

National Symposium on Restorative Justice

20 June 2019

Concept Paper

I. Background on TIJ's collaboration with UNODC on Restorative Justice

1. Restorative justice is a key measure in criminal justice. It provides an opportunity for all stakeholders to understand the dynamics that led to the specific incident, and allows them all to seek a community-based solution to the conflict. In general, restorative justice facilitates the optimal conditions for effective reparation, insofar as it involves all interested stakeholders, empowers the victims to express their needs and helps them to restore their well-being, assists the offenders in finding ways to make amends as well as be held accountable for their actions, and also engages the community in the resolution of conflict since both victims and offenders need to be reintegrated into the community. As such, restorative justice could contribute to building better understanding and to promoting social harmony and peace through the healing of victims, offenders, and the community. Because of this connection, it has been noted that wider use of restorative justice could help criminal justice systems worldwide, including in Thailand, to respond to the challenges that they face, by addressing crime at its root causes, and by alleviating the congestion in court and the overcrowding in prisons.
2. In recognition of the importance of restorative justice, Economic and Social Council resolution (ECOSOC) 2016/17 requested the United Nations Office on Drugs and Crime (UNODC) to convene an expert group meeting on restorative justice in criminal matters, which was held in Ottawa, Canada in November 2017. The Ottawa meeting called for a review of the use and application of the basic principles on the use of restorative justice programmes in criminal matters, as well as of new developments and innovative approaches in the area of restorative justice. At the Ottawa meeting, the expert group noted that “there was a more nuanced understanding of the key concepts of the basic principles” and that “further guidance would be beneficial in the interpretation and application of those key concepts of basic principles”.¹ In line with the observations and the recommendations made by the expert group, the UNODC has prepared the draft for an updated *Handbook on Restorative Justice Programmes* which reflect those inputs into practical guidance. The draft updated

¹ E/CN.15/2018/13, “Report of the Secretary-General on the outcome of the expert group meeting on restorative justice in criminal matters.”

Handbook provides a framework and the practical tools to support countries in the implementation and development of restorative justice programmes.

3. During the Expert Group Meeting in 2017, the Thailand Institute of Justice (TIJ) made its contribution by highlighting key developments in the application of restorative justice in the context of cases involving children in conflict with the law as well as in domestic violence cases in Thailand. TIJ's presentation focused on the 2010 revision of Thailand's *law on the Juvenile and Family Court and on Juvenile and Family Procedures*, which paves the way for the use of restorative justice in connection with child offenders either at the pre-charge or the post-charge stages. However, a decline in the use of restorative justice was found during the period 2011 – 2016, with an annual average of 440 children going through the restorative justice process, compared with an annual average of 3,300 children in the years 2004 – 2010. One possible explanation for this decrease in the use of restorative justice may be that an increased proportion of those children who come into contact with justice system are charged with more serious crimes, or they have reoffended, since either situation could affect the eligibility of the referral. Despite the decline in the number of cases, the TIJ contribution highlighted the on-going trend in expanding the use of RJ in Thailand. This trend includes the use of RJ in domestic violence cases under the Thai law on the protection of victims of domestic violence. Initiatives to enhance the capacity of criminal justice professionals by the Department of Juvenile Observation and Protection and the Central Juvenile and Family Court were also presented as progress in implementation of RJ in Thailand, while accepting that more work needs to be done such as in terms of capacity-building, sensitization among the public and systematic follow-up and evaluation of restorative justice practices.
4. Building upon the contribution of TIJ at the November 2017 meeting, TIJ continued to work together with the UNODC to enhance the use of RJ internationally as well as at the domestic level. In this regard, TIJ made a financial contribution to support the work in updating the *UNODC Handbook on Restorative Justice Programmes*. In this joint project, another Expert Group Meeting will be convened in order to further review and provide guidance to improve and to finalize the updated Handbook. In addition, with a view to promoting wider use of restorative justice in criminal matters, the project involves the development of training curriculums on restorative justice on both the national and the regional level, in order to deepen the understanding, knowledge and skills of criminal practitioners and policymakers in delivering restorative justice services.

5. The Expert Group Meeting will be held on 17 - 19 June 2019 in Bangkok. Approximately twenty-five prominent experts on restorative justice from all regions of the world will be invited in their individual capacity to attend the meeting. The meeting aims to gather additional views, inputs, good practices, lessons learned, and observations on the basis of various types of expertise on restorative justice, including policymakers, restorative justice practitioners, victim services providers, prosecutors, members of the judiciary, civil society organizations, academia, etc., in order to further improve, finalize and publish the updated draft Handbook.

II. National Symposium on Restorative Justice (20 June 2019)

6. As part of continued efforts to promote the application of restorative justice, TIJ commissioned two research projects in 2018 to review the concept of restorative justice and its practices in criminal justice and among relevant agencies with a focus on the situation in Thailand. Thanks to cooperation from all stakeholders, the findings produced useful information and identified essential obstacles to restorative justice programmes that need to be addressed. Another action initiated by TIJ was the organization of a Seminar on Restorative Justice in October 2018, at which key stakeholders working on restorative justice in Thailand contributed their hands-on experience on the situation and formulated in-depth recommendations for the way forward.
7. The outcomes of these two projects show that over the past years, while there has been significant progress in term of laws, the implementation of restorative justice as a complement to the formal criminal justice system has been limited. The perception of relevant authorities and the general public on the merits of restorative justice, *inter alia*, remains a key challenge that hampers the effective function of restorative justice. Further to this, the new provisions in the law regarding when diversionary measures can be used appear to be somewhat ambiguous, and they have been interpreted in a way that gives practitioners less flexibility. Another barrier relates to the high threshold for referral and management of restorative justice. As rising numbers of offenders have been charged with more serious crimes, extending the eligibility for referral to restorative justice may be necessary to promote wider use of such an approach.
8. Against this backdrop, the efforts to foster criminal justice reform greatly require a holistic approach that engages the participation of every sector in society. The collaboration between justice agencies as well as the involvement of all stakeholders are central to effective and sustainable policy implementation. In this

light, a consolidation of evaluation and monitoring mechanisms is needed to justify the promise of restorative justice. This would provide useful evidence of the effectiveness of restorative justice in reducing re-offending and providing crime victims with redress that plays a crucial role in building trust in such procedures among those come into contact with criminal justice, criminal justice practitioners and society as a whole. In conjunction with this, the upcoming Expert Group Meeting for the updating of the handbook on restorative justice programmes, which will take place on 17-19 June 2019 in Bangkok, will offer a timely opportunity to generate greater domestic awareness of restorative justice and to seek collective solutions to these challenges. Moreover, we envisage the arrival of international experts from around the world as an unprecedented opportunity to share and exchange experiences on restorative justice with Thai stakeholders.

9. With a view to enhanced understanding and the strengthened capacity of Thai stakeholders on the concept of restorative justice that results in wider use of the approach as part of a broader process of criminal justice system reform, a National Symposium on Restorative Justice is proposed. The National Symposium is aimed to be a high-visibility event involving a wide range of stakeholders in Thailand to build momentum for the use of restorative justice as an alternative to formal criminal justice proceedings. This will be a great opportunity to sensitize stakeholders to allow for wider acceptance of ideas and wider use of restorative justice, as well as to address practical problems relating to the application of such measures. It will also allow experts attending the EGM to present good practices from their respective countries.
10. The Symposium will comprise three panel discussions. The first session will concentrate on the concepts, the values and the objectives of participatory and restorative justice. The second session will deal with more practice-oriented aspects of restorative procedures. The last session will seek to provide participants an opportunity to engage in an exchange of good practices in different countries, as well as to generate constructive discussions to address any challenges facing the implementation of restorative measures. Each session will be followed by Q&A from the floor. English-Thai simultaneous interpretation will be provided throughout the day