

# RESTORATIVE JUSTICE PRACTICES IN THAILAND



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# Implementing FCGC in Thailand

- Restorative Justice: Family Community Group Conferencing (FCGC) in Thailand
- In the year 2000, the New Zealand government, through its Good Governance program, invited the DJOP's DG 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 DJOP planned and prepared regulations and guidelines, including intensive training of staff, for FCGC implementation with the support of UNICEF.

\*Excerpt from his plenary speech note dated 11 November 2005

# Implementing FCGC in Thailand

- 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 practice, along with regulations and guidelines, in the 52 Juvenile Observation and Protection Centers around the country.
- These centers used an adapted version 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).

# Implementing FCGC in Thailand

## Laws to support the practice:

- The Juvenile and Family Court and Procedure Act 1991: Articles 50 and 63
  - ▣ 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 of the Protection Center the authority to recommend a non-prosecutorial order to the prosecutor in the jurisdiction.
- In making such a proposal the Director has to use his/her discretion based on three factors:
  1. Qualifications of the child that 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 gives consent to be under the control of the Director in follow-up monitoring.
- Application of the Law: the former law was not drafted with the purpose of benefiting FCGC, it was designed for alternative approach in general.

# Implementing FCGC in Thailand

- The articles have been on the books for many years, but no one has ever used it because each director did not want to exercise this discretion all by him/herself.
- Under the FCGC process, the decision to make a proposal for the non-prosecutorial 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 the prosecutor.

# The Next Step: Developing Restorative Communities

- At the beginning, during the first three months, very few cases went through the FCGC process because the facilitators and directors of the protection centres 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 in giving the children another chance in life.

# The Next Step: Developing Restorative Communities

- They agreed that it provided a venue for a child and his/her parents to openly discuss the problem at hand, 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.

# The Next Step: Developing Restorative Communities

- 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 centres to be efficient conference facilitators based on the Real Justice model.

# Implementing FCGC in Thailand

- The participants in FCGC are:
  - the victim
  - the child offender
  - the parents and relatives of the child
  - a psychologist
  - a social worker
  - one or more representatives of the community
  - the director of the protection centre
  - the police investigator
  - a prosecutor
  - and the conference facilitator.
- With such a structure, the FCGC in Thailand is similar to the circle process used in Canada.

# Current Practice of the FCGC

- Expand the practice out of the criminal justice field into schools: Sonkhla Project.
- The Juvenile and Family Court Act B.E. 2553 (2010)
- CHAPTER VII: Special Measures in Place of Criminal Prosecution : Section 86.
- Similar Criteria:
  - A Child or Juvenile is alleged to have committed a criminal offence that is punishable by a 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 Centre 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.
- Classification Tools for Risks and Needs: Low Risks
- The preparation of the Rehabilitation plan shall be subject to consent from the victims and the Child or Juvenile.
- The implementation of the Rehabilitation plan shall be reported to the court.
- 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.

# Current Practice of the FCGC

- **Section 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.
- **Section 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.

# Implementing FCGC in Thailand

- The statistics from 1 June 2003 to 31 June 2005 are as follows:
- Num. of children arrested: 66,858 persons
- Num. of potential FCGC cases: **10,220 cases**
- Num. of FCGCs successfully organized: **7,217 cases**
- Num. of cases w/ non-prosecutorial orders: 5,751 cases

# Current Practice of the FCGC

- In 2010
  - Num. of children arrested: 46,345 persons
  - Num. of potential FCGC cases: **19,775 cases**
  - Num. of FCGCs successfully organized: **4,976 cases**
  - Num. of cases w/ non-prosecutorial orders: 4,751 cases
- In 2012
  - Num. of children arrested: 30,451 persons
  - Num. of potential FCGC cases (Director proposed the use of Article 86): **961 cases**
  - Num. of FCGCs successfully organized: **772 cases**
  - Num. of cases w/ non-prosecutorial orders: 188 cases

# Challenges

- The JFC Law
- Level of staff training:
  - Conference preparation process
  - Process in the conference
  - Follow up of the case: Mentoring and supervision system
  - Emphasis placed more on the Juvenile and less on the victim
  - Trust in the effectiveness and fairness of the process
- Resources: Man, Money, Management
- Lack of diversion measures and alternatives to detention
- Vision of the Leaders of the organization
- Public interest: Media

# Lessons learned in implementation of the FCGF in Thailand

- Recruitment criteria.
- Equal and thorough supports for Juveniles and the victims:
  - ▣ Accountability
  - ▣ Intervention (not alternative punishment choices: community works)
  - ▣ Treatment (not payment)
- Evaluation of the practices.
- Continuation of supports and training for related staffs.
- Communicates to the public.

# Opportunities

- New Research Project of the DJOP: 2013-2015
- The **Community Associations Reintegration Effort** for Children in the Justice System: The **CARE** for Children Project.
  - Capacity building for NGO's and Foundation in the Community: KAP
    - Case management and supervision
    - Related JV Laws and regulations
    - Restorative Justice Approaches
  - Referral of the younger kids (10-14 Yrs.) preparing for the increasing of the ACR
  - Reduction of time in Detention and emphasis more on reintegration with collaboration from the community
  - (Hopefully will be) Funded by UNICEF Thailand

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YOU!**