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RESTORATIVE JUSTICE IN THAILAND

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I. Introduction

“Restorative justice” is the name given to a wide range of emerging justice approaches that aim for more healing and satisfying response to crime. While each approach may be different, the basic philosophy and principles of restorative justice are common: restorative justice views crime as harm to people and justice as restoring social harmony by helping victims, offenders and community to heal. In fact, restorative justice is not a wholly new concept, elements of restorative justice have been presented in major criminal justice systems for many decades, in some cases, centuries. With the obvious shortcomings of conventional criminal justice and recent interest in reassessment of the relationships between offenders, victims, communities and the State in criminal cases, there are growing interests in restorative justice in many jurisdictions around the world, including in Thailand.

In Thailand, like in many other Asian countries, restorative justice is not a new approach but a familiar concept well entrenched in the Thai traditions and culture. Many elements of restorative justice still remain in the traditional way of communal justice in some rural areas. With such solid background in the Thai culture and increasing problems resulted from the shortcomings of conventional criminal justice, it is not surprising to see a growing interest of restorative justice in Thailand. In my presentation, I will examine the experience of Thailand in implementing restorative justice to the Thai criminal justice process. Although restorative justice has been *reintroduced* in Thailand only recently, and an attempt for its implementation is only in the beginning stage, restorative justice has been very well received by the criminal justice communities and the public. There are also many indications that it is likely to be adopted as a viable alternative to the formal criminal justice process in various types of offenses.

II. Why Restorative Justice? : The Case of Thailand

There are many reasons why Restorative Justice has received much interest in Thailand.

1. The shortcomings of conventional criminal justice

During the past decade in Thailand has witnessed a growing awareness and concern about the ever-increasing size of prison populations and the continued and increasing reliance on the use of imprisonment at sentencing. The problems have been exacerbated by the widespread of methamphetamine, which has doubled the numbers of prison populations during the past five years. Before 1996, the prison population in Thailand had remained approximately 120,000 but with the “get tough” policy on drug, which did not provide adequate attention to the demand

side, has resulted in the rapid increase of inmates more than half of whom were drug users or addicts. According to the statistics revealed in September 2002, there are approximately 250,000 inmates in prisons while the available space could handle only 100,000 persons.

The overcrowding problems have caused many problems within the criminal justice ranging from the high costs of criminal justice administration, riots and human rights problems in prisons, the failure of rehabilitation during confinement, etc. With the severity of the problems at hand, the policy on incarceration will gradually change and, in my opinion, prisons will soon be preserved only for dangerous criminals who should be kept in confinement. The future direction on the treatment of offenders in Thailand, in my opinion, will be toward community corrections, the trend, which coincides with principles of restorative justice.

There are similar problems with regard to juvenile justice system. Juvenile offenders were drawn into the formal process and too many of them were detained in the Juvenile Observation and Detention Center. The statistics for juvenile delinquents have remained fairly steady during the past five years from 29,284 cases in 1998 to 29,622 in 2002. Most of these were narcotic offenses. In 2002, 21.5 percent of the cases were sent to the Department for Juvenile Observation and Protection for a period between 6 months to 3 years detention without any process of restoration.

Apart from problem of overcrowding and juvenile justice, the Thai criminal justice also faces problems of case backlogs. The lack of screening processes, such as diversion programs and other alternative measures, during the police and prosecution levels have resulted in the influx of criminal cases to the formal justice processes, which now inundate the works of the police, the prosecution and the court. It is not surprising to see a criminal case taking more than a year to finish the criminal courts of first instance and several more years before the final decision of the Supreme Court arises. Realizing the problem of delay in the criminal process the Constitution of 1997 has stipulated that a suspect shall rightfully receive an “expeditious, continual, and fair” investigation or trial. In implementing the constitutional provision, it was found that a criminal case pending the consideration of the court has to wait for more than a year before the case will be adjudicated. As a result, it is obvious that more alternative measures and diversion programs have to be urgently introduced at the pretrial stage so as to be able to achieve speedy trial in Thailand.

With such shortcomings, the Thai justice system is now in search of new justice initiatives as a means to solve the problems. As a result, when the concept of restorative justice has been presented to the public, it has received considerable interest among practitioners and academics. This is partly due to the fact that restorative justice not only presents new way of looking at crime and punishment, but it also introduces alternative and diversionary measures which also help reducing caseloads and prison populations. In addition, restorative justice also brings new dimensions to the solution of the high financial and human costs of justice and to the expanded role of for victims, offenders and communities in criminal justice.

2. The need for more community involvement in criminal justice

During the past 2 decades Thailand has witnessed an increasing interest in community participation in the administration of the country. This phenomenon was the result of the long campaign for democracy, which has culminated into the Constitution of 1997, widely called the People's Charter. During the drafting of the Constitution, there were strong interests on the part of the people at the grassroots to have more roles in administering the country. As a result, the Constitution contains many provisions aiming at transforming the country's philosophy of government from "representative democracy" to "participatory democracy." The Constitution has created the ground rules for transforming Thailand from a bureaucratic polity prone to abuse of political rights and corruption into more participatory in which citizens will have greater opportunity to charge their own destiny. It has set the frameworks of laws and administrative procedures, which promote citizen participation, protect individual liberties, restricted state's power to infringe upon individual rights, advocate independent judiciary, and create mechanisms for greater transparent and accountable government. It encourages decentralization by delegating more powers to local administrations and communities.

In the area of criminal justice, community participation in justice administration used to be the hallmark of traditional Thai culture and traditions. Many conflicts were resolved, with mutual consent and satisfaction of the adversaries, within the communities by respectable persons in the communities, mostly the elders, village-leaders, etc. Through the community bonding and networks, the duties of crime prevention, treatment and support of offenders had largely remained within the community. However, because of the country's too much reliance on highly centralized control of government for many decades have resulted in the decline and weakness of the roles of the community particularly on these very important functions. With the establishment of police stations in all districts all over Thailand with highly centralized commands from the police headquarter in Bangkok, the rural community, which used to play a key role in crime prevention and, sometimes, mediation of minor infractions, have almost completely abandoned their roles.

With this new movement toward the revival of the community spirits and decentralization of power of the central government to local administration, the prospect of involving the community to have more meaningful roles in the administration of justice is better than ever. The obvious shortcomings of the Thai criminal justice mentioned earlier have made people think back to the good old days of strong community participation and networking which have made great contribution to the success of crime prevention and treatment of offenders in the community.

The widespread of drug have also highlighted the need or more community involvement in crime prevention and control. With such immense workloads of trivial drug cases in the criminal process and increasing numbers of drug addicts/users, the policy makers have come to realize that there is no way to fight the problem without full participation of the communities and all sectors within the society. There has been increasing awareness that crimes cannot and should not be the sole responsibility of the State to tackle alone. The community and other private parties should join in and share such responsibilities with the State in the form of partnership. With such background, it is not surprising to see that the government has put the policy of public participation and involvement in criminal justice administration among its high priorities. The

Department of Probation, together with other relevant governmental and non-governmental agencies, are working on several pilot projects all over Thailand in creating or bringing back “community justice networks” in the community to assist in crime prevention and treatment of offenders in that community. These new networks will also attempt to find linkages with local administrations, which are now enjoying more autonomy in accordance with the new Constitution. The results of these pilot projects will help our future planning on the attempt to involve local communities to enter into “partnerships” with the State in areas of crime prevention and control.

The above-mentioned phenomenon has, I believe, contributed greatly to the implementation of restorative justice principles, as communities will play an important role in the process to achieving restorative outcomes.

3. Wider interest in the protection of the right of victims

As in many countries, the rights of crime victims have received due attention in Thailand only recently. With the advent of the new Constitution of 1997, widely called the People’s Charter, there are two provisions that directly addressed the right of crime victims. Section 53 provided that:

“Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment.

Children and youth with no guardian shall have the right to receive care and education from the State as provided by law.”

Although the protection rendered by this Section does not address crime victims in general, it however deals with such issues as domestic violence which is one of the major areas where victims need special protection and treatment. In addition, Section 245 of the Constitution stipulates that:

“In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive an aid from the State, upon the conditions and in the manner provided by law.”

The increasing awareness of the right of victims in the Thai criminal justice was a result of a long campaign for criminal justice reform in the country. With the mandate by the Constitutions, the past five years saw a dramatic increase on the protection of crime victims in both laws and practices. The Criminal Procedure Code was amended to adopt a new procedure for interrogation of children who were victims of violence particularly on domestic violence. They were allowed to have a prosecutor, psychologist and social worker presented during the interrogation. Teleconference was also provided during court hearings so as to reduce the pressure of confrontation with the defendants. Moreover, recently the Parliament has passed the law on compensation for crime victims and the wrongfully accused. Currently, the Ministry of Justice is in the process of preparing ministerial regulation setting up the scheme for compensation.

As restorative justice places great emphasis on restoring the plight of crime victims, such heightened awareness of the rights of victims of crimes has directly helped generate interest in restorative justice.

4. Recent criminal justice reform in Thailand

Another major problem on the administration of criminal justice in Thailand is the "non-system" of the criminal justice agencies. Unlike in most countries where major organs in the criminal justice system, such as the police, the prosecutors, the probation and correction officers, are under the purview of the Ministry of Justice, in Thailand, criminal justice agencies are scattered in different places. Such an unorganized structure of the criminal justice system is one of the major causes for the lack of cooperation and coordination among organs within the system. Each agency in the criminal justice system often focuses its resources in solving problems or creating works and projects within its own organization without adequate consideration on the impact of such efforts on the criminal justice process as a whole. These have resulted in repetition of works, the building of empires among criminal justice agencies, the lack of national criminal justice policy, the end results of which is inefficiency in the administration of justice. This has made it very difficult to initiate or implement any new criminal justice policy.

The recent overhaul of the criminal justice system was aimed at solving this structural problem within in Thai criminal justice. According to the new structure, the judiciary, which has long been under the Ministry of Justice, became an independent entity. At the same time, the Ministry of Justice, which used to be a small ministry overseeing only the administrative works of the judiciary, has become the focal point for justice administration, quite similar to the Ministry of Justice of Japan.¹ In this new structure, all agencies concerning justice administration, including those dealing with the treatment of offenders, were brought together under the same organization. Most importantly, a new agency called the Office of Justice Affairs was established with the aim to be a platform for policy planning and budget allocation within the justice system. To help the effective functioning of this new office, the National Committee on Justice Administration, chaired by the Prime Minister, will be created. Apart from the heads of criminal justice agencies within the Ministry of Justice, the Committee, according to the draft law proposed to the cabinet for approval, shall also, *inter alia*, consist of the Prosecutor General, Police Commissioner General, Secretary General of the Court of Justice, representatives of the Bar, the Law Society, academics, and related NGOs.

With this new structure, it is a lot easier to design and implement new criminal justice policies and initiatives, including restorative justice, as a means to solving inherent problems with the administration of justice. The Ministry of Justice has drafted the 1st National Master Plan on Criminal Justice of 2004-2007, which was approved by the cabinet on February 10, 2004. The Master Plan contains the Restorative Justice Programs Plan in its Sixth Strategy- Strategy to

¹ The new Ministry of Justice consists of the following agencies: (1) The Office of the Permanent Secretary, (2) the Office of the Minister of Justice, (3) Office of Justice Affairs, (4) The Special Bureau of Investigation, (5) the Institute of Forensic Science, (6) the Rights and Liberties Protection Department, (7) the Department of Correction, (8) the Department of Probation, (9) the Department of Child Observation and Protection, (10) the Department of Legal Execution. In addition, there are 3 other agencies which are not within the Ministry of Justice but under the direct supervision of the Minister of Justice; they are the Office of the Attorney General, the Office of the Narcotics Control Board and the Office of the Anti-Money Laundering Board.

Promote Conciliation and Diversion from Criminal Justice System. This is the first time that a National Master Plan on Criminal Justice has been adopted and is also the first time that restorative justice has been incorporated into the mainstream justice system.

III. How Restorative Justice was introduced in Thailand?

Against this background, I would like to turn attention to how the concept of restorative justice was introduced in Thailand. As mentioned earlier, even though during the past decade the concept of restorative justice has been known and discussed among a few criminologists in the academic world, but it was formally introduced to Thailand only recently. The principles of restorative justice were mentioned for the first time on October 6, 2000 at the National Seminar on Strategies for Criminal Justice Reform in Thailand organized by the Thailand Criminal Law Institute at the Government House. In the Seminar, a numbers of strategic plans and proposals aiming at the overhaul of the criminal justice system were introduced. Among the many plans and proposals made, it was also suggested that “there must be a paradigm change from retributive to restorative justice.” However, as there are many issues presented at the Seminar, restorative justice was mentioned only briefly.

However, the first national seminar on restorative justice, which has formally introduced restorative justice to the Thai criminal justice communities, was organized subsequently on January 16, 2002. Prior to that there were several seminars and workshops on the New Zealand’s “family conferencing model” which was introduced not as a restorative justice program but as a means to deal more effectively with juvenile cases. The restorative justice concept, which is the framework of the family conferencing model, has not been mentioned distinctively in those seminars and workshops.

In fact, the idea of organizing a national seminar to officially launch restorative justice concept in Thailand was carefully plan so as to be able to achieve optimal result. The venue was chosen at the Government House and the audiences were top criminal justice officials, leading academics and elite within the Thai society. The Seminar was presided over by Dr. Thaksin Shinawatra, the Prime Minister of Thailand, who is also a criminologist. The Seminar was also attended by HRH Princess Bajrakitiyabha, the grand daughter of the Crown Prince of Thailand, who is currently doing her doctoral degree in law at Cornell Law School. The Seminar was broadcast live all over Thailand by a public television channel.

The Seminar has achieved quite a successful result. There was good feedback as the media has paid great interest to this new justice initiative. Several articles were published in major newspapers both English and Thai regarding restorative justice. The Prime Minister himself gave several interviews afterward in support of this new concept, particularly in the area of juvenile justice. The organizers also published several books on restorative justice. Moreover, restorative justice concept has now been taught in advanced criminal law courses in the major law schools as well as in other criminal justice institutions, while researches on the subjects in various aspects have been conducted and received financial support from research funding agencies.

Despite the fact that there are many reasons for applying restorative justice programs in Thailand and a strong support for implementation as mentioned above, real implementation is not at all

easy. First of all, the drastic changes of restorative justice concept from the mainstream criminal law ideology make it quite difficult to convince a number of conservative criminal justice officials to understand and accept the idea. Moreover, as restorative justice is an evolving concept with no exact definition or formula, it is somehow difficult for criminal justice officials to understand, let alone to support the idea. Moreover, the Thai criminal justice system is not familiar with any diversion programs, either at the police or prosecution level. Normally, criminal cases process mostly through official procedure from the police to the prosecutors who rarely use discretion in dismissing the case. Almost all criminal cases with sufficient evidence, except minor offenses with fine as maximum penalty, shall be prosecuted to the court. Such unfamiliarity with informal procedure make it more difficult to initiate and successfully implement restorative justice programs, which in itself are more advanced forms of diversions where restorative processes and outcomes are key elements to the success of the programs.

One aspect, in my opinion, which partly contributes to the successful introduction of the idea of restorative justice to the Thai justice circles and the general public, is the name in Thai of restorative justice. Instead of translating it literally which would make it sound much more difficult and less comprehensible in Thai, I have deliberately chosen the Thai word *Samarn-Chan*, which means “social harmony.” As a result, the Thai terminology for restorative justice for the Seminar is *Yutithum Samarn Chan*-- justice for social harmony-- in the term in Thai which, in my opinion, may capture the true essence of restorative justice far better than literal translation. This has proven to be an appropriate and strategically correct choice, since the word is well received by the media and the public as well as people in academic circles.

IV. Drug Rehabilitation Act of 2002: An important ground work for restorative justice programs

Another important development, which may provide good ground works for the implementation of restorative justice programs in Thailand, is the recent passage of the new Drug Rehabilitation Act of 2002 with an aim to implement demand reduction programs to counter the widespread of methamphetamine in the country. Although Thailand has been quite successful in cutting down heroin production and consumption, we are still facing the problem regarding the widespread of methamphetamine. Methamphetamine is much easier to produce than heroin and is as much lucrative. Although the volumes of the drug seized have been increasing notably, there is still widespread drug abuse to a large number of people including among the young. The Thai government has placed the drug problem issue high on its agenda. It has introduced the holistic approach to drug prevention and suppression. While the government will continue with its efforts in supply-side reduction by stepping up its strong law enforcement on drug producers and traffickers and cutting down the entry of production from abroad, at the same time, it will also put great emphasis on the reduction of the demand for drug by concentrating more on prevention strategies as well as on rehabilitation of drug addicts.

As mentioned earlier, the Parliament has recently passed the Drug Rehabilitation Act of 2002. This law has for the first time introduced drug compulsory treatment programs to the country. According to the implementation plan, the programs will start operation, during the first phase, within 36 selected provinces in early March 2003, and for the rest of the country in July this year. The compulsory treatment program will for the first time introduce “drug diversion

programs” to the Thai criminal justice. It will allow drug addicts to undergo treatment instead of prosecuting them. If they are willing to receive treatment and relinquish their drug habits, the prosecutors will drop the charge and they will be assisted to continue their daily lives in the community as ordinary people. To ensure that this new initiative will be successful, the Department of Probation, in the capacity as the coordinator of the programs, has work closely with many government and non-government agencies as well as the communities all over the country. It is believed that by concentrating seriously on rehabilitation and prevention, Thailand will be able make progress on the fight against drug. By such policy, the government will be able to step up the suppression as well as to make the precise target of suppression so that those punished will be the ones who deserve punishment, not the addicts who themselves are the victims of the drug problem.

The introducing of the compulsory treatment policy is a new concept in drug rehabilitation in Thailand. It will complement the voluntary treatment programs, which we now have. As a matter of fact, the compulsory treatment program will strengthen the voluntary programs, as it will increase their clients immensely. With this new and clear policy from the government, Thailand is on the right track on demand reduction policy. It is necessary that drug rehabilitation capacity be increased to meet the rising demand. However, to be successful in these undertakings it is important to involve the communities more into the process of rehabilitation. In addition, we need to think about the issue of reintegration into the society of these addicts. The communities must support and encourage them to start new lives.

According to the new procedure specified by the law, those arrested under drug consumption charge will be sent to the Department of Probation for assessment and review of the level of addiction. The Probation Department has set up the so-called “drug rehabilitation committees” in every province all over the country to do the job. The Committee consists of a prosecutor as chair and a doctor, a psychologist, a social worker and two representatives of the communities. The Committee will design drug treatment programs for each individual drug users/addicts. If they are able to meet with the rehabilitation programs prescribed by the drug Committee, their charges will be dropped. As currently, more than half of the police, prosecutors and judges caseloads are drug cases, the programs will not only introduce an appropriate solution to drug problem, but they will also help reducing the pressure of the heavy drug caseloads from the Thai criminal justice.

Moreover, the Drug Rehabilitation Act and the national policy on drug will rely heavily on reviving the community spirits and involving them into the drug rehabilitation programs. Through the new policy, the Probation Department will try to establish “community justice networks” within certain community around the countries. These networks will, among other things, assist in the persuasion of drug users/addicts to receive treatment in voluntary treatment programs (without having to arrest them). Family and community support and encouragement are also necessary during and after the treatment. These networks will collaborate closely with the volunteer probation officers in the aftercare and the follow up of the drug users and addicts within the community after the treatment. If successful, the responsibilities of the networks will hopefully be extended to other functions such as the prevention of crime, community mediation, etc.

In my opinion, this new law will directly contribute to the application of restorative justice in Thailand in many aspects. Firstly, the new drug diversion programs will make the Thai criminal justice officials familiar with the concept of suspension of prosecution and diversion programs. This is a major breakthrough since Thailand, unlike in some countries, have never before adopted any kind of diversion programs as a normal practice. Given the large amount of cases going through this channel, it will make these diversion programs at the prosecution level a common practice in all jurisdictions. This will directly support the draft legislation for diversion at the prosecution level where restorative practices will be used, which is now awaiting consideration of the parliament.

V. Restorative Justice Implementation in Selected Areas

(1) Juvenile Justice

Adapted from the New Zealand's "Family Group Conferences," Thailand, through the Department of Juvenile Observation and Protection (DJOP) of the Ministry of Justice, has initiated its "Family and Community Group Conferences" (FCGC) since June 2003. From then up to the end of January 2005, there were 4,653 cases referred to FCGC, of which the prosecutors agreed to drop the charges for 3,366 juvenile offenders. The use of restorative justice in juvenile justice has received a great deal of support from all concerned including the Prime Minister, who in many occasions, has shown his preference for this new approach to the old, flawed juvenile justice system.

The introduction of restorative justice into the Thai juvenile justice has been made possible by a provision in the Juvenile Procedure Act which allows the prosecutors to drop the charge if the director of the juvenile training center recommend for such measure. According to the law, he has to convince the prosecutors that the young offender can change their behaviors and become a good person without being prosecuted in court. This provision has however not been used as Thailand never has a tradition for any diversion programs before. With the increasing concerns of the public towards the quality of juvenile justice in protecting and rehabilitating juvenile delinquents and the popularity of restorative justice concept in Thailand, the DJOP has reintroduced this provision and added FCGC as a restorative process for the parties to solve their conflict.

The FCGC is the process of multidisciplinary brainstorming, particularly of all stakeholders who have been affected by the incident including the child offender and the victim. The criteria for cases to go through FCGC are as follows:

1. The offence must be under 5 year imprisonment;
2. The young offender has to admit and show his intention to repair the harm;
3. The victim has to agree with this arrangement;
4. The young offender must be a first-time offender exception the prior offence is a petty one;

To systematically and quickly introduce FCGC to all jurisdictions in Thailand, the DJOP has worked closely with Mr. Ted Wachtel and the International Institute for Restorative Practices (IIRP) for the designing of the restorative process and training of facilitators.

(2) Domestic Violence

Domestic violence particularly when female spouses were assaulted by their love ones has recently received a great deal of attention in the Thai society. Through long, continued and efficient campaigns by women rights advocates, the public has started to realize the inadequacies of the conventional criminal law and criminal justice process in protecting the right of the aggrieved wife. In such case it is obvious that in most cases the victims do not want their husbands to be put into prisons; they just want them to change behaviors and stop hurting them. The criminal justice system in Thailand do not leave many choices for the aggrieved wives, since the police, for obvious reasons, do not want to receive complaints as the incidents were viewed as family matters. The beaten wives will mostly be forced to reconcile with the aggressors, a venue which does not adequately protect them or guarantee that future similar incidents will not occur. On the other hand, if the police decide to proceed with the complaints, it is more likely than not that the wives will later request the police or prosecutors to withdraw the cases for fearing that the husbands will have to be imprisoned, a result which will directly affect the women and their children economically and socially. Such dilemma represents the weakness of the existing conventional criminal justice process to which restorative justice can appropriately fill the gap.

To solve this problem, on January 3, 2005, the Department of Probation, together with the Bangkok Metropolitan Police Bureau and the City of Bangkok, has introduced the use of restorative justice in a pilot project, which was named by the media as “husband rehabilitation clinic.” The project aims at setting up a diversion program at the police level for treatment of abusive husbands. It is proposed that the police, after receiving complaints from the victims of aggression, refer the case to probation officer instead of proceed with the formal investigation process. The probation officer, after considering the facts and circumstances of the case, may organize a conference among the victim, the aggressor, their relatives (if necessary), respected members of the community (if appropriate) to find appropriate measures for the treatment of the aggressor and the solution to the personal conflict and/or other problems. In this process, the probation officer will act as a facilitator trying to seek reconciliatory measures for the belligerent couple. The aggressor may be subject to some or all of the following conditions: attending appropriate treatment programs, regular report to probation officer within a specified period of time, providing restitution or rendering community services as deemed necessary. If the aggressor was able to meet with the conditions set for him, the probation officer will report the positive result to the police. On the contrary, if the agreed conditions were broken the police may proceed with the criminal process.

By having this alternative program, it is hope that not only both the victims and aggressors in domestic violence will be appropriately taken care of, but such measures will also allow the police to be more efficient in the preventive campaign against domestic violence. Currently, the project was initiated only in about 30 police stations in Bangkok metropolitan areas. If the project proves to be successful, it will hopefully be extended to cover all jurisdictions.

(3) Draft Legislation for Diversion at Prosecution Level for Adult Offenders in Offense with less than 5 years imprisonment

With the success of the drug addicts diversion programs as mentioned earlier and the widening support of restorative justice in Thailand, the draft legislation on diversion programs with restorative approaches at the prosecution level has been approved by the cabinet since October 2004 and now awaiting consideration of the parliament. Hopefully, it will soon become law. According to the draft legislation, for the offence with 5 year imprisonment or less, the prosecutors may use his discretion to suspend the decision to prosecute and refer the case for a restorative process. To be eligible for this diversion program, the offender must admit his crime and be willing to make amends. The victim must also agree to this process. The prosecutor may refer the case for the probation officer who will act as facilitator.

(4) At Probation Works

At the moment, the Department of Probation has, since June 2004, initiated a pilot project in selected 11 offices for the use of restorative justice in probation works. This include the use of restorative process between offenders and victims during the preparation of pre-sentencing reports, the organization of healing and supporting circles at parole where parolees, victims and their relatives, and representatives of the community meet. Probation officers have been trained to act as facilitators and to organize various types of restorative process for reconciliation of victims and offenders.

The implementation of restorative justice in probation works including the role of probation officers in acting as facilitators will be evaluated by a research project for future improvement. As probation officers will be the key player according to the draft legislation on restorative practices at prosecution level, this project will make them ready for their future responsibilities.

VI. Future Trends of Restorative Justice in Thailand

Restorative justice policies are, in my opinion, a benevolent means of addressing crime problem and, in the case of Thailand, are appropriately capable of addressing many concerns on the administration of justice. Underlying the crime prevention goals of restorative justice is the reduction of prison populations and formal criminal justice processing through the rehabilitation of offenders by committing them to assuming greater accountability and sensitivity to victims. The procedure through which prison reductions are to occur involve the use of various forms of diversions from courts as well alternatives to incarceration which also coincides with the current policy of reducing cases coming into the formal justice processes. In addition, the restorative process by which restorative outcomes are achieved is the process that involves and empowers individuals and communities to deal with many of the crime and disorder problems normally dealt with by the state criminal justice system. In line with the policy of more community participation and involvement, restorative justice emphasizes the solving of crime and justice problems through the delegation of many aspects of criminal justice decision making to the local level. It is also supports the use of partnerships, where desirable, between the private parties, that is, individuals and communities on the one side, and the public spheres, that is, state agencies, such as police, prosecutors, probation, on the other side.

Although it will not be easy to bring restorative justice policies into practices within a short period of time, the prospect of its being accepted to the mainstream criminal justice are very bright. In the case of Thailand, I believe that it is necessary that we must make sure that restorative justice is a complement to and not a replacement of conventional criminal justice. Moreover, it is important to, at least at the outset, carefully select areas of trial application that can guarantee success with fewer objections. For example, restorative justice policies may be initiated in juvenile justice and other areas where the plights of crime victims are obvious, such as in domestic violence, car accidents, etc. In addition, it is also important to distinguish restorative justice from other diversion programs by placing the utmost importance to restorative processes where victims should be placed at the center of the attention with appropriate participation from the offenders and the communities. Finally, we have to be mindful that restorative justice is an evolving concept and there is no definite formula of success. What works in one society may not flare as well in others. Each country has to find its own recipe which properly balances the conventional role of criminal justice with this new concept so as to be able to come up with a better way to ensure justice to all.