

# RESTORATIVE JUSTICE FOR ADULTS AND JUVENILES IN THAILAND

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## 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 provides 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 of 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

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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,

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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).

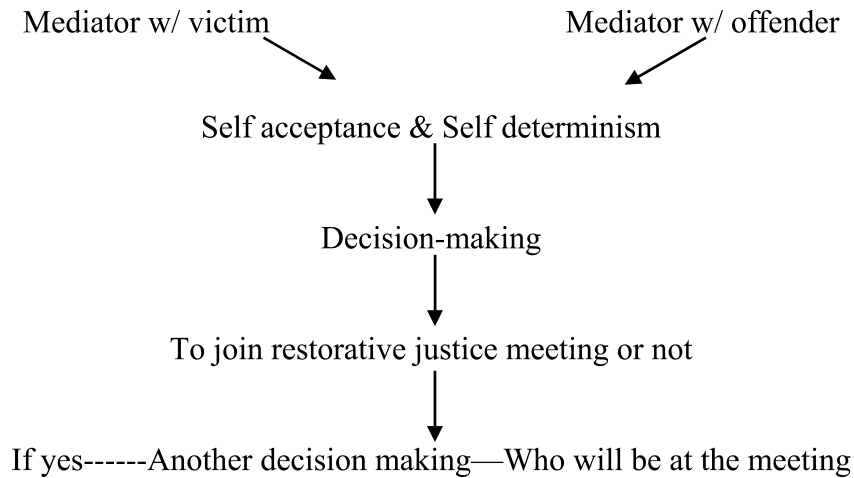
One of the principles of restorative justice is to “make things as right as possible” (Ron Claassen, 1996) which includes: attending to needs created by the offence such as safety and repair of injuries to relationships and physical damage resulting from the offence, and attending to needs related to 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 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.

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*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 Invittaya, 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



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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 be 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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