

Diversion Programs for Drug Addicts, Restorative Justice and New Community-Based Treatment Measures in Thailand

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Introduction: A New Era for Community-Based Treatment of Offenders

Now is perhaps the most significant period for those who are interested in seeing wider application of measures on community-based treatment of offenders in Thailand. Not only that there are more interest in the community-based treatment concept at the policy making level, but with the ongoing criminal justice reform in Thailand, there are also greater possibility for the implementation of such measures in reality. In the past, even though the concept of community-based treatment of offenders have been well accepted, it is very difficult to bring the idea into reality. The lack of overall criminal justice policy planning, the lack of cooperation and coordination, the inadequate funding are among the major reasons hampering the success of introducing community-based treatment measures as alternatives to the current the practices based mostly on retributive, custodial measures.

The recent overhaul of criminal justice system has directly promoted more and wider application of community-based treatment. In 2000, the judiciary, which has long been under the Ministry of Justice, was promoted to become an independent entity. At the same time, the Ministry of Justice, which used to be a small ministry overseeing only administrative works of the judiciary, have since October 2002 become the focal point for justice administration, quite similar to the Department of Justice in the United States. In this new structure, all agencies concerning justice administration, including those dealing with the treatment of offenders, will be brought together under the same organization. A national committee on justice administration will soon be created in order to be a platform for policy planning and budget allocation within the justice system. This new development has directly promoted the wider application of community-based treatment and other alternatives

as a means to solving inherent problems with the administration of justice in the country.

Apart from the major reform of the criminal justice system mentioned above, there are several other reasons, which, directly or indirectly, contribute to the promotion of community-based treatment measures. To begin with, the lack of well policy planning toward community-based treatment of offenders has made the criminal justice system in Thailand facing with severe incidents of case backlog and overcrowding. It is not surprising to see a criminal case taking more than a year to finish the criminal courts of first instance and several more years before the final decision of the Supreme Court arises. Thailand also faces severe problem of overcrowding. In 2002, there are approximately 260,000 inmates in prisons while the available space could handle only 100,000 persons.

In addition, the changing policy on drug problems has also opened the way for new community-based treatment of drug abusers who consists of more than half of the number of defendants in criminal cases in the criminal justice system and inmates in correction facilities. The necessity to take drug rehabilitation more seriously together with the need to lessen the pressure within the criminal justice system have prompted the government to promulgate a new law on compulsory drug rehabilitation programs which places major emphasis on community-based treatment of drug addicts.

Last but not least, the growing interest in the concept of restorative justice is another factor that has direct impact on the promotion of application of community-based treatment of offenders in Thailand. As restorative justice emphasizes informal method of dealing with crime, particularly with the increasing roles of the victims, offenders and the community, it has, in many ways, supported the community-based treatment options.

Such above-mentioned reasons are among the major rationales behind the growing interest in community-based treatment of offenders in Thailand. In this connection, the government, on July 10, 2001, issued a cabinet resolution specifying detailed guidelines on how to reduce case backlog and overcrowding. The so-called “July 10 Resolution” has recommended several non-custodial and community-based

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treatment measures which will serve as a road map for future trends and development of community-based and non-custodial treatment measures in Thailand.

New community-based measures

As already pointed out earlier, the “July 10 Resolution,” which outlined measures aiming at reducing the number of cases coming into the justice system, could serve as good frameworks for trends in community-based treatment and non-custodial measures. The resolution has recommended several measures namely: the setting up of community mediation centers to settle certain kind of disputes within the communities, the encouragement of the use of prosecutorial discretion not to prosecute subject to certain kind of conditions, the initiation of drug diversion programs, the increasing use of probation to juvenile offenders, the proposed reform of the fine penalty, etc. Here are some of the community-based treatment measures which I would like to highlight.

1. New Drug Rehabilitation Law

The Drug Rehabilitation Law has been approved by the parliament in September 2001. The new law has for the first time introduced drug compulsory treatment programs. In the past, drug addicts will be strictly arrested and prosecuted in hoping that such policy would help deterring future drug users. With the rising numbers of drug users, it was proved that such policy which placed higher emphasis only on supply reduction side was not a correct policy. The strict enforcement of law against drug addicts has resulted in the overcrowding of prisons. According to recent statistics, drug offenders consist of approximately 65 percent of the total inmates. Moreover, punishing drug abusers, who themselves are victims of drug and social problems, by imprisoning them is not a solution but a cause of more problems. As a result, at present, the government is attempting to adopt a holistic approach to solving drug problems. More emphasis has been put toward the demand reduction strategies, such as prevention and rehabilitation, so as to make the drug policy more balanced.

Given the number of drug addicts estimated to be more than 1 million, 300,000 of whom need medical assistance, the government has put serious efforts into solving this problem. The government has sent out a clear message to every party

concerned that drug addicts are not criminals but those who need treatment. Policy on rehabilitation becomes one of the 3 major policies on drug which are now familiar lines for everyone in Thailand: “prevention takes priority over suppression, drug addicts will be treated, and drug producers and traffickers will be severely punished.” In order to achieve the goal in rehabilitation, it is important to create a large numbers of rehabilitation programs and initiatives for drug addicts as well as to create favorable environment in the community to enable them to start their new lives after rehabilitation.

In our experience, voluntary programs for drug rehabilitation alone did not work efficiently because they do not provide adequate incentives for the participants to complete such programs. As a result, the new law which introduces the so-called “compulsory treatment” programs was enforced in 2002 to complement the existing voluntary programs. In accordance with the new law those who were arrested on drug consumption charges will be allowed to have a chance for treatment through the compulsory treatment programs. If the outcome of the treatment is satisfactory, the prosecutors may then drop the charge. If the persons do not abide by rules and regulations for treatment, we may then proceed with the prosecution.

Given the number of drug addicts, the law has created a very large diversion programs for those normally charged for drug abuses. Since the Thai criminal justice has never experienced any kind of diversionary programs before, this endeavor is most challenging, not only among criminal justice officials but for those outside the field also. The responsibilities for implementation of this new initiative fall upon the Department of Probation. As the core coordinator of this drug diversion programs, the Probation Department is now collaborating with many agencies, including the public health agencies, local administrations, the military, etc. A national committee headed by the Permanent Secretary for Justice has been set up, consisting of all the relevant governmental and non-governmental agencies involved in drug rehabilitation both within and outside the criminal justice fields. The Director General of the Probation Department will serve as the secretary to this body. In addition, local committees attached to each court jurisdiction will also be established nation-wide. These committees consist of prosecutors, psychologists, doctors and social workers, whereas probation officers serve as secretaries to the committees. They are in charge of preparing an appropriate rehabilitation program which is suitable to each individual. Such programs may be a comprehensive treatment program that may require the

individual to be detained during the period of treatment or a community-based treatment program available in the community. The results of the treatment will be reported to the committees in each particular jurisdiction who will prepare a recommendation to the prosecutors. Successful participants to the programs will be exempt from criminal prosecution.

Concurrent with the compulsory treatment program, the government also campaign for the addicts to turn out for voluntary treatment programs. The drug treatment programs whether voluntary or compulsory will be the largest community based diversion programs ever apply in the Thai criminal justice system. Since the initiation of the programs in March 2003, at the end of March 2005 after two years of operation there were approximately 42,000 addicts going through this compulsory process.

2. Other diversion programs

Apart from the new drug rehabilitation programs, there are also several other diversion programs recommended by the July 10 Resolution.

The community mediation and conciliation programs

The programs aim at enabling communities to resolve conflicts among themselves and thereby reducing the burdens of having to bring their cases to the formal justice processes which sometimes are too costly and not easy to access, especially for the poor. At present, in most instances the disputes settled were civil matters, however, the study underway on how this informal ways of conflict resolution should also be extended to some minor crimes. In Thailand, there is a separation between the “compoundable offense”- an offense not criminal in nature- and the “non-compoundable offense”- an offense with *mala in se*. The trend now is to explore the ways and means toward apply informal mediation and conciliation to *mala prohibita*, compoundable offenses.

Suspension of prosecution

Unlike prosecutors in many jurisdictions, the prosecutors in Thailand rarely used discretion not to prosecute a case on other reasons except lack of sufficient evidence. The recent trend now is to encourage the prosecutors to use more discretion to suspend the charge subject to conditions. The July 10 Resolution recommended a law should be drafted on the use of prosecutorial discretion. It is also recommended before granting the person a non-prosecution order, he or she should be required to do some community service works or subjected to any conditions the prosecutor sees fit. In this connection, the Resolution suggested that the Department of Probation is responsible to prepare community-based programs for this new initiative.

Following such recommendation, a law allowing a diversion for less serious offenses at the prosecution level was drafted and was since October 2004 approved by the cabinet. It is now awaiting consideration of the parliament. It is interesting to note that there a provision allowing the prosecutors to refer a case to probation officers who will act as facilitators to convene restorative conferences for victims, offenders, interested parties and the communities, when appropriate.

Community-based treatment for juvenile offenders

The cabinet resolution of July 10 also recognized the need for providing more community-based treatment programs for juvenile offenders. In the past, juvenile offenders would be sent to the Office of Child Observation and Protection which were attached to the Juvenile and Family Courts. With such practices the number of juvenile offenders detained the juvenile corrections have dramatically increased. According to the new structure of the Ministry of Justice, the Office of Child Observation and protection will be promoted to the departmental status. Currently, the Department of Probation is working closely with the Office to prepare future treatment programs in the community for juvenile offenders.

The Emergence of Restorative Justice Concept

In Thailand, there has been increasing interest in the restorative justice concept during the past several years. Recently, the concept has been well received at the policy making level. Currently, the concept of restorative justice is being implemented in several pilot projects. Firstly, the so-called family group conferences

have been applied as pilot projects since June 2003 and now more than 5,000 cases have been diverted out of the juvenile justice system through these restorative conferences. Moreover, there are ongoing projects related to the application of restorative justice in domestic violence. Also, there are several initiatives on restorative justice at probation works as well as during incarcerations.

Though restorative justice programs are at an early stage of development in Thailand, it will definitely be of more uses in the near future. The restorative justice concept is not a new idea but coincide with the existing Thai traditions. It puts greater emphasis on the plight of the victims as well as the role of the community which is consistent to the trends of criminal justice development everywhere including in Thailand.

Conclusion

Never before has community-based treatment measures received such a strong support at the policy making level. However, underlying reasons for increasing interest on community-based treatment measures among supporters may vary. For some community-based treatment measures are not just an alternative for imprisonment, but a far better option for the treatment of offenders. For others, they may be only a cheaper alternative or a “way out” of imminent crisis from problems of prisons overcrowding.

No matter what the rationales may be, ever since the time of the inception of probation work for adult offenders in Thailand in 1980 to the establishment of Department of Probation in 1992, now is the most challenging time for community-based treatment measures in Thailand. Given the important tasks at hand, it is important for the Department of Probation, who have to shoulder most of the responsibilities in implementing the government policy outlined in the July 10 Resolution, to revise plans and strategies to meet the rising demands. Through a decade of hard work the Department of Probation has been successful in establishing the system of probation for adult offenders in Thailand. There are more than 120,000 persons currently under supervision and the success rate has been very satisfactory. However, with more than triple workloads, it is also necessary to let it be known that there is no shortcut for success. Viewed as a cheaper alternative, probation works in many countries, including Thailand, are facing the same problems of chronic lack of

funding and inadequate personnel and staffs. Although community-based options may in fact be a cheaper alternative, but this does not mean that they can survive without adequate funding and support. To ensure successful result, it is necessary that due consideration be given to providing full support to probation works during this crucial period.

Community-based treatment measures in Thailand have come to an important juncture. Through adequate nurture and support, I am confident that we will be able to meet the challenge and to prove that community-based treatment measures are not only an alternative but far better option for the treatment of offenders.