

**Max Planck Institute
For Comparative Public Law And International Law
Heidelberg**



Fair Trial Workshop Afghanistan

Kabul, 23.02.-07.03.05

Final Report and Evaluation

15. April 2005

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ANNEX: Letters by Participants of the Workshop

A. Final Report

Financed by the German and French Ministries of foreign affairs the Max-Planck-Institute for Comparative Public Law and International Law (MPI) in cooperation with the Institut International Paris La Défence (IIPLD) conducted a Fair Trial workshop from the 23 February until the 07 March 2005.

I. Procedure

1. Heidelberg/ Paris

The preparation of the trainers took place from 14 until 21 February 2005 at the MPI in Heidelberg and the IIPLD in Paris. Prior to their arrival they had been furnished with the MPI Manual which formed the basis for the preparation.

Each section of the manual was briefly introduced by a member of staff to be then discussed by the trainers, focussing less on substantive matters than on methodological and pedagogical issues. In view of the fact that the trainers were all fully qualified jurists, the discussion of the topics focussed more on the specific Afghan norms and the circumstances to be expected in a post-conflict situation, rather than general aspects of the fair trial principles.

Furthermore, throughout the workshop potential problems arising from the cultural context were pointed out. Time was taken to discuss the role of Islam and the issues that could possibly arise due to conflicts between the Shari'a, the Paschtunwali (the tribal code of the pashtunes) and the Afghan norms addressed in the Fair Trial Manual. For this purpose, Dr. Tellenbach from the Max Planck Institute for Foreign and International Criminal Law was invited to introduce criminal and criminal procedural law aspects of the Shari'a.

In Heidelberg, most of the following discussions were conducted in Farsi, moderated by one of the Farsi-speaking employees of the MPI. It turned out to be particularly important for the trainers to review the Dari legal terminology.

2. Kabul

The workshop itself took place at the Faculty of Law and Political Science of the University of Kabul. It lasted from 23 February till 7 March 2005. The courses were held every day except Fridays from 9am to 4pm. Some of the courses were taught by just one trainer, some by two, depending on the experience of the respective trainers.

Each class consisted of between 10 to 20 participants, most of whom were attorneys and judges, but for the sake of sustainability, several law professors from both the Law and Political Science and the Shari'a Faculties, as well as two postgraduate law students with special merits in their examinations also attended. Furthermore, members of the Afghan Women Lawyers Association, one lady from the Afghan Independent Human Rights Commission and two defence lawyers, altogether 63 people, participated.

In order to minimise disruption, lunch was provided by the organisers.

Towards the end of the programme, both participants and trainers were provided with evaluation forms in order to assess the success of the teaching, as well as the organisation.

The results of the survey are attached to this report, and will influence the design of any follow up project.

Each day after class there was a debriefing session where the trainers reported about problems and the general progress of their courses. While major problems did not arise, these debriefing sessions were helpful to clarify teaching approaches, as well as identifying issues of particular interest or concern to the participants; in general the participants were very interested to learn about comparative law, i.e. to see how similar legal problems had been solved in other countries, especially Germany and France.

The working conditions at the University of Kabul were adequate, given the local conditions. In order to heat the room, projects funds were use to buy gas heaters which would subsequently be given as a gift to the university.

The trainers and the MPI/IPLD team resided at the Hotel Intercontinental Kabul. The transport between the hotel and the faculty of law was handled by a minibus of the hotel that had been rented for this purpose.

There have been no security incidents whatsoever.

Due to the multilingual background of the trainers and the organisers, most communal discussions were held in Dari and French, as well as English and German, where required. Despite these difficulties, there was an excellent and very warm working relationship between the German and French group. Likewise, the cooperation and coordination with the German and French embassy staff worked flawlessly, and we would like to take this opportunity to thank in particular Ambassadors Guinot and Dr. Steck, as well First Secretaries Laudi and Giannechini.

II. Content of the courses

The unique concept for the judicial training of the MPI/IPLD can be summarised in three main points:

- The courses were all held in Dari, all the trainers were native Dari or Farsi speakers.
- The participants were all supplied with the relevant teaching material at the beginning of the workshop.
- The different classes were of a small size to allow for a more Socratic teaching approach.

As planned, the fact that no translators were used guaranteed for very lively and dynamic communication between trainers and trainees, as well as saving considerable time.

The advantage of supplying all trainees with their own teaching material (the MPI Fair Trail Manual, the Afghan Constitution, the interim criminal procedure for courts, the penal code and the International Covenant for Political and Civil Rights as well as the Universal Declaration of Human Rights) in Dari, was that the participants were able to concentrate and could take an active part, rather than just being occupied with taking notes as in other similar projects. Furthermore, the participants actively used the opportunity to prepare themselves

every day for the following class. Most participants never had access to printed legal materials, and therefore very much welcomed the opportunity to be able to actually work with the laws.

The small size of the classes enabled the trainers to teach in a more Socratic method relying much on discussions and role plays.

Topics of the courses were:

Equality before the law and equal treatment; non-retroactivity of criminal law; presumption of innocence and freedom from arbitrary detention; protection from torture and degrading treatment and the right to remain silence; the right to counsel; access to courts; independence and impartiality of judges; trial without undue delay; public conduct of trial; the right to an adequate defence incl. information rights; the right to interpreters; the right to call adverse witnesses; trial in absentia; decision, sentencing, punishment; guarantee of ne bis in idem; possibility of appeal and review; special cases (juvenile and mentally disabled persons).

III. Problems encountered

a) At the beginning of the workshop, a certain amount of scepticism shown towards the motives of the Iranian team members. Moreover, there was doubt towards legal experts educated mostly in legal systems foreign to the ideas of Afghan tradition and to Islamic law. However, due to the fact that the trainers were all native speakers, they were able to notice these problems very soon and could approach them in a forthright and open manner. The value of our thorough preparations in Heidelberg and Paris, and the fact that the project was well-acquainted with the Afghan situation handsomely paid off here, as we were quickly able to overcome these scepticisms. This improved the atmosphere of the teaching even further and created a special bond of trust between trainers and trainees, serving as a multiplier of the teaching success.

b) At the beginning of the workshop, only 45 participants were present, since only very few judges took part. As agreed upon beforehand the participating judges should have been selected for participation by the Supreme Court (SC). This agreement was reached with Judge Murad Ali Murad as the representative of the SC and the MPI in the course of a meeting on 18 January 2005. The MPI team talked to Mister Murad Ali Murad on explicit advice of the German Embassy on their preparatory trip. However, Mister Murad Ali Murad obviously failed to pass on the information he received about the project, therefore Chief Justice H.E. Mawlawi Fazl Hadi Shinwari was not aware of the MPI/IPLD project when the SC was approached prior to the commencement of the courses, and refused to cooperate.

That problem was solved by a visit of some of the team members to the SC (Judge Kamawari), to introduce the project anew on 23 February 2005, the first day of the workshop. After the presentation of the project, and a further meeting with the Governing Council of the SC, it was finally agreed to select some judges as participants of the workshop, 18 of whom duly arrived in the course of the next few days to participate in the courses.

IV. Conclusion

Summing up, the project was a great success, a fact proved by the evaluation of the workshop by both trainers and trainees. Moreover, the feedback by visitors of the project (UNDP, GTZ, USAid, Italian Officials of the Justice Project, H.E. Mohammad Qasem Haschimzai, Deputy Minister of Justice and the Afghan Independent Human Rights Commission) was overwhelmingly positive. Visitors and participants regularly pointed out the advantage of the courses being held solely in Dari/Farsi. Likewise the distribution of teaching material to the participants was highly appreciated.

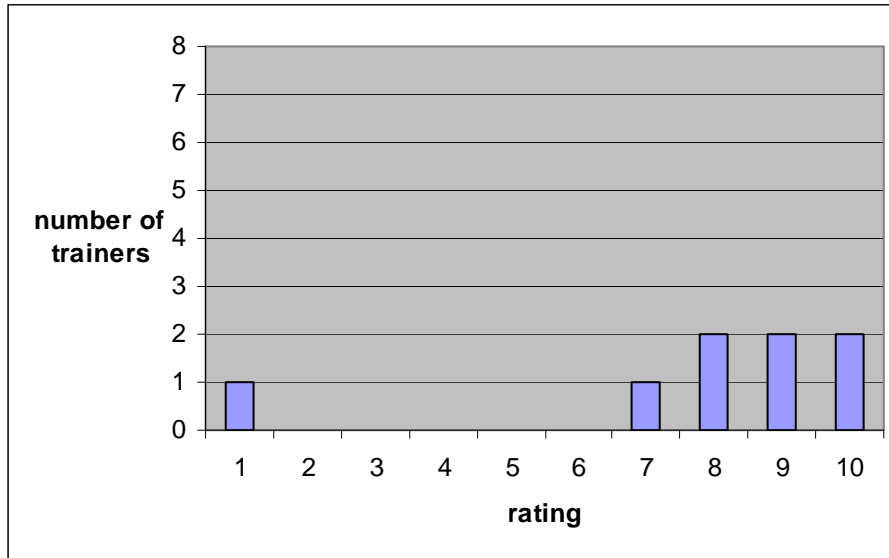
It should also be mentioned that there was a unanimous wish for a continuation of the project and for its expansion to the provinces in order to reach a broader scope of future participants. The idea was broached to conduct any such continuation within the framework of the ongoing UNDP 'Access to Justice at the District Level Project'.

I. Evaluation of the Workshop by Trainers

The following evaluation questions were dealt with by eight workshop trainers (out of nine). If not marked differently, each answer counts for one trainer, and the scale used ranges from 1-10 in ascending order of satisfaction.

Preparation:

1. Was the time allocated for the Preparation adequate?

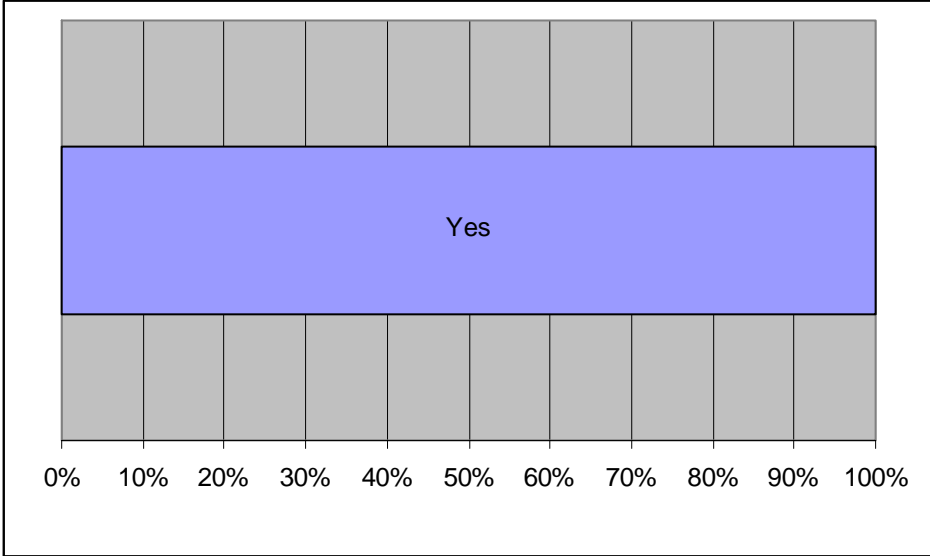


2. If not, would you have preferred a shorter or a longer preparation?

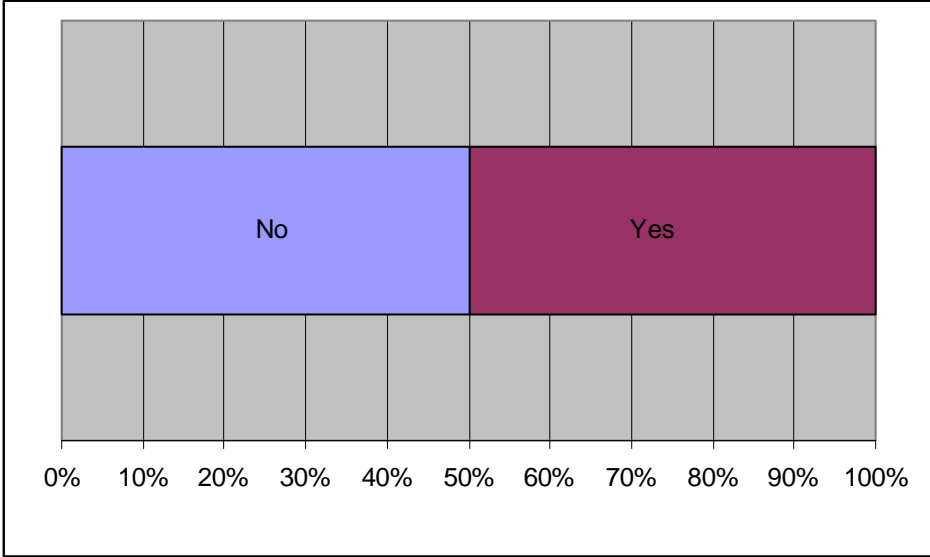
- Break between preparation and workshop (2)
- Longer preparation (2)
- Better structuring of the preparation

3. Were all necessary topics covered sufficiently?

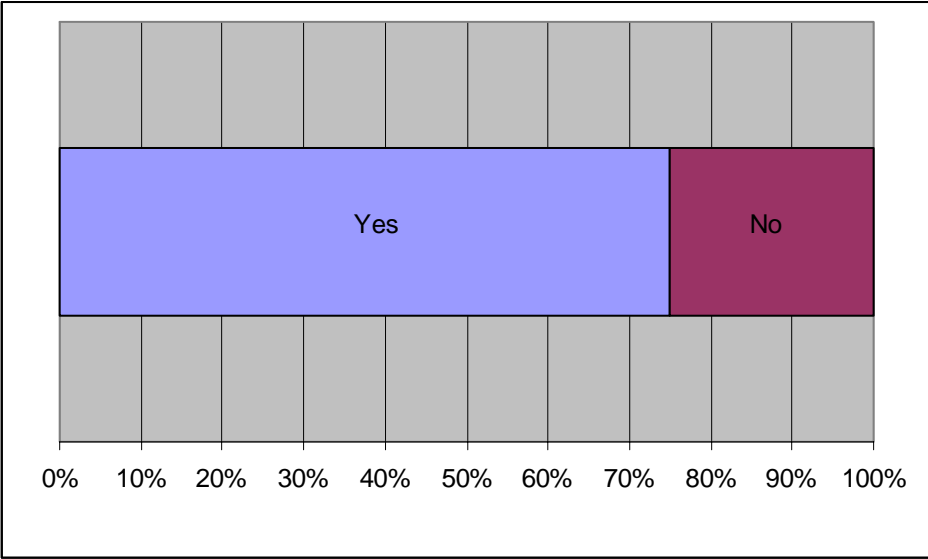
a) General information on the project



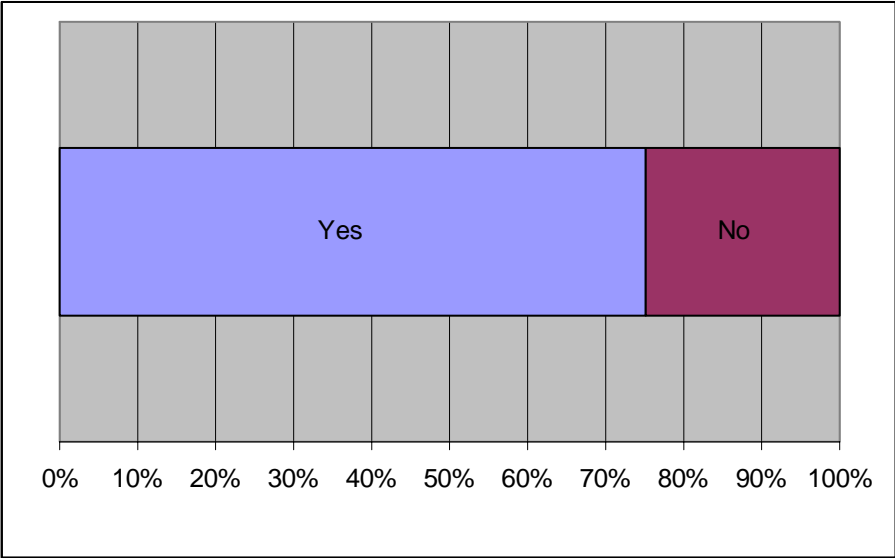
b) Afghan Context



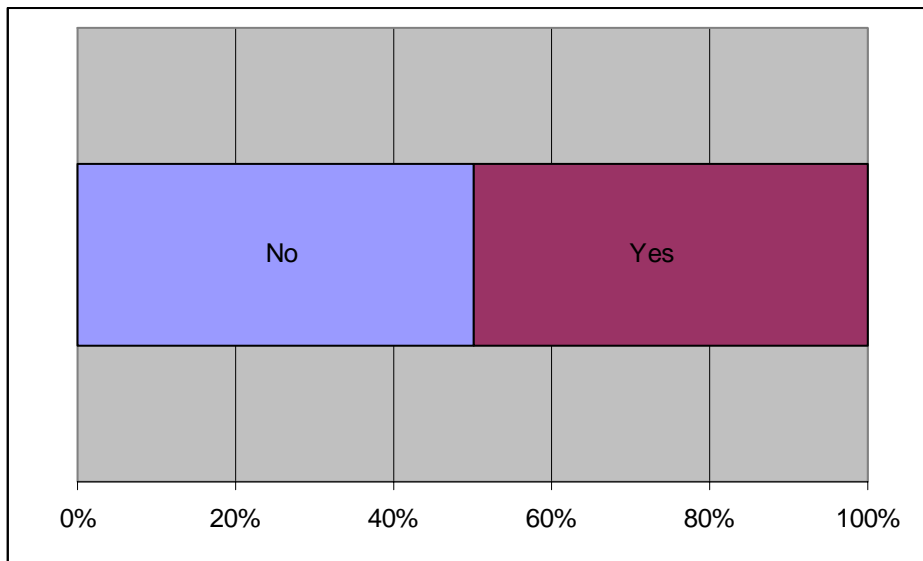
c) Legal theories on fair trial



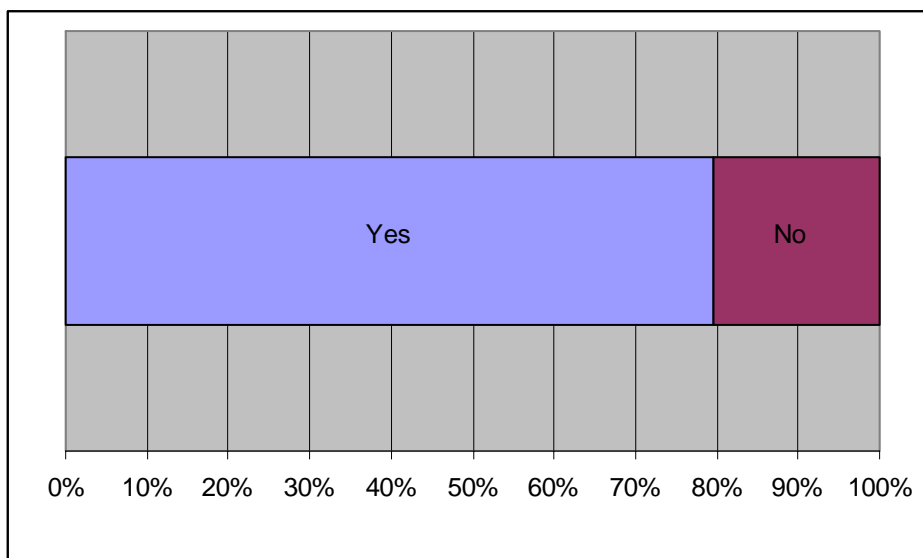
d) Case studies on fair



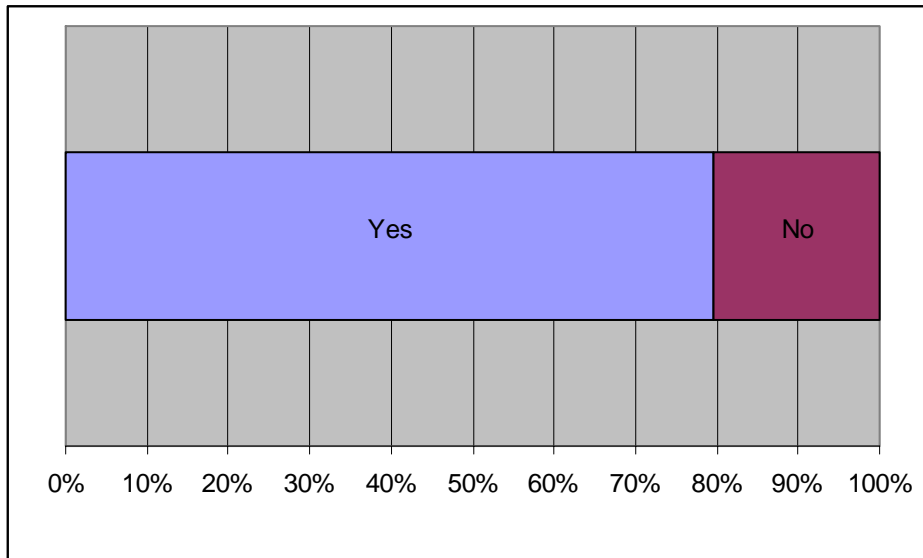
e) Teaching methodology in Paris/Heidelberg



4. Were you satisfied with the formal presentation of the manual, i.e. clarity, structure, etc.?



5. Was the translation of the manual (especially legal terms and concepts, except official legal texts) correct?



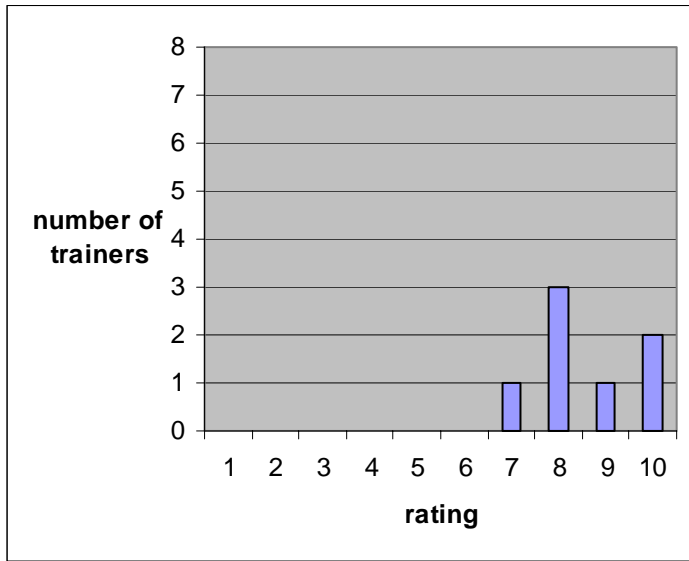
6. If your answer is no, was it a problem of :

a) mere translation of legal terms or concepts from English to Dari

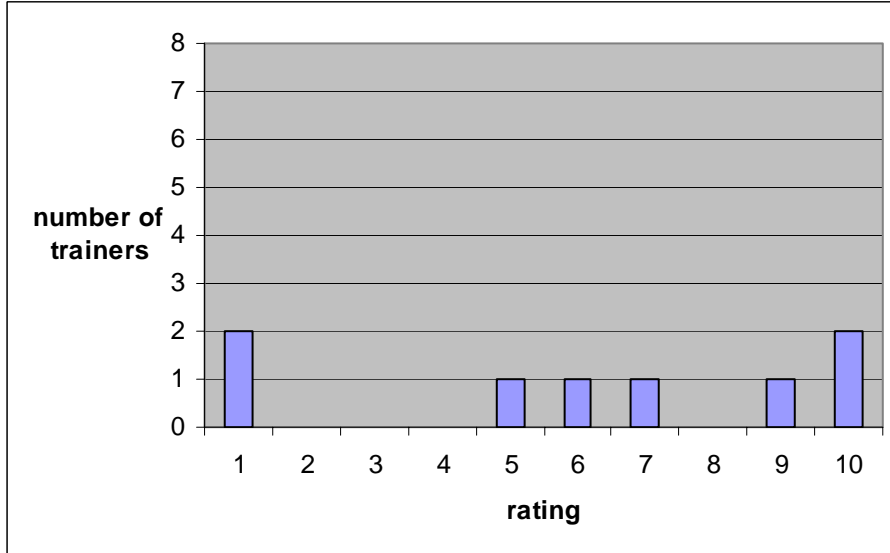
b) the meaning/substance of the legal term or concept in Dari being unclear

1 Yes

7. Should there be more time allocated to discussing the Dari legal terminology?



8. Was it useful to have the training sessions immediately after the preparation time?

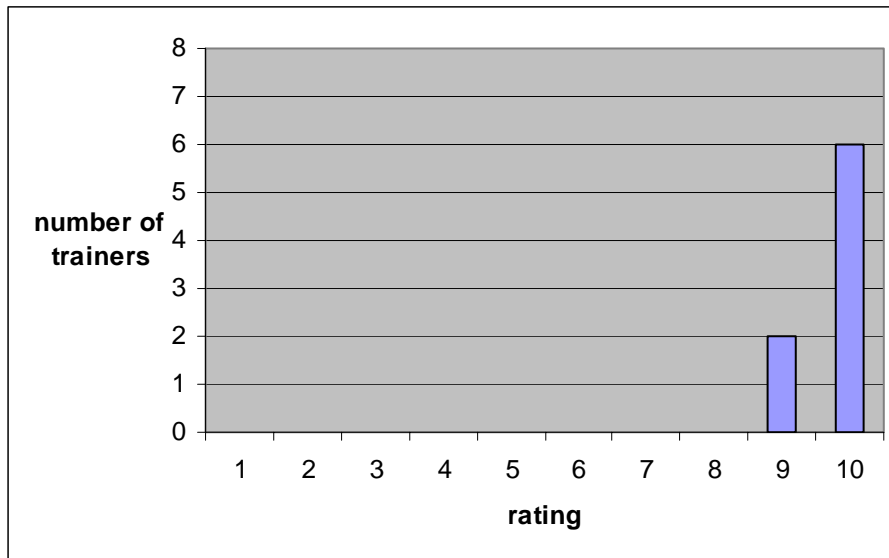


9. Do you have other remarks or suggestions concerning the preparation?

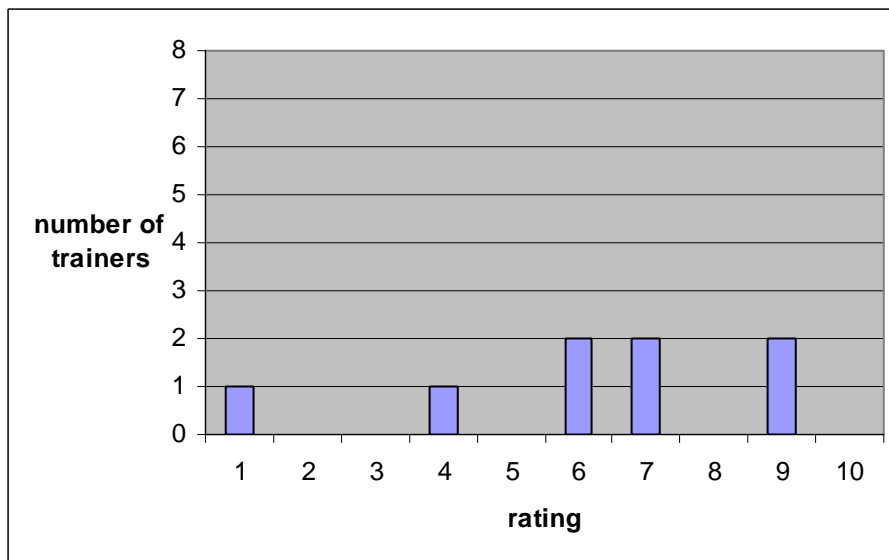
- Manual should have been distributed earlier
- Preparation should have started 2 month prior to the project
- The training in Paris/Heidelberg should have also contained training in the Afghan language and more teaching methodology
- It would have been better if during the preparation also an experienced Afghan legal expert would have been present in order to talk about the practical problems of the Afghan judicial system
- Discussions in Dari/Farsi took too much time
- Shorter time for speeches and more time for the discussions

General Situation in Kabul:

10. Did you feel safe in the hotel?

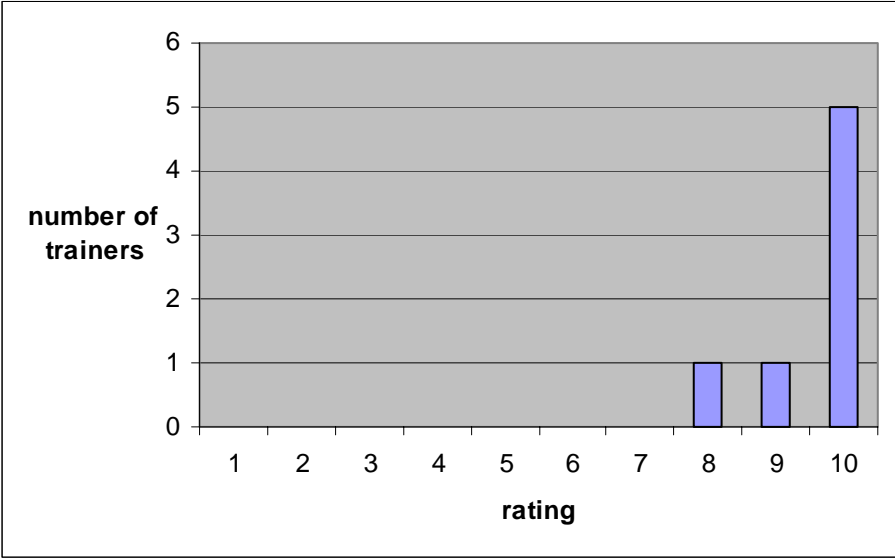


11. How did you find the food?



- the food was good, but unfortunately not varied

12. Did you feel you could easily address the accompanying team with problems?

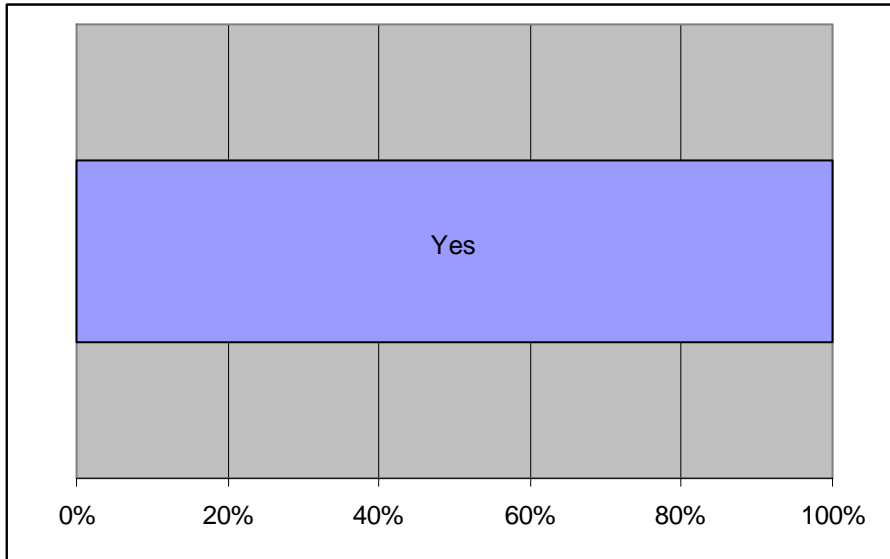


13. Do you have other remarks or suggestions?

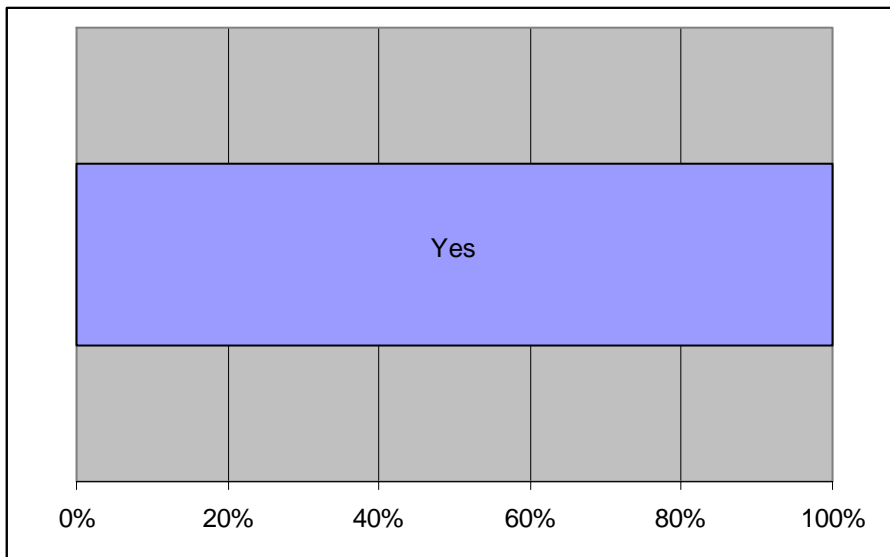
- Better if per diems would have been given to the trainers to get food by themselves
- The composition of the teaching teams should have been given more to the teachers themselves
- An Afghan citizen as responsible team member for the preparatory work in Kabul would have been very helpful

Organisation of the training sessions in Kabul:

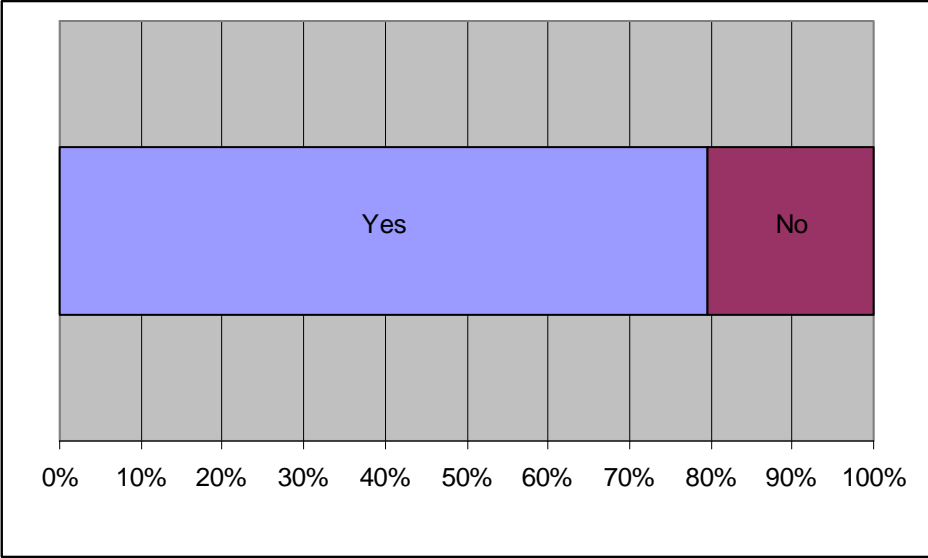
14. Was the duration of the complete training sessions adequate?



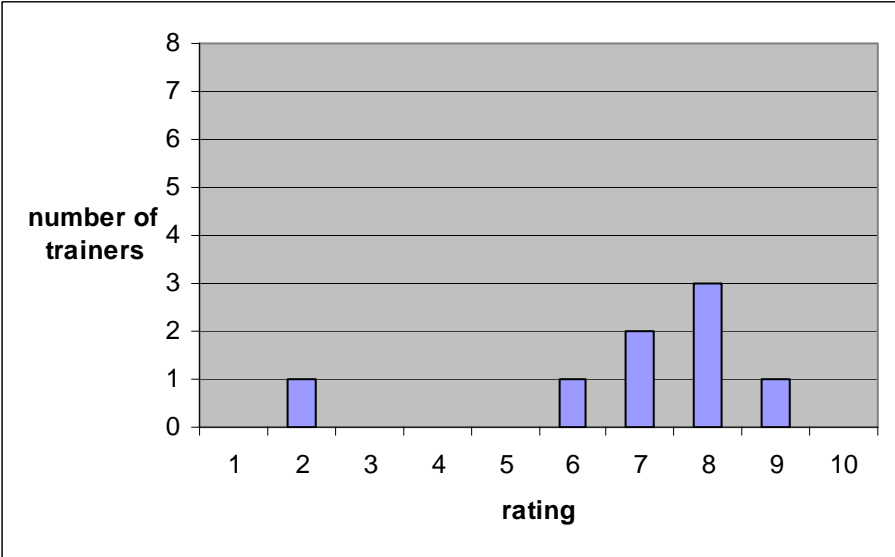
15. Were there enough breaks during the day?



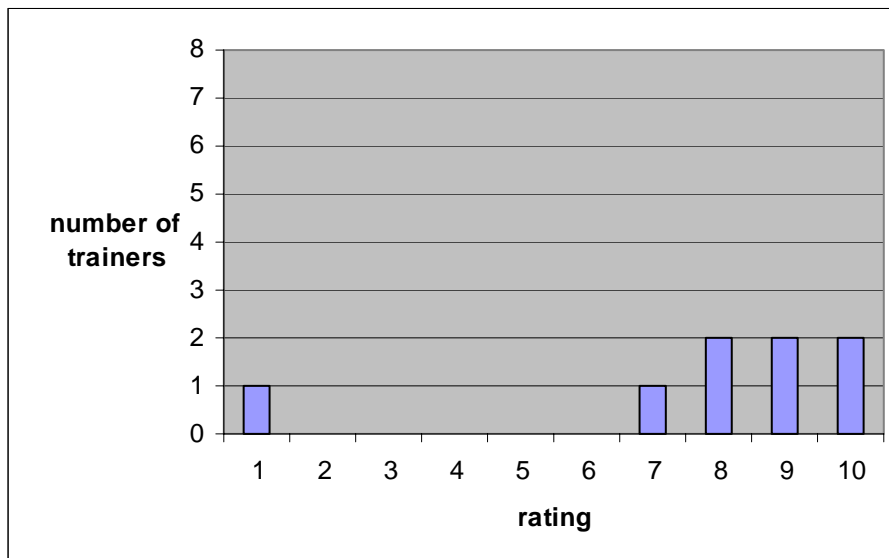
16. Would you have preferred to teach the same class throughout the training period?



17. Were the daily debriefing sessions necessary and useful?



18. Was the timing of the debriefing sessions (immediately after the classes) satisfactory?

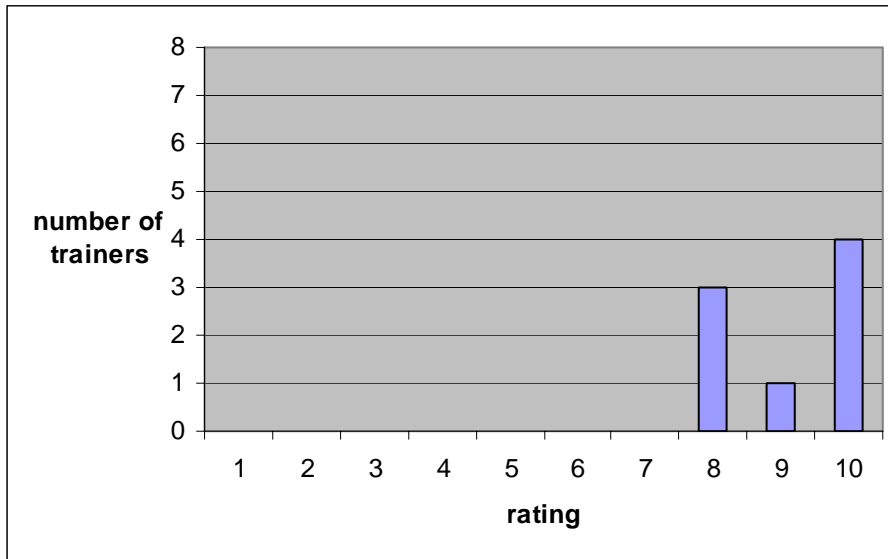


19. Do you have other remarks or suggestions?

- Debriefing sessions took too much time, they tended to be one man shows. Lack of authority in this regard.
- Debriefing sessions were due to take 30 min, but some held speeches for 1,5 hours without any break
- It would have been useful if the organisers would have moderated the debriefing sessions more actively
- One should have reached agreement on the language to be spoken during these sessions

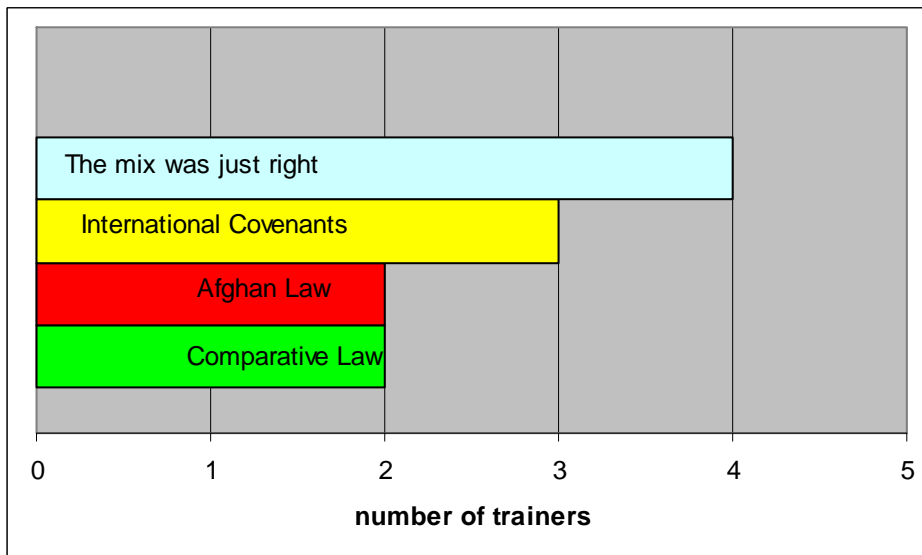
Contents of the course:

20. Do you think that the participants felt the topics were useful for their work?

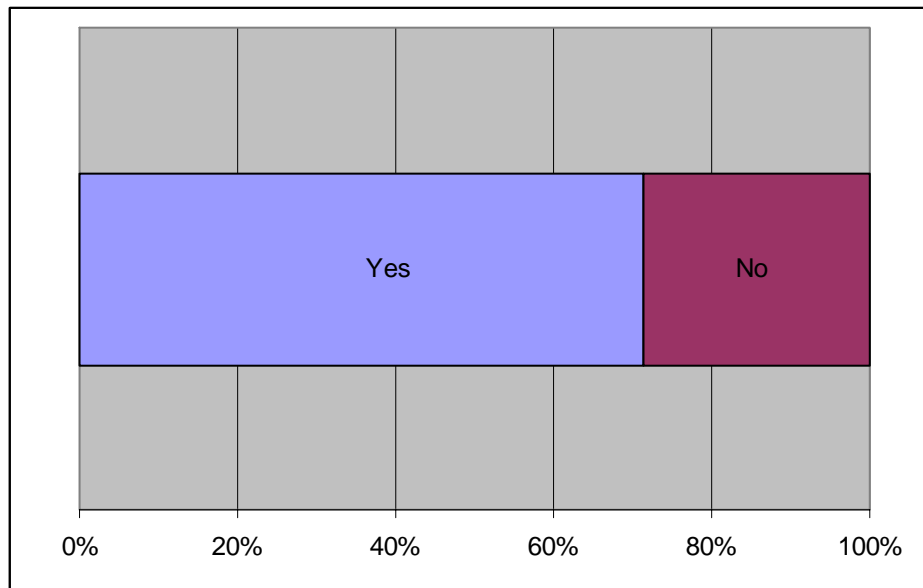


- Some participants pointed out the difficulties to practice fair trial standards in Afghanistan

21. Should the following subjects have been addressed more intensely?



22. Should other issues have been addressed when discussing fair trial principles?

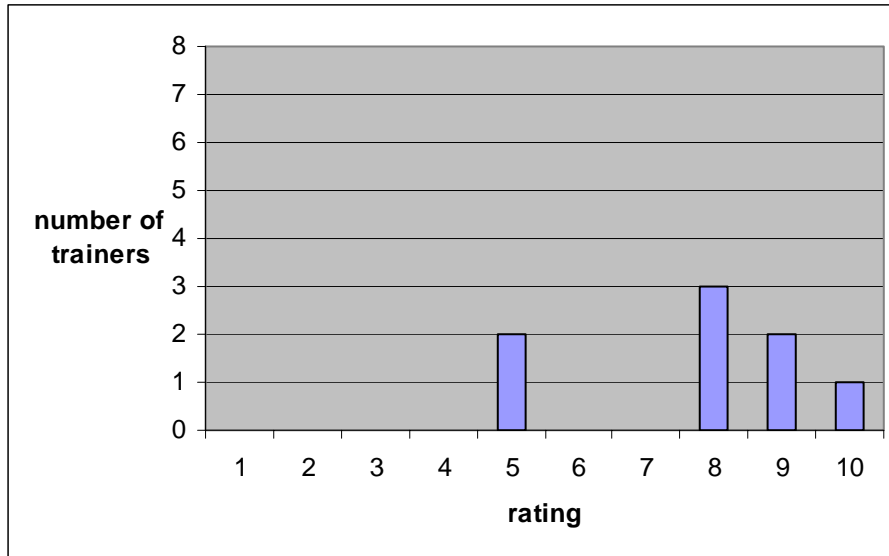


If so, which ones?

- Fundamental principles
- One case that contained all of the principles
- More general principles of the law
- The actual problematic situation of the justice sector in Afghanistan
- Justification of fair trial principles; principles of territory and personality
- Cases of national and international importance, i.e. trial in absentia in France
- There was a lot of interest in comparative law, particularly to learn more about German and European practice.

Methodology:

23. Was the time allocation in general for each topic adequate?



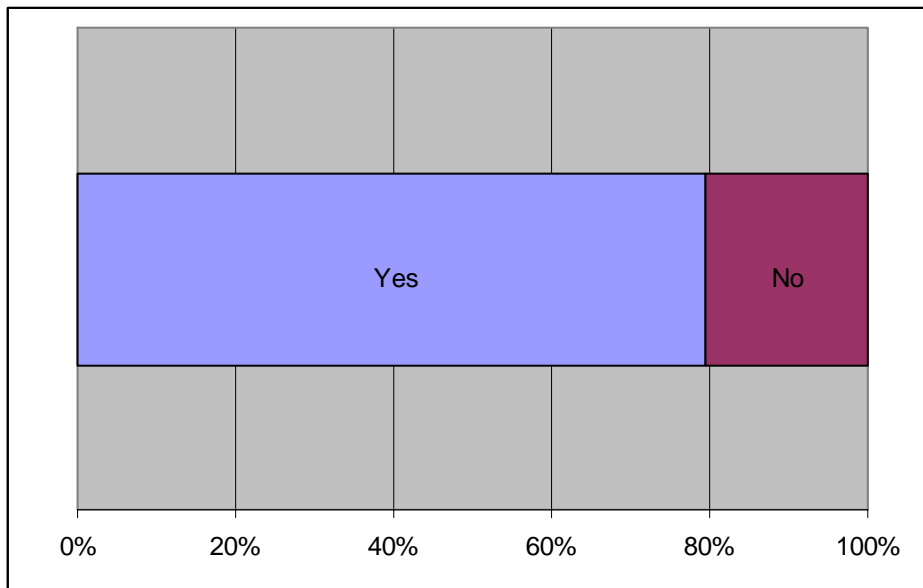
24. For which topics should there have been more time?

- Equality of arms
- Role plays and practice (2)
- General principles (Art. 16 ICC, Art.58 AC)
- Access to courts
- Impartiality of judges
- The compatibility between Islamic law, Afghan law and international treaties

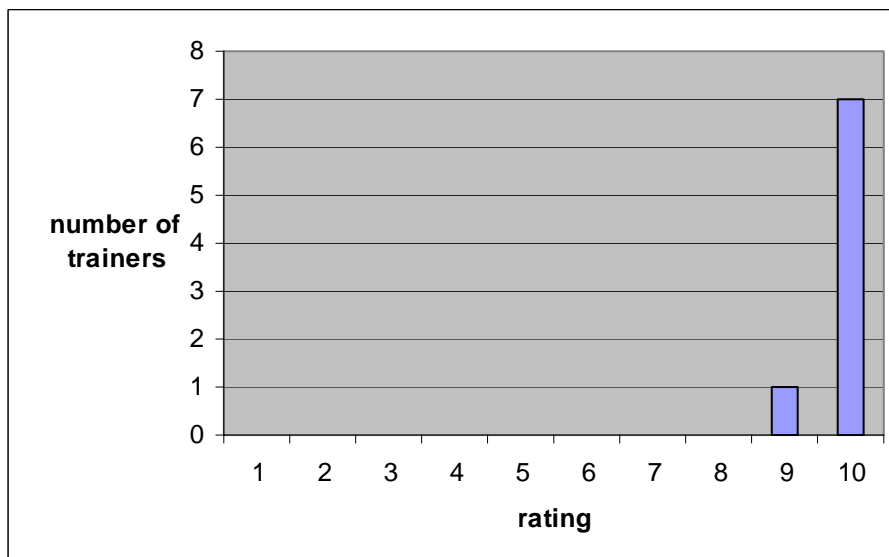
25. For which topics should there have been less time?

- for none (3x)
- Summary of principles after each proceeding phase (one case example would be sufficient)

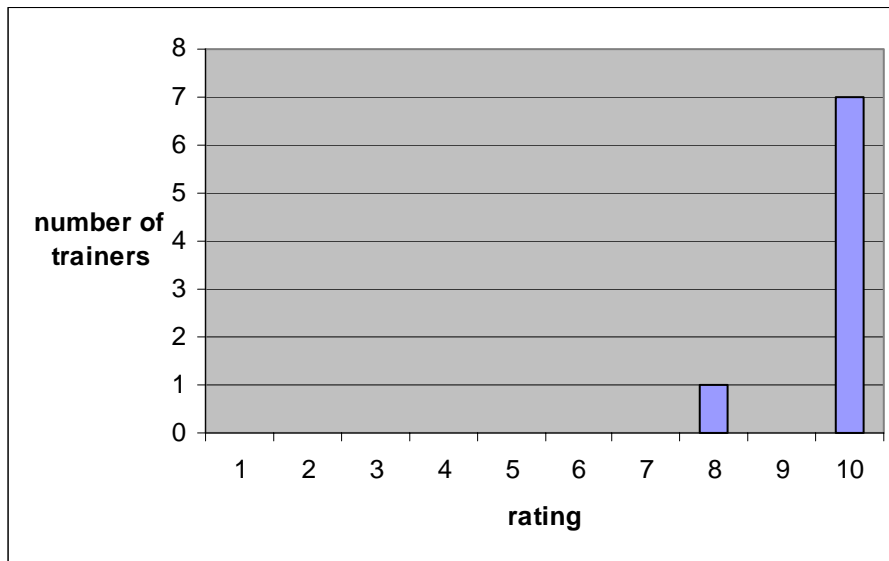
26. Was the order of the topics logically structured?



27. Was the work in small groups useful?

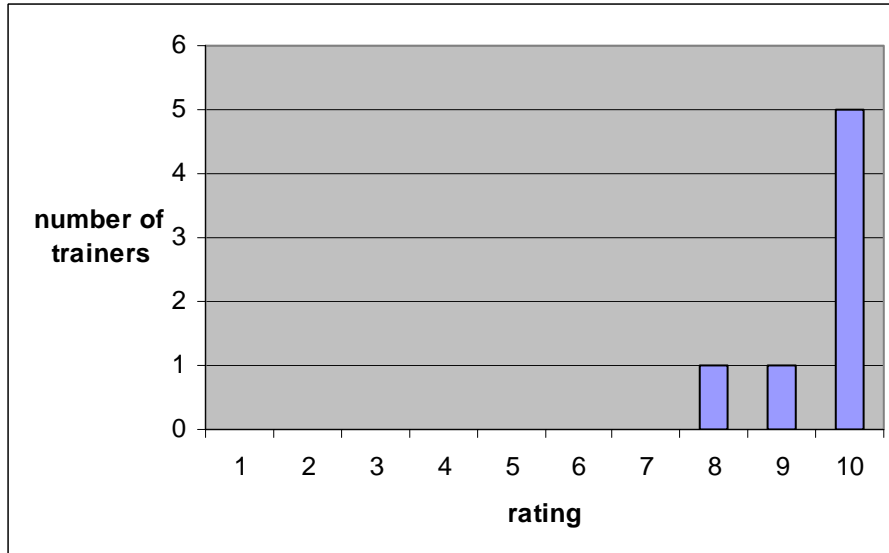


28. Was the composition of the classes with participants from different professions useful?



- in theory it was, but in fact there were too many prosecutors

29. Did the trainees actively participate in the role plays?



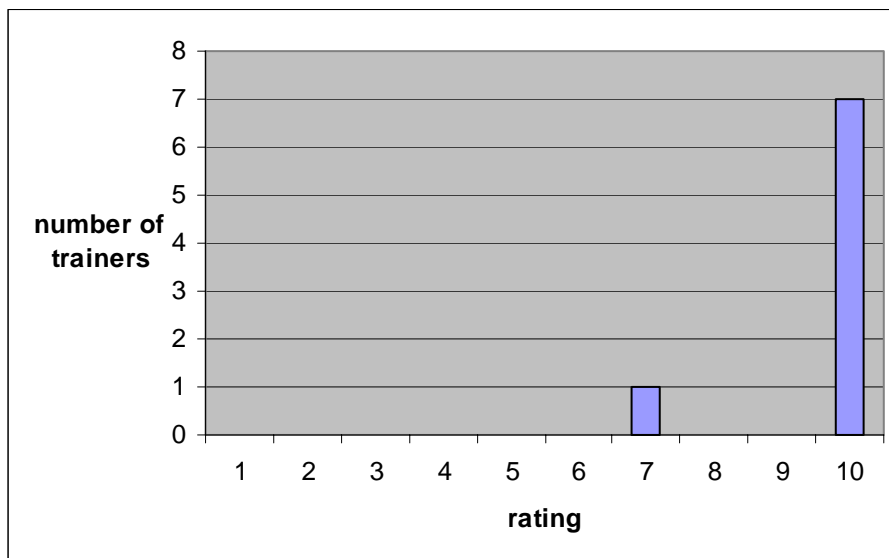
- one trainer did not carry out any role plays (lack of time)

30. Do you have other remarks or suggestions?

- It would have been better if the different legal professions would have been distributed equally between the classes
- Would have been better if some of the trainers would have had experience in the Afghan legal culture
- One of the great advantages of our courses was that they were in Persian
- The participants were relieved that they could talk to their trainers in Persian
- Next time it would be useful to have all occupational groups in each class (i.e public prosecutors in all classes)
- It would be of advantage to have policemen taking part in the workshop

Quality of course material:

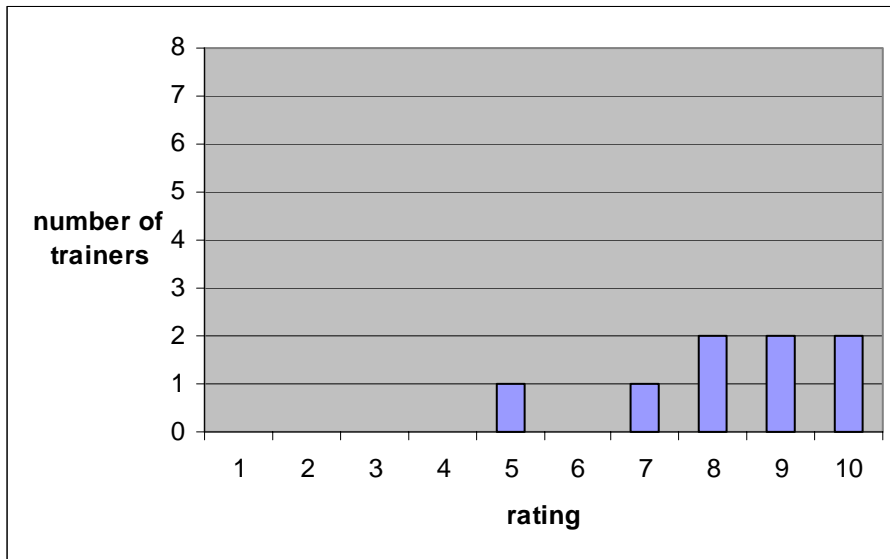
31. Did you receive enough material to work with?



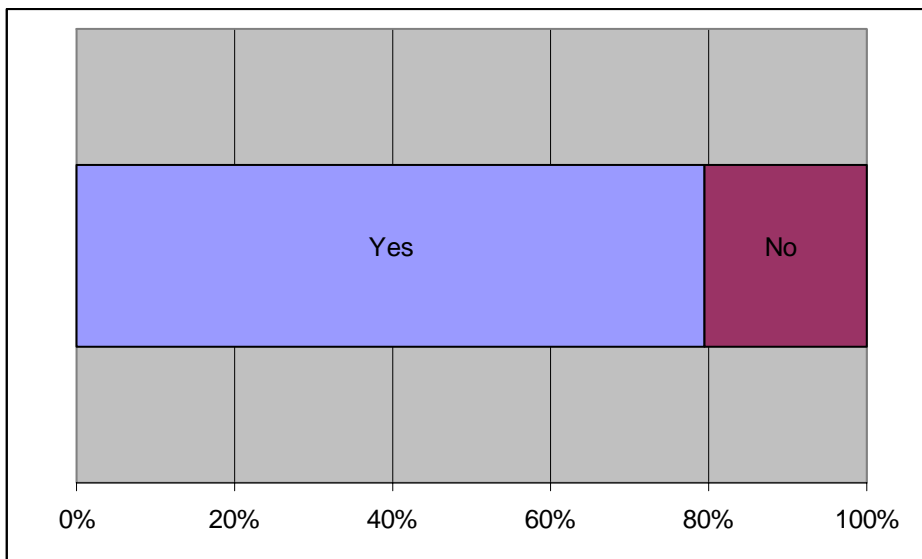
32. Which other material would have been useful?

- Declaration of human rights; united nations minimum rules for juvenile cases
- Materials of important historical cases like fair trial in France
- Sketches of the fair trial principles
- Case examples in order to illustrate single principles

33. Were the case examples in the manual relevant / realistic?



34. Was the number of cases in the manual sufficient?

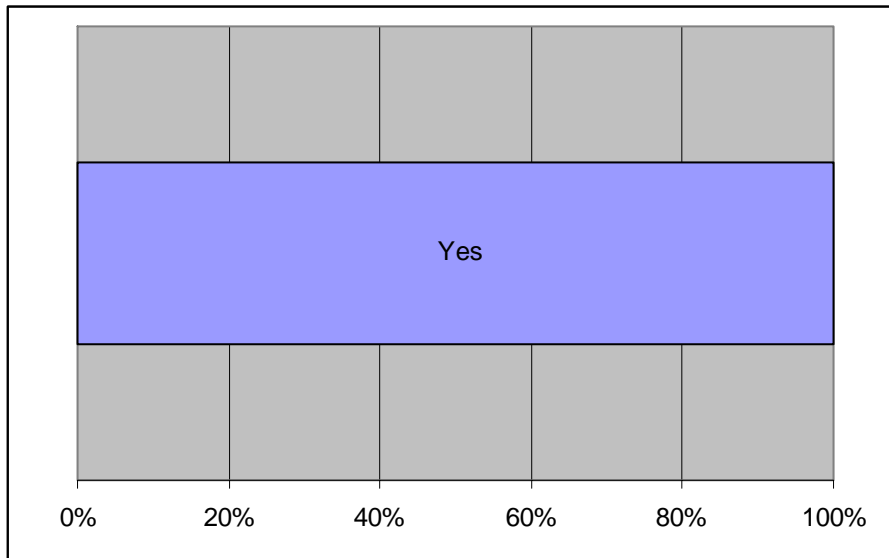


35. Do you have other remarks or suggestions?

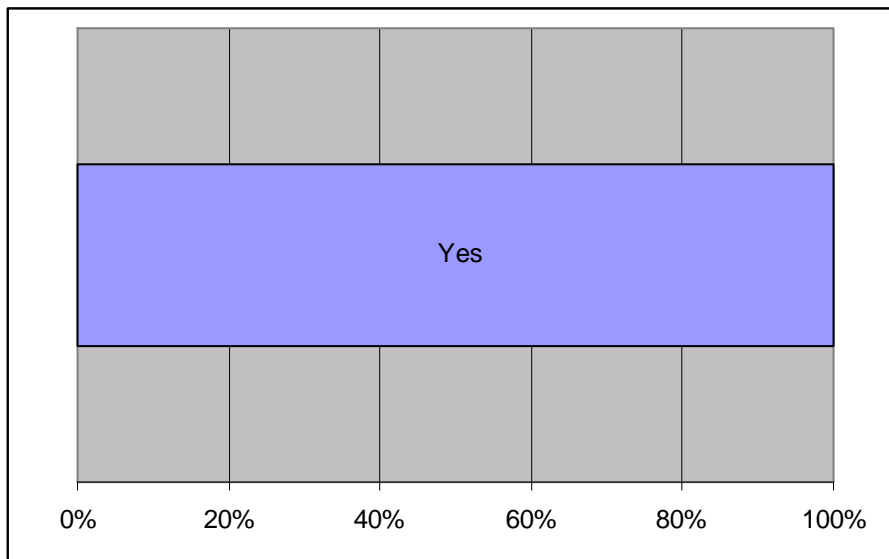
- Shorter cases but more and at the end of each topic
- Trainers should be chosen in accordance to their scientific degree and profession
- It was helpful that an introductory phase took place in Heidelberg. Thus all trainers adapted the same amount of knowledge to pass on

Miscellaneous:

36. Would you be willing to teach such a course again?



If yes, would you also be willing to teach in the provinces?



- If security is provided

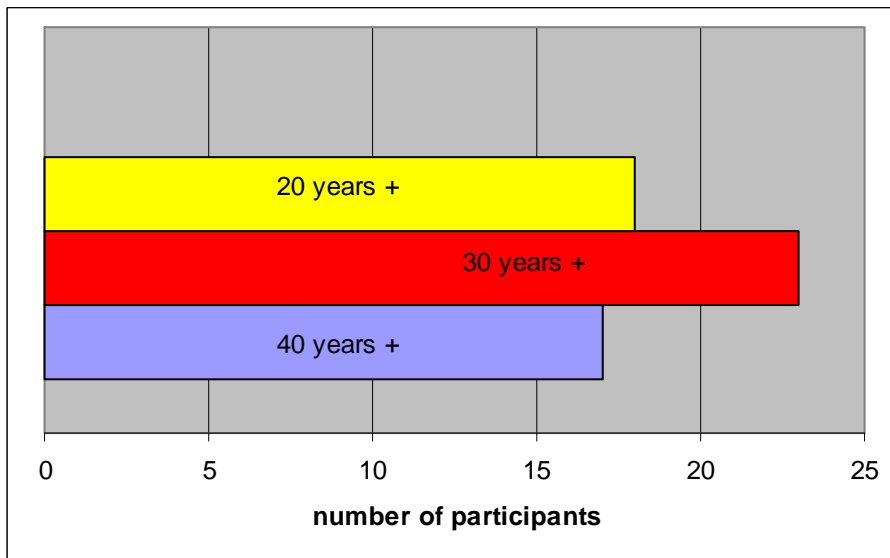
37. Do you have general remarks or suggestions?

- continuation of the project and similar workshops in the future (2)

II. Evaluation of the Workshop by Participants

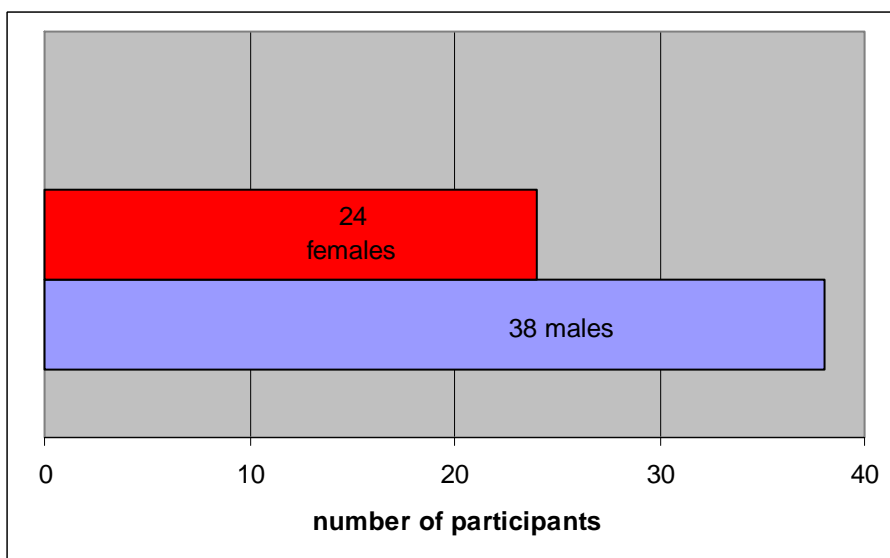
The evaluation sheets were returned by 62 workshop participants (out of 63). If not marked differently, each answer counts for one participant.

1. Average age of the participants

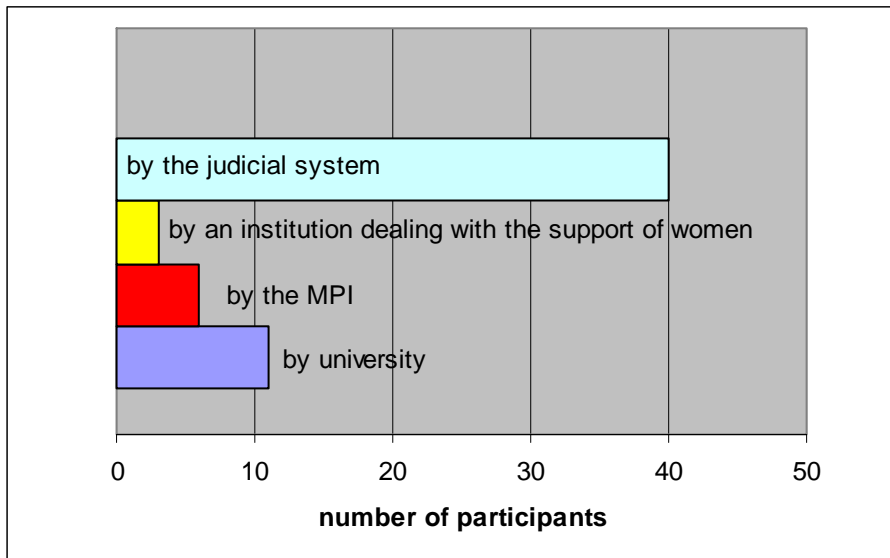


no answer: 4

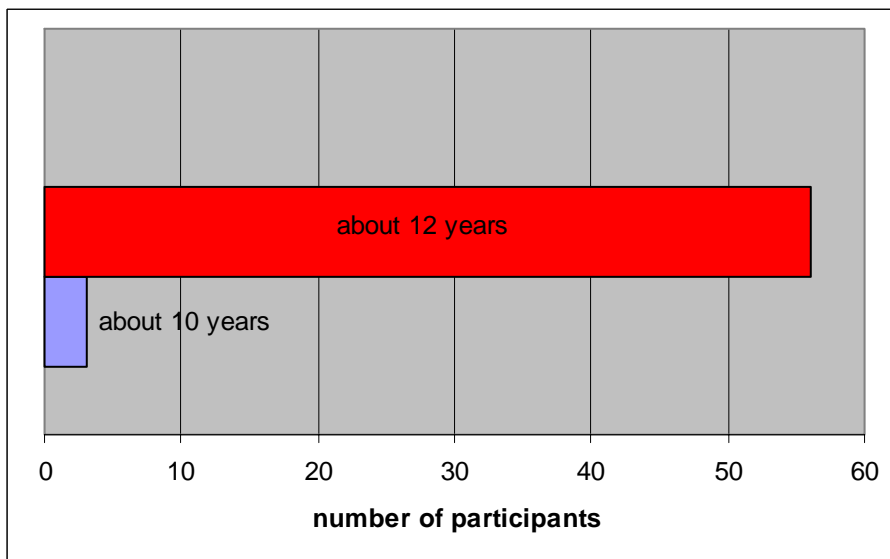
2. Male/Female



3. How have you been chosen for this workshop?

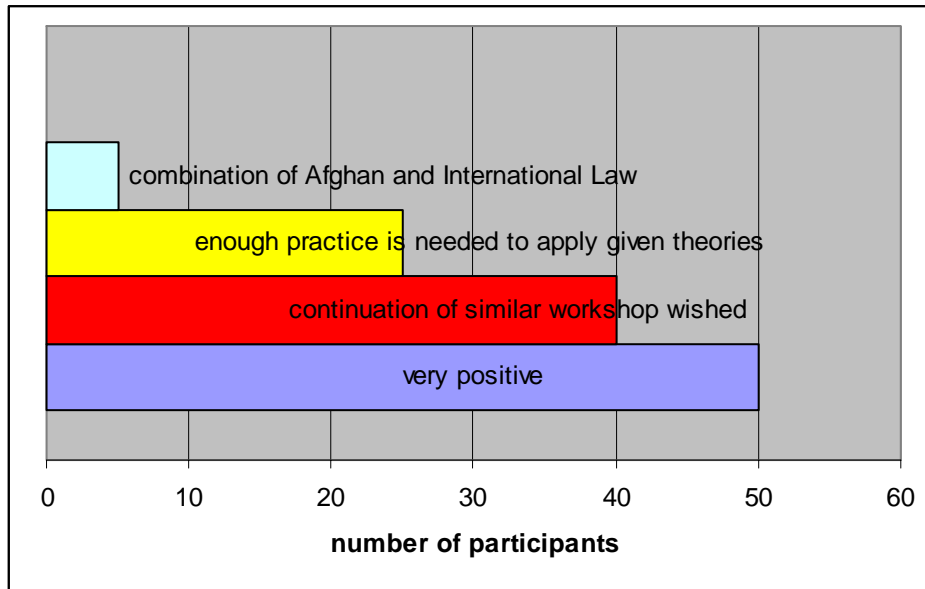


4. Experience in the field of Law?

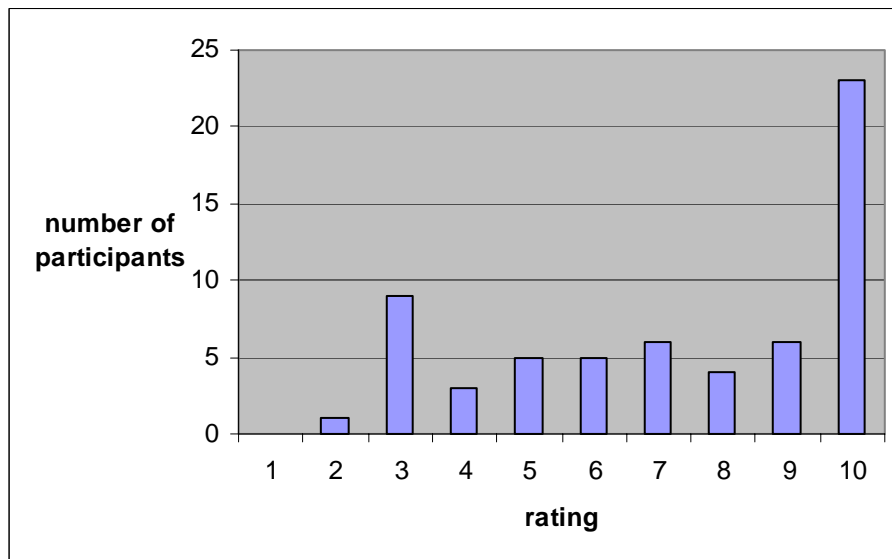


no answer : 5

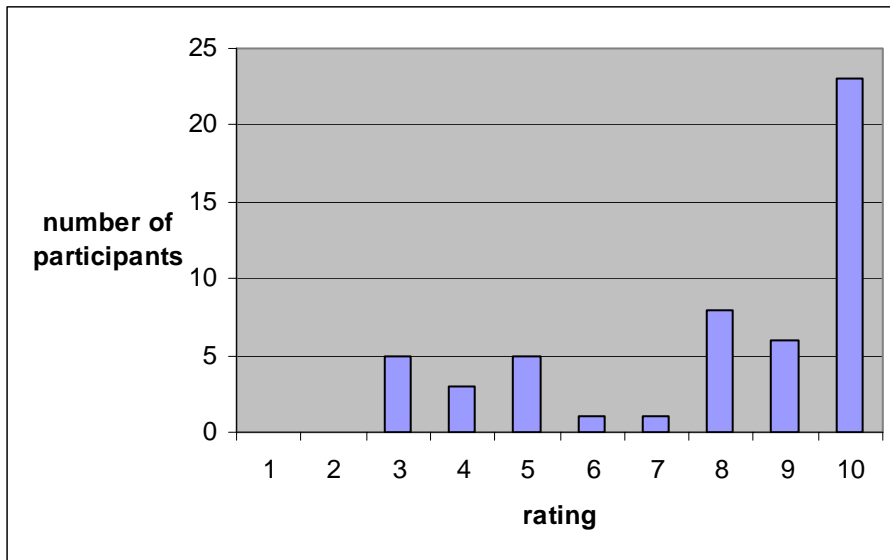
5. General impression of the workshop? (written answers to be filled in)



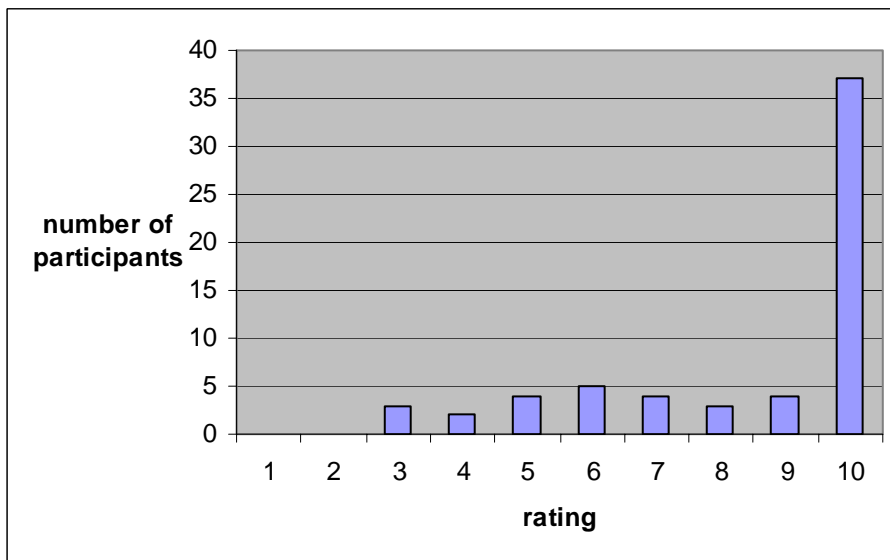
6. Were the teaching rooms warm enough?



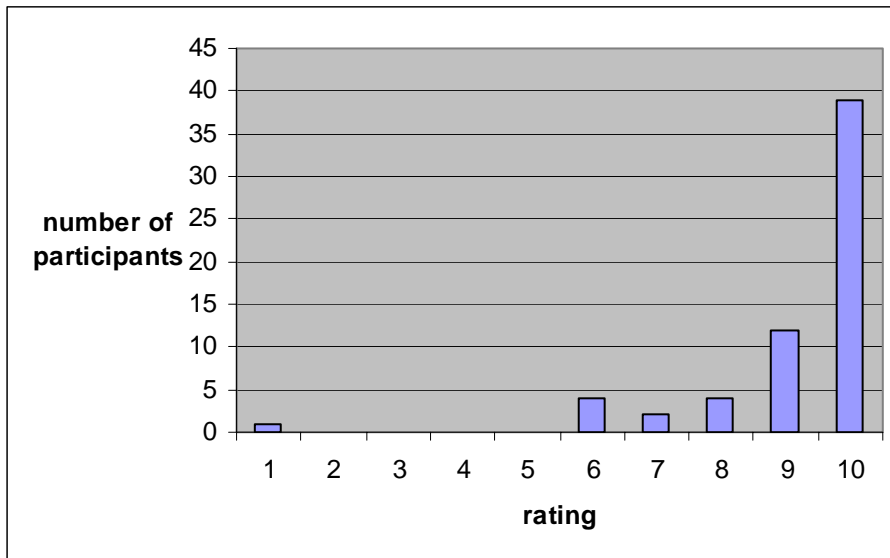
7. Were the teaching rooms clean and tidy?



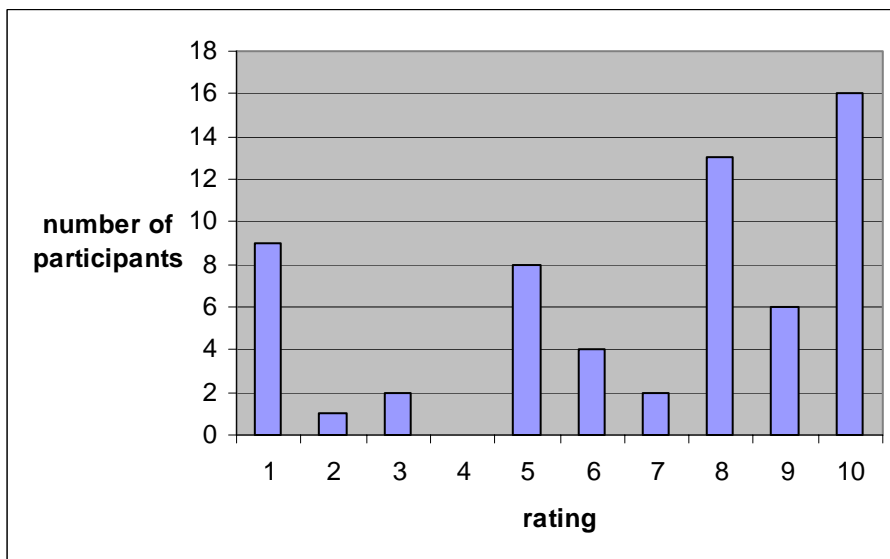
8. How did you find the food?



9. Was the allocated time for the courses adequate?

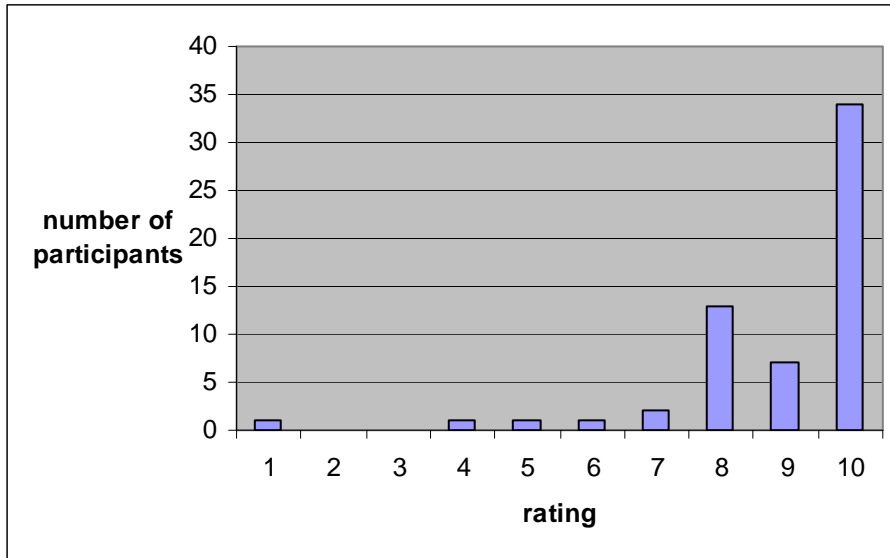


10. Was the allocated time for the whole training adequate?



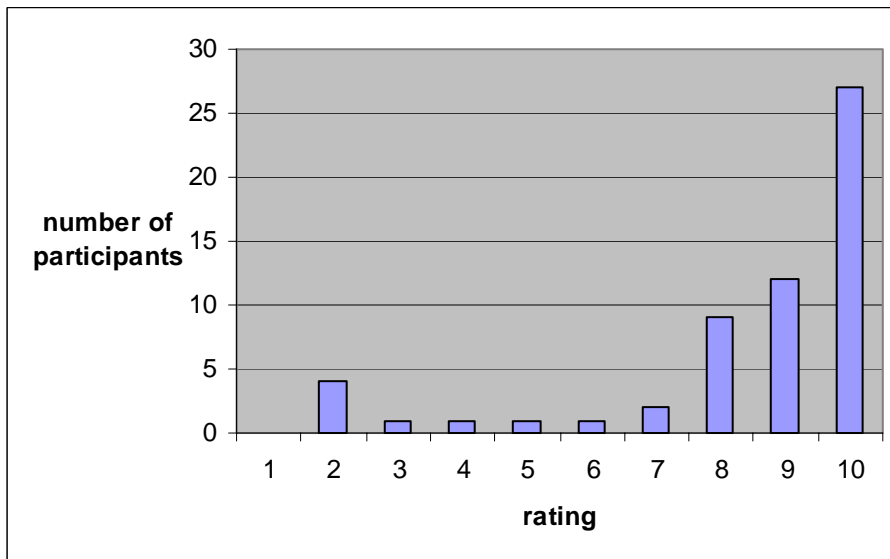
no answer: 1

11. Were there enough breaks during the day?



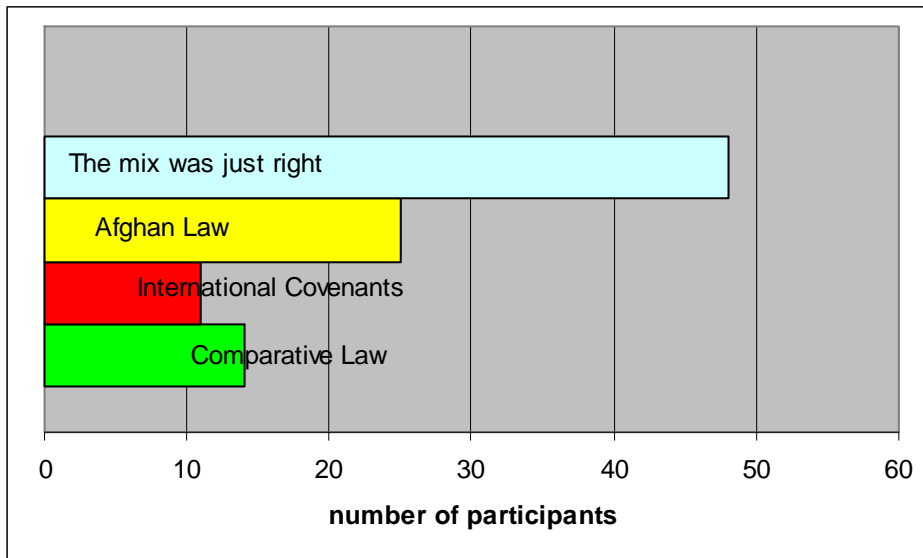
no answer : 1

12. Did the course material correspond with your own work?

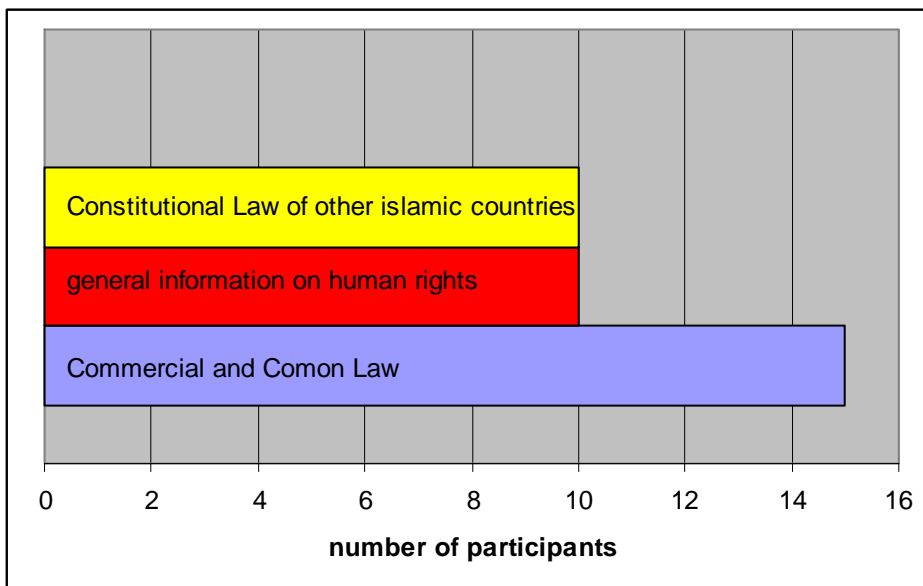


no answer : 1

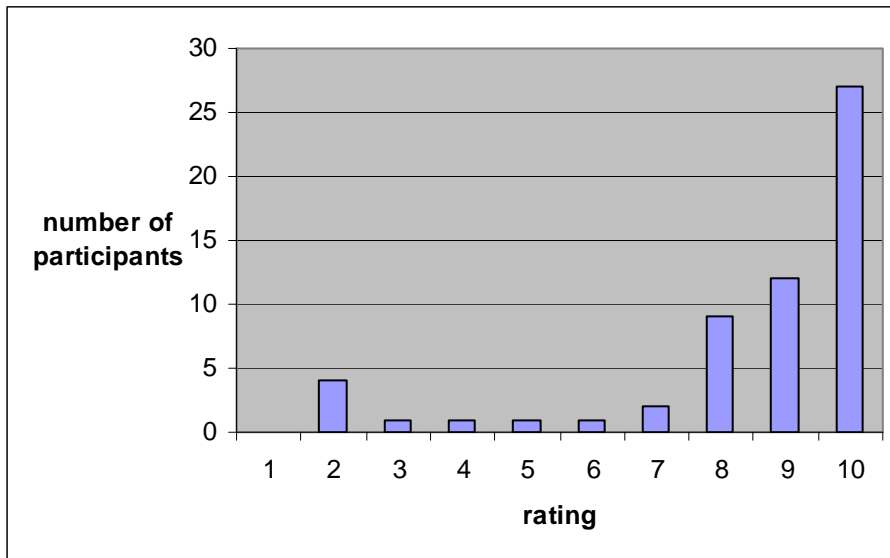
13. Which of the listed subjects should have received more attention?



14. Should other issues have been addressed when discussing fair trial principles?

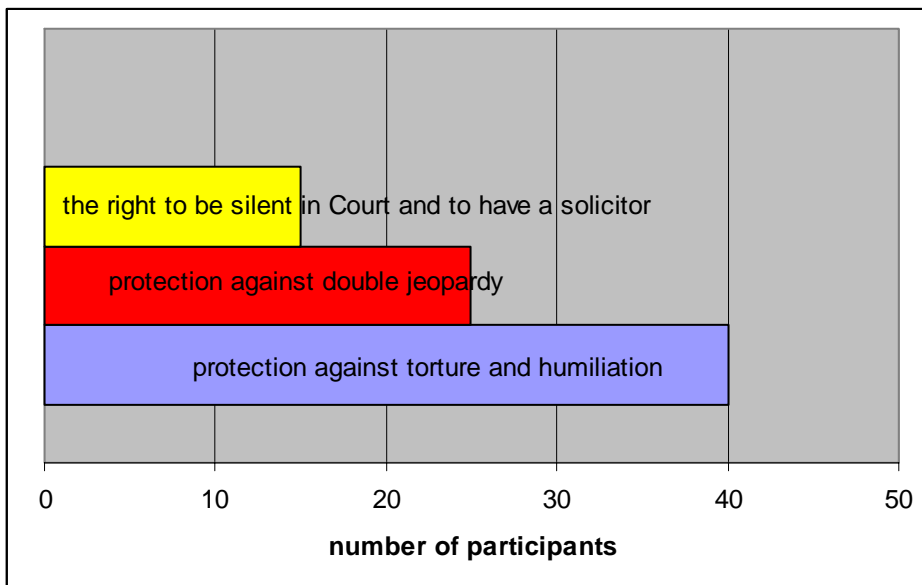


15. Was the time allocated in general for each topic adequate?

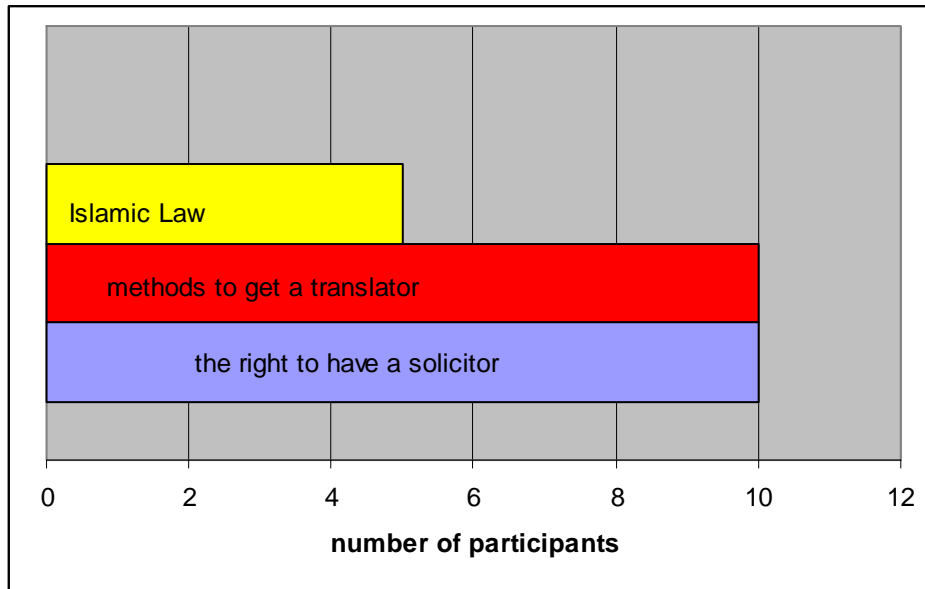


no answer : 2

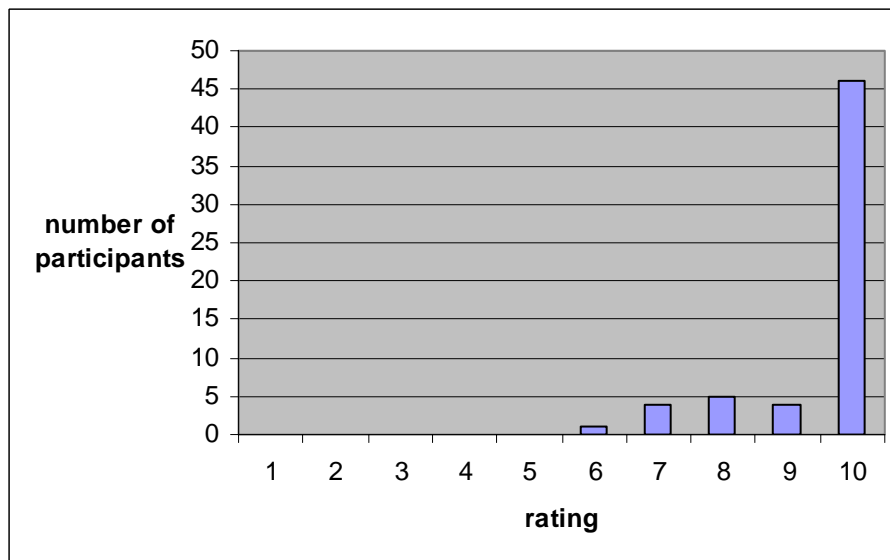
16. Which topic should have been discussed more thoroughly?



17. Which topic should have been given less time?

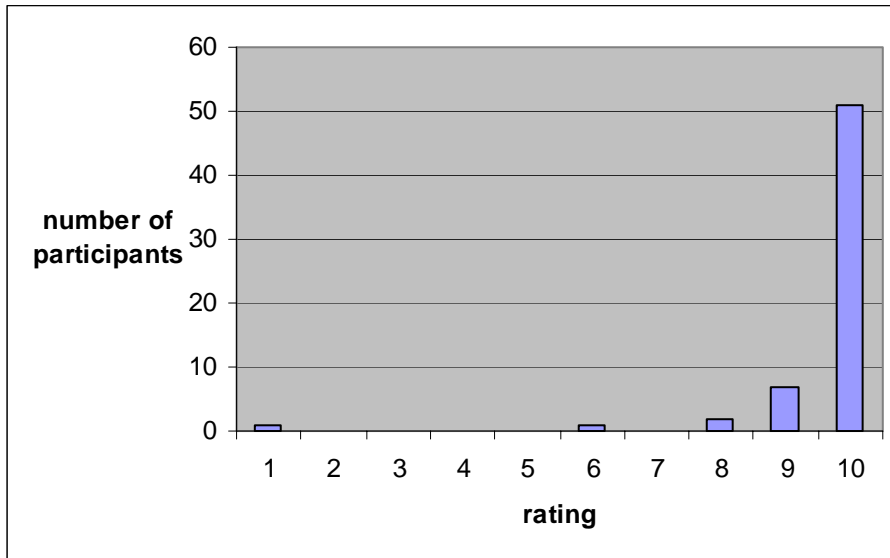


18. Was the work in small groups effective?

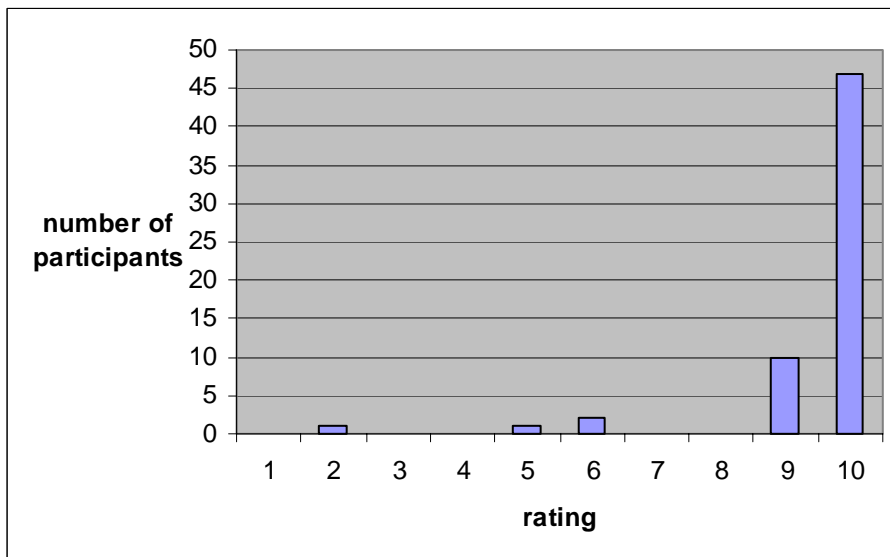


no answer: 2

19. Was the composition of the classes with participants from different professions useful?

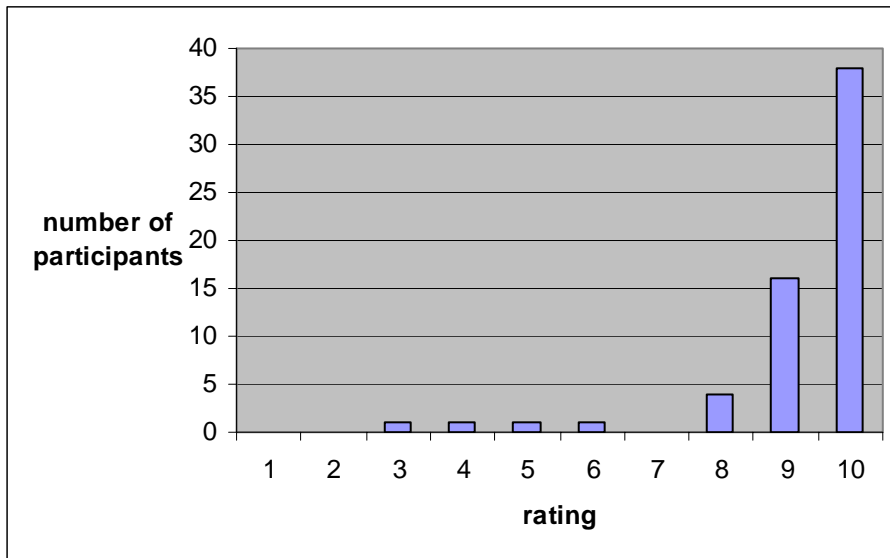


20. Were the role-plays helpful considering the understanding of the topic?

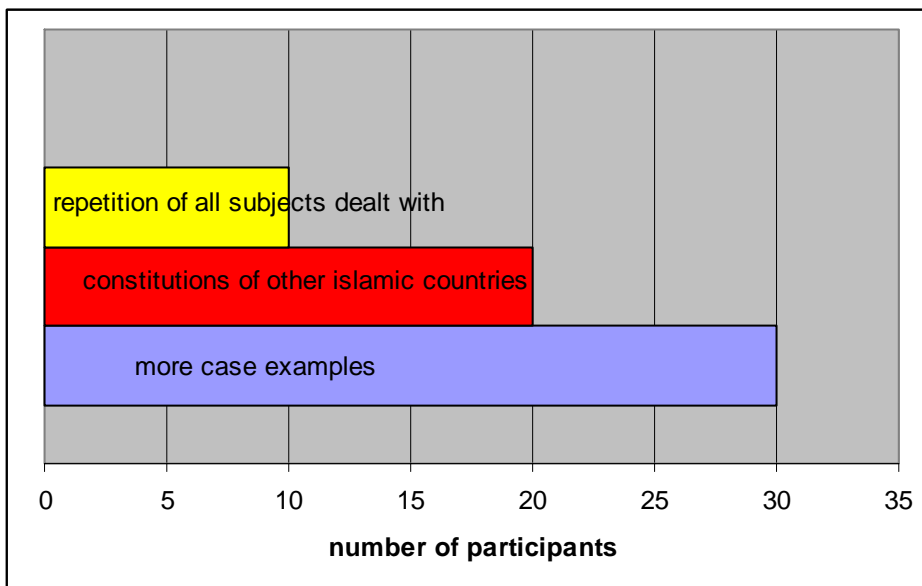


no answer : 1

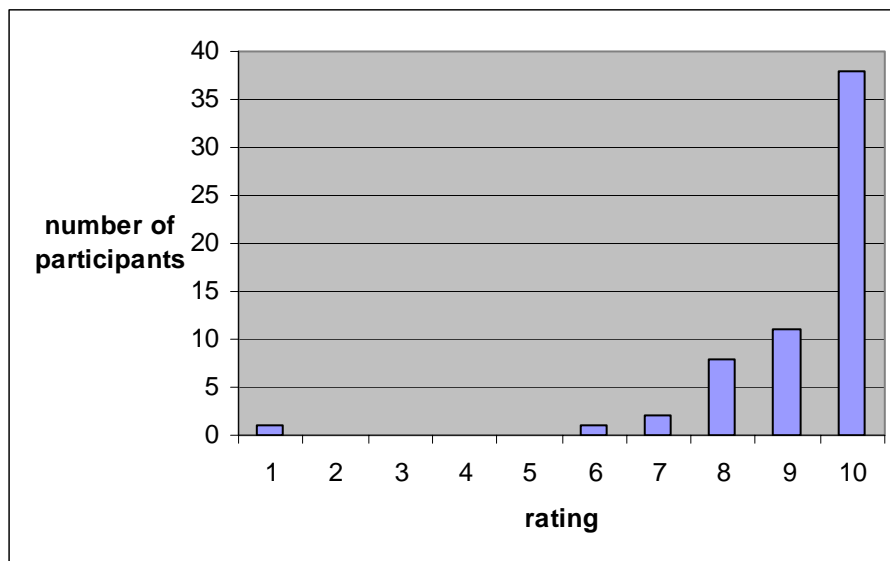
21. Did you receive enough material to work with?



22. Which other material would have been useful?

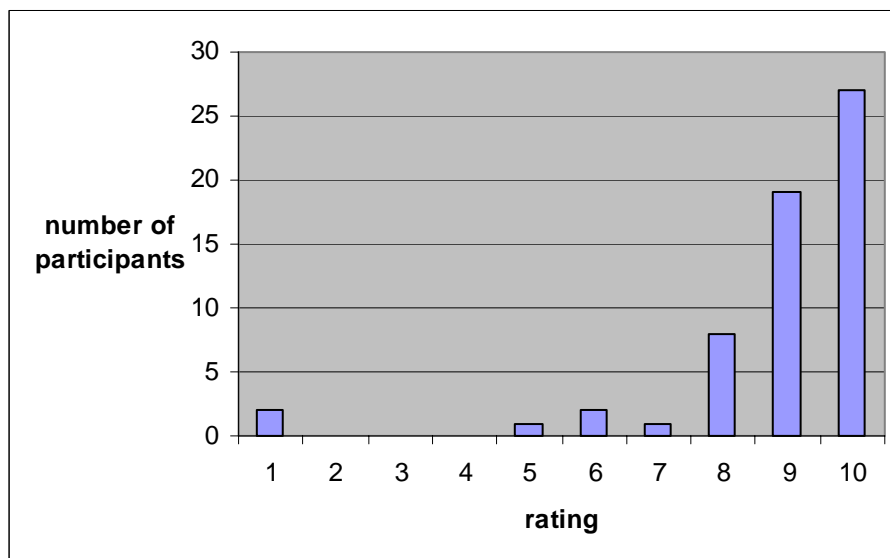


23. Were the case examples in the manual realistic?



no answer : 1

24. Was the number of cases in the manual sufficient?



no answer : 2

25. Do you have other remarks or suggestions?

