

## RESTORATIVE JUSTICE: THE THAI EXPERIENCE

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### I. INTRODUCTION

“Restorative justice” is the name given to a wide range of emerging justice approaches that aim for a 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 the 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 and the State in criminal cases, there are growing interests in restorative justice in many jurisdictions around the world, including in Thailand.

The fundamental principles shaping the framework of restorative justice can be best described by the following<sup>1</sup>:

1. Crime is a human process whereby humans violate social relationships, both personal and those implied relationships with others as a consequence of being members of communities. Crime is not merely an act of breaking laws of the state; it is a tearing of the social or community fabric; it is the violation of one human being by another.

2. The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible.

3. To have a chance at restoration, victims of crime must have the opportunity to choose to be involved in the process of justice. Such involvement may include: information, dialogue with the offender, mutual resolution of conflict with the offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, getting the experience resolved and renewing hope.

4. To have a chance at restoration, offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations regarding individual victims and the community as a whole. Such opportunity may lead to: participation in defining their obligations, safe face-to-face encounters with victims, understanding the impact of their own actions, creative ways of providing restitution, identifying their own needs, partial ownership of the process, getting the experience resolved and renewing hope.

5. To have a chance at restoration, the local community and its resources must be brought to bear on the needs of victims and offenders as well as in prevention of delinquent and criminal acts.

6. To have a chance at restoration, the formal criminal/juvenile justice system must continue to work to ensure victim and offender involvement which values genuine engagement of all participants without coercion. It must continue to monitor and follow-up on accountability. It must exhaust less restrictive interventions before moving toward incarceration alternatives as it seeks to promote justice in the community.

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 a solid background in the Thai culture and increasing problems resulting from the shortcomings of conventional criminal justice, it is not

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<sup>1</sup> Mark S. Umbreit and Robert B.Coates, *Multi-Cultural Implications of Restorative Justice: Potential Pitfalls and Dangers* (1998), pp.1-2.

surprising to see a growing interest in restorative justice in Thailand. In my paper I examine the attempt to introduce restorative justice in Thai criminal justice. 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 for some types of offenses soon.

## **II. WHY RESTORATIVE JUSTICE? : THE CASE OF THAILAND**

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

### **A. The Shortcomings of Conventional Criminal Justice**

During the past decade Thailand has witnessed a growing awareness and concern about the ever-increasing size of its prison population and the continued and increasing reliance on the use of imprisonment at sentencing. The problems have been exacerbated by the widespread use of methamphetamine, which has doubled the prison population during the past five years. Before 1996, the prison population in Thailand had remained approximately 120,000 but the “get tough” policy on drugs, which did not provide adequate attention to the demand side, has resulted in a rapid increase of inmates, more than half of whom are drug users or addicts. According to the statistics revealed in September 2002, there were approximately 250,000 inmates in prison while the available space could handle only 100,000 persons. Considering the manpower of 10,700 correction officers, the ratio rate of officers to inmates is approximately 1 to 24, which is very far from the internationally acceptable rate of 1 to 4 or 5.

Overcrowding has caused many problems within the criminal justice system ranging from the high costs of criminal justice administration, riots and human rights problems in prisons and 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.

Apart from problems of overcrowding, the Thai criminal justice system also faces problems of case backlogs. The lack of screening processes, such as diversion programmes and other alternative measures, during the police and prosecution levels have resulted in an influx of criminal cases to the formal justice processes, which now inundate the work of the police, the prosecution and the court. It is not surprising to see a criminal case taking more than a year to be decided in the criminal courts of first instance and several more years before a final decision of the Supreme Court is given. 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 programmes have to be urgently introduced at the pretrial stage so as to be able to achieve a 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 ways 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 victims, offenders and communities in criminal justice.

### **B. 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 culminated in 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 a greater role 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 shape their own destiny. It has set the framework of laws and administrative procedures, which promote citizen participation, protect individual liberties, restricted state's power to infringe upon individual rights, advocate an independent judiciary, and create mechanisms for greater transparency and an 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 reliance on highly centralized control of government for many decades this has resulted in the decline and weakness of the role of the community particularly in these very important functions. With the establishment of police stations in all districts all over Thailand with highly centralized command from the police headquarters 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 spirit and decentralization of power of the central government to local administration, the prospect of involving the community to have a more meaningful role in the administration of justice is better than ever. The obvious shortcomings of the Thai criminal justice system mentioned earlier have made people think back to the good old days of strong community participation and networking which made a great contribution to the success of crime prevention and treatment of offenders in the community.

The widespread use of drugs has also highlighted the need for 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 is an increasing awareness that crime 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 a partnership.

With such a 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 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 of achieving restorative outcomes.

### **C. Wider Interest in the Protection of the Rights 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 rights of victims in the Thai criminal justice system 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 in 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 domestic violence. They were allowed to have a prosecutor, psychologist and social worker present during the interrogation. Teleconferencing was also provided during court hearings so as to reduce the pressure of confrontation with the defendants. Moreover, recently Parliament passed the law on compensation for crime victims and the wrongfully accused. Currently, the Ministry of Justice is in the process of preparing a 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.

#### **D. Recent Criminal Justice Reform in Thailand**

Another major problem with 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 of 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. 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.<sup>2</sup> 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 of being 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*,

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<sup>2</sup> 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.

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.

### **III. HOW RESTORATIVE JUSTICE WAS INTRODUCED IN THAILAND?**

Against this background, I would like to turn my 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, it was formally introduced to Thailand only recently. The principles of restorative justice was 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 were many issues presented at the Seminar, restorative justice was mentioned only briefly.

However, the first national seminar on restorative justice, which formally introduced restorative justice to the Thai criminal justice communities, was organized subsequently on January 6, 2002. Prior to that there were several seminars and workshops on New Zealand’s “family conferencing model” which was introduced not as a restorative justice programme 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 the restorative justice concept in Thailand was carefully planned 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 the 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, the restorative justice concept is now taught in advanced criminal law courses in the major law schools as well as in other criminal justice institutions. To my knowledge, there are at least 4 Ph.D. candidates whose doctoral dissertations focus on restorative justice. Due to the success in the launching of the idea, Thailand’s major research funding agencies have expressed their willingness to support further studies on the application of restorative justice in Thailand.

Despite the fact that there are many reasons for applying restorative justice programmes in Thailand and strong support for implementation as mentioned above, real implementation is not at all easy. First of all, the drastic differences of the restorative justice concept from the mainstream criminal law ideology makes 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 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 programmes, either at the police or prosecution level. Normally, criminal cases proceed mostly through the official procedure from the police to the prosecutors, who rarely use their discretion to dismiss a case. Almost all criminal cases with sufficient evidence, except minor offenses with a fine as the maximum penalty, are prosecuted in the courts. Such unfamiliarity with informal procedure makes it more difficult to initiate and successfully implement restorative justice programmes, which in themselves are more advanced forms of diversions where restorative processes and outcomes are key elements to the success of the programmes.

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- the term in Thai which, in my opinion, may capture the true essence of restorative justice far better than a 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 FOUNDATION FOR RESTORATIVE JUSTICE PROGRAMMES**

Another important development, which may provide a good foundation for the implementation of restorative justice programmes in Thailand, is the recent passage of the new Drug Rehabilitation Act of 2002 with the aim of implementing demand reduction programmes to counter the widespread use of methamphetamine in the country. Although Thailand has been quite successful in cutting down heroin production and consumption, we are still facing the problem of the widespread use of methamphetamine. Methamphetamine is much easier to produce than heroin and is as lucrative. Although the volume of the drug seized has notably increased, there is still widespread drug abuse, 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 the drug by concentrating more on prevention strategies as well as on rehabilitation of drug addicts.

As mentioned earlier, Parliament recently passed the Drug Rehabilitation Act of 2002. This law has for the first time introduced compulsory drug treatment programmes to the country. According to the implementation plan, the programmes 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 programme will for the first time introduce "drug diversion programmes" to 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 charges and they will be assisted in continuing their daily lives in the community as ordinary people. To ensure that this new initiative will be successful, the Department of Probation, in its capacity as the coordinator of the programmes, has worked 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 to make progress in the fight against drugs. By such policy, the government will be able to step up the suppression as well as to precisely target its 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 introduction of the compulsory treatment policy is a new concept in drug rehabilitation in Thailand. It will complement the voluntary treatment programmes, which we now have. As a matter of fact, the compulsory treatment programme will strengthen the voluntary programmes, as it will increase their clients immensely. With this new and clear policy from the government, Thailand is on the right track to pursue its demand reduction policy. It is necessary that the 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 in the process of rehabilitation. In addition, we need to think about the issue of reintegration into 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 charges will be sent to the Department of Probation for assessment and a review of the level of their 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 programmes for each individual drug users/addicts. If they are able to meet with the rehabilitation programmes prescribed by the drug Committee, their charges will be dropped. Currently, more than half of

the police, prosecutors and judges caseloads are drug cases, the programmes will not only introduce an appropriate solution to the drug problem, but they will also help in reducing the pressure of the heavy drug caseloads on the Thai criminal justice system.

Moreover, the Drug Rehabilitation Act and the national policy on drugs will rely heavily on reviving the community spirits and involving them in the drug rehabilitation programmes. Through the new policy, the Probation Department will try to establish “community justice networks” within certain communities around the country. These networks will, among other things, assist in the persuasion of drug users/addicts to receive treatment in voluntary treatment programmes (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 programmes will make the Thai criminal justice officials familiar with the concept of suspension of prosecution and diversion programmes. This is a major breakthrough since Thailand, unlike in some countries, has never before adopted any kind of diversion programmes as a normal practice. Given the large amount of cases going through this channel, it will make these diversion programmes at the prosecution level a common practice in all jurisdictions. This will also support the draft bill on suspension of prosecution of the Office of the Attorney General, which will soon be sent to the cabinet for approval before being forwarded to parliament.

#### **V. SELECTED AREA FOR TRIAL APPLICATION: DOMESTIC VIOLENCE**

Domestic violence, particularly when female spouses are assaulted by their loved ones, has recently received a great deal of attention in 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 rights of the aggrieved wife. In such cases it is obvious that in most cases the victims do not want their husbands to be put into prison; they just want them to change their behavior and stop hurting them. The criminal justice system in Thailand does not leave many choices for the aggrieved wives, since the police, for obvious reasons, do not want to receive complaints as the incidents are 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 case for fear 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.

As a matter of fact, an attempt to introduce the restorative justice approach to the solution of domestic violence was made even before the formal introduction of the restorative justice concept in January 2002. A few years earlier, while serving as the Director of the Thailand Criminal Law Institute, I and a group of women’s rights advocates attempted to introduce programmes for treatment of the aggressor as part of the alternatives to prosecution in domestic violence cases. At that time, although the idea was well received by academics and practitioners, it was very difficult to start the programme without a strong commitment from the police, the prosecutors and a coordinating agency, such as, for the case of Thailand, the probation services. After I had the opportunity to run the Department of Probation in August 2001, I then reintroduced this programme on the first appropriate occasion in November of 2002, since November is the month for campaigning against violence against women and children.

The project, which was named by the media as “husband rehabilitation clinic” or, literally in Thai, “husband repairing factory”, aims at setting up a diversion programme at the prosecution level for treatment of abusive husbands. It is proposed that the police, after receiving complaints from the victims of aggression, proceed with the case rather than viewing it as a family matter and decline to accept the complaint. At the prosecution level, the prosecution will consider conditional dismissal of the charge if the following prerequisites are met: consent of the victims, the aggressors are repentant and willing to undergo a

123RD INTERNATIONAL SENIOR SEMINAR  
VISITING EXPERTS' PAPERS

treatment programme if necessary, the nature of the case is appropriate for pretrial dismissal (factors such as the gravity of the case, etc. will be looked at). If the prosecutor decides that conditional dismissal is more appropriate than prosecution, he will submit the case to the probation officer. 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) and 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 programmes, be required to regularly report to his probation officer within a specified period of time, providing restitution or rendering community service as deemed necessary. If the aggressor was able to meet with the conditions set for him, the probation officer will report the positive results to the prosecution who will then drop the charge. On the contrary, if the agreed conditions were broken the prosecutor will continue with the suspended prosecution.

By having this alternative programme, it is hoped 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.

As mentioned earlier, the project was proposed once again in November 2001 during the National Seminar for the Protection of the Right of Women and Children, an event held every year during the month of November. This time it began to receive wider support from the public and has become front-page news. However, it was not until November 2002 at a Seminar on Restorative Justice and Domestic Violence, organized by the Department of Probation and the Thailand Research Fund (TRF), that it became the talk of the town and one of the biggest news during the campaign month for ending domestic violence.

Although the proposed scheme has received a lot of publicity and overwhelming support from the public, the Department of Probation is still unable to launch the project as early as expected due to reluctance on the part of the Office of the Attorney General to start the suspension of prosecution scheme without any back up law on it. The proponents of the scheme are of the opinion that no law is needed in this case since in limited circumstances, particularly in petty crimes, the prosecution has already adopted the opportunity principle of dropping prosecution of several cases on the grounds that prosecution will serve no public interest. Such non-prosecution orders were issued even without any conditions. As a result, in domestic violence cases where the victims provide their consent; the nature of the case is not aggravated; and the offenders are willing to undergo and complete rehabilitative and restorative programmes, there are even less grounds for prosecution. Although there is no real opposition to the idea, some believe that it may be better to wait for the law on suspension of prosecution before attempting an innovative idea such as this. Others, particularly more conservative criminal justice and judicial officials, may simply not understand the seriousness of the problem and may not see any urgent need for a special programme of this kind.

Despite the obstacles for the immediate implementation of the scheme, I am quite confident that the project will soon be implemented. Recently the Office of the Attorney General has shown an interest in the programme and a discussion with the Department of Probation as to how to implement such programme will soon occur.

Apart from the area of domestic violence, attempt has been made in the use of restorative justice approaches in juvenile justice. Currently, there are ongoing research projects aiming at setting appropriate schemes for restorative justice approaches in dealing with juvenile delinquents. In addition, the Department of Corrections has initiated a pilot project on restorative justice in Nontaburi prison by setting up a restorative justice process between the victims of crime and their relatives with the inmates before providing parole. These are some examples of the healthy trends towards more widespread adoption of restorative justice principles in the Thai criminal justice system in the near future.

## **VI. FUTURE TRENDS OF RESTORATIVE JUSTICE IN THAILAND**

Restorative justice policies are, in my opinion, a benevolent means of addressing crime problems and, in the case of Thailand, are appropriately capable of addressing many concerns in 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 their victims. The procedures 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 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 and probation services, on the other.

Although it will not be easy to bring restorative justice policies into practice within a short period of time, the prospect of its being accepted into the mainstream criminal justice system are very bright. In the case of Thailand, I believe that it is necessary to 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 programmes by placing the utmost importance on 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 for success. What works in one society may not fare 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.