ANNUAL REPORT FOR 2013
and
RESOURCE MATERIAL
SERIES No. 93

UNAFEI

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 93. This volume contains the Annual Report for 2013 and the work produced during the 156th International Senior Seminar, conducted from 15 January to 14 February 2014. The main theme of the 156th Seminar was *Protection for Victims of Crime and Use of Restorative Justice Programmes*.

The improvement of victim protection is an international trend, yet some countries in Asia, Africa, and Central and South America do not have adequate systems for the protection of victims of crime. The three-fold objectives of the 156th Seminar were to clarify and analyse the current situation of victim protection in the participating countries, to explore more effective ways to protect crime victims and to encourage their active participation in the criminal justice process—specifically in the context of restorative justice approaches.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Seminar to explore various issues that relate to victim protection and restorative justice. This issue of the Resource Material Series, in regard to the 156th International Senior Seminar, contains papers contributed by visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Seminar. I regret that not all the papers submitted by the participants of the Seminar could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

August 2014

Tomoko Akane
Director of UNAFEI

PART ONE

ANNUAL REPORT FOR 2013

- *Main Activities of UNAFEI*
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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2013 - 31 December 2013)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1962 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of the criminal justice field discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). Approximately one hundred government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA is an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

By the end of 2013, UNAFEI had conducted a total of 155 international training courses and seminars. Approximately 4,900 criminal justice personnel representing 131 different countries have participated in these seminars. UNAFEI also conducts a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and hold important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 153rd International Senior Seminar

1. Introduction

The 153rd International Senior Seminar was held from 9 January to 8 February 2013. The main theme was "Treatment of Female Offenders". Fifteen overseas participants (including one course counsellor) and seven Japanese participants attended the Seminar.

2. Methodology

Firstly, the Seminar participants introduced the roles and functions of criminal justice agencies in their countries in regard to the main theme. After receiving lectures from UNAFEI Professors and

visiting experts, the participants were then divided into two group workshops as follows:

Group 1: Implementing the "Bangkok Rules"—Focusing on Protecting Human Rights by Improving the Living Environment of Female Offenders

Group 2: Rehabilitation Programmes for Female Offenders—Focusing on Reducing Reoffending of Female Offenders

Each Group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experiences, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the Reports of the Seminar. The full texts of these Reports were published in UNAFEI Resource Material Series No. 90.

3. Outcome Summary

(i) Implementing the "Bangkok Rules"—Focusing on Protecting Human Rights by Improving the Living Environment of Female Offenders

The group considered the treatment of female offenders from the following perspectives: 1) Gender Sensitivity: Protecting the Human Rights of Female Offenders; 2) Dependent Children; 3) Health Care; 4) Juvenile Care; 5) Minorities; 6) Personnel; 7) Research and Study; 8) Safety; and 9) Social Relations.

After a lengthy discussion, the Group reported its recommendations for implementing the Bangkok Rules and focused on the protection of human rights of female offenders. Based on their discussions of all agenda items, Group 1 concluded that gender sensitivity is not a priority in most countries; prisons are not designed for female offenders; overcrowding must be addressed by diversion and alternative treatment for women that avoids imprisonment; and treatment must focus on providing women with educational or vocational skills, making them self-reliant upon the conclusion of their treatment.

The Group advocated the following recommendations to improve the treatment of female offenders: A. extensive research to address female offenders' specific needs; B. providing gender-specific training to correctional staff; C. using inter-agency cooperation (police, prosecution, courts, and corrections) to address overcrowding by the improvement of diversion programmes; D. judicial and human-rights-organization inspection of the condition of female inmates; E. sensitization of the public through "Restorative Justice" public awareness campaigns; F. the construction of women's prisons and smaller, more community-based institutions; G. empowering correctional facilities to provide special medical care for female offenders, especially for gynaecology and mental health care; H. employment of experienced female staff by relevant governmental agencies in order to influence the decision-making process on issues that affect female offenders; I. separation of juvenile and adult female offenders; J. optimizing mental health care, drug treatment programmes, and educational/vocational programmes through public- and private-sector partnerships.

(ii) Rehabilitation Programmes for Female Offenders—Focusing on Reducing Reoffending of Female Offenders

The group conducted its discussions according to the following agenda: (1) characteristics of female-committed offences; (2) effective assessment/classification methods for female offenders; (3) necessary rehabilitation programmes for female offenders; and (4) surrounding issues of rehabilitation programmes of female offenders.

After in-depth discussions on these sub-topics, the group concluded that the treatment of female offenders has not received sufficient attention due to their small (but increasing) population in comparison with male offenders. The Group recognized that offences committed by females differ from those of males in terms of the types of offences or the motives for the offences. Consequently, female offenders require special consideration of treatment that meets their needs—both in the institution and in the community.

Based on the input from the visiting experts, Group 2 identified risks and needs specific to female offenders: mental health history, depression/anxiety, psychosis/suicidal [tendencies], child abuse, adult victimization, relationships, parental stress, and housing safety. Treatment must be tailored to address each offender's risks and needs; thus, effective risk-needs assessment is vital. Successful rehabilitation programmes must be gender-specific and must target criminogenic factors; they must use established methodologies, such as Cognitive Behavioural Treatment, and gender-sensitive methodologies, such as trauma care; finally, a holistic approach is necessary.

In addition, the following recommendations were advocated: *first*, actuarial assessment (i.e. statistical research) must be conducted to further identify and analyze gender-specific risks and needs; *second*, custodial and non-custodial treatment programmes must focus on gender-specific and criminogenic risk factors, and treatment requires more community-based measures for low-risk female offenders; and *third*, the treatment of female offenders must be viewed in a wider context that (1) increases the capacity of correctional officers to treat female offenders; (2) expands the knowledge base through statistical research and sharing of best practices; (3) strengthens cooperation between local and international agencies in terms of knowledge sharing and human rights monitoring; and (4) raises public awareness of the situation of female offenders.

B. The 154th International Training Course

1. Introduction

The 154th International Training Course was held from 15 May to 28 June 2013. The main theme was "Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff". Twelve overseas participants, including two international observers, and seven Japanese participants attended this Course.

2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations, lectures by visiting experts and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into two groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Causes of Stress for Correctional Personnel and Necessary Abilities for Mid-Level Staff to Solve the Problems

Group 2: What Mid-Level Staff Can Do for Correctional Personnel in Terms of Stress Management

The two groups each elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. The Groups presented their reports during the Report-Back Session, where they were endorsed as the reports of the Course. The full texts of the reports were published in full in Resource Material Series No. 91.

3. Outcome Summary

(i) Causes of Stress for Correctional Personnel and Necessary Abilities for Mid-Level Staff to Solve the Problems

Group 1 reported on the causes of stress, stress management solutions, and the abilities required for mid-level correctional staff to solve the problem of work-related stress. Although there are many causes of stress, the group focused on the five main issues that cause stress: (1) limited corrections budgets; (2) the nature of corrections work; (3) prison overcrowding; (4) lack of leadership and management; and (5) lack of adequate training.

Limited corrections budgets affect both inmates and officers: inmates suffer from inadequate care and facilities, and officers are understaffed, overworked and underpaid. Solving this problem requires improved advocacy for budget allocations and effective management of limited resources. Mid-level

staff must link budget proposals with organizational goals. Further, they must improve managerial skills and motivate their staffs.

The nature of corrections work is inherently stressful because officers deal with threats, inmates' demands, and the diversity and seriousness of criminal problems. Solutions include maintaining law and order, improved teamwork, and instituting effective treatment programmes. *Overcrowding* causes significant stress; the group emphasized the importance of alternative sentencing and diversion programmes to solve this problem. Mid-level staff must lead by example, use teamwork and communicate effectively.

*Lack of leadership and managemen*t is caused by the lack of skills and poor strategic planning. Managers must develop sound administrative and human-resource policies to solve this problem. Mid-level staff must learn to engage in strategic planning, recruit and develop human resources, and motivate subordinates.

Lack of adequate training causes stress for employees who do not feel they have adequate knowledge to perform their jobs. Solutions include training all levels of employees and actively encouraging staff participation in the programmes. Mid-level staff must have the ability to plan and execute training programmes and manage human resources effectively.

Sometimes, despite our best efforts, problems cannot be solved. In these cases, mid-level staff must engage in stress management to reduce stress. The group reported numerous techniques to manage stress that were drawn from the Individual Presentations (i.e. leading balanced lives and religious/spiritual pursuits) and the Visiting Experts (i.e. the Golden Ratio).

Mid-level staff can improve their abilities by (1) using reliable assessment programmes to evaluate the strengths and weaknesses of their subordinates; (2) designing tailor-made training programmes in response; (3) broadening professional exposure by attending senior officer meetings, gaining experience in different departments, and attending overseas training seminars; (4) knowledge sharing of rules and regulations, case studies, staff welfare issues, etc. using Hong Kong's "Knowledge Management System" (KMS) database as a model; and (5)"horizontal" development by performing tasks outside of their core duties.

(ii) What Mid-Level Staff Can Do for Correctional Personnel in Terms of Stress Management

Group 2 reported on measures that can be taken by mid-level staff to address work-related stress in correctional settings. The group discussed (1) the current situation and countermeasures in the country of each participant in the group, (2) common problems and countermeasures faced by all countries; and (3) enhancing leadership of mid-level staff. Overcrowding, the nature of corrections work, lack of budget and staff, lack of facilities and equipment, lack of communication, and lack of training and leadership skills were all identified as factors that cause work-related stress. Recognizing that budgets are almost always limited, the group focused on using the limited resources available in the best way to achieve desired targets.

The group began by identifying the current situation of stress faced by correctional officers in each country participating in the group, as well as countermeasures against it. Next, the following common problems were identified: (1) lack of communication; (2) insufficient training, and (3) lack of leadership. First, the group recommended implementing feedback systems, including the Plan, Do, Check, Act (PDCA) Cycle as the primary method for improving communication within the workplace. Additionally, mid-level staff are encouraged to take action that will increase communication and improve the work environment, such as encouraging open communication, scheduling regular meetings, and considering use of the "large room" system, which is currently being evaluated by the Japanese Public Prosecutor's Office. Next, frequent mistakes, low morale, and feelings of incompetency were identified as problems caused by insufficient staff training; emphasis on basic, follow-up, specialized and on-the-job training was proposed as a countermeasure. Finally, the group proposed using Performance and Maintenance (PM) Theory to address lack of leadership by focusing on providing support and feedback to subordinates.

The group reported that enhancing leadership of mid-level staff was vital to reducing work-related stress. Mid-level staff should (1) evaluate the performance of their subordinates; (2) delegate authority; (3) increase employee autonomy and accountability; (4) improve decision-making skills; (5) practice "transformational leadership"; and (6) receive systematic and organized training.

To achieve effective stress management, the group made the following recommendations: that all correctional institutions (A) adopt stress management programmes; (B) establish a communications network in order to share important information timely, accurately, and objectively; and (C) provide employees with appropriate and continuous education and training, and train mid-level staff to properly delegate authority.

C. The 155th International Training Course

1. Introduction

The 155th International Training Course was held from 21 August to 27 September 2013. The main theme was "Effective Collection and Utilization of Evidence in Criminal Cases". Seventeen overseas participants and seven Japanese participants attended.

2. Methodology

The participants of the 155th Course endeavoured to explore the theme primarily through a comparative analysis of the current situation and the problems encountered. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations, lectures by visiting experts and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into two groups.

Each Group elected a chairperson, co-chairperson, rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Both groups examined the course theme. The Groups presented their reports in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports were published in full in UNAFEI Resource Material Series No. 92.

3. Outcome Summary

(i) Effective Collection and Utilization of Evidence

Group 1 conducted its discussions based on the following agenda: (1) effective collection and utilization of oral statements; (2) collection of objective evidence; and (3) necessary measures to improve/develop investigation in each country. All group members emphasized the importance of the statements of witnesses, victims and suspects for the completion of a successful criminal investigation and for bringing criminal offenders to justice. While affirming the importance of the right of criminal defendants to remain silent during criminal investigations, the group found that respect for that right by criminal justice professionals creates challenges that require the use of improved investigation and interrogation techniques and reliance on objective evidence.

On oral statements, the group reported that aspects of the PEACE model and Reid technique are being used in most countries. Although the countries participating in the group reported differing views on the necessity of obtaining confessions, the PEACE model and Reid techniques of investigation and interrogation are useful in the criminal investigation process. Moreover, the group discussed the use of plea bargaining in the participating countries and reported that such systems are used—either by law or in practice—in the Ukraine, Guinea, Nepal, and Vanuatu. Plea bargaining is not used, but is under consideration, in Japan and Thailand. The group reported that it found plea bargaining to be a useful tool in obtaining oral testimony from suspects or accomplices. However, regarding plea bargaining and use of the PEACE model and Reid technique, the group felt that each country must find its own solution.

On objective evidence, the group reported that the main aim for collection of such evidence is to

establish the objective truth. All participating countries reported the use of some form of objective evidence, but techniques and resources vary from country to country

The group concluded that each country requires its own solutions to challenges faced during the investigation process, and detailed measures for each participating country are stated in the group's final report. The following recommendations are applicable to all countries: (1) every possible measure should be taken in all countries to follow the rule of law; (2) all countries should enhance the effectiveness of criminal investigations by adoption of legislation for appropriate interrogation methods; (3) all countries should share best practices and deepen international cooperation in the field of criminal justice.

(ii) Effective Collection and Utilization of Evidence

Group 2 conducted its discussions based on the following agenda: (1) effective collection and utilization of oral statements; (2) collection of objective evidence; and (3) necessary measures to improve/develop investigation in each country. Regarding the collection of oral statements, the group reported that although there are differing attitudes on the extent of the right to remain silent in criminal investigations, all group members agreed that the right is a human right. However, the group agreed that the oral statements and testimony of suspects, accomplices, witnesses, and victims are all significant in conducting a thorough investigation and achieving a successful prosecution. Thus, improved techniques are needed.

The group adopted a number of recommendations designed to improve the collection of oral evidence in all countries. The group identified the need to improve research of interviewing and interrogation techniques by the development of a system for the exchange of information on investigation, prosecution, and adjudication experiences between countries; this research can be applied by the development of training manuals to standardize the use of such techniques. As a practical matter, the group suggested concrete measures for improving investigations by (1) establishing separate, well-equipped interviewing rooms at police stations, (2) relying on the guidance of psychologists or experienced investigators, and (3) utilizing assistants to investigators.

Additional measures proposed by the group include: (1) considering the adoption or development of interviewing and interrogation techniques, such as the PEACE model and Reid technique; (2) the development or expansion of witness, victim, and accomplice protection programmes in order to obtain crucial testimony; (3) adoption of a discretionary model of prosecution that would allow prosecutors to focus their attention on the most serious crimes; and (4) adoption of a plea-bargaining system, based on the advantages and the success of such systems in the fight against organized crime and corruption.

Regarding the collection of objective evidence, the group agreed that such evidence is the most important aspect of criminal investigation—solid objective evidence can render a confession unnecessary. However, most countries report a lack of experience, training, and resources to collect objective evidence. In response, all countries should develop national DNA and fingerprint databases; formulate rules for dealing with electronic and internet-based evidence; cooperate with the private sector to develop digital forensics analysis tools; utilize security camera analysis; and provide training and funds for scientific analysis.

D. Special Seminars and Courses

1. The 16th UNAFEI UNCAC Training Programme

The 16th UNAFEI UNCAC Training Programme was held from 9 October to 13 November 2013. This Programme dealt with the United Nations Convention against Corruption and examined countermeasures against corruption. The theme of the Programme was *Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors*. Eighteen overseas participants and seven Japanese participants attended.

2. The Seventh Regional Seminar on Good Governance for Southeast Asian Countries

UNAFEI hosted the Seventh Regional Seminar on Good Governance for Southeast Asian Countries from 3 to 5 December 2013 at the Malaysia Anti-Corruption Academy in Kuala Lumpur, Malaysia. The

Seminar was co-hosted by the Malaysian Anti-Corruption Commission. The main theme of the Seminar was "Enhancing Investigative Ability in Corruption Cases". Thirteen participants from eight Southeast Asian countries attended. The Seminar featured the following visiting experts: Mr. Tony Kwok, former Deputy Commissioner of Hong Kong's Independent Commission against Corruption; Mr. Ang Seow Lian, Deputy Director of Singapore's Corrupt Practices Investigation Bureau; and Mr. Kenneth C. Kohl, Resident Legal Advisor at the U.S. Embassy in Malaysia.

3. The Thirteenth Training Course on the Juvenile Delinquent Treatment System for Kenya

The Thirteenth Training Course on the Juvenile Delinquent Treatment System for Kenya was held from 30 January to 22 February 2013. Eleven participants from juvenile justice agencies were exposed to theories and practices with regard to "through-care" and what is required to treat juveniles in the juvenile justice system. The course curriculum was based on lectures, visits to relevant organizations and group work discussions. At the end of the course, the participants prepared training materials on through-care for childcare and protection officers in Kenya.

4. The Ninth Seminar on Criminal Justice for Central Asia

The Ninth Seminar on Criminal Justice for Central Asia was held from 27 February to 14 March 2013. The main theme of the Seminar was "Addressing Corruption which Hinders Countermeasures for Drug Offences and Other Crimes: Especially, Ethics and Codes of Conduct for Judges, Prosecutors and Other Law Enforcement Officials". Eleven participants from four Central Asian countries, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, attended.

III. TECHNICAL ASSISTANCE

A. Regional Training Programmes

1. Short-Term Experts in Kenya

From 22 July to 23 August, UNAFEI dispatched a professor to provide technical assistance to Kenya on its juvenile justice system, in coordination with Kenya's national project for capacity-building of childcare and protection officers (CCPOs). The professor participated in the terminal evaluation of the project, made a presentation on the twenty-year history of UNAFEI's support to Kenya's juvenile justice system, delivered a lecture on information sharing in the Japanese juvenile justice system and assisted in the preparation of guidelines on through-care and aftercare for the children in statutory institutions. These guidelines were approved by the Director of Children's Services, the Director of Probation and Aftercare Services and the Commissioner General of Prison Service, and were shared with senior CCPOs through a symposium on through-care and aftercare for the children in the juvenile justice system.

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2013, the 89th, 90th and 91st editions of the Resource Material Series were published. Additionally, issues 140 to 142 (from the 153rd Seminar to the 155th Training Course, respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's web site at http://www.unafei.or.jp/english.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 24 January 2013, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the participants of the 153rd International Senior Seminar. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. In 2013, Dr. Patricia Van Voorhis, Professor Emerita, School of Criminal Justice at the University of Cincinnati, and Dr. Nathee Chitsawang, Deputy Director, Office of the Attorney General of Thailand, were invited as speakers. They presented papers entitled "Policy Developments Regarding the Treatment of Women Offenders in the US: the Slow Process of Change" and "Key Issues of Women Prisoners: Lessons Learned from Thai Prisons," respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Professor Akiko Tashiro visited Bangkok, Thailand from 19 to 21 February 2013 to attend the East Asia-Pacific Regional Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

Professor Akiko Tashiro visited Bangkok, Thailand and Manila, the Philippines, from 1 to 10 April 2013 to attend the 2013 ASEAN Plus Three Conference on Probation and Non-custodial Measures.

Deputy Director Kenichi Kiyono visited Vienna, Austria from 21 to 25 April to attend the 22nd session of the Commission on Crime Prevention and Criminal Justice, held in the United Nations Office in Vienna.

Deputy Director Kenichi Kiyono visited Ulaanbaatar, Mongolia from 22 to 25 May 2013 for a conference on the Implementation and Tendency of State Policy on Combating Crime, hosted by the Law Enforcement University of Mongolia.

Director Tomoko Akane visited Beijing, China from 16 to 19 August 2013 to attend the Fifth International Forum of Contemporary Criminal Law.

Deputy Director Kenichi Kiyono visited Delhi, India from 9 to 12 September 2013 to attend the Fifty-Second Annual Session of the Asian-African Legal Consultative Organization.

Professor Koji Yoshimura and Officer Masato Honda visited India Delhi from 22 to 27 September 2013 to attend the 33rd Asian and Pacific Conference of Correctional Administrators (APCCA). Professor Yoshimura made a presentation entitled "Mission and Future Challenges of UNAFEI" as a Specialist Presentation.

Professor Akiko Tashiro visited the United Kingdom from 7 to 15 October 2013 to attend the 1st World Congress on Probation and to conduct research on the criminal justice system in the UK.

Professor Toru Nagai visited Colorado Springs, U.S.A from 26 October to 3 November 2013 to attend the 15th Annual Conference of the International Corrections and Prisons Association (ICPA).

Director Tomoko Akane visited Bangkok, Thailand from 14 to 15 November 2013 to attend the Bangkok Dialogue on the Rule of Law.

Deputy Director Kenichi Kiyono visited Panama City, Panama from 25 to 27 November 2013 to attend The Fifth Conference of the States Parties to the United Nations Convention against Corruption.

Director Tomoko Akane visited Courmayeur, Italy from 11 to 15 December 2013 to attend the Co-ordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network and the ISPAC International Conference.

D. Assisting ACPF Activities

UNAFEI cooperates and collaborates with the Asia Crime Prevention Foundation (ACPF) to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty and Staff Changes

Mr. Yuichi Tada, formerly a professor of UNAFEI, was transferred to the Yokohama District Court on 1 April 2013.

Ms. Kumiko Izumi, formerly a professor of UNAFEI, was transferred to the Saitama District Public Prosecutors Office on 1 April 2013.

Mr. Fumihiko Yanaka, formerly a professor of UNAFEI, was transferred to the International Bureau on 1 April 2013.

Ms. Mayu Yoshida, formerly a professor of UNAFEI, was transferred to Tochigi Prison on 1 April 2013.

Ms. Yukako Mio, formerly a public prosecutor of the Okayama District Public Prosecutors Office, was appointed a professor of UNAFEI on 1 April 2013.

Mr. Kazuhiko Moriya, formerly a public prosecutor of the Fukuoka District Public Prosecutors Office, was appointed a professor of UNAFEI on 1 April 2013.

Mr. Toru Nagai, formerly the chief of the financial affairs section at Kanazawa Prison, was appointed a professor of UNAFEI on 1 April 2013.

Mr. Yusuke Hirose, formerly a Judge of the Kushiro District Court, was appointed a professor of UNAFEI on 1 April 2013.

Mr. Tatsuya Sakuma, formerly the Director of UNAFEI was transferred to the Maebashi District Public Prosecutors Office on 5 July 2013.

Ms. Tomoko Akane, formerly a public prosecutor at the Supreme Public Prosecutors Office, was appointed as the new Director of UNAFEI on 5 July 2013.

Ms. Sae Sakai left her position as a kitchen chef at UNAFEI on 1 November 2013 and was replaced

by Ms. Maki Odagiri.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

WORK PROGRAMME FOR 2014

I. TRAINING

A. Training Courses & Seminars (Multinational)

1. The 156th International Senior Seminar

The 156th International Senior Seminar was held from 15 January to 14 February 2014. The main theme of the Seminar was "Protection of Victims of Crime and Use of Restorative Justice Programmes". Seven overseas participants, one overseas observer and seven Japanese participants attended.

2. The 157th International Training Course

The 157th International Training Course was held from 14 May to 19 June 2014. The main theme of the Course was the "Assessment and Treatment of Special Needs Offenders". Nine overseas participants, two overseas observers and seven Japanese participants attended.

3. The 158th International Training Course

The 158th International Training Course will be held from late August to late September 2014. The main theme of the Course is "Conducting Speedy and Efficient Trials".

4. The 17th UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, is scheduled for mid-October to mid-November 2014.

5. The Eighth Regional Seminar on Good Governance for Southeast Asian Countries

In November 2014, UNAFEI will hold the Eighth Regional Seminar on Good Governance in Kuala Lumpur, Malaysia. The main theme of the Seminar is "Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases".

6. The First Criminal Justice Training Programme for French-Speaking African Countries

From 19 February to 11 March 2014, UNAFEI held the First Criminal Justice Training Programme for French-Speaking African Countries. Thirty participants attended from 10 countries, including Japan.

7. The Follow-up Seminar on Criminal Justice for Central Asia

The Follow-up Seminar on Criminal Justice for Central Asia was held from 4 to 19 March 2014. The main theme of the Seminar was "Addressing Corruption which Hinders Countermeasures for Drug Offences and Other Crimes: Focusing on Ethics and Codes of Conduct for Judges, Prosecutors and Other Law Enforcement Officials".

B. Training Course (Country Specific)

1. The Comparative Study on Criminal Justice Systems of Japan and Nepal

The Comparative Study on Criminal Justice Systems of Japan and Nepal will be held from 21 August to 4 September 2014.

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course - 157th International Training Course)

Professional Background / Country/Area	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	**Total**
Afghanistan	9	9	6	4		1							29
Bangladesh	24	14		19	5		4			5		2	73
Bhutan				12									12
Brunei	4				2								6
Cambodia	1	2	1	7	1								12
China	13	5	5	10							8		41
Georgia				1									1
Hong Kong	18			12	30	3	9		1	3	1		77
India	15	10		55	7	1	1			2	6	4	101
Indonesia	23	22	33	33	14		3			6		2	136
Iran	5	12	8	8	6						2	1	42
Iraq	6	3	3	7	5	5					2		31
Jordan		1	3	5	1								10
Korea	13	3	53	6	32	4					3		114
Kyrgyzstan	1			1									2
Laos	10	7	7	10									34
Malaysia	21	2	7	46	35	8	3		1	5	3	1	132
Maldives	2	3	3	2	2		2						14
Mongolia	1		1	2									4
Myanmar	7	1	1	4	3								16
Nepal	36	16	15	32								3	102
Oman			1	4									5
Pakistan	20	10	2	42	8	1	2				2	2	89
Palestine	2		1	1			1			1			6
Philippines	20	9	28	39	10	3	14	3	1	7	5	7	146
Saudi Arabia	5			7	3						1	1	17
Singapore	11	18	5	12	10	3	10			3	1	1	74
Sri Lanka	22	20	17	22	20	1	11		1	3		1	118
Taiwan	12	4	2	2	1								21
Tajikistan	1												1
Thailand	27	44	41	18	21	9	16	1		8	5	1	191
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Viet Nam	15	5	3	8	1					4	2		38
Yemen	1			2									3
A S I A	348	221	247	435	217	39	76	4	4	47	42	28	1,708
Algeria		4	2										6
Botswana	2		1	5	2					1			11
Cameroon	4		1										5
Cote d'Ivoire		2		1									3
Democratic Republic of the Congo	2	1	2	1									6
Egypt	1	3		3							3	1	11
Ethiopia	3			2									5
Gambia				2									2
Ghana	1		1	5	1								8
Guinea	2		1	3									6
Kenya	9	5	1	12	9	2	10				2		50
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Malawi			1										1
Mauritius		1											1
Morocco		1	1	4							1	1	8
Mozambique	1			1	1								3
Namibia			1	1	1								3
Niger			1										1
Nigeria	1			6	7							1	15
Seychelles				4	3					1	1		9
South Africa				3			1						4
Sudan	2		1	13	1		1				2		20
Swaziland				2									2
Tanzania	4	3	7	9	2								25
Tunisia		1		1									2
Uganda			1	5								1	7
Zambia		1		6									7
Zimbabwe	1		3	8									12
A F R I C A	33	22	25	99	27	2	14	0	0	2	10	4	238
Australia			1				1			1			3
Fiji	6	1	9	21	17					1			55
Kiribati	1												1
Marshall Island	1			4									5
Micronesia				1			1						2
Nauru				1	1								2
New Zealand	1			1									2
Palau				2	1								3
Papua New Guinea	10	1	4	23	10		5			1		2	56
Samoa	3			2			2					1	8
Solomon Islands	3		2	2	1								8
Tonga	2	1		7	4		4				1		19
Vanuatu			1	4	2		1						8
THE PACIFIC	27	3	17	68	36	0	14	0	0	3	1	3	172
Antigua and Barbuda				1			1						2
Argentina	2	2		2								1	7
Barbados				2			1						3
Belize	1			2									3
Bolivia		1										1	2
Brazil	3	1	9	27	2				1	1			44
Chile	1		1	4	2								8
Colombia	3	1	2	6					1			1	14
Costa Rica	3	5	5								1	2	16
Dominican Republic				1									1
Ecuador			1	4		1							6
El Salvador	2	1		5	1						1	1	11
Grenada				1									1
Guatemala	1			1	1							1	4
Guyana				3	1								4
Haiti				1									1
Honduras			2	8								1	11
Jamaica	3			1	5	1							10
Mexico	2			2								1	5
Nicaragua		1											1
Panama			5	4								1	10
Paraguay	1		1	9		1							12
Peru	4	10	4	4	1						1	2	26

DISTRIBUTION OF PARTICIPANTS

Saint Christopher and Nevis			1	1									2
Saint Lucia	1			1	1								3
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
U.S.A.								1					1
Uruguay				3									3
Venezuela	1		1	12							1		15
NORTH & SOUTH AMERICA	29	22	32	107	15	3	2	1	2	1	4	12	230
Albania	1			2									3
Azerbaijan	1												1
Bulgaria				1									1
Estonia			1										1
Former Yugoslav Republic of Macedonia	2												2
Hungary	1												1
Lithuania				1									1
Moldova				1									
Poland				1									1
Ukraine	1	1	1										3
E U R O P E	6	1	2	6	0	0	0	0	0	0	0	0	15
United Nations Office on Drugs and Crime												1	1
J A P A N	118	192	310	105	101	95	217	68	38	2	48	78	1,372
T O T A L	561	461	633	820	396	139	323	73	44	55	105	126	3,736

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AS OF 31 DECEMBER 2013

2013 VISITING EXPERTS

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Visiting Experts

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Ms. Piera Barzanò	Criminal Justice Reform Expert Justice Section/Division of Operations United Nations Office on Drugs and Crime (UNODC)
Dr. Nathee Chitsawang	Deputy Director Thailand Institute of Justice Thailand

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Mr. Gray Luawa Bani Vuke	Commander of Police State Prosecution Vanuatu

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Mr. Hiroshige Kawata	Narcotics Agent Narcotic Control Department Kanto-Shinetsu Regional Bureau of Health and Welfare
Mr. Shuusuke Kiyota	Public Prosecutor Niigata District Public Prosecutor's Office
Mr. Toru Kodama	Coast Guard Officer 5th Regional Coast Guard Headquarters
Ms. Miwa Namekata	Judge Tokyo District Court
Ms. Miki Suzuki	Inspector Shizuoka Prefectural Police

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Mr. Mohammad Saidur Rahman	Director Anti-Corruption Commission Bangladesh
Mr. Vladimir Barros Aras	Federal Prosecutor Secretary for International Legal Cooperation Federal Public Prosecution Service of Brazil Brazil
Mr. Norith Nuon	Deputy Director General General Department of Operation Anti-Corruption Unit Cambodia
Mr. Abraham Kipkoech Kemboi	Technical/Surveillance Officer Investigation and Asset Tracing Ethics and Anti-Corruption Commission Kenya
Mr. Obuo Martin Otieno	Attorney Evidence Analysis Ethics and Anti-Corruption Commission Kenya

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APPENDIX

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PART TWO

RESOURCE MATERIAL SERIES
No. 93

Work Product of the 156th International Senior Seminar

"Protection for Victims of Crime and Use of Restorative Justice Programmes"

UNAFEI

VISITING EXPERTS' PAPERS

CRIME, COLONISATION AND COMMUNITIES

*Dr. Brian Steels**

I. INTRODUCTION

With the knowledge that crime can be viewed as 'relational'[1] and that desistance from crime occurs away from the criminal justice system[2] inclusive of police, courts, prisons, parole and the judiciary may be able to improve both process and outcomes by using a variety of restorative justice approaches[3]. So too, as Maruna and Immarigeon[4] suggest "the major correlates of desistance from crime identified in research . . . . involve ongoing, interactive relationships that can take up most of an individual's waking life". Furthermore, it is noted that relationships developed and supported during restorative encounters and circles are crucial to enable desistance from crime.[5]

It is also important that discussion takes place around the policies that drive the overuse of the penal estate in many countries of the region, most notably Australia. Communities have been made no safer and victimization has failed to be reduced by the building of more prisons and yet policy makers and politicians view these institutions as the quick fix for many unspoken social ills. If the region's criminal justice systems were to be judged on producing fair and just processes and outcomes, as experienced by victims and perpetrators and respectful of all human rights, they would most likely be found wanting in both ethics and in their breach of rules regarding integrity. Sadly these self-propelled juggernauts increase the size of their own bureaucracies out of all proportion to the benefits that they provide to victims, the community and those who commit harm.

With British colonisation of the Indian continent, Singapore, Burma, Australia, and New Zealand, came the importation of the British legal system with its accompanying public service and burgeoning bureaucracy. Embedded within this were the assumptions about education, race, crime, property and power as well as the argument to suggest the superiority of the Western way of life. A frontier mentality challenged Robert Peel's notion that "the police are the public and the public are the police"[6] slowly transforming a community based service into a paramilitary operation. In turn the ready-made justice system, driven by self-serving bureaucracies, protected the new landowners, business developers and industries, ensuring the removal of local populations, especially indigenous peoples throughout the region, from land and full citizenship. However, this colonization was not only a British move, but one used for commerce and trade by Dutch, French and Spanish interests who, like their British counterparts, used military force and European systems of law and justice to hold onto land and maintain the excesses of power. Today's colonizer could be seen as the US, with tentacles of its own brand of justice exported through literature, commerce, media and politics.

It is within this set of assumptions that today's criminal justice systems are developing, often imposed throughout the jurisdictions of the region as law and order policies by powerful lobby groups, politicians and their civil service. Growth in the fear industry creates the conditions for high incarceration rates and more policing, more criminal acts legislated and more charges laid. With an array of bureaucratic measures that slowly but surely became self-serving a growth industry was born around

*Co-authored with Dr. Dot Goulding.
[1] Burnside & Baker 1994; Braithwaite 1989.
[2] Farrall 1995.
[3] Goulding & Steels 2006.
[4] Maruna and Immarigeon 2004.
[5] Goulding and Steels 2006.
[6] Nazemi 2009.

punishment and incarceration. It is the marginalised, poor and oppressed who are always the first to be dispossessed and incarcerated, a move that continues today, almost ensuring the removal of people from their lands to prison cells. Many of the assumptions held during the early years of occupation throughout the region have found comfort today within bureaucracies and leading political parties. Among the most obvious are the notions that "once a criminal, always a criminal" and referring to all people seen as "the other" with taunts of "you can't trust any of them".

Although independence and self-government has arrived across most of the region, Western assumptions about law and order had already permeated the criminal justice systems of many nations throughout Asia. These assumptions about crime, society, community and family challenged ways of life and philosophies of many regional states particularly where Eastern philosophy was held in high regard. An examination of past practices from around the world clearly shows that "both violence and peacemaking have shaped the overall human experience. In short, human beings are often, at one time or another, both conquered and conquerors".[7] This binary state of peace and violence is the "starting point for many nations and communities as they try to live in global peace and harmony.... this is a balance not always peacefully achieved". Furthermore, as the authors note from several developing projects, notions of reparation and healing of the environment as well as the harm done to others, takes shape through the broadening of restorative notions and peace-making principles that address the totality of human activity, relationships and interconnectedness. It is here that we are able to bring into focus a glimpse across borders, cultures and national concerns and link RJ (Restorative Justice) with better compliance to rules, fairness in process and just outcomes within diverse cultural contexts. Western notions of criminal mediation are vastly different to the local Panchayat focus in an Indian village or the gatherings of the Pukhtoon Jirga in Afghanistan.

An example of the remnants of the colonial past can still be found in India where reform of its criminal justice system is crucial to ensure timeliness, fairness and equitable access to legal recourse. This requires a move from its bureaucratic overburden of red tape and incompetence to responding to the needs of local people wishing to experience fair process and just outcomes. Within the Buddhist and Hindu traditions harmony and balance between nature and human activity was sought, informing ways of dealing with rule breaking. Today the Indian criminal justice system fails most litigants as the system sinks under the huge demands made upon it to deal with small and localised disputes. It is within Asia's largest democracy that corrupt practices exist and where according to Thilagaraj[8] police are "known to extort money at every step" and where tasks are "quite often neglected outright". The Indian experience for both victim and offender is often dependent upon status, power and wealth. Quah[9] suggests that "corruption results from the combined effect of ample opportunities, low salaries, and the low possibility of detection and punishment for corrupt behavior", arguing that this is not a problem in Japan, Singapore and Hong Kong where corruption is seen as being of high risk and low reward. To ensure that fair and just processes occur in Indian everyday life a cultural shift has to occur across society towards restorative and therapeutic practices that can be afforded to everyone living within a society that is socially aware and just. Privilege, position, power and prestige all too often hold the hallmark of corruption.

That said, the authors note that throughout the region Confucian legal tradition has been noted as being mostly secular and unofficial, informed by the notion of being harmonious and interconnected between the human and natural universe where "ideal harmonious human-society relationships and harmonious human-nature relationships were sought".[10] The conflict between Western legal systems and the many local jurisdictions' ways of dealing with legitimacy, compliance and law breaking is now at a crucial point in the early stages of the 21st century. It is within this contested space where the values and practices of restorative justice can be found as commonplace among local people who recognise crime as belonging to them, or within a government controlled space that forms part of formalized procedures and highly regulated and dominating services where legitimacy is often in question and fairness is decreed by the state.

[7] Steels & Goulding 2012.
[8] Thilagaraj 2013:201.
[9] Quah 2013:31.
[10] Lui and Palermo, 2009:52.

Hope for change is in the air as communities throughout India and the sub-continent as well as in Japan, Taiwan, China and Indonesia begin to demand fair practices and processes to address the needs of those harmed by perpetrators as well as by lawyers who often try to avoid the full weight of the law being applied. So it is that hope for a better future lies within each family, community and nation as they turn to restorative practices across all harm-making from the micro aspect of individuals to the macro aspect of nation building, peacemaking and truth and reconciliation commissions.

II. RESTORATIVE PRACTICES THROUGH THE CRACKS AND THROUGHOUT THE REGION

The ultimate aim of reducing victimisation and violence, increasing trust in the common good and encouraging support for the social contract can be achieved through the development of new pathways throughout the region. Restorative justice can and should be viewed as a positive response to combat crime, anti-social activities and war as these are all behaviours that bring harm to others. RJ can also be viewed as a crucial tool for the region where local, cultural and gender appropriate practices are required as the norm in order to foster healing and promote responsibility taking. However, let us examine the benefits of RJ as seen by Lord McNally[11] who confirmed his support for RJ, stating:

> I am an ardent supporter of the principles of restorative justice. It offers an opportunity not only to assist the rehabilitation of offenders but to give victims a greater stake in the resolution of offences and in the criminal justice system as a whole. Victim-led restorative justice can allow us to make inroads into the re-offending cycle, with the triple benefit of victims avoiding the trauma of future crimes, the tax payer not having to foot the bill of more crime, and a rehabilitated offender making a positive contribution to society.

In his address McNally speaks of "the evidence for the effectiveness of restorative justice" and referred to his department's analysis of several restorative justice pilots that showed "85% of victims who participated were satisfied with the experience and there was an estimated 14% reduction in re-offending". These results urged him to reaffirm that the government is "therefore committed to making use of restorative justice in more areas, and in more circumstances across the criminal justice system". Indeed, others have argued that restorative justice is best located within local culture, communities, customary laws and by-laws[12]. It has to be responsive to local crime and re-offending through unique responses. It needs to be driven by the voices of those people harmed as well as those taking responsibility for their actions together with communities and practitioners, academics and respected local people.[13] RJ is all about process and can be considered a participatory process of healing that can occur inside or outside of the criminal justice system. The authors also note the contention that "the major correlates of desistance from crime identified in research.... involve ongoing, interactive relationships that can take up most of an individual's waking life".[14] Farrall[15] also found that, in general terms, "....desistance occurs away from the criminal justice system".

In short, social relationships are central to restoring justice both for victims and offenders especially when crime is viewed as a fracture of relationships within a community. This can also be applied to sustainable practices that work best when conducted at grass roots levels by participatory methods that are centred on relationships and interconnection with others. However, the authors note that restorative justice often enters the scene through cracks in rigid processes involving state police and prosecution and judiciaries no longer willing to abandon human rights and social justice. It is usually the cry for fairness and tears of shame that have allowed the light to enter. Although it was never going to be an easy task to empower victims of crime, make rehabilitation effective and offer an alternative to all parties.

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[11] Lord McNally, British Peer and Parliamentarian, Minister of State for Justice (UK), in his 2012 address to the All-Party Parliamentary Penal Affairs Group AGM.
[12] Steels 2007; Goulding & Steels 2006; Bevan et al. 2005.
[13] Steels, Goulding & Abbott 2013.
[14] Maruna and Immarigeon 2004:6.
[15] Farrall 1995:23.

The status quo with its expansion policies driven by the mantra of *tough on crime* see these failed systems as a result of a lack of discipline and social order within the community as well as from within their own ranks. Blame is laid at the foot of the marginalised, poor and oppressed as these systems deny the evidence that continually highlights ineffective practice. Such criminal justice institutions are less able to provide a process that is experienced as fair and just whilst they continue to ensure that every crime is exposed throughout the communities as an act against the state. The argument here is that in general terms restorative justice offers victims, offenders and the community a participatory process, one not generally experienced within traditional criminal justice sanctioning. A working definition by Cormier (2002) defines restorative justice as:

> An approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime — victim [s], offender and community — to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.

It has been noted previously[16] that the Asia Pacific regions hold the world's largest populations, namely China (1.3 billion) and India (1.1 billion) along with Pakistan and Indonesia. These regions encompass many diverse cultures and belief systems within a matrix of relationships from Buddhism with its Four Noble truths, the respectful Shinto temples, the simplicity and complexity of Zen, through to the mystics of India and the Teaching of the Gita. There are also the teachings of the Quran among the world's most populated Muslim country and the words of the Old and New Testaments of Christianity as well as the teachings of the Torah. The authors also note that the regions include ancient Confucianism with its philosophy of restoring harmony together with Taoism and the perpetual need for balance. All of these belief systems exist within nation states that can ". . . . display the politics of nationalism, communism, capitalism, juntas, democratic governments and dictatorships".[17] The authors argue that within such cultural diversity it is still possible to find common ground around both restorative justice as well as its relationship to ecological sustainability and the reduction of harm to the planet. For example, the global ability to help others in times of anguish and disaster that crosses national boundaries and the protocols that relate to a global reduction on greenhouse gases and global warming. Trying to keep a balance between yin and yang in the maintenance of harmony impacts upon the young as well as the elderly and knows no limits. Bloodlines can stretch far across land and seas and it is these interconnections that highlight the many ancient traditions working together with modern practices and ambitions of restoring peace, harmony and justice. They bring into the 21st Century the Asian Pacific practices of harmony and peace with the self, among others, within local villages, small communities and peaceful co-existence between nations.

Restorative Justice has played a role historically in one form or another in China. RJ has now developed along with the emergence of principles and standards, especially as the process within some jurisdictions has moved into schools, nursing homes, prisons, rehabilitation centres and other institutions.[18] A note of caution is registered here as Braithwaite[19] raises the concern that standardization can mean a progression of moves that leads the state to maintain control over a restorative process that has been produced to empower citizens. The authors suggest that these concerns are real and evident. However, as practices are established among villages and local communities the hand of the state will hopefully be one of support rather than control, with a balance to ensure fairness and just outcomes are not motivated by fear but a willingness to engage freely.

Restorative practices along with responsibility taking have also moved from a purely criminological focus among individuals to include a focus on a nation's responsibility to its people, including environmental concerns that impact on quality of life throughout the region. Harm is often now redefined across borders as nations begin to cooperate to reduce harm among people, species and the planet. In addition, victim driven policies are fast becoming commonplace where restitution and

[16] Steels & Goulding 2013.
[17] Steels & Goulding 2013.
[18] Maxwell 2007; Newell 2007; Braithwaite 2002; Bazemore & Schiff 2005; van Ness, 2003; Zehr 2002; 1990.
[19] Braithwaite 2002.

reparation are expressed as concerns for victims and the communities harmed by crime.[20] Though RJ practices are among new initiatives for dealing with various types of offending in many countries, there has been a paucity of evidence-based documentation and evaluation of the actual grass roots use of RJ practices in mainland China.

III. THE REGION

Mediation (tiaojie) has been practiced as a central principle of social control throughout the Greater Chinese region and has been referred to as being similar to some of the more fundamental restorative practices in outcome and process. RJ (hufuxing xifa) is noted by several authors[21] as more of a Western style approach to crime, specific to a more traditional Chinese form of social control. Mok and Wong[22] agree with others[23] that current restorative practices and regimes are replacing many of the traditional mediation practices across several areas of China. Again, according to Wong and Mok[24] the term restorative justice (hufuxing xifa) has attracted attention from practitioners and scholars since early 2000.[25] However, in most jurisdictions the discourse has continued to show a narrow focus. Generally speaking, the main focus of RJ has been on juvenile crime, specifically on young, first time offenders of petty criminal activity. Such a narrow view of RJ has discriminated against the many victims of serious crime by adult offenders by denying victims the opportunity to engage in restorative processes. In addition, the authors argue that the use of RJ in combination with therapeutic outcomes as well as its use within penal institutions is the way forward to effectively reducing reoffending and re-victimisation.[26] The prevailing narrow focus on youth and less serious crimes is seen as problematic. On the other hand, the authors note several ad hoc examples of visionary and progressive practices. For example, on a recent visit to India the authors were privileged to see, within one of India's largest and most populous prisons, a move towards an environmentally sustainable and healing environment where the linking of harm to self, others, communities and the planet demonstrated a truly holistic interconnectedness.

In this paper we examine across jurisdictions and national borders how to best transform individuals from convicted persons into people who comply with the social and legal demands surrounding them as citizens, and how best to have people harmed by crime move to reclaim their identify, often damaged by crime. The authors note that throughout the region informal as well as formal ways of dealing with wrongdoing are used. It is in Japan that we see the practice of Ji-dan that has a long tradition of use as a means of conflict resolution. In contemporary Japan Ji-dan remains as a useful process of negotiation between family members and others as a way to resolve a dispute between two or more parties. It may mean that no direct face to face meetings will occur but that family or trusted others will negotiate for a fair and just outcome that will save face and restore harmonious relationships. However, it is pertinent to note that Japanese social organization and cultural practices are central to the success of Ji-dan. As Komiya[27] points out:

> As Japanese have obtained a sense of security by integrating themselves with groups, they had no choice but to strictly adhere to countless rules for group cohesiveness. In this process, the Japanese have become a patient and orderly people, and have successfully elevated their level of self-control.

Certainly, we can agree that such elevated levels of self-control as seen in Japan are not apparent within contemporary Australian society where individual rights continue to subsume notions of the common good as a societal and cultural norm. However, we note Kittayarak's[28] remarks that we "....have to be mindful that restorative justice is an evolving concept and there is no definite formula

[20] Harris, 2008; Johnstone & Van Wormer, 2008; van Ness, 2007.
[21] Leng 2011; Li 2010.
[22] Mok and Wong 2013.
[23] Zhang, 2013; Wong & Lo 2011.
[24] Wong and Mok 2010.
[25] Ibid.
[26] Goulding & Steels 2013.
[27] Komiya 2011:132/133.
[28] Kittayarak 2005.

of success.... 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". The same can be applied to sustainable practices emerging alongside RJ within the notion of reducing harm. An element of caution should be noted here as all restorative practices and solutions ought to aim to be compliant with a set of standards as outlined by Braithwaite,[29] always cognizant of human rights.

The discussion is now focused on how the people of the region, including Japan, China, Taiwan, Indonesia, India and Australia as well as other regional players can take some control over their local criminal justice systems and their environments whilst power remains invested in the state. Pertinently, many of these nation states have already established RJ legislation in place and yet do not always adhere to the basic principles. As Pranis[30] suggests, when a community can "draw on and trust its own inner resources to discover the validity of a new paradigm, the community is liberated from bondage from old embedded, fixated ways of being in the world". It becomes clear that regardless of local policies and the political ambitions of a few, the community is then, according to Pranis[31] "....able to embrace the creativity of chaos, the possibility of dreams". It is from this perspective that she suggests people are then "empowered to imagine new ways of being, to problem solve on a deep level".

Meanwhile New Zealand's Judge McElrae[32] suggests that the criminal justice system will be able to "....deliver justice for all, not just for defendants, and that the courts will be left to get on with the job of judging according to the law and applying principles of respect and compassion for all". Further he claims that[33]

> ....restorative justice offers a quite different view of victims' interests, one that is not necessarily opposed to that of offenders — and can produce "win-win" outcomes. They are actually what is aimed at every time. If the Courts could more consistently show that victims' interests can be catered for in meaningful ways (not token ways like victim impact statements), and that their needs are better addressed in this way, much of the pressure for tougher sentences would fall away.

Freiberg[34] provides insight to the holistic model when he describes restorative justice joined to problem-oriented approaches:

> The astonishing expansion of restorative justice programs around the world, even in the absence of solid evidence about their effect on recidivism, indicates that their true appeal is not necessarily utilitarian but symbolic: process is paramount. When this insight is joined with a problem-oriented approach which devotes court and service resources to deal with underlying criminogenic causes, it can provide a powerful alternative to the sterile, costly and ultimately counter-productive punitive approaches which have resulted in dispirited court and correctional officers and bursting gaols.

Alternatively, Kittayarak[35] claims that the future for restorative practices in the region is only going to be as good as services allow it to be. There will always be a need for policing and court services with a separation of the legislators and judiciary, quality prosecution and exemplary lawyers, and we are all aware of the question mark hanging over much of current practice throughout the region. We should also be aware that in some instances long court lists, delays in claims for reparation and the marginalization from justice for the marginalized and powerless ensure that many people currently do not experience fair treatment or just outcomes. However the authors contend that transformation is occurring, mostly due to the call for change from the grass roots where the impact

[29] Braithwaite 2002.
[30] Pranis 2010:4.
[31] Ibid.
[32] Judge McElrae 2010:3.
[33] Judge McRae 2010:2.
[34] Freiberg 2001:9.
[35] Kittayarak 2005.

or war, conflict and crime requires people to engage at local levels where solutions can inspire personal and community transformation, reduce harm among families as well as communities and across borders. Social and cultural change is often driven by local people immersed in the aftermath of conflicts and crime, policy makers and politicians signing up to international agreements and neighbouring states showing that restorative practices can reduce the strain on the courts whilst offering procedures that are fair, timely and healing. For the region, restorative justice offers a very important opportunity to invest in procedural fairness with outcomes that are socially just. It is within the vast bureaucracies of India and China that we see glimmers of hope as current situations are no longer tolerable for both the leadership or for the local people. As Van Wormer[36] points out, the traditional Chinese emphasis is on "harmony between persons and on the unity of humanity with nature. Influenced by Confucian communitarian ideology, the Chinese criminal justice system relies on grassroots committees to provide social control and to resolve conflict".

Villages and other small communities can participate in empowerment strategies and working for the common good as they engage in social justice, community education and an awareness of restorative benefits. They can turn to restorative justice practices to heal many conflicts including the aftermath of interpersonal and relational crime, communal violence, public disorder and grievances. This may lead to a sense of purpose for individuals and communities seeking out solutions that assist in building the community's capacity to create harmony whilst reducing crime and anti-social behaviours. Being valued by leadership and having leadership value its citizens will also bring about the transformation of the region. Tyler's[37] argument supports this:

> People value affirmation of their status by legal authorities as competent, equal citizens and human beings, and they regard procedures as unfair if they are not consistent with that affirmation. To understand the effects of dignity, it is important to recognise that government has an important role in defining people's view about their value in society. Such a self-evaluation shapes one's feelings of security and self-respect.

Tyler's words link the actions of procedural fairness and just outcomes as found within restorative practices with security and self-respect. They also relate to other practices such as sustainability as much as restorative solutions, giving hope to the idea that collectively the region can lead the world in embracing restorative solutions to relationships between people as well as how we relate to our environment, our communities, other species and the planet.

IV. VICTIMS OF CRIME

Victims of crime, war and community violence are often the unheard voices during the aftermath of such harmful events yet RJ often appears to focus on those who do the harm. Whilst the rehabilitation of perpetrators of crime is crucial for community safety so too is the care of victims. Victim participation in the aftermath of crime is however clearly identified by various bodies.[38] These documents continue to encourage jurisdictions to provide a broad interpretation. They also set the scene to allow and encourage the voice of victims in various guises. Today we ask that consideration be given by governments to encourage victim driven RJ practices. Victim driven processes allow victims to request an encounter with their perpetrator at a date, time and place to suit them in a process of their choice. Such a process would seek to find out how best to encourage and develop RJ into a meaningful and empowering exercise of choice for victims albeit with the supports necessary to ensure safety, recovery and a full return to community participation.

UN Standards call for the support of victims of war, terrorism and crime. The Rwandan experiences following its civil war demonstrates that victims of crime together with the perpetrators can act in a fair and just way following conflict. *Gacaca* is the system of community justice used throughout

[36] Van Wormer 2008:3.
[37] Tyler 1996:10.
[38] Council Framework Decision of the European Union (2001/220/HA); the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the Council of Europe Recommendations for Victims of Crime (R (85) 11).

villages in Rwanda. Rules are few and processes clear whereby all parties listen to each other and accept the group's decision following apology, restitution and compensation. It is among these village gatherings where victims find resolution and empowerment as well as having their voices heard.

Sadly, this is not true of all jurisdictions throughout the region. For instance, in Western Australia (WA) victims are only able to participate in an RJ process under the terms set out by the legislators and then only with juvenile first time offenders. Victims of repeat offenders and/or adult offenders are denied the opportunity to meet and participate in restorative processes. The Juvenile Justice Teams are a bureaucratic response to restorative justice within the Juvenile Justice legislation but this pseudo restorative programme fails to answer the needs of victims of crime. And so it is with victims of adult offenders, as these victims can't engage in any restorative process apart from a victim impact statement. For the most part these victims are captured as the witness, a role with limited voice and one that is unable to transform into participant of a restorative encounter. This is especially true for Indigenous women, as victims' services are often unavailable outside of the major cities and where violence against women is commonplace. Whilst there have been many calls for restorative justice to be offered as a response to crime in WA, apart from a successful pilot project, little has been done to ensure that *all* victims of crime have an opportunity to participate in a process of their choice.

According to Edwards[39] there are four styles or practices whereby a victim of crime can participate in restorative justice processes. Edwards sees the first as control. This is the most empowering style that enables victims to lead the process and make a choice of method of participation. Victims' needs are catered for with the choice of practice and style of facilitator or mediator at a particular place to meet and at a time to suit the victim rather than the prosecution and court. The implication here is that the criminal justice system will provide for the victim's preferences. The obligation is on the authorities to make this happen, an issue that is often raised as criminal justice systems around the region continue to have few options available. Innovation has to be found within the bureaucratic and legalistic processes for this to occur. The second style that Edwards suggests is that of consultation whereby authorities are obligated to find out what the victim wants in terms of available participation processes and for the system to act accordingly. This consultation often means that the system remains in control and can only invite the victim to participate in what is already in place. The third style is through information provision whereby victims are obliged to supply any information that they may have to the police and prosecution whilst being used as the "body witness", the "body specimen" or the "body damaged". Edward's fourth style is expression whereby victims can express their wishes but the authorities may or may not act on them. Edwards' continuum from empowered to controlled can be a useful additional tool in the evaluation of services and together with Braithwaite's Standards[40] are able to provide an insight into the degree of participation and values associated with victims of crime.

V. PROCEDURES AND STANDARDS

Braithwaite[41] argues that throughout human history "restorative justice has been the dominant model of criminal justice". Bottoms[42] on the other hand, suggested that threats, punishment and coercion were the order of the day for settling disputes in pre-modern societies. The authors suggest instead that a degree of restoration and restitution may have existed as a notion of the common good. These notions of justice are woven through the social connections between communities, families and kin, holding together the values that lend themselves to the larger social and moral order. Tyler[43] and his work around Restorative Justice and Procedural Justice sees a major link between social compliance, rule breaking and restorative processes. He contends that:

> Procedural justice research suggests that there is another possible route to effective social regulation besides punitive punishment (Tyler, 1990; Tyler & Huo, 2002). This route involves

[39] Edwards, I., (2004). An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making. *British Journal of Criminology,* 44, 967-982.
[40] Braithwaite, J., (2002b). Setting standards for restorative justice. British Journal of Criminology 42, 563-77.
[41] Ibid.
[42] Bottoms 1999.
[43] Tyler, 2003; 2006.

> treating people with procedural justice and respect. When people are so treated, they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for following social rules. This approach has been labelled a process-based model of regulation.

Interestingly, with regard to processes following disputes, including apology, Tavuchis[44] notes that "no matter how sincere or effective, an apology does not and cannot undo what has been done. And yet, in a mysterious way and according to its own logic, this is precisely what it manages to do". The authors experiences within prisons, courts and communities has demonstrated that whilst science can try to control and predict, determine and state, the human spirit is able to astonish us with its complexity of responses to crime, including the ability to let go.

Braithwaite[45] identified three types of standards for assessing and maintaining the quality of RJ practices with the following caution ". . . . whether a restorative justice programme is up to standard is best settled in a series of regulatory conversations with peers and stakeholders rather than by rote application of a rulebook". Braithwaite's first tier identifies "constraining standards" and includes non-domination, empowerment, equal concern for all stakeholders, respectful listening, honouring legally specific upper limits on sanctions and the respect for human rights. The second tier highlights the "maximising standards" such as the restoration of human dignity, property loss, restoration of human relationships freedom, compassion peace sense of citizen duties and other social support and prevention of future injustice. Braithwaite's third tier standards are the "emergent standards" such as remorse over injustice, apology, censure of the act, forgiveness of the person and mercy. Braithwaite[46] states:

> The constraining list are standards that must be honoured and enforced as constraints; the maximizing list are standards restorative justice advocates should actively encourage in restorative processes; the emergent list are values we should not urge participants to manifest — they are emergent properties of a successful restorative justice process. If we try to make them happen, they will be less likely to happen in a meaningful way. These, especially when linked to sustaining an effective strategy for compliance with the law, lead to a better understanding of processes that are experienced as fair and just.

Also, Tyler,[47] when dealing with compliance, suggests that we would "benefit from being in a situation in which people have additional reasons for obeying the law beyond their fear of being caught and punished for wrongdoing".

Throughout the many regional criminal justice systems the legitimacy of authority is often questioned and frequently made worse by processes that are mandatory and at times used without good reason other than to maintain control. To provide processes that are participatory, fair and just, as well as being used for the safety of everyone within the community, is a major point that is often overlooked in the process of rehabilitation within the courts and penal estates. Tyler[48] illustrates the pathways that people walk from non-compliance to compliance as they recognize and act on procedural fairness and legitimacy of the authority. Tyler[49] also claims that:

> One way to encourage people to view law as legitimate is for legal authorities to act in procedurally just ways. For example, studies suggest that procedural justice during personal experiences with authorities is important because it builds the social value of legitimacy (Tyler, 2004). Legitimacy, once activated, then encourages everyday compliance with the law. Hence, legal authorities receive more citizen cooperation when people generally view them as legitimate. People, who have more supportive social values, are easier for legal authorities to deal with during personal encounters.

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[44] Tavuchis 1991.
[45] Braithwaite 2002.
[46] Braithwaite 2002:571.
[47] Tyler 2006:210.
[48] Ibid.
[49] Tyler 2006:312.

Not only do Tyler's words underpin the need for legitimacy to be recognized and experienced within the community but also within the criminal justice system. Tyler explains compliance in direct relation to being treated fairly and justly. This includes being given the opportunity to engage in positive social values and shown a direction by a legitimate authority such as from parole, police and prison officers and other professional staff and officers. Legitimacy is often questioned of poor quality policing and is at the core of non-compliance among many people. Again Tyler[50] adds to this by suggesting that:

> Experiencing procedural justice, either in particular personal experience or in the everyday functioning of the law, is important because it encourages feelings of responsibility and obligation to follow the law—i.e., it increases the legitimacy of the law and the legal system. Hence, procedural justice suggests that possibility of a legal system based more heavily upon voluntary cooperation of process-based regulation.

As a cautionary measure it is important to note that a sense of purpose is something that we all need and so it is with the criminal justice systems of the region, for the system itself needs criminals and has to continually create rules and regulations that criminalize and remove people from society. In doing so the criminal justice system often fails to address the systemic issues that underpin crime. These are issues such as poverty, homelessness and dispossession. The authors also contend that the prevailing promotion of restorative justice through a "Western" view of processes and methodologies perpetuates a purely Western hegemony that diminishes the underpinning values of restorative justice. We continually note rigidity and conformity, which presents a "west is best" criminological discourse through literature and practices. Therefore it is pertinent here to reflect on Braithwaite's[51] standards that speak to the empowerment of participants and the opposing control by services over them.

Evidence and innovation from below instead of armchair pontification from above should be what drives the hope of restorative justice to replace our existing injustice system with one that actually does more to promote justice than to crush it.

VI. A PROCESS OF EMPOWERING AND HEALING: RESTORATIVE JUSTICE

Restorative justice is about people who have been harmed and people who have harmed them, together with support from both parties. As a process RJ doesn't have to be encumbered by tight regulations, yet attempts are often made to make it so.[52] The RJ process doesn't have to be inflexible although departments within the system often demand that certain victims cannot be given the opportunity to meet the person who harmed them due to the nature and severity of the crime, or the offender's perceived lack of remorse, unsuitable demeanour or closeness to the victim. It is as though the victim does not know best or is acting in a way that is likely to decrease the sentence. These predominantly "western standards" engulf community practices as Steels[53] noted whilst developing a community response to crime where the autonomy of local people was challenged by service providers operating under regulatory and bureaucratic parameters from outside of the local community. This is often the case among poor and marginalised communities that wish to be a part of the solution to local crime and want a say in how the processes are to operate. However, with the urgent call from victims of crime and their supporters, far from the trappings of power, many government agencies and academics are beginning to note the call to break from dominating parameters and limited flexibility that often engulf the innovative, local and culturally balanced processes.

The above practices provide opportunity to break from what Braithwaite terms "domination" within restorative practices. In defining domination, Braithwaite[54] argues that domination means "if a stakeholder wants to attend a conference or circle and have a say, they must not be prevented from attending. If they have a stake in the outcome, they must be helped to attend and speak". Further,

[50] Tyler 2006:313.
[51] Braithwaite 2002:569.
[52] Steels 2008.
[53] Ibid.
[54] Braithwaite 2002: 565.

Braithwaite[55] maintains that, "any attempt by a participant at a conference to silence or dominate another participant must be countered". It is within the understanding of domination and liberation within restorative solutions that both regimes will be constantly engaged as both have to contend with prisoner and staff movements and their attendant training and practices.

On the one hand, governments have moved closer to restorative justice practices but, on the other hand, they have often redefined RJ by building it into existing and often closed regimes. This is done with limited foresight as well as a lack of insight into the broader applications of the process. In turn, many jurisdictions have attempted to keep tight control, lessening the ability to empower and support those most harmed and decreasing opportunities for all participants to tell their stories. How governments respond to crime through their courts and justice services is often a concern with regards to human rights and fair process. If governments are to produce quality restorative practices, then new services will have to be designed, delivered and regulated to reflect liberating rather than controlling governance, striking a balance between the needs of offenders with the needs and aspirations of victims. Without such safeguards new practices and services can end up as what Pelikan[56] describes as overtly legalistic formalities and regulatory controls that fail to deliver a high degree of satisfaction in terms of access, process, timeliness and outcomes.

Early restorative practices began as a voluntary encounter between a person who has harmed someone and the person who experienced that harm. Nils Christie[57] claimed that conflict should be seen as the property of those with an interest in it. That is, the offender and the person(s) offended against rather than the property of the state. Over a period of time these processes have often become "all-encompassing diversionary practice"[58] far removed from families and communities and their problem-solving responses to crime. A good example of this style of bureaucratic diversionary measures comes from Western Australia where strict state control determines and limits access to any restorative practice. On the other hand, good examples flourish internationally and it is these breakaway processes from the tightly controlled and institutionalised criminal justice systems that form where conformity is most often demanded. They are the light getting into the cracks of strict control.

VII. THE HEART OF RJ: STORY TELLING AND NARRATIVES

Set at the heart of the restorative encounter and within any of the restorative justice or healing circles[59] is the period of time in which all participants are encouraged and supported to share examples of their life, leading up to and including the recent events that have brought them together with others in the aftermath of crime, war and/or conflict. This is best described as unscripted story telling or free-flow conversations where facilitators encourage empathy, support questions and allow for past and current narratives. Steels and Goulding[60] argue that it is through participation in restorative encounters, first among those who have produced harm together with their family and then among all those who have been harmed that we are presented with an opportunity to consider our conduct as it presents;

> ....the ability to reflect rationally upon our actions and those of others is often the starting point after we have caused harm or experienced being harmed by another. It is a crucial time to be able to have the space to review our lifestyle, to think of cause and effect, to think of what has occurred and to go over in our heads those often catastrophic and defining moments.[61]

It is within this balance of personal and shared space where reflection and admission, hurt and fear

[55] Ibid.
[56] Pelikan 2000.
[57] Nils Christie 1997.
[58] Pelikan 2000:150.
[59] Steels and Goulding suggest that three circles are used in any RJ process. The first is with the harm-maker and their family and supportive people, the second is with the people most hurt, injured or harmed, together with their family and support, and the final circle or encounter is set among all of the participants from the first two circles.
[60] Steels and Goulding 2013:388.
[61] Ibid.

all build up into a greater awareness and where the personal and often tragic storylines begin. As Braithwaite[62] notes in his essay *Setting Standards for Restorative Justice*, the process allows people to feel empowered regardless of socio-economic status, age or gender.[63] Braithwaite further highlights Pranis' suggestion[64] that people will listen to those in high office or power but will ignore those that are not. Restorative justice allows all those involved a chance to tell their story and for those around them to listen. In this way giving the storyteller a sense of empowerment. These encounters help to create an environment of trust and fairness throughout the circle, giving balance in terms of time and frequency with a talking piece. It is among these circles where passion and emotions flow, that Braithwaite[65] sees the presence of "relatives, friends or a personally relevant collectivity" act to challenge personal actions and make amends for the future largely because "repute in the eyes of close acquaintances matters more to people than the opinions or actions of criminal justice officials" This also compliments Tyler's[66] notions that where encounters increase the motivation to transform and challenge the immediate behaviour as well as any future actions in a way that encourages respect from close family and associates. It also enhances self-image and leads to compliance with the law in the future.

For many people the free-flowing process within these series of circles provides an opportunity for participants to engage in a way that seeks to heal the aftermath of crime, resolve various questions and enable discussions to take place with regard to future directions and positive outcomes. For some, this process comes a little easier when it is shared within a safe environment and where only one or two rules exist. One very important rule is to ensure that only one person speaks at a time. Another is to ask that truth be spoken without fear or prejudice but with respect. To enable these stories to assist in the problem solving restorative and healing process the following ideas may be of use. They are often used by the authors within and outside of the formal justice system and can be used in conjunction with story-telling or other ceremonies. With all story-telling and yarning circles a good amount of silence is encountered. This is to be honoured and respected as a part of the ceremony. Flexibility is the key to this restorative encounter that may last longer than most restorative justice encounters. It may be spread over days or hours rather than a rushed event especially when it is dealing with serious and repeat offending from within a smaller community or large family. Timeliness is crucial for courts and justice services but not always so for many traditional or customary circles.

The cross over and mix of traditional and modern or between Western and Eastern processes shows the flexibility of facilitators, participants and process. It should be able to accommodate people of different or no religious faith, various cultural backgrounds and cross-cultural communities. Stories are often so rich that they give life to the encounter in a way that more formal courts are unable to provide.

VIII. THERAPEUTIC COURTS AND THERAPEUTIC COMMUNITIES

The authors note from Tyler's[67] that to treat people badly or to give them an experience of injustice in the early stages of contact with the criminal justice system often means that they, together with family and friends, fail to be compliant and respectful of the law in the future. Fairness always needs to remain crucial to any restorative encounter as well as the legitimacy of the criminal justice process for being unfairly treated disrupts "the relationship of legitimacy to compliance" even more than "receiving poor outcomes"[68] . All participants must be in a position to feel that they are being treated fairly and respectfully. Combined, the therapeutic, restorative and procedural justice concepts provide all parties with an opportunity to feel satisfied with both the process and outcome. In addition, processes should not bring about harm. Winick (2003:26) claims that therapeutic jurisprudence "should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever

[62] Braithwaite 2002:564.
[63] In Pranis 2007.
[64] Ibid.
[65] Braithwaite 1989.
[66] Tyler 2006: pp. 307-326.
[67] Tyler's work 1990.
[68] Ibid.

possible, and when consistent with other values served by law should attempt to bring about healing and wellness". Combined with restorative justice and the participation of people who have experienced harm the therapeutic jurisprudence process is a good companion for restorative justice practices where such ideals are seen as the sum total of the circle process for all participants.

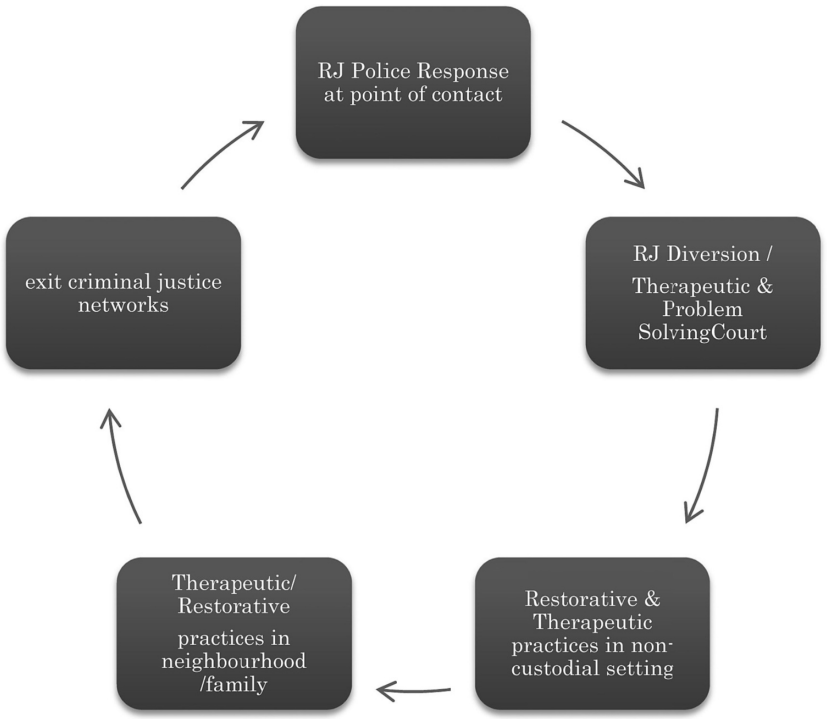
When preparing for the first circle, or the first part of a meeting or conference, facilitators should be aware of Sykes and Matza[69] processes of neutralisation that include; denial of responsibility; denial of injury; denial of victim; condemnation of the condemners and appeal to higher loyalties. If not exposed, these notions will continue to deflect blame on others rather than allow a space for offenders to take responsibility. Alternatively they may then erupt or lay dormant just under the surface during the first circle.

Focusing on one specific group of people as offenders within the criminal justice system can be helpful if the process used is one that is culturally appropriate, respectful to traditional law, and doesn't produce further harm especially among those people who are victimized by the crime. But it also brings limitations and assumptions about the court process. Whilst it is a positive move to engage with perpetrators in a manner that is respectful perhaps even in a special First Nation court with local Elders, the process may leave out cultural, traditional and customary representations for First Nation or Aboriginal victims of crime. If the person most harmed by the crime is a First Nation person then a number of safeguards must come into being. The first is that a fair and just process is provided, one that protects their right to be heard in a safe and secure environment. The second is that they are assured of protection from re-victimization and further abuse. Victim support services in rural and remote areas of some states find themselves lacking the resources to engage with even the most seriously victimized people. With regard to a perpetrator's family there could be good reason for the perpetrator and his/her family to be provided with an opportunity to engage in ceremonies that heal the group, assist with an apology and restitution and acknowledge the shame that has descended upon them.

The authors pose the question of how this process might work in a cross cultural situation where the victim of crime is a member of a First Nation or Aboriginal person and the perpetrator is not. Do we ensure that the court acts respectfully and in a culturally appropriate manner towards the victim of crime, including the treatment of them by the media? One way to ensure that we treat all participants in a criminal justice process fairly, justly and in a culturally respectful way is to offer a restorative process to all people who are willing and able to participate. This includes listening to victims of crime who ask for a facilitated encounter with their offender even when the prosecution opposes such a pathway. It would also assume that any victim of crime, not only victims of first offenders, would be invited to attend or able to request an encounter with the perpetrator and the perpetrator's family. This would serve to provide all victims of crime with the same opportunities to participate. In this way all people are treated respectfully with recognition of their cultural, traditional and customary needs. Finally we strongly advocate for restorative processes to be made available in every court, linked to the philosophy and practice of therapeutic jurisprudence where the voices of all participants in a restorative encounter are able to be heard.

The following diagram shows restorative justice and therapeutic interventions from the point of contact with the police to breaking away from the criminal justice system. To be effective it requires a high degree of procedural fairness.

[69] Sykes and Matza 1957: 664-670.



Sadly and all too often the authors note a connection to the criminal justice system at an early age followed by further connections leading to and from juvenile detention centres and later the adult prison system. This is particularly true of the Australian and New Zealand systems. Scholars attribute this cycle of crime to various inter-connected factors. Individual behaviours are questioned together with a lack of societal discipline[70] poor socioeconomic conditions within families and communities together with a lack of support;[71] colonisation and intergenerational trauma,[72] and other structural factors due to geographic location, language, under-employment and drug and alcohol fuelled violence. Whilst any one or more of those conditions may be prevalent within a family home or community it may also be attributed to current "tough on crime" policies widely heralded across Asia. However, it is also due to the enormous gap referred to by Casey[73] as he highlights the gap in social and economic wellbeing between Indigenous and non-Indigenous people. Casey reports on the Australian situation noting that "the discrepancy between the social and economic well-being of Indigenous and non-Indigenous people could be described as a vast gulf, rather than a 'gap'". As Indigenous people throughout the region find themselves more and more marginalized especially in India, Taiwan, Japan and China, restorative practices may assist them to have their voices heard.

The results of these regional policies are but a warning of the danger of building more courts and prisons whilst failing to use therapeutic, problem solving and restorative environments. It is important to consider a policy redirection towards effective solutions that apply smart, fair and just processes. The evidence to date suggests that therapeutic and restorative interventions help to provide empathy for others, improve social connections, are inclusive of victims and look to local and community solutions. Problem-solving courts, restorative practices and therapeutic communities seek answers, can place the criminal act within a context, listen to solutions and are focused on healing the aftermath of crime whilst aiming to reduce re-victimization. They challenge offending or harmful behaviour whilst providing support. They include all stakeholders and empower participants. Perhaps cynically, the authors question whether the problem with these progressive, problem solving ideas is that they will reduce imprisonment whilst allowing funds to be channeled where they are needed—to victims, perpetrators and their networks—our communities.

[70] Weatherburn et al., 2003.
[71] Blagg 2005; Steels 2008; Goulding et al., 2006.
[72] Atkinson 1990; Steels 2008; Cunneen 1999.
[73] Casey 2007.

IX. PRISONS OF THE FUTURE: RESTORATIVE, SUSTAINABLE AND PROBLEM SOLVING

Victims of crime throughout the region are often not fully compensated for the harm and losses that they incur and the overuse of imprisonment fails to make their communities feel safer. Further, victims of crime seldom have a role to play in the penal estate apart from ad hoc occasional circumstances. Regionally, prisons do not reduce crime but conversely are often themselves criminogenic, providing a learning environment among people who have already been convicted of crime. Goulding, Hall and Steels suggest that the community gains few benefits from prisons "because the continued high cost of incarceration eats into the public purse with ever increasing imprisonment rates".[74] Their economic cost demands a thorough examination in terms of social and economic costs. For example, currently the cost of keeping each adult prisoner in custody in Western Australia is $115,000 per year (DCS, WA, Annual Report 2010-2011) and rising.

Alternatively, restorative processes throughout the prison can offer victims, offenders and the community greater participation and improved outcomes than traditional criminal justice processes. The restorative prison, according to Coyle[75] is able to "present prisoners with a series of duties, challenges and learning opportunities". A key factor in a restorative prison is an environment of safety for prisoners and prison staff. There is no doubt that many obstacles have to be overcome in transforming current prisons' punitive regimes to restorative practice. This is something that we are now undertaking in collaboration with partners from Europe. Newell[76] contends that the tension between restorative processes and traditional prison modes are still troublesome, maintaining that "restorative justice requires respect, the assuming of responsibility and the freedom to solve problems by those involved in the conflict". Another conflict facing many jurisdictions keen to design innovative restorative practices within the penal setting is risk averse government ministers and their departments. Attempting to balance risk with progress often sees good ideas shelved, although our science on the topic is improving. Whilst the process is difficult it is worthy of closer examination.

A restorative prison would continually challenge criminal behaviour in order to and reduce re-victimization through comprehensive and effective, restorative and transformative programmes. All members of a holistic prison environment including residents in custody, management and staff are called upon to act respectfully and restoratively in all communications thus ensuring fair and just processes and outcomes that are more likely to encourage compliance and pro-social behaviour, within and outside of the prison environment. These holistic processes would include facilitated encounters between victims and their supportive others, prisoners and their family and/or peers and members of communities of interest. Encounters such as these are an effective way to encourage victim empathy and improve self-image. Making an apology to family and friends is often the first step towards taking complete responsibility for our actions, and the beginning of the journey towards the encounter with the person most harmed and victimized. A restorative justice prison is one that is able to successfully engage in restorative practices with the accompanying underpinning philosophy of harm reduction, reparation and restitution. Many of the prison's activities would involve victims, community reparation projects and skill-development activities that are pro-social and civic minded. The activities ought to be designed to encourage respect for others and increase a desire to take on board responsible citizenship.

All prisons should be instilled with the desire to be experienced as a restorative justice prison that is seriously looking to provide a wholly restorative environment with fair and just processes and positive outcomes. These processes and outcomes can be measured through the personal experiences of residents in custody, victims of crime and prison management teams. Through restorative and transformative environments, these prisons could reduce further victimization whilst generating a greater interest in family connections, social responsibility and civic pride. In terms of prisoner experiences, a holistic restorative prison environment could provide an example of being treated fairly and justly with respect and understanding. This can in turn present opportunities to look at the self as

[74] Goulding, Hall & Steels 2008.
[75] Coyle 2001.
[76] Newell 2001.

a respected social being with responsibility who can reflect on the harm that has been caused to others —victims and their own family and relatives. Restorative practices usually encourage personal growth, maturity and integrity on the journey to a better understanding of how we respond to ourselves and others, especially in times of crisis and conflict. These are critical life skills that can assist those who reside in custody to make amends, put their lives in order, understand others and look at being valued by others.

In terms of prison management, restorative practices offer prison staff the opportunity to be pro-active in encouraging responsible living in harmony with others. We seldom hear of peacemaking and responsibility taking within penal institutions but that is what is called for from the prison's leadership as prison staff move among residents who may not have experienced being treated with dignity and respect. As a management tool restorative philosophy and practices can initiate potential for growth and transformation of key workers, senior staff, prison officers and people held in custody. In turn this can lead all participants towards positive relationships and lifestyles. Restorative justice prisons can provide more than just a glimmer of hope—they offer a journey of transformation. As previously mentioned, the authors recently visited Tihar Prison in Delhi in order to see first-hand the prison as a place of environmental sustainability. This visit runs parallel to the research being undertaken in Western Australia. Already Tihar management have noted a marked change in the behaviour of residents working within their sustainable projects. Residents are able to focus on the fine balance of climate, human activity and food security, ensuring that the jail is not a burden or is not producing further harm to the planet.

Although these are small examples they serve to highlight the link with harm to self and victim, harm to family and community with harm to the future of life on earth. In typical Asian style it shows the interconnectivity and inter-dependency of species and clearly demonstrates that harming another human being brings harm to many others. The focus on these others does in turn assist the prisoner to learn more about life than crime.

X. CONCLUSION: RJ; SUSTAINABLE PRISONS; THERAPEUTIC AND PROBLEM SOLVING COURTS

With the Asian region taking account for the world's most populated land masses, diverse languages and well defined national identities, there is always going to be major functional differences within jurisdictions, especially around restorative solutions to crime and compliance to law. This is underpinned by a variety of philosophies and religions, Indigenous, colonised and mixed populations and legal support or restrictions placed on human rights and democratic processes. Most importantly for ordinary people wishing to own their crime, for those who want to make things rights and for those wanting to share their stories of their fear and harm, many regional governments and services are beginning to listen. The future does hold hope for restorative encounters and free-flowing conversations facilitated between harm doers and those most harmed in a willingness to ensure that harmony prevails. The how, where and when we can all see restorative justice providing the region's people with a safer way to live without fear of crime, is with us now. We need to seize the opportunity. We are all empowered to take control of crime, work towards healing its impact and restoring good relationships. This paper is just the first of many steps to take in personal, national and international transformation. It should lead us all to a greater understanding, compassion and fairness among families and communities. Restorative justice can come into its own once empowered by the all-encompassing bureaucratic criminal justice systems and treated as a mainstream, genuine response to healing crime. Its ability to have people move towards future compliance and to experience their government's processes as fair will in future bring local and national rewards of safer and peaceful communities. However, none of this occurs overnight. Crime still occurs, wars continue and justice remains lost to many and yet it is the most crucial relationships between the victim of crime and the harm-doers that we have to focus on today. These restorative solutions present not only a way out of crime for those participants entering an encounter but it offers whole communities and governments a more effective and less costly way of healing the harm.

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CREATING RESTORATIVE AND SUSTAINABLE ENVIRONMENTS WITHIN A CUSTODIAL SETTING: ESTABLISHING A TEMPLATE FOR THE FUTURE

*Dr. Brian Steels**

I. INTRODUCTION

This research remains in its embryonic stage as it attempts to produce a universal template for designing and implementing a wholly restorative justice and environmentally sustainable prison regime, shaped by restorative values and sustainable practices. The project will raise awareness through sustainable educational and transformational programmes, transforming the culture among residents, workers and visitors throughout the penal estate. These interconnected and interdependent values and practices remain mostly unexplored, suggesting a need for an increase in scientific literature across disciplines, communities and borders. Expected outcomes include a greater understanding of responsibility taking, procedural fairness and harm reduction within a sustainable prison — restoring prisoners, their environment and communities.

> Human activity has brought harm to other human beings, different species as well as the planet. The project engages participants at the forefront of restoration of all harm done to people, place and planet.[1]

There are many articles that examine restorative processes in prisons, restorative justice used for environmental crimes and environmental issues being explored in a prison setting. There are low security work camps and prison farms that practice sustainability and there is a very good example of sustainability within Tihar Jail, New Delhi, India, where food security and healthy living are practiced in terms of ecological sustainability. However there are no papers, seminars or books that explore the development of a fully environmentally sustainable secure prison that combines harm reduction with restorative justice practice and philosophy. The authors believe that these go hand in hand as sustaining harmony and peaceful community living helps to reduce crime and fractured relationships. Further, reducing the carbon footprint can be viewed as taking responsibility for the environment, one's family and the community and enhancing awareness and concern for others, in this way leading to reflections on the self and the self's impact on others.

This project has begun to examine the current structure and the capacity of Acacia Prison and Wandoo Reintegration Unit in Western Australia to respond to criminal activity and environmental sustainability through diverse needs with unique responses, including sustainable programs and environment. The project is situated within Curtin University, with support from Curtin University Sustainability Policy Institute (CUSP) the Australian Sustainable Development Institute and the Office of Research and Development. It is coordinated across schools so as to initiate related projects through associated networks and partnerships. The project relies upon a multi-disciplinary and culturally aware team to record the processes of organizational change necessary to adapt a punitive prison regime into a therapeutic and environmentally sustainable estate, built upon the foundations and values of restorative justice and sustainability.

The project's uniqueness will inform and design the Universal Template[2] that will assist other jurisdictions to replicate these practices within their own estates, cognizant of their difference and cultural diversity. As such the project will aim for the positive transformation of offenders, reparation

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[1] Steels. B., Presentation, Asian Criminological Society, Mumbai 2013.

to people and communities harmed by crime and environmentally sustainable practices that reduce the impact of the prison in terms of its carbon footprint and impact upon its local environment. The template will be informed by evidence gathered through action-based and participatory research and should be useful as a tool to answer questions relating to design, implementation, process and outcomes. An interdisciplinary team as well as the voices of those held in custody and the people responsible for their safety and security will inform the template. It will record progress with sustainable, rehabilitative and restorative practices, seeking data from people harmed by crime; families of offenders and victims of crime. The template will therefore be informed by measuring restorative and environmentally sustainable practices and the levels desired and expected by management, residents and community.

II. RESTORATIVE JUSTICE

Underpinning the project's restorative values will be Braithwaite's standards that assist with evaluating degrees of restorativeness. Restorative Justice is defined by Cormier[3] as:

> An approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime — victim [s], offender and community — to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.

The conceptual framework for the wholly restorative justice sector of the project cites practitioners and academics[4] all of whom have provided insights into the work done by prison authorities to introduce limited restorative practices into several prisons in England, Wales and Scotland. However, restorative practices within prisons are a relatively recent phenomenon and since 2000 the entire Belgian prison system has undergone substantial cultural change to a system based on restorative principles.[5] Restorative justice counsellors were employed in all thirty Belgian prisons in order to oversee the establishment of restorative practices to all aspects of the prison regime.[6] However, according to Aertsen,[7] specialist restorative justice trainers and practitioners have been absorbed into senior management positions leaving a doubt as to the sustainability of the Belgian restorative practices. The values and practices underpinning the research project will counter regimes that maintain a continuum of punitive policies. However, sustainability is key if the programs are to be effective within the ever-changing prisoner and staff populations and their dynamic human relationships flowing through the prison's environment. In addition to the restorative prison projects, therapeutic communities have been established in several prisons in England and Wales. HMP Grendon, housing around 200 high security prisoners, is undoubtedly the best known of these. Liebmann[8] notes that within HMP Grendon: "The programme is based on therapeutic community principles, where a dedicated multidisciplinary team of staff works together with prisoners, in an atmosphere where attitudes and expressions that would not normally be tolerated in prison are accepted and used to give feedback to prisoners."

The innovative restorative regimes will be based on the concept of re-integrative rather than stigmatic shaming, essentially shaming the act rather than the actor whilst providing a values and skill-set to enhance day to day relationships with others as well as the personal and shared environment. Thus, sustainable restorative justice could be said to be a process that involves active participation of all people; those harmed by crime; those who can learn to take responsibility for the harm they

[2] This Universal Template is expected to become part of international guidelines and standards for developing and maintaining restorative and environmentally sustainable practices within prisons. It may have usefulness for other institutions, organisations and small communities as they attempt to build harmonious relationships between diverse people, places and the natural environment.
[3] Cormier 2002.
[4] Newell 2001; Stern 2005; Coyle 2001 and Liebmann 2007.
[5] Aertsen, Daems & Roberts: 2006.
[6] Newell 2001.
[7] Discussions with Aertsen held at Katholieke Universitiet Leuven in 2012.
[8] Liebmann 2007:247.

have caused; and those who can provide support. This enables direct and indirect reparation and restitution to both primary and secondary victims and a real commitment to personal reflection and transformation. In an innovative move, all residents and workers in the custodial settings will learn about and practice restorative justice and will be in part responsible to assist with facilitating encounters and teaching theoretical constructs. In this way participants will learn about restorative processes and outcomes, be encouraged to teach others and provide a set of skills to others, both inside and outside of prison. Residents will be encouraged to apply for paid positions within the prison as assistants, consultants and practitioners and be an integral part of the research team. This fits with Curtin University's mission[9] "to change minds, lives and the world through leadership, innovation and excellence in teaching and research".

Research[10] suggests that prisons do not reduce criminal activity but, conversely, are themselves criminogenic in nature. Australia-wide, recidivism rates remain consistently high and rehabilitation programs, where they exist, have limited success rates and are frequently unsustained by economic policies. Currently, the few restorative justice programs that do occur in Australian prisons are ad hoc and dependent on the passion of individual managers and staff, as well as their community based voluntary organisations and hence they become unsustainable. The restorative prison setting, according to Coyle[11] would "present prisoners with a series of duties, challenges and learning opportunities". A key factor in a restorative prison is an environment of safety and positive values for prisoners and prison staff. There is no doubt that many obstacles have to be overcome in the cultural change towards restorative practices. Newell[12] contends that the tension between restorative processes and traditional prison modes are still troublesome, maintaining that "restorative justice requires respect, the assuming of responsibility and the freedom to solve problems by those involved in the conflict". The challenge goes to the Curtin team to create fair, just and sustainable processes with positive and sustainable values. To date, environmental sustainability plans and activities remain unrewarded by risk adverse governance. Monitors fail to ensure the sustainability of quality rehabilitative programs, as noted by Western Australia's Prisoners' Release Board[13], "A further area of concern is the limited provision of rehabilitation and training programmes for prisoners and parolees". This limited provision requires further investigation as it hampers participants throughout the estate as well as victims and community members; thus placing safety and rehabilitation in isolation to security needs. This study will engage all aspects of rehabilitation as the resident's progress from convict to citizen.

Restorative encounters held with offenders to discuss their release and rehabilitation plans are ideally held among friends and family. Using Sykes and Matza's[14] neutralization theory during these encounters, facilitators are able to challenge a denial of responsibility, denial of injury, denial of victim, condemnation of the condemners and note an appeal to higher loyalties. If not exposed, these notions will continue to deflect blame onto others rather than allow a space for offenders to take responsibility for their actions. This is crucial to the project for as the Youth Justice Board[15] has identified, young offenders with strong family ties are six times less likely to re-offend. Furthermore, research[16] indicates that family support helps offenders to reintegrate into communities and avoid criminal behaviour. This research will explore family encounters[17] that include the notion of re-integrative shaming.[18] These encounters enable the focal person to reflect on their relationship with their family and the harm brought to the family by harming other people. This study will explore if a genuine concern for others can be enhanced through engagement and concern for a positive, sustainable environment; one that leads to positive community engagement.

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[9] Mission; Strategic Plan 2013-2017.
[10] Carlen 1994, 2002; Pratt 1997; Steels 2006; Stern 1998:11; Goulding 2007:4.
[11] Coyle 2001.
[12] Newell 2001.
[13] Prisoners Review Board Annual Report 2012: 6.
〈http://www.prisonersreviewboard.wa.gov.au/_files/PRB_Annual_Report_2012.pdf〉.
[14] Sykes and Matza's (1957: 664-670).
[15] Youth Justice Board, UK 2003:07.
[16] Stockdale 2008; Renshaw 2007.
[17] Steels and Goulding call these encounters 'the first circle'.
[18] Braithwaite 1999.

III. ENVIRONMENTAL SUSTAINABILITY

> It is becoming increasingly clear that community engagement and support is crucial to gaining environmental outcomes. The active engagement of the community's energy, knowledge, and intelligence is now a vital ingredient in the success of many different types of sustainability programs. (NSW heritage and Environment 2013)[19]

When associated with aspects of a sustainable environment the restorative actions outlined above are able to place awareness of self and others, by residents and staff at an unexpected level of knowledge and empathy. This study places the Curtin research at the leading edge of effective restorative and environmentally sustainable prisons and associated projects. It will shed light on the interconnectivity and build into the universal template not only the aims to be achieved, but also how to make the journey effective and efficient. Prisons currently offer little that is positive to society in terms of reducing criminal activity, reducing further victimisation and making communities safe. In addition, their economic and social costs are high. To date their impact on the environment has held little interest in criminology or by environmentalists, or indeed government departments. Sustainable penal estates have waited too long to be explored and this project will inform other jurisdictions through the development of the universal template action-based research and experimental projects, journal articles, papers, presentations and seminars.

A unique network of Curtin scientists and practitioners has begun to build up the project's sustainability credentials with a collective responsibility to reduce the combined estates' carbon footprint. The vision is also to enhance the opportunity of residents to actively participate in constructive roles as research assistants, facilitators and practitioners within the custodial environment and within their communities upon release. It is a combination of sustainable skills acquisition, competency training and empowerment for all participants including staff. The study has already started to encourage further examination of food production, security and transport; investigate the use of clean, sustainable and efficient energy production; research innovative storage, use and reuse of water; and seek alternative and innovative energy efficient practices. It will also seek to examine the estate's ability to contribute to other environmentally sustainable practices including species protection of flora and fauna; including breeding and re-stocking national parks and wildlife sanctuaries; growing and nurturing plants for prison and commercial use; supplying produce for zoological and farming enterprises (aquaculture, agriculture and horticulture) and supporting local environmental interest groups. These credentials will provide the platform for further awareness training and education among residents, who will be well placed as skilled citizens. Together these values place the emphasis on responsibility for self, others and living environments.

Prisons are workplaces as well as places for secure custody. They also provide an ever-growing population of workers. A sustainable workplace is defined by Sustainability at Work[20] as bringing about the following benefits to the organisation's workplace; environmental, human resources and employee engagement, financial and brand and reputation. In terms of this research project all aspects will be thoroughly explored, evaluated and documented. Sustainable Prison Projects (SPP) exist for small groups of prisoners in very few jurisdictions. Among the more well-known is a work camp at Cedar Creek[21], where nearly 60 inmates live and work in the low security forest work camp. They hold a variety of jobs on the sustainability project; composting material, looking after bees, collecting rainwater and they run a scientific research project on endangered species. The state's Deputy Director of Prisons, Dan Pacholke[22] says that any prison system will tell you that idleness is a bad thing, "if we don't have stuff for them to do, then we're just going to hire more security staff..... It's environmental economics, we're expensive places to operate. I could sell the [project] on cost containment alone: solid waste, energy, food costs".

India too has an excellent environmental awareness and sustainability section at Tihar Jail, Delhi.

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[19] 〈http://www.environment.nsw.gov.au/community/index.htm〉.
[20] 〈http://www.sustainabilityatwork.com.au/public/images/benefit.jpg〉 retrieved Thursday July 11, 2013.
[21] Cedar Creek, Washington State Department of Corrections and The Evergreen State College facility joint project.
[22] 〈http://blogs.evergreen.edu/sustainableprisons/files/2013/01/SPP-EssentialComponents-1-10-13.pdf〉.

Tihar houses more than 14,000 prisoners (almost half of Australia's entire prison population). Over the past two years, the Prison Director has introduced a greening and environmentally sustainable prison regime. The prison grounds cover over 200 hectares in the middle of New Delhi and yet inside the prison boasts an environmentally positive ambience with trees, shrubs and herb, fruit and vegetable gardens. The authorities have introduced several animal and bird species including cows, pigeons and geese, although the food served in the prison is entirely vegetarian. The Director explains that caring for the animals has had a calming effect on the prisoners and staff and that, overall, there have only been positive outcomes.

IV. CULTURAL SUSTAINABILITY AND AWARENESS

For Aboriginal and Torres Strait Islander residents and staff as well as students and staff across Curtin the research project will bring about significant sharing of ideas and a greater depth of understanding of the spiritual and cultural significance and interconnectedness of people, place, country and environment. Cultural significance and sustainability will be studied throughout the project as a central part of the overall concern for the 40 per cent of the resident population that identify themselves as Aboriginal or Torres Strait Islander people. This group of residents will inform the template's cultural sensitivity and sustainability notes as well as provide input into regeneration and sustainable production of local food, seeds, species and plants.

Aboriginal residents and support staff will ensure cultural awareness is presented and respected across the template design and along with selected non-Aboriginal residents assist with as much as they are able to with the project and research team. This is a crucial aspect of the project. The study will at all times engage and empower residents within a learning environment as well as helping them to increase their knowledge of restorative practices and environmental sustainability. This will entail peer-to-peer and lateral training across roles as well as top to bottom and bottom-up training in concepts, terminology and practice, fitting as it does with Braithwaite's (2002) notion of transformation of the current justice system. For residents at each site, this study will involve them in researching and gaining knowledge of ideas suitable for their current circumstance as well as for their own family and community upon release.

V. SIGNIFICANCE AND INNOVATION IN CREATING AND COMBINING RESTORATIVE AND SUSTAINABLE PRACTICES

This piece of research is highly significant as it presents the opportunity for a paradigmatic shift in the way that the total prison environment is viewed and managed. This, in turn impacts upon other human service institutions such as hospitals and nursing homes as well as smaller rural and remote communities where relationships with others and the environment are crucial in terms of sustainability and capacity building. Indeed, the research proper aims to address several important issues found within prisons across jurisdictions; the high re-victimisation and recidivism rates, the awareness of harm done to others and the interconnection between prison, community and their impact on the environment. The above could have a direct impact on small communities and rural towns that could benefit from the return of ex-prisoners who are fully skilled in both restorative justice and environmental sustainability. This directly links the penal estate's creative and innovative activities to community needs and local benefits. It enhances the opportunity for ex-prisoners to make the journey from convict to citizen, an area of special interest throughout the research. Furthermore, the research calls upon all residents and workers within the penal estate to work towards common goals and shared ambitions with regard to lowering conflict and crime, reducing victimisation and harm to the environment. It links up notions of food insecurity, safer communities and ecologically sound management of both prison and community space.

The current partnership with Serco developed through the Curtin University researchers' involvement with them over the past eight years. Management is innovative and want to use restorative justice processes within a wholly sustainable environment throughout their combined estates, including transport and court services, placing the vision and practices within their organisational goals. Custodial settings that run on restorative and sustainable practices have the potential to;

- Be innovative by promoting an awareness of the impact of criminal activity on victims and all others harmed, including family and associates, through direct encounters between victims and offenders, including notions of responsibility taking, apology and reparation

- Promote environmental sustainability as a learning tool, skilling all participants and creating greater awareness of the interconnectedness of harm to self, others and the planet

- Establish meaningful and sustainable workplace activities for prisoners where a proportion of their time is spent working for the benefit of others, particularly victims

- Incorporate restorative principles into all dispute, grievance and disciplinary procedures throughout the prison and Serco's other sites

- Initiate good relationships with local communities to illustrate the need for prisoners to be reconciled with society and environment

It is anticipated that this study will advance the criminological and sustainable environmental knowledge base at Curtin. The authors view this as a win-win situation for Curtin researchers and campus, Serco, prisoners, victims and the environment. In taking this research out into other jurisdictions, the idea of the international template becomes a major focus, a point of connection between Curtin University's researchers and other interested parties worldwide.

VI. SIGNIFICANCE AND INNOVATION FOR CURTIN AND OTHER UNIVERSITIES IN THE REGION

This research allows for the expansion of innovative and creative research within two major fields that intersect through the new penal estate and created for future living. It also addresses Curtin's Strategic Plan[23] "where Leadership matters". It will focus on people and culture across the campus as it brings together research teams, graduates, teachers and students across a broad spectrum of interests. The project will develop into an inspiring and innovative collective of energetic Curtin people. Indeed, under the heading of research this ticks all of the boxes. It already has iconic names with Aertsen (KUL Leuven) Belgium; Braithwaite (ANU); Shapland (Sheffield) UK; Lalli and Subramarian (India) Wong and Chang (CityU) Hong Kong as well as Newman and team at CUSP. Within Aboriginal and Torres Strait Islander interests it has strong credentials across Australian campuses as well as leadership within Curtin. The research is a life-changer for individuals, families and communities here in Western Australia, across the nation and internationally. It is high impact applied research and development across disciplines.

The teaching and learning credentials of the project will lead to an expanded source of students and graduates as residents within the custodial estates along with their counterparts on campus engage in the various projects on a demanding learning curve. As for "engagement and impact" this project is best described as a dynamic organism for the region. It will bring challenges to many assumptions about crime, living environments, sustainability and Indigenous interests whilst meeting the needs of diverse communities across country and borders. It has already gained interest through Steels' and Goulding's work as Directors of the Asia Pacific Forum for Restorative Justice and partnerships built up over several years. This collaboration of international networks already links Curtin with many other academic sites across the Asia Pacific as well as Europe. It gives Curtin and its partners a leading edge in two fields as criminology and sustainability meet to reduce harm to people across the world. This project is about researching socially just and sustainable living that embraces positive change, and meets Curtin's mission and that of our neighbours in many ways. For Curtin, Serco and other partners, this research project will identify and examine each aspect of sustainability. Crucially it will include sustainable prison programs as well as harmony building and relationships central to restorative practices. These will build up part of the "template" and will include noting the engagement with community groups, how assistance is given to primary and secondary victims and how innovation and cultural challenges could be understood and transferred through the template, to other

[23] Curtin's Strategic Plan 2013-2017.

prisons, locally and internationally. It will also inform the future design of sustainable and harmonious communities.

VII. COUNTERING GROWTH IN THE PENAL ESTATE

It remains a major concern that there is continuous growth in prison populations. On average prison populations in Australia have grown by 5 per cent each year over the past two decades.[24] Such growth in prison populations and costs are unsustainable and unjustifiable as imprisonment remains an ineffective tool for reducing crime. However, crime rates have fluctuated over this period, showing both increases and declines. Garland[25] contends that, "....today's world of crime control and criminal justice was not brought into being by rising crime rates.... It was created instead by a series of adaptive responses to the cultural and criminological conditions of late modernity". Thus, the effectiveness of imprisonment is questionable as prisons are often the embodiment of secrecy, invisibility, exclusion and lack of accountability:

> These factors encourage, rather than discourage, coercion brutality and violence amongst prisoners and prison staff. One of the consequences of this is that imprisonment....does not prepare inmates for productive and pro-social living in the wider community[26]

The argument here is that imprisoning more people for longer periods of time does not make communities safer or victims at less risk of further victimisation. Furthermore, the economic and social costs of imprisonment are unsustainable[27] as is the impact on the environment. Ever-increasing imprisonment rates result in escalating economic and social costs but present few real benefits to communities. Austin et al[28] highlight these facts:

> This high rate of recidivism is, in part, a result of a range of policies that increase surveillance over people released from prison, impose obstacles to their re-entry into society, and eliminate support systems that ease their transition from prison to the streets. Prison policy has exacerbated the festering national problem of social and racial inequality.

Austin et al[29] call for reform in rehabilitation and especially the focus on the other that causes non-Caucasians to be arrested and jailed at higher rates than their Caucasian peers, a factor that is reflected throughout Australian and similar jurisdictions. Johnstone and Van Ness[30] have argued that "....prisons are authoritarian and hierarchical, controlling virtually all aspects of the lives of prisoners, making it difficult for them to exercise responsibility. Yet, responsibility is a key value of restorative justice". However to date little attention is given to the sustainability of programs, where due process of engaging with a pre-release program is often delayed. Any interconnectivity between harm of self, harm to others and harm to place and planet remains unnoticed and disconnected within the criminal justice system. This research begins to join the dots together.

Lessons learned from Belgium's Restorative Prison experiment and research include the importance of sustaining programs and practices throughout an ever changing group of residents and high turnover of staff. This study will help to identify ways in which prisons can maintain restorative, fair and just practices over time whilst creating inbuilt sustainability across the various social roles and actors (prisoners/residents; staff/management; visitors; service providers). Sustaining corporate knowledge will present a challenge where the cost of maintaining the total penal estate frequently fails to acknowledge the environmental and social costs against a broad spectrum of performance indicators. The authors therefore argue that the above should inform policies and practices as well as presenting a viable, positive alternative in terms of reduced social and economic costs to governments and their communities. Curtin and its partners across the region have a vision for restorative processes

[24] Australian Institute of Criminology 2007.
[25] Garland 2001:193.
[26] Goulding, Hall and Steels 2008:232.
[27] Austin et al.: 2007:1.
[28] Ibid.
[29] Ibid.
[30] Johnstone and Van Ness 2007.

becoming fundamental to all communications and activities within all residential units along with a unique interest in cultural and environmental sustainability. Serco has keen residents, staff and management who are engaged with Curtin in developing restorative and sustainable practices wherever possible. The custodial and transport facilities are at the forefront of reducing carbon footprints within the industry. In order to develop the universal template, this Curtin-based research has begun with an expansive platform that examines restorative, therapeutic and sustainable processes and outcomes including the:

- Degree of awareness of and reparation to victims and communities through work activities that assist individual victims or communities harmed by crime
- Journey from convict to citizen; what helps and what hinders
- Impact of encouraging prisoners to apologize in recognition of the harm caused to victims and families, their own families and local communities
- Restructuring of all grievance procedures to include alternative dispute resolution processes, family and community encounters, prisoner-to-prisoner disputes, prisoner to staff disputes and all prison staff grievances
- Encouragement given to prisoners to engage in therapeutic programs in the prison with support networks of family or peers
- Degree of participation of residents and workers learning about and actively participating in restorative justice and environmental sustainability practices
- Identifying and lowering Carbon footprint levels over research period
- Percentages of food use to production on site, as well as energy usage, production and reduction
- Level of stress and sick leave among staff, residents over term of research project

The project will also lead Curtin research teams in an exploration of:

- Health and well-being, including mental health and stress of all residents and staff
- Quality and safe work practices relating to total living and working environments
- Sustaining quality water supplies (renewable and reusable — fresh/grey, tanks, ponds)
- Energy production and storage, including new research for painted roof technologies, thermal and passive energy design and implementation
- Prison Industries; low and renewable energy use, and to provide evidence of effective practices for the broader community
- Food production and wastage: cottage-industry style production (bee keeping, jam and pickle making, preserves), on small and commercial scales
- Maintaining cultural and traditional language and activities, including sustainable use of country
- Media/arts studies linked to restorative and environmentally sustainable practices
- Rehabilitative activities including RJ, Restore, STP and others including family support

- Meaningful support to Victims of crime and their various groups, and offers of participating in any aspect of the research and projects
- Designing sustainable prisons through collectives of science and technology
- Quality social practices throughout the estate that are restorative and that aim to build a culture of support within and outside of the prison
- Innovation and creativity across roles within penal estates
- Low carbon footprint surveillance technologies and systems

The above will be taken into account for their ability to encourage and support positive lifestyles cognizant of reducing harm across penal and community environments. Research shows that restorative justice processes can assist in reducing crime by up to 30 per cent when used in conjunction with therapeutic interventions.[31] Currently there is a lack of evidence to link restorative justice, harm-reducing programmes and environmental sustainability with an ability to reduce re-victimisation. However, this unique and innovative project positions Curtin and its partners to enquire of the pathways chosen by Indigenous and non-Indigenous people leaving the penal estate. It has the ability to highlight outcomes to all communities, but especially rural and remote locations where a disproportionate number of Indigenous people are arrested, imprisoned and released without gaining positive skills for their future. This applies to similar marginalised groups of people throughout the Asian region.

VIII. DATA COLLECTION

Data will be continually collected through an analysis of current procedures and practices across all sectors of the prison estate. Measurements will be taken of all aspects[32] of the project and will form the baseline to identify organizational change, as well as sustainable activities and outcomes. Discussions and continual feedback will involve senior management, staff, visitors, focus groups and prisoners together with scientists, researchers and evaluators. This data will inform a benchmark of international standards within the universal template. Importantly, residents will participate and inform all parts of the research from its inception through to practice and where possible they will be employed by the prison to participate in sessions with the research teams on site and on the Curtin campus via Skype. Once international partnerships are formed these too will connect with prisons and other campuses.

IX. DISSEMINATION OF SIGNIFICANT AND INNOVATIVE RESEARCH OUTCOMES

Prison residents will present findings at local and international seminars using interactive technology, teleconferencing, and pre-recorded presentations. Our international networks suggest that the frequent dissemination of information through journal articles and presentations will attract further national and global interest. Journal papers have already been called for from China, India, Hong Kong, UK, Belgium and Japan. Team members have begun to brief the legal, criminal justice, victims of crime and environmental and sustainability sectors of government through regular seminars and project newsletters. Serco management, staff and official visitors will continue to highlight the work through their world-wide magazines, and other partnerships including Perth Zoo, Men of Trees, Department of Agriculture, and Corrective Services. Residents and staff will be encouraged and supported by researchers to disseminate information and research outcomes through local radio, international prisoner magazines and articles in Penal Reform International and the International Centre for Prison Studies, London. The World Congress of Victims of Crime will be invited to explore

[31] Bonta, Jesseman, Rugge and Cormier 2006.
[32] To date this includes water and power and waste management, renewable energy, measuring carbon footprint, converting to electric equipment, recycling, introducing RJ in programs and grievance procedures, engagement with community partners, inclusion of victims of crime, providing community equipment and further reparation practices.

the project prior to their conference in Fremantle 2015.

X. PARTNER ORGANISATIONS — COMMITMENT AND COLLABORATION

Serco is committed to this research and will assist with the transformation of its existing penal culture through the use of restorative and sustainable policies and practices. It is willing to assist with the development of the template for cultural change, recognizing its value within its own and other organisations. Serco's values are reflected in its Governing Principles that in turn fit within RJ and sustainability. It aims to foster an entrepreneurial culture by encouraging and generating new ideas and embracing change. It aims to positively contribute to the communities that it works with including victims of crime groups and individual beneficiaries, prisoners' families and networks and other participatory communities of interest. Its environmental aims include assisting prisoners to transform their lives into capable, confident citizens who can make a constructive contribution to their family and community.

It is through these practices that Acacia and its parent company Serco Asia Pacific strongly support this project. Curtin University and Serco Asia Pacific are in the process of completing a Memorandum of Understanding to ensure the sustainability of the project and beyond. City University of Hong Kong and the Institute of Correctional Administration (India) are encouraging further research and development of alliances. Serco is also seeking support from Curtin to enhance its work through further research across its estate, raising conversations relating to its other work associated with hospitals and detention centres.

Another major partner in this and future research is the Asia Pacific Forum for Restorative Justice (APFRJ). Its patron, Professor John Braithwaite, is the world's foremost and acclaimed author of Restorative Justice and his support for such a regional body has been exceptional. Its international membership represents all regional nations and many academic institutions. The Directors of APFRJ are able to place Curtin at the leading edge of regional activity. This project fits within its goals and aspirations for a positive and participatory cultural shift within the field of criminology and social justice, including support for the integration of the region's Indigenous prisoner populations (including Australia, New Zealand, Taiwan, Afghanistan, China and India) to be active participants in the research.

XI. APPROACH AND DESIGN

The project continues to use a multi-disciplinary approach to design, implement and evaluate the template for a restorative and environmentally sustainable penal estate and its support networks of transport and visitors services. The template will be flexible enough to be used across cultures and jurisdictions. In essence, the research is informed by the following concepts: theories of restorative prisons;[33] notion of re-integrative shaming;[34] fair & just processes,[35] and a theory of responsibility-taking.[36] The study also takes account of organizational cultural change[37] in concert with industry appropriate cultural change theory developed by Aertsen[38] specifically for the Belgian experience. The critical economical analysis of imprisonment will refer to Austin et al.[39] and the environmental sustainability will refer to Australian Standard (AS) ISO 14064 series, and International Standard ISO 14040 series as well as other protocols and reporting guidelines as outlined by the team through the support of its partner CUSP.

[33] Newell 2001; Aertsen 2006.
[34] Braithwaite 1989.
[35] Tyler 2006.
[36] Sykes & Matza 1957.
[37] Scott et al., 2003.
[38] Aertsen 2006.
[39] Austin et al., 2007.

XII. 4 YEAR PROJECT DESIGN: TO DATE AND THROUGHOUT YEAR 1

Activity	Support & Collaboration	Notes
Developing partnership	APRRJ/Serco	RJ development (past 8 years)
Developing RJ teams	CAS, ORD & APFRJ	Over past 18 months
Developing International team	Aertsen, Wong, Lalli, Shapland	Over past 18 months
Initiating interest in RJ grant	CAS & Serco	ARC Linkage application '13
Initiating interest in RJ grant	CAS & Serco	Preparing ARC Discovery 2014 (RJ)
Interest in sustainable prison	CAS/Serco facilities	Over past 9 months
Developing teams	CAS, ORD, Serco, APFRJ	Ongoing
Linking with CUSP	CAS & ORD	In progress
Visits to Serco facilities	CAS, CUSP, ORD	Over past 2 months
Symposium for RJ and a and Sustainability	ORD, CAS, CUSP, Serco	Invites extended to Researchers, academics, NGOs, contractors and networks
Develop further Research Teams and opportunities across disciplines.	Various faculties and schools, As well as other international collaborating	Initiate collaborative ARC and other Competitive grants, also Lottery West and philanthropic grants across health, social justice, Aboriginal and environmental sustainability interests
Establish community Consultation and research comm.	Community groups, NGOs And teams	Consultation with various groups And government sector, for members
Baseline Date collection	Across research teams	First stage of audit of penal estate
Ethics applications	Individual research teams	Timeline dependent on variables
Data collection	Teams	Audit of other Serco services
Begin RJ practice training	All residents and staff	Capture activity via multi media

4 year project design: Years 2, 3

Activity	Support & Collaboration	Notes
Develop, support and monitor ongoing projects	Across all disciplines ORD, CAS	Develop sustainable leadership within teams
Develop and build capacity for further research	Various faculties, schools and Partnerships. ORD	Retain Curtin's corporate knowledge of its footprints during this project
Publish and present	Asia Pacific, European and US/Canadian networks	Aim to have at least 2 papers from each area pa + 2 Books publications
Keynote presentations and Regional workshop	Environmental and Sustainable Institutions and communities	Produce academic book chapters, and papers from at least two international conferences
Hold 2 conferences at Curtin over three year period	APFRJ/WA Govt/Serco NGOs	One is already being considered for end of 2014 (RJ and Sust. Prisons)
Exchange HDR students And academics	Overseas Universities and Regional partners	Engage in overseas collaboration

4 year project design: Year 4

Activity	**Support & Collaboration**	**Notes**
Continue to build networks And interest in projects	Curtin, APFRJ, CUSP	Develop further ARC and other Competitive grants,
Develop a Centre of Excellence (Sustainable Communities)	Curtin and partners	Open a Centre by 2017
Develop a Learning and Research centre of RJ in prisons	Curtin, Serco and partners	Open a Centre by 2017

This project began life several years ago, and has already seen several papers produced following keynote addresses and presentations. The sustainability dimension has only been added over the past 12 months, following Steels' networking and development of projects within the partnerships built up around the APFRJ, CUSP and Serco Asia Pacific. The Office of Research and Development and CUSP have already contributed to much of the above, providing support and motivation. This research will lead and assist with the coordination of multi-disciplined teams entering the prisons to conduct research interconnected through this project, and to inform the template for other jurisdictions.

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POLICIES FOR VICTIM PROTECTION AND SUPPORT: CURRENT SITUATION AND PROBLEMS FACED BY VICTIMS OF CRIME IN HONG KONG

*Betty PANG Mo-yin**

I. INTRODUCTION TO HONG KONG

A. Geographical Location

Hong Kong is located in Eastern Asia, the southeast coast of the People's Republic of China, facing the South China Sea. Geographically, it consists of three main territories namely, Hong Kong Island, Kowloon and the New Territories. The geographical location of Hong Kong is at Appendix A.

B. Size and Population

The area of Hong Kong is 1,104 sq km. The population at the end of 2012 was 7,173,000.

C. The Hong Kong Special Administrative Region

The Chief Executive (CE) is the head of the Hong Kong Special Administrative Region (HKSAR). The main administrative and executive functions of the Hong Kong Government are carried out by three secretary departments, 12 policy bureaux (consisting of 61 departments and agencies) and other services.

(a) Secretaries of Departments
- Chief Secretary for Administration
- Financial Secretary
- Secretary for Justice

(b) Directors of Bureaux
- Secretary for Transport and Housing
- Secretary for Home Affairs
- Secretary for Labour and Welfare
- Secretary for Financial Services and Treasury
- Secretary for Commerce and Economic Development
- Secretary for Constitutional and Mainland Affairs
- Secretary for Security
- Secretary for Education
- Secretary for Civil Service
- Secretary for Food and Health
- Secretary for the Environment
- Secretary for Development

(c) Other Services
- Commissioner of Police
- Commissioner of Independent Commission Against Corruption
- Commissioner of Customs and Excise
- Director of Immigration
- Director of Audit

The civil service employed approximately 156,000 people, or about 4% of the Hong Kong workforce. Apart from administering public services, its main tasks are to assist the Chief Executive and princi-

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pals in formulating policies and carrying out decisions.

D. Special Features

Hong Kong's free economic system and low tax rate have created a favourable environment for the city's development in finance, banking, trade, industry and commerce, real estate, shipping and civil aviation. Hong Kong is one of the most densely populated places in the world. The land population density in mid-2012 stood at 6,620 persons per sq km.

E. Visitors

In the year 2012, Hong Kong registered a record of 48.62 million visitor arrivals. Mainland visitors reached 34.91 million in 2012 and continued to be the largest source of visitors to Hong Kong.

F. Crimes

In 2012, a total of 75,930 crimes were reported. The overall crime rate was 1,064 per 100,000 persons.

II. HONG KONG POLICE FORCE

A. Command

The Hong Kong Police Force (the Force) is headed by the Commissioner of Police who is responsible to the Chief Executive of the Hong Kong Special Administrative Region for the administration and operational efficiency of the Force. He is assisted by two Deputy Commissioners. The Deputy Commissioner of Police (Operations) is responsible for operations, crime and security; whereas the Deputy Commissioner of Police (Management) is responsible for personnel, training, management services, finance, administration and planning.

At the end of 2012, the Force had 28,400 regular police officers, 4,700 civilian staff, and 4,500 auxiliary police officers. The police-population ratio in 2012 was 394 regular officers for every 100,000 persons.

B. Vision, Common Purpose and Values

The Force's Vision, Statement of Common Purpose and Values have been in place since 1996.

Vision — That Hong Kong remains one of the safest and most stable societies in the world

Common Purpose — The Hong Kong Police Force will ensure a safe and stable society by:

- upholding the rule of law
- maintaining law and order
- preventing and detecting crime
- safeguarding and protecting life and property
- working in partnership with the community and other agencies
- striving for excellence in all that we do
- maintaining public confidence in the Force

Values

- Integrity and honesty
- Respect for the rights of members of the public and of the Force
- Fairness, impartiality and compassion in all our dealings
- Acceptance of responsibility and accountability
- Professionalism
- Dedication to quality service and continuous improvement
- Responsiveness to change
- Effective communication both within and outwith the Force

C. Strategic Directions

The Force reviews its Strategic Directions on an annual basis. The Strategic Directions 2012-2014 cover Engaging the Community, Enhancing Personal and Professional Qualities of Force Members, Strengthening Criminal Intelligence Gathering Force-wide, and Supporting Frontline Units.

D. Classification and Detection of Crime

The Force classifies crimes into the following ten categories:

(a) Violent Crime against Person

(b) Violent Crime against Property

(c) Burglary & Theft

(d) Fraud & Forgery

(e) Sexual Offence

(f) Serious Drug Offences

(g) Offences against Lawful Authority

(h) Serious Immigration Offences

(i) Miscellaneous Crimes

(j) Preventive Crime

In 2012, 75,930 crimes were reported. 33,094 cases were detected; representing a detection rate of 43.6%, which was an increase of 1.1% when compared with 42.5% in 2011.

III. VICTIM PROTECTION AND SUPPORT

A. Problems Faced by Victims

It is not uncommon that police officers encounter victims of crime who are uncooperative during the investigation. Whilst there could be many forms and reasons for such behaviour, it is rather obvious that the attitude of victims could have a significant role in the quality and success of an investigation and subsequent prosecution. It is therefore of paramount importance that victims are given proper care and treatment.

It takes courage for victims to report a crime committed on them and going through various investigative and prosecutorial procedures. This is particularly true for victims of crimes that can be collectively known as abusive offences for instances domestic conflicts, family violence, sexual offences, child and elder abuse; whereby the abuser is often a relative or carer upon whom the victim is dependent and fears the loss of their support. As such, the victim might appear uncooperative in order to avoid causing disharmony or embarrassment within the family. Other reasons include a misplaced sense of shame or guilt, or concern about being disbelieved or blamed for being the cause of the problem.

There could be many reasons for a victim to be uncooperative; but generally speaking, problems faced by victims include but are not limited to:

(a) Fear of revenge

(b) Fear of losing care

(c) Fear of publicity

(d) Lack of confidence in government/police

(e) Lack of knowledge regarding available assistance

(f) Embarrassment

(g) Incapacitated

(h) Relationship with offender

(i) Complicated investigative and legal procedures

(j) Re-traumatized

Hong Kong accords high importance in providing protection and support to victims of crime with a view to achieving the dual purpose of preventing further crimes and prosecuting offenders. This support and protection comes in many ways including legislation, administrative measures, multi-agency approach, protection and support provided by the Force, other government departments, and non-government organizations.

B. Victim Protection and Support — Legislation

Hong Kong is a signatory member of core international conventions on human rights, and corresponding legislation is in place to protect victims of crime. Where appropriate, amendments to and enactment of legislation is made with a view to enhancing protection of victims. Below is a list of existing legislation in Hong Kong that has provisions or relevance in the protection and support of victims:

(a) Evidence Ordinance (Cap 8)
- Provisions to strengthen evidence given by children

(b) Mental Health Ordinance (Cap 136)
- To protect the welfare of mentally incapacitated persons, including provisions for a Guardianship Board

(c) Domestic and Cohabitation Relationships Violence Ordinance (Cap 189)
- Provisions of injunction orders to protect victims of domestic violence

(d) Crimes Ordinance (Cap 200)
- Provisions to protect the identity of sexual-offence victims

(e) Offences Against the Person Ordinance (Cap 212)
- Criminalizing various forms of child abuses

(f) Protection of Children and Juveniles Ordinance (Cap 213)
- Care or Protection Orders for children and juveniles in need

(g) Criminal Procedure Ordinance (Cap 221)
- Provisions to reduce stress and trauma of victims (vulnerable witnesses give evidence and cross-examined via live television link, support person scheme, closed court, non-disclosure of witness identity)

(h) Summary Offences Ordinance (Cap 228)
- Prohibits taking photographs etc. in court that may lead to identification of the victims

(i) Sex Discrimination Ordinance (Cap 480)
- To protect people from sex discrimination

(j) Witness Protection Ordinance (Cap 564)
- Provisions of a programme to protect witnesses and associated persons

(k) Prevention of Child Pornography Ordinance (Cap 579)
- To protect children from erotic acts

(l) Racial Discrimination Ordinance (Cap 602)
- To protect people from racial discrimination

C. Victim Protection and Support — Administrative Measures

1. Special Measures for Child Victims/Witnesses

In addition to the arrangements authorized under the law to avoid re-traumatizing child victims/ witnesses while they are giving evidence in court, i.e. submission of video recorded interview as evidence during examination-in-chief, giving evidence by way of a live TV link in criminal proceedings, and victims accompanied by a support person while giving evidence in court (Witness Support Programme); other special measures for child victims/witnesses include:

(a) Viewing his/her video recorded interview to refresh memory before the trial;

(b) Paying a pre-trial visit to the court;

(c) Provision of special passages when entering and leaving court;

(d) Cases involving child victims will be given priority in listing; and

(e) Postponement of trial would only be allowed in very exceptional circumstances in order to avoid child victims being burdened by additional stress.

2. Special Measures for Other Vulnerable Witnesses

In addition to protection and support available for child victims/witnesses, administrative measures are also in place to protect other vulnerable witnesses, e.g. victims of sexual-offence cases. To minimize stress or further trauma on victims of sexual offences during court proceedings, the Police may apply to a court for appropriate protective measures. Having considered the circumstances of each case, the following measures could be adopted:

(a) Banning of shooting and recording in court
- No shooting and recording is allowed in court to prevent disclosure of the identity of victims.

(b) Provision of screen during trial
- When a victim gives evidence in a courtroom, the court, upon the application of the prosecution, may arrange for a screen to be placed around the victim so that the public and the press will not be able to view or identify the victim during the proceedings.

(c) Provision of special passage
- Where circumstances warrant, the court may order special arrangement be made for victims to enter/leave the court building through special passages. Such order is generally made upon application of the prosecution.

(d) Special arrangement in court's daily case list
- Court's daily case list placed at the reception counter or Judiciary website for dissemination to the public will only display the initials of a defendant's name if full disclosure may lead to identification of the victims.

3. Sexual Conviction Record Check Scheme (SCRC)

Sexual Conviction Record Check Scheme (SCRC) is established to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons (MIPs) to check whether their prospective employees have a criminal conviction record for certain types of sexual offences. The purposes of the SCRC are:

(a) To prevent previous sexual offenders from obtaining the trust of employers by deliberately

withholding their past sexual conviction records and molesting children or MIPs again through contact with them in the course of their work; and

(b) To reduce the risk of sexual abuse to children or MIPs and give them better protection.

D. Victim Protection and Support — Multi-Agency Approach

1. Working Groups

The Hong Kong Government adopts a multi-agency and cross-sectoral approach in combating crimes and providing protection and support to victims. In line with this strategy, the Force has been working closely with different government departments and non-governmental organizations (NGOs) to protect the best interests and rights of victims. Representatives from the Force attend various working groups that were formed to address specific areas of concern including examining respective problems and mapping out strategies to address them. Some of the working groups attended by Force representatives are:

(a) Committee on Child Abuse
- Focuses on issues relating to child abuse

(b) Working Group on Combating Violence
- Emphasizes spouse battering and sexual violence

(c) Working Group on Elder Abuse
- Aims at tackling elder abuse problems

2. Multi-Agency Referral Mechanisms

In addition to performing the core duties of case investigation and prosecution, the Force also provides protection and support to victims by utilizing its own resources and/or through close collaboration with other government departments and non-governmental organizations (NGOs). Timely referral mechanisms have been established between the Force and relevant stakeholders including 24-hour Police Designated Hotline to facilitate police referrals and arranging emergency services.

3. Child Protection Special Investigation Team (CPSIT)

The Child Protection Special Investigation Team (CPSIT) is formed by specially trained police officers and social workers to conduct joint investigation into cases of suspected child abuse with a view to collecting evidence, which will be admissible in criminal proceedings, and to prevent further trauma to the child by having to repeat details of the allegation to different persons.

4. Multi-disciplinary Case Conference (MDCC)

Multi-disciplinary Case Conference (MDCC) is an effective multi-disciplinary cooperation model for child abuse, domestic violence and elder abuse cases. MDCC is most commonly used for child abuse cases. It is a forum by which professionals having a major role in handling and investigation of the case for instances social welfare officers, the police (officer-in-charge of the case), parents, guardians, carers, clinical psychologist, and representatives from Education Department/school, can share their professional knowledge, information and concern on the victim's health, development, functioning, and his/her parents/guardians/carers' ability to ensure safety of the victim.

E. Victim Protection and Support — Provided by the Hong Kong Police Force

The Force has initiated various victim protection and support measures with a view to enhancing the service quality and gaining trust and cooperation from victims so that the investigation and prosecution could be conducted more effectively and efficiently. Highlights of these initiatives are:

1. Performance Pledge

Performance pledges on 'Criminal Investigation' and 'Witness Reassurance' designed by the Force provide information on certain standards of service that victims or witnesses can expect, including their rights to be informed of progress of the investigation, reassurance for vulnerable witnesses and those in fear. A copy of the performance pledges is at Appendix B.

2. Rights of Victims and Witnesses of Crime

The Force publishes a notice to victims and witnesses of crime informing them of their rights during investigation and prosecution. The notice contains information/advice on treatment and services they are entitled to receive, including their rights of access to information and obtaining legal representatives during interview with the police, and specific provisions for child victims or witnesses. A copy of the notice is at Appendix C.

3. Witness in Court

The leaflet 'Witness in Court' is published by the Force to better prepare victims/witnesses before attending court by informing them what to expect in court. The leaflet provides information on the type and function of criminal courts in Hong Kong, the appropriate dress code, use of language, court procedures, the sitting of different persons inside courts, witness expenses for attending court and prevention on interference with witnesses. A copy of the leaflet is at Appendix D.

4. Witness Protection Unit (WPU)

The Witness Protection Unit (WPU) was formed in April 1995. The unit consists of permanent staff supported by a pool of cadre officers. Its primary function is to run the Witness Protection Programme (WPP), which aims at encouraging members of the public to come forward to give evidence as witness in criminal cases by offering effective protection to them. The unit also advises case officers on matters regarding various means and degree of witness protection.

5. Non-Disclosure of Victims' Identities

In respect of child abuse, rape and other sexual offences (including homosexual offences), triad related offences, blackmail, debt-collection cases, or where the officer-in-charge of the case considers that a victim or witness might be interfered, only limited information that would not disclose the victim's or witness's identity, e.g. the sex, age and occupation, are provided in documents that required circulation.

6. Enhanced Central Domestic Violence Database (ECDVD)

The Enhanced Central Domestic Violence Database (ECDVD) was set up in 2005 by the Force for frontline officers to swiftly check, upon receiving a report of a case involving domestic violence, whether persons involved in the case were also involved in similar or other related cases, such as repeated domestic violence, child abuse, elder abuse and missing person cases anywhere in Hong Kong. Such data enables frontline officers to obtain more background information on the case, so that they can assess the risk of continuation and recurrence of similar incidents in order that swift and appropriate actions can be taken in respect of the investigation and provision of protection and support to victims.

The ECDVD also has an automatic alert function that notifies case officers and supervisors when a person who was involved in a domestic violence case handled by them previously becomes involved in a fresh domestic violence case. This ensures the ongoing nature of the problem is brought to the police's attention so that additional preventative measures can be considered.

7. Child Abuse Investigation Units (CAIU)

Police investigate all child abuse reports with the aim of collecting sufficient evidence to prosecute abusers whilst protecting victims. The Child Abuse Investigation Units (CAIU), which comprise of specially trained detectives, investigate serious child abuse cases; and where necessary, will collaborate with the Family and Child Protective Services Unit and Clinical Psychologists of the Social Welfare Department (SWD).

8. Vulnerable Witness Interview Suite (VWIS)

The Force maintains a number of Vulnerable Witness Interview Suites (VWIS) at discreet locations throughout Hong Kong where vulnerable witnesses can be interviewed and medically examined in a safe and comfortable environment. Each VWIS contains facilities and equipment for recording video interviews and forensic examination so that 'one stop service' can be provided to minimize the stress experienced by victims.

9. Specific Protocols for Handling Domestic Violence Cases

Experience indicates that domestic conflicts might escalate into violence and have a significant impact on victims and society as a whole. In order to apprehend offenders and provide the best protection and support to victims, the Force provides specific training for officers responsible for handling these cases. Specific protocols are also in place to enhance the quality of investigation and maximize the support and protection provided to victims and their family. These protocols include:

(a) A supervisor of at least Sergeant rank will attend the scene of crime to ensure correct assessment of the case;

(b) Use of checklist to ensure that frontline officers complete all actions required;

(c) Deploy the same team to handle reports from the same family for better investigation and services (one family, one team);

(d) Each Police district has a designated team to investigate serious domestic violence cases;

(e) Victims are given leaflets (with 10 different languages) which include information on available services provided by the government and non-governmental organizations;

(f) Victims are given advice on how to reduce the risk of recurrence and are referred to the Social Welfare Department for various welfare services; and

(g) Implementation of the Victim Management Scheme and Victim Support Programme for Victims in Domestic Violence to ensure that the victim is well taken care of during the investigation, before, during and after court hearing.

10. Senior Police Call

In order to enhance protection and support to the elderly population, the Police have developed a Senior Police Call scheme, which is an effective platform for regular engagement between the elderly population and the Police. The programme promotes 'productive aging' and encourages elderly to support other elderly and the community, promotes crime prevention by developing fight crime partnership with the Police, and promotes personal safety through reducing victimization and enhancing road safety awareness.

F. Victim Protection and Support — Provided by Other Government Departments

There are different victim protection and support services provided by other government departments, such as the Department of Justice and the Social Welfare Department. The following are some examples:

1. Criminal and Law Enforcement Injuries Compensation Scheme (CLEIC)

The aim of the Criminal and Law Enforcement Injuries Compensation Scheme (CLEIC) is to provide financial assistance to persons (or their dependants in cases of death) who are injured as a result of a crime of violence, or by a law enforcement officer using a weapon in the execution of his duty. Payments under the scheme come from public funds. The Social Welfare Department is responsible for staffing applications including assessment and arranging payment.

2. The Victims of Crime Charter (Department of Justice)

Members of the community who come into contact with the criminal justice system, particularly victims of crime, are entitled to know what their obligations are in helping the law enforcement agencies and, in return, what standard of service they can expect to receive from those involved in the criminal justice system. The Victims of Crime Charter developed by the Department of Justice sets out the rights and duties of victims of crime. A copy is at Appendix E.

In addition to the Victims of Crime Charter, the Department of Justice also publicizes programmes to enhance awareness of members of the public on their services such as, provision of legal aid services.

3. One-stop Service Model (Social Welfare Department)

The Social Welfare Department provides specific support services to victims of sexual violence, which includes the One-stop Service Model. The principle of the model is to minimize the need for victims to undergo different procedures and repeat the incident. It provides professional services that are easily accessible to victims on a 24-hour basis. An important feature of the model is the designation of the same social worker as a case manager for better coordination of services among different departments and units, and to provide victims with customer-oriented service. Victims can receive services and go through all relevant procedures in a convenient, safe, confidential and supportive environment, which minimizes the need to repeat their unpleasant experience.

G. Victim Protection and Support — Provided by Non-Governmental Organizations

Non-governmental organizations (NGOs) in Hong Kong, either working independently or in collaboration with different government departments, provide various types of support to victims of crime, for instance, temporary shelters for child victims or victims of domestic conflicts incidents, financial assistance, and counselling services.

One of the facilities is a crisis intervention and support centre called 'CEASE Crisis Centre' of the Tung Wah Group of Hospitals (an NGO). Operating round-the-clock throughout the year, the centre provides immediate intervention and support services to victims of sexual violence. Social workers of the centre will provide the following 24-hour outreaching services:

(a) Arrangement of suitable venue, e.g. hospital, for taking statements and conducting forensic examination;

(b) Aftercare medical services at family/gynaecology clinic, e.g. prevention of pregnancy or transmission of disease;

(c) Emotional support or counselling service, psychological treatment and temporary accommodation; and

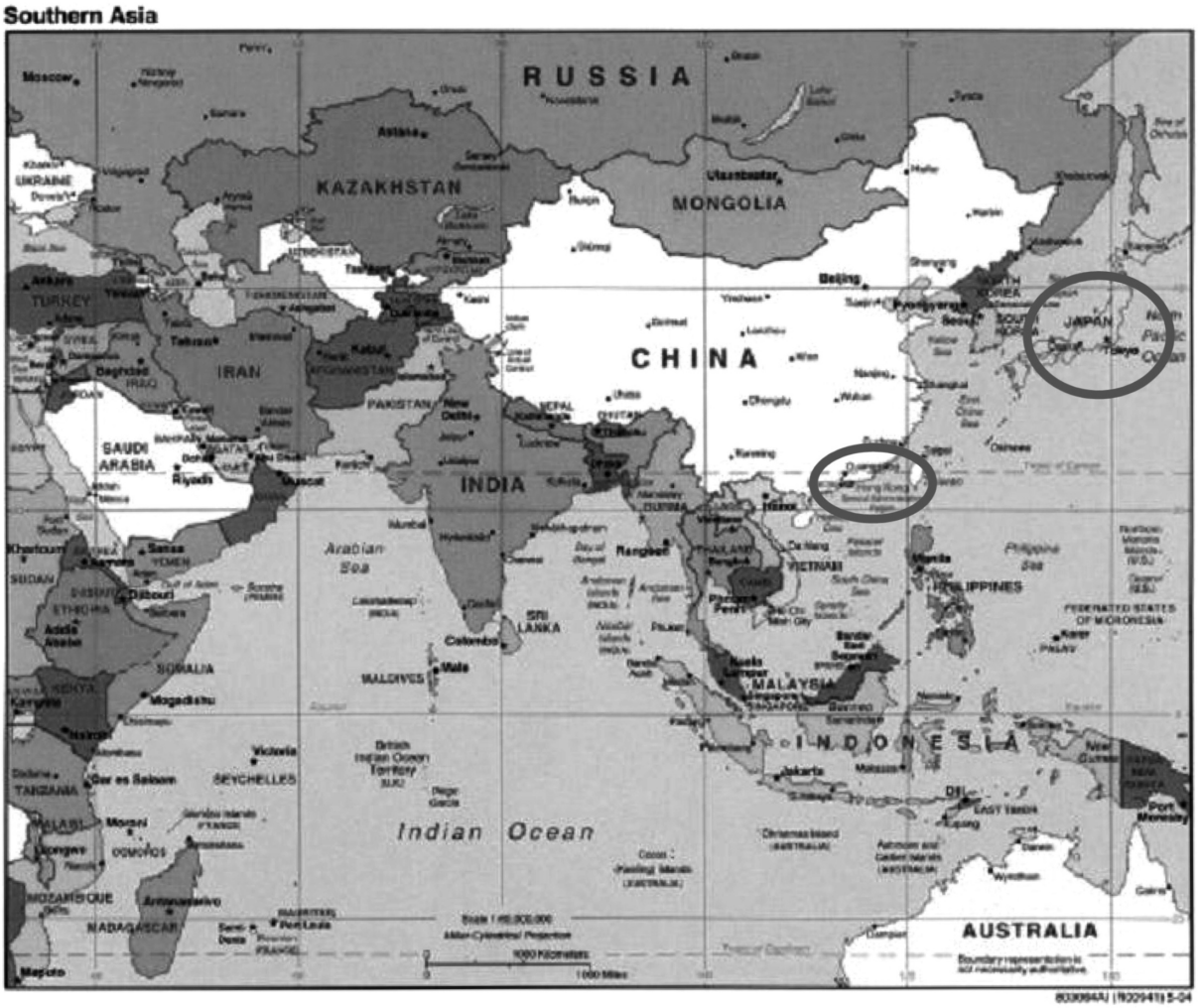
(d) Victim will be accompanied throughout the process of investigation and court proceedings.

IV. CONCLUSION

Hong Kong accords high importance in providing protection and support to victims of crime through legislation, administrative measures, multi-agency approach, and various measures and mechanisms adopted by the Hong Kong Police Force, other government departments and non-governmental organizations; with a view to achieving the dual purposes of preventing further crimes and prosecuting offenders. The Force will continue to work with its stakeholders to safeguard victims' best interests, rights and welfare.

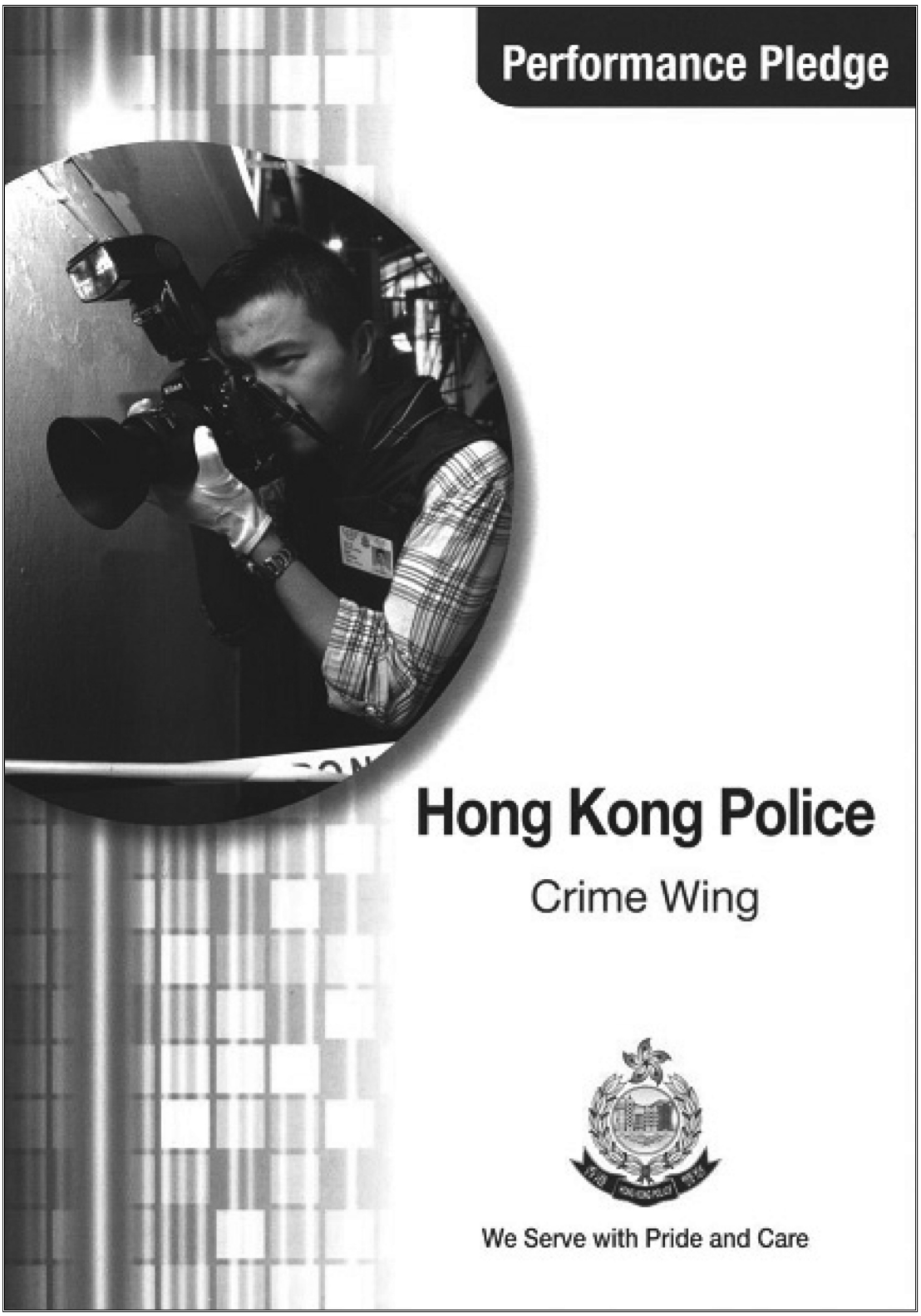
APPENDIX A

Geographical Location of Hong Kong



APPENDIX B

Performance Pledge — Crime Wing



Appendix B1

This leaflet tells you about certain standards of service which you can expect from the Crime Wing of the Hong Kong Police. It also tells you the steps you can take if you want to seek explanations or make comments on the service you receive.

Service Delivered

This performance pledge covers the following police activities :

- criminal investigation;
- witness reassurance; and
- time required to obtain a certificate of no criminal conviction (CNCC).

Performance Standards

Criminal Investigation

- Police will respond to all reports of crime, and for crimes that are listed as SERIOUS according to internal guidelines, police will inform the complainant of the progress of the investigation every six months.
- Police will inform a complainant :
  - of the name, rank, and office telephone number of the officer-in-charge of the case;
  - when a person has been arrested and charged in connection with the report;
  - not later than four weeks after the investigation is concluded or whenever enquiries are curtailed; and
  - not later than four weeks after the determination of any trial concerning the case.
- When a court orders the return of a person's property which has been used as an exhibit, this will be returned as soon as possible following the expiration of the appeal period.
- Property not required as an exhibit will be returned to the owner as soon as possible.

Witness Reassurance

- When you make a report of crime, you will be provided with the name, rank, service number and contact telephone number of the officer-in-charge of the case. A Report Reference Card containing these details will be given to you.
- If you are the victim of a sexual offence, you will normally be interviewed in private by an officer of the same sex.
- Juveniles (persons aged under 16) will be interviewed only in the presence of a parent, guardian or some other suitable adults of the same sex as the child, except if a delay would cause undue hindrance to the furtherance of justice or might cause harm to others.
- If you are required to attend court as a witness, you will be informed of the date, time and location of the hearing once this is known.
- Witnesses will be provided with suitable protective measures in all cases where a genuine threat is assessed to exist.
- Mentally incapacitated persons as well as child witnesses of cases of sexual abuse, cruelty, assault or a threat of injury to others, may have their interviews video recorded for the purpose of tendering as evidence in court or may give evidence through live television link during the court trial.

Obtaining a CNCC

These certificates will be provided within four calendar weeks after applications from the CNCC Office, 14/F, Arsenal House, Police Headquarters, No.1 Arsenal Street, Wan Chai, Hong Kong.

Appendix B2

Effective Monitoring

The Police Force will monitor these standards through analysis of investigation of every report of crime.

Service Environment

The Police Force aims to provide a fair, proficient and professional investigation of every report of crime.

Suggestions for Improvement

There may be occasions when, despite our best efforts, you feel that the standard of service provided could have been better. If you require an explanation, or have any suggestions that may help improve our service, you may contact the Police Community Relations Officer of your local police station or write to your local police station.

In the case of CNCC, you may contact the officer-in-charge of the CNCC Office at 2860 6555.

Channels for Complaints

If you wish to complain that your case has not been dealt with adequately, you may contact the Complaints Against Police Reporting Centre, Ground Floor, Annex Block, Caine House, No.3 Arsenal Street, Wan Chai, Hong Kong or telephone the 24-hour complaint hotline (2866 7700). We will attempt to establish a personal contact with you within two working days of the complaint being known to the Complaints Against Police Office. We will notify you of the result as soon as the investigation into the complaint is completed.

Where to Go for Further Information

For further information on matters stated in this leaflet, you may contact the Police Community Relations Officer at your local police station. The following leaflets may also be useful to you and are available from any police station, and/or accessible from the Police Homepage:

- Victim's Charter;
- Rights of Victims and Witnesses of Crime; and
- Witness in Court.

Hong Kong Police August 2013
Printed by the Government Logistics Department

APPENDIX C

Rights of Victims and Witnesses of Crime

Rights of Victims and Witnesses of Crime

Thank you for discharging your civic duties. In addition to the information provided in this notice, please ask for a copy of the "Victim of Crime Charter" which provides further useful information to you. As a victim or witness of crime you have the right to:-

1. be treated with courtesy, compassion, sensitivity and respect for your personal dignity and privacy;
2. so far as practicable, be interviewed by police at a place and time convenient to you;
3. be accompanied by your legal representative during an interview with the police;
4. receive prompt medical attention in respect of injuries sustained in the commission of a crime, or should you feel unwell;
5. obtain refreshments at your own expense;
6. keep certain particulars unconnected to the investigation confidential, and have data provided to police handled in accordance with the Personal Data (Privacy) Ordinance;
7. automatically be interviewed by an officer of the same sex in all cases of a sexual nature;
8. request consideration of the use of a one-way viewing facility at an identification parade;
9. request a copy of any written statement you have made to police (or video tape recording of your interview where applicable);
10. be given a report reference card detailing the case reference number, name, rank, service number and telephone number of the officer-in-charge-of-the-case and of an investigating officer of the case;
11. have property belonging to you returned to you at the earliest opportunity once not required in connection with the investigation;
12. be informed of police and court procedures should you request such information, and be informed of the progress and result of the investigation expeditiously;

Appendix C1

13. be informed of your role in, and the procedures of, the prosecution process;
14. be informed of the date and location of any subsequent court hearing;
15. be provided with protective measures by the police in accordance with their evaluation of any threat, and be considered for inclusion in the Witness Protection Programme, should you so wish;
16. be advised of appropriate agencies which may be able to assist you, such as the Social Welfare Department, the Legal Aid Department and the Consumer Council and
17. a child victim or witness may:
    - be accompanied by his/her parent or guardian when being interviewed or assisting a police enquiry, providing the adult is not involved in the case and his/her presence will not hinder the investigation;
    - request consideration be given for an interview to be recorded on video;
    - request consideration be given for evidence to be given by use of a closed circuit television link in court (the final decision being with the magistrate or judge); and
    - be accompanied by a support person when giving evidence in court, providing that person is not involved in the case.

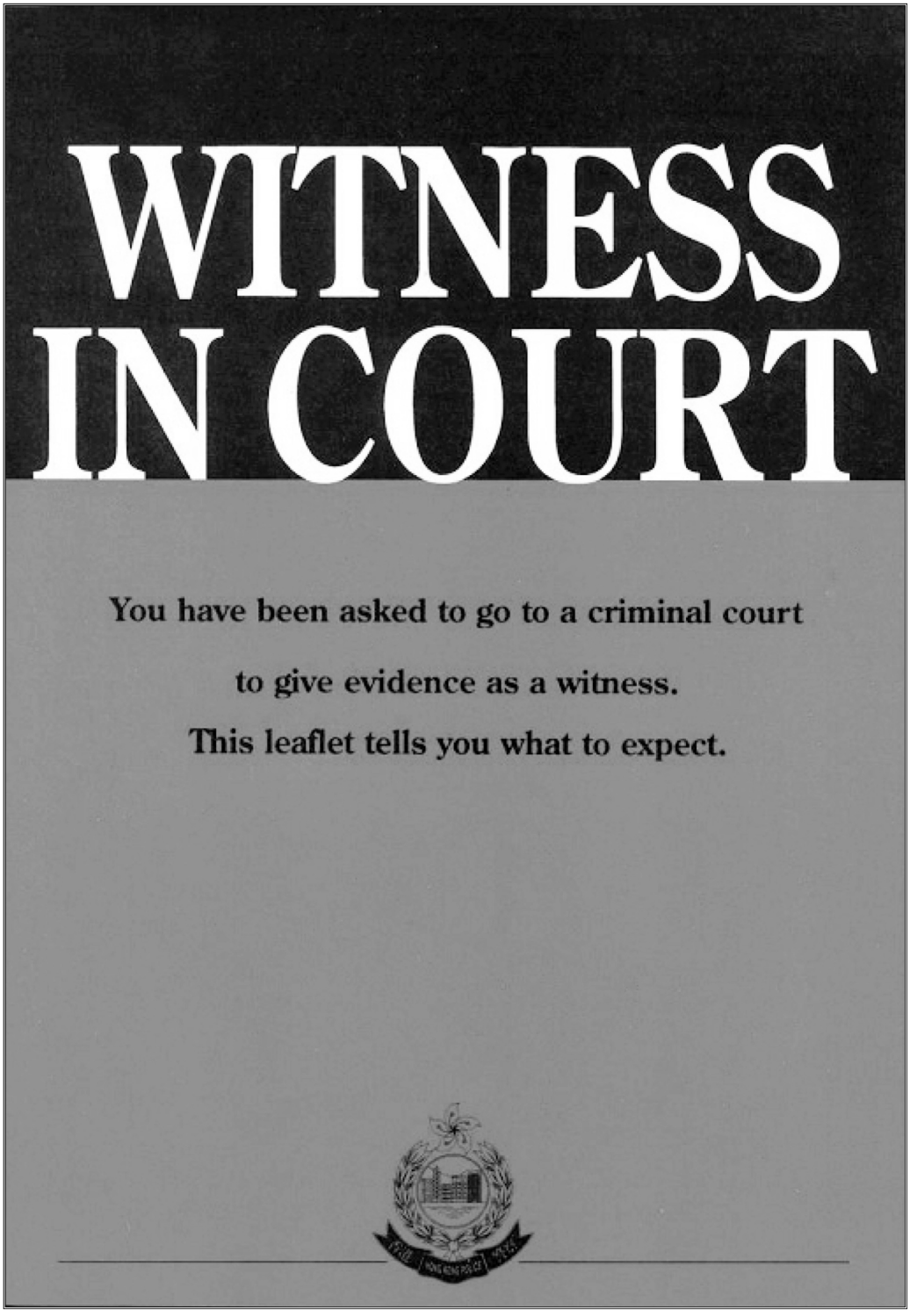
Furthermore, you are advised that:

- the taking of prosecution proceedings, or a decision not to prosecute an offender, does not usually constitute a bar to subsequent civil action against the offender;
- any criminal conviction you have must, by law, be divulged to the defence;
- information concerning the Criminal Injuries Compensation Scheme and legal advice is available from the Duty Officer of any police station;
- if you are required to attend court to give evidence a Witness Allowance may be payable to you. You may make enquiries of this with the officer-in-charge-of-the-case; and
- if you change your address or contact telephone number prior to being informed by police the case is concluded, you should inform the officer-in-charge-of-the-case as soon as possible.

Oct 2006

APPENDIX D

Witness in Court



WITNESS IN COURT

You have been asked to go to a criminal court

to give evidence as a witness.

This leaflet tells you what to expect.

Appendix D1

The Criminal Courts in Hong Kong

The criminal courts in Hong Kong comprise Magistrates' Courts, Juvenile Courts, District Courts and Court of First Instance of High Courts. The jurisdiction of criminal courts varies with regard to the age of offenders appearing before them, to the gravity of the offences that they are permitted to try, and to the severity of the sentence they may impose.

What happens in Courts

Most criminal trials take place in a Magistrate's Court. The Magistrate listens to all the evidence and decides whether the person accused of the crime (the defendant) is guilty or not. Defendants under the age of 16 will be tried in Juvenile Courts by a Magistrate. If the defendant is found guilty, the Magistrate decides on the sentence. The more complicated or serious cases are dealt with in the District Courts and the Court of First Instance of High Courts. A District Court is presided over by a Judge and a Court of First Instance of High Courts is presided over by a Judge sitting with a jury of at least seven persons (who are ordinary members of the public). There will be a prosecutor who is appointed by the Secretary for Justice to argue for the prosecution, and there may be one or more lawyers who argue for the defendant unless he is representing himself.

How to dress

To show respect to the court, you should be neatly attired. For male witness, shirt preferably with tie or "polo" shirt and long trousers are expected while plain or conservative-patterned shirt or blouse with skirt or long trouser are expected for female witness.

What language to use

Chinese and English are the predominant languages used in the criminal courts. However, you may use other languages which you feel comfortable to give evidence. Interpreters will be provided if you are not familiar with either Chinese or English.

Where does everyone sit

The picture shows a typical Magistrate's Court. The Magistrate sits behind a raised bench and the witness box is usually to one side (left or right), near the front of the court. The defendant will also be present in court and you may be called upon to identify him. In the District Courts and Court of First Instance of High Courts, lawyers and Judges wear gown and wigs. There is an area for the jury to sit in the Court of First Instance of High Courts.

When you arrive at court

When you arrive at court, report to the prosecutor or his assistant, give them your name and show them your witness summons. They will tell you where to wait. If you are not sure in which court your

Appendix D2

case is to be heard, you should go to the enquiry counter in the court building for assistance. In a Magistracy building the staff in the Police General Office should be able to assist you.

Before you are called

While you are waiting to be called to testify, you should not talk to anyone about the evidence you will be giving. Do not leave the court building until you are told that you are no longer needed. If you have an important reason to leave early, tell the prosecutor or his assistant before the case starts. It may be possible for you to give evidence out of turn.

Some cases are delayed or even put off until another date. This may be because an earlier case has gone on longer than expected or an important witness in the case has not arrived. Sometimes a defendant pleads guilty on the day of the trial so witnesses are told at the last minute that their evidence is not needed.

When you give evidence

As you are called into the court you will be shown to the witness box by the court clerk. He will ask you whether you wish to take the oath or to affirm. To take the oath is to swear to tell the truth on the Bible. To affirm is to solemnly promise to tell the truth. You should remain standing when giving evidence unless you are told otherwise by the Magistrate or Judge.

As a witness for the prosecution, you will be asked questions by the prosecutor first. Then the defence will ask some questions, this is called cross-examination. If the defence is represented by more than one lawyer, all of them can ask questions in turn. When the cross-examination has finished, the prosecutor may ask you a few more questions. A Magistrate or Judge may also ask you questions at any stage.

REMEMBER

- The defendant will have pleaded not guilty. Your evidence will help the court to decide whether he or she is guilty or not.
- Speak the truth.
- Say so if you are not sure of the answer.
- Take your time to speak slowly and clearly.
- Ask for questions to be repeated if you do not understand or cannot hear clearly.

After you have finished giving evidence you may be told that you are released. This means that you are free to leave but you can stay and listen to the rest of the case if you want to. You should not discuss your evidence with another witness who has not given his evidence.

Sometimes you might have to stay after you have given evidence. This usually only happens when something new has come up while you are giving evidence.

Appendix D3

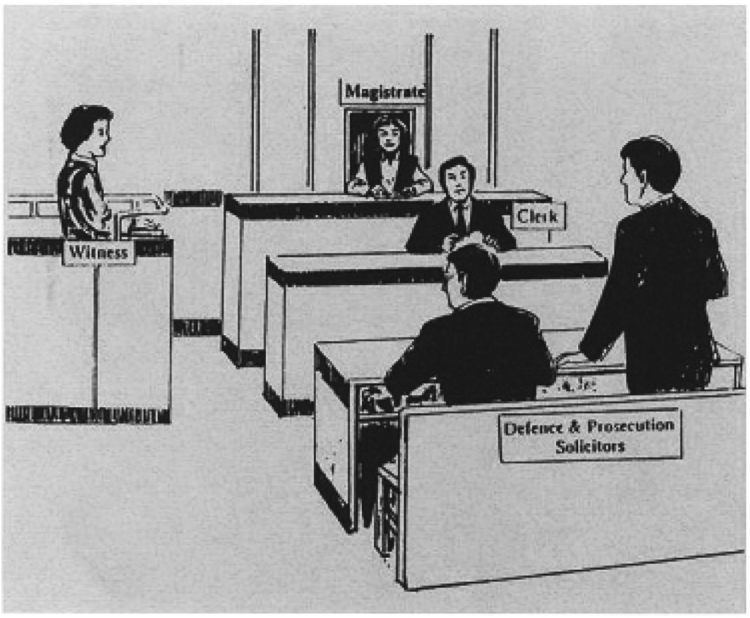
Vulnerable witnesses including children, the mentally incapacitated and witnesses in fear may give evidence via a video link television system.

Interference with Witness
It is an offence to threaten or persuade a witness to omit, change or falsely give evidence. If at any stage you are so approached you should report the matter immediately to the police.

Expenses
You are entitled to claim a witness allowance for expenses incurred related to your appearance in court. The allowance is set at a fixed rate and is approved by the presiding Magistrate or Judge. You should request the prosecutor to apply on your behalf.

Thank you
For your time and trouble.

This leaflet is for general reference only. It should not be taken as a legal directive. If you have queries, you should consult professional advice.



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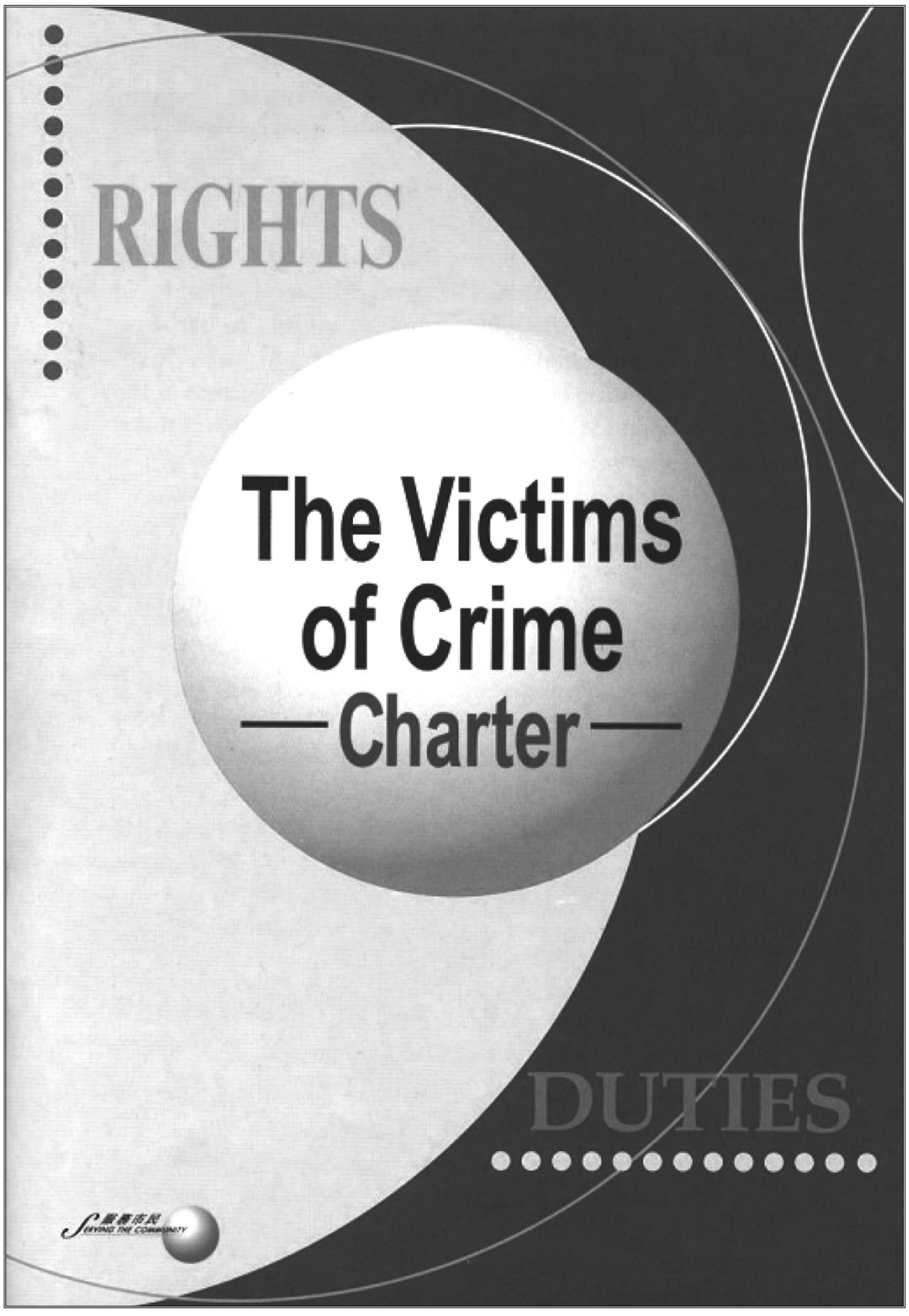
APPENDIX E

The Victims of Crime Charter



Appendix E1

The Victims of Crime Charter

All members of the community who come into contact with the criminal justice system, but particularly victims of crime, are entitled to know what their obligations are in helping the law enforcement agencies and, in return, what standard of service they can expect to receive from those involved in the criminal justice system. This Charter sets out these rights and duties of victims of crime. The Charter is not meant to be the final word: standards need to be kept under review and the aim should be to improve standards of service for victims of crime wherever possible.

Who is a victim?

A victim is a person who suffers physical or emotional harm, or loss or damage to property, as a direct result of a criminal offence. This covers not only the person against whom the offence was committed but also anyone who has suffered directly from the commission of the offence. The definition of victim may include, for example, the parent of a child who has been sexually abused or the immediate family of a murder victim.

Rights and duties of a victim

1. The duty to help maintain law and order

Every member of the community should help all law enforcement agencies, such as the Police and ICAC, to maintain law and order and to discover and apprehend offenders. This does not mean that members of the public

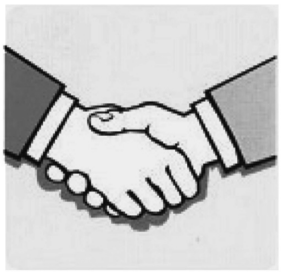
Appendix E2

should put themselves at risk when faced with a violent criminal, but it does mean that they should:

- abide by the law
- take proper precautions to prevent crime - for instance, by making sure that their home and personal property are kept secure
- report crime, corruption and any suspicious circumstances - such as persons loitering in the vicinity of a building
- be co-operative when asked to help the police or other law enforcement agencies
- give any assistance they reasonably can at an incident when asked to do so by the police or other law enforcement agencies
- come forward as a witness

2. The victim's right to be treated with courtesy and respect

Members of the law enforcement agencies, prosecutors, court staff, counsel, and other persons dealing with victims of crime shall at all times treat them with courtesy, compassion, sensitivity and respect for their personal dignity and privacy.



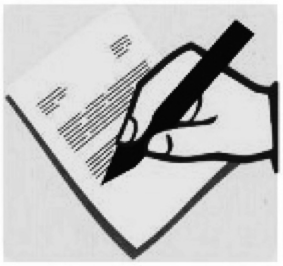
3. The victim's right to have a proper response to complaints of crime

Complaints of crime shall be responded to promptly by the law enforcement agencies, which shall provide fair, proficient and professional investigation of every report of crime.

Appendix E3

4. The victim's right to information - reporting the crime

Victims shall be provided with the name, rank, service number and contact telephone number of the officer in charge of the case. Upon request, victims shall be provided with a copy of any statement they make. Members of the law enforcement agencies and health and social services personnel shall inform victims as soon as is practicable of the services and remedies available to them. This will include, where appropriate, information regarding criminal injuries compensation, legal aid, social welfare and health services.



5. The victim's right to information - investigation and prosecution

So far as can be done without prejudicing the progress or outcome, victims of crime shall be kept fully informed of the progress of the case. If a decision is made not to prosecute, victims shall be told of that decision. Where prosecution is proceeding, victims shall be told about the steps which follow in the prosecution process, the progress of the investigation, the role of victims as witnesses in the prosecution of the offence, the date and place of the hearing of the proceedings, and the final disposal of the case, including the outcome of any appeal. Victims shall have the right to ask to be notified of the offender's pending release, or escape, from penal custody, provided that the victims have given the Commissioner of Correctional Services their current address and telephone

Appendix E4

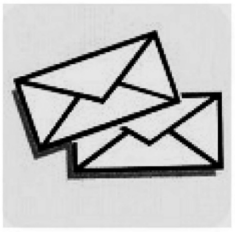
number. Subject to the provisions of the Personal Data (Privacy) Ordinance (Cap 486), the Commissioner shall notify the victims accordingly.

6. The victim's right to proper facilities at court

Victims who have to give evidence in court shall not be made to feel intimidated by the experience. There shall be clear signposting in every court premises, and a clearly marked reception or information point. There shall be adequate accommodation and facilities for victims and other witnesses while they are waiting at the court premises.

7. The victim's right to be heard

Members of the law enforcement agencies and prosecuting counsel involved in advising on, and prosecution of, the case shall inform themselves of the victims' circumstances and their views on prosecution. Prosecuting counsel shall bring to the attention of the court the victims' circumstances and views whenever appropriate.



8. The victim's right to seek protection

Victims shall be informed of their right to ask for protection. The Witness Protection Programme shall be widely publicised to ensure that victims are aware of the Programme's provisions.

9. The victim's right to privacy and confidentiality

All those involved in the criminal justice system, from police officers to judiciary staff, shall respect the victim's right to privacy and confidentiality. Victims are no longer required to provide their addresses when giving evidence in court. In cases involving certain sexual offences, there is a statutory

Appendix E5

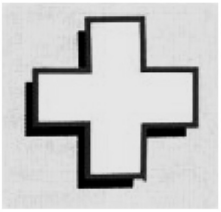
prohibition on publishing or broadcasting anything likely to identify the victim. In cases where victims are justifiably apprehensive as to what may happen to them or their family or friends if they give evidence in open court, or in respect of offences of sexual abuse, an application can be made to the judge hearing the case for the victim to testify from outside the court by way of a video link.

10. The victim's right to prompt return of property

Law enforcement agencies and the courts shall return as promptly as possible any property belonging to victims which has been held for evidentiary purposes.

11. The victim's right to support and after-care

Victims shall be provided with medical care after the offence, and where it helps (such as in cases of sexual assault or abuse), law enforcement agencies shall put the victims in touch with the appropriate agency (whether medical, social or any other kind of assistance) and stay in touch with the victims as long as is reasonably required.



12. The victim's right to seek compensation

Victims shall have the right to seek redress by way of civil proceedings under appropriate circumstances. Victims shall have the right to seek compensation under the Criminal and Law Enforcement Injuries Compensation Scheme, and the court has the power to order a convicted offender to compensate the victim.

CHILD PROTECTION POLICY UNIT OF THE HONG KONG POLICE FORCE

*Betty PANG Mo-yin**

I. INTRODUCTION TO HONG KONG

A. Geographical Location

Hong Kong is located in Eastern Asia, the southeast coast of the People's Republic of China, facing the South China Sea. Geographically, it consists of three main territories namely, Hong Kong Island, Kowloon and the New Territories.

B. Size and Population

The area of Hong Kong is 1,104 sq km. The population at the end of 2012 was 7,173,000.

C. The Hong Kong Special Administrative Region

The Chief Executive (CE) is the head of the Hong Kong Special Administrative Region (HKSAR). The main administrative and executive functions of the Hong Kong Government are carried out by three secretary departments, 12 policy bureaux (consisting of 61 departments and agencies) and other services.

(a) Secretaries of Departments
- Chief Secretary for Administration
- Financial Secretary
- Secretary for Justice

(b) Directors of Bureaux
- Secretary for Transport and Housing
- Secretary for Home Affairs
- Secretary for Labour and Welfare
- Secretary for Financial Services and Treasury
- Secretary for Commerce and Economic Development
- Secretary for Constitutional and Mainland Affairs
- Secretary for Security
- Secretary for Education
- Secretary for Civil Service
- Secretary for Food and Health
- Secretary for the Environment
- Secretary for Development

(c) Other Services
- Commissioner of Police
- Commissioner of Independent Commission Against Corruption
- Commissioner of Customs and Excise
- Director of Immigration
- Director of Audit

The civil service employed approximately 156,000 people, or about 4% of the Hong Kong workforce. Apart from administering public services, its main tasks are to assist the Chief Executive and principals in formulating policies and carrying out decisions.

*Senior Superintendent of Police, Hong Kong Police Force.

D. Special Features

Hong Kong's free economic system and low tax rate have created a favourable environment for the city's development in finance, banking, trade, industry and commerce, real estate, shipping and civil aviation. Hong Kong is one of the most densely populated places in the world. The land population density in mid-2012 stood at 6,620 persons per sq km.

E. Visitors

In the year 2012, Hong Kong registered a record of 48.62 million visitor arrivals. Mainland visitors reached 34.91 million in 2012 and continued to be the largest source of visitors to Hong Kong.

F. Crimes

In 2012, a total of 75,930 crimes were reported. The overall crime rate was 1,064 per 100,000 persons. Special Features

II. HONG KONG POLICE FORCE

A. Command and Structure

The Hong Kong Police Force (the Force) is headed by the Commissioner of Police who is responsible to the Chief Executive of the Hong Kong Special Administrative Region for the administration and operational efficiency of the Force. He is assisted by two Deputy Commissioners. The Deputy Commissioner of Police (Operations) is responsible for operations, crime and security; whereas the Deputy Commissioner of Police (Management) is responsible for personnel, training, management services, finance, administration and planning. Structure of Hong Kong Police Force is provided in Chart 1 on page 92.

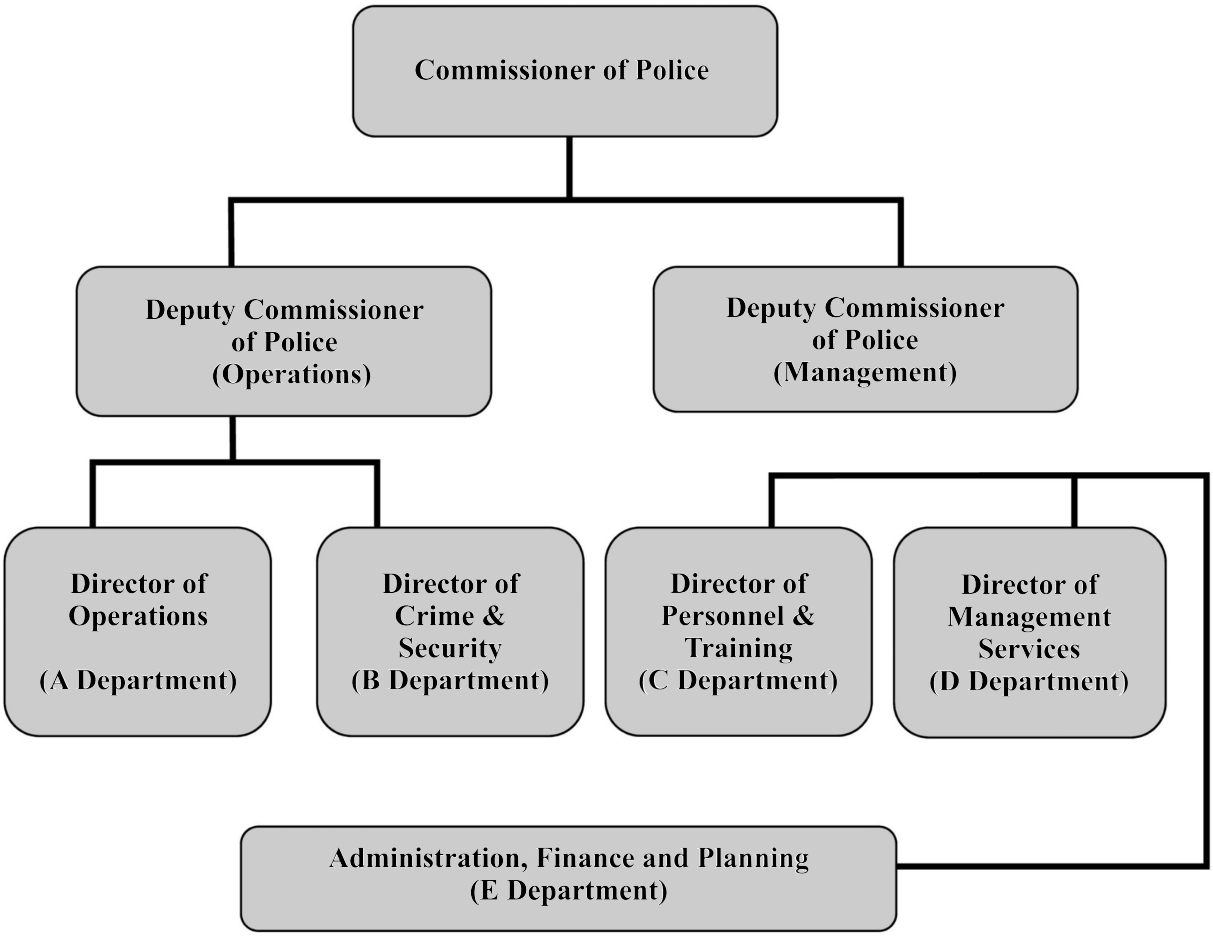
At the end of 2012, the Force had 28,400 regular police officers, 4,700 civilian staff, and 4,500 auxiliary police officers. The police-population ratio in 2012 was 394 regular officers for every 100,000 persons.

B. Vision and Common Purpose

The Force's Vision and Statement of Common Purpose are:

Vision	That Hong Kong remains one of the safest and most stable societies in the world
Common Purpose	The Hong Kong Police Force will ensure a safe and stable society by: ● upholding the rule of law ● maintaining law and order ● preventing and detecting crime ● safeguarding and protecting life and property ● working in partnership with the community and other agencies ● striving for excellence in all that we do ● maintaining public confidence in the Force

Chart 1: Hong Kong Police Organizational Structure



C. Strategic Directions and Operational Priorities

Every year, the Commissioner of Police addresses challenges through a structured strategic planning process that identifies and prioritizes future requirements to enable the Force to build on its success as a respected and trusted police service locally and abroad. Strategic Directions and Operational Priorities were then formulated.

The Strategic Directions 2012-2014 cover Engaging the Community, Enhancing Personal and Professional Qualities of Force Members, Strengthening Criminal Intelligence Gathering Force-wide, and Supporting Frontline Units.

The Commissioner's Operational Priorities 2013 are Violent Crime; Triad, Syndicated and Organized Crime; Dangerous Drugs; Quick Cash Crime; Technology Crime; Public Safety; and Terrorism. Under the first operational priority Violent Crime, Domestic Violence is identified as one of the main issues; and it is the direction of the Commissioner of Police that all reports of domestic violence should be professionally handled and investigated.

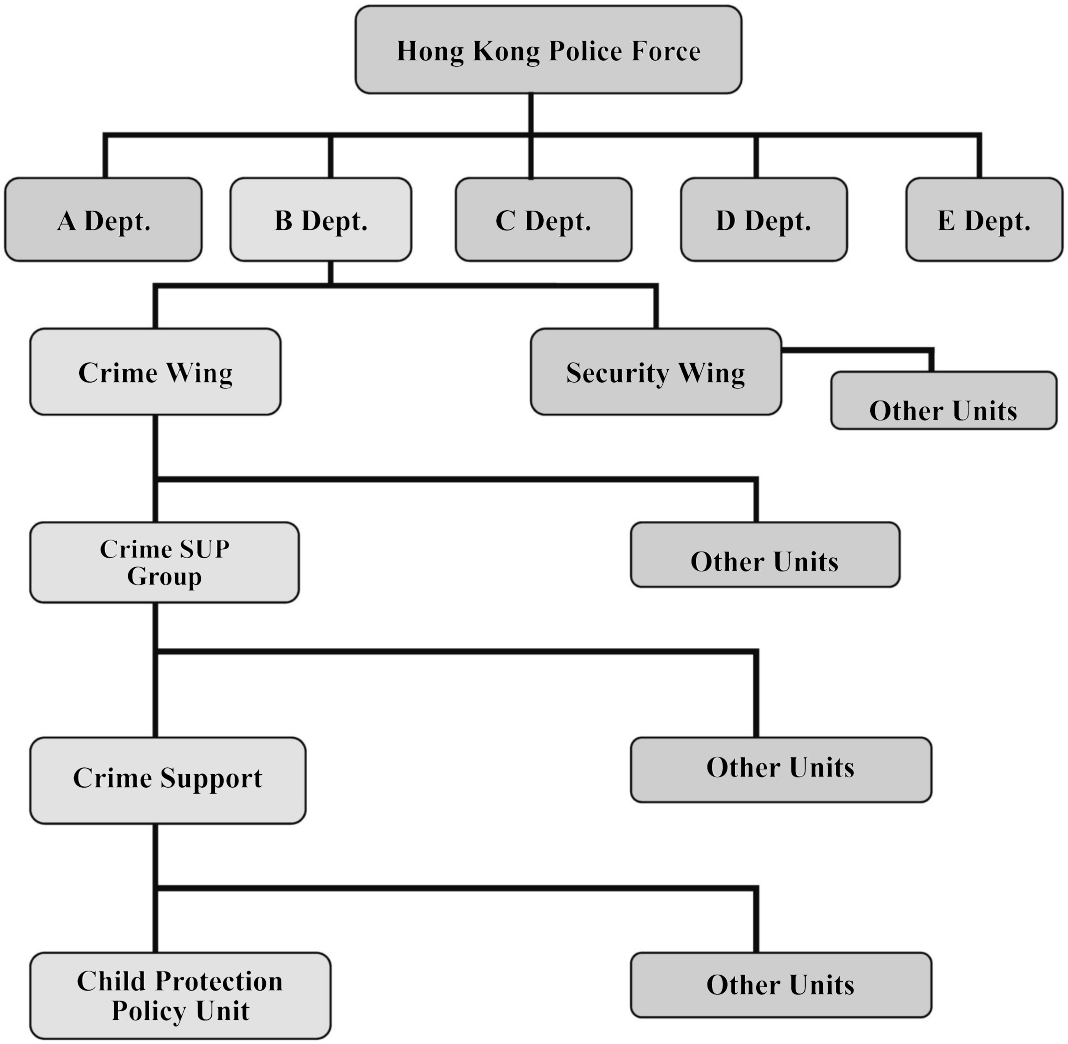
The Child Protection Policy Unit (CPPU) within the Hong Kong Police Force is a designated unit responsible for dealing with amongst others, policy matters of domestic violence. This paper describes the roles and functions of the CPPU.

III. CHILD PROTECTION POLICY UNIT

A. Command and Structure

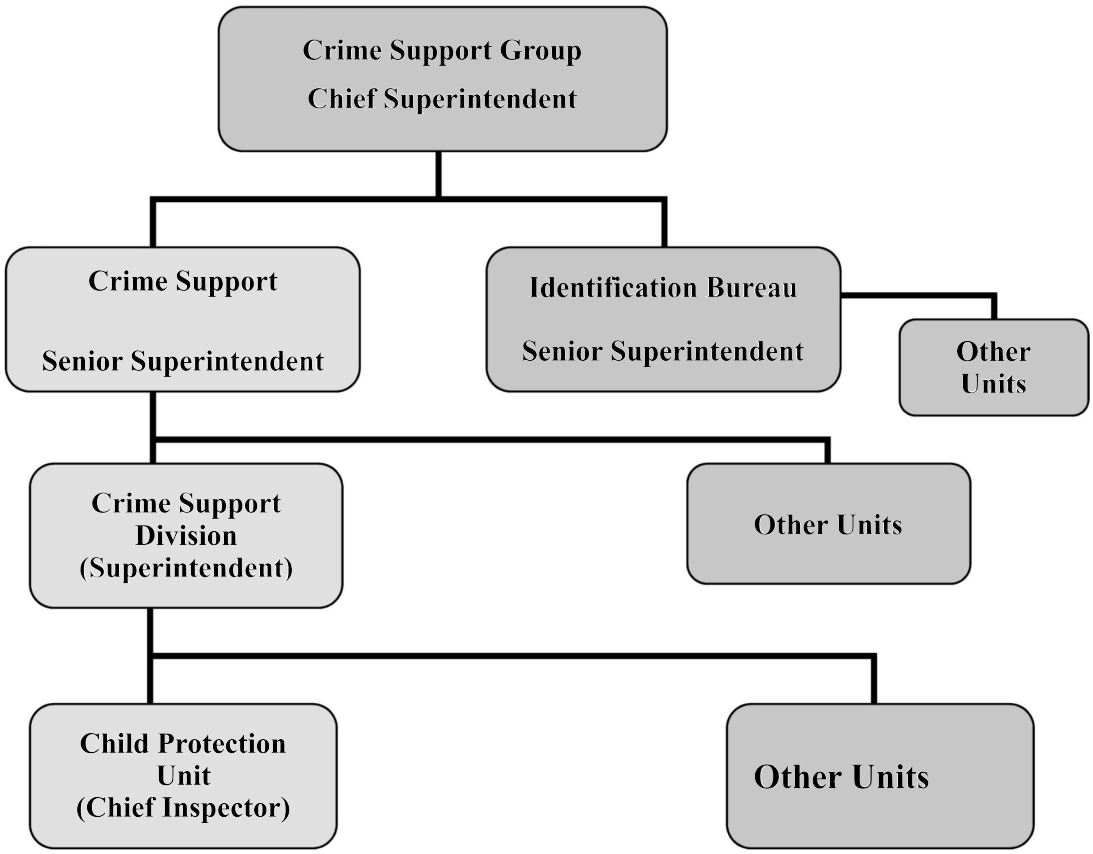
The Child Policy Protection Unit (CPPU) was established in 1997 under B Department (Crime and

Security) of the Hong Kong Police Force (the Force), and is a unit within the Crime Support Group under Crime Wing. The overall command of the Crime Support Group is a Chief Superintendent. He/she is assisted by two Senior Superintendents, one of which is in charge of the CPPU. The position of CPPU within the Force organizational structure is as follows:



At the time when CPPU was set up in 1997, its primary duties were to deal with policies on child protection. Over the years, its charter has been expanded to also handle policies, procedures and training in relation to domestic violence, child abuse, elder abuse, sexual violence, which are commonly known as abusive offences; the Police Superintendent Discretion Scheme (PSDS) for juvenile crimes; and child pornography. Actions are in hand to amend the nomenclature of the unit with a view to better reflect its current roles and functions.

CPPU consists of a Chief Inspector, three Inspectors, a Sergeant, three Constables, and a Police Clinical Psychologist (PCP). The major functions of the PCP are providing advice on formulation of policy and procedural guidelines on victim protection; and training in handling child and vulnerable victims/witnesses. He/she also assists the Force in conducting psychological assessment of persons involved in criminal cases, which is commonly known as criminal profiling, and gives expert evidence in court. The structure of CPPU is as follows:



B. Roles and Functions

CPPU combats abusive offences and juvenile crimes by adopting multi-agency and cross-sectoral approach in pursuit of the twin goals of protecting victims and prosecuting offenders. The roles and functions of CPPU are as follows:

(a) Formulation and implementation of Force policies

- As a policy unit, CPPU is responsible for devising, formulating and implementating government and Force policies and procedures in respect of child abuse, domestic violence, sexual violence, elder abuse and juvenile crime cases to ensure appropriate and coordinated response to reports of these cases in collaboration with multi-agency professionals.

(b) Liaison with other government departments and non-governmental organizations (NGOs)

- CPPU works closely with individual governmental departments and non-governmental organizations on multi-disciplinary procedures, inter-agency cooperation, training and coordination on subject matters under its purview. Representatives of CPPU are currently attending three working groups/committees that are set up by the government to examine and deal with problems of abusive offences and to map out preventive strategies. CPPU keeps the Force abreast of the latest development in governmental policies and formulates plans for effective implementation within the Force.

(c) Liaison with overseas law enforcement agencies, victim and witness care agencies and non-governmental organizations (NGOs)

- CPPU keeps regular contact with overseas law enforcement agencies, victim and witness care agencies and non-governmental organizations (NGOs) on new initiatives and practices in respect of investigation and presentation of evidence in criminal proceedings involving children, mentally incapacitated persons and battered spouses.

(d) Assist in legislation issues

- CPPU assists the Hong Kong Government in introducing and amending legislation on

subject matters under its purview. The unit also identifies implications to the Force in terms of policy, procedures and resources consequent to the enactment of relevant legislation and makes recommendations to Force management where appropriate.

(e) Monitor crime trends
- CPPU monitors trends in crimes against children and mentally incapacitated persons, domestic violence, sexual violence, elder abuse and juvenile crime with a view to improving relevant strategies, policies and procedures in dealing with these offences.

(f) Training
- CPPU devises and develops inter-agency training and a tiered Force training programme on child abuse investigation, domestic violence handling, sexual violence investigation, juvenile crime prevention and after care services.

(g) Assist Department of Justice
- CPPU assists the Department of Justice in liaising with police formations in matters pertaining to child abduction under the Hague Convention on International Child Abduction.

(h) Contact point with Social Welfare Department on the Witness Support Programme
- CPPU coordinates and processes all requests under the Witness Support Programme and liaises with Social Welfare Department for subsequent arrangement.

(i) Research on related issues
- CPPU works closely with local universities and other research institutes/associations on research projects; and where appropriate, organizes seminars to update Force members on new issues that can be of relevance in enhancing the Force's overall capabilities in tackling abusive offences.

C. Highlights of Engagement

1. Overseas Liaison and Exchange of Expertise

CPPU takes an active approach in the exchange of experience and expertise with other international focus groups and law enforcement agencies; and proactively engages international and local communities through participation in workshops, seminars and exchange programmes. Through these activities, CPPU shares its experience, expertise and knowledge with other counterparts, and introduces good practices of the Force. Most of the counterparts are representatives of other law enforcement agencies, academics, experts and non-governmental organizations.

During the past two years, CPPU officers have participated in the following major events:

(a) The 9th International Symposium of Best Police Practices in Dubai
- CPPU shared good practices on children's rights and child violence with participants from Western, Asian, Middle East and African countries.

(b) The 1st South East Asia Working Party Meeting of the Interpol Specialist Group on Crimes against Children in Bangkok
- CPPU and participants from Western and Asian countries shared experiences on tackling crimes against children.

(c) The 12th Guangdong, Hong Kong and Macao Exchange Programme
- CPPU and law enforcement agencies from Guangdong and Macao exchanged experience and good practices in handling of domestic violence.

(d) The 31st Meeting of the Interpol Specialist Group on Crime against Children in Lyon, France
- CPPU and participants from different countries shared and exchanged opinions on latest crime trends, and strategy and technology adopted to combat crimes against children.

(e) Overseas Development Programme at Singapore Police Force

- CPPU's representative shared with Singapore Police on training on handling abusive offences.

2. Inter-Departmental Liaison

In the context of victim protection, the Force will not be successful without the cooperation and support of other governmental departments and agencies. CPPU enters into partnerships with the Social Welfare Department, Department of Health and Department of Justice to work out plans for formulating policies and cooperation protocols in relation to protection of victims of crime.

CPPU represents the Force to attend working groups and committees that provide a platform for relevant stakeholders from the government, non-governmental agencies and experts to examine the problems of abusive offences and work out corresponding measures. These working groups and committees are:

(a) Committee on Child Abuse chaired by the Director of Social Welfare to examine problems of child abuse and map out strategies to address the problem identified

(b) Working Group on Combating Violence chaired by the Director of Social Welfare responsible for mapping out strategies to address the problem of spouse battering and sexual violence

(c) Working Group on Elder Abuse chaired by the Assistant Director of Social Welfare (Family and Child Welfare) responsible for examining the issue of elder abuse and proposing strategies to address the problem

3. Inter-Departmental Training

The Force fully realizes the importance of professional ability and knowledge that its members should equip in fighting crime and providing protection and support to victims to safeguard their rights, well-being and welfare. In order to enhance the overall professionalism of Force members, CPPU invites the Social Welfare Department to jointly organize the Child Protection Special Investigation Course (CPSIC), which is a tailor-made training programme for detectives, clinical psychologists and social workers engaged in dealing with abusive offences. Only after attending the training, officers are qualified to take part in the investigation of cases involving serious sexual abuse or violence against children or mentally incapacitated persons.

CPPU also proactively engages its stakeholders in training and experience sharing sessions with a view to enhancing cooperation and collaboration for mutual benefits. Recent exchanges include a training session with the Social Welfare Department where CPPU shared experience in handling victims and safeguarding their rights and welfare in domestic violence cases, and a training session with the Correctional Service Department where CPPU shared experience in handling youth offenders by way of caution (Police Superintendent Discretion Scheme — PSDS) instead of prosecution.

4. Public Engagement

CPPU also commits to engaging the public through education with a view to raising the public's awareness on protection and support to victims of crime. During the past years, CPPU has participated in a series of programmes organized by different public groups, for instances:

(a) Seminar organized by The Hong Kong University

- During the seminar, CPPU officers introduced the Force policy and procedures on handling sexual violence cases to university professors, social workers, non-governmental organizations and overseas scholars.

(b) Seminar organized by the Hong Kong Federation of Women Lawyers

- Participants of the seminar include members of the public, lawyers, social workers, professionals and legislative councillors. During the seminar, CPPU officers introduced the Force policy and procedures on handling sexual violence cases and highlighted its cooperation with governmental departments and non-governmental organizations in the protection of victims against further trauma. CPPU also shared with participants of the seminar its

experience in implementing legislation relating to protecting victims of sexual violence.

(c) Seminar organized by the Philippine Consulate
- During the seminar, CPPU officers offered advice to Philippine nationals working in Hong Kong on protection against violence and provided information on assistance provided by government departments and non-government organizations (NGOs).

(d) TV Programme
- CPPU has designed a TV programme on elder abuse to raise public awareness and advocate protection to elderly victims.

5. Internal Training

CPPU recognizes the importance of training to Force members in handling abusive offences, and has been constantly updating training materials and injecting new initiatives to improve its training. In addition to providing regular training on handling domestic violence, sexual violence, child abuse, elder abuse and juvenile crime in foundation training, criminal investigation courses, and varies development and promotion courses, CPPU has recently developed the following training packages:

(a) A training package on 'Handling of Elder Abuse' with emphasis on protection and support of the well-being and welfare of elderly victims; and

(b) A training package 'The Hidden Truth' with emphasis on the importance of applying patience and empathy to different types of victims of abusive offences.

6. Legislation

CPPU has been representing the Force in assisting the Hong Kong Government in introducing new legislation and amendments to existing ordinances in areas under its purview. The following are some examples of CPPU's involvement:

(a) Child Abduction Legislation (Miscellaneous Amendments) Bill 2013
- This law protects children from parental abduction. CPPU has offered comments on the practicality of the amended Bill and has been attending Bills Committee Meeting with other government officials on behalf of the Force.

(b) Sexual Offences Reform
- The definition of some sexual offences will be redefined and new offences will be created for better coverage and protection. The Senior Superintendent of Crime Support Group in charge of CPPU represents the Force in the Law Reform Sub-committee on Review of Sexual Offences.

(c) Death of Child
- To cover grey areas in proving criminal liability of child murders and child abuse. The Senior Superintendent of Crime Support Group in charge of CPPU represents the Force in the Law Reform Sub-committee on Death of Child.

D. Challenges

CPPU considers that the following issues would be major challenges to the Force in the fight against abusive offences and the protection and support to victims of crime.

1. Building Trust with Victims of Crime

Victims of crime may hesitate or are reluctant to report crimes for various reasons. In order to enhance victims' trust in the Force's capabilities in tackling crimes and its abilities to protect and support them, it is considered that more training on officers' professional sensitivity in handling victims should be arranged.

2. Law Reform

Changes in laws and corresponding administrative and procedural adjustments would require extra

resources to train up officers in the implementation of new procedures in order to maintain the Force's professionalism and capabilities.

3. Economic and Financial Stability

Economic and financial stability are often factors affecting the harmony of a family. Generally speaking, financial/economic downturn may lead to an increase in conflicts over family problems and thereby increasing the risk of using violence. It is therefore necessary that the Force continue to maintain a close and constructive relationship with its stakeholders for information sharing in order to enhance the effectiveness in investigation, prosecution, as well as victim protection and support.

4. Aging Population

The population of Hong Kong is aging. By 2016, the percentage of the population over 65 years of age will be 16%. It is anticipated that by the year 2036, that percentage will rise to 29%. The increase in the elderly population and decrease in workforce may lead to an increase in crimes relating to elderly people for instance, more illegal gambling activities involving the elderly, or elderly people becoming victims of crimes such as embezzlement, deception and theft. Providing more training to Force members and continuous collaboration with relevant stakeholders are both essential in maintaining the Force's overall professionalism in dealing with these crimes and providing support to elderly victims.

IV. CONCLUSION

CPPU is committed to maximize the effectiveness of actions in combating abusive crimes and will continue to strengthen multi-agency and cross-sectoral collaboration with other governmental departments, non-governmental organizations and professionals for continuous improvement.

COOPERATION WITH OTHER AUTHORITIES: ORGANIZATIONS AND EXPERTS TO PROTECT AND SUPPORT VICTIMS OF CRIME IN HONG KONG

*Betty PANG Mo-yin**

I. INTRODUCTION TO HONG KONG

A. Geographical Location

Hong Kong is located in Eastern Asia, the southeast coast of the People's Republic of China, facing the South China Sea. Geographically, it consists of three main territories namely, Hong Kong Island, Kowloon and the New Territories.

B. Size and Population

The area of Hong Kong is 1,104 sq km. The population at the end of 2012 was 7,173,000.

C. The Hong Kong Special Administrative Region

The Chief Executive (CE) is the head of the Hong Kong Special Administrative Region (HKSAR). The main administrative and executive functions of the Hong Kong Government are carried out by three secretary departments, 12 policy bureaux (consisting of 61 departments and agencies) and other services.

(a) Secretaries of Departments
- Chief Secretary for Administration
- Financial Secretary
- Secretary for Justice

(b) Directors of Bureaux
- Secretary for Transport and Housing
- Secretary for Home Affairs
- Secretary for Labour and Welfare
- Secretary for Financial Services and Treasury
- Secretary for Commerce and Economic Development
- Secretary for Constitutional and Mainland Affairs
- Secretary for Security
- Secretary for Education
- Secretary for Civil Service
- Secretary for Food and Health
- Secretary for the Environment
- Secretary for Development

(c) Other Services
- Commissioner of Police
- Commissioner of Independent Commission Against Corruption
- Commissioner of Customs and Excise
- Director of Immigration
- Director of Audit

The civil service employed approximately 156,000 people, or about 4% of the Hong Kong workforce. Apart from administering public services, its main tasks are to assist the Chief Executive and princi-

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pals in formulating policies and carrying out decisions.

D. Special Features

Hong Kong's free economic system and low tax rate have created a favourable environment for the city's development in finance, banking, trade, industry and commerce, real estate, shipping and civil aviation.

Hong Kong is one of the most densely populated places in the world. The land population density in mid-2012 stood at 6,620 persons per sq km.

E. Visitors

In the year 2012, Hong Kong registered a record of 48.62 million visitor arrivals. Mainland visitors reached 34.91 million in 2012 and continued to be the largest source of visitors to Hong Kong.

F. Crimes

In 2012, a total of 75,930 crimes were reported. The overall crime rate was 1,064 per 100,000 persons.

II. HONG KONG POLICE FORCE

A. Command

The Hong Kong Police Force (the Force) is headed by the Commissioner of Police who is responsible to the Chief Executive of the Hong Kong Special Administrative Region for the administration and operational efficiency of the Force. He is assisted by two Deputy Commissioners. The Deputy Commissioner of Police (Operations) is responsible for operations, crime and security; whereas the Deputy Commissioner of Police (Management) is responsible for personnel, training, management services, finance, administration and planning.

At the end of 2012, the Force had 28,400 regular police officers, 4,700 civilian staff, and 4,500 auxiliary police officers. The police-population ratio in 2012 was 394 regular officers for every 100,000 persons.

B. Vision and Responsibilities

The Force's vision is that 'Hong Kong remains one of the safest and most stable societies in the world'. The primary responsibilities of the Force are:

(a) Maintenance of law and order in the community;

(b) Prevention and detection of crime;

(c) Road safety; and

(d) Operations.

C. Crime Rate and Detection Rate

In 2012, 75,930 crimes were reported. 33,094 cases were detected; representing a detection rate of 43.6%, which was an increase of 1.1% when compared with 42.5% in 2011.

Maintaining a low crime rate and high detection rate can be regarded as one of the indicators of the Force's performance; but providing protection and support to victims of crime is equally important as it can affect members of the public's confidence in the Force.

III. COOPERATION WITH AUTHORITIES, ORGANIZATIONS AND EXPERTS IN THE PROTECTION AND SUPPORT OF VICTIMS OF CRIME

Hong Kong accords high importance in providing protection and support to victims of crime with a view to achieving the dual purposes of preventing further crimes and prosecuting offenders. This support and protection comes in many ways including legislation, administrative measures, multi-

agency approach, protection and support provided by the Force, other government departments and non-governmental organizations. This paper talks about cooperation with authorities, organizations and experts in the protection and support of victims of crime.

A. Working Groups and Committees

Apart from prevention and detection of crime, the Force attaches great importance to the protection and support of victims of crime. The Force has been maintaining partnership with different authorities, organizations and experts to protect the best interest of victims. The following three working groups and committees are typical illustrations of such multi-agency and cross-sectoral cooperation.

1. Committee on Child Abuse (CCA)

The Director of Social Welfare is the Chairperson of the Committee on Child Abuse (CCA). The CCA comprises 13 representatives from different government departments and non-governmental organizations including staff/professionals from the Labour and Welfare Bureau, Department of Health, Home Affairs Department, Hong Kong Police Force, Hospital Authority, Information Services Department, Social Welfare Department, Against Child Abuse, End Child Sexual Abuse Foundation, Hong Kong Council of Social Service, Hong Kong Family Welfare Society and Hong Kong Psychological Society.

The CCA is responsible for monitoring the overall situation of child abuse in Hong Kong. Its terms of reference are:

(a) To examine the child abuse problem in Hong Kong in view of current social circumstances;

(b) To map out strategies to address the problem of child abuse including prevention, public education and community participation;

(c) To examine ways to facilitate multi-disciplinary collaboration;

(d) To formulate new approaches for the handling of child abuse cases;

(e) To facilitate and coordinate research studies on child abuse and related subjects; and

(f) To monitor the implementation of recommendations.

2. Working Group on Combating Violence (WGCV)

The Director of Social Welfare is the Chairperson of Working Group on Combating Violence (WGCV). The WGCV comprises 20 representatives from different government departments and non-government organizations including staff/professionals from the Labour and Welfare Bureau, Security Bureau, Department of Justice, Legal Aid Department, Department of Health, Hospital Authority, Education Bureau, Home Affairs Department, Hong Kong Police Force, Housing Department, Information Services Department, Social Welfare Department, Association Concerning Sexual Violence Against Women, Caritas — Hong Kong, Christian Family Service Centre, Harmony House, Po Leung Kuk, Tung Wah Group of Hospitals, Hong Kong Association for the Survivors of Women Abuse (Kwan Fook) and Hong Kong Council of Social Service.

The WGCV is responsible for monitoring the overall situation of spouse battering and sexual violence in Hong Kong. Its terms of reference are:

(a) To examine the problem of violence in Hong Kong, with main focus on spouse battering and sexual violence;

(b) To map out strategies and approaches in handling the problem, including prevention, public education, publicity and provision of services;

(c) To examine the existing procedures and guidelines on handling the problem and recommend improvement measures;

(d) To strengthen coordination and cooperation among governmental departments, non-governmental organizations and professionals in handling and combating the problem;

(e) To coordinate statistics and facilitate research studies; and

(f) To form task groups or sub-groups to examine specific issues where necessary.

3. Working Group on Elder Abuse (WGEA)

The Assistant Director of Social Welfare (Family and Child Welfare) is the Chairperson of the Working Group on Elder Abuse (WGEA). The WGEA comprises 9 representatives from different governmental departments and non-governmental organizations including staff/professionals from the Elderly Commission, Labour and Welfare Bureau, Hong Kong Police Force, Department of Health, Social Welfare Department, Hospital Authority, The Hong Kong Council of Social Service, Tertiary Institute and social service sector.

The WGEA is responsible for examining elder abuse issues and proposing strategies to address the problem identified. Its terms of reference are:

(a) To examine the issue of elder abuse in Hong Kong;

(b) To propose strategies, practical measures and an action plan to combat the problem of elder abuse; and

(c) To draw up a framework to implement the action plan.

B. Procedural Guidelines

Working groups and committees provide a common platform for relevant stakeholders to deliberate and formulate appropriate strategies/measures on victim protection and support. Procedural guidelines are then derived to guide relevant stakeholders in the implementation in order to maximize the effectiveness of cooperation amongst them. The following are some examples:

(a) Procedural Guide for Handling Child Abuse

(b) Guide for Handling Intimate Partner Violence Cases

(c) Procedural Guidelines for Handling Elder Abuse Case

(d) Procedural Guidelines for Handling Adult Sexual Violence Cases

C. Central Information Systems

In order that working groups and committees can map out the profile and characteristics of, and provide statistical data for reference to professionals providing services on the prevention and handling of child abuse, elder abuse, domestic violence and sexual violence, three sets of central information systems were jointly developed by different authorities and organizations, for instance the Social Welfare Department, Hong Kong Police Force, Hospital Authority, Department of Health, and other non-governmental organizations. These central information systems are jointly maintained by relevant authorities and organizations. They contain comprehensive information on specific offences and have been very useful in assisting the work of different working groups and committees.

D. Multi-disciplinary Case Conference (MDCC)

Multi-disciplinary Case Conference (MDCC) is an effective multi-disciplinary cooperation model for child abuse, domestic violence and elder abuse cases. MDCC is most commonly used for child abuse cases. It is a forum by which professionals having a major role in handling and investigation of the case, for instance social welfare officers, the police, parents, guardians, carers, clinical psychologist, and representatives from Education Department/schools, can share their professional knowledge, information and concern on the victim's health, development, functioning, and his/her parents/guardians/carers' ability to ensure safety of the victim.

Case officers may make reference to the following issues when considering the need for an MDCC:

(a) The case involves at least three service units;

(b) There are different views between service units and the victim regarding welfare plan; and

(c) The case is complicated in nature, e.g. risk of homicide, propensity to violence, etc.

The focus of the MDCC is on protection and welfare of the victim rather than prosecution of the abuser. The MDCC analyzes risks and recommends actions to be taken in relation to the welfare planning of the victim and his/her family, respecting the statutory obligations of individual members of the case. In child abuse cases, family perspective is adopted in reviewing safety of all the children and other members in the household even if concerns are only being expressed about one child.

E. Child Protection Special Investigation Team (CPSIT)

The Child Protection Special Investigation Team (CPSIT) is formed by specially trained police officers and social workers to conduct joint investigation into cases of suspected child abuse. The advantage of having a CPSIT is to combine specialist and complementary investigation skills of the Police and Social Welfare Department in the collection of evidence, which will be admissible in criminal proceedings, prevent further trauma to the child by having to repeat details of the allegation to different persons, and provide maximum protection and support to children who have been abused or are at risk.

F. Guardianship Order

The Mental Health Ordinance, Cap. 136 Laws of Hong Kong empowers an independent Guardianship Board (the Board) to conduct hearings in order to make guardianship orders. Social workers, medical officers and police officers will help persons in need of Guardianship Order if they meet the following criteria.

(a) Adults 18 years old or over; and

(b) Mentally incapable of making decisions about their personal affairs, financial matters, medical or dental treatment.

When the victims meet the above criteria, the police shall refer them to the Social Welfare Department (SWD) for application of the Order. The Order specifies the appointment of a guardian, either private (a family member or friend) or public (Director of Social Welfare), and the powers conferred to the guardian. In a normal situation, application for guardianship will be proceed only where effective informal arrangements cannot be made.

Upon the receipt of an application, the Guardianship Board will arrange a date for hearing in which Board members will examine all the information and evidence collected, interview the subject and relevant witnesses to reach a decision. The following services may be provided:

(a) Support, protect and advocate the best interest of mentally incapacitated adults;

(b) Employ guardian to facilitate the management of their finances;

(c) Ensure that their needs for service and medical treatment are met;

(d) Protect them against abuse, exploitation and neglect;

(e) Enhance the quality of care; and

(f) Facilitate the resolution for disputes with relatives and services provider.

G. Multi-agency Referral Mechanisms

In addition to performing the core duties of case investigation and prosecution, the Force also provides protection and support to victims by utilizing its own resources and/or through close collaboration with other governmental departments and non-governmental organizations (NGOs). Timely referral mechanisms have been established between the Force and relevant stakeholders.

The officers-in-charge of the case shall carefully examine each case and make timely referrals. The Social Welfare Department is one of the Force's partners providing support services to victims. A cooperation protocol has been established to maximize effectiveness of the collaboration including acknowledgement of receipt of the referral within seven working days and informing the Police within one month whether the subject has accepted the service or not.

Specifically for victims of domestic violence, appropriate referrals to the Social Welfare Depatment and non-governmental organizations will be made to provide victims with family support services. The Social Welfare Department has set up a 24-hour Police Designated Hotline to facilitate police referrals and arranging emergency services. Victims of domestic violence will also be referred to non-government organizations (NGOs) for temporary accommodation services and emotional support services.

For sexual violence cases, investigation officers would introduce the Social Welfare Department's One-stop Service Model, and the CEASE Crisis Centre (CCC) of the Tung Wah Group of Hospitals (a NGO) to victims. If victims select to take up the services, the investigation officers would personally call the 24-hour Police Designated Hotline to arrange designated social workers to provide immediate assistance and crisis intervention for victims. Victims can also be referred to services provided by other non-governmental organizations (NGOs), for instance, the 'Family Planning Association of Hong Kong' and 'Rainlily' through established referral mechanisms for appropriate protection and support services.

H. One-stop Service Model

In pursuit of multi-agency and cross-sectoral approach, the Force commits to handle all sexual abuse cases by providing victims with immediate support services through close collaboration with other departments and non-governmental organizations (NGOs). The One-stop Service Model for sexual abuse cases is adopted under the following principles:

(a) Professional service should be made available and easily accessible to victims on a 24-hour basis; and

(b) The need for victims to undergo different procedures and to repeat incidents should be kept at minimum.

When the One-stop Service Model is introduced to sexual violence victims, police officers will immediately contact the Social Welfare Department (SWD) or non-governmental organizations (NGOs) for referral. SWD or NGOs provide the following 24-hour outreach services:

(a) Arrangement of suitable venue, e.g. hospital for taking statements and conducting forensic examination;

(b) Aftercare medical services at family/gynaecology clinic, e.g. prevention of pregnancy or transmission of disease;

(c) Emotional support or counselling service, psychological treatment and temporary accommodation; and

(d) Victim will be accompanied throughout the process of investigation and court proceedings.

I. Refuge Centre

When victims or their family members are considered at risk of serious or repeated violence, the

Police will advise victims on the availability of refuge centre. The Police will take the following actions if victims wish to accept the service:

(a) Liaise with the refuge centres for the victims;

(b) Provide transport to victims;

(c) Keep the location of the refuge centre confidential.

J. Outreach Services

If a victim wishes to be accompanied by a support person whilst giving a statement to the Police, relatives or friends are allowed as long as no hindrance to investigation is caused. If necessary, the Police will contact non-governmental organizations (NGOs) for outreach services where social workers will be arranged to accompany the victims or provide them with counselling service.

K. Overseas Special Assistance

If Hong Kong citizens become victims of crime overseas, particularly in major incidents with a significant number of victims involved, a cross-departmental rescue team comprising staff of governmental departments and other organizations including members of the Force may be mobilized to attend to victims and their family members. Apart from victim identifications and immigration matters, psychosocial support service from the Social Welfare Department will be provided to victims and their family members. These services include:

(a) Consultation on psychological support and critical incident stress management services;

(b) Crisis intervention;

(c) Financial assistance;

(d) Operate hotline to assist victim's family members; and

(e) Accompany family members to hold funerals for the deceased.

L. Art Therapy

Counselling services run by religious groups, non-governmental organizations (NGOs) and schools are provided to children who witnessed domestic violence in their family. During the treatment, the children are invited to take part in painting classes. Professionals will assess the children's condition through evaluation of their paintings. Advice will be given to parents or social workers so that a desirable counselling and support plan can be worked out.

M. Batterer Intervention Scheme

Special counselling service will be given to batterers through which the potential of repeated violence against their intimate partners may be reduced. The Batterer Intervention Scheme helps the batterers control their use of physical violence and enhance batterers' emotional control, non-violent conflict resolution and marital relationship.

One of the programmes under the Batterer Intervention Scheme is a psycho-education programme known as the Anti-violence Programme (AVP) provided by non-governmental organizations (NGOs) in conjunction with the Social Welfare Department. The District Court may order the batterer to participate in an AVP with a view to seeking a change of his/her attitude. Special counselling and support services will be given to batterers with follow-up services to help them re-integrate into their families and community.

IV. CONCLUSION

Hong Kong is a caring society. It has long been recognized, both internationally and in Hong Kong, that close collaboration amongst stakeholders involved in handling victims, particularly those who

suffered from abusive offences, will maximize the effectiveness in the protection and support of victims of crime, gain trust and cooperation from victims so that the investigation and prosecution could be conducted more effectively and efficiently.

As a result of longstanding multi-agency and cross-sectoral cooperation amongst different organizations and authorities in providing protection and support to victims of crime, different mechanisms/measures have been in place to safeguard the interests of victims of crime. These mechanisms/measures have been working smoothly and are subjected to regular reviews.

JUSTICE FOR VICTIMS OF CRIME

*Dr. Gerd Ferdinand Kirchhoff**

I. INTRODUCTION

Victims of crime and abuse of power should be treated with compassion and respect for their dignity. This demands the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/35 (1985)). Fortunately, this UNAFEI seminar gives opportunity to recall the content of the Declaration (see II). We will together look at the impact of crime on victims (III) and at victim needs (IV). Much has been done to "implement" the Declaration, that is: to translate it into national legislation of UN member states. We will deal with the current situation and with problems that crime victims face at every stage of the criminal justice system (IV). What has been done, has been criticized — for victim activists, reforms are too weak minded, too slow and not extensive enough — for more conservative policy makers they are already too extensive and too much in contrast to customary and cherished convictions. Often the interest in the smooth running of criminal proceedings have been seen as the main objective of reforms, not increased compassion and respect for the dignity of victims.

II. THE 1985 UN DECLARATION

A. From 1985 to 2013

In 1983, the Executive Committee of the World Society of Victimology adopted a document which became the core of the 1985 UN Declaration. Originally a document dealing only with crime victims, the scope enlarged to victims of abuse of power. The fathers of the Declaration, Irvin Waller (a Canadian professor of sociology), LeRoy Lamborn, (professor of criminal procedure in USA) were couched — like the whole process within the UN system — by the unforgotten Irene Melup (victim expert from the Office of the Secretary General). The activities in the early eighties opened the victim issue to international political debate, and it was mainly the common law wealth and the American criminal justice systems, which dominated the debate. The inclusion of "abuse of power" was dangerous in the time of the cold war in 1985, when the members of the capitalist camp and members of the communist camp mutually accused each other of "abuses of power" and both accused the South African apartheid regime. In summer 1985 in Milan's UN Crime Congress, the two superpowers ceased their opposition to the Declaration and finally, in November, the General Assembly unanimously decided on it. It was now up to the member states to act, to implement the Declaration, to translate it into national legislation.

Maybe, the superpowers realized that this document was not a convention which could have the chance to become binding — a UN Declaration is not binding at all. But one should not underestimate this Declaration — it radiates a strong moral obligation, despite the legally non-binding character. That 29 years later UNAFEI conducts this seminar, is an effect of this Declaration.

15 years ago, in 1999, the UNODC published a "Handbook on the Use and Application of the 1985 Declaration", a work guided by Jan van Dijk, at that time President of the World Society of Victimology[1].

In 2000, in the Montreal WSV Symposium, we celebrated the 15 year anniversary of the Declaration,

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[1] As Secretary General of the World Society of Victimology, I was to participate on the work. But I could not participate, recovering in Mexico Ciudad from an unpleasant meeting with taxi robbers.

rather critical about the state of implementation. Member states were not able or willing to implement this declaration. One problem was the title of the declaration: it was easier to talk about "Victim Rights" and about "Justice for Victims". And the newest development: End of last year, the UNODC convened a working group on a review of the 1999 handbook. This group finalized its work and the new Handbook "Justice for Victims" will be available soon. This handbook is, like its predecessor, an exhibition, a list of offers from which interested member states could choose.

In 2008, The Declaration was reviewed by a team of experts in the Tokiwa International Victimology Institute and the Tilburg International Victimology Institute[2]. This 4th Symposium of the TIVI 2008 led the World Society of Victimology to send representatives to the 10th UN Congress in Salvador, Brazil. The final "Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World"[3] on 12 occasions uses the word "victims" or "victimization" (prevent victimization including revictimization, protection and assistance to victims, child victims, victims of trafficking and a victim centered approach with full respect for the human rights of victims of trafficking). Besides the already known issues, two new special victimizations appear, in the wake of two new conventions: child victims and victims of human trafficking.

B. Principles of Justice

While victims are around as long as there is crime, legislation on crime and criminals has been is much more detailed and obviously much more important for the legislator and administrators than victims. I have explained this with the Divided Territory Theorem[4]: Criminal justice always was the exercise of power of the rulers against the subordinates who endangered by their crime the position of the sovereigns. The resulting Criminal Justice System was a vertical system: power was used from the state to the offender. The eighteenth and nineteenth centuries were busy with humanizing criminal justice — a task that is still unfinished! The concept of "balance" was introduced, the balance between the power of the state (oppressing the offender) on the one side and on the other side, the human rights of the offender. For the new upcoming powers in society the old criminal justice which did not care for offenders rights, was too dangerous. Today, we often hear about "Justice for Victims". In the eighties of last century, it became fashionable to complain about the imbalance in criminal justice (US President's Task Force on Victims of Crime[5]). "The system is out of balance" was the slogan. It was said to be out of balance since it granted offenders many rights and no rights to the victims. There is indeed an unequal distribution of rights. Speaking of the "balance between offenders and victims" in criminal procedure is too simplistic and it contains too much political rhetoric. The balance in criminal justice is between state and offender, not offender and victim. The latter is a useful argument in the political fight for influence and power, for sure — and this is why we allow victim activists to talk about "Victim Rights" and about "Justice for Victims" — but not in a balanced discussion between responsible criminal lawyers and the lawyers who seek to avoid that victims are harmed by criminal procedure.

To understand this, we have to discuss the topic of secondary victimization. We have to understand why the avoidance of secondary victimization is such a central goal. We have to see that we move in a field of tension between different concepts of criminal law. Criminal justice and the application of criminal law is a means of social control. It is a formal offender oriented social control by repression of the offender, of course ideally under strict observation of human rights of offenders. The topic in criminal justice is traditionally social control by repression of offenders.

Obviously, the style of social control is in dispute. In postmodern times it is no wonder that there

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[2] Dussich, J.P.J. and Mundy, K. (eds.) (2009): Raising the Global Standards for Victims: The Proposed Convention on Justice for Victims of Crime and Abuse of Power. Proceedings of the 4th Symposium of the Tokiwa International Victimology Institute. Tokyo (Seibundo) , Japan.

[3] 〈http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf〉.

[4] Kirchhoff, G.F. (2005) What is Victimology? Tokiwa International Victimology Institute Monograph Series No.1. Tokyo (Seibundo) p.46

[5] US President's Task Force on Victims of Crime, Final Report. Washington D.C. 1982.

is a heated discussion about the right of the state to determine the way of this formal social control. The vivid and passionate discussion between the poles of repressive justice and restorative justice is a symptom for this. Regardless where one stands, in the camp of restorative justice, in the camp of traditional justice or with one leg in each of the camps: Victims have a right to be unharmed by criminal proceedings. Victims have suffered from offenders — that is enough. We have to be clear: Justice can only be achieved if victims do not suffer more than absolutely necessary from the criminal justice system. Victimologists argue: the protection of victims from harm is not realized radically enough.

The counterweight of this right is the obligation of the state to arrange the criminal proceedings correspondingly. This is the center of the discussion on "avoiding secondary victimization". This is the center of the 1985 Declaration. The discussion is about victim needs, about victims' position in criminal proceedings, about what harm is needed and unavoidable, and about what has to be done to keep up the social control that is desired and necessary. On the other side there is the position of more victim-friendly discussants — observing the right not to be secondarily victimized — and on the other side that offenders rights are not curtailed, "without prejudice to the accused" (Declaration 1985 A nr. 4 b). I believe that in 2014 we have to be even more pronounced:

In some situations, the right of the state to criminal justice has to step behind the right of the victim to be unharmed:[6] I would be more radical in the demands: If victims are likely to suffer, the state is obliged to invent procedures to alleviate the burden, even if this means that the state has to refrain from criminal prosecution.

C. A Summary of the Content of the Declaration and an Outlook to a New Handbook

The Declaration contains the following "principles of Justice" which are commonly called "victim rights". These are the "victim rights" we might find in the 1985 Declaration:
These are the right

1. to be treated with compassion and respect for their dignity (A 4)
2. to access to justice (A 4)
3. to prompt redress (A 4)
4. to procedures — formal or informal — that are fair, expeditious, inexpensive and accessible (A5)
5. to receive information
    a. procedure, scope, timing, progress of the procedure and the disposition (A 6 a)
    b. role of the victims (A 6 a)
    c. availability of redress possibilities (A 5 sentence 2)
    d. about social assistance (A 15 to 17)
6. to allow the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused (A 6 b)
7. to provision of proper assistance to victims throughout the legal process (A 6 c and 15)
8. to minimal inconvenience (A 6 d)

[6] An example of the priority of protection of victims before state prosecution is seen in the institution of the child interrogator in Israel: Sternberg, K.J., Lamb, M.E. (1996): Child Sexual Abuse Investigations in Israel: Evaluating Innovative Practices. In: Bottoms, B. & Goodman, G.:, Thousand Oaks (Sage) p.62-77.

9. to protection of their privacy (A 6 d)

10. to be safe from intimidation and retaliation (family members and witnesses on their behalf) (A 6 d)

11. to speedy trial, avoiding unnecessary delays (A 6 d)

12. to access to informal mechanisms of dispute resolutions including mediation, arbitration and customary justice (A 7)

13. to restitution: offenders should make fair restitution, restitution as a sentencing option , special mention of environmental harm (A 8 - 10)

14. to compensation by the state (A 12 and 13)

15. to general (social) victim assistance (three sub-articles) (A 14 to 17).

If we use the word "rights" to describe "desirable states of affairs", then the Declaration deals with victim rights.

The Declaration turns to Member States and to their government — victims are of interest as the matter of member state legislation. In the center of the matter is "Avoidance of Secondary Victimization" — not the "rights of victims".

The "nude" norms are too abstract, and therefore the UNODC tried to give more concrete explanations of what was really meant by this Declaration. This is done by "Guides for Practitioners" or by "Handbooks".

The most recent "Handbook on Justice for Victims" was drafted during the year 2013 by a group of experts convened by the UNDOC in Vienna. The group finished the work in December 2013. The "Handbook" is ready for publication in 2014.

This Handbook will cover these topics:

1. Description of crisis and trauma that victims of crime and abuse of power may suffer, PTSD.

2. Other consequences of victimization

3. Victims that are ignored or dismissed by the public (children and elderly)

4. Victims of international crimes (cybercrime, cross-border human trafficking)

5. Formal criminal justice processes and victim rights in affluent countries

6. Emergent victim services program: establishing, sustaining and expanding programs

7. Helpful groups and professionals for victims

8. Remedies: Restitution and Compensation

9. Issues involved in restorative justice and crime prevention

10. Promising practices in implementing the legislation of victim rights

11. Key examples of international cooperation and collaboration

12. Consequences for those working with victims, methods for maintaining personal health (for

example avoidance of burnout).

The draft Handbook contains 184 pages of A4 text. It is a wealth of information about what can be done for victims and what has been tried successfully. This UNODC Handbook on Justice for Victims 2014 is an object of great expectations.

III. THE IMPACTS OF CRIME ON VICTIMS

A. General Impacts

What is the impact of crime on victims? For analytical purposes we distinguish: Victimization means experience of damage (diminution of resources). Damage is experienced in three dimensions: emotional, physical and financial.

For many lawyers, the consequences would be more plausible in a reversed sequence: financial, physical and finally the emotional damage. Jurists are used to handle financial consequences for sure, most conflicts in civil law deal with finances. The whole area of civil laws, tax laws, social security and welfare laws deal with finances. This is the field lawyers feel most competent in.

In reality we know that these analytical categories are neither mutually exclusive nor do they have clear boundaries: emotional burden can very likely express itself in headaches, muscle aches, tensions and other physical consequences. These transform easily in financial damages if, for example, a physician must be consulted or medicine must be bought. There is no clear borderline between emotional and physical damage. Therefore I will give up this introductory static scheme and come to a more dynamic one.

B. Victimizations as Invasions of the Self

The new Handbook says that the most important element in dealing with victims of crime is to understand the nature of crisis and trauma. It then explains how to understand scientifically trauma - reactions. The Handbook deals with these topics: Normal equilibrium and stress, the brain structure, communications of the brain, brain functions, traumatic thinking (the thought processes during experience of trauma), normal memory processes, traumatic memory as compared to narrative memory, crisis reactions, traumatic reactions, uncomplicated PTSD and finally complicated PTSD. This is described in 26 pages, highly concentrated and not easy to understand. The difficulty is partly due to the problem itself — the emotional impacts of crime for victims are a complicated matter; in addition the way the brain processes trauma information is not well understood[7], let alone easily explained[8].

Victimizations are invasions into the self of the victim. That formula was developed some forty years ago. I find it still very useful. Invasions into the self of the victim. Of course this is a parable, an allegory, a picture: Behind this formula, there we find a specific image of men:

Imagine an onion: here is the outer peel, brown, tough, hard though fragile. Remove the peel — a different layer appears, and removing layer after layer, you reach the soft center. Penetration is easier and easier the more you come to the center, to the heart of the onion. That stands for the heart of the person, the "self" of the victim, the center of its existence.

Victimizations are invasions into the self of the victim, they are like needles that penetrate the onion.

We can employ this allegory to demonstrate different intensities or different severities of victimization. More on the outer skin we have victimizations by, for example, taking away from us items which are not valuable and easy to replace. Different, if the item was emotionally valuable to you: if the stolen ring was given to you as a sign of love by your partner. Then the invasion goes deeper and cannot be brushed away like a flurry of dust from your jacket.

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[7] See Winkel, F.W. (2007) Posttraumatic Anger. Nijmwegen (Welp).
[8] Foa, E., Hembree, E. & Olasov Rothbaum, B.: Prolonged Exposure Therapy for PTSD. Oxford 2007.

Assaults: usually victims do not realize how easy it is to be hit. It would take a slight backhand move of your hand to injure the face of your neighbor. Of course we are not aware how vulnerable we are. This victimization would invade a completely unsuspecting victim. And would the pain be the main dimension of victimization? Or the humiliation to be treated in such a disrespectful way? Publicly? In an international UNAFEI conference? The feeling of surprise, of being unexpectedly harmed, told how vulnerable you are — even in this setting, and that your position of a leader in the homeland criminal justice system does not help you at all. You feel enraged, ashamed, deeply offended, humiliated, bewildered, you turn maybe to the chairperson for help....

In the oral presentation there follows a description of a victimization the author experienced himself.

I have provided a detailed description to demonstrate to you what this robbery meant. The financial loss was not important. The emotional damage I experienced was the central event. That this would be classified as robbery and consequently be punished was unimportant to me in the moment of the invasion. Loss of physical integrity, experience of fear and despair, of helplessness, of being isolated and completely alone, of pain, of humiliation that some complete strangers treated me with such disrespect to what? To my person, to my identity, that they invaded me, that they brought me to such childish reactions like inventing numbers which I knew would bring only short-time relief, the humiliating feeling that I owed my life to the leader of this gang who "allowed me" to get away from them....

Victimizations are invasions into the self of the victim. Burglary is not alone (and often to the lesser extent) a property victimization — The victim's feeling of security is shattered. Victims realize that they sleep safely behind very thin and fragile glass windows of their bedroom. Humans tell themselves permanently stories about the safety of their existence.

And finally, in sexual victimizations, in cases of being groped and sexually invaded, victims experience that they are completely helpless, that they can be sexually attacked and invaded at any moment. Victims of rape tell us that they felt that their life was endangered, by this forceful closeness of invading actions of another person who invades not only the body forcefully but invades a part of victim's personality that, for normal social interactions, must be kept un-invaded, undisturbed. Can we live with the feeling that we are open for everyone's sexual invasion? Of course we cannot.

C. Understanding Crisis

Victimizations are invasions into the self of the victim. That does not have to be demonstrated in cases of physical and sexual assault, in cases of torture, in cases in which the victims are forced to endure invasions into their self. It is self-evident in cases of homicide.

In all victimizations the emotional damage is very important — that a human being treated the victim without respect — let alone the physical and financial consequences. Even in cases of investment fraud the emotional damage is evident — the humiliation felt by the victim that someone treated the victim in this way, taught him a lesson about his own financial credulity, dupability, gullibility and outright stupidity.

Victimizations tell the victim that he surrounded himself with stories about his own independence, intelligence, smartness, about his own ability to control, about his power to determine what is going on in his personal life — these stories are like protective walls, protective shields we construct against our own vulnerability. People nurture illusions about the power of the criminal justice system and its organs including police to protect them, to grant that life is worth being lived. It is easy to imagine that victims of stalking lose all their hopes to ever live safely again.

Victimizations mean the forceful experience of the destruction of protective stories we tell ourselves about us and about the world we live in. We need these stories to stay alive. If we delve too deep into this knowledge, we might kill ourselves. Life is not worth living anymore. Every week we read something like this:

A 12-year-old girl who was killed after she walked onto the tracks and was hit by a bullet train in Tendo, Yamagata Prefecture, on Jan 7, left a note in which she hinted she had been bullied at school.[9]

"Bullying" is a cute way of denying the real harm and the revolting insensitivity of school to the emotional well-being of their students.

The impact of this invasion on victims is crisis.

Crises are situations of experienced instability, of insecurity. They are generated by the experience that the normal crisis management functions are blocked. The experience of blockage causes anxiety and stress. The usual skill, power, capability to handle difficult situations, is gone. The coping resources cannot be activated. The new Handbook describes very well how that functions physiologically.

Victims are suddenly confronted with a situation that does not make sense to them. They react with

insecurity,	what is going on here?
confusion	I need an explanation to understand what is happening!
disorientation	where am I? why am I here?
surprise	That is completely new and unexpected!
Despair	I cannot see any way to get out of here!
Cluelessness	How could this happen?
Anger	about oneself, about the people who usually are supposed to assist and help, family members, spouses, but as well police, prosecutors and the court, the whole state administration.
Self-Blaming	If I would not have done this and this!
Blaming of others	
Loss of control and powerlessness	They cannot comprehend what happened. They do not know how to respond.
Shock	Victims may be completely surprised, numbed,
Disbelief	this cannot be true!
Denial	No, this is not happening
Terror	complete shock and confusion and anxiety
resulting in frozen fright	numbness, no reaction at all, frozen, immobilization,
stress	resulting from impossibility to fight or to escape, another consequence of hyper-arousal

There is a certain pattern in responses:

Fear is caused by the loss of autonomy and control and by the loss of the ability to face situations by planning, "a uniquely human characteristic. The threat that pain will be inflicted can trigger fears more intensely than the immediate sensation of pain. Anger often results from fear. Anger might be directed against an offender or another person held responsible for a traumatic event. It may displace to supernatural powers (God, fate), family members, social institutions against oneself and it may generalize focusing not only on the one who offended but might be directed against the whole group he stands for. Related to anger is the desire for revenge.

The thirst for revenge is an enhancement of anger directed at classes of individuals. It is not uncommon. People do not know how to handle anger. It leaves people empty, bitter, morally in conflict and painfully in dissonance with what victims or other survivors of a catastrophe believe to be an ethically good reaction. Social reaction to anger is often disgust and rejection. Victimologists know that victims quite often are not at all vengeful. That is not plausible for people who would like to believe that victims turn to the criminal justice system for revenge. Victims are in a situation where

[9] Japan Today, January 7, 2014.

they look for the meaning of what happened, and of course they seek protection in the system that is taught to them as "taking care of their needs". Victims feel themselves confronted with a situation that does not make sense to them. Their understandable reaction is that they seek protection. They want to feel safe.

In this confusion, victims try to remember what happened. They have only scattered memories of the traumatic event. They cannot cohesively reconstruct this event. This scattered memory is a sign of PTSD and is accessible through cognitive behavioral therapy (and not in a police hearing or in an oral court hearing, see Foa et al. 2007). The confusion becomes frustration and despair when victims think they should remember or could remember when they only tried. It is obvious how important this fact is for police, prosecutor and judge.

Self-blame: Victims often think they are guilty of something. They blame themselves. Victim self-blame comes in two forms, blaming the behavior of oneself (If I would not have done this!) and blaming the character (I am the kind of person who attracts these events; It is me and my individuality).

Self-blame goes hand in hand often with shame. Shame is often exacerbated by the reaction of the social environment.

D. Secondary Victimization

Not only victims react. Their social environment reacts too. These reactions can help the victim to overcome the emotional impacts of the victimization. But there are good chances that these reactions are not helping and that they are damaging. Victims are confronted with reactions of the social environment that do not help them. The damage by these reactions is called "secondary victimization".

Reactions may intensify the feeling of powerlessness, lack of self-esteem, lack of confidence, the loss of self-control, increased fearfulness and vulnerability, damage in the self-esteem of victims. They may intensify the feeling to be left alone, having no control, leaving no hope for the future.

Secondary victimization refers to the victimization that occurs through responses of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the criminal justice system. At times, per the Handbook, it amounts to a complete denial of human rights to victims of a particular cultural group, of classes or of a particular gender. It amounts to a refusal to recognize their experience as criminal victimization. An example of a complete lack of social recognition of victimization is the family of the offender after sentencing.

Another example for this might be the evaluation of violence against children — In Sweden a criminalized event, in Germany an illegal act with family law, civil law and administrative law consequences. In South Africa, for example, parents and teachers have the inherent power of chastisement. The South African courts first declared the imposition of corporal punishment by courts unconstitutional — before this, the victims of corporal punishment were not recognized (till 1995) while in 1996 the South African School Act declared it criminal for teachers to punish corporally. The total abolition of the power to resort to corporal punishment is "probably" inevitable (SAfr Crim Law p. 111).

Whether parents have the right to disciplinary chastisement or whether children's rights prohibit this is victimologically irrelevant: it is the suffering of the victim, and basically it is not important from the victim's perspective whether beatings are applied under observation of the limits of the law or whether these limits are crossed.

Secondary victimization is characterized by a loss of trust. This loss of trust explains why victims often show dramatic changes which we normally do not expect — they move out of their apartment, they change their address, they move into another city after they have been stalked. They change the school after being bullied by their schoolmates and teachers did not intervene properly. Marriages break down in the wake of victimization. The whole setting in which life usually functioned may be

changed. We have disturbing news about victims of rape who after reporting to police were bullied and harassed by their peers and by adult members of the community who blamed the victims so much that victims committed suicide or moved out of the neighborhood, into a new city and often that was not enough. The victims killed themselves or tried to do so. We have disturbing news about harassment of rape victims on the Internet.

The whole process of criminal investigation and trial may cause secondary victimization, from investigation through decision to prosecute or not, the trial itself and the sentencing to the possible release. It is not so much that there are difficulties to balance the rights of the victim with the rights of the offenders, it is more so that personnel are unaware of the possibility that their decisions may victimize, and they act without taking into account the perspective of the victim.

Victims of abuse of power have particular difficulties in gaining recognition as victims. That can be explained by the fact that the power under which they suffer, power that is created to protect citizens, is here used to damage, pertains not only to abuses but pertains to the whole apparatus that is involved in recognizing victims, like the press, the criminal justice system, the majority of the population. Often, when the abuser is the state itself, supporting groups come from outside the country. International NGOs have been useful in some countries in pursuing cases of victimization outside the country. The letter action of Amnesty International is a good example for this.

I deal here with the impacts of normal victimization on victims. These are impacts that can be observed in run-of-the-mill court proceedings. They can be seen every day in the criminal justice systems of the countries represented here.

Of course they are more concentrated and visible in cases of mass victimization armed conflicts or genocide. There is a worldwide campaign against violence against women.

Another topic are the victims of hate crimes: prejudice against persons due to race. Culture or ethnicity are contributors to violence and to mistreatment in the justice system. Victims not only suffer from the emotional wounds caused by the violence but also from being categorized as the "others" — other people which do not really belong to us. As a result, some countries have responded with passing new "hate crimes" laws involving enhanced punishments for crimes motivated by prejudice. This is often the reaction of legislators: to invent new crimes and to increase the upper or the lower limit of punishment. There is no evidence that this really produces less victimization. The victimologist recognizes: victimizations are used to justify a stricter social control of offenders. This is done to enhance the reputation of the justice system, not to serve victims.

The impact on victims includes the physical consequences and the financial consequences of victimization. There is simply not enough room available in this paper to deal with the two consequences with the necessary intensity. This does not mean to downplay the role of these victimizations. It must be emphasized that in most if not all cases of physical victimizations (assaults, injuries) and financial victimizations (the so called property crimes), there is an emotional impact on victims and that is often, even in cases where we do not expect it, a very important part of the victimization.

IV. WHAT VICTIMS NEED

In victimology, there is often the talk about "victim needs". Victims need recognition that they are victimized. They need restoration of their damages. They need a social environment (individuals, institutions and communities) that is aware of secondary victimization. They need an environment that tries to avoid secondary victimization as much as possible. It is theoretically very simple: the damages they suffered must not be intensified.

The answer to the question "What Victims Need" is quite complicated. Victims have emotional needs — for they had emotional damages. They have physical needs if they are physically impaired. They have financial needs.

V. CURRENT SITUATION AND PROBLEMS FOR VICTIMS AT EVERY STAGE OF THE CRIMINAL JUSTICE SYSTEM

A. The Investigative Phase: Police and Victims

Victims need attention and care. That is difficult to deliver in the criminal justice system. Why?

The whole criminal justice system is part of the system of social control. In a famous sentence, a high Japanese court said that Justice is in public interest, not in the interest of the victim. That sentence electrified the supporters of victims. In a rather short time, they collected more than 550,000 signatures, requesting the Prime Minister to take better care of and respect the victims of crime. That changed the political climate in Japan. Since 2005, Japan has revamped its justice system.

For traditionally educated lawyers, criminal law is the matter of the state against the offender, applied in a clearly vertical system of social control. The victim has to serve as evidence. But today there are different demands on this system.

Police need training to improve their attitude in accepting the information of victims about crimes. Modern police are service oriented. Police have to be polite. They have to take the victims seriously and to do this, they must be aware of their emotional situation. That is difficult for police. They deal professionally with crime. For them, a crime story is one story in an endless chain of repeated stories. They deal with these events as everyday events. For victims this is completely different: For them, victimization is usually a one-time event, an exceptional situation. This is obviously so in case of burglary, a very upsetting event, a deep invasion into the self of victims. Feelings of security, of safe living, of "my home is my castle" — all these shields with which we surround ourselves, are destroyed. Victims do not get angry with police if the offender is not found — usually about 85% of reported burglaries are not cleared by police. Nevertheless, people were content with their police — since the officer was polite, caring, came out to them, offered a listening ear and was generally understanding.

Victims do not know the criminal justice system. They do not know what happens with their report. They are in a strange environment. They are afraid and nervous. They have difficulties to reconstruct the event.

Taking the emotional situation of victims seriously: that means that the first approach to the crime scene, home visits of victims, are performed without using police cars and uniformed policemen — neighbors are watching and victims are afraid of their reaction. The use of special limousines for questioning victims at crime scenes is needed. In police stations, there are installed special victim suites where victims can be interrogated and questioned in a safe environment, away from interference by other police performances done in a larger multi-purpose office.

Taking the emotional and social situation seriously — in Brazil since 1985 there are 475 women-only police stations where women feel better served than in the usual police stations. The Korean police has specialized units to serve the victims of sexual assaults — one stop sexual assault centers. There are nurses on duty, evidence can be taken in a way that respects human dignity of victims, respects their feeling of shame and their needs for privacy. Social workers and or clinical psychologists interact with the victims.

It is necessary for the police to protect the identity of victims — no press release with the names of victims! Respect for the dignity of victims means to take their fears seriously: victims must be allowed to bring trustworthy attendants to hearings. It must be considered to allow a lawyer on the side of the victim. There are many opportunities to help victims in the difficult situation during the investigation: Japan has very successfully used experienced retired policemen and prosecutors to give information, to provide escort services to hospitals, to assist in situations where personal protection is needed. There are countless situations where victims need counselling and information.

B. The Trial Phase

1. Waiting Rooms for Victims and Services for Victims in the Court

Victims suffer if they have to wait — together with the defendant! — in front of the courtroom.

Since 1980 the international victimological scene is informed about the need for special waiting areas in courts.[10] It took twenty more years until the first victim waiting room was installed in a court in Germany. It was so difficult to convince judges and the administration of justice that such a service is needed. The professionals in the court took it almost as a personal offence that there was the suspicion that they would not take care of obvious needs of victims. It was simply that judges and prosecutors were not aware of the fears of victims. It is not enough to have these waiting rooms where victims can wait separated from the offender, it is very much needed to have social workers attending the waiting victims and witnesses. In Germany, there are regular training courses for "Professional Caretakers of Victims and Witnesses" in the court houses. These professionals give information. They provide guidance, They can explain what victims can expect in the courtroom. They guide victims through the physical appearance of a courtroom. Judges and prosecutors had to learn to think about these services as positive — of course they thought that it is not so difficult to serve as witnesses. They simply forgot how intense the fear and the nervousness and the insecurity of witnesses in front of the court are!

Nils Christie[11] has convincingly described that courts — for non-insiders — are a "jungle". Even for lawyers it is very difficult to find the physical way through this jungle, to find the right courtroom where the case is heard. It is even more so for the material orientation. For people working in criminal justice, proceedings and routines are self-understood and daily experience. But all these routines are a "terra incognita" for victims, frightening, confusing, disorienting. His ingenious essay "Conflicts as Property" can be used as a primer in the need of victim-witness orientation services in the courtroom. Christie shows that the traditional criminal justice system serves its own interests. The smooth running of criminal proceedings and the ease to achieve convictions is often more important for legislators than the service to victims.

2. Protection of Special "Vulnerable" Victims

Occasionally it is needed to protect witnesses/victims by the use of screens, by closed circuit TV, by video recording of the testimony. That means investment of money and technical training, but it means primarily the development of an awareness of the persons working in the criminal justice system, of judges and prosecutors and lawyers.

3. Victim Participation

The Declaration demands to allow the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice for the accused and consistent with the relevant national criminal justice systems (D 6 (b)).

This blends into the discussion about "victim participation". If we read the declaration very exactly, participation is a very broad interpretation: 6 (d) gives the right for victim input if national legislation already provides this possibility, and this input — of course, why else is it given? — must be considered by the court.

Discussing "victim participation" is unavoidable for any criminal justice system — after the seminal analysis of Nils Christie. He analyzed the need for involvement of victims in finding the solution of the conflict that he described as a "property of the lawyers". He provoked with his thesis: lawyers have stolen the conflict from victims and offenders. His vision of "giving the conflict back to the owners" — to the victims and the offenders — has opened the way of the traditional vertical system to include more possibilities of the victim to participate in the vertical system. It was like opening the gate of the vertical system to allow more meaningful elements of horizontal victim oriented solutions.

4. Victim Impact Statement and Side Prosecution

Criminal justice systems have developed the institution of the "Victim Impact Statement" to enable the victim to play a more active role in the proceedings. The lack of active role was seen as a major deficit of existing systems. It is almost self-understood that these systems were introduced without ever empirically researching whether victims really want such a position. Different criminal justice systems

[10] Viano, E.: Zeugenwarteraeume. In Schneider, H.J. (ed.) 1980 Opfer in Internationaler Persepektive. Berlin (de Gruyter).
[11] Christie, N.: Conflicts as Property. In British Journal of Criminology, 1977 (17) no. 1, p.1-15.

may share one experience — that victims are not so much interested in being involved in the trial.

It is a very important field. In the traditional criminal justice systems — as they developed in Europe in the nineteenth century and as they developed the criminal justice systems in the world, the victim had to answer questions. The judge determined basically what "belonged to the matter" — all what did not belong to the matter, was superfluous and wrong. That silenced at least those victims who wanted to tell "their" stories. This "silencing" is interpreted as not taking victims seriously. It is an example that structural constraints are faced by the victim. In reality, the limitations of the victim impact statement cause new problems. These problems are avoided if the system gives to the victim the right of full participation like it is done in the German system of "Side Prosecution" (*Nebenklage*).

Some jurisdictions have allowed the victim to act as a "side prosecutor". In these cases, the victim has the right — enforceable — to be admitted as "side prosecutor", sharing the position of the prosecutor in equal rights. It is highly interesting for victims, for example, of rape to be represented during the whole court proceeding. It is highly interesting for victims to not only react to questions but to be able to ask questions. This institution is very well developed in Germany. At times, the institution was attacked. Experts in criminal procedure demanded its abolition: it was seen as a private "instrument of revenge". Nowadays, it is a very welcome shield against the demand of victim activists for more influence on the proceedings. Contrary what one would expect, in Germany, the side prosecutor is usually quite passive — the institution is used to prepare the civil law case against the offender. Victims and their representatives are not so much interested in demanding higher punishment — that even would taint most probably the perception of the court and give extra ammunition to the defence lawyer. I therefore will not repeat the arguments that are usually made in favor of side prosecution as an instrument to give the victim an opportunity to introduce its viewpoints into the criminal proceedings. "*Nebenklage*" is an institution that is strictly ruled by principles of criminal procedure. Therefore it does not compare to the *partie civile* in French influenced legal systems.

5. Refund for Victim/Witnesses

Victims need to be refunded for the costs they have to face when they are called as witnesses. If the accused is sentenced, he has to pay the costs — if he is too poor, then the victim has to pay these costs. It does not need recourse to the Declaration and to principles of compassionate treatment to expect that the state alleviates the burden of the victim. In any case, victims need to be refunded for their costs of the participation in the traditional criminal proceedings when they have to serve as witnesses. The refundable costs include:

- Refund for transportation costs to the courthouse (limited to the costs of public transportation) for public transportation
- Refund for parking fees
- Refund for loss of income — usually with a cap on the amount of hours and the value for single hour
- Refund for household assistance
- Refund for food and hotel
- Covering the costs for necessary support services (blind persons, handicapped victims)
- Cost for child care

6. Review of the Decision of the Prosecutor

Victims often have the right to seek a review of the decision of the prosecutor not to prosecute. This right is not given in most jurisdictions. Especially in systems who use the system of plea bargaining extensively — in the USA to 96% of the indictable offences — it is difficult to imagine installing this right.

A full revision is possible in Germany: If the prosecutor wants to drop a case, he has to inform the victim. The victim can administratively appeal. That has the consequence that now the deciding prosecutor has to report to the Chief State Prosecutor who makes a decision — either in favor of the victim or in favor of the decision to drop the case. In this case, the victim can — with the help of a lawyer — appeal to the highest court in the state which then will decide.

There are many possibilities to subject the prosecutor to a kind of scrutiny if they do not want to prosecute. In Japan, there is a special administrative proceeding. It makes it possible to review the decisions of the prosecutor and finally is able to force prosecutors to prosecute. The value of these kinds of possibilities is that prosecutor's decisions are reviewable from outside the prosecution system — within limits. For victims, it at least offers the theoretical possibility that prosecutorial decisions are reviewed. A problem is that there are only decisions possible to prosecute or not to prosecute. Much more fruitful for victims would be not to seek punishment but to seek peaceful solutions in the dimensions of restorative solutions.

7. Private Prosecution

In a limited scope of crimes, some jurisdictions introduced "private prosecution". In Germany the prosecutor in some cases can recommend to the victim to act as private prosecutor. Private prosecution means that the victim has all the rights of a prosecutor against the defendant. This institution is quite disputed among the legal profession: There is an enforced mediation procedure and victims can only prosecute when there is a certificate of a fruitless mediation attempt. 50% of all these cases in the biggest state of Germany are solved by peaceful mediation, by an apology or by payment to a non-for-profit organization (not a fine). Another bulk of the cases ends with a peaceful settlement in front of the judge. There are professors who evaluate private prosecution as very unsuccessful — since they do not result in sentencing and punishment. I think these proceedings are very successful: the vast majority of cases are solved without resorting to punishment, and that is a strength of a society and a success for freedom and compromise.

The idea of private prosecution rests on an — often false — image that victims are vengeful and that they need punishment. It is less the idea of improving the position of the victim. It is the idea to make punishment possible even if the prosecutor does not see a public interest in punishing. But that is not at all in public interest but in the interest of revenge-seeking victims. It is therefore highly welcome that the *Privatklage* in Germany so rarely leads to a punishment of the offender.

Restorative elements are often included in the way criminal justice proceeds. But that is outside of the topic of my presentation. Very fruitful was the decision of the German legislature: The behavior after the offence, especially the serious attempts of the offender to reach an agreement with the offender (Offender — Victim — Mediation) has to be taken into account in sentencing. That led to a mushrooming in cases that are solved with mediation. It is very sad that the European attempts to solve a problem, are so rarely known.

C. Victim Aspects in Probation and in Parole

Since probation is part of the sentencing, it does not need to be discussed here. Parole hearings: The UN Declaration says nothing about parole hearings. In Japan, the victims do not have a right to make a statement in front of a parole office or a parole board. The same is true for Germany. No matter how much victims might express their plight and suffering and how much they express their expectation for a negative decision of the parole authority. The Declaration is quite careful: Victims should be able to express their opinion "without prejudice to the accused". If parole hearings were such "appropriate stages of the proceedings", then the declaration would have used the word "sentenced" or "convict". To augment this more formal reason, the material parole decisions must be based on the future dangerousness and development of the convict. Victims cannot have any information about this.

And they should not be heard in parole proceedings. It would decrease the parole rate beyond necessity. It would increase victim disappointment. Input of victims in parole decisions is not only dangerous, it is counterproductive. In the USA, victim support organizations very often rally against decisions of parole boards who do not have the independence of a court. Regularly there is an outcry of anger and rage against the chance that offenders are released "prematurely". Such an outrage can

be organized by means of telecommunication. Organized public "outrages" are really no help for a society which tries to solve its conflicts peacefully. In Germany, there is no sign that the justice system is in any way impressed by demands for stiff sentencing, and comparably Germany is known for rather mild sentencing.

This brings the discussion back from more technical details to the idea that is behind all the efforts to bring "victims" into the right place in the criminal justice system.

D. Victims in Corrections

In Japan, there are Victim Awareness classes in the correctional institutions. These victim panels play an important role in prisons. They belong to the resocialization efforts in corrections. The Belgian correctional system is very far advanced in bringing victimological aspects into the treatment of offenders. Every prison in this country has a victimological expert in a high ranking correctional position.

VI. CONCLUSION

In one of the preceding UNAFEI seminars on victims the famous victimologist and criminologist Ezzath Fattah[12] lectured here in this place. Fattah pointed out that "victim lingo" often hides a conservative, law and order orientation which is anti-offender and which brings the criminal justice system to more stiffness and harsher sentencing. I agree fully with my highly respected colleague. Fattah rightly attacks the political propaganda of some victim support groups who are in accord with law and order orientation. There is indeed a danger that well-organized voices of some victim assistance organizations stir up emotions against offenders. The rhetoric of "We are for victims and therefore against offenders" — belongs to the repertoire of political arsonists. Progress in the position of the victim has to do with taking the victim seriously. It is necessary to revise old positions. Avoidance of secondary victimization is in line with striving for a world with less fear and less avoidable repression.

It is difficult to see what punishment sustainably does for the alleviation of the pain of victims. Punishment has not healed a single wound. Financial damage cannot be restored by punishment. Forfeiture of assets, illegally and criminally gained, may be much more healing — especially if the money is used to repair the damage of the victim. Why is it not possible to put fines on probation? A condition of probation could be that the offender compensate the victim. Is the financial interest of the state more important than the interest of the victim in restitution of damages? Legislators can do a lot to make sure that the criminal justice system takes care of the interests of victims.

A less pretentious goal might be to strive for a system that does not damage victims. Avoidance of secondary victimization is of great importance. If criminal justice serves to achieve a peaceful world with a minimum of violence, then avoidance of secondary victimization is even more important than sentencing. It is a miscarriage of justice, when sentencing leads to avoidable secondary victimization. It is better that a guilty offender is acquitted than that "justice" is done while victims suffer avoidable secondary victimizations.

[12] Fattah, E.A.: Victimology Today: Recent Theoretical and Applied Developments. UNAFEI Resource Material Series No. 56, December 2000, p. 60-70; The Vital Role of Victimology in the Rehabilitation of Offenders and in Their Reintegration to Society. UNAFEI Resource Material Series No. 56, December 2000, p. 71-86.

PARTICIPANTS' PAPERS

THE ROLE OF THE VICTIM IN THE CRIMINAL PROCESS AND USE OF RESTORATIVE JUSTICE PRACTICES IN BRAZIL: PROBLEMS AND CHALLENGES IN SEARCH OF PRINCIPLES AND NATIONAL GUIDELINES

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I. INTRODUCTION

This article aims to briefly present notions of victim participation in criminal proceedings and on the use of restorative justice practices in the criminal justice system in Brazil. Thus, initially, we present an overview of the role of victims in Brazilian criminal proceedings, highlighting the recent changes in legislation that gave greater importance to the victim in the criminal prosecution.

Whereas one of the basic principles of restorative justice refers to the rediscovery of the victim in criminal proceedings, some good practices of restorative procedures used in Brazil will also be presented, which highlight, to some extent, the victim's role in conflict resolution.

Finally, taking into account the cultural and normative constraints existing in Brazil on the subject, this paper exposes the challenges and issues which should be discussed in order to develop a national programme with basic guidelines for the application of restorative justice practices in the country.

II. THE ROLE OF VICTIMS IN THE BRAZILIAN CRIMINAL SYSTEM

The Brazilian criminal justice system follows the Civil Law tradition, due to the strong influence of the country's colonization by Portugal, from the sixteenth century onwards. Thus, the models of conflict resolution and the sanctions used by the indigenous communities had little influence on the formation of the judicial culture in Brazil and, therefore, are studied very little in Brazilian legal literature.

By the time of the Brazilian colonization, Portugal already used a criminal justice system based on the expropriation[1] of the conflict from the victim, and on the monopoly of its solution by agents of the State. This characteristic had a strong influence in shaping the current criminal justice system of Brazil, and especially in building a legal sensibility that values the role of a third party, the professional judge in the case, to resolve social conflicts.

This expropriation of the victim's conflict by the State is reflected in the Brazilian legal system in the Federal Constitution, which restricts to the Prosecutor's Office, as a general rule, the proposal of all public prosecutions[2]. Basically, in Brazil, there are two ways to initiate criminal prosecution: a) through public action (indictment); and b) through private action (criminal complaint). In the public criminal action, there may be two other hypotheses: the criminal action conditioned to a representation —which can only be filed by prosecutors with the previous consent of the victim—and the unconditioned public criminal action, which regardless of the opinion or will of the victim can be filed by the prosecutors[3].

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[1] The term expropriation of conflict is widely used in Brazilian legal literature and has a strong significance beyond the exclusion of victims of the conflict, as it is also related to the importance of property in our culture.

[2] Article 129. Institutional functions of the Prosecutor's Office:
I - promote, exclusively, public criminal action, according to the law;

[3] There is also the public prosecution subsidiary, which is offered by the victim, in the case of inertia of the prosecution, but it is rarely used.

As a general rule, the punishment for crimes deemed most serious is done through the public prosecution and they represent the vast majority of criminal conduct typified in the abstract in Brazil. Only a few criminal offences, most of them lighter ones[4], rely exclusively on the initiative of the victim through a criminal complaint or a representation for the indictment.

Moreover, in addition to the concentration of most of the initiative to start the criminal process in the hands of the State, through the public prosecutors, there is another big barrier that hinders or even prevents the resolution of disputes through conciliation: the principle of obligation. In general, this postulate consists in the unavailability of prosecution by the prosecutor, whose duty is to take action every time that he takes cognizance of a criminal offence which entails a public criminal action, when it is not the case to terminate the investigation[5]. In this case, if he does nothing, he commits the crime of prevarication. Thus, the principle of obligation complicates the search for alternative solutions to the conflicts in the criminal legal system in Brazil, and contributes to a lack of participation of the victims in most crimes.

However, following global trends related to restorative justice, as well as the increased focus on the need to increase the participation of victims in the criminal prosecution system[6], and also in the context of the resolution of the General Assembly of the United Nations 40/34, November 1985, which provides for the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Constitution of 1988 (the seventh Brazilian Constitution) provided for the creation of a simpler justice system to manage less serious conflicts—civil and criminal—which would be based on the principles of morality and simplicity, and would allow interaction and agreement between offender and offended[7].

Seven years after the promulgation of the Constitution in 1988, the Brazilian National Congress enacted Law 9.099/95, which created the Special Criminal Courts at the state level[8], which brought an important starting point for the development of restorative justice practices in the country.

A. Law 9.099/95—Law of Special Criminal Courts

The Law 9.099/95, drafted with the spirit of minimal intervention of the criminal law, has the basic principles of morality, simplicity, informality, judicial economy and expediency, seeking, wherever possible, reconciliation and transaction, in crimes whose maximum penalty does not exceed two years in prison[9]. Generally, the prosecution of these less offensive crimes can be initiated only with the consent of the victims. However, there are several criminal offences of public criminal action encompassed by this law, for example, abuse of authority (Law 4.898/65), environmental crimes (Law 9.605/98) and crimes against consumers (Law 8.078/90).

In the crimes in which the victim's participation was already needed to start the criminal process,

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[4] The prosecution for the crime of rape, despite not being minor crime, is of private prosecution, because it is understood that it should fit the victim in this case, the decision to undergo, or not, to the scandal of the process.

[5] The prosecution is expected to promote the termination of investigation, when it is believed that there is no crime in the case, or investigation line capable of obtaining the evidence needed for the public criminal action.

[6] Ricardo Luiz Barbosa de Sampaio Zagallo notes the increased participation of victims in proceedings after Nazism. This subject was also treated in some congresses around the world. In his master's thesis, he evaluated some practices of restorative justice in Brazil, following the principles developed by John Braithwaite. His work is available at ‹http://repositorio.unb.br/bitstream/10482/7687/1/2010_RicardoLuizBarbosadeSampaioZagallo.pdf›, accessed 26/10/2013.

[7] Article 98. The Union, the Federal District and the Territories, and States shall establish:
I - special courts, filled by professional judges, or professional and lay judges, competent for conciliation, trial and execution of civil suits of lesser complexity and criminal offenses of lower offensive potential through accelerated, and oral procedures, allowed in the cases provided in law, settlement and judgment of appeals by panels of judges of first instance;

[8] Later, it was also introduced the Law 10.259/01, which, with the same conciliatory principles of the Law 9.099/05, dealt with the federal crimes in which the victim are the Union and its legal entities.

[9] In Brazil, all conduct considered to be a criminal offence is subject to punishment with imprisonment, which, in some cases, depending on the subjective aspects of the offender's conduct and the aim of the conduct itself, may be replaced by alternative penalties, such as restriction of specific rights or community service. However, with the enactment of Law 11.343/06, which deals with combating crimes related to trafficking in narcotics, the crime of use of drugs doesn't receive anymore the penalty of deprivation of freedom. Moreover, for material impossibilities, there is also no punishment of prison for the crimes committed by a legal entity, as provided for by the Law 9.605/98.

this participation was highlighted by Law 9.099/95, as, before the beginning of the prosecution, a conciliation hearing is needed to be held, where the victim and accused will be present. The hearing is guided by a conciliator, who helps both parties to discuss a possible deal, a composition of the damage or any other measure that satisfies the victim, which will then be approved by the judge. If the reconciliation is successful, the victim waives the right of representation or to file a complaint against the perpetrator, and the case is closed with the approval of the judge.

Furthermore, for the crimes that depend on the action of the prosecutor to start the criminal prosecution, Law 9.099/95 provided some flexibility to the principle of obligation, creating the possibility of reconciliation[10]. In this transaction, the public prosecutor enters into a deal with the offender: the prosecutor won't initiate criminal prosecution if the offender fulfills certain requirements, including providing compensation for damages suffered by the victim, attendance in court with some frequency over a period of time, the prohibition of visiting certain places, providing community service, etc. Besides permitting reconciliation, Law 9.099/95 also establishes the conditional suspension of the criminal process[11]. In this second measure, the criminal process already has been started, and the public prosecutor may propose the suspension of the process, subject to the offender's compliance with measures similar to those already mentioned, within a certain time interval. If the accused follows the restrictions, after the agreed time period has passed, the process is extinguished, and he cannot be punished for this crime.

In these 18 years of enactment of Law 9.099/95, while bringing significant changes in the criminal justice system in relation to the participation of victims, some Brazilian jurists, as Aury Lopes Júnior[12], have some criticisms of it, since one of its basic philosophies, the deployment of conciliation

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[10] Article 76. If there is representation or in the case of the crime of public criminal action, not being the case filing, the prosecutor may propose the immediate application of a penalty of rights restriction or fine, to be specified in the proposal.
§ 1 In the cases that the fine is the only penalty applicable, the judge can reduce it to half.
§ 2 There won't be a proposal if it is proved :
I - have been the offender convicted of a crime, and applied the penalty of imprisonment by a final judgment ;
II - have the agent previously received, within five years, the application of restrictive penalty or fine under this article;
III - the background, social behavior and personality of the agent, as well as the reasons and circumstances of the crime, doesn't indicate that the transaction is necessary and sufficient.
§ 3 Accepted the proposal by the offender and his counsel, it will be submitted to the Judge.
§ 4 Accepting the proposal of the prosecutor accepted by the offender, the judge will apply the penalty of restricting rights or fine, it won't be counted to the verification of relapse, being registered just to block the concession of the same benefit within five years.
§ 5 From the sentence in the paragraph above will fit the appeal referred to in art. 82 of this Law.
§ 6 The imposition of the sanction in § 4 of this article shall not bear a certificate of criminal record, except for the purposes specified in the same device, and will not have civil effects, leaving it to interested propose appropriate action in the civil court.

[11] Article 89. In crimes where the minimum penalty is equal to or less than one year, covered or not by this Law, as he presents the indictment, the public prosecutor may propose the suspension of the procedure for two to four years, if the accused isn't being processed or has not been convicted of another crime, present the other requirements that authorize the probation (art. 77 of the Criminal Code).
§ 1 Accepted the proposal by the accused and his counsel, the Judge, after receiving the indictment, may suspend the process, subjecting the accused to a trial period, under the following conditions:
I - repair the damage, unless unable to do so;
II - prohibition from attending certain places;
III - ban to absent from the county where he resides, without authorization of the judge;
IV - personal and mandatory attendance to the court each month to inform and justify his activities.
§ 2 The judge may specify other conditions which shall be observed during the suspension, which shall be appropriate to the fact and the personal circumstances of the accused.
§ 3 The suspension will be revoked if, in the course of the term, the beneficiary were to be prosecuted for another crime or not perform, without justification, the repair of the damage.
§ 4 A suspension may be revoked if the accused were to be processed, in the course of the term, for a misdemeanor, or breaches any other condition imposed.
§ 5 The deadline expired without revocation, the judge will declare extinct the punishment.
§ 6 The prescription won't run during the period of suspension of proceedings.
§ 7 If the accused does not accept the proposal under this article, the process will continue in their later terms.

[12] AURY LOPES JR. "DIREITO PROCESSUAL PENAL - 9ª edição." Editora Saraiva, 2012-04-05T13:07:29+00:00. iBooks.

in the context of criminal law, was frustrated by the "resurrection in the social imaginary of criminal misdemeanors and other criminal offences of minimal social relevance". In fact, some criminal conduct that, before the enactment of Law 9.099/95 was not even subject to registration in police stations, such as honour crimes, disturbing the peace by neighbours and other incivilities, returned to the police counters, and are sent to the Judiciary for the implementation of the quicker procedure of the the Special Criminal Courts. Hence, rather than a reduction in the size of the state intervention, there was a considerable increase, so that such demand represents a significant portion of police work in the Civil Police of the Federal District.

Another criticism of the procedure of Law 9.099/95 is founded on a survey conducted by the Ministry of Justice of Brazil, in 2010, which concluded that, because there is little room for victims to present their views at the judicial hearings, as the legal professionals end up dominating the negotiations and the time to negotiate reconciliation is short to meet the high demand. Therefore, some victims leave unsatisfied with the conciliation, and they are often unhappy with the proposals made by the prosecutor[13].

Undoubtedly, Law 9.099/95 inaugurated a new philosophy in the criminal justice system. It encouraged and enhanced the participation of victims in criminal proceedings, as before it was completely ignored, serving only as means to an end.

However, the aforementioned law also inaugurated a serious discussion nationwide about the trivialization of domestic violence against women, that many times took the guise of low offence crimes, and so received only light punishments (community service and payment of money), mainly in cases of physical harm against wives and companions.

Furthermore, the complexity of the situation of domestic violence, in which generally the women are financially and emotionally dependent on the perpetrators, influenced them to make arrangements, using the restorative tools of Law 9.099/95, to ward off criminal liability of the offender, as the start of the prosecution relied on the representation of the victim.

In this context, to address the need for specific treatment of gender violence against women, Law 9.099/95 was amended to prevent the application of the mentioned instruments in these cases. Furthermore, because of this modification, the Brazilian Supreme Court ruled that criminal action on the crime of corporal injury, in the context of domestic violence against the woman, is public and unconditional and not private anymore.

B. Law 11.340/06—The Maria da Penha Law

An important legislative instrument enacted in Brazil in 2006, as a major victory for the defence of women's rights, was Law 11.340/06, which, besides creating concrete measures to curb domestic violence against women, brought more legal instruments to ensure protection of victims of this type of crime both in the civil and in the criminal sphere. The need to promote mechanisms for the prevention and repression of domestic violence is also a topic in the Brazilian Federal Constitution[14].

Law 11.340/06 is known in Brazil as the Maria da Penha Law, in honour of Maria da Penha Maia Fernandes. She fought for twenty years to see her companion arrested, due to an assassination attempt that occurred in 1983, in which she was shot in the back while asleep and became a paraplegic. Then he tried to kill her again through electrocution in the shower. The trial took place eight years after the crime, but the conviction was overturned in 1991. In 1996, there was a new trial that resulted in a sentence of 10 years in prison, but the defendant appealed. After great international pressure, the case

[13] MINISTRY OF JUSTICE, Office of Legislative Affairs. Final research report: The victim in criminal proceedings Brazil: a new role in the contemporary scene? Available at: 〈http:// participacao.mj.gov.br / pensandoodireito / wp-content / uploads / 2012 / 12 / 24Pensando_Direito_relatorio.pdf〉, accessed on October 24, 2013.

[14] Article 226. The family, the basis of society, has a special state protection.

§ 8 - The State shall ensure assistance to the family in the person of each of the members, creating mechanisms to suppress violence within their relationships.

was sent to the Commission on Human Rights (OAS), which received, for the first time, a complaint of domestic violence. Brazil was then condemned for negligence and failure to respond to such aggression, and was assigned as punishment the preparation of appropriate legislation to respond to this type of violence.

The aforementioned law brought a rather broad concept of domestic violence against women —defined as any action or omission based on gender that will cause death, injury, suffering physical, sexual, psychological and moral or patrimonial damage—which facilitates the protection of the victims by public agents, such as the police, the prosecutors and the judiciary.

Additionally, Law 11.340/06 established expedited procedures for immediate protection of the victims of domestic violence. So, as soon as the aggression happens, the victim must head for a police station, where she will declare the facts in an official document and request protective measures[15], which range from restriction of rights—suspension or restriction of possession of firearms, prohibition of approaching the victim or his family or contact with the victim by any means—to the removal of the aggressor from the common home and the provision of aliments to the victim. After the application, the Police Authority must send it within 48 hours to the Court, which will consider the request promptly. If the protective measures are imposed, the offender will be informed, and, in case of noncompliance, he may have his freedom curtailed.

In more severe cases, where the victim is at risk of death, there is the possibility of referral to a shelter house, whose location is kept secret, and also the possibility for victims to receive aid from the state for their survival until the threats cease.

In light of the need to empower the victim in the criminal justice system, an important dilemma to be evaluated is a recent decision of Brazil's Supreme Court, which, in cases of domestic violence with bodily injuries, the criminal action is public and unconditioned, and the victim's will is disregarded. The aim was to offer better protection to women, as many times they were coerced to withdraw the charges, and this new interpretation made it impossible. On the other hand, this interpretation has also expropriated the conflict from the women, and blocked her from seeking a bargained solution to solve problems within her own family. The question, however, remains open, and also represents another challenge for the discussion of the implementation of the principles of restorative justice in Brazil.

C. Recent Changes and News with Discussions of the CP and the New CPP

The Brazilian Code of Criminal Procedure (1941) and Penal Code (1940), legislation in existence for over 70 years, presents a philosophy originally directed to the expropriation of the victim's conflict,

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[15] Article 22. Confirmed the practice of domestic and family violence against women, under this Law, the judge may apply immediately to the offender, together or separately, the following urgent protective measures, among others:
I - suspension of possession or restriction of authorization of bearing arms, with communication to the competent body, in accordance with the Law 10.826/03;
II - removal from the home, residence or place of coexistence with the victim;
III - prohibition of certain conducts, including :
a) approximation of the victim, her family and witnesses, fixing the minimum distance between them and the offender ;
b) contact with the victim, witnesses and their families by any means of communication;
c) frequenting certain places in order to preserve the physical and psychological integrity of the victim ;
IV - restriction or suspension of visits to minor dependents, heard the multidisciplinary team or similar service;
V - providing provisional or temporary aliments.
§ 1 The measures referred to in this Article shall not preclude the application of other under the laws in force, where the safety of the victim or the circumstances so require, and this other measure shall be communicated to the prosecutors.
§ 2 In the case of application of item I, finding the perpetrator under the conditions mentioned in the heading and items of Article 6 of Law 10.826/03, the judge shall inform the respective body, corporation or institution the urgent protective measures granted and determine the restriction of carrying weapons, becoming the immediate superior of the abuser accountable for compliance with the Court's order under penalty of the crimes of disobedience or prevarication, as appropriate.
§ 3 To ensure the effectiveness of urgent protective measures, the judge may order, at any time, assistance of the police force.
§ 4 Applies to the cases specified in this Article, as applicable, the head and the paragraphs 5 and 6 of Article 461 of the Law 5.869/73 (Code of Civil Procedure).

focusing the response to crimes on state agents, without taking much into account regarding the wishes of the victim.

However, such statutes have undergone various changes over time in order to be harmonized with the new philosophies of criminal process relating to the minimum penal law paradigm, the valorization of the victim in criminal proceedings and measures of Restorative Justice.

In this context, for example, the Code of Criminal Procedure undergone significant changes through the recent laws 11.719/08 and 11.689/08, which brought an appreciation of the victims, expanding their rights and guarantees. They brought, for example, the right of the victim to be alerted of the arrest or release of the accused, and the possibility of overlapping the criminal action with the request for compensation for the damage caused by the crime.

These limited reforms to the Brazilian system of criminal justice undermine the notion of its systemic ordering, so currently there are, in the final stages of discussion, two bills to replace, in full, both the current Criminal Code and Criminal Procedure Code.

Regarding the victim's rights, the new project of the Criminal Procedure Code—Bill 156/2009—provides for a new chapter on the subject, in which the victim is no longer considered just an instrument of evidence to support the conviction of the accused, but happens to be a subject of rights. Hence, in keeping with the content of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, approved by the United Nations in 1985, the new code proposes, in the course of sixteen statements[16], better treatment of victims with the principles of compassion and respect for their dignity, as well as psychosocial assistance and immediate treatment of any traumas resulting from the offence.

Moreover, despite plans to eliminate private criminal action, the victim will be able to directly follow the criminal case, receiving copies of the police investigation and judicial proceedings, which is not the usual practice today, except when enacted confidentiality in the investigation's interest.

Another novel measure that the future Code of Criminal Procedure will provide, if approved, is the possibility of the victim receiving financial aid from the State both for her and for her close relatives. This is important in order to avoid secondary victimization of the offended, consisting of difficulties experienced throughout the criminal process because of the crime.

The bill of the new Penal Code, Bill 236/2012, also introduces modifications which, albeit timid, are important in relation to the rights of victims. It introduces, for example, the incidence of automatic fine against the perpetrator when the crime generated harm to the victims, to their benefit, and the judge's obligation to fix aliments for family members of homicide victims, to be imposed on the accused.

Despite these measures, it appears that, in the discussion of the construction of the main legal

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16 Article 91. Are rights guaranteed to the victim, among others:
I - to be treated with dignity and respect befitting his situation;
II - receive immediate medical and psychosocial care;
III - to be sent to a forensic exam when suffering personal injuries;
IV - recover in case of crimes against property, objects and personal belongings which were stolen, except for the cases in which a refund cannot be done immediately because of the need for expert examination;
V - to be informed of:
a) the arrest or release of the alleged perpetrator;
b) the completion of the police investigation and the offering of the indictment;
c) the filing of any investigation pursuant to Article 39;
d) the conviction or acquittal of the accused ;
VI - obtain copies of parts of the police investigation and criminal proceedings, except when justifiably kept in strict confidence;
VII - be counseled about the appropriate exercise of the right of representation, the private action subsidiary of the public, civil action for patrimonial and moral damages, the civil accession to the criminal prosecution and about the composition of the damage to effect the extinction of criminal liability in cases prescribed by law;

instruments for the consolidation of a criminal justice system, there still isn't a philosophy focused on the use of restorative justice practices in a systemic way, consolidated into a nationwide programme, nor is there sufficient attention focused on the valuation of the victim in criminal proceedings.

III. RESTORATIVE JUSTICE PRACTICES IN BRAZIL

Despite not being able to claim that there is a national programme aimed at restorative justice practices, it is possible to find in Brazil local examples of applying restorative programmes. Several factors, including the overcrowding of prisons—in December 2012, the Brazilian prison system had room for 310,667 inmates, and a prison population of 548,003 people—the index numbers for criminal relapse, the high costs for the maintenance of the criminal justice system, the difficulty in repairing the damage and dissatisfaction of victims with the criminal proceedings are some of the factors that win more and more fans to the model of restorative justice.

Although there is no clear definition or consensus on what restorative justice is, it is understood as a set of practices aimed at conciliation and reconciliation between the parties, at the resolution of the conflict, the reconstruction of the ties broken by the criminal offence, the prevention of recurrence and personal accountability[17].

The Australian John Braithwaite believes that "restorative justice is a process where all people affected by an injustice have an opportunity to decide what should be done to fix it"[18]. Braithwaite outlines some key elements of the restorative justice model: 1) willingness to participate, 2) equal opportunities for the manifestation of the parties, 3) prohibition of humiliating punishments; 4) restoration of human dignity, property, security and the human relations. Besides these elements, the author points to other standards that attest to the success of restorative practice, for example, remorse for the injustice done, apologies, forgiveness of the victim and compassion.

Another important element that integrates the model of restorative justice is the responsibility of those involved, characterized by their empowerment to manage the conflict. Although there is a third side guiding the procedure, the parties directly involved assume the central role of the process, a task normally given to a third party, usually a state agent, in the traditional model of conflict resolution.

In Brazil, despite the indicated legal limits to the model of restorative justice, one can identify some pilot restorative justice projects. ZAGALLO pointed to three experiments: São Caetano do Sul, in the state of São Paulo; Porto Alegre, in the state of Rio Grande do Sul; and Núcleo Bandeirante, in the

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VIII - testify on a day other than the one stipulated for the hearing of the alleged perpetrator or wait in a separate location until the procedure begins;
IX - to be heard before other witnesses, according to the order under the heading of Article 276;
X - to petition the authorities to be informed about the progress and the closure of the investigation or proceedings, as well as express their opinions;
XI - get the offender to repair the damage, secure the assistance of a public defender for this purpose;
XII - intervene in criminal proceedings as assistant prosecutor or as civil suitor for the claim for indemnification;
XIII - receive special protection from the State when, due to his cooperation with the investigation or prosecution, suffering duress or threat to their physical, psychological and patrimonial integrity, being extended the protection measures to the spouse or partner, children, family and the like, if necessary;
XIV - receiving financial assistance from the Government, in specific cases and conditions determined by law;
XV - be referred to shelters or programmes for the protection of women in situations of domestic violence, if applicable;
XVI - get, through simplified procedures, the premium of the compulsory insurance for personal injuries caused by motor vehicles.
§ 1 It is the duty of all to respect rights under this title, especially the public security organs, prosecution, the judiciary, the government agencies and social services and health.
§ 2 The communications referred to in item V of the head of this Article will be made by post or e-mail address registered and will be done by the authority responsible for the act.
§ 3 The authorities will always careful to preserve the address and other personal data of the victim.

[17] PALLAMOLLA, Raffaella da Porciuncula. *Justiça restaurativa: da teoria à prática*. 1ª. ed. São Paulo: IBCCRIM, 2009. p. 53.

[18] ZAGALLO, Luiz Barbosa de Sampaio Ricardo. *A justice restaurativa no Brasil: entre a utopia e a realidade*. Available at ‹http://repositorio.unb.br/bitstream/10482/7687/1/2010_RicardoLuizBarbosadeSampaioZagallo.pdf›, accessed 26/10/2013.

Federal District.

The first two experiments concern the application of restorative justice practices to conflicts involving young people. The age at which a person may be responsible for a practice of criminal conduct, in Brazil, is 18 years. If the agents is between 12 and 18 years, he doesn't commit a crime, but an infractional act, resembling a crime, and is submitted to the infractional justice system, aimed at teenagers. This system, however, offers more flexibility in relation to the criminal justice system, because instead of being governed by the principle of obligation, the principle of opportunity is applied, through the possibility of remission provided for in Article 126 of Law 8.069/90 (Statute of Children and Adolescents)[19]. In the remission, the public prosecutor, before starting judicial procedure, can forgive the teenager, according to the circumstances of the case, subject to the approval of the judge.

Thus, in the city of São Caetano do Sul, the restorative justice project is intended to resolve conflict in the school environment, where restorative circles are established with the participation of victim and offender, their supporters, community representatives and two facilitators. Where conflicts involve the practices of infractional acts, the terms of the agreement, formulated in the restorative circles, are sent to the public prosecutor and subject to the approval of the Judiciary.

In the city of Porto Alegre, the use of restorative justice measures is also aimed at young people, but more broadly. The project covers not only school conflicts prior to the initiation of judicial proceedings, but there is also the possibility of submission to restorative circles during court proceedings and even in the execution of educational measures—the punishments in case of the practice of infractional acts.

Differently, the project implemented in Núcleo Bandeirante is intended to reduce crimes. Since 2006, the Court of Justice of the Federal District and the Territories created a center of restorative justice practices to work in conjunction with the Special Criminal Courts and improve the implementation of the institutes of the Law 9.099/95. Thus, when the public prosecutor, judge or public defender perceives a conflict with potential to be solved by those involved, they are referred to a restorative meeting. There, the best techniques of mediation will be applied to seek the solution of the problem and an agreement, or to prove its impossibility.

The timid practices of restorative principles in Brazil, as well as the weak measures for recovery of the victim's importance in the criminal justice system, point to the need for discussion of the subject in the country and to identify its challenges.

IV. CHALLENGES AND WAYS TO ENHANCE RESTORATIVE JUSTICE IN BRAZIL

When compared to the traditional way of resolving conflicts in the western world, especially in countries of the Civil Law tradition, the dialectical and consensual logic of restorative justice, more typical of the Common Law tradition, presents a break in the paradigm of criminal legal systems focused on the offender, to the detriment of the victim.

In this context, the concept of legal sensibility developed by the anthropologist Clifford Geertz is an important guideline for comparative studies of legal institutions based on different legal systems such as the Common Law and Civil Law. Geertz proposes a study that emphasizes the context of the

[19] Article 126. Before starting the procedure for judicial determination of an infractional act, the public prosecutor may grant remission, as a form of exclusion from the process, given the circumstances and consequences of the fact, the social context as well as the teenager's personality and its largest or lesser participation in the infractional act.
Unique paragraph. Initiated the procedure, the granting of remission by the judicial authority will imply the suspension or termination of the process.
Article 127. Forgiveness does not necessarily imply recognition or proof of responsibility, nor prevail for purposes of background and may eventually include the application of any of the measures provided by law, except the placement in the regime of semi-freedom and internment.
Article 128. The measures applied by virtue of the forgiveness may be judicially reviewed at any time, at the express request of the adolescent or his legal representative, or by the prosecutor.

institutions and their local significance, which lend it the legitimacy required to produce its organizing effect[20]. So he adopts the view that the right is a local knowledge, putting in question the roots of its legitimacy, founded by those who choose to owe it obedience, or that are required to do so.

From this premise, Roberto Kant de Lima briefly explains the different trappings of the idea of legitimacy in the Civil Law and the Common Law traditions. Under the Civil Law tradition, the legitimacy is based on abstract rationality, in which it is considered that the technical judgments, made by judges, are better than the judgments of ordinary people, who don't have access to a specialized legal knowledge. Differently, the legitimacy of the judgments under Common Law tradition is based on reasonableness, in which the parties discuss their arguments and the decision emerges from the consensus of the referees.

The valorization of the technical judgment of a third person is a deep-rooted tradition in Brazil, and this characteristic is essential for understanding the challenges of restorative justice in the country. In the criminal trial, the suitors adopt the practice of endless contradiction of versions, which is finished only with the sentence of the professional magistrate. In this context, rarely the parties adopt a consensual and dialectic approach.

It is a Brazilian cultural characteristic or legal sensibility which points to the need of building specific principles of restorative justice for the country. The traditional paternalistic attitude of the state towards its citizens is another cultural aspect of Brazilian society to be considered as a challenge to the application of restorative justice practices, and to the enhancement of the role of victims in criminal proceedings.

Considering the historical aspects of Brazil, as well as the youth of our Constitution, which reopened the Democratic State, as well as the socio-economic aspects of the country, in which there is great inequality between citizens, much of the population adopts a passive stance about the defence of their rights. Such a stance is not consistent with the principles of restorative justice, which value the capacity and autonomy of the parties to discuss the best solution to the conflict.

So it is critical to think about a model of restorative justice in Brazil that takes into account this passivity and encourages emancipatory practices in the use of conciliatory mechanisms. Alongside these cultural aspects, there is also a large formal challenge that still must be overcome at a systemic level: the relaxation of the principle of obligation.

As stated earlier, the bills of the new Penal Code and the new Code of Criminal Procedure bring only timid enhancements for the rights of the victims, and showed no major change in the prevailing logic of expropriation of the conflict. Without a relaxation of the principle of obligation, allowing the use of restorative practices for any type of crime, always according to the characteristics of the case, it is not possible to achieve great advances towards restorative justice in Brazil, as well as the appreciation of the role of the victim in criminal proceedings.

However, while these bills proceed through the Brazilian Parliament, the legislative procedure of Bill 7.006/06 is also going forward. This bill provides for the use of restorative procedures for all types of crimes, if it is advisable under the facts and circumstances of the case as well as the personalities of the parties. Under the mentioned bill, these procedures shall be governed by the principle of voluntariness, human dignity, impartiality, proportionality, cooperation, informality, confidentiality, interdisciplinarity, accountability, mutual respect and good faith. It appears that the proposal constitutes a true relaxation of the principle of obligation, enabling the prosecution to forbear criminal action while there is an ongoing restorative procedure[21]. It is also interesting to notice that, during the

[20] LIMA, Roberto Kant de. *Sensibilidades jurídicas, saber e poder: bases culturais de alguns aspectos do direito brasileiro em uma perspectiva comparada*. Anuário Antropológico/2009 — 2, 2010: 25-51.

[21] Article 14 - added to Article 24 of Decree-Law n. 3,689, of October 3, 1941, the third and fourth paragraphs, as follows:
§ 3 - The judge may, with the consent of the prosecutor, refer the case to the centers of restorative justice, when victim and offender demonstrate voluntarily intend to undergo the restorative procedure.
§ 4 - The prosecutor may not propose the criminal action while ongoing restorative procedure.

investigation, the police authority itself may suggest the referral of the parties to find a solution to the case through a restorative procedure. If an agreement is reached, with the consent of the public prosecutor, the judge will approve this conciliation[22].

Although Bill 7.006/06 presents a significant advance for the intensification and development of restorative justice mechanisms in Brazil, as it proposes important modifications to the current system of the Penal Code and Criminal Procedure Code, its rapporteur in the Parliament, Congressman Antonio Carlos Biscaia, opined for its rejection. He stated that, although the project is important, it goes against the desires of the Brazilian society, that currently suffers the feeling of impunity, as it would decriminalize behaviours.

However, the implementation of a restorative justice project in Brazil has nothing to do with decriminalization of behaviours considered criminal. Rather, it seeks more effective measures for the satisfaction of the parties involved, with the compensation for property, social and psychological damage. It promotes democratic and social accountability mechanisms in cases that recommend the use of restorative methods, irrespective of abstract legal prohibition. The sense of satisfaction after the success and effectiveness of a restorative circle, unlike the argument of Congressman Antonio Biscaia, leads to a reduced sense of impunity, not to its increase.

The possibility of greater freedom of the police authority also stands out as a breakthrough in Bill 7.006/06, in which the police may directly refer the parties to the restorative procedure.

In Brazil, police stations operate 24 hours, and are responsible for receiving most reports of crimes, recording them and ascertaining the facts. Victims seek the police and report the facts, which should be taken immediately to the Chief of Police, who is responsible for deciding whether or not the reported facts constitute a crime, and for explaining the procedures for the settlement of that conflict to the victim. In many cases, the Chief of Police just mediates the differing interests between the parties, which many times are characterized as family or neighborhood conflicts.

The possibility of the use of restorative instruments from the first contact of the victim or the offender with a state agent—what generally happens at the police station—would constitute a major breakthrough for the development of justice in Brazil, and to the construction of a more democratic criminal justice system. It would also promote a paradigm shift in the Brazilian legal sensitivity, which is grounded in the valorization of the "technique" of "knowledge-power".

V. CONCLUSION

The path to the development of restorative justice in Brazil, as well as the appreciation of the dignity of the victim in criminal proceedings, still requires hard work to be followed, although it is possible to say that some windows have been opened by means of restorative practices introduced by the Law of Special Criminal Courts and the Law Maria da Penha.

However, the major challenges related to the sensitivity of the Brazilian legal culture in relation to the valuation of technical judgments, instead of dialectic debate and emancipated citizens, present a major barrier to achieve a national project, based on the principles and guidelines of the restorative procedure, and the necessary relaxation of the principle of obligation. Despite these difficulties, it is important to continue following this path in practice in order to truly improve the Brazilian democratic state.

[22] Article 13 - It is added to Article 10 of Decree-Law n. 3,689, of October 3, 1941, the fourth paragraph, as follows:
§ 4 - The police authority may suggest, the investigation report, the referral of the parties to the restorative procedure.

RESTORATIVE JUSTICE FOR ADULTS AND JUVENILES IN THAILAND

*Dr. Angkana Boonsit**

I. INTRODUCTION

Thailand introduced restorative justice in the Ministry of Justice, both in the Department of Probation for adult cases and the Department of Juvenile Observation and Protection for juvenile cases.

Thai criminologists and criminal justice practitioners first learned about the concept of restorative justice in 2000. 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. The seminar has achieved quite a successful result. There was good feedback as the media has paid great attention to this new justice initiative. Several articles were published in major newspapers, both English and Thai, regarding restorative justice. Moreover, the restorative justice concept has been taught in advanced criminal law courses in the major law schools as well as in other criminal justice institutions. There were doctoral dissertations focused on restorative justice. Due to the success in the launching of the idea, Thailand's major research funding agencies had expressed their willingness to support further studies on the application of restorative justice in Thailand.

The first implementation of restorative justice practices occurred in 2003 when a family group conferencing initiative was set up by the Department of Juvenile Observation and Protection. In 2004, the Department of Probation also implemented victim-offender mediation using the name "to restore relation conferencing" for adult cases.

II. CURRENT SITUATION REGARDING RESTORATIVE JUSTICE IN THAILAND

A. Restorative Justice for Juveniles

1. The Step of Family and Community Group Conferencing

In the year 2000, the New Zealand government, through its Good Governance programme, invited the Director-General of the Department of Juvenile Observation and Protection, Mr. Wanchai Roujanavong, and his colleagues to New Zealand to be trained in child-friendly procedures for abused children. The process of family group conferencing (FGC) was introduced during the training period.

In March 2003, the Department of Juvenile Observation and Protection planned and prepared regulations and guidelines, including intensive training of staff, for Family and Community Group Conferencing (FCGC) implementation with the support of UNICEF. After all the preparations, the department launched the FCGC project and conducted its first family and community group conference on 1 June 2003. This was followed by implementation of the project, along with regulations and guidelines, in the 52 Juvenile Observation and Protection Centers around the country. These centers used and adapted versions of New Zealand's family group conferencing approach, and incorporated the community as a significant part of the process. This is because in Thai society the community plays a very significant role in nearly every aspect of the lives and social functions of the Thai people. Therefore, the conferencing approach in Thailand was called Family and Community Group Conferencing (FCGC).

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At the beginning, during the first three months, very few cases went through the FCGC process because the facilitators and directors of the protection centers throughout the country were not really confident in organizing the conferences. They were very cautious and needed a lot of advice in applying this measure, but as time went by with more and more experiences gained in FCGC, the majority of them admitted that they liked it and felt that it was a good measure for giving the children another chance in life. They agreed that it provided a venue for a child and his/her parents to openly discuss the problem, created a better understanding within the family, and gave victims the right to speak, participate and share their feelings. It also gave the community a chance to support the children and their parents in solving the problems that affected the community, and as a result, social harmony had been restored through the restorative practice.

In 2004, the department contacted the International Institute for Restorative Practices (IIRP) for technical support to integrate the Real Justice model into FCGC in Thailand to strengthen the practice. Mr. Ted Wachtel, Dr. Paul McCold and Ms. Beth Rodman, restorative practice experts with the IIRP, were invited to train several staff in the department to be trainers of FCGC facilitators. The trainers then went out to train other staff in all the protection centers to be efficient conference facilitators based on the Real Justice model.

2. Laws to Support the Practice

The implementation of restorative justice for juveniles in Thailand has developed quickly, in part due to a law supporting this practice, although not drafted for that purpose. This law, the Juvenile and Family Court and Procedure Act, has two relevant articles—Articles 50 and 63—that facilitate the implementation of FCGC. Article 50 provids that when a child is arrested, the police are obligated to send the child to the Protection Center within 24 hours. Article 63 gives the Director the Protection Center the authority to recommend a non-prosecution order to the prosecutor in the jurisdiction.

In making such a proposal, the Director uses his/her discretion based on three factors:

(1) Qualifications of the child need to fit the criteria: the offence committed is punishable by not more than 5 years' imprisonment, it must be the child's first offence, the child has to plead guilty and want to repair the harm done, and the victim has to give consent to use FCGC.

(2) the Director is of the opinion that the child can be reformed without being prosecuted in court;

(3) the child consents to be under the control of the Director during the follow-up monitoring.

Application of the law was not drafted with the purpose of benefiting FCGC; it was designed as an alternative approach in general.

Article 63 had been law for several decades without being used because the Director did not want to exercise this discretion alone. FCGC addressed this concern by drawing in the key stakeholders. Conference participants include the victim, the juvenile offender, the parent/s and relative/s of the child, a psychologist, a social worker, one or more representatives or the community, the Director of the Protection Center, the police investigator, the prosecutor, and the conference facilitator. Under the FCGC process, the decision to make a proposal for the non-prosecution order is a collective decision, derived from the brainstorming of all the participants in the conference, while the role of the director is to deliver the collective decision to the prosecutor.

In 2010, the Juvenile and Family Court and Procedure Act 1991 was repealed and replaced by the Juvenile and Family Court Act 2010 (B.E.2553) CHAPTER VII: Special Measures in Place of criminal Prosecution: article 86

- A child or juvenile is alleged to have committed a criminal offence that is punishable by maximum of 5 years' imprisonment.

- Child or Juvenile has shown repentance for his or her act before the prosecution, and the Director of the Juvenile Observation Center considers by taking into account the age, personal

records, behaviours, intelligence, education background, physical and mental conditions, occupation, financial status and cause of the offence, that the child or juvenile may reform himself or herself without the requirement for prosecution.

- The preparation of the Rehabilitation Plan shall be subject to consent from the victims and the child or juvenile.

- If it appears to the court that the process of preparing the rehabilitation plan is unlawful, the court may issue an order as it considers appropriate.

Article 87: In preparing a rehabilitation plan pursuant to section 86, members: child or juvenile and his or her parties, the victim parties and psychiatrists or social workers, may also invite community representatives or agencies that have relevant duties or that have been affected by the offence, or a public prosecutor. The rehabilitation plan shall be complete and proposed to the public prosecutor for consideration within 30 days from the date on which the child or juvenile has shown repentance for his or her act.

Article 90: When a prosecution is brought to the court against a child or juvenile and the alleged criminal offence is punishable by a maximum of 20 years' imprisonment. For both cases if the rehabilitation plan is fully complied with, the Director notifies the court, and the court issues an order to strike the case out of the case-list.

The Department of Juvenile Observation and Protection defines "special measures" as the alternative measures to prepare rehabilitation plans, and FCGC is used as a method for repentance showing. In some cases that juvenile can be rehabilitated without trial, under the condition that the juvenile has to change his/her behavior(s), restitution is paid, the damage is repaired, and something is done for social safety. The officials have to propose the rehabilitation plan to the prosecutor for consideration.

Experience has shown that preparation is the most difficult and vital part of the process. The conference facilitator explains the entire process, including the positive and negative aspects of FCGC, to the victim, the child offender and his/her parents. In many cases the facilitator has to approach the victim more than once. With good and appropriate preparation, failure in the conferences is very much reduced. So, the department uses FCGC in this process. The outcome of FCGC is used to prepare a rehabilitation plan.

B. Restorative Justice for Adults

1. The Step of Restorative Justice Implementation

The Department of Probation initiated a programme for adult offenders in 2004 when there was no law to support this practice for adult offenders. Fortunately, the Director-General of the department, Dr. Kittipong Kittayarak, is the leading thinker on restorative justice in Thailand, and there was a master plan of the justice system which supports the restorative justice approach. The vision of this plan was "to develop the justice system by enabling effective use and also enhancing a just and fair, restorative and peaceful society beyond an equilibrium between law enforcement and human dignity." The mission was "to promote and to develop the justice system and its mechanisms regarding rights/liberty of people, the community and other organizations. The rights of the victim are emphasized for enhancing a vigorous and harmonious society."

Restorative justice was included in this plan, under strategy No. 6, as a method of dispute resolution. So, in April 2004, the Director-General appointed the restorative justice committee in the department, which is composed of high level executives. The committee authorized to assign a framework and policy to run the restorative justice project. Even though there is no law to support this process, we considered the legal framework for how it could be done. According to the Probation Procedure Act, 1979, article 12 states, "When the court orders a probation officer to do a pre-sentence investigation report, the probation officer ha[s] to propose the social inquiry report which consists of the offender's social background and officer's suggestion within 15 days following the court order."

The committee decided to use restorative justice at this stage because the outcome of the conferenc-

ing or the agreement between victim and offender might be useful for sentencing. But not all offences in these types are eligible. Most of them must be compoundable offences, for example sex offences against persons over the age of 15, property offences against relatives and some petty offences.

Restorative justice was implemented by pilot project in 11 probation offices. After that, the regulations, the guidelines and the curriculum for mediator training were set up, and handbooks for mediation and for restorative justice procedure were compiled. In May 2004, the first training course was held on restorative practices in 11 probation offices. Only four months after that, in September 2004, the committee decided to extend the project nationwide.

From 2004-2006, there were 379 trained mediators, and each probation office had 1-2 mediators. By 2006, all directors of probation offices around the country were trained under a special curriculum aiming to manage restorative justice practices and support or encourage the mediator's work in their office. These developments show that even though there is no legislation specifically for restorative justice, we can implement restorative practices through policy.

By observation and experience, I found that most of the judges knew restorative justice by the pre-sentence investigation report which described restorative processes and outcomes. They were aware of the victim's voice and victim's needs, which were never previously recognized in criminal justice procedure. The parties' agreement has also been accepted as the court's judgment.

The parties' satisfaction is one way to promote restorative practice. They tell others about restorative practices, their experience in the conference and how satisfied they are. From 2006-2007, we did quantitative research entitled "Human Rights in Restorative Justice Approach".

2. Mediator Training

(a) Restorative justice approach

Restorative Justice is the justice to restore relationships in cases of conflict resolution. In Thailand, when someone talks about restorative justice, they also expect that the conference or the mediation process can lead to forgiveness. Sometimes they imagine that when the conference is finished, victim(s) and offender(s) might hug one another. In fact, forgiveness does not happen easily. I would like to explain the forgiveness process by Ron Claassen's Peacemaking Model.

Peacemaking based on love, caring and valuing is helpful in clearly understanding restorative justice. The peacemaking process should start with a commitment to be constructive which has to start with someone. This means that someone has to decide to take the initiative by being constructive even though what was done to them was not constructive. When both victim and offender decide to be constructive they are both more free to fully describe and understand what happened, the damage, the hurt, and its ongoing impact (Claassen, 2002, p. 4). The second step, explained by Claassen, is recognizing the injustice which is the part when all of the parties describe their experience and feeling and have them recognized by the other(s). Recognition is the focus of this part of the process (Claassen, 2003, p. 25). The third step is restoring equity, where something is done to restore equity as much as possible. Restoring equity is usually a combination of restitution, something the offender can do, and grace, "the letting go" part by the victim. Restoring equity could be all grace but is usually some combination of restitution and grace (Claassen, 2002, p. 7). The fourth step, clarifying future intentions, means changing the way things were done in the past so that the violation or injustice will not happen in the future (Claassen, 2002, p. 8).

One of the important stages that follows clarifying future intentions is follow-up and accountability, where agreements that have been made, have been kept and have been acknowledged as having been kept (Ron Claassen, 2002, p. 9). When equity is restored, by which the future intentions are clear and have been kept, forgiveness is discovered. Claassen (2002, 2003) has explained further that forgiveness is a process that transforms a relationship which has been damaged by hurt, violation, or injustice, into a new creation. When people experience all of the parts of this pattern, they say they discover forgiveness. The more thoroughly they experience each part of the pattern, the more they experience forgiveness. It is much more than a pronouncement, and it is experienced most clearly when the offender and the one who was offended, after significant preparation, "return to contact, to dialogue,

to confrontation with caring (Ron Claassen, 2002, p. 12). In this process of invitation and opportunity, they make agreements. When people make an agreement with each other, it means that trust begins to grow. When they keep the agreements that have been made, trust grows even more. When someone is unwilling to make an agreement with another, trust diminishes (Ron Claassen, 2002, p. 12). Love, trust, and forgiveness are the core elements to restoring relationships. These core elements are fundamental values of the alternative healing justice—restorative justice.

On the other hand, restorative justice is the process of problem solving which involves offenders, victims, and the community in specific offences by viewing how to deal with the aftermath of the offence and its implications for the future, to build good relationships rather than simply dealing out punishments. In addition, it requires the attention to victims' needs — material, financial, emotional, and social (including those personally close to the victim who may be similarly affected). The process will enable offenders to assume active responsibility for their actions and to recreate a working community that supports the rehabilitation of offenders and victims (Marshall, Tony E, 1999, p. 6).

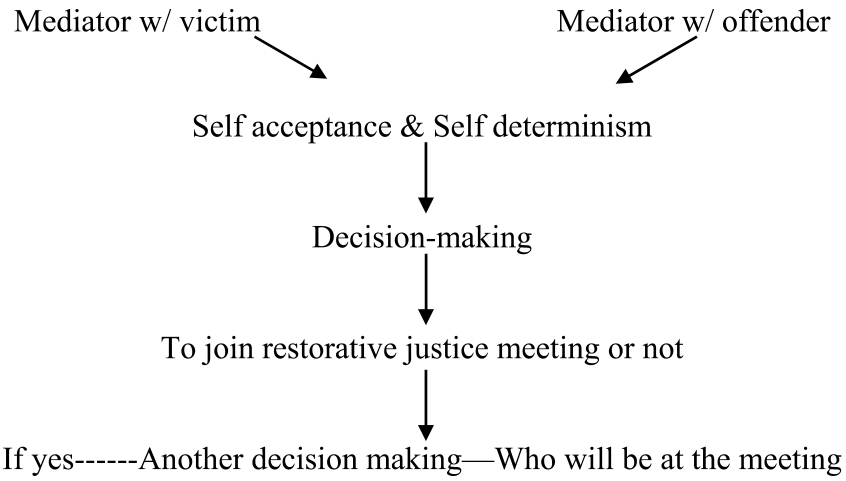
One of the principles of restorative justice is to "make things as right as possible" (Ron Claassen, 1996) which includes: attending to needs created by the offence such as safety and repair of injuries to relationships and physical damage resulting from the offence, and attending to needs related to the cause of the offence (addictions, lack of social or employment skills or resources, lack of moral or ethical base, etc.). An important process of restorative justice is a victim-offender meeting (Mark Umbreit, 1998, 2001 and 2003) which is a way to give the offender a chance to compensate his/her victim voluntarily. Compensation can mean more than paying money to the victim, and it includes an apology from the offender to the victim and an explanation of the cause of his offence. The offender will listen to the victim's feelings and the impact that the victim felt from the offender's action. This can be therapeutic for the victim to express his/her feelings and make an invisible impact on the offender. All this leads the offender to compensate/make reparations to the victim. It helps the offender to prepare himself to return to live in the community. The reparation will take the form of: (1) monetary compensation (2) doing some work for the victim (3) working for a community where the victim is the person who can choose what job to do (4) participating in rehabilitation activities such as drug rehabilitation, or attending a counselling course or (5) the last choice is to do all of the above. This method is flexible and responds to victim-offender needs. The process works through victim-offender capacities rather than the process of court. Some victims can forgive offenders.

The social benefits of victim-offender mediation (Angkana Boonsit, 2004) are: (1) victims' needs are able to be understood, including the need to be consulted, (2) victim and offender can see each other as persons rather than stereotypes (a learning experience for both), and (3) offenders are more affected by the experience than by bringing of formal criminal charges against an offender in court and punishment, while being given a positive motivation and a feeling that society is ready to accept the offender back again. The meeting should be done carefully, and the person who facilitates the meeting should be a specially trained mediator, whose primary tasks are to make certain to create a safe and comfortable environment and lay out firm ground rules for producing beneficial results, which is a re-affirming and a positive learning experience for both parties. The characteristics of the mediator become important—genuineness, authenticity or self-congruence, showing non-possessive warmth with accurate empathy. The mediator should be tolerant: although he/she may find certain aspects of behaviours of the victim or the offender or any person in the meeting personally unacceptable, the mediator can distinguish between his/her feelings towards the behaviour and toward the person.

(b) Counselling: the embedded process in restorative justice practice

For practicing restorative justice specifically by Ron Claassen's Peacemaking Model, which focuses on love, trust and forgiveness, a victim-offender meeting (VOM) becomes an important process in restoring relationships. This process must be a voluntary one—that is, the victim should be the person who decides to have or not have a meeting with the offender who also makes a decision to see the victim. The mediator needs to meet individually with the victim and the offender in order to help each of them to understand themselves and to become voluntarily and constructively involved in the process. The process can be explained as follows:

Step 1 Commitment to being constructive



When both agree to have a meeting, there is commitment to be constructive. This means that each individual has at least considered and decided to take the initiative to be constructive even though what was done to him/her or what he/she has done to others was not constructive. The role of the mediator will be as a counsellor who conducts individual counselling with the victim and the offender and may conduct group counselling with significant others of each side. This step is important preparation for restoring relationships because it will help the victim and the offender to speak to and confront each other with caring.

Step 2 Recognizing the injustice

This step begins when all parties, who are participating in the restorative meeting, describe their experiences and feelings and have them recognized by the others. The role of the mediator in this step is to facilitate the process by asking the listeners, "what did they hear?" and stimulate them to express what they heard, "tell him/her what you have heard." This process will help both parties to hear and to understand others as well as themselves from listening to each other's experiences. However, if the victim and the offender are not in the mood to listen to each other, they will not hear what the other has just said, and when they describe their experiences, they will describe only the part that is right for them. If this happens in the meeting, there is a tendency that the meeting will stop. Usually the victim and his/her significant others will be the person who asks to stop the meeting and they may need to have group counselling with the mediator for their emotional support and empowerment.

Step 3 Opportunity for restoring equity

When each person listens to the other and hears what that person has just said, it means that person begins to give the opportunity to listen to one's self as well as to others. Consider a part of an offender, he/she will have a chance to listen to the victim's feelings and the impact that he/she perceived from the offender's action. It will help the offender to realize the victims' needs—material, financial, emotional, and social (including those personally close to the victim who may be similarly affected) needs. It will give an opportunity to the offender to restore a good relationship to the victims and their significant others who also have had the impacts from the offence. The offender can assume active responsibility voluntarily for his/her actions to the victims rather than simply being dealt out punishment. On the other hand, the victims will have an opportunity to express their feelings and their invisible impacts to the offender. The restorative process will enable the victims to the reach the stage of "letting go". Such feelings will help the victims to give the offender the chance to compensate/make reparations to the victim and to prepare him/herself to return to live in community. The output of this step will be an agreement between the victim and the offender. When the offender begins to assume active responsibility for his/her actions, the victim will begin to experience forgiveness, and if the agreement has been kept, trust will grow. The role of the mediator in this step will be the facilitator in group counselling between the victim, the offender and their significant others.

Step 4 Clarifying future attention

This step is to change the way things were done in the past so that the violation or injustice will not happen in the future. The offender will perform what he/she has agreed to do in the "written agreement". When agreements have been kept and have been acknowledged as having been kept, trust will grow more. In a contrary way, if the agreements have not been kept, trust will be diminished. The important step in this process will include follow-up and accountability. The role of the mediator will focus on individual counselling (if there is any) to empower the victim and the offender and to provide psychological support for each individual who is involved in the agreements.

Counselling seems to play a major role in practicing restorative justice; it is embedded in every step, especially in step one: the commitment to be constructive. If this step is satisfied, the victim and the offender will each understand themselves and the situation, and will realize what he/she really wants to do, which may or may not be to have the meeting. Whatever each decides, the mediator accepts the decisions with respect. Counselling is a process in which the counsellor assists the individual to make interpretations of facts relating to a choice, plan, or adjustments which he/she needs to make (Smith, 1955, p. 156).

For practicing restorative justice which focuses on love, trust and forgiveness, the mediator should be more concerned about voluntary participation. Counselling is the process that will help each individual to understand oneself and the environment and be able to decide which choice is the best for him/her. The mediator needs to know and be able to apply counselling techniques specifically in the step of preparing for restorative justice practice.

(c) Mediator training curriculum

The curriculum includes the restorative justice approach and theory, the counselling technique on restorative justice practice and focuses on practice by role-playing, based on a learning-by-doing approach. The training curriculum includes 3 hours of lectures on restorative justice approaches, 3 hours of lectures on counselling techniques concerning restorative practices and 18 hours for practice training which focus on role-playing.

(d) Human rights in restorative justice approach

In 2007, research entitled "Human Rights in Restorative Justice Approach" was conducted by Angkana Boonsit, Puangtip Nuankhaw and Rachada Imvittaya, probation officers at the Probation Development Section, Department of Probation. The research was begun in 2006, and the objective was to evaluate the mediators' working in the restorative justice process concerning the rights of victims, offenders and their networks in restorative justice procedure and (2) to study the benefit of restorative justice. Qualitative research was conducted, and victims, offenders and their networks, who participated in the restorative justice conference run by probation officers during the pre-sentence investigation stage, were interviewed as sample populations. The research found that both victims and offenders have the right to:

- Consult with probation officers concerning the restorative justice process.
- The right to be informed: at the invitation stage, probation officers inform participants of their rights, the nature of the process and the possible consequences of their decision.
- The right not to participate: the restorative justice process functions on a voluntary basis. Neither the victim nor the offender should be coerced. At the invitation stage, probation officers inform all parties that they have the right to decide themselves whether to join the mediation process or not.
- The right to choose the date and time for the mediation process.
- The right to choose their network for the mediation process.
- The right to cancel the mediation at any stage of the process, because it is conducted on a voluntary basis.

- The right to set ground rules during the mediation stage.
- The victims have the right to disclose their feelings and all effects of the crime which the offender should know.
- The offenders have the right to repair the harm that they caused.

All of the above are discussed in the *Handbook on Restorative Justice Programmes* by the United Nations Office on Drug and Crime (UNODC) in 2006.

(e) Knowledge management of restorative justice at the Department of Probation

In 2008, four years after restorative justice was implemented at the Department of Probation, there were 379 trained mediators who worked in the probation office around the country and 9,632 cases in the restore-relationship conferencing. The workshop for knowledge management took place from 28-29 August 2008. The participants were 30 selected mediators to share their knowledge and experience on best practices in each situation and in each local culture. The important result was that the mediators need full knowledge of restorative justice approaches and counselling technique skills. Some issues of the knowledge management are explained below.

(f) Effectiveness of the restorative justice process on crime victims and adult offenders in Thailand

In 2010, Boriboonthana, Y. and Sangbua-ngamlum, S., probation officers at the Research and Development Center, Department of Probation, Thailand, conducted further research which drew on the research findings of the restorative justice process for adult offenders in Thailand run by probation officers during the pre-sentence investigation stage. The evaluation study was conducted in 2009, aiming to analyze the effect of restorative justice on victims and offenders. The researchers investigated various key aspects, such as the rate of satisfaction and perception of fairness, changing attitudes of victims and offenders, responses to the victims' needs, offenders' accountability and recidivism rates. Factors associated with these aspects were also analyzed. A quasi-experimental research design was applied and the research findings showed that victims and offenders participating in the restorative justice process were significantly more satisfied with almost all evaluated outcomes than those who did not. However, the study did not find any significant difference in the recidivism rate between offenders in the experimental and comparison groups. Finally, the study found that two factors, i.e. victim's income and the victim-offender relationship, were significantly related to the victim's satisfaction. Victims who had low income were more likely to be satisfied with the outcome than those who had high income, and victims who previously knew the offender were more likely to be satisfied with the process than those who did not.

C. Statistical Comparison between Juvenile Cases and Adult Cases

Table 1 number of FCGC cases in the Department of Juvenile Observation and Protection

Year	Total cases	FCGC cases	%
2009	**44,786**	**4,686**	**10.46**
2010	**44,559**	**4,488**	**10.07**
2011	**25,867**	**2,301**	**8.90**
2012	**31,876**	**421**	**1.32**
2013 (Jan.-Nov.)	**35,996**	**241**	**0.67**

Table 2 number of restorative practice cases in the Department of Probation

Year	Total cases	Restorative justice cases	%
2009	**76,880**	**1,281**	**1.67**
2010	**81,058**	**1,146**	**1.41**
2011	**86,756**	**844**	**0.92**
2012	**84,283**	**977**	**1.16**
2013 (Jan.-Nov.)	**114,714**	**796**	**0.69**

The tables above show that there are very few cases in which restorative justice was used. Generally, a smaller percentage of adult cases use restorative justice when compared to juvenile cases. This is true even though there is legal support.

III. LESSONS LEARNED

Based on my experience as a trainer, mediator and researcher, there are some important aspects of restorative justice that should be remembered:

- The key point of restorative justice is to restore relationships between victim(s) and offender(s). So, it is necessary to find out who is/are victim(s) and offender(s) in the restorative justice approach because it relates to agreement making between victim(s) and offender(s). Restorative justice has two types of victims: direct victims and indirect victims. Sometimes, we found that the victim in the criminal justice system is the offender under the restorative justice approach, and the offender's network is the indirect victim. So, the agreement will be done between the victim and the offender in the restorative justice approach, even though they may have different roles within the criminal justice approach.

- Mediation is only one step in the restorative justice process as a method to repair harm, to reconcile and to restore relationships.

- Mediation in the restorative justice approach should be neutral, respectful of each party and on a voluntary basis. So, some local mediation programmes are not mediation following the restorative justice approach.

Restorative justice is the way to restore relationships which were damaged by crime. However, restorative justice is concerned with culture, social context and the conventional criminal justice system. 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 attention with appropriate participation from the offenders.

For growth and sustainability, law and management are very important. Laws are useful to define the rights and responsibilities of victims, offenders, officials and others who may concerned. Management is useful in practice and to achieve justice for all. So, each country should find its own recipe which properly balances the conventional role of criminal justice with the restorative justice approach.

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THE THAI CRIMINAL JUSTICE SYSTEM AND PROTECTION FOR VICTIMS OF CRIME AND USE OF RESTORATIVE JUSTICE PROGRAMMES

*Chirawan Khotcharit**

I. THE HISTORY OF THE THAI CRIMINAL JUSTICE SYSTEM

A. The *Sukhothai*, the *Ayutthaya* and the *Thon Buri* Periods

The Thai legal system and the judiciary's history started between AD 1238 to 1350 (the *Sukhothai* period) when the King, himself, adjudicated all disputes between his citizens. Later in the *Ayutthaya* period (AD 1350 to 1767), the Thai legal system was developed by introducing the *Dhammasattham* — the ancient Hindu jurisprudence—as the law code of the realm. The *Dhammasattham* was a fundamental law dealing with both civil and criminal matters. Unfortunately, during the reign of King Taksin the Great (AD 1767 to 1782), the country was faced with a series of battles; therefore, the law and judiciary system had little improvement.

B. In the Early *Rattanakosin* Period (Absolute Monarchy)

Later, at the beginning of the Chakri Dynasty in 1782, the Law of Three Seals was written, as the code law, by revising the laws derived from the *Ayutthaya* period. In the reign of King Rama V, there was important development of the legal and judiciary system when the country was required to standardize the law and legal system equally to foreign nations. The first criminal law code was enacted in 1908, and drafting of the Civil and Commercial Code was started but was not completed until the reign of King Rama VII.

C. In the Present *Rattanakosin* Period (Democracy)

The Revolution of 1932 changed the form of government from an absolute monarchy to a democracy and had an important effect on the Thai legal and judiciary system. The Constitution B.E. 2475 (AD 1932) established the powers, functions and duties as well as the structure of the Executive, the Legislative and the Judiciary. The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) has had a significant impact on the reorganization of the political system as well as the judicial system of Thailand.

D. The Courts of Justice

Before 1997, there were two types of Courts in Thailand; however in 1997, a significant change in the Judiciary power had been made. Under the 1997 Constitution (and the 2007 Constitution), there were (and now are) four types of courts: the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Court. The Courts of Justice are classified into three levels comprising the Courts of First Instance, Courts of Appeal and the Supreme Court. Courts of First Instance are categorized as general courts, juvenile and family courts and specialized courts, called the Central Intellectual Property and International Trade Court, the Central Bankruptcy Court, the Central Tax Court and the Labour Court. The general courts are ordinary courts which have authority to try and adjudicate criminal and civil cases.

E. Judges of the Court of Justice

There are four types of judges in the current Thai judicial system, namely, career judges, senior judges, lay judges, and *Kadi (Datoh Yutithum)*. Firstly, career judges are recruited by the Judicial Commission and are appointed by His Majesty the King. In order to be an eligible candidate for career judge one has to be of Thai nationality, at least 25 years of age and must have earned a Bachelor's

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degree in law, passing the examination of the Thai Bar Association, and having not less than two-years' working experience in the legal profession. A candidate must pass a highly competitive examination given by the Judicial Commission. Once the candidates are recruited, they have to be trained as judge-trainees for at least one year. Those candidates who complete the training with satisfactory results will be approved by the Judicial Commission and tendered to His Majesty the King for royal appointment to be a junior judge. A solemn declaration before His Majesty the King is also required before taking office as a judge. Secondly, senior judges must be at least sixty years of age and have performed judicial services for at least twenty years and also pass the assessment of health performance, according to the Act on Rules for Appointing and Holding Senior Judge Position, B.E. 2542 (AD 1999). Judges who are qualified and wish to be senior judges must express their intention in writing to the President of the Supreme Court. Senior judges are able to remain in office until they reach seventy years of age. A senior judge cannot be appointed to hold the office of court executive, such as a Chief Justice, or even to perform duties in place of such person. Thirdly, Lay Judges who are laymen recruited separately to perform duties in the Juvenile and Family Courts, the Labour Courts or the Central Intellectual Property and International Trade Court. The reason for having lay judges is to have an experienced person or an expert in a relevant field who can work closely with a career judge in adjudicating cases. Unlike a career judge, becoming a lay judge is not a permanent position. Each lay judge holds his or her office for a term of years depending on which specialized court he or she is working for. Forty *Kadi (Datoh Yutithum)*, according to the Act on the Application of Islamic Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala, and Satun Provinces, B.E. 2489 (1946), the Islamic Law on Family and Succession except the provisions on prescription in respect of succession shall apply instead of the Civil and Commercial Code in adjudicating civil cases concerning family and succession of Muslims. In such cases, career judges and a *Kadi*, who is an expert on Islam, will sit on the bench together to adjudicate the case to comply with the principles of Islam. A *Kadi* must not be less than thirty years of age, know the Thai language at the prescribed level, and have knowledge of Islam to enable him to apply the Islamic laws relating to family and succession.

II. THAI CRIMINAL JUSTICE SYSTEM

Concentrating criminal cases in Thailand, the prosecution process is the responsibility of several government organizations: the Royal Thai Police, the Office of the Attorney General, the Courts of Justice, and the Ministry of Justice. Almost all criminal cases are filed by the State, the public prosecutor, against a person or organization who violates a penal law. Which acts or omissions are considered as crimes or offences must be identified by the Penal Code. Special penal laws, for example, the Narcotics Control Act B.E. 2522 (AD 1979), the Land Traffic Act B.E. 2522 (AD 1979), and the National Forest Act B.E. 2507 (AD 1964), however, can identify and impose punishment on one who does or omits something that is considered as a criminal act. Even though an act is socially or morally wrong, no criminal liability is incurred until that act is classified as a crime under the law. The reason why the public prosecutor—not the private injured person or the victim—sues the offender, is because crimes are considered offensive to peace and order in society. The victim is considered only as a witness for the State to prove the criminal's guilt. This long process starts with the victim having to go to the Police to report of a criminal incident. The Police then proceed to investigate the alleged crime and report their findings to the Office of the Prosecutor. Later, the Office of the Prosecutor files the appropriate criminal case with the Court. Courts have jurisdiction in the district where an offence has been committed, alleged or believed to have been committed, or where an accused resides or is arrested, or where an inquiry official conducts an inquiry. After the court hears the witnesses of the prosecution and the defence, it then renders its judgment. Due to the fact that the victim of the crime is also affected by the offender and the overwhelming number of criminal reports, the Criminal Procedure Code empowers the victim of the offence, a private citizen, to hire lawyers to directly file the criminal case in court, instead of reporting it to the police. In the Thai justice system, only judges decide criminal cases; the jury system does not apply in this country.

A. The Crime Victim's Right To Be Compensated

Early in history, criminal law was essentially law for victims who were the center of the administration of criminal justice. For example, compensation and restitution were criminal sanctions aimed at providing redress to the victims. However, the criminal justice system had changed to a system of retributive justice and became offender centered—a system that only put emphasis upon guilt and

punishment. Crime victims are recognized as the rights of the accused and, at best, valuable witnesses for the prosecution of the state's case; on the other hand, at worst, they are sometimes viewed as impediments to the prosecutorial process. The concept of crime as a victim redressing has been replaced by the notion that crime is an act against the well-being of the state. Therefore, society, including crime victims, seeks the most severe possible punishment for offenders. Victims believe that the longer offenders are in jail, the happier the victims will be in the future, but such severe punishment often leaves victims feeling empty and unsatisfied because a retributive criminal system cannot compensate their losses, ease their fears and insecurities, restore their confidence or heal their physical and emotional wounds. On the other hand, after serving their time in the prison, offenders often return to the community even more antisocial than before and tend to recidivate.

The Thai criminal justice system recognizes the crime victim's right to be compensated by the offender. According to Section 43 of the Criminal Procedure Code, public prosecutors—only in cases of theft, snatching, robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property—may seek restitution on behalf of the victims. Later in 2005, the Criminal Procedure Code was amended; Section 44/1 grants to authority to the public prosecutor to have the right to claim compensation for loss of life, bodily or mental harm, injury to person, impairment of reputation or proprietary damage from the crime offenders on behalf of the crime victims or injured people. Before this amendment, crime victims had to file complaints with the civil court for such compensation at their own expense; therefore, many of them tended not to pursue their rights. (Crime victims also can apply for compensation awards to the Victim Compensation and Restitution Board (VCR), Ministry of Justice, according to the Victim Compensation and Restitution for the Accused Person Act and the Witness Protection Act B.E.2544 (AD 2001)).

B. Crime Victims' Rights in Domestic Violence Offences

The problem of domestic violence has been increasingly realized and acknowledged in Thai society. Domestic violence cases should not be conducted using the conventional criminal judicial process because it does not take an interest in the harm suffered by the victim and the community and cannot prevent offenders from recommitting their crimes. Therefore, Thailand enacted the Domestic Violence Victim Protection Act to handle domestic violence cases. The Domestic Violence Victim Protection Act, B.E.2550 (AD 2007), which deals with any act committed with an intention to cause bodily or mental harm, or an act committed intentionally in a manner that may cause bodily or mental harm, to a family member or any coercion or undue influence conducted with a view to make a family member do something, refrain from doing something or accept any act illegally, has some kind of protection which is different from the general criminal cases. For example, under section 6, the domestic violence victim has right to get treatment from a physician and to have a consultation with a psychiatrist, psychologist or social worker. If the domestic violence victim would like to file a complaint, he or she can file a complaint on his or her own or allow the competent official to file a complaint on his or her behalf. In order to respect the domestic violence victim's privacy rights, section 9 orders that in domestic violence cases, no person shall publish or make known to the public in any manner whatsoever any picture, story or any information which may cause damage to the person who commits an act of domestic violence or to the domestic violence victim. As mentioned above, domestic violence cases are different from general criminal cases because of the relationship between the offender and the victim. These kinds of cases need to have some special court orders. Therefore, section 10 orders that the domestic violence victim has the right to ask the competent official to impose provisional remedial measures or means in favour of the domestic violence victim, such as an order requiring the person who commits domestic violence to receive a diagnosis from a physician, to pay financial assistance in accordance with his station in life, not to enter into the residence of the family or to stay close to any person in the family, as well as an order concerning care of his or her child. *Thon Buri* Criminal Court established the Psychosocial Clinic. This Clinic employes psychosocial clinic consultants who have a duty to give a consultation for domestic violence offenders and victims. Psychosocial clinic consultants are lay persons with psychological or social-work experience, and they must attend the psychosocial clinic's training.

C. Child Offenders, Victims and Witnesses

The Thai criminal justice system is concerned about children who have been involved in criminal cases as offenders, victims or witnesses. Therefore, section 133 bis of the Criminal Procedure Code

orders that in cases of offences punishable with maximum imprisonment of three years and upward, or in the case of offences punishable with fewer than three years' imprisonment and the injured person or witness who is a child so requests, or in the case of causing bodily harm to a child not yet over eighteen years of age, the examination of a child victim or witness shall be made separately in a place suitable for him or her, and a psychologist or social worker, a person requested by the child and the public prosecutor shall participate in such examination. At trial, section 172 ter of the Criminal Procedure Code orders all courts to provide a suitable place for child witnesses and requests that a psychologist or social worker must attend to help the child witness during the examination-in-chief, cross-examination, and re-examination.

D. Mediation Center and Reconciliation Center

The Mediation Center has authority to mediate compoundable offences when the crime victim or injured person files the complaint by himself or herself, while the Reconciliation Center deals with non-compoundable cases in which the State, through a public prosecutor, brings a lawsuit before the court. The Medication Center and Reconciliation Center allow offenders, victims, and their family members to participate in every session. During the mediation and reconciliation process, the offender and victim will participate in a face-to-face victim-offender meeting, including both joint and caucus sessions. The mediation and reconciliation system has a special concern for the needs of crime victims. The crime victim has a chance to express his or her emotion, agony and insecure feelings as well as to ask for compensation and restitution from the offender. At the same time, the offenders are able to show their responsibility, sympathy and regret. During the mediation process, a mediator will conduct and facilitate both parties to express their real interest and finally get to the agreement. On the other hand, during the reconciliation process, a judge has a duty to explain the charge, the accused's rights and liability and victim's rights. Unfortunately, the mediation and reconciliation process are alternative options.

E. Courtroom without Directly Confronting the Accused

In general, the trial and taking of evidence must be conducted in open court and in the presence of the accused. A witness has to give evidence in front of the accused. The judge, public prosecutor, defendant and defendant's attorney shall be present in the courtroom. A criminal trial shall be made with direct confrontation of the witness and the accused. However, in some cases, the original courtroom is not suitable for adult witnesses who feel fear or embarrassed by the accused. *Thon Buri* Criminal Court is concerned about the rights and safety of witnesses. Therefore, *Thon Buri* Criminal Court established the Courtroom without Direct Confrontation of the Accused. In this courtroom, a witness gives testimony in the courtroom where the judge, public prosecutor and defendant's attorney are together but a witness will not confront the accused. Moreover, there is the Witness Room where a witness can rest and relax before and after giving testimony. This type of courtroom is suitable for a witness who is a child under 18 years of age, women and the elderly who are afraid or ashamed of the accused. Up until now, there was only one courtroom without direct confrontation of the accused in the Kingdom of Thailand.

III. CHALLENGES FOR THE THAI CRIMINAL JUSTICE SYSTEM

From my experience as a *Thon Buri* Criminal Court judge, the challenge for the Thai criminal justice system, in terms of protecting victims' rights and applying Restorative Justice, firstly is the attitude of crime victims and judges. Secondly, as mentioned above, the victim and society desire the severest punishment possible for the offender, which is actually a burden to the court and the criminal justice system. Thirdly, the Mediation and Reconciliation process concentrates only on crime victims and offenders but leaves the whole community out of the process, and the victims usually refuse the court's efforts to have the victim meet with the offender, or they only reluctantly participate in the mediation and reconciliation process. Even if the concept of Restorative Justice has been introduced to the juvenile criminal justice system since 2010, the criminal justice system has not fully applied Restorative Justice in its system.

The Courtroom without Direct Confrontation of the Accused

The Witness Room

The Courtroom for Child Witnesses


เขตหวงห้ามเฉพาะ
ห้องสืบพยานเด็ก
ห้ามเข้าก่อนได้รับอนุญาตจากศาล

REPORTS OF THE SEMINAR

GROUP 1

SUPPORT FOR VICTIMS

Chairperson	Mr. Philip Kaya WELIA	(Papua New Guinea)
Co-Chairperson	Mr. OTA Tomohiko	(Japan)
Rapporteur	Mr. AKAGI Kazuo	(Japan)
Co-Rapporteur	Ms. Chirawan KHOTCHARIT	(Thailand)
Members	Ms. Veronica Guadalupe URIARTE FLORES	(El Salvador)
	Mr. DIALLO Amadou Tanou	(Guinea)
	Ms. KIKUCHI Shizuka	(Japan)
	Ms. TAJIMA Kayoko	(Japan)
Adviser	Prof. MIO Yukako	(UNAFEI)

I. INTRODUCTION

In the framework of group workshops during the 156th International Senior Seminar held by UNAFEI and sponsored by JICA from 13th January to 14th February 2014, Group 1, composed of participants from Japan, Papua New Guinea, Thailand, El Salvador and Guinea, focused its discussions on the following points:

a) Access to the justice system by victims,

b) Victim compensation and restitution, and

c) Prevention against secondary victimization and revictimization.

With a large consensus, the group elected Mr. Philip Welia as Chairperson, Mr. Ota as co-chairperson, Mr. Akagi as rapporteur and Ms. Chirawan as co-rapporteur.

II. SITUATION OF SUPPORT FOR VICTIMS

In criminal procedure, protecting the perpetrator's rights has been considered most important. On the other hand, the victim's rights have not been focused on much. Often the victims are required to participate in the criminal procedure for the case, even though the victim does not want to speak about what happened to him (or her). Victims have no fault in the criminal case. However they have a hard time talking about the case many times and sacrifice their precious time. Therefore, criminal justice systems and organizations should pay more attention to protecting "innocent" victims.

III. SUMMARY OF THE DISCUSSION

A. Access to the Justice System

1. Specific Issues Preventing Crime Victims from Accessing the Justice System in Each Country

First of all, all participants' countries share some common problems, such as lack of man power and financial support from their governments, the huge caseload which affects the final court decision, and also the trustworthiness of the criminal justice system as a whole. Also, the crime victim's information is often published in newspapers and news programmes on national television. In El Salvador, the gang-related offenders deter crime victims' access to the justice system. In most gang-related crimes, the crime victim has been intimidated not to report the crime to the police, and they are also discouraged from giving testimony in court as a witness. Secondly, victims of sexual offences tend not to report said incidents to police because of embarrassment.

2. The Measures to Ensure that All Victims Have Access to the Justice System

(a) Informing victims of their rights and developments in the case

The group agreed that victims have to be informed about their rights, and all criminal justice organizations should educate the general public via mass media and national or organizational campaigns.

(b) Victim involvement in decision-making

The crime victim's right to withdraw the ongoing case is respected in many criminal justice systems among the participating countries; however, if such cases are considered as crimes against the State, the crime victim's request to withdraw the case does not jeopardize the public prosecutor's complaint.

(c) Victim participation at trial

The group noticed that in general the crime victim has his or her right to participate at trial but as an observer and not as a victim. However, in Japan and Thailand, the victim may ask questions with the public prosecutor's advice.

B. Victim Compensation and Restitution

1. Current Situation in Each Country

The current situation in all participants' countries is similar: when the victim appeals for restitution in court, the court can order the offender to pay it.

2. State Compensation

The group came to a consensus that a State compensation system is beneficial to the victims, even though it is difficult to set up, because of the financial difficulty. Victims should be compensated by the perpetrator, but sometimes the perpetrator is not able to pay full restitution. The victims have to pay for doctors' fees, transportation costs and other expenses. For these reasons, State compensation systems should be adopted by the governments. For example, in January 1981, the Law for Providing Compensation to Innocent Victims of Crime (Japanese law) was put into operation for survivors, disabled and severely injured persons.

3. Restitution by Offenders to Victims and to the Community

Restitution should be paid by the perpetrator. For the community, the perpetrator indirectly contributes after being rehabilitated in prison by learning job skills, which are intended to help offenders avoid criminal activity and thus reduce recidivism.

C. Preventing Secondary Victimization and Revictimization

1. Current Situation in Each Country

The current situation in all participants' countries is similar because the crime victim has to answer the same questions repeatedly during the criminal justice process from police officers, public prosecutors, judges and physicians who gave victim the clinical (or medical) check-ups. Moreover, the mass media is always longing to present in depth news about crime incidents as soon as possible. There are some distinguished justice systems in Guinea and Papua New Guinea where the community plays a crucial role in prevention revictimization. "An eye for an eye" revenge seems acceptable for such jurisdictions with tight and strong community relationships.

2. Information Protection Systems for Victims

In the investigation process, the information protection system for victims should be managed by sealing the victim's information; however, in some cases disclosure of such information cannot be avoided. Trials have to be in public, but when the victim makes a request, the trial can be closed to the public.

3. Ensuring Safety of Victims

As a witness, the crime victim is concerned with proving the defendant's guilt. The police officers and courts will escort and protect the victim only for important cases or when he or she makes such a request. However, all participants agree that crime victims should be protected from any further

harm. NGOs can play an important role to ensure the safety of victims involved in sexual offences or domestic violence, and also with the financial support at the governmental and international level. This protection measure can be used in every country.

4. Prevention against Revenge by the Perpetrator

In domestic violence offences and stalking cases, in some participants' countries, such as Japan, Papua New Guinea and Thailand, the court has authority to issue a restraining order against the offender; however, some participants' counties do not implement such orders. In cases in which the suspect or defendant is on bail, he or she must abide by the court's restraining order as well. One of the effective prevention measures against revenge by the perpetrator is implementation of a rehabilitative justice system instead of a retributive justice system and using this restraining order. In some African countries, revenge by the perpetrator is very rare because the community supports the victim and his or her family.

5. Alleviation of Burden and Distress of Victims

The group agreed that collaboration has to be on two levels: between intergovernmental organizations and private organizations as well. "One-stop service", for example, in Japan has been recognized as a channel to alleviate the crime victims' burdens. The "One-stop service" model is a practical system and should be adopted by other countries.

6. Training for Police Personnel, Prosecutors and the Judiciary

Training on the topic of "Victimization" will broaden the knowledge of all criminal justice organizations and allow such organizations to feel empathy for crime victims. This kind of feeling and understanding enables criminal justice professionals to treat victims properly. The training should be held at least yearly and should invite victims to participate and share their emotions.

IV. CONCLUSION AND RECOMMENDATIONS

To realize a safe society without crime, criminal procedure should be done properly. It is important to obtain victim cooperation with the police or prosecutor's investigation and to testify in court what happened to him or her precisely. If the perpetrator had not committed the crime, the victim would never have to sacrifice his or her time, emotions or embarrassment for the investigation and the trial. But the judicial system requires victims' cooperation to punish the perpetrator appropriately, with the goal of creating a society without crime. Without victims' cooperation, the judicial system does not work and people will start to bypass the judicial system, and maybe even the government. As a result, we should use our best efforts to support victims and to create a society without crime. We hope the results of this discussion contribute to the creation of safer communities, even world peace.

GROUP 2
ISSUES CONCERNING THE INTRODUCTION OF RESTORATIVE JUSTICE PROGRAMMES IN CRIMINAL AND JUVENILE JUSTICE SYSTEMS

Chairperson	Ms. Cyntia Cristina DE CARVALHO E SILVA	(Brazil)
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	Ms. Reiko OTA	(Japan)
Adviser	Mr. Ryo TSUNODA	(UNAFEI)

I. INTRODUCTION

This paper aims to briefly present some notions of restorative justice in criminal cases, and it shows the results of the discussions among the participants of the 156th Senior Seminar of UNAFEI.

The definition of restorative justice ("RJ") programme utilized is the same as in the United Nations Basic Principles on use of restorative justice programmes in criminal matters — restorative justice programmes means any programme that uses restorative processes and seeks to achieve restorative outcomes. Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles. Restorative outcome means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

Initially, we present an overview of restorative justice programmes in each participant country, as such, Brazil, Japan, Indonesia, Papua New Guinea and Thailand. After that, we discuss the implementation of new restorative programmes in each participating country. Finally, we show the results of our group discussions about the issues and challenges of restorative justice in an effort to improve the restorative programmes in the participating countries.

II. ESTABLISHED RJ PROGRAMMES IN EACH PARTICIPANT'S COUNTRY

A. Brazil

In Brazil, the RJ programme is handled by Special Criminal Courts — *Juizados Especiais Criminais* — and it was established by Law 9.099 in 1995, which aimed to increase the victim's satisfaction with the criminal system and also to decrease the population of Brazil's prisons.

Law 9.009/95 established the restorative process, in which the victim and the offender participate together and actively in the resolution of matters arising from the crime; and the restorative outcome, in which there is reparation and community service as penalties for crimes. Basically, the RJ programme in Brazil adopts just the practice of victim-offender mediation (VOM). There is no participation of the community or the family group conferencing, the circle sentencing or the peace making circles.

Nowadays, the programme is implemented at the Court for adults (persons more than 18 years old), and it is applied to crimes considered petty; in some cases the initiative to begin the criminal process belongs to the victim; in others, to public prosecutors. Furthermore, there is a limit to the application

of the RJ programme — for crimes with penalties that do not surpass 2 years' imprisonment.

Criminal RJ procedure consists of the following: the victims of crime report the facts to the police, who are responsible for investigating the case and making a final report. The whole investigation is then sent to the Court and, depending on the crime, to the public prosecutor or the victims, who start the process. Before the offender presents his defence, there is a conciliation with a facilitator trained by the Court (a civil servant or a law student), in which the victim and the offender try to reach an agreement about the reparation of damages. In case of agreement, it is necessary that the offender confess to the crime, because the Brazilian Federal Constitution presumes the innocence of the accused.

B. Indonesia

There is no formal restorative justice programme in Indonesia. It has occured as an informal proccess, and has never been recorded or noticed. This is because such a system or programme has been in conflict with the legal system that has never been revised until now (Indonesia Penal Code, Act number 8/1981). This means that it has been implemented without any formal legal process and will not be upheld. Consequently, restorative justice programmes cannot be implemented formally. However, this does not mean that restorative justice practices have never been applied on a practical basis in the community. These practices have involved traditional ways of resolving disputes, sometimes called alternative dispute resolution (ADR), which involves various parties in the community like elders, religious leaders, academic parties, youth leaders, victims, victims' families, offenders, offenders' families, and even the police and low-level government officials. Restorative justice programmes mostly have been implemented in cases of minor crime such as traffic accidents and theft, with some conditions, among others, being that the cases involve non-fatal injury and less physical or non-physical damage. The conclusion is that there will be no formal system or programme on restorative justice as long as the penal code has not been revised.

C. Japan

In Japan, there are no established RJ programmes based on specific law, but the following two efforts are considered as possibilities of institutionalizing RJ. One of them is "System of conveying victims' feelings" in the probation and parole supervision stage based on the Offenders Rehabilitation Act. This system is not only to convey victim's feelings about the damage inflicted on him/her to the respective probationer/parolee, but also to convey the offender's feelings on the basis of the victim's feelings. The other one is "Education from the victim's viewpoint" for juveniles and adults in Japanese correctional institutions. It teaches inmates how crime harms people and societies, physically, emotionally and financially. It is an opportunity for inmates to improve empathy toward crime victims and other people. It offers opportunities for interested crime victims to be involved in correctional efforts to prevent further victimization in society.

D. Papua New Guinea

In the criminal justice system, RJ is implemented for both adults and juveniles mostly at the presentencing and reintegration stages. It is implemented at this stage because:

- The community must actively participate in the reintegration process;
- The Probation Officers will have to implement programmes for offenders;
- The Correctional Institutions will have to implement rehabilitation programmes for serious offenders; and
- The Organizational committees will have to implement rehabilitation programmes for juvenile and minor crime offenders.

The RJ programmes initiated can only be implemented for adults who committed minor offences and juveniles, and for adults who committed major offences and who are of good reputation and non-dangerous to the community and victims.

E. Thailand

1. Restorative Programme for Juveniles

The restorative justice programme for juveniles is called Family Community Group Conferencing (FCGC), and was conducted by the Department of Juvenile Observation and Protection (DJOP) since 2004. The main objective of the programme is to restore relationships between juveniles, victims, and families. FCGC has been implemented in the presentence investigation stage because the results or the outcomes of this programme might be useful for a non-prosecution order.

In part due to a law supporting this practice, although not drafted for that purpose, this law, the Juvenile and Family Court and Procedure Act, has two relevant articles — Articles 50 and 63 — that facilitate the implementation of FCGC. In 2010, The Juvenile and Family Court and Procedure Act 1991 was repealed; now, there is The Juvenile and Family Court Act 2010: Articles 86 and 87 support the Restorative Programme Procedure.

2. Restorative Programme for Adults

The restorative justice programme for adults, called restore-relationship conferencing, is conducted by the Department of Probation (DOP). It has been implemented in the presentence investigation stage for all crimes and is based on the parties' need(s). The process is used on a voluntary basis. The results of the conference are recorded in the presentence investigation report and are submitted to the court for sentencing. There is no law to support this programme, but the programme is conducted as a matter of policy.

III. POSSIBLE NEW RJ PROGRAMMES IN EACH PARTICIPANT'S COUNTRY

A. Brazil

Undoubtedly, Law 9.099/95 inaugurated a new philosophy in the criminal justice system in Brazil. It encouraged and enhanced the participation of victims in criminal proceedings, as before it was completely ignored, serving only as means to an end. However, the RJ programme in Brazil could be improved and widened for other stages of the criminal justice system.

Realistically, for instance, it is possible to apply the victim-offender mediation in the police station for petty crimes (penalty up to 2 years of imprisonment), because it is the first stage of the conflict and the parties are sensitive about the problem. Then, it could be offered as practical training for the police officers to work as facilitators, helping the parties to reach an agreement together. Nowadays, to apply the RJ programme to all types of crimes, it is necessary to promote some changes in the criminal law, because the Brazilian Federal Constitution adopts the principle of obligation, which blocks any attempt to reach an agreement, because, if the legal requirements are satisfied, the prosecutor must seek indictment.

This practice of RJ could be implemented also for the teenagers (persons 12-18 years old). However, it would be more suitable for persons between 16-18 years old, because they are mature enough to take part actively in the mediation.

At the beginning, there would be some difficulties to get used to this relatively new type of conflict solution, not only for the victim and the offender, but also for the other parties involved, like the police officers. But this initial difficulty can be overcome through many initiatives, like the qualification of the professionals involved and educational and publicity campaigns.

B. Indonesia

FGC is the programme that seems more realistic to be implemented in Indonesia because the traditional system still emphasizes "kinship" and "paternalism". The elders and prominent figures still have influence and important roles among the society even at the governmental level. However, it used to be implemented in the pre-charge (police) where victims usually initially report the crime, and of course only in specific crimes as long as it is not contradicted by the law. On the other hand, the amount of damages is considered (physical and non-physical), as well as the offender's ability to pay damages (with or without family support). We can use RJ for adults, juveniles, and those who do not

deny having committed the crime as long as the offender is able to keep and submit to the substantive goals of the restorative justice programme, such as restoring the victim, repairing the damage and participating in rehabilitation, providing an apology to the victim and her/his family, signing an agreement to commit no further crimes, and to pay compensation to the victim. The police are the most responsible in correlation with their jobs. Police also are the frontline of maintaining security and public order; that's why they have to ensure the situation remains stable, including by providing a suitable settlement, like the restorative justice programme. Regarding the facilitator, it must be a neutral person or party with no unwarranted interest in the outcome, and it must be someone with some influence among the community, like prominent figures or NGO representatives. Some issues that we should anticipate are, first, that the programme does not conflict with the legal system; second, that there will be no complaints in the future, especially from the victim's side; third, that the offender does not feel excessively burdened.

C. Japan

In Japan, Public Prosecutors have great discretion to suspend prosecution of adult-offender cases considering the seriousness of the crime and the situation after the offence, even if there is enough evidence to obtain a conviction. Therefore, with regard to petty crime committed by an adult offender, victim-offender mediation (VOM) may be implemented before prosecution under the prosecutors' supervision. Facilitators should be a third party who has no interest in the offence other than public prosecutors, because public prosecutors should be impartial.

The new programme of education from the victim's viewpoint is called "Message of Life". This is an exhibition held under the auspices of non-profit organizations in Japan. The main exhibits are life-size images of victims and their "shoes" as relics. The shoes are symbols of their lives. On the life-size images of victims, messages are written by bereaved family members. Life-sized images of victims are called "Messengers". Inmates appreciate this exhibition and recognize respect for the lives of crime victims. The Ministry of Justice will hold this exhibition in all prisons and juvenile training schools from 2013 to 2018.

As concerning rehabilitation services, development of the "System of conveying victims' feelings" also may be implemented as one of the feasible countermeasures of VOM-type RJ.

D. Papua New Guinea

Restorative Justice for adults and juveniles emphasizes:

1. Restorative Justice Programmes:
   - Embody the values and practices familiar in traditional PNG societies;
   - Approach concerns balancing the needs of victims, offenders, and the community;
   - Draw on traditional and contemporary international practices to achieve RJ system.

2. Diversion Programmes:
   - Key strategies for juvenile justice reform programmes to divert juveniles away from the formal court system towards community-based work programmes and restorative justice programmes;
   - The Public Order Act allows community leaders to have the offender work for the community. Mediation, welfare, vocational training, church fellowship programmes that are ultimately aimed at changing the mindsets and behaviour of offenders; and
   - Courts used Probation Acts to impose community work sentences in two ways:
     a) Community work orders for first-time offenders and minor offenders on conditions, instead of imposing court fines; and

     b) Imposed community work on special condition for serious offenders of normal Probation Order.

3. Under the Probation Act, community work for both adult and juvenile offenders.
   Supervision is provided by Probation Officers or community-group volunteers.

E. Thailand

Thailand has conducted the Restorative Programme, FCGC for juvenile and restore-relationship conferencing for adults in the presentence stage. So, it is not necessary to implement another programme. But it should be expanded for implemention in all criminal justice organizations for all crimes and all parties on a voluntary basis and based on the parties' need(s). The restorative programme should be done by trained mediators who are personnel within each organization.

IV. DISCUSSION

A. Introduction

In general, RJ can be applied to all crimes at all stages, for adult and juvenile offenders. However, such factors as the intention of the victim, the intention of the offender, the severity of the damages and the relationship between the victim and offender can affect types of RJ programmes and the scope of participants. We find dual purposes for RJ programmes: one is as a diversion (to avoid prosecution and imprisonment) and the other is to restore. Based on this aspect, we discussed the application of RJ programmes to typical types of crime which are common in our countries.

B. Types of Crime

1. Domestic Violence

Definition: any form of violence between family members including physical and psychological damages.

Summary of discussion

In cases of domestic violence, it is possible to apply VOM (victim-offender mediation) or FGC (family group conference), because this offence is more sensitive and the victims and the offender would not feel comfortable with the community's participation during the proceeding.

For petty cases, it is recommendable to fix the problem using RJ programmes as diversion at the pre-charge stage where a mediator can talk with victims and offenders and make an agreement together to avoid prosecution, because they have the possibility to restore their relationship and such victims do not want the offenders to be prosecuted.

On the contrary, in hard cases, for example, causing serious injury, it is necessary to refer the case to a prosecutor who decides whether to indict. In addition, when the offender has a habit of aggression, it is also recommendable to be referred to a prosecutor because these offenders tend to commit other violent crimes against their family members. Therefore, in these cases, RJ programme should be used to promote restoration of family relationships or to facilitate divorce with consent at the post-prosecution stage.

2. Rape

Summary of discussion:

In cases of rape, it is necessary to take account of maintaining dignity, personality and character of victims as well as punishing offenders.

In most rape cases, the suitable restorative justice programme would be VOM, because rape victims do not want to divulge their damages in front of many people. It is important to avoid secondary victimization. In addition, when the rape occurred among family members, it is also possible to use FGC, inviting victim's and offender's immediate social networks, because family members have to restore their relationships as well.

Considering punishing rape offenders and preventing other rapes, rape offenders should be prosecuted. Therefore, basically, RJ programmes should be used as a means to give victims restitution, compensation and an apology from the offender, not as a means of diversion. However, some rape victims do not want their cases to be prosecuted because they are too afraid of having their privacy exposed in criminal court even if they cannot receive any compensation or an apology from the offenders. Considering this situation, applying RJ programmes as a diversion at the pre-prosecution stage would give a good chance to such victims to receive financial compensation.

3. Traffic Accidents

Definition: A traffic accident is an incident that occurred on the street, involving a vehicle, person, motorcycle, property, deliberately or carelessly, and that resulted in fatal/non-fatal casualties and physical or non-physical damages.

Summary of discussion:

In cases of traffic accidents, implementing restorative justice in the pre-charge stage as a diversion is relatively effective and suitable. For example, if the victim has suffered minimal physical or property damages, and if the victim will agree to a financial settlement from the offender, these cases should be settled and should not be prosecuted. On the other hand, if the damage is serious, such as death or serious injury, the case should be prosecuted. At the post-prosecution stage, the result of the agreement or settlement between an offender and a victim can be considered in the process of sentencing and release on parole.

At any stage, VOM and CFGC (community and family group conference) programmes would be suitable.

4. Murder

Summary of discussion;

In murder cases, the bereaved family members become the victims, because the real victim is dead. Implementing restorative justice in the pre-charge stage as diversion is difficult. Offenders should be prosecuted, because protection and maintenance of public security must be the responsibility of the state.

As for murder cases between family members, and where the remaining family members do not want the offender to be punished severely, the victims' feelings can be considered in the process of sentencing. Such offender should serve their sentences in the community under the supervision of his family and community rather than in prison. In such a case, we can use CFGC restorative justice programmes effectively.

Although the ultimate goal of restorative justice is to restore the relationship between victims and offenders, victims and offenders cannot restore their relationships easily in murder cases. However VOM and FGC types of RJ programmes can offer a chance to make offenders recognize the seriousness of the damage that he/she caused to the victim, which is one of the important objectives of restorative justice, and a chance to allow victims to ask the offender what the victims want to know. Restorative justice has to fix society little by little to prevent further retaliation.

C. Mediator

The mediator is a non-party neutral person, who can be an officer or volunteer, with the responsibility of helping the parties involved in the restorative justice proceeding to reach an agreement. To become a mediator, it is necessary to have knowledge about restorative justice approaches, psychology and social work. Moreover, the mediator must be sensitive to understanding and listening to people in different social and economic contexts.

In cases of domestic violence, rape and murder, the mediator must be specifically trained, because he/she has to face difficult issues among parties involved.

V. CONCLUSION AND RECOMMENDATIONS

The implementation of RJ programmes still requires hard work in all of the participants' countries of the 156th Senior Seminar at UNAFEI. It demands, for instance, some change in the national legislation and also in culture about the traditional criminal justice system.

However, RJ is not an entirely new concept. In some countries, similar concepts have already been introduced. There are some communities where RJ has been used as a custom. We should work further to improve our system where offenders try to recover the damages they caused to the victim and to the community. But there are differences from country to country in terms of established systems as well

as customary practices.

To implement RJ, first, the philosophy of RJ has to be understood, the results of the discussion reported in this paper should be considered and a system that best matches the situation of each country should be implemented. RJ gives rights to the victims, and also gives some duties and responsibilities to the offenders and the community. Law enforcement agencies should support them.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- ***156th International Senior Seminar***

UNAFEI

The 156th International Senior Seminar

Left to Right:

Above:
Dr. Gerd F. Kirkhoff (Germany)

4th Row
Mr. Hayasaka (Staff), Mr. Sugiyama (Staff), Mr. Fukuta (Staff), Ms. Suzuki (Staff), Mr. Tada (Staff)

3rd Row
Ms. Iwakata (Staff), Ms. Nishi (Staff), Mr. Kobayashi (Japan), Mr. Paksa (Indonesia), Mr. Ito (Japan), Mr. Akagi (Japan), Mr. Welia (Papua New Guinea), Mr. Diallo (Guinea), Ms. Hichiguro (Staff), Ms. Yamada (Staff), Ms. Odagiri (Chef)

2nd Row
Mr. Toyoda (Staff), Ms. Yamamoto (JICA), Mr. Ndrasal (Papua New Guinea), Ms. Kikuchi (Japan), Dr. Angkana (Thailand), Ms. Khotcharit (Thailand), Ms. Ota (Japan), Ms. Uriarte Flores (El Salvador), Ms. De Carvalho E Silva (Brazil), Ms. Tajima (Japan), Mr. Ota (Japan)

1st Row
Mr. Ando (Staff), Prof. Moriya, Prof. Yoshimura, Prof. Mio, Dr. Brian Steels (Australia), Director Akane, Ms. Betty PANG Mo-yin (Hong Kong), Prof. Tsunoda, Prof. Tashiro, Prof. Hirose, Mr. Schmid (LA)