officer will be able to detect whether the investigation officer has fabricated the evidence or not. This could be done by verifying the investigation diary of the investigation officer with that of his official diary or pocket book.

**14.** The police in most countries influenced by the civil law system such as Costa Rica, Laos, the Philippines and Thailand, does not screen cases at the second level. In Japan, there is a system of disposition of trivial cases by the police committed by adult offenders. These offences include theft, fraud or embezzlement involving a small amount of money. Instead of referring the case to the prosecution, the police will submit monthly reports. In the Republic of Korea, for offences punishable with imprisonment of less than 30 days or a fine of less than 200,000 won, the police may, after investigations, send the case directly to the court for trial.

## **C. Evidentiary Standard**

**15.** From the deliberation in our group workshop, it is found that in most countries where the police decides to submit a charge to the court, the evidentiary standard of

proof required is “prima facie” or “reasonable prospect of securing the conviction”<sup>4</sup>.

#### **D. Relations with the Prosecution and The Court**

**16.** In general, the police maintains a good and close relationship with the prosecution. The prosecutor is the friend and counselor of the police and will always be considered in that spirit. In addition to specific cases in which the laws requires the police to report to the prosecution, all other unusual cases and legal problems which present difficulty and require legal advice will be referred to the prosecution. The latter will willingly assist the police at all times and at all stages of the investigation. As regards the courts, the role of the police in screening cases will ensure that the courts are not clogged with unnecessary and trivial cases.

### **III. SCREENING BY THE COURT**

**17.** In some jurisdictions, the court screens cases prior to the actual hearing. However, in some other countries such as Cameroon, China, Costa Rica, India, Indonesia, Japan, Laos, Malaysia, Maldives, Nepal, Pakistan and the Republic of Korea, the court does not perform such a function. Screening by the court can be done in the following ways:

#### **A. Preliminary Inquiry or Hearing**

**18.** A “Preliminary Inquiry” is a hearing held prior to trial during which the state is required to produce sufficient evidence to establish that there is probable cause to believe that a crime has been committed and that defendant committed it<sup>5</sup>.

**19.** The presiding magistrate performs the function of screening<sup>6</sup>. Its function is not to decide on the guilt of the defendant. Hence, a different degree of proof or quality of evidence from indictment or conviction at trial is required. Preliminary inquiry

or hearing by the court is observed in Ghana, Kenya, Singapore, Sri Lanka and Thailand. The majority of these countries conduct such proceedings to determine whether there is sufficient evidence to proceed with the trial or refer or commit the case to the High Courts for trial. For some of these countries, the purpose is to determine the truth or falsehood of the complaint against the offender.

**20.** The quantum of evidence to attain such objectives differs also in these countries. In some countries, the standard of prima facie is used, whilst in others, it is less than the proof of beyond reasonable doubt. In Kenya, Subordinate Courts conduct a preliminary inquiry in murder and treason only. For Ghana, a preliminary hearing is conducted by a community tribunal consisting of a judge and two lay persons in cases punishable by death and in first-degree felonies. Singapore and Sri Lanka limit such inquires to cases that are triable by the High Court such as murder, trafficking in drugs and rape. In Thailand, a preliminary hearing is, in practice, conducted only for private and not public prosecution.

**21.** The mechanics of the proceeding also vary in these countries because in some, it is akin to a trial whereby the prosecution and the defense present their evidence in support of their cause. In others, it is summary in nature because no evidence is presented by the contending parties and the court merely relies on the documents submitted by the police, the investigating officer or the prosecution. In some countries, a mere request to the magistrate for the transmittal of the case to the High Court will suffice.

**B. Summary Proceedings<sup>7</sup>**

**22.** Another form of screening by the court is the so-called “Summary Proceedings” which is practiced in Sri Lanka. These proceedings are not actual trials. During this process, the Magistrate Court examines the complaint filed by the police, the investigating officer or the private complainant. It will then determine for itself whether or not there are well-founded allegations to proceed with the trial of the person complained of. If there is none, the Magistrate Court will dismiss the case. Otherwise, it will issue a summon to the accused for him to answer the charge. The magistrate also drafts the charge against the accused.

**C. Pre-trial Conference<sup>8</sup>**

**23.** In Philippines, the court conducts screening by way of pre-trial conference. This is conducted before trial to consider the possibility of a plea bargain, the stipulation of facts, the marking for identification of evidence by the parties, the waiver of objections to admissibility of evidence and such other matters as will promote a fair and expeditious trial<sup>9</sup>.

**24.** One of the purposes of such conference is plea bargaining, which is the process whereby the accused and the prosecution in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the grave charge. It takes place when an Information (charge sheet or bill of indictment in other countries) is already filed in court and the accused had already been arraigned (reading of the Information to the accused and asking him how he pleads). If he pleads not guilty, the case shall be then set for pre-trial conference where the possibility of plea bargaining may be

discussed. However, the conduct of a pre-trial conference is not mandatory because it may be held only by the court when the accused and his counsel agree. Should the accused opt to plead guilty to a lesser offense during the pre-trial conference, the approval of the prosecutor and the victim or offended party must also be sought before the court approves the same<sup>10</sup>.

**D. Plea Bargaining Proceedings<sup>11</sup>**

**25.** In Sri Lanka, there is a plea bargaining system where the prosecution and the defense discuss the possibility of the accused pleading guilty to a lesser offense. The approval of the court is required. However, unlike in the Philippines where the matter is discussed during the pre-trial stage, in Sri Lanka it is taken up before or even during the trial where the prosecution and defense can compromise on this aspect.

**IV. SCREENING BY THE PROSECUTION**

**26.** In various legal systems, like in Costa Rica, Indonesia, Japan, Laos, Maldives and the Republic of Korea, public prosecutors monopolize public prosecution. In other words, only public prosecutors can bring the case to the court. In China and Thailand, although public prosecutors can initiate prosecution, private prosecution by the injured party is also allowed. However, in reality, private prosecution in those countries is very limited.

**27.** It is noted that in countries influenced by the common law system like Ghana, India, Kenya, Malaysia, Singapore and Zambia, police prosecutors can prosecute cases. However, they are generally limited to less serious cases. While prosecuting, a police officer is acting as the representative of the Attorney General or the Director of Public Prosecution. In his capacity as a prosecutor, he is subject to the directions of the Attorney General or the Director of Public Prosecution.

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**28.** Usually, in screening cases, the prosecution decides whether to prosecute based on the sufficiency of evidence. Additionally, it may exercise discretion to withdraw the prosecution or suspend prosecution, to do plea bargaining, or to proceed the case through summary proceedings for the interest of justice. According to the United Nations Guidelines on the Role of Prosecutors, the prosecutors must not commence and proceed with prosecution if there is no basis to frame the charge and in setting aside cases, the prosecutors must fully appreciate the rights of the suspects and also the victims.

**A. Evidentiary Standard for  
Initiation of Prosecution**

**29.** Generally, in all countries, one of significant functions of the prosecution is to make either a prosecution order against alleged offenders or a non-prosecution order. It is widely accepted that an innocent person should not be tried in court. Nonetheless, the evidentiary standard for initiation of a criminal trial varies from country to country. From the analysis of the group, it was found that different terminology, such as “prima facie” and “probable cause”, was used to describe the different evidentiary standards. However, the same term can be used to describe different standards; for example, “prima facie” can mean less than a 50 percent chance of conviction in some countries but more than a 50 percent in others. Therefore, to analyze the level of proof, the group will endeavor to use percentages to explain the standard, which is only an estimation.

**30.** In countries like, India, Pakistan, Kenya, Malaysia, Pakistan and Sri Lanka, the evidentiary standard is prima facie. Nonetheless, based on the analysis of the group, it is interpreted that the standard for a prima facie case in those countries varies from a 50 percent to 60 percent

certainty of guilt. In Singapore, the prosecution must be satisfied that there is reasonable prospect of securing a conviction before referring the case to the court for trial. This is more than a 50 percent possible proof of guilt<sup>12</sup>. In Costa Rica, a balance of probability of guilt or more than a 50 percent certainty of guilt obtained from the investigation is enough to send a case to trial. In Philippines, the evidentiary standard for the charge according to the law is also probable cause which is defined roughly as a 40 to 50 percent possibility of guilt. In Thailand, there is no written law identifying the evidentiary standard for the charge. In practice, the prosecution normally applies probable cause as a standard in prosecution. However, such standard, in practice, as opposed to the standard in the Philippines, accounts for more than a 70 percent prospect of a guilty verdict. In Sri Lanka, about 10 percent of the cases are closed at this stage for this reason.

**31.** In China, Indonesia, Japan and the Republic of Korea, the laws do not clearly mention the evidentiary standard. In practice, the standard is similar to the court in rendering a guilty verdict, which is beyond a reasonable doubt. In Japan, the percentage of cases closed by prosecution for insufficiency of the evidence was 1.2 percent in 1996<sup>13</sup>. In the Republic of Korea, the percentage of cases closed at this stage for the same reason was 10.1 percent in 1994<sup>14</sup>.

**32.** The group has found that the difference in the standard used can be attributed to several reasons such as social, political and cultural differences, including the influence of the different legal systems. For example, one factor may be whether the prosecution is vested with the powers of investigations. In Japan and the Republic of Korea where a high standard of proof is used, the prosecution can conduct

investigations, including interviewing witnesses and the accused person. The prosecution can, therefore, decide whether to proceed with the cases based on additional facts and circumstances such as the veracity of the witnesses. Consequently, the standard used is higher than in countries where prosecution is not vested with the powers of investigations. In such instances, the prosecution cannot determine the strength of the evidence through investigations. The only way is to refer cases to court to have the evidence tested in a trial. More cases are sent to court for adjudication as such.

**B. Withdrawal of Prosecution**

**33.** From our comparative study, the extent of discretionary power exercised by prosecution differs from one state to another. In some countries like Costa Rica, Laos and the Philippines, the initiation of criminal trial is compulsory if there exists sufficient evidence to prove that the offender is guilty to the court. In these countries, the prosecution does not have the discretionary power to withdraw or discontinue the prosecution. In Indonesia, the prosecution is obliged to prosecute regardless of whether the case is minor or serious. One exception is that the Attorney General of Indonesia himself can exercise the discretion not to prosecute. In practice, this discretion is rarely exercised.

**34.** On the other hand, in various legal systems, the prosecution can be withdrawn even if there is sufficient evidence to proceed for trial. For the purpose of this report, the phrase “withdrawal of prosecution” is defined as:

Any screening process where case is withdrawn by the prosecution before filing the charges or during trial even if there is sufficient evidence to prove the criminal guilt in view of the circumstances of the case.

**35.** It will include the notion of “Suspension of Prosecution”, which is uniquely used in Japan and the Republic of Korea, discontinuance of prosecution as practiced in some countries and *nolle prosequi*.

**1. Suspension of Prosecution**

**36.** In Japan, a system known as “Suspension of Prosecution” exists. The prosecution in Japan has general and vast discretion to decide whether to prosecute suspects. If after considering the character, age and situation of the offender, the gravity of the offense, the circumstances under which the offense was committed, and the conditions subsequent to the commission of the offense, prosecution is deemed unnecessary, the prosecution may decide to suspend the case. This practice is consistent with the “Expediency” or “Opportunity” principle. The percentage of cases closed by the system is 30.9 percent or relatively one-third of all cases in 1996.<sup>15</sup>

**37.** Likewise, in the Republic of Korea, the prosecution may decide not to prosecute if the criminal trial does not accord public interest or is against the public morals or order or affects national security or important national interests after taking into account the suspect’s age, character, pattern of behavior, intelligence, circumstance, relationship to the victim, motive, and method for committing the crime, results and circumstances after the crime. In 1994, 10.8 percent of the total cases were dropped by the public prosecutors<sup>16</sup>. Moreover, the Republic of Korea has two particular systems concerning the suspension of prosecution:

**a) Suspension of prosecution: Decision for juvenile offenders on the “Fatherly Guidance Condition”**

**38.** Prosecution is suspended on the condition that the offender, who is under

the age of 18, is subject to the protection and guidance of a member of the Crime Prevention Volunteers Committee. This is for a period of 6 to 12 months after the decision, depending on the possibility of committing a crime again in the future. To make this decision, the prosecution will select the person to protect the offender among the members to the Crime Prevention Volunteers Committee. The prosecution then hands in a referral document to the person and receives from that person a certificate stating that he or she has received the custody of the offender and would bear the responsibility of protecting and guiding the offender. If the offender does not comply with the volunteer's guidance or commits another crime, the prosecution may remand the suspension of prosecution decision and prosecute the offender.

**b) Suspension of prosecution:  
Decision on the "Protection  
and Surveillance Committee  
Guidance Condition"**

**39.** This is for adult offenders who need protection and guidance by experts for a period of 6 to 12 months, depending upon the possibility of the offenders committing another crime in the future. The prosecution entrusts the offender to a member of the Protection and Surveillance Committee. The offender is subject to the protection and guidance of the committee.

**40.** The discretionary authority of the prosecution in Japan and the Republic of Korea has proven to be a very useful means in the correction of criminals, the protection of society, alleviating the case loads of the court and preventing the overpopulation of prisons. It has been widely accepted among criminal justice agencies and the public.

**2. Discontinuance of Prosecution  
or Non-prosecution**

**41.** In various legal systems such as China, Maldives, Singapore and Thailand, the prosecution can withdraw prosecution even if there is sufficient evidence to prove the case. In other words, there is no mandatory prosecution in those countries. However, the detailed practice relating to this process still differs from one country to another. The number of cases in Singapore where the prosecution withdraws prosecution is small. Most of them are petty or minor cases. Likewise, in Maldives the cases are limited. In Maldives, the Attorney General can withdraw prosecution after writing to the office of the President and on his approval. In Thailand, according to the internal regulation of the Office of the Attorney General, the prosecution must refer the case to the Attorney General for further consideration as to whether prosecution should be withdrawn. However, in Thailand, this is rarely done. In China, non-prosecution is allowed in cases where the circumstances of offence are minor.

**3. Nolle Prosequi**

**42.** In some countries like Ghana, Kenya and Sri Lanka, there is power exercisable by the Attorney General to discontinue the case from trial at any stage after indictment and before judgment which is technically known as nolle prosequi. In general, it can only be exercised under the direction of the Attorney General. In these countries, there is no obligation for the Attorney General to mention any reason. However, it is exercised only when the interest of justice and state demands recourse to such action.

**43.** The grounds for discontinuance or withdrawal of proceedings are varied and may include the following circumstances:

- (1) Additional evidence found later proving the innocence of the defendant;
- (2) Amnesty or pardon;
- (3) False implication of accused person as a result of political and personal vendetta;
- (4) Adverse effects that the continuation of prosecution will bring on public interest in the light of changed situation; and
- (5) Unavailability of a prosecution witness.

### **C. Plea Bargaining**

**44.** In most countries, plea bargaining is not practiced. However, in Malaysia, the Philippines, Singapore, Sri Lanka and Zambia, plea bargaining is an acceptable practice. In Sri Lanka and the Philippines, plea bargaining is subject to the approval of the court as seen from the part of screening of cases by the court. On the contrary, in Malaysia and Singapore, the prosecution has the full authority to decide on plea bargaining matters to avoid prejudicing the judge. Therefore plea bargaining is done solely between the prosecution and the defense, and it usually involves negotiations for a reduced number of charges and or an amendment to less serious charges in exchange for the guilty plea. However, it should be noted that, as compared to the practice in the United States, plea bargaining does not occur quite often in such countries.

### **D. Alternatives to Ordinary Trial Proceedings**

**45.** Besides ordinary trial proceedings, there exist some other alternatives as follows:

#### **1. Summary Proceedings**

**46.** Summary proceedings are proceedings whereby the court will usually impose only a fine on the accused as practiced in some countries such as Japan and the Republic of Korea. In such countries, the public prosecutors have the authority to decide whether to proceed the case to the court by summary proceedings or not<sup>17</sup>. Through such proceedings, ordinary trial is not proceeded. In summary proceedings, a single judge adjudicates the case based on documentary evidence. It is noteworthy that in Japan, only 4.7 percent of cases were tried by formal procedure whereas the percentage of summary procedure was approximately 49.2 percent in 1996<sup>18</sup>. Correspondingly, in the Republic of Korea, only 7.4 percent of cases were prosecuted for formal trial and 42.8 percent of cases was prosecuted for summary trial in 1994<sup>19</sup>.

#### **2. Imposition of Fines by the Police or Other Administrative Officials**

**47.** The method whereby the case is settled outside the courtroom is applied in several countries such as China, Malaysia, Singapore, Sri Lanka and Thailand. In China, a public security organ may impose a penalty, that is a warning, a fine from one to 200 yuan and detention from 1 to 15 days, for petty offences as a final disposition. In Malaysia, Singapore and Sri Lanka, for minor cases such as traffic offences, the police or other administrative agencies will issue a summons to the offender who has committed the offence. The offender is informed that he is being offered a composition fine. If he pays the fine within a certain period, the offense is considered settled. Correspondingly, in Thailand, for trivial offenses punishable with only with a fine and offenses punishable with a maximum of one month's imprisonment or a small fine, the police can impose fines on the offenders. In cases where the accused does not agree with the

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imposed fine, the cases will be prosecuted in the court as ordinary cases.

**E. Relation with the Police**

**48.** In most countries, the prosecution is vested with the power to require additional investigation from the police before making any decision on the case. The police is obliged to follow the prosecution's instructions regarding further investigation to be completed. In general, the police is cooperative to such directions.

**49.** In most jurisdictions, the screening authority of the prosecution is ultimate. As a result, the police can not contest it. However, there are some exceptions in a few countries. For example, in Thailand, the Chief of the Police Department can balance the power of prosecution regarding the non-prosecution order for cases occurring in Metropolitan Bangkok. This non-prosecution order, if not issued by the Attorney General himself, is not final unless concurred by the Director-General of Police. If he disagrees with the order, the case will finally be reviewed by the Attorney General and, therefore, his order, whether or not to prosecute, will be final. In Indonesia, if the investigator stops investigation, he shall inform the public prosecutor; likewise, if the prosecutor stops prosecution he shall inform the investigator. In India, if there is a conflict of opinions between the investigating officer and the prosecution as to the viability of prosecution, the ultimate decision whether to send a case for trial lies with the police authority which is the District Superintendent of Police.

**V. PROBLEMS IN SCREENING**

**50.** There are several factors, which can affect the screening process. Some of these factors can cause a decrease in the number of cases screened, resulting in an increase in the number of cases that are proceeded

with in court. The net effect is an increase in the number of cases the court has to handle. This has overloaded the courts in some countries. The conviction rate may also be lower as a less stringent standard of proof is used in the screening process.

**51.** Excessive screening may result in fewer cases. This means that less cases are proceeded with to court for adjudication as the evidentiary standard used in the screening process is very high. The net effect may be that the conviction rate is unusually high.

**52.** It is important to note that these effects may not be considered a problem in a country if the people of that country do not perceive it as a problem.

**53.** For ease of discussion, the group has divided the problems into two categories: general problems and specific problems. In the former, all three components can be affected. In the latter category, these problems are specific to each component.

**A. General Problems**

**54.** The following are some of the general problems relating to screening for the police, the prosecution and the court:

**1. Manpower and Management of Workforce**

**55.** In some countries such as Laos and Sri Lanka, there are insufficient police officers to handle investigations. This could be due to several reasons; for example, in some countries, there is low motivation in the police force as there is a lack of incentives for officers to work. There are also problems with recruitment as not many people are interested in joining the police force. Sometimes, even if the manpower is sufficient, the organization of the personnel is ineffectively managed. Such problems affecting investigations can also hamper the proper screening of cases. A result of

such problems is to cause less screening. Some countries face another related problem: police officers that are already experienced in investigations are transferred to another department. This can create a depletion in the pool of competent investigating officers, which is very often hard to replace.

**56.** This problem affecting the police can also affect prosecution. In some countries, prosecution is viewed as a difficult job and hence, a lot of very competent graduates are shying away from the profession. Furthermore, in most jurisdictions, working as a private attorney in the private sector yields more returns. Therefore, some countries are experiencing a loss of bright young talents to the private sectors, resulting in an unbalance in the quality of the workforce. This can affect effective and accurate screening.

## **2. Facilities and Support**

**57.** Several developing countries face problems relating to technical support and facilities, such as the availability of computers. These are essential requirements for the efficient disposition of cases, including the sieving of the evidence and correct decision-making. Undeserving cases or cases with weak evidence may be proceeded with in court for trial due to the lack of such facilities. For example, the police or the prosecutor may be unable to determine the antecedents of the accused due to the lack of facilities and, therefore, be unable to decide properly whether to bring the case to court.

**58.** It is essential for the police, the prosecution and the court to be updated with the latest legal developments, whether it is case law or a new enactment by the legislature. In some countries, legal materials such as such books and periodicals are not accessible as facilities

are lacking. As a consequence, there may be less or inaccurate screening.

## **3. Abuse of Powers**

**59.** Perhaps the greatest problem is the abuse of powers which can affect the fair and equitable screening of cases. This possibility exists whenever any agency is given the discretion to decide on such matters. In particular, problems such as corruption can also disrupt the screening process. In most jurisdictions, there have been incidents where police officers and prosecutors have been charged with corruption. The prevalence of such incidents will vary from one country to another, depending on factors such as whether the officers are satisfied with the salary and other incentives that their jobs provide. It also appears that corruption occurs quite often in offences where the public officers and the accused have direct dealings. There are also cases where the fabrication of evidence has occurred; for example, drugs were placed in an accused's bag to secure a conviction. Hence, this problem can result in both excessive screening as well as less screening.

## **B. Specific Problems**

**60.** The group has identified several problems affecting screening. Specifically, they are:

### **1. The Police**

**61.** The primary role of the police is to investigate. Hence, the problems in screening for the police will inevitably relate to the investigation process. These are:

#### **a) Education**

**62.** Generally, in most countries, the educational requirements for the recruitment of police officers into the police organization are less stringent than the prosecution. Unlike the prosecution, there

is also no requirement that they be law graduates. During investigations, the police officer in charge has to know the legal requirements for the particular offence which he is investigating so that important evidence is gathered and not missed. This is especially important for the screening process by the police where it has to decide whether to recommend suspension of sentence as in some countries<sup>20</sup>. Without adequate training in the law, the screening process is likely to be hampered.

**b) Political influence**

**63.** The duty of the police is to maintain law and order in the country. To ensure strong and effective command and control, it is necessary that the police be a part of the executive. Hence, in most countries, the police is the executive arm of the government. Because of this, the likelihood of political influence from the executive is higher as compared to a body that is independent of the executive<sup>21</sup>. The screening of cases can be affected to some extent.

**2. The Court**

**64.** Similar problems that affect the police and the prosecution may also affect the courts in screening. These will include lack of technical expertise, logistics and legal training.

**65.** Other specific problems that affect the role of the court in screening are as follows:

**a) Problems relating to preliminary inquiry**

**66.** In some countries influenced by the common law system, the courts screen cases by preliminary inquiry. However, there are several problems accompanying the use of preliminary inquiry:

**(i) Inordinate Delay**

**67.** Having another inquiry prior to the trial proper can cause unnecessary delay, since the inquiry is often a duplication of the trial itself. In Sri Lanka, the need to conduct preliminary inquiry for some cases has caused significant delay amounting to about one and a half years. Hence, preliminary inquiry can slow down tremendously the whole judicial process.

**(ii) Duplication**

**68.** Related to the above point is that preliminary inquiry creates a lot of unnecessary work, which is a duplication to the trial. This problem is compounded by the fact that in most cases, the accused will be committed for trial in the High Court in any case.

**(iii) Unfair advantage to the defense**

**69.** In a preliminary inquiry, the prosecution is expected to reveal a lot of information regarding the case against the accused. However, the accused need not reveal his defense at that stage. In fact, in certain countries, he is allowed to remain silent. Hence, there is some unfair advantage to the accused.

**(iv) No avenue for appeal**

**70.** In some countries, the decision of the judge not to refer the case for trial cannot be appealed or reviewed. This means that the aggrieved party does not have any avenue to lodge his complaint.

**b) Problems relating to Summary Proceedings**

**71.** In Sri Lanka, the Magistrate Courts utilize summary proceedings as a way to screen cases. The Magistrate Courts have to determine the appropriate charges that can be preferred against the accused based on the facts that are revealed in the proceedings. The problems relating to the use of such proceedings are:

**(i) Overloading**

72. In addition to the cases that the Magistrate's Courts have to handle, they have to deal with cases referred to them in the summary proceedings. This overburdens the courts and creates unnecessary delays.

**(ii) Duplication**

73. Ordinarily, in such proceedings, the police will assist the Magistrate's Courts in drafting charges. The court then decides on the charges based on these draft charges. This is a duplication of the work.

**(iii) Mere formalities**

74. The Magistrate's Courts usually will adopt the charges that have been drafted by the police. Hence, having such proceedings to determine the charges is in fact unnecessary.

**(iv) Prejudice**

75. If the magistrate is of the view that the case should be proceeded with for trial, the same magistrate will also hear the case. This means that the magistrate may be prejudiced by the previous knowledge of the case.

**3. The Prosecution**

76. The prosecution in most countries is tasked with the responsibility of examining the evidence gathered to support the charge. It is also involved in the screening cases to determine whether the cases should be proceeded with in court for trial. The problems relating to this screening process are as follows:

**a) Knowledge in other fields**

77. With an increase in the sophistication of the crimes being committed, the prosecution very often are expected to screen cases which are very complex in nature. Some of these cases may require very specialized fields of knowledge such as money laundering, international crimes

and computer crimes. Even with the legal training prosecutors received in law school, it is impossible to be trained in every legal and non-legal field. Hence, a lack of knowledge due to insufficient training in these areas may result in less screening. Although this affects both the police and the prosecution, this problem is perhaps more serious for the prosecution as it has a supervisory role over the police.

**b) Investigative skills and expertise**

78. Prosecutors in countries which have been influenced by the common law system are not vested with the powers of investigation. As such, in countries such as Singapore, Sri Lanka and Thailand, the prosecutors can only depend on the police's files in coming to a decision whether to prosecute or not. If the evidence of the case is not accurately reflected, this can influence the decision-making process. In addition, an understanding of the investigation process is essential to the making of a proper and accurate decision, especially if the prosecution does not investigate the case personally. Therefore, it is important for prosecutors to be familiar with the investigation process in order to properly exercise the powers of discretion in the screening. Being handicapped in this area may affect the screening process.

**c) Coordination with police**

79. For the efficient disposition of cases by the prosecution, the prosecutors have to maintain a close working relationship with the police to ensure proper coordination. This is especially important in countries where the powers of investigation are only vested in the police and not the prosecution. In some counties, investigation papers are often not sent on time to the prosecutor's office. If there is insufficient time to screen, the prosecutors can either suspend the case or conduct a cursory examination of the evidence before sending the file for

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prosecution in court. This can result in both an increase or decrease in screening. Having mentioned that there should be a close liaison between the police and the prosecution, there can also be problems if both these agencies become too familiar with each other. Too much familiarity may cause a lack of objectivity in the role of the prosecution in supervising the investigations and screening conducted by the police.

**d) Problems relating to the extent of discretionary powers**

**80.** Although prosecution has to possess some discretion to screen cases, the issue is the degree. The problem is that the more extensive discretion, the easier it is for errant prosecutors to abuse their discretion. The number of cases screened may either be increased or decreased in such a situation.

**81.** On the other hand, having a system of compulsory prosecution also poses some problems. In such a system, cases are referred to courts even if there are very strong mitigating factors to warrant the cases to be dealt with differently; for example, the accused is a first offender, the gravity of the offence is not serious or the accused expresses remorse over his misdeed. As a result, for some countries, the courts are clogged with cases that are trivial. Hence, precious court time, which could have been used more productively, is wasted in dealing with these cases. In addition, the prisons are overcrowded as a result.

**e) Political influence**

**82.** Prosecution in most countries is part of the executive branch of the government. Therefore, like the police, the prosecution can be influenced by political pressure not to prosecute even if there is sufficient evidence against the accused or vice versa.

For example, a high-ranking political figure is charged for a crime and pressure may be put on the prosecutor to discontinue the case. This problem can affect any jurisdiction regardless of whether the country practices withdrawal of prosecution or not. The prosecution may be pressured to continue or discontinue the case on the basis of insufficiency of evidence or withdrawal of prosecution. Such external influences can either cause an increase or decrease in the number of cases being screened.

**f) Police prosecutors**

**83.** In some countries, police prosecutors are law graduates. However, in some other jurisdictions, they are not. For the latter, this may cause problems as screening a case to determine whether there is sufficiency of evidence requires a good knowledge of the law. In some jurisdictions, the promotion of police prosecutors depends on the police force. As a result, the exercise of their discretion could be unconsciously hampered in favor of the police. As a consequence, there will either be an increase or decrease in the amount of screening conducted by the prosecution.

**g) Problems relating to private prosecution**

**84.** In countries such as Indonesia, Japan and the Republic of Korea, the prosecution monopolizes prosecution; i.e., only prosecutors can bring a criminal case to the courts. On the other hand, in some jurisdictions such as Kenya, Singapore and Thailand, there is a system of private prosecution. In these proceedings, the injured parties bring criminal cases to the courts themselves. In some countries, private prosecution is restricted to certain offences, primarily those that violate private rights, such as defamation or petty bodily injuries. Elsewhere, the right of private prosecution may be exercised only

when the prosecution waives prosecution in a case due lack of public interest or insufficiency of evidence. In such cases where the prosecution has little or no actual control over the proceedings, screenings are lacking as compared to cases where the prosecution undertakes the prosecution on its own. There may be less screening.

## VI. SAFEGUARDS AND RECOMMENDATIONS

**85.** From the above analysis, it is clear that some of these problems are common to all three components of the criminal justice system. These are:

- (1) lack of requisite knowledge and qualifications;
- (2) lack of technical facilities and support; and
- (3) manpower and personnel problems

**86.** For lack of knowledge and qualifications, there could be improvement in training in the required fields. The qualifications of recruitment either to the police force or prosecution can also be increased. Facilities can also be improved. For example, in some countries where the use of computers is highly encouraged, latest case updates can be obtained very easily with the use of advanced search tools in computers. Manpower and personnel issues can be resolved by proper management of the workforce and increasing productivity.

**87.** For problems in relation to external influence and abuse of powers, one important safeguard is having honorable officers of high integrity. Hence, there is a need to consider these factors during the recruitment process. Regular ethics courses could also be conducted as part of the continuous legal training of the police and the prosecution.

**88.** The other specific safeguards and recommendations are as follows:

### A. The Police

**89.** There are several ways to provide safeguards for screening by the police.

#### 1. Supervision by the Prosecution

**90.** In several countries, the prosecution has a supervisory role over the police. The police can refer the case to the prosecution if the police wants to seek the advice of the prosecutors regarding difficult points of law. Sometimes, advice as regards further investigations is sought. In some jurisdictions like Maldives and Singapore, if the police wants to withdraw any case, the case has to be referred to the prosecution for concurrence. Therefore, for screening by the police, the prosecution can act as a check. This can further enhance the screening process.

#### 2. Improved Co-ordination with the Prosecution

**91.** The primary responsibility of the police is to investigate and to gather evidence for prosecution. One of the primary roles of the prosecution is to examine these evidence to determine whether prosecution should be proceeded. For effective screening, the prosecution and the police should maintain close ties with each other.

#### 3. Limit the Powers of Police in Screening Cases

**92.** In order to prevent possible abuses, there are two recommendations considered by the members of group. One of the recommendations is to abolish the powers of the police in screening cases<sup>22</sup>. The police in such a case has to refer all cases to the prosecution for the prosecutors to decide whether to proceed with the case. This is done in several countries like Costa Rica, Maldives and Thailand, where only the prosecutors have the power of screening. The other recommendation is to limit the

powers of the police in screening cases to some less serious offences. This has been done in some countries such as Malaysia.

## **B. The Court**

**93.** The opinion of the majority of the group is that the court should conduct the screening of cases. Screening by the court should not be abolished as it serves as an additional safeguard to the screening conducted by the police and the prosecution<sup>23</sup>. However, the group recommends enhancing the present screening proceedings. The safeguards and recommendations are:

### **1. Preliminary Inquiry**

**94.** From the foregoing, it is clear that there are problems relating to preliminary inquiry. However, there are also some advantages in that it can provide a sieve in screening undeserving cases. It also serves as an additional check by the courts on the prosecution and the police. Therefore, in order to overcome some of these problems, some members of the group recommend improvements to the existing procedures; for example, disallow cross-examination at the stage of the preliminary inquiry which is to be reserved for the proper trial. Preliminary inquiry can also be restricted to complicated or controversial cases where re-screening is required. Other members are of the view that the preliminary inquiry should be abolished<sup>24</sup>. This has been done in Malaysia. It is noted that in Sri Lanka, preliminary inquiry was abolished but revived again subsequently. The reasons are perhaps peculiar to the circumstances of the country.

### **2. Appeal and Judicial Review**

**95.** As a means of check on the powers of the courts to screen cases, there should be some provisions in law to allow for appeal and review to a higher court or body by the aggrieved party. For example, in Thailand,

appeal procedures are available for cases that are not referred to the court for trial.

## **3. Abolition of Screening by Magistrates in Summary Proceedings**

**96.** In Sri Lanka, there is a move to abolish the power of the magistrate to screen cases by way of summary proceedings. Another prosecutorial body coming under the supervision of the Attorney General will be vested with this power. This body will comprise law graduates.

## **C. The Prosecution**

### **1. Powers of Investigations**

**97.** In order to resolve the problems of the lack of investigative skills on the part of the prosecution, the prosecution could be vested with the powers of investigation as in Japan and the Republic of Korea. Alternatively, the prosecution could be allowed to investigate in some special cases. This is the position of China and Indonesia. This will enhance the ability of the prosecutors in screening cases as they can gain invaluable experience by understanding the investigation process. They can also supervise the legality of the investigations more effectively. In addition, if the prosecutor personally investigates, he need not depend merely on the files of the investigating officer to come to a decision. Hence, the screening by the prosecution is more accurate.

### **2. Security of Tenure**

**98.** As mentioned before, the prosecution to some extent is part of the executive arm of the government. However, in the execution of its duties, it has to uphold the rule of law and protect the public interest. In order to ensure that the office of the prosecution is independent, one recommendation is to provide security of tenure for the prosecutors. Having security of tenure means that prosecutors will have no fear in the exercise of the powers of

screening. The office of the Attorney General can be protected by having it entrenched in the constitution. This has been done in countries such as Singapore. Other than constitutional protection, the removal process could be made more difficult by legislation or regulations. In Japan, prosecutors can only be removed under the following circumstances:

- (1) voluntary resignation;
- (2) reaching retirement age;
- (3) found unsuitable for the position by the Public Prosecutors Qualifications Examinations Committee; and
- (4) disciplinary action.

**99.** In the Republic of Korea, prosecutors can be removed from office through an impeachment process initiated before the Constitutional Court or upon conviction of a crime punishable with imprisonment. In the Philippines, the removal of the public prosecutors rests with the President. However, in practice, they are not usually removed. In Thailand, public prosecutors usually hold office until they reach their retirement age of sixty. They can be removed by the Public Prosecutor Commission.

### **3. Checks and Control**

**100.** To prevent possible abuses during the screening of cases, there is a need to have some checks and control. There are two types of checks. One is external and the other is internal. External checks on the prosecution can include the following:

#### **a) Check by an independent body**

**101.** Abuses in the screening process could be taken up to an independent body that serves like an ombudsman. There are several examples in various countries. In Japan, if the prosecutor decides not to prosecute and the victim is not satisfied with this decision, the latter can appeal to the Prosecution Review Committee, which

consists of lay persons<sup>25</sup>. After the Committee receives the application, it will examine the case and return a verdict. If the Committee rules that the non-prosecution is not proper, the prosecution has to reconsider its original position. In the Republic of Korea, a constitutional petition may be made to the Constitutional Court if the decision of the prosecution amounts to a violation of fundamental rights. In the Philippines, the appeal is made directly to the Secretary of Justice as to the propriety of non-prosecution. If the decision of non-prosecution amounts to an abuse of discretion, the aggrieved party can file a complaint to a Tanodbayan who can sanction an erring public official. In China, there exists a Standing Committee of the People's Congress which can review cases if a complaint is made to the Committee. A system of a slightly different nature but similar in effect exists in the United States. A "Grand Jury," which consists of lay persons representing the community, decides whether a person should be indicted after listening to the evidence as presented by the prosecution. One of the functions of this system is to serve as a check on the prosecution's discretionary power.

#### **b) Media scrutiny**

**102.** The media plays a significant role in modern criminal justice administration. In reporting news about crimes, the media can create public interest and awareness which in turn serves as a check on the prosecution in the exercise of its discretion. Hence, as a result of media scrutiny, the prosecution is accountable to the public in its decision-making process. In addition, in Thailand, when there is a non-prosecution decision, the Attorney General as a policy will make available the reasons for non-prosecution to the media. This will ensure transparency. The group also holds the view that the media can protect the independence of the prosecution. However,

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there is a need to prevent sensationalisation by the media. The media should be responsible in its reporting of cases. In this respect, there are laws in some countries where the newspapers are prevented to report the names of the victims of sexual offences.

**c) Interdepartmental consultation**

**103.** Periodic interdepartmental consultation should be conducted among the institutions in the criminal justice administration. The aim is to develop policies and guidelines to minimize or eliminate interference or destruction as well as to monitor and evaluate the implementation of such policies and guidelines.

**d) Judicial action**

**104.** Another possible means of controlling the use of discretion is to utilize judicial proceedings. In Japan and the Republic of Korea, the codes of criminal procedure provide that if a prosecutor declines to prosecute an offender for an offence relating to the abuse of official power or for a violation against a citizen by a law enforcement officer, the complainant can request the court to re-examine the case and commit it for formal trial. If such request is granted, a private lawyer will be appointed by the court to exercise the prosecutor's function.

**e) Internal checks**

**105.** Internal checks can include the following:

**(i) Check by higher authority**

**106.** In most jurisdictions, there exist some form of internal control. Within the prosecution, there can be checks by superior officers. In Singapore and the Philippines, junior officers are required to obtain the concurrence and approval of

senior prosecutors in discontinuing cases. Dissatisfied complainants can also appeal to a competent High Public Prosecutor's Office or to the Attorney General for review. In Japan, the public prosecutor generally has to seek the approval of the senior public prosecutor on whether to proceed with prosecution or not. If the aggrieved party is still not satisfied, there is an additional check of appeal to a higher supervisory authority in the organizational structure. In the Republic of Korea, if the decision of non-prosecution by the District Public Prosecutor's Office is not satisfactory, there can be an appeal to the High Public Prosecutor's Office. There can also be a further appeal to the Supreme Public Prosecutor's Office. This system of appeal is similar to the appeal in courts. An appeal to the Constitutional Court is also possible as a final resort. In China, the non-prosecution order made by the People's Procuratorate is delivered to the public security organ, which can review the decision.

**(ii) Code of ethics**

**107.** Drawing up a set of ethics (code or regulation) for the prosecution stipulating the standards expected of the prosecution in the performance of its duties with the necessary sanctions for its implementation is highly recommended. Senior officers within the department can administer the sanctions.

**4. Enhance the Discretion to Withdraw Prosecution**

**108.** As discussed previously, it appears that if there is a system of withdrawal of prosecution, there is a greater chance for abuse. For example, in coming to a decision to withdraw prosecution even if there is sufficient evidence, it may be difficult to understand the reasons why the case was withdrawn. This means that the prosecution can consider factors not relevant. The group, however, does not

recommend abolition of withdrawal of prosecution for the following reasons:

- (1) Sometimes, bringing a case to court for prosecution may not be the best solution in the view of the circumstances of the case. These are minor offences or offences relating to young offenders. Withdrawing prosecution in these cases could give a chance to the offender to reform and reintegrate into society;
- (2) Without withdrawal of prosecution, all cases except those with weak or no evidence are referred to court. This would include minor cases such as the theft of small items of insignificant value. This will overload the court with unnecessary and trivial cases. In addition, this will increase the time frame for hearing cases; and
- (3) Having a system of withdrawal of prosecution can prevent the overcrowding of prisons. Before suspension of prosecution was introduced in 1884 in Japan, the prisons were overcrowded and a great amount of financial burden was caused to the government. This problem was resolved with the introduction of this system.

**109.** From the above analysis, it is clear that the benefits outweigh the possible abuses. In Costa Rica where withdrawal of prosecution is currently not practiced, a new legislation providing for suspension of prosecution will be in force in the near future<sup>26</sup>. In any case, abolishing withdrawal of prosecution may not prevent these abuses completely. The prosecution, if corrupt, can have the case withdrawn on the basis of no evidence even if there is in fact sufficient evidence to proceed with the trial. Hence, the group is of the view that the practice of withdrawal of prosecution should continue with the additional safeguard that all decisions of the

prosecutors be accompanied with reasons. The reasons should be documented so that if need be, the basis of withdrawal of prosecution can be made known to the victim or any other interested party. This will ensure transparency and accountability in the decision-making process.

### **5. Police Prosecutors**

**110.** In some countries where police prosecutors are not law graduates, there are steps to slowly reduce the number of police prosecutors. This to achieve 100 percent legally trained prosecutors. Additionally, it will also enhance the control of the prosecution. However, the group also recognizes the importance of the institution of police prosecutors in some jurisdictions and the need to preserve it. For these countries, it is recommended that in order to further enhance screening, police prosecutors should receive sufficient legal training, especially if they are not law graduates. The office of the police prosecution should also be independent from the police so that the discharge of its duty is not faltered by loyalty issues.

### **6. Private Prosecution**

**111.** The group is of the view that the system of private prosecution should be retained for two reasons. First, it can resolve the manpower problems affecting the prosecution. Secondly, private prosecution can be considered a safeguard; for example, when public prosecution is refused, the injured party can institute private prosecution. To resolve the problems of private prosecution, it is recommended that some improvements be made to the existing system. For example, in Thailand, all private prosecutions have to be screened by a preliminary inquiry. In such a case, the court can provide the screening which is lacking.

## VII. CONCLUSION

**112.** As discussed in this paper, case screening is a practice sine quo non to building up an effective criminal justice system in any society. It essentially helps to reduce the workload of a criminal court and consequently, prevents delay in the disposition of cases. The foregoing chapters have discussed, *inter alia*, the need and the importance of having a proper screening system, which authority should be vested with the power to carry out screening in a criminal case and a comparative analysis of the different systems of screenings. It is indubitable that the prosecution in many countries plays a very vital role in case screening. The prosecution is acting as a quasi-judicial entity, operating at an intermediate position between the executive and the courts. The prosecution with a proper legal background can decide best what cases should be brought for trial. At the same time, the prosecution is in the best position to decide what cases should be withheld from adjudication by the courts. Since the prosecution has a direct responsibility to a trial court, he is expected to carry out the screening carefully. That helps to save criticism and humiliation for bringing frivolous cases for trial. At the same time, in the eye of the public, he will be able to preserve his professional integrity. Moreover, this will help to keep a firm tab on the cases pending for trial before a court. Case load will be lessened. Public funds will not be wasted. Government's coffer will not be overburdened. The prisons will not be overcrowded. Consequently, justice will not only be done but seen to be done. Hence, it is the consensus of the group that the power of the prosecution in case screenings should be strengthened to enable the prosecution to discharge its duties more professionally, objectively, legally and independently. However, this should not be misapprehended as a

statement to undermine the importance of having the police and the court also involved in case screenings at different stages of a criminal case. After all, for screening, the most important component parts of the criminal justice system are the police, the prosecution and the court.

**113.** The final part of this report is devoted to consider the various problems and safeguards relating to case screening. In considering the nature of the problems relating to screening, what is easily discernible is that the problems in screening could be due to various reasons. Sometimes, these reasons are peculiar to a society. For instance, manpower problems, problems relating to lack of technical facilities, etc. could be directly attributable to the economic and social conditions of each society. In the circumstances, any move to eliminate these problems should be considered in the backdrop of the economic development of a society.

**114.** However, some other major ethical and moral problems also have serious impact on case screening. For instance, the non-availability of constitutional safeguards providing an independent position to the authorities involved in case screening and the possibility of having some room for political or extraneous influences on case screening authorities, etc. are viewed as serious problems by the group. It is the consensus of the group that these problems can be resolved by making a firm joint commitment by a society to fight these social evils. One effective way of achieving this goal will be by introducing firm legal safeguards and entrenched clauses to the constitution to protect and nurture the case screening authorities. It is important to acknowledge sincerely these problems are not stemming out of basic social problems. Therefore, we believe that each society and all governments should find out the safeguards and

recommendations to make it possible. These matters are discussed in the paper. Of course, they are neither perfect nor consummate the whole issue fully. However, we hope that they may be of some help to find some realistic measures establish effective criminal justice systems in the global village.

### ENDNOTES

- 1 In this report, the word “Police” refers to police officers only, excluding police prosecutors.
- 2 In some countries, all serious cases are referred to the public prosecutor for his advice and approval to withdraw prosecution. This means that the Prosecution screens the case.
- 3 According to our definition, if the prosecution’s concurrence is needed to withdraw prosecution, screening is done by the prosecution.
- 4 The group has found that even if the same term is used in different countries, the standard is not the same. Please refer to discussion under the topic: Evidential Standard for Initiation of Prosecution under Screening by the Prosecution.
- 5 Definition in Black’s Legal Dictionary, 5th Edition.
- 6 In Costa Rica and France, an examining judge plays a role in screening. This function is similar to the role of the presiding magistrate conducting preliminary inquiry.
- 7 Please note that the phrase “Summary Proceedings” used in this context refers to the procedures adopted by Sri Lankan courts to screen cases. It is different from the usual summary proceedings as in Japan as it is commonly known.
- 8 Please note that the phrase “Pre-trial Conference” used in this context refers to the procedures adopted by Philippine courts to screen cases.
- 9 Please refer to, Rule 118, section 1 of the Rules on Criminal Procedure—Philippines, which reads as follows: “Pre-trial when proper—To expedite the trial, where the accused and counsel agree, the court shall conduct a pre-trial conference on the matters enumerated in section 2 hereof, without impairing the rights of the accused”. Further, Rule 118, section 2, reads as follows: “Pre-trial conference; subjects—The pre-trial conference shall consider the following:
  - (a) Plea bargaining;
  - (b) Stipulator of facts;
  - (c) Marking for identification of evidence of the parties;
  - (d) Waiver of objections to admissibility of evidence; and
  - (e) Such other matters as will promote a fair and expeditious trial.
- 10 Rule 116, section 2, reads as follows: “Plea of guilt to as lesser offence—The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offence, regardless of whether or not it is necessarily included in the crime charged or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary. A conviction under this plea shall be equivalent to a conviction of the offence charged for purposed of double jeopardy.”
- 11 Please note that phrase “Plea Bargaining Proceedings” used in this context refers to the procedures adopted by Sri Lankan courts to screen cases. The meaning may be different from the usual attached to it.
- 12 In Singapore, the meaning of “reasonable prospect” is similar to the standard of “prima facie” used in Sri Lanka.

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- 13 This number represents the percentage of all cases the prosecution disposed of, including cases relating to offenses such as traffic professional negligence and road traffic violations. Please see, "The Annual Report of Statistics on Prosecution for 1996 of Japan" (Research and Training Institute of the Ministry of Justice).
- 14 This number represents the percentage of all cases the prosecution disposed of, including the offenses such as traffic professional negligence and road traffic violations. Please see, "The White Paper on Crime, 1995 of Korea" (Research and Training Institute of the Ministry of Justice).
- 15 This number represents the percentage of all cases the prosecution disposed of, including cases relating to offenses such as traffic professional negligence and road traffic violations. Please see, "The Annual Report of Statistics on Prosecution for 1996 of Japan" (Research and Training Institute of the Ministry of Justice).
- 16 This number represents the percentage of all cases the prosecution disposed of, including the offenses such as traffic professional negligence and road traffic violations. Please see, "The White Paper on Crime, 1995 of Korea" (Research and Training Institute of the Ministry of Justice).
- 17 In Japan, the defendant's consent is required. Otherwise, the prosecution cannot utilize the summary proceedings.
- 18 This number represents the percentage of all cases the prosecution disposed of, including cases relating to offenses such as traffic professional negligence and road traffic violations. Please see, "The Annual Report of Statistics on Prosecution for 1996 of Japan" (Research and Training Institute of the Ministry of Justice).
- 19 This number represents the percentage of all cases the prosecution disposed of, including the offenses such as traffic professional negligence and road traffic violations. Please see, "The White Paper on Crime, 1995 of Korea" (Research and Training Institute of the Ministry of Justice).
- 20 For example, in Singapore, the police usually states its views as to whether the cases should be suspended or proceeded with.
- 21 For example, the judiciary is an independent organ.
- 22 According to our paper, this refers to the second stage of screening by the police. The first part of the screening should not be abolished.
- 23 In Costa Rica, there is a move to abolish screening conducted by the courts.
- 24 In France and Costa Rica, the examining judge also acts like an investigative agency during screening. Such a procedure in Costa Rica will be abolished.
- 25 All non-prosecution decisions can be appealed to the Prosecution Review Committee.
- 26 The new law is found in Articles 25 to 29, Law No. 7594 of the Criminal Procedure Code.